



Providing Opportunity to Family Forestland Owners

July 23, 2015

Testimony to the Board of Forestry

From **Roger Beyer** - Clackamas County forestland owner and OSWA member

Do you remember the story of Diogenes, the ancient Greek who wandered the streets of Athens with a lantern, day and night, searching for an honest man? Sometimes OSWA feels like Diogenes as we look for someone in one of the agencies to show us a study in which the scientific basis for the Protecting Cold Water (PCW) rule is critically reviewed and documented.

In 2003 EPA published its temperature guidance regarding the development of temperature water quality standards. At the July, 2014 Board of Forestry meeting, OSWA member John Westall reviewed that document. For the *numeric criteria*, the Guidance cites and discusses the scientific evidence, demonstrating that EPA conducted a thorough, well documented review. In contrast, for *the PCW* rule, the Guidance cites and discusses *no* scientific evidence, but just refers to the anti-degradation policy and lists several "potential benefits." EPA made no effort at all to justify its guidance with scientific studies.

OSWA has sought an explanation from DEQ, EPA and NOAA Fisheries. These agencies have given testimony stating that science exists to support the PCW, but when asked to reveal the documentation for the science we either get no response or that they can't point to a specific paper but that the evidence to support their rule is overwhelming. This lack of response suggests that the scientific basis for the PCW rule has *never* been critically reviewed, and there is not documentation to answer the questions.

So, today OSWA, like Diogenes in ancient Greece, is still looking for a documented basis for the PCW rule, and wondering why the people who call it science won't provide the scientific documentation to back up their claims.

Conceptually, the sort of review that is necessary to establish the basis of the PCW rule would be a critical examination of studies of fish response to temperature, such as the documentation EPA prepared for the numeric criteria in 2003.

You have now been provided documentation and will hear that those studies do in fact exist. In contrast to the PCW, this peer reviewed research shows beneficial impacts on fish to openings in the forest canopy along streams and beneficial impacts on fish from minor and temporary increases in cold water temperature resulting from a timber harvest following current FPA rules.

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Roger Beyer testimony continued

Please consider all the actual known science about fish and forest streams when making your decision on forest riparian rules. You have the ability to treat an undocumented policy call for what it is, not practicable. I ask the Board of Forestry to not repeat the mistake made by the EQC by adopting new riparian rules on a premise that is not scientifically reviewed and documented.

The PCW also has a temperature standard for oceans and bays. This criterion provides that "ocean and bay waters may not be warmed by more than 0.3C above the natural condition *unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life.*" OAR 340-041-0028(7). So why is it okay to look at the benefits to fish species in the ocean and bays, but not streams? It is not okay, it is poor public policy. .

For reference [not part of spoken or written testimony]: OAR 340-041-0028 (7) and (11)

(7) Oceans and Bays. Except for the Columbia River above river mile 7, ocean and bay waters may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the natural condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life. Absent a discharge or human modification that would reasonably be expected to increase temperature, DEQ will presume that the ambient temperature of the ocean or bay is the same as its natural thermal condition.

(8) Natural Conditions Criteria. Where the department determines that the natural thermal potential of all or a portion of a water body exceeds the biologically-based criteria in section (4) of this rule, the natural thermal potential temperatures supersede the biologically-based criteria, and are deemed to be the applicable temperature criteria for that water body.

NOTE: On August 8, 2013, the Environmental Protection Agency disapproved rule section OAR 340-041-0028(8). Consequently, section (8) is no longer effective as a water quality criterion for purposes of CWA Section 303(c) and it cannot be used for issuing certifications under CWA Section 401, permits under CWA Section 402, or total maximum daily loads under CWA section 303(d).

(9) Cool Water Species.

(a) No increase in temperature is allowed that would reasonably be expected to impair cool water species. Waters of the State that support cool water species are identified on subbasin tables and figures set out in OAR 340-041-0101 to 340-041-0340; Tables 140B, 190B and 250B, and Figures 180A, 201A and 340A.

(b) See OAR 340-041-0185 for a basin specific criterion for the Klamath River.

(10) Borax Lake Chub. State waters in the Malheur Lake Basin supporting the Borax Lake chub may not be cooled more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) below the natural condition.

(11) Protecting Cold Water.

(a) Except as described in subsection (c) of this rule, waters of the State that have summer seven-day-average maximum ambient temperatures that are colder than the biologically based criteria in section (4) of this rule, may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the colder water ambient temperature. This provision applies to all sources taken together at the point of maximum impact where salmon, steelhead or bull trout are present.

(b) A point source that discharges into or above salmon & steelhead spawning waters that are colder than the spawning criterion, may not cause the water temperature in the spawning reach where the physical habitat for spawning exists during the time spawning through emergence use occurs, to increase more than the following amounts after complete mixing of the effluent with the river:

(A) If the rolling 60 day average maximum ambient water temperature, between the dates of spawning use as designated under subsection (4)(a) of this rule, is 10 to 12.8 degrees Celsius, the allowable increase is 0.5 Celsius above the 60 day average; or

(B) If the rolling 60 day average maximum ambient water temperature, between the dates of spawning use as designated under subsection (4)(a) of this rule, is less than 10 degrees Celsius, the allowable increase is 1.0 Celsius above the 60 day average, unless the source provides analysis showing that a greater increase will not significantly impact the survival of salmon or steelhead eggs or the timing of salmon or steelhead fry emergence from the gravels in downstream spawning reach.

(c) The cold water protection narrative criteria in subsection (a) do not apply if:

(A) There are no threatened or endangered salmonids currently inhabiting the water body;

(B) The water body has not been designated as critical habitat; and

(C) The colder water is not necessary to ensure that downstream temperatures achieve and maintain compliance with the applicable