

1 **FOREST PRACTICES BOARD**
2 **Regular Board Meeting – May 8, 2019**
3 Natural Resources Building, Room 172, Olympia, WA
4

5 Meeting materials and subject presentations are available on Forest Practices Board’s website.
6 <https://www.dnr.wa.gov/about/boards-and-councils/forest-practices-board>
7

8 **Members Present**

9 Stephen Bernath, Chair, Department of Natural Resources
10 Ben Serr, Designee for Director, Department of Commerce
11 Bob Guenther, General Public Member/Small Forest Landowner
12 Brent Davies, General Public Member
13 Carmen Smith, General Public Member/Independent Logging Contractor
14 Dave Herrera, General Public Member
15 Jeff Davis, Designee for Director, Department of Fish and Wildlife
16 Lisa Janicki, Elected County Official
17 Noel Willet, Timber Products Union Representative
18 Patrick Capper, Designee for Director, Department of Agriculture
19 Paula Swedeen, General Public Member
20 Tom Laurie, Designee for Director, Department of Ecology
21 Tom Nelson, General Public Member
22

23 **Staff**

24 Joe Shramek, Forest Practices Division Manager
25 Marc Engel, Forest Practices Assistant Division Manager
26 Patricia Anderson, Rules Coordinator
27 Phil Ferester, Senior Counsel
28

29 **WELCOME AND INTRODUCTIONS**

30 Chair Stephen Bernath called the Forest Practices Board (Board) meeting to order at 9 a.m.
31 Introductions of Board members and staff were made.
32

33 **REPORT FROM CHAIR**

34 Chair Bernath thanked Hans Berge for his service as the Adaptive Management Program
35 Administrator (AMPA). He mentioned that Jean Fike, Northwest Region Manager, is leaving the
36 Department of Natural Resources (DNR) and recognized Boyd Norton’s retirement after 42 years
37 of service.
38

39 Chair Bernath provided an update on passed legislation:

- 40 • SB 5330 provides funds to University of Washington to analyze impacts to small forest
41 landowners,
42 • SB 5597 creates a work group to assess chemical applications and
43 • HB 1324 extends the surcharge on the Business and Occupation Tax to year 2045 to fund the
44 Adaptive Management Program (AMP).

45 He said a facilitator has been hired to assist the Timber, Fish and Wildlife (TFW) principals in
46 participating in a capacity building exercise to restore relationships between caucuses. The hope is

1 to recommit to the TFW values and take a look at what the process should look like for the next
2 20-30 years. The workshop will occur between June 12 and 17.

3
4 **PUBLIC COMMENT (AM)**

5 Ken Miller, Washington Farm Forestry Association (WFFA), said today's topics are too complex
6 for most small forest landowners to comprehend or follow in a meaningful way. His takeaway
7 from these discussions is that some folks believe non-fish buffers are too narrow and that the
8 water type break between F and Np should be located further upstream. He is relying on the AMP
9 to sort this out in understandable terms and use statistically sound science before the Board makes
10 any significant decisions. He said small forest landowners support a map-based water typing
11 system.

12
13 Peter Goldman, Washington Forest Law Center (WFLC), urged the Board to consider their
14 decisions in light of human impacts on the environment. Referring to a court case that determined
15 Board Manual guidance is not enforceable, he asked the Board to ensure the water typing rules are
16 prescriptive, clear enough for folks to understand the concepts and sufficiently guides people on
17 how to do things repeatedly.

18
19 **APPROVAL OF MINUTES**

20 **MOTION:** Carmen Smith moved the Forest Practices Board approve the November 13 & 14,
21 2018 meeting minutes.

22
23 **SECONDED:** Bob Guenther

24
25 Board Discussion:

26 Ben Serr noted the error that his predecessor, Heather Ballash, was listed as present at the meeting.

27
28 **ACTION:** Motion passed unanimously.

29
30 **ADAPTIVE MANAGEMENT PROGRAM TYPE N EXPERIMENTAL BUFFER**
31 **TREATMENT PROJECT IN HARD ROCK LITHOLOGIES STUDY RESULTS**

32 Bill Ehinger, Department of Ecology and Howard Haemmerle, AMPA, presented the phase 1
33 results of the Type N Experimental Buffer Treatment Project in Hard Rock Lithologies study
34 (known as the 'hard rock' study).

35
36 Ehinger said the study's goal was to evaluate the effectiveness of the current western Washington
37 Type Np stream riparian buffers. The study used a before-after-control-impact procedure by
38 studying sites featuring a control stream segment, a 100% buffered segment, a standard forest
39 practice rule buffered segment, and a 0% buffered segment. Of the initial three hundred fifty sites
40 selected, only 17 sites meeting the amphibian and basalt lithology criteria were included in the
41 study. Post-harvest data was collected between 2009 and 2011.

42
43 Ehinger summarized the results: the 100% buffered stream segments were the most effective at
44 preventing measurable responses to the water, and the forest practice rule buffered and the 0%
45 buffered streams were the least effective in preventing measurable responses to the water. He said

1 the phase 2 study report has been through the initial review by the Cooperative Monitoring,
2 Evaluation, and Research Committee (CMER). The next report draft should be out in June 2019.

3
4 Board member Davies asked what trends the group might expect to see with the phase 2 extended
5 monitoring.

6
7 Ehinger said they expected to see stream temperature increases immediately post-harvest and then
8 expected to see stream temperatures go down over time. They also expected to see stream nutrient
9 exports to go down relatively quickly over time. He said the initial amphibian results may have
10 been influenced by initial migration responses to harvest practices, but the longer term results do
11 not account for or address the influence of amphibian reproduction.

12
13 Amy McIntyre, Department of Fish and Wildlife (WDFW) said two different amphibian density
14 tests were conducted—basin wide and along tributaries. The density results found little change in
15 the population of giant salamanders. In the lower Type Np stream reaches, they found a decrease
16 in the number of giant salamanders in the forest practices buffered areas only. They assumed this
17 decrease may be from amphibian migration within the stream system.

18
19 Ehinger said phase 1 assessed stream temperature responses through 2011. Phase 2 involves
20 response assessments through 2017. Once CMER review of phase 2 is complete, the report will
21 then go through an independent science peer review (ISPR).

22 23 **CONSENSUS PROPOSAL IN RESPONSE TO TYPE NP STUDY RESULTS IN** 24 **WESTSIDE BASALT LITHOLOGY**

25 Chair Bernath mentioned that the recommendations by the TFW Policy Committee (Policy) are
26 consensus recommendations.

27
28 Curt Veldhuisen, Policy Co-Chair, said Policy’s review involved two steps. Step one – review the
29 hard rock study’s findings; Step two – determine if action is needed. He said Policy formed a
30 workgroup to develop a charter and evaluate the study’s findings. Based on the workgroup
31 evaluation of the study results, Policy decided that the report findings regarding the water quality
32 standards related to stream temperature should be addressed. Draft Type Np buffer proposals for a
33 potential rule were developed by a number of caucuses for Policy’s consideration.

34
35 Veldhuisen acknowledged that additional ongoing studies in western Washington, such as the
36 Type N Experimental Buffer Treatment in Soft Rock Lithologies study (soft rock study), may also
37 inform additional next steps regarding Type N buffers. He said Policy consensus was reached to
38 form a technical workgroup to assess how to mitigate the increased stream temperature responses
39 found in the hard rock study with the understanding the technical workgroup will be a multi-year
40 effort since additional studies are forthcoming. He said Policy is evaluating how to compensate the
41 technical workgroup members for their time to review the study results and draft
42 recommendations.

43
44 Board member Nelson asked how the cancellation of the February Board meeting affected their
45 proposed timeline.

1 Veldhuisen said that with the cancellation of the February meeting, three months would need to be
2 added to the charter timeline but the final report timeline should not change.

3
4 Veldhuisen added that four additional studies are being conducted that could provide additional
5 information on shade and temperature responses. These are: hard rock phase 2; soft rock; Westside
6 Type N Buffer Characteristics, Integrity, and Function; and the Buffer Integrity, Shade
7 Effectiveness (Amphibian) Project.

8
9 Terra Rentz, Policy Co-Chair, clarified that the timeline may need to be adjusted as a result of the
10 required review process by ISPR and CMER for each additional Type N study. The timeline may
11 shift by 12 to 18 months for the soft rock study and the hard rock extended monitoring. As each
12 final study is completed, Policy will begin their 180-day review period to develop
13 recommendations.

14
15 Haemmerle said the timeline is built on required additional AMP review steps. Policy does not
16 always know how long a certain CMER approval step will take and may have to adjust the
17 timeline as new information is made available.

18
19 Board member Davies asked about the potential for additional Type N studies or studies from
20 other states to influence the decision and evaluate the potential to provide varying information.

21
22 Board member Nelson urged the group to evaluate other study methods and science previously
23 done to form the basis for various measurements and final results.

24
25 Rentz said section five in the Type N charter directs the workgroup to evaluate other studies, but
26 not re-evaluate the results from hard rock study. Policy has agreed action is needed based on
27 stream temperature increases. Policy also agrees the workgroup may be able to use the findings of
28 the additional studies to inform on proposed actions.

29
30 Board member Janicki asked if the consensus budget contains funding for the Type N workgroup.

31
32 Rentz said the budget does include the anticipated work for developing Type N buffer
33 recommendations and compensation for workgroup members.

34
35 Board member Swedeen asked how far off the Type N workgroup timeline is from the June 2020
36 deliverable.

37
38 Rentz said Policy initially expected to receive the final reports in the spring of 2020. However,
39 Policy has now been informed not to expect the report findings until 2021, shifting the timeline
40 out an additional six months.

41
42 Board member Swedeen said an extension to 2021 is cause for concern since the study results
43 identified a need for response given the Clean Water Act requirements. She asked if Policy could
44 make recommendations sooner since they have the initial soft rock study results.

1 Rentz said the Board could adjust Policy’s timeline. The workgroup could separate the hard rock
2 and soft rock study results and provide different Type N rule recommendations. The general
3 decision at Policy was to provide a landscape approach rather than presenting separate rule
4 recommendations based on the hard and soft rock study results.

5
6 Board member Nelson said the hard rock study looked at approximately 30% of the geology in
7 western Washington and suggested separating the two geographical areas may miss the other 70%
8 of the land base in western Washington.

9
10 Haemmerle acknowledged that the CMER process is not a fast process. Although there is no way
11 to guarantee a fast track, encouraging collaboration may speed up the process.

12
13 Rentz said another way to speed up the process is to send the final report findings directly to the
14 Type N workgroup eliminating the additional 180-day review/decision process. She mentioned
15 that CMER does not follow the required timelines Policy follows in relation to final study reviews
16 and steps to develop recommendations.

17
18 Chair Bernath suggested that Policy provide an update of the Type N workgroup’s progress at
19 each regular Board meeting.

20
21 **PUBLIC COMMENT ON CONSENSUS PROPOSAL IN RESPONSE TO TYPE NP**
22 **STUDY RESULTS IN WESTSIDE BASALT LITHOLOGY**

23 Darin Cramer, Washington Forest Protection Association (WFPA), reminded the Board that they
24 have a consensus hard rock study recommendation from Policy. He said although temperature
25 response is concerning, there is a lot of information to consider. He added that cumulatively over
26 time, the adaptive management program is taking significant steps forward to reduce scientific
27 uncertainty.

28
29 Ray Entz, Kalispel Tribe, said Policy’s recommendation should not be considered consensus since
30 two caucuses are not at the table. He said the science track and policy track within the AMP is the
31 closest it has ever been to breaking the firewall between science and policy. He said the status quo
32 of delaying decisions occurs when the firewall is down.

33
34 Alec Brown, Washington Environmental Council (WEC), said consensus was reached for those
35 caucuses presently at the Policy table. He said the conservation caucus is concerned with the
36 increase in stream temperature and believes the Board should act quickly. He questioned if a
37 delayed 2021 timeline for rule recommendations meets the statutory requirement which directs the
38 Board to act quickly when scientific results show a need to amend the rules to protect public
39 resources.

40
41 **CONSENSUS PROPOSAL IN RESPONSE TO TYPE Np STUDY RESULTS IN**
42 **WESTSIDE BASALT LITHOLOGY**

43 **MOTION:** Tom Nelson moved the Forest Practices Board accept the Type Np Study Results in
44 Westside Basalt Lithology as complete and accept TFW Policy’s recommendations
45 and amended timeline to address Type Np buffer prescriptions through a Policy
46 work group.

1 **SECONDED: Lisa Janicki**

2
3 Discussion

4 Board members and Policy co-chairs discussed altering the dates contained in the Type N
5 workgroup timeline.

6
7 Board member Swedeen asked if the Board should have a discussion at a future Board meeting
8 given that the statute [RCW 76.09.370(7)] directs the Board to ‘act quickly’.

9
10 Board member Nelson said he believed the motion contained an adequate timeline and suggested
11 any motion should contain the most accurate timeline as possible to let folks know the intended
12 outcome.

13
14 **ACTION: Motion passed unanimously.**

15
16 **TYPE N PROPOSED ACTION AND WORK GROUP CHARTER**

17 Curt Veldhuisen and Terra Rentz, TFW Policy Committee Co-Chairs, acknowledged the efforts
18 by the conservation and industry representatives to find common ground. Rentz walked the Board
19 through the main purpose and structure associated with the Type N Workgroup Charter.

20
21 Rentz said the charter had consensus from Policy. The purpose is to develop proposed riparian
22 management zone (RMZ) buffer prescriptions for Type Np streams that meet the following
23 objectives: (1) maintain water temperatures, (2) are repeatable and enforceable, (3) are
24 operationally feasible, (4) provide wood to the stream, (5) account for wind throw, (6) consider
25 options that allow for management (e.g. selective harvest) in the RMZ; and (7) minimize
26 additional economic impacts. The main focus includes the development of prescriptions for Type
27 N buffers and evaluate the effectiveness of the prescriptions. She said Policy will update the Board
28 as the Type N workgroup timelines are adjusted. At this time, Policy has not identified co-chairs
29 or workgroup members.

30
31 Veldhuisen said Policy envisions the technical members would not be from any advocacy group.
32 He said Policy has not finalized their selection criteria or process.

33
34 **ADAPTIVE MANAGEMENT PROGRAM ROLES AND RESPONSIBILITIES**

35 Joe Shramek, DNR, provided a refresher on the AMP structure, requirements to change aquatic-
36 related forest practices rules and how those involved with the AMP program relate to each other.
37 His overview of the Policy Committee included how representatives are selected and how
38 recommendations are formed and delivered to the Board. His overview of the CMER process
39 included the Board’s role in selecting CMER members, how decisions are made and their task of
40 maintaining the CMER work plan.

41
42 He described the role of the AMPA and how the individual functions as the liaison between
43 CMER, Policy and the Board. He said the administrator determines, through a proposal initiation,
44 which track a proposal should follow, either through policy or science. He briefly outlined the
45 process of each track.

1 Board member Swedeen questioned if the only way to hold the AMP accountable or ensure
2 deliverables are met is to perform an overhaul of the program.

3
4 Shramek said he did not think a change to the program is the only way. He said reviewing the
5 options available to the Board and reviewing the past AMPA's options for making program
6 improvement may help arrive at ways to hold the AMP to task.

7
8 **PUBLIC COMMENT (PM)**

9 Chris Mendoza, Conservation Caucus, reminded the Board that CMER has gone through a couple
10 of efficiency processes to make their work more efficient and has recently updated their protocols
11 and standards manual which includes timelines for the review and handoff of reports to Policy. He
12 said while CMER has made efforts to make the system more efficient, additional improvements
13 may be possible. He also reminded the Board of the list of improvements created by Hans Berge
14 for the Board's consideration.

15
16 Jamie Glasgow, Conservation Caucus, encouraged the Board to consider the nexus of Board
17 decisions with the impacts from climate change. He indicated that current extreme climate
18 conditions have a negative impact on fish.

19
20 Ray Entz, Kalispel Tribe, said CMER did not approve the budget, the budget came directly from
21 Policy. One example he gave was the decision by Policy to defund the Potential Habitat Break
22 (PHB) validation study. He said the lack of agreements demonstrates the Board does not have
23 control of AMP. He said the Board has the opportunity to provide leadership and suggested the
24 Board take charge of the AMP rather than involving the principals.

25
26 **UPDATE ON PROGRESS ON DRAFT WATER TYPING SYSTEM RULE**

27 Marc Engel, DNR, provided a chronological review of the processes to arrive at recommendations
28 for a water typing system rule. He discussed how concepts were developed and recommendations
29 delivered to the Board beginning in November 2011 up to and including Policy recommendations
30 and final results from dispute resolution in May 2017 and the acceptance of the PHB options and
31 the anadromous fish floor in February 2018. The most recent action taken by the Board occurred
32 in November 2018, which included the Board's acceptance of the PHB validation study design.
33 He said the goal is to adopt a permanent rule to fulfill the legislative intent of Forests and Fish
34 legislation and the commitments of the Forest Practices Habitat Conversation Plan.

35
36 Marc Ratcliff, DNR, presented an overview on the progress to develop the draft rule. WAC 222-
37 16-030 was used as the foundation for the draft language and incorporated the Board-approved
38 elements, Policy recommendations and final results from dispute resolution. He outlined the
39 structure of WAC 222-16-0301, which describes the two methods applicants can use to determine
40 the water type break between Type F and N waters. He said the default physicals which define the
41 presumed end of fish habitat will reside as a Type F classification, but the description for applying
42 the stream physical metrics will be in the new section.

43
44 Engel said the new language in WAC 222-24-040 acknowledges the work completed under road
45 maintenance and abandonment plans to upgrade stream crossings. The intent was to address water
46 crossing replacements should a fish assessment find the Type F break moved upstream of the

1 crossing and take into consideration the functionality of the structure. He said the concept was
2 discussed by Policy, but was not brought forward as a recommendation.

3
4 Board member Davies questioned the validity of this section if it was not a recommendation from
5 Policy.

6
7 Chair Bernath confirmed that the Board would not take action on the language contained in WAC
8 222-24-040 until Policy has provided a recommendation.

9
10 Ratcliff presented an overview on the progress to develop Board Manual Section 23 to accompany
11 the water typing rule. Section 23 will provide guidance for three main topics: (1) how to conduct
12 the fish habitat assessment method (FHAM) including how to measure PHBs, (2) best
13 management practices for conducting electrofishing surveys and (3) the process to identify off-
14 channel habitat using bankfull width or ordinary high water line indicators.

15
16 Ratcliff said the board manual work group has done a lot of work to develop the draft guidance
17 thus far. However, the group has been unable to complete several components for measuring
18 PHBs since the Board has not finalized which anadromous fish floor/PHB option will be used in
19 the rule. He said the draft guidance being developed will be useful when the rule elements are
20 clarified.

21
22 Board member Nelson suggested it would make more sense to complete the deliberations on the
23 options including the updated spatial analysis, then draft the rule and finalize the cost/benefit
24 analysis (CBA) based on those final decisions. He said the Board should have thought a little more
25 about the feasibility of including the various options.

26
27 Chair Bernath said the options are required for the Board to take rule action. He said DNR has
28 always attempted to ensure the technical guidance accompanies a rule so that the public
29 understands how to comply with the rule.

30
31 Board member Swedeen said the Board needs to determine whether the anadromous floor was
32 discussed as part of the Policy recommendations or if there is a lack of science supporting the
33 anadromous fish floor.

34
35 Board members Herrera said he believes discussions did occur within Policy regarding an
36 anadromous fish floor concept. He said the Western Washington tribes intended to use PHB
37 option nine in the expert panel's report as their proposed anadromous fish floor.

38
39 Chair Bernath said he understands that most folks agree that a goal of the water typing rule is to
40 capture low elevation, low gradient streams as fish habitat, but is unclear how the anadromous fish
41 floor concept came about. His understanding of the table in the expert panel's report was to
42 address PHBs as part of the application of FHAM in the upper portions of streams, but not
43 necessarily applied in streams close to salt water.

44
45 Board member Swedeen said her review of the record showed that a discussion on the anadromous
46 fish floor concept, did occur in Policy. She said she believes option nine was intended to function

1 as an anadromous floor below a certain gradient regardless of the terminology used to describe the
2 starting point.

3
4 Engel provided an update on the work to complete the spatial analysis for comparing the process
5 to determine the water type break between Type F and N waters under the current rule with the
6 process using FHAM for each PHB option. He said DNR staff began the process to gather data
7 points and evaluate each PHB option after gaining clarification on each PHB option after the
8 Board's August 2018 meeting.

9
10 Engel said the data to inform the spatial analysis came from existing water type modification
11 points gathered across seven eco-regions where high quality lidar was available. The GIS analysis
12 used 214 points statewide to inform the spatial analysis. He said in most cases, the GIS analysts
13 were able to identify the various PHBs with lidar. However, the width-based PHBs could not be
14 precisely identified with a reasonable degree of confidence.

15
16 Kia Ross, Cramer Fish Sciences, briefly described the methodology to locate a PHB to perform
17 the spatial analysis. He said they only looked at gradient and barrier PHBs, they did not have
18 confidence in the width PHBs, and therefore width PHBs were not analyzed.

19
20 Board member Nelson asked Ross if the group compared notes with Lee Benda's group working
21 on a spatial analysis since Benda's process analyzed width metrics.

22
23 Ross said they did not consult with Benda.

24
25 Board member Swedeen asked what the implication would be for not having confidence in
26 identifying certain PHBs.

27
28 Ross agreed that not applying a PHB width analysis may result in missing lower stream points
29 than strictly relying on gradient PHBs. He was unsure if the economics would change since
30 gradient PHBs were captured adequately.

31
32 Board member Laurie asked if the distances for the Type F and N points changed for the PHB
33 options in DNR's analysis and specifically asked how Lee Benda's analysis compared to DNR's
34 analysis.

35
36 Engel said the DNR analysis established the distance for each PHB option and said he is unaware
37 of the final results of Benda's work. He added that DNR shared their spatial analysis approach and
38 information with stakeholders in December 2018 and made the data available to the public via a
39 'box' website.

40
41 Engel said DNR hired a contractor to prepare a CBA and small business economic impact
42 statement. He said DNR convened an economic stakeholder advisory group to review and provide
43 advice on pertinent information for the CBA. The draft preliminary analyses were shared with the
44 economic advisory group. The goal was to provide workgroup members two weeks to review the
45 documents before scheduling a meeting to discuss the report outcomes.

1 He said as a requirement of the Administrative Procedures Act, the Board must determine that the
2 probable benefits of the rule are greater than its probable costs. The Board must weigh both the
3 quantitative and qualitative benefits and costs when making their decision. The preliminary CBA
4 has primarily provided a quantitative analysis. DNR has not yet prepared a qualitative analysis.
5

6 Engel concluded the update by stating that DNR is still gathering the data to inform the
7 environmental analysis including the specific effects regarding fish benefits. The concerns
8 regarding the clarification necessary to support the anadromous fish floor and PHB criteria affects
9 the SEPA analysis as well. He said it is important for the responsible official to have all the
10 environmental information to make an appropriate threshold determination.
11

12 **VALIDATION STUDY DESIGN**

13 Howard Haemmerle, AMPA, and authors of the PHB validation study provided an update on the
14 study. Science panel members include: Phil Roni, Pat Trotter, Phil Kershner, Pete Bison and Joe
15 Maroney. He said the authors received and addressed over 450 comments on the study throughout
16 the entire study design development process.
17

18 Chair Bernath mentioned that Policy voted not to fund the PHB validation study.
19

20 Haemmerle said the implementation plan for conducting the validation study was intended to be
21 developed in consultation with the Instream Scientific Advisory Group. The AMPA had several
22 meetings with the United States Department of Agriculture, Forest Service and the United States
23 Geologic Service — agencies the AMPA was looking to lead project implementation. A final
24 implementation plan and contracts needed for project implementation are not in place at this time.
25

26 Board member Swedeen said she understands the rule includes language related to where one
27 might start looking for PHBs or the anadromous floor. She asked if the study included the ‘starting
28 point’ for fish or would the study need additional elements to assess looking for the first PHB.
29

30 Roni said there is nothing in the data the group is collecting for the validation study that would
31 prohibit defining the starting point or other PHBs.
32

33 Chair Bernath asked if there was an opportunity to combine the physical stream criteria study with
34 the PHB validation study to increase efficiencies between the two.
35

36 Roni said the physical stream criteria assessment study is not necessarily a different study and data
37 collection could inform both studies. He suggested the physicals study could help answer
38 additional questions related to the anadromous floor. He added that both studies could help
39 validate the lidar-based mapping project.
40

41 Roni clarified that both studies include the collection of the same data. He added that the lidar
42 regression study involves additional costs including acquiring additional lidar and the collection of
43 randomly selected Type F and N breaks. Assuming the group does not have to acquire additional
44 lidar data, the additional cost would be a few hundred thousand dollars.
45

1 **PUBLIC COMMENT ON DRAFT WATER TYPING SYSTEM RULE AND OTHER**
2 **MATERIALS**

3 Vic Musselman, WFFA, said the cost analysis performed by Industrial Economics Incorporated
4 shows an impact of nearly 29% more for small forest landowners, 42% more than large forest
5 landowners. He urged the Board to fast track the lidar-based water type maps and default physical
6 assessment study so that these approaches can be implemented by small forest landowners.
7

8 Darin Cramer, WFPA, said the PHB analysis needs to include a width component and it needs to
9 be completed before any additional work occurs. He said WFPA's anadromous fish floor is
10 incorrectly described in the proposed rule nor was an analysis performed. He said their spatial
11 analysis is different than DNR's outcome. He suggested that the Board ensure the PHB analysis is
12 completed correctly, get folks together to discuss the goals for the anadromous fish floor, provide
13 fish effects in the CBA and support a collaborative approach to problem solving. He said the
14 Board is not set up to manage a process this complex and make decisions on issues they have little
15 understanding.
16

17 Ray Entz, Kalispel Tribe, said it might be difficult to get folks back to the table to continue
18 collaborative discussions. He would like to see the process be sent back to Policy, but it must be
19 balanced and include accountability. He suggested this rule is beyond the Board's capacity and
20 staffing level. He said they believe the PHB validation study should occur. He questioned the
21 ability for a PHB to be a viable end of habitat given fish migration and seasonality. He said he
22 believes that since the eastside tribes have left the table, their vacancy has been embraced. He does
23 not feel like the eastside tribes would be welcomed back to Policy. He said it would be important
24 to have the federal caucus back at the table as well.
25

26 Steve Barnowe-Meyer, WFFA, strongly encouraged the Board to retain the goal of a lidar-based
27 fish habitat model in rule and maintain the goal for refining the default physicals. He said the off-
28 channel habitat definition still needs work to align with Policy's recommendation. All paths
29 forward should include a collaborative process, clearly define the problems to solve, objectives of
30 the water typing rule, sort out remaining technical and policy issues, determine outstanding data
31 gaps and use credible spatial analysis. He suggested stakeholder with expertise need to meet and
32 collaboratively arrive at correct PHB spatial analysis and said DNR should utilize the CMER
33 eastside data to help inform the gaps in the PHB analysis. Regarding the anadromous fish floor, he
34 said the data gaps need to be filled and the goal needs to be articulated clearly.
35

36 Alec Brown, WEC, acknowledged that the PHB validation study did not go through the normal
37 process from CMER to Policy. Since Policy did not design the questions, he doubted the study
38 would answer the questions and eventually validate the water typing rule. He reminded the Board
39 of their goal to move away from a fish presence system adopted twenty years ago and noted that
40 the program is still without a process to adequately determine fish habitat. He voiced concern with
41 the Board's lack of ability to make a decision and encouraged the Board to act on the rule quickly.
42 His caucus believes the anadromous fish floor did go through the adaptive management process.
43 He encouraged the Board to continue the rule making process and then decide if the rule is
44 erroneous or not.
45

1 Peter Goldman, WFLC, asked the Board to not bifurcate the anadromous fish floor and not send it
2 back to Policy. Addressing the direction in RCW 76.09.370, he said the Board is tasked to make
3 changes to the rules covering aquatic resources if the changes are consistent with a scientifically
4 based adaptive management process. He said section seven of the statute directs the Board to use
5 best available science. He said that since the anadromous fish floor contains a gradient concept, it
6 demonstrates it is worthy of a legitimate rule for defining habitat. He suggested the Board has
7 enough science-based information to pass an adequate rule that protects fish habitat now.

8
9 Joe Maroney, Kalispel Tribe and science panel member, encouraged the Board to move forward
10 with the PHB validation study. He reminded the Board that the science panel provided what the
11 Board had asked for. Given his history with past fish habitat projects, he said it is difficult to
12 assume progress is being made when it has taken twenty years to arrive at a permanent rule.

13
14 Kevin Godbout, Weyerhaeuser Company, suggested there is uncertainty in what the rule should
15 look like because in part, we are establishing a regulatory rule where we as humans are attempting
16 to determine with accuracy where fish reside. He asked the Board to direct staff to work with
17 stakeholders—either Policy or workgroups—to identify the unanswered questions and come back
18 in August with a plan to move forward. He suggested collaboration is better than simply counting
19 votes to arrive at the outcome. He suggested the Board retain ownership in the process, but that
20 DNR needs to be the driver, coordinating with both technical and professional folks.

21
22 Jim Peters, Western Washington tribes, said the anadromous fish floor concept, which was
23 intended to be option nine, would define a stream below 10% as fish habitat and reduce
24 electrofishing. He said the floor needs to be part of the PHBs and not bifurcated. He said the
25 western tribes are working on a product to provide DNR to take through the AMP and will be
26 reaching out to other caucuses to arrive at a consensus product. He said it may be a three to five
27 month process. He said if their concept does not go forward, the western tribes would like to see
28 the adoption of FHAM as rule, hold off on adopting PHB criteria and anadromous fish floor until
29 a validation study is done, put the 10% fish habitat gradient into the board manual and rely on
30 using default stream physicals in conjunction with electrofishing. Additionally, he said the western
31 tribes would welcome back those caucuses that have left the Policy table.

32
33 Ash Roorbach, Northwest Indian Fisheries Commission, reiterated that the western tribes are
34 working to bring data and an analysis forward that could inform on the development of an
35 anadromous fish floor, but added it could take six months. He said the alternative is a validation
36 study that could take years. They would support moving forward with FHAM in rule and have the
37 PHB criteria and anadromous floor as part of the board manual. He clarified that a 10% gradient
38 and their anadromous fish floor would include interdisciplinary teams and natural barriers but
39 capture where fish habitat is most commonly found.

40 41 **BOARD DISCUSSION ON DRAFT WATER TYPING SYSTEM RULE MATERIALS**

42 Chair Bernath attempted to capture takeaways from the discussion. He said he heard most folks do
43 not want to give this back to Policy, DNR should continue with the rule making process and to
44 convene a Board committee to help DNR and stakeholders resolve outstanding issues. He
45 suggested the Board hold a special meeting to discuss this further.

1 A conceptual motion was presented for Board consideration. Several ideas were discussed
2 regarding the various components necessary for a motion and options for meeting the intent of a
3 water tying rule. No action was taken.

4
5 It was agreed that DNR staff would draft a motion on next steps for the Board to consider at a
6 special meeting in late May/early June.

7
8 **EXECUTIVE SESSION**

9 None.

10
11 Meeting adjourned at 6:10 p.m.

1 **FOREST PRACTICES BOARD**
2 **Special Board Meeting – May 9, 2019**
3 Natural Resources Building, Room 172, Olympia, WA
4

5 Meeting materials and subject presentations are available on Forest Practices Board’s website.
6 <https://www.dnr.wa.gov/about/boards-and-councils/forest-practices-board>
7

8 **Members Present**

- 9 Stephen Bernath, Chair, Department of Natural Resources
10 Ben Serr, Designee for Director, Department of Commerce
11 Bob Guenther, General Public Member/Small Forest Landowner
12 Brent Davies, General Public Member
13 Carmen Smith, General Public Member/Independent Logging Contractor
14 Dave Herrera, General Public Member
15 Jeff Davis, Designee for Director, Department of Fish and Wildlife
16 Lisa Janicki, Elected County Official
17 Noel Willet, Timber Products Union Representative
18 Patrick Capper, Designee for Director, Department of Agriculture
19 Paula Swedeen, General Public Member (participated by telephone)
20 Tom Laurie, Designee for Director, Department of Ecology
21 Tom Nelson, General Public Member
22

23 **Staff**

- 24 Joe Shramek, Forest Practices Division Manager
25 Marc Engel, Forest Practices Assistant Division Manager
26 Patricia Anderson, Rules Coordinator
27 Phil Ferester, Senior Counsel
28

29 **WELCOME AND INTRODUCTIONS**

30 Chair Bernath called the Forest Practices Board (Board) meeting to order at 8:00 a.m.
31 Introductions of Board members and staff were made.
32

33 **PUBLIC COMMENT**

34 Ken Miller, WFFA, provided an update on their Westside Riparian Template proposal which
35 Policy was supposed to have to the Board at this meeting. He indicated that the target date is now
36 November 2019 and doubted consensus is achievable by then. In order for the November due date
37 to work, dispute resolution would need to be invoked at the June Policy meeting.
38

39 Elaine Oneil, WFFA, shared that they were able to get a \$500,000 request through the legislature
40 to update the current landowner database, conduct a trends analysis and an analysis of the reasons
41 for observed trends including how regulatory impacts affected those trends. The bill (SB 5330) is
42 currently waiting for the Governor’s signature and if signed into law would direct those funds to
43 the University of Washington School of Environmental and Forest Sciences. She also provided an
44 update on their Eastside Riparian Template which includes a change in direction to develop a
45 series of alternate plans with a forest health focus.
46

1 Darin Cramer, WFPA, requested the Board ensure that the spatial analysis is re-run to include a
2 width component with the results included in the economic and environmental analyses. He said
3 the intent of an anadromous floor needs to be clarified and a validation component for both PHBs
4 and the floor is necessary. He identified other components of the rule that need to be addressed
5 and asked the Board to ensure stakeholders are involved in all the steps. He said all elements need
6 to be integrated into a timeline and brought back to the Board at the August or November meeting.
7

8 **RELATIVE PRIORITIES FOR THE ADAPTIVE MANAGEMENT PROGRAM**

9 Terra Rentz, TFW Policy Committee Co-Chair, described Policy’s decision-making process for
10 developing the consensus recommended priorities for the master project schedule budget.
11

12 She acknowledged the good work of Policy representatives over the past fourteen months. She
13 said the group is a highly-functioning team of respectful people who strive for finding common
14 ground. She expressed the importance for Board members to understand how well Policy is
15 functioning now, so they can weigh the relative feedback that this group provides.
16

17 Rentz provided an overview of the core projects recommended by Policy to be included in the
18 master project work schedule for the next biennium. She conveyed that given the responsibility to
19 continue funding for core projects that are underway and nearly complete, funding for the PHB
20 validation study could not be recommended at this time. Policy requests additional direction from
21 the Board.
22

23 **2019-2021 CMER PROPOSED BIENNIAL BUDGET**

24 Howard Haemmerle, AMPA and Terra Rentz, Policy Committee Co-Chair, presented the
25 proposed CMER budget and highlighted the following:

- 26 • Program Administrative staff – \$261,000 is allocation for administrative assistance supporting
27 the AMP. Includes hiring DNR staff (Administrative Assistant 2) rather than having the duties
28 performed under a contract. A contract would occur for mediation.
- 29 • CMER scientists – four positions need funding: ecologist, geologist, riparian and wetlands
30 scientists. These positions will be housed at the Northwest Indian Fisheries Commission. The
31 program is also working to recruit an eastside scientist position. This position would report
32 directly to the AMPA.

33 Joe Shramek, DNR acknowledged the delay in getting the eastside scientist position filled. He
34 said once DNR fills the AMPA and support positions, they hope to complete the process for
35 the eastside scientist.

36 Rentz said the reduction of \$41,000 reflects retirements and cost savings of bringing on new
37 staff.

- 38 • Funding for CMER conference – the \$5,000 reflects the two day preparation for conducting
39 the CMER science workshop.
- 40 • Type N workgroup – \$200,000 is allocated for bringing on technical folks to help with Type N
41 buffer prescriptions. Not all the logistics are worked out for this process or how the money will
42 be spent.
- 43 • Extended monitoring projects – the completion of hard rock and soft rock studies are
44 reflections of the cost associated with this line item. The increase in 2021 reflects additional
45 staff time to complete the report.

- 1 • Eastside Type N Riparian Effectiveness Project (ENREP) – the contractors adjusted costs
2 given equipment needs and access issues. The team may add six additional basins along the
3 east slope of the Cascades.
- 4 • Roads Prescription Monitoring Project – the costs reflect public works contract logistics not
5 previously anticipated.
- 6 • Deep-Seated Landslide Research Strategy – the objectives include spatially mapping
7 landslides and the landslide classification project.
8 Chair Bernath suggested providing an update at the August Board meeting.
- 9 • Clean Water Act – concepts for the Amphibians in Intermediate Stream study have begun, but
10 the project has not started to date.
- 11 • Water Typing Strategy – the budget reflects Policy’s decision not to fund the PHB validation
12 study, but maintain funding for other water typing projects.

13
14 Board member Nelson asked for clarification on the amounts allotted for AMP administrative
15 staff.

16
17 Haemmerle said the administrative costs are paid for by the program, but it is not \$625,000, rather
18 \$180,000 (\$92,500/year), which reflects a cost savings. The savings however, cannot be
19 automatically moved into other research projects.

20
21 Shramek clarified that the \$288,000 might have been a calculation error and initially unavailable
22 for spending. He said a more accurate figure will be included in time for Policy to adjust the
23 budget to reflect the governor’s budget.

24
25 Board member Janicki asked what the reversed fund shift refers to.

26
27 Chair Bernath said the Board is required to provide the Office of Financial Management and
28 legislative budget committees anticipated carry over funds. The money that supports the AMP is
29 from the Forests and Fish Support Account and General Fund State. The legislature reduced the
30 General Fund State amount by \$1.1 million.

31
32 Board member Nelson asked since the PHB validation study is not being funded, where is the
33 money coming from for other items the Board wants to achieve—PHB study, lidar-based model
34 and default physical stream assessment study.

35
36 Rentz said at the time they were to provide their summary sheets, they were not given any
37 allocations related to the PHB study, lidar or the physicals study. She said those products could fit
38 nicely in the placeholder for the PHB validation study.

39
40 Haemmerle said there is a cost saving by combining the default physical study with the PHB
41 validation study. Saving could be done depending on the approach the Board chooses.

42
43 Board member Nelson said he would like to see more money allocated for the water typing
44 strategy to reflect the Board’ intent to retain water typing as a priority, specific to the PHB
45 validation study, lidar and default physical studies.

46

1 Board member Davies asked if the co-chairs could put budgetary numbers associated with the
2 priorities and identify how many staff are working on these projects.

3
4 Rentz said for the upcoming biennium, Policy has \$4.8 million to work with for the research
5 program. She said \$55 million is allocated for additional Clean Water Act assurance projects, \$23
6 million is allocated for additional type N projects, \$33 million is allocated for deep-seated
7 landslide projects and finally, \$2.1 million is allocated for the PHB validation study, lidar and
8 physical studies.

9 10 **CLEAN WATER ACT ASSURANCES**

11 Mark Hicks and Heather Bartlett, Department of Ecology, provided a status update on how well
12 the corrective milestones for maintaining the Clean Water Act assurances are going. Since August,
13 there has been a combination of milestones completed as well as ones that have moved forward in
14 the process. These include:

- 15 • A plan was completed to survey small forest landowner roads;
- 16 • Buffer Integrity Shade Study was completed, a combination water quality amphibian study
17 intended to tie in well to the overall Type N Strategy conversations planned in future;
- 18 • A reviewed draft was completed on the soft rock study;
- 19 • CMER is reviewing the extended hard rock study;
- 20 • Begun implementing the assurance milestone for the Eastside Type N Effectiveness
21 Monitoring Study; and
- 22 • Initiating a process to achieve an independent review of the AMP, which is the performance
23 audit that Ecology has wanted to be part of the 2010 milestones.

24
25 Bartlett shared some of Ecology's perspectives as the Board considers and makes decisions on
26 work currently underway. She said Director Maia Bellon, takes seriously the upcoming decision
27 on next steps regarding the Clean Water Act assurances beyond the end of 2019.

28
29 She indicated that the Forests and Fish Report rules, use of the AMP to test those rules and the
30 assurances are all important and indicated that Ecology would like to see these continue together
31 as the model. She said with less than a year remaining of the ten-year extended assurances,
32 Ecology is looking to the Board to secure a more predictable path for identifying improvements to
33 the AMP.

34 35 **PUBLIC COMMENT ON PROPOSED BIENNIAL BUDGET**

36 Chris Mendoza, Conservation Caucus, said the CMER work plan was delivered to Policy in
37 January 2019. He said the work plan would provide in-depth information Board members may
38 have on individual projects. CMER does not necessarily follow Policy's priorities and vice versa.
39 Two examples include ENREP and the Amphibians in Intermittent Streams study. He said the 2-
40 day budget retreats were helpful to understand priorities and decide on appropriate paths forward.
41 He did not think a facilitator was necessary at Policy, but a coordinator position similar to CMER
42 may be a better option.

43
44 Darin Cramer, WFPA, recommended the budget retreat concept be enacted again. He said his
45 organization mostly supports the consensus budget. He cautioned spending money on the PHB
46 validation study until there is buy-in by stakeholders. He said he has concerns that the pass

1 through and overhead monies were not adequately explained in the budget or at Policy. He said
2 allocations related to the balance for Forest and Fish Support Account, the fund shift for Model
3 Toxics Control Act and the proviso language needs to get sorted in the supplemental budget. He
4 requested staff provide an update at a later time.

5
6 Alec Brown, WEC, said the conservation caucus has concerns with how the budget does not
7 necessarily meet the Clean Water Act assurance milestones. He acknowledged that the PHB
8 validation study did not go through the normal CMER process and reminded the Board that the
9 Conservation Caucus did not vote down the PHB validation study, but voted sideways.

10 11 **2019-2021 CMER PROPOSED BIENNIAL BUDGET**

12 Board member Janicki said she is concerned with passing a budget with funding uncertainty
13 related to water typing strategies, the PHB validation study and facilitator needs. She suggested
14 the Board approve the budget today and revise the budget at the upcoming special meeting.

15
16 Chair Bernath asked what is the latest date the Board can pass the budget to account for biennial
17 dollars and have money available for current contracts.

18
19 Shramek did not think the participation grant funding for tribes and state agencies would be
20 affected.

21
22 Haemmerle said they are continuing to address money for contractors in order to ensure funds are
23 available for implementing contracts by July 1, even if the budget was passed closer to July than
24 in May.

25
26 Board member Nelson suggested staff look into clarifying and possible revisions for cost saving
27 for PHB validation study, lidar-based model and physicals study including staff overhead and
28 facilitator.

29
30 Board member Laurie questioned if Policy could evaluate the need for the Amphibian in
31 Intermittent Stream study. He said he would like to see a cost comparison between a phased
32 project and one conducted through the normal CMER process. He suggested the effort for this
33 would include the PHB validation study, the physical study and the lidar-regression study.

34
35 Chair Bernath suggested some things could be done quickly like send out the CMER work plan to
36 Board members. He asked if Policy could provide better financial numbers by ‘scrubbing’ line
37 items.

38
39 Rentz said Policy could provide what the Board requested related to the budget. She added that
40 the Amphibian in Intermittent Stream study is a Clean Water Act assurance and may provide
41 important information.

42
43 Board member Serr asked about the \$1.5 million for ENREP and acknowledged the concerns for
44 the cost. He asked if the dollar amount reflected the workshop.

1 Haemmerle said a workshop was held and clarified that no changes occurred for ENREP funding
2 resulting of the workshop. The workshop was held to help clarify if adjustments were warranted.
3 He added that a revisited budget is possible after the principal investigators assess the need for
4 any adjustments.

5
6 Rentz suggested Board members provide focused budget questions so Policy can respond
7 appropriately. She suggested the CMER work plan may provide information to inform the budget
8 decision. She said Policy is unable to decide the priorities for the Board unless they understand the
9 questions Board members are seeking to answer.

10
11 Chair Bernath said these water typing studies have been in place for several years and have been
12 identified as a priority for the Board. He encouraged all to work together to resolve these issues.

13
14 Board member Swedeen suggested that the bigger question is to assess how to fund these larger
15 studies, such as the PHB validation study given the shortfall budget in the future. She did not
16 think funding will be available for such studies down the road.

17
18 Board member Herrera said since the Board shifted to the Board-directed science panel, CMER
19 folks and Policy folks have been left out of the process. As a result, he understands why there is
20 confusion on what the question is. He suggested \$40,000 is appropriate to allocate for water
21 typing moving forward.

22
23 Haemmerle offered that one way for Board members to understand specific questions the studies
24 seek to address is to re-read the studies. He said this should help members to be better informed as
25 to what the priority question are. He said both the physical study design and PHB validation study
26 design offer some suggestions to improve efficiencies and reduce potential overlap.

27
28 **MOTION:** Brent Davies moved the Forest Practices Board approve the 19-21 biennium Master
29 Project Schedule and Budget for the Adaptive Management Program.

30
31 She further moved the Board direct the AMPA to work with Policy and CMER to
32 revise the budget and implement a new line item for AMP improvement facilitation
33 of \$150,000 and move remaining excess funds into the water typing strategy line
34 item.

35
36 The Board will consider approval of a revised budget and CMER work plan at the
37 August meeting.

38
39 **SECONDED:** Tom Nelson

40
41 Discussion

42 Several Board members assisted with refining the wording of the motion and discussed options
43 for approving the budget once clarifications were made on the water typing strategies, facilitation
44 and other studies/projects.

1 The options for addressing the budget at today’s meeting ranged from not approving the budget
2 and waiting until Policy refined the dollar amounts, then take action at a special meeting to
3 approve the budget or have Policy provide clarifications in August.

4
5 **ACTION:** Motion passed unanimously.

6
7 **STAFF REPORTS**

8 No questions on the following reports:

- 9 • Adaptive Management
10 • Compliance Monitoring
11 • Small Forest Landowner Office
12 • Upland Wildlife

13
14 The Board requested time at the August meeting to address questions on the Western Gray
15 Squirrel report.

16
17 **2019 WORK PLANNING**

18 Marc Engel, DNR, presented amendments to the work plan as a result of yesterday and today’s
19 meeting.

20
21 **MOTION:** Tom Laurie moved the Forest Practices Board approve the 2019 Proposed Work
22 Plan as amended.

23
24 **SECONDED:** Carmen Smith

25
26 **ACTION:** Motion passed unanimously.

27
28 **SMALL FOREST LANDOWNER DEMOGRAPHIC AND FOREST PRACTICES DATA**
29 **PRESENTATION**

30 Due to time constraints this presentation was moved to the August meeting.

31
32 Meeting adjourned at 12:30 p.m.