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3 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
4 FOR THE COUNTY OF MULTNOMAH

5 CASCADIA WILDLANDS, an Oregon non-  
6 profit corporation; AUDUBON SOCIETY OF  
7 CORVALLIS, an Oregon non-profit  
8 corporation; AUDUBON SOCIETY OF  
9 SALEM, an Oregon non-profit corporation;  
10 BENTON FOREST COALITION, an Oregon  
11 non-profit organization; CENTER FOR  
12 BIOLOGICAL DIVERSITY, a California non-  
13 profit corporation; OREGON WILD, an  
14 Oregon non-profit corporation;  
15 WILLAMETTE RIVERKEEPER, an Oregon  
16 non-profit corporation; and JOHN JACKSON,

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Petitioners,

vs.

PETER DAUGHERTY, in his capacity as  
State Forester, and OREGON DEPARTMENT  
OF FORESTRY, an agency of the State of  
Oregon,

Respondent.

Case No.

**PETITION FOR REVIEW**

(Administrative Procedures  
Act, ORS 183.484 *et seq.*)

**INTRODUCTION**

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Petitioners Audubon Society of Corvallis and Audubon Society of Salem, Benton Forest  
Coalition, Cascadia Wildlands, the Center for Biological Diversity, Oregon Wild, Willamette  
Riverkeeper, and John Jackson bring this Petition for Review of an agency order other than a

PETITION FOR REVIEW OF AN AGENCY ORDER

1  
2 contested case against the Oregon Department of Forestry and Peter Daugherty in his capacity as  
3 State Forester (“Department” or “Respondent”) under provisions of the Oregon Administrative  
4 Procedures Act (“APA”), ORS 184.484.

5 2.

6 In September 2020, unusually strong east winds and ongoing drought caused the rapid  
7 expansion of multiple wildfires in western Oregon. More than a million acres of federal, state,  
8 and private forest lands west of the Cascade crest burned. The fire severity across western  
9 Oregon varied from areas with little or no burn, to zones of high- or moderate-severity fire,  
10 thereby creating a mosaic of fire effects across the landscape.

11 3.

12 The Oregon Department of Forestry manages the 47,465-acre Santiam State Forest. It is  
13 owned by the State of Oregon and held in trust by the Board of Forestry (“Board”) and the State  
14 Land Board and extends across portions of Linn, Marion, and Clackamas counties.  
15 Approximately 24,700 acres (52%) of the Forest were affected by wildfires in 2020, including  
16 the Beachie Creek Fire, Lionshead Fire, and Riverside Fire. As across the larger region, fire  
17 severity within the Santiam State Forest varied, creating a mosaic burn pattern of unburned,  
18 moderately burned, and severely burned areas.

19 4.

20 In response to the fire on the Santiam State Forest, the Department sought to roughly  
21 triple annual allowable logging levels on the forest. To facilitate this logging, the Department  
22 revised its 2012 implementation plan, and released a draft implementation plan major revision  
23 (“draft revision”) for public review in November 2020, and a second revision in February 2021  
24 (“revised implementation plan”). The plan included a proposal to log up to 3,500 acres of burned  
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2 forest within the perimeter of the 2020 wildfires. The draft revision also proposed various  
3 restoration activities such as infrastructure and trail repair, tree replanting, and streamside  
4 rehabilitation.

5 5.

6 Post-fire logging is often conducted to recover economic value in the dead and damaged  
7 trees, but it also has significant negative effects on fish and wildlife habitats, water quality, and  
8 maintenance of ecosystem processes. During the draft revision’s public comment period,  
9 Petitioners provided the Department with extensive published research and studies documenting  
10 the importance of post-fire habitat conditions and the severe negative consequences of post-fire  
11 logging. The best-available science provides clear evidence that post-fire forests provide  
12 important habitat for a variety of native species and contain large snags and downed wood  
13 critical to riparian ecosystem health and recovery. Post-fire logging not only removes these  
14 valuable post-fire habitat elements, but actively degrades the forest across a variety of indicators,  
15 including soil health, water quality, and forest recovery, among others. Natural recovery of  
16 forests after fire is associated with development of complex habitat and development of desired  
17 future conditions such as older forest and layered forest. Post-fire logging makes forest structure  
18 and composition relatively uniform and simplified and puts forests on an alternate developmental  
19 pathway that is not associated with complex forest habitat and less likely to attain desired future  
20 conditions such as older forest and layered forest.

21 6.

22 The Department is required to manage the state forests for the “greatest permanent  
23 value,” which includes “healthy, productive, and sustainable forest ecosystems that over time  
24 and across the landscape provide a full range of social, economic, and environmental benefits to  
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1  
2 the people of Oregon.”<sup>1</sup> While the greatest permanent value rule does factor in sustainable timber  
3 harvest, it also specifically requires that the Department consider and develop strategies to  
4 protect aquatic habitats for salmonids and other native fish and aquatic life, habitats for native  
5 wildlife, productive soil and water, and to protect against floods and erosion. In its drive to  
6 generate as much commercial timber volume as possible from the burned portions of the Santiam  
7 State Forest, the Department failed to consider strategies to protect these non-commercial timber  
8 values in its revised implementation plan. In fact, the Department began auctioning off post-fire  
9 clearcutting projects long before the revised implementation plan was finalized, indicating that  
10 the revision process was merely pretense to justify commercial logging decisions already made  
11 by the Department.

12 7.

13 The Department has violated governing statutes and regulations in its expedited effort to  
14 dramatically increase logging levels on the Santiam State Forest. While there is much-needed  
15 restoration to be done on the forest, the Department has impermissibly prioritized generating  
16 commercial timber volume over all other important management goals.

17 8.

18 In 2010, the Oregon Board of Forestry adopted and codified in administrative rule the  
19 Northwest Oregon State Forests Management Plan FINAL PLAN April 2010 (“Forest  
20 Management Plan” or “FMP”). This Forest Management Plan provides controlling management  
21 direction for all state forests, including the Santiam State Forest. Petitioners bring this Petition  
22 for Review seeking a declaration that the Department violated the Administrative Procedures Act  
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25 <sup>1</sup> ORS 530.050; OAR 629-035-0020(1).

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2 when it authorized post-fire salvage logging on the Santiam State Forest inconsistent with the  
3 Forest Management Plan and agency regulations.

4 9.

5 Specifically, Petitioners seek a declaration that (1) pursuant to ORS 183.484(5)(b)(A),  
6 ORS 183.484(5)(c), or other authority, the Department’s February 2021 revised implementation  
7 plan and corresponding annual operations plan are outside the range of discretion delegated to  
8 the Department by law and otherwise in violation of a statutory provision, namely ORS 530.050,  
9 and/or is not supported by substantial evidence in the record; and (2) pursuant to ORS  
10 183.484(5)(b)(B) or other authority, that the revised implementation plan and corresponding  
11 annual operations plan is inconsistent with the Department’s own rules, officially stated agency  
12 position, and prior agency practices without explanation.

13 **PARTIES**

14 10.

15 Petitioner CASCADIA WILDLANDS is an Oregon non-profit corporation headquartered  
16 in Eugene, Oregon. Founded in 1998, Cascadia Wildlands represents over 10,000 members and  
17 supporters, and has a mission to educate, agitate, and inspire a movement to protect and restore  
18 Cascadia's wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of  
19 salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique  
20 landscapes of the Cascadia Bioregion. Cascadia Wildlands is devoted to the conservation of the  
21 Cascadia Bioregion, which extends from northern California to southeastern Alaska. Cascadia’s  
22 principal business office is in Eugene, Oregon in Lane County.

23 11.

1  
2 Cascadia Wildlands uses a combination of education, organizing, outreach, litigation,  
3 advocacy, and collaboration to defend wild places and promote sustainable, restoration-based  
4 forestry. The organization has long advocated for improved management of forests, the  
5 protection of older forests, and specifically for the protection of post-fire forests. Since its  
6 inception, Cascadia Wildlands has focused on challenging post-fire, salvage logging projects  
7 given the disproportionate environmental impacts that stem from this type of logging.

8 12.

9 Petitioner AUDUBON SOCIETY OF CORVALLIS (“ASC”) is a not-for-profit  
10 charitable organization, our purpose “shall be to engage in any such educational, scientific,  
11 investigative, literary, historical, philanthropic, and charitable pursuits as may be part of the  
12 stated purposes of the National Audubon Society, of which the Society shall function as a  
13 Chapter.” We accomplish these through a range of environmental education activities, popular  
14 monthly public presentations, state-wide field trips, and advocacy. ASC membership is open to  
15 all who share in our purpose. Our membership area includes urban and rural residents across  
16 both Linn and Benton Counties. Over decades ASC has demonstrated a consistent ongoing  
17 interest in protecting natural forests of western Oregon, and participated in numerous  
18 administrative reviews of federal activities in Linn and Benton counties. Limited portions of the  
19 Santiam State Forest are within Linn County, where some ASC members live. Members take  
20 part in citizen science bird surveys, including Christmas Bird Counts (Brownsville, National  
21 Audubon), Breeding Bird survey routes (Santiam, Cool Camp, and Blue River routes, USGS), as  
22 well as Great Big Backyard Bird Counts, along with popular eBird web-based data contributions  
23 (Audubon/Cornell). Collectively, our members contribute to tracking critical bird species  
24 population changes, which help inform land management decisions. We believe the Department  
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1  
2 must make informed decision because forest removals effect larger area wildlife populations and  
3 impact downstream water quality and flows and riparian zones most species depend on,  
4 including humans. Post-fire logging projects on public lands have an outsized impact because  
5 private landowners largely are not required to protect multiple resource values.

6 13.

7 Petitioner AUDUBON SOCIETY OF SALEM is a chapter of National Audubon and a  
8 non-for-profit charitable organization (501-c-3). Our mission is to connect people to Nature,  
9 through education focused on birds, other wildlife and their habitats, and conservation and  
10 restoration of natural ecosystems. To this end, we promote the enjoyment of wildlife and the  
11 stewardship of the environment with birding field trips, nature walks, monthly meetings and a  
12 variety of traveling educational programs. We involve volunteers in education, advocacy,  
13 conservation, and habitat restoration projects. Our service area is Marion County, Polk County  
14 and portions of Yamhill County. Our members are actively engaged in a wide variety of  
15 conservation and habitat restoration projects. We recently built and with our National Wildlife  
16 Refuge partners will operate a new Nature Center located at Ankeny Natural Wildlife Refuge.  
17 The 11-acre site of the Nature Center has been restored to native habitat, representing 4 diverse  
18 habitat types. We own and actively maintain a 5-acre Nature Reserve in West Salem. We  
19 organize the annual Salem Christmas Bird Count, part of a national annual bird survey. We  
20 conduct formal and informal bird surveys for the Nature Conservancy, the Confederated Tribes  
21 of the Grand Ronde, Oregon Department of Fish and Wildlife, and several private land owners in  
22 the Santiam Watershed with NRCS easements. We offer workshops, webinars and public  
23 lectures on a wide variety of birding and conservation topics which are open to the general  
24 public, many conducted on the Zoom platform. We have a traveling education program, offering  
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1  
2 a variety of courses on wildlife for middle school children. Periodically, we advise the City of  
3 Salem on the conservation management of Minto-Brown Island Park and the Minto-Brown  
4 Conservation Area, both of which are managed for wildlife. We are opposed to logging the  
5 Santiam State Forest primarily because of the risk to the water quality of the North Santiam  
6 River, the potential destruction of critical habitat for the endangered spotted owl, and potential  
7 undermining the conservation goals of the forest’s management plan, including goals to maintain  
8 a portion of the forest as a structurally complex forest. Until the proposed federal Habitat  
9 Conservation Plan is adopted for state forests in western Oregon, which puts in place protections  
10 for complex forests, we are opposed to logging in the Santiam State Forest.

11 14.

12 Petitioner BENTON FOREST COALITION (“BFC”) advocates for enhanced  
13 recreational opportunities on public lands and the conservation of native forest ecosystems. To  
14 this end, BFC submits comments, protests, appeals, and objections on public land forest  
15 management plans and projects. BFC surveys tree, plant, fungal, mollusk and wildlife species  
16 affected by forest management on public lands, including state lands. BFC also educates  
17 interested members of the public on the management of forests, and leads hikes through public  
18 forests, including state forests, and also actively builds trails in publicly owned forests. BFC  
19 members have visited or hiked in the Santiam State Forest. BFC opposes post-fire logging,  
20 especially when harvest plans include clearcutting due to negative effects on wildlife habitat,  
21 soils, waterways, greenhouse gas release, carbon storage, and native species. BFC will be  
22 harmed by the post-fire logging of the Santiam State Forest.

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Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a national, non-profit conservation organization that works through science, law, and the media to protect imperiled species and their habitats. The Center has more than 84,000 members, including many who live and recreate in the Santiam State Forest or the Santiam Watershed. Plaintiff is incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States including in Portland, Oregon. Center members and staff are concerned with the conservation of imperiled species, including the northern spotted owl and other species dependent on the Santiam State Forest. Center members and staff have aesthetic, scientific, recreational, spiritual, and other interests in the Santiam State Forest and the habitat that it provides. The Center has members who spend time in the Santiam State Forest on an ongoing basis and have concrete plans to visit it in the future, and who will attempt to observe them in the wild.

16.

Petitioner OREGON WILD is a charitable, non-profit corporation headquartered in Portland, Oregon with approximately 20,000 members and supporters who share our mission to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy. We seek to protect the state's remaining old-growth forests and roadless areas, and restore fully-functioning ecosystems and watersheds with a full complement of native species. Oregon Wild has a campaign to reform Oregon's forest practice rules that apply to state and private lands with a goal to protect water quality, fish & wildlife habitat, and rural communities, reduce the use of toxic chemicals, increase carbon storage, and maintain Oregon's quality of life.

17.

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2 Petitioner WILLAMETTE RIVERKEEPER is a 501(c)(3) and Oregon non-profit corporation  
3 headquartered on the Willamette River in Portland, Oregon with nearly 7,000 members and  
4 supporters. Since 1996, Willamette Riverkeeper has served as the eyes, ears, and voice of the  
5 Willamette River Basin Waters. The organization's sole mission has been to protect and restore  
6 the Willamette River's water quality, habitats for wildlife and aquatic species, and resources.  
7 Willamette Riverkeeper works throughout the basin on programs, policy objectives, and projects  
8 ranging from Clean Water Act compliance and river education, to Superfund cleanup and habitat  
9 restoration, and where necessary, litigation. Willamette Riverkeeper believes that a river with  
10 good water quality and abundant natural habitat, safe for fishing and swimming, is a basic public  
11 right. Here, where the state's project impacts will negatively affect basin water quality, and state  
12 proposes to gut mature forests that protect essential water quality functions, and fish and wildlife  
13 habitat, Willamette Riverkeeper joins as a Petitioner to protect our members' interests in the  
14 Santiam and the Willamette Rivers, and to require the State of Oregon to comply with  
15 environmental protections.

16 18.

17 Petitioner JOHN JACKSON is an adult citizen of the United States and a resident of Linn  
18 County, Oregon. He is a member of Cascadia Wildlands, but brings this action in his individual  
19 capacity.

20 19.

21 Respondent PETER DAUGHERTY in his capacity as State Forester. The State Forester  
22 is the chief executive officer of the Department of Forestry. The State Forester is responsible for  
23 the management, protection, utilization and conservation of state lands not inconsistent with law.  
24 ORS 530.050(13). State Forester shall manage forest lands by developing and implementing  
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1  
2 management plans consistent with the Board of Forestry approved Forest Management Plan.  
3 OAR 629-035-0020(4).

4 20.

5 Respondent OREGON DEPARTMENT OF FORESTRY (“Department” or  
6 “Respondents”) is an agency of the State of Oregon. The Department is responsible for  
7 protecting, managing, and promoting stewardship of Oregon’s forests to enhance environmental,  
8 economic, and community sustainability. Under Oregon law, the Department is obligated to  
9 manage forest lands “to secure the greatest permanent value of those lands to the state.” ORS  
10 530.050.

11 **THE NATURE OF PETITIONERS’ INTERESTS**

12 21.

13 Petitioner John Jackson lives within sight of the Santiam State Forest and regularly  
14 recreates there. Mr. Jackson has explored and recreated throughout most of the Santiam State  
15 Forest. Mr. Jackson enjoys hiking in the Santiam, looking for wildlife, admiring the forests, and  
16 regularly visits the area in search of peace and solitude. Given that the Santiam State Forest is  
17 Mr. Jackson’s backyard, he will continue to regularly explore and recreate there and continue to  
18 show guests the various treasures in the forest he holds dear. Mr. Jackson will be irreparably  
19 injured and adversely affected and aggrieved by the Department’s proposed logging of the  
20 Santiam State Forest. It will greatly damage his experience there and the value he places on his  
21 home. The closure of the Santiam State Forest to facilitate the ongoing logging of Santiam State  
22 Forest also injures Mr. Jackson because he is unable to access the forest to recreate. The planned  
23 and ongoing logging by the Department of the Santiam State Forest severely damages the native  
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1  
2 forests and unique forested habitats that Mr. Jackson regularly uses and enjoys. If logged, these  
3 forests will not grow back within Mr. Jackson's lifetime.

4 22.

5 Petitioners Audubon Societies of Corvallis and Salem, Benton Forest Coalition, Cascadia  
6 Wildlands, the Center for Biological Diversity, Oregon Wild, and Willamette Riverkeeper are all  
7 non-profit organizations with charitable missions that include protecting and restoring Oregon's  
8 environment, wildlife, and biological diversity. Petitioners have a specific and particular interest  
9 in the protection and recovery of the Santiam State Forest and its biological diversity, including  
10 but not limited to its complex forest habitats.

11 23.

12 Petitioners have a real and direct interest in the conservation of Oregon's state forests,  
13 and have dedicated substantial time, money, and resources toward that goal. Petitioners and their  
14 members and supporters regularly use and enjoy the Santiam State Forest to recreate, view  
15 wildlife, and experience the peace and solitude of some of the last intact and unlogged forests in  
16 Oregon. The proposed salvage logging operations, particularly clearcutting in already complex  
17 forest, will negatively impact Petitioners' mission to protect the land, its habitat, and the fish and  
18 wildlife that live there. The proposed logging will also directly injure the Petitioners and their  
19 members' use and enjoyment of the Santiam State Forest for generations. Petitioners cannot  
20 fulfill their organizational missions and goals to protect the Santiam State Forest if the  
21 Department shirks its legal obligation to secure the greatest permanent value of Oregon forests.

22 24.

23 Petitioners have a further interest in the proper and lawful management of Oregon's  
24 state lands, and in Respondent's compliance with Oregon laws surrounding the Santiam State  
25

1  
2 Forest. By this action, Petitioners seek to further interests that the legislature expressly  
3 wished to have considered.

4 25.

5 Petitioners' injuries are irreparable, and there is an appreciable threat of ongoing  
6 harm to Petitioners. Once the land is clearcut, the area is permanently damaged. The loss of  
7 complex forests, some over 100 years in age, which cannot be replaced in the span of a lifetime,  
8 causes Petitioners and their members ongoing and irreparable harm for which there is no remedy  
9 at law. Large dead trees, often called snags or wildlife trees, are valuable habitat for a large  
10 number of species and serve a variety of other ecosystem services such as: carbon storage, soil  
11 conservation, creating microsites suitable for forest regeneration, capture/storage/release of  
12 water, nutrients, and sediment, and when snags fall, they have the capacity to do mechanical  
13 work such as thinning young seedlings and saplings. Once large snags are removed by post-fire  
14 logging it takes more than 100 years to replace a population of large dead trees. The  
15 environmental harm from converting a mature, native, public forest to a swath of barren earth to  
16 be seeded as a tree plantation cannot be remedied by monetary damages and is permanent and  
17 irreparable.

18 26.

19 Petitioners have also extensively participated in the public process that accompanied the  
20 implementation plan revision, which renders them parties to the agency proceeding. Petitioners  
21 provided written comments to the Department on December 23, 2020, to the Board of Forestry  
22 on January 5, 2021, and provided supplemental comments to the Department on February 8,  
23 2021, and April 6, 2021. Petitioner Willamette Riverkeeper provided oral testimony to the Board  
24 of Forestry regarding the Draft Revision on January 6, 2021, and supplemental written testimony  
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2 on January 19, 2021. Petitioner Wild Salmon Center provided written comments on the Draft  
3 Revision on January 4, 2021. Petitioner Oregon Wild provided oral testimony to the  
4 Department’s State Forests Advisory Committee regarding the Draft Revision on January 12,  
5 2021. Petitioner Cascadia Wildlands provided written comment prior to, and oral testimony  
6 during, the Board of Forestry’s March 3, 2021 meeting regarding the Santiam State Forest  
7 agenda item.

8 **JURISDICTION**

9 27.

10 This court has jurisdiction to consider this Petition for Review of the Department’s  
11 approval of the February 2021 revised implementation plan pursuant to ORS 183.484, review of  
12 orders other than contested cases.

13 28.

14 Judicial review of an agency order in other than a contested case is governed by  
15 ORS 183.480 and 183.484. ORS 183.480(1) states, “any person adversely affected or  
16 aggrieved by an order or any party to an agency proceeding is entitled to judicial review of  
17 a final order, whether such order is affirmative or negative in form.”

18 29.

19 “Jurisdiction for judicial review of orders other than contested cases is conferred  
20 upon the Circuit Court for Marion County and upon the circuit court for the county in  
21 which the petitioner resides or has a principal business office.” ORS 183.484(1).

22 30.

23 This case is brought in Multnomah County Circuit Court, where plaintiff organizations  
24 Oregon Wild and Willamette Riverkeeper have their principal offices.  
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31.

Under Oregon law, “any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form.” ORS 183.480(1).

32.

The court may affirm, reverse, or remand the order. “If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall: (A) Set aside or modify the order; or (B) Remand the case to the agency for further action under a correct interpretation of the provision of law.” ORS 183.484(5)(a).

33.

“The court shall remand the order to the agency if it finds the agency’s exercise of discretion to be: (A) Outside the range of discretion delegated to the agency by law; (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or (C) Otherwise in violation of a constitutional or statutory provision.” ORS 183.484(5)(b).

34.

“The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.” ORS 183.484(5)(c).

35.

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2 “The reviewing court’s decision under ORS 183.482 or 183.484 may be mandatory,  
3 prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective  
4 of the original form of the petition.” ORS 183.486.

5 36.

6 “Final order” means final agency action expressed in writing. ORS 183.310(6)(b). The  
7 Department’s February 2021 revised implementation plan is a written, final agency action  
8 comprising a final order subject to judicial review under ORS 183.484. The Department’s North  
9 Cascade District 2021 Annual Revised Operations Plan is a written, final agency action  
10 comprising a final order subject to judicial review under ORS 183.484. Timber sales auctioned  
11 pursuant to the 2021 revised implementation plan are, individually, reviewable final agency  
12 actions expressed in writing under ORS 183.484.

13 **FACTUAL BACKGROUND**

14 *The Santiam State Forest*

15 37.

16 The Santiam State Forest is a beloved recreational and ecological resource for  
17 Oregonians and visitors alike. Attractions including Shellburg Falls, the High Lakes Recreation  
18 areas, the Santiam Horse Camp, the Monument Peak trail system, and Niagara-area trails are all  
19 valued for year-round access to outdoor recreation. The Santiam State Forest nurtures the  
20 headwaters of streams that provide important fish habitat and recreation opportunities, as well as  
21 drinking water to several downstream cities, including Salem. It is also home to a wide range of  
22 plants and animals, including state and federally listed threatened and endangered.

23 38.





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2 “[e]mbedded within the mosaic will be a network of areas which develop into older forest  
3 conditions and then persist in a relatively unmanaged state.”

4 40.

5 The Forest Management Plan uses five different stand types, points along a continuum of  
6 forest development. The five stand types are, from least to most complex: regeneration, closed  
7 single canopy, understory, layered, and older forest structure. These stand types are used to  
8 categorize both the existing state of a forest stand and the desired future condition of a forest  
9 stand. The Forest Management Plan contains “sidebars” that describe the “development process  
10 that occurs in that stand type.”

11 41.

12 Of particular significance here are the layered and older forest structure stand types.  
13 Layered forest stands contain complex vertical structure with tress over 18 inches in diameter  
14 being predominant. They contain a complex mixture of tree species including western red cedar,  
15 western hemlock, Douglas-fir, and noble fir, and contain a younger cohort of developing trees.  
16 These stands may provide habitat for some species associated with older forests. Older Forest  
17 Structure stands are merely Layered stands that have attained substantial amounts of downed  
18 wood and snags. Layered stands may also contain substantial amounts of snags and downed  
19 wood, but lack the minimum tree diameters needed to provide habitat for wildlife species such as  
20 northern spotted owls, pileated woodpeckers, and flying squirrels.

21 42.

22 Given the difficulty with categorizing forest stands along this spectrum, the FMP uses  
23 ranges for the “desired future condition array” across the landscape instead of setting strict  
24  
25

1  
2 percentages for each stand type, with certain management activities only allowed within areas  
3 that are necessary to move these stands to the desired future condition.

4 43.

5 To implement this landscape management strategy, districts develop implementation  
6 plans that describe management approaches and activities. These plans are required to describe:  
7 (1) the current condition of stand types and their distribution; (2) the desired future condition  
8 array for reach management basin; (3) the projected timeline for reaching the desired future  
9 condition; and (4) “[p]roposed management activities for the ten-year period that will be  
10 necessary to move toward the desired future condition.” Annual operations plans are designed to  
11 achieve the implementation plan objectives for shorter periods of time and describe specific  
12 projects.

13 *The Beachie Creek, Lionshead, and Riverside Fires*

14 44.

15 In September 2020, a series of relatively small wildfires responded to drought conditions  
16 and unusually strong, hot, dry, east winds and fires expanded rapidly down the western slope of  
17 Oregon’s Cascade Range. These wildfires burned over 1 million acres of land in western Oregon,  
18 much of it in public ownership. Three such fires were the Beachie Creek Fire, the Lionshead  
19 Fire, and the Riverside Fire, which had devastating impacts to Oregonians including the loss of  
20 life and the extensive loss of property.

21 45.

22 A portion of the Santiam State Forest lies within the perimeter of the Beachie Creek,  
23 Lionshead, and Riverside fires. Approximately 52%, or 24,700 acres, of the Santiam State Forest  
24 is within the fires’ footprint, but of this area, only 16,191 acres actually burned, and the severity  
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1  
2 of fire effects varied widely. Roughly two-thirds of the “burned area” burned at either low or  
3 moderate severity. The vast majority of the burning occurred on tree plantations within the  
4 Santiam State Forest, and these plantations generally burned at much higher severity levels  
5 compared to older forests. Consequently, a “mosaic” pattern of varying burn severities and  
6 unburned areas extends across the Forest.

7 46.

8 The management contemplated by the HCP in layered or older forests is designed to  
9 mimic the effects of fire on a forest stand. Mixed-severity wildfire is thought to help maintain  
10 diverse habitat conditions by killing a portion of the trees, recruiting valuable dead wood habitat,  
11 and creating new opportunities for diverse vegetation by giving them access to more space, light,  
12 water, and nutrients.

13 *Post-Fire Forests*

14 47.

15 Wildfires can have consequential impacts to human homes and lives, and the Beachie  
16 Creek Fire, the Lionshead Fire, and the Riverside Fire had devastating impacts to Oregonians  
17 including the loss of life and the extensive loss of property. However, as Petitioners and others  
18 have noted in comments to the Department and the Board of Forestry, wildfires are also an  
19 inherent and necessary stage of ecological succession. Oregon’s forests evolved with wildfires,  
20 which research shows to have been regular occurrences across western Oregon for thousands of  
21 years. Many ecologists view Oregon’s recent wildfires as a return to a more normal fire regime,  
22 one that more closely mirrors the situation prior to aggressive intentional fire suppression by land  
23 managers in the 20th and 21st centuries.

24 48.

1  
2 Land-management agencies often speak in terms of “recovery” after a wildfire, as if the  
3 burned forest lacks functional values until it has a new crop of trees established, but scientists  
4 regularly emphasize that the post-fire condition is just one stage, among many equally valuable  
5 stages, in the natural progression of this region’s fire-adapted forests. Burned forests may be just  
6 as diverse, or even more diverse, as old growth forests. Many plant and animal species not only  
7 thrive in recently burned forests, but some species are rarely found outside of recently burned  
8 forests, indicating they need the burned landscape to complete their life cycle. For these species,  
9 fire itself represents recovery, while the establishment of dense conifers represents loss of habitat  
10 suitability. Post-fire logging followed by replanting removes the vast majority of this  
11 irreplaceable dead wood structure, replacing a complex vegetative community with an industrial  
12 tree farm. A burned forest subjected to post-fire logging and replanting is removed from a  
13 complex forest trajectory and instead placed on a trajectory to become an even-aged commercial  
14 tree farm.

15 49.

16 The Forest Management Plan designates portions of the Santiam State Forest to remain  
17 as, or develop into, complex mature or old-growth forest structure, in part to contribute toward  
18 the ecological, soil health, water quality, and aquatic habitat goals of the “greatest permanent  
19 value” standard. These reserves are designated for a “desired future condition” of “Layered” or  
20 “Older Forest Structure,” (collectively, “complex”) conditions which inherently take several  
21 decades or longer to achieve. Wildfire is a natural part of this process of creating and  
22 maintaining complex forests as it recruits essential snags and downed wood, makes resources  
23 available to enhance the growth of surviving trees, and makes room for establishment of new  
24 layers of diverse vegetation.

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50.

According to authoritative syntheses of existing research on post-fire conditions, where land managers wish burned forests to develop into mature, complex forests after a wildfire, management should focus on the goal of allowing natural regeneration. In many or most cases, this would require “few or no management activities.”<sup>2</sup>

51.

The Department is setting aside little to no acreage for natural regeneration. It is replanting 5,100 acres and planning to log up to 3,500 acres of burned forest, of which 437 acres are designated either “layered” or “older forest structure.” In addition to setting back the development of these stands into the desired mature-forest character by decades, if not centuries, the revised implementation plan fails to recognize that:

Detrimental ecological effects of post-fire timber harvest include: increased erosion and sedimentation, especially due to construction of new roads; damage to soils and nutrient-cycling processes due to compaction and displacement of soils; reduction in soil-nutrient levels; removal of snags and, in many cases, live trees (both of which are habitat for spotted owls and their prey); decreased regeneration of trees; shortening in duration of early-successional ecosystems; increased spread of weeds from vehicles; damage to recolonizing vegetation; reduction in hiding cover and downed woody material used by spotted owl prey; altered composition of plant species; increased short-term fire risk when harvest generated slash is not treated and medium-term fire risk due to creation of

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<sup>2</sup> USFWS, Revised Recovery Plan for the Northern Spotted Owl, 2011, at III-49.

1  
2 conifer plantations; reduction in shading; increase in soil and stream temperatures; and  
3 alterations of patterns of landscape heterogeneity . . . .<sup>3</sup>

4 52.

5 As with all the above information regarding post-fire forests, Petitioners have repeatedly  
6 emphasized in written comments and discussions with the Department that post-fire timber  
7 harvests “undermine many of the ecosystem benefits of major disturbances”<sup>4</sup> and are not  
8 appropriate in forests, especially the parts of the Santiam State Forest, that are intended to  
9 provide complex forest structure. Forests with structurally complex beginnings due to fire can  
10 develop desired older forest characteristics faster than forests simplified by salvage logging and  
11 replanting.

12 *The Implementation Plan Revision*

13 53.

14 The Department’s post-fire surveys of the Forest determined that while approximately  
15 24,700 acres, or just over half of the Forest, was within the fire perimeter, only about 16,600  
16 acres were impacted by the fires. The Department assessed approximately 14,000 of these acres  
17 for post-fire logging because the remaining acres were mostly in the low burn severity class and  
18 many were located within scattered ownership blocks. Of these 14,000 acres, the Department  
19 determined that 5,400 acres were unloggable because of “operability issues, low volume, low  
20 value, high landslide hazard locations, non-forest, administrative sites, etc.” and that 5,100 acres  
21 were young plantations that burned so intensely that logging was not an option; they were only  
22 suitable for replanting. The Department plans to commercially log the remaining 3,500 acres.

23 \_\_\_\_\_  
24 <sup>3</sup> Id. at III-48.

25 <sup>4</sup> Lindenmayer, David & Foster, David & Franklin, Jerry & Hunter, M & Noss, Reed &  
Schmiegelow, Fiona & Perry, David. (2004). Salvage Harvesting Policies After Natural  
Disturbance. Science (New York, N.Y.). 303. 1303. 10.1126/science.1093438.

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2 This amount of logging would roughly triple the annual allowable logging on the Santiam State  
3 Forest dictated by the Board of Forestry. Because these and other activities would exceed the  
4 maximum allowed volume variance from the governing 2012 implementation plan, the  
5 Department prepared a major revision to the 2012 implementation plan.

6 54.

7 The draft revision was released for public comment in November 2020, and public input  
8 was accepted through January 4, 2021. The initial draft revision was extremely brief—nine  
9 pages, excluding maps—and failed to explain how the Department’s large-scale, post-fire  
10 logging projects would comply with a series of state and federal statutory and regulatory  
11 requirements. A second 48-page revised implementation plan was released on February 19,  
12 2021, and included substantially more information. Despite the increased scope of the second  
13 revision, the proposed logging was unchanged.

14 55.

15 The Department received comments on the draft revision from Petitioners and other  
16 organizations, several hundred individuals, the Oregon Department of Fish and Wildlife and  
17 Oregon Department of Environmental Quality.

18 56.

19 Petitioners’ comments focused on the lack of transparent public oversight of this process  
20 and the plan’s failure to analyze potential impacts of post-fire logging to designated complex  
21 forests, streams, wildlife, functioning ecosystems, water quality, and recreation. Petitioners’  
22 comments requested the Department thoroughly review the best-available science regarding  
23 post-fire forest recovery and logging and explain how the revised implementation plan would  
24 implement restoration plans within the forest pursuant to the scientific standard.  
25



1  
2 57.

3 Petitioners also raised concerns that it was inappropriate for the Department to log forest  
4 stands with a desired future condition of either Layered or Older Forest Structure (collectively,  
5 “complex”) because the natural openings, density reductions, snags, and downed wood naturally  
6 created by the fires were all critical components of complex forests explicitly contemplated by  
7 the Forest Management Plan. The Department’s planned logging would remove the downed  
8 wood and snags and redirect the stands’ development trajectory, greatly slowing the stands’  
9 progress toward complex desired future conditions.

10 58.

11 In addition to these substantive concerns, Petitioners raised concerns that the  
12 Department’s public review was merely *pro forma*. Even before the public comment period  
13 closed on January 4, the Department offered post-fire timber sales off the Santiam State Forest to  
14 occur on January 12 and 21, 2021. While the plan revision was still in draft form, the Department  
15 advertised an additional series of timber sales on February 18, March 4, and March 11, 2021.  
16 Because the Department had not finalized an analysis of environmental impacts of its salvage  
17 logging program, Petitioners requested that the Department open individual burned-timber sales  
18 to public comment prior to offering them for auction. The Department denied this request.  
19 Petitioners also requested that the Department provide interested members of the public with  
20 tours of the potential timber sale units because the Santiam State Forest was, and remains, closed  
21 to public access, but the Department denied this request as well.

22 59.

23 In its comments, the Oregon Department of Fish and Wildlife (“ODFW”) highlighted the  
24 need for the revised implementation plan to describe how the Department will ensure its  
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1  
2 activities maintain and/or help develop functional fish and wildlife habitat on the Forest. ODFW  
3 highlighted the importance of leaving “biological legacies” (*i.e.*, living or dead standing trees)  
4 within the burned forests and that to “salvage” log those interferes with ecological recovery.  
5 ODFW stated that the Department should plan to retain unlogged areas. In areas like those  
6 designated for “complex” forest conditions:

7 [ODFW] recommends retaining as much of the structural and compositional legacy (*i.e.*,  
8 remnant old growth trees, residual live trees, snags, and down wood) as possible,  
9 especially in Land Management Classifications and other areas primarily intended to  
10 maintain fish and wildlife habitats for threatened and endangered species, RMAs, or other  
11 areas of biological priority or conservation concern. Salvage logging may not be  
12 appropriate in these areas.<sup>5</sup>

13 ODFW indicated that the draft revision lacked a broad range of information needed for  
14 ODFW to provide informed comment on potential impacts to fish and wildlife. In particular,  
15 ODFW requested that the plan clearly define the current and desired future characteristics of the  
16 stands the Department intends to log, and to specifically identify such “key considerations” as  
17 “maintenance of structural complexity in forest stands,” “maintenance of landscape  
18 heterogeneity,” and “maintenance of connectivity and landscape corridors for fish and wildlife  
19 species.”<sup>6</sup> ODFW’s letter suggested the Department failed to fully analyze impacts from its plan  
20 to fish-bearing streams, invasive species, forest structure, long-term forest health, future wildfire  
21 risk, and climate change. ODFW’s letter cited extensive research showing that ecological  
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24 <sup>5</sup> Oregon Department of Fish and Wildlife, “Comments on the Oregon Department of Forestry  
(ODF) Draft Santiam State Forest Implementation Plan” (Jan. 4, 2021), at 3.

25 <sup>6</sup> *Id.*, at 2.

1  
2 recovery after a fire is hindered by post-fire logging. None of this research was mentioned or  
3 applied by the Department in the February 2021 revised implementation plan.

4 60.

5 The Oregon Department of Environmental Quality (DEQ) provided comments on the  
6 Draft Revision to the Department on December 18, 2020. DEQ’s comments highlighted the  
7 importance of sound post-fire management activities to multiple water-quality indicators and to  
8 forest recovery:

9 The implications for water quality, aquatic habitat, Total Maximum Daily Load  
10 [“TMDL”] implementation, and (not least) drinking water provision are substantial.

11 Oregon State Forest-managed lands are importantly placed for the water supply of cities  
12 and water districts including Molalla, Canby, Silverton, Stayton, Lyons-Mehama, and  
13 Salem. Damage to riparian zones will likely set back achievement of TMDL load  
14 allocations and water quality standards, and post-fire management could enhance or  
15 inhibit ecological recovery. While we recognize that ODF's State Forests Division does  
16 not have control over all of the affected land base, the extent and location of ODF's  
17 ownership makes it a critical piece of the landscape.<sup>7</sup>

18 DEQ’s comments also pointed out the risk inherent in logging burned stands and  
19 replacing them with “high-density stands,” *i.e.*, plantations, that are likely to burn at higher  
20 intensity in future fire events, and questioned whether less-resilient plantations are compatible  
21 with the Greatest Permanent Value mandate.<sup>8</sup> DEQ’s comments noted that the draft revision  
22 lacked any “discussion of the ecological benefits of standing and downed dead trees and how  
23

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24 <sup>7</sup> Oregon Department of Environmental Quality, “Oregon DEQ comments on Santiam State  
Forest Management Plan Revisions.” (Dec. 18, 2020.)

25 <sup>8</sup> *Id.*

1  
2 these fire legacy benefits to wildlife, aquatic habitat, and water quality/hydrology will be  
3 incorporated into post-fire salvage, non-commercial thinning, and replanting operations.”<sup>9</sup> The  
4 final implementation plan also lacked discussion of these important planning considerations.

5 61.

6 Petitioners and others presented information regarding the draft revision to the Board of  
7 Forestry orally and in writing in early January 2021. Petitioners’ and the agencies’ comments on  
8 the draft revision were forwarded to the Board for review in January 2021. On February 19,  
9 2021, the Department released an approved and newly revised implementation plan. Prior to  
10 March 3, 2021, Petitioners again submitted written comments to the Board. During the March 3,  
11 2021 Board of Forestry meeting, Petitioner Cascadia Wildlands presented oral testimony  
12 regarding the continuing, insufficient justification for how the Department’s logging proposal  
13 complies with state regulatory requirements and best available science.

14 **LEGAL BACKGROUND**

15 *Greatest Permanent Value Mandate*

16 62.

17 The Board authorizes and directs actions taken by the State Forester. ORS 530.050.  
18 Under Oregon law, “the State Forester shall manage the lands . . . to secure the greatest  
19 permanent value of those lands to the state.” *Id.* Greatest permanent value “means healthy,  
20 productive, and sustainable forest ecosystems that over time and across the landscape provide a  
21 full range of social, economic, and environmental benefits to the people of Oregon.” OAR 629-  
22 035-0020(1).

23 63.

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<sup>9</sup> *Id.*

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2 The benefits of securing the “greatest permanent value” include “(a) Sustainable and  
3 predictable production of forest products that generate revenues for the benefit of the state,  
4 counties, and local taxing districts; (b) Properly functioning aquatic habitats for salmonids, and  
5 other native fish and aquatic life; (c) Habitats for native wildlife; (d) Productive soil, and clean  
6 air and water; (e) Protection against floods and erosion; and (f) Recreation.” OAR 629-035-  
7 0020(1).

8 64.

9 Pursuant to the Department’s mandate to secure the “greatest permanent value,” the  
10 Department manages the Forest under the 2010 Northwest Oregon State Forests Management  
11 Plan (“Forest Management Plan” or “FMP”), which was approved by the Oregon Board of  
12 Forestry. The FMP directs the Department to develop and manage state forest lands according to  
13 implementation plans for each district, to be approved by the State Forester. The Board’s  
14 approval of the plan represents its determination that activities carried out or allowed by the State  
15 Forester meet the greatest permanent value obligation and renders the plan an administrative  
16 rule. OAR 629-035-0030(5); OAR 629-035-0030(6)(a). The current implementation plan for the  
17 North Cascade District became effective in 2012.

18 65.

19 According to the FMP, “The forest management plan and district implementation plans  
20 are the *primary mechanism* for financial management planning, since they identify the  
21 appropriate types and levels of management activities that accomplish the *legal mandates for*  
22 *managing the lands.*”

23 66.  
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1  
2 The FMP is the operative planning document for management direction of all Board of  
3 Forestry lands and Common School Forest Lands in the Northwest Oregon and Willamette  
4 Planning Regions, including the Santiam State Forest. The FMP is the foundational basis for  
5 intermediate planning at the district level, namely district implementation plans.

6 67.

7 The development of the Forest Management Plan is required under Oregon law. ORS  
8 526.255. The development of implementation plans at the district level is a requirement of the  
9 FMP.

10 68.

11 In achieving the goals of securing greatest permanent value through the promulgation of  
12 Management Plans and implementation plans, the Department may not act or make rules  
13 inconsistent with Oregon law. ORS 530.050(13). The Department must also develop plans based  
14 on the best available science pursuant to the greatest permanent value rule. OAR 629-035-0020;  
15 OAR 629-035-0030(1).

16 69.

17 Under Oregon law, Department action and forest planning that violates agency rule  
18 violates ORS 530.050. OAR 629-035-0030(6)(a); ORS 530.050(13).

19 70.

20 In response to changed, post-fire conditions on the Santiam State Forest, the Department  
21 revised the 2012 implementation plan, and released a draft implementation plan major revision  
22 for public review in November 2020, and finalized a revised implementation plan in February  
23 2021.

24 71.

1  
2 Integrated forest management strategies such as setting “desired future conditions” are  
3 described in the FMP as the basis for forest management. While the February 2021 revised  
4 implementation plan proposed various restoration activities such as infrastructure and trail repair,  
5 tree replanting, and streamside rehabilitation, it fails to describe the current condition of stand  
6 types following the 2020 fires or the management activities that are necessary to move these  
7 stands towards their desired future conditions. The Department’s proposed logging activities  
8 within the revised implementation plan and corresponding revised annual operations contemplate  
9 management activities, namely logging, that hinder the achievement of these desired future  
10 conditions.

11 *Northwest Oregon Forest Management Plan*

12 72.

13 The Department’s obligations to its general directives and to the FMP and its contents are  
14 legally binding. The Department’s failure to adhere to its own rules, positions, or practices  
15 violates Oregon law. ORS 183.484(5)(b)(B).

16 73.

17 The Department’s implementation plan and annual operations plan must be consistent  
18 with the Forest Management Plan. The Forest Management Plan is an administrative rule and  
19 constitutes legally binding guidance upon the Department.

20 74.

21 The February 2021 revised implementation plan fails to describe the current condition of  
22 stand types following the 2020 fire as required by the Forest Management Plan. The revised  
23 implementation plan and corresponding annual operations plan relies on an unsupported  
24  
25

1  
2 assumption that burned complex forests no longer meet the requirements for layered or older  
3 forest structure typing regardless of burn severity.

4 75.

5 By prescribing salvage logging and clearcutting harvest prescriptions in post-fire  
6 complex forest, the revised implementation plan and annual operations plan fails to adhere to  
7 previous Department commitments to provide for complex forest structure. The FMP does not  
8 contemplate clearcutting of such stands and replacing them with tree plantations. Both actions  
9 are inconsistent with development of complex forest structure.

10 76.

11 The FMP's own definition of clearcutting, or "regeneration harvesting," does not  
12 reference any goal of improving forest complexity or diversity, nor does it indicate that it  
13 enhances or accelerates forest maturity; *i.e.*, clearcut logging is inconsistent with development of  
14 complex forest structure. "Regeneration harvests are intended to replace an existing stand," and  
15 "[c]learcuts remove all trees in a stand." Following harvest, "[f]ully stocked Douglas-fir  
16 plantations occupy over 95 percent of most past sale areas."

17 77.

18 The revised implementation plan must secure the greatest permanent value in its goal to  
19 achieve Desired Future Conditions on the Santiam State Forest. The plan is intended to address a  
20 "long-term vision" with a "short-term" recovery phase.

21 78.

22 One long-term goal envisioned by the FMP is to create layered and older forest structure  
23 condition, collectively, "complex" structure. "Layered" forest structure requires "[o]pen stands  
24 that have significant understory development. Vigorous herbaceous and shrub communities  
25



1  
2 combine with tress crowns to create multiple canopy layers. Tree crowns and shrubs create a  
3 complex vertical structure from the forest floor to the tops of the tallest trees.” “Older forest  
4 structure” requires “[s]tands with large trees; multiple, deep canopy layers; substantial amounts  
5 of coarse woody debris; large snags; and other structures typically associated with older forest.”

6 79.

7 In defining forest structure types, the revised implementation plan states, “Fire impacts  
8 and post-fire management activities are considered in the context of the 2010 FMP forest  
9 management principles. The foundation of the current FMP is to create a diverse set of forest  
10 conditions over time and across the landscape.”

11 80.

12 In relevant part, the Santiam State Forest has an overall long-term Desired Forest  
13 Condition target set at 35% Complex, which is estimated to take 70-90 years to achieve.  
14 Accordingly, the revised implementation plan states plainly, “[t]he objective of each harvest  
15 prescription and accompanying reforestation plan is to achieve the desired future stand condition  
16 in the most rapid, safe, and efficient manner.”

17 81.

18 Despite the lengthy period required to reach the target complexity goal, the revised  
19 implementation plan would implement logging operations on nearly 18% of the Santiam State  
20 Forest. The revised implementation plan is absent of any assertion that salvage logging would  
21 accelerate a stand’s progress toward these desired future conditions.

22 82.

23 The FMP admits that dead trees are essential to meeting desired future conditions for  
24 complex forests and removing dead trees slows attainment of DFC goals, saying “[t]he snag  
25

1  
2 management guidelines presented in this forest management plan are designed to provide  
3 nesting, roosting, foraging, perching, and denning habitat for the various species of wildlife that  
4 use snags in the forests of northwest Oregon,” and that clearcuts reduce biodiversity with respect  
5 to these species when snags are removed.

6 83.

7 With respect to old forest complexity, the 2010 FMP also states that, “Down wood is an  
8 integral component of the structure of old forest stands and provides a biological legacy from old  
9 stands to young stands after catastrophic events. This legacy can also be provided in managed  
10 stands if appropriate requirements are incorporated into timber harvest plans.” However, when  
11 down wood is removed from younger managed stands, “the abundance of down wood can be  
12 substantially less than in natural stands, due to the loss of down logs from salvage during harvest  
13 and site preparation activities, and the lack of large trees left as a source of future down wood.”

14 84.

15 Explicitly for these reasons, and because “large logs will persist longer and will provide  
16 wildlife with habitat continuity over longer periods of time,” the FMP purposefully requires that  
17 “plan contains strategies to replicate old forest conditions that include requirements for the size  
18 of down logs.”

19 **FIRST CLAIM FOR RELIEF**

20 **(Review of an Agency Order Other Than a Contested Case)**

21 85.

22 Petitioners incorporate by reference all preceding paragraphs.

23 86.

1  
2 The Department’s management of state forests must be consistent with the Forest  
3 Management Plan. The Department’s implementation plan must be consistent with the Forest  
4 Management Plan. The Department’s annual operations plan must be consistent with the Forest  
5 Management Plan. The Forest Management Plan is an administrative rule and constitutes legally  
6 binding guidance upon the Department. The Forest Management Plan “provides management  
7 direction” for the Santiam State Forest.

8 87.

9 The governing FMP specifies to “[c]ontribute to biological diversity of forest stand types  
10 and structures at the landscape level and over time,” the implementation plans will include forest  
11 stand types, and desired future stand conditions and management restrictions that lead to these  
12 goals. To these ends, the FMP specifically requires that the implementation plan assign a  
13 “desired future condition array” across the landscape, describe the “current condition of stands  
14 types and their distribution,” and describe the “[p]roposed management activities for the ten-year  
15 period that will be necessary to move toward the desired future condition.”

16 88.

17 The Department’s revised implementation plan fails to describe the current condition of  
18 stand types and their distribution across the Santiam State Forest. The State Forester’s revised  
19 implementation plan fails to describe management restrictions or proposed management  
20 activities necessary to move towards the desired future condition within these stands. The 2021  
21 annual operations plan states that the work to retype the stands within the burn has only just  
22 begun.

23 89.  
24  
25

1  
2 The logging of post-fire forests will substantially slow attainment of their desired future  
3 condition, and the Department in the revised implementation plan does not even attempt to argue  
4 otherwise. The proposed logging is not “necessary to move toward the desired future condition”  
5 and thus violates the “site-specific goals for forest resources” within the FMP that are required  
6 by Oregon law to achieve forest diversity.

7 90.

8 The revised implementation plan and corresponding annual operations plan is thus  
9 agency action “outside the range of discretion delegated to the agency by law,” under ORS  
10 183.484(5)(b)(A) and is “inconsistent with an agency rule, an officially stated agency position, or  
11 a prior agency practice,” under ORS 183.484(5)(b)(B). Individual timber sales sold under these  
12 plans are “outside the range of discretion delegated to the agency by law” under ORS  
13 183.484(5)(b)(A) and “inconsistent with an agency rule, an officially stated agency position, or a  
14 prior agency practice,” under ORS 183.484(5)(b)(B).

15 91.

16 The revised implementation plan states that post-fire harvest, including both clearcutting  
17 and partial cutting, will occur on 437 acres of designated future condition Layered and Older  
18 Forest Structure forests.

19 92.

20 The #2 Niagara Restoration timber sale was auctioned and sold on February 18, 2021  
21 under the 2021 revised annual operations plan. The #2 Niagara Restoration timber sale  
22 authorizes the purchaser to conduct a modified clearcut of forest stands with a Desired Future  
23 Condition of Layered or Older Forest Structure. This proposed logging is not necessary to move  
24 these forest stands to the designated Desired Future Conditions.

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93.

The #2 Niagara Restoration timber sale has been partially logged. Forest stands designated to become complex forests have been clearcut. Logging operations associated with the #2 Niagara Restoration timber sale are ongoing or have been completed.

94.

The Sevenmile timber sale was auctioned and sold on March 11, 2021. The Sevenmile timber sale authorizes the purchaser to conduct a modified clearcut of forest stands with a Desired Future Condition of Layered. The proposed logging is not necessary to move these forest stands to the designated Desired Future Condition.

95.

The Gawley Panther and Packsaddle timber sales authorized under the 2021 revised annual operations plan contemplate the modified clearcutting of forest stands with a Desired Future Condition of Layered and Older Forest Structure.

96.

The revised implementation plan and corresponding annual operations plan must be reversed, set aside, and/or remanded to the Department under ORS 183.484. Any further auction, award, or implementation of timber sales under the February 2021 revised implementation plan must be suspended until the violations of law set forth above have been remedied by the agency.

**SECOND CLAIM FOR RELIEF**

**(Review of an Agency Order Other Than a Contested Case)**

97.

Petitioners incorporate by reference all preceding paragraphs.

98.

1  
2 To the extent the Department has represented in the revised implementation plan that the  
3 post-fire logging of forest stands with designated Desired Future Conditions of Layered and  
4 Older Forest Structure is necessary to achieve these desired future conditions, this position does  
5 not represent the best available science and is not supported by the substantial evidence in the  
6 record.

7 99.

8 The State Forester is required to “include strategies that utilize the best scientific  
9 information available to guide forest resource management actions.” OAR 629-035-0030(3)(d).  
10 The 2021 revised implementation plan does not cite a single scientific study or provide any  
11 scientific support for the proposition that logging post-fire forests is necessary for these forests to  
12 achieve the desired complex future conditions. Petitioners provided numerous scientific studies  
13 that establish that post-fire logging will drastically hinder these forest stands’ ability to develop  
14 into desired complex forest stands.

15 100.

16 The revised implementation plan states that post-fire harvest, including both clearcutting  
17 and partial cutting, will occur on 437 acres of designated future condition Layered and Older  
18 Forest Structure forests. The revised implementation plan does not explain or even assert that the  
19 logging of these areas is necessary to move toward the desired future condition. The revised  
20 implementation plan does not even describe the current condition of these stands. The  
21 contemplated logging of these areas violates FMP requirements that management activities must  
22 be necessary to achieve the desired future condition.

23 101.

1  
2 The Oregon Department of Fish and Wildlife provided written input on the Department’s  
3 draft revised implementation plan citing key studies and sources regarding the broadly accepted  
4 scientific view that logging post-fire forests delays forest recovery into complex, older stands  
5 like those for which the Department is required to manage on the Santiam State Forest. The  
6 comments highlighted the potential for post-fire logging to harm fish, wildlife, habitat, water  
7 quality, and other attributes for which the Department is required to manage the Santiam State  
8 Forest. The revised implementation plan did not describe how its proposed activities would  
9 comply with the established body of science regarding the impacts of post-fire logging to forest  
10 recovery.

11 102.

12 The Oregon Department of Environmental Quality (“DEQ”) provided written input on  
13 the Department’s draft revised implementation plan. The comments highlighted the importance  
14 of careful post-fire management of the Santiam State Forest as a key landscape within the  
15 Santiam River watershed. Due to its location and resource conditions, DEQ described the  
16 Santiam State Forest as “a critical piece of the landscape” for ensuring downstream water  
17 quality, healthy aquatic habitat, and drinking water supplies.<sup>10</sup> DEQ noted the Department’s  
18 choice of management activities “could enhance or inhibit ecological recovery.”<sup>11</sup> The revised  
19 implementation plan did not analyze how its planned logging activities would contribute to water  
20 quality or ecological recovery.

21 103.

22 “The court shall set aside or remand the order if it finds that the order is not  
23

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24 <sup>10</sup> Oregon Department of Environmental Quality, “Oregon DEQ comments on Santiam State  
Forest Management Plan Revisions.” (Dec. 18, 2020.)

25 <sup>11</sup> *Id.*

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2 supported by substantial evidence in the record. Substantial evidence exists to support a  
3 finding of fact when the record, viewed as a whole, would permit a reasonable person to  
4 make that finding.” ORS 183.484(5)(c).

5 104.

6 The Court should set aside or remand the revised implementation plan because no  
7 substantial evidence exists in the record that would permit a reasonable person to conclude that  
8 the best available science supports the contention that the post-fire logging of forest stands is  
9 necessary for these areas’ development into complex forests.

10 **PETITIONERS’ PRAYER FOR RELIEF**

11 Petitioners respectfully request that this Court:

- 12 1. Determine that the Department violated or erroneously interpreted its legal obligations  
13 through its failure to describe current stand types and designate necessary management activities  
14 or management restrictions within these stands to move them towards their respective desired  
15 future conditions.
- 16 2. Determine that any assertion that post-fire logging is necessary to develop complex  
17 forests is not supported by the substantial evidence in the record.
- 18 3. Reverse, remand, or set aside the Department’s adoption of the February 2021 revised  
19 implementation plan and corresponding annual operations plan for violations of the governing  
20 Forest Management Plan, as an action outside the range of discretion afforded to the Department,  
21 and as an action inconsistent with the Department’s own rules, positions, and practices. ORS  
22 183.484(5)(b)(A); ORS 183.484(5)(b)(B).



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4. Prohibit any further implementation, auction, award, or sale of timber sales under the February 2021 revised implementation plan until the violations of law set forth above have been remedied by the agency.

5. Award Petitioners their reasonable costs and attorneys' fees pursuant to ORS 183.497 or other authority; and

6. Grant Petitioners such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 14th day of April, 2021.



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*Attorney for Petitioners*

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2 **CERTIFICATE OF FILING**

3 I hereby certify that I electronically filed the foregoing with Multnomah County Circuit  
4 Court by using the Oregon Judicial Department’s online filing system on April 14th, 2021.

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6 

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8 \_\_\_\_\_  
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14 *Attorney for Petitioners*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on April 14th, 2021 I served a true copy of this petition for judicial  
17 review and accompanying documents using the Court’s electronic filing system and by United States  
18 Postal Service, certified or registered mail, return receipt requested at the addresses set forth below  
19 to:

20 Ellen Rosenblum  
21 Attorney General  
22 1162 Court Street NE  
23 Salem, OR 97301-4096

24 Peter Daugherty, State Forester  
25 Department of Forestry  
2600 State Street  
Salem, OR 97310

26 

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