

March 4, 2015

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

Dear Chair Imeson and Board of Forestry Members:

As the board and department move forward with stakeholders to develop and analyze options to address riparian protection issues, OSWA and OTFS encourage you to keep the following three principles in mind:

- Apply practices that are both efficient and effective;
- Avoid singular focus on one resource value at the expense of other resource values or beneficial uses; and
- Provide for active management to improve riparian conditions and in-stream physical habitat.

These principles are essential to meet the integrated policies of the Oregon Forest Practices Act, continue the success of the Oregon Plan and avoid unintended consequences. Given the long-term nature of wood input to streams, only through active management will restoration occur in the short-term. In fact, ODFW has already seen the signature of private landowner restoration work in their habitat surveys.

Economics

Once draft administrative rules are proposed related to riparian area management, OSWA and OTFS encourage the Board to include a comprehensive analysis of the financial impacts to family woodland owners.

Revised riparian rules on 1,953 miles of small and medium streams that have salmon, steelhead and bull trout (SSBTs) may affect at least 7,800 family woodland owners.¹

The economic analysis will be a challenge. To the extent that a solution is needed, both OSWA and OTFS believe the economic analysis needs to evaluate whether the benefits to the resource are in proportion to the contribution that forestlands make to the resource concern, weighted against the contributions of other land uses to the any solution. A key question before the board will be whether the costs of added forest regulations are proportional to any benefit to the resource.

ORS 527.714(5)² requires that:

- Rules have clear objectives and that any restrictions prevent harm or provide benefits to the resource directly related to the objective;

- Rules substantially advance the rule purpose;
- Regulatory alternatives are considered;
- Alternatives chosen are the least burdensome to landowners; and
- Benefits to the resource are in proportion to the degree that existing practices contribute to the overall resource concern that the proposed rule is intended to address.

ORS 527.714(7)³ requires a comprehensive economic analysis that includes the potential change in timber harvest, the overall statewide economic impact, an estimate of the total economic impact, and the economic impacts on a broad and inclusive sample of woodland owners.

Incentives

Family woodland owners are increasingly disadvantaged in incentives and benefits we receive for the high level of protection already provided to Oregon's resources. Economic analysis needs to go beyond a consideration of the loss of land and timber value. The board needs to explore the loss of market values such as conservation easements, certification and carbon credits.

For example, on February 15th the House of Representatives passed H.R. 644, [*the America Gives More Act of 2015*](#), a package of charity-related tax bills which includes the text of H.R. 641, [*the Conservation Easement Incentive Act of 2015*](#). This Act makes permanent a tax credit for conservation easements. The bill awaits Senate approval and the President's signature, both of which are expected. Conservation easements are extensively used, especially in the eastern United States where they focus on slowing the loss of forests to development. This new conservation tax credit may be available to Oregon family woodland owners who volunteer to have their stream RMAs placed under easements. The Oregon Watershed Enhancement Board also has incentives for easements.⁴ However, these opportunities are shut off once regulations are imposed. This is an unintended consequence.

Purpose and Goal

Family woodland owners believe that the purpose rule the board constructs and adopts to support any revised riparian rules may be problematic since rules must prevent harm, or provide benefits to, a resource.

John Westall's paper on the PCW⁵, which he presented to the board last July, thoughtfully summarizes two critical questions:

"1. What is the goal of the PCW rule, that is, what are we trying to achieve by adhering to the rule?"

2. *What is the scientific basis for the rule, that is, what scientific evidence do we have that our adherence to the rule will contribute (or is necessary or is sufficient) in achieving the goal?"*

John's paper highlights the scientific uncertainty about possible harm to water quality, a fact that complicates the board's decision on exactly what any purpose rule should look like. He recommended that [the board] "*consider the entire habitat carefully, evaluate the evidence, and make the best rational, scientifically based decision... if the evidence is not clear about the benefit of the rule, then focus habitat protection and restoration efforts where they are more likely to have a significant effect, incorporating social acceptance in all aspects of the analysis.*"⁶

Oregon's Success

After almost two decades under the current forest practice stream rules and the policies of the Oregon Salmon Plan, family woodland owners and industrial forestland owners have voluntarily replaced thousands of culverts that blocked fish passage, improved road surfacing and drainage, and placed thousands of pieces of large wood in streams.

Coho salmon have responded. Harvests of wild coho are now allowed on many Oregon coastal streams. It seems like Oregon is on the right course.

OSWA and OTFS believe the most efficient and effective way to improve stream water quality for fish is to continue on this successful path. Family woodland owner efforts can be re-energized through education and by encouraging voluntary actions. However, our organizations cannot support increased forest landowner regulatory costs when little resource benefit is provided, especially when investments on lands in other uses offer much better returns.

Sincerely,



Scott Hayes
Vice-chair, Oregon Tree Farm System
Past President, Oregon Small Woodlands Association

End Notes

¹ Modeled from stream data provided by ODF, February 2015.

² **ORS 527.714** (5)(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought, or in the case of rules proposed under **ORS 527.710 (Duties and powers of board)** (10), to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and substantially advance its purpose;

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection; and

(f) The benefits to the resource, or in the case of rules proposed under **ORS 527.710 (Duties and powers of board)** (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

³ **ORS 527.714** (7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by **ORS 183.335 (Notice)** (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a change in output, employment and income;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) Information derived from consultation with potentially affected landowners and timber owners and an assessment of the economic impact of the proposed rule under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels.

⁴ **ORS 541.376(1)**; ORE. CONST. ART. XV, § 4b; OR. REV. STAT. §§ 541.351 to .426 (2009) (Watershed Management and Enhancement). The Oregon Constitution provides for the use of net proceeds from the state lottery for salmon restoration and watershed and wildlife habitat protection. The Constitution specifically provides that such proceeds may be used for, inter alia, the purpose of entering into agreements to obtain from willing owners conservation easements that protect watershed resources. A portion of the state lottery proceeds are deposited into a special subaccount, and the Oregon Watershed Enhancement Board is authorized to use such proceeds to enter into agreements to obtain conservation easements protecting watershed resources from willing owners. The Board also administers a watershed improvement grant program pursuant to which it can make grants from a separate fund for the purpose of entering into agreements to obtain conservation easements protecting watershed resources from willing owners. The legislation provides that "land" purchased through a grant agreement with the Board "shall be subject to title restrictions that give the board the authority to approve, approve with conditions or deny the sale or transfer of the land." It is not clear if this provision applies only to lands held in fee, or also to conservation easements.

⁵ **John Westall Paper**, July 25, 2014 Board of Forestry Meeting, Agenda Item A, Attachment 1, pages 19-20:

⁶ *Ibid.*, page 24.