

Agenda Item No.:	C
Work Plan:	Administrative Work Plan
Topic:	Petition for Rehearing and/or Reconsideration
Presentation Title:	Final Order – John West
Date of Presentation:	November 1, 2017
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SUMMARY

The purpose of this agenda item is to consider the petition for rehearing and/or reconsideration of the final order issued on July 25, 2017 by the Board of Forestry for order of the state forester (repair orders) involving several forest practices violations by John West (Agency case numbers 16-SW046 & 16-SW047).

CONTEXT

The Oregon Forest Practices Act though ORS 527.700 allows for appeals from orders of the State Forester and allows the Board to establish rules to carry out the appeal process. In OAR 629-001-0050, the Board established a rule that before a party can appeal a Board’s Final Order, the party must first file a petition for reconsideration or rehearing by the Board. Once the Board has ruled on the petition for reconsideration or rehearing, ORS 527.700(2) provides for appeals from the Final Order as allowed by ORS 183.482. The Respondent has taken the next step in the process for appealing the Final Order issued by the Board on July 25, 2017 involving case numbers 16-SW046 and 16-SW047 requesting that the Board allow rehearing and/or reconsideration of the Final Order.

BACKGROUND

John West of Brimstone Natural Resources Co. (Respondent) appealed the repair orders on December 6, 2016. John West through his legal counsel waived the timeline requirements for this hearing. A contested case hearing was conducted by an administrative law judge (ALJ Barber) on March 29 and 30, 2017. John West presented 7 exhibits and 5 witnesses. The Department presented 32 exhibits and 5 witnesses. An Assistant Attorney General for Department of Justice (DOJ), represented ODF because of the complexity of the case and possible legal argument surrounding the administrative search warrant along with mining laws, specifically jurisdiction of Oregon Forest Practices Act over mining activities. ALJ Barber allowed for written closing arguments to be submitted on April 18, 2017. ALJ Barber issued the proposed final order on June 19, 2017.

The proposed final order found in favor of ODF’s positions and found the Respondent’s arguments unpersuasive. The BOF issued an amended Final Order on July 25, 2017 in favor of ODF. The Respondent filed the current petition for rehearing and/or reconsideration of the

case on September 22, 2017. The petition recited many of the same legal arguments that were considered by the ALJ during the hearing, and raised objections to many of the factual findings that were either made by the ALJ, or omitted by the ALJ as not relevant to his ultimate determination. Staff and DOJ have reviewed the petition and found no new legal arguments and no basis for changing the findings of fact. Additional summary background information can be found in the July 25, 2017 Board of Forestry meeting “Proposed final order review – John West” staff report. The record of the hearing and exhibits are available for Board members to review by contacting Greg Wagenblast at (503)945-7382.

ALTERNATIVES CONSIDERED

Upon review of the petition, the Board can:

- A) Accept or deny the petition:
 - 1) Accept the petition at public meeting within 60 days; proceed to (B)
 - 2) Deny the petition at public meeting within 60 days
 - 3) Take no action within 60 days and petition is denied as a matter of law

- B) If the petition is accepted, then the Board can:
 - 1) Take steps to evaluate the arguments or clarify the record:
 - a) Board evaluation of written or oral arguments
 - b) Office of Administrative Hearings (OAH) further hearing on specific factual issues
 - 2) Ultimately make a decision to Modify or Affirm the Final Order

RECOMMENDATION

The Department recommends alternative A(2) as the Respondent’s Petition fails to present any new legal arguments or basis for changing the findings of fact.

ATTACHMENTS

- (1) Petition for rehearing and/or reconsideration submitted by John West