

Tax Law Dispute Resolution Process (DRP)



What Is It?

- Voluntary, stepped process intended to facilitate resolving forestry related disputes (e.g. 'win-win' solutions)
- Applies to land enrolled in the MFL & FCL programs
- 2-step process to reach resolution

Why?

- Need for a fair / credible process to resolve disputes
 - » Cooperating Forester DRP* – Distrust / bias, not frequently used, 'broken', drawn out process
 - » Change in MFL Cutting Notice Approval

*Tax Law DRP does not replace the Cooperating Forester DRP

DRP Implementation Process

- DRP Administrator
 - » 3rd Party Contractor
 - » Administer Process
 - » Make assignments to resolve disputes

DRP Implementation Process

- Initial Request
 - » Received by the DRP Administrator
 - » Consultation with DNR to determine if DRP is appropriate

DRP Implementation Process

- Level I Dispute
- Level II Disputes

DRP Implementation Process

- **Level I Disputes**
 - » involves a **Forestry Mediator**
individual; neutral, third party expertise
 - » Facilitate communication between involved parties to reach agreement

DRP Implementation Process

- **Level II Disputes**

- » **Panel Forestry Experts**

- neutral, third party expertise

- » Determine / recommend changes needed to practice sound forestry, or if sound forestry was practiced

- » State Forester decision

DRP Implementation Process

- DRP Administrator
 - » Request For Proposals (RFP) posted
 - » Proposals due May 5, 2016

- June 1, 2016 (tentative)

DRP Implementation Process

Cooperating Forester

- **Level II Disputes**
 - » Expert panel may determine / recommend DNR to assess adherence to the Cooperating Forester agreement.
 - » recommendations / determinations may be used in lieu of or in addition to the Cooperating Forester DRP.

Cooperating Forester DRP

- Currently under review; changes to the process likely
- Cooperating Forester Specialist Team engaged
- Public comment

Council on Forestry

- The Governor's Council on Forestry (COF) initially discussed concerns from the forestry community regarding the current DRP.
- Feedback indicated people weren't using the formal process, but instead would seek out certain leaders for help. This resulted in inconsistent outcomes and is not in line with the goals of good governance.
- COF decided a new process was necessary.

Goals for the new DRP

- be independent, objective and not promote bias towards one party or the other
- be able to be completed on a timely basis
- facilitate ownership and trust in the process by those involved

Committee on the Tax Law DRP

- **Committee members:**

Hans Schmitt (Kretz Lumber)

David Dhaseleer (Steigerwaldt)

Earl Gustafson (Paper Council)

Charles Mentzel (SAF)

David Congos (WWOA)

Don Peterson (WCF)

Jessie Augustyn (GLTPA)

Allison Hellman (DNR)

Committee on the Tax Law DRP

- Committee had its first of a handful of in-person and teleconference meetings in September of 2015 and concluded work in early November 2015.
- Members were encouraged to keep in regular contact with the COF member who nominated them. The full Council was also updated once during the process and offered input.
- Committee members were highly engaged throughout the process.

Forestry Mediators and Experts

- Process is only as good as the people participating, so there was lengthy discussion over who would qualify to be a mediator or expert.
- COF will be taking nominations for mediators and experts. The chair, vice chair, and State Forester must unanimously agree for someone to be appointed.

Minimum Mediator Qualifications

- First step in DRP
- Must have 7 years of professional forestry experience and have worked with forest tax law and silvicultural handbooks
- Three references with regard to forestry experience and ability to resolve disputes
- No forestry related convictions in past 10 years

Minimum Expert Qualifications

- Will be nominated by professional forestry organizations like WCF and SAF
- Associate's, bachelor's or higher degree in forestry from a school that is SAF accredited
- 10 years professional forestry experience with the tax law and application of the silvicultural handbook
- No forestry related convictions in past 10 years

Timeline

- Goal is to get issues resolved quickly, especially more quickly than going to a contested case hearing or through court
- From initiation through convening expert panel—39 days for management plans and amendments, cutting notices and active timber sales
- May need additional days for State Forester Decision

Timeline Continued

- Timeline is longer for issues related to completed timber sales
- From initiation through convening of expert panel—72 days
- May need additional days for State Forester decision
- In all cases the State Forester has been directed to make a decision ASAP

Public Input

- The draft DRP was posted for public comment in December of 2015. Comments were incorporated and the final DRP was issued in January, 2016
- The committee and COF agreed that public input will be important going forward to determine whether the new DRP is successful or whether changes should be made

FAQs

- Who can participate in the process?
DNR and private sector foresters (including cooperators), loggers, or landowners
- Is the process mandatory?
No. Only those who want to participate will use the process.
- Is this for all forestry?
No. Only those in FCL and MFL programs.

FAQs Continued

- What sort of disputes are anticipated to go through the DRP?

Examples include, but are not limited to order of removal, residual basal area, residual size distribution, productivity requirements, oak wilt restrictions, adequacy of regeneration present or regeneration techniques integrated into the practice, how BMP guidelines are applied, and/or restrictions on the type of equipment used.

FAQs Cont.

- What is an example of an issue that wouldn't be appropriate for the DRP?

Issues related, but not limited to: MFL eligibility (except for productive requirements), business practices of cooperators, and/or timber theft.

Questions?