

DRAFT DISPUTE RESOLUTION PROCESS

Response to Comments

December 2015

Comments received:

Public: 5

DNR Staff: 4

Comments and Responses:

1. Commenters offered edits to make the language in the document more clear and consistent.

Response:

- a. The majority of suggested edits that did not change the intent or direction of the DRP were incorporated.
2. Several commenters felt the title "Forestry Specialists" was confusing because staff in the Division of Forestry who have statewide or program-wide responsibilities are referred to as Specialists such as Private Forestry Specialist.

Response:

- b. The title Forestry Specialist was changed to Forestry Mediator.
3. The small private landowner voluntarily agreed to participate in MFL based on DNR procedures in place at the time of their enrollment. These procedures state that DNR's role is to review and approve all proposed cutting practices prior to the actual harvest and ensure these practices met sustainable forestry standards.

Response:

- a. The DRP does not change the DNR's role in reviewing and approving proposed cutting notices.
- b. The 2015-2017 state budget changed the MFL/FCL cutting notice approval process. Now an owner who intends to cut on MFL or FCL lands is no longer required to obtain DNR approval if the DNR cutting notice is submitted by an accredited forester from any one of the following identified organizations: Wisconsin Consulting Foresters (WCF), Society of American Foresters (SAF), Association of Consulting Foresters (ACF), or Wisconsin Cooperating Foresters (CF).
- c. A landowner may request DNR review and approval of a cutting notice submitted by a member of WCF, SAF, ACF or CF. To indicate their request for DNR review and approval a landowner must check the box located above the landowner's signature at the bottom of the first page of the cutting notice.
4. The new DRP clearly removes the DNR from this function solely to satisfy critics with vested interests in purchasing this timber and give authority to selected non DNR individuals (who have no legal responsibility to the landowner) to resolve technical forestry disputes involving DNR forestry standards.

Response:

- a. The DRP does not change the DNR's responsibility to ensure that sound forestry is being practiced within the MFL/FCL guidelines and the landowner objectives. The DNR's role in approving cutting notices was changed in the 2015-17 state budget – see response to first bullet.
 - b. The DNR forester is involved at every step of the DRP process and it is their obligation as a DNR Forester to ensure that sound forestry is being practiced within the parameters of the MFL/FCL program and the landowner's objectives. If the DRP proceeds to the panel of forestry experts, the panel is providing recommendations or determination for the State Forester's consideration when making his final decision.
5. This is a unilateral change in DNR policy that provides no benefit to the enrolled landowners and actually raises their financial risks to continue in the program. Instead of the DNR acting as a disinterested third party and technical lead for sustainable forestry, the landowner must now hire a consultant to represent his/her interests at considerable cost.

Response:

- a. This is not an accurate interpretation of the DRP. The DRP does not change any of the rights, risks or responsibilities of the landowner.
 - b. The DRP is a voluntary process and requires the landowner to agree to be involved in the DRP. In other words a consultant cannot enter in to the DRP without the landowner's consent. In those cases where the consultant hired by the landowner disagrees with the DNR's decision, the landowner may choose to not agree to enter into the DRP process and direct their consultant to accept the Department's decision regarding the issue involved and make (or direct contractor (i.e. logger, consultant)) changes to the management plan, plan amendment or cutting notice as determined by DNR to ensure sound forestry is being planned/implemented.
 - c. The DRP offers a benefit to the landowners, consultants and loggers by providing a way to resolve disputes in a manner that is timely, unbiased and most likely cheaper than requesting a contested case hearing under ch 227.42, Wis. Stats.
 - d. The existing Cooperating Forester Resolution Process (CFRP) is limited to Cooperating Foresters and has a much larger scope than the DRP. The CFRP can be used on lands not enrolled in MFL/FCL, which is the limit of the DRP, and evaluates more than just whether or not a Cooperating Forester practices sound forestry using DNR guidelines, which is the focus of the DRP. When entering the Cooperating Forester Program, foresters also agree to such things as attending yearly professional training, completing annual reporting and notifying clients of possible conflicts of interest. The CFRP is only available to Cooperating Foresters, not landowners, loggers or consulting foresters who are not in the Cooperating Forester Program.
6. The DNR will only review the harvest area after cutting is complete and, if it fails to follow the landowner's management plan based on a consultant's technical advice, the landowner can be mandatorily removed from the MFL/FCL program and subject to repayment of back taxes. The landowner's only recourse at this point is to pursue legal action at his/her own cost. In addition, since the timber has already been removed from the property it will make a legal case difficult and expensive to document and pursue.

Response:

- a. This statement is true for those cutting notices submitted by individuals who are members of WCF, SAF, ACF or CF and where the landowner has not indicated on the form that they request DNR review and approval. This was a change that resulted from the 2015-2017 budget, not the DRP process. This would situation would exist regardless of the existence of the DRP or the CFRP.
 - b. The landowner can reduce their risk by indicating on the cutting notice form that they request DNR review and approval.
7. We find little advantage for the landowner to participate in this process. It appears this proposed process benefits those individuals and entities not interested in meeting DNR's sustainable forestry standards, and DNR administrators interested in reallocating resources and priorities away from the small private landowner and toward other State forestry programs.

Response:

- a. The DRP does not change any of the rights, risks or responsibilities of the landowner.
 - b. The DRP offers a benefit to the landowners, consultants and loggers by providing a way to resolve disputes in a manner that is timely, unbiased and most likely cheaper than requesting a contested case hearing under ch 227.42, Wis. Stats. since hiring legal council is not necessary.
 - c. The hope is that the DRP process will reduce the amount of time involved in resolving professional disagreements for DNR staff, landowners, loggers and consulting foresters. Any time savings realized by DNR staff will stay within the private forestry program and will not be shifted to other state forestry programs.
8. Seems like an excessive process (15 pages and I'm not sure I still fully understand how it will work).

Response: The DRP will be analyzed in even numbered years (see last item under DRP Administrator Responsibilities) for process improvements and lessons learned and provide recommendations to address unforeseen complications in its administration.

9. Asks both parties involved in the dispute to approach it good faith and willing to resolve. This is sounds good but is the basis of the problem. If both parties had this attitude the rest of the process wouldn't be needed, they could resolve the dispute on their own. However these disputes aren't simply matters of opinion, there is a fair amount of money and reputations at stake.

Response: This is a statement which does not ask for a change in the process or reveal that clarification of the process is needed.

10. Asks both the Specialist and Expert to leave their affiliations at the door and avoid conflict of interest or appearance of conflict of interest. This sounds good also but I'm skeptical. I'm skeptical of who would volunteer to accept the stress that comes with either of these positions if they didn't have a special interest the outcome of the dispute (which should void them from the position).

Response: This is a statement which does not ask for a change in the process or reveal that clarification of the process is needed.

11. The system must assure that good sound forestry is conducted on MFL land. Pressures of short term financial gains must not outweigh sound long term forest management.

Response: This is a statement which does not ask for a change in the process or reveal that clarification of the process is needed.

12. In summary, I think the current system of resolving disputes is a workable system. I don't see this as an improvement and it may be worse if special interests can override policy with personal opinion or financial interests.

Response: The Department clearly heard from some external stakeholders that they believe the existing Cooperating Forester Resolution Process (CFRP) is both time consuming and biased, the latter because the Department is reviewing its own decisions and selecting the majority of those who are on a panel. As a result, the Department was seeing an increasing number of disputes being taken right from the field to legislators. After discussions with the Council on Forestry, the Department decided to work with interested parts of the forestry community to design a process that would quickly resolve disputes and be viewed as credible by all parties.

13. Overall the process developed is very detailed and lays out well who is responsible for what.

Response: No response needed.

14. The name may cause confusion with the Cooperating Forester Program since both resolution processes have the same name. Could you add a prefix to the name (MFL/FCL or Forest Tax)?

Response:

- a. Changed title to Tax Law Dispute Resolution Process

15. Page 31-11 bottom of page – item 2 under “Involved Parties: ...” This is a good piece to include. The difficulty will be educating all parties on the details of the process.

Response: No response needed.

16. Time lines laid out are very limited, will be very hard to adhere to. It is important to move the process along as quickly as possible but don't set them up to fail. For example on Page 31-13 I.A., the first deadline for the DRP Administrator is 3 days. This would only work if the 3 days don't start until after all info is submitted and available. Under I. A. 3. b) (2) the deadline is 1 day – the only way for a party to really make that decision in such a short time is if they come to the process with the knowledge/selection already in hand, which goes back to educating everyone on the process.

The phrase “if practicable” shows up throughout the process – is this your way of saying deadlines can be flexible?

Response:

- a. It is recognized that the timeline is very tight, but due to the financial repercussions that can occur from a delaying a timber harvest a short timeline was desired. The phrase “if practicable” was included to allow flexibility when legitimate delays are necessary. Additionally, the practicality of the time lines will be assessed when the process is evaluated in even numbered years (see last item under DRP Administrator Responsibilities)

17. On page 31-15 item E.3., page 31-16 item IV.B.2. and page 31-18 item III.B.2. are statements regarding further action if the situation involves a Cooperating Forester. If the situation does involve a

Cooperating Forester it would be better to address and deal with it from the start instead of waiting till you have worked through the Tax Law DRP and then have to start again with the Coop Forester DRP. The Cooperating Forester should be made aware from the start. Right away under I.A.1. Initiation of the Process page 31-13. And page 31-17.

Response:

- a. The following statement was added on page 31-12 in the section for Involved Parties: DNR Foresters, Landowners, Consulting Foresters, Cooperating Foresters, and Loggers under #2: “Cooperating Foresters understand that Expert Panel may determine that the DNR should assess whether or not they were adhering to their Cooperating Forester agreement. The Department may use the information, recommendations and determinations resulting from the DRP in the assessment in lieu of or addition to the Cooperating Forester Resolution Process in the Private Forestry Handbook.

18. Appendix A and Appendix B – It is appropriate for WWOA to nominate members who are professional foresters for Forestry Specialist and Forestry Expert positions. But I object to the reference/inclusion that WWOA is a under additional qualifications.

Response:

- a. “professional forestry organization” was changed to “an organization focused on individuals involved in forestry”

19. Appendix B page 31-20 Minimum Standard – believe that the educational requirement should be the same as for the Cooperating Forester program.

Response:

- a. No change was made. It is felt that an Associate’s Degree provides sufficient knowledge, along with the required work experience, to fulfill the role of a forestry mediator.

20. Are you assuming that there will always be only 2 parties?

Response:

- a. Yes, the DNR and the person signing the cutting notice or management plan or their representative.

21. What happens when the parties involved and the Forestry Specialist are not all available at the same time within the 10 days. Can they agree on a different time line? (page 31-14)

Response:

- a. The DRP Administrator should only be offering Forestry Specialists who are available within the 10 day time period. However, if all parties agree to a different timeline that is acceptable.

22. What is included in "identifying information"? (page 31-14)

Response:

- a. Information which would identify the individuals involved in the dispute such as names, address, identifiers on maps that would allow a person to ascertain ownership, etc.

23. Why is it 5 days here and 15 days for completed timber sale (page 31-16)

Response:

- a. The timeline for completed timber sales is longer because the financial repercussions of a delayed decision are not as relevant.

24. Does the term candidate here refer to "experts" only or can "forestry specialists" be considered too?

Response:

- a. Individuals can be in both the Specialist (Mediator) and the Expert candidate pools, but an individual cannot be on the Expert Panel if they were the Specialist (Mediator) for the same dispute.

25. Understand the desire to redact information but if a public records request is made of all info wouldn't have to be released anyway?

Response:

- a. Correct, if a public records request is made, all of the information would need to be released. It was recommended by the committee who developed the DRP that this language be included in the event that case studies were made more broadly available.

26. It would be good to define what could be argued based on professional opinion. It is said that forestry is both an art and a science. While the art may be debatable, the science of forestry can in many instances be quantified. If answers can be quantified, the DRP should examine results as well as opinion.

Response: The first paragraph of the Scope of the Process section was changed to address this comment.

27. What if the question is if the sale followed the MFL plan? A practice can be sound but not correct, recommended, or advisable. Ex. NH stand has an aspen component. Plan calls for single tree selection but CCF sets up and admin's coppice. Practice does not follow plan or landowner wishes but is still technically sound. Simply judging a practice as being sound may be too low a test. (Page 1 – In paragraph after list of items that DRP is not to be used for.)

Response:

- a. Added the phrase 'is consistent with the management plan and the landowner's objectives' throughout the document.

28. Is this the right question to ask? The question should revolve around the reason for the DRP? Example: was the harvest a shelterwood or not? Did the harvest achieve plan targets, etc. (Page 31-16 title of section II; Determination by Forestry DRP Review Panel whether or not.....)

Response:

- a. Added the phrase 'is consistent with the management plan and the landowner's objectives'.

29. Are 'forester related violations' defined? These should be listed to avoid later confusion.

Response:

- a. To better define 'forestry related violations' the text was changed to: Has not been convicted in past 10 years of violations of Chapter 26, Wis. Stats. or any county or local ordinances directly addressing forestry practices.

30. While there are differences of opinion that occur over silvicultural guidelines, like residual BA or size distribution, perhaps more commonly disagreements are based on what is the “acceptable range of variation” around those silvicultural guidelines. That is why we developed the -10/+20 sq. ft. of BA in the marking evaluation procedure. This is an important consideration when evaluating cutting notices and this is not usually defined neatly by our guidelines. The DRP will need to evaluate multiple issues, not just the principles of sound forestry, and this concept of acceptable range of variation will be one. (Page 1 - first paragraph of scope)

Response:

- a. Added the following to the Scope of the process, #7 under Forestry Specialist (Mediator) Responsibilities (page 31-12) and #2 under Expert Responsibilities (page 31-12), “including whether or not prescriptions is consistent with the management plan and the landowner objectives.”

31. MFL productivity requirements are based on numeric standard (20 cu. ft./acre/year), so I am not sure this is a matter of opinion as stated here. Yes, we do have limited tools for field evaluation of this standard, so the debated may be over the stand assessment methods used to determine productivity. (Page 1 - first paragraph of scope)

Response:

- a. In the past there have been differences in opinion regarding whether or not a stand meets the productivity standards although these disputes can likely be more easily resolved due to the standards.

32. Broaden the DRP evaluation responsibilities to encompass more than just a “determination of whether sound forestry was practiced.” For example, when foresters evaluate a cutting notice (and potentially deny the notice), they are evaluating against multiple criteria at the same time. Does the prescription generally meet “sound forestry” principles? Is the prescription consistent with the landowner objectives as stated in the plan? Does the timber sale, as marked/established, successfully implement the prescription as outlined in the plan, cutting notice, and guidelines (i.e., Did you do what you said you were going to do in the plan?)? Is the marking within an acceptable range of variation? It looks like the DRP specialist and expert panel only need to judge at a course level whether or not the cutting notice met the “principles of sound forestry.” Further explanation of the specialist’s and panel’s role in evaluating against these multiple criteria will give everyone a clearer picture of what will be considered during the process. (Page 2 – last paragraph of the scope section)

Response:

- a. Added the phrase ‘is consistent with the management plan and the landowner’s objectives’ throughout the document.

33. Multiple evaluation criteria could be expanded here. (Page 31-12 #7 under role of the specialist and #2 under role of Experts).

Response:

- a. Added the phrase ‘is consistent with the management plan and the landowner’s objectives’.

34. During the dispute resolution process I understand that we have “forestry specialist” and “forestry experts” that can comprise the individuals that will work through the dispute. I also noticed that a specialist can engage in dialog with a state silviculturalist, but this must be agreed upon by both

parties. During the dispute resolution process, it seems that it is important to have a person on the panel that has specific training that focuses on silviculture. I would propose that a “trained silviculturalist” be a mandatory member during the dispute process at all stages. This could be above and beyond the current number proposed or as a mandatory member. This silviculturalist could be a Forest Service, B.I.A., Industrial, DNR, etc. representative that is considered a silviculturalist based on training that they received. One of the requirements that would be mandatory to have as a silviculturalist is specialized training (i.e. forest service training academy, graduate degree, etc.) where they could provide their expertise on the various silvicultural systems that can be utilized for that cover type, current field trials on this subject or current data on what is considered successful for that specific tree species. During most discussions that could occur there are bound to be questions on how this tree species regenerates, how long can this tree live, how often does this tree produce seed, what are some forest health concerns for this species, what is the economical rotation for this species, etc. It would seem important to consult with this professional when making a determination if what was conducted on the landscape was best for the specific cover type of tree that is growing there. It seems vital to have this expert on the dispute resolution team to discuss the science behind how we implement various harvest on the ground.

Response: The DRP was changed to reflect that in disputes involving a silvicultural issue a party may ask for a Silviculturist to be consulted if both parties agree. The Silviculturist will not be part of the Expert panel.

35. On behalf of the Wisconsin Consulting Foresters, I would like to thank you for including us in the development of this process. We are excited to see a process be put in place, though MFL is a good start we would like to see this process expand to other issues in the future. We also hope that this process is open for continuous improvement, though the development of this process was very involved, it is certain that we overlooked issues/concerns that will arise.

Response: No response needed.