



September 22, 2015

To: Members of the Oregon Board of Forestry Subcommittee on Riparian Rule Analysis

Please accept the following comments on behalf of Oregon Wild, a member of the Oregon Stream Protection Coalition, regarding the Board of Forestry's obligation to insure that the Protecting Cold Water Criterion (PCW) is met on small and medium streams. Oregon Wild represents approximately 10,000 members and supporters who share our mission to protect and restore Oregon's wildlands, wildlife and waters as an enduring legacy.

We'd like to reiterate much of what has been submitted as public testimony and supplementary materials by Mary Scurlock, representing the Oregon Stream Protection Coalition over the past several years. In general, we support the Board's adoption of streamside rules that will effectively meet the legal requirements for clean water – nothing less should be considered.

In particular, we'd like to draw your attention to the following key points and supplementary materials:

- Buffer size: The ODF modeling evidence before the Board demonstrates that for small and medium streams, a 120 foot no-harvest buffer will provide virtually 100% certainty that the PCW will be met (i.e. "insure to the maximum"). It is our reading of the legal standard that this "maximum" level of compliance is required unless this option is demonstrably not practicable. But there is nothing impracticable about a 120 foot buffer. The absolute minimum buffer that should be considered is 100 feet, which translates into a predicted average warming of .18 degrees and would meet the PCW about 80 to 85% of the time. (Pers. Comm. J. Groom, ODF, 2 June 2015). A 90 foot buffer that provides about a 50% certainty of meeting the standard simply does not provide adequate certainty to "insure" attainment of the PCW.
- Geographic extent: There is no evidence in the record – including the Scientific Evidence Review -- that would mitigate against the Board's finding, on the basis of the RipStream study, that current rules do not meet the PCW in the entirety of western Oregon. Likewise, there is no rational basis for the Board to exclude the Siskiyou from a rulemaking intended to cure this shortcoming.
- Stream Extent: Substantially more than 1000 feet above SSBT reaches would be needed to reliably protect downstream reaches from prohibited warming, and at least *some* tributaries

would need protection. (Inexplicably, tributaries are excluded from all of the Department's proffered policy packages). We further recommend that PCW-sufficient buffers be for the full extent of the upstream fish-bearing network as well as nonfish tributaries that contribute 20% or more of the streamflow of the receiving fishbearing water.

Application of the new rule to Salmon, Steelhead and Bull Trout (SSBT) reaches would extend new protection to just slightly more than 11% of the perennial stream network, and 25% of perennial streams governed by the FPA in western Oregon. (EPA analysis, A. Henning and P. Leinenbach, June 3, 2015). We strongly believe that public policy dictates in favor of "all fish" coverage because it will substantially reduce the risk of failing to meet the PCW on SSBT reaches in ways that were not modeled by the Department: due to insufficient upstream and tributary protection. Importantly, this option will also get us furthest down the road toward CZARA and TMDL compliance, both of which cannot be attained by focusing only on SSBT reaches.

Eastern Oregon: We urge the Board to accompany this rulemaking with a commitment to implement appropriate commensurate protection from harvest-related stream warming for small and medium fish streams in Eastern Oregon within 12 months.

Nonfish Streams: The Board should initiate a rule change to address water quality needs on non-fish streams statewide within 12 months.ⁱ

Protecting streamside vegetation on private forestlands should be viewed not only as a necessary legal obligation, but as a positive economic benefit for the broader public the Board is obliged to serve. For example, as noted in a memo submitted as an attachment to Mary Scurlock's June 3 statement before the Board of Forestry, economist Ernie Niemi found tremendous potential for storing carbon in riparian forests. In summary, the memo says: "By allowing trees to grow, rather than be logged, expanded buffers would create an economic benefit by increasing the amount of carbon dioxide the trees remove from the atmosphere, and reducing the damage that anticipated changes in climate will impose on Oregonians and others. The assumptions and data described below suggest that this benefit likely would be about \$100,000–\$300,000 per acre."ⁱⁱ These numbers indicate that the substantial economic benefits accruing to the public far outweigh the small increase in the cost of doing business by a single sector.

In addition, as the Department's preliminary large wood analysis illustrates, stream buffers on private forest lands will benefit more than just stream temperatures. Abundant large wood is essential to maintain biological and hydrological processes in streams. On federal lands in western Oregon under the Northwest Forest Plan, increased stream buffers and restoration standards and guidelines have led to tangible improvements in in-stream and riparian habitat structure and function, specifically including large wood recruitment. While Oregon's current forest practice rules for stream protection are focused on providing minimal shade and sediment control, the buffers needed to meet the PCW Criterion will be large enough to provide significant sources of large instream wood to help dissipate energy, stabilize stream banks, store sediment, partition habitat, and provide nutrients, energy, and a substrate for biological activity. While the proposed buffers for private forest lands are not as wide as the Northwest Forest Plan, similar kinds of benefits would be expected.

Increased streamside protections on private lands would also contribute to the ongoing restoration efforts in many watersheds that cross boundaries from federal to all manner of private lands. Successful partnerships between Watershed Councils, Soil & Water Conservation Districts, federal and State agencies, and private land owners have successfully benefited in-stream and riparian vegetation and habitat across western Oregon. These efforts are more successful when downstream (usually private) properties are also participating in restoration or riparian protection efforts. This sort of common sense contribution to the wide and growing cause of whole watershed restoration, such as those celebrated in recent films about the Siuslaw National Forest and watershed (Seeing the Forest: <http://www.fseee.org/index.php/ground-truth/1004154>) and Willamette River Basin (Upriver: <http://freshwatersillustrated.org/link/up-river/m/>) is one additional benefit from the streamside buffers that should be implemented on private forest lands.

Respectfully submitted,



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ⁱ Much of the preceding content is based on or excerpted from the July 23, 2015 Statement to the Board of Forestry by Mary Scurlock, representing the Oregon Stream Protection Coalition. <http://oregon-stream-protection-coalition.com/wp-content/uploads/2015/07/Scurlock-July-23-Testimony-BOF.pdf>

ⁱⁱ <http://oregon-stream-protection-coalition.com/wp-content/uploads/2015/06/Carbon-Values-for-Riparian-Buffers.pdf>