

FOREST PRACTICES BOARD
Regular Board Meeting
May 11, 2016
Natural Resources Building, Room 172
Olympia, Washington

Members Present

Stephen Bernath, Chair, Department of Natural Resources
Brent Davies, General Public Member
Carmen Smith, General Public Member/Independent Logging Contractor
Court Stanley, General Public Member
Heather Ballash, Designee for Director, Department of Commerce
Joe Stohr, Designee for Director, Department of Fish and Wildlife
Lisa Janicki, Elected County Official
Patrick Capper, Designee for Director, Department of Agriculture
Rich Doenges, Designee for Director, Department of Ecology

Members Absent

Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Dave Herrera, General Public Member
Paula Swedeen, General Public Member,

Staff

Joe Shramek, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Senior Counsel

WELCOME AND INTRODUCTIONS

Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m. Introductions of the Board were made.

APPROVAL OF MINUTES

MOTION: Joe Stohr moved the Forest Practices Board approve the February 10, 2016, meeting minutes.

SECONDED: Court Stanley

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Bernath reported on the following:

- Supplemental budget
- 2017-19 biennial budget
- Possible Board field trip in late fall

- Compliance monitoring to go through Independent Science Peer Review
- Board's Practices and Procedures Rule Making postponed
- Department of Natural Resources (DNR) conducting unstable slopes training

PUBLIC COMMENT (AM)

Jim Peters, Northwest Indian Fisheries Commission, provided comments on the commitments made on the Clean Water Act (CWA) Assurances. He said all the stakeholders have recommitted to meeting the ten year mark to ensure water quality standards are being met.

Jim Peters representing himself also provided comments on cultural resources. He said tribes view plants, fish, shellfish, wildlife, birds, trees, water, and air as cultural resources. He said he was taught to value and take care of these resources even while harvesting them. He said it is very important to protect these resources as they are part of the ecosystem and are important to future tribal generations and should be to the state of Washington and its citizens.

Ken Miller, Washington Farm Forestry Association (WFFA), voiced concern about the length of time the TFW Policy Committee (TFW Policy) has taken to finalize the alternate plan template. He also provided commonalities between small landowners and the tribes. He concluded by saying that if the voluntary, neighborly aspects of the current cultural resource process goes away, everyone loses.

Peter Goldman, Conservation Caucus, said they are concerned that the Board's November 2016 deadline to receive recommendations on a permanent water typing rule will not be met. He urged the Board to provide direction to TFW Policy on the Board's expectation on whether to receive a consensus product or accept differing opinions on how best to move forward.

Tom Laurie, Department of Ecology, said he supports Jim Peters' comments on the CWA Assurances. He also said that the cultural resources component for today's meeting is an important aspect to forest practices. He said cooperation and communication are key and encouraged the Board to be open to recommendations on how to improve the system for clarity, efficiency, and accountability.

Karen Terwilleger, Washington Forest Protection Association (WFPA), said they believe progress is being made on a permanent Type F rule. She indicated that TFW Policy is working through the matrix approved by the Board and anticipates a consensus recommendation to be delivered to the Board. She also provided an historical perspective on the water typing rule, including a background on the implementation of physical defaults.

Jeffery Thomas, Puyallup Tribe, said the TFW tribal perspective is that they are "the people of the land" and reflect on the treaties and the implementation goals of the tribes. He said tribal culture encompasses the people's day-to-day lifestyle, and is derived from the interaction between people and the land.

CULTURAL RESOURCES

Bernath welcomed the tribal community attending the meeting today. He said the purpose of the presentations and discussions are to gain an understanding of what cultural resources are, and why it is important to protect them.

Introduction to what is a cultural resource and why is it important.

The tribal presenters included Mary Leitka and Vivian Leigh, tribal elders of the Hoh Tribe, Dave Burlingame, Cowlitz Tribe, and John Sirois, Upper Columbia United Tribes. They described the importance of cultural resources, how they are interwoven into their culture, and the need to protect them for future generations. The speakers also provided an insight to how they use the land and the teachings passed down from their elders.

Current State Agency Practices

Marc Engel, DNR and Dr. Allison Brooks, Department of Archaeology and Historic Preservation (DAHP) provided an overview of their respective agency's process for protecting tribal cultural resources.

Landowner Perspective

Dave Morrill and Robert Bass, Hancock Forest Management, presented their company's process for managing cultural resources during forest practices activities and through the application process. They noted in their process that the collaboration was the most successful approach.

In addition to the presentation by Hancock Forest Management, the following landowners provided additional comments on how best to manage cultural resources.

- Tom Nelson, Sierra Pacific Industries, emphasized fostering better communication between landowners and tribes.
- Steve Barnowe-Meyer, WFFA, emphasized small forest landowner's on-going commitment to protecting cultural resources and the need to provide small forest landowners with guidance and training for continued success.
- Jason Sedaro, SDS Lumber Company, encouraged improving communication on the ground rather than rule making to protect resources.

CULTURAL RESOURCES

Phil Rigdon, Yakama Nation, said the reason for today's discussion stems from their frustrations in not receiving a response to their March 2015 letter to the Board and DNR. He said the letter outlines concerns on how WAC 222-20-120 is being interpreted by DNR and provides suggestions on how to resolve these issues. He said the Board's failure to respond resulted in the Yakama Nation proposing legislation during the 2016 Legislative session to ensure DNR has the authority to protect cultural and archaeological resources information as a public resource.

Court Stanley asked what Rigdon believed was the best forum and the pathway forward to address their concerns. Rigdon replied that the concerns need to be raised to a higher level to address the recommendations in the letter.

Bernath stated that DNR is in the process of contracting with a facilitator for the TFW Cultural Resources Roundtable to address some of the communication concerns. He also said that DNR is

committed to having a discussion at the leadership level with the tribes, landowners, and agencies for resolving these concerns.

Rigdon expressed a desire for a written response to their letter dated March 2015.

Jeffrey Thomas, Puyallup Tribe, mentioned the following on behalf of the TFW Tribal Caucus:

- they would provide a more formalized set of comments and recommendations pertaining to today's discussions;
- invited Board Members to attend the next meeting of the TFW Tribal Caucus which is being scheduled for the second week of June; and
- requested a memo from the Board describing the action the Board is planning to take next.

PUBLIC COMMENT (PM)

Vic Musselman, WFFA, provided comments on the alternate plan template currently within the Adaptive Management Program. He urged that any rejection or acceptance of the proposed prescriptions be based on best available science.

Ken Miller, WFFA, said he is an advocate for the alternate plan harvest prescriptions the Forests and Fish Report required be available for small forest landowners. He is concerned that the Board and TFW Policy do not have a clear understanding of their proposal. He invited the Board to plan a field tour at his property to illustrate the proposal on site.

Elaine Oneil, WFFA, provided an update on their forthcoming Eastside riparian template. She indicated that the proposal will most likely come before the Board in November.

Mary Scurlock, Conservation Caucus, encouraged the Board to give careful attention to the recommended action items in the CWA Assurances report. She also provided a brief status update on other projects within TFW Policy.

Chris Mendoza said he supports the CWA Assurances memo from Mark Hicks. He also commented on Cooperative Monitoring, Evaluation, and Research Committee's (CMER) process for how studies are initiated and completed as outlined in Board Manual Section 22.

Heather Hansen, Washington Friends of Farms & Forests, provided a brief overview of her organization. She said they are a resource for pest management issues. She said they believe the Forest Practices Application does not provide clear, easy to understand information and have been in communication with DNR to provide clearer guidance.

Karen Terwilliger, WFFA, said they are committed to meeting the CWA Assurances. She suggested the Board review the studies related to the CWA Assurances when reviewing the budget as well as work load priorities for CMER and TFW Policy. She also indicated how important it is for the stakeholder principals to be involved in the process and recommit to the TFW ground rules, Forests and Fish Report and the CWA Assurances milestones.

Peter Goldman, Washington Forest Law Center (WFLC), shared his perspective on board manual guidance versus a rule requirement. He said the board manual is technical guidance that

supports rule; however there is a lot of overlap and provided some examples. He cautioned the Board to not approve a board manual that undercuts a rule and to not add language to the board manual that should be in rule.

Bruce Barnes, Elk Hunters, shared his concerns of pesticide use and the effect on future generations using the forest. He urged the Board to convene a public committee to investigate the chemicals being used. He also questioned why the State of Washington is not getting on the same page as Oregon and legislate doing away with aerial herbicide spraying.

WESTERN GRAY SQUIRREL (WGS) ANNUAL REPORT

Terry Jackson, Washington Department of Fish and Wildlife (WDFW) and Brandon Austin, DNR, provided a brief overview on the 2015 tracking data, voluntary landowner efforts, and results from the periodic status review conducted by WDFW, which was presented to the Fish and Wildlife Commission (Commission) in January 2016. Jackson said the Commission took action to keep the WGS as “state threatened” based on the species’ relatively small population size, continued threats to the squirrel, and lack of information.

In addition to the on-going efforts, the following is needed:

- additional funding/resources for data collection on species distribution and abundance to better inform the success of the voluntary protection approach;
- additional opportunities for landscape management approaches; and
- developing economic incentives for small forest landowners.

WESTERN GRAY SQUIRREL PETITION FOR RULE MAKING

Marc Engel, DNR, presented the petition for rule making received on April 20, 2016, requesting the Board amend WAC 222-10-040 (1) and (2) by adding WGS conservation measures and amend WAC 222-10-040 (3) to include the 1996 WGS guidelines attached to the petition.

He said the annual WGS Report from WDFW stated that in January 2016 the Commission decided to maintain the status of the WGS as a state threatened species based on the recent WDFW periodic status review. He said WDFW determined that until further data is collected, there is insufficient evidence to conclude that the species has declined since 2005. Furthermore, he said that based on forest practices tracking data, there is no conclusive evidence that additional rules are needed to adequately protect the squirrel.

PUBLIC COMMENT ON PETITION FOR RULE MAKING

None.

WESTERN GRAY SQUIRREL PETITION FOR RULE MAKING

Marc Engel, DNR, recommended the Board continue to receive annual reports that include updates on voluntary protection measures, opportunities for landscape management approaches and small forest landowner incentives.

MOTION: Court Stanley moved the Forest Practices Board deny the petition for rule making on Western Gray Squirrel habitat. Based on Department of Fish and Wildlife's periodic status review there is insufficient evidence to conclude that there is a need to changing the Board's approach to protecting the species. He further moved the Forest Practices Board continue to annually revisit the status of the voluntary protection approach.

SECONDED: Heather Ballash

Board Discussion:

Joe Stohr said he agrees with the staff recommendation. He said the squirrel is not doing well but more data needs to be gathered before taking any action.

Court Stanley recognized Hancock and SDS Lumber Company's voluntary protection efforts as providing some good innovative approaches for managing the species.

Brent Davies said she supports finding funding for landowner incentives for all species.

ACTION: Motion passed unanimously.

SMALL FOREST LANDOWNER WESTSIDE TEMPLATE UPDATE

Marc Engel, DNR, said the Board accepted and directed the Adaptive Management Program Administrator (AMPA) to present the small forest landowner Westside Low Impact Template Proposal Initiation to TFW Policy.

He said TFW Policy received the recommendations and initiated a subcommittee to review the proposed prescriptions to determine if they meet the criteria of a template; and to affirm the AMPA's recommendation to contract a literature synthesis of riparian function.

He said the review has taken considerable time because the proposed template features a full suite of prescriptions and site conditions for conifer and hardwood riparian forests for application on Type F and N Waters.

To complete the subcommittee's analysis for Type F Waters, additional work was required by the small forest landowner community to identify how to apply the remaining conditions and additional prescriptions for consideration. The subcommittee will meet on May 23rd to review the additional prescriptions and conditions.

When the Type F prescription evaluation is completed, the subcommittee still needs to:

- Repeat the same evaluation process for the Type N prescriptions;
- Develop questions to be evaluated from the riparian function literature synthesis; and
- Determine if any of the proposed prescriptions have merit for inclusion in Board Manual Section 21, *Alternate Plans*.

BOARD MANUAL SECTION 16 UNSTABLE SLOPES

Marc Ratcliff, DNR, requested the Board's approval of Board Manual Section 16 *Guidelines for Unstable Slopes and Landforms*.

He said the qualified expert work group reviewed and made recommendations on two documents related to screening for complex deep-seated landslides and using LiDAR for assessing past deep-seated landslide deposits.

The group agreed to:

- expand the existing deep-seated landslide section to include information on the successive movement within landslides;
- include additional LiDAR examples showing various geomorphic features characteristic of deep-seated landslides; and
- provide information on how LiDAR can be used to identify historic deep-seated landslide deposits within a given geographical area.

Ratcliff addressed WFLC's letter expressing concerns and potential deficiencies or gaps in the manual by reporting that the group fully vetted all technical materials and proposed language during these meetings. Not all the information could be incorporated because some of the material contained rule prescriptions not applicable for guidance or contained material needing additional research. He requested the Board approve the manual today and wait until the science can further answer the questions contained within the unstable slopes Proposal Initiation.

Brent Davies stated there is a lot of talk on the difference between guidance and rule and asked for additional information to understand the concern about the board manual undercutting any kind of rule.

Ratcliff responded that he would not say it undercuts the rule. He explained the rules are clear that proposals on or near the five different types of rule identified landforms need to be assessed by a qualified expert. He said the board manual provides guidance for conducting various assessments, but the process and analysis is up to the qualified expert.

PUBLIC COMMENT ON BOARD MANUAL SECTION 16 UNSTABLE SLOPES

Kara Whitaker, WFLC, acknowledged the efforts made to address gaps in Board Manual Section 16, however, she said significant gaps still remain. She said these gaps were identified in a letter to the Board dated April 29, 2016. She stated that as long as these gaps remain, the board manual does not provide adequate technical guidance to implement class IV-special rule identified landforms.

Karen Terwilleger, WFFA, said they encourage the Board to approve the revisions to Board Manual Section 16. She also requested the Board's continued support for the unstable slopes Proposal Initiation.

Ken Miller, WFFA, encouraged the Board to approve the board manual. He also requested the Board's continued support of the unstable slopes Proposal Initiation.

BOARD MANUAL SECTION 16 UNSTABLE SLOPES

Marc Ratcliff, DNR, requested the Board's approval of Board Manual Section 16.

MOTION: Carmen Smith moved the Forest Practices Board approve Board Manual Section 16, Guidelines for Evaluating Potential Unstable Slopes. She further moved the Board allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Rich Doenges

Board Discussion:

Brent Davies expressed her appreciation for all the work put into the document and acknowledged the issues remaining that have yet to been addressed. She said she is hopeful the proposal initiation will resolve those remaining issues.

ACTION: Motion passed unanimously.

UNSTABLE SLOPES PROPOSAL INITIATION UPDATE

Hans Berge, DNR, provided a status update on the proposal initiation. He said he completed the recommendations and presented it to TFW Policy at their March meeting. He said TFW Policy has begun their review and is making progress.

FOREST CHEMICAL APPLICATION

Bernath said the Board received two rule making petitions on pesticide application, specifically focused on adjacent landowner notification and reporting. He provided a brief history on the Forest Practices Application/pesticide use, multi-year applications, and chemical patents expiring resulting in less transparency for the public. He said an informal group had been working on this and when the rule making petitions were received he asked the petitioners to consider withdrawing their petitions and join the informal group to identify solutions. He said they agreed and suggested the Board hear their concerns.

Donelle Mahan, DNR provided an overview on the regulation of aerial chemical application under forest practices and Kelly McLain, State Department of Agriculture provided an overview of pesticide registration and use in Washington State.

Wyatt Golding, WFLC, provided a brief introduction to their petition for rule making. He said the petition's focus is to make modest changes to the Forest Practices Rules regarding the notification of pesticide use. He said better communication to the public is needed.

Diane Hardee, Skykomish Valley Environmental and Economic Alliance, said she would rather communicate proactively to discuss concerns and prevent problems rather than deal with the after-effects of the chemical applicator not knowing where the community is, and possibly accidentally contaminating properties and water supplies. She said it was difficult to know when aerial spraying would occur, and now that FPA's are approved for three years and cover a larger area, it is nearly impossible to know when and where it might occur. She said because of this, a statewide plan to notify people who may be affected by spraying is needed.

Elizabeth Ruther, Defenders of Wildlife, expressed concerns affecting streams, wildlife, plants, and amphibians after aerial spraying of pesticides. She said the recommendations in the petition will help reduce impacts to specific species with more accurate information on time, frequency, and location that would be gained from more detailed post-operation forest chemical reporting.

Todd Wildermuth, University of Washington Regulatory Environmental Law and Policy Clinic, described the purpose of the clinic and said the project was taken on because it had a compelling set of clients who presented a straightforward ask--requesting better notice and recordkeeping of what is already being applied.

Wildermuth said the students drafted rule language that:

- is based on the existing Forest Practices Application/Notification framework;
- did not require going through the adaptive management process;
- was within the existing authority of the Board; and,
- is tailored to cover only aerial applications of forest chemicals.

He said the draft language provides a good starting place for a discussion.

Patrick Capper thanked the petitioners for considering this pathway and the trust given to the Board to take the time to go through this process.

Bernath stated that the petitioners always have the option to submit their petition for rule making if they do not feel progress is being made within the informal group. He said an update will be provided at the August meeting.

Brent Davies asked why the records submitted to Department of Agriculture are insufficient. Golding responded that the records are not easily available to the public as they are held privately with the applicator.

Davies asked why they are proposing a rule and not some other approach. Golding responded a more comprehensive and consistent process is needed; however they are open to other options.

2015-2017 CMER BIENNIAL BUDGET ADJUSTMENTS

Hans Berge, DNR, presented an adjusted budget for 2016 and for 2017. He said the adjustments made to the 2016 budget are focused on purchasing equipment for CMER research projects and the adjustments made to the 2017 budget include equipment purchases for the Eastside Type N Riparian Effectiveness Project, analysis and reporting of genetic tissue samples from amphibians collected in 2015 and 2016, and initial funding of a project related to effectiveness monitoring of wetlands following the strategy approved by the Board in August 2015.

PUBLIC COMMENT ON 2015-2017 CMER BUDGET

Karen Terwilleger, WFPA, acknowledged the work done by Berge, Todd Baldwin, and Doug Hooks on getting the budget done and in a manner that makes sense.

2016-2017 CMER BUDGET

Hans Berge, DNR, requested approval of the budget.

MOTION: Heather Ballash moved the Forest Practices Board approve the 2015-2017 updated CMER budget dated April 29, 2016.

SECONDED: Lisa Janicki

Board Discussion:

Joe Stohr asked if the budget supports the CWA Assurances and Berge responded that it does.

Stohr also asked what the funding strategy is for the small landowner template. Berge responded that it is a separate process and current studies in process will provide updated information from what we already have.

Rich Doenges asked about the increase in funding for positions. Berge responded that there was a shortfall in spending due to vacancies in the Adaptive Management Program and have redirected the monies towards projects.

ACTION: Motion passed unanimously (Court Stanley not available for vote)

2017-2019 CMER MASTER PROJECT UPDATE

Hans Berge, DNR, reported that the current budget is sufficient and TFW Policy agreed that there is no need to seek additional funding.

STAFF REPORTS

Northern Spotted Owl Implementation Team and Safe Harbor Agreement

Lauren Burnes, DNR, said the primary focus has been the development of the programmatic Safe Harbor Agreement. She said a work group has been convened to develop recommendations for the draft agreement. She said the team expects to have a draft Safe Harbor Agreement to the Fish and Wildlife Service by early 2017.

Clean Water Act Assurances

Bernath noted the comments received today on the CWA Assurances and said a full report and discussion will occur at the August meeting. He also said DNR is committed to working with Department of Ecology between now and August regarding the operational issues.

Bernath also encouraged CMER and TFW Policy to identify where the issues are within the CMER projects and provide a status report at the August Board meeting.

TFW Policy Committee's Work Priorities

Adrian Miller, Chair, provided a brief progress report on identifying a second co-chair, on-going work regarding recommendations for a permanent water typing rule, small forest landowner's alternate plan template, and the unstable slopes Proposal Initiation.

Due to time constraints, there were no questions or additional comments for the following reports:

- Adaptive Management
- Board Manual Development
- Compliance Monitoring
- Rule Making Activity
- Small Forest Landowner Advisory Committee and Small Forest Landowner Office
- Upland Wildlife Working Group
- TFW Cultural Resources Roundtable
- Taylor's Checkerspot Butterfly Annual Report

2016 WORK PLANNING

Marc Engel, DNR, reviewed the changes to the work plan as a result of the meeting.

The following was added or the completion date was adjusted:

- TFW Policy's Recommendations and Timelines on the unstable slopes Proposal Initiation - August
- Board's administrative process rule making - November
- CMER Master Project Schedule - August
- Report to legislature on Master Project Schedule due 10/1/2016 - August
- Cultural Resources - November
- Forest Chemicals – August

MOTION: Brent Davies moved to approve the 2016 work plan presented today along with the additional items approved today. TFW Policy needs to continue to make water typing be their first priority so that recommendations come to the Board in November.

SECONDED: Heather Ballash

Board Discussion:

Bernath said that the motion sends a clear message to TFW Policy and asked Adrian Miller if it is helpful. Miller responded yes as it reinforces the Board's existing priorities and that when Policy does have time constraints it is clear what needs to be worked on.

ACTION: Motion passed unanimously (Court Stanley not available for vote).

EXECUTIVE SESSION

None.

Meeting adjourned at 5:00 p.m.