

1 Idaho Department of Lands, Public Hearing  
2 September 19, 2013, 1:00 P.M. MDT  
3 300 N. 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83720  
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5 Public Hearing:  
6 Docket No. 20-0201-1301  
7 IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act – Shade Rule  
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9 **Hearing Officer:** Archie Gray, IDL Forest Practices Program Manager  
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11 **Note taker:** Sandra Allen, IDL Administrative Assistant  
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13 **Present:** Craig Foss, IDL Forestry Assistance Bureau Chief  
14 Terry Cundy, Potlatch Corporation  
15 Michael McIntyre, Idaho Department of Environmental Quality  
16 Jonathan Oppenheimer, Idaho Conservation League  
17 Jim Werntz, Idaho Environmental Protection Agency  
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19

20 **SPEAKERS:**

- 21 • Archie Gray
  - 22 • Michel McIntyre
  - 23 • Jonathan Oppenheimer
  - 24 • Jim Werntz
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27 **Archie Gray:** Good afternoon, my name is Archie Gray, Forest Practices Program Manager for the Idaho  
28 Department of Lands. Thank you all for attending this hearing today. This is the Boise rulemaking  
29 hearing for the propose Forest Practices Act rule changes that are now posted in the Idaho  
30 Administrative Bulletin preparing to go forward as pending rules. Negotiated Rulemaking was  
31 conducted from June 5 through June 26, resulting in several meetings with interested parties and  
32 written comments submissions from multiple forestry interest groups. Negotiated rulemaking meetings  
33 are the times defined within the state’s rulemaking process in which there are back-and-forth  
34 conversations with all interested people about the substance of the proposed rule changes, and during  
35 which summary presentations are presented of the rule history and status.

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37 Both written and oral comments are very important at this stage of the rulemaking. Changes to the  
38 Proposed Rule can only be made based on written or oral comments received on or before September

39 25, 2013. The Department will review these comments and evaluate whether or not additional rule  
40 changes are needed. We will then prepare the Pending Rule for review by the Land Board at their  
41 November meeting. Based on their recommendation, we will then submit a Pending Rule for  
42 consideration by the 2014 legislature.

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44 The format of this hearing is prescribed by rule. This prescribed hearing format does not  
45 include an opportunity for multi-party dialogue. This hearing is your opportunity to  
46 provide public *testimony* regarding the Proposed Rule change as it stands now, after  
47 modifications as a result of the negotiated rulemaking process. If you have questions or  
48 would like to discuss the rules please contact me directly. Testimony that strays too far  
49 from the proposed rule change may be gently guided back to the Proposed Rule. This is a  
50 public forum, and I ask all of you to listen respectfully to all speakers, and to speak  
51 respectfully to all listeners. There will be no rebuttals.

52  
53 A couple of requests:

54 If you have not filled out and signed the sign-in sheet at the front of the room, please do so now.  
55 When you come to the mic, the mic is back there, we will actually have the testimony from right here.  
56 Please begin by clearly stating your name, and if you are here representing any group or organization,  
57 please identify that also.

58  
59 This meeting and all comments are being recorded. The audio file and transcription file will be filed and  
60 stored as the formal record of this hearing.

61  
62 A few housekeeping items, restrooms are down the hall and to the left.

63  
64 This hearing is beginning now approximately 1:05 p.m. Mountain time, September 19, 2013. We will  
65 begin hearing testimony now. Who would like to go first?

66  
67 **Michael McIntyre:** DEQ will be just listening today. We will be submitting written comments by next  
68 Wednesday.

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70 **Archie Gray:** Thank you.

71 **Jim Werntz:** Good afternoon, my name is Jim Werntz. I am the director for the United States  
72 Environmental Protection Agency, Idaho Operations. I appreciate the opportunity today to comment on  
73 the rule. Want to acknowledge and commend the effort that the Idaho Department of Lands has made  
74 over the last 10 years to revise the shade requirements in the Idaho FPA rules, and for inviting the EPA  
75 and others to participate throughout the rule development process. The EPA supports Idaho's efforts to  
76 strengthen stream zone protections that are provided in the Idaho Forest Practice rules.

77

78 While Class 1 riparian areas typically represent about 5% or less of the land area within a watershed.  
79 They are disproportionately important in terms of water quality, fisheries and drinking water and  
80 providing protection to key aquatic species or aquatic live uses including the endangered species. EPA  
81 has carefully reviewed the current proposed rulemaking and we generally support the two options  
82 available to land owners to meet the new relative stocking requirements, since we believe they  
83 represent a significant improvement over the current shade requirements. EPA conducted an  
84 independent quantitative analysis of these options. Our findings are similar to IDL's analysis and we  
85 support the two management options in the draft rule. However, we do have one major concern  
86 regarding how the new requirements will be implemented. The rule proposes different levels of relative  
87 stocking in the inner and outer portion of the stream protection zone that produce shade critically  
88 needed to maintain water quality. Throughout this process these options have been evaluated as  
89 though relative stocking targets must be achieved in both areas for both zones before harvesting down  
90 to the targets would be allowed, at the conclusion of the rule development process we learned that the  
91 two zones would be implemented separately, leading to circumstances where relative stocking and  
92 attendant shade levels are below target in one zone, but harvest could occur in the other zone. The  
93 affect of implementing the rule in this manner was not technically evaluated during rule development,  
94 but clearly could result in significantly greater shade loss than scenarios that were evaluated. The EPA  
95 does not support implementing the rule in this manner because it could lead to conditions which would  
96 not meet shade targets set in the Idaho Temperature TMDL's and would not meet Idaho water quality  
97 standards. Ensuring that clean water act objectives are met is of critical importance in all the state  
98 forest practice rules. We strongly recommend that the rule be revised to specify that the inner and  
99 outer zone targets be implemented jointly. Since independent implementation of zone targets is not  
100 supported by technical analysis, if targets are implemented separately the existing variance process  
101 should be used to ensure that the Idaho water quality standards are being met. Again, the EPA sincerely  
102 appreciates the opportunity to participate in the rulemaking process and will be submitting written  
103 comments prior to the September 25 deadline. Thank you.

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105 **Archie Gray:** Thank you.

106

107 **Jonathan Oppenheimer:** I think that might just leave me. Again, my name is Jonathan Oppenheimer; I  
108 am the Senior Conservation Associate with the Idaho Conservation League. The Idaho Conservation  
109 League is a 501C3 non-profit organization dedicated to the protection of Idaho's clean water wilderness  
110 and quality of life, celebrating our 40<sup>th</sup> anniversary this year.

111

112 Along the lines of the concerns that the EPA and a number of the Indian tribes have indicated in  
113 response, or in the written comments to the draft rule, the Idaho Conservation League shares some of  
114 those concerns. I would say, mirroring EPA's comments, we are supportive of this update to the  
115 streamside standards and regulations with regards to the forest practices act, but are concerned by the  
116 lack of a linkage between the inner and outer zone. We see that as a critical shortcoming of the  
117 proposal. I just wanted to take a few minutes to walk through some of the issues and concerns we have,

118 that were responded to in a document that was posted to the Idaho Department of Lands website, the  
119 negotiated rulemaking summary, doesn't really have a title, but it basically is a response to comments  
120 document, I don't know how to better describe that. It is part of the docket that is up on the website  
121 pertaining to IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act with regards to this  
122 proposal. In particular, and just walking through some of the comments that were fairly consistent from  
123 amongst Idaho Conservation League, EPA, and a number of the Tribes. There was concern over the lack  
124 of linkage with regards to minimum tree requirements and relative stocking in the inner and outer  
125 zones, and that lack of a linkage and what the impact and implications of that would be with regards to  
126 meeting state water quality standards, especially with regards to temperature, but also woody  
127 recruitment. The Idaho Department of Lands responded effectively by arguing that the decision was  
128 informed by extensive shade modeling outcomes disciplined by real field data. I guess one of the main  
129 points I would make is that the specific modeling of the lack of linkage between the inner and outer  
130 zones was never modeled as far as we know. None of the model runs that we saw reflected that lack of  
131 linkage between the inner and outer zones. What I mean to that, just to be entirely clear, is if you had  
132 an outer zone that was below the minimum relative shade stocking levels, the outer zone and the inner  
133 zone could still be managed to that minimum relative stocking level and that the model runs were never  
134 conducted so as to illustrate what the potential impacts would be if the outer zone was below standard  
135 and the inner zone was brought down to that minimum standard. While we certainly recognize that  
136 extensive modeling was conducted, recognize that EPA also ran some models independently to  
137 determine what the impact would be to water quality and some other threshold, indicators and  
138 thresholds. The potential impact of this rule and the implications were never modeled. So, we see that  
139 as a very significant failure and one that we would strongly urge the Forest Practices Act Advisory  
140 Committee on the Idaho Department of Lands to determine if additionally modeling is needed to  
141 determine what the affects of this may be. The response to comments then goes on to argue that little  
142 tree removal is presently occurring within Class 1 Streamside Protection zones, we certainly appreciate  
143 that fact, but at the same time the rule should be constructed in such a way that it protects water  
144 quality standards regardless of what is happening on the ground. If no one is cutting within the  
145 streamside zones then we see it as entirely appropriate to consider a very simple approach that would  
146 establish a option that would create a no-cut buffer along streams. We see that as a very sensible  
147 alternative and based on the response to comments it appears that effectively that's what's occurring  
148 on many lands, so we see that as a very simple, straightforward approach that could be attractive to  
149 landowners to have an option at their disposal of a no-cut buffer and to have that clearly delineated in  
150 the rulemaking we see it would be a significant improvement. The, again, the modeling to quote IDL,  
151 modeling strongly indicates effective shade levels related to canopy removal in the SPZ streamside  
152 protection zone remain relatively unaffected until relative stocking in the outer zones drops below 25.  
153 So the key question there is; were model runs conducted that would illustrate that there would not be  
154 an impact to state water quality standards if it was below that relative stocking of 25. As far as we  
155 know, that modeling was never done.

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157 Moving on, IDL argues that limiting harvest, effectively rebutting or arguing against the linkage  
158 of the two zones, IDL maintains that, quote, "Limiting harvest by linking the two zones can only  
159 increase the hazards of disease, insect and fire by creating or perpetuating significantly over-  
160 stocked conditions. Allowing some management within the SPZ can help improve overall forest  
161 health...". The main argument that I would offer there is that some level of endemic disease  
162 and mortality within streamside protection zones is critical towards the recruitment of woody  
163 material for streams and it is exactly that type of mortality and disease that helps to contribute  
164 to in-stream wood that has time and again been illustrated to be very important for the  
165 development of properly functioning streams. We will be, it is our intent to submit written  
166 comments as well, though I think that they will primarily cover the same topics that I covered  
167 here today as well as in our letter that was submitted back in June with regards to this issue. I  
168 appreciate the opportunity to testify and certainly appreciate all the work, and time and effort  
169 that went into the development of this rule on the part of the advisory committee and the  
170 department, however, I do think that the failure to model the relationship between the inner  
171 and outer zones is a significant enough a problem that it may result in the rule failing to meet  
172 its intent. The intent here is to protect and ensure that state forest practice act rules are  
173 consistent with TMDL's and state water quality standards. It's got to be conducted in a way  
174 that demonstrates that IDL and the advisory committee took the requisite hard look to  
175 determine whether or not those standards will be met. The failure to conduct the modeling on  
176 what is a very real world potential that could happen where you don't have the linkage  
177 between the inner and outer zones, we see as a significant failure and one that we hope to see  
178 resolved in future drafts.

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180 **Archie Gray:** Thank you. O.K., having no one else here to testify that will close the hearing here  
181 today at, I have 1:19 P.M. Mountain time. Thank you for participating in the rulemaking  
182 process. You are invited of course to submit written comments in addition to the oral  
183 comments. Both will made a part of the official record and will be used to come out with the  
184 final proposed rules. Thank you.

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