

1 **FOREST PRACTICES BOARD**
2 **Regular Board Meeting – May 11, 2022**
3 via Zoom Webinar

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

7 **Members Present**

8 Alex Smith, Chair, Department of Natural Resources
9 Ben Serr, Designee for Director, Department of Commerce
10 Bob Guenther, General Public Member/Small Forest Landowner
11 Brent Davies, General Public Member
12 Carmen Smith, General Public Member/Independent Logging Contractor
13 Cody Desautel, General Public Member
14 Dave Herrera, General Public Member
15 Jeff Davis, Designee for Director, Department of Fish and Wildlife
16 Kelly McLain, Designee for Director, Department of Agriculture
17 Rich Doenges, Designee for Director, Department of Ecology
18 Tom Nelson, General Public Member
19 Vickie Raines, Elected County Commissioner
20 Wayne Thompson, Timber Product Union Member
21

22 **Staff**

23 Joe Shramek, Forest Regulation Division Manager
24 Karen Zirkle, Forest Regulation Assistant Division Manager
25 Marc Engel, Senior Policy Advisor
26 Patricia Anderson, Rules Coordinator
27 Phil Ferester, Senior Counsel
28

29 **WELCOME AND INTRODUCTIONS**

30 Chair A. Smith called the Forest Practices Board (Board) meeting to order at 9:05 a.m. Roll call of Board
31 members and introduction of staff was made.
32

33 **ZOOM MEETING INSTRUCTIONS**

34 Tracy Hawkins, Department of Natural Resources (DNR), provided instructions on how the Zoom
35 meeting would be conducted and how to provide public comment.
36

37 **REPORT FROM CHAIR**

38 Chair Smith shared that starting in August 2022 the Board will resume in-person meetings with the ability
39 to attend remotely.
40

41 Chair Smith provided an update on the following:

- 42 • The recognition of industrial landowners who have completed their Road Maintenance and
43 Abandonment Plan (RMAP) obligations in the last 5 years has been rescheduled for the August 2022
44 meeting.
- 45 • The Timber, Fish and Wildlife (TFW) principals met on April 25 and 26, 2022. Takeaways from the
46 meeting include: updating the role of science by strengthening confidence in the Adaptive
47 Management Program (AMP) process; identifying other areas for potential improvement; next steps
48 for the anadromous fish floor (AFF) which includes a goal to have an AFF alternative before the
49 Board at its August 2022 meeting.

- 1 • The Board will receive TFW Policy recommendations for a Master Project Schedule and associated
2 budget for the FY 2023-25 biennium at the August 2022 meeting. Today's action is simply for minor
3 adjustments for FY 2023 budget that had previously been approved by the Board.
- 4 • TFW Policy co-chair's report describes how TFW Policy has resolved three disputes since the
5 February Board meeting. Resolved disputes include Request for Type Np Buffer Basin GIS/FPA
6 Project Proposal Initiation; Hard Rock (Phase 3) Study Design Charter; and Washington Farm
7 Forestry Association (WFFA) Motion for Compliance Monitoring, Evaluation and Research (CMER)
8 Response to their submitted science supporting their western Washington low impact template
9 Proposal Initiation.
- 10 • Legislative update for the Department includes the passage of the derelict vessels bill and the kelp and
11 eelgrass protection bill. Also additional monies for riparian efforts on DNR leased agricultural lands,
12 and for riparian and nearshore investments with our Aquatics Program and an additional \$5 million to
13 reduce the Forestry Riparian Easement Program (FREPP) backlog of unfunded easements.
- 14 • The Department received funding to develop a new forest practices application system which will take
15 approximately two years. In order to complete this project the following leadership staff changes were
16 made within the DNR Forest Regulation Division: Donelle Mahan is now the Forest Practices
17 fpOnline Program Manager; Mary McDonald is the Assistant Division Manager for Forest Practices
18 Operations; and Karen Zirkle has come into the program from the Wildland Fire Management
19 Division to be the Policy and Landowner Services Assistant Division Manager. Additional staffing
20 news includes Jerry Johnson, South Puget Sound Region District Manager, who will retire at the end
21 of June and new Division employees include Bryan Massey as a geologist and hydrogeologist with the
22 science team and Chris Dwight as the program manager for the Family Forest Fish Passage Program
23 (FFFPP).

24
25 Board member Dave Herrera requested the agenda today include an update on the water typing rule
26 development including the anadromous fish floor. It was decided that a discussion would be added to the
27 end of the agenda.

28 29 **APPROVAL OF MINUTES**

30 **ACTION:** Bob Guenther moved the Forest Practices Board approve the February 9, 2022 meeting
31 minutes.

32
33 **SECONDED:** Wayne Thompson

34
35 Discussion:
36 None.

37
38 **ACTION:** Motion passed unanimously.

39 40 **2021-2023 Master Project Schedule Adjustment**

41 Saboor Jawad, Adaptive Management Program Administrator (AMPA), said that in August of 2020, the
42 Board approved the Master Project Schedule (MPS) for the 2021-23 biennium; and each year at the May
43 meeting the Board approves adjustments to the MPS and associated budget for the following fiscal year.

44
45 Jawad presented the TFW Policy [recommendations for adjustments](#) to the MPS and associated amended
46 budget for fiscal year 2023, which begins on July 1, 2022, for Board consideration and approval.

1 **PUBLIC COMMENT MASTER PROJECT SCHEDULE ADJUSTMENT**

2 Ray Entz, Kalispel Tribe, said the Board members should take the items of concern seriously and that
3 these concerns are not likely to reach consensus prior to the August Board meeting. He said time is
4 needed to dive deeply into the priorities of this program, knowing that we have serious deadlines for
5 effectiveness by 2030. He said that for the next two biennia the MPS funding is in a deficit, including
6 specific out year funding requests for participation funding and the commitment to extensive and
7 intensive monitoring which is an important effort. Entz said there are challenges ahead that the east
8 Washington tribes will continue to work diligently through the principals process and policy process to
9 bring the Board consensus recommendations for the MPS.

10
11 Darin Cramer, Washington Forest Protection Association (WFPA), said the Board received a non-
12 consensus budget for the current FY 2021-23 biennium and there is a high probability that it may happen
13 again for FY 2023-25 biennium. He asked what the likely consequence would be of implementing a non-
14 consensus MPS budget. Cramer said he agrees that an assist from those that attended the principals
15 meeting expressing a willingness to be more engaged going forward. He said that even in that scenario,
16 there are deeper issues that need to be worked through about the different perspectives and priorities for
17 the AMP. He said that those are not easy to solve, but they must be solved if we want this system to work
18 for the long haul and to work for everybody. Cramer encouraged the Board to look into what is going on
19 within the AMP and assist where they can to help work through it.

20
21 Peter Goldman, Washington Forest Law Center, said that regardless if consensus can't be achieved on any
22 matter and if dispute resolution has been conducted, then the Rules require the AMPA to present majority/
23 minority reports. He said we have to move forward with majority/minority reports if consensus can't be
24 achieved.

25
26 **2021-2023 MASTER PROJECT SCHEDULE ADJUSTMENT**

27 **MOTION:** Vicki Raines moved the Forest Practices Board approve the amended Master Project
28 schedule and associated FY 2023 budget.

29
30 **SECONDED:** Bob Guenther

31
32 Board Discussion:
33 None.

34
35 **ACTION:** Motion passed unanimously. (Cody Desautel not available for vote.)

36
37 **CLEAN WATER ACT MILESTONE UPDATE**

38 Brandon Austin, Department of Ecology (Ecology), said that in 2009 when the Clean Water Act
39 assurances were extended for a 10-year period, Ecology committed to providing annual updates to the
40 Board on the progress being made for water quality.

41
42 He said this year, Ecology continue to express interest in the completion of the Type Np rule making
43 process, consistent with Director Watson's [December 2021](#) letter to the Board.

44
45 Austin said that there was significant progress made on the Clean Water Act milestone list with the
46 completion of four projects, and the number of projects remaining is small. He said that several projects
47 are pushed out several years, so the Board will continue to receive Ecology milestone updates for some
48 time. As the end of year gets closer, the Board will receive further communication from Ecology about
49 the current extension of the Clean Water Act assurances.

1 Board member Rich Doenges asked Austin to comment on the success of the road management efforts in
2 relation to Clean Water Act Assurances. Austin said there is currently a study underway looking at best
3 management practices and effectiveness for roads and that there has been tremendous success from the
4 Road Maintenance and Abandonment Planning (RMAP) work for the past 21 years. The commitment
5 from landowners and DNR to improve water quality has been significant not only for fish passage barrier
6 corrections but by work of landowners to reduce sediment delivery to waters by bringing roads up to rule
7 standards including the improvement of drainage structures, , carrying road water to the forest floor where
8 it can filter out before reaching typed water. Austin said Ecology looks forward to the recognition of the
9 landowner RMAP accomplishments in August 2022.

10

11 Board member Brent Davies said it is helpful to have Ecology’s detailed update on the schedule and
12 milestones, particularly where we are on track.

13

14 **UPDATE ON THE IMPLEMENTATION OF SAO RECOMMENDATIONS AND TFW POLICY**
15 **COMMITTEE AND AMPA OPTIONS PAPER FOR RECOMMENDATION #5: ADOPT A NET**
16 **GAINS MODEL FOR PROJECT PLANNING**

17 Saboor Jawad, Adaptive Management Program Administrator (AMPA), reported on the progress of the
18 work to complete the Board approved State Auditor’s Office (SAO) recommendation work plan and
19 specific detail on the work and timing to bring forward recommendations to the Board to implement
20 recommendation #5-net gains model for project planning and #6-decision criteria for determining actions
21 for the Board.

22

23 Jawad presented [six net gains options](#) TFW Policy is considering to address recommendation #5--1) adopt
24 multi-criteria decision making; 2) Clarify process for Outside Science, which may require rule change; 3)
25 Set clear AMP Priorities; 4) Review Dispute Resolution Process/Timelines which may need rule
26 modification; 5) Initiate Dialogue with CMER; 6) Develop Guidance or Manual for TFW Policy.
27 Recommendations #7, 8, 9 still require funding.

28

29 Board member Brent Davies said difficult issues need to be addressed and that there is concern that net
30 gains or win-win will promote avoiding these difficult issues. Jawad responded that the current net gains
31 options are not to avoid difficult decisions but to give the process more structure to make decisions in a
32 timely manner.

33

34 Board member Ben Serr said he appreciates the reminder of where we are in the process. He asked how
35 recommendation #13 relates to recommendation #1 and if the Jawad has insights on the implications of
36 that to the Board. Board member Serr said he is concerned if the Board is not able to take effective action
37 that AMP reform will go to the Legislature and will be out of the Board’s control. Jawad responded that
38 the SAO recommendations related to the Legislature are not part of the package that AMP staff are
39 looking into.

40

41 **SMALL FOREST LANDOWNER BACKGROUND AND LEGAL STANDARDS FOR**
42 **ALTERNATE PLANS**

43 Chair Smith shared that the Board received more than 30 letters prior to the meeting related to alternate
44 plans for small forest landowners. She said the letters do not relate to any topics on today’s agenda,
45 instead they relate to two disputes working their way through the dispute resolution process in TFW
46 Policy. She said she invited Phil Ferester, Senior Counsel with the Office of the Attorney General to
47 provide a background of the statutes and how they impact small forest landowners.

48

49 In a detailed [presentation](#), Ferester explained the definition of a small forest landowner and the
50 development of alternate plans in the Forests and Fish Report (FFR).

1 He reviewed the commitments and understandings of the Forests and Fish report, acknowledging that the
2 FFR collaborators knew that the proposed forest practices restrictions would have economic costs to
3 landowners. Ferester stated FFR Appendix E addressed the economic impacts by recommending
4 “acquisition in certain situations and allows for the development of alternate plans as means of addressing
5 such impacts while still maintaining a level of protection for public resources at least equal in overall
6 effectiveness to the protection provided by the basic rules.”

7
8 Ferester also stated that FFR Appendix H stated an alternate plan must provide "protection for public
9 resources at least equal in overall effectiveness to, the protection provided by the basic rules"; and FFR
10 Appendix I described the small forest landowner program recommendations were “not a small landowner
11 "exemption” that sets lower standards of resource protection for small landowners. Instead, it applies the
12 same riparian and related buffers to small landowners as is applied to all other forest landowners, and
13 provides partial compensation to those small landowners who volunteer to enter into easements covering
14 riparian areas.”

15
16 Ferester stated that the statutes and rules established that small forest landowners would not be exempted
17 from providing protection for riparian functions because of their status as small forest landowners small
18 forest landowners through: RCW 76.09.370(3) – which provides required statutory minimum standard. It
19 cannot be changed by the FPB or DNR; and WAC 222-12-0401(6) which conforms to the statutory
20 standard.

21
22 Board member Tom Nelson said he has heard for years that there is an implied difference between small
23 forest landowners and industrial landowners in the FFR and that small forest landowners would be
24 afforded less restrictive rules. He questioned why the small landowners would work on an alternate plan if
25 there is not a chance for getting it approved. Ferester responded that there was no commitment in the FFR
26 to do lesser riparian protection for a class of landowners. The intent of the FFR is for all landowners to
27 meet the legal requirements for the protection of aquatic resources.

28
29 Board member Brent Davies asked why the definition of small forest landowner changed in 2003.
30 Ferester stated that after the Forests and Fish Rules became effective it was recognized that preparation
31 and implementation of road maintenance and abandonment plans were very challenging for small forest
32 landowners so the Board amended the rules to ease this burden.

33
34 Board member Nelson asked how many forest practices applications with small forest landowner alternate
35 plans have been submitted and approved in the past 4-5 years, how many acres they include and what
36 percentage of forested land area does this encompass. This information was not readily available. Chair
37 Smith committed that staff would provide a response after the meeting.

38
39 Board member Davis acknowledged the importance of the 30 plus letters received by the Board and the
40 request by small forest landowners for help to continue managing their lands for trees and protect land use
41 as forestry to benefit the health of the environment and work to slow down global climate change. She
42 stated that the issues brought forward could be addressed by a focus on small forest landowners that are
43 practicing forest management versus those landowners that have forested land not being managed for
44 forestry and asked whether the Board and Principals can lean into assisting these landowners.

45 46 **GENERAL PUBLIC COMMENT**

47 Elaine Oneil, Washington Farm Forestry Association (WFFA), emphasized the legislative intent that
48 characterizes the promises made 23 years ago during the Forests and Fish negotiations. Specifically, that
49 “small forestland owners should have the option of alternate management plans or alternate harvest
50 restrictions on smaller harvest units that may have a relatively low impact on aquatic resources.” She

1 appreciates Ferester’s summary of the law, but it seems that the emphasis on “equal in overall
2 effectiveness” is presumed to trump all other criteria that also exist in statute. They are not disputing that
3 this is a challenge but is something that needs to be discussed in this venue to come to the best decisions
4 possible.
5

6 Paula Swedeen, Conservation Caucus, addressed claims that the Board has not followed proper process
7 thus far to develop the permanent water typing rule. She said such a narrative is incorrect and counter-
8 productive. The need to move away from the current system which uses single pass electro-shocking to
9 identify the end of fish habitat has been discussed many times before the Board. In 2015, she said the
10 Federal Services reminded the Board that they expected better progress on a permanent rule, and that the
11 high number of water type modifications being made through electro-fishing was not consistent with the
12 Habitat Conservation Plan. Swedeen concluded by stating that making a rule decision after a non-
13 consensus recommendation from TFW Policy may be uncharted territory for the Board, but that does not
14 mean the proper process has not been followed. She urged the Board to continue with the Water Typing
15 rule making process.
16

17 Ken Miller, Washington Farm Forestry Association (WFFA), recapped the regulatory commitments made
18 on behalf of small forest landowners by the Legislature. These included smaller buffers, “low impact”
19 options, and guidance for all ID team participants for small landowner alternate plans.
20

21 Ray Entz, Kalispel Tribe, said he agrees with Swedeen and that she captured his comments.
22

23 Kevin Godbout, Weyerhaeuser Company, shared his observations from the Principals meeting which
24 included: a commitment to build trust, trust in the decision making processes, trust with the Adaptive
25 Management Program, implementation of the principles established in TFW and in the Forests and Fish
26 Agreement and a balance between resource protection and economy.
27

28 Jim Peters, Northwest Indian Fisheries Commission, shared his thoughts on the following three points. 1)
29 disappointment the April Special Board Meeting was canceled. He was hoping the Board decision-
30 making process would be completed; 2) that threatening litigation in the TFW process is forbidden and is
31 a process foul; and 3) the anadromous fish floor issue should be developed and approved within the
32 Adaptive Management Program rather than through the Principals’ process.
33

34 Chris Mendoza said he is speaking today as a technical worker concerning gradient thresholds and results
35 of the TFW Policy dispute resolution and the Board directing technical work for the completion of the
36 elements of the water typing system rule. He said in May of 2017, TFW Policy had several consensus
37 recommendations; and that there generally was not disagreement over whether to consider gradient
38 thresholds, but there was non-consensus about what criteria should be used for determining gradient
39 thresholds. These same arguments are being heard today. He recapped the steps the Board took which
40 resulted in the expert panel that reported directly to the Board and produced a series of gradient thresholds
41 and a report for the Board.
42

43 Darin Cramer, WFPA, shared his thoughts on the Principals meeting in which he thought was a great
44 success. He said the positive tone, the constructive feedback and the willingness to reengage and try to
45 stay engaged as much as possible is an important recipe and component for success of the overall system.
46 The Caucus Principals or their designees are supposed to make up TFW Policy, however over time, that
47 role has been moved down the chain of command and the Principals have drifted away. In Cramer’s view
48 that has not been a good thing.
49
50

1 **TFW Policy Committee Update on Type Np Buffer Recommendations**

2 Meghan Tuttle, TFW Policy Committee Co-chair, said TFW Policy completed the first stage of the
3 dispute resolution process to address the findings of the Hard Rock Phase 1 study. TFW Policy has agreed
4 to enter into Stage 2 of the dispute resolution process to develop Type Np buffer alternatives. If consensus
5 is not reached in Stage 2 of dispute resolution, majority/minority reports will be developed over the
6 summer. She said TFW Policy is fully committed to bring alternatives to the Board before the November
7 Board meeting. TFW Policy recommended the Board to hold a workshop with a field tour component to
8 inform the Board of the Type Np alternatives.
9

10 Tuttle reported the Board will receive a presentation on the final studies for the Hard Rock Phase II Study
11 and Soft Rock Study at their August meeting.
12

13 Marc Engel, TFW Policy Committee Co-chair, reported on TFW Policies ongoing work in preparation for
14 the August Board meeting and accomplishments since the February Board meeting which are detailed in
15 the [TFW Policy Co-chair staff report](#).
16

17 Board member Davies requested the Board receive CMER reports.
18

19 **STAFF REPORTS**

20 There were no questions on the following reports.

- 21 • Adaptive Management Program Update
- 22 • Small Forest Landowner Office Update
- 23 • TFW Policy Committee Update
- 24 • Upland Wildlife Update
25

26 **2022 WORK PLAN**

27 Marc Engel, DNR, reviewed the 2022 Work Plan and highlighted the changes since the May 2022
28 meeting. The Board scheduled a June 27, 2022 special meeting to conduct a workshop on the
29 Anadromous Fish Floor (AFF) alternatives approved by the Water Typing Board Committee to bring
30 forward to the Board. The Board also decided to schedule a field tour/workshop in early October for the
31 Type Np buffer alternatives and will also have a workshop/field tour within the next year on small forest
32 landowner issues. The Board will discuss dates at their August meeting.
33

34 **MOTION:** Dave Herrera moved the Forest Practices Board approve the 2022 Work Plan as amended.
35

36 **SECONDED:** Brent Davies
37

38 Board Discussion:

39 None.
40

41 **ACTION:** Motion passed unanimously. (Cody Desautel not available for vote.)
42
43

44 **NEW BUSINESS**

45 **Water Typing Rule**

46 Chair Smith acknowledged the displeasure of the cancellation of the April 2022 special meeting. She said
47 that the cancellation was in no way a reflection of the completed work or how hard everyone worked. She
48 said there was concern that the Board would approve three AFF alternatives. This along with the multiple
49 Board-approved potential habitat break alternatives would set up a very long and complicated rulemaking

1 process. Analyzing nine or ten different alternatives and conducting the detailed analyses that come with a
2 significant rule making would only lengthen the time until a final rule is done.

3
4 Marc Engel, DNR, provided a brief background about the Board’s Water Typing Rule Committee,
5 including how the committee was formed, the reason why it was formed and the products developed
6 regarding the AFF.

7
8 Board member Bob Guenther said that he appreciated all the work that everyone did, and that a lot of
9 good work has been done but is not finished.

10
11 Board member David Herrera said the rule making process needs to continue moving forward. He
12 appreciates the principals’ process, however the rule making process belongs to the Board. He suggested
13 moving a decision to the August Board meeting as well as a review of the materials produced by the
14 Board’s committee. He would like the AFF technical and Policy member reports sent out to the Board by
15 the end of May and suggested the Board have a special meeting in June 2022.

16
17 Board member Tom Nelson said the scientific work added by the contractor hired by the Northwest
18 Indian Fisheries Commission needs to have a transparent review by everyone involved. He also said that
19 there has not been an economic analysis of the three different AFF alternatives that would support making
20 an informed decision.

21
22 Board member Brent Davies said she agrees with Board member Nelson in needing the cost benefit
23 analysis, however a CR-102 packet needs to be completed that will include the cost benefit analysis. She
24 supports Board member Herrera's suggestion.

25
26 Board member Rich Doenges said he also supports Board member Herrera’s suggestion.

27
28 Chair Smith said a workshop will be scheduled for June 27 2022 and that the August 2022 meeting
29 agenda will have discussion and an action item around the AFF alternatives and the final elements of the
30 water typing rule.

31
32 **EXECUTIVE SESSION**

33 None.

34
35 Meeting adjourned at 2:50 p.m.