

1 Idaho Department of Lands, Public Hearing  
2 September 10, 2013, 1:00 P.M. PDT  
3 3284 West Industrial Loop, Coeur d'Alene, Idaho 83815

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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:** Kevin Greenleaf, Kootenai Tribes (via teleconference)

14 Craig Foss, IDL Forestry Assistance Bureau Chief

15 Steve Funk, Private Forest Owner

16 Janet Funk, Private Forest Owner

17 Madeline David, Private Forest Owner

18 Kirk David, Private Forest Owner

19 Ara Andrea, IDL Technical Services Bureau Chief

20 Terry Cundy, Potlatch Corporation

21 Jim Riley, Riley and Associates

22 Paul Buckland, Inland Empire Paper Company

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25 **SPEAKERS:**

- 26 • Archie Gray
  - 27 • Craig Foss
  - 28 • Steve Funk
  - 29 • Madeline David
  - 30 • Jim Riley
  - 31 • Paul Buckland
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33 **Sandra Allen:** O.k. It is 1:00 so Archie is going to call the hearing to order.

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35 **Craig Foss:** Kirk there is a sign-in sheet if you and Madeline would....Did you sign in Terry?

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37 **Terry Cundy:** I suppose I better go do that.

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39 **Archie Gray:** Good afternoon. My name is Archie Gray; I am the Forest Practices Program Manager for  
40 the Idaho Department of Lands. Thank you all for attending this hearing today. This is the Coeur d'

41 Alene Rulemaking Hearing for the proposed Forest Practices Act rule changes that are now posted in the  
42 Idaho Administrative Bulletin preparing to go forward as pending rules. Negotiated Rulemaking was  
43 conducted from June 5 through June 26, resulting in several meetings with interested parties and  
44 written comments submissions from multiple forestry interest groups. Negotiated rulemaking meetings  
45 are the times defined within the state's rulemaking process in which there are back-and-forth  
46 conversations with all interested people about the substance of the proposed rule changes, and during  
47 which summary presentations are presented of the rule history and status.

48  
49 Both written and oral comments are very important at this stage of the rulemaking. Changes to the  
50 Proposed Rule can only be made based on written or oral comments received on or before September  
51 25, 2013. The Department will review these comments and evaluate whether or not additional rule  
52 changes are needed. We will then prepare the Pending Rule for review by the Land Board at their  
53 November meeting. Based on their recommendation, we will then submit a Pending Rule for  
54 consideration by the 2014 legislature.

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

64  
65 A couple of requests:

66 If you have not filled out and signed the sign-in sheet at the back of the room, please do so now.  
67 When you come to the mic or the podium to offer comments, please begin by clearly stating your name,  
68 and if you are here representing any group or organization, please identify that also.

69  
70 This meeting and all comments are being recorded. The audio file and transcription file will be filed and  
71 stored as the formal record of this hearing.

72  
73 A few housekeeping items, restrooms are right across the entryway here. There is not  
74 really a water fountain but there are some cups and sink right here.

75  
76 The hearing is beginning now approximately 1:05 p.m. Pacific time. There will be a second meeting  
77 scheduled for 1p.m. Mountain time in Boise on September 19 and written comments must be received

78 by September 25<sup>th</sup>. They can be received at either IDL office and can be addressed to myself or Craig.  
79 Also, you may leave a written copy of your oral comments that maybe goes into more depth or  
80 something if you'd like before you leave. Or if you have written comments separate from your oral  
81 comments you may leave those with us also and they will become part of the record as well. With that  
82 said, we may begin. Who would like to go first? The floor is open.

83

84 **Steve Funk:** Since nobody volunteered, I guess I will. I have a hard time reading my own scribble. O.K.,  
85 please state my name. My name is Steve Funk and my wife Janet, I will be speaking for her as well. I am  
86 a forest owner; I am a member of the American Tree Farmed System. I am a Director of the Idaho  
87 Forest Owners Association and I sit on the American Forest Foundation's National Operating Committee.  
88 Janet, she also sits on the ILRCC Committee and the DEQ's Water Advisory Group and Janet also was  
89 very helpful in organizing the Wolf Lutz Creek Watershed renovation project. Now, I'll get on with what  
90 I got to say here. If the proposed rule changes as I see in the SPZ are for fish, then that is just fine. The,  
91 we as forest owners are really in favor of the betterment of the fish habitat and of water quality. That  
92 being said, I think we all should be on board for providing better fish habitat. It seems to me that by  
93 singling out only forest landowners is unjust. The agriculture and livestock producers plus the land  
94 developers should also be onboard to protect what I consider *our*, the people of Idaho's, water quality.

95

96 I can foresee that if the rule changes are made law an appeal based on discrimination of one group  
97 being targeted, I think that's...could happen. I also feel the relative stocking of 60, I feel in most cases is  
98 not attainable....Here I go with my notes...It's not attainable and I believe if it was attainable you would  
99 have a forest situation that is in decline and I don't feel that's a good forest practice. Also, I do have a  
100 concern for the small woodland owners say 40 acres, give or take or so, with riparian ground and they  
101 perhaps would not be eligible to practice a harvest. I can foresee an economic downturn for them,  
102 especially if they have high value trees in riparian areas and would not be allowed to take them.  
103 Depending on the amount of riparian edges this could be a significant loss for them with no financial  
104 recovery of leaving those trees in place. And also, it just seems like....I'm lacking the science based  
105 information on the fish biology and the forestry that goes along with this. I know it's out there, but it is  
106 kind of hard to pick up. But, that being said I'm through with my testimony. I thank you very much for  
107 hearing me.

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109 **Archie Gray:** Thank you Steve.

110

111 **Madeline David:** I'm Madeline David I'm a family forest owner I don't have near the credentials  
112 that Steve has.

113 (Laughter)

114

115 **Archie Gray:** Tough act to follow.

116

117 **Madeline David:** Yeah, tough act to follow. I am a tree farmer, American Tree Farm System and a  
118 member of IFOA. For months the family forest owners have struggled to accept the proposed FPA rule  
119 changes now under consideration. That is a lot of people putting in a lot of time and (unintelligible) to  
120 this issue. We've spent hours debating, questioning and trying to understand. We know that IDL and  
121 FPAC have worked intensively to craft a rule that is measurable and defensible. At the end of the day  
122 we still have some major concerns with the proposed rules.

123  
124 With the passage of these FPA rule changes, which are represented to be based on good and defensible  
125 fish science, the State of Idaho will mandate that the owners of forest land bordering streams practice  
126 bad forestry. That is the goal will be to grow and maintain riparian areas on Class 1 streams in a state of  
127 forest decline as defined by Teply in the report to FPAC. Thus the state will be choosing the value of one  
128 valid resource science over another. Further this mandate will apply only to a select class of landowners  
129 who own forested streamside property that is categorized for forest management. Owners of  
130 agricultural, residential, commercial or recreational land along streams are exempt from this mandate to  
131 shade streams for the well-being of fish. Beware the effect of unintended consequences for the family  
132 forest owner, friend of our shared environment, who is not allowed to manage his riparian zones may  
133 therefore forgo beneficial stream restoration and planting projects. In financial extremity he may find  
134 land use conversion a necessity when a well considered harvest could otherwise have met his needs.  
135 The concern of the family forester owners I know is emphatically not to clear-cut to the water's edge,  
136 but rather through sound forest resource management to maintain the healthy functionality of the  
137 forest which shades the fish-bearing streams.

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139 **Archie Gray:** Thank you Madeline. Kevin (to Kevin Greenleaf on phone) are you there?

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141 **Kevin Greenleaf:** Yes, I'm still here.

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143 **Archie Gray:** O.K. we are signing you in. Are you representing the Kootenai tribe?

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145 **Kevin Greenleaf:** Yes, I am.

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147 **Archie Gray:** O.K. we are signing you in on the sign in sheet so your presence is noted.

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149 **Kevin Greenleaf:** O.K., that'd be great.

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152 **Archie Gray:** Do you want to provide any testimony at this time?

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154 **Kevin Greenleaf:** No, we've already provided written comment. So that's all we were going to do.

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156 **Archie Gray:** O.K. Thank you.

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**Kevin Greenleaf:** You bet.

**Archie Gray:** Would anyone else like to provide testimony at this time?

**Jim Riley:** I will. I'll speak at this time. This is in somebody's living room it looks like.

(Laughter) Good afternoon, my name is Jim Riley; I'm the president of Riley & Associates. I'm here today on behalf of my company which represents landowners and various sawmill interests in Idaho and other states as well as my clients today Stimson Lumber Company and Hancock Forest Resources. We've been a part of this process since its inception and have had numerous opportunities to contribute and offer our ideas on the proposed rule as it has evolved over, what now, 2 and a half decades? (Laughter)...No, 2 and a half years I think is more appropriate. And we are at what now is almost the end of the process. We stand today in support of the rule as proposed. It's not perfect. I don't think it's possible to evolve a perfect rule for forestry. I work in a lot of different states as well as here, but this is as perfect, or as a good a rule as we believe we've seen anywhere and we want to applaud both the FPAC and all the members of the FPAC as well as the Department of Lands that evolved this rule because it is innovative, it's flexible, and it's trying to be as sensitive as possible, and I think it is as sensitive as anything we have seen anywhere else in the county, to the interests of various landowners of all sizes and different parcels. The land, certainly the forested landscapes of Idaho, are diverse places...and there is different forest ecosystems on different landscapes there is different opportunities and they are owned by different people. The different people and the different organizations that own them all have different objectives and goals. It is very difficult to allow a single management regime that applies well to everybody; there is no question about that. As our forestry profession, our country has struggled with how to deal with that the one thing that appears to be clear is that if you don't have any standards you result in unacceptable practices so you there needs to be some standards of some sort. What we find particularly useful and helpful about this rule is it was designed to be flexible. It provides options for landowners depending on what size you are its not unfettered discretion, but there are options there. Our assessment from our technical specialists is that it is based on as good as science as is available today. That doesn't mean that the science is absolutely clear, nor does it mean that we don't have opportunity to improve the science. We hope that over time as science is, as new information comes in that we will understand that there is some opportunity for some additional flexibility. But given the world we live in and the need to do something, we think this rule is based on as sound a science as is available today, provides as good as flexibility as can be provided to forest types throughout the state of different sizes and different conditions and to landowners throughout the state of different motivations and different values. So we do that. We also want to applaud the department for the extensive process of opportunities that you have provided the private sector to offer our thoughts and suggestions about how this is. Countless hours have been spent by your volunteers on your Forest Practices Act Advisory Committee and I know lots of hours have been spent by your resource professionals at the department reaching out and talking to people, coming to meetings, making sure there is as much possible understanding as people can have about this and truly inviting ideas and input

197 from the private sector. We know from our experience, we've seen adjustments that we have proposed  
198 or inconsistencies in your early proposals, we've brought that to your attention and you've been very  
199 responsive in responding to that. We appreciate that, this has been a good process from our point of  
200 view and we know at the end we may not have total harmony about this, but I know at the end this is  
201 the best thing to put into place now because the alternatives in the world of the people who are  
202 pressing on us for less activity and are willing to advance that through litigation and other means is a  
203 much larger exposure than doing what we think is the best right now. So we do that and we are very  
204 sensitive to our colleagues in forestry who might not find that this rule is fully acceptable yet, we will  
205 continue to work with them as our pledge on finding better ways, but today we believe this is the best  
206 way. So, that is what I have to say today and we will submit comments for the record.

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208 **Archie Gray:** Thank you Jim. Anyone else wish to provide testimony at this time?

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210 **Paul Buckland:** My name is Paul Buckland; I'm the Forest Resource Manager for Inland Empire Paper  
211 Company. I am also the President of Inland...ah...Idaho Forest Owners Association. I am also a small  
212 private landowner. I'll make this short and sweet because I think Jim said it very eloquently, I am in full  
213 agreement with...just put Ditto marks...(Laughter)...no, as an industrial owner and manager, we do own,  
214 Inland Paper owns 55,000 acres in Idaho, we are supportive of this rule. We feel that it is a workable  
215 solution. It is defensible. Much like Jim said, it's not perfect, but it is workable. I also come from, I work  
216 in Washington as well and I've seen this same process go on with the Fish and Forest rules, with much,  
217 much different outcome. Those rules are very, very difficult to operate under. These are...the  
218 proposed rules here in Idaho are workable. The one major issue that I would like to go on record as  
219 saying that we do feel there is an inequality in the burden of shading streams amongst landowner  
220 groups. That is to say the agriculture, ranching and development industries are not held to the same  
221 standard that we are being asked to protect these streams. I would encourage other state agencies,  
222 state and federal agencies, particularly the department of Environmental Quality to look into what they  
223 can do with these other landowner groups to also protect streams. That's all I have.

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225 **Archie Gray:** Thank you Paul. Would anyone else like to provide oral testimony at this time? We will  
226 give it just a couple of more minutes. A couple of minor things, this is the first of two meetings as I said  
227 at the beginning. There will be a second meeting on September 19 at 1:00 mountain time in Boise.  
228 Both written and oral comments will be accepted at that time as well. That will be at the Boise IDL  
229 headquarters. Written comments will be accepted through September 25 to either IDL office, addressed  
230 to either Craig Foster or myself. With that I will ask one more time if anyone else would like to submit  
231 oral comments. O.K. Hearing done, that closes the hearing for today at 1:25 P.M. PDT. Thank you for  
232 participating in the rulemaking process. Have a good afternoon.