

Timber, Fish, & Wildlife Policy Committee
December 5, 2013 Meeting Summary

Decisions and Actions from Meeting

Decision	Notes
1. Accepted October 3, 2013 meeting summary with minor edits.	Acceptance by all caucuses
2. Accepted November 7, 2013 meeting summary with edits.	Acceptance by all caucuses
3. Bring water typing issues to the Forest Practices Board February 2014 meeting for direction.	Due to lack of consensus; process outlined in Board Manual Section 22

Action	Assignment(s)
By December 23: Send comments/edits on draft Mass Wasting responses document to Adrian Miller.	All caucuses
By December 23: Send brief report to AMPA noting recommendations to the Board on substance and process next steps for Type F water typing.	All caucuses
By February 1: Send comments on hydraulic code revision (Version 4) to AMPA.	All caucuses

Welcome & Introductions – Stephen Bernath and Adrian Miller, Co-Chairs, welcomed the Timber, Fish, & Wildlife Policy Committee (Policy) and led introductions (*please see Attachment 1 for a list of participants*). The Adaptive Management Program reform changes are still in the pilot phase and some changes have been made from the November meeting set-up. In 2014, Policy will meet in the basement room which should provide a better set-up.

Agenda & Meeting Summaries – There were no edits to the draft agenda except that the name of the Committee has now officially changed from “Forests & Fish Policy Committee” to “Timber, Fish, & Wildlife Policy Committee”. This name change will now be on all documents. The Upper Columbia United Tribes (UCUT) expressed concern that the name of the Committee has changed.

The October 3, 2013 meeting summary was reviewed; many members had sent their edits on the summary which had been incorporated into a revised version. The revised version was accepted with a few clarifying edits. Additionally, the November 7, 2013 meeting summary was reviewed. Edits were suggested particularly to the sections on the Eastside Type N TWIG and WDFW’s hydraulic code revision. After discussion by the full Committee, the revised meeting summary was accepted with the edits.

Update from November Forest Practices Board Meeting – Marc Engel updated Policy on the outcomes of the November Board meeting, including the Board’s following actions:

- Deferred action on the western gray squirrel rulemaking; expects a staff report at an upcoming meeting for more information on this rulemaking.
- Approved 2014 workplan; many topics are relevant to Policy’s work in 2014.

- Plans to review and approve the annual CMER workplan and budget as well as the Master Project Schedule in May, so CMER and Policy should prepare all three documents in the spring.
- Motioned that any Policy caucus that wishes to make comments to WDFW on the draft hydraulic code rules should also submit their comments to the Adaptive Management Program Administrator (AMPA) by February 1. The AMPA will compile the comments and provide to the Director of the Department of Fish and Wildlife by February 15, 2014. Before WDFW files CR-102, they will incorporate comments from Policy caucuses as appropriate.

Legislative Prep – Ann Larson, WDFW’s Legislative Liaison, joined Policy for this topic.

WDFW has two bills for the 2014 short session that affect forest practices, which are about:

- Aquatic invasive species. This bill is under review by the Governor’s office and assigns WDFW as the lead agency for invasive species management, including rapid response, early detection and monitoring, prevention, containment, control, eradication and enforcement. It gives WDFW the authority to enter upon any public or private property for the purpose of inspecting and eradication of invasive species.
- Enforcement of the taking of nests belonging to state-listed species. This is an omnibus bill which amends RCW 77.15.120 to address enforcement of the unlawful taking of active or perennial nests of state listed species (which will include the nests of western gray squirrels).

DNR has three bills* for the 2014 short session that affect forest practices, which are about:

- Community forest trust account. Creates a new account in the state treasury solely for community forest trust purposes. Clarifies legislation passed in 2012 that did not specify where the collected money goes currently so the money is mixed with other accounts.
- Conservation futures. Allows counties which are not cooperating in the conservation futures program to create a smaller, “sub-district,” program. This will not apply to the counties who already have a county-wide conservation futures program in place.
- Recovery of forest damage. Defines when a landowner has a fire come onto their land and how much they can recover, given the fire source.

Several caucuses (state, landowners & conservation) are working jointly on long-term funding of the Adaptive Management Program. They are currently working on scheduling a meeting between the Washington Forest Protection Association (WFPA) and the Governor’s office to address some concerns about opening a tax code that may negatively affect the timber industry. More will be shared with Policy once this meeting is complete. The tribes requested that they be involved as soon as possible. Policy also discussed that there are multiple funding mechanisms that could be pursued to achieve long-term, stable funding.

WFPA has a bill on incendiary devices, which would give DNR the ability to prohibit the use of these devices during fire season. Policy discussed the mechanism used to prohibit the use of devices, and these devices include targets and candle lanterns.

Skagit County will ask for funding to compensate for trust lands taken for the Blanchard Mountain project.

* Please see the PDF fact sheets for each of the three DNR bills, attached to this summary.

The Washington Farm Forestry Association (WFFA) is under new leadership and will hold a workshop in 2014 for legislators to learn more about small landowner issues.

Currently, the Department of Ecology has no bills for the 2014 session that relate directly to forest practices, though they are waiting to see the outcome of the Climate Legislative & Executive Workgroup.

Each caucus's legislative liaisons:

WDFW: Ann Larson.

DNR: Jon Noski.

Ecology: Denise Clifford.

Conservation Caucus: Miguel Perez-Gibson.

Washington State Associate of Counties: Laura Merrill.

Eastside tribes: Chase Davis can serve as messenger but usually individual tribes hire their legislative liaisons.

Westside tribes: Individual tribes hire their legislative liaisons.

WFFA: Heather Hanson.

WFPA: Deborah Munguia, though Karen Terwilleger can serve as a messenger. John Ehrenreich handles legislative affairs specific to taxing. Often, individual member companies hire their legislative liaisons.

Federal Caucus: Marty Acker can serve as a liaison if someone is interested in contacting one of the participating federal agencies (EPA, NOAA-NMFS, and USFWS).

Mass Wasting – Policy reviewed the outline of next steps that DNR, WFPA, and the Conservation Caucus have been working on as a smaller subgroup. All caucuses shared that the outline is generally on track for approval. The Conservation Caucus provided substantive edits to the full document and Policy discussed #3 in detail. The discussed edits will be sent soon as a revised version, all caucuses are encouraged to send Adrian Miller their edits by December 23, 2013. He will incorporate the edits from everyone and provide an updated version for the January 9, 2014 meeting.

Type F – Aaron Everett, Chair of the Forest Practices Board, and Tom Laurie, Board member, joined Policy for this discussion. They shared that the Board's obligation is to respond to proposals from the Adaptive Management Program, which requires that there has been sufficient work to thoroughly develop a proposal and decision item for the Board's decision. They expressed uncertainty about what Policy could bring to the Board for a decision item at this point.

The Policy Co-Chairs shared that the Type F water typing is an important issue for every caucus so it would be premature to go to the Board before Policy has fully prepared a decision item. They shared concern about losing control of the process and outcomes if the issues go to the Board.

Policy members asked questions to the present Board members, which led to these discussion points:

- The main objective for this topic is to reach a permanent stream typing rule through the adaptive management process.
- The question of whether or not the Board could provide direction to Policy on the established resource objectives, which are the adaptive management standards in the Habitat Conservation Plan (HCP). Board discussion around the high-level objectives and federal commitments may be

difficult because of the technical nature of the HCP, the adaptive management objectives, and Forest Practices rule implementation. Current Board members were not present at the original Forest and Fish negotiations, and not all at the 2005 discussions on Type F.

- In order to make a decision, the Board would need enough information and clarity on issues so they could have a substantial discussion and make a decision. Board members may feel uncomfortable about making a decision because the more technical the issue, the more information needed. If the Board considers this issue for decision, it may take a while for them to gain enough knowledge to substantively discuss and make a decision.

Decision: Policy voted whether or not to bring the water typing issue to the Board in February 2014. Four caucuses voted to bring the issue to the Board (UCUT, Westside Tribes, Federal Caucus, and Conservation Caucus); five caucuses voted to not bring it to the Board yet and to continue working at the Policy level (small landowners, large landowners, counties, and both state caucuses). Due to a lack of consensus, the dispute will be forwarded to the Board because of the process guidelines in Board Manual, Section 22. After some discussion on how to present the issues, the Committee agreed on next steps. Each caucus will send to the AMPA by December 23, 2013 a brief set of questions or recommendations for the Board on substance and process next steps. The AMPA will compile the questions or recommendations into one report for the Board's February 2014 meeting.

Type N – Stephen Bernath will convene a meeting for the Type N Policy Subgroup, hopefully before the January meeting. The Subgroup will review the data from the Technical Subgroup. In the meantime, Stephen will talk with the landowner and conservation caucuses to discuss progress moving forward.

CMER Update – Mark Hicks, CMER Co-Chair, summarized updates from CMER. Overall, there will be several studies coming to Policy soon:

- The authors of the hard rock study are still developing the chapters and CMER is reviewing them. This study will probably come to Policy in 2015.
- The Amphibian Buffer Shade Study went through ISPR, then SAG, and the author addressed the ISPR comments. Now the study is at CMER for review.
- LWAG has requested the Tailed Frog Literature Review project, which has completed ISPR.
- Progress is being made on recommendations for the Westside Type F Effectiveness Study.
- The soft rock study is continuing and they are now in the harvest window.
- The Wetlands Literature Synthesis is nearing completion.
- After the November 19th workshop on LiDAR, RSAG will consider additional questions for consideration. Then they will bring a high-level report to Policy for review. The questions include:
 - Willing to use vegetation as a surrogate for temperature?
 - Replace stand condition for shade?
 - Use fairly untested models to convert from shade to temperature?

The meeting adjourned at 4:45 pm.

Attachment 1 – 12/5/13 Meeting Participants by Caucus*

Conservation Caucus

Peter Goldman, WFLC
Chris Mendoza
*Mary Scurlock

County Caucus

Laura Merrill, Washington State Association of
Counties (phone)
*Kendra Smith, Skagit County

Federal Caucus

*Marty Acker, USFWS

Landowner Caucus – Industrial (large)

Kevin Godbout, Weyerhaeuser
Adrian Miller, Olympic Resource Management
(Co-Chair)
*Karen Terwilleger, WFPA

Landowner Caucus – Non-industrial (small)

*Dick Miller, WFFA

*Caucus leads

Others

Jim Hotvedt, Adaptive Management Program Administrator
Ann Larson, WDFW
Claire Turpel, Triangle Associates (facilitation team)
Bob Wheeler, Triangle Associates (facilitation team)

State Caucus - DNR

*Marc Engel
Chris Hanlon-Meyer
Marc Ratcliff

State Caucus – WDFW/Ecology

*Stephen Bernath, Ecology (Co-Chair)
Mark Hicks, Ecology
*Terry Jackson, WDFW

Tribal Caucus – Westside

Mark Mobbs, Quinault Nation
Nancy Sturhan, NWIFC
Curt Veldhuisen, Skagit River System
Cooperative (phone)

Tribal Caucus – Eastside

*Chase Davis, UCUT
Marc Gauthier, UCUT

Attachment 2 – Ongoing Priorities Checklist

Priority	Assignment	Status & Notes
Type N	Type N policy subgroup	Type N Policy Subgroup to review data analysis of eastside data.
Type F	Policy	Send brief recommendations for Board on next steps to AMPA by December 23, 2013.
FPHP Integration		The Board adopted the integrated rules and approved the FPHP Board Manual. The rules will become effective on December 30, 2013.
Adaptive Mgmt Program Reform Rule Changes	DNR	Board adopted the CR-103 at the August meeting. Implemented initial changes at November meeting, will tweak changes at subsequent meetings.
Mass Wasting Report Findings Package	Policy	Charter developed and meetings complete. Final work currently drafted on outline of next steps.
Ongoing CMER reports reviewed by Policy	Mark Hicks & Todd Baldwin, CMER Co-Chairs	CMER Co-Chairs to give update(s) as needed at Policy meetings; AMPA to give quarterly reports for when CMER studies to come to Policy

*This table is meant to note the Policy Committee priorities that were sent to the Forest Practices Board and any other major topics or issues that arise during the year.

Attachment 3 – Entities, Groups, or Subgroups: Schedule and Notes

Entity, Group, or Subgroup	Next Meeting Date	Notes
TFW Policy Committee	January 9, 2014	
CMER	December 17, 2013	
Type N Policy Subgroup		To be scheduled
Type F Subcommittee of the Whole		Dispute will be presented to the Forest Practices Board at the February 2014 meeting.
Forest Practices Board	February 11, 2014	



Community Forest Trust Account

A Tool to Facilitate the Preservation of Working Forests

Issue Community forests require a dedicated account for funds related to community forest trust lands. This dedicated account will help define the difference between state trust forests, which are managed for revenue production for state beneficiaries, and community forests, which are managed to preserve working forests with local communities. A dedicated account will also segregate community forest funds from state trust resources, which by law cannot be used for activities that do not support trust beneficiaries.



Currently, funds to manage community forests are placed in the Park Land Trust Revolving Fund. This fund is focused on acquisition and management activities on state trust lands.

Background In 2011, the legislature created the Community Forest Trust Act as a way to prevent Washington's working forests from being converted to other uses. This legislation allowed local communities to partner with the Washington State Department of Natural Resources (DNR) in acquiring and managing working forests at high risk of conversion to non-forest uses. The legislation was unique because, though there are many tools to protect recreation lands and open spaces, this was the first that allowed local communities to collaborate with state government to protect working forests.

The Teanaway Community Forest was the first use of this legislation and represents an innovated and unprecedented collaborative management partnership between DNR and the Washington Department of Fish and Wildlife (WDFW). Through a Habitat Restoration and Working Lands Easement and inclusive interagency agreement, DNR and WDFW have agreed that the best way to manage funds for this ground-breaking partnership and new type of designated forest is through a dedicated Community Forest Trust Account. This account will be utilized for the Teanaway Community Forest and for all future community forests.

- Proposal**
- ▶ **Creates a new account in the State Treasury solely for community forest trust program purposes.**
 - ▶ **Identifies funds designated for the Community Forest Trust Account and authorizes DNR to make expenditures.**
 - ▶ **Preserves the requirement of board approval of expenditures where it presently exists.**



Specifying Recovery for Fire Damages to Public or Private Forested Lands

Issue The State of Washington seeks to clarify the reasonable damages resulting from wildfires that start on, or spread from, public or private forest land.

Damages from those fires that may be recovered by forest land owners should be the lesser of:

- The difference in the fair market value of the property immediately before and immediately after a wildfire, or
- The cost of restoring the property to the condition the property was in immediately before the wildfire occurred.

Property damages apply to both real property and personal property on forest lands. Any other objectively verifiable monetary loss such as fire suppression and other out-of-pocket expenses, loss of earnings, loss of use of property, and loss of business or employment opportunities resulting from the fire also may be recovered.

Clarifying reasonable damages will provide a more certain framework for forest land owners whose property sustained damages from forest fires and for persons who are at fault for such fires. Clarification of the damages recoverable from fire damage to forested lands will provide more certainty and efficiency, allow for faster processing and prosecution of such claims, and make the resolution of legitimate claims for compensation less costly and burdensome for all litigants.

Background In 2013, our neighboring states of Oregon, Idaho and Montana recognized an urgent need to clarify reasonable damages that can be claimed for forest land when a forest fire occurs.

Washington law is unclear and relatively undeveloped regarding the types and amounts of damages that can be recovered when forest fires damage public and private forest lands. Recent litigation related to forest fires in California exhibits an alarming trend toward excessive claims for property damage that far exceed the fair market value of the property damaged by the forest fire. These claims include theories of compensation for damage to property attributes that are not recognized in market-based transactions or in government guidelines for compensation paid

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when property is taken for a public purpose. Without an exclusive statutory cause of action that provides a uniform standard for determining property damages from wildfire on public and private forest land, courts and litigants may expend time and resources on claims and theories of damage that are without precedent under Washington law and expose the parties alleged to have caused the fire to incalculable, unmanageable, and uninsurable risks.

Proposal

- ▶ **Provide a single, clear, and efficient cause-of-action and standard for reasonable compensation when damage to forest land is caused by fire and is the fault of another forest land owner or other third party.**
- ▶ **Ensure consistent treatment of all public and private forest land owners as plaintiffs whose land was damaged by forest fires, and consistent treatment of all defendants, including public and private forest land owners, when they are at fault for forest fires that damage forest land.**
- ▶ **Provide compensation based on the reduction in fair market value of forest land or the reasonable cost of restoration, whichever is less. Compensation also includes any other objective, verifiable, monetary losses from fire such as such as fire suppression and other out-of-pocket expenses, loss of earnings, loss of use of property, and loss of business or employment opportunities.**
- ▶ **Make no change to state law on the duty of forest land owners to prevent or mitigate the spread of forest fires or criminal sanctions for starting forest fires.**
- ▶ **Will not affect causes of action and compensation available for damage to forest land where the damage results from unauthorized entry accompanied by intentional, wrongful actions or when fire is not the cause of property damage.**
- ▶ **Will not affect causes of action and compensation available for damage to property other than public and private forest lands.**

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Enhancing Local Options for the Utilization of Conservation Futures

Issue Thirteen Washington counties have participated in the Conservation Futures Program, a countywide property tax levy that generates revenue to protect working forests and farms, outdoor recreational areas, and open space. However, in some counties, applying a Conservation Futures Tax countywide has not been viable due to the variable distribution of population, income, lands targeted for preservation, and support for land retention funding. In other counties, successful and popular Conservation Futures programs have been enacted countywide without sating the appetite for local conservation funding, increasing pressure on the state legislature to fund local projects.

This bill addresses these problems by allowing counties and incorporated cities/towns to create local Conservation Futures Districts that can be smaller-than-countywide. In counties with preexisting countywide Conservation Futures programs, local towns and cities can enact their own Conservation Futures programs as long as the overlapping property levy does not exceed the statutory maximum of 6.25-cents-per-\$1000 of assessed property value for any property owner.

The legislation provides more options for local communities pursuing land conservation projects to fund these initiatives locally where there is support without having to rely on the state funding or a countywide tax. This increases local land retention options for their working land base, open spaces, and outdoor recreational areas, supporting the preservation of the way of life and quality of life of Washington communities.

Background The Conservation Futures Program was conceived in 1971 as a land retention tool that county legislative authorities can opt-in to protect open and working landscapes. When combined with grants and matching funds obtained for Conservation Futures projects, this program has raised over \$700 million to fund the land retention goals of communities across Washington.

The use of this effective tool has been limited due to the necessity of applying the

tax to all property owners in a county indiscriminately. This has limited its use in larger and more rural counties where communities are more geographically distant and diverse, and the need to preserve working lands are more pronounced.

In the Conservation Futures Program, a county may levy an amount not to exceed 6.25-cents per \$1,000 of assessed value of all taxable property within the county to raise funds to protect, preserve, maintain, improve, restore, and limit the future use of threatened areas of open space, timberlands, wetlands, habitat areas, culturally significant sites, and agricultural farmlands. Currently, 13 counties have active Conservation Futures programs: Spokane, Ferry, Skagit, Clark, King, Pierce, Thurston, Snohomish, Jefferson, Whatcom, Island, Kitsap, and San Juan.

Of the thirteen counties with existing conservation futures programs, seven levy property taxes at rates lower than the statutory maximum. This means that, under this bill, new Conservation Futures programs can be created by any incorporated town or city in King, Thurston, Jefferson, Whatcom, Spokane, Kitsap, and San Juan counties as long as the cumulative tax rate never exceeds the statutory maximum. This will provide a broad array of new funding opportunities on a local level for land retention projects in areas where the program's success has already been demonstrated, in many cases for decades.

Proposal

- ▶ **Allow counties that are not participating in a Conservation Futures Programs to create one based on a smaller-than-countywide scale, thereby providing a more precise tool for land retention that reflects the needs of local communities.**
- ▶ **Allow incorporated cities and town to create a local community-based Conservation Futures Program as long as it does not overlap with a preexisting countywide Conservation Futures program to exceed statutory levy ceiling of 6.25-cents per \$1,000 of assessed property value.**

Fiscal Impact

The 2012 version of this bill (SB 6165) was scored to have a fiscal cost of \$5,500 to Department of Revenue.

Any way to ↑