

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
Statement of Mary Scurlock relevant to
Agenda Item N (Paired Watershed Studies) and Item O (stream temperature)
19 June 2014

My name is Mary Scurlock and I represent a coalition of environmental and fishing groups united around the need for science-based forest practices regulations and associated landowner programs capable of assuring Oregonians that attainment of water quality standards is not impaired by timber harvest on private lands. Over the last two and a half years I have appeared on numerous occasions before the Board of Forestry in support of the riparian rulemaking process designed to address the disconnect between the current stream protection rules governing forest practices on small and medium fish-bearing streams and the Protecting Coldwater Criterion's prohibition against management-induced stream warming of .3 degrees Celsius or more.

I would like to make a few comments to the Commission based on prior testimony to the Board of Forestry that is relevant to two informational items on this afternoon's agenda: the Paired Watershed Studies and the State's water quality management approach for stream temperature. I close with some thoughts on the appropriate role of the Commission to ensure that best management practices are sufficient to meet water quality standards.

Reasonable Inferences from the Paired Watershed Studies. We have become extremely concerned about the claims being made regarding the policy implications of the three Paired Watershed studies, especially on the basis of research results that have not been fully published and peer reviewed. It is our hope that the presentation this afternoon will bring some clarity to the question of what these studies are capable of telling us, if anything, about the programmatic sufficiency of our current water protection rules to meet water quality standards and allow recovery of native aquatic species. In general, however, the study results to date do not conflict with or call into question the RipStream study's findings that current forest practices rules allow harvest-related stream warming of .3 degrees C or more along small and medium fish streams on a high proportion of sites.

In an effort to help accurately describe the true implications of these studies to the conservation community and policymakers, we have commissioned Dr. Chris Frissell to provide a summary analysis. When complete shortly, this report will include discussion of following items:

1. Why it is premature to make policy suggestions or inferences.
2. The inherent limitations of using managed stands as controls. These studies can only evaluate whether additional harvest will cause additional adverse impacts to an already altered landscape — they cannot tell us what the overall adverse impacts of intensive timber harvest has been and will continue to be.
3. The studies cannot alone reveal adverse impacts of timber harvest on longer term aquatic ecosystem processes and functions.
4. The scale of the studies prevents them from demonstrating that small adverse impacts (which some may characterize as being "within the range of natural variability" because changes of this magnitude also can occur from natural

disturbances) will not in fact cause adverse cumulative impacts that degrade aquatic ecosystems and impair species recovery.

The Protecting Coldwater Criterion (PCW) is necessary to fully protect salmon, steelhead and bull trout. Our assessment of the basis for the PCW is that it is ecologically sound and would easily withstand a legal challenge. There is a large body of science supporting the need to avoid management-induced stream warming that could accrue and distort downstream temperature gradients. We look forward to the Department's presentation this afternoon that should further explain the strong rationale behind this standard.

Role of EQC in securing needed changes to forestry management rules. As far as the public and the fish are concerned, the Commission, the Board of Forestry and the regulated community have been on notice that change is needed for a very long time. 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. The current process – formally initiated in January of 2012 - was originally scheduled to send a rule package out for public comment well over a year ago, in January 2013.

At this time, the Board of Forestry is still on course to propose a rule change to meet the Protecting Coldwater Criterion, but no specific rule alternative has yet been proposed. Given recent efforts to deflect or delay public discourse from the details of rule alternatives to the PCW criterion itself, however, we remain concerned about whether the Board will act in a timely and sufficient manner.

We remind the Commission that ORS 527.765 (3)(d) *requires* the Board of Forestry to review any rulemaking petition from you to change forest practices. Furthermore, new rules must be adopted "as quickly as practicable" if the EQC were to identify significant damage that is occurring to beneficial uses, but in any case new rules are mandated within 2 years unless EQC agrees to additional time. ORS 527.765(3)(f), and (g). If the Board does not act within 2 years the "BMP shield law" lapses, and enforcement against operators violating water quality standards will be allowed. ORS 527.770.

Should it become apparent that the Board of Forestry will not timely act to implement PCW-sufficient rules, we urge this Commission to use the petition process to ensure that management measures for forestry are expediently adopted.