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**FOREST PRACTICES BOARD**

March 19, 2003

Ramada Inn Governor House, 621 S. Capitol Way  
Olympia, Washington

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**Members Present:**

Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board  
Alan Soicher, General Public Member  
Bob Kelly, General Public Member  
David Hagiwara, General Public Member  
Eric Johnson, Lewis County Commissioner  
John Mankowski, Designee for Director, Department of Fish and Wildlife  
Lee Faulconer, Designee for Director, Department of Agriculture  
Sherry Fox, General Public Member/Independent Logging Contractor  
Toby Murray, General Public Member (participated via teleconference)  
Tom Laurie, Designee for Director, Department of Ecology  
Wendy Holden, Designee for Director, Office of Trade and Economic Development

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**Members Absent:**

Keith Johnson, General Public Member/Small Forest Landowner

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**Staff:**

Lenny Young, Forest Practices Division Manager  
Paddy O'Brien, Assistant Attorney General  
Patricia Anderson, Rules Coordinator  
Dani Jones, Board Coordinator

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**CALL TO ORDER**

27 Chairman Pat McElroy called the meeting to order at 9:00 a.m. Dani Jones gave an emergency  
28 briefing, and McElroy facilitated introductions of the Board, staff, and attendees.

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**U.S. TIMBERLANDS AND PLUM CREEK RESPONSE**

31 U.S. Timberlands and Plum Creek Timber Company had requested time on the Board's agenda to  
32 explain the company's land management practices in response to statements made by Washington  
33 Forest Law Center (WFLC) staff at the February 19, 2003 meeting.

34  
35 Jeff Jones, U.S. Timberlands, explained that the primary cutting method used in the Teanaway  
36 Basin area has been partial cutting or selective harvesting. He said 80% of the harvests have been  
37 on the south facing slopes, traditionally not nesting habitats for spotted owls. U.S. Timberlands  
38 provides demographic support for spotted owls and is committed to growing trees for the long term.  
39 The company is committed to Forests and Fish and has accomplished substantial road upgrades and

1 maintenance to protect public resources and water quality by installing hundreds of culverts, drain  
2 dips and resurfacing.

3  
4 John Hempelmann, legal counsel for Plum Creek Timber Company, responded to WFLC's criticism  
5 of and appeals made on Plum Creek's forest practices. The appeal on a forest practices application  
6 in the Carbon River Valley was about cumulative adverse impacts on aesthetics, the primary  
7 concern being the impact on people driving on the Carbon River Road to Mt. Rainier National Park.  
8 He provided photos of harvests in the Carbon River Valley, noting that Plum Creek had a landscape  
9 planning policy to address harvest in areas of potential public view and that Plum Creek had  
10 maintained a tree buffer and vegetation along the Carbon River Road. In all of the appeals, no  
11 additional conditions were imposed and Plum Creek was able to comply with all the regulations.  
12 The Forest Practices Appeals Board and the Court of Appeals concluded that no additional  
13 conditions were necessary. The harvests were in areas that had been zoned for long-term  
14 commercial forestry, not in the wilderness area or the national park.

15

#### 16 **STAFF REPORT - BACKGROUND INFORMATION ON PETITION**

17 Pat McElroy asked Board Members if they had questions for staff about the report provided to them  
18 (See Attachment 1).

19

20 Eric Johnson asked Lenny Young about Department of Natural Resources' (DNR) authority under  
21 the Forest Practices Act to prevent segmentation by requiring that landowners provide DNR with  
22 complete descriptions of total proposals, and the frequency, timing and under what conditions DNR  
23 requires it.

24

25 Young said the most common instance is when DNR receives a road-only Forest Practices  
26 Application (FPA) and needs to know more about the context of that proposal in regards to the road  
27 system and whether it is a precursor to harvest activities. He said he would need to check on the  
28 extent to which this is done for other FPAs.

29

30 Tom Laurie asked if DNR would change that practice if the Department of Ecology's (DOE)  
31 proposed amendment to WAC 197-11-305 is adopted. Young said no, DNR would continue that  
32 practice. Laurie said he wanted to be clear it was not linked to the WAC 197-11-305 proposal.

1 Wendy Holden asked about monitoring at various watershed scales: how much monitoring is in  
2 place, when the results come in, and how the results are used. Young explained that DNR was in  
3 the early development of its monitoring commitments. McElroy reminded the Board of its approval  
4 of \$60,000 toward the development of compliance monitoring under the Adaptive Management  
5 Program, which will inform effectiveness monitoring.

6  
7 Young pointed out that the biological work is being done by the Adaptive Management Program, a  
8 multi-organizational forum, whereas compliance monitoring is more integrated with operations and  
9 will be done primarily by DNR, with advice from other organizations. He also emphasized that  
10 monitoring is key to long-term implementation of Forests and Fish and that DNR was working to  
11 get those systems in place as quickly as resources allow.

12

### 13 **TESTIMONY SUPPORTING THE PETITION**

14 Judy Turpin provided a chronology of the Board's efforts over the last 25 years to address  
15 cumulative effects. In 1978, a court decided that the Class IV classification was too narrow and in  
16 1979, the Board identified 14 issues including cumulative effects. It then commissioned a further  
17 study on cumulative effects that came out in 1984. This led to the Timber, Fish and Wildlife  
18 (TFW) agreement which included recommendations on cumulative effects. In 1989, the Board  
19 identified cumulative effects as a priority, TFW prepared an issue paper, and TFW Policy instructed  
20 TFW CMER to identify goals, measurable thresholds, and risk assessment and management tools.  
21 There were a number of appeals related to cumulative effects in the late 1980's, and in March 1990,  
22 the Board adopted an interim basin approach. This was followed by a stakeholder negotiation  
23 process that led to a 1992 rule package that included watershed analysis. Through the 1990's  
24 several HCPs included watershed analysis, and the Board worked on spotted owls and marbled  
25 murrelets. In 1997, the focus shifted to fish listings, followed by the 1999 Forests and Fish Report  
26 and legislation that put watershed analysis in statute for the first time. The report made changes but  
27 did not eliminate watershed analysis. At its 2001 retreat the Board acknowledged that instead of  
28 addressing cumulative effects through watershed analysis, it was now built into the Forests and Fish  
29 base rules and adaptive management, but that watershed analysis was still a useful tool.

30

31 She noted two troubling changes since the adoption of the Forests and Fish rules: the proposal to  
32 alter WAC 197-11-305, and the functional demise of the watershed analysis administrative system.

1 She said the Board cannot ignore the impact of these changes. After 20 years of Board effort, the  
2 promise to address cumulative effects remains unfulfilled.

3  
4 Marcy Golde, Washington Environmental Council, requested that the Board start the process of  
5 implementing protections against cumulative effects that have not been addressed. She stressed that  
6 the Board must recognize that cumulative effects still exist and cannot be identified or fully  
7 mitigated on an application-by-application basis. She described situations where attempts to  
8 address cumulative effects have failed causing erosion on the road surfaces, road failures, mass  
9 wasting of sub-surface flows and diversion of sediments into stream systems. She said forest  
10 practices rules provide little protection against impacts from the disturbance or destruction of  
11 archaeological and cultural sites. She urged the Board to accept the challenge of finding equitable  
12 ways to deal with the impacts of un-addressed cumulative effects.

13  
14 Eric Harlow, WFLC, acknowledged that U.S. Timberlands is doing everything according to  
15 regulations, but the company has offered no evidence that increased sedimentation has not occurred  
16 - only the legal observations heard earlier from an employee. He said that WFLC is using the  
17 Teanaway as an example of what could occur under the current regulatory system. There have  
18 recently been numerous FPAs approved in this sensitive area and with relatively little monitoring  
19 data. He voiced concern that only one watershed analysis has been completed in the Teanaway, and  
20 there is no monitoring requirement for the resulting plan. He said WFLC was not trying to prove  
21 the consequences from what is happening in the Teanaway, but the likely occurrence of future  
22 cumulative impacts. He clarified that the petitioners were not asking the Board to initiate  
23 emergency rule making but to file a notice of intent to initiate rule making, and start the rule making  
24 process at the May meeting.

25  
26 Bill Bidstrup said he strongly supports the cumulative effects petition. He said the rules do not give  
27 forest practices foresters the tools to address cumulative impacts. He said he has suggested many  
28 times the need to learn from cumulative impacts on water quality, fisheries, wildlife and recreation,  
29 and the need to be able to condition applications with regard to cumulative impacts. He pointed out  
30 what he considered inadequacies of watershed analysis – which does not assume that the entire  
31 watershed is harvested and does not look at the rate of harvest. All watershed analysis does is  
32 compare the current conditions of the watershed to what was there naturally.

33

1 Peter Goldman, WFLC, explained why the Board should take the lead on this issue and how to go  
2 about doing it. Although the Forests and Fish Adaptive Management Program plays an important  
3 role in attempting to resolve contentious regulatory issues, its role is advisory. The Board is the  
4 responsible entity to commence a process to solve the failure of the forest practices rules to address  
5 cumulative impacts for all resources. He stressed that forest practices rule making is and must be a  
6 public governmental function, structured to require stakeholder input, but not to be controlled by a  
7 non-governmental entity. He asked the Board to proactively solve this problem in the state forum  
8 before it becomes a federal issue. He said the petitioners were willing to waive the 60-day decision  
9 deadline to provide time for stakeholder and public process and asked the Board to take its  
10 responsibility seriously. He encouraged the Board to notify the public that it is serious about taking  
11 on this important issue by filing a notice of intent to initiate rule making. Then the interested parties  
12 can get together to solve the problem that must be solved one way or another.

13

#### 14 **TESTIMONY NOT SUPPORTING THE PETITION**

15 Joseph Pavel, Northwest Indian Fisheries Commission (NWIFC), recommended denial of the  
16 petition, but said NWIFC supported the petitioners' concerns and believes those concerns should be  
17 addressed through Forests and Fish. He said the Adaptive Management Program, watershed  
18 analysis, and the monitoring program all must come together to address cumulative effects.  
19 Watershed analysis is a process that has languished and we must have a mechanism to monitor  
20 progress and impacts of Forests and Fish rules. He recommended that the Board keep the watershed  
21 analysis modules and the Board Manual current with the rules and new products such as the  
22 geologic hazard mapping project. The Board Manual Coordinator should regularly report progress  
23 to the Board. He concluded saying that it is essential to reinvigorate the Compliance Monitoring  
24 Program and that the tribes are supportive and active.

25

26 Bill Wilkerson, Washington Forest Protection Association (WFPA), recommended that the Board  
27 deny the petition because the Board has aggressively addressed cumulative effects for 15 to 18  
28 years. He said federal agencies gave input that watershed analysis, a voluntary program, should not  
29 be the exclusive vehicle to do that, but wider buffers, higher road standards, and protection against  
30 sedimentation were needed – all of which the Board did. All of those issues were driven by the  
31 need to prevent cumulative effects. The Board, stewards of the most aggressive forest practices  
32 regulations in the country, has been addressing cumulative effects very well.

33

1 Ann Goos, WFPA, presented visual and verbal history of the Board's commitment to protect the  
2 environment and to address cumulative effects through progressively protective forest practices  
3 rules, including SEPA on Class IV forest practices, from 1974 to 2001. She explained that in the  
4 1980's Timber, Fish and Wildlife (TFW) came into being to discuss cumulative effects and  
5 protective rules were adopted in 1987 and 1992 as a result of TFW negotiations. The 1992 rule  
6 package restricted the size of clear cuts, required green-up and wildlife reserve trees, and provided a  
7 watershed analysis process for planning on a larger scale. Also in 1992 the Board adopted a rate of  
8 harvesting rule that allowed DNR to study and assess harvesting patterns in each watershed  
9 resource inventory area (WRIA) subject to forestry activities. All WRIsAs experienced rates of  
10 harvest well below the thresholds of concern agreed to by TFW stakeholders. She noted the rules  
11 that addressed spotted owl protection resulted in land taken out of production, and timber harvest is  
12 now at the lowest overall harvest rate in history. Finally, she noted the value in the Board's  
13 watershed analysis system of large-scale assessment and planning. The resulting scientific analysis  
14 revealed the need for new riparian, unstable slopes, and roads rules, which in turn resulted in the  
15 Forests and Fish Report of 1999.

16  
17 Bob Meier, Rayonier, presented a case for how the forest practices rules address cumulative effects  
18 and how important the timber industry is to Washington State. Cumulative effects are addressed  
19 through timber harvest size and adjacency regulations, reforestation, watershed analysis, unstable  
20 slopes, threatened and endangered species protection, and the Forests and Fish rules that protect  
21 aquatic habitat. He explained how the rules all interact with each other to create significant reserve  
22 areas and habitat patterns, and each rule interacts with silvicultural practices to create mosaics of  
23 habitat across the landscape. Photographs he presented showed post-harvest landscape patterns for  
24 aquatic and upland habitat. He told the Board that permitting costs and review periods have  
25 increased dramatically as the complexity of the rules increase, and explained how the low timber  
26 prices, high permitting costs, and reduced harvestable areas are causing economic stress in the  
27 industry. This is in conjunction with lower tax revenues and a higher unemployment rate. He said  
28 it is important that the Board recognize the important environmental gains that are occurring as a  
29 result of all the new rules, along with the knowledge that forestry is the base for rural economies  
30 and stabilizing the state's economy as a whole.

31

1 Bob Bilby, Weyerhaeuser Company, explained the meaning of the term, “cumulative effects” and  
2 how the rules have been and are currently ensuring positive cumulative effects on forested lands  
3 across the state. “Cumulative effects” are ecological responses to applications of multiple  
4 management actions, and have temporal and spatial aspects that interact to create environmental  
5 conditions. The primary factors influencing the environmental conditions are thermal energy, wood  
6 and organic matter, sediment, and runoff. The regulations since the adoption of the Forest Practices  
7 Act have addressed temperature in aquatic systems, TFW revisions focusing on temperature, wood,  
8 and sediment, watershed analysis focusing on temperature, wood, sediment, mass wasting, and  
9 hydrologic effects, and the Forests and Fish revisions that formalized watershed analysis  
10 components of greatest value, standardized riparian management, and improved stream typing. And  
11 there continues to be gradual expansion in the processes addressed by the forest practices rules.  
12 About the question of whether cumulative effects is being addressed, he pointed out the focused  
13 monitoring effort in place that promises to produce the information that will tell us whether or not  
14 particular regulations are truly achieving the Board’s goals.

15  
16 John Hempelmann talked about how the State Environmental Policy Act (SEPA) relates to the  
17 Forest Practices Act. The Forest Practices Act is designed to foster the commercial timber industry  
18 and, at the same time, protect the environment. Court of Appeals decisions have said that Class I,  
19 II, and III forest practices as defined by the forest practices rules, are not subject to the requirements  
20 of SEPA. The legislature adopted that exemption because it recognized the regulatory burden of  
21 case-by-case review of environmental impacts was unnecessary. It is unnecessary because the  
22 Board has looked at every conceivable subject that needs heightened attention and has engaged in  
23 extensive SEPA analysis of the individual and cumulative application of those rules. He  
24 emphasized that SEPA does apply to the sensitive forest practices that the Board has concluded  
25 have potential for probable significant adverse impact. Those are Class IV forest practices. DOE is  
26 now taking steps to eliminate the abuse of WAC 197-11-305. He added that the rules not only  
27 address cumulative effects for aquatic habitat, but also for recreation and aesthetics and wildlife:  
28 WAC 222-30-025 limits the size and timing of even-age harvests, and WAC-222-20-0405  
29 establishes special management guidelines in the Columbia Gorge scenic area.

30  
31 Bill Wilkerson explained that resolution of this issue is incredibly important to the future of Forests  
32 and Fish. The legislature was very clear that it anticipates major changes in the rules to occur over

1 time through the adaptive management process, or legislation, or litigation. Right now, it looks like  
2 the litigation route is being attempted. The industry is weary of hearing that nothing is being done  
3 on a subject of this importance. We are doing more than a lot. He encouraged the Board to deny  
4 the petition and continue to implement one of the best programs in the country.

5

6 Chairman McElroy announced the conclusion of testimonies supporting and not supporting the  
7 petition, and encouraged the Board to ask any questions of the testifiers.

8

9 Alan Soicher asked Ann Goos if the rate of harvest data provided is at a watershed administrative  
10 unit (WAU) scale. Goos responded that it is at a water resource inventory area (WRIA) scale.  
11 Goos described that WRIAs are large river basins, like the Yakima River system. The WRIA level  
12 was chosen by DNR.

13

14 John Mankowski asked Jeff Jones to describe the approach that U.S. Timberlands is using to  
15 preserve owl habitat. Jones responded that the decision to decertify the circles was based on  
16 economics and the fact that the owls have not been there since 1992. U.S. Timberlands has been  
17 analyzing conservation planning, and at this time, it is just not economically feasible. However,  
18 they are going to discuss other options and develop better solutions. U.S. Timberlands has not  
19 decided whether to complete a habitat conservation plan or landowner option plan. Jones said that  
20 in the next few weeks U.S. Timberlands staff will be meeting with WDFW to discuss options and  
21 future expectations.

22

23 Sherry Fox stated that the original petition requested the Board to do emergency rule making and  
24 asked Peter Goldman why he has changed his mind. Goldman said that he never appeared before  
25 the Board saying every forest practices or even most forest practices need to go through SEPA.  
26 SEPA is a procedural statute that does not get us anywhere. WAC 197-11-305 is a symbol that  
27 requires landscapes to be analyzed based on impacts of many small activities. Goldman said that  
28 the Board adopted the SEPA rule and is giving up a vital tool to get at cumulative effects. He said  
29 that SEPA does not need to apply to everything but before the tools go away, landscapes need to be  
30 looked at.

31



1 Eric Johnson asked John Hempelmann whether the rulings in the specific court cases he shared with  
2 the Board state whether or not the agency appropriately applied the existing rules, or whether or not  
3 the existing rules were adequate to protect against cumulative impacts. Hempelmann replied that all  
4 of the cases were fact-specific forest practices applications. The court rulings were more specific  
5 rather than general.

6  
7 Eric Johnson asked for Peter Goldman's perspective on the specific court rulings. Goldman said  
8 that John Hempelmann's response was not accurate. WAC 197-11-305 was available and used to  
9 show that the combination of the existing rules collectively cumulatively would still permit an  
10 adverse impact. He said that the important piece of those rulings was not the facts in the case but  
11 rather the availability of the mechanism that each particular exempt application can add up to be  
12 something bigger.

13  
14 McElroy asked John Hempelmann to explain the common practice of mitigating before submitting  
15 an FPA. Hempelmann said that is a common practice with industry to avoid any appeal issues.  
16 Industry looks to avoid problems and works proactively with DNR to deal with potential issues.

17  
18 Alan Soicher asked John Hempelmann whether Plum Creek is no longer doing watershed analysis,  
19 if watershed analysis is a done deal for future forest practices, and what are the potential  
20 implications. Hempelmann said that he could not answer the first question because he is outside  
21 counsel and not involved in the decisions or the science of watershed analysis. About the second  
22 part of the question he said that the sole purpose from a regulatory perspective of watershed  
23 analysis is to address potential impacts on water quality, fish habitat, and public resources. By  
24 doing a watershed analysis, a Class IV trigger can be avoided.

25  
26 John Mankowski asked Marcy Golde whether she agreed to any of the testimony stating cumulative  
27 effects was a big issue in the early 1990s but now we have the owl, marbled murrelet and other  
28 habitat rules that help address cumulative effects. Golde said that the owl and the marbled murrelet  
29 rules are species-specific and she thought the goal was to have the rules be more general. She said  
30 the problem is that you are not allowed to look beyond the four corners of the application. Overall,  
31 the rules are better but you still cannot look beyond the application.

32

1 Based on Marcy Golde's comments, McElroy asked Young whether DNR is limited to looking only  
2 at the four corners of the application. Young responded generally yes but with some exceptions.  
3 For example where watershed analyses are completed, the applications are tied into the watershed  
4 analyses. Young added that there are other such circumstances he was not thinking of at the  
5 moment.

6  
7 McElroy then asked Young whether DNR has conditioning authority for when it believes there is  
8 potential for an adverse environmental impact or potential for damage to public resources in most  
9 circumstances, or do they look solely at an application site specific, or do they look more generally.  
10 Young said that DNR has the authority and does look outside the application boundaries somewhat,  
11 but primarily on an application-by-application basis.

12  
13 Paddy O'Brien said that her understanding was that DNR has the authority to look at the existing  
14 environment when it is examining an application and does not just look at the map associated with  
15 an application.

16  
17 Wendy Holden said that several speakers indicated that watershed analysis and landscape planning  
18 are either less available now or not being used as much, and she asked for some clarification.

19  
20 Judy Turpin offered an answer. She said when she mentioned the watershed analysis administrative  
21 system was functionally defunct, that came from a letter from the U.S. Fish and Wildlife Service in  
22 response to Plum Creek. Plum Creek had built watershed analysis into their habitat conservation  
23 plan (HCP) and was asking for modifications in it because they felt they could no longer live up to  
24 the requirements regarding watershed analysis. The tools for watershed analysis exist but the  
25 system to support it has been substantially weakened and it will require resources to re-energize it.

26  
27 Ann Goos said she was frustrated hearing all the support for watershed analysis only in the sense  
28 that in 1996 the environmental community issued a report called the Collins, Pess Report that  
29 criticized watershed analysis. In fact, that was impetus for moving ahead on Forests and Fish  
30 negotiations for baseline rules protective of riparian areas, roads, unstable slopes, that move  
31 protection measures to the entire landscape as opposed to waiting for protection watershed by  
32 watershed. However, she said that she was happy to hear there is a recommitment to working on

1 watershed analysis. There are about 70 completed in the state. In terms of Holden's question, yes,  
2 it is still a tool that can be used. If people want that tool again, we would be willing to work on it.  
3

#### 4 **Board Discussion**

5 Toby Murray stated that Murray Pacific's (MP) amended HCP was largely based on watershed  
6 analysis. The lessons learned from over 70 watershed analyses throughout the state, including MP,  
7 formed the basis for many of the prescriptions adopted by Forests and Fish, and have been  
8 extremely effective in preventing a variety of cumulative effects. In fact, there have been numerous  
9 rain-on-snow events over the last several years and the tree farm has come through with flying  
10 colors, illustrating the effectiveness of the prescriptions in preventing damages from cumulative  
11 effects. Forests and Fish Forest Practices regulations are in place, and they are taking care of the  
12 problem.  
13

14 John Mankowski asked Young to what extent WAC 197-11-305 would help DNR change in  
15 determining whether segmentation is happening. Young replied that DNR would no longer look at  
16 segmentation if DOE's rulemaking is successful and WAC 197-11-305 goes away. In instances of  
17 road-only applications where understanding is needed to determine what the application is actually  
18 for, DNR would request additional information. The operational guidance that was recently issued  
19 would be rescinded.  
20

21 Sherry Fox stated that much time, expertise and energy went into the intensive Forests and Fish  
22 negotiations and while some things are not happening as quickly as some would like, for others it's  
23 happening far too quickly. She said she believes that the process must continue by using the  
24 established avenues to deal with these kinds of issues. The information presented by NWIFC is  
25 clear in identifying what needs to happen and it can be accomplished through the adaptive  
26 management process.  
27

28 Wendy Holden agreed with the information presented from NWIFC and said it may be the role of  
29 the Board to reenergize and revitalize some things that already exist to address the issues presented  
30 in the petition. She said she believed that improving and using what is available is the best  
31 approach.  
32

1 David Hagiwara said he agreed with Wendy Holden that rule making is not the best solution. The  
2 adaptive management process is our avenue and believes we need to let that work. He said he was  
3 impressed with the information presented by the NWIFC, but he would add goals and a time frame  
4 if that is the direction the Board chooses.

5  
6 Eric Johnson stated that after reviewing the statutory framework in which we operate, it seems that  
7 the process available to us is adaptive management.

8  
9 Tom Laurie said he did not think that a SEPA 305-like rule was appropriate for forest practices.  
10 However, the subject matter was timely and he appreciated all the testimony provided. He stated  
11 that the NWIFC recommendations are a breath of fresh air because they point to some specific  
12 things that need to be done. He said he did not feel that the Board was faced with an emergency  
13 issue, but a need to move ahead with the processes that are already in place.

14  
15 Bob Kelly agreed with the recommendations provided by NWIFC and said he hopes the Board  
16 would review watershed analysis before making a decision.

17  
18 Lee Faulconer said cumulative effects are very important and this petition made him think back at  
19 some of the votes he has taken to deal with cumulative effects. He said he believed that tools are  
20 available to deal with cumulative effects, although there is a significant part of the population that  
21 probably questions the effectiveness of the tools. He said it is important that the Board pay  
22 attention to the design and implementation of a good monitoring program and that periodic reports  
23 are provided to the Board. He said he did not think there was a crisis and he would like to give the  
24 forest practices rules a chance to work. He said that attention is needed to get the resources for a  
25 good design and to carry out the program long term.

26  
27 Alan Soicher said his understanding of amending the rules is by legislation. He stated that  
28 watershed analysis could be valuable and the watershed administrative unit is a good concept. He  
29 said that watershed analysis needs to be revamped to be consistent with the best available science.  
30 He called it a good tool but said it needs to cover the protection of all public resources. He  
31 questioned whether cumulative effects can be addressed through the adaptive management process  
32 or whether it should be done outside of that.

1  
2 John Mankowski said he is confident that the Forests and Fish rules are a substantial improvement  
3 in how aquatic resources are protected. He said he was not sure that cumulative effects is addressed  
4 100%, but the Board is heavily invested in adaptive management. He said there needs to be an  
5 analysis of the wildlife rules and a look at how federal and state laws can work together that are  
6 affecting wildlife resources. He said he did not think that a petition to immediately address wildlife  
7 rules was the best approach. He said he was not convinced that cumulative effects with respect to  
8 wildlife were completely addressed in the rules, but there are tools available such as the Adaptive  
9 Management Program and the Wildlife Workplan.

10  
11 McElroy said he believes the rules adopted by the Board do address cumulative effects. He recalled  
12 at the 2001 Board retreat that the Board committed to continue working on aesthetics and recreation  
13 following its work on wildlife, recognizing that the two are linked. He said the Board is in general  
14 agreement that the adaptive management process is available and should be used, and that the  
15 Forests and Fish rules went into effect less than two years ago. It is too soon to know whether the  
16 rules work or not. The Board has no statutory duty to adopt a SEPA 305-like rule. He noted that  
17 the legislature has told the Board not to engage in rule making on rules that were related to the May  
18 2001 rule package unless those issues go through adaptive management. He added that the  
19 legislature has directed the Board to establish a short, specific closed list of forest practices  
20 classified as Class IV-Special, thus subject to SEPA analysis on an individual basis. The  
21 petitioners' desire for an amended rule would not be consistent with existing legislative direction.  
22 His opinion, he said, is that the Board does not have the authority to engage in rule making as  
23 identified in the petition.

24  
25 Wendy Holden asked Alan Soicher what he thought fell outside of the Forests and Fish rules that  
26 were adopted in 2001. Soicher identified wildlife issues and hydrologic change in the watershed  
27 analysis. McElroy disagreed with Soicher and said that the whole area within the aquatic arena is  
28 off limits to the Board's consideration unless it has gone through adaptive management and by peer  
29 review research.

30  
31 Eric Johnson said he was still unsure whether there is an emergent need or not. Sometimes there are  
32 acute situations that lead to a breaking point and he does not want to discount that maybe some

1 chronic issues are going on, particularly with the wildlife issues. He said he did not want to give the  
2 perception that there is not something building to that point.

3  
4 John Mankowski stated that the scientists need to be consulted on a statewide basis in order to find  
5 the problems so the Board can identify whether programs and processes are in place to address the  
6 issue or fix the problem. He said it is a complex problem that takes a complex analysis rather a  
7 simple cumulative effects rule fix.

8  
9 McElroy asked Paddy O'Brien whether the petitioners' request to waive the 60-day decision period  
10 is allowed. O'Brien responded that the statute provides for a 60-day decision and does not appear  
11 to authorize a waiver.

12  
13 McElroy made the following motion.

14 **MOTION:** The Forest Practices Board has before it a Petition for Rule Making received  
15 February 14, 2003 filed by the Washington Forest Law Center on behalf of a  
16 group of organizations. In addressing the issues posed in the petition, the  
17 board offers the petitioners its view of how the concerns raised in the petition  
18 either have been or will be addressed.

- 19 1. With respect to the issue of the cumulative effects of forest practices, the  
20 rules adopted by the board over the past many years address cumulative  
21 effects in a number of ways. The board incorporates by reference the  
22 portion of the Forest Practices Division staff memo to the board dated  
23 March 12, 2003, entitled "Historical review of significant FPB actions  
24 (1975-2001) addressing cumulative effects" and the "Conclusions"  
25 therein, along with all material referenced in the document.
- 26 2. With respect to the issue of aesthetics and recreation, the board has  
27 already examined the issue and believes the existing rules meet the  
28 legislative direction in the Forest Practices Act. In addition, the board  
29 believes that this issue is connected to the issue of upland wildlife  
30 protection, which is under review by the board. The board has stated its  
31 intent of examining this issue again upon completion of its work on  
32 upland wildlife.

- 1 3. The board directs the petitioners' attention to the board's work plan and  
2 the adaptive management work plan, which are incorporated by reference,  
3 which deal with many of the issues of concern to petitioners.
- 4 4. The board reaffirms its support of the Forests and Fish rules passed in  
5 May 2001. The board continues to believe that these rules, combined  
6 with the pre-existing rules and the Adaptive Management Program do  
7 address the central concerns of petitioners, and provide adequate  
8 protection to public resources consistent with maintaining a viable forest  
9 industry. The Adaptive Management Program, which the board adopted  
10 at the direction of the legislature, is designed to make adjustments as  
11 quickly as possible to forest practices that are not achieving the board's  
12 resource objectives, incorporating the best available science and other  
13 information.

14  
15 Considering the above, and for the following reasons, the board denies this  
16 petition:

- 17 1. Contrary to the petition, the board has no statutory or other legal "duty"  
18 to engage in rule making to adopt a rule similar to or that operates like the  
19 "305 Rule" described in the petition.
- 20 2. The board intends to address issues covered under Forests and Fish  
21 through the Adaptive Management Program, which may result in rule  
22 changes over time. In the meantime, the legislature has provided that rule  
23 changes related to the Forests and Fish Rules generally, and specifically  
24 any rules adopted in May 2001 that relate to protecting aquatic resources,  
25 must follow the forest practices adaptive management process or be  
26 required by court order or future legislation. Petitioners request for rule  
27 making would not be consistent with legislative direction.
- 28 3. The legislature has authorized the Board to develop rules for the  
29 voluntary development of resource management plans and has recognized  
30 the importance of incentives to landowners to voluntarily develop long-  
31 term multi-species landscape management plans that will provide  
32 protection of public resources. Petitioners' request to mandate that

landowners develop landscape plans or future harvest plans is inconsistent with the legislature's emphasis on voluntary planning.

4. The petitioners have failed to show why an emergency exists that would require the board to adopt emergency rules under the Administrative Procedures Act.
5. As directed by the legislature, the board has established a short, specific "closed list" of forest practices classed as IV-Special, and thus subject to SEPA analysis on an individual basis. Petitioner's desire for a "catch-all" or open-ended rule would not be consistent with legislative direction.

SECONDED: Toby Murray.

AMENDED

MOTION #1: Bob Kelly amended the motion by adding the following language from the Northwest Indian Fisheries Commission memo dated March 19, 2003.

Furthermore, the Board requests the Department and the Adaptive Management Program Administrator take such action as necessary to:

- A. Reinvigorate the Watershed Analysis Process.
  1. Reinforce and enhance board manual development and revision process within the Adaptive Management Program.
  2. Investigate and report on resources and activities required to bring WSA process and modules up to FFR intent and viable with current rules.
  3. Investigate and report on resources and activities required to implement WSA process.
- B. Reinvigorate CMER's Monitoring Advisory Group with priority tasks including:
  1. Finalize the Monitoring Design Team Report
  2. Develop and manage linkage between CMER and DNR compliance monitoring
  3. Develop and manage an Extensive Monitoring Program



1 4. Develop and manage an Intensive Monitoring Program  
2 focused on cumulative effects.

3 C. Set timelines for completion of tasks.  
4

5 **SECONDED:** Pat McElroy.  
6

7 **Board Discussion**

8 Toby Murray asked if this was possible to accomplish within the current budget. McElroy said the  
9 issue needs to be addressed and reported back to the Board. Kelly agreed. The Board agreed to  
10 have adaptive management as a standing agenda item.

11  
12 Alan Soicher asked McElroy where the idea that aesthetics and recreation issues are connected to  
13 upland wildlife protection comes from. McElroy stated that Mankowski shared this information  
14 during the work plan discussion at the October 2001 meeting.

15 **AMENDED**

16 **MOTION #2:** Alan Soicher moved to amend the original motion to add the language  
17 “certain potential” after the word “address” in bullet #1. The amendment  
18 would read as follows:

19 1. With respect to the issue of the cumulative effects of forest practices, the  
20 rules adopted by the board over the past many years address certain  
21 potential cumulative effects in a number of ways. The board incorporates  
22 by reference the portion of the Forest Practices Division staff memo to  
23 the board dated March 12, 2003, entitled “Historical review of significant  
24 FPB actions (1975-2001) addressing cumulative effects” and the  
25 “Conclusions” therein, along with all material referenced in the  
26 document.

27 **SECONDED:** John Mankowski.  
28

29 **Board Discussion**

30 Alan Soicher said he believed that the original motion gave the impression that the rules address  
31 cumulative effects in all instances.  
32

1 Pat McElroy said he did not agree and did not interpret the motion as addressing cumulative effects  
2 in its entirety. Murray agreed and said he would presume that the rules do address cumulative  
3 effects until the Board knows otherwise.

4  
5 Pat McElroy said he was against the amendment. You have to look at the scale of the rules -  
6 harvest size, green up requirements, and riparian corridors, all of which address cumulative effects  
7 as well as forest practices on wildlife species.

8 Tom Laurie agreed with McElroy and said he would not support the motion if it stated, “addressed  
9 all cumulative effects.”

10  
11 John Mankowski said that the Board’s approach to cumulative effects is addressed in the rules and  
12 through the Adaptive Management Program, and if there are adjustments that need to be made, the  
13 Board will work on it. He said he did not think the motion says that the rules address all cumulative  
14 effects.

15  
16 After discussion, with the understanding that the original motion was not a catch-all statement, Alan  
17 Soicher withdrew his motion.

18 **AMENDED**  
19 **MOTION #2:** Soicher withdrew the motion.

20  
21 **AMENDED**  
22 **MOTION #1:** Motion carried unanimously.

23  
24 Alan Soicher suggested setting up sideboards and timetables to deal with the recommendations in  
25 Bob Kelly’s motion. McElroy said that he would defer that back to DNR and the Adaptive  
26 Management Program to work through and report to the Board.

27  
28 **ORIGINAL**  
29 **MOTION:** Motion carried unanimously.

30  
31 **Wildlife Planning**

32 John Mankowski presented the draft wildlife work plan. Elements of the plan include: assessment  
33 of current rules intended to protect wildlife, landscape-level wildlife assessment, implementation  
34 mechanisms and incentives for wildlife habitat management, and adaptive management. The entire

1 plan is estimated to take two to three years to accomplish. Products and progress reports will be  
2 provided to the Board as developments occur.

3 **MOTION:** Sherry Fox moved that the Forest Practices Board adopt the wildlife work plan as  
4 presented (and amended) today, and that, as outlined in that plan, the Department of  
5 Fish and Wildlife be requested to begin to organize the scientific analysis and  
6 stakeholder involvement so that this Board continues to make steady progress  
7 towards ensuring the State's wildlife resources are adequately protected as required  
8 by the Forest Practices Act and associated regulations.

9 **SECONDED:** Alan Soicher and Lee Faulconer

10

### 11 **Board Discussion**

12 Tom Laurie asked if WDFW will take the lead on the work plan and receive input from DNR and  
13 others as necessary. Mankowski replied that it is a partnership with DNR with an extensive  
14 stakeholder process. The current plan requires that both DNR and WDFW do a number of things.  
15 He said that he envisions this planning to be much like the cultural resources project.

16

17 John Mankowski said that the best approach is to adopt the work plan to allow those that have the  
18 time to get started on the scoping of each element.

19

20 Eric Johnson asked if this would be accomplished with the existing resources of the agencies. John  
21 Mankowski replied he is confident that with the current resources much can be accomplished.  
22 However, at some point outside contracting may be used for GIS work.

23

24 Eric Johnson said that he would like to know what the outcome of each element would be.

25 Mankowski said that the next step would be to scope out the project and develop a budget to  
26 determine outcomes.

27

28 Alan Soicher asked whether proposals on landscape planning will lead to amendments in the current  
29 wildlife rules. Mankowski replied it probably would with site-specific species.

30 **ACTION:** Motion passed unanimously.

31

1 **EXECUTIVE SESSION**

2 No executive session was needed.

3

4 **MOTION:** Toby Murray moved to adjourn the meeting.

5 **SECONDED:** Wendy Holden

6 **ACTION:** Motion passed unanimously.

7 Meeting adjourned at 3:10 p.m.