

# Combined NW & SW Oregon Regional Forest Practices Committee Meeting Minutes – August 27, 2014

Pursuant to public notice made by news release with statewide distribution, a combined committee meeting of the Northwest and Southwest Oregon Regional Forest Practices Committees [an advisory body to the Oregon Board of Forestry with authority established in Oregon Revised Statute 527.650] was held on August 27, 2014 at the Weyerhaeuser Office, 785 North 42<sup>nd</sup> Street, Springfield, OR 97477

### ***Committee members present:***

Chris Jarmer, NW Chair	Dan Fugate - SW
Candace Bonner - NW	Dana Kjos - SW
Tally Patton – NW	Bryan Schlaefli – SW Chair
Mike Barnes – NW	Sanford Hillman – SW
Mike Maguire – SW	Mike Meredith – SW
Dave Erickson - SW	

### ***ODF staff present:***

Paul Bell  
Lena Tucker  
Susan Dominique  
Scott Swearingen

### ***Guests present:***

Gary Springer, BOF  
Eric Geyer, RFP  
Tuch Koreiva, ODF Retiree

### ***Call to Order***

SW Chair, Brian Schlaefli called the meeting to order at 9:45 a.m.

### ***Item 1 – Welcome and Review of the Agenda***

- No additions to the agenda.
- Minutes and other committee business deferred until the September 19<sup>th</sup> meeting.
- Roundtable introductions were made.
- Public Comment was called. No comments offered.

### ***Item 2 – Discussion of the Board of Forestry’s Streamside Rulemaking process for the Protecting Cold Water Standard (PCW) to develop comment to be presented at the BOF September 3, 2014 meeting.***

Members were provided the following handouts (included are some BOF materials):

- a. Table 1: Informal Checklist – Sequential Approach to necessary findings for rule analysis and factors for adopting BMPs based on April 2012 Board Meeting
- b. Board of Forestry Riparian Rule Analysis Decision Tree
- c. ODF Staff Report on June 2014 Workshop: Summary and Next Steps
- d. Oregon BOF Riparian Rule Analysis Workshop Summary
- e. Letter from NW and SW Regional Forest Practices Committees to the Board of Forestry dated February 11, 2014 regarding Riparian Protection Rule Analysis

These handouts were referenced during the discussion.

Discussion:

Chris Jarmer set the stage for the discussion by providing background on the decision to convene this joint meeting then informally polled the members in attendance regarding their tenure on the committee and noting the disparate experience of many members in the rulemaking process. He also called on some of the members that had attended the BOF Riparian Rulemaking Workshop in June to share their thoughts on the workshop.

The Chair was questioned as to the committee's mandate on this rulemaking

**[Action Item:** Staff will provide copies of the statute and rules regarding committee function.]

Schlaefli: We are meeting to help the BOF in their current rulemaking process by seeing if we can identify other avenues than what was suggested in the Staff Report when they meet next week on a possible riparian rule change. Our last meeting was in January of this year. A Motion was made at that time to send a letter (updated February 11, 2014) to the BOF regarding the Riparian Protection Standards Rule Analysis then underway. Our concern was that to all appearances there appeared to be direction for an expedited process for moving this rulemaking forward but the committee has not been asked for further review since then although a lot of activity on the rule was happening. There is evidently a computer model set up with the RipStream to determine compliance under various conditions of what it would take to protect the cold water standard. The 'model' suggested that it would take a 100' no cut horizontal distance on both sides of a small and medium fish bearing stream to reach the standard. That model has yet to be presented to us or the Board. And yet with a November deadline and other observations I can share, our assumption is that there seems to be a proposed revised rule coming with 100 foot no-cut buffer. We haven't seen any language about what that rule or prescriptions may look like despite the upcoming deadline. I will qualify that by saying that this is the way it feels. Although, there was a request for our committees to work with the Board with options for dealing with this.

There was a suggestion made at the BOF/EQC June Workshop that there was still opportunity to come up with advisory language to help the BOF get past adopting a decision based solely on what information they have been presented so far. As the next Board meeting is next week and we weren't scheduled to meet till a week later we felt it was important to self-convene prior to the September 3<sup>rd</sup> meeting.

Jarmer: When we wrote our letter in February there was no workshop scheduled. But we were consulted on the workshop design. When we were done with that workshop we had envisioned other alternatives would be brought forward and expected to be able to present them to the Board within the timelines. When we saw the Staff Report we felt that the staff had missed an opportunity to look at different options which were presented. (Page 1 Staff Report four pathways/alternatives). The Checklist sheet (in your handouts) has never been used before in the rulemaking process. It presents a very linear path to decision-making. You do this, check the box and move on. In the past we have always iterated in working a rule back and forth between the staff and Regional Committees which was a more collaborative process.

- The fourth direction down; regarding the Maximum Extent Practicable. In this process they have checked the box and seem to be trying to get past that issue without public debate.

Patton: I'm a long term member of the RFPC and have also been a Forest Practice Forester. This rule making process is very different than it has been in the past. Having these Forest Practice sub-committees are wonderful for getting strong rulemaking language. I am disenchanted in not being provided the model or the RipStream data that fed it and why. We haven't done any of that, and that is part of a normal process to follow to provide protection for the resources and provide landowners understanding on why they may be asked to do something and why it may cost them something. This expedited process is not the usual way rulemaking is done and I think that we have an opportunity today to bring the process back to

that. It's difficult for the Board as they don't have the history some of us have. It's not so much the future rule itself but how do we get there in a direction that makes sense.

Fugate: I've been doing this for 26 years and we have never been as far apart as it feels we are now from the Board. As we haven't seen the proof behind the potential buffer increase and benefit. Part of our job is to keep working forests working. We've always come up with recommendations and we always came to an agreement. When you take 100' on both sides you are *taking*. Taking industrial income and small landowner livelihoods. Maybe there should be a timber tax exemption. The State needs to figure out a way to compensate for the loss in income. Because it will hit everyone in the pocketbook and regulation never seems to end. It seems the state is locked in the 100' no-cut already but I don't think we, the regional committees are locked in at this point.

Jarmer: There won't be any economics presented at the next meeting. The BOF is being asked to determine what process to use. No substantive decisions on prescriptions will be made next week. The impacts will be discussed after the process is decided. Our overall goal is always to help the BOF develop better, more effective rules and at lower cost. There are other ways the Board could proceed that aren't listed here. What we exist for is to point this out.

- If we are suggesting different paths, it might be interesting to couple significant changes with some tax incentives. Such as the option of offsetting cost using harvest tax incentives.
- Suggestion to making more Paired Watershed results available? I do not see anything that says that the department is suggesting a 100' no-cut. It says Variable Retention, No-Cut, and Alternative Practice.
- Consider solutions as voluntary versus regulatory?
- No Change *could* be an option.
- We want options presented to the Board and to feel our concerns are addressed. The dialog between both agencies should include realization that ODF has many resources to protect, cold water is one. We are the stewards of many resources, you don't want to make a decision in a narrow framework where years later we may find we were wrong.
- We would like the Board to broaden the scope of what they considering.

Additional considerations and comments:

- I am going to suggest that we could ask the Board to look at reviewing the Desired Future Condition statement that is in the rules. Currently, the rules favor a conifer-dominated forest RMA across the landscape as an 80-120 year old riparian forest, and we don't have that now and we won't get there by just leaving trees, if we are not there now. If that is really our goal, as a state, we have to change our management. What's there now are the hardwoods, but hardwoods are discouraged, and seemingly that review of desired future condition is not being considered. Hardwoods are not even counted in the basal area minimums. Those are discussions we could have at the committee level. When that statement was made we had imperfect knowledge of what we were talking about.

**Note: Examine the Desired Future Condition Statement as to its accuracy or desirability.**

- Is it possible to write the rule to sunset and then in the interim evaluate the effectiveness during that period of time? If there is no more degradation of resources and if the rule doesn't have the desired affect let it sunset. There would be an evaluation of the effectiveness, and down the road there may be more scientific information available
- Recommend attaching a monitoring program in the rule.
- Choose to request a review of the standard with the EQC.
- Temperatures may not be biologically significant but higher temperatures are a marker for human activity. It is significant because it means human activity has an influence over stream temperature but there is always a chain of effects that are not predictable.
- Maybe you don't change the criteria but there might be an Alternate practice that works within the PCW standard. I think our initial foray into the RipStream research should have produced more middle data not just maximum and minimum.
- I think it is legitimate to update the study with more research. The sub-sets of units studied in RipStream were not random, but particularly chosen for their characteristics. The measurement of the temperature change was supposed to be where the Salmon, Steelhead and Bull Trout are and that was not done.
- Include Large Woody Debris as a natural recruitment in the RMA in streams.
- One factor with Large Woody Debris, is we found out through watersheds that as certain streams are considered either navigable or non-navigable if you add debris into navigable streams you are liable for damage. So if looking at woody debris we need to consider liability issues.
- Member requested to review the February letter to the BOF as to whether the points have been addressed or not. If we are going to communicate to the Board we need to reference this letter in our next response.

Schlaefli: I think it's accurate to say they worked on it but it still is in process. I haven't heard back from the BOF or the Department. There hasn't been any engagement back formally to me or the committee. Everything current for us is observational. EQC has a Board Liaison and the BOF liaison to the EQC. I think there is an effort there with the workshop, to push this issue ahead. 2a. in the letter regarding completing the RipStream results including post-harvest years. Some has been analyzed, but not necessarily presented here. There *is* a degradation, .03 has been exceeded at the bottom of the reach. That's where EQC stops. If it happened once it is a degradation. It's a point in place and time creating the degradation. If the temperature recovers over time and space it doesn't seem to matter to the EQC. We can make a point that choosing to focus on a point in time and place once may not take into account all the other factors the department is responsible for.

- Are you misconstruing Degradation versus Disturbance? Disturbance is acknowledged as part of the process. So a disturbance may produce an increase in temperature in the short term but is healed in the long term.

Springer: That is recognized in the legislative intent. Our rules are to help maintain resources over time.

- Its long term versus short term. That's why hardwoods are not included because they disappear in the long term, whereas conifer have longer term effectiveness.

Schlaefli: (*Reviewing RFPC letter to the Board.*)

2. b. Economic Impact. Until we have rule language we don't know what the economic impact will be.

2. c. Effectiveness for meeting the numeric criterion? So that's the 16 and 18 degrees, that was met and recognizing that this is a non-event, we are just looking at PCW at this point.

2. d. Fish response to temperature increases as measured in the WRC Paired Watershed Studies? I think that is the dichotomy between what the BOF considers and what the EQC considers. In the course of other resources out there how is that measured? Climate change is the wild card in this process. If you look at climate change models for growing trees what will be the future impact? Fish response data has been collected and analyzed as well.

Schlaefli: The fact that they had the workshop is huge. Agencies put their processes on hold. Some of the folks present regarded that fact that the process was paused, possibly calls the deadline into question but no changes have been made on the November date.

- Suggestion to revise the sequential approach.
- Suggestion was made to extend the deadline.

Jarmer: Let's talk about process; what we recommend as Chairs is that we write another letter to present to the Board on September 3<sup>rd</sup>. Brian has agreed to do that on our behalf. Unless there is negative feedback that is how we will proceed. In that letter we will include all of the suggestions that we have had. I think it is clear that in presenting other things we are not endorsing what's already been provided.

- Member requested clarity in our response that these ideas are coming from various members of the committee and they were not voted as individual recommendations.

Bell: I'd like to offer a couple of thoughts; the Staff Report *does* lay out other alternatives. Think about using that process to give the BOF support in relationship to other processes that come out of the work session in relationship to off-ramps.

Jarmer: When I read the staff report and look at the flowchart I get real confused. I don't know how to get to the finish line. To build on that, it might be confusing to the Board as well. Is the Staff Report and resulting flowchart clear to you?

Springer: I need to speak as one Board of Forestry member not the entire Board. I *can* see the confusion and can't see where this should go. I think it's time for the Board to take some leadership rather than just giving a thumbs up or down at the end of discussion. I believe the Board and EQC are looking for improvement, not exactly perfection and I think a 100' No-Cut sounds a lot like looking for perfection to me.

Geyer: One of the things that override this whole deal is the federal agencies. When they came to the workshop they seemed to be saying that we will do whatever is needed to reach the PCW. The State's Natural Resources Advisor stood up and in his opinion the state has wide discretion on how to address this issue. That's a key part. If there is going to be push back to the Federal Agencies that is where it comes from. How can the Board use discretion? Maximum Extent Practicable was mentioned; the notion of disturbance was mentioned; the Desired Future Condition and a re-do of the RipStream Study are all actions under the Board's discretion. Is there a way to package these ideas under an umbrella of discretion?

**Action Item:** *(Geyer's statement) Jarmer believes this is a good element to add into the introductory paragraph of our letter.*

- The roll of tributaries: Should we consider protecting the streams feeding into the Fish streams? So is that an idea worth pursuing? Perhaps extend the rule over non-Fish streams on tributaries within the harvest range?
- The evidence that we have is RipStream. It measured only the impacts to the unit measured above and below the harvest unit. The effect is solely from that harvest. The harvest units selected for RipStream did not have tributary input in the harvest unit. That was one of the selection criteria. In my view we should evaluate other units to see if we see the same signal. Because we specifically selected the sites to see if the signal was there but the criteria is only for Salmon, Steelhead and Bull Trout streams.
- Factoring in woody debris along with shade there is potential in the language for alternative approaches. I don't see a problem with placing logs to improve the stream structure as fisheries biologists are interested in doing. So if you have a better structured stream rather than just uniform temperatures, it will support the fish habitat.
- The measurement is temperature not habitat. In RipStream the large woody debris did not biologically correlate with temperature.
- Member noted that at the workshop all three biologists came out in favor of stream structure. Hyporheic Flow, to increase that.
- There is no evidence in large wood data related to temperature effects.

Jarmer: I have noted the following suggestions, not recommendations, which are not voted on or indicative of having any level of support. In addition we have three subjects to add to the introductory paragraph. We are suggesting that the Board consider:

1. Tax incentives to offset financial impacts;
2. Engage the EQC;
3. Change the Desired Future Condition;

4. Mandatory Sunset adding research and monitoring into the rule itself;
5. Improve on RipStream by adding more units and measuring where SSB exists;
6. Do more research on Large Woody Debris and including legal liability;
7. Option of revising the Checklist and/or removing deadlines in flowchart and checklist.

Kjos: I request a Motion to vote on each suggestion. I request that we send it to the BOF with clear opinion as the result of a vote and not a series of independent suggestions coming from the combined committees.

Schlaefli: So we have a Motion on the floor, seconded?

Hillman: Seconded.

Jarmer: Dana, please explain the distinction about what you motioned for.

Kjos: I think the weight of the committee should be brought to these suggestions by vote.

Schlaefli: The distinction is recommending something has a force of will. As suggestions they are requests for consideration. Dana where do you stand on your motion at this point? Yes or no on each item as recommendations? In contrast to; here's what we want you to consider?

Kjos: I still think we should be making a recommendation, otherwise what are we doing? I just want it to be inclusive.

Barnes: Word it that at a Joint Meeting of the NW and SW Committees the following items were discussed and members suggest that the BOF consider these items as they go forward in the decision-making process.

Bell: Encourage the Board to have this committee engage with the Department regarding these items.

- Additionally, we affirm through our discussions that we want to be part of the process. That is the main reason we are here.

Schlaefli: Generally, we don't fall back to parliamentary procedure much but here we need to. So the Motion is that we vote up or down on each one. One facet is that we approve the Motion then we move forward and we vote on each one as a recommendation, or it would seem to expedite the process to let this Motion fall then pick it up to say this is the packet of suggestions. The Motion on the Floor is to take up these seven recommendations and vote each one up or down. Discussion on other topics to follow. I would like to move this forward. Does everyone understand? If you vote yes, we will do seven votes of each concept next. Voting no we will put this Motion behind us. Members voted to lay down the Motion for voting on individual concepts.

Back to the discussion, these concepts compose the basis of what we want to present to the Board next week. It will be presented as suggestions from the combined committees to include engaging us as the rule change moves forward. We don't need to make a Motion on this, as it is not a recommendation.

Jarmer: So in summary;

- Look into tax incentives;
- Meaningfully engage with the EQC;

- Change the Desired Future Condition;
- Put mandatory Sunset Clause
- Add research and monitoring language into the rule itself;
- improve on RipStream by adding more units and measure where salmon, steelhead and Bull Trout exist;
- Do more research on Large Woody Debris prior to doing more work on the rule, including legal research;
- Revise the flowchart and checklist and removing the deadlines to provide flexibility and research.

Bonner: Add the **full participation of the sub-committees**.

Jarmer: The four things we will put in the opening paragraph to set the tone for the letter are:

1. Lead with the creativity part. The department clearly has signaled future engagement so that's done.
2. Offer these suggestions, as strongly worded as possible.
3. Remind them of their wide discretion.
4. Make sure rules are flexible and they achieve all of the goals because of the possible detriment of others.

Schlaefli: Are there any other ideas you have for suggested pathways?

Public comment:

Koreiva: Look at what rules are in place now, operationally or Silvicultural rules. Looking at those to see if we can better apply them in the field, or pull back on some silvicultural practices, harvesting and road maintenance. I don't think we need any more rules, just better define the rules for a whole different time frame. A lot of thought and process went into the creation of these rules. Can we do it differently with the same rules in place with different focus?

Jarmer: I would capture this on our list, broadening the list by **looking at the rule package for the tight fit in today's time**. It might have been appropriate at the time the rules were written.

Patton: Perhaps looking at the rules that affect just this current situation? Desired conditions? Not opening *all* the rules. Using rules we have and fine tuning that.

Bonner: Chris is right, the Desired Future Condition covers that. Perhaps it would be valuable to add hardwoods into basal area computations?

Jarmer: Another part of that as a forester, we are used to thinking in longer terms rather than today. They take actions that get them there today but may have significant ramifications down the road, the time element becomes important.

Schlaefli: That's a very good concept. Disturbance versus degradation again.

**Action Item:** (Jarmer) Process-wise I'll be working on the letter Friday and will send it on to Brian by Friday one pm. We need to have it done on Tuesday of next week. Brian Schlaefli will vocally present the letter and its content to the Board of Forestry meeting on September 3<sup>rd</sup>.

Schlaefli: Today, we are looking for a nod on the intent, rather than micro-manage the format today. We need responses back by Tuesday one o'clock. Have we captured the process well enough?

**Action Item:** Brian to fax to Dan Fugate.

Springer: This will be helpful. Following the workshop, the Board is looking for something like this and comments will be taken positively. On behalf of the Board, we are looking forward to this response.

[Committee discussed upcoming meeting schedule and whether an additional meeting will be needed in October if the BOF stands to meet the November deadline on the rule.]

***Reminder: The current scheduled October meeting was planned for the Operator of the Year Tours. NW – October 7-8; SW October 15-16. Nominations are needed now.***

Schlaefli: Without sounding apologetic, this rule analysis is a more important piece of work we will do as a committee since the landslide issue and we are under a considerable time crunch. So, thank you for your attendance.

Adjourn: There being no further business, and as the Good of the Order was not on this agenda, the meeting was adjourned at 12 noon. The next Combined NW & SW RFPC meeting is scheduled for September 19<sup>th</sup> at the Willamette Nat'l Forest Supervisor's Offices in Springfield.

Lena Tucker  
Committee Secretary  
Regional Forest Practices Committee

[08/29/2014]