FILED 12-5-14
CC Client

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON DEPARTMENT OF FORESTRY

IN THE MATTER OF: BRIMSTONE NATURAL RESOURCES CO., Respondent.	DECLARATION OF JOHN WEST OAH Ref. No.: 140385 Agency Case Nos: 13-SW022 13-SW023, 13-SW024

I, John West, declare as follows:

1. I am one of the owners of Brimstone Natural Resource Co. I make this declaration based on personal knowledge in connection with Brimstone's Opposition to Motion for Summary Determination.

2. Brimstone purchased the property which is the subject of this action in July of 2013. It was always our intention to log this property and, along Brimstone Gulch, to mine for placer gold. I have been actively involved in logging and mining placer gold in Southwest Oregon for approximately 40 years. My experience leads me to believe that the area along Brimstone Gulch through this property has potential to produce good gold values and that is one of the major reasons we purchased it. I took samples on the property to confirm this.

3. The only way to safely and effectively mine this property is to first remove the vegetation along Brimstone Gulch. This is because the paying material lies beneath the overburden and goes all the way down to bedrock. Trees and brush grow on top of the overburden. It would not be unusual here to expect about four vertical feet of overburden and another three feet of paying material on top of the bedrock. If Brimstone

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Ex R1
1 of 14

WATKINSON LAIRD RUBENSTEIN & BURGESS P.C.
ATTORNEYS AT LAW
1246 N.E. SEVENTH STREET, SUITE B
GRANTS PASS, OR 97526
(541) 295-3218 FAX (541)295-3224

cannot remove the vegetation it cannot remove the overburden. If we cannot remove the overburden, we cannot get to the paying ground.

4. In approximately March of 2013, I was investigating purchasing the property before Brimstone closed the transaction. I needed to be sure there were no conditions that would prevent Brimstone from logging and mining, such as Spotted Owl or other problems. I went to ODF's local office where I was informed by an ODF representative, who showed me a map, that Brimstone Gulch was not a fish bearing stream above the railroad tracks and culvert which are about 1,000 feet downstream from the property. This was consistent with my observations; it is unreasonable to believe Brimstone Gulch is fish bearing through the property. I do not believe any fish are in Brimstone Gulch at Brimstone's property and it appears that physical barriers and other conditions prevent fish from getting that far upstream. At this time, as it passes through Brimstone's property, Brimstone Gulch is approximately two to four feet wide and is approximately 6 inches deep.

5. In May of 2013, I met with ODF representative Steve Wetmore on a nearby parcel Brimstone had purchased. I told Mr. Wetmore that I intended to mine the entire length of Brimstone's property along Brimstone Gulch. In response, he gave me the attached Forest Activity Inspection Report. Exhibit 1. That report was the first time I had received any indication ODF took the position that Brimstone Gulch was a fish bearing stream through Brimstone's property. The report admits I was previously told by ODF that it was not fish bearing. However, by then Brimstone had already paid approximately $1 million to buy the property. Mr. Wetmore told me that ODF had made a mistake when it told me that Brimstone Gulch was not a fish bearing stream. This did not and does not change my belief that there is no way Brimstone Gulch could be a fish bearing stream through the property.

Ex R1
2 of 14

6. I have mined other property in Southwest Oregon and I have been involved extensively in logging. I have never been advised by anyone associated with ODF that it

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could or would deny my ability to mine. Based on years of experience with the agency, I knew ODF's written plans apply to activities like logging and crossing streams but not to gold mining.

7. On July 8, 2013, I submitted a Notification of Operation/Application for Permit to ODF in connection with logging another part of this same property. Exhibit 2. I did not submit one in connection with the area ODF claims is subject to protection under the Forest Practices Act because I believed then, and I believe now, that Brimstone's right to mine supersedes the state's right to restrict Brimstone's mining. I tried to follow what I understood to be ODF's rules.

8. Shortly thereafter, ODF's representative Tyson Schultz gave me another Forest Activity Inspection Report and told me to submit a written operating plan to remove vegetation along Brimstone Gulch. I did not understand why he would ask for this because our plan was for mining, not commercial logging. I was never told anything by anyone from ODF about submitting an "alternate plan" in accordance with OAR 629-610-0090 or 629-601-0173. I was unaware of any such possibility.

9. Brimstone's property was not open to public access in the summer of 2013. At one point I learned that Tyson Schultz had gone onto an adjacent property owned by Brimstone. When I found out about that I told Mr. Schultz that no one was allowed on Brimstone's property without my permission. He told me that he would advise ODF personnel of this, although he said he could not assure me that ODF's fire personnel would get that notice. Despite this, shortly thereafter Mr. Wetmore apparently entered onto Brimstone's property without my permission. There was no reason for this other than to try and find reasons to cite Brimstone. I do not believe ODF was inclined to try and work with Brimstone to comply with its requirements.

10. I have obtained from the Oregon Department of Fish and Wildlife the documents attached as Exhibit 3. I was told by ODFW representatives that these are the

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Ex R1
3 of 14

WATKINSON LAIRD RUBENSTEIN & BURGESS P.C.
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only indications that Brimstone Gulch is a fish bearing stream. The area where these surveys were taken are approximately a mile upstream from Brimstone's property.

11. Our operator for the logging of Brimstone's property was BS Roads. The operator logged the hillside first in the area indicated by the July 8, 2013, Notification of Operation/Application for Permit. I then told BS Roads to start to clear away the trees and vegetation where Brimstone planned to mine. BS Roads proceeded based on these instructions.

12. I have submitted an alternate plan. It is attached hereto as Exhibit 4. This plan calls for removing all the vegetation which Brimstone removed in 2013 because that is the only way to effectively mine the property. It further provides for replanting vegetation. As I testified in the November 21, 2013, hearing, it was always Brimstone's intention to replant in order to protect our property. I was not advised until we were in the November 21, 2013 hearing that ODF had to grant Brimstone's alternate plan and it would take only a few weeks to process it.

13. There is no "damage" to any protected "resource" on Brimstone's property. During the November 21, 2013, hearing, Mr. Wetmore testified that ODF would not have jurisdiction over Brimstone's activities if it did not sell the trees that were cut along Brimstone Gulch. Accordingly, if Brimstone has the right to mine by simply providing an "alternate plan", or if ODF would not restrict Brimstone's activities if it did not sell the logs removed from along Brimstone Gulch, then there could be no damage because the trees and vegetation had to be removed in order for Brimstone to mine the gold. The only thing that Brimstone arguably did not do was submit an "alternate plan". The reasons Brimstone did not submit an alternate plan include (1) the fact that I was first told Brimstone Gulch was not a fish bearing stream; and (2) because ODF never told me

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Ex R1
4 of 14

WATKINSON LAIRD RUBENSTEIN & BURGESS P.C.
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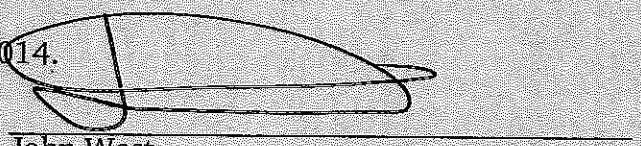
this was one way to comply with the Forest Practices Act while still preserving Brimstone's right to mine.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty for perjury.

Dated this 5th day of December, 2014.



John West

Ex R1
5 of 14

WATKINSON LAIRD RUBENSTEIN & BURGESS P.C.
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GRANTS PASS, OR 97526
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Oregon Department of Forestry
Forest Activity Inspection Report

Date: 5-21-13
Notification / Unit No.: 2013-12-01584
Sale or Job Name: Brimstone
FPF Name/No.: Eclipse 169

Operator: Swiss West Landowner: Brimstone Natural Resources LLC Timber Owner: LO

FIRE PREVENTION

REQUIRED	OK THIS DATE		
		☐ Slash Hazard Inspection	☒ Not Active This Date

- ☐ ☐ Fire Tools: Number of workers in operation: _____
- Power Saws: Number in operation: _____ Number Checked _____
- ☐ ☐ Spark Arresters / Exhaust Systems
- ☐ ☐ Shovels and Fire Extinguishers
- Trucks: Number in operation: _____ Number Checked _____
- ☐ ☐ Exhaust Systems
- ☐ ☐ Tools and Fire Extinguishers
- Other Power Driven Machinery and Engines:
- ☐ ☐ Spark Arresters / Exhaust Systems
- ☐ ☐ Debris Accumulation Removed
- ☐ ☐ Fire Extinguishers
- Cable Logging Systems:
- ☐ ☐ Cable lines clear
- ☐ ☐ Blocks cleared Number checked: _____
- ☐ ☐ Shovels and water at blocks
- ☐ ☐ Water Supply / Pump / Hose / Nozzle
- ☐ ☐ Fire Watch Hours after operation: _____
- ☐ ☐ Alternate methods or equipment, as described below are approved for use.
- ☐ ☐ Other: _____
- ☐ ☐ Other: _____
- ☐ IFPL Waiver, as described below, is approved
- ☐ Order: For the items described below, you are hereby ordered to cease violation of ORS Chapter 477. Your Permit to Use Fire or Power Driven Machinery is suspended for these items until compliance is restored.

FOREST PRACTICES

☐ Pre-Operation Inspection ☒ Active or Post-Operation Inspection ☐ Complaint Investigation ☐ Waiver of 15 Day Waiting Period

Prior Approval / Written Plans

☐ Prior Approval Granted: Applicable rule(s) _____

Written Plan Action: ☐ Required ☐ Approved ☐ Approval Denied

Written plan rule(s): _____

Written plan resources: _____

☒ RECOMMENDATIONS

Written below are recommendations. The inspecting Forest Practices Forester recommends these actions to prevent an unsatisfactory condition which may result in a violation of the Forest Practices Act. These recommendations pertain to the following rules:

☐ Written Plans ☐ Chemicals ☒ Water Protection
☐ Reforestation ☐ Road Construction ☐ Other _____
☐ Slash ☐ Harvesting

☐ WRITTEN STATEMENT OF UNSATISFACTORY CONDITION

This operation is not in compliance with the Forest Practices Act. Further enforcement action will begin if damage occurs or if you do not comply with the instructions written below by this compliance date: _____

This unsatisfactory condition(s) pertain to rule(s) or statute(s):

☐ Written Plans ☐ Chemicals ☐ Water Protection
☐ Reforestation ☐ Road Construction ☐ Other _____
☐ Slash ☐ Harvesting

ORS/OAR(s) _____

INFORMATION ON ITEMS CHECKED ABOVE: Page ___ of ___

1) On the original notification Brimstone Unit 8 Dog C was incorrectly classified.

2) Brimstone Unit 8 is surveyed, Medium Fish and Dog C is surveyed, Small Fish. Submit a written plan for all operations within 100' of fish use.

THIS REPORT INDICATES THE CONDITIONS FOUND TO EXIST AT THE TIME OF THIS INSPECTION FOR THOSE ITEMS CHECKED OR NOTED ABOVE. IT DOES NOT IMPLY THAT ALL PARTS OF THE OPERATION WERE INSPECTED NOR DOES IT INDICATE ITEMS NOT INSPECTED ARE SATISFACTORY.

Until written plan is approved, no operations within 100' of fish use.

Signed: _____ Date

Received By: _____ Date

☐ Copies Mailed _____ Date

Swiss West 5-21-13

State Forester's Representative Date

EXHIBIT 1 EXHIBIT A24
FORM 6-2-5-211 (02000)

_____ COPY

EXHIBIT 1 PAGE 1 OF 2

Exhibit 1 6 of 14

Interrogatory
Exhibit
A1, p.1 of 4

NOTIFICATION OF OPERATIONS/APPLICATION FOR PERMIT

STATE OF OREGON

OREGON DEPARTMENT OF REVENUE

DEPARTMENT OF FORESTRY

DEPARTMENT OF REVENUE

Notification Number: 2013 7120038 2

Geographic Area: OP | To | LO

Date Received: 2-6-13 Time: 1205

Initial: Office:

District:

Correction:

FILING THIS NOTIFICATION DOES NOT GRANT PERMISSION TO REMOVE FOREST PRODUCTS! FIRST OBTAIN PERMISSION FROM THE LANDOWNER AND TIMBER OWNER.

ON-SITE INSPECTIONS MAY BE CONDUCTED BY THE STATE FORESTER/STEWARDSHIP FORESTER TO ENSURE COMPLIANCE WITH STATE LAWS AND RULES GOVERNING FIRE PROTECTION AND FOREST PRACTICES ON PRIVATE LAND.

1. COUNTY: Yoncalla

2. NOTICE AND PERMIT TYPE

Check Appropriate Boxes (2A, 2B, and/or 2C)

2A ☒ NOTICE TO THE STATE FORESTER THAT OPERATION WILL BE CONDUCTED ON LANDS DESCRIBED ON REVERSE (ORS 527.670).

2B ☐ APPLICATION FOR PERMIT TO OPERATE FOUND SUBJECT TO AUTHORITY (ORS 477.625).

2C ☐ NOTICE TO THE STATE FORESTER AND THE DEPARTMENT OF REVENUE OF THE INTENT TO HARVEST TIMBER (ORS 321.560).

3. REPRESENTATIVE: Kinnikinnick Timberwest — PLEASE PRINT. Person to be contacted to assist in this transaction (Unit operator, Forester, etc.) — Area Code & Phone No.

4. Timber Sale Name: Timber Sale Number: Blimstone

CHECK ONE BOX BELOW TO INDICATE WHO FILLED OUT THE APPLICATION.

5. OPERATOR ☒

ATTENTION: If you are contacting before beginning of road construction within 100 ft of any pipeline or underground utility facility, call the Oregon Utility Notification Center at 1-800-332-2344. Failure to do so may result in an unintended conflict. Call a representative of the forestry office for more information.

6. LANDOWNER ☒

Timber harvesting may result in the planting requirements for reforestation. The landowner has responsibility for planting. Failure to complete reforestation requirements regarding the size, density and method may result in civil penalties. Contact your local office of the Oregon Department of Forestry for more information.

Name: BLIMSTONE NATURAL RESOURCES CO. — Business Name: JOHN WEST — Mailing Address: PO BOX 1949 — City, State and Zip Code: MCCLEAN OR. 97232 — Area Code & Phone No.: 541-760-6541

Fill out this section only if you are the landowner, the applicant, and/or the operator and you have entered into a written agreement regarding the harvesting of timber on the property. Indicate who is responsible for reforestation of the site.

7. TIMBER OWNER AND TAXPAYER ☒

Name: BLIMSTONE NATURAL RESOURCES CO. — Business Name: JOHN WEST — Mailing Address: PO. BOX 1949 — City, State and Zip Code: MCCLEAN OR. 97232 — Area Code & Phone No.: 541-760-6541

Timber Owner Employer Identification Number: 27-1446283 — Last 4 digits of the Social Security Number

The timber owner must provide either a Tax payer identification number (as the term is defined by section 6109 of the Internal Revenue Code) or Social Security number. Information will be used ONLY by the Department of Revenue for the purpose of identifying the timber owner in the Department of Revenue's tax collection of Timber Tax, and will be held in confidence.

Please provide us (name) the property, survey, other information that may be relevant to the Stewardship Forester.

APPLICANT REMARKS:

Ex R1
7 of 14

EXHIBIT 2

PAGE

Interrogatory Exhibit A1, p.2 of 4

8. TYPE OF ACTIVITY								9. ACTIVITY PERIOD		10. SITE CODES				11.	12. LOCATION OF OPERATION																			
															LEGAL DESCRIPTION																			
															NE				NW				SW				SE							
SF No (s)	FIRE / FPA	Unit No.	Activity Code	Methods Used	Quantity (by unit) Acres	Quantity (by unit) Feet	Estim. MBF Removed	Est. Activity Starting Date	Est. Activity Ending Date	Conditions W100, W200, WNA, S1, S2, S3, T1, T2, T3	Concerns ARG, CGG, CGS, SH, SW, UGE, WG	SIGNIF. WET, OTHER WET, LAKES>8, OTHER LAKES STREAMS, EDS, EOG, ES, GWS, SEEP	SEN, SEP, DER, BIG, EPS, GO, GWD, GBH, GLD, HLN, MUR, NSG, OSP, RAF, SBS, TerE	Dest. Lot # if outside old section	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	SEC	TWP	RGE	Required Unit Area
64	M/H		1A	DOZER	18		50 MBF	7/9/13	8/1/13	W100 T151				TL800										X							8	34	6W	

10. The applicant may request a waiver of the 1 seven-day waiting period by checking this box. Requesting a waiver does not necessarily mean one will be granted. ☒

11. ATTACH MAP AND/OR AERIAL PHOTOS!

14a. Print name of applicant here: x John West

14b. I (applicant) certify that all information I have provided is true and correct. (Signature and date.) Date: 7/8/13

WRITTEN PLANS	NAMES OF PROTECTED RESOURCES	WATERSHED CODE	STREAM CLASS CODE
629-605-017 1A	BAIMSTONE		MSF

SUBSCRIBERS:

WATER RIGHTS SUBSCRIBERS:

STEWARDSHIP FORESTER COMMENTS:

No operations within 100 feet of stream without a reviewed, written plan on file with ODF. TS

Fifteen-day waiting period waived by:

x [signature] Date: 7/10/13

629-2-1-2024 Notification of Operation - Revised 8/11 (TJK order)

Ex R1
8 of 14

EXHIBIT 2
Agenda Item D
Attachment 2
PAGE 8 of 14

FISH PRESENCE SURVEY FORM
ATTACH A COPY OF THE 7.5 MINUTE ODF STREAM CLASS MAP

RM 2.6

Surveyor Name(s): SAVAGE / GONZALEZ
Agency: ODFW
Land Owner: (562) 923-3343 PHILIP DEAN SCHWEPDT
Mailing Address: 1495 E GREGORY ROAD CENTRAL POINT, OR 97502
Phone: 826-8774
Date Surveyed: 5/1/97

Stream: BRIMSTONE CR
Tributary to: GRAVE CREEK
Quad Map: GLENDALE
Location: T 34S R 6W Sec. 18 NW CENTER

Survey Method (✓): ☒ Electroshocker ☐ Angling ☒ Visual

Survey Above End of Fish Use: Distance (feet) 150' Number of Pools 7

Flow Level (✓): ☐ Low ☒ Moderate ☐ High

Weather: CLEAR
Water Temperature: —

Water Clarity (✓): ☒ Clear ☐ Moderate ☐ Turbid

FISH OBSERVATIONS

Species	Sizes
CT	(4) 3" / (1) 4" / (2) 7"

AQUATIC WILDLIFE

Species	Quantity
P. GIANT SALAMANDER	3
NEWT	2
P. TREE FROG	1

PHYSICAL STREAM DATA

	At or Downstream of Fish Use	Upstream of Fish Use
Bankfull Channel Width (feet)	10'	7.5'
Current Wetted Width (feet)	4'	3.5'
Channel Gradient (percent)	2.5%	8%
ODF Stream Class Size	S	S

If fish use ends at a natural barrier, describe the conditions that prevent upstream fish passage.

If fish use ends at a road crossing, describe conditions that may prevent upstream fish passage.

Ex R1
9 of 14

Other comments (use reverse side if necessary):
NO OBVIOUS BARRIER FOUND, SLOPE IS POSSIBLE OBSTACLE TO MIGRATION.

EXHIBIT 3
PAGE 1

Agenda Item D
Attachment 2
Page 9 of 14

FISH PRESENCE SURVEY FORM
ATTACH A COPY OF THE 7.5 MINUTE ODF STREAM CLASS MAP

10 0463 320 P.M 0.45
47 17 665

Surveyor Name(s): GAUCE / GONZALEZ
Agency: ODFW Land Owner:
Mailing Address: 1495 E GREGG RD CENTRAL POINT OR 97502
Phone: 826-8774 Date Surveyed: 5/1/97

Stream: BR-A Tributary to: BIMMERNE → GRANT CR
Quad Map: GLENDALE Location: T 34S R 6W Sec. 15

Survey Method (✓): ☒ Electroshocker ☐ Angling ☒ Visual

Survey Above End of Fish Use: Distance (feet) 150' Number of Pools 7

Flow Level (✓): ☐ Low ☐ Moderate ☐ High

Weather: CLEAR Water Temperature: —

Water Clarity (✓): ☒ Clear ☐ Moderate ☐ Turbid

FISH OBSERVATIONS

Species	Sizes
CT	0-2" / 0-7"

AQUATIC WILDLIFE

Species	Quantity
P. GIANT SALAMANDER	(2)

PHYSICAL STREAM DATA

	At or Downstream of Fish Use	Upstream of Fish Use
Bankfull Channel Width (feet)	9'	5'
Current Wetted Width (feet)	4'	2'
Channel Gradient (percent)	5%	8%
ODF Stream Class Size	5	3

If fish use ends at a natural barrier, describe the conditions that prevent upstream fish passage.

Ex R1
10 of 14

If fish use ends at a road crossing, describe conditions that may prevent upstream fish passage.

Other comments (use reverse side if necessary):
FISH USE IS MAINLY AT THE MOUTH OF THIS CREEK. SLOPE COULD BE LIMITING FACTOR FOR FISH MIGRATION FACTOR

EXHIBIT 3
Agenda Item D
Attachment 2
PAGE 9
Page 10 of 14

Interrogatory
Exhibit
A1, p.3 of 4

Ex R1
11 of 14

EXHIBIT 3

PAGE 1

11/25/14
(Page 1)

Subject: ALTERNative Plan
RE: Mining Operation T34S
R6W Sec 8 18Ac. NW 1/4 SW 1/4
Permit #2013-712-00302
(Brimstone Gulch)

(1) Brimstone Natural Resource Co. Inc. Intends to mine both sides of Brimstone Gulch on said Property.
(2) Brimstone Company will finish Removing Overburden (Trees, Brush, Stumps, etc. From Stream Edge to 50 Feet and as far as 100 feet away. Brimstone will Remove All soil that is overburden to Get to Pay Gravels at Bottom on Bedrock. Brimstone will not Disturb more than one Acre or 5000 cubic yards at one Time. Safety is our Goal So Trees will not be Left and put as in a unsafe working Condition.
(3) Brimstone will put All Rock & soil back into place and Replant Maples, Alders, and Ash along stream Edge as these will Grow Fast and Create shade. Brimstone will Reclaim this Ground as each section is mined for its Gold Bearing Gravels. This will All be done into Accordance will Brimstones Right to Retrieve Gold Through its Patent and mineral Rights.

Ex R1
12 9 14

EXHIBIT 4

Subject: ALTERNATIVE Plan 11/25/14
RE: Brimstone Gulch (Page 2)
T34S R6W SEC 8 18AC. NW1/4 SW1/4

(3) Brimstone will Continue to Plant DF Seedlings EVERY 10 to 12 FEET APART ON Remaining MINED LAND until All Property is MINED AND Reclaimed with THIS Plan. Brimstone CO. will Reclaim EACH SECTION AT A TIME AS MINING is Completed

FOR
Rus. Brimstone Natural Res. CO. INC.

Ex R1
13 of 14

EXHIBIT 4
PAGE

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF JOHN WEST on:

Rick Barber, Administrative Law Judge
P.O. Box 14020
Salem, OR 97309
Richard.d.barber@state.or.us
Emp.oahreferral@state.or.us

Angie Lane
Civil Penalty Administrator
Department of Forestry
State Forester's Office
2600 State Street
Salem, OR 97310
alane@odf.state.or.us

Matt DeVore
Assistant Attorney General
Natural Resources Section
Department of Justice
1162 Court Street NE
Salem, OR 97301
Matt.B.DeVore@doj.state.or.us

on the 5th day of December, 2014, by electronically emailing to said parties a true copy thereof, to the electronic email addresses listed above and by mailing a true copy by first-class mail at the addresses listed above.

WATKINSON LAIRD RUBENSTEIN & BURGESS, P.C.

By: _____
James R. Dole, OSB No. 892272
jdole@wlrlaw.com
Of Attorneys for Respondent

Ex R1
14 of 14