FOREST PRACTICES BOARD

REGULAR BOARD MEETING
May 8, 2012
Natural Resources Building
Olympia, Washington

Members Present
Bridget Moran, Chair of the Board, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Dave Somers, Snohomish County Commissioner
David Whipple, Designee for Director, Department of Fish and Wildlife
Norm Schaaf, General Public Member
Paula Swedeen, General Public Member
Phil Davis, General Public Member
Jaclyn Ford, Designee for Director, Department of Agriculture
Tom Laurie, Designee for Director, Department of Ecology

Members Absent:
David Herrera, General Public Member
Mark Calhoon, Designee for Director, Department of Commerce

Staff
Darin Cramer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Bridget Moran called the Forest Practices Board (FPB or Board) meeting to order at 9:05 a.m. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

APPROVAL OF MINUTES

MOTION: Dave Somers moved the Forest Practices Board approve the February 14, 2012 meeting minutes.

SECONDED: Bob Guenther

Board Discussion:
David Whipple made two corrections to page 7, lines 34 and 35 to read as follows:
David Whipple . . . administrative changes to their self-certification process under the Bald and Golden Eagle Protection Act and track state forest practices applications proposing activities certain distances from eagle ~~habitat~~nests and roosts. . .

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Bridget Moran reported:

- Beginning May 2013 there will be an annual review of the effectiveness of the new process in WAC 222-20-120 regarding the notice of forest practices to affected tribes.
- The compliance monitoring 2010-2011 biennial report showed mixed results and there is still much work to do to reach full compliance. Completing the compliance action plan tasks and implementing a training program is expected to result in improved compliance over time.
- Second Engrossed Substitute Senate Bill 6406 integrating FPA/HPAs passed:
  - The Board will consider filing a CR-101 at this meeting;
  - New forest practices application (FPA) fees and three-year FPA terms will take effect July 10, 2012;
  - Rule making to integrate hydraulic project approval in forest practices will occur by December 2013.
- The critical habitat (SEPA) rule making is moved to August to allow the Washington Department of Fish and Wildlife (WDFW) time to consider a recommendation to the Board on the gray wolf.

David Whipple, WDFW, explained that in December 2011 the Washington Fish and Wildlife Commission adopted the Wolf Conservation Management Plan for the gray wolf in Washington. He said he will be assembling the Wildlife Working Group to assess the forest practices critical habitat rules in relation to the Wolf Conservation Management Plan.

PUBLIC COMMENT

Chris Mendoza, Conservation Caucus, commented on the compliance monitoring report. He said he appreciated that the report is more objective than in the past and there was more opportunity for input. He also mentioned the haul road results were probably artificially high because monitoring did not take place in rainy conditions, which is the critical time to assess disconnection from waters.

Peter Goldman, Washington Forest Law Center, asked the Board to consider how it can influence regulators to improve compliance.

Pete Heide, Washington Forest Protection Association (WFPA), stressed that WFPA members' goal is to perform at 100 percent compliance. He summarized points he made in a letter which he provided to Board members, including notable results that show signs of compliance improvements and suggestions for future reports. He said WFPA remains concerned about the reporting of water type classifications. He also said the rules are clear and enforcement should be emphasized.

STAFF REPORTS

Bridget Moran asked if Board members had questions about the staff reports. There were no questions.

2012 LEGISLATIVE SUMMARY AND BUDGET UPDATE

Darin Cramer, DNR, reported the passage of legislation affecting the forest practices program: 2ESSB 6406 which integrates hydraulic projects into the FPA process; E2SHB 2238 that pairs required investments in compensatory environmental mitigation with programs that are referenced in Title 76 RCW; 3ESHB 2127 on fiscal matters; and ESB 6074, a jobs in the environment bill that appropriated $10 million to the Recreation and Conservation Funding Board for the Family Forest Fish Passage Program.

He summarized provisions of 2ESSB 6406, including:

- Rule making by December 31, 2013 to incorporate fish protection standards from the hydraulics code and develop guidance;
- Adding 30 days to the review period for FPAs that include hydraulic projects;
- Eliminating the Forest Practices Act requirement for an early 30-day review of draft rules by WDFW and counties (effective July 2012);
- FPA fee increases (effective July 2012); and
- FPAs effective for three years instead of two (effective July 2012).

OVERVIEW OF PROPOSED NORTHERN SPOTTED OWL CRITICAL HABITAT DESIGNATION

Ken Berg, U.S. Fish and Wildlife Service (USFWS), gave a presentation on the Service's proposed revised northern spotted owl critical habitat designation and the draft environmental impact statement on the experimental barred owl control (which is part of the spotted owl recovery plan). He explained that the economic analysis for the proposed critical habitat rule will be released the end of May and the comment period for the proposed rule will be extended for 30 days after the release of the analysis.

He said all of the private forest lands proposed for critical habitat in Washington (approximately 180,000 acres) are within the current Spotted Owl Special Emphasis Areas, and about a quarter of those areas are already covered by habitat conservation plans or safe harbor agreements.

Bridget Moran said the Board will consider modifications to its critical habitat rule after the federal rule is finalized, and the USFWS expects a final federal rule just after the Board's November 2012 meeting. She also said the Board will continue the discussion about the spotted owl at the August meeting and consider convening a Board subcommittee.

ADAPTIVE MANAGEMENT REVIEW (LEAN PROCESS) UPDATE

David Howe, Strategica, reported observations from the Lean Event on the Adaptive Management Program. He explained that the CMER scoping paper and the study design processes were selected for assessment. The key suggested changes are:

- fewer review and approval steps;
- smaller teams of qualified writers;
- fewer input/comment/decision points for CMER; and
- expedited peer review for projects with less potential for rule change.

Howe said the process improvements could result in as much as an 80 percent time reduction, assuming the appropriate expertise is available to comprise differently structured technical writing and implementation groups (TWIGs). He also offered additional observations: the distinction between CMER and Forests and Fish Policy (Policy) is fuzzy; there is excessive due process; the consensus decision making approach contributes to extremely long cycle times. He suggested that the recommended process be piloted before full implementation.

Jim Hotvedt, DNR, and Howe provided the following answers to Board members' questions:

- Other parts of the adaptive management process could benefit from a similar assessment.
- It was advantageous to include an independent facilitator in the Lean process.
- CMER voting members participated in the Lean process and were outstanding to work with.
- CMER will be considering whether to conduct one or more pilots, which may be possible for studies currently underway.

With general Board agreement, Bridget Moran provided direction to CMER to receive the formal report, digest it, and initiate the suggested scoping and study design process improvements on projects that would commence before the August Board meeting. She also requested that CMER provide a status report and recommendations to the Board in August.

COMPLIANCE MONITORING BIENNIAL REPORT

Walt Obermeyer, DNR, presented a summary of the 2010-2011 Biennial Compliance Monitoring Report and provided a detailed overview of the results. He concluded that:

- The correct water type determination, and subsequent Type F Water buffering, of low-gradient streams in Western Washington needs improvement;
- There were fewer "major" and "moderate" severity occurrences than in the 2008-2009 biennial sampling period;
- A high level of compliance was demonstrated on haul routes; and
- There was good compliance in road construction and abandonment.

Darin Cramer, DNR, reported on the status of the Compliance Action Plan. He said recently completed actions are:

- FPAs must include water type classification information and documentation to be considered complete;
- Special emphasis sampling, employed in 2011, has resulted in the haul route survey and a water/wetland classification sample; and
- A condition is added to 20-acre exempt FPAs to provide a two-day notice before harvest.

He said water typing guidance will soon be added to the forest practices website and several other action items are ongoing.

Norm Schaaf asked how many of the 8,973 FPAs submitted in 2010-2011 included harvesting; how many of the 196 sample FPAs included harvesting; what is the east/west breakdown; and what is the landowner breakdown. Obermeyer said he would provide the answers at a later date because he did not have the information with him.

PUBLIC COMMENT

Chris Mendoza, Conservation Caucus, commented on the Lean discussion. He commented that the Adaptive Management Program (AMP) is a stakeholder-driven process and asked the Board to be cautious about any change for AMP decision approval from the current consensus to a majority requirement. He added that the Lean process should not be seen as a substitute for an objective independent audit.

INTRODUCTION TO STATE FORESTER

Aaron Everett, DNR, explained his role as Washington State Forester, including:

- serving as DNR's conduit for several federal funding programs including fire, forest health, and stewardship forestry technical assistance programs;
- tracking federal funding legislation, e.g., the Farm Bill; and
- initiating a process under state law to look at forest health issues in Eastern Washington.

There was discussion about the state forester's nexus with the Forest Practices Board. Everett gave the example of seeking funding partners for the Forestry Riparian Easement Program, the Family Forest Fish Passage Program, and Adaptive Management Program scientific research.

CLEAN WATER ACT ASSURANCES

Mark Hicks, Department of Ecology, reported that in the past six months:

- The Solar Radiation/Effective Shade study was completed (approved all the way through the CMER and Policy process).
- Two studies are nearing completion (now in CMER review):
  - Bull Trout Overlay Temperature; and
  - Mass Wasting Landscape-Scale Effectiveness.
- Two non-CMER milestones were completed upon adopting the RMAPs rule; those are revising the forest roads board manual and revising the RMAPs reporting forms.

He also mentioned two additional notable efforts:

- Progress on developing a strategy to examine the effectiveness of the Type N rules; and
- The Lean assessment.

FOREST BIOMASS WORK GROUP UPDATE

Rachael Jamison, DNR, explained that the Forest Practices Biomass Working Group is comprised of a broad range of stakeholders and was formed to analyze the efficacy of the forest practices rules for forest biomass removal. Its purpose is to arrive at a consensus recommendation to the Board after analyzing existing science, policy, available technologies, best management, and the existing forest practices rules applicable to biomass harvest. She said the group will be taking a field trip to eastern Washington in June, and plans to offer a final recommendation to the Board in August.

There was discussion about demand for biomass and the construction of biomass facilities in the state. Jamison pointed out that demand is not within the purview of forest practices; however, the results of the University of Washington's supply study shows that although there is not a limitless supply, there is much more forest biomass available than previously thought.

Paula Swedeen inquired about planned facilities on the Olympic Peninsula. Norm Schaaf answered Nippon Paper's co-generation facility expansion is under construction and Port Townsend Paper's expansion has received permits.

Bridget Moran explained that any forthcoming recommendations having an effect on aquatic resources would go through the Adaptive Management Program process prior to the Board receiving a recommendation. She also requested that staff send the Working Group's website link to Board members.

RULE MAKING FOR FORESTRY RIPARIAN EASEMENT PROGRAM

Gretchen Robinson and Dan Pomerenk, DNR, requested that the Board adopt the Forestry Riparian Easement Program rule changes. They said two public hearings were held, one in Spokane on March 27 and one in Centralia on March 29, and the Board received one comment in support of the proposal and one comment about the under-funding of the program.

MOTION: Dave Somers moved the Forest Practices Board adopt the rule proposal amending chapter 222-21 WAC, Forestry Riparian Easement Program, that incorporates House Bill 1509. He further moved the Board direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser.

SECONDED: Paula Swedeen

Board Discussion:

Norm Schaaf asked about use of the term, "forests and fish rules" in rule language, and asked if it would be understood through time which rules it refers to. Staff responded that the proposed rule language includes a definition in WAC 222-21-010 that should provide a clear understanding: "Forests and fish rules" means the rules adopted by the Board in accordance with RCW 76.09.055, RCW 76.09.370, and the amendments to those rules."

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON PILOT RULE MAKING FOR WESTSIDE TYPE N BUFFER EFFECTIVENESS SOFT ROCK STUDY

Peter Goldman, Washington Forest Law Center, said the Conservation Caucus supports the pilot rule making. He stressed it is important to stick with the methodology that has been agreed to and living with the results no matter what they are.

PILOT RULE MAKING FOR WESTSIDE TYPE N BUFFER EFFECTIVENESS SOFT ROCK STUDY

Jim Hotvedt, DNR, and Mark Hicks and Bill Ehinger, Department of Ecology described the Type N Experimental Buffer Treatment for Soft Rock Lithology study and requested the Board's approval to proceed. They explained the goal of the research is to answer how harvest affects:

- water temperature within and at the outlet of a Type N basin;
- sediment input to and storage within a Type N channel;
- suspended sediment and nutrient export to downstream Type F waters; and
- benthic macroinvertebrate communities immediately downstream of a harvest unit.

There was discussion about whether the study sites or reference sites could be changed after the Board approves the action. Hicks said the proposal indicates the likely magnitude of sites but there is a possibility of sites being eliminated and added. Ehinger said the reference sites will not change.

Hotvedt described several revisions to the draft CR-101 he wanted the Board to consider before approval.

MOTION: Tom Laurie moved the Forest Practices Board approve a pilot rule for the Westside Type N Buffer Effectiveness Study in Soft Rock Lithologies under the

Administrative Procedure Act (RCW 34.05.313) as presented today. The pilot will test the effectiveness of the current riparian management rules in providing protection for water quality and providing riparian functions along non-fish bearing streams in western Washington.

Forest practices conducted under this pilot will vary from existing forest practice rules for certain study sites and the Board determines that the pilot rule is in the public interest and necessary to conduct the riparian treatments. He further moved the Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify the public that the Board is conducting pilot rule making.

SECONDED: David Whipple

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON CMER 2013 WORK PLAN AND BUDGET

None.

CMER 2013 WORK PLAN AND BUDGET

Jim Hotvedt, DNR, requested approval of the 2013 CMER work plan and budget. He provided an overview of the entire work plan document, and pointed out that the 2013 projects and budget are shown on pages 11 and 12 of the document. He summarized the 2013 budget which shows a Forests and Fish Support Account balance of $1,737,000.

Bridget Moran said it appears more funds are available than are needed for projects, which is not consistent with what the Board often hears about the lack of Adaptive Management Program funding. Cramer explained that this budget addresses an anticipated shortfall in available funding. He said the program will be in trouble by the middle of the next biennium at the current rate of spending, and a sustainable long-term funding source must be found. The Forests and Fish Support Account is currently the primary source of funding, but it is not adequate to keep the program moving at its current pace. Hotvedt added that quite a few of the field projects are winding down right now, and new projects and study designs are not being initiated because of the funding uncertainty.

MOTION: Norm Schaaf moved the Forest Practices Board approve the 2013 CMER work plan and budget.

SECONDED: Phil Davis

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON RULE MAKING FOR SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

Vic Musselman, Washington Farm Forestry Association, highlighted the portion of the bill that specifies one three-year FPA renewal. He explained that currently applications can be renewed more than once, which has benefitted small forest landowners who want to wait for more favorable market conditions. He asked that Board consider a streamlined FPA review process for harvest proposals already approved in the expired applications.

RULE MAKING FOR SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

Gretchen Robinson, DNR, requested approval to file a CR-101 *Preproposal Statement of Inquiry* to notify the public the Board is considering rule making to:

- Incorporate hydraulic project approvals in the forest practices application process; and
- Clarify existing rule language related to forest practices within urban growth areas.

She indicated that staff will provide a timeline for rule making related to the hydraulic project approvals at the August meeting.

MOTION: Carmen Smith moved the Forest Practices Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify the public the Board is considering rule making to incorporate provisions of Second Engrossed Substitute Senate Bill 6406 relating to hydraulic project approvals for forestry activities and to clarify classification definitions.

SECONDED: Bob Guenther

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

Executive session was convened from 3:10 p.m. to 3:39 p.m.

Meeting adjourned at 3:40 p.m.