

April 14, 2014

Thomas Imeson, Chair  
Oregon Board of Forestry  
2600 State Street  
Salem, Oregon

Dear Chair Imeson and Members of the Board of Forestry:

Good morning. My name is Scott Hayes. I'm the president of the Oregon Small Woodlands Association. My wife and I live on our 40 acre woodland northwest of Forest Grove. In the audience are several OSWA members.

OSWA's Executive Director Jim James and I submitted a letter on April 4<sup>th</sup> requesting that the Board press the pause button on the rule making process. I understand you received our letter.

### **The Oregon Way**

First, I'd like to briefly review my understanding of the original thinking behind ORS 527.714 that guides the Board's rulemaking process and, in part, forms the basis for OSWA's letter.

After previous Boards in the early 1990s passed the significant wetland rules, the T&E species rules, the sensitive bird site rules, followed by rules addressing the stream classification and protection, clearcut size limits, scenic highway buffers, leave trees in harvest units and reforestation, it was felt that over 95% of resource protection that could be gained through regulatory actions under the FPA had occurred. The 1996 Legislature believed that additional protections would have little likely gain, but at great cost. The leaders at that time were keenly aware that Washington and California had adopted many process rules that might be used to limit forest operations, but that did not actually result in any practical resource protection on the ground. The result was ORS 527.714 – the Oregon Way.

This law created a very deliberative process for the adoption of additional resource protection rules, requiring evidence of a problem, practical solutions, proportionality (for example don't solve water quality problems on urban and rural land, agricultural lands, or in estuaries, by requiring more from forestlands), and a rigorous evaluation of the economic impacts of increased regulation compared to the projected benefits of a new rule.

### **Problem with the Checklist**

In the current process, the Board's checklist seems to limit the deliberative process envisioned in the Oregon Way. The flaw in the checklist is that, once an item is checked, it appears that the opportunity to revisit the decision is closed. I believe a flow chart process that allows continuous rethinking of previous actions is more appropriate. Examples of the shortcomings

in using a checklist are the decisions made in March and November 2103 on scientific information and monitoring. But the three-part subsection of ORS 527.714 (5)(c) reads:

*“The proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon.”*

OSWA believes the Legislature's intent in ORS 527.714 supports a Board decision to have adequate field evaluations of the 33 RipStream sites to find out what worked and what didn't work. This is what OSWA proposed in our April 4<sup>th</sup> letter.

### **Purpose of a Rule**

Another checked box in April 2012 relates to the Protecting Cold Water (PCW) rule objective. Apparently the rule objective is proposed under the existing stream rule purpose and goal statements. If protecting a cold water temperature standard is critical to Oregonians, then family woodland owners should know exactly what the purpose of a PCW rule is, what resources are being protected, and the level of protection required by them, as required under ORS 527.714(4).

### **Alternatives Rejected**

In July 2012, 16 rule alternatives were proposed, such as variable retention that included large tree retention, minimizing gaps, and south-side stream buffers, plus alternatives centered on field-based shade standards, shrub shade, hardwood shade contributions, and the Oregon Plan. However, the door was closed on these alternatives in November 2013 because there was no “scientific evidence base” found in the literature search that these management opportunities might meet the PCW standard. OSWA disagrees. With adequate field evaluations, the Board will have available for its consideration valuable input about whether these rejected alternatives may in fact be practical, practicable, and the “least burdensome” alternatives for landowners.

### **Desired Future Conditions**

During early stakeholder input, many thought the desired future conditions rule for riparian areas should be reviewed. Unfortunately, it was decided not to revisit OAR 629-640-0000. Yet it is abundantly clear that on most family woodlands, and many larger forestland ownerships, a mature conifer riparian forest does not exist, and has never existed. Mixed hardwood and conifer forests are the norm on family woodland owner riparian areas.

Woodland owners and foresters familiar with managing riparian areas understand that “good shade” comes from hardwoods, while conifers usually provide “tube shade” that is only effective if there are a lot of them. Unfortunately, it appears that rule prescriptions using a “novel statistical approach” focus only on conifer basal area. Hopefully the Board will revisit the conifer-centric desired future condition rule, plus revive the discussions on rule alternatives related to shade and hardwoods in riparian areas.

### **Summary**

OSWA believes on-the-ground field reviews by professional practitioners can provide the Board with practical, realistic and effective solutions and strategies for managing riparian areas. As stated in our April 4<sup>th</sup> letter, there are other benefits when the pause button is pressed:

- Allows time for the Board to be better informed about pending findings from other watershed studies.
- Gives the Board and the Environmental Quality Commission more time to jointly review the science, the policies and the politics that underpin the PCW criterion.

The success of the Forest Practices Act since 1971 is because of its popular support by landowners who understand the benefits of practical, realistic rules that protect the tangible resources Oregonians enjoy.

Thank you for your consideration and your hard work on these important issues.

Sincerely,

Scott Hayes  
President, Oregon Small Woodlands Association