



August 29, 2019

Thomas Imeson, Chair
Oregon Board of Forestry
2600 State Street
Salem, OR 97310

RE: Agenda Item 6, Siskiyou Streamside Protections Review

Dear Chair Imeson and Members of the Board:

Thank you for the opportunity to provide public comment on Agenda Item 6 Siskiyou Streamside Protections Review. Rogue Riverkeeper works to protect and restore clean water and fish populations in the waters of the Rogue through advocacy, accountability, and community engagement. The Oregon Stream Protection Coalition is an ad hoc statewide partnership of conservation and fishing industry organizations focused on ensuring that nonfederal forest practices regulations are adequate to achieve water quality standards and aquatic species conservation goals.

On behalf of our members and supporters, we remain significantly concerned that the Siskiyou region's small and medium salmon and steelhead streams continue to suffer from weaker protections than those in the rest of western Oregon without justification. This is the result of the Board of Forestry's November 2015 decision to exclude this region from the 2017 stream buffer rule. We are further concerned that neither the 2015 decision nor any of the Board's subsequent decisions pertaining to the Siskiyou's stream rules for stream temperature have addressed the lack of a rational scientific or public policy basis to find that the Ripstream shade and stream temperature data does not inform a sufficiency determination in the Siskiyou.

We recognize that additional clarifying information may be presented at the Board meeting and look forward to continuing the dialogue with Board members and staff.

In summary, we recommend that the Board direct ODF to:

- Conduct the Expanded Literature Review Option 1(a);
- Provide a recommended monitoring approach without creation of an Advisory Committee by November 2019 or January 2020 at the latest;
- Proceed with evaluation of TMDLs and finalize a joint monitoring plan with DEQ by November 2019 or January 2020 at the latest; and
- Implement Climate Change Option 1 and incorporate climate change analysis into the recommended monitoring option to address FPA sufficiency Question 1: Stream Temperature by November 2019 or January 2020 at the latest.

I. Monitoring Options for FPA Sufficiency Question 1: Stream Temperature

The “Update on Monitoring Options” (Attachment 2) document clearly lays out monitoring project options to evaluate FPA sufficiency in the Siskiyou for stream temperature under Table 2:

- 1) *Item 2.1*: TMDL evaluation – DEQ collaboration; and/or
- 2) *Item 2.2.2*: Landscape Priority Stream Assessment (moderate field study, GIS remote-sensing analysis at difference scales).

Additionally, we suggest that an expanded literature review, as discussed under Item 3.3 in the “Policy Options” (Attachment 1) document, be added as a third monitoring option. An expanded literature review should be evaluated as a monitoring approach, rather than as a policy option.

A. Recommendation: The Board should direct the Department to conduct Expanded Literature Review Option 1(a).

We suggest that the expanded literature review option, described in the “Policy Options” (Attachment 1) document should be added as a third monitoring option. Further, we recommend that the Board direct the Department to move forward with Expanded Literature Review Option 1(a). Under this approach, the Department would incorporate the information on stream temperature and shade described in the 2013 (Czarnomski et al.) and 2019 (Cowan et al.) systematic reviews (SR) and add any additional publications or gray literature since 2013 that meet the SR criteria.

The Czarnomski et al. (2013) SR was designed to:

- 1) Provide scientific guidance to the Board on the efficacy of rule alternatives in addressing the objective to “establish riparian protection measures for small and medium fish-bearing streams that maintain and promote shade conditions that insure, to the maximum extent practicable, the achievement of the Protecting Cold Water Criterion”; and
- 2) Inform the Board’s decision on the geographic extent of the rule analysis within western Oregon.¹

Czarnomski et al. (2013) explicitly includes the Siskiyou Georegion as one of the five georegions in western Oregon included in the scope of this SR.² Further, Czarnomski et al. (2013) clarify that:

Due to the selection criteria for this review, all publications were limited to areas within, or similar to, Oregon west of the crest of the High Cascades. These areas were selected ***due to their similarities in climate, vegetation, hydrology, and topography with those from the study (Groom et. al, 2011b)*** that initiated this rule analysis.³

¹ Czarnomski, Nicole. (2013). Effectiveness of riparian buffers at protecting stream temperature and shade in Pacific Northwest Forests: A systematic review. Final Report September 2013.

² Czarnomski, Nicole. (2013). Effectiveness of riparian buffers at protecting stream temperature and shade in Pacific Northwest Forests: A systematic review. Final Report September 2013. P. 1.

³ Czarnomski, Nicole. (2013). Effectiveness of riparian buffers at protecting stream temperature and shade in Pacific Northwest Forests: A systematic review. Final Report September 2013. P. 20. *Emphasis added.*

Not only is the Czarnomski et al. (2013) SR directly relevant to FPA sufficiency Q1 regarding stream temperature, but the Department recognizes that this approach “capitalizes on existing and ongoing work, minimizing timelines and effort” (“Policy Options” at 5). Further, the Department provides estimated duration, cost, and staff times to inform the Board decision for Expanded Literature Review Option 1(a): 4-6 months of 0.5 FTE, \$20,000-30,000.

B. Recommendation: The Board should direct the Department to recommend additional monitoring approaches by November 2019.

It is not clear why the Department recommends waiting until spring 2020 for the Board to consider the suite of monitoring approaches already outlined in the current Board materials. In the “Update on Monitoring Options” document, the Department presents a suite of monitoring approaches to address FPA Sufficiency Question 1: Stream Temperature. We recommend that the Board direct the Department to continue developing monitoring options and to provide its recommendation for a monitoring plan with clear timeline, scope, and outcomes by the next BOF meeting in November 2019 or January 2020 at the latest. Consistent with the discussion at section II.C. below, this recommendation should incorporate climate change analysis, as proposed under Climate Change Option 1 in the “Policy Options” (Attachment 1) document.

C. Recommendation: The Board should direct the Department to proceed with evaluation of TMDLs and finalize a joint monitoring plan by November 6, 2019.

We are extremely supportive of work that fulfills the state’s unmet obligations to demonstrate that forestlands managed under the stream protection rules will reliably meet targets set under approved TMDLs, including but not limited to those for stream temperature.

However, again it is not clear to us why Item 2.1 (FPA sufficiency monitoring plan and further evaluation of DEQ TMDLs) needs deferral until Spring 2020. We recommend that the Department be clearly instructed to continue with development of a joint monitoring plan to evaluate DEQ TMDLs as they relate to stream rule sufficiency in the Siskiyou on September 4 and to finalize a joint plan in time for presentation to the Board in November 2019 or January 2020 at the latest.

Additionally, the Board should request further information about 1) the “considerable progress” of ODF and DEQ on FPA sufficiency as it relates to “TMDL implementation” and 2) the legal relationship between “water quality standards” and TMDL load allocations in relation to the OFPA mandate by the November 2019 meeting.

Finally, in the context of FPA sufficiency Q1 regarding stream temperature, it is important for the Board to clearly understand its responsibility for meeting temperature load allocations and associated shade targets under relevant TMDLs as part of its mandate to meet water quality standards. To address Q1, it is necessary for ODF and DEQ to develop a dialogue regarding shade targets and shade curves associated with stream temperature load allocations required under relevant TMDLs that is informed by legal and policy considerations. Any renegotiation of the MOU between the two agencies that results from the joint monitoring plan, while it may address technical matters, is also a policy matter which, as staff recognizes, requires Board oversight.

II. Policy Options for FPA Sufficiency Question 1: Stream Temperature

In the “Siskiyou Streamside Protections Review: Policy Options” document, the Department responded to the outcomes of the June 2019 Board meeting by dividing the possible approaches into 1) policy options and 2) monitoring options. As discussed above, the “Update on Monitoring Options” document provides a range of monitoring options to specifically address FPA Sufficiency Question 1: Stream Temperature. We suggest that Item 3.3 Expanded literature review should be more appropriately considered as a monitoring option rather than a policy option.

A. Recommendation: The Board should direct the Department to proceed with Monitoring Options without creation of Advisory Committee

Staff has recommended that an advisory committee be formed to “collaboratively discuss and provide feedback on proposed policies and methods to implement the sufficiency review of small and medium fish streams in the Siskiyou region,” but “this committee would not provide input on ODF-DEQ collaboration” though it would remain “apprised.” (Policy Options Attachment at 2).

We appreciate that an advisory committee could potentially streamline stakeholder communication about FPA Sufficiency Question 1: Stream Temperature given the high level of stakeholder interest. But as stakeholders with limited resources, we are also wary of advisory committees that have a vague purpose or which lack clear sideboards and timelines. An advisory committee cannot substitute for leadership by this Board. At this point, given that the Department has already provided several options for monitoring to address FPA Sufficiency Question 1, it is not clear what the purpose of this advisory committee would be and it seems likely that committee formation would end up impeding rather than expediting progress toward a Siskiyou sufficiency finding.

B. Response to Staff Recommendations – Advisory Committee Conditions

If we could be persuaded of the potential benefits of an advisory committee, we would support creation of an advisory committee only if the Board clearly enunciates membership, purpose, scope, timeline and outcomes (deliverable).

IF the Board chooses to create an advisory committee, we recommend the following guidance from the Board:

- a. **Membership.** Members should be welcomed who represent ODFW, DEQ, small forest landowners, industrial landowners, local government, drinking water managers, tribal, and conservation/fishing interests. We do not think it is necessary or equitable to have “representatives” of the regional advisory committee in addition to landowner representatives, but the landowner representatives may (and likely will be) members of the regional advisory committee. We recommend that core membership be kept to ~8-10 persons, with a recognition that members may have technical or policy advisors upon whom they rely.
- b. **Purpose:** The purpose of the advisory committee is to collaboratively discuss, provide feedback, develop a range of specific monitoring options to answer Sufficiency Questions 1 and 2, and provide a recommended approach to the Board of Forestry. This includes Department implementation of Climate Change

Option 1. In conversations with the Department, staff contemplate purposes for the advisory committee beyond finalization of monitoring options. This should be reflected in the purpose of the advisory committee.

- c. **Timeline:** The “Policy Options” document does not provide a clear timeline for the advisory group to develop the range of options and provide a recommendation to the Board. We recommend **Oct 1, 2019 – Jan 15, 2020 as an appropriate period within which to** develop a clear and specific range of monitoring options (incorporating the draft climate change policies) and provide a recommendation to the Board by January 30, 2020.
- d. **Scope:** By January 30, 2020 the advisory committee will:
 - 1) Make consensus and/or minority-majority recommendations to the Board.
 - 2) Review the monitoring options proposed by ODF in the “Update on Monitoring Options” document and any subsequent revision to this document. Specifically, conducting a further evaluation of DEQ TMDLs, GIS analysis of remote sensing data, expanded literature review, and/or a field study;
 - 3) Incorporate climate change analysis into the current FPA sufficiency questions (Q1 and Q2) for the Siskiyou as outlined under Climate Change Option 1 including, but not limited to:
 - i. Identify and characterize climate-induced environmental changes that may affect stream temperature or DFC in the Siskiyou at a high level, such as directions and patterns of change (e.g. expected increases in stream temperature); and
 - ii. Qualitative risk assessment of climate-induced environmental changes in relation to achievement of goals for DFC and achievement of water quality standards, including attainment of TMDL load allocations for stream temperature.
 - 4) Develop a clear and specific range of monitoring options; and
 - 5) Provide recommendations to the Board by January 15, 2020.
- e. **Outcomes:** The advisory committee will provide specific monitoring recommendations to the Board by January 15, 2020. This monitoring approach will be designed to address Sufficiency Questions 1 and 2.

C. Response to Staff Recommendations – Climate Change Options

The Board should not accept staff recommendation on climate change, but direct ODF to implement Climate Change Option 1: Incorporate into current rule sufficiency analysis. The Department should incorporate climate change analysis into the recommended monitoring option to address FPA sufficiency Question 1: Stream Temperature presented to the Board by the November 2019 BOF meeting.

This analysis includes, but is not limited to: identifying climate-induced environmental changes that may affect stream temperature in the Siskiyou; predicted environmental changes at a high

level, such as directions and patterns of change (e.g. expected increases in stream temperature); and qualitative risk assessment of climate-induced environmental changes and achievement of goals for achievement of water quality goals for stream temperature on forestlands.

If the Board decides to direct the Department to initiate an advisory committee, then both the advisory committee and ODF should move forward with climate change analysis under Climate Change Option 1. The advisory committee should include analysis of climate change factors in the development of the recommended monitoring approach for the FPA sufficiency review for the Siskiyou. The advisory committee and ODF should evaluate the sufficiency of the FPA rules regarding Q1 and Q2 in the context of these changes. This process can serve as a pilot from which ODF can develop a comprehensive and clearly articulated set of policies on climate change.

We question whether the “high level linkage analysis” described here need take 9-12 months because much is known that can inform policymaking by the Board. The “Hotter, Drier, No Less Wild” report from the Klamath-Siskiyou Wildlands Center synthesizes the current science on climate change impacts on the Siskiyou region, including impacts to streams. In summary, the report concludes that more precipitation in the winters and less precipitation in the summers is likely. More precipitation will come as rain, resulting in less snowpack and lower stream flows. As stated in the report, “As the region becomes hotter and drier, stream levels in summers will decrease and water temperatures will increase.”⁴

III. Degradation Finding Warranted

The 2002 statewide sufficiency analysis and the results of the RipStream study in 2011 demonstrated that current stream buffer rules under the Forest Practices Act are not protective of stream temperature and violate the Protecting Cold Water (“PCW”) water quality standard.⁵ Under ORS 527.765(1), the Board is required to establish regulations and best management practices to “insure that to the maximum extent practicable” water quality standards are achieved and maintained. The 2012 finding of resource degradation was not restricted geographically to exclude the Siskiyou, which includes much of the Rogue watershed, until 2015. Since 2015, we have submitted extensive comments regarding the impacts of not reliably meeting the PCW in the Rogue watershed, which supports threatened Southern Oregon/Northern California Coast (“SONCC”) coho salmon and where many waterways are listed as impaired for temperature with existing TMDLs.

We urge the Board to act based on due consideration for all available information and the history of this issue at the Board to find that the current water protection rules for the Siskiyou do not meet stated objectives and a resource is being degraded under ORS 527.714 and 527.765.

Sincerely,

⁴ Breen, Brandon M. Hotter, Drier, No Less Wild: Protecting Public Land and Biodiversity in the Klamath-Siskiyou Region in the Era of Climate Change. KS Wild. October 2017. P. 3.

⁵ Groom et al. 2011. *Response of Western Oregon (USA) stream temperature to contemporary forest management*, Forest Ecology and Management, 262: 1618-1629.



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