

Oregon Board of Forestry – Virtual Special Public Meeting

Thursday, February 25, 2021

With the current public gathering restrictions, the Board of Forestry will hold a special meeting virtually to allow interested persons to view the meeting. The Board of Forestry public meeting will be conducted online and streamed live. No public comment will be allowed for this special February meeting.

**Link to view Board of Forestry Meeting available at
<https://www.youtube.com/c/OregonDepartmentofForestry>**

Prior meetings' audio and this meeting's written material available on the web www.oregon.gov/odf/board. The matters under the Consent Agenda will be considered in one block. Any board member may request removal of any item from the consent agenda. Items removed for separate discussion will be considered after approval of the consent agenda. Public comment will not be taken on consent agenda items.

Board Roll Call and Meeting Instructions

2:30 – 2:34

Consent Agenda

2:34 – 2:35 **A. *Petition for Rehearing or Reconsideration of Final Orders – Siskiyou Cascade Resources (SCR)**.....
.....Kyle Abraham and Greg Wagenblast

Times listed on the agenda are approximate. At the discretion of the chair, the time and order of agenda items—including addition of an afternoon break—may change to maintain meeting flow. The board will hear public testimony [*excluding marked items] and engage in discussion before proceeding to the next item.* A single asterisk preceding the item number marks a work session, and public testimony/comment will not be accepted.

BOARD WORK PLANS: Board of Forestry (Board) Work Plans result from the board's identification of priority issues. Each item represents commitment of time by the Board of Forestry and Department of Forestry staff that needs to be fully understood and appropriately planned. Board Work Plans form the basis for establishing Board of Forestry meeting agendas. Latest versions of these plans can be found on the Board's website at: <https://www.oregon.gov/odf/Board/Pages/AboutBOF.aspx>

PUBLIC TESTIMONY: The Board of Forestry places great value on information received from the public. The Board will only hold public testimony at the meeting for decision items. The Board accepts written comments on all agenda items except consent agenda and Work Session items [see explanation below]. Those wishing to testify or present information to the Board are encouraged to:

- Provide written summaries of lengthy, detailed information.
- Remember that the value of your comments is in the substance, not length.
- For coordinated comments to the Board, endorse rather than repeat the testimony of others.
- To ensure the Board will have an opportunity to review and consider your testimony before the meeting, please send comments no later than 72 hours prior to the meeting date. If submitted after this window of time the testimony will be entered into the public record but may not be viewed by the Board until after the meeting.
- For in-person meetings, sign in at the information table in the meeting room when you arrive. For virtual meetings, follow the sign up instructions provided in the meeting agenda.

Written comments for public testimony provide a valuable reference and may be submitted before, during, or up to two weeks after the meeting for consideration by the Board. Please submit a copy to BoardofForestry@oregon.gov, and written comments received will be distributed to the Board. Oral or written comments may be summarized, audio-recorded, and filed as record. Audio files and video links of the Board's meetings are posted within one week after the meeting at <https://www.oregon.gov/odf/Board/Pages/BOFMeetings.aspx>. The Board cannot accept comments on consent agenda items or a topic for which a public hearing has been held and the comment period has closed.

WORK SESSIONS: Certain agenda topics may be marked with an asterisk indicating a "Work Session" item. Work Sessions provide the Board opportunity to receive information and/or make decisions after considering previous public comment and staff recommendations. No new public comment will be taken. However, the Board may choose to ask questions of the audience to clarify issues raised.

- During consideration of contested civil penalty cases, the Board will entertain oral argument only if Board members have questions relating to the information presented.
- Relating to the adoption of Oregon Administrative Rules: Under Oregon's Administrative Procedures Act, the Board can only consider those comments received by the established deadline as listed on the Notice of Rulemaking form. Additional input can only be accepted if the comment period is formally extended (ORS 183.335).

GENERAL INFORMATION: For regularly scheduled meetings, the Board's agenda is posted on the web at www.oregonforestry.gov two weeks prior to the meeting date. During that time, circumstances may dictate a revision to the agenda, either in the sequence of items to be addressed, or in the time of day the item is to be presented. The Board will make every attempt to follow its published schedule, and requests your indulgence when that is not possible.

In order to provide the broadest range of services, lead-time is needed to make the necessary arrangements. If special materials, services, or assistance is required, such as a sign language interpreter, assistive listening device, or large print material, please contact our Public Affairs Office at least three working days prior to the meeting via telephone at 503-945-7200 or fax at 503-945-7212.

Use of all tobacco products in state-owned buildings and on adjacent grounds is prohibited.

Agenda Item No.:	A
Work Plan:	Administrative Work Plan
Topic:	Petition for Rehearing and/or Reconsideration
Presentation Title:	Final Order – Siskiyou Cascade Resources LLC Three cases: 19-SW002, 19-SW003 and 19-SW007
Date of Presentation:	April 25, 2021
Contact Information:	Greg Wagenblast, Civil Penalties Administrator, Private Forests Division, 503-945-7382, greg.wagenblast@oregon.gov Kyle Abraham, Division Chief, Private Forests Program

SUMMARY

The purpose of this agenda item is to consider the petition for rehearing and/or reconsideration of the final orders issued on November 4, 2020, by the Board of Forestry for the order of the state forester (repair orders) involving several forest practices violations by Siskiyou Cascade Resources LLC (Agency case numbers for one order relate to 19-SW002 and 19-SW003 with a second-order relating to 19-SW007).

CONTEXT

The Oregon Forest Practices Act (ORS 527.610 through ORS 527.770) 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 Orders issued by the Board on November 4, 2020, involving case numbers 19-SW002 and 19-SW003 for one request and a second-order relating to 19-SW007, both requesting that the Board allow rehearing and/or reconsideration of the Final Orders for each.

BACKGROUND

ODF Case No. 19-SW002 & 19-SW003

Siskiyou Cascade Resources LLC. (Respondent) appealed the repair orders on September 6, 2019. Siskiyou Cascade Resources LLC (SCR) through legal counsel waived the timeline requirements for this hearing. A contested case hearing was conducted by an administrative law judge (ALJ Triana) on July 9 and 10, 2020. SCR presented no exhibits and 1 witness. The Department presented 68 exhibits and 5 witnesses. An Assistant Attorney General for the Department of Justice (DOJ), represented ODF because of the complexity of the case and possible legal arguments. ALJ Triana issued the proposed final order on July 29, 2020.

ALJ Triana's proposed final order found in favor of ODF's positions and made the following Conclusion of Law:

1. Respondent failed to design and construct a stream crossing over Murphy Creek that allowed migration of fish upstream and downstream during conditions when fish movement in the stream normally occurs, in violation of OAR 629-625-0320(2)(b).
2. Respondent failed to design and construct a stream crossing over Spencer Creek that allowed migration of fish upstream and downstream during conditions when fish movement in the stream normally occurs, in violation of OAR 629-625-0320(2)(b).
3. The Department may require Respondent to cease further violations of OAR 629-625-0320(2)(b).
4. The Department may order Respondent to repair the damage or correct unsatisfactory condition(s) caused by the violation(s) of OAR 629-625-0320(2)(b).

The BOF issued a Final Order on November 4, 2020, that adopted the ALJ's proposed order in favor of ODF, with the only change being to the timeline of required repairs. The Respondent filed the current petition for rehearing and/or reconsideration of the case on December 29, 2020, by US Mail. The petition states:

"Siskiyou Cascade Resources requests rehearing because it is no longer in privity with the owner of the land the subject of the citation and has no authority to enter the subject property and engage in the remediation ordered. At the time of citation and hearing, the subject property was owned by an affiliate of Siskiyou Cascade Resources but the property has subsequently been sold to a private party not enjoined in this matter."

Department staff has consulted with DOJ and recommends that the Board find that Respondent's arguments fail to form a basis for changing the findings of fact or conclusions of law. Staff believes that the Forest Practices Act allows for operators to be held responsible for their violations and that operators must work with landowners to coordinate making repairs on land that the operator does not own. Additional summary background information can be found in the November 4, 2020 Board of Forestry meeting "Proposed final order review – Siskiyou Cascade Resources LLC" staff report. The record of the hearing and exhibits are available for Board member's review by contacting Greg Wagenblast at (503) 945-7382.

ODF Case No. 19-SW007

Siskiyou Cascade Resources LLC. (Respondent) appealed the repair orders on August 21, 2019. Siskiyou Cascade Resources LLC (SCR), through legal counsel, waived the timeline requirements for this hearing. A contested case hearing was conducted by an administrative law judge (ALJ Triana) on August 6, 2020. SCR presented no exhibits or witnesses for this case hearing. The Department presented 47 exhibits and two witnesses. An Assistant Attorney

General for the Department of Justice (DOJ) represented ODF because of the complexity of the case and possible legal arguments. ALJ Triana issued the proposed final order on August 21, 2020.

ALJ Triana's proposed final order found in favor of ODF's positions and made the following Conclusion of Law:

1. Respondent failed to drain skid trails by water barring or other effective means immediately following completing of the operation, resulting in significant down-slope erosion and delivery of excessive sediment to waters of the state, in violation of OAR 629-630-0300(3).
2. The Department may require Respondent to cease further violation of OAR 629-630-0300(3).
3. The Department may order Respondent to repair the damage or correct unsatisfactory condition caused by the violation of OAR 629-630-0300(3).

The BOF issued a Final Order on November 4, 2020, that adopted the ALJ's proposed order in favor of ODF. The Respondent filed the current petition for rehearing and/or reconsideration of the case on December 29, 2020, by US Mail. The petition states:

“Siskiyou Cascade Resources requests rehearing because the record fails to establish statutory or administrative authority for the contention of the Department that it can place future deadlines on further remediation where failure to meet the deadline is subject to citation. Here, Siskiyou Cascade addressed the immediate concerns of the Department in January but the Steward Forester wanted additional remediation completed by mid-June. Siskiyou Cascade completed the additional remediation but didn't finish to the satisfaction of the Department until August. This citation issued for failure to meet the deadline given by the Steward Forester and there is no authority for this penalty where, as here, there is no immediate risk of detriment to the resource if the deadline is not met.”

Staff has consulted with DOJ and recommends that the Board find that Respondent's arguments fail to form a basis for changing the findings of fact or conclusions of law. Additional summary background information can be found in the November 4, 2020 Board of Forestry meeting “Proposed final order review – Siskiyou Cascade Resources LLC” 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 petitions, 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 and the petition shall be deemed denied by a matter of law on the 60th day following the date the petition was filed

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) Refer the matter back to the Office of Administrative Hearings (OAH) for further hearing on specific factual issues
- 2) Ultimately make a decision to Modify or Affirm or Withdraw the Final Order

RECOMMENDATION

ODF Case No. 19-SW002 & 19-SW003

The Department recommends alternative A(2) as the Respondent's Petition fails to present any new information that justifies changing the findings of fact or conclusions of law.

ODF Case No. 19-SW007

The Department recommends alternative A(2) as the Respondent's Petition fails to present any new information that justifies changing the findings of fact or conclusions of law.

ATTACHMENTS

1. Petition for rehearing and/or reconsideration submitted by Siskiyou Cascade Resources LLC ODF Case No. 19-SW002 & 19-SW003
2. Petition for rehearing and/or reconsideration submitted by Siskiyou Cascade Resources LLC for ODF Case No. 19-SW007

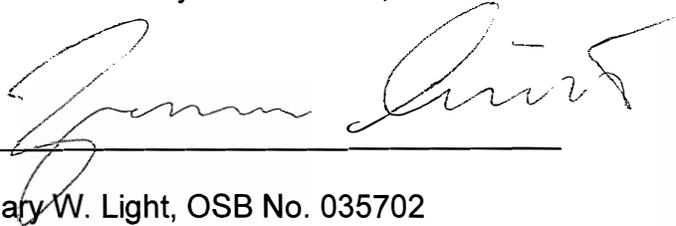
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REQUEST FOR RECONSIDERATION

Siskiyou Cascade Resources asks the Board to, in the alternative, reconsider its issuance of the Final Order in this matter.

Respectfully submitted.

Dated this 28th day of December, 2020.

By: 

Zachary W. Light, OSB No. 035702
Attorney for Siskiyou Cascade Resources, LLC

Zachary W Light, P.C.
14 N. Central Ave. #101
Medford, OR 97501
Ph.: 541-494-0355 / 541-494-0354

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ACHARY W. LIGHT, P.C.
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ODF MAILROOM

Greg Wagenblast
Dept of Forestry
2600 State St., Bldg D
Salem, OR 97310

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for the
OREGON DEPARTMENT OF FORESTRY
PRIVATE FORESTS

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IN THE MATTER OF:) PETITION FOR REHEARING OR
) RECONSIDERATION
SISKIYOU CASCADE RESOURCES,)
ABN OF SISKIYOU CASCADE) OAH Reference No.:
RESOURCES LLC) 2019-ABC-03047
) Agency Case Nos.:
) 19-SW007
)

COMES NOW Siskiyou Cascade Resource, LLC, by and through their attorney
Zachary W. Light, and hereby submits the following request for rehearing or
reconsideration.

REQUEST FOR REHEARING

Siskiyou Cascade Resources requests rehearing because the record fails to
establish statutory or administrative authority for the contention of the Department
that it can place future deadlines on further remediation where failure to meet the
deadline is subject to citation. Here, Siskiyou Cascade addressed the immediate
concerns of the Department in January but the Steward Forester wanted additional
remediation completed by mid-June. Siskiyou Cascade completed the additional
remediation but didn't finish to the satisfaction of the Department until August. This
citation issued for failure to meet the deadline given by the Steward Forester and

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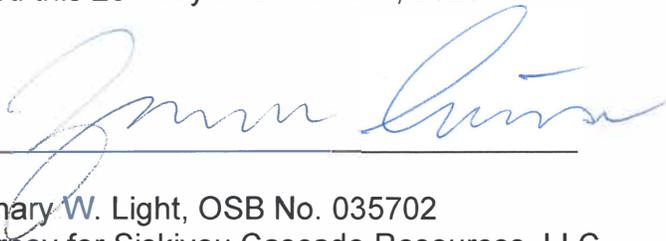
1 there is no authority for this penalty where, as here, there is no immediate risk of
2 detriment to the resource if the deadline is not met.

3 REQUEST FOR RECONSIDERATION

4 Siskiyou Cascade Resources asks the Board to, in the alternative, reconsider its
5 issuance of the Final Order in this matter.

6 Respectfully submitted.

7 Dated this 28th day of December, 2020.

8
9
10 By: 
11 _____

12 Zachary W. Light, OSB No. 035702
13 Attorney for Siskiyou Cascade Resources, LLC
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