FOREST PRACTICES BOARD

REGULAR BOARD MEETING
February 11, 2014
Natural Resources Building
Olympia, Washington

Members Present
Aaron Everett, Chair, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Court Stanley, General Public Member
Dave Somers, Snohomish County Commissioner
David Herrera, General Public Member
Joe Stohr, Designee for Director, Department of Fish and Wildlife
Heather Ballash, Designee for Director, Department of Commerce
Julie Morgan, Designee for Director, Department of Agriculture
Paula Swedeen, General Public Member (participated by phone from 9 a.m. – 2:45 p.m.)
Tom Laurie, Designee for Director, Department of Ecology

Members Absent
Vacant, General Public Member

Staff
Chris Hanlon-Meyer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Senior Counsel

WELCOME AND INTRODUCTIONS

Aaron Everett called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

MOTION: Bob Guenther moved the Forest Practices Board approve the November 12, 2013 meeting minutes as amended.

SECONDED: Tom Laurie

ACTION: Motion passed unanimously (12 support).

REPORT FROM CHAIR

Aaron Everett shared the following:

- The Legislature ~~is fully aware of~~recognizes the success of the road maintenance and abandonment planning in ~~increasing~~ addressing fish passage barriers.
- The State Auditor's Office produced an audit on permitting processes for state agencies. The audit recommended "best practices" for agencies which resulted in legislative bills that would require agencies to collect information to be posted on the website of the Office of the Regulatory Assistance.

- Water typing is a fundamental issue in how the rules are applied and meeting the resource objectives in Forests and Fish. The gravity of the issue is the cause of the dispute before the Board.

PUBLIC COMMENT
None.

STAFF REPORTS
Adaptive Management
Jim Hotvedt, DNR, provided information about CMER's LEAN pilot projects. He indicated that it has been a slow start as a result of staff capacity. He said the past 3-4 years has seen a reduction in human resources as agencies and industry have fewer resources than when CMER began 10 years ago. He said individual CMER members are looking for additional resources but there is no formal plan in place.

Rule Making Activity & 2014 Work Plan
Marc Engel, DNR, presented a revised work plan reflecting time line adjustments for rule making and the compliance monitoring report.

MOTION: Heather Ballash moved the Forest Practices Board approve the 2014 work plan that reflects a revised completion date for road maintenance and SEPA clarification rule making and for the Compliance Monitoring Biennial Report.

SECONDED: Bill Little

ACTION: Motion passed unanimously (12 support).

TFW Policy Committee's Work Priorities
Stephen Bernath and Adrian Miller, Co-chairs, provided an update on the following projects:
- Mass Wasting
- Type N water typing
- Process improvement tools

Upland Wildlife Working Group
Joe Stohr, Washington Department of Fish and Wildlife (WDFW), provided an update on measures taken to improve Western Gray Squirrel (WGS) protection using a voluntary management approach:
- Notification from DNR Regions to WDFW
- DNR to include a note on the Forest Practices Applications (FPAs) Decision Page
- WDFW tracking FPAs that trigger WGS hits
- WDFW introduced SB 6041 to amend RCW 77.15 to clarify that it is unlawful to *intentionally* destroy eggs or nests of fish or wildlife designated as endangered, threatened or sensitive (including the WGS).
- WDFW developing a WGS 2-Year Action Plan
- WDFW has developed guidance to provide consistency in implementing the current forest practices voluntary management approach, protection and their habitat.

Chair Everett referred to staff's January recommendation regarding Taylor's checkerspot butterfly. After reviewing the USFWS critical habitat designation for this species, staff recommended, with WDFW support, continuation of the Board's voluntary cooperative approach and additional application review and outreach to forest landowners within the newly designated areas. The Board had no objections.

The following staff reports were not discussed:

- Board Manual Development
- Compliance Monitoring
- Northern Spotted Owl Implementation Team
- Small Forest Landowner Advisory Committee and Small Forest Landowner Office
- TFW Cultural Resources Roundtable

LEGISLATIVE UPDATE

Chris Hanlon-Meyer, DNR, reported on legislative bills that would impact the Forest Practices Program if passed. Bills included HB 2192, SHB 2312, SSB 6478, and HB 2724.

CLEAN WATER ACT ASSURANCES

Mark Hicks, Department of Ecology, provided a progress update on the CWA milestones. He said that very few of the projects progress without challenges.

Everett asked if milestones will be updated as a result of the CMER budget in April. Hicks answered yes.

TYPE F/N BREAK DISPUTE RESOLUTION

Jim Hotvedt, DNR, provided background information on the Type F/N water break dispute resolution process and outlined the next step which was to bring the issue to the Board. He provided a timeline, starting with the initiation of the process by the Conservation Caucus in January 2013, the background of the Board's actions to date related to water typing, and the issues under dispute which include the regression model, definitions of fish habitat and off-channel habitat, shared risk assumptions and electrofishing.

Aaron Everett called on the TFW Policy Committee (Policy) co-chairs and selected members to explain why Policy was not able to conclude the dispute resolution process. Responses included:

- Disagreement on priorities.
- Trust deficit among caucus members.
- Treating every word as important when attempting to complete the Type F Charter.
- Trying to get into solutions before there was agreement on the problem.
- Not coming to an understanding of the substantive, technical, data-related issues.
- Lack of clarity in rules regarding stream-associated wetlands.
- Disagreement on the meaning of "shared risk."

Everett asked Bridget Moran, U.S. Fish and Wildlife Service (USFWS), to explain that agency's position on water typing procedures. She said ~~a permanent rule is needed,~~ that while the Services knew electrofishing would be used at the beginning of the Habitat Conservation Plan (HCP), the transition period the Services expected has taken too long, and that electrofishing is not a Forest Practices HCP-covered activity.

Marc Engel presented a possible motion for consideration regarding Board direction on the Type F/N Break.

PUBLIC COMMENT

Chris Mendoza, CMER member, reminded the Board of the process related to the performance reviews conducted on the CMER program and recommended that this be done for other parts of the Adaptive Management Program.

Rob Kavanaugh spoke on behalf of his petition for rule making to protect the WGS. He noted some recent developments including a possible change in ESA listing status from threatened to endangered. He said while reviewing DNR records he noticed a change in FPA conditioning from DNR's previous administration to the current administration for protecting the WGS.

PUBLIC COMMENT ON TYPE F/N BREAK

Mary Scurlock, Conservation Caucus, said her caucus was generally supportive of the motion and suggested adding language to part 1b:

- "An evaluation of the current regulatory process…"
- "...field implementation guidance ~~or~~in addition to rule language…"

Peter Goldman, Washington Forest Law Center (WFLC), said the interim water typing rule is under-protective, relies heavily on electrofishing, and does not implement the definition of "fish habitat" in WAC 222-16-010. He added that better guidance in the Board manual is needed to protect fish habitat.

Chris Mendoza, Mendoza Environmental, said he supported part 2 of the motion, i.e., the pilot project to investigate model utility.

Norm Schaaf, Merrill & Ring, described the established protocols necessary before any electrofishing can occur. He encouraged the Board to support the motion and said he appreciated that data collection would inform the process.

Blake Murden, Port Blakely Tree Farms, said proper use of electrofishing settings provides for a high level of fish detectability and a low level of injury to fish.

Tim McBride, Hancock Forest Management, commented that his company's water type modifications have resulted in an approval rating of 99.9 percent the first time by using the protocols in Board Manual Section 13. He suggested changing "may" to "shall" in the last sentence in part 1 of the motion:

- "Policy ~~may~~shall accomplish these tasks through the formation of technical groups…"

Adrian Miller, Olympic Resource Management, said the motion's specificity will facilitate progress. He added that off-channel habitat is often best defined on the ground, and completing the process outlined in the motion will help to identify the situations where there are vagaries.

Kevin Godbout, Weyerhaeuser, commented that no data has been presented to prove that the use of electrofishing is a problem. He suggested three changes to the motion:

- "…minimizing potential site-specific impacts to ESA-listed fish species…" (part 1a);
- "…evaluation of ~~published~~ relevant literature…" (part 1a);

- "Policy ~~may~~shall accomplish these tasks through the formation of technical groups…" (part 1, last sentence)

Karen Terwilleger, Washington Forest Protection Association (WFPA), listed components of the Forests and Fish Report and Forest Practices HCP water type strategy: fish habitat description, 95 percent accuracy, and equitable allocation of risk. She added that good data and science are necessary to formulate the basis of determining the Type F/N break, and that focusing on the one issue will help Policy to move it forward.

Curt Veldhuisen, Skagit River System Coop, requested that the Board update the manual and create a permanent rule. He said the Board manual guidance is outdated because the science has moved beyond it. In regards to the motion, he said the model was a failure in the North Cascades and he was not convinced that putting additional resources into it would produce a usable product.

Jim Peters, Northwest Indian Fisheries Commission (NWIFC), commented the Board manual needs updating so it is easier to implement. He stressed that stream typing is very important, to verify the habitat in use now, and the habitat that will be used as fish runs recover. He added that all of the land uses and jurisdictions should use the same water typing system.

Elaine O'Neil, Washington Farm Forestry Association, said the motion looked pretty good because it supported the use of data to inform the process. She added that small forest landowners do not have millions of dollars to do electrofishing, and said she was concerned that they should somehow have the ability to ground-truth a mapped break. She said the use of LiDAR can improve the process for assessing where to start, but it cannot definitively determine the F/N break without ground-truthing.

DIRECTION ON TYPE F/N BREAK

MOTION: Carmen Smith moved the Forest Practices Board initiate actions to remedy the Type F water concerns outlined in the majority and minority recommendations of the TFW Policy committee caucuses by obtaining additional information and directing additional work by Policy. These steps are essential for the Board to consider making a final determination of the appropriate approach to take in the development of a permanent water typing rule.

She further moved the Board and Policy work plans be amended to reflect the following:

1) Policy is directed to complete recommendations for options on a permanent water typing rule, beginning with two tasks to be completed and reported to the Board at the May, 2014 meeting:
   a) Development of "best practices" recommendations regarding protocol survey electrofishing, including an evaluation of published literature, minimizing potential site-specific impacts, and options for reducing the overall extent of the surveys' use;
   b) An evaluation of the process to identify off-channel habitat under the interim water typing rule, including recommended clarifications in field implementation guidance, or rule language. The evaluation must be based, in part, on field review of approved Forest Practices Applications and water type modification forms.

Policy may accomplish these tasks through the formation of technical subgroups or other means, as needed, to complete work by the established deadline.

2) The Adaptive Management Program Administrator is directed to work with Board staff and others, as needed, to scope and initiate a pilot project to re-run the existing hydrologic model using LiDAR data, including at least two watersheds; one westside and one eastside. The Administrator shall make optimal use of contract resources, persons involved with the original development of the model, and LiDAR analytical frameworks completed and in-development by DNR-State Uplands. The objectives of this effort are to:
    a) Develop quantitative information about the "footprint" of the interim rule, as applied;
    b) Compare model-based water type designations to on-the-ground Forest Practices Applications and Water Type Modification Forms;
    c) Investigate additional model utility, such as detection of off-channel habitat, ability to predict physicals & assess footprint effects from using different physicals (i.e., its ability to provide analytical and/or implementation value to different "options" for approaching the various issues raised in the water typing rule dispute memos);
    d) Provide information that can inform the Board's basic administrative choices among "map-as-rule" vs. "guidance map with field adjustments."

The Board authorizes the Administrator to utilize up to $100,000 of Forests and Fish Support Account funding to enter into contracts as needed to scope and initiate work before the May, 2014 Board meeting.

The pilots are to be completed by the August, 2014 Board meeting. The Administrator will present a progress report at the May, 2014 Board meeting, including an estimate of the total funds needed to complete the work directed above.

SECONDED: Bob Guenther

AMENDMENT #1: Dave Somers moved the Forest Practices Board amend the motion as follows:

. . .

a) Development of "best practices" recommendations regarding protocol survey electrofishing, including an evaluation of ~~published~~ relevant literature, minimizing potential site-specific impacts, and options for reducing the overall extent of the surveys' use;
b) An evaluation of the current rule process to identify off-channel habitat under the interim water typing rule, including recommended clarifications in field implementation guidance, or rule language. The evaluation must be based, in part, on field review of approved Forest Practices Applications and water type modification forms.

Policy ~~may~~ shall accomplish these tasks through the formation of technical subgroups or other means, as needed, to complete work by the established deadline.

. . .

SECONDED: Court Stanley

ACTION: Amended motion passed unanimously.

AMENDMENT #2: Court Stanley moved the Forest Practices Board amend the motion as follows:

. . .

a) Development of "best practices" recommendations regarding protocol survey electrofishing, including an evaluation of relevant literature, minimizing potential site-specific impacts to Incidental Take Permits covered species, and options for reducing the overall extent of the surveys' use;

. . .

SECONDED: Carmen Smith

ACTION: Amended motion passed unanimously.

ACTION ON MAIN MOTION: Motion as amended passed unanimously.

PUBLIC COMMENT ON ROAD MAINTENANCE AND ABANDONMENT PLANNING (RMAP)

Norm Schaaf, Merrill & Ring, said that the company will meet the 2016 deadline to have its RMAP work completed and will continue to maintain its roads as needed. He said he does not support the rule making because it is redundant; such language already exists in WAC 222-24-051(5)(c) and (d), and subsections (12) and (14).

Kevin Godbout, Weyerhaeuser, said he did not support the rule making because he does not understand the need for it.

RMAP CLARIFICATION RULE MAKING

Gretchen Robinson, DNR, requested that the Board approve filing a CR-101 *Preproposal Statement of Inquiry* to add language to the road maintenance rules. She explained that at times, for example after an extreme storm event, landowners can be faced with large amount of road maintenance work necessary to protect public resources. She said DNR wants to clarify that an enforcement mechanism (e.g., notice to comply) for road maintenance can be combined with an agreed-to schedule to accomplish the remainder of the necessary road work. Such a schedule would reflect the relative potential for public resource damage. She emphasized that this concept is consistent with the forest practices standards for public resource protection, and does not affect current Road Maintenance and Abandonment Plans or obligations.

Marc Engel, DNR, added that in most cases DNR would issue a notice to comply for immediate threats to public resources, and would work with the landowner to agree on a financially feasible plan if needed by the landowner.

MOTION: Dave Somers moved the Forest Practices Board direct staff to file a CR101 Preproposal Statement of Inquiry to notify the public that the Board is considering rule making to clarify road maintenance and planning rules.

SECONDED: Heather Ballash

ACTION: Motion passed unanimously (12 support).

PUBLIC COMMENT ON THE MASS WASTING EFFECTIVENESS MONITORING PROJECT: A POST MORTEM STUDY

Kara Whitaker, WFLC and Conservation Caucus, highlighted three recommendations to be implemented to help minimize the occurrence of future landslides due to forest practices: acquire additional LiDAR-based digital elevation models; develop additional documentation for all forest practices applications; and prioritize future CMER research of mass wasting.

Karen Terwilleger, WFPA, stated that she is in agreement with Kara Whitaker's statements. She also thanked Adrian Miller for providing leadership in pulling everyone together, and the conservation caucus for working with the industry caucus to finding a solution that works for everyone.

THE MASS WASTING EFFECTIVENESS MONITORING PROJECT: A POST MORTEM STUDY EXAMINATION OF THE LANDSLIDE RESPONSE TO THE DECEMBER 2007 STORM IN SOUTHWESTERN WASHINGTON

Jim Hotvedt, DNR, requested that the Board take no action on the Mass Wasting Study based on the results of the study. He stated that while Policy recommends no action from the Board, it did agree it is necessary to make process improvements in FPA review and compliance monitoring, and to further research and monitor the effectiveness of road and harvest prescriptions to meet mass wasting resource objectives.

MOTION: Bob Guenther moved the Forest Practices Board accept TFW Policy Committee's recommendation to take no action at this time on the Mass Wasting Effectiveness Monitoring Project: An examination of the landslide response to the December 2007 storm in Southwestern Washington.

SECONDED: Dave Somers

ACTION: Motion passed unanimously (12 support).

PETITION FOR RULE MAKING - WESTERN GRAY SQUIRREL

Marc Engel, DNR, presented the petition for rule making received on January 28, 2014, and said it did not offer any additional or new information than the petitioner previously submitted in November 2013.

Everett asked Board members for their opinion on whether the recent petition provided any new or additional information. All Board Members present agreed there was none.

MOTION: Bill Little moved the Forest Practices Board deny the petition for rule making on Western Gray Squirrel received on January 28, 2014.

SECONDED: Carmen Smith

ACTION: Motion passed unanimously (11 support).

EXECUTIVE SESSION

None.

Meeting adjourned at 3:10 p.m.