

Dispute Resolution Process

PROPOSAL – for review by the Council on Forestry

The Council on Forestry (Council) sent a letter to the Joint Committee on Finance (JFC) seeking funding enabling the Council to pursue work on identified priority issues and also recommended the establishment of a dispute resolution process (DRP). The legislature did not take action on this request. The Division of Forestry (Division), along with several Council members, feels it is a priority to revise the current DRP the Division manages and work to develop a process that meets the needs of all stakeholders.

The Division's legal counsel reviewed the Council's proposed process and found several areas of concern that would affect the Council's ability to implement the DRP without a law change. If, in this process, the Council oversees final decision-making authority, it may change the Council's status (which right now is advisory only). Other legal issues include: the DRP committee would not be protected from private civil suit for their decisions/actions, etc., unless specifically covered by statute, and they would not be able to compel testimony, require specific discovery, or have other substantive process issues addressed. The Division is still very supportive of the Council pursuing a statutory change that will allow for the Council's ownership and leadership of the DRP. In the meantime, the Division wants to work with the Council to improve the current DRP, recognizing the need to more closely manage the process in this interim period.

Below are two alternative proposals for a dispute resolution process based on feedback from Council members.

Proposed Dispute Resolution Process (DRP)

PURPOSE OF DRP: for use when disagreements relating to a DNR administered program cannot be readily resolved between any of these sectors: DNR foresters, private sector foresters (cooperators and others), landowners and loggers.

ADMINISTRATION: The Division of Forestry would manage the dispute resolution process (process) and, as funds allow, pay for the expenses of the experts.

PROCESS #1:

1. The Division, with review by the Council, would form a committee of representatives from several different organizations (e.g., DNR, WWOA, WCF, GLTPA, SAF) to provide guidance and develop operating policies and the criteria for selecting "forestry experts". The Division will solicit at least three names from each of the representative organizations to serve on the committee and the Division will make specific recommendations to the Council for final approval. (This committee's sole purpose is to develop the guidance and operating procedures and is different than the panel in step 5.)

2. The Division would solicit participation from a set of “forestry experts” to serve in a capacity as arbitrators. These experts would be used to quickly respond to requests from one or both of the disputants involved in a forestry conflict regarding a DNR-administered program. The criteria for serving as an expert would be developed by the committee in step 1 and approved by the Council. Forestry experts would be solicited in three categories: public, private, other (academia, non-profit, retired, etc).
3. The Division would offer names of 3 experts to the parties in dispute. Each party could strike one name and the remaining name would be the expert assigned to the dispute. (If the parties selected the same name, the Division would select one of the two remaining experts.) The expert would make every attempt to arbitrate a mutually agreed upon solution to the dispute.
4. If the dispute was not resolved via teleconference, the expert would conduct a site visit within 10 working days.
5. If the expert could not negotiate a solution, they would provide a written report to the Division, who would present the report with any additional follow-up information to the DRP Panel for a final resolution within 15 business days. The DRP Panel would be different for each dispute and chosen by the parties involved in the dispute. The parties would be provided a list of three names for each of the five organizations identified in step 1. Alternating, each party could strike one name from each organization until there was one name left for each organization.
6. The goal would be for the DRP Panel to reach consensus. They would capture their recommendation (and outline the basis of disagreement when applicable) and forward to the Chief State Forester for final decision. The parties would be bound by the decision.
7. Decisions would be documented and a report shared with the Council annually outlining the use of the DRP, the length of time until decision, and how issues were resolved.

PROCESS #2:

1. The Division, with review by the Council, would form a committee of representatives from several different organizations (e.g., DNR, WWOA, WCF, GLTPA, SAF) to provide guidance and develop operating policies. The Division will solicit at least three names from each of the representative organizations to serve on the committee and the Division will make specific recommendations to the Council for final approval. (This committee’s sole purpose is to develop the guidance and operating procedures.)
2. Each party to the dispute identifies an “expert” (as they define it) to represent him/her.
3. The two experts confer and, within 5 business days, identify a third individual that both agree to mediate the dispute.
4. A meeting and, if necessary, site visit is conducted within 10 working days.
5. If the selected expert could not negotiate a solution, they would provide a written report to the Division with a recommendation. The department would make the final decision in cases in which consensus was not achieved.
6. Decisions would be documented and a report shared with the Council annually outlining the use of the DRP, the length of time until decision, and how issues were resolved.