



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

December 2, 2019

Forest Practices Board
PO Box 47012
Olympia, WA 98504

Re: Forests and Fish Program – End of 10 year Clean Water Act Extension Period

Dear Forest Practices Board Members:

Twenty years have passed since the adoption of the 1999 Forests and Fish Report. During the intervening years, the Department of Ecology (Ecology) with the support of the U.S. Environmental Protection Agency, has maintained the commitment to provide the Clean Water Act Assurances (Assurances) for forest practices in Washington State. The Assurances provided promised federal guarantees covering both the Clean Water Act, as well as the Endangered Species Act, to serve as a predictable and a consistent regulatory framework for the forest industry.

Ecology's original Assurances provided a Schedule M-2 of the 1999 Forests and Fish Report. The Assurances established a conditional, ten-year agreement to treat the development of traditional Clean Water Act water cleanup plans (Total Maximum Daily Loads) on Washington's forest lands as a low priority, while relying on the state's forestry rules to ensure water quality standards would be met on forest lands. Maintaining an effective Adaptive Management Program to test the forestry rules and revise them if found inadequate, was a critical condition for maintaining these Assurances.

The original 1999 Assurances established a 2009 milestone to verify that the state's forestry rules were on-track for bringing waterbodies into compliance with water quality standards. In 2009, Ecology's review of the Adaptive Management Program found that it could not demonstrate success in meeting water quality objectives. With commitments from key stakeholder groups, Ecology extended the Assurances for another ten years until 2019, in order to provide more time to verify the effectiveness of the rules or revise them as needed. The extension included key milestones to demonstrate steady incremental improvement in the program.



Key Adaptive Management Program achievements to date include:

- The establishment of long term funding for the Adaptive Management Program.
- The Type F (fish-bearing streams) buffers the effectiveness of monitoring studies conducted in eastern Washington and provides a measure of confidence that the riparian rules are meeting performance targets for thermal water quality protection for these fish-bearing waters.
- The priority Westside Type N (non-fish-bearing streams) hard rock study is complete and a package of Westside Type N studies are due for completion in 2020.

Establishing long term funding for the Adaptive Management Program and completing the above referenced studies is a major achievement since 2009. The challenge we now face is implementing the required adaptive management.

The first two years of the 2009 extension showed good progress in meeting key milestones identified, but the momentum was not sustained through the ten-year extension of the Assurances. A number of milestones established to ensure progress of the Adaptive Management Program to support certainty of meeting water quality objectives remain incomplete. Milestones associated with priority research projects delayed the completion dates for some of the milestones projected to be complete five years beyond their original target dates. Ecology has consistently raised concerns about these missed milestones to the Forest Practices Board during routine updates.

Looking specifically at the science, we have found that the Type N studies clearly show Type N riparian rules need strengthening to protect water quality. Revising the rules to meet water quality objectives was the precursor for the establishment of the Adaptive Management Program. The Timber Fish and Wildlife Policy Committee and the Forest Practices Board have recently agreed to a workgroup process aimed at developing new rule prescriptions. Ecology views this as a positive step and looks forward to the establishment of a clear timeline for such rulemaking.

With the Assurances expiring at the end of this calendar year, I have conducted an in-depth review of the Adaptive Management Program, weighed the many positive features of the program with the ongoing performance concerns and delayed progress. Based on my review, I have decided to extend the Assurances to December 31, 2021. This will provide ample time for Board Members to reach an agreement on the revision of the Type N rules, to protect temperature better.

This extension aligns with the existing Timber Fish and Wildlife Policy Technical Type N Prescriptions Workgroup charter (dated March 7, 2019). Evidence of adaptive management success would be the Board issuing a draft rule available for public comment before the end of 2021. This will require a CR101 filing in the summer of 2021, a draft CR102 developed, and distributed for public review by the end of November 2021.

The Forests Practices Boards

December 2, 2019

Page 3

At the end of 2021, I will consider another extension to the Assurances. If the Type N rules are effectively improved, we will be able to conclude that the Forests and Fish Report and the Adaptive Management Program are working to achieve water quality standards, in which case Ecology will be supportive of extending the Assurances for a longer period.

Ecology believes that, in addition to committing to rulemaking to protect water temperature on Type N streams, improvements to the Adaptive Management Program process are necessary to create a program that participants can rely on to test the effectiveness of the rules in protecting water quality and to timely modify those rules as the science dictates. Therefore, we urge the Board and the Adaptive Management Program Cooperators to identify and implement system improvements, over this two-year period, and to continue to prioritize the completion of the remaining uncompleted research milestones identified in the 2009 Assurances review.

Thank you very much for working with Ecology on protecting Washington State's waters.

Sincerely



Maia D. Bellon

Director

Enclosure

cc: Environmental Protection Agency
National Marine Fisheries Service
United States Fish and Wildlife Service
Forest Practices Board Liaisons
Timber Fish and Wildlife Policy

