

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

IN THE MATTER OF:

**BRIMSTONE NATURAL RESOURCES
COMPANY,**

Respondent.

**OREGON DEPARTMENT OF
FORESTRY'S EXHIBIT INDEX**

OAH Ref. No.: 1403854
Agency Case Nos.: 13-SW022
13-SW023
13-C8024
SW al

NO.	DATE	DESCRIPTION	Pages	OFF	ADM
A1	10/30/13	Brimstone Gulch Citation Overview	16		
A2	11/1/13	Excel spreadsheet of tree diameters-east/west	2		
A3	7/8/13	Notification filed by Brimstone - #00302	4		
A4	7/10/13	Notification Report/Written Plan Notice - #00302	4		
A5	9/9/13	Inspection Report for #00302	1		
A6	9/25/13	Citation #13-SW022 and Certificate of Service (Motion for Summary Determination Ex. A1)	2		
A7	9/25/13	Citation #13-SW023 with Cease/Repair Order and Certificate of Service (Motion for Summary Determination Ex. A2)	4		
A8	9/25/13	Citation #13-SW024 with Cease/Repair Order and Certificate of Service (Motion for Summary Determination Ex. A3)	3		
A9	9/25/13	Notice of Contested Case Rights on Repair Order	4		
A10	10/17/13	Request for Hearing on Repair Order	3		
A11	10/22/13	Letter to Brimstone acknowledging hearing request on Repair Order	1		
A12	11/7/13	Instructions for filling out notification of operations – key to codes on form	2		
A13		(omitted)			
A14	11/7/13	Letter to Brimstone with supplemental rules on Repair Order	4		
A15	11/5/13	Maps of unit in relation to Medium F Stream	4		
A16	9/9/13	Photo 1 – 1st tree cut in 20' high water	2		
A17	9/9/13	Photo 2 – 3 trees within 20' high water	2		
A18	9/9/13	Photo 3 – Existing RMA	2		
A19	9/9/13	Photo 4 – Existing RMA 2	2		
A20	9/9/13	Photo 5 – Residual RMA	2		
A21	9/9/13	Photo 6 – Tree within 20' high water	2		

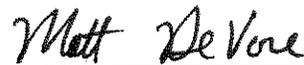
NO.	DATE	DESCRIPTION	Pages	OFF	ADM
A22	9/9/13	Photo 7 – Unposted access	2		
A23	11/1/13	Photo 8 – Posted access	2		
A24	3/28/13	Notification #00154 and statement of Unsatisfactory Condition	8		
A25	10/31/13	Curriculum Vitae – Brad Knotts, ODF Expert	2		
A26	1/3/14	Brimstone’s Exceptions to Proposed Repair Order in 13-SW023, 13-SW024 (Motion for Summary Determination Ex. A4)	5		
A27	1/15/14	Final Order to Repair Damage on 13-SW023 and 13-SW024 (Motion for Summary Determination Ex. A5)	29		
A28	7/29/14	Notice of Civil Penalty on Citations 13-SW022, 13-SW023 and 13-SW024	19		
A29	7/29/14	Notice of Rights on Civil Penalty	4		
A30	8/13/14	Brimstone Request for Hearing on Civil Penalty	1		
A31	8/25/14	Brimstone Denial, Claims and Defenses on Civil Penalty	3		
A32	9/4/14	Letter to Brimstone acknowledging request for hearing on Notice of Civil Penalty	1		

The Oregon Department of Forestry reserves the right to modify or supplement this Exhibit List and to submit additional Exhibits for its case-in-chief and in rebuttal.

DATED this 29th day of December, 2014.

Respectfully Submitted,

ELLEN F. ROSENBLUM
Attorney General



Matt B. DeVore, #063103
Assistant Attorney General
Of Attorneys for Oregon Department
Of Forestry

CERTIFICATE OF FILING/SERVICE

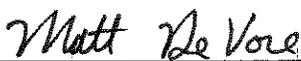
I hereby certify that on December 29, 2014, I filed the original OREGON DEPARTMENT OF FORESTRY'S EXHIBIT LIST AND EXHIBITS A1 THROUGH A32, by hand-delivery to Rick Barber, Office of Administrative Hearings, P.O. Box 14020, Salem, Oregon 97309-4020.

I further certify that on December 29, 2014, I served the within OREGON DEPARTMENT OF FORESTRY'S EXHIBIT LIST AND EXHIBITS A1 THROUGH A32 on the parties hereto by first-class mail at the addresses listed below.

James Dole
Watkinson Laird Rubenstein
1246 NE 7th Street, Suite B
Grants Pass OR 97526
jdole@wrlaw.com

Angie Lane
Oregon Department of Forestry
Private Forests
2600 State Street, Building D
Salem OR 97310
angie.g.lane@state.or.us

DATED this 29th day of December 2014.


Matthew B. DeVore, OSB #063103
Assistant Attorney General

Brimstone Natural Resources

- Notified on for Notification 201371200302 located at T34S, R6W sec 8 NWSW on July 8, 2013
- Operator and landowner were notified in writing by Tyson Schultz, SF 66 on July 10, 2013 that a written plan was required

Brimstone Natural Resources

- Notified on for Notification 201371200154 located at T34S, R6W sec 8 SWNW adjacent to property where violation occurred
- Received several complaints about equipment crossing Brimstone Gulch in May
- Met with John West & Robert Stumbo to discuss crossing without a written on May 21

EXHIBIT

A1

Page

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of

16

Brimstone Natural Resources

- Received several complaints in August about logging down to the creek, erosion concerns in the Brimstone Area
- On September 9, 2013 (delayed to fire activity) I drove out Brimstone and discovered that an operation had occurred near Brimstone Gulch, MF . Property was not posted and was open access
- Confirmed with GP HQ, notification number, operator and landowner

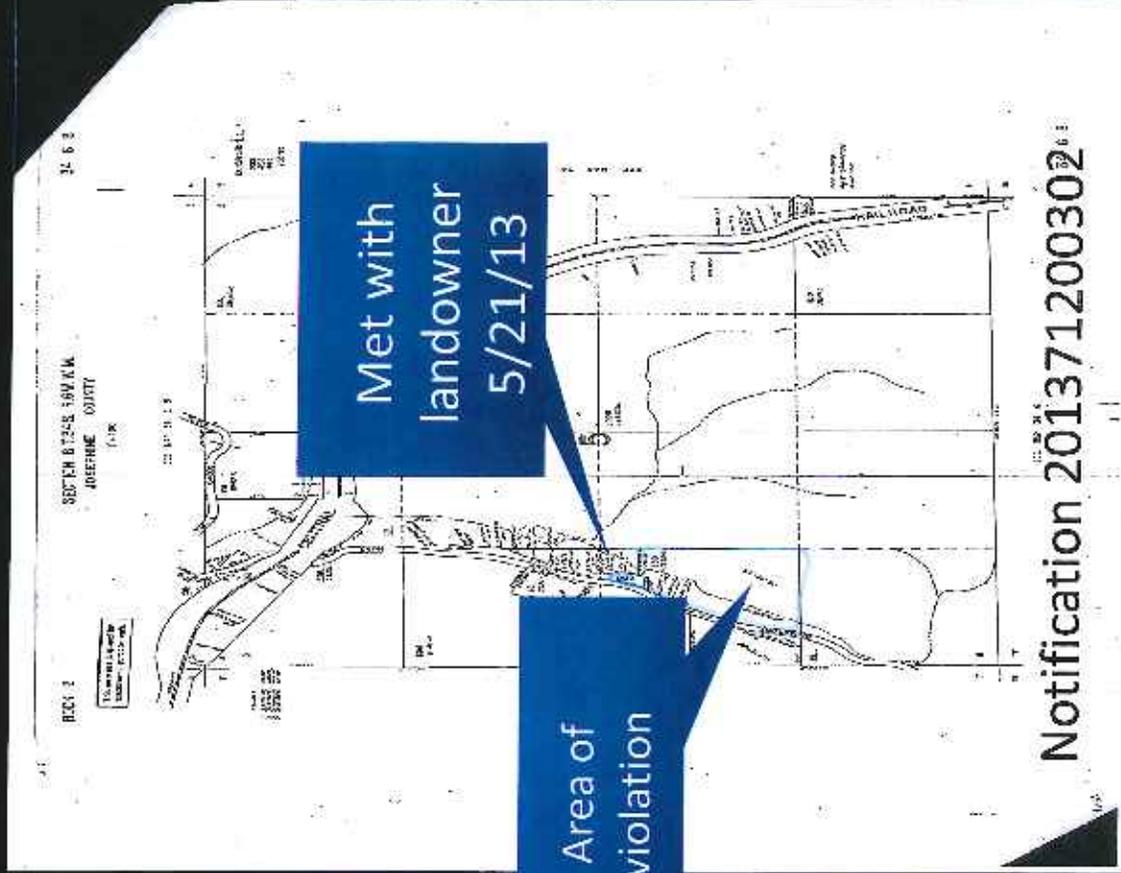
Brimstone Natural Resources

- Discovered a crossing had occurred without a written plan, UC issued for pullback and mulch
- Also discovered that 4 trees had been cut within 20' and that 45 total conifer trees had been removed from the RMA

EXHIBIT A1

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Brimstone Natural Resources



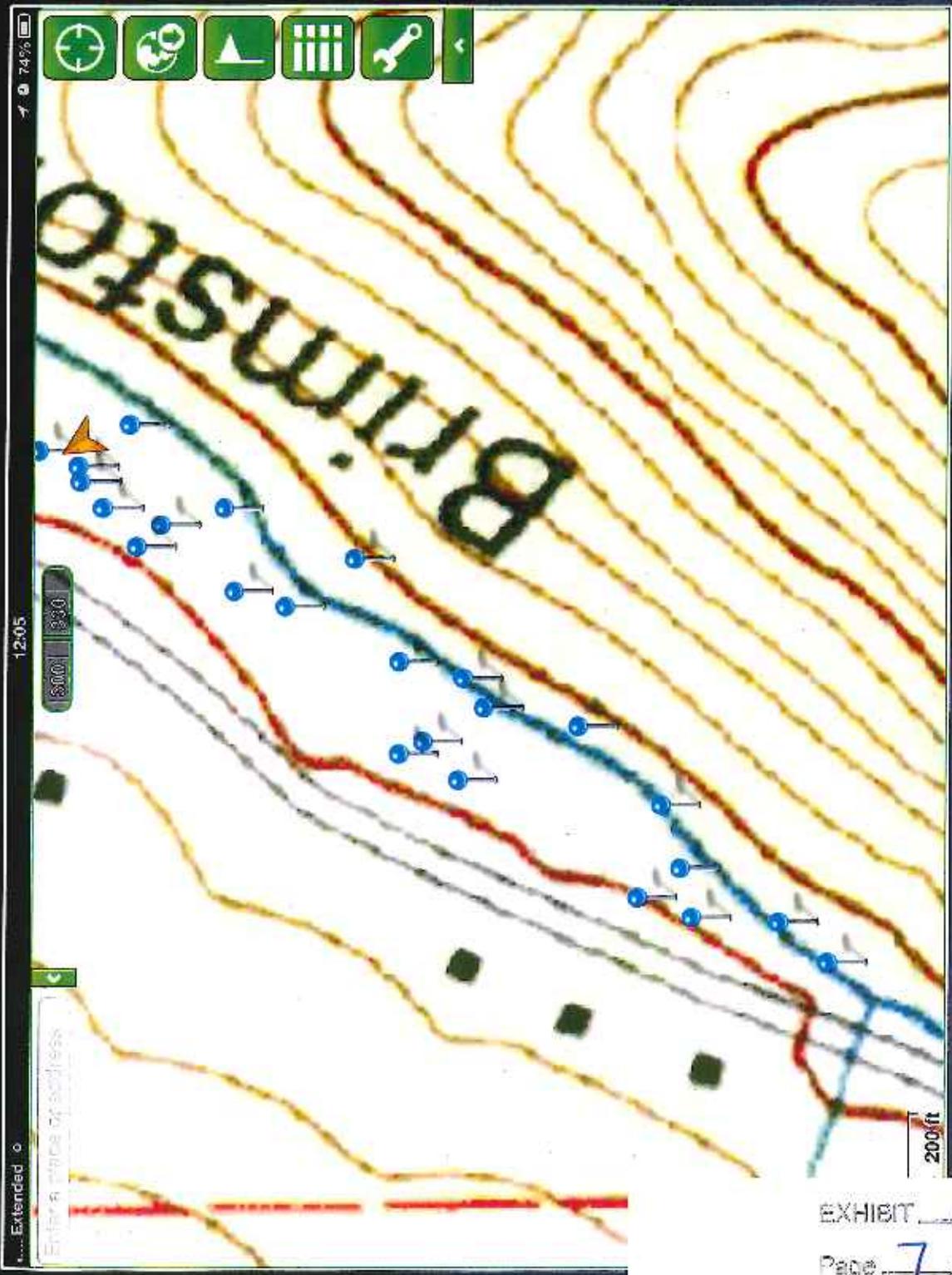


UC stream crossing

EXHIBIT A1

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AGENDA ITEM D
Attachment 3
Page 9 of 145



Pins represent where trees or groups of trees were harvested

Brimstone Natural Resources

Verizon LTE

17:15

95%

"Measure Your Land"

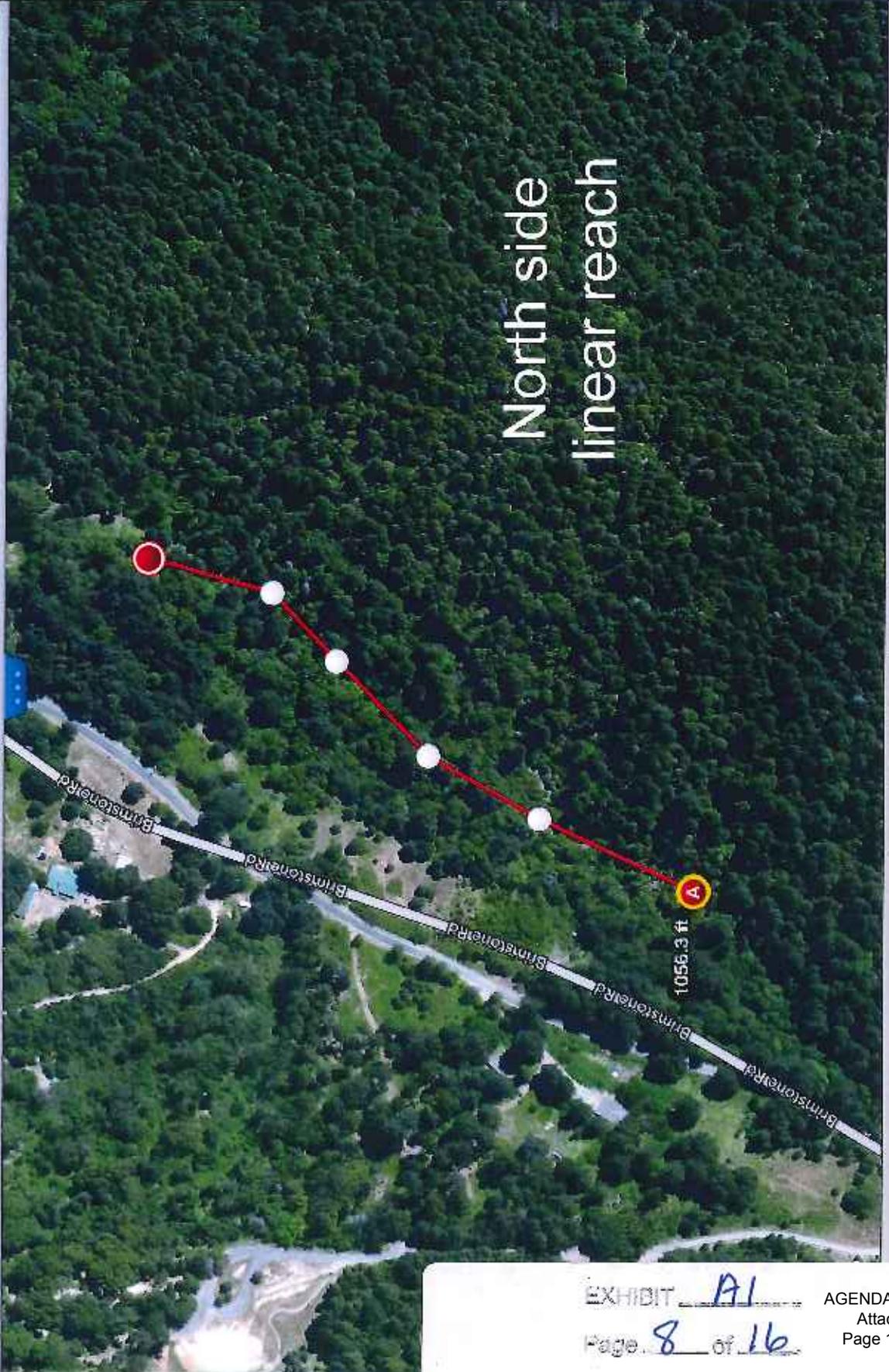


EXHIBIT A1
Page 8 of 16

AGENDA ITEM D
Attachment 3
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Brimstone Natural Resources

Verizon LTE

17:26

96%



"Measure Your Land"

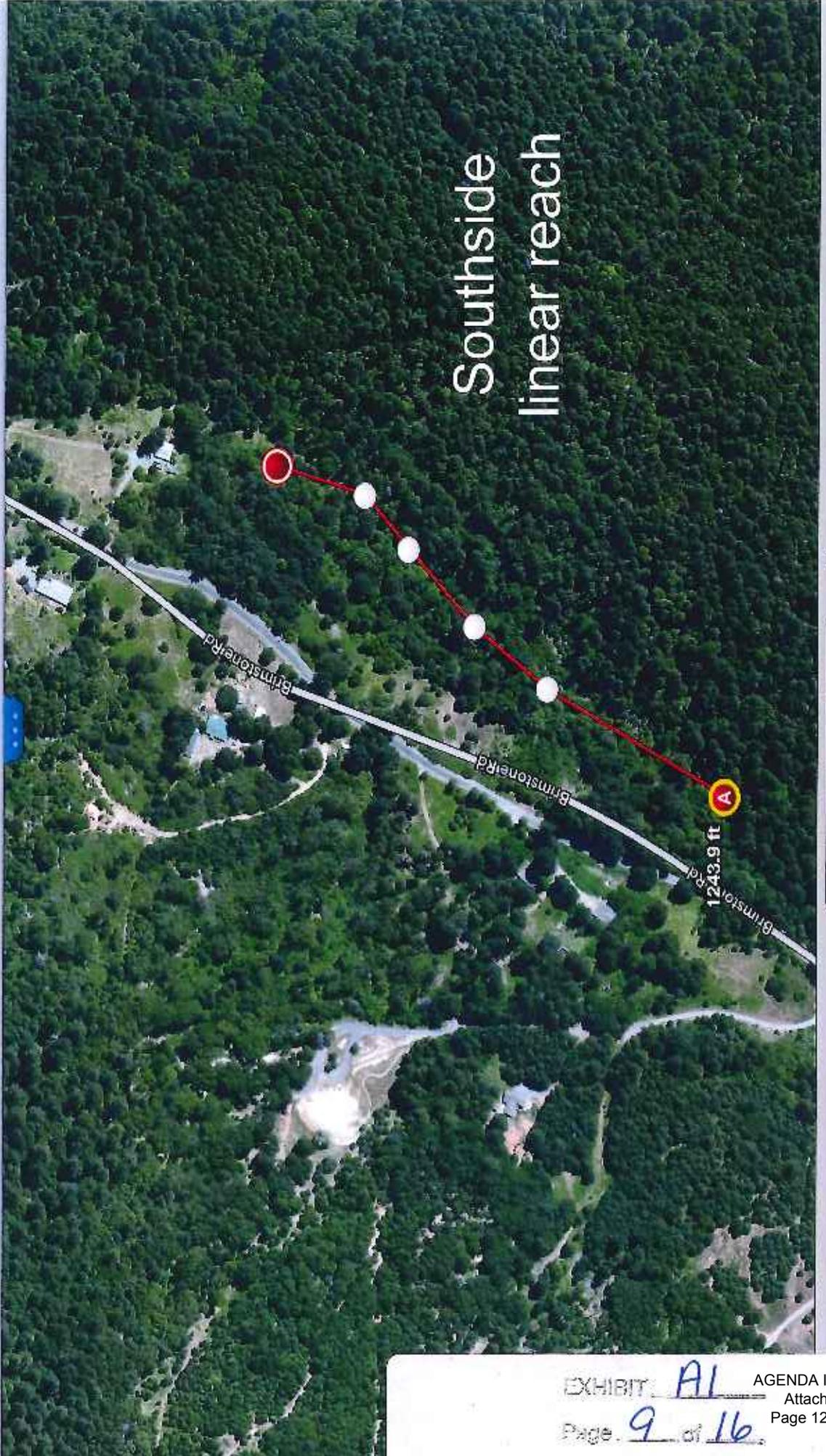


EXHIBIT AI
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AGENDA ITEM D
Attachment 3
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Brimstone Natural Resources

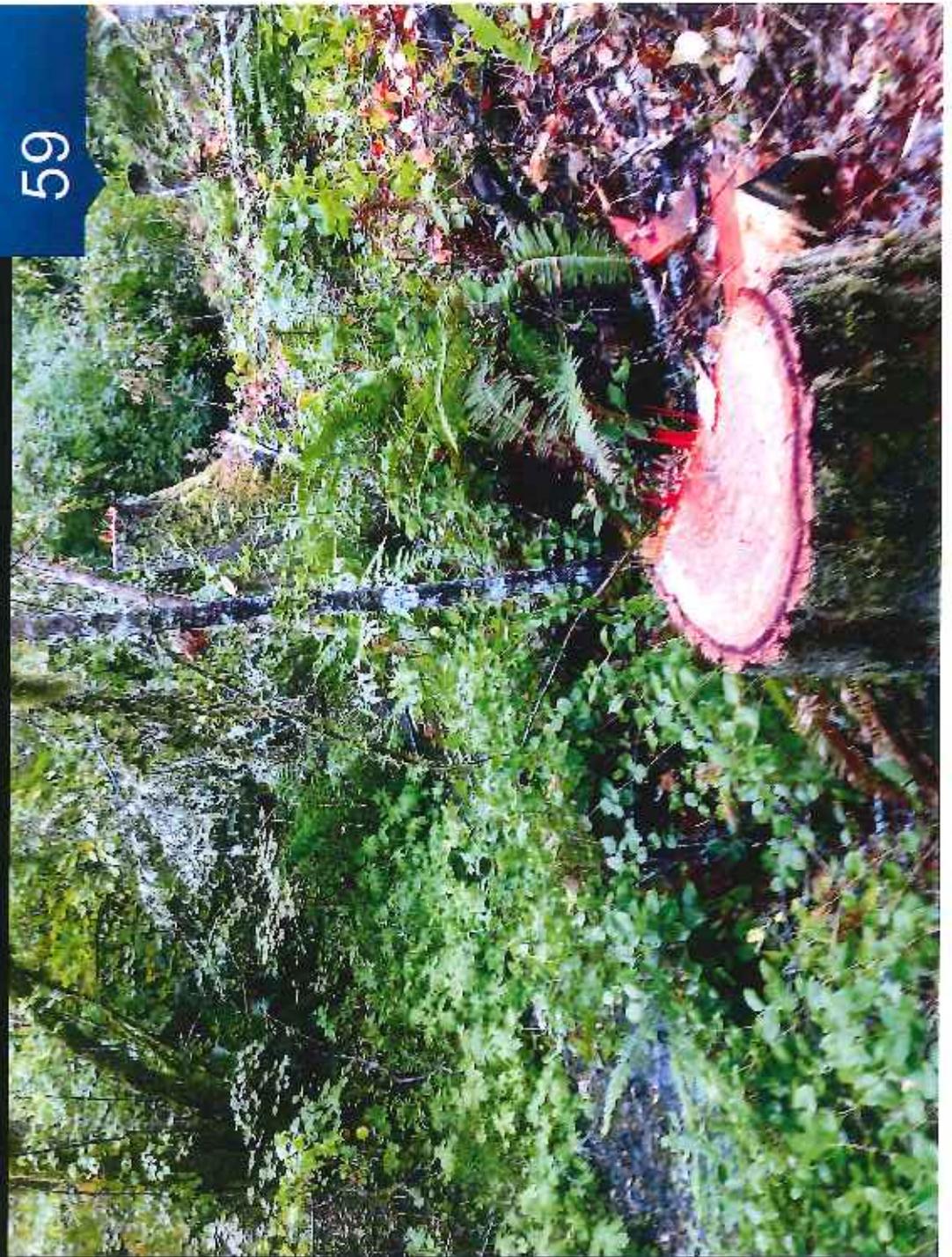
- Tree #10. Dbh 46" cut within 20'



EXHIBIT A1
Page 10 of 16

Brimstone Natural Resources

Tree
59



Trees 57-59 all
within 20'

EXHIBIT A1
Page 11 of 16

Brimstone Natural Resources



- Tree #58. Dbh 22" cut within 20' & leaning over the channel

EXHIBIT

A1

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of

16

Brimstone Natural Resources



- Tree #59. 14" Dbh cut within 20'

EXHIBIT A1
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Brimstone Natural Resources

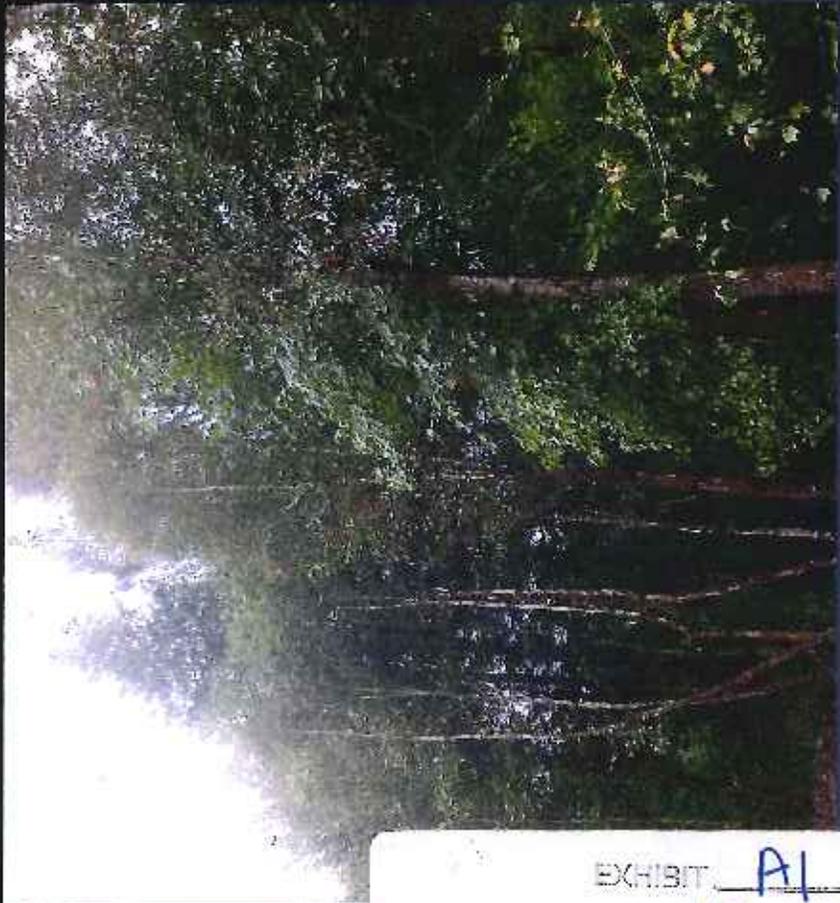


Existing RMA



• Residual RMA

Brimstone Natural Resources



Existing RMA



• Residual RMA

EXHIBIT A1
Page 15 of 16

Brimstone Natural Resources



- Historical items impacted

EXHIBIT AL
Page 16 of 16

WEST SIDE WOLF CREEK SOUTH OF CROSSING

Tree #	HARVESTED						LEAVE TREES			
	Stump Diameter	Diameter	Within 20'	Within 50'	Within 70'	BA	DBH	STUMP	TAPER	BA
1	25	22.0			X	2.64	29			4.59
2	6	5.3			X	0.15	6	7	0.86	0.20
3	6	5.3			X	0.15	10			0.55
4	22	19.4			X	2.04	17	18	0.94	1.58
5	24	21.1			X	2.43	16			1.40
6	12	10.6			X	0.61	12	14	0.86	0.79
7	15	13.2			X	0.95	6	7	0.86	0.20
8	24	21.1			X	2.43				
		14.7							0.88	
						SUBTOTAL	11.41		SUBTOTAL	4.70

WEST SIDE WOLF CREEK NORTH OF CROSSING

Tree #	HARVESTED						LEAVE TREES			
	Stump Diameter	Diameter	Within 20'	Within 50'	Within 70'	BA	DBH	STUMP	TAPER	BA
47	26	22.9			X	2.87	12			0.79
48	14	12.3			X	0.83	6	7	0.86	0.20
49	38	33.5			X	6.12	14	15	0.93	1.07
50	26	22.9			X	2.87	6	7	0.86	0.20
51	18	15.9		X		1.37	18			1.77
52	33	29.1		X		4.62	11	12	0.92	0.66
53	33	29.1		X		4.62	14			1.07
54	48	42.3			X	9.77	32			5.59
55	17	15.0		X		1.23	16	17	0.94	1.40
56	21	18.5		X		1.87	10	12	0.83	0.55
57	17	15.0	X	X		1.23	10	11	0.91	0.55
58	25	22.0	X			2.65	8	9	0.89	0.35
59	16	14.1	X			1.09	12	14	0.86	0.79
60	12	10.6		X		0.61	14	16	0.88	1.07
61	30	26.5		X		3.82	9	10	0.9	0.44
62	12	10.6		X		0.61	8	10	0.8	0.35
63	22	19.4		X		2.05				
64	26	22.9		X		2.87				
		21.3							0.88	
						SUBTOTAL	51.07		SUBTOTAL	16.02

EAST SIDE BRIMSTONE GULCH SOUTH OF CROSSING

Tree #	HARVESTED			LEAVE TREES						
	Stump Diameter	Diameter	Within 20'	Within 50'	Within 70'	BA	DBH	STUMP	TAPER	BA
9	38	33.6		X		6.17	12	14	0.86	0.79
10	52	46.0	X			11.55	12	14	0.86	0.79
11	20	17.7			X	1.71	18			1.77
12	16	14.2			X	1.09	14			1.07
13	20	17.7			X	1.71	8	9	0.88	0.35
14	24	21.2			X	2.46	6	7	0.86	0.20
15	22	19.5			X	2.07	22			2.64
16	18	15.9			X	1.38	24			3.14
17	32	32.0			X	5.59	30	36	0.83	4.91
18	28	28.0			X	4.28	20	22	0.91	2.18
19	24	24.0			X	3.14	34	36	0.94	6.31
20	20	20.0			X	2.18	30	32	0.94	4.91
21	28	28.0		X		4.28				
22	18	18.0			X	1.77				
23	30	30.0			X	4.91				
24	30	30.0		X		4.91				
		24.7							0.89	
						SUBTOTAL	59.19	SUBTOTAL		25.11

EAST SIDE BRIMSTONE GULCH NORTH OF CROSSING

Tree #	HARVESTED			LEAVE TREES						
	Stump Diameter	Diameter	Within 20'	Within 50'	Within 70'	BA	DBH	STUMP	TAPER	BA
25	36	29.2		X		4.64	12			0.79
26	32	32.0		X		5.59	6	7	0.86	0.20
27	24	24.0		X		3.14	12	13	0.92	0.79
28	24	24.0			X	3.14	12	16	0.75	0.79
29	26	26.0			X	3.69	12	17	0.71	0.79
30	38	38.0		X		7.88				0.00
31	20	20.0		X		2.18				0.00
32	18	18.0		X		1.77				0.00
33	20	20.0		X		2.18				0.00
34	32	32.0		X		5.59				0.00
35	22	22.0		X		2.64				0.00
36	30	30.0			X	4.91				0.00
37	24	24.0		X		3.14				
38	22	22.0		X		2.64				
39	30	30.0		X		4.91				
40	56	56.0		X		17.10				
41	17	17.0		X		1.58				
42	18	18.0		X		1.77				
43	13	13.0		X		0.92				
44	18	18.0		X		1.77				
45	21	21.0		X		2.41				
46	21	21.0		X		2.41				
						SUBTOTAL	85.97	SUBTOTAL	0.81	2.55

25.2



NOTIFICATION OF OPERATIONS/APPLICATION FOR PERMIT
STATE OF OREGON

DEPARTMENT OF FORESTRY

DEPARTMENT OF REVENUE

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 Deschutes While in one county name:
 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 527.570).
 2B APPLICATION FOR PERMIT TO REMOVE FOREST PRODUCTS (ORS 47.620).
 2C NOTICE TO THE STATE FORESTER AND THE DEPARTMENT OF REVENUE OF THE INTENT TO HARVEST TIMBER (ORS 521.550).

3. REPRESENTATIVE: John West PLEASE PRINT! Person to be contacted in case of fire emergency (Designated Representative).
 4. Timber Sale Name and/or Number: Brimstone Area Code & Phone No.

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

5. OPERATOR
 ATTENTION: If you are conducting timber harvesting or road construction within 100 feet of overhead or underground utility lines, call the Oregon Utility Notification Center at 1-800-552-2844. Request that the owner of the line be notified, and record the number issued to you by the Oregon Utility Notification Center here.

6. LANDOWNER
 Timber harvesting may result in a tree planting requirement on the landowner. The landowner has the responsibility to reforest if the harvest results in an understocked condition. Call a Department of Forestry office for more information.
 For activities within an urban growth boundary, the applicant is advised to contact the appropriate local government regarding land use regulations which may apply to the future use or development of this site.

7. TIMBER OWNER AND TAX PAYER
 The timber owner must provide either a Tax payer identification number OR the last 4 digits of the Social Security number (see ORS 521.550(1) and (2)). Social Security number information will be used ONLY for the purpose of identifying the timber owner to the Department of Revenue for the collection of Timber Tax, and will be held in confidence.

Notification Number: 201371200303
 OP TO LO
 Geographic Area:
 Date Received: 7-8-13 Time: 1208
 Initials: LSH
 District:
 Correction:
 Officer:

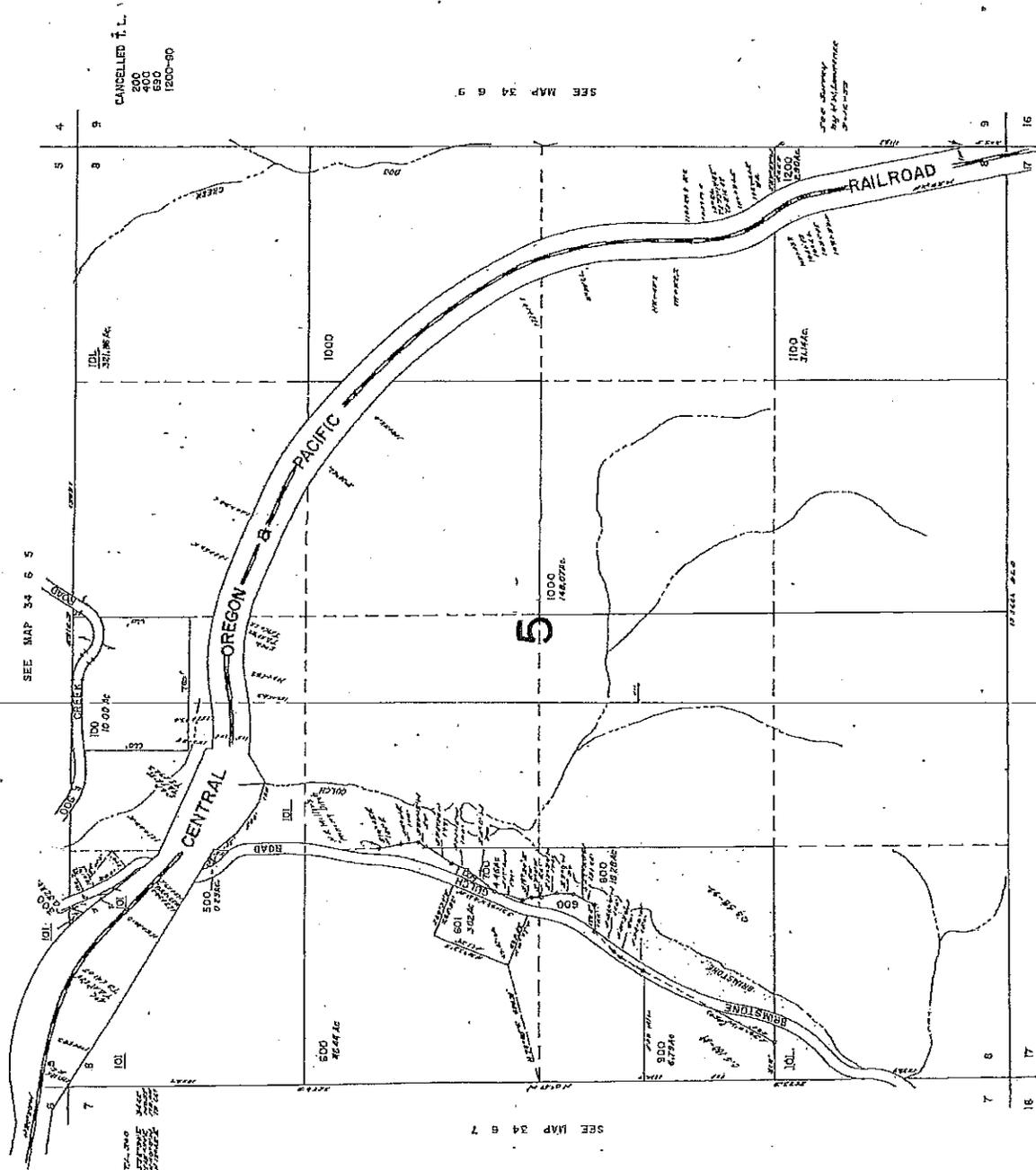
Please describe the intent of the operation, and any other information that may be relevant to the Stewardship Forester.

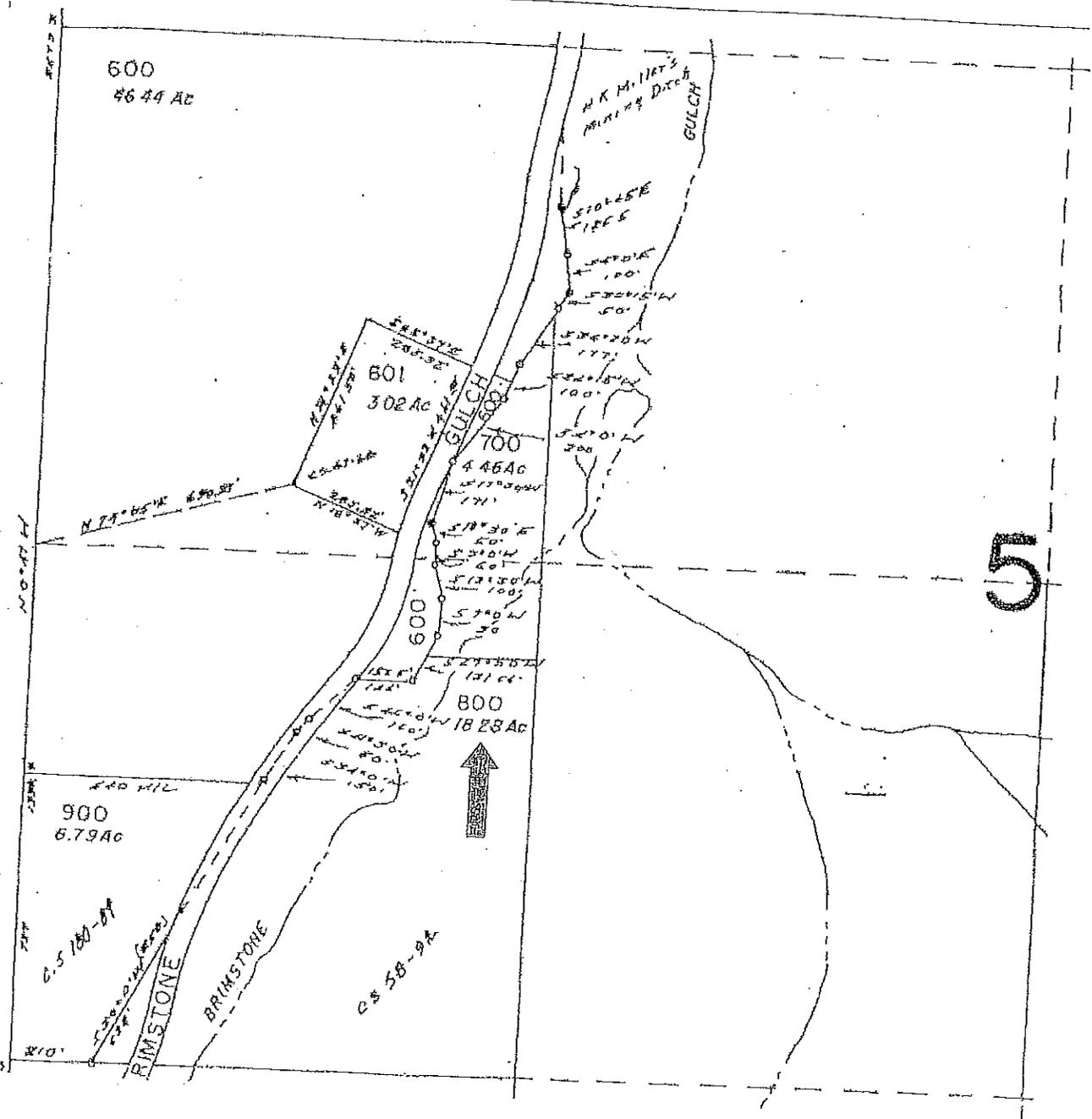
APPLICANT REMARKS:
 Name: B.S. Roads
 Business Name:
 Mailing Address - Street Address: 140 Stable Dr
 City, State and Zip Code: Roseburg OR 97470 Area Code & Phone No: 541-430-6613
 Name: Brimstone Natural Resource Co.
 Business Name: John West
 Mailing Address - Street Address: PO Box 1249
 City, State and Zip Code: MELLEN OR 97532 Area Code & Phone No: 541-660-9541
 Name: Brimstone Natural Resource Co.
 Business Name: John West
 Mailing Address - Street Address: PO Box 1249
 City, State and Zip Code: MELLEN OR Area Code & Phone No: 541-660-9541
 Timber Owner Employer Identification Number: E1A 46-2537330 Last 4 digits of the Social Security Number

Division of Operations - Revised 3/11 (12K order)

This map was prepared for assessment purposes only.

1" = 500'





CLATSOP COUNTY
 E. McAndrews Road, Ste.100
 Grants Pass, Oregon 97504
 T: 541-772-2811 F: 541-772-6079
medfordtitle@ticortitle.com

JOSEPHINE COUNTY
 744 NE 7th Street
 Grants Pass, Oregon 97526
 P: 541-476-1171 F: 541-476-1174
grantspasstitle@ticortitle.com

This map is made solely for the purpose of assisting in locating the premises, and the Company assumes no liability for errors or omissions printed on this map, including but not limited to zoning variations (if any) in area, actual dimensions, and other details.



State of Oregon
 Department of Forestry - Department of Revenue
 Notification Number: 2013-712-00302
 Timber Sale: Brimstone

REPRINT
 EDITED
 08/23/13



Attached is the processed information from the Notification of Operation/Application for Permit signed by John West representing the Land Owner, and received by Department of Forestry on July 8, 2013. Please review this information and retain for future reference.

Notices and Permits

Notice is given to the State Forester that an operation will be conducted on the lands described herein.

A permit to use fire or operate power driven machinery is issued for the land described herein.

A notice is given to the State Forester and the Department of Revenue of the intent to harvest timber.

SF Comments: NO OPERATIONS WITHIN 100 FEET OF STREAM WITHOUT A REVIEWED, WRITTEN PLAN ON FILE WITH ODF - TS

LEGAL NOTICE

The following section provides legal notification of the requirement to submit a written plan before certain portions of this Operation may begin. The requirements are indicated below:

Based on information provided by the applicant, no Written Plans were required at the time this notice was sent. Written Plans may be required at a future date if new protected resources or other information is discovered.

Notification 15 Day Waiting Period:

This Operation is subject to the 15 day Waiting Period. A waiver was requested and was granted by Tyson Schultz on July 10, 2013.

Operator:

Carlos Short
 B.S. Roads/Carlos Short
 140 Sable Dr
 Roseburg, OR 97470

Fire Contact:

John West
 (541) 660-9541

Land Owner:

John West
 Brimstone Natural Resource Co.
 P.O. Box 1249
 Merlin, OR 97532
 (541) 660-9541

Notice to Land Owner: If timber harvesting is part of the proposed operation, the party shown above, is responsible for reforestation of the site if so required.

Timber Owner:

John West
 Brimstone Natural Resource Co.
 P.O. Box 1249
 Merlin, OR 97532
 (541) 660-9541

Notice to Timber Owner: If timber harvesting is part of the proposed operation, the party shown above, owning the timber at the point it is first measured is responsible for payment of Oregon timber taxes.

District: Southwest Oregon

Office: Grants Pass Unit

County: Josephine

(Land Owner Copy)

Doug Decker, State Forester
 Daniel Thorpe, District Forester

John West
 Brimstone Natural Resource Co.
 P.O. Box 1249
 Merlin, OR 97532

Unit Information - Notification: 201371200302
 Unit 1 of 1 Start: 07/23/13 End: 12/31/13
 Status: Open
 Stewardship Forester: Stephen K. Wetmore

Site Conditions Waters: Lake or stream Within 100 feet.
 Soils: No mass soil movement.
 Slope: 0% to 35%.
 SF Phone Number: (541)474-3152

Priorities: Fire: Medium FPA: High

Twp	Rge	Sec	NE				NW				SW				SE				Government Lot Number	Tax Lot No.	Reg Use
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
34S	06W	8	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		800														

Activity	Method	Acres	Feet	MBF	Comment
1a - Commercial Thinning, Selective Cutting	Dozer	18.00	0	50	

Resource Name	Resource Description
Brimstone Gulch	Brimstone Gulch: Medium Type F Stream(s)
High Landslide Hazard Location	No Special Concerns Found.
Subscribers: Oregon Department of Fish & Wildlife, Marianne Moskowitz	

**Oregon Department of Forestry -- Southwest Oregon
SF Operation Report for Stephen K. Wetmore, SF No. 64
Notification No. : 201371200302**

REPRINT
EDITED
08/23/13

Sale Name / No. :	Brimstone	Auto-Accomplish:	No
Total Units :	1	Notices / Permits :	Operation PDM Harvest
Date Received :	July 8, 2013	15 Day Waiting Period :	Waiver granted by Tyson Schultz on July 10, 2013.
County :	Josephine		
Start Date :	07/23/13		
End Date :	12/31/13		

Operator	Land Owner	Timber Owner
Carlos Short B.S. Roads/Carlos Short 140 Sable Dr Roseburg, OR 97470	John West Brimstone Natural Resource Co. P.O. Box 1249 Merlin, OR 97532 (541) 660-9541	John West Brimstone Natural Resource Co. P.O. Box 1249 Merlin, OR 97532 (541) 660-9541

Fire Contact: (541) 660-9541 - John West

Signed by: John West for Land Owner

Notification Comments: NO OPERATIONS WITHIN 100 FEET OF STREAM WITHOUT A REVIEWED, WRITTEN PLAN ON FILE WITH ODF - TS

Unit 1 of 1 Start: 07/23/13 End: 12/31/13
Status: Open
Stewardship Forester: Stephen K. Wetmore

Site Conditions Waters: Lake or stream Within 100 feet.
Soils: No mass soil movement.
Slope: 0% to 35%.

Priorities: Fire: Medium FPA: High

Twp	Rge	Sec	NE				NW				SW				SE				Government Lot Number	Tax Lot Number	Reg Use				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE							
34S	06W	8	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		800																		

Activity	Method	Acres	Feet	MBF	Comment
1a - Commercial Thinning, Selective Cutting	Dozer	18.00	0	50	

Resource Name	Resource Description
Brimstone Gulch High Landslide Hazard Location	Brimstone Gulch: Medium Type F Stream(s) No Special Concerns Found.

Subscribers: Oregon Department of Fish & Wildlife, Marianne Moskowitz

Sent on 7/10/13

Your Proposed Operation

Needs to be Described in a Written Plan

OREGON DEPARTMENT OF FORESTRY
FOREST PRACTICES PLAN NOTICE



Operator : BS Roads Landowner: Brimstone Natural Resource CO.

Notification #: 2013-712-00302 Operation Name or Vicinity: Brimstone

Written plans are intended to assist you in achieving compliance with forest resource protection rules and laws. The plan is to help the landowner, operator, the Department of Forestry, and interested publics know that the operation will protect forest resources.

For your operation you need to prepare and submit to the Dept. the following type(s) of plan(s).

A Statutory Written Plan for your Brimstone Creek operation is required by:

- ORS 527. 670(3)(a) and OAR 629-605-0170(1)(a) for an operation within 100 feet of a Type F Stream (Brimstone Creek).

By law, these plans have a mandatory 14-day public comment period and an additional maximum 7-day comment period for the Department of Forestry. You may not operate on the areas subject to this written plan until you receive my formal written comments on the plan. If the Dept. does not comment, you may begin on the 22nd day after your plan is received by the Department of Forestry.

In your written plan include:

- A map showing the operation area boundary and the protected resource location(s);
- the specific resource or resources requiring protection;
- the practices that may affect the protected resource(s); and
- the specific techniques and methods you will use to protect the resource(s).
- Other information necessary to explain how the operation will comply with any specific rule requirements.

The Dept. will review the written plan and may provide comments regarding whether your written plan is or is not likely to achieve compliance. The Dept. may also provide recommendations to help you achieve compliance. You may request a pre-operation review of the site.

You may begin operating on areas not subject to this written plan on or after 7/10/13.

Reviewing Stewardship Forester (type): Tyson Schultz *Tyson Schultz*

Office Phone: 541-474-3152 Cell Phone: 541-531-2211



Oregon Department of Forestry
Forest Activity Inspection Report

Date: 9/9/13
Notification / Unit No.: 201371200302
Sale or Job Name: Brimstone
FPF Name/No.: Stephen K Wetmore / 64

Operator: Carlos Short dba BS Roads
Landowner: Brimstone Natural Resources
Timber Owner: Landowner

Form with sections: FIRE PREVENTION, FOREST PRACTICES, RECOMMENDATIONS, WRITTEN STATEMENT OF UNSATISFACTORY CONDITION. Includes checkboxes for various inspection items and a detailed statement of non-compliance.

INFORMATION ON ITEMS CHECKED ABOVE:
1. The crossing of Wolf Creek (MF) was done without a reviewed written plan on file and has resulted in excessive amounts of fill that may erode and contribute large quantities of sediment into waters of the State. You are hereby directed to pullback all fill material from the crossing and place in a stable location.
2. Establish waterbars on all skid trails near crossing and above the crossing.
3. Mulch all exposed soil with 6-12" straw
4. Pullback all sidecast material from skid trails or roads within 50' of Wolf Creek and mulch all exposed soils.

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.

FAILURE TO COMPLETE THIS OR IF DAMAGE OCCURS PRIOR TO COMPLETION WILL RESULT IN A FOREST PRACTICES CITATION
(541) 471-4253 desk
(541) 621-4104 cell

Signed: [Signature]
Received By:
Copies Mailed:
Date: 9/9/13
State Forester's Representative

Certificate of Service

**RE: In the Matter of Brimstone Natural Resource Co., Notice of Violation,
Orders to Cease Further Violation and Repair Damage or Correct
Unsatisfactory Condition
Case No. 13-SW022**

I HEREBY CERTIFY that I have made service of copies of the foregoing Notice of Violation and Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition upon the following party by causing them to be mailed in the United States Post Office at Merlin, OR 97532, on 9/25/13 a true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid addressed to:

BRIMSTONE NATURAL RESOURCE CO.
C/O JOHN WEST
PO BOX 1249
MERLIN, OR 97532

BRIMSTONE NATURAL RESOURCE CO
C/O JOHN WEST
215 ASHBROOK LANE
GRANTS PASS, OR 97526

BY CERTIFIED MAIL & FIRST CLASS MAIL

Stephen Wetmore, SF 64
Southwest OR, Grants Pass Unit, (541)474-3152

629-1-1-1-001
629-6-3-1-001

**OREGON DEPARTMENT OF FORESTRY
NOTICE OF VIOLATION / CITATION**

4/97

STATE OF OREGON

County of Josephine

District Southwest

Operation No. 201371200302

THE UNDERSIGNED STATE FOREST OFFICER CERTIFIES AND SAYS:

THAT ON THE 9th DAY OF September, 2013 AT 1000 CLOCK A M

AT (location): Former Historical Society Espy Tract

Township 34 South, Range 06 West, Section 8 NWSW, W.M.

(legal description)

NAME Brimstone Natural Resource Co.

LAST	FIRST	MIDDLE	
RES. PO Box 1249			
CITY Merlin	STATE OR	ZIP 97532	PHONE (541)660-9541
DATE OF BIRTH	OCCUPATION Logging / Mining		SEX

DID THEN AND THERE UNLAWFULLY COMMIT THE FOLLOWING OFFENSE:
Operator failed to submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a Type F or Type D stream."
IN VIOLATION OF ORS 527.670(3) OAR NO. 629-605-170(2)
RESULTING IN THE FOLLOWING UNSATISFACTORY CONDITIONS:
Failed to provide the State Forester the opportunity to review the written plan and determine the adequacy of resource protection specifically Brimstone Gulch, a Medium Type F and ensure compliance with the vegetative retention requirements.

DATE SERVED 9/25/13

OFFICER Stephen Wetmore, SF 64

NO. 1458

COURT APPEARANCE NOT REQUIRED

APPEAR IN

JUSTICE

DISTRICT COURT

ON: DAY OF , 20 , AT M

LOCATED AT

Certificate of Service

**RE: In the Matter of Brimstone Natural Resource Co., Notice of Violation,
Orders to Cease Further Violation and Repair Damage or Correct
Unsatisfactory Condition
Case No. 13-SW023**

I HEREBY CERTIFY that I have made service of copies of the foregoing Notice of Violation and Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition upon the following party by causing them to be mailed in the United States Post Office at Merlin, OR 97532 on 9/25/13, a true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid addressed to:

BRIMSTONE NATURAL RESOURCE CO
C/O JOHN WEST
PO BOX 1249
MERLIN, OR 97532

BRIMSTONE NATURAL RESOURCE CO
C/O JOHN WEST
215 ASHBROOK LANE
GRANTS PASS, OR 97526

BY CERTIFIED MAIL & FIRST CLASS MAIL

Stephen Wetmore, SF 64
Southwest OR, Grants Pass Unit, (541)474-3152

629-1-1-1-001
629-6-3-1-001

**OREGON DEPARTMENT OF FORESTRY
NOTICE OF VIOLATION / CITATION**

4/97

STATE OF OREGON

County of Josephine

District Southwest

Operation No. 201371200302

THE UNDERSIGNED STATE FOREST OFFICER CERTIFIES AND SAYS:

THAT ON THE 9th DAY OF September, 2013 AT 1000 CLOCK A M

AT (location): Former Historical Society Espy Tract

Township 34 South, Range 06 West, Section 8 NWSW, W.M.

(legal description)

NAME Brimstone Natural Resource Co.

LAST	FIRST	MIDDLE	
RES. PO Box 1249			
CITY Merlin	STATE OR	ZIP 97532	PHONE (541)660-9541
DATE OF BIRTH	OCCUPATION Logging / Mining		SEX

DID THEN AND THERE UNLAWFULLY COMMIT THE FOLLOWING OFFENSE:
Removed four trees within 20' of the high water level of Brimstone Gulch , a Medium Fish. Diameters of the trees removed were calculated to be 46", 15", 22" and 14" diameters breast height based upon stump cruise of leave trees within the same reach as the trees harvested
IN VIOLATION OF ORS OAR NO. 629-640-100(2)(b) RESULTING IN THE FOLLOWING UNSATISFACTORY CONDITIONS: Removed forest structure necessary to provide shade, bank stabilization, and potential large woody debris critical for fish streams in Southern Oregon

DATE SERVED 9/25/13

OFFICER Stephen Wetmore, SF 64

NO. 1458

COURT APPEARANCE NOT REQUIRED

APPEAR IN

JUSTICE

DISTRICT COURT

LOCATED AT _____ ON: _____ DAY OF _____, 20____, AT _____ M

**STATE OF OREGON
DEPARTMENT OF FORESTRY**

TO: Brimstone Natural Resource Co., 13-SW023

ORDER TO CEASE FURTHER VIOLATION

Pursuant to ORS 527.680(2), you are hereby directed to cease further violation of 629-640-100(2)(b) which requires that "Operators shall retain all trees within 20' of the High Water Level " as part of the general vegetative retention requirements.

ORDER TO REPAIR DAMAGE OR CORRECT UNSATISFACTORY CONDITION CAUSED BY VIOLATION

You are hereby directed to take the following action to repair damage or correct the unsatisfactory condition resulting from violation of 629-640-100(2)(b):

- 1) Plant a minimum of 40 Douglas-fir trees within 20' of the High Water Level as replacements for the 4 trees which were removed.
- 2) Plant no closer than 15' spacing
- 3) Specifications for the seedlings:
 - a. Must be for Seed Zone 3
 - b. Elevation < 2000'
 - c. 1-1 with caliper of 8-10 mm (prefer 2-0 with caliper of 8-10 mm)
- 4) Any species or size substitutions must be approved by ODF prior to planting
- 5) Planting only allowed from November 1, 2013 through February 28, 2014
- 6) Trees must be maintained for 4 years after planting to reach "Free To Grow" status

Such action is to be completed on or before February 28, 2014.

Date 9/25/13 /s/ Stephen Wetmore, _____
State Forester - Authorized Representative

As provided in ORS 527.700(1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.730 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

This notice becomes a final order unless the above-named party makes a written request for a hearing within 30 days from the date of service or mailing of the notice.

OrderToCeaseRepairForm.doc/Jaz D (FP)

OPERATOR

Certificate of Service

**RE: In the Matter of Brimstone Natural Resource Co., Notice of Violation,
Orders to Cease Further Violation and Repair Damage or Correct
Unsatisfactory Condition
Case No. 13-SW024**

I HEREBY CERTIFY that I have made service of copies of the foregoing Notice of Violation and Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition upon the following party by causing them to be mailed in the United States Post Office at Merlin, OR 97532, on 9/25/13, a true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid addressed to:

BRIMSTONE NATURAL RESOURCE CO
C/O JOHN WEST
PO BOX 1249
MERLIN, OR 97532

BRIMSTONE NATURAL RESOURCE CO
C/O JOHN WEST
215 ASHBROOK LANE
GRANTS PASS, OR 97526

BY CERTIFIED MAIL & FIRST CLASS MAIL

Stephen Wetmore, SF 64
Southwest OR, Grants Pass Unit, (541)474-3152

629-1-1-1-001
629-6-3-1-001

OREGON DEPARTMENT OF FORESTRY
NOTICE OF VIOLATION / CITATION

4/97

STATE OF OREGON

County of Josephine

District Southwest

Operation No. 201371200302

THE UNDERSIGNED STATE FOREST OFFICER CERTIFIES AND SAYS:

THAT ON THE 9th DAY OF September, 2013 AT 1000 CLOCK A M

AT (location): Former Historical Society Espy Tract

Township 34 South, Range 06 West, Section 8 NWSW

(legal description)

NAME Brimstone Natural Resource Co.

LAST	FIRST	MIDDLE
RES. PO Box 1249		
CITY Merlin	STATE OR	ZIP 97532
PHONE (541) 660-9541		
DATE OF BIRTH	OCCUPATION Logging / Mining	SEX

DID THEN AND THERE UNLAWFULLY COMMIT THE FOLLOWING OFFENSE:
Operator failed to retain 30 live conifer trees 8" dbh or larger per 1000' along medium streams
IN VIOLATION OF ORS OAR NO. 629-640-100(5) RESULTING IN THE FOLLOWING UNSATISFACTORY CONDITIONS: Removed critical components of the Riparian Management Area dramatically decreasing the thermal cover, bank stablization, negatively affecting wildlife uses and potential to deliver large woody debris into the stream system. 45 Trees with an average dbh of 24" along Brimstone Gulch were removed. The trees ranged in age approximately from 75 to 135 years old, 87% of the RMA was harvested

DATE SERVED 9/25/13

OFFICER Stephen Wetmore, SF64

NO. 1458

COURT APPEARANCE NOT REQUIRED

APPEAR IN

JUSTICE

DISTRICT COURT

LOCATED AT _____ ON: _____ DAY OF _____, 20____, AT _____ M

**STATE OF OREGON
DEPARTMENT OF FORESTRY**

TO: Brimstone Natural Resource Co., 13-SW024

ORDER TO CEASE FURTHER VIOLATION

Pursuant to ORS 527.680(2), you are hereby directed to cease further violation of OAR 629-640-100(5) which requires that "Operators must retain a minimum of 30 live conifers, 8"dbh or larger per 1000 feet along medium streams."

ORDER TO REPAIR DAMAGE OR CORRECT UNSATISFACTORY CONDITION CAUSED BY VIOLATION

You are hereby directed to take the following action to repair damage or correct the unsatisfactory condition resulting from violation of OAR 629-640-100(5):

- 1) Plant a minimum of 125 trees per acre for a total of 462 Douglas-fir trees within 70' of the High Water Level as replacements for the 41 trees which were removed from within the Riparian Management Area. This does not include the 40 trees to be planted as repairs for 13-SW023.
- 2) West side acreage is 1.7 acres using 70' RMA x 1056' reach requiring 212 trees minimum and the East acreage is 2.0 using 70' RMA x 1244' reach requiring 250 trees to be replanted.
- 3) Plant no closer than 19' spacing
- 4) Specifications for the seedlings:
 - a. Must be for Seed Zone 3
 - b. Elevation < 2000'
 - c. 1-1 with caliper of 8-10 mm (prefer 2-0 with caliper of 8-10 mm)
- 5) Any species or size substitutions must be approved by ODF prior to planting
- 6) Planting only allowed from November 1, 2013 through February 28, 2014
- 7) Trees must be maintained for 4 years after planting to reach "Free To Grow" status

Such action is to be completed on or before February 28, 2014.

Date 9/25/13 /s/ Stephen Wetmore

State Forester - Authorized Representative

As provided in ORS 527.700(1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.730 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

This notice becomes a final order unless the above-named party makes a written request for a hearing within 30 days from the date of service or mailing of the notice.

LANDOWNER

OrderToCeaseRepairForm.doc/Jaz D (FP)

EXHIBIT A8 AGENDA ITEM D
Attachment 3
Page 3 of 3 Page 39 of 145

**NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES
OTHER ORDERS OF THE STATE FORESTER**

This is information you should read to prepare for the hearing.

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules of the Department of Justice and the Oregon State Department of Forestry, (Oregon Administrative Rules 137-003-0505 through 137-003-0692, 629-001-0010 through 629-001-0050, and 629-672-0100 through 629-670-0220).
2. **Right to attorney.** The Department of Forestry is authorized to and will usually be represented by a lay representative. You have a right to be represented by an attorney at your own expense. **Unless you are a corporation, partnership, limited liability company, unincorporated association, trust, or agency, you may represent yourself at the hearing. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary it will be the decision of the administrative law judge (ALJ) if you may request a recess. Agencies, corporations, partnerships, limited liability companies, unincorporated associations and trusts may be represented only by attorney unless otherwise specifically provided by law.**
3. **Conferences.** Prior to a hearing, the State Forester or ALJ may schedule a prehearing conference. The agency and party(ies) shall appear through legal counsel or through persons authorized to represent the agency or party(ies). The purposes of the conference may include, but are not limited to the following:
 - (a) to facilitate discovery and to resolve disagreements about discovery;
 - (b) to identify, simplify and clarify issues;
 - (c) to eliminate irrelevant or immaterial issues;
 - (d) to obtain stipulations of fact and to admit documents into evidence;
 - (e) to provide to the hearing officer, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;
 - (f) to authenticate documents;
 - (g) to decide the order of proof and other procedural matters pertaining to the conduct of the hearing;
 - (h) to assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;
 - (i) to schedule the date, time, and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits; and

- (j) to consider any other matters that may expedite the orderly conduct of the proceeding.

The conference will usually be brief and held by telephone.

A record will be made of any stipulations, rulings, and agreements. Stipulations to facts and to the authenticity of documents, and agreements to narrow issues are binding upon all unless good cause is shown.

Unaccepted proposals of settlement at conference shall be privileged and shall not be admissible as evidence in the proceeding.

4. **Subpoenas.** You may subpoena witnesses. The Department of Forestry will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
5. **Presiding Officer.** The person presiding at the hearing is known as the administrative law judge. The ALJ will rule on all matters that arise at the hearing. The ALJ is a member of the Office of Administrative Hearings of the State of Oregon. The ALJ is not an employee, officer, or representative of the agency and may have authority to make a final independent determination if the Board of Forestry so delegates it.
6. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to gather facts. The order of presentation of evidence is normally as follows:
 - (a) Statement and evidence of the Department of Forestry in support of its action.
 - (b) Statement and evidence of the party disputing the Department of Forestry's action, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited.
 - (c) Rebuttal
 - (d) Closing arguments
7. **Burden of presenting evidence.** The burden of presenting evidence to support a fact or a position rests upon the party who proposes that fact or position. You should be prepared to present evidence which will support your position.
8. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by other parties or by the presiding officer.
9. **Admissible evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Evidence will be accepted only on issues brought up in the request for hearing.

Four kinds of evidence may be admitted:

- a. Knowledge of the agency. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the agency takes "official notice" of any fact so that you may contest those facts.
- b. Testimony of witnesses. This includes your own testimony.
- c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.
- d. Photographs, experiments, demonstrations and similar means used to prove a fact.

10. **Objections to evidence.** Evidence may be objected to on any of the following grounds:

- a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
- b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.
- c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.

Evidence objected to may be received by the ALJ who will rule on its admissibility either at the hearing or in the proposed order.

11. **Continuances.** Unless allowed by the State Forester or ALJ, you may not reopen any matter determined at the hearing. If the State Forester or ALJ finds there was good cause for a party's failure to appear, the State Forester or ALJ may permit the matter to be reopened, heard, and considered.

12. **Exceptions to proposed order.** The ALJ shall draft, file with the board, and serve on all parties, a proposed order, including rulings on the admissibility of offered evidence if the rulings are not set forth in the record, recommended findings of fact, conclusions of law, and recommendation for disposition of the case.

If the recommended action is adverse to you or to the agency, you or the agency may file exceptions within the time set by the ALJ or not later than seven days after the date of the filing of the proposed order with the board if no other time is specified. Written argument, based on the order or exceptions may be presented to the board at the time it considers the disposition of the proposed order. The board will determine whether it will entertain oral argument. Exceptions must be filed with the agency.

(a) The exceptions shall be confined to factual and legal issues that are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

(A) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

- (B) A necessary legal conclusion is omitted or is contrary to law or the board's policy; or
 - (C) Prejudicial procedural error occurred.
- (b) The exceptions shall be numbered and shall specify the disputed finding, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.
13. **Final Order.** After the board has received and reviewed the proposed order and the exceptions, if any, the board may:
- (a) Entertain written and/or oral argument if the board determines it is necessary or appropriate to assist the board in the proper disposition of the case. If allowed, oral argument will be limited to matters raised in written exceptions and shall be presented under time limits determined by the board chair;
 - (b) Remand the matter to the ALJ for further proceedings on any issues the board specifies, and to prepare a revised proposed order as appropriate, under OAR 137-003-0655(2);
 - (c) Enter a final order adopting the recommendations of the ALJ; or
 - (d) Enter an amended proposed order or final order that modifies or rejects the recommendations of the ALJ. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665.

If a majority of the Board cannot review the record and meet in a timely manner, the Chairperson may delegate to the ALJ the authority to make a final order.

14. **Record.** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the court of appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.
15. **Reconsideration and Rehearing.** Under the provisions of OAR 137-003-0675, you may file a petition for reconsideration or rehearing of the final order with the board within 60 calendar days after this order is served. Any such petition shall set forth the specific grounds for reconsideration or rehearing and the remedy sought. The petition may be supported by a written argument. Under OAR 629-001-0050, you must file a petition for reconsideration or rehearing as a condition for further appeal.
16. **Appeal.** You may appeal by filing a petition for judicial review with the Oregon Court of Appeals within 60 days following the date the final order on reconsideration or rehearing is issued, or within 60 days following denial of the request for reconsideration or rehearing. See Oregon Revised Statutes 183.480 et seq.

WATKINSON LAIRD RUBENSTEIN
BALDWIN & BURGESS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

101 EAST BROADWAY, SUITE 200
EUGENE, OREGON 97401-3114
(541) 484-2277
FACSIMILE (541) 484-2282

(800) 270-7418

WEBSITE: WWW.WLRLAW.COM

MAILING ADDRESS
POST OFFICE BOX 10567
EUGENE, OREGON 97440-2567

GRANTS PASS OFFICE
1246 NE 7TH STREET, SUITE B
GRANTS PASS, OREGON 97526
(541) 295-3218

ROSEBURG OFFICE
425 SE JACKSON STREET
ROSEBURG, OREGON 97470
(541) 673-5528

FAX COVER SHEET

DATE: October 17, 2013

TO: 503-945-7490

COMPANY: Watkinson Laird Rubenstein Baldwin & Burgess, P.C.

FROM: Clark E. Rasche

RE: Demand for Hearings / Notices of Violation
Nos. 13-SW022, 13-SW023, and 13-SW024

FAX NUMBER: 503-945-7490

PAGES: 8 (Including this Cover Sheet)

MESSAGE:

If all the pages of this transmission are not clearly received, please call Laina at (541) 484-2277.

Facsimile transmittal only

An original is being mailed

Message is being emailed

CONFIDENTIAL INFORMATION

THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED IN THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

WATKINSON LAIRD RUBENSTEIN
BALDWIN & BURGESS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

101 EAST BROADWAY, SUITE 200
EUGENE, OREGON 97401-3114
(541) 484-2277
FACSIMILE (541) 484-2282

(800) 270-7418

WEBSITE: WWW.WLRLAW.COM

MAILING ADDRESS
POST OFFICE BOX 10567
EUGENE, OREGON 97440-2567

GRANTS PASS OFFICE
1246 NE 7th STREET, SUITE B
GRANTS PASS, OREGON 97526
(541) 295-3218

ROSEBURG OFFICE
425 SE JACKSON STREET
ROSEBURG, OREGON 97470
(541) 673-5528

CLARK E. RASCHE

EMAIL
CRASCHE@WLRLAW.COM

October 17, 2013

VIA FIRST CLASS MAIL
and
FACSIMILE: 503-945-7490

The State Forester
Attn: Civil Penalty Administrator
2600 State St.
Salem, OR 97310

Ladies and Gentlemen:

Re: Demand for Hearings / Notices of Violation
Nos. 13-SW022, 13-SW023, and 13-SW024

This law firm represents Brimstone Natural Resource Co. (**Brimstone**), who was served by mail with the notices of violation referenced in the subject line and two related orders to cease further violation, copies of which are enclosed. Brimstone requests a hearing for each of the notices of violation and related orders.

It is Brimstone's position that the citation and related orders are an unlawful interference with its right to mine subsurface resources on the subject property. Brimstone will address these issues at a hearing or hearings on the following notices.

13-SW022

Brimstone denies that it did not give the State Forester notice or a written plan as required by OAR 629-605-0140, OAR 629-605-0170(2), and ORS 527.670(3).

Brimstone contends that it was not required to obtain approval of any written plan, pursuant to ORS 527.674. Further, Brimstone contends that requiring submission of notice, a written plan, or requiring approval of any written plan, is an unlawful interference with its right to extract the mineral resources on the land that is the subject of the notice of violation.

As relief Brimstone demands that the notice of violation be dismissed.

WATKINSON LAIRD RUBENSTEIN BALDWIN & BURGESS, P.C.

October 17, 2013

Page 2

13-SW023

Brimstone denies that it improperly removed four trees within 20' of the high water level of Brimstone Gulch.

Brimstone wishes to address the issue of whether it in fact removed trees and whether by issuing the notice of violation and an order to cease further violation the State Forester has engaged in unlawful interference with its right to extract mineral resources on the land that is the subject of the notice of violation.

Brimstone disputes the State Forester's authority under state and federal law to prohibit or restrict the removal of trees when done in connection with Brimstone exercising its right to extract mineral resources. Brimstone demands that the order be dissolved or otherwise held to be without any force or effect.

13-SW024

Brimstone denies that it improperly failed to retain 30 live conifer trees 8" dbh or larger per 1000' along a medium stream.

Brimstone wishes to address the issue of whether it in fact improperly failed to retain trees and whether by imposing such a requirement the State Forester has engaged in unlawful interference with Brimstone's right to extract mineral resources on the land that is the subject of the notice of violation.

Brimstone disputes the State Forester's authority under state and federal law to impose a requirement that it retain 30 live conifer trees 8" dbh or larger per 1000' along a medium stream where it would restrict or interfere with Brimstone's right to extract mineral resources. Brimstone demands that the order be dissolved or is otherwise held to be without any force or effect.

Sincerely,



Clark E. Rasche

CER:lms

Enclosures

c: Client (w/enc.)
James R. Dole (w/enc.)

HearingDemand13-SW023Final(101713lms).doc



Oregon

John A. Kitzhaber, MD, Governor

General File
6-3-1-600

Department of Forestry

State Forester's Office
2600 State Street
Salem, OR 97310-1336
503-945-7200
Fax 503-945-7212
<http://www.odf.state.or.us>



October 22, 2013

Watkinson Laird Rubenstein Baldwin & Burgess, Attorneys at Law
Attention: Clark E. Rasche, Attorney at Law
PO Box 10567
Eugene, OR 97440-2567

Re: Forest Practices Act Violation, Case Numbers 13-SW022, 13-SW023, 13-SW024

Dear Mr. Rasche:

This is to acknowledge receipt of your request for a contested case hearing regarding the citations for Case files 13-SW022, 13-SW023, and 13-SW024. We are assuming that your request is for an appeal of the repair orders since we have not yet issued a Notice of Civil Penalty. There is a very tight statutory time limit within which a hearing must be held (within 14 days of the receipt of the hearing request), so a hearing will be scheduled for some date before October 30, 2013. You will receive a formal notice of this hearing from the Office of Administrative Hearings soon. Enclosed are the "Notice of Contested Case Rights and Procedures" and a copy of the agency's case file to date.

If we are incorrect about your intent to appeal the repair orders rather than the pending notices of civil penalty please inform us immediately.

You should note that the citation associated with 13-SW022 is for an administrative violation of ORS 527.670(3). There is no repair order associated with this administrative violation and hence no order from the State Forester to appeal. Appeals for this type of citation occur with the notice of civil penalty.

If you have any questions, or if you are interested in discussing your concerns with the goal of a possible settlement, please contact me at (503) 945-7240.

Sincerely,

Marganne Allen
for
Marganne Allen
Field Support Manager

Enclosures

C: Brimstone Natural Resource Co., Respondent

EXHIBIT ALL AGENDA ITEM D
Attachment 3
Page 1 of 1
Page 47 of 145

Provide PHOTOCOPIES of the completed notification form and map to the local offices of the Water Resources Department and the Oregon Department of Fish and Wildlife IF AND ONLY IF you plan to use on-site water to mix pesticides or to control slash burns. In the applicant remarks section of the notification form identify the proposed water source. Addresses of the Water Resources and ODF&W offices are available in each Forestry office.

A notification is not considered accepted until it is received by the Forestry office that handles the location of your planned activity. Mail, fax or hand-deliver the notification form to the offices whose addresses are shown below.

For assistance filling out the notification form, contact your local ODF office.

OFFICE	COUNTIES COVERED	ADDRESS	PHONE NO.	FAX NO.
ASTORIA	Clatsop	92219 Hwy #202, 97103	503-325-5451	503-325-2755
BAKER CITY	Baker	2995 HUGHES LANE, 97614	541-523-5531	541-523-5874
CENTRAL POINT	Jackson	5286 TABLE ROCK ROAD, 97602	541-664-3329	541-776-6194
COLUMBIA CITY	Columbia, Clatsop	408 E STREET, 97018	503-397-2636	503-397-5361
COOS BAY	Coos, Curry, Douglas	53512 FIFTH STREET, 97420	541-267-4106	541-269-2027
DALLAS	Polk, Yamhill	825 OAK VILLA ROAD, 97338	503-623-8146	503-623-9034
FOREST GROVE	Tillamook, Washington, West Multnomah, Yamhill	801 GALES CREEK ROAD, 97116-1189	503-357-2191	503-357-4548
FOSSIL	Wheeler, Morrow, Gilliam	45945 HWY 19, 97630	541-763-2576	541-763-2027
GRANT'S PASS	Josephine	5375 MONUMENT DRIVE, 97526	541-474-3162	541-474-9168
JOHN DAY	Grant	PO BOX 546, 97845 (415 PATTERSON BRIDGE RD.)	541-575-1139	541-575-2253
KLAMATH FALLS	Klamath, Lake	3200 DELAP ROAD, 97601	541-883-5681	541-883-5555
LAGRADE	Baker, Malheur, Union	511 20TH STREET, 97650	541-953-3168	541-962-1068
LAKEVIEW	Lake, Klamath	2290 NORTH 4TH STREET, 97630	541-947-3311	541-947-3078
MEHAMA	Linn, Marion	22955 N. FORK ROAD SE, LYONS 97358	503-869-2151	503-869-2158
MOJALLA	Clackamas, East Multnomah	14955 S. HWY 211, 97038	503-829-2216	503-829-4736
MONUMENT	Grant, Wheeler	PO BOX 385, 97864 (MAY STREET)	541-934-2300	541-934-2301
PENDLETON	Umatilla, Grant, Morrow	1055 AIRPORT ROAD, 97801	541-276-3491	541-276-0710
PHILOMATH	Benton	24533 ALSEA HWY, 97370	541-929-3266	541-928-5549
PRINEVILLE	Cook, Deschutes, Jefferson	3501 NE 3RD, 97754	541-447-5658	541-447-1469
ROSEBURG	Douglas	1765 NE AIRPORT ROAD, 97470-1499	541-440-3412	541-440-3424
SPRINGFIELD	Lane	3160 E. MAIN STREET, 97478	541-726-3588	541-726-2501
SWEET HOME	Linn	4650 HWY 20, 97386	541-367-6108	541-357-5513
THE DALLES	Hood River, Sherman, Wasco	3701 W. 13TH ST., 97058	541-296-4626	541-298-4593
TILLAMOOK	Tillamook	5005 THIRD STREET, 97141-2934	503-842-2545	503-842-3143
TOLEDO	Linn	763 NW FORESTRY ROAD, 97391	541-336-2273	541-336-5281
VENETA	Lane, Douglas	PO BOX 157, 97487 (67360 TERRITORIAL HWY)	541-935-2293	541-935-0731
WALLOWA	Wallowa	602 WEST HWY 82, 97855	541-886-2881	541-886-9095

WRITE OR TYPE INFORMATION ONTO THE FORM. Please don't write in shaded areas. The number to match numbered areas on the notification form.

Instructions For Filing Out The Notification Of Operation/Application For Permits form 629-2-1-002A

File notice with the State Forester at least 15 days prior to the date you would like to start operating.

- Your operation area is brand new.
- You are adding a new activity to the operation.
- You are changing or increasing the area involved in an existing operation.
- It is after February 28, and you are continuing an operation that has been idle since the end of the previous calendar year and you have not informed ODF you intend to continue the operation before now.

1. "COUNTY (Enter only one)." Fill in the county name where the operation will take place. If an operation spans two or more counties, file a separate notification for each county. The address list shows which counties are handled by which offices.
2. "NOTICE AND PERMIT TYPE" Check Appropriate Boxes (2A, 2B and/or 2C). Checkmark in the boxes next to the notices you are giving and/or the permit you need. Anyone filing a notification for hauling only should check box 2B.
3. "REPRESENTATIVE" The person ODF should contact in case of fire emergency. Print the name and phone number. This person must know what resources you have available to fight the fire and have the authority to commit those resources.
4. "Timber Sale Name and/or Number: This information is required for all state and federal sales and is optional for private land sales.

"CHECK ONE BOX NEXT TO 5, 6, OR 7 TO INDICATE WHO FILLED OUT THE APPLICATION."

5. "OPERATOR" The name, address and phone of the person or company who is doing the work.
6. "LANDOWNER" The name, address and phone of the person who owns the land. Harvesting timber may result in a tree planting requirement for the landowner. RC (Recipient Class) EG (Ethnic Group) and S (Size of land ownership) boxes gather information about the landowner. We ask you to voluntarily enter this information which we will use for annual reports. In these reports, no names are connected with the codes.

Recipient Class	Ethnic Group	Size
1. Local Government	1. Does not apply	1. Does not apply
2. State Government	2. White	2. 0-9 acres
3. Federal Government	3. Black	3. 10-99 acres
4. Individual/Non-Industrial Private Forest Landowner (someone who owns 5,000 or fewer acres of forest land, and makes less than 50% of his or her annual income from the primary processing of forest products)	4. Hispanic	4. 100-499 acres
5. Partnership/Corp. Industrial Forest Landowner	5. American Indian/Alaskan Native	5. 500-999 acres
6. Other (private landowner such as a church or non-profit organization)	6. Asian/Pacific Islander	6. 1,000-4,999 acres
No number seven.	7. All Other	7. 5,000+ acres

7. "TIMBER OWNER AND TAX PAYER" Enter the name of the person or company, their address and phone number. Fill in EITHER the timber owner's Employer Identification number OR the last four digits of the timber owner's Social Security number. The Social Security number information will be held in confidence. The party who owns timber at the point of first measure is the timber owner, and is responsible for paying the harvest and, if applicable, severance taxes.

8. "TYPE OF ACTIVITY," "UNIT NUMBERS" Assign a unit number between 1 and 99. A unit can be:

- A single operating area within a continuous boundary, or
- An operating area with a state or federal sale unit number, or
- A separate area within your total operation area on which you plan to conduct a single type of activity (for example, 30 acres of harvest type 3 only).

Multiple harvest units may be listed on one notification. BUT, IF HARVEST units are separated by a mile or more (in a straight line), file separate notifications for each unit.

In all cases, all activities you plan on that unit should be listed beside the unit number. For example, road construction activity needed prior to starting a commercial timber harvest should be described along with the harvest activity. Multiple lines may be used for each unit to describe the activity.

Activity Code	Methods Used	Activity Code	Methods Used
1a. Commercial Thinning. Most of the conifer timber or large hardwoods will remain uncut on the unit after harvesting (such as commercial thinning or selective cutting).	Cable/Ground/Other	2a. Road Construction 2b. Road Reconstruction 3. Site Preparation. (Do not use for building site preparation, this is preparing for planting.)	Dozer/Backhoe/Other Manual/Mechanical/ Burning (not slash)
1b. Most, or all, conifer timber or large hardwoods will be cut and removed from the unit during harvesting (such as in clearcuts, shelterwood, and seed tree harvests).	Cable/Ground/Other	4a. Herbicide Application 4b. Insecticide Application 4c. Rodenticide Application 4d. Fertilizer Application 4e. Fungicide Application 4f. Repellent Application	For Pesticides: • Ground or Aerial • Common Name (always); Brand Name (if known) • Carrier/Additives • For 2,4-D or triclopyr: specify amine or ester
1c. Felling only (no yarding or decking involved). 1d. Other Harvest. Type not covered in 1a. or 1b. Describe in applicant's remarks box. (Examples are removal of just cedar timber from a mixed conifer stand, or creating salable chips.)	Other	5. Land Use Change Planned • to agricultural use • to residential use • to other uses Local government land use approval may be required.	For Fertilizers: List all the above plus the application rate
1e. Sort Yard. A single location where woods-direct logs are stored prior to being taken to a mill.	Other	6. Treatment of Slash	Manual/Chemical/ Burning/Mechanical
		7. Pre-commercial Thinning 8. Others	Explain: EXAMPLES: rockpits used in roadway construction and chipping.

"Quantity by Unit." Enter either the acres (A) or lineal feet (F) involved in the activity.
"Approximate Thousand Board Feet (MBF) Removed." List the approximate MBF to be removed, for each unit with commercial timber harvesting. For example 50 MBF = 50,000 Board Feet.

9. The starting date must be at least 15 days after the date the notification form is received by the appropriate ODF office. Continuation into the next calendar year requires written notification to the local ODF office.

10. "Site Codes." You must enter the W, S, and T conditions code(s) for each unit. Fill in concerns, waters, and resources code(s) when known. We are asking for your assistance in identifying units with characteristics that we are bound by law to protect. If you don't know whether any of these characteristics exist, go to item 12.

CONDITIONS	CONCERNS	WATERS	RESOURCES
W100 Within 100 feet of any lake, stream (a channel flowing surface water during some part of the year), W300 Within 300 ft. of any estuary or any wetland greater than 8 acres. WNA Waters Not Applicable. S1 No evidence of mass soil movement (landslides, slips, slumps). S2 Evidence of old slides, small failures. S3 Recent or active movement; wet areas. T1 Slopes of 0% to 35%. T2 Slopes of 36% to 65%. T3 Slopes greater than 65%.	ARC (biological) site. CGG Columbia Gorge General management area. CGS Columbia Gorge Special management area. SH Scenic Highway. The operation takes place near a FPA Scenic Highway. SW The operation takes place near a state scenic Waterway. UGB The operation takes place within an Urban Growth Boundary. WG The operation takes place in the Willamette Greenway.	SIGNIF. WET. A wetland 8+ acres. OTHER WET (land). LAKE 8+ acres. OTHER LAKES STREAM: A channel flowing surface water during some part of the year. ECS: Important spring in Eastern Oregon. BOG Any size Bog. ESQUARY A type of bay. DWS Domestic Water Supply. SEEP Water seeps out of ground, no flow evident.	BEN Bald Eagle Nesting site. BEP Bald Eagle foraging site. (A perch) BER Bald Eagle Roosting site. BIC (logical) site of a rare life form or community: example, a snake pit. BPS Banded-tailed Pigeon Spring. CC The operation will result in a single ClearCut or continuation of contiguous clearcuts that exceed 120 acres. CWD Columbia White Tail Deer. GBH Great Blue Heron nest site. GLD Golden eagle nest site. HLH High Landslide Hazard Location. MUR Marbled Murrelet nesting site. NSO Northern Spotted Owl nesting sites. OSP Presence of Osprey nest and key components. RAP Other Raptor nests. SBS Sensitive Bird roosting, nesting, watering site. T or E Threatened or Endangered species.

11. "Government Lot Numbers." Special numbers for map locations that do not fit the standard Township/Range grid.

12. "Location of Operation." If the activities codes description for a unit takes up several lines, REPEAT THE CODES ON EACH LINE: DO NOT REPEAT THE LEGAL DESCRIPTION.

13. To request a waiver of the 15-day waiting period, check the box and contact the Stewardship Forester (SF) at the ODF office where the notification is filed. The SF will decide if a waiver will be granted.

14. Print your name in 14a.; sign your name and write the date in 14b.

15. "ATTACH MAP AND/OR AERIAL PHOTOS." The notification form is NOT complete unless a map or aerial photo of the operation area is attached.

On-site inspections may be conducted by the Stewardship Forester to ensure compliance with state laws and rules governing fire protection and forest practices on private land.

CERTIFICATE OF SERVICE

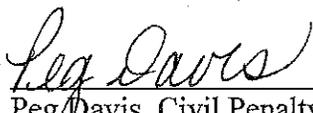
**RE: In the Matter of John West, Order to Repair Damage
Case Numbers: 13-SW022, 13-SW023, 13-SW024**

I HEREBY CERTIFY that I have made service of copies of the foregoing Order to Repair Damage upon the following party by causing them to be mailed in the United States Post Office at Salem, Oregon, November 7, 2013, a true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid addressed to:

John West
Brimstone Natural Resources Co.
PO Box 1249
Merlin, OR 97532

Clark Rasche
Attorney at Law
PO Box 10567
Eugene, OR 97440-2567

BY CERTIFIED MAIL & FIRST CLASS MAIL



Peg Davis, Civil Penalty Assistant
Private Forests



Oregon

John A. Kitzhaber, MD, Governor

GF 6-3-1-400

Department of Forestry

State Forester's Office

2600 State Street

Salem, OR 97310

503-945-7200

FAX 503-945-7212

TTY 503-945-7213 / 800-437-4490

<http://www.odf.state.or.us>



"STEWARDSHIP IN
FORESTRY"

November 7, 2013

John West
Brimstone Natural Resources Co.
PO Box 1249
Merlin, OR 97532

Re: Forest Practices Act Violations, Repair Orders
13-SW023 & 13-SW024

This letter is to provide you with supplemental information regarding statutes and rules associated with the repair orders you received on September 25, 2013. This supplemental information is meant to assist you with understanding some of the terms used in the repair order and identify the statutes and rules that guide landowners and operators through the Oregon Forest Practices Act.

In addition to the statutes and rules cited in the Repair Order, Notice of Violation / Citation, and Notice of Contested Case Rights, the following statutes and rules are substantially relevant to the Repair Order:

ORS 527.610 to 527.770, 527.990 (1) and 527.992 constitute the Oregon Forest Practices Act.

ORS 527.620 provides definitions for several relevant terms. In particular, the following subsections are substantially relevant to this proceeding for the definitions of the listed terms:

- (3) "DBH"
- (5) "Forest practice"
- (11) "Landowner"
- (12) "Operation"
- (13) "Operator"
- (15) "State Forester"
- (17) "Timber owner"

ORS 527.630 describe the general policy statements of the Oregon Legislature as it relates to management of forests in Oregon.

OAR chapter 629, division 600 provides definitions for use in divisions 605 through 669 and 680 through 699. In particular, the following subsections of OAR 629-600-0100 are substantially relevant to the Repair Order:

- (11) "Commercial"
- (17) "Domestic water use"
- (22) "Fish use"
- (29) "Free to grow"
- (36) "High water level"
- (46) "Live tree"
- (62) "Riparian area"
- (63) "Riparian management area"
- (67) "Seedlings"
- (75) "Stream"
- (84) "Type D stream"
- (85) "Type F stream"
- (86) "Type N stream"

OAR chapter 629, division 635 describes ODF's water protection rules, including riparian management area widths. In general, OAR 629-635-0200 explains the stream classification system. In particular, the following rules are substantially relevant to the Repair Order:

- OAR 629-635-0200(4) states that streams will be classified into three beneficial use categories, Type F, Type D, and Type N.
- OAR 629-635-0200(9), (10), and (11) describe the methods used to determine if a stream is considered to have fish use.
- OAR 629-635-0200(12) states that for each of the three beneficial use categories, including Type F, streams will be categorized into three categories of stream sizes. The rule defines the three categories of stream sizes.
- OAR 629-635-0300 describes ODF's purpose in managing riparian areas.
- OAR 629-635-0310 defines the width of the riparian management area ("RMA"). In Citation and Repair Order 13-SW023, ODF uses a RMA width of 70' for medium Type F streams, as explained in this rule.

OAR chapter 629, division 640 describes ODF's water protection rules, as they relate to vegetation retention along streams. OAR 629-640-0100 provides the general retention prescription for Type F streams.

OAR 629-670-0100 allows the State Forester to conduct inspections and requires enforcement in certain situations; OAR 629-670-0105 defines how the State Forester should evaluate the damage caused by noncompliance with forestry rules ; OAR 629-670-0110(2) allows the Forester to initiate enforcement action with a citation under OAR 629-670-0130 and ORS 527.680; OAR 629-670-0130(1) and (2) describe the Forester's authority to issue an order to cease further violation and an order to repair damage or correct an unsatisfactory condition.

OAR 629-670-0010 provides further definitions of the listed terms in subsections:

- (2) "Damage"
- (3) "Forest practice rule"
- (8) "Timely corrective action"
- (9) "Unsatisfactory condition"
- (10) "Violation"

OAR chapter 629, division 672 describes procedures to be used by the Forester in issuing orders. In particular, OAR 629-672-0200 describes the procedures for hearings on repair orders and procedures for final orders.

Procedural rules relevant to the upcoming hearing are also contained in OAR 629-670-0000 to 629-670-0130, and OAR 629-672-0100 to 629-672-0220.

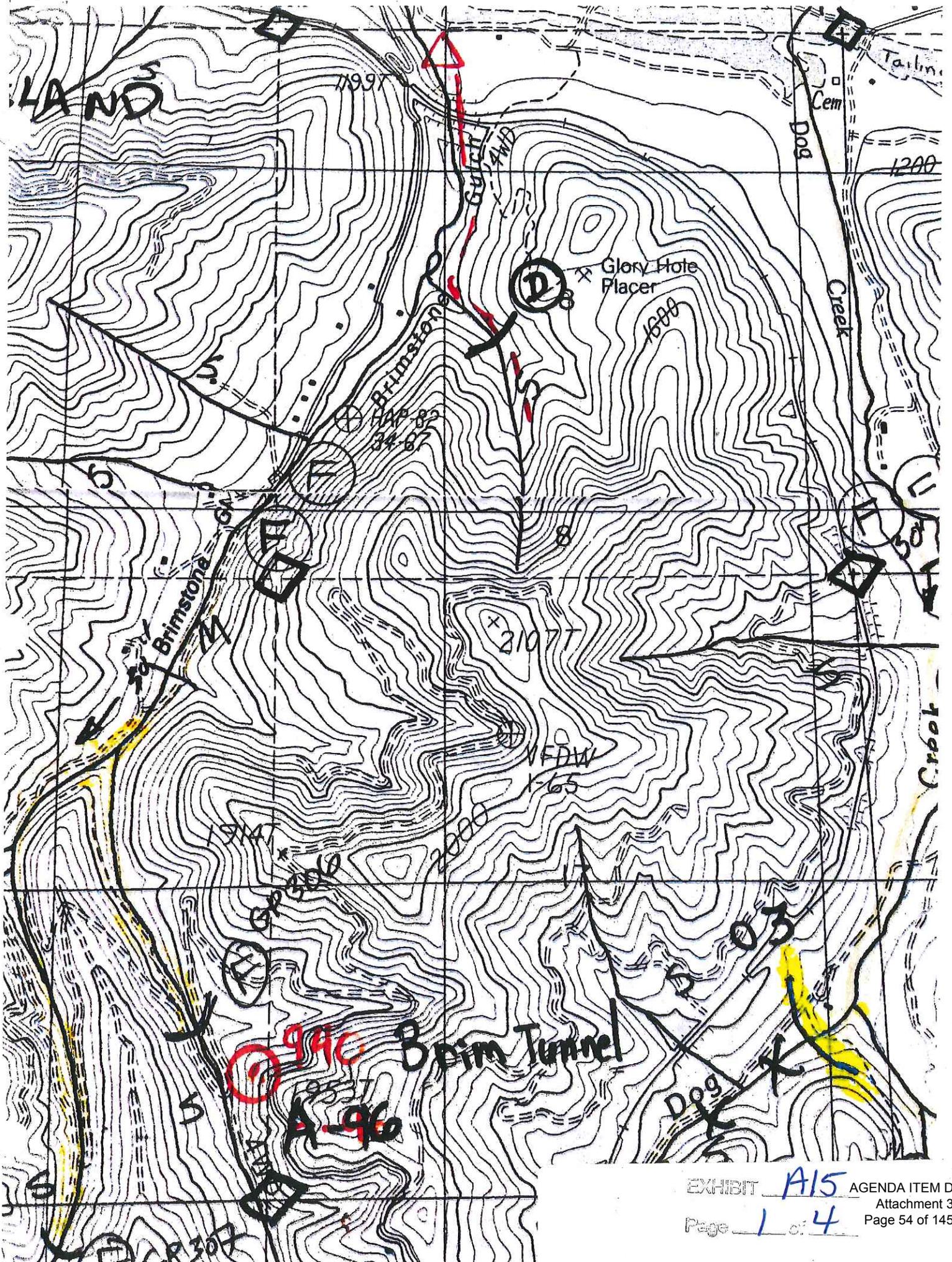
Should you have any questions about the process, please feel free to contact me.

Sincerely,



Angie Johnson, Civil Penalties Administrator
Oregon Department of Forestry
Private Forests
2600 State St., Salem, Oregon 97310
503-945-7387
ajohnson@odf.state.or.us

C: Steve Wetmore, Stewardship Forester, ODF – Grants Pass
Rick Dryer, Assistant District Foresters, ODF – Southwest Oregon District
Clark Rasche, Attorney at Law, Counsel for Brimstone Natural Resources Co.
Case Files





Shareholder in Forestry

NOTIFICATION OF OPERATIONS/APPLICATION FOR PERMIT STATE OF OREGON

DEPARTMENT OF FORESTRY DEPARTMENT OF REVENUE

FILE 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 FORESTERS/STEWARDSHIP FORESTER TO ENSURE COMPLIANCE WITH STATE LAWS AND RULES GOVERNING FIRE PROTECTION AND FOREST PRACTICES ON PRIVATE LAND.

1. COUNTY: DESPERINE Write in one county name.

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 527.570).
 2B APPLICATION FOR PERMIT TO OPERATE POWER DRIVEN MACHINERY (ORS 477.625)
 2C NOTICE TO THE STATE FORESTER AND THE DEPARTMENT OF REVENUE OF THE INTENT TO HARVEST TIMBER (ORS 321.590).

3. REPRESENTATIVE: John West Please Print! Person to be contacted in case of Fire Emergency (Designated Representative). Area Code & Phone No. 541-660-9541

4. Timber Sale Name and/or Number: Blimstone

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

5. OPERATOR
ATTENTION: If you are conducting timber harvesting or road construction within 100 feet of overhead or underground utility lines, call the Oregon Utility Notification Center at 1-800-852-2344. Request that the owner of the line be notified, and record the number issued to you by the Oregon Utility Notification Center here:
Name: John West
Business Name: Blimstone Natural Resource Co.
Mailing Address - Street Address: P.O. Box 1249
City, State and Zip Code: MELVIN OR. 97532 Area Code & Phone No. 541-660-9541

6. LANDOWNER
Timber harvesting may result in a tree planting requirement on the landowner. The landowner has the responsibility to reforest if the harvest results in an understocked condition. Call a Department of Forestry office for more information.
For activities or operations within an urban growth boundary, the applicant is advised to contact the appropriate local government regarding land use regulations which may apply to the future use or development of this site.
Name: John West RG: _____ EG: _____ S: _____
Business Name: Blimstone Natural Resource Co.
Mailing Address - Street Address: P.O. Box 1249
City, State and Zip Code: MELVIN OR. 97532 Area Code & Phone No. 541-660-9541

7. TIMBER OWNER AND TAX PAYER
The timber owner must provide either a Tax payer Identification number OR the last 4 digits of the Social Security number (see ORS 321.550(1) and (2)). Social Security number information will be used ONLY for the purpose of identifying the timber owner to the Department of Revenue for the collection of Timber Tax, and will be held in confidence.
Name: John West Area Code & Phone No. 541-660-9541
Business Name: Blimstone Natural Resource Co.
Mailing Address - Street Address: P.O. Box 1249
City, State and Zip Code: MELVIN OR. 97532 OR 8688
Timber Owner Employer Identification Number: _____ Last 4 digits of the Social Security Number: _____

APPLICANT REMARKS:

Please describe the intent of the operation, and any other information that may be relevant to the Stewardship Forester.

Notification Number: 201371200154
Geographic Area: _____
Date Received: 3-28-13 Time: 1650
Initials: VH
District: _____
Office: _____

SF No (c)	PPA	Unit No.	ADQNY Code	5. TYPE OF ACTIVITY		6. ACTIVITY PERIOD		Methods Used	7. TYPE OF ACTIVITY		Quantity (per unit)	Area	Post	Exin. Equip. Removal	Ea. Activity Starting Date	Ea. Activity Ending Date	Conditions	Concerns	10. SITE CODES	11. LEGAL DESCRIPTION	12. LOCATION OF OPERATION	Registered Class No.	
				Methods Used	Area	Post	WATERED CODE		STEWARDSHIP FORSTER COMMENTS:	WATERED CODE													STEWARDSHIP FORSTER COMMENTS:
011	1A			Ground	TRACTOR	3/15/13	9/13/13	SLURRY	WATERED CODE: 100	STEWARDSHIP FORSTER COMMENTS: May require reforestation	3/15/13	9/13/13	SLURRY	WATERED CODE: 100	STEWARDSHIP FORSTER COMMENTS: May require reforestation	WATERED CODE: 100	STEWARDSHIP FORSTER COMMENTS: May require reforestation	WATERED CODE: 100	STEWARDSHIP FORSTER COMMENTS: May require reforestation	WATERED CODE: 100	STEWARDSHIP FORSTER COMMENTS: May require reforestation	WATERED CODE: 100	STEWARDSHIP FORSTER COMMENTS: May require reforestation

13. If the applicant certifies that all information provided is true and correct. (Signature and date.)

14. Print name of applicant here:

15. Attach map and/or aerial photos.

16. ATTACH MAP AND/OR AERIAL PHOTOS.

17. NAMES OF PROTECTED RESOURCES

18. WATERED CODE

19. STEWARDSHIP FORSTER COMMENTS

20. SIGNATURE AND DATE

21. REGISTERED CLASS NO.

029-605-1001(a)

029-605-1001(a)

029-605-1001(a)

029-605-1001(a)



Legend

900 0 900 1800 Feet

Locator Map

○ Taxlots
2005 Airphotos

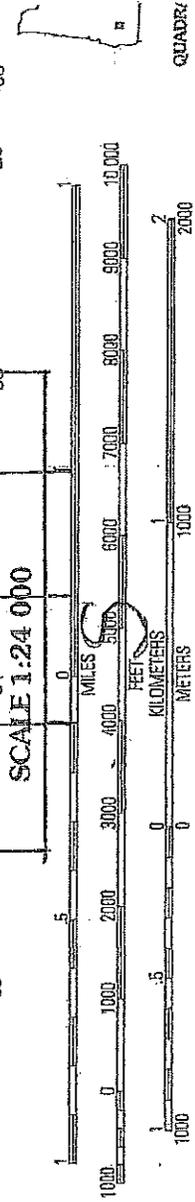
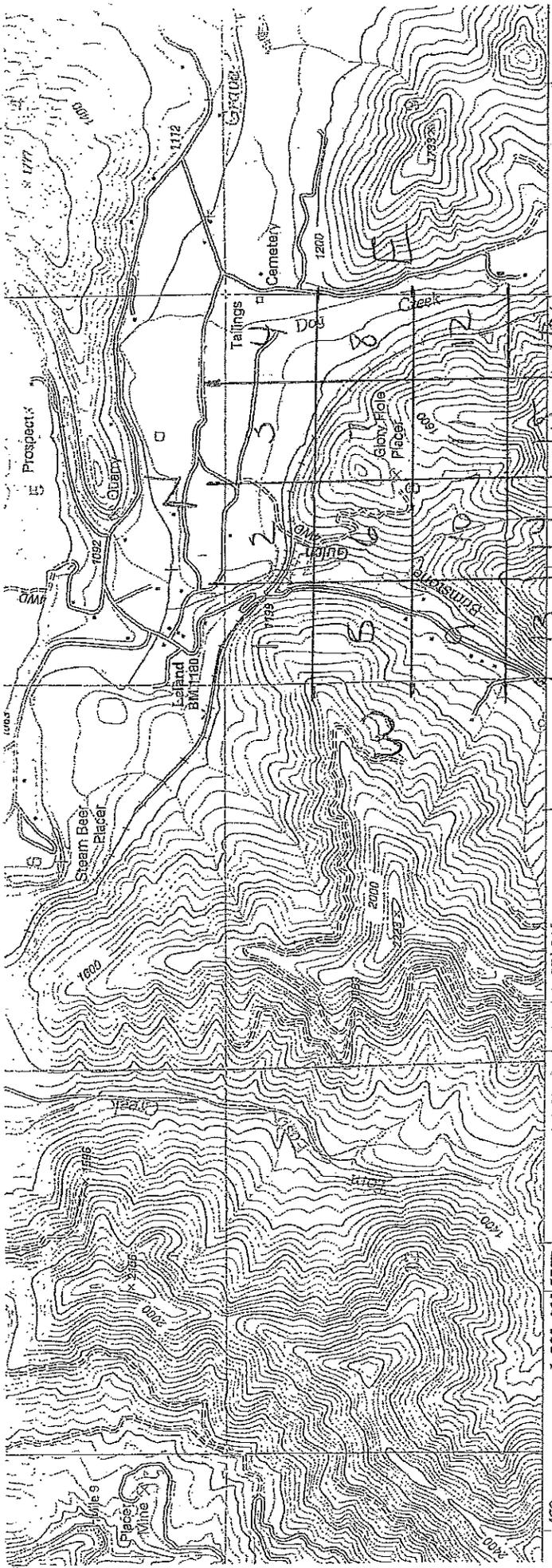
The information on this map is furnished for general interest purposes only. This information is provided without warranties of any kind, express or implied, and it should not be used to support any purchase or other investment. Neither Josephine County, Cave Junction, nor Grants Pass will accept responsibility for any errors or inaccuracies in the depicted information.



Scale
1:10200



Creation date: Wednesday, November 28, 2012 C:\Puma\puma.epr



1	2
4	7
6	7

ADJOINING

CONTOUR INTERVAL 40 FEET
 NATIONAL GEODETIC VERTICAL DATUM OF 1929
 TO CONVERT FROM FEET TO METERS, MULTIPLY BY 0.3048

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 FOR SALE BY U.S. GEOLOGICAL SURVEY, P.O. BOX 25286, DENVER, COLORADO 80225
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

UTM GRID AND 1997 MAGNETIC NORTH
 DECLINATION AT CENTER OF SHEET



34-6-8 72 101

221.86 ac.

1986

Ken 1982

10-foot ticks:

amer ticks

use

CON software

lands are

sheet

6

Oregon Department of Forestry -- Southwest Oregon
SF Operation Report for Stephen K. Wetmore, SF No. 64
Notification No. : 201371200154

REPRINT
 EDITED
 05/28/13

Sale Name / No. : Brimstone Total Units : 1 Date Received : March 28, 2013 County : Josephine Start Date : 05/15/13 End Date : 12/31/13	Auto-Accomplish: No Notices / Permits : Operation PDM Harvest 15 Day Waiting Period : Waiver granted by Stephen K Wetmore on April 1, 2013.
--	---

Operator	Land Owner	Timber Owner
John West Brimstone Natural Resource Co. P.O. Box 1249 Merlin, OR 97532 (541) 660-9541	John West Brimstone Natural Resource Co. P.O. Box 1249 Merlin, OR 97532 (541) 660-9541	John West Brimstone Natural Resource Co. P.O. Box 1249 Merlin, OR 97532 (541) 660-9541

Fire Contact: (541) 660-9541 - John West

Signed by: John West for Operator

Notification Comments: NO OPERATIONS WITHIN 100' OF STREAM, INCLUDING CROSSINGS AND LANDINGS, WITHOUT A REVIEWED, WRITTEN PLAN ON FILE WITH ODF; MAY REQUIRE REFORESTATION; DOMESTIC WATER CERTIFICATE 68658; 5 ACRE CRUSHER SW/SW - SKW

Unit 1 of 1 Start: 05/15/13 End: 12/31/13
 Status: Pending
 Stewardship Forester: Stephen K. Wetmore

Site Conditions Waters: Not Applicable.
 Soils: No mass soil movement.
 Slope: 0% to 35%.

Priorities: Fire: Low FPA: High

Twp	Rge	Sec	NE				NW				SW				SE				Government Lot Number	Tax Lot Number	Reg Use			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE						
34S	06W	8	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		100,101	

Activity	Method	Acres	Feet	MBF	Comment
1a - Commercial Thinning, Selective Cutting	Ground	360.00	0	50000	tractor

Resource Name	Resource Description
Dog Creek	Dog Creek: Small Type F Stream(s)
Brimstone	Brimstone: Medium Type F Stream(s)

No Threatened or Endangered Species Found.
 No Special Concerns Found.

Subscribers: Oregon Department of Fish & Wildlife



Oregon Department of Forestry
Forest Activity Inspection Report

Date: 5-21-13
Notification / Unit No.: 2013 71200154
Sale or Job Name: Brimstone
PPF Name/No.: Sweetmore 164

Operator: John West
Landowner: Brimstone Natural Resources Co
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
Spark Arresters / Exhaust Systems
Shovels and Fire Extinguishers
Trucks: Number in operation
Exhaust Systems
Tools and Fire Extinguishers
Other Power Driven Machinery and Engines
Cable Logging Systems
Cable lines clear
Blocks cleared
Shovels and water at blocks
Water Supply / Pump / Hose / Nozzle
Fire Watch
Alternate methods or equipment
IFPL Waiver
Order for items

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...

- Written Plans
Reforestation
Slash
Chemicals
Road Construction
Harvesting
Water Protection
Other

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
Reforestation
Slash
Chemicals
Road Construction
Harvesting
Water Protection
Other

ORS/OAR(s)

INFORMATION ON ITEMS CHECKED ABOVE:

Page 1 of 1

1) On the original notification Brimstone Gulch & Dog Cr were incorrectly classified.
2) Brimstone Gulch is a sunward, Medium Fish and Dog Cr is sunward, Small Fish. Submit a written plan for all operations within 100' of rim line.

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.

Submit written plan for Brimstone by 11/13
Dog Cr through tailings cannot be SF

Signed: [Signature]
Received By: [Signature]
Date: 5-21-13
Copies Mailed: [Signature]
Date: 5-21-13
State Forester's Representative



Oregon Department of Forestry
Forest Activity Inspection Report

Date: 6/18/13
Notification / Unit No.: 2013712, 00/54
Sale or Job Name: Brimstone
FPF Name/No.: S. Wetmore / 64

Operator: John West
Landowner: Brimstone Nature Pres
Timber Owner: LO

FIRE PREVENTION

- REQUIRED - OK THIS DATE
Slash Hazard Inspection
Not Active This Date
Fire Tools: Number of workers in operation: 5
Power Saws: Number in operation: 3 Number Checked: 3
Spark Arresters / Exhaust Systems
Shovels and Fire Extinguishers: 5 Number Checked: 5
Trucks: Number in operation: 5 Number Checked: 5
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.

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.

- Written Plans
Reforestation
Slash
Chemicals
Road Construction
Harvesting
Water Protection
Other

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: All future (08/31/13)

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

- Written Plans
Reforestation
Slash
Chemicals
Road Construction
Harvesting
Water Protection
Other

ORS/OAR(s) 629-605-170(1)(a)

INFORMATION ON ITEMS CHECKED ABOVE:

Page of

- 1) No written plan on file to cross Brimstone batch as required
2) TIMCO shovel, 352 GBL, stihl 9945, delimeter, Grapple cat, stihl 07144, GARCOS, YAEXB52, shovel, stihl 11111
3) 765 BUP, needs shovel, ax and fire extinguisher before returning to the operation

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.

Empty box for additional notes or signatures.

Signed X [Signature]
Received By: [Signature] Date: [Date]

Copies Mailed: [Signature] Date: 6/18/13
State Forester's Representative

Address: Private Forests Division
Oregon Department of Forestry, Salem OR 97310
Telephone: 503-945-7484
Email: bknotts@odf.state.or.us

EDUCATION

B.S. (1980) Forest Management, Oregon State University

EMPLOYMENT HISTORY

Forest Practices Field Coordinator (2009-2013, current position)
Oregon Department of Forestry, Private Forests Division, Salem, OR
Silvicultural Policy Analyst and Assistant Forest Practices Field Coordinator (1999-2009)
Oregon Department of Forestry, Private Forests Division, Salem OR
Service Forester (1998-1999)
Oregon Department of Forestry, Forestry Assistance Program, Dallas OR
Forest Practices Forester (1988-1998)
Oregon Department of Forestry, Forest Practices Program, Dallas OR
Forest Technician, Forester 1 (1981-1988)
Oregon Department of Forestry, State Forests Program, Forest Grove OR
Forest Technician (1980-1981)
Oregon Department of Forestry, State Forests Program, Grants Pass OR
Forest Technician (1977-1979, summer seasonal)
U.S. Forest Service, Lakeview OR

TRAINING RECEIVED

Investigation Training (2010), Oregon Department of Justice
Administrative Rule Training (2003), Oregon Department of Administrative Services and Oregon Department of Justice
Public Law Conference (2001), Oregon Department of Justice
Public Law Conference (1999), Oregon Department of Justice
Chemical and Other Petroleum Products Rule Training (1997), Oregon Department of Forestry
Forest Practices Forester Conference (1996), Oregon Department of Forestry
Reforestation Rule Training (1995), Oregon Department of Forestry
Forest Law Administration IV (1992), Oregon Department of Forestry
Negotiation Skills for Forest Practices Foresters (1992), Oregon Department of Forestry
Courtroom Procedures (1990), Oregon Department of Forestry
Forest Road Drainage Design and Maintenance (1989), Oregon Department of Forestry
Forestry, Landslides, and Slope Stability Conference (1989), Oregon Department of Forestry
Wildlife Tree Seminar (1988), Oregon Department of Forestry
Riparian and Aquatic Rule Training (1987), Oregon Department of Forestry
Setting Design Workshop (1987), Oregon Department of Forestry
Timber Cruising (1987), Oregon Department of Forestry
Recognition of High Risk Sites (1987), Oregon Department of Forestry
Timber Sale Contract Administration (1986), Oregon Department of Forestry
Operation Inspection Workshop (1986), Oregon Department of Forestry

TRAINING RECEIVED (continued from page 1)

Timber Cruising (1985), Oregon Department of Forestry
Advanced Forest Law Administration (1982), Oregon Department of Forestry
Basic Forest Law Administration (1982), Oregon Department of Forestry
Timber Cruising (1982), Oregon Department of Forestry
Cable Logging Workshop (1982), Oregon Department of Forestry
Timber Sale Contract Administration (1981), Oregon Department of Forestry

TRAINING, OUTREACH, AND INFORMATIONAL ROLES

1999-2013 (activities throughout that period continuing to the date of this document)

- Instructor for numerous formal training sessions held at statewide and regional levels. Audiences include Oregon Department of Forestry staff, other agency staff, operators, and landowners. Subjects are the policy and administration of the Oregon Forest Practices Act and the associated forest practice rules, including enforcement procedures.
- In response to questions from Oregon Department of Forestry staff, other agency staff, operators, landowners, and concerned citizens and other members of the public, routinely provide information on a statewide basis on the policy and administration of the Oregon Forest Practices Act and the associated forest practice rules, including enforcement procedures.

1988 through 1998

- Same as above, but the work was primarily on a regional basis in Polk, Benton, and Yamhill counties.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF FORESTRY, PRIVATE FORESTS**

IN THE MATTER OF:

**BRIMSTONE NATURAL
RESOURCE CO.,**

Respondent.

**RESPONDENT'S EXCEPTIONS
TO THE PROPOSED ORDER**

OAH Case No. 1303445
Agency Case No. 62900

Respondent Brimstone Natural Resources Co. submits the following Exceptions to the Proposed Order herein.

1. The Proposed Order is based on the improper legal conclusion that is contrary to the agency's policy, that the Respondent is required to comply with the Citations/Repair Orders notwithstanding the fact that the effect will be to prevent respondent from pursuing mineral resources on the property. The evidence in the record is undisputed that respondent intends to pursue mining gold-bearing land within the RMA. The State Forester did not contest the fact that the FPA cannot prevent such activities, yet the Proposed Order nowhere permits Respondent the legal or practical ability to use the property for the reason Respondent acquired it. To the extent the Proposed Order is not otherwise improper, it should have afforded Respondent the ability to provide an alternative plan for a land use conversion to be approved by the State Forester or, only in the alternative, to comply with the repair orders. The Proposed Order, therefore, is in direct conflict with OAR 629-610-0090. It results in the unlawful interference with Respondent's right to extract mineral resources on Respondent's land. The following corrective language should be added to the Proposed Order:

A new Conclusion of Law should be inserted following the fifth Conclusion of Law:

Pursuant to OAR 629-610-0090, Respondent may submit a plan for alternate practice.

The sixth Conclusion of Law should be renumbered so that it is the seventh Conclusion of Law, and should be modified to read:

If Respondent fails to submit a plan for alternate practice, the Citations/Repair Order shall not be dismissed.

The Order section of the Proposed Order should be modified to read:

ORDER

“Within 30 days of this Proposed Order becoming final, Respondent shall submit a plan for alternate practice pursuant to OAR 629-610-0090. The Department of Forestry shall approve the plan for alternate practice within 30 days of receipt. If Respondent does not submit a plan for alternate practice, then the Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition (#13-SW023 and #13-SW024) issued on September 15, 2013, shall be AFFIRMED.”

2. The Proposed Order is based on the improper factual conclusion that Respondent's activities resulted in damage to the RMA. John West testified, and there was no contrary evidence, that upon completion of mining each discreet area of gold-bearing ground, he would reclaim the same to a condition superior to that proposed to be required by the repair orders, including planting faster-growing deciduous trees that would provide a superior canopy in the RMA. Since the State Forester admits that Respondent could legally undertake mining activities notwithstanding the ostensible requirements of the FPA, there is, therefore, no basis to conclude that Respondent's activities resulted in any damage. As a corrective measure, Respondent proposes that the final sentence of the third finding on page 21 of the Proposed Order should be deleted in its entirety. As an additional corrective measure, the first sentence of the second paragraph of the fourth finding should be modified to read as follows:

However, as set forth previously, the State Forester has the authority to issue Repair Orders.

3. The Proposed Order includes the improper and unsupported conclusion that Brimstone Gulch is a protected, medium type F stream. The record is clear that the designation of Brimstone Gulch as a fish-bearing stream was made by the State Forester in response to Respondent's activities and not in accordance with OAR 629-635-0200. John West was advised by representatives of the State Forester that, in fact, Brimstone Gulch is not a fish-bearing stream. All references to Brimstone Gulch as a medium type F stream should be removed from the Proposed Order.

4. The conclusion that Brimstone Gulch is a protected, medium type F stream is inconsistent with Lord's Oregon Laws §§ 6551-6552 and, therefore, contrary to law. All references to Brimstone Gulch as a medium type F stream should be removed from the Proposed Order.

5. The Proposed Order was based on facts resulting from the illegal entry onto private lands by representatives of the State Forester. The hearing testimony was not disputed that representatives of the State Forester are not to enter onto private lands without the property owner's consent. The finding that the "property was not posted and was open access" is unsupportable under law. The FPA does not permit the unauthorized entry onto private lands and, therefore, the Proposed Order is contrary to law.

6. The Proposed Order's finding that the activity "was more akin to clear-cutting . . . rather than commercial or selective thinning" is unsupported by a preponderance of the evidence, and the language should be removed.

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7. The Proposed Order inappropriately concludes that Brimstone Gulch is within the definition of "waters of the state." The preponderance of evidence does not support the finding that Brimstone Gulch is "waters of the state." All references to "waters of the state" should be removed from the Proposed Order.

8. The Proposed Order improperly finds that the activities of the Respondent within the RMA dramatically decreased the thermal cover, bank stabilization, negatively affecting wildlife uses and potential to deliver large woody debris into the stream system. There is no evidence in the record to support this finding, and it should be removed.

DATED this 3rd day of January 2014.

WATKINSON LAIRD RUBENSTEIN BALDWIN & BURGESS, P.C.

By: _____

James R. Dole, OSB No. 892272

Email: jdole@wrlaw.com

Clark E. Rasche, OSB No. 114960

Email: crasche@wrlaw.com

Of Attorneys for Respondent

101 East Broadway Ste 200

PO Box 10567

Eugene, OR 97440-3114

Telephone: 541-484-2277

Facsimile: 541-484-2282

CERTIFICATE OF FILING/SERVICE

I certify that on January 3, 2014, I filed or caused to be filed **RESPONDENT'S EXCEPTIONS TO THE PROPOSED ORDER** via facsimile and by depositing the original in the United States Post office at Springfield, Oregon, enclosed in a sealed envelope, with first class postage prepaid and addressed to the party at the address and facsimile transmission number stated below:

Angie Johnson, Civil Penalties Administrator
Department of Forestry, State Forests
2600 State Street
Salem, OR 97310
Facsimile: 503-945-7212

I further certify that on January 3, 2014, I served or caused to be served **RESPONDENT'S EXCEPTIONS TO THE PROPOSED ORDER** via facsimile and by depositing true, exact, and complete copies in the United States Post Office at Springfield, Oregon, enclosed in a sealed envelope, with first class postage prepaid and addressed to the parties at the addresses and facsimile transmission numbers stated below:

Dove L. Gutman
Administrative Law Judge
Office of Administrative Hearings
2510 Oakmont Way
Eugene, OR 97401
Facsimile: 541-686-7565

Matthew B. DeVore
Oregon Department of Justice
1162 Court St NE
Salem, OR 97301
Facsimile: 503-378-3784

WATKINSON LAIRD RUBENSTEIN BALDWIN & BURGESS, P.C.

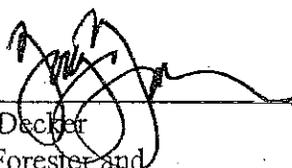
By: 
James R. Dole, OSB No. 892272
Email: jdole@wrlaw.com
Clark E. Rasche, OSB No. 114960
Email: crasche@wrlaw.com
Of Attorneys for Respondent

**BEFORE THE BOARD OF FORESTRY
STATE OF OREGON**

In the Matter of Orders for Repairs)	
Violation of the Forest Practices Act)	FINAL ORDER
)	Agency Case No.: 62900
BRIMSTONE NATURAL)	ODF Case Nos.: 13-SW023 &
RESOURCES CO.)	13-SW024

The Board of Forestry, at a meeting in Salem on January 8, 2014, by consensus adopts and incorporates by reference the attached proposed order issued by Senior Administrative Law Judge Dove L. Gutman, on December 19, 2013, and affirms and incorporates by reference the Repair Orders 13-SW023 and 13-SW024, issued by Stewardship Forester Steven Wetmore (these are also enclosed). Exceptions by the respondent were received in a timely manner, and were considered by the Board. The exceptions were not incorporated into the final order.

Dated this 15th day of January, 2014.

By: 

Doug Decker
State Forester and
Secretary to the Board of Forestry

DATE of Service: January 15, 2014

RIGHT TO JUDICIAL REVIEW

If you are dissatisfied with the Order, you may not appeal it until you have asked the agency to rehear the case or reconsider the Order. To obtain agency rehearing or reconsideration, you must file a petition for rehearing or reconsideration pursuant to OAR 137-003-0675 within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for rehearing or reconsideration within the time limits provided, you will lose your opportunity for rehearing or reconsideration and you will lose your right to appeal to the Oregon Court of Appeals. (OAR 629-001-0050).

If, after you have filed a petition for rehearing or reconsideration, the agency issues an Order you are dissatisfied with, you have the right to appeal that Order to the Oregon Court of Appeals pursuant to ORS 183.482.

If, 60 days after you have filed a petition for rehearing or reconsideration, the agency has not issued an order, your petition will be considered denied and at that time you will the right to appeal the original Order to the Court of Appeals pursuant to ORS 183.480 and ORS 183.482. To appeal, you must file a petition for judicial review with the Court of Appeals within 60 days from the day that your petition is deemed denied. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF FORESTRY**

IN THE MATTER OF:) PROPOSED ORDER
)
BRIMSTONE NATURAL) OAH Case No.: 1303445
RESOURCES CO.,) Agency Case No.: 62900
Respondent)

HISTORY OF THE CASE

On September 25, 2013, the Oregon Department of Forestry (ODF) issued three Notices of Violation/Citation (#13-SW022, #13-SW023 and #13-SW024) and two Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition (#13-SW023 and #13-SW024) to Brimstone Natural Resources Co., (Respondent). On October 17, 2013, Respondent requested a hearing.

On October 22, 2013, ODF referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) A. Bernadette House was assigned to preside at hearing.

On October 23, 2013, a prehearing telephone conference was held. ALJ House presided. Matthew DeVore, Assistant Attorney General, represented ODF. Clarke E. Rasche, Attorney at Law, represented Respondent. Marganne Allen and Stephen Wetmore appeared on behalf of the ODF.

On October 25, 2013, ALJ House issued a letter to the parties outlining the matters that were discussed and agreed upon during the prehearing conference.

On November 1, 2013, the case was reassigned to Senior ALJ Dove L. Gutman.

On November 21, 2013, a hearing was held in Eugene, Oregon. ALJ Gutman presided. Mr. DeVore represented ODF. Mr. Rasche and Jim Dole, Attorney at Law, represented Respondent. Testifying on behalf of ODF were Brad Knotts and Stephen Wetmore. Testifying on behalf of Respondent was John West. The record was held open until December 13, 2013. The record closed on December 13, 2013.

ISSUES

ODF

1. Whether Respondent failed to retain all the trees within 20 feet of the high

water level of Brimstone Gulch, a type F stream, as required by OAR 629-640-0100(2)(b).

2. Whether Respondent failed to retain at least 30 live conifer trees, at least eight inches in diameter at breast height, per 1,000 feet along Brimstone Gulch, a medium stream, as required by OAR 629-640-0100(5).

3. Whether the State Forester has authority to issue Repair Orders against Respondent pursuant to ORS 527.680.

Respondent

4. Whether the State Forester has engaged in unlawful interference with Respondent's right to extract mineral resources on the land.

5. Whether the State Forester has authority under state or federal law to prohibit or restrict the removal of trees when done in connection with Respondent's exercise of mineral extraction rights.

6. Whether the Citations/Repair Orders shall be dismissed.

EVIDENTIARY RULING

Exhibits A1 through A12 and A14 through A25, offered by ODF, were admitted into the record without objection.¹ Exhibit R1, offered by Respondent, was admitted into the record without objection.

FINDINGS OF FACT

Background

1. John West is a co-owner of Brimstone Natural Resources Co., (Respondent). Mr. West is a miner. He also engages in commercial logging and ranching. Mr. West owns several placer mines, most of which are patented. (Test. of West.)

2. On July 8, 2013, Mr. West, on behalf of Respondent, filed a Notification of Operations / Application for Permit (Notification form) with the Department of Forestry (ODF) and the Department of Revenue (DOR). The Notification form was assigned number 201371200302.

The Notification form provided notice to the State Forester that an operation would be conducted on lands described in the Notification form. The Notification form requested a permit to operate power driven machinery. The Notification form also provided notice to the State Forester and the DOR of the intent to harvest timber.

¹ ODF did not offer Exhibit A13.

The Notification form listed B.S. Roads as the Operator, and Respondent as the Landowner and Timber Owner.

The Notification form described the planned operation as a commercial or selective thinning of 18 acres located in Township 34S, Range 6W, in the NW ¼ SW ¼ of Section 8, Willamette Meridian, Josephine County (the property), for a total of 50,000 board feet, within 100 feet of a stream.

The Notification form requested a waiver of the 15-day waiting period.²

Mr. West filled out the Notification form (the numbered areas).³ Mr. West filled in the activity code of "1A" to indicate that commercial thinning was planned on the property. Mr. West did not fill in an activity code to indicate that mining was also planned on the property.⁴ (Test. of West, Wetmore; Exs. A3, A12.)

4. The instructions for the Notification form require the applicant to list all activities planned on the unit (operating area). (Ex. A12.)

5. Mr. West purchased the property with the intent to mine the property. Mr. West believes the property was mined in the past. (Test. of West.)

6. Mr. West has previously filled out and filed Notification forms with ODF on behalf of Respondent, including a Notification form involving clear-cutting and mining on property. (Test. of Wetmore.)

7. Mr. West could have filled in the activity codes of "5" or "8" on the Notification form to indicate mining.⁵ (Test. of Wetmore.)

8. On or about July 10, 2013, Tyson Schultz, ODF Stewardship Forester, reviewed the Notification form. Mr. Schultz determined that the planned activity was near the Brimstone Gulch, a medium type F stream (medium fish-bearing stream) and a protected resource. Mr. Schultz noted that information on the Notification form. In the "Stewardship Forester Comments" section on the Notification form, Mr. Schultz noted:

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

² ODF uses the 15-day waiting period to check with other state agencies regarding jurisdictional matters or matters of concern. (Test. of Wetmore.)

³ The Notification form has numbered areas that must be filled out by the applicant. It also has an area that the Stewardship Forester fills out after receiving and reviewing the form. (Exs. A3, A12.)

⁴ If Respondent had notified ODF of its intent to mine the property, ODF would have checked with the Oregon Department of Geology and Mineral Industries (DOGAMI), as well as other state agencies, regarding the proposed mining operation on the property. In addition, ODF would have worked with Respondent to come up with an alternative plan to allow Respondent to mine the property and adhere to state regulations regarding the Oregon Forest Practices Act. (Test. of Wetmore.)

⁵ Activity code "5" indicates "Land Use Change." Activity code "8" indicates "Other." (Ex. A12 at 2.)

(Test. of Wetmore; Ex. A3 at 2.)

9. On July 10, 2013, Mr. Schultz sent a notice to Mr. West and Respondent that stated, in pertinent part:

Notification Number: 2013-712-00302

Timber Sale: Brimstone

Attached is the processed information from the Notification of Operation/Application for Permit signed by John West representing the Land Owner, and received by Department of Forestry on July 8, 2013. Please review this information and retain for future reference

Notice and Permits

Notice is given to the State Forester that an operation will be conducted on the lands described herein.

A permit to use fire or operate power driven machinery is issued for the land described herein.

A notice is given to the State Forester and the Department of Revenue of the intent to harvest timber.

SF Comments: NO OPERATIONS WITHIN 100 FEET OF STREAM WITHOUT A REVIEWED, WRITTEN PLAN ON FILE WITH ODF – TS.

Notification 15 Day Waiting Period:

This Operation is subject to the 15 day Waiting Period. A waiver was requested and was granted by Tyson Schultz on July 10, 2013.

Resource Name
Brimstone Gulch

Resource Description
Brimstone Gulch: Medium
Type F Stream(s)

(Ex. A4 at 1-2; emphasis in original.) Mr. Schultz would not have granted a waiver of the 15-day waiting period had ODF been notified of Respondent's intent to mine the property. (Test. of Wetmore.)

10. On July 10, 2013, Mr. Schultz sent Respondent a Forest Practices Plan Notice

that stated, in part:

Your Proposed Operation
Needs to be Described in a Written Plan

Written plans are intended to assist you in achieving compliance with forest resource protection rules and laws. The plan is to help the landowner, operator, the Department of Forestry, and interested publics know that the operation will protect forest resources.

For your operation you need to prepare and submit to the Dept. the following type(s) of plan(s).

A Statutory Written Plan for your **Brimstone Creek** operation is required by:

- ORS 527.670(3)(a) and OAR 629-605-0170(1)(a) for an operation within 100 feet of a Type F Stream (Brimstone Creek).

By law, these plans have a mandatory 14-day public comment period and an additional maximum 7-day comment period for the Department of Forestry. You may not operate on the areas subject to this written plan until you receive my formal written comments on the plan. If the Dept. does not comment, you may begin on the 22nd day after your plan is received by the Department of Forestry.

You may begin operating on areas not subject to this written plan on or after 7/10/13.

(Ex. A4 at 4; emphasis in original.)

The violations

11. Sometime in July and/or August, 2013, Respondent conducted timber harvesting operations on the property. Respondent cut down conifer trees from the riparian management area of Brimstone Gulch and then sold the trees to Roseburg Forest Products for approximately \$3,600. (Test. of West, Wetmore; Ex. A1 at 3.)

12. In August 2013, ODF received complaints from the public regarding the timber harvesting operations on the property. (Test. of Wetmore, Ex. A1 at 3.)

13. On September 9, 2013, Stephen Wetmore, ODF Stewardship Forester, conducted an investigation of the property. The property was not posted and was open access.

Mr. Wetmore observed that several trees had been unlawfully harvested from the riparian management area (RMA). The RMA is 70 feet from the high water level of Brimstone Gulch.

Mr. Wetmore also observed that the activity that had taken place on the property was more akin to clear-cutting (activity code "1b") rather than commercial or selective thinning (activity code "1a" or "1A").⁶

Mr. Wetmore further observed that a crossing of Brimstone Gulch had occurred without a written plan. The crossing resulted in fill being placed in Brimstone Gulch.

Mr. Wetmore counted and documented the trees that had been cut and took appropriate measurements, using standard forestry practices. The trees that had been cut were Douglas Fir and Ponderosa Pine (forestry species in the Forest Practices Act).

Mr. Wetmore determined that Respondent had cut four trees within 20 feet of the high water level of Brimstone Gulch. Mr. Wetmore calculated that the diameters of the four trees removed were 46", 15", 22", and 14" diameters at breast height (dbh) based upon stump cruise of leave trees within the same reach as the trees harvested. The four trees were approximately 60 to 80 years old.

Mr. Wetmore also determined that Respondent had removed approximately 45 conifer trees from the RMA. The trees ranged in age from 75 to 135 years old. Mr. Wetmore further determined that Respondent had failed to retain 30 live conifer trees 8" dbh or larger per 1000 feet along Brimstone Gulch. Mr. Wetmore calculated that 87% of the RMA had been harvested. (Test. of Wetmore; Exs. A1, A2, A8; A16 through A23.)

14. Mr. Wetmore subsequently contacted Mr. West regarding the violations. Mr. West told Mr. Wetmore that he was working within the federal mining act. (Test. of Wetmore.)

15. On September 9, 2013, Mr. Wetmore issued a Forest Activity Inspection Report (Inspection Report) to Carlos Short dba BS Roads (the Operator) and to Respondent regarding the crossing of Brimstone Gulch. The Inspection Report provided, in part:

**■ WRITTEN STATEMENT OF UNSATISFACTORY
CONDITION**

⁶ Activity code "1b" triggers reforestation concerns. (Test. of Wetmore.)

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: 09/25/13

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

Written Plans Chemicals Water Protection
 Reforestation Road construction Other: _____
 Slash Harvesting

ORS/OAR(s) 629-625-0320(1)(c) and 629-625-200(2)

INFORMATION ON ITEMS CHECKED ABOVE:

1. The crossing of [Brimstone Gulch] (MF) was done without a reviewed plan on file and has resulted in excessive amounts of fill that may erode and contribute large quantities of sediment into waters of the State. You are hereby directed to pullback all fill material from the crossing and place in a stable location.
2. Establish waterbars on all skid trails near crossing and above the crossing.
3. Mulch all exposed soil with 6-12" straw.
4. Pullback al[l] sidecast material from skid trails or roads within 50' of [Brimstone Gulch] and mulch all exposed soils.

(Test. of Wetmore, Ex. A5.) Mr. Short subsequently removed the excess fill from the crossing and mulched the area. (Test. of Wetmore.)

16. On September 25, 2013, Mr. Wetmore issued three Notices of Violation/Citation (#13-SW022, #13-SW023, and #13-SW024) and two Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition (#13-SW023 and #13-SW024) to Respondent by certified and first class mail. (Exs. A6, A7, A8.)

17. The Notice of Violation/Citation #13-SW023 provided, in part:

THAT ON THE 9TH DAY OF September, 2013, at 1000

CLOCK AM

AT (location): *** Township 34 South, Range 06 West,
Section 8 NWSW, W.M.

NAME: Brimstone Natural Resource Co.

**DID THEN AND THERE UNLAWFULLY COMMIT
THE FOLLOWING OFFENSE:**

Removed four trees within 20' of the high water level of
Brimstone Gulch, a Medium Fish. Diameters of the trees
removed were calculated to be 46", 15", 22", and 14"
diameters breast height based upon stump cruise of leave
trees within the same reach as the trees harvested.

IN VIOLATION OF ORS OAR NO. 629-640-
100(2)(b)

**RESULTING IN THE FOLLOWING
UNSATISFACTORY CONDITIONS:**

Removed forest structure necessary to provide shade, bank
stabilization, and potential large woody debris critical for
fish streams in Southern Oregon.

(Ex. A7 at 2; emphasis in original.) The Order to Cease Further Violation and Repair
Damage or Correct Unsatisfactory Condition for #13-SW-023 provided, in part:

TO: Brimstone Natural Resource Co., 13-SW023

ORDER TO CEASE FURTHER VIOLATION

Pursuant to ORS 527.680(2), you are hereby directed to
cease further violation of 629-640-100(2)(b) which requires
that "Operators shall retain all trees within 20' of the High
Water Level" as part of the general vegetative retention
requirements.

**ORDER TO REPAIR DAMAGE OR CORRECT
UNSATISFACTORY CONDITION CAUSED BY
VIOLATION**

You are hereby directed to take the following action to

repair damage or correct the unsatisfactory condition resulting from violation of 629-640-100(2)(b):

- 1) Plant a minimum of 40 Douglas-fir trees within 20' of the High Water Level as replacements for the 4 trees which were removed.
- 2) Plant no closer than 15' spacing.
- 3) Specifications for seedlings:
 - a. Must be for Seed Zone 3
 - b. Elevation < 2000'
 - c. 1-1 with caliper of 8-10 mm (prefer 2-0 with caliper of 8-10 mm)
- 4) Any species or size substitutions must be approved by ODF prior to planting.
- 5) Planting only allowed from November 1, 2013 through February 28, 2014.
- 6) Trees must be maintained for 4 years after planting to reach "Free to Grow" status.

Such action is to be completed on or before February 28, 2014.

(Ex. A7 at 3; emphasis in original.)

18. The Notice of Violation/Citation #13-SW024 provided, in part:

THAT ON THE 9TH DAY OF September, 2013, at 1000
CLOCK AM

AT (location): *** Township 34 South, Range 06 West,
Section 8 NWSW, W.M.

NAME: Brimstone Natural Resource Co.

**DID THEN AND THERE UNLAWFULLY COMMIT
THE FOLLOWING OFFENSE:**

Operator failed to retain 30 live conifer trees 8" dbh or
larger per 1000' along medium streams.

IN VIOLATION OF ORS OAR NO. 629-640-
100(5)

RESULTING IN THE FOLLOWING

UNSATISFACTORY CONDITIONS:

Removed critical components of the Riparian Management Area dramatically decreasing the thermal cover, bank stabilization, negatively affecting wildlife uses and potential to deliver large woody debris into the stream system. 45 Trees with an average dbh of 24" along Brimstone Gulch were removed. The trees ranged in age approximately from 75 to 135 years old, 87% of the RMA was harvested.

(Ex. A8 at 2; emphasis in original.) The Order to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition for #13-SW024 provided, in part:

TO: Brimstone Natural Resource Co., 13-SW024

ORDER TO CEASE FURTHER VIOLATION

Pursuant to ORS 527.680(2), you are hereby directed to cease further violation of 629-640-100(5) which requires that "Operators must retain a minimum of 30 live conifers, 8" dbh or larger per 1000 feet along medium streams."

ORDER TO REPAIR DAMAGE OR CORRECT UNSATISFACTORY CONDITION CAUSED BY VIOLATION

You are hereby directed to take the following action to repair damage or correct the unsatisfactory condition resulting from violation of 629-640-100(5):

- 1) Plant a minimum of 125 trees per acre for a total of 462 Douglas-fir trees within 70' of the High Water Level as replacements for the 41 trees which were removed from within the Riparian Management Area. This does not include the 40 trees to be planted as repairs for 13-SW023.
- 2) West side acreage is 1.7 acres using 70' RMA x 1056' reach requiring 212 trees minimum and the East acreage is 2.0 using 70' RMA x 1244' reach requiring 250 trees to be replanted.
- 3) Plant no closer than 19' spacing.
- 4) Specifications for seedlings:
 - a. Must be for Seed Zone 3
 - b. Elevation < 2000'
 - c. 1-1 with caliper of 8-10 mm (prefer 2-0 with caliper of 8-10 mm)

- 5) Any species or size substitutions must be approved by ODF prior to planting.
- 6) Planting only allowed from November 1, 2013 through February 28, 2014.
- 7) Trees must be maintained for 4 years after planting to reach "Free to Grow" status.

Such action is to be completed on or before February 28, 2014.

(Ex. A8 at 3; emphasis in original.)

Other information

19. Respondent's mining operation on the property is exempt from Oregon Department of Geology and Mineral Industries (DOGAMI's) permit requirements. (Test. of West.)

20. Respondent and/or Mr. West have a Federal Land Patent #5037 for the property. The terms and/or provisions on the Federal Land Patent are illegible. (Test. of West; Ex. R1.)

21. Respondent and/or Mr. West have been previously cited by ODF for clear-cutting and failing to follow the alternative plan in a case where Respondent engaged in the mining of property. (Test. of West; Wetmore.)

22. Mr. West believes that if he is required to comply with the Repair Orders, he will not be able to mine his property. (Test. of West.)

23. ODF may not prevent land use conversion. (Test. of Wetmore.)

CONCLUSIONS OF LAW

1. Respondent failed to retain all the trees within 20 feet of the high water level of Brimstone Gulch, a type F stream, as required by OAR 629-640-0100(2)(b).

2. Respondent failed to retain at least 30 live conifer trees, at least eight inches in diameter at breast height, per 1,000 feet along Brimstone Gulch, a medium stream, as required by OAR 629-640-0100(5).

3. The State Forester has authority to issue Repair Orders against Respondent pursuant to ORS 527.680.

4. The State Forester has not engaged in unlawful interference with Respondent's right to extract mineral resources on the land.

5. The State Forester has authority under state law to prohibit or restrict the removal of trees when done in connection with a commercial operation that is related to forestry activities.

6. The Citations/Repair Orders shall not be dismissed.

OPINION

ODF contends that Respondent violated the Forest Practices Act (FPA) and should be required to repair the damage that resulted from the violations. As the proponent of this position, ODF has the burden of proof. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987). ODF has met its burden.

Preliminary matters

a. State Forester's authority to enforce the Forest Practices Act (FPA).

Respondent contends that the FPA does not apply to its mining operations on the property. ODF contends that the FPA applies to Respondent's timber harvesting operations on the property. I agree with ODF.

In 1972, the Oregon Legislature enacted the Oregon Forest Practices Act (FPA). ORS 527.610 to 527.770, 527.990(1) and 527.992. Through the FPA, the legislature

“declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.”

ORS 527.630(1).

The legislature recognized that operations on forestlands are already subject to regulations of other agencies which deal primarily with the consequences of such operations, and it is the Board of Forestry that should have exclusive authority to enforce

provisions on the FPA and how the operations are conducted. ORS 527.630(2), (3).

The FPA applies to any operator conducting a commercial operation that is related to forestry activities. The legislature defined "operator" as "any person, including a landowner or timber owner, who conducts an operation." ORS 527.620(13). In turn, "operation" is defined as "any commercial activity relating to the establishment, management or harvest of forest tree species..." with exceptions. ORS 527.620(12).

In 2003, the Oregon Court of Appeals evaluated the definitions of "operator" and "operation" and found that:

"Thus, an 'operation' includes not just the activity of harvesting forest tree species but also 'any commercial activity relating to' such activity. ORS 527.620(12) (emphasis added). The term 'relating to' ordinarily refers broadly to activities that are logically or causally connected. See *Webster's Third New Int'l Dictionary* 1916 (unabridged ed. 1993) (defining the transitive verb "relate" in part as "to show or establish a logical or causal connection between") (emphasis added). Thus, an 'operator' is one who conducts any commercial activity that is logically or causally connected to the establishment, management, or harvest of forest tree species.

Moreover, in ordinary parlance, one 'conducts' something when he or she leads, directs, runs, or manages it. See *Webster's* at 474 (defining the transitive verb "conduct" as, among other things, 'to bring by or as if by leading: LEAD, GUIDE, ESCORT *** to lead as a commander *** to have the direction of: RUN, MANAGE, DIRECT'). Nothing in the phrasing of the statute or anything in its context suggests that the legislature intended a meaning different from the ordinary meaning of the term. Thus, once again, it is clear from the wording of the statute that, to be considered an 'operator,' an individual need not personally harvest the trees."

Gambie v. ODF, 191 Or App 241, 251 (2003). Under this precedent, the Board of Forestry has broad authority to apply the requirements of the FPA to any person, landowner or timber owner managing a commercial activity that is logically or causally connected to the harvest of forest tree species.

The legislature granted the Board of Forestry broad rulemaking authority to implement and enforce terms of the FPA. ORS 527.710 to 527.715, ORS 527.765. The Board of Forestry promulgated rules, including OAR 629-640-0100, which requires specific riparian protections for operations occurring near streams. The State Forester

has authority to issue citations for violation of the terms of the FPA (as well as any rules promulgated thereunder) and may order operators to make reasonable efforts to repair the damage. ORS 527.680(1), (2). The legislature defined "State Forester" to include duly authorized representatives of the State Forester. ORS 527.620(15). The State Forester authorized Stewardship Foresters to issue citations and repair orders.

On July 8, 2013, Mr. West, on behalf of Respondent, filed Notification form #201371200302 with ODF. The Notification form provided notice to the State Forester that an operation would be conducted on lands described in the Notification form. The Notification form requested a permit to operate power-driven machinery. The Notification form also provided notice to the State Forester and the DOR of the intent to harvest timber.

The Notification form listed Respondent as the Landowner and Timber Owner. The Notification form described the planned operation as a commercial or selective thinning of 18 acres located in Township 34S, Range 6W, in the NW ¼ SW ¼ of Section 8, Willamette Meridian, Josephine County (the property), for a total of 50,000 board feet, within 100 feet of a stream. The Notification form requested a waiver of the 15-day waiting period.

On July 10, 2013, Mr. Schultz, ODF Stewardship Forester, notified Mr. West and Respondent that, among other things, a permit to operate power driven machinery was issued and a waiver of the 15-day waiting period was granted.

Sometime in July and/or August 2013, Respondent conducted timber harvesting operations on the property. Respondent cut down conifer trees (forestry species in the FPA) from the riparian management area of Brimstone Gulch and then sold the trees to Roseburg Forest Products for approximately \$3,600.

Respondent's operation of cutting down and selling conifer trees for profit meets the definition of "operation" since it is a commercial activity and logically or causally connected to the management or harvest of forest tree species. Respondent is the landowner and "operator."

Therefore, Respondent is required to comply with the terms of the FPA. Consequently, the State Forester has authority to enforce Respondent's violations of the FPA.

b. Mining exemptions to the FPA

i) State mining rights

Respondent contends that its mining operation on the property is exempt from DOGAMI's permit requirements. ODF contends that even if Respondent is exempt from DOGAMI's requirements, Respondent's timber harvesting operation is not exempt from ODF requirements. I agree with ODF.

Oregon has the authority to regulate the environmental aspects of mining on all lands in Oregon, even federal lands. *Granite Rock v. California Coastal*, 480 US 572 (1987) (reversing a Ninth Circuit ruling that federal mining rules establish a *per-se* preemption over state permit requirements). In Oregon, mining operators are regulated by the Department of Geology and Mineral Industries (DOGAMI). ORS chapter 517. DOGAMI generally requires mining permits for exploration or active operations, with some exemptions. ORS 517.705 (exploration permit); ORS 517.790 (operating permit).

In regulating mineral exploration, the legislature declared its purpose “to encourage efficient and environmentally sound identification and development of the mineral resources of this state.” ORS 517.702(2). DOGAMI rules recognize that mining operators may need to obtain approval from other federal, state and local agencies, as required by those entities. DOGAMI helps to coordinate with other agencies to avoid duplication of efforts, but a DOGAMI permit “does not constitute authorization to proceed without approval of other agencies if required.” OAR 632-033-0025(1) (mining exploration permits); OAR 632-030-0005(3) (surface mining operating permits).

In some situations, mining operations or explorations may be exempt from DOGAMI regulations. *See, e.g.*, ORS 517.715 (exempts small operations from exploration permits, but not DOGAMI regulations); ORS 517.750(15) (excludes certain operations from definition of surface mining, including small-scale operations); OAR 632-030-0016 (exempts some small scale surface mining operations from DOGAMI regulations); OAR 632-033-0016 (exempts prospecting for precious minerals from DOGAMI regulations). However, these exemptions only extend to DOGAMI rules. DOGAMI does not have the authority to exempt operators from the requirements of the FPA, or any other federal, state or local rules that may apply to the operation. *See, e.g.*, ORS 517.715 (“However, nothing in this section exempts a person from the requirements of ORS chapter 273 or the requirements of other departments”).

Mr. West testified that Respondent’s mining operation on the property is exempt from DOGAMI’s permit requirements. However, Respondent’s timber harvesting operation on the property is not exempt from ODF’s requirements. ORS 527.630; OAR 629-640-0100.

ii) Federal mining rights

Respondent contends that it has a federal mining patent on the property, and that the federal mining law preempts ODF’s regulations. ODF contends that even if Respondent has a federal mining patent on the property, ODF’s regulations do not conflict with the federal mining law. I agree with ODF.

The General Mining Law of 1872 (30 USC §§ 22-54), and the Federal Land Policy and Management Act of 1976 (43 USC §§ 1701-1787) are the primary Congressional acts establishing federal mining rights.

Federal mining rights may exist for mining operations on federal lands, or in some circumstance, on private lands. On federal lands, which have mining rights available, a person has the right to file a claim to engage in mining. This unpatented mining claim, if properly filed and staked, can be perfected to establish a type of property right. Though title to the land remains with the federal government, people who hold a perfected mining claim have exclusive right to the possession and enjoyment of the claim, "so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title..." 30 USC § 26.

Congress charged the Secretary of the Interior with administering the mining regulations, and the Secretary designated the Bureau of Land Management (BLM) as the agency with primary responsibility for enforcing the mining laws on all federally-owned lands. 30 USC § 28k; 43 CFR § 3802 and § 3809. The BLM maintains records of mining claims and resolves disputes concerning federal mining claims. All mining claims must be recorded with the BLM and the county recording office. 43 CFR § 3833.1. Pursuant to Oregon Law, patent mining claims must be filed with the county recorder. ORS 517.030 (lode claims filed within 60 days); ORS 517.052 (placer claims filed within 60 days).

To establish a mining claim, a person must file a legal description of the site so that it could be located using a map. 43 CFR § 3832.12(a). The size of a mining claim depends upon the type of claim made. Federal mining claims may be either placer claims or lode claims. Lode claims cover the classic situation where veins of precious mineral deposits extend for a distance (such as a gold vein) with well-defined boundaries. Lode claims typically resemble a parallelogram shape and follow the vein of deposits. Lode claims cannot exceed 1,500 feet in length and 600 feet in width. 43 CFR § 3832.22(a). Placer claims cover all other types of mining claims, such as gravel or gypsum. Individual placer claims cannot exceed 20 acres per claim. 43 CFR § 3832.22(b).

Mining operations are categorized as either: (1) casual use, (2) notice-level operations, or (3) plan-level operations. 43 CFR § 3809.10. Casual use involves a mining activity with a negligible disturbance to the surface and no permit requirements. 43 CFR § 3809.5. Notice-level operations may involve earth moving equipment disturbing less than 5 acres per year, and require operators to file a notice with BLM. 43 CFR § 3809.21. Plan-level operations involve all other surface disturbance activities and require BLM approval prior to beginning operations. 43 CFR § 3809.11.

Mining operations on federal land which are based on an unpatented mining claim may be exempt from state regulation in some situations.⁷ See, e.g., OAR 632-030-0019. To the extent that a federal exemption may exist, however, it extends only to state or local laws that directly conflict with federal laws. *State ex rel. Cox v. Hibbard*, 31 Or App 269 (1977) (finding that federal mining laws did not preempt State's authority to enforce fill and removal law); *Elliott v. Oregon Intern. Mining Co.*, 60 Or App 474

⁷ Respondent's operations occurred on privately-owned lands. As such, Respondent's operations are not exempt from the FPA under the theory of an unpatented mining claim on federal lands:

(1982) (finding that county regulations were preempted since the county attempted to prohibit conduct that Congress specifically authorized); *Kinross Copper Corp. v. State*, 160 Or App 513 (1999) (involving state regulations placed upon wastewater discharges from an unpatented mining claim).

A person with a perfected mining claim may apply for a patented mining claim. Generally, a patent grants legal title of the real property to the mining operator. In some situations, federal acts, such as the Stock Raising Homestead Act of 1916, separated the mineral estate from the property estate. In those cases, the federal government granted property rights, but reserved the mineral rights. See, e.g., *Elliott v. Oregon Intern. Mining Co.*, 60 Or App 474 (1982). In either case, once the patent has been issued and both the mineral estate and property estate become privately owned, the federal government no longer has any regulatory interest in the patented mining claim. Mining operations conducted pursuant to a patent mining claim may be exempt from state or local regulation in some situations. To determine whether the federal law preempts state or local laws, courts consider the specific provisions of the regulations. *Granite Rock v. California Coastal*, 480 US 572 (1987).

Respondent has a Federal Land Patent on the property. However, the terms and/or provisions on the land patent are illegible. Presuming that Respondent's land patent also contains a patented mining claim, a review of pertinent case law and the provisions of the regulation are necessary to determine if a direct conflict with the mining law exists.

In *Granite Rock v. California Coastal*, the US Supreme Court found that the California Coastal Commission had authority to regulate the environmental aspects of unpatented mining operations occurring on federal lands, so long as the state regulations did not create an "actual conflict" with the federal law. 480 US 572 (1987). Similarly, in *State ex rel. Cox v. Hibbard*, the Oregon Court of Appeals found that the Division of State Lands could require the operator of an unpatented mining claim to comply with the Fill and Removal Law, though the operation occurred on federal lands. 31 Or App 269 (1977). In *Elliott v. Oregon International Mining Co.*, the court found that federal rights to a patented mining claim preempted county regulations, but only when the county regulation directly prohibited conduct that Congress specifically authorized. 60 Or App 474 (1982).

The Mining Law of 1872, as originally passed, was silent on the subject of environmental regulation. However, Congress has since recognized the federal government's right to minimize adverse environmental impacts on surface resources. 30 USC § 601 *et seq.*, 36 CFR §§ 228.1, 228.3(d). Congress has also recognized that even where extensive federal environmental legislation exists, the primary responsibility for implementing environmental policy rests with state and local governments. 42 USC § 4331(a), 42 USC § 4371(b)(2).

Likewise, the courts have consistently found that federal mining laws did not create a pervasive regulatory scheme occupying the entire field of regulation, but instead

the laws specifically recognize the state's authority to set additional regulations. See, e.g., *State ex rel. Cox v. Hibbard*, 31 Or App at 274; *Granite Rock v. California Coastal*, 480 US at 583, 588-589.

The FPA, at issue in this case, is an environmental regulation. The FPA encourages economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland. The FP also provides for the overall maintenance of air quality, water resources, soil productivity, and fish and wildlife. ORS 527.630, ORS 527.710.

The FPA does not mandate particular uses for the land or land use conversion. The FPA requires that, however the land is used, damage to the environment (forest species, forestland, RMA) be kept within prescribed limits and/or repaired.

The FPA provisions that Respondent is alleged to have violated relate to retention of trees in the riparian zone of a creek. OAR 629-640-0100 is titled "General Vegetation Retention Prescription for Type F Streams" and provides, in part:

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams.

(2) Operators shall retain:

(b) All trees within 20 feet of the high water level;

(5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

The retention of trees in the riparian zone of a creek provides forest structure necessary to provide shade, bank stabilization, and potential large woody debris critical for fish streams in Southern Oregon. By enforcing this provision, ODF is not seeking to regulate Respondent's use of the property. Rather, ODF is seeking to regulate Respondent's commercial operations that are related to forestry activities so that the operations are carried out in a more environmentally sensitive and resource protective

fashion.

Therefore, after reviewing the provisions of the regulation at issue, I find that the FPA does not directly conflict with the mining law. Accordingly, ODF has authority to regulate the environmental impact of forest practices, including the operation at issue in this case.

1. Whether Respondent failed to retain all the trees within 20 feet of the high water level of Brimstone Gulch.

ORS 527.710 is titled "Duties and powers of board; rules; inventory for resource protection; consultation with other agencies required" and provides, in part:

(1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990(1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

- (a) Air quality;
- (b) Water resources, including but not limited to sources of domestic drinking water;
- (c) Soil productivity; and
- (d) Fish and wildlife.

OAR 629-640-0100 is titled "General Vegetation Retention Prescription for Type F Streams" and provides, in part:

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams.

(2) Operators shall retain:

(b) All trees within 20 feet of the high water level;

Sometime in July and/or August 2013, Respondent conducted timber harvesting operations on the property. Respondent cut down conifer trees from the riparian management area (RMA) of Brimstone Gulch and then sold the trees to Roseburg Forest Products for approximately \$3,600.

On September 9, 2013, Stephen Wetmore, ODF Stewardship Forester, conducted an investigation of the property. Mr. Wetmore observed that several trees had been unlawfully harvested from the RMA.

Mr. Wetmore counted and documented the trees that had been cut and took appropriate measurements, using standard forestry practices. The trees that had been cut were Douglas Fir and Ponderosa Pine (forestry species in the Forest Practices Act).

Mr. Wetmore determined that Respondent had cut four trees within 20 feet of the high water level of Brimstone Gulch. Mr. Wetmore calculated that the diameters of the four trees removed were 46", 15", 22", and 14" diameters at breast height (dbh) based upon stump cruise of leave trees within the same reach as the trees harvested. The four trees were approximately 60 to 80 years old.

Therefore, I find that Respondent failed to retain all trees within 20 feet of the high water level of Brimstone Gulch, a medium fish-bearing stream. As such, Respondent violated OAR 629-640-0100(2)(b).

2. Whether Respondent failed to retain at least 30 live conifer trees, at least eight inches in diameter at breast height, per 1,000 feet along Brimstone Gulch.

OAR 629-640-0100 further provides:

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams.

(5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

Sometime in July and/or August 2013, Respondent conducted timber harvesting

operations on the property. Respondent cut down conifer trees from the RMA of Brimstone Gulch and then sold the trees to Roseburg Forest Products for approximately \$3,600.

On September 9, 2013, Mr. Wetmore conducted an investigation of the property. Mr. Wetmore observed that several trees had been unlawfully harvested from the RMA.

Mr. Wetmore counted and documented the trees that had been cut and took appropriate measurements, using standard forestry practices. The trees that had been cut were Douglas Fir and Ponderosa Pine (forestry species in the Forest Practices Act).

Mr. Wetmore determined that Respondent had removed approximately 45 conifer trees from the RMA. The trees ranged in age from 75 to 135 years old. Mr. Wetmore further determined that Respondent had failed to retain 30 live conifer trees 8" dbh or larger per 1000 feet along Brimstone Gulch. Mr. Wetmore calculated that 87% of the RMA had been harvested.

Consequently, I find that Respondent failed to retain 30 live conifer trees 8" dbh or larger per 1000 feet along Brimstone Gulch, a medium fish-bearing stream. Thus, Respondent violated OAR 629-640-0100(5).

3. Whether the State Forester has authority to issue repair orders against Respondent.

ORS 527.680 is titled "Violation by operator; citation; order to cease violation; order to repair damage; temporary order where violation continuing; service on operator" and provides, in pertinent part:

(1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990(1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as a result of such violation.

(2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

(a) Shall issue and serve upon the landowner or operator or

authorized representative an order directing that the landowner or operator cease further violation. If the order is served upon an operator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber owner and landowner; and

(b) May issue and serve an order upon the landowner or operator and shall cause a copy of such order to be mailed or delivered to the timber owner and landowner, directing the landowner or operator, where practical and economically feasible, to make reasonable efforts to repair the damage or correct the unsatisfactory condition specified in the citation within a period specified by the State Forester.

On September 9, 2013, Mr. Wetmore, ODF Stewardship Forester, conducted an investigation of the property. Mr. Wetmore observed that several trees had been unlawfully harvested from the RMA of Brimstone Gulch, a medium fish-bearing stream, in violation of OAR 629-640-0100(2)(b), and (5), and the FPA.

On September 25, 2013, Mr. Wetmore issued three Notices of Violation/Citation and two Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition (Repair Orders) to Respondent by certified and first class mail.

The Repair Orders required Respondent to repair the damage done to the RMA of Brimstone Gulch as a result of its commercial operation related to forestry activities that it conducted on the property.

I find that pursuant to ORS 527.680, the State Forester has the authority to issue Repair Orders against Respondent. I further find that the Repair Orders are reasonable and necessary to repair the damage done to the RMA of Brimstone Gulch.

4. Whether the State Forester engaged in unlawful interference with Respondent's right to extract mineral resources on the land.

Respondent contends that by issuing the Repair Orders, the State Forester has engaged in unlawful interference with Respondent's right to extract mineral resources from the property.

However, as set forth previously, the State Forester has the authority to issue Repair Orders requiring Respondent to repair the damage done to the RMA of Brimstone Gulch as a result of its commercial operation related to forestry activities that it conducted on the property. Consequently, Respondent's argument is unpersuasive.

5. Whether the State Forester has authority under state or federal law to prohibit or restrict the removal of trees when done in connection with Respondent's

exercise of mineral extraction rights.

Respondent contends that the State Forester does not have the authority under state or federal law to prohibit or restrict the removal of trees when done in connection with the exercise of mineral extraction rights.

However, as stated previously, Respondent engaged in a commercial operation related to forestry activities on the property that caused damage to the RMA of Brimstone Gulch. As such, the State Forester has the authority under the FPA to prohibit or restrict the removal of trees from the RMA of Brimstone Gulch. Therefore, Respondent's argument is unpersuasive.

6. Whether the Citations/Repair Orders should be dismissed.

Because I have determined that the State Forester has the authority to issue Repair Orders to Respondent, the Citation/Repair Orders shall not be dismissed.

ORDER

I propose the Oregon Department of Forestry issue the following order:

The Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition (#13-SW023 and #13-SW024) issued on September 25, 2013, be AFFIRMED.

Dove L. Gutman

Senior Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS TO PROPOSED ORDER

If this proposed order is adverse to you or to the agency, you or the agency may file exceptions within seven days after the date of the filing of the proposed order with the board if no other time is specified. Exceptions must be filed with the agency.

The exceptions shall be confined to factual and legal issues that are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

1. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;
 2. A necessary legal conclusion is omitted or is contrary to law or the board's policy;
- or
3. Prejudicial procedural error occurred.

The exceptions shall be numbered and shall specify the disputed finding, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

After the board has received and reviewed the proposed order and the exceptions, if any, the board may:

1. Entertain written and/or oral argument if the board determines it is necessary or appropriate to assist the board in the proper disposition of the case. If allowed, oral argument will be limited to matters raised in written exceptions and shall be presented under time limits determined by the board chair;
2. Remand the matter to the ALJ for further proceedings on any issues the board specifies, and to prepare a revised proposed order as appropriate, under OAR 137-003-0655(2);
3. Enter a final order adopting the recommendations of the ALJ; or
4. Enter an amended proposed order or final order that modifies or rejects the recommendations of the ALJ. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665.

RECONSIDERATION AND REHEARING

Under the provisions of OAR 137-003-0675, you may file a petition for reconsideration or rehearing of the final order with the board within 60 calendar days after this order is served. Any such petition shall set forth the specific grounds for reconsideration or rehearing and the remedy sought. The petition may be supported by a written argument. Under OAR 629-001-0050, you must file a petition for reconsideration as a condition for further appeal.

APPEAL

You may appeal by filing a petition for judicial review with the Oregon Court of Appeals within 60 days following the date the final order on reconsideration or rehearing is issued, or within 60 days following denial of the request for reconsideration or rehearing. See Oregon Revised Statutes 183.480 *et seq.*

CERTIFICATE OF MAILING

On December 19, 2013, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1303445.

By: First Class Mail

Clark Rasche
Attorney at Law
PO Box 10567
Eugene OR 97440-2567

Angie Johnson
Department of Forestry, Private Forests
2600 State Street, Bldg D
Salem OR 97310

Matthew DeVore
Assistant Attorney General
Department Of Justice
1162 Court Street NE
Salem OR 97301-4096

Lucy Garcia
Administrative Specialist
Hearing Coordinator

CERTIFICATE OF MAILING

On January 15, 2014, I mailed the foregoing Final Order in OAH Case No. 1303445;
Agency Case No. 62900.

By: First Class Mail

Clark Rasche
Attorney at Law
PO Box 10567
Eugene OR 97440-2567

Matthew DeVore
Assistant Attorney General
Department Of Justice
1162 Court Street NE
Salem OR 97301-4096

Dove L. Gutman
Administrative Law Judge
Office of Administrative Hearings
2510 Oakmont Way
Eugene, OR 97401



Angie Johnson, Civil Penalty Administrator
Oregon Department of Forestry
Private Forests Program

STATE OF OREGON
DEPARTMENT OF FORESTRY

TO: Brimstone Natural Resource Co., 13-SW023

ORDER TO CEASE FURTHER VIOLATION

Pursuant to ORS 527.680(2), you are hereby directed to cease further violation of 629-640-100(2)(b) which requires that "Operators shall retain all trees within 20' of the High Water Level " as part of the general vegetative retention requirements.

ORDER TO REPAIR DAMAGE OR CORRECT UNSATISFACTORY CONDITION CAUSED BY VIOLATION

You are hereby directed to take the following action to repair damage or correct the unsatisfactory condition resulting from violation of 629-640-100(2)(b):

- 1) Plant a minimum of 40 Douglas-fir trees within 20' of the High Water Level as replacements for the 4 trees which were removed.
- 2) Plant no closer than 15' spacing
- 3) Specifications for the seedlings:
 - a. Must be for Seed Zone 3
 - b. Elevation < 2000'
 - c. 1-1 with caliper of 8-10 mm (prefer 2-0 with caliper of 8-10 mm)
- 4) Any species or size substitutions must be approved by ODF prior to planting
- 5) Planting only allowed from November 1, 2013 through February 28, 2014
- 6) Trees must be maintained for 4 years after planting to reach "Free To Grow" status

Such action is to be completed on or before February 28, 2014.

Date 9/25/13 /s/ Stephen Wetmore,

State Forester - Authorized Representative

As provided in ORS 527.700(1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.730 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

This notice becomes a final order unless the above-named party makes a written request for a hearing within 30 days from the date of service or mailing of the notice.

STATE OF OREGON
DEPARTMENT OF FORESTRY

TO: Brimstone Natural Resource Co., 13-SW024

ORDER TO CEASE FURTHER VIOLATION

Pursuant to ORS 527.680(2), you are hereby directed to cease further violation of OAR 629-640-100(5) which requires that "Operators must retain a minimum of 30 live conifers, 8" dbh or larger per 1000 feet along medium streams."

ORDER TO REPAIR DAMAGE OR CORRECT UNSATISFACTORY CONDITION CAUSED BY VIOLATION

You are hereby directed to take the following action to repair damage or correct the unsatisfactory condition resulting from violation of OAR 629-640-100(5):

- 1) Plant a minimum of 125 trees per acre for a total of 462 Douglas-fir trees within 70' of the High Water Level as replacements for the 41 trees which were removed from within the Riparian Management Area. This does not include the 40 trees to be planted as repairs for 13-SW023.
- 2) West side acreage is 1.7 acres using 70' RMA x 1056' reach requiring 212 trees minimum and the East acreage is 2.0 using 70' RMA x 1244' reach requiring 250 trees to be replanted.
- 3) Plant no closer than 19' spacing
- 4) Specifications for the seedlings:
 - a. Must be for Seed Zone 3
 - b. Elevation < 2000'
 - c. 1-1 with caliper of 8-10 mm (prefer 2-0 with caliper of 8-10 mm)
- 5) Any species or size substitutions must be approved by ODF prior to planting
- 6) Planting only allowed from November 1, 2013 through February 28, 2014
- 7) Trees must be maintained for 4 years after planting to reach "Free To Grow" status

Such action is to be completed on or before February 28, 2014.

Date 9/25/13 /s/ Stephen Wetmore

State Forester - Authorized Representative

As provided in ORS 527.700(1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.730 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

This notice becomes a final order unless the above-named party makes a written request for a hearing within 30 days from the date of service or mailing of the notice.

LANDOWNER

OrderToCeaseRepairForm.doc/Jaz D (FP)



Oregon

John A. Kitzhaber, MD, Governor

GF 6-3-1-400

Department of Forestry
State Forester's Office
2600 State Street
Salem, OR 97310-1336
503-945-7200
Fax 503-945-7212
<http://www.odf.state.or.us>

July 29, 2014

Certified and First Class Mail



Brimstone Natural Resource Co.
Attention: John West
PO Box 1249
Merlin, OR 97532

Re: Notice of Civil Penalty for Forest Practices Violation
Case Nos. 13-SW022, 13-SW023 and 13-SW024

Mr. West:

On September 25, 2013, the Oregon Department of Forestry issued three citations to you for violation of the Forest Practices Act. Staff reviewed the citations and determined that the rules that were violated were incorrect on the citations and also on the Orders to Cease and Orders to Repair Damage. In each reference, there was a "0" omitted from the rule number. The rule numbers referenced in the citations and orders were otherwise correct. The rules referenced in the enclosed notice, are correct.

Additionally, staff reviewed the facts in these cases and determined that a fine was appropriate as described in the enclosed notice of civil penalty. Please read the notice for the penalty amount and information about your rights to a hearing or collaborative dispute resolution. In addition, more detailed information on those rights is enclosed in a separate document.

If you have any questions regarding this matter or the administration of civil penalties, please call me at (503) 945-7387.

Sincerely,

Angela G. Johnson (Lafe)
Civil Penalty Administrator

C: Steve Wetmore, Stewardship Forester, Grants Pass Unit Office
Rick Dryer, Assistant to the District Forester, Southwest Oregon District, Grants Pass Office

Enclosures

- (1) Notice of Civil Penalty
- (2) Formula for Determining Civil Penalties
- (3) How to Request a Hearing, Collaborative Dispute Resolution, or Mitigation
- (4) Invoice

bc: Dan Thorpe, Southwest District
Leon Nerpel, Finance
Case Files 13-SW022, 13-SW023 and 13-SW024

CERTIFICATE OF SERVICE

**Re: Notice of Civil Penalty for Forest Practices Violation, Case No. 13-SW022, 13-SW023
and 13-SW024**

I HEREBY CERTIFY that I have made service of copies of the foregoing Notices of Civil Penalty upon the following parties by causing them to be mailed in the United States Post Office at Salem, Oregon, on July 29, 2014, by United States Mail and Certified Mail, a true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to:

Brimstone Natural Resource, Co.
Attention: John West
PO Box 1249
Merlin, OR 97532

CERTIFIED MAIL & FIRST CLASS MAIL



Peg Davis, Civil Penalty Assistant
Private Forests Program
(503) 945-7471

**State of Oregon
Department of Forestry on behalf of the
Board of Forestry**

In the matter of violation of the Forest Practices Act,
OAR 629-605-0170(2), and
OAR 629-640-0100(2)(b) and (5)
By Brimstone Natural Resource Co.) Notice of Civil Penalty; Findings of Fact;
) Proposed and Final Order; Case Nos.
) 13-SW022, 13-SW023 and 13-SW024
)
)

TO: Brimstone Natural Resource Co.

Oregon Revised Statute 527.610 requires anyone who conducts forest operations or owns forestland to conform to the Forest Practices Act and administrative rules. A person who fails to follow the statute and rules is subject to a civil penalty as provided by ORS 527.683 through 527.687 and 527.992.

Case No. 13-SW022

The Oregon Board of Forestry considers that you have violated the Forest Practices Act and administrative rule OAR 629-605-0170 Written Plans for Operations near Type F Stream, which states in relevant part:

- (2) An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a Type F or Type D stream.

Case No. 13-SW023

The Oregon Board of Forestry considers that you have violated the Forest Practices Act and administrative rule OAR 629-640-0100(2)(b), Vegetation Retention Prescription for Type F Streams, which states in relevant parts:

- (2) Operators shall retain:
 - (b) All trees within 20 feet of the high water level

Case No. 13-SW024

The Oregon Board of Forestry considers that you have violated the Forest Practices Act and administrative rule OAR 629-640-0100(5), Vegetation Retention Prescription for Type F Streams, which states in relevant part:

- (5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

I. APPLICABLE LAW

In addition to the statutes and rules cited in the Repair Order, Notice of Violation/Citation, and Notice of Contested Case Rights, the following statutes and rules are substantially relevant to the Repair Order:

ORS 527.610 to 527.770, 527.990 (1) and 527.992 constitute the Oregon Forest Practices Act.

ORS 527.620 provides definitions for several relevant terms. In particular, the following subsections are substantially relevant to this proceeding for the definitions of the listed terms:

- (3) "DBH"
- (5) "Forest practice"
- (11) "Landowner"
- (12) "Operation"
- (13) "Operator"
- (15) "State Forester"
- (17) "Timber owner"

ORS 527.630 describe the general policy statements of the Oregon Legislature as it relates to management of forests in Oregon.

OAR chapter 629, division 600 provides definitions for use in divisions 605 through 669 and 680 through 699. In particular, the following subsections of OAR 629-600-0100 are substantially relevant to the Repair Order:

- (11) "Commercial"
- (17) "Domestic water use"
- (22) "Fish use"
- (29) "Free to grow"
- (36) "High water level"
- (46) "Live tree"
- (62) "Riparian area"
- (63) "Riparian management area"
- (67) "Seedlings"
- (75) "Stream"
- (84) "Type D stream"
- (85) "Type F stream"
- (86) "Type N stream"

OAR chapter 629, division 635 describes ODF's water protection rules, including riparian management area widths. In general, OAR 629-635-0200 explains the stream classification system. In particular, the following rules are substantially relevant to the Repair Order:

- OAR 629-635-0200(4) states that streams will be classified into three beneficial use categories, Type F, Type D, and Type N.
- OAR 629-635-0200(9), (10), and (11) describe the methods used to determine if a stream is considered to have fish use.

- OAR 629-635-0200(12) states that for each of the three beneficial use categories, including Type F, streams will be categorized into three categories of stream sizes. The rule defines the three categories of stream sizes.
- OAR 629-635-0300 describes ODF's purpose in managing riparian areas.
- OAR 629-635-0310 defines the width of the riparian management area ("RMA"). In Citation and Repair Order 13-SW023, ODF uses a RMA width of 70' for medium Type F streams, as explained in this rule.

OAR chapter 629, division 640 describes ODF's water protection rules, as they relate to vegetation retention along streams. OAR 629-640-0100 provides the general retention prescription for Type F streams.

OAR 629-670-0100 allows the State Forester to conduct inspections and requires enforcement in certain situations; OAR 629-670-0105 defines how the State Forester should evaluate the damage caused by noncompliance with forestry rules; OAR 629-670-0110(2) allows the Forester to initiate enforcement action with a citation under OAR 629-670-0130 and ORS 527.680; OAR 629-670-0130(1) and (2) describe the Forester's authority to issue an order to cease further violation and an order to repair damage or correct an unsatisfactory condition.

OAR 629-670-0010 provides further definitions of the listed terms in subsections:

- (2) "Damage"
- (3) "Forest practice rule"
- (8) "Timely corrective action"
- (9) "Unsatisfactory condition"
- (10) "Violation"

OAR chapter 629, division 672 describes procedures to be used by the Forester in issuing orders. In particular, OAR 629-672-0200 describes the procedures for hearings on procedures for final orders.

II. FINDINGS OF FACT

The following is a summary of the events that led up to issuing citations for the violations by the landowner, Brimstone Natural Resources Co.

John West is a co-owner of Brimstone Natural Resources Co., (Respondent). Mr. West engages in mining, commercial logging and ranching. Mr. West owns several placer mines, most of which are patented.

On July 8, 2013, Mr. West, on behalf of Respondent, filed a Notification of Operations I Application for Permit (Notification form) with the Department of Forestry (ODF) and the Department of Revenue (DOR). The Notification form was assigned number 201371200302.

The Notification form provided notice to the State Forester that an operation would be conducted on lands described in the Notification form. The Notification form requested a permit to operate power driven machinery. The Notification form also provided notice to the State Forester and the DOR of the intent to harvest timber. The Notification form listed B.S. Roads as the Operator, and Respondent as the Landowner and Timber Owner.

The Notification form described the planned operation as a commercial or selective thinning (activity code "1a" or "1A") of 18 acres located in Township 34S, Range 6W, in the NW 1/4 SW 1/4 of Section 8, Willamette Meridian, Josephine County (the property), for a total of 50,000 board feet, within 100 feet of a stream. The Notification form requested a waiver of the 15-day waiting period. The instructions for the Notification form require the applicant to list all activities planned on the unit (operating area). The Notification form has numbered areas that must be filled out by the applicant. It also has an area that the Stewardship Forester fills out after receiving and reviewing the form.

On or about July 10, 2013, Tyson Schultz, ODF Stewardship Forester, reviewed the Notification form. Mr. Schultz determined that the planned activity was near the Brimstone Gulch, a medium type F stream (medium fish-bearing stream) and a protected resource. Mr. Schultz noted that information on the Notification form. In the "Stewardship Forester Comments" section on the Notification form, Mr. Schultz noted:

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

ODF uses the 15-day waiting period to check with other state agencies regarding jurisdictional matters or matters of concern. Respondent did not indicate that it intended to convert the land to a different use. If Respondent had notified ODF of its intent to mine the property, ODF would have checked with the Oregon Department of Geology and Mineral Industries (DOGAMI), as well as other state agencies, regarding the proposed mining operation on the property. In addition, ODF would have worked with Respondent to come up with an alternative plan to allow Respondent to mine the property and adhere to state regulations regarding the Oregon Forest Practices Act.

Sometime in July and/or August, 2013, Respondent conducted timber harvesting operations on the property. Respondent cut down conifer trees from the riparian management area of Brimstone Gulch and then sold the trees to Roseburg Forest Products for approximately \$3,600.

In August 2013, ODF received complaints from the public regarding the timber harvesting operations on the property.

On September 9, 2013, Stephen Wetmore, ODF Stewardship Forester, conducted an investigation of the property. The property was not posted and was open access.

Mr. Wetmore observed that several trees had been unlawfully harvested from the riparian management area (RMA). The RMA is 70 feet from the high water level of Brimstone Gulch.

Mr. Wetmore also observed that the activity that had taken place on the property was more akin to clear-cutting (activity code "1b") rather than commercial or selective thinning (activity code "1a" or "1A"). Activity code "1b" triggers reforestation concerns.

Mr. Wetmore further observed that a crossing of Brimstone Gulch had occurred without a written plan. The crossing resulted in fill being placed in Brimstone Gulch.

Mr. Wetmore counted and documented the trees that had been cut and took appropriate measurements, using standard forestry practices. The trees that had been cut were Douglas Fir and Ponderosa Pine (forestry species in the Forest Practices Act).

Mr. Wetmore determined that Respondent had cut four trees within 20 feet of the high water level of Brimstone Gulch, in violation of OAR 629-640-0100(2)(b). Mr. Wetmore calculated the size of the four trees removed were 46", 15", 22", and 14" diameters at breast height (dbh) based upon stump cruise of leave trees within the same reach as the trees harvested. The four trees were approximately 60 to 80 years old.

Mr. Wetmore also determined that Respondent had removed approximately 45 conifer trees from the RMA. The trees ranged in age from 75 to 135 years old. Mr. Wetmore further determined that Respondent had failed to retain 30 live conifer trees 8" dbh or larger per 1000 feet of the RMA along Brimstone Gulch, in violation of OAR 629-640-0100(5). Mr. Wetmore calculated that 87% of the RMA had been harvested. As a medium type F stream, the RMA for Brimstone Gulch extends 70 feet from the high water level of the main channel, pursuant to OAR 629-635-0310.

Mr. Wetmore subsequently contacted Mr. West regarding the violations. Mr. West told Mr. Wetmore that he was working within the federal mining act.

On September 9, 2013, Mr. Wetmore issued a Forest Activity Inspection Report (Inspection Report) to Carlos Short dba BS Roads (the Operator) and to Respondent regarding the crossing of Brimstone Gulch.

On September 25, 2013, the Oregon Department of Forestry (ODF) issued three Notices of Violation/Citation (#13-SW022, #13-SW023 and #13-SW024) and two Orders to Cease Further Violation and Repair Damage or Correct Unsatisfactory Condition (#13-SW023 and #13-SW024) to Respondent.

Respondent requested a hearing on the Order to Cease Further Violation and Repair Damage in #13-SW023 and #13-SW024. ALJ Dove Gutman presided over the contested hearing on November 21, 2013. ALJ Gutman issued a proposed order on December 19, 2013, affirming the Orders. On January 15, 2014, the Board of Forestry incorporated ALJ's proposed order and issued a Final Order to Cease Further violations and Repair Order on Citations #13-SW023 and #13-SW024.

III. CONCLUSIONS OF LAW

Respondent violated the Forest Practices Act and administrative rule OAR 629-605-0170 by failing to file a Written Plans for Operations near Type F Stream.

Respondent violated the Forest Practices Act and administrative rule OAR 629-640-0100(2)(b) by failing to retain all trees all trees within 20 feet of the high water level.

Respondent violated the Forest Practices Act and administrative rule OAR 629-640-0100(5) by failing to retain at least 30 live conifer trees at least 8 inches DBH per 1000 feet along medium streams.

IV. ASSESSMENT OF CIVIL PENALTY

A civil penalty is assessed against Brimstone Natural Resources Co. in the amount of **\$4,950.00**. This penalty is calculated using a formula set out in administrative rule (OAR 629-670-0210). The rule describing how the formula is applied is in Attachment 1. The formula is $\$B(C \times P) + (\$B \times D \times R)$, where:

13-SW022, 13-SW023 and 13-SW024

Case No. 13-SW022

1. The base fine (\$B) is \$100.00 for violation of OAR 629-605-0170(2). [see OAR 629-670-0210(2)(a)]
2. The cooperation value (C) is 1 because Mr. West followed the direction of ODF and there was no unsatisfactory condition to correct for this administrative violation. [See OAR 629-670-0210(3)(b)]
3. The prior knowledge value (P) is 2 because Mr. West had specific correspondence from ODF about the required practice involved before the violation. [See OAR 629-670-0210(4)(c)]
4. The damage value (D) is 0 because there is no resource damage from an administrative violation. [See OAR 629-670-0210(5)(a)]
5. The repair value (R) (extent of damage that cannot be corrected or prevented in the future) is not applicable because the damage value is 0. [See OAR 629-670-0210(6)].

$$\$100.00 (1 \times 2) + (\$100 \times 0 \times 0) = \$200.00$$

Case No. 13-SW023

1. The base fine (\$B) is \$250.00 for violation of OAR 629-640-0100(2)(b). [See OAR 629-670-0210(2)(E)]
2. The cooperation value (C) is 2 because Mr. West neglected to take necessary and timely action to repair damage or correct an unsatisfactory condition. [See OAR 629-670-0210(3)(c)]
3. The prior knowledge value (P) is 2 because Mr. West has had significant past experience with the practice involved in the violation. [See OAR 629-670-0210(4)(c)]
4. The damage value (D) is 15 because the damage is the result of harvest or destruction of all the trees or snags required to be maintained; and is major in relative effect, with self restoration taking much more than 10 years. [See OAR 629-670-0210(5)(e)]
6. The repair value (R) (extent of damage that cannot be corrected or prevented in the future) is 1 because repairs have not been completed (a due date of February 28, 2014, was set for repairs. [See OAR 629-670-0210(6)].

$$\$250.00 (2 \times 2) + (\$250 \times 15 \times 1) = \$4,750.00$$

Case No. 13-SW024

1. The base fine (\$B) is \$250.00 for violation of OAR 629-640-0100(5). [See OAR 629-670-0210(2)(E)].
2. The cooperation value (C) is 2 because Mr. West neglected to take necessary and timely action to repair damage or correct an unsatisfactory condition. [See OAR 629-670-0210(3)(c)]
3. The prior knowledge value (P) is 2 because Mr. West has had significant past experience with the practice involved in the violation. [See OAR 629-670-210(4)(c)]
4. The damage value (D) is 15 because the damage is the result of harvest or destruction of all the trees or snags required to be maintained; and is major in relative effect, with self restoration taking much more than 10 years. [See OAR 629-670-0210(5)(e)]
7. The repair value (R) (extent of damage that cannot be corrected or prevented in the future) is 1 because repairs have not been completed (a due date of February 28, 2014 was set for repairs). [See OAR 629-670-0210(6)]

$$\$250.00 (2 \times 2) + (\$250 \times 15 \times 1) = \$4,750.00$$

$$\text{Total Penalty Assessment: } \$200.00 + \$4,750.00 + \$4,750.00 = \$9,700.00$$

The Civil Penalty Administrator has the discretion to combine violations for the sake of assessing reasonable penalties as stated in OAR 629-670-0214. Because the violations resulted from the same practice and the same damage, and it is in the best interest of the public, the violation for Case No. 13-SW023 and the violation for Case No. 13-SW024 will be combined into one penalty of \$4,750.00.

$$\text{Revised Total Penalty Assessment: } \$200.00 + \$4,750.00 = \$4,950.00$$

V. RIGHT TO A HEARING; NOTICE FOR ACTIVE DUTY SERVICEMEMBERS

You are entitled to a hearing as provided by the Forest Practices Act and the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing, you must file a written request for hearing, directed to:

State Forester
2600 State Street
Salem, Oregon, 97310
Attn: Civil Penalty Administrator

Your request must be received within 20 days of service of this notice as defined in "Attachment 2." You must also file admissions, denials, claims and defenses, either with the request or within 10 days after your request for a hearing. (Attachment 2 describes in more detail what you must include in your written request.)

An independent administrative law judge (ALJ) will hold the hearing. The purpose of the hearing is for both sides to present their facts so that the ALJ can make a recommendation to the Board of Forestry about whether the penalty was appropriate. An attorney may represent you at the hearing. However, an attorney **must** represent you at formal proceedings if you are a corporation, partnership, limited liability company, unincorporated association, or trust.

Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If the department does not receive a request for hearing by **August 18, 2014**, you will have waived your right to a contested case hearing.

VI. REQUESTING COLLABORATIVE DISPUTE RESOLUTION

There may be details about your case that you wish to address informally, without going through a contested case hearing. If so, you may also consider asking the Civil Penalty Administrator to use a *collaborative dispute resolution* (CDR) process to resolve the issues in controversy. CDR refers to informal negotiations over the issues raised in this notice, including the possible use of an independent third party to facilitate the negotiation sessions. If you and the

Department of Forestry agree to participate in a CDR process, there is no obligation to reach an agreement, and either you or the department may choose to withdraw from the process at any time.

If you want CDR, you must send a written request to the State Forester, together with a request for hearing, Attn: Civil Penalty Administrator at the same address as above, within 20 days from the date this notice was served.

VII. STEPS YOU MUST FOLLOW

If you request only a hearing within 20 days of service, the Civil Penalty Administrator will notify you of the time and place of the hearing. You will be provided with information on the procedures, right of representation, and your rights relating to the conduct of the hearing under ORS 183.413(2).

If you request collaborative dispute resolution, you must also request a hearing and do both within 20 days of service to prevent this order from becoming final. The Civil Penalty Administrator will notify you whether the Department of Forestry will participate with you in a CDR process. You retain your right to a hearing while the Department of Forestry considers your request. If the department chooses not to participate in a CDR process, or if CDR does not resolve the matter, a hearing can be scheduled.

Following receipt of your written request for CDR, you will be provided with more information on the process(es) you requested, on your rights in the process(es), and on scheduling.

VIII. FINAL ORDER BY DEFAULT

This order and civil penalty assessment will become final by default if:

1. You do not request a hearing within 20 days of service of this notice; or
2. You request a hearing, and subsequently, you either:
 - a. withdraw your request for a hearing; or
 - b. notify the Civil Penalty Administrator or administrative law judge that you will not appear at a scheduled hearing; or
 - c. fail to appear at a scheduled hearing.

When a default order is issued, the record of what has happened to date, including the Department of Forestry files on this violation, automatically becomes part of the contested case record. The department asserts that this record proves that there are sufficient facts to support the order and civil penalty assessment.

IX. PAYING THE CIVIL PENALTY; COLLECTION

The penalty is due and payable within 10 days after this order becomes final. Your check or money order in the amount of **\$4,950.00** is payable to "**State Forester**" and should be sent to:

**Department of Forestry
Unit 12
PO Box 4395
Portland, Oregon 97208-4395**

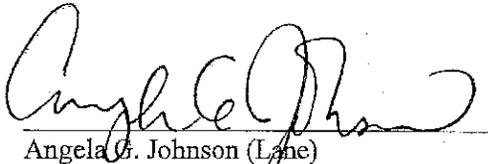
Do not pay this penalty if you are requesting a hearing, collaborative dispute resolution, or reduction of the penalty.

You may request the Civil Penalty Administrator to consider reduction of the penalty through any of several methods described in "Attachment 2." This request must be sent to the State Forester, Attn: Civil Penalty Administrator, at the address provided for requesting a hearing, within 20 days from the date this notice was served.

All civil penalties are credited to the State's General Fund. The penalties are not used by, nor available to, the Oregon Department of Forestry or the State Forester.

If the penalty is not paid in a timely manner, the invoice will be referred to the Department of Forestry's Finance Section for collection. Failure to respond to these efforts will result in the debt then being referred to a collection agency.

In addition, the Department may have this civil penalty order recorded with the county clerk in any county of this state. The clerk will then record your name and the amount of the penalty in the County Clerk Lien Record.



Angela G. Johnson (Lane)
Civil Penalty Administrator,
For:

July 29, 2014

Doug Decker,
State Forester

AMOUNT OF CIVIL PENALTIES
OAR 629-670-0210

Civil Penalty Formula

- (1) The amount of civil penalty per violation shall be the lesser of \$5000 or the amount determined by the formula $\$B(C \times P) + (\$B \times D \times R)$ where:
- (a) \$B is a base fine established by type of violation in section (2) of this rule;
 - (b) C is cooperation;
 - (c) P is prior knowledge or prior violations;
 - (d) D is damage to protected resources; and
 - (e) R is the extent of damage that cannot be corrected, or prevented in the future, even though repairs are made.

Base Penalties

- (2) The base penalty value (\$B) shall be established as follows:
- (a) A base penalty of \$100 shall be applied to violations of a type where the operator fails to notify the State Forester of intent to operate or fails to submit a required written plan or obtain written approval of a plan for an alternate practice.
 - (b) A base penalty of \$250 shall be applied to:
 - (A) Violations of any rule or statute which requires or sets standards for accomplishing reforestation.
 - (B) Violations involving a failure to comply with the terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.
 - (C) Violations of a type where the operator fails to comply with any term or condition of an approved plan for an alternate practice.
 - (D) Violations where the State Forester determines that an operator has intentionally failed to notify the State Forester of intent to operate, notwithstanding subsection (2)(a) of this rule.
 - (E) All other violations of forest practice rules or statutes not specifically described in section (2) of this rule.
 - (c) A base penalty of \$1000 shall be applied to violations of any rule or statute which sets a maximum size for harvesting operations.

Cooperation of the Operator

- (3) The cooperation value (C) shall be determined by the State Forester after reviewing whether the operator is taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assigned as follows:
- (a) A value of 0.5 shall be assigned when, in the judgment of the State Forester, the operator takes substantial initiative to correct the damage or problem that led to the violation. Substantial initiative may include, but is not limited to, reporting the violation before it is discovered, initiating effective repairs without having to be directed, or making substantive changes in operating procedures designed to identify and avoid potential recurrences.
 - (b) A value of 1 shall be assigned when the operator cooperates in following the direction of the State Forester by immediately ceasing further violation and taking prompt action to repair damage or correct any unsatisfactory condition where deemed feasible by the State Forester.
 - (c) A value of 2 shall be assigned when the State Forester determines that the operator does not immediately cease further violation, is evasive upon attempts to make necessary communications, or neglects to take necessary and timely action to repair damage or correct any unsatisfactory condition.

Prior Knowledge of the Operator

- (4) The prior knowledge value (P) shall be determined by the State Forester after reviewing department records of citations, operation notification or operation inspections. A value from 0.5 through 10 shall be assigned as follows:
- (a) A value of 0.5 is appropriate when the operator has little or no prior knowledge of the Oregon Forest Practices Act but has cooperated in ceasing violation and correcting unsatisfactory conditions.
 - (b) A value of 1 is appropriate when the operator has general knowledge of the Oregon Forest Practices Act and rules, but has not had significant past experience with the practice in question, or has significant

past experience with the practice, but the violation is determined by the State Forester to be inadvertent or accidental.

(c) A value of 2 is appropriate when the operator has had significant past experience with a practice or condition, or has had specific correspondence or conversation with department personnel about the required practices or actions involved in the violation, before the violation.

(d) A value of 4 is appropriate when the State Forester has issued a written statement of unsatisfactory condition to the operator for the violation and timely corrective action was not taken.

(e) A value from 3 through 5 is appropriate when the operator has received citations for any other forest practice rule or statute within the past three years.

(f) A value from 5 to 10 shall be assigned when the operator has been cited within the past three years for a violation of the same forest practice rule, statute, or condition; or in a case of failure to comply with an order to cease further violation, or order to repair damage, or order to correct an unsatisfactory condition (ORS 527.680(2)).

Damage Value

(5) The damage value (D) shall be determined by the State Forester as a measure of extent or relative adverse effect of damage. The specific value applied shall be based on the pre-operation condition of the site, if known, the severity and extent of damage associated with the violation, and any potential economic gain to any involved operators. The damage value should be consistent with the policy of deterring future violations. A value from 0 through 20 shall be assigned. The following shall guide the State Forester's determination:

(a) A value of zero shall be assigned when the violation has not resulted and will not result in resource damage.

(b) A value of 1 shall be assigned when the adverse effects of the violation left uncorrected are minor and the affected resources will naturally self-restore within one year. Example: Siltation from exposed soil flows into the upper reaches of a stream, but the site will naturally revegetate within the next growing season, preventing further siltation.

(c) A value from 2 to 5 shall be assigned when the damage from the violations left uncorrected is more serious than described in subsection (b) of this section, but the affected resources will self-restore naturally within five years. Examples: A small volume debris avalanche is caused by road construction material placed in an unstable location and the debris comes to rest in a fish-bearing or domestic use water; or logs are skidded across a stream without an adequate temporary crossing leaving ruts and disturbed soil areas that will flow muddy water directly into the stream.

(d) A value from 5 through 10 shall be assigned when the damage from the violation left uncorrected is major in relative effect, with natural self-restoration taking up to 10 years. A consideration in selecting a value from 5 to 10 may include, but is not limited to the size of the area affected. Examples: Failure to reforest five acres may be assigned no less than a 5, while failure to reforest 50 acres may be assigned a 10. Removal of understory vegetation along 500 feet of a small stream may be assigned a 10.

(e) A value from 5 through 20 shall be assigned when damage is the result of harvest or destruction of trees or snags required to be maintained; or when the damage from the violation left uncorrected is major in relative effect, with self-restoration taking more than 10 years. Example: Severe riparian management area soil disturbance, combined with the total harvest or destruction of what had been a fully stocked stand of trees required to be maintained, along more than 500 feet of a small stream may be assigned a factor of 20.

Repair Value

(6) The repair value (R) shall be assigned by the State Forester as a measure of the relative extent of the damage that is corrected or prevented through timely corrective action. The value shall be set by the State Forester between 0 and 1, inclusive and expressed as a decimal. The decimal indicates the degree of damage that already occurred and future damage that cannot be prevented, even after the repairs are completed as directed in the repair order. Example: A tractor crossed a stream with no temporary structure, breaking the stream banks down, leaving exposed skid trails which eroded, creating turbidity, and leaving visible sediment in the stream. With no repairs, the stream bank and skid trails would revegetate in 4 years. The landowner performed all repairs as ordered, including mulching, placing rip-rap, and building waterbars. In the State Forester's judgement, compliance with the repair order will prevent all but 20% of the potential damage expected over the next 4 years. Therefore R equals 0.20. If repairs are not feasible or are not completed, R equals 1.0.

HOW TO REQUEST A HEARING, COLLABORATIVE DISPUTE RESOLUTION AND/OR MITIGATION OF CIVIL PENALTY

"Attachment 2"

Requesting a Hearing

- 1) *The State Forester must receive your hearing request within 20 days from the date of service of the notice of civil penalty. (Service is defined as the date of mailing or upon personal service.)*

If you decide to request a hearing, it must be in writing and directed to:

The State Forester
Attn: Civil Penalty Administrator
2600 State Street
Salem, Oregon 97310

(You may make the request by facsimile to (503) 945-7490
and follow with regular mailing.)

- 2) *When you request a hearing or within 10 days following your request, you must submit admissions and denials. This means admit (concede as true) or deny (declare untrue) in writing, all factual matters stated in the notice of penalty. Otherwise, any factual matters you do not deny will be presumed admitted.*

In addition, you must state any and all claims or defenses you may have and the reasoning in support of the claims or defenses. Claims and defenses are arguments and facts that contradict the findings of fact stated in the penalty notice. If you fail to raise a claim or defense, it is presumed that you have waived that claim or defense.

- 3) *The administrative law judge will only consider evidence on issues raised in one or more of the following: 1) the notice; 2) the request for hearing; 3) or a timely follow-up statement. In addition, you may present evidence at the hearing on your economic and financial condition only if you had already raised the issue in your request. (See mitigation of penalty below.)*
- 4) *If you do not submit admissions, denials, claims or defenses (as described in #2), the Civil Penalty Administrator will forward agency files of your case to an administrative law judge with the Office of Administrative Hearings for review and a hearing will NOT be scheduled. Instead, the administrative law judge will decide the case on the basis of those files alone, and prepare a proposed order for the Board of Forestry to act upon.*

Corporation, Partnership, Limited Liability Company, Unincorporated Association or Trust Hearings

If you are a corporation, partnership, limited liability company, unincorporated association or trust requesting a hearing, you must be represented by an attorney at pre-hearing conferences and hearings held before the administrative law judge. Unless you are represented by an attorney, your participation during such hearings/conferences would be limited to providing a witness who could testify regarding facts of the case. You would not be allowed to present arguments or examine and cross-examine witnesses.

Hearing Procedures / Location

Hearings shall be conducted using Oregon administrative procedures that are applicable to contested cases. No hearing shall be held earlier than 45 days, not later than 180 days, from the service of the notice, unless otherwise agreed to by all parties.

Hearings will be held at locations that are within the forest practices region where the violation occurred. This is usually a Department of Forestry office, unless all parties agree to a different location. Hearings may also be held by telephone.

Requesting Collaborative Dispute Resolution for a Possible Settlement

- 1) *You may request collaborative dispute resolution (CDR) as a less formal method of review and possible settlement.* Settlement may be reached between you and the Oregon Department of Forestry (district or Salem staff level). A third party may also be called upon to assist.

Requests for collaborative dispute resolution must be made in writing to:

State Forester
Attn: Civil Penalty Administrator
2600 State Street
Salem, Oregon 97310

The State Forester must receive the request for CDR within 20 days from the date of service of the notice of civil penalty (follow the procedures in Section 1, "Requesting a Hearing").

IMPORTANT: You must also request a hearing in order to prevent the notice of civil penalty from becoming a final order by default.

- 2) *The Oregon Department of Forestry may choose not to participate in collaborative dispute resolution if it is believed after preliminary discussions with you and ODF district or Salem staff that a settlement is unlikely to be reached.* If ODF chooses not to participate in CDR, the Department will notify you. You then have the opportunity to schedule a hearing.

(continued on next page)

(Collaborative Dispute Resolution, con't.)

- 3) *If the Oregon Department of Forestry chooses to participate in collaborative dispute resolution, the Department may establish a deadline for concluding the process. If that deadline is reached without a settlement, or if you or the Department decides to opt out of the process, a hearing can be scheduled if desired.*

R Requesting a Penalty Reduction (Mitigation)

You may request a reduction of the penalties (mitigation), either as part of your request for a hearing or as a separate issue.

Mitigation can be requested:

- 1) *For Economic/Financial Reasons* - If you want the Department of Forestry to consider your economic and financial condition, you must do so in a written request for mitigation. *The burden of presenting evidence of your economic and financial condition is on YOU.* Doing so is not an admission that the violation has occurred or that you are responsible for the violation.
- 2) *Based on Repair Costs* - You may request that the costs of the repairs ordered by the State Forester be considered in reducing your penalty. This request must be received in writing within 20 days from the date of service of the civil penalty (see #1 under "Requesting a Hearing"). You may present evidence of the costs without any prejudice to your claims regarding the violation or your responsibility.

Because of a desire to substitute a higher level of repair or to substitute a suitable restoration or enhancement project for all or part of the civil penalty - The Board of Forestry is interested in encouraging landowners and operators to mitigate the damage caused by violations of resource protection rules. This can be done by investing in enhancement of the resources protected by the Forest Practices Act. These resources include air quality, water, soil productivity, fish, wildlife and scenic resources.

The State Forester is authorized by the Board of Forestry to reduce your civil penalty in exchange for your commitment to perform one or more of the following resource enhancement projects:

- Planting a higher tree density per acre in a set timeline for a reforestation violation
- Reconstructing, relocating or vacating roads that present a higher risk to water quality than if they had been located and designed to current forest practice rule standards
- Restoring or enhancing upstream/downstream fish passage, including replacing crossing structures not designed to current forest practice rule standards

(continued on back)

(Resource Enhancement Projects, con't.)

- Restoring or enhancing fish habitat by placing large woody debris or other structures in or adjacent to stream channels
- Retaining conifers adjacent to streams to supplement current forest practice rule requirements that are consistent with forest health considerations
- Restoring or enhancing habitat for threatened and endangered species or other wildlife habitat
- Restoring or enhancing the protection of salmonid production areas
- Controlling noxious weeds or exotic species
- Reducing the risk of catastrophic fire or insect and disease damage

In addition, you may also agree to donate all or an agreed-upon portion of the penalty to a local watershed council or other program that does resource enhancement projects.

(These mitigation projects may be discussed and agreed-upon during a collaborative dispute resolution process, as well.)

A request for mitigation must be made in writing to:

State Forester
Attn: Civil Penalty Administrator
2600 State Street
Salem, Oregon 97310

The State Forester must receive the request for mitigation within 20 days from the date of service of the notice of civil penalty (see #1 under "Requesting a Hearing").

IMPORTANT: Even if you request a penalty reduction, you must also request a hearing or the notice of civil penalty will become final by default.

If you have questions about these procedures, contact:
Private Forests Civil Penalties

(503) 945-7471

January 2002

REMIT TO:

Oregon Department of Forestry
 Unit 12
 P.O. Box 4395
 Portland, OR 97208-4395

Invoice # AR 59015

Date: July 29, 2014

BRIMSTONE NATURAL RESOURCES CO.
 PO BOX 1249
 MERLIN, OR 97535

Description	Quantity	Unit Price	Extension
Civil Penalty Assessed for Violation of the Forest Practices Act OAR 629-605-0170(2), Case # 13-SW022			200.00
OAR 629-640-0100(2)(b), OAR 629-640-0100(5) Case #'s 13-SW023 & 024			4,750.00
TOTAL DUE			4,950.00
Total amount due this invoice (if blank - see next page for total)			

R*STARS users, please reference ARI, this document number and appropriate suffix.
 For ACH, EFT or the Financial Management System; put the invoice number in the Reference Number Field
 If there are any questions regarding this invoice, please call: Peg Davis 603-945-7471

Payment in full is due 30 days from the date of invoice unless other arrangements have been made.

Accounts assigned to collection companies will be assessed 9% interest per ORS 82.010
 Additionally, collection costs of up to 30% will be added to the debt per ORS 293.231.

Please return one copy with your payment.

Tcode	Seq#	Batch Type:		Batch No:		Batch Date:		*Inv GL #
		Index	PCA	Project	Phase	Object	Invoice Amt.	
		27000	00101	671022	13		4,950.00	

*Needed for, but not limited to, Long-term receivables. Object is coded at time of payment. GL Acct is coded at time of invoicing.

YELLOW COPY - CASE FILE

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

This is information you should read to prepare for the hearing.

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules of the Department of Justice and the Oregon State Department of Forestry, (Oregon Administrative Rules 137-003-0505 through 137-003-0675, 629-001-0010 through 629-001-0050, and 629-670-0300 through 629-670-0310).
2. **Right to attorney.** The Department of Forestry is authorized to and will usually be represented by a lay representative. You have a right to be represented by an attorney at your own expense. **Unless you are a corporation, partnership, limited liability company, unincorporated association, trust, or agency, you may represent yourself at the hearing. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary it will be the decision of the administrative law judge (ALJ) if you may request a recess. Agencies, corporations, partnerships, limited liability companies, unincorporated associations and trusts may be represented only by attorney unless otherwise specifically provided by law.**
3. **Conferences.** Prior to a hearing, the State Forester or ALJ may schedule a prehearing conference. The agency and party(ies) shall appear through legal counsel or through persons authorized to represent the agency or party(ies). The purposes of the conference may include, but are not limited to the following:
 - (a) to facilitate discovery and to resolve disagreements about discovery;
 - (b) to identify, simplify and clarify issues;
 - (c) to eliminate irrelevant or immaterial issues;
 - (d) to obtain stipulations of fact and to admit documents into evidence;
 - (e) to provide to the ALJ, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;
 - (f) to authenticate documents;
 - (g) to decide the order of proof and other procedural matters pertaining to the conduct of the hearing;
 - (h) to assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

- (i) to schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits; and
- (j) to consider any other matters that may expedite the orderly conduct of the proceeding.

The conference will usually be brief and held by telephone.

A record will be made of any stipulations, rulings, and agreements. Stipulations to facts and to the authenticity of documents, and agreements to narrow issues are binding upon all unless good cause is shown.

Unaccepted proposals of settlement at conference shall be privileged and shall not be admissible as evidence in the proceeding.

4. **Subpoenas.** You may subpoena witnesses. The Department of Forestry will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
5. **Presiding Officer.** The person presiding at the hearing is known as the administrative law judge. The ALJ will rule on all matters that arise at the hearing. The ALJ is a member of the Office of Administrative Hearings of the State of Oregon. The ALJ is not an employee, officer, or representative of the agency and does not have authority to make a final independent determination at this time.
6. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to gather facts. The order of presentation of evidence is normally as follows:
 - (a) Statement and evidence of the Department of Forestry in support of its action.
 - (b) Statement and evidence of the party disputing the Department of Forestry's action, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited.
 - (c) Rebuttal
 - (d) Closing arguments
7. **Burden of presenting evidence.** The burden of presenting evidence to support a fact or a position rests upon the party who proposes that fact or position. You should be prepared to present evidence which will support your position.
8. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by other parties or by the presiding officer.
9. **Admissible evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.

Four kinds of evidence may be admitted:

- (a) Knowledge of the agency. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the agency takes "official notice" of any fact so that you may contest those facts.
- (b) Testimony of witnesses. This includes your own testimony.
- (c) Writings. This includes letters, maps, diagrams and other written material offered as evidence.
- (d) Photographs, experiments, demonstrations and similar means used to prove a fact.

10. **Objections to evidence.** Evidence may be objected to on any of the following grounds:

- (a) Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
- (b) Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing, or involves a claim or defense not presented in writing within 10 days of the request for hearing.
- (c) Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.

Evidence objected to may be received by the ALJ who will rule on its admissibility either at the hearing or in the proposed order.

- 11. **Continuances.** Unless allowed by the State Forester or ALJ, you may not reopen any matter determined at the conference or hearing. If the State Forester or ALJ finds there was good cause for the person's failure to appear, the State Forester or ALJ may permit the matter to be reopened, heard, and considered.
- 12. **Exceptions to proposed order.** Within 60 days after the closing of the record, the ALJ shall draft, file with the Board, and serve on all parties, a proposed order, including rulings on the admissibility of offered evidence if the rulings are not set forth in the record, recommended finding of fact, conclusions of law, and recommendation for disposition of the case.

If the recommended action is adverse to you or to the agency, you or the agency may file exceptions within the time set by the ALJ or not later than seven days after the date of the filing of the proposed order with the board if no other time is specified. Written argument, based on the order or exceptions may be presented to the board at the time it considers the disposition of the proposed order. The board will determine whether it will entertain oral argument. Exceptions must be filed with the agency.

- (a) The exceptions shall be confined to factual and legal issues that are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:
 - (A) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

- (B) A necessary legal conclusion is omitted or is contrary to law or the board's policy; or
 - (C) Prejudicial procedural error occurred.
- (b) The exceptions shall be numbered and shall specify the disputed finding, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.
13. **Final Order.** After the board has received and reviewed the proposed order and the exceptions, if any, the board may:
- (a) Entertain written and/or oral argument if the board determines it is necessary or appropriate to assist the board in the proper disposition of the case. If allowed, oral argument will be limited to matters raised in written exceptions and shall be presented under time limits determined by the board chair;
 - (b) Remand the matter to the ALJ for further proceedings on any issues the board specifies, and to prepare a revised proposed order as appropriate, under OAR 137-003-0655(2);
 - (c) Enter a final order adopting the recommendations of the ALJ; or
 - (d) Enter an amended proposed order or final order that modifies or rejects the recommendations of the ALJ. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665.
14. **Record.** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the court of appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.
15. **Reconsideration and R hearing.** Under the provisions of OAR 137-003-0675, you may file a petition for reconsideration or rehearing of the final order with the board within 60 calendar days after this order is served. Any such petition shall set forth the specific grounds for reconsideration or rehearing and the remedy sought. The petition may be supported by a written argument. Under OAR 629-001-0050, you must file a petition for reconsideration as a condition for further appeal.
16. **Appeal.** You may appeal by filing a petition for judicial review with the Oregon Court of Appeals within 60 days following the date the final order on reconsideration or rehearing is issued, or within 60 days following denial of the request for reconsideration or rehearing. See Oregon Revised Statutes 183.480 et seq.

WATKINSON LAIRD RUBENSTEIN
BALDWIN & BURGESS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

1246 N.E. SEVENTH STREET, SUITE D
GRANTS PASS, OREGON 97526

TELEPHONE (541) 295-3218

FACSIMILE (541) 295-3224

WEBSITE: WWW.WLR.LAW.COM

MAILING ADDRESS
POST OFFICE BOX 10567
EUGENE, OREGON 97440-2567

JAMES R. DOLE

EUGENE OFFICE
101 E. BROADWAY, SUITE 200
EUGENE, OREGON 97401
(541) 484-7277

EMAIL
JDOLE@WLR.LAW.COM

ROSEBURG OFFICE
425 SE JACKSON STREET
ROSEBURG, OREGON 97470
(541) 673-5528

August 13, 2014

Via Fax 503-945-7490
and First Class Mail

State Forester
Attn: Civil Penalty Administrator
2600 State Street
Salem, OR 97310

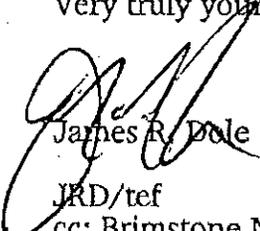
RE: Brimstone Natural Resource Co.
Case Nos. 13-SW022, 13-SW023 and 13-SW024

Ladies and Gentlemen:

This firm represents Brimstone Natural Resource Co., in connection with the above-referenced cases. Our client requests a hearing on each of these cases.

We will be filing our admissions, denials, and defenses as required by the applicable regulations.

Very truly yours,


James R. Dole
JRD/tef
cc: Brimstone Natural Resource Co.

WATKINSON LAIRD RUBENSTEIN
BALDWIN & BURGESS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

101 EAST BROADWAY, SUITE 200
EUGENE, OREGON 97401-3114
(541) 484-2277
FACSIMILE (541) 484-2282

(800) 270-7418

WEBSITE: WWW.WLRLAW.COM

CLARK E. RASCHE
EMAIL
CRASCHE@WLRLAW.COM

MAILING ADDRESS
POST OFFICE BOX 10567
EUGENE, OREGON 97440-2567

GRANTS PASS OFFICE
1246 NE 7th STREET, SUITE B
GRANTS PASS, OREGON 97526
(541) 295-3218

REDMOND OFFICE
442 SW UMITILLA AVENUE, SUITE 210
REDMOND, OREGON 97756
(541) 923-8767

ROSEBURG OFFICE
425 SE JACKSON STREET
ROSEBURG, OREGON 97470
(541) 673-5528

August 25, 2014

VIA FACSIMILE: (503) 945-7490
and
FIRST CLASS MAIL

State Forester
Attn: Civil Penalty Administrator
2600 State St.
Salem, OR 97310

Ladies and Gentlemen:

Re: *Brimstone Natural Resource Co.*
Case Nos. 13-SW022, 13-SW023, and 13-SW024

Respondent Brimstone Natural Resource Co. furnishes the following denials and statement of claims and defenses.

DENIALS:

For Case No. 13-SW022 Respondent denies that it violated the Forest Practices Act and OAR 629-605-0170.

For Case No. 13-SW023 Respondent denies that it violated the Forest Practices Act and OAR 629-640-0200(2)(b).

For Case No. 13-SW024 Respondent denies that it violated the Forest Practices Act and OAR 629-640-0100(5).

Respondent denies the following factual matters as asserted in the Notice of Civil Penalty; Findings of Fact; Proposed Final Order; Case Nos. 13-SW022, 13-SW023, and 13-SW024 (the **Findings**):

Respondent denies that "[t]he Notification form provided by notice to the State Forester that an operation would be conducted on lands described in the Notification form[.]" all other

August 25, 2014

Page 2

statements of fact with respect to what the Notification form did or did not say. The Notification form speaks for itself.

Respondent admits that Tyson Schultz wrote "No operations within 100 feet of a stream without a reviewed, written plan on file with ODF. TS." However, Respondent denies that Mr. Schultz had the authority to make the statement.

Respondent denies that "ODF would have worked with Respondent to come up with an alternative plan to allow Respondent to mine the property and adhere to state regulations regarding the Oregon Practices Act."

Respondent denies that "[i]n August 2013, ODF received complaints from the public regarding timber harvesting operations on the property."

Respondent denies that "[t]he property was not posted and was open access" at the time Stephen Wetmore entered the property.

Respondent denies that any trees were harvested unlawfully. Respondent denies that the stream in question is a Type F stream and therefore denies that any trees were harvested or removed from the riparian management area of a Type F stream.

Respondent denies the validity of Mr. Wetmore's observations with respect to the factual assertion contained within the Findings that he "observed that the activity that had taken place on the property was more akin to clear-cutting (activity code '1b') rather than commercial or selective thinning (activity code '1a' or '1A')."

Respondent lacks sufficient knowledge to admit or deny whether Mr. Wetmore "took appropriate measurements [of trees that had been cut], using standard forestry practices" and therefore denies the same.

Respondent denies that Mr. Wetmore properly "determined that Respondent had cut four threes within 20 feet of the high water level of Brimstone Gulch, in violation of OAR 629-640-0100(2)(b)." Respondent denies the accuracy of Mr. Wetmore's calculation of dbh and tree age.

Respondent denies that it violated OAR 629-640-0100(5) by failing to retain 30 live conifer trees 8" dbh or larger per 1000 feet of the RMA along Brimstone Gulch[.]" Respondent denies that Brimstone Gulch is a medium Type F Stream and therefore denies that the RMA extends 70 feet from the high water level of the main channel pursuant to OAR 629-635-0310.

August 25, 2014

Page 3

CLAIMS AND DEFENSES:

Because Brimstone Gulch is not a medium Type F stream, Respondent has not violated the Oregon Forest Practices Act or OAR 692-605-1070 as alleged in Case No. 13-SW022.

Because Brimstone Gulch is not a medium Type F stream, Respondent has not violated the Oregon Forest Practices Act or OAR 629-640-0200(2)(b) as alleged in Case No. 13-SW023.

Because Brimstone Gulch is not a medium Type F stream, Respondent has not violated the Oregon Forest Practices Act or OAR 629-640-0100(5) as alleged in Case No. 13-SW024.

Sincerely,



Clark E. Rasche

CER:lmo

c: Client
James R. Dole

LtrDenialsFinal(082514lmo).doc

September 4, 2014

James R. Dole
Watkinson, Laird, Rubenstein,
Baldwin, & Burgess
1246 NE 7th Street, Suite B
Grants Pass, OR 97526

Re: Hearing Request for Forest Practices Violation, Cases 13-SW022, 13-SW023, and
13-SW024

Mr. Dole:

I am writing to acknowledge receipt of your request for a hearing regarding this case. We also are in receipt of your submission of claims and defenses. We will refer your case on to the Office of Administrative Hearings. We will work to schedule a hearing with them prior to January 25, 2015. I have included information you will need to know prior to the hearing. (See the enclosed document titled, "Notice of Contested Case Rights and Procedures")

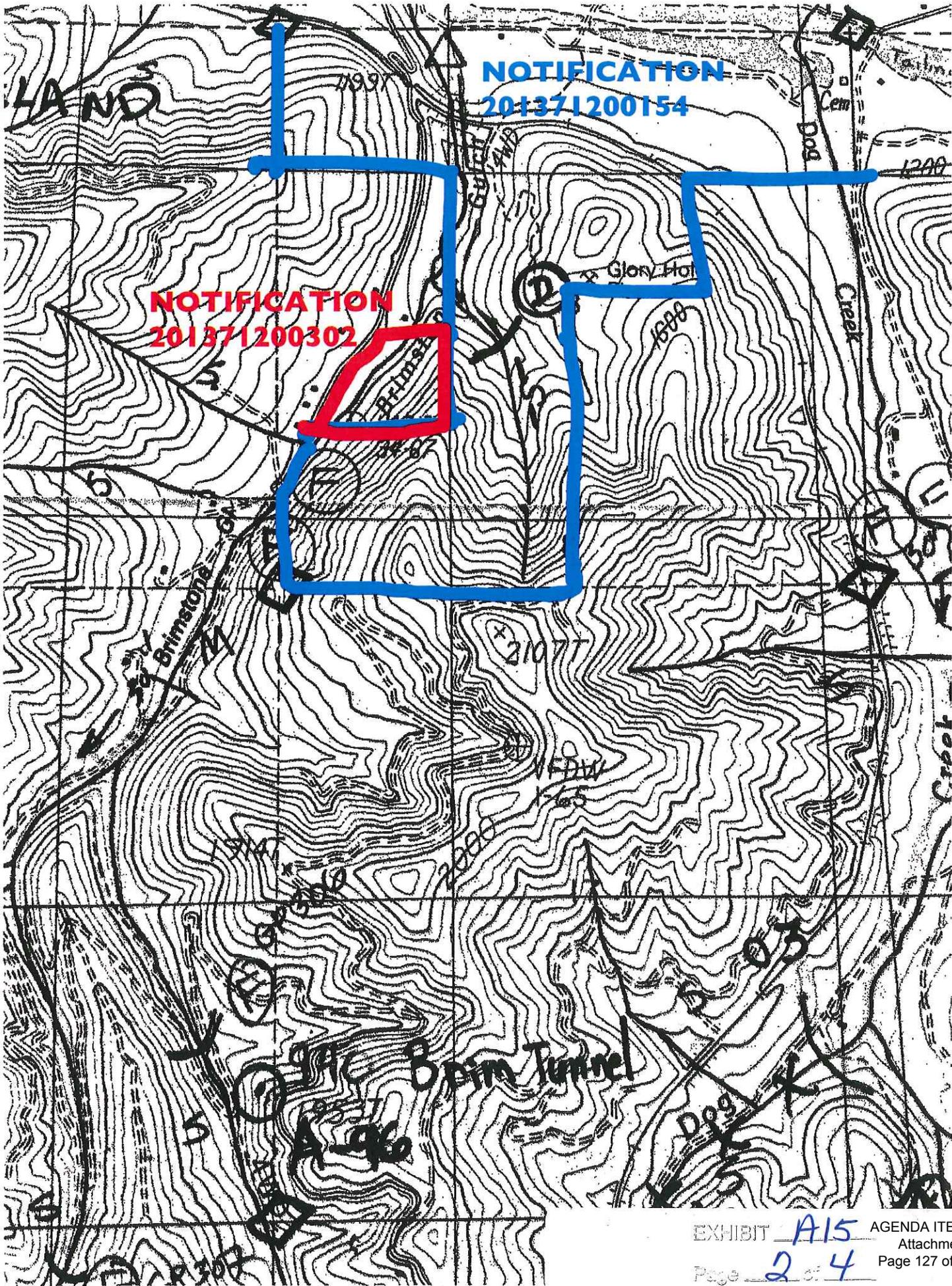
If you have any questions, or if you are interested in discussing your concerns further with the goal of a possible settlement, please call me at (503) 945-7387. It may be that we can reach agreement short of a formal hearing.

Sincerely,

Angela G. Lane
Civil Penalty Administrator

C: Steve Wetmore, Stewardship Forester, Grants Pass ODF
Rick Dryer, Assistant District Forester, Grants Pass ODF

Enclosure - 1



NOTIFICATION
201371200154

NOTIFICATION
201371200302

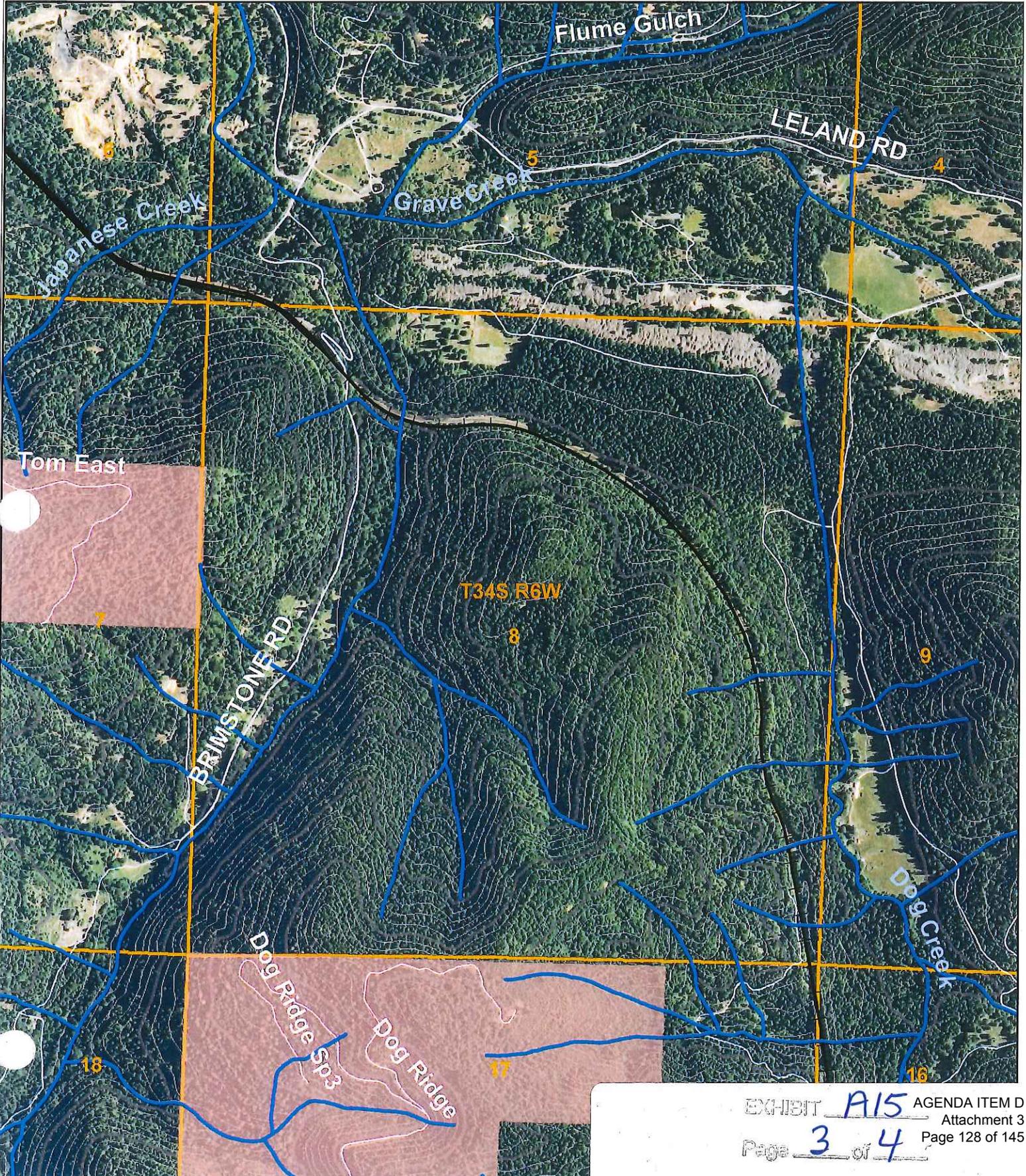


Brimstone Creek Exhibit



Date: 11/01/2013

-  Streams
-  Railroads
-  US Bureau of Land Management





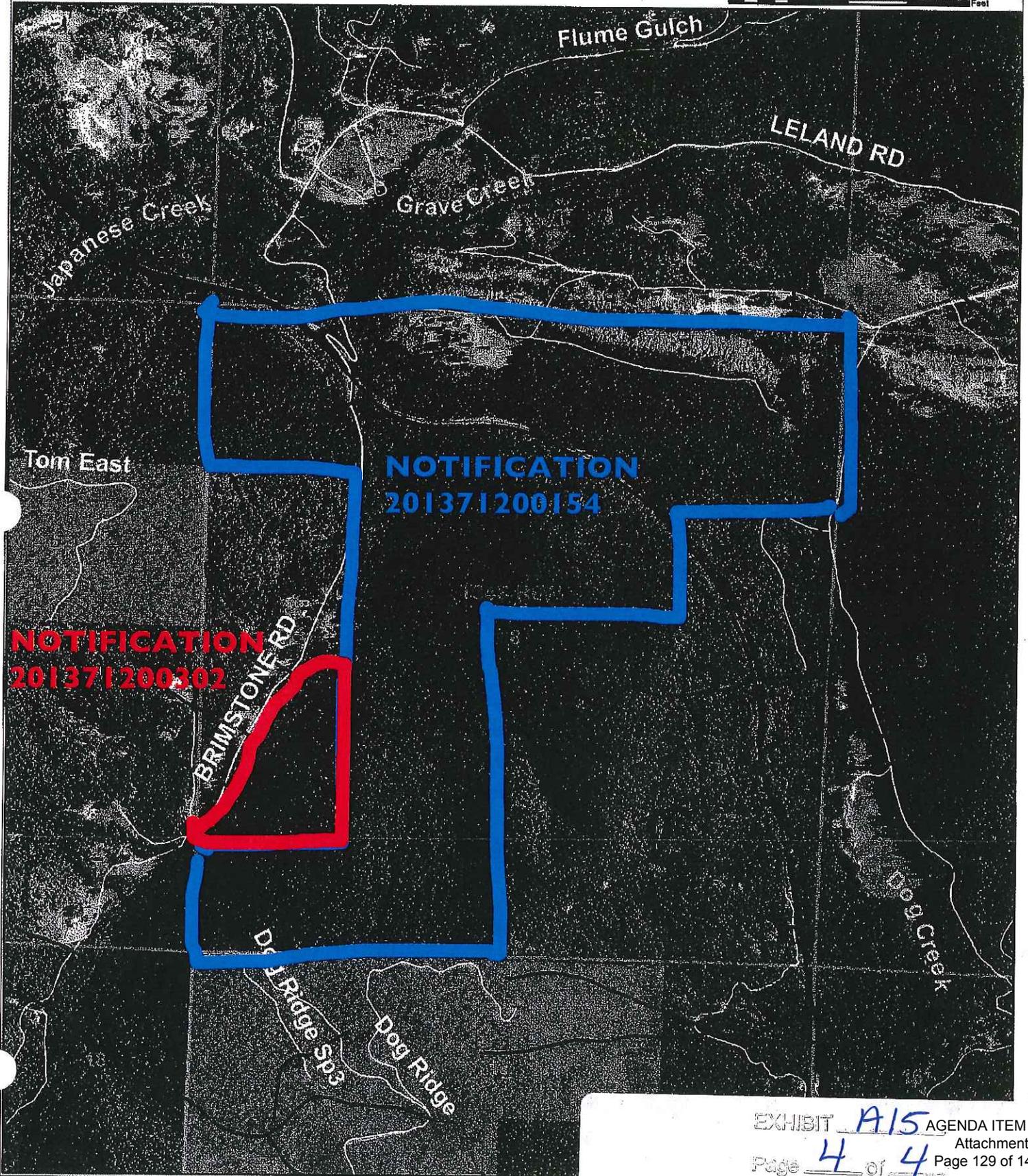
Brimstone Creek Exhibit



-  Streams
-  Railroads
-  US Bureau of Land Management

Date: 11/01/2013

0 250 500 1,000 1,500 2,000 Feet



Case Files Home - 1st Tree within 20'.JPG

View

Manage: Edit Item, Version History, Manage Permissions, Delete Item

Actions: Print, Check Out, Alert Me, Workflows

Name: 1st Tree within 20'

Title:

Thumbnail Preview: 

Picture Size: 2592 x 1936

Date Picture Taken: 9/9/2013 8:51 AM

Document ID: [RX5PSX645DY2-1507-310](#)

Comments:

Content Type: Case Photos
Version: 2.0
Created at 10/30/2013 10:35 AM by WETMORE Stephen K
Last modified at 10/30/2013 10:37 AM by WETMORE Stephen K

Close



Case Files Home - 3 Trees within 20'.JPG

View

Manage
Edit Item
Delete Item
Manage Permissions
Version History

Actions
Print
Check Out
Alert Me
Workflows

Name: 3 Trees within 20'

Title:

Thumbnail Preview: 

Picture Size: 2592 x 1936

Date Picture Taken: 9/9/2013 9:03 AM

Document ID: RX5PSX645DY2-1507-311

Comments:

Content Type: Case Photos
Version: 2.0
Created at 10/30/2013 10:35 AM by WETMORE Stephen K
Last modified at 10/30/2013 10:37 AM by WETMORE Stephen K

Existing RMA posted access Residual RMA Tree within Unposted Ac



Case Files Home - Existing RMA.JPG

View

Manage: Edit Item, Version History, Manage Permissions, Delete Item

Actions: Print, Check Out, Alert Me, Workflows

Name: Existing RMA

Title:

Thumbnail Preview: 

Picture Size: 2592 x 1936

Date Picture Taken: 9/9/2013 8:53 AM

Document ID: RX5PSX645DY2-1507-313

Comments:

Content Type: Case Photos
Version: 2.0
Created at 10/30/2013 10:35 AM by WETMORE Stephen K
Last modified at 10/30/2013 10:38 AM by WETMORE Stephen K

Close

Existing RMA posted access Residual RMA Tree within Unposted Ac







Case Files Home - Tree within 20'.JPG

View

Version History Alert Me
Manage Permissions Workflows
Delete Item Print Check Out

Edit Item Manage Actions

Name [Tree within 20'](#)

Title

Thumbnail Preview 

Picture Size 2592 x 1936

Date Picture Taken 9/9/2013 9:10 AM

Document ID [RX5PSX645DY2-1507-315](#)

Comments

Content Type: Case Photos
Version: 2.0
Created at 10/30/2013 10:35 AM by [WETMORE Stephen K](#)
Last modified at 10/30/2013 10:40 AM by [WETMORE Stephen K](#)

Close



Case Files Home - Unposted Access.JPG

View

Edit Item Manage

Version History
Manage Permissions
Delete Item

Print
Check Out

Alert Me
Workflows

Actions

Name Unposted Access

Title

Thumbnail Preview



Picture Size 2592 x 1936

Date Picture Taken 9/9/2013 8:44 AM

Document ID RX5PSX645DY2-1507-308

Comments

Content Type: Case Photos
Version: 1.0
Created at 10/30/2013 10:17 AM by WETMORE Stephen K
Last modified at 10/30/2013 10:17 AM by WETMORE Stephen K

Close

Existing RMA posted access Residual RMA Tree within Unposted Access



