

**BEFORE THE OREGON BOARD OF FORESTRY**

*14 April 2014, Canyonville, Oregon*

Re: Riparian Protection Rule Analysis, Agenda Item 5

Statement of Mary Scurlock on behalf of conservation and fishing interests

I am Mary Scurlock, an independent freshwater policy consultant representing the interests of 17 conservation and fishing organizations. My brief remarks pertain to the rulemaking to strengthen stream protection for small and medium fish-bearing streams to meet the Protecting Coldwater Criterion of Oregon's stream temperature standard. We strongly urge the Board to avoid any further delays in this rule process. If Board members require further education about the legal and scientific issues involved, we can support the concept of a special Board workshop in addition to regular Board meetings to accomplish this. However, we cannot support further delays in the rule analysis and promulgation process. The consequences of continued failure to act are serious and unacceptable.

**Current status.** It has been over fourteen years since the ODF and DEQ "Stream Temperature Sufficiency Analysis" found that the stream protection rules don't prevent harvest-related stream warming. It has been five years since the pre-publication results of the "RipStream" study were first presented to this Board, which results have been presented numerous times since. This particular process was originally scheduled to send a rule package out for public comment well over a year ago, in January 2013. As far as the public and the fish are concerned, this Board and the regulated community have been on notice that change is needed for a very long time.

Over the last few months, staff has shared the preliminary results of the rule analysis with stakeholders in preparation for formal presentation of a new statistical model developed to evaluate rule prescription alternatives. This model and its implications for the types of riparian prescriptions needed to prevent stream warming were originally scheduled for presentation at today's meeting. Instead, you are receiving a Staff Report that cites "landowner concerns" and "emerging policy issues" and requests your "direction on an approach for next steps in the process," suggesting "a workshop session." Conspicuously missing from the Staff report is any clear recommendation about the rule's process timeline, with all remaining process steps designated "TBA."

**Board should commit to a clear timeline and stick to it this time.** Although no formal decision has been made by the Board to pause this rule process – a path we oppose – we are alarmed that the Board has not adopted a timeline for rule promulgation. We urge the Board to set the date for any needed special meetings and to commit to a new timeline today. The content of this meeting should be determined with direction and involvement from all members of the Board representing a broad range of stakeholders.

**Content and objectives of a Board workshop.** The staff report suggests that a workshop session should be held "to discuss" stakeholder concerns raised in relation to the rule and to provide "clarification" about several issues, most of which relate to subjects that were addressed in earlier stages of the rule process. We recognize that some of the newer Board members in particular may benefit from a review of Board authority and discretion with regard to forest practice rules, factors appropriately considered by the Board, the Board's mandate to meet water quality standards and the legal and ecological basis for the PCW, and other issues. But we strongly suggest that such a workshop should not give the impression that it will revisit decisions that the Board has already made in this process, nor should it provide a forum for those who have a bone to pick with the Environmental Quality Commission's duly promulgated water quality standards. In short, the point of the workshop should not be simply to give those opposed to any rule change on economic or ideological grounds another forum to present their views.

It is our hope that insertion of a workshop into this process will save time in the long run by fully preparing the Board to make decisions about rule alternatives without further delay and by putting some concerns to rest. In addition to the legal and policy issues already mentioned, such a workshop would appropriately include 1) presentation of the ODF's Bayesian model and its policy implications, how its findings compare to other available policy analysis, and how it has fared with outside reviewers, etc; 2) A clear proposal from ODF and DEQ about how to determine the geographic extent of the Protecting Coldwater Criterion, including eastern Oregon. 3) Presentations about the special impacts of a rule change to non-industrial landowners be coupled with proposals for how to address these impacts in ways that still meet water quality goals; 4) Input from federal agencies that puts this rulemaking in the context of Coastal Zone nonpoint control requirements and the Endangered Species Act's recovery goals for Oregon Coastal Coho and other listed salmonids reliant on nonfederal forestlands, including in eastern Oregon.

**Rule analysis to date is sound and in keeping with best available science; policy implications are in keeping with policies designed to meet the same objectives elsewhere.** As I stated in March, there is no new legal or scientific reason that justifies re-visiting the Board's initial 2012 determination that a rule change is needed to prevent harvest-related stream warming on small and medium fish streams. Available information indicates that the Department's predictive model is consistent with other work in this area and is a sound decision tool upon which the Board can confidently rely in crafting new riparian prescriptions.

**Public presentation of rule alternatives is needed so economic impacts can be evaluated and appropriately addressed.** Landowner objections to the potential economic impacts of a rule change are keeping this rule from moving forward, although these objections are also being couched in scientific and legal terms. As we indicated in March, these arguments do not justify stalling the rule process. However, if this rule process moves to the discussion of specific rule alternatives, the Board can take on the question of which alternative is the "least burdensome" way to meet our mandated objectives, as required by ORS 527.714(d). We could also begin to forge alliances around related policy initiatives, such as those designed to address the special needs of landowners who may be disproportionately affected by the rule change. By delaying release of the specific rule prescriptions needed, we are simply delaying necessary and important public discourse about implementation.

**This Board's credibility is on the line; failure to act is unacceptable.** Continued delay further undermines this Board's credibility with the public. It should not take decades to change rules inadequate to meet minimum water quality standards. And this rule is not the only issue on the Board's to do list. Recent media coverage questions current rules' ability to prevent human health impacts from forest chemicals and to protect the public from harvest-related landslide risks. It is widely believed that current rules don't provide streams with adequate large wood, with findings expected soon based on additional data from the RipStream study. The state faces imminent disapproval of Oregon's coastal nonpoint pollution plan largely on the basis of inadequate forest practices rules for non fish-bearing streams.

Process is not action, and promises to change aren't enough. Failure to act would be a clear breach of public trust. We urge you to stay the course on this rulemaking and conclude it as soon as possible.

For:

*Audubon Society of Portland, Cascadia Wildlands, Center for Biological Diversity, Coast Range Association, Defenders of Wildlife, Institute for Fisheries Resources, McKenzie Flyfishers, Native Fish Society, Northwest Environmental Advocates, Oregon Chapter Sierra Club, Oregon Wild, Northwest Guides and Anglers, Pacific Coast Federation of Fishermen's Associations, Pacific Rivers Council, Rogue Riverkeeper, Wild Salmon Center, WaterWatch of Oregon*