



### FPA Riparian Rule Review

Comment by Rex Storm, Associated Oregon Loggers, Inc.  
before the Oregon Board of Forestry – November 5, 2015

Chair Imeson and Board members, my name is Rex Storm, Certified Forester and Forest Policy Manager for Associated Oregon Loggers (AOL). I make these comments on behalf of the 1,000+ AOL member companies, representing logging, transportation, construction, and allied forest management businesses working across Oregon—many who own forestlands and forest streams. Your consideration of Oregon Forest Practices riparian rules is of critical concern to our business.

**Concerning riparian rulemaking, we urge the Board to adopt Subcommittee Package #2, with the following provisions:**

- a) Applicable the same to all landowners practicing the same stewardship; and
- b) ODF monitor and report both the ongoing compliance and the ongoing voluntary stream enhancements by landowners and operators

**We also urge the Board to reject Subcommittee Package #1 and other choices discussed:**

- a) Reject discrimination among so-called “small” and “large” landowners; and
- b) Reject upstream of SSBT reaches, Siskiyou georegions application, and no consideration of voluntary stream enhancements

I make these recommendations in respect for the Board’s 44-year commitment to Oregon’s Forest Practices Act and Rules, which have always been developed in the spirit of cooperative stewardship with your advisory committees and forest cooperators. These “cooperators” are: landowners, operators, and the forestry rate payers who uniquely share in the State’s expense of Oregon forest resource protection—unlike in other states or in other land uses. Let’s respect “The Oregon Way!”

- ✓ As Subcommittee Package #2 would best-achieve improved riparian conditions through strong future stewardship, Package #1 would clearly fail to accomplish a number of important stream stewardship & riparian objectives, described below.
- ✓ We do not see any middle-ground position, between Packages #2 and #1. Package #2 is truly a compromise—as it proposes greater stream shade changes than would prescriptions previously offered to the Board by the Board’s Regional FP Committees, AOL, and OFIC. Any further compromise between #2 and #1 would be a political maneuver that damages the important stewardship relationship.

We have previously shared our concerns and objectives with the Board, your advisory committees, and Department staff—so, none of the following objectives should surprise you. Subcommittee Package #2 would achieve the following objectives; Package #1 would not:

1. Board advisory committees—Consistent with the thoughtful solutions offered by Regional Forest Practices and Family Forestlands advisory committees. These expert advisors crafted small, targeted stream upgrades, which would not overreach nor be unintended consequence.

2. Support by Oregon's forest cooperators, which would offer small, tailored enhancements to foster high compliance, extra contributions, and improved stream conditions over time.
3. Continued voluntary private investment in extra stream improvements and high compliance with RMA rules by willing forest cooperators, who are accepting of the measured changes in Package #2. This is cooperative stewardship; it is not measured or shown in Department charts. Cooperator support for existing RMA rules—plus small upgrades—would foster continued voluntary private investments. In contrast, the over-reaching Package #1 would severely damage, or eliminate, future private investment in improved streams. Such investments/voluntary improvements should be identified and reported by ODF.
4. Effects on the beneficial use: Fish. The myopic examination of the PCW criterion is an unnatural scheme that fails to contemplate the context of fish beneficial use. While the singular PCW platitude ignores fish use, the MEP consideration must consider the current robust health of fish habitat and native populations within forest streams.
5. The singular PCW criterion fails to contemplate the context of natural conditions. Absent a natural conditions criterion in Oregon's water quality standard, the broad natural variation and behavior among forest streams must be weighed during your MEP consideration.
6. The "Lone Ranger" PCW criterion fails to stack-up to the full water quality standard. The PCW alone is fraught with irrational contradiction—especially in the ever-changing dynamics of diverse forest streams. The PCW completely fails to weigh natural variation of forest streams and fish use. Arguably, the PCW criterion is a singular dimension isolated unnaturally in space & time. Oregon forest water quality standard is broken, because of its lacking "natural conditions criterion." The lone pursuit of this unnatural, zero tolerance for PCW temperature control appears to come at great expense to fish condition, landowner cost, impacted stewardship, and unintended consequences. Absent a natural conditions criterion in Oregon's water quality standard, the broad natural variation and behavior among forest streams must be weighed during your MEP consideration. Pursuit of the singular and artificial PCW criterion—in a void that ignores all natural conditions, ignores beneficial fish use, ignores temporal effects, ignores downstream effects—is a political fool's errand.
7. Considering the important current science. Preliminary findings of the *Watershed Research Cooperative's* science indicate that effects of current RMA buffers are not transferred downstream. We cannot ignore the apparent and relative lack of downstream temperature effects of current RMA forest stream buffers and harvesting.
8. Fairness among land uses; new science; and downstream effects. The exacting water quality standard expectations dictated on forests are relatively inequitable and more limiting, when compared to other land uses agriculture, urban, suburban, industrial, or public property & highways. Forest streams should not be held to higher yardstick than urban or agricultural streams, especially for those small effects here.
9. RipStream and "Model" are two different vehicles; Model is an unnatural & inaccurate approximation. Although the RipStream study shows an instantaneous time & space temperature situation (ignoring temporal and downstream relief), the use of RipStream data within a separate "Model" is an errant step. The RipStream study sample explicitly was biased in its unit selection to eliminate nearly all natural variation in sample stream reaches.

It is therefore a misappropriation of the biased unnatural data set—to then apply that unnatural data into a Model that would presumably predict so-called natural conditions. This is an error! Dynamic natural forest streams, and their buffers, behave differently than this artificial-biased-unnatural Model—an inaccurate approximation of natural conditions.

10. The least burdensome package would work in concert with cooperators and the Board's advisory committees. Cooperation through a measured small change in RMA rules would avoid potential warring, among cooperators and agencies, which could undermine future voluntary improvements, high compliance, and superior innovation in resource protection in all facets of forestry relationship. On the contrary, if overreaching RMA rule changes were dictated, then such an added burden would perform as a new and unfair tax on cooperator's prior record of high cooperation that fostered voluntary stream/watershed improvements. An overreaching RMA rule change would be divisive and counter-productive.
11. Benefit of rule change should be proportional to problem. Any rule change—and its costs and impacts—should be proportional in scope to the aggregate size of the resource problem. The relatively small-temporary-onsite (not downstream) scale of the PCW variance detected by RipStream certainly does not warrant more than a commensurately small RMA rule change. A large rule change would cause unwanted stewardship costs, less voluntary investment, avoided RMA management, potential land use change to non-forest use, and property value takings that could trigger Measure 49 claims.
12. Economic impacts of rule change accepted as reasonable and appropriate. Cooperators, landowners, and operators view FPA rulemaking as an investment in a level playing field, where all cooperators give and receive equitably by a common set of standards. And, the history of the FPA has relied most heavily on science-based rule upgrades that are proportional to problem and least burdensome. Because current rules are regarded as measured and fair, any overreaching change, having significant economic impacts that are understood to be unwarranted, would be implemented with less accommodation by the cooperators. Cooperators seek the least cost outcomes that would assure their collective resource protection. Economic impacts should be low, commensurate, and fair.
13. Legal basis supports Board prudence to adopt small, targeted stream upgrades to reduce the PCW effects for all forestlands—large and small. Rulemaking provisions authorize your discretion to choose a solution to the maximum extent practicable. Such an MEP solution would: value the beneficial use, weigh temporary & downstream effects, accommodate naturally dynamic conditions, hear current WRC science, foster cooperative stewardship, be proportional to the problem, not discriminate between landowners because of their perceived size, and be the least burdensome Package.

In summary, these objectives illustrate the importance of private cooperative stewardship, and how small, targeted rule changes can best reduce the variance concerning the PCW dilemma, without a host of costly unintended consequences. Thank you for assuring effective rules and voluntary measures that are willingly employed by Oregon's forest cooperators.

We are confident that your decision will honor the 44-year relationship between the Forest Practices Act rulemaking and its forest cooperators. These cooperators teamed with the Board and Oregon Legislature to author the Act in 1971, and together continue strengthening it. This marriage has forged America's most respected forest law through cooperation between the state and private sector.