

1 **FOREST PRACTICES BOARD**

2 **SPECIAL BOARD MEETING**

3 April 10, 2009

4 Natural Resources Building

5 Olympia, Washington

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9 **Members Present:**

10 Peter Goldmark, Chair of the Board, Department of Natural Resources

11 Brad Avy, Designee for Director, Department of Agriculture

12 Brent Bahrenburg, Designee for Director, Community, Trade and Economic Development

13 Joe Stohr, Acting Director, Department of Fish and Wildlife

14 Bill Little, Timber Products, Union Representative

15 Carolyn Dobbs, General Public Member

16 David Hagiwara, General Public Member

17 David Herrera, Skokomish Tribe

18 Doug Stinson, General Public Member/Small Forest Landowner

19 Norm Schaaf, General Public Member

20 Sherry Fox, General Public Member/Independent Logging Contractor

21 Tom Laurie, Designee for Director, Department of Ecology

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23 **Absent:**

24 Dave Somers, Snohomish County Commissioner

25
26 **Staff:**

27 Gary Graves, Forest Practices Division Manager

28 Marc Engel, Forest Practices Assistant Division Manager

29 Phil Ferester, Assistant Attorney General

30 Patricia Anderson, Rules Coordinator

31 Danielle Sayers, Board Support

32
33 **WELCOME AND INTRODUCTIONS**

34 Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

35 Introductions were made by Board and staff. Danielle Sayers, Department of Natural Resources

36 (DNR or Department), provided an emergency safety briefing.

37
38 **PREVIOUS BOARD ACTION ON MARCH 31, 2009 RELATING TO DESIRED**
39 **FUTURE CONDITION**

40 Lenny Young, DNR, explained that there had been vigorous conversations about the
41 appropriateness of a contingent rule making after the Board's action at the last meeting. He
42 briefed the Board on the issues surrounding that decision. First, the Forest Practices Act and the
43 rules require that any rule amendments or adoptions pertaining to water quality protection be
44 made in agreement with the Department of Ecology (DOE). The Board's action last week did not
45 have this agreement nor did the Board's DOE representative vote to support the action taken.

1 Secondly, there is a requirement in the Administrative Procedure Act (APA) (RCW 34.05.340)
2 which states that an agency may not adopt a rule that is substantially different from the rule
3 proposed in the CR-102. He said it was highly likely that adopting a rule contingent on an action
4 by the Legislature would represent a substantially different rule than what was filed with the CR-
5 102.

6
7 Lastly, as DNR prepared to work with the Legislature towards the fee reduction, it became very
8 apparent DNR's operating budget would need to be reduced by a commensurate amount.

9
10 Young concluded that there have been some strong opinions expressed with threats of litigation
11 from all parties. He asked that the Board consider rescinding the rule adoption, updating the CR-
12 102, and tabling the rule adoption decision until the May meeting.

13
14 Goldmark said he regretted that the motion to adopt Proposal 3 at the March 31 meeting was
15 defective, and by convening this special meeting, he wanted to make sure that any Board
16 decision be defect-free.

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18 **MOTION:** Goldmark moved to rescind the Board's decision of March 31, 2009 regarding the
19 Desired Future Condition rulemaking. That decision adopted DFC alternative #3,
20 but did so contingent upon a budget proviso or legislation that waives the Forest
21 Practices Application/Notification fees required in RCW 76.09.065, for Class II,
22 III, and IV-Special applications.

23
24 Further consideration by Board staff demonstrates that last week's decision is
25 unworkable and why this step is now necessary, including:

- 26 1. the DFC rule affects water quality, and the action taken on March 31 did not
- 27 have the agreement of the Department of Ecology (see RCW 76.09.040(1));
- 28 2. the contingency aspect of the action taken on March 31 may represent a
- 29 "significant" change from the prior text of the rule under RCW 34.05.340; and
- 30 3. contacts with the Legislature indicate that a waiver of fees cannot be obtained
- 31 without significant impacts to DNR's State General Fund operating budget.

32
33 Additionally, making Board rulemaking decisions that are dependent on future
34 legislative action sets an unwise precedent.

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36 As the CR 103 on the Board's March 31, 2009 DFC decision has not yet been
37 filed with the Code Reviser, this motion will halt Board staff's preparation of that
38 and all other documents related to the final step in the rulemaking process
39 previously taken on March 31.

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41 **SECONDED:** Carolyn Dobbs

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43 **Board Discussion:**

44 Doug Stinson asked about DOE's concerns with the rule. Young answered it was not that any of
45 the three proposals were the concern, but that any rule affecting water quality protection should
46 have DOE's support. DOE was not in agreement with the action taken.

1 Norm Schaaf asked about the threats of litigation Young had mentioned.
2
3 Goldmark said Board members could bring up any questions they had about legal issues.
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5 Schaaf went on to ask about what level it is appropriate to get DOE's concurrence.
6
7 Tom Laurie replied that any problems should be identified as soon as possible.
8
9 Goldmark said this rule making had been complex with several different proposals before the
10 Board, and that DOE expressed its concern through Laurie's vote at the last meeting. He said
11 Ecology should have an opportunity to comment on proposals well in advance so the Board
12 members have that assurance before voting on a rule adoption. He added that his motion to
13 rescind the action did not change his determination to move forward and find a way to balance
14 additional ecological commitment by the industry with some form of compensation or incentive
15 for contributions to ecological improvement.
16
17 Hagiwara asked about a time table to move forward.
18
19 Goldmark's answered his intention was for the Board to receive a defect-free rule proposal which
20 has agreement among the various constituencies at the May meeting.
21
22 Schaaf reminded the Board that part of the reason the motion was adopted at last week's meeting
23 was to connect the fee reduction with the rule proposal. He added that the fee reduction was
24 more or less the equivalent to the additional costs that would be incurred by the adoption of
25 Proposal 3 instead of Proposal 2. He said the Board is bound to adopt a rule that provides for the
26 lowest cost to the regulated community. The Board was attempting to mitigate by making
27 Proposal 3 the least burdensome alternative.
28
29 Stinson agreed with Schaaf and supported compensation to landowners. He said that industry and
30 landowners are at a point where they badly need it. He said if it was not taken care of now,
31 landowners were more likely to be driven off their land.
32
33 Goldmark said the Board did not knowingly go forward with the defects and that it was
34 important that sufficient time be given so everything is done according to the rules and process.
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36 **ACTION: Motion passed unanimously.**
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39 **MOTION: Tom Laurie moved to have Board staff update the CR-102 notice regarding the**
40 **Desired Future Condition proposal, based on the previous motion and any other**
41 **technical changes that may be needed and to table the discussion on which DFC**
42 **rulemaking proposal should be adopted, and under what conditions, until the**
43 **Board's regularly scheduled May meeting.**
44
45 **SECONDED: Brent Bahrenburg**
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1 **Board Discussion:**

2 Phil Ferester said that the last CR-102 was filed March 2 and suggested that a new CR-102
3 should be filed with a new anticipated date of adoption to provide notice to the public that the
4 rule making is still ongoing

5
6 Sherry Fox asked if there would only be one proposal presented to the Board at the May meeting.

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8 Ferester replied that because the current CR-102 has three alternative rule proposals the Board
9 could not act to remove any of them until the May meeting.

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11 **ACTION:** Motion passed unanimously.

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13 **EXECUTIVE SESSION**

14 No executive session.

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16 Meeting adjourned at 9:35 a.m.

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