

IDAHO DEPARTMENT OF LANDS

-----X

IN THE MATTER OF:

RULEMAKING PUBLIC HEARING
FOR IDAPA 20.02.01

-----X

August 15, 2019; 9:30 AM

HELD AT: Coeur d'Alene, Idaho

BEFORE:

APPEARANCES:

TRANSCRIBER: MIRIAM RETZKIN

1 MR. GARY HESS: So Cori, could you please
2 read the names of the folks that have called in?

3 CORI: Yes. Amy Johnson, Joy Vega, Russ
4 Hendricks, and Donna Caldwell.

5 MR. HESS: Thank you. And if we could start
6 at the back of the room and just work our way forward
7 with introductions?

8 MR. TOM SCHULTZ: Tom Schultz. Idaho Forest
9 Group

10 MR. PETER STEGNER: Peter Stegner, Riley
11 Stegner Associates.

12 MR. JIM REILLY: Jim Reilly, Riley Stegner.

13 MR. DAVID GABRIELSON: David Gabrielson,
14 Hancock Forest Management.

15 MR. PAUL BUCKLAND: Paul Buckland, Inland
16 Empire Paper Company.

17 MS. MICHELE ANDERSON: I'm Michele Anderson,
18 Idaho Department of Lands.

19 MR. HAWK STONE: Hawk Stone, Idaho DEQ.

20 MR. ROB RIDER: Rob Rider, I'm a resident of
21 Wolf Lodge.

22 MR. DAVID GROESCHL: David Groeschl, IDL.

23 MR. TOM MOSMAN: Tom Mosman, private land
24 owner down in Lewis and Clearwater Counties.

25 MS. MARJORIE FRENCH: Marjorie French and I

1 [unintelligible] timber in Latah and a while bunch in
2 Washington.

3 MS. MADELINE DAVID: Madeline David, private
4 forest landowner.

5 MR. KIRK DAVID: Kirk David, private forest
6 land owner.

7 MR. STEVE FUNK: Steve Funk, private forest
8 landowner and IFOA.

9 MS. JANET FUNK: Janet Funk, private forest
10 landowner [unintelligible].

11 MR. MARCUS SMITH: Marcus Smith, a private
12 landowner and IFOA.

13 MR. GARY HESS: I'm Gary Hess. I'm the
14 Forest Practices Program Manager for the State of
15 Idaho, and I work for IDL.

16 MS. ARA ANDREA: Ara Andrea and I'm the
17 Forestry Assistance Bureau Chief, also with the
18 Department of Lands.

19 MR. FOSS: And I'm Craig Foss. I'm the
20 Division Administrator for Forestry and Fire with the
21 Department of Lands. So I'll do the read in, and
22 because this is a hearing I won't be too
23 conversational. It's a script. We're going to read
24 the script and then we'll just move into the -- Gary
25 will then move into the agenda and we'll proceed from

1 there. So again, good morning. My name is Craig
2 Foss, the Forestry and Fire Division Administrator for
3 the Idaho Department of Lands. Thank you all for
4 attending this hearing. Before we start, I wanted to
5 provide some general background. The Department of
6 Lands is not proposing any changes to IDAPA 20.02.01
7 or rules pertaining to the Forestry Practices Act.
8 Currently these rules are in a temporary proposed
9 status, and are anticipated to be reauthorized by the
10 2020 legislature. This public hearing, by request, is
11 focused on a specific subsection, the Stream
12 Protection Rule, which is 030.07.e.ii, also known as
13 the Shade Rule. The rules promulgation process
14 described in the Idaho Administrative Bulletin of June
15 19th opened all Idaho administrative rules to comment.
16 For background on this rule, IDL entered into
17 negotiated rulemaking in 2012 through 2013 to develop
18 a new tree retention requirement for Class I fish-
19 bearing streams. This was in response to water
20 quality audit findings from as early as the year 2000
21 that indicated the rules in place for shade and large
22 woody wooded debris recruitment for such streams were
23 not adequately maintaining water quality. IDL
24 believes that the negotiated rulemaking process was
25 very productive, and it ended with a new rule to

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 promote landowners' forest management of their
2 riparian area on Class I streams while providing
3 statutorily required protection to maintain water
4 quality. The new rule was published on July 1st of
5 2014. The format of this hearing is prescribed by
6 Rule. This particular format for both rulemaking does
7 not include an opportunity for multiparty dialogue.
8 The hearing is your opportunity to provide testimony
9 regarding the proposed rules pertaining to the Idaho
10 Forest Practices Act. If you have questions or you'd
11 like to discuss some aspect of forest practices in
12 Idaho, please contact Gary Hess directly. This is a
13 public forum, and I ask all of you to listen
14 respectfully to all speakers and to speak respectfully
15 to all listeners. The proposed rules were published
16 in the June 19th, 2019 Idaho Administrative Bulletin,
17 Special Edition Volume 19-6SE on pages 4,099 to page
18 4,100 and pages 4,125 through 4,151. The rule in the
19 Bulletin is the official version, and all comments
20 should be based on that version. Our rulemaking
21 website is updated, and provides a web link to the
22 Bulletin. A simple internet search for Idaho
23 Administrative Bulletin 19-6SE will lead you to the
24 correct place to read the rules. Both written and
25 oral comments are useful at this stage of the

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 rulemaking. Changes to the proposed rules can only be
2 made based on written or oral comments received on or
3 before August 16th of 2019. IDL will review these
4 comments and evaluate whether or not rule changes are
5 needed. Your comments and any IDL suggestions for
6 changes will be presented to the Idaho State Board of
7 Land Commissioners in September for a decision. We
8 will prepare the pending rule for review by the Land
9 Commissioners at their October meeting. Based on
10 their recommendation, we will then submit a pending
11 rule for consideration by the 2020 legislature.
12 Please make sure the Department receives your comments
13 before August 16th. If you brought written comments
14 today, please make sure you give us a copy. Because
15 written and oral comments receive equal treatment, to
16 ensure all who desire to testify get the opportunity
17 to speak, those who plan to submit written comments
18 today may want to use this opportunity to briefly
19 summarize their written comments, or to elaborate on
20 specific points. Simply reading your submitted
21 written comments verbatim does not enhance their
22 impact. Regardless of whether you have written
23 comments to submit, please do not hesitate to testify
24 today. This is your opportunity to provide feedback
25 on these rules. Please make sure that you have signed

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 in at the back of the room and you have checked the
2 boxes for either written testimony, oral testimony, or
3 both. Everyone who wants to speak gets one
4 opportunity. There will be no rebuttals. A time
5 limit on testimony may be necessary, depending on the
6 number of attendees that sign up to testify. A few
7 housekeeping matters. When you came in the front
8 door, the restrooms are off to your left. It's down
9 the hallway before you go through the next door.
10 There's a water fountain right next to the entrance to
11 the restrooms. So that's all I have.

12 MR. HESS: Okay. Thank you, Craig. Just
13 for everyone's benefit, I wanted to let you know that
14 a private landowner, Sandy Schlepp, joined us here in
15 Coeur d'Alene. She's also a logging contractor.

16 [unintelligible].

17 MR. HESS: So today I would like to provide
18 a handout that -- let me back up a little bit. I'm
19 going to do the same thing that Craig did, because we
20 have an afternoon session as well. I'm not going to
21 read the slides, but I'm going to read my notes that
22 are associated with those slides. And the slides are
23 posted on our web page so people that have called in
24 have access to what is being presented here in the
25 room. We provide a handout that includes a Shade Rule

1 fact sheet, comment letters associated with the
2 proposed rule of 2013, a memoranda from Governor
3 Little to the Departments regarding the rule
4 reauthorization process I'm going to talk about today.
5 On the agenda you'll see that there's going to be a
6 short talk about water quality in Idaho and then a
7 lengthy talk about the history of Idaho fish-bearing
8 stream Class I Shade and Tree Retention Rules, and
9 what is required by IDL through State statute and
10 rule, why this rulemaking is being conducted. And
11 then we will have testimony from the attendees.
12 Because of federal and state law, the structural
13 relationships among federal and state agencies, the
14 monitoring implemented by IDL and DEQ and the IDL
15 administration of forest practices BMPs, a nonpoint
16 discharge elimination system permit is not required
17 for timber harvesting in Idaho. Furthermore, third-
18 party certifiers, such as the American Tree Farm
19 System and the Sustainable Forestry Initiative,
20 reference compliance with these best management
21 practices as part of their standards. These
22 structural relationships, the monitoring processes,
23 and forest practices rule development are depicted
24 graphically on this slide. And I will give you a
25 moment to digest that, because it's somewhat

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 complicated. Yes?

2 TOM MOSMAN: It said that FPAC develops
3 forest practices rules. Who is that?

4 MR. HESS: That's the Forest Practices
5 Advisory Committee. I apologize for not pointing that
6 out.

7 TOM MOSMAN: Who's on that?

8 MR. HESS: It's a board of nine citizens, a
9 committee of nine citizens that represent landowners,
10 logging contractors, private landowners, and just
11 general Idaho citizens that are familiar with forest
12 practices. It's a nine-member committee.

13 JIM RILEY: Statutorily established.

14 MR. HESS: Thank you, Jim. I want to
15 provide some detail on the history of the current
16 Class I Tree Retention Rule. Idaho's Forest Practices
17 Rules were adopted nearly entirely from Oregon's
18 original rules, which were likely developed by a group
19 of foresters using the best knowledge available at the
20 time. Both states' rules were developed in response
21 to federal requirements under the Clean Water Act. It
22 would have been inefficient to start from scratch, yet
23 comparative review reveals that IDL foresters were
24 selective in what was not adopted. But there are
25 still some rules in our current rule structure that

1 were the original Oregon rules that have not been
2 needed to have been modified. Over time numerous
3 modifications and additions have been accomplished by
4 the Forest Practices Advisory Committee, but some of
5 the rules remain intact from the earlier adopted
6 Oregon rules. I'll give you a moment to read the
7 original Shade Retention Requirements. And if at any
8 time anybody needs for me to go back, just let me
9 know. I'd be glad to do so. In 1990, probably based
10 on 15 years' experience trying to develop selective
11 cutting prescriptions, the original rule was
12 simplified and specific tree retention requirements
13 were added. There's always been a shade requirement,
14 and for almost two decades a standing tree requirement
15 for Class I streams. Please note the current rules
16 still support the site-specific riparian management
17 prescription variance option implemented in 1990 where
18 the rule cannot be met due to particular site
19 conditions. Every four years the Idaho Department of
20 Environmental Quality audits the Forest Practices
21 Program by monitoring Forest Practice operations near
22 Class I streams on all lands but tribal lands in
23 Idaho. These audits, combined with IDL identified
24 enforcement issues, have revealed the need to
25 periodically make adjustment to Idaho's rules. 20

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 years ago, the need to modify the 1972 developed rule
2 was apparent. In 2004, auditors' initial visual
3 observations of tree density were not borne out by
4 subsequent stand measurements that were made during
5 the audit. It was also clear that repeated entry
6 under the 75 percent of current shade paradigm was
7 contributing to water quality issues. IDL, FPAC, and
8 the Idaho Department of Environmental Quality have
9 evaluated available science and used empirical
10 studies, as well as modeling, to inform shade and
11 large woody debris recruitment for aquatic habitat
12 health. By the 2012 quad audit, these efforts were
13 well underway. I have provided a handout that goes
14 into great detail regarding the rule adopted in 2014.
15 I would encourage you to read it because it provides
16 way more detail than I have time to go into here. The
17 rule is a compromise between simplicity and specific
18 applicability in order to provide adequate protection
19 statewide, while incorporating regional differences in
20 forest types. Differing forest landscapes can support
21 varying numbers of trees of varying species. So the
22 rule uses the expected maximum tree density by forest
23 type as a metric. The relative stocking compares
24 actual stand density to this metric, and the limits
25 are set to avoid mortality and yet still provide

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 adequate shade and large woody debris. To do less
2 would risk not adequately meeting water quality
3 requirements. And to do more by incorporating
4 orientation, topography, and stream size would only
5 create a less manageable rule and likely not gain much
6 in maintaining water quality. I want to focus now on
7 what IDL is continuing to do to help landowners
8 achieve their forest management objectives, while
9 demonstrating that the relative stocking limits are
10 achieving the desired metrics for water quality.
11 Idaho private forestry specialists have conducted
12 hundreds of site visits to assist landowners and
13 operators with the new rule. IDL and DEQ have
14 conducted surveys and studies to determine how the
15 rule is being implemented, how often, and how much
16 actual cutting occurs, and how harvesting relates to
17 shade reduction. The IDL operational monitoring
18 survey determined that from 2016 through 2018,
19 approximately two-thirds of stream protection zones
20 identified for harvest have demonstrated some level of
21 harvest. Of those, nearly all of the industrial
22 landowners and two-thirds of the nonindustrial
23 landowners choose the 6010, Option 2. The DEQ Shade
24 Effectiveness Study will calculate shade removal
25 through preharvest and postharvest measurements of

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 sites harvested to the exact limit of the rule. IDL
2 and FPAC committed to using the empirical information
3 from these studies to compare with the calculations
4 done when the rule was formulated. These comparisons
5 will reveal if the current relative stocking limits
6 are supported by what is actually happening on the
7 ground. Idaho had a legacy fish-bearing stream tree
8 retention rule that audit findings determined did not
9 adequately protect shade nor large woody debris
10 recruitment. Regulators struggled with significant
11 and substantial, and how to define current shade,
12 postharvest shade, and until shade recovers.
13 Responsible operators did not have a definitive guide
14 with which to manage the timber in the SPZ. And
15 uncertain, left more than necessary. Irresponsible
16 operators practiced multiple reentry until SPZs were
17 laid nearly bare, or they were cited. Stand
18 conditions and riparian areas ranged from severely
19 understocked to heavily overstocked and unhealthy.
20 Today, with the current rule, nearly two decades of
21 research and deliberation have gone into the current
22 rule. And research continues to assure its validity.
23 Many operators are surprised at the degree of
24 management flexibility within the SPZ, while still
25 providing sufficient stream protection. A majority

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 are selecting the Option 2 harvest prescription, which
2 can provide easily accessible value, but also leaves
3 more trees in the inner 50 feet where the shade
4 contribution is greater. In many cases more trees are
5 being left in the outer 25 feet from the ordinary high
6 watermark than before, which results in a less abrupt
7 change in the canopy than the previous 50-foot
8 standing tree buffer. I'm going to describe the
9 rulemaking process that we're currently in. We're
10 governed by the Administrative Procedures Act, Idaho
11 Code Title 67, Chapter 52. All rules expire July 1st
12 of every year unless they're extended by statute by
13 the legislature. The legislature did not do this in
14 2019. All state agencies initiated temporary and
15 proposed rulemaking to fill the regulatory gaps.
16 Temporary rules were effective on June 30th of 2019.
17 For IDAPA 20.02.01, rules pertaining to the Idaho
18 Forest Practices Act, no changes are proposed to the
19 temporary proposed rule. And I will reiterate what
20 Eric Wilson said yesterday in the Dredging and Placer
21 Mining Public Hearing, that if the State had not taken
22 these measures to put in place emergency rules until
23 we can bridge this gap, that circumstances would arise
24 where you couldn't get a hunting license because there
25 would be no rule to support it, and there wouldn't be

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 any speed limits. And you could continue to think of
2 examples of where, if those rules were not in place,
3 there could have been potentially catastrophic
4 consequences that would take place. This shows the
5 hierarchy of State documents, and we're right here
6 where it says State Agency Rules under Administrative
7 Code. That fits under the Idaho Constitution and
8 legislative statutes, and below that are policies,
9 procedures, and guidelines, and other written
10 interpretations. Under the normal rulemaking
11 timeline, there would be stakeholder, technical
12 expert, and FPAC discussions about requested or
13 suggested rule changes well in advance of the typical
14 April Land Board approval to enter rulemaking.
15 Negotiated rulemaking initiates a process to draft
16 specific language and to ensure all interested parties
17 participate. The very compressed timeline for this
18 current situation in 2019 results from the Office of
19 Administrative Rules trying to fit this unique
20 situation into their normal business schedule. And
21 I'll let you take a minute here to kind of digest this
22 slide. So your public testimony today can contribute
23 to a normal negotiated rulemaking process when the
24 Land Board approves us to go into negotiated
25 rulemaking. So we will take your comments and share

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 those with the Land Board in September, as Craig
2 indicated. And that will roll over into future
3 rulemaking efforts that we may enter into.

4 CRAIG FOSS: Gary, I think you just said
5 negotiated. I think you meant [unintelligible].

6 ARA ANDREA: Negotiated. Potentially that
7 could start next spring.

8 CRAIG FOSS: I got you.

9 ARA ANDREA: But substantive changes will
10 not be presented to the 2020 legislature. They will
11 have to be -- if there are substantive changes, by law
12 they must go through negotiated rulemaking. And that
13 would potentially start, the very earliest, next
14 spring.

15 MR. HESS: Yeah. The point of the slide was
16 just to point out that in the current proposed
17 rulemaking status that we're in is outside the typical
18 negotiated or normal rulemaking timeline. I um, when
19 the request for the public hearing was received, we
20 had a very short period of time to try and put that
21 public hearing together, get all the documentation put
22 together so that we could have this meeting today, and
23 still meet the timeline that was necessary, that OAR
24 has to support for these proposed rules to make it
25 into the legislative session in 2020. So we'll just

1 reiterate that public comments, we'll take oral
2 comments today but written comments, people can still
3 make written comments up until tomorrow, August 16th.

4 KIRK DAVID: So am I misinterpreting in that
5 last slide where it says, the end of September is the
6 end of public comments?

7 MR. HESS: The end of September would be the
8 normal rulemaking timeline. We end here October 16th
9 for the proposed rules to become pending rules.

10 KIRK DAVID: Okay.

11 MR. HESS: But we're actually at August
12 15th, not the end of September the way it would
13 typically. And of course, we kind of started the
14 process in June. And usually, if it were negotiated
15 rulemaking, that would start in the spring, in April.
16 So it's been quite a challenge. This reiterates what
17 Craig said in his opening statement and some of what I
18 just said. This is an opportunity to provide
19 testimony. I don't think we'll need a time limit,
20 based upon the number of people that we have, both on
21 the phone and here in the room. Again, written
22 comments are also accepted. This is an opportunity to
23 comment on the current proposed rule as published June
24 19. It is not a forum to negotiate the proposed rule
25 language. So I think what we will do is take oral

1 testimony from anyone who's on the -- calling in
2 first. Cori, do we have anyone that's providing oral
3 testimony?

4 CORI: No, nobody's providing oral
5 testimony.

6 MR. HESS: Okay. Then we will start with
7 folks here in the room. I'll just use the sign-in
8 sheet and ask you to come up and [unintelligible].

9 SANDY SCHLEPP: Can we also ask questions as
10 part of our testimony?

11 MR. HESS: If you have questions we should
12 probably address those now before we start the
13 testimony.

14 SANDY SCHLEPP: Okay. My question is, is
15 [unintelligible] Shade Rule. I would like to know the
16 results is the shade rule doing temperature wise
17 because this is all TMDL issues, and I understand
18 temperature is part of water quality. So temperature
19 is one of the things that they're saying, okay, you
20 guys, you got to meet the federal [unintelligible].
21 Either way it meets federal, or we'll come in
22 [unintelligible] governing what we are saying we want
23 to control Idaho, Idaho. And we're going to do the
24 Clean Water Act and stuff in our own management so
25 we're not [unintelligible]. So I would like to know,

1 what is temperature driving? Did they go down from
2 the time that we imposed this rule? Because last time
3 I asked this at one of your land meetings, I got told
4 there wasn't money for the grant to stick a
5 thermometer in the water. So I'm wondering, did
6 anybody stick the thermometer in the water to get
7 actual readings on this?

8 MR. HESS: So monitoring results that were
9 done when the rule was adopted, basically the
10 objective of that was to ensure that there was no more
11 than a 10 percent, on average throughout the State, no
12 more than a 10 percent reduction in the shade over
13 fish-bearing streams.

14 SANDY SCHLEPP: So actually you did not do
15 temperature. You just monitored the cover.

16 MR. HESS: Well, what DEQ did in the study
17 was, they measured the pre- and postharvest shade over
18 specific sites that have been harvested down to the
19 rule minimums. The 10 percent shade removal is a
20 metric that is well known within the biological
21 community to contribute no more than, on average, a
22 one-degree centigrade increase in stream temperature.
23 So you can imagine with, I believe, about 45,000 miles
24 of Class I stream in the State of Idaho, that it would
25 be extremely difficult to go out and monitor all those

1 streams for temperature. And it's also extremely
2 difficult on a given site if we had tried to do
3 temperature monitoring on one of the shade
4 effectiveness sites because there are so many things
5 that can affect the temperature other than just the
6 shade.

7 SANDY SCHLEPP: I guess that's my point.
8 That was my question. So actually in the study we're
9 not really addressing the TMDL of temperature. We're
10 just addressing shade?

11 MR. HESS: In the study we're addressing
12 shade. That's correct.

13 SANDY SCHLEPP: In the rule is we're just
14 addressing shade. We're not addressing the TMDL.

15 MR. HESS: That's correct.

16 SANDY SCHLEPP: Addressing [Shade. Okay.

17 STEVE FUNK: I got a question. Your Shade
18 Rule is the shade provided only by conifers? Or does
19 shade constitute alder, aspen, willow? And is that
20 part of the equation? It does provide shade. Are you
21 only addressing conifer stand?

22 MR. HESS: In the measurements that were
23 made for the Shade Effectiveness Study, everything
24 that's contributing to shade is taken into account.

25 STEVE FUNK: Okay.

1 MR. HESS: And that's why we tried to get as
2 large a sample size as we could, so we could see what
3 that variation was across the landscape. But in the
4 rule, we can't do site-specific estimations of shade
5 based upon the boulders that are there or the tall
6 grass in the summer or the hardwoods that are there.
7 And what we're talking about is people harvesting
8 conifer species for commercial purposes. And so
9 that's what the rule, in terms of the relative
10 stocking requirements, focus on, is just with that
11 conifer density is by forest type.

12 STEVE FUNK: Thank you.

13 MR. HESS: Do we have any other questions?

14 JANET FUNK: I do have a question. It
15 indicted that the study would be available to FPAC
16 next spring in April. And that FPAC would look at
17 those results. At that time, will the public have a
18 chance to have seen those results and would they
19 request a hearing if they so desire? Or is this all
20 going to be handled just internally and FPAC gets the
21 results and then say we're going on? Is there another
22 opportunity for public input at that time?

23 MR. HESS: The Shade Effectiveness Study is
24 being conducted by DEQ and the analysis is being done
25 by University of Idaho. And so when they're complete

1 with that analysis, DEQ will take that and publish a
2 report associated with that. And how DEQ handles that
3 report, that is outside of our control here within IDL.
4 But the results of that analyses will definitely be
5 presented in FPAC meetings.

6 FEMALE VOICE: And how does the public, who
7 may not get that report, know whether or not they need
8 to go to FPAC to have any input?

9 MR. HESS: I would anticipate that, and I
10 can only hazard a guess, but I assume that that report
11 would be made available. Hawk, would you like to
12 address that or?

13 HOP: I think it's almost certain that by
14 the end of November we'll have that report publicly
15 and/or on the website for anyone who's interested.

16 MR. HESS: Thank you, Hawk.

17 ARA ANDREA: Well, and we're always
18 interested in how can we further put our invitation
19 out to publicly announce the FPAC meeting that follows
20 that. That will be on the agenda, so.

21 [unintelligible].

22 ARA ANDREA: I'm thinking that's a good
23 idea.

24 JIM RILEY: But indeed, the FPAC meetings
25 are public meetings, right?

1 ARA ANDREA: Absolutely.

2 JIM RILEY: Anybody can attend the meeting.

3 ARA ANDREA: Absolutely.

4 MR. FOSS: I'll mention that there is a
5 private forest landowner representative on FPAC, that
6 is intended to be communicating both ways. Bringing
7 claims to the committee and bringing committee
8 business back. But no one's trying to hide the ball.

9 JIM RILEY: Then I think also that any
10 citizen at any point in time can participate in the
11 rulemaking if you feel like something needs to happen,
12 you can ask the Agency to consider undertake
13 rulemakeing. That's not limited to FPAC or anything
14 else.

15 (Crosstalk)

16 MR. HESS: That's correct.

17 ARA ANDREA: Or directly approach FPAC
18 members that represent your constituency to move
19 forward with rulemaking.

20 JANET FUNK: I think what I'm headed for is
21 that most private forest landowners do have so much
22 work on the ground that to monitor every website for
23 potential whatevers is arduous or onerous, and that
24 there's got to be a better way to get information
25 [unintelligible].

1 FEMALE VOICE: Okay. Point taken, and we
2 will put extra efforts into more widely and more
3 detailed publicizing of the FPAC meeting that follows
4 the publicly distributed version of the report.

5 MR. HESS: And I typically send out
6 information to everyone that I have on a mailing list
7 prior to those FPAC meetings. I send out the agenda,
8 I send out the meeting notice in addition to what our
9 Boise office does in terms of public outreach through
10 the news media and things like that. So, I mean, I
11 will add the names of the people that signed up today
12 and their email addresses to that distribution list,
13 if they're not already on there. And I believe most
14 of you are on there. I don't know if Russ Hendricks
15 is on there or not. But I try to add to that list
16 whenever I get a new constituent that is interested in
17 this process, I add their name to that email
18 distribution list and push out as much information as
19 I can. Okay. Well, let's start the testimony, then.
20 Marjorie, I would ask you to come up first. Marjorie
21 French?

22 MS. FRENCH: Okay. That's what happens
23 when you come first, huh? (Inaudible and laughter).
24 I appreciate your comment on, that if we didn't have
25 rules and regulations we would have pandemonium. And

1 highways are one, but there's many others too. And
2 that isn't my observation of this. My observation of
3 it, is just like has already been witnessed, that we
4 don't have evidence that this Shade Rule has affected
5 our temperature, which as timber owners decides the
6 clean water. We are led to the fact that we've got to
7 take care of the temperature of the water, but it's
8 still an unknown as far as the testimony and
9 information that's been presented so far. And there's
10 been a study in Oregon. And it kind of lends some
11 questionability as to what happens to the temperature
12 of a stream. And I know that the -- how fast the
13 water's going depends on the topography, also affects
14 that temperature. But to me, this is kind of a taking
15 of private property, that you can't manage your timber
16 the way you would like to, to abide by these stream
17 rule that are there. And so if we can't have
18 something changed, and that the amount of acreage that
19 is lost to these -- if we can't get that reduced so
20 that you can manage your own timber better, somebody
21 needs to compensate that timber owner for the timber,
22 the value of his product that he can't harvest and
23 manage. And timber is a renewable resource. So you
24 can manage it and, if necessary, replant. And nobody
25 wants to see dirt going down the stream. And so I

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 think we have to respect the landowner, that he wants
2 to protect his ground for losing the soil, but he also
3 wants to be able to manage that product, which is his
4 timber harvesting ability.

5 MR. HESS: Thank you, Marjorie. Janet Funk,
6 are you going to provide oral testimony?

7 MS. FUNK: I will wait to see how much of
8 the rest of it

9 MR. HESS: Okay.

10 MS. FUNK: Gets said.

11 MR. HESS: Madeline David?

12 MS. DAVID: Since the Shade Rule was
13 implemented in 2014 it's been proved, it has proven
14 for owners of smaller parcels of forest land difficult
15 and costly to implement. It's difficult in that it
16 requires specialized knowledge, and costly in that we
17 must, for the most part, hire that knowledge. Simply
18 put, I personally cannot go out and set up a
19 streamside harvest without hiring a consultant. In a
20 market that's marginally profitable at best, this
21 extra cost is often making a difference in managing or
22 not managing our riparian areas. It means doing what
23 is right for the land is sometimes the exact price to
24 what we can afford. It also means that sometimes
25 we're sacrificing the act of forest management --

1 excuse me, art of forest management on the alter of
2 basal area. Family forest owners supported the
3 implementation of the Shade Rule in 2014 were promised
4 that research as to the effectiveness of the Shade
5 Rule would be timely accomplished and shared. We've
6 attended most, if not all, the FPAC meetings but to
7 date, five years later, we have seen no research
8 results. We have no idea if the sacrifices we've made
9 are making a difference. Harder still to swallow is
10 that even should the research show that the Rule
11 works, we will never know unless further study is
12 implemented if more flexible rules, or taking stream
13 widths, aspect, direction of flow, brush anddeciduous
14 cover and other factors into consideration might work
15 just as well. None of us are interested in denuding
16 our streams, nor do we think there should be no
17 riparian management rules. We are, however, finding
18 this Rule a disincentive to good forest management.
19 When forest management becomes too onerous the result
20 will be growing houses instead of growing trees. And
21 then there will be the fish be?

22 MR. HESS: Thank you, Madeline. Kirk David?

23 MR. DAVID: I'm kind of going on a little
24 bit of a timeline here. 2012, that was when the
25 meetings started and the work on this rule started.

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 In 2013 and 2014, the reason most private family
2 forest landowners agreed to go along with the
3 negotiated rule was that a study of the effectiveness
4 of the model and the adaptive rule would be reported
5 back in two years. 2019, jumpin to this spring, the
6 same as at all the FPAC meetings since 2016, I again
7 asked, when will the study be finished? The answer
8 from IDL was, I don't know. After the announcement of
9 the temporary rule process, the comment period, I was
10 told by the FPAC vice-chair, it'll be done this fall.
11 So what I'm saying here is what a lot of us will say.
12 Forest owners are not here today to delete the Shade
13 Rule. We are here to comment on it and work toward
14 improvement of it. So for the opportunity to comment,
15 which apparently will be forwarded when and if there's
16 negotiated rulemaking, and to negotiate later, I have
17 a few brief comments. Number one, the rule compliance
18 is based on a model, not on actual conditions. This
19 may make it easier to administer but it makes it
20 unfair to almost all. Number two, one of the criteria
21 is based on a stated water temperature needed for bull
22 trout presence, which has been proven invalid because
23 there's bull trout there in places where the water is
24 not that cold. But it's been insisted that we cannot
25 change that temperature rule. That's just not true.

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 Yes, you can change it. Number three, actual
2 thermometer temperatures instream above and below,
3 before and after harvest is easily measured, but yet
4 we're not doing that. Number four, how about the
5 width of the stream? The model uses a number.
6 Most smaller landowner streams are a lot less than 10
7 feet wide. If the number 10 can be plugged into the
8 model, then the number five or the number two can be
9 plugged into the model, according with the actual
10 conditions. Number five is kind of towards the
11 percent of the impact that's happening out there on
12 the land. One of my suggestions would be somewhat on
13 the order of a tiered rule, 10 feet, five feet, two
14 feet, whatever. But that's a concept that's being
15 proposed with this next one in line, the Smoke Rule.
16 So maybe there's opportunity to incorporate something
17 like that in our shade rule. The percent of watershed
18 contributed by that particular parcel that's being
19 harvested could be considered, because as we've stated
20 there are all sorts of other instream added sources
21 for temperature. Number six, in Class II streams, how
22 about let's remove the Class I for domestic use only
23 designation? If it's a Class II stream, few if any
24 fish -- no fish, and it's a Class I because of
25 domestic use, there are no temperature rules for

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 domestic use. Number seven, if fish and their habitat
2 are the reason for the Shade Rule, and the Shade Rule
3 only applies to Category 6 and 7 property categories
4 conducting forest practices, the rule is another
5 disincentive of keeping the property in natural
6 resource base condition. Economic incentive to
7 convert to ag or development or any other categories
8 basically takes all the shade away. There are no
9 shade rules for any other portion of fish-bearing
10 streams. How does that help the fish? Unintended
11 consequences are the sad result of shortsighted ruling
12 by supposedly well intended government and people.
13 Thank you to you and to the Idaho legislature for this
14 opportunity to comment on a rule that needs more
15 negotiated and adaptive work done to benefit all of
16 Idaho's citizens and its fish. Thank you.

17 MR. HESS: Thank you. Tom Mosman?

18 MR. MOSMAN: Thanks for the opportunity to
19 speak today on the Shade Rule. I understand why you
20 have to make one rule to cover a lot of things. But I
21 don't have a lot of things. I've got one. And it's
22 impacted me a lot that the Shade Rule has. We're in
23 steep country, and I kind of laughed when I saw the
24 high water mark, that the usual high water mark. I
25 don't know what the usual high water mark is. In 50

1 years of kind watching it, that's changed every year.
2 But for you to take the canyons, Big Canyon and Little
3 Canyon that I'm specifically talking about, the clear
4 water drainage. That whole bottom is covered with
5 water in the spring of the year [unintelligible]. So
6 basically that whole creek bottom is you have to
7 start where the canyon goes up, where you're 75 feet.
8 So you go up 75 feet from the high water mark, there's
9 a bunch of canyon left. Specifically I'm talking
10 about one of our areas, and that's we own eleven
11 forties in Little Canyon. And Little Canyon is a
12 Class I stream. So eleven forties is that we own all
13 in one piece eight of 'em are right up the Little
14 Canyon, right up the canyon. There's three others
15 that are kind of off to the side. So we have
16 Northwest Management come in and did the timber cruise
17 on the timber that was in there, both for
18 [unintelligible] Then I had IDL, I had a couple of
19 different loggers come in, and we looked at it. And
20 what the loggers looked at it and said, look, with
21 these Shade Rules it isn't worth cutting any timber.
22 So I lost any timber that was there. Northwest Forest
23 Management said I had 1.3 million board feet of timber
24 in there. Now I have none, because of the rules. So
25 the one rule fits all isn't probably working pretty

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 good for me. Now, I understand that there has to be -
2 - but we also need to be able to quantify what this
3 rule is doing. Are we really getting more fish? I
4 mean, that's the bottom line, we need more fish.
5 Cooler temperatures, shade, whatever you want to call
6 it, we still want more fish. Like I say I appreciate
7 the opportunity to speak today, but we also, in this
8 rulemaking, we just need to be more flexible. And if
9 there's no way to be more flexible, if there's no way
10 that I can harvest any of that timber, then there does
11 need to be mitigation. There has to be a way to pay
12 private landowners for the loss -- what they're
13 losing. Is there any questions? Thank you.

14 MR. HESS: Thank you, Mr. Mossman. Paul
15 Buckland?

16 MR. BUCKLAND: I want to again thank you for
17 the opportunity. I'm both a small private landowner
18 and an industrial manager. I have implemented the
19 Class I stream parsing rules, both in the old rules
20 and the new rules. I don't even know how many times,
21 six or eight different stream lengths, I would
22 estimate. In my opinion, the existing Shade Rule, or
23 the new Shade Rule, is an improvement over the old
24 one. It's measurable and more defensible. It's as
25 easy as going out and counting trees with

1 diameters. And I personally found helpful the IDLs
2 spreadsheet that they developed to count up the
3 relevant stocking. That did make it much easier.
4 Additionally, the rulemaking process was consistently
5 applied, and in this case worked as it should. So I
6 think it would be premature to modify the Shade Rule
7 prior to the results of the forthcoming Shade
8 Effectiveness Study. So I support reauthorizing the
9 existing Shade Rule without changes. Thank you.

10 MR. HESS: Thank you, Paul. Peter Stegner.

11 MR. PETER STEGNER: Thank you for allowing
12 me to comment. Again, I'm Peter Stegner. I'm here
13 with Jim Riley with Riley Stegner and Associates. On
14 this rule we represent Bennett Lumber Products,
15 Incorporated, Hancock Forest Management, Idaho Forest
16 Group, Molpus Wooldands Group PotlatchDeltic Company
17 and Stimsson Lumber Company. These companies
18 collectively manage over 1 million acres of commercial
19 forestland in Idaho. Over the last few weeks we have
20 been surveying all these clients. And have found that
21 uniformly they have told us they have been able to
22 more efficiently and effectively manage their forest
23 lands under the current Shade Rule than the past Shade
24 Rule, similar to what Mr. Buckland said. As such, we
25 request the Agency maintain the current Shade Rule and

1 the rules pertaining to the Forest Practices Act
2 amendment. We also stand ready to work with all
3 parties to monitor and improve Idaho forest practices
4 to allow maximum flexibility for private landowners
5 while protecting the fundamental approach of the
6 Idaho's forests, soils and water. Thank you.

7 MR. HESS: Thank you, Mr. Stegner. Tom
8 Schultz?

9 MR. TOM SCHULTZ: Thanks, Gary. My name's
10 Tom Schultz with Idaho Forest Group. Appreciate the
11 opportunity to speak. Idaho Forest Group does support
12 the existing rule. We manage about 25,000 acres of
13 fee lands in Idaho, but we also purchase about 75
14 percent of our logs from private lands or industrial
15 landowners. I guess something to comment on, as it
16 relates clearly, I think, getting this study completed
17 and that information communicated is important to
18 everyone to see how effective the Shade Rule is at
19 trying to achieve its goals. I think secondly, I
20 looked at one of your slides you had. You showed the
21 positions that were added to the Department, I think
22 four positions that were added back in on the State
23 and Private Forestry side to help landowners, and
24 maybe making that more known and aware to landowners.
25 I think there was a comment about the cost being borne

1 by private landowners and how that could be offset.
2 So I think making sure that those private forestry
3 assistants are available to assist landowners in
4 understanding the rule and assisting them in
5 developing plans. The other piece I just want to
6 point out, that there's been a lot of discussion about
7 the options. You have two options in the rule. What
8 was not discussed as much is there's also a variance
9 process that allows for a variance from the Shade Rule
10 altogether with the site-specific plans. So that's
11 where I think there is another avenue to landowners by
12 which they can put together a plan and find an
13 alternate way to address concerns over temperature and
14 shade. A site-specific plan, obviously there will be
15 costs to do that. But I did want to point out that
16 there is a variance process that's afforded in the
17 rule. So in summary, we support the existing rule.
18 We think it's important now to get the study
19 completed, to continue to take feedback, and
20 communicate effectively with various landowners across
21 the State, making them aware of the results of the
22 study but also the availability of resources that the
23 State has that can assist landowners in implementing
24 the existing rule. Thank you.

25 MR. HESS: Thank you, Mr. Schultz. Sandy

1 Schlepp?

2 MS. SANDY SCHLEP: I guess I'm going to hit
3 this in a little different angle because I am a
4 private landowner, too. And as a private person
5 landowner, I also believe with what some of these
6 other people said about if you condemn our land for
7 the good of all, the good of all should help pay what
8 we're losing to provide for ourselves. So that's one
9 thing to take, is should be compensated for it. Now
10 on the next chapter, I guess I'm going to give some
11 oral representation of what I've seen as a private
12 landowner, contractor, plus logger that sells a logs
13 to Idaho Forest Group. I've actually had some sales I
14 could not do adequate forest health because of this
15 Shade Rule. I can tell you one was a Class I stream.
16 There is mistletoe that was going to spread throughout
17 its forest. There was beetles. I wanted to take two
18 trees within that 75-foot zone. We were doing select
19 cut of the whole 300 acres. I could not take those
20 two trees. They said, no way. They're within that
21 75-foot, there's not enough shade. I had to leave
22 those two trees. I went back, there's five dead trees
23 there now. We should have taken one, and we probably
24 could have solved some of that issue. So I see some
25 of this as being a threat to the riparian zone by

1 leaving diseased trees. I think there should be an
2 alternative, that you can take out the diseased, over-
3 mature, stagnating our riparian zone, and lose the
4 value all at the same time. The other one was a lake,
5 Class I, it's a lake. Guess what? There's so many
6 cottonwoods there, you're lucky to get a little tree
7 to grow. But those don't count. So once again, I had
8 to leave the one white fir that was mistletoe, gonna
9 to spread upstream when the wind blew it up to all the
10 neighboring timber that was actually nice. And I do
11 more select cut than clear cut. And so I think this
12 Shade Rule, I think they should put in an alternative
13 for type of cut. Because when you have 300 acres that
14 is not clear cut, it's select cut, you still got
15 temperature control from that surrounding bank. The
16 temperature isn't just, my theory, I don't have a
17 science degree, is not just settled by that 75-foot.
18 You've got springs, you've got different factors. The
19 soil heating up, how fast the runoff comes. All of
20 those factors going into this Class I stream that you
21 guys call. So I think that should be something that
22 should be brought up to some of the Shade Rule,
23 because I think consideration for what type of cut.
24 When you're going to complete clear cut and you're
25 wiping out everything except that 75 feet, we're

Ubiquis Reporting

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 saying how could you have so many blowdowns? So
2 you're going to lose some of that 75 feet right there.
3 But you've also got that heat from that bank. You
4 know. It's heating up those soils. That's changing
5 temperature because it's not keeping the sun range.
6 So I think there's other factors, other than just
7 saying oh yeah, don't cut a tree on the 75 feet.
8 Forest health needs to be considered in adequate ways.
9 And the loss of that private owner is a big one. And
10 the cost of doing it as a contractor, if I have to go
11 in and just yeah, it's great. IDL comes out, and
12 they've been really good. Move very fast at coming
13 out. But it's still time consuming on okay, no.
14 We've got to do this no you can't cut this one. There
15 needs to be that. That and a little bit more
16 consistency of it's diseased, you better be able to
17 take it out to protect the remainder. So that's my
18 point on it.

19 MR. HESS: Thank you, Ms. Schlepp. Steve
20 Funk.

21 MALE VOICE: Thanks for the opportunity to
22 speak. I only have one comment. I know that the
23 rules pertaining to a stream are very important. And
24 I don't think there's anybody in this room that would
25 want to degrade our streams. The point being, I would

1 like to not only have the rules pertain to the forest
2 landowners but to ag and developers who degrade the
3 streams, I think far more than what woodland owners
4 do. I think woodland owners take care of the stream a
5 lot better. And if you're going to apply rules to us,
6 I think the onus should not just apply to us but the
7 rules should also apply to ag and developers. Thanks.

8 MR. HESS: Thank you, Mr. Funk. Is there
9 anybody else that did not sign up for testimony that
10 would like to? Janet?

11 MS. FUNK: You can put a check on my name.

12 MR. HESS: Okay.

13 MS. FUNK: Thank you for the opportunity to
14 speak regarding this. And while I wanted to make sure
15 what everyone else had to say so I didn't needlessly
16 repeat all of this, there's just a couple of issues
17 that remain. First of all, I think the shade
18 effectiveness process is not accessing all the
19 information necessary to make a premise regarding fish
20 health. And that would have to do with not having
21 temperature rules. That also ties into the fact that
22 stream size, which makes a difference, and I
23 understand that on temperature. The stream size is
24 inadequately represented in the model. So smaller
25 streams where you can [unintelligible] better, and

1 most of the smaller streams we have on private land
2 where you could better take the temperature and
3 readily see if there is an impact on fish health. We
4 feel that small landowners are actually more impacted
5 than larger holdings percentagewise, because we have a
6 smaller holding we also have to maximize the product
7 and the income that we can get off that smaller
8 holding. And so we are impacted percentagewise to a
9 greater degree than people or industries that have
10 larger holdings. So while I agreed with much of
11 what's been said today, I think these points just need
12 to be kind of highlighted, if you would please. And
13 thank you for the opportunity. I am not recommending
14 that everything be thrown out. We do need to have a
15 process, but we need to have a process where private
16 forest landowners are not going to be taking what
17 could be productive forest land and diverting it into
18 grazing land or whatever so that they are not -- or
19 development, so they're not going to be subject to the
20 rule. Thank you.

21 MR. HESS: Thank you, Mrs. Funk. Is there
22 anybody else that would like to provide public
23 testimony? Okay. That closes the public testimony
24 for today, or this morning.

25 MR. FOSS: Thanks that closes testimony, as

1 Gary said. Thanks for participating in the rulemaking
2 process.

3 (Inaudible conversations)

4 [END OF HEARING]