NORTHWEST ENVIRONMENTAL ADVOCATES

Statement of Nina Bell, Executive Director, Northwest Environmental Advocates
Re: Riparian Rule Analysis – June 3, 2015 Board of Forestry Meeting

My name is Nina Bell and I am the Executive Director of Northwest Environmental Advocates. NWEA has worked to improve regulatory programs that protect and restore water quality in Northwest states, including state water quality standards that are the foundation of pollution control programs. We believe that all pollution sources must take responsibility for their adverse impacts to public waters, including the logging industry.

Oregon's forest practices are an embarrassment. As the states around us have updated their logging practices to reflect scientific understanding of streams, riparian vegetation, fish, and wildlife, Oregon has remained very much in the last century. My testimony will focus on one issue: the need for Oregon forest practices to meet Oregon water quality standards.

While the Board does not yet have a recommendation from the Department, the stakeholder involvement process has made one thing clear: the Department has chosen to compartmentalize Oregon's water quality standards rather than to read them the way in which they are written. As a result, what the Department will propose to the Board for changes in riparian rules will not be adequate—legally or scientifically—to meet applicable water quality standards.

This failure takes place against the backdrop of the Department's having refused to consider changing riparian buffers for many years, despite the numerous agencies and scientists pointing out their inadequacy. ODF stubbornly insisted it could only move forward on the basis of its own studies. Once completed, RipStream confirmed what we all knew: Oregon's riparian buffers do not provide enough shade to keep Oregon's streams as cold as is needed for the cold-water species that depend upon them. And, while all of the published reports say that the average temperature increase was 0.7°C, in fact analysis of RipStream data demonstrated current practices result in average increases of 1.45°C—fully twice the results reported.

The Department compares this result of 1.45°C to the Protecting Cold Water (PCW) criterion in Oregon's water quality standards, which limits to 0.3°C any increase in stream temperatures for water bodies that currently meet the standards' numeric criteria. While this comparison was useful to evaluate *whether* the RipStream data signified that changes needed to be made to riparian buffers, it is not an accurate way to analyze *what* changes should be made. That analysis should be compared to the applicable water quality standards.

The water quality standards for temperature in a given basin or subbasin turn on whether the Oregon Department of Environmental Quality (DEQ) has developed, and EPA has approved, a Total Maximum Daily Load (TMDL). Where a TMDL is in place, Oregon's water quality standards limit *all* sources of temperature pollution to an increment of stream warming of 0.3°C; the amount allocated for temperature increases from logging will necessarily be smaller than that. In fact, TMDLs developed for the basins and subbasins subject to this rulemaking allocate

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an increment to logging that ranges between zero and 0.1°C. The plain language of the water quality standards establishes that the TMDL allocations and limits supersede the other criteria, with the result that it is the TMDL limits that are the standards to be met, not the PCW criterion.

In addition, while the PCW criterion applies only to Salmon, Steelhead, and Bull Trout streams, along with all waters upstream unless they have been demonstrated to not be needed for cooling waters in which salmonids reside, the TMDLs apply to a geographic scope potentially greater, namely all perennial streams at a minimum.

The Department says that the RipStream-based rulemaking should focus exclusively on meeting the 0.3°C PCW increment and that meeting the requirements of Oregon TMDLs is a different process for a different day. But this misreads Oregon's water quality standards for temperature, which explicitly change to incorporate the limits of temperature TMDLs *into* the standards. It is those limits and their associated geographic breadth that should guide the Board.

The Board should aim for the right target because it is efficient and does not rely on the disingenuous suggestion that the Department has the resources to conduct further rulemaking basin-by-basin. The Board should aim for the right target to respond to the science that demonstrates that stream warming is cumulative and that you can't just protect fish where you find them. The Board should aim for the right target because focusing only on threatened and endangered salmonids to the exclusion of other cold-water species, such as frogs and salamanders, is both legally required and smart for Oregon's future. The Board should aim for the right target because climate change is about to make a mockery of all of our water quality models and the best thing we can do is to insulate all of our streams from its effects.

Six years after the RipStream results were first presented, the Board should move forward with 120 foot buffers as the most likely to meet the water quality standards that are actually in place and apply them, at a minimum, to all perennial and all intermittent fish-bearing streams. That is what is legally required. It is also biologically required, as strongly urged by Oregon's very own Independent Multidisciplinary Science Team in 1999.