

Attendees:

Stephen Bernath, DOE
Marc Engel, DNR
Terry Jackson, DFW
Marty Acker, NMSF & EPA proxy
Chris Mendoza, CC, proxy
Doug Hooks, WFPA
Kendra Smith Skagit County
Nancy Sturhan, NWIFC
Joseph Pavel, Skokomish Tribe
Curt Veldhuesin, SRCS
Pete Heide, WFPA
Mark Hicks, DOE
Dawn Hitchens, DNR

By Phone:

Chase Davis, UCUT
Kevin Godbout, Weyerhaeuser

Forest Practices Board – August 14th Meeting Preview of Agenda

Marc Engel reported Lenny Young will serve as the chair as he is the alternate to the Forest Practices Board chair. The meeting will feature:

- ♦ A panel of experts presenting the timeline of actions for the northern spotted owl in the state of Washington. This agenda item is not reflective of impending rule making; it is an update for board members especially with five new out of the thirteen board members.
- ♦ A report from the forest biomass Work Group. The Forest Practices Board completed a rulemaking adding the removal of forest biomass as a forest practices activity. DNR then convened a Forest Biomass Work Group to review the forest practices rules to determine if additional rules are needed to address forest biomass harvest. The review is complete with the Work Group identifying a potential rulemaking to define forest biomass.
- ♦ Reports from all work groups that report to the Forest Practices Board outlining their work plans for calendar year 2013. This assists board members in understanding the work load for next year.
 - Stephen Bernath added the letter from the F&F Policy co-chairs outlining Policy's 2013 work plan had been modified from the draft version mailed to Policy. The last sentence addressing the post-mortem study was removed. This sentence stated multiple options would be presented to the Forest Practice Board when in reality this is unclear at this point.
- ♦ The Forest Practices Board will act on the CMER membership nomination.

Update on Policy Facilitation & Scope of Work – September 12th

Jim Hotvedt reported he is currently developing the scope of work for generating a solicitation for a facilitator/mediator. He is working on how to word the mediation part of it, in case Policy does go into dispute resolution. He is working with the contract specialist to solicit through the state master contracting process. An update of this process and the draft scope of work will be shared with Policy members on at the August 16th work meeting.

Forest Practices Habitat Conservation Plan Settlement Agreement

Stephen Bernath announced that the first work meeting is scheduled for August 16th at the Department of Ecology. In preparation, DNR staff will develop a proposal initiation for the AMPA to identify the process under which Policy will review Attachments 2 and 3 of the Settlement Agreement to determine how best to implement improvements to the adaptive management program and the master schedule of CMER work. The main purpose for the August 16th meeting is for the AMPA to present for Policy approval the issues and the process in which Policy will review and discuss the issues, and agree on the meeting schedule. At the conclusion of review of all recommended changes in the Settlement Agreement, Policy will make recommendations for adaptive management program reform to the Board. Policy has agreed to the Settlement Agreement deadline for completion of adaptive management program modifications and changes by December 2013.

Kendra Smith expressed disappointment in the Settlement Agreement. The counties have concerns with an agreement for the forest practices adaptive management program that was negotiated by only three of the six Forests and Fish Policy caucuses identified in the rules. This is out of line with the Timber Fish & Wildlife (TFW) agreement. It seems like the settlement agreement was totally out of keeping with the TFW spirit and arrangement of working together. The Forests & Fish Policy Committee is expected to work in a collaborative manner, leave the arms at the door, and really participate in the meetings. The TFW agreement prevents Policy from going through the legal system to make decisions. In the long run, counties have talked with one another and have been in agreement with the work, and have had to deal with streamlining like everyone else. It will not bode well for the counties if they have to decide which county commissioner attends Policy. The counties have invested time and energy to be a part of Policy and are really concerned about the outcome of the Settlement Agreement.

Joseph Pavel expressed the Settlement Agreement did not represent the tribes. Every tribe is a sovereign nation and will not be forced to select one representative. That will not happen.

Pete Heide responded everything that has to do with the Settlement Agreement will have to go through the adaptive management proposal initiation and subsequent process. This will start on August 16th. Large industrial landowners were prompted to participate as one of the three caucuses in the settlement discussions which were initiated by the threat of a lawsuit by the conservation caucus. If the lawsuit had gone through, Policy members would not be at the table right now. The parties agreed to a legal confidentiality agreement for the negotiations to occur. The timeline and funding for CMER projects were thoroughly discussed during the negotiations. There is an expectation others will bring up the issue of improving and funding the adaptive management program. The three parties that took part in the settlement agreement agreed to support increasing funding for the adaptive management program as indicated in the FP HCP.

Adrian Miller suggested inserting a sentence in the F&F Policy memo to the Forest Practices Board about the provisions of the settlement agreement to go through the adaptive management proposal process as not all the caucuses were part of the negotiations. This would signal to the Board the stated concerns.

Joseph Pavel agreed to the addition to the memo and suggested “as such are not limited to the settlement agreement options.”

Chase Davis asked when and where funding will be discussed.

Stephen Bernath replied discussions have started. Ecology and DNR have already met with two caucuses; the tribal caucuses’ discussion is scheduled for August 9th. The two agencies – Ecology and DNR – were reaching out to each caucus to look at a funding proposal and asked for feedback in a short time frame. He added in terms of legislative work, the legislative folks from each agency are involved in the process.

Chase Davis added there was a lot of good work going on and UCUT has heard very little about funding. He expressed concern about not concurrently dealing with funding. The credentials, research topics and long term work plan, hard to do this with inadequate funding.

Adrian Miller expressed it was important to get clear about what is being run through Policy and what stakeholder process is being run through by members of this body. It sounded like the communications needed to be broader. He requested members not to use this group’s time to lambast DNR.

Joseph Pavel added the tribes understood funding was a huge priority and the need to work on strategies to appropriately fund this program. There were other avenues to follow for the funding mandates; and it was paramount for the principals to cooperate and respect equal points of view and the willingness to pursue funding. These are the tools to legitimize the pursuit of funding; not just the side corner of caucuses. He added he thought the three caucuses that negotiated the settlement agreement missed that step right up front in terms of what this process is all about.

The Mass Wasting Effectiveness Monitoring Project Report – Alternative Proposal

Stephen Bernath reported Policy members needed to revisit the post-mortem dispute resolution solution as the ISPR associate editor was not available to perform the required work.

Adrian Miller clarified that the Policy co-chairs and AMPA developed an alternative that reflects a plan A and plan B for Policy approval. This prevents returning back to Policy in case plan A does not pan out. The following reflects the alternative with two options for approval:

Option A: Essentially the same as using the ISPR AE – Preferred

The panel should be composed of a mix of expertise, with members who are highly regarded scientists in the general fields of geology, forest hydrology, geomorphology or similar field. At least one should have a solid working knowledge and experience in experimental design and statistical analyses. To the extent possible, all should have peer-reviewed publication records in order to understand what is acceptable and not acceptable for revisions to manuscripts submitted for publication.

Items to be submitted for the review panel’s use are exclusively the original draft 7a submitted for ISPR review, version 8 containing track changes, version 8a (a clean

version without track changes), ISPR reviewers' comments and Associate Editor's synthesis, and CMER's consensus-approved ISPR response matrix.

The F&F Policy Committee expects to have the lines of communication open between the review panel and the AMPA for clarification of issues and use of discretion in assisting the panel. The F&F Policy Committee will rely on the AMPA to make the final decision of whether author's revisions to version 8a are satisfactorily and fairly responsive to the review panel's recommendations and decisions.

Option B:

F&F Policy Committee requests that the AMPA retain a mediator to work with the parties in disagreement over version 8a of the *Mass Wasting Effectiveness Monitoring Project: An Examination of the Landslide Response to the December 2007 Storm in Southwestern Washington* report to resolve outstanding issues related to author responses to ISPR reviewer comments on version 7a. The mediator should have experience in helping to resolve technical disputes. Because mediation takes special training and experience, the mediator will not be restricted to having some level of background in a particular related technical area, although that would be preferable. Time spent directly with all parties together in the same meetings should be limited to 16 hours (two days). Time spent with individual parties should be limited to 8 hours per individual (one day).

The AMPA will select the mediator after consultation with each of the Policy caucuses. The AMPA will facilitate and coordinate the mediator's work.

Discussion Points

Mark Hicks asked if the associate editor was unavailable because he did not have time or had a deeper reason. He asked because CMER would like to investigate this option.

Stephen Bernath reported the associate editor was unavailable and provided a suggestion for Policy to consider. In the future the associate editor needs to play more of a summarizing role and be clearer than in the past.

Mark Hicks replied CMER wanted to put the associate editor in the role of editor.

Pete Heide added his caucus believed in mediation with a qualified mediator and understood the level of angst over this issue in UPSAG. He thought if we had mediation by a professional within proper framework, we would have a better outcome than one dictated by an outsider. The landowner caucus supported plan A and appreciated the feedback from the associate editor; this showed professionalism. The landowner caucus wanted to include the minority reports and the authors' response to the minority reports. This gives a broader picture for the panel members; would be a better solution. Weyerhaeuser has stated that they would be okay with the outcome as long as their disputants' information was part of the review.

Curt Veldhuesin added his caucus was not in philosophical dispute with a mediated avenue. He added (as one of the co-authors of the report) they did review and respond to the minorities'

concerns. The technical and inferential statistical interpretations need to be resolved; which is why they think a technical approach is perfect.

Pete Heide withdrew his suggestion.

Chris Mendoza added initially when this came to Policy, Marty Acker's proposal was to have the AMPA bin the comments. The AMPA did not do that; instead the AMPA provided a solution. CMER's response was not to deal with the minority comments after the ISPR review; the conservation caucus retains their stance on this. In the absence of not having the Policy approved route of using the ISPR associate editor; the conservation caucus supported returning to Marty Acker's motion and move forward. The conservation caucus saw no fatal flaws in the report; the three ISPR reviewers gave recognition to the original study and level of rigor of applicable statistical reference; and the authors improved the report above what the ISPR associate editor suggested. The conservation caucus did not support plan B as discussed; it was not acceptable to the caucus to bring in comments after the fact. The conservation caucus did not support plan A; they did not see the necessity for a panel as the peer reviewers found no fatal flaws in the report. The conservation caucus preferred for Policy to debate this and if Policy was not willing to do so, they supported sending this to the Forest Practices Board to give direction to Policy to accept the report or not.

Joseph Pavel concurred with the conservation caucus. He did not see the merits of this review and supported Policy to accept the report and move forward. He added the process has been followed and implemented as agreed to; Policy should not reinvent the process.

Kendra Smith added the counties supported the alternative proposal as this allowed the opportunity for a full response and review.

Marty Acker stated the federal caucus was not ready to block these options. He added the question at hand was whether the scientific report was meritorious on its own and if the dissenters had received satisfactory responses. He stated the alternative dove right in the middle and did not address either position. Marty responded the federal caucus would like to focus on the objective of evaluating the science and not on lobbying reviewers; they did not think this was a common pathway in scientific reviewing.

Stephen Bernath asked Policy members to recall the process to date; the CMER co-chairs brought a non-consensus report to Policy and the landowner caucus called for dispute resolution. The role of Policy was to reach a solution and not make this a problem for the Forest Practice Board. He urged Policy to work toward a resolution or move this into step 2 of the dispute resolution process.

Terry Jackson replied the state caucus preferred option A. The state caucus supported this route as a method for resolving this to the satisfaction of each stakeholder and working toward the scientific merits of the study. The state caucus supported including the minority reports as part of the package for evaluation.

Kevin Godbout added he thought it was imperative to include the minority reports, as this was part of the CMER process. The reviewers went to the trouble of pulling them together at the direction of CMER co-chairs and the AMPA; it seemed strange to suppress them. He supported that level of technical review and transparency.

Stephen Bernath added he heard Chris Mendoza say if the minority reports were included, then he wanted all of the reviewers' comments. He asked if that was a point of consensus.

Pete Heide added that this was a formal process step in CMER, and Policy was dealing with what happened at that point. His caucus supported including the minority reports in the hands of those that will help to resolve the dispute. If there are other materials that will help in the review, then they supported that, as long as Policy received a clean response. He added this body was presented with this report and Policy needed to figure it out; Policy members heard from their scientists this was not scientifically sound and it needed to be reviewed.

Kevin Godbout offered in order to move this forward, since the tribes, conservation, and federal caucuses viewed the minority reports as unsound, then Policy needed to fix that and include them in the next review step. This went through the CMER process and this is part of the official record.

Chris Mendoza replied he was not proposing that as an option; he reiterated his point was that every reviewer had options to comment and check off that review step; the rules of engagement have not been followed. The conservation caucus was not accepting the minority and authors responses to be reviewed; they were stating this has occurred. They supported keeping CMER members accountable to the process. That is why they supported going to the Forest Practices Board to show them the process has not been followed and to provide a clear example of where improvements need to be made.

Pete Heide added what was in dispute was not the statistical analysis, it was the reporting of the non-statistical data and conclusions reached in the report. What was in dispute was the way in which the authors responded to the ISPR comments and what followed after the ISPR. He added this was not outside of the process; and the crux was how the authors reported on the non-statistical data.

Adrian Miller added Policy was working toward an attempt to reach a conclusion of the dispute resolution. He suggested the caucuses meet and return to the meeting with an approach of solving the dispute.

Caucuses convened for 20 minutes.

Adrian Miller facilitated reporting from the caucuses as follows:

Tribes and conservation caucus supported accepting the post-mortem report and move on. The process has been followed; they did not accept the alternative plan.

Washington Counties accepted plan A.

Landowner, federal and state caucuses accepted the alternative proposal; the landowner caucus wanted the minority reports included in the review.

Policy members did not reach consensus on the alternative proposal the post-mortem dispute resolution solution.

Stephen Bernath added any participant can invoke each succeeding stage in the dispute resolution process as reflected in the Forest Practices Rules – WAC 12, and Chapter 22 in the board manual. Since Policy has reached non-consensus in resolving this dispute; this will be invoked unless another option is reached.

As referenced: Board Manual – Section 22:

5.2 The Stage of Dispute Resolution

Adaptive management dispute resolution can involve up to three stages, but stops at any point before entering the third stage if consensus is reached.

Stage 1 – resolve issues within 6 to 12 months where a technical dispute must be addressed by CMER & Policy.

Stage 2 – implement mediation to facilitate consensus or agree to arbitration within 3 months following initiation of stage 2.

Stage 3 – submit the dispute to the Board for action.

5.3 Mediation or Arbitration

Mediation involves a professional mediator to organize and manage discussions between or among the parties with the clear purpose of reaching consensus on an issue. Arbitration is normally a binding process similar in many ways to the judicial system.

Within the Policy process the results of arbitration could be binding only as long as parties agreed to be bound. Arbitration in this context is a method of employing a third party to provide an informed and reasoned assessment of disputed issue(s). With arbitration, it is the arbitrator's responsibility to transmit his or her discussion to the appropriate party. In the case of a Policy dispute on a rule or recommendation, this means that the arbitrator would transmit his or her decision to the Board.

Joseph Pavel offered since Policy was in the dispute resolution process, and they did not want to impede the progress of reaching a solution, they could approve plan A. They did not accept plan B of the alternative approach as this was stage two in the dispute resolution. The tribes modified their approach and supported plan A in the alternative proposal.

Chris Mendoza reported he did not have the authority to move to plan A from his caucus. He offered to take this back to the caucus so as to avoid impeding the process. He cautioned Policy members they were not making any rule changes based on the report results and suggested each caucus write down as an exercise what each caucus wants to see as an outcome of this report. This was the only thing the conservation caucus put on the table as an alternative. The conservation caucus was concerned the landowner caucus wanted a rule change that may not be

there regarding unstable slopes. Chris will take alternative plan A back to the caucus for feedback; he added the conservation caucus was concerned about the selection of the panel in plan B.

Adrian Miller replied Policy members appreciated this and Policy was prepared to move to stage two in the dispute resolution process if the conservation caucus returns without an agreement to the alternative proposal. This will be decided at the Policy meeting in September.

Stephen Bernath suggested for the conservation caucus to meet and agree on the plan A in the alternative proposal within two weeks. The conservation caucus needed to report back to the Policy co-chairs on the decision within two weeks so the co-chairs could inform the AMPA. He also suggested the conservation and landowner caucuses meet to reach an agreement on the inclusion of the minority reports & authors' response in the packet for the panel to review.

FPA/HPA Integration - Timeline & Anticipated Workload

Marc Engel and Terry Jackson shared the timeline of what needs to be accomplished by the DNR & DFW.

Deadlines specified in legislation:

Forest Practices Board

- By 12-31-13, incorporate existing fish protection standards in chapter 77.55 RCW into the forest practices rules.
- By 12-31-13, establish technical guidance in a new Board manual section.

Department of Natural Resources (DNR)

- By 12-31-12, enter into MOA with WDFW describing how to implement integration of HPAs into FPAs.
- By 12-31-13, develop and maintain examples of high quality FPAs for DNR and Office of Regulatory Assistance websites.
- By 9-1-14 and by 9-1-16, jointly (with WDFW) report findings and recommendations regarding regulatory integration to legislature.

Washington Department of Fish and Wildlife (WDFW)

- By 12-31-13, adopt rules establishing procedures for a concurrence review process.
- By 12-31-12, enter into a memorandum of agreement (MOA) with DNR describing how to implement integration of HPAs into FPAs. This will be followed by an interagency contract.
- By 9-1-14 and by 9-1-16, jointly (with DNR) report findings and recommendations regarding regulatory integration to legislature.

Fees in the Forest Practices Application Account started July 10th. The account needs to build up a working reserve. The rules are anticipated to be in effect July 1st. DFW expects to have the HPA rules modified at the same time.

DFW is in three rule making processes:

- 1) HPA – integration with FPA rules by May 2013. Concurrent review process applies. 2ESB6404 mandated DFW to adopt the rule making process and DNR will reference those rules by December 2013. The CR 101 will be filed next week and will reflect draft rule language as identified in 6406. This will be brought to Policy at November meeting and then DFW will file CR 102. The public hearings will be scheduled mid-November to mid-December. Policy will be provided an update after the public comment period. Policy will

be provided an update of the rule language February 2013. DFW is attempting to synchronize the rule making process with the 6406 timeline with current rules.

Action: Stephen Bernath requested DFW to provide a hand out of the timeline.

- 2) Hydraulic Code Rule Revisions – new rules in the integration piece was not possible; these new rule will come again in 2014. The new rules will not change how DFW does business in terms of protection standards; they plan to provide clearer and more predictable standards. They are currently scoping EIS; a second draft of the revised rules will go out to stakeholders in August. Policy will get a copy of these. The CR 102 is scheduled for mid-January, with public comment mid-Jan-Feb. The adoption of these rules is projected by December 2013. DFW plans to run these through the adaptive management process. DFW has an active website for informing the public on the updates.

Meeting Adjourned.