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July 30, 2009

Via Priority Mail – Certified Mail
Return Receipt Requested # 7006 2150 0001 2766 5497
Oregon Board of Forestry
2600 State Street
Salem, OR 97310

Re: Petition for Reconsideration of Decision Made at June 3, 2009 Board of Forestry Meeting

Dear Board of Forestry:

Enclosed please find a Petition for Reconsideration of the State Forests Work Plan 2, IBI-6 changes to the NW Forest Management Plan made by the Oregon Board of Forestry on June 3, 2009.

This petition is filed on behalf of the Sierra Club, the Pacific Rivers Council, the Center for Biological Diversity, the Coast Range Association, Inc., the Wild Salmon Center, the Native Fish Society, the Association of Northwest Steelheaders and the Northwest Guides and Anglers Association.

Thank you for your kind attention to these matters and I look forward to hearing from you.

Sincerely,

Ralph Bloemers

Ralph O. Bloemers

cc: Attorney General John Kroger (via priority mail)
David Leith, Esq. (via priority mail)
Michael Carrier, Natural Resources Policy Director (via priority mail)

STATE OF OREGON
BEFORE THE BOARD OF FORESTRY

IN THE MATTER OF State Forests Work Plan 2, IBI-6 Changes to the NW Forest Management Plan made by the Oregon Board of Forestry	OAH No. _____ Agency Case No. _____
Sierra Club, Pacific Rivers Council, Native Fish Society, Center for Biological Diversity, Coast Range Association, Inc., Wild Salmon Center, Association of Northwest Steelheaders, Inc. and Northwest Guides and Anglers Association *Petitioners.*	**PETITION FOR RECONSIDERATION**

I. Introduction.

Petitioners the Sierra Club, the Pacific Rivers Council, the Center for Biological Diversity, the Coast Range Association, Inc., the Wild Salmon Center, the Native Fish Society, the Association of Northwest Steelheaders and the Northwest Guides and Anglers Association ("Petitioners") respectfully request reconsideration of the decision issued by the Board of Forestry ("BOF") to modify the state forest management plan to reduce the target for older, complex forest from 50% to 30%. Pursuant to OAR 137-004-0080 and ORS 183.484, Petitioners request that the BOF reconsider and reverse its decision or provide the science supporting its decision consistent with the requirements of state law.

Petitioners submit that the BOF has not complied with the legal requirements established by statute and its own governing regulations. Specifically, the BOF has disregarded its

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obligation under OAR 629-035-0010(5)(e) to manage the state forests using the best available science and instead the BOF has approved a plan based on predictions which do not comply with the mandates of state law. The BOF has an obligation to *maintain and restore* properly functioning aquatic habitats for salmonids under OAR 629-035-0030. Instead of doing so, the BOF adopted a plan that has a high potential for harming aquatic habitats that are in need of restoration. These aquatic habitats support imperiled species like the Oregon coast coho. By approving this modification of the plan, the BOF has exceeded the decision-making authority granted to it by statute and implemented a plan through its own administrative rules. In so doing, the BOF has ignored its statutory obligations to manage the state forestlands to achieve the greatest permanent value for the State of Oregon.

For these reasons, the Petitioners request that the BOF reconsider its decision, respond to the public and, ultimately, reverse the decision and comply with state law.

II. Background.

In April 2009, the BOF adandoned its long-standing practice of making decisions by consensus. Prior to the June 3, 2009 meeting, Chair John Blackwell was sent numerous comments from members of the public and from representatives of the Oregon State legislature. In a letter dated June 2, 2009, Senator Jackie Dingfelder wrote to Chair Blackwell saying that:

> "I do not believe that Oregon's interests would be best served by raising timber production above other values on the forest, nor do I believe that a decision on forest management should be made if the record is not ready. In particular, I hope that you will take care that long-range management decisions are anchored in peer-reviewed and interdisciplinary science. My experience has been that shortcuts on science often lead to long delays on implementation."

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Attached as **Exhibit 1** hereto. The record for the June 3, 2009 meeting does not show that Senator Dingfelder's comments or comments submitted by members of the public were provided to the other board members prior to the Chair calling for a vote on the proposed revision.

Yet despite this input, at its June 3, 2009 meeting, the BOF voted 4 to 2 to approve a modification of the state forest management plan that would effectively reduce the target for older, complex forest from 50% down to 30%. These changes threaten significant negative impacts to aquatic and terrestrial habitat, do not comport with the requirements of state law and are not based on the best available science. The reduction in the targeted acreage for older forests threatens to significantly increase clear cutting in the northern Coast Range in an area that is already dominated by clear cutting practiced by industrial forest land owners and permitted by the Oregon State Forest Practice Act. As the Department of Forestry's own review of this approach noted, the increased harvest will have "a low probability of maintaining or enhancing hydrologic function" and will result in "more watersheds in a high risk category." Species of Concern report ("SOC report") at 27.

Furthermore, the BOF decision was not informed by key scientific and policy issues. There was no consideration of climate change in the decision, either in terms of carbon sequestration or in terms of the way climate change will affect the forests and the metrics that the Oregon Department of Forestry is using to measure habitat health and other key requirements of state law. Unlike the 2001 state forest plan, there was no independent peer review of the effect of the proposed changes on threatened and endangered species. The current Salmon Anchor

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Habitat strategy, which the BOF endorsed in 2004, was seriously weakened without any review of the costs and benefits of continuing most of the strategy's components.

The stated rationale for BOF's new plan was to "[r]evise the Northwest Oregon Forest Management Plan to allow a different balance of economic, environmental, and social benefits." (Agenda Item 4, State Forests Work Plan 2, IBI 6 – Improve Northwest Management Plan to achieve desired outcomes, 5, June 3, 2009). In fact, the BOF has shifted away from a balanced mix of environmental protections and resource extraction toward one that tips in favor of resource extraction, focusing primarily on generating revenues from timber harvests rather than ensuring the greatest permanent value from state forest lands. *Compare* first Combination of Outcomes *with* second Combination of Outcomes in the Agenda Item 4.

Specifically, the BOF decided to "modify the complex forest structure range from 40 to 60% of the forest to 30 to 50%." Agenda Item 4 Staff Report at 5. Though this change appears to be relatively modest, the model that was utilized assumed a 20% shift from the goal of 50% long-term complex forest structure to 30% complex structure in the long term. Species of Concern report, Table 1, page 5, The Influence of Modeled Management Scenarios on Habitat for Species of Concern, Oregon Department of Forestry, June 3, 2009 (the "SOC report"). The 30% figure for maximal complex forest structure was also used in an earlier Oregon Department of Forestry document that set the stage for the modifications approved at the June 3, 2009 meeting.[1] Fish and Wildlife Species of Concern: List and Draft Proposed Strategies for the

[1] Specific language from the March 20, 2009 document includes, "One sideboard for our work was that we should expect that percent complex structure would not exceed 30% ..." (page 3).

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Clatsop and Tillamook State Forests, Background Paper, Oregon Department of Forestry, March 20, 2009.

The BOF actions simply do not square with Governor Kulongoski's endorsement "of deep science-based knowledge of our forests" as the basis for balanced forest management.[2] Rather, this decision was a rushed attempt to respond to pressure from certain members of the legislature, while the broader public interest and the requirements of state law were ignored.

III. Legal Background.

OAR 629-035-0020(1) states that the term "greatest permanent value" as used in the ORS 530.050 means healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon. The benefits include timber production; properly functioning aquatic habitats for salmonids, and other native fish and aquatic life; habitats for native wildlife; productive soil, and clean air and water; protection against floods and erosion; and recreation. *Id.*

OAR 629-035-0020(2) provides that the State Forester shall maintain these lands as forest lands and actively manage them in a sound environmental manner to provide sustainable timber harvest and revenues to the state, counties, and local taxing districts. Yet this particular management goal is not exclusive of other forest resources, but must be pursued within a broader management context that: "(a) [r]esults in a high probability of maintaining and restoring properly functioning aquatic habitats for salmonids, and other native fish and aquatic life; (b)

[2] http://governor.oregon.gov/Gov/speech_102204.shtml

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[p]rotects, maintains, and enhances native wildlife habitats; (c) [p]rotects soil, air, and water; and (d) [p]rovides outdoor recreation opportunities." OAR 629-035-0020(2)(a)-(d).

The State Forester must pursue management practices that provide for compatibility of forest uses over time, are based on the best available science and apply new management practices and techniques as new scientific information and results of monitoring become available. OAR 629-035-0020(3). The BOF is not obligated to provide timber harvests or generate revenue at the expense of other values, nor does the BOF owe any fiduciary duty to Oregon counties. See Department of Justice Memorandum dated October 16, 2006 at 1. The DOJ has further found that even if such a duty to the counties existed, this duty should not govern how the forests are managed. *Id.* In sum, the BOF must obtain the greatest permanent value from Oregon's state forests by restoring aquatic habitats, enhancing wildlife habitat, and protecting other values. The BOF cannot vaunt timber extraction above all other values.

IV. Petitioners' Interests.

Each Petitioner has a substantial interest in the state forest lands managed by the BOF. The decision to lessen the amount of older forest structure, weaken protections for older forests and the species and aquatic life that depend on them, and increase logging levels has a practical affect on each Petitioner and the tens of thousands of members that enjoy these state forest lands.

Petitioner Sierra Club is a non-profit corporation that represents over 20,000 members throughout Oregon, which includes thousands of members who enjoy the Tillamook and Clatsop state forests. The Sierra Club promotes conservation of Oregon's natural environment. The Sierra Club advocates for the protection of roadless areas, mature and old growth forests, and

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investment in ecological restoration of fish and wildlife habitat damaged by past logging and roadbuilding activities. The Sierra Club's members regularly enjoy hiking, camping, birding, wildlife watching, recreation, and ecological study within the Tillamook and Clatsop state forests.

Petitioner Association of Northwest Steelheaders ("NW Steelheaders") was formed to help conserve fish and to educate children and adults about the joys of fishing. NW Steelheaders brings together anglers to meet other anglers and find out about great places to go fishing. NW Steelheaders works to ensure that the agencies in charge of our public lands and waterways are doing what they should be doing to insure the long term health and sustainability of all anadromous fish salmon, steelhead and trout for today and future generations.

Petitioner Pacific Rivers Council ("PRC") works to protect and restore rivers, their watersheds and the native species that depend on them. PRC does this for the benefits that healthy watersheds provide to present and future generations - and for the intrinsic virtues of rivers themselves. In the West, water resources are diminishing in quality and quantity. Land use practices continue to degrade water quality and watershed health. At the same time, scientific research clearly indicates that water resources will be further impacted by climate change. Thus, the threats to freshwater ecosystems have never been more abundant or more immense. To address these issues, PRC uses a watershed approach to river and aquatic species conservation. PRC focuses its efforts on building lasting solutions for people and species that depend on healthy watersheds, working closely with leading scientists, economists, and legal experts to synthesize current knowledge of watershed conservation, injecting current knowledge

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about watershed conservation into the most significant areas of policy decision-making, taking legal action to protect aquatic resources from imminent danger, promoting the economic benefits of healthy watersheds, establishing permanent protection for the best remaining watersheds and actively promoting watershed restoration. PRC works to ensure that the best available science is used to inform and reform Oregon's policies. PRC's Legacy Rivers Program has identified the Kilchis and Little North Fork Wilson Rivers as Legacy Rivers and these rivers run through Oregon's Tillamook State Forest.

Petitioners Wild Salmon Center ("WSC") works to identify, understand and protect the best wild salmon ecosystems of the Pacific Rim. The WSC devises and implements practical strategies, based on the best science, to protect forever these extraordinary places and their biodiversity. WSC works for institutional reform so water and land management agencies can effectively carry out restoration of our degraded public lands.

Petitioner Native Fish Society ("NFS") protects and restores native, wild fish and their habitats in the Pacific Northwest. NFS works with public agencies and governments to get native fish conservation policies implemented and to ensure that native fish policies are indeed followed once implemented. NFS is involved in public policy decisions and promotes scientifically-based solutions to fish management problems. NFS encourages the involvement at both the administrative and personal levels by the public by educating them about the beauty, mystery and value of native fish and their environment. NFS advocates for scientifically sound conservation, protection, and recovery actions for native fish and their habitats in the Pacific Northwest. NFS monitors and influences public agency management decisions in favor of native

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fish. NFS inventories and monitors the status and health of native fish populations and works to improve the public's understanding of native fish ecosystem function.

Petitioner Northwest Guides and Anglers Association ("NWGA") works to protect, enhance, and promote healthy sportfisheries and the ecosystems they depend on in the Pacific Northwest. NWGA was formed to address issues that limit the productive capacity of the Northwest's rivers and streams. NWGA works for fair fishery allocations and the necessary conservation regulations that are backed by credible science to protect fisheries. NWGA works to restore water quality that limits fish production in our streams and rivers, including excessive water temperatures, and improper flow. NWGA works to reform industrial practices that negatively affect our salmonid and sturgeon fisheries to ensure that these resources are there for future generations to enjoy.

Petitioner Center for Biological Diversity ("CBD") works to secure a future for all species, great and small, hovering on the brink of extinction. CBD uses science, law, policy advocacy, and strategic collaboration to protect and restore public lands. As the coming century of global warming threatens to accelerate the extinction crisis, CBD is working to ensure that public lands provide safe harbors for species by protecting the ecological systems upon which these species depend. To this end, CBD works to directly confront land uses that harm species and ecosystems. CBD works to protect and restore western rivers as well as the native fish and wildlife that make their homes in and around them.

Petitioner Coast Range Association, Inc. ("CRA") was formed in 1991 to defend the region's interests, protect its natural and cultural endowments and restore its rivers, wetlands and

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forests. CRA is deeply committed to the stewardship of our natural resources. A balanced concern for people and the land informs the CRA mission. CRA works to build just and sustainable communities that provide for people and the natural world.

The Petitioners' recreational, aesthetic, spiritual, scientific, and educational interests will be adversely affected and irreparably injured if the BOF is able to take actions in contravention of state law. Oregon's state forests include stream habitats essential for the recovery of imperiled salmon, trout, and other native aquatic species. The changes that the BOF has made to the management plan threaten to adversely degrade the ecological integrity, native forest species habitat viability, waterways and aquatic habitat, and water quality in Oregon's state forests. The changes negatively affect the Petitioners' interests and the interest of their members, volunteers, and supporters by diminishing and irreparably altering the quality and value of the areas for recreational, educational, natural, aesthetic, and other activities throughout the state forests. Petitioners and their members have an interest in protecting these resources and the relief sought herein will remedy those injuries.

V. Argument.

A. First Ground for Reconsideration: The Board of Forestry's Decision is Inconsistent with the Oregon Administrative Rules Which Mandate That the Board Restore Properly Functioning Habitats for Fish and Wildlife.

The BOF is charged under the Oregon Administrative Rules (OAR) to manage the state forestlands for the Greatest Permanent Value (GPV) for the State of Oregon. ORS 530.050; OAR 629-035-0000 to 629-035-0110. While the BOF has chosen to put a strong emphasis on the generation of revenue through timber production in attaining GPV, the concept is actually

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much broader and includes an obligation to maintain, enhance, and restore habitat. OAR 629-035-0020(2). Even if a more narrow economic focus were permitted by state law, the BOF ignored numerous direct economic benefits of more ecologically sound and sustainable management that are provided by high-quality and high-quantity sources of water and recreationally and commercially fishable wild salmon and steelhead populations. By increasing harvest levels and reducing complex forest structure targets, the BOF has decided to generate timber revenue at the expense of other values, and in so doing has reduced the value of the public's resources in violation of state law.

As part of requiring the state forests be managed to achieve the greatest permanent value, the Oregon Administrative Rules ("OAR") specifically mandate the maintenance, restoration, and enhancement of aquatic habitats and other wildlife habitats. The OAR requires that forest conditions should be managed to "result in a high probability of maintaining and *restoring* properly functioning aquatic habitats for salmonids, and other native fish and aquatic life"[3] and also calls for "protecting, maintaining, and *enhancing* native wildlife habitats." OAR 629-035-0030 (emphasis added). In other words, the OAR requires the BOF to not just maintain the current conditions but to actually restore aquatic habitats and enhance terrestrial habitats.

The key words in the OAR are "maintain," "restore," and "enhance." The word "maintain" is defined as "to keep in a state of repair, efficiency, or validity: preserve from failure or decline." Webster's Third International Dictionary of the English Language at 1362 (1993). The word "restore" is defined as "to bring back into a healthy state: to cause to recover" and "to bring back from a state of injury or decay." *Id.* at 1936. Lastly, the common dictionary meaning

[3] Similarly, the Oregon Coast Coho Conservation Plan for the State of Oregon is based on the premise that: "*[h]abitat management and improvement is the key to protecting and enhancing coastal coho.*" Page 6, March 16, 2007 (emphasis in original).

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of "enhance" is "to raise" and to "advance, augment, elevate, heighten, increase." *Id.* at 753.

Importantly, the SOC report itself defines "maintain" and "enhance" for the purposes of discussing how these habitat parameters will be affected by the model itself.[4] However, with regards to "restoring" habitats, the SOC report avoids the issue by declaring that "[t]here are no specific standards describing a condition that represents 'habitat restoration.' Therefore, at this time [the probabilities] that the models restore habitats for species of concern are not evaluated." SOC report, page 11. As a result, the BOF has rendered the habitat restoration requirements, a critical component of the OAR, meaningless as a factor that is used in comparing the base plan with the PM + SOC model. However, the same section of the SOC report refers to Appendix D of the report, which contains detailed information regarding specific standards for habitat recovery set forth by the Oregon Coast Coho Conservation Plan. *Id.* at 54-55. Appendix D contains a metric for evaluating habitat condition and evaluation thresholds for aquatic habitat recovery. *Id.* While the BOF, in relying on the SOC report, claims that there are no specific standards for habitat restoration available and asserts that habitat restoration cannot be evaluated, this statement is directly contradicted by Appendix D, which specifically sets forth evaluation standards for restoration of habitat for certain fish species. This contradiction underscores the lack of foundation for the BOF's decision. The BOF decision is based on the unsubstantiated claim in the SOC report that measuring restoration objectives is not possible, and further illustrates the lack of support of the best available science in the BOF decision. In so doing, the BOF has ignored the "restore" requirement of the greatest permanent value rule at 035-0020.

[4] Maintain: Spatial or temporal trends suggest no net loss of habitat quantity and no decrease in habitat function. Enhance: Spatial or temporal trends suggests increased habitat quantity or improved habitat function. SOC report page 10.

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The Oregon Coast Coho Conservation Plan represents available science that the BOF could and should apply along with other available science to meet the best available science requirement.

The BOF's decision to use the PM + SOC model to reduce from 50% to 30% the target for complex forests violates the OAR requirements because this decision does not ensure that that habitat will be enhanced. With regard to watershed function the SOC report concludes that, "[t]his suggests *the PM+SOC model has a moderate probability to maintain watershed function. There is a low probability to enhance watershed function because although the trend is improving, there is an initial increase in high risk and individual watersheds attain very high levels of cumulative clearcut percentages.*" SOC report, page 26 (emphasis in original). Similarly, with regards to hydrologic function, the SOC report concludes, "*[t]here is a low probability of maintaining or enhancing hydrologic function at a watershed scale because the trend results in more watersheds in a higher risk category.*" SOC report, page 27 (emphasis in original). While the SOC report predicts a moderate probability of maintaining and a low probability of enhancing watershed function, and low probability of maintaining or enhancing hydrologic function at a watershed scale, the OAR requires a *high* probability of maintaining and restoring properly functioning habitats for salmonids. The BOF decision does not come close to meeting this requirement. Nor does the SOC report meet OAR requirements of maintaining, restoring, or enhancing habitat. Indeed, the SOC report essentially says that both enhancement and maintenance of the existing aquatic habitat is unlikely to happen under the new plan by predicting a *low probability* of enhancing watershed function and a *low probability* of maintaining or enhancing hydrologic function at a watershed scale.

In sum, while the OAR calls for heightened protection for aquatic and terrestrial ecosystems by mandating the enhancement and restoration of these habitats, the BOF has

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adopted a new approach which fails to restore aquatic habitat and to enhance terrestrial habitat. Under the model adopted by the BOF, even the *maintenance* of existing aquatic habitat is being compromised. The BOF must address this requirement and reevaluate its approach. At bare minimum, the BOF must reconsider its modification to the state forest management plan to ensure that ODF's actions on these state forest lands do not violate OAR 629-035-0020 and OAR 629-035-0030.

B. Second Ground for Reconsideration: Failure to Meet the Best Available Science Requirement.

Under applicable law, the BOF must manage state forestlands using management practices that are "based on the best available science." OAR 629-035-0010(5)(e). However, the newly approved plan was not based on the best available science nor was it was ever subjected to peer review. *Oregon allows more logging in Clatsop, Tillamook forests*, Mathew Preusch, The Oregonian, Wednesday June 03, 2009.[5] The BOF did not provide the scientific basis for its decision to reduce the target for older, complex forest from 50% to 30%.

While the BOF states that its goal is to mimic or approximate the historic range of old forest structure, the BOF decided to provide a target of 30% old forest structure. The Board has not provided a scientific basis for determining that the Tillamook and Clatsop State forests historically consisted of only 30% old forest structure. This decision does not appear to be based on any science, much less the best available science. A reduction in the goal for complex forest structure from 50% to 30% represents a *40% decrease* in the amount of complex forest structure that ODF could eventually achieve on the land. The Tillamook and Clatsop State Forests are approximately 500,000 acres in size, so the net result would be a reduction of the goal of 250,000

[5] http://www.oregonlive.com/environment/index.ssf/2009/06/oregon_allows_more_logging_in.html

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acres of complex forest structure within 80 years to only 150,000 acres of complex forest structure within 80 years. In other words, the BOF decision would allow clearcutting on most of an additional 100,000 acres of land in the Tillamook and Clatsop state forests. The Board must re-evaluate this decision and determine whether such a large reduction in complex forest structure will approximate the historic range of variability within these forested landscapes.

Consistent with this loss of potential habitat, the June 3 SOC report details a large number of less-favorable predicted outcomes at 80 years under the adopted PM +SOC model than under the current (base) plan. Examples include a predicted reduction in the percent of complex landscape from 50% to 30% (Figure 2), a predicted reduction in percent landscape in older forest structure from 40% to 27%, a predicted reduction in suitable large patches for American marten and Northern spotted owl from 18% to 10% (Figure 6), an increase from 15% to 25% of young stands, and a decrease from nearly 60% to 35% for the amount of AAWs (aquatic anchor watersheds) with >50% area within complex forest strand structures (Figure 11).

Similarly, the BOF completely ignores sedimentation as a problem. SOC report at pg. 31. The BOF approach on this key issue is arbitrary and does not comport with the best available science requirement. The BOF has simply failed to model sediment output even though there are readily available scientific methods to conduct this kind of analysis. For example, the SOC report admits that hydrologically connected roads will have an impact of fish habitat, but then states that "there are no modeled outputs on sediment from roads." *Id.* Certainly, the BOF decision will increase road use and hauling and thereby increase sediment delivery to the connected streams and waterways. The BOF decision to ignore this issue is arbitrary and does not comport with state law.

Likewise, the BOF did not take into account the potential for increased logging on steep

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slopes and the potential for increased landslides and provides no scientific basis for so doing. The BOF, in determining whether the decision meets the GPV requirements, must use the best available science in determining whether the increased logging will result in a greater number of landslide events and how those events will impact aquatic habitat and species.

The BOF also assumes that 100 foot buffers in fish-bearing and 50 foot buffers in non-fish bearing streams are adequate to protect aquatic habitat. SOC report at 5. While the BOF cites to studies in the SOC report for the fact that 100 feet is adequate for large wood recruitment, SOC report at 28-29, it does not provide a citation for the proposition that the 100 and 50 foot buffers are adequate to ensure suitable stream temperatures for aquatic life. Moreover, the SOC report acknowledges that stream temperature increases as timber harvests increase within 100 feet of streams, but the BOF never determined or considered whether harvests outside of the 100 foot buffer negatively impact stream temperature. In reaching its decision, the BOF also completely ignored sedimentation as a function of buffer width, despite available scientific information (e.g. the Northwest Forest Plan Aquatic Conservation Strategy) that provides guidance on the necessary buffer widths to ensure a high probability of protecting aquatic habitats. Petitioners strongly question the BOF's apparent assumption that 100 ft. and 50 ft. buffers are adequate to prevent sediment delivery in an amount that would degrade or prevent recovery of aquatic habitat. The BOF has not set forth any scientific basis for its actions on this point much less relied upon the best available science.

Moreover, the BOF has based its conclusions on management practices within Aquatic Anchor Watersheds ("AAWs"), which includes 17 watersheds. But the BOF did not consider what happens outside of those watersheds, when it happens or where it happens. Oregon law requires protection of all aquatic habitats, not only those in the proposed Aquatic Anchors, which

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compose less than half of the forested landscape. By failing to conduct a basic analysis of the effects of the proposed management strategy on watersheds that are not AAWs, the BOF ignored those areas that do not have the special protections afforded to AAWs, which are most likely to fail to be maintained, enhanced, or restored under the new approach.

Furthermore, the best available science suggests that older forests act as an immense carbon sequestration mechanism and serve as an increasingly valuable function in maintaining the health of our planet and reducing global warming. In light of this science and the growing need to address global warming, the GPV for the State of Oregon can be achieved by preserving the forest as a carbon sequestration and habitat refuge resource. By increasing harvest levels and reducing targets for complex living forest structure, the BOF has ignored its responsibility to maintain GPV and effectively reduced the value of the public's resources. With climate change, the Oregon Coast Range will see increased storm precipitation with lower low flows during the dry season. The BOF has not considered how clearcutting and increasing peak flows will impact fish habitat synergistically with climatic changes over the long-term. The smaller buffers and increased sedimentation will combine with climate change to increase stream temperatures, yet BOF did not even consider whether the surrogates it has used to measure habitat effectiveness in its chosen model are currently adequate and will remain adequate in the short- and long-term to assess habitat health given the predicted impacts of climate change.

Despite the numerous negative environmental effects under the PM + SOC model, the BOF reached the same conclusion for almost every species of concern, namely that they would fare equally well under either the old or the new plan.[6] In other words, the BOF relied on the

[6] Exceptions for terrestrial vertebrates are for the American marten and red tree vole, which are predicted to not do as well under the PM + SOC plan. Likewise fish are predicted to not do as well under the new plan due to higher amounts of clearcutting in AAWs.

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SOC report to conclude that the total effect of a large number of predicted negative ecological changes to the environment under the PM +SOC model, relative to the base plan, is essentially nothing. This predicted outcome appears to be based on a number of individual comparisons that ignore the cumulative impact of the proposed activites that are authorized by the new plan. The BOF has downplayed or disregarded shorter-term and smaller-scale impacts which cumulatively carry a high risk of degradation over the long-term. At a bare minimum, the predictions in the SOC report must be squared with the requirements of state law and the best available science, which could be accomplished by subjecting the predictions in the SOC report to an independent peer review.

C. Third Ground for Reconsideration: The Board of Forestry Ignored Public Comment and its Own Rules in Reaching its Decision on June 3, 2009.

The BOF must follow the Roberts Rules of Order when it conducts board meetings. OAR 629-010-0010. Article IV, No. 27 of Roberts Rules of Order states that when "papers are laid before the assembly, every member has a right to have them read once...before he can be compelled to vote on them." The public comments from Sentaor Dingfelder and the communications directly with Chair Blackwell via email from members of the Sierra Club and other conservation groups were papers that were laid before the board. Yet the Chair failed to provide these public comments to the other members of the BOF before calling for a vote, and therefore, the Chair violated the rules of order adopted by it. The BOF's failure to follow the proper public procedure casts serious doubt on the validity of the BOF's decision and the ability of the public to participate effectively and provide constructive input.

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Similarly, on its webpage, the BOF has posted its Decision System Process, setting forth the approach it purportedly utilizes. In its Decision System Process, the BOF claims to strive towards providing transparency for all Board activities. Failing to disclose public comments to all Board members is not transparency, it is the exact opposite. The BOF further aims to engage in a process that is agreed to and understood by all board members. If the contents of numerous public comments are known only to the Chair, and are not disclosed to other board members, then all board members cannot fully understand the process. The BOF's Decision System Process also seeks to encourage policy making that is adaptive and responsive to changing needs and concerns. If the board members are not provided the relevant public comments, they cannot know the public's concerns and, therefore, cannot respond to them. Additionally, the BOF's Decision System Process aims to be recognized by stakeholders as a place to be fully heard and understood. Stakeholders cannot be fully heard or understood if the Chair fails to allow the board members to review public comments.

Furthermore, attached to the agenda for the June 3, 2009 BOF meeting is a page which recites the BOF's procedure for accepting testimony from the public, which declares that the BOF "places great value on information received from the public" and that written comments provide a "valuable reference" and may be submitted for consideration by the BOF.[7] The document states that "written comments received before the meeting will be copied and distributed to the Board." These promises were not kept for the June 3, 2009 meeting.

[7] http://www.oregon.gov/ODF/BOARD/docs/June_3_2009/Agenda.pdf

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VI. Conclusion.

In reaching its decision, the BOF has violated the state law and its commitment to the public to provide a transparent and open process. The BOF failed to place appropriate value on public testimony and sound science. For these reasons, the Petitioners request that the BOF carefully reconsider its decision, respond to the public and disclose the science upon which its decision is based. The Petitioners respectfully submit that the BOF should rescind its decision and engage in an open, transparent and scientific process to pursue a management approach consistent with applicable law.

Dated this July 28, 2009.

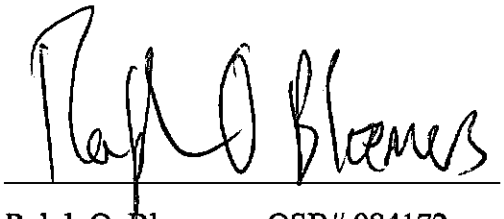

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Exhibit 1

JACKIE DINGFELDER
STATE SENATOR
DISTRICT 23

OREGON STATE SENATE
900 COURT ST. NE S-407
SALEM, OR 97301

June 2, 2009

John Blackwell, Chair, Oregon Board of Forestry
c/o Oregon Department of Forestry
2600 State Street
Salem, Oregon 97310

Dear Chair Blackwell and the Oregon Board of Forestry:

I am writing to you regarding the ongoing decisions you face on the management of the Tillamook and Clatsop State Forests. As you know, there has been considerable interest and a great deal of conversation this legislative session regarding your Board and the management of the state forests. The most interest has centered on HB 3072, which would make timber production the primary purpose of these state lands.

Given the vocal enthusiasm among some of my colleagues for a quick decision by the Board for increased timber harvest, I thought it important to write to ensure you that such sentiment is not universally held.

I do not believe that Oregon's interests would be best served by raising timber production above other values on the forest, nor do I believe that a decision on forest management should be made if the record is not ready. In particular, I hope that you will take care that long-range management decisions are anchored in peer-reviewed and interdisciplinary science. My experience has been that shortcuts on science often lead to long delays on implementation.

My constituents have made clear to me that they want a balanced and multi-resource approach to these forests in which no single value dominates management. If there is a bias among my constituent communication, it is strongly in favor of a far greater conservation emphasis for these forests, and certainly not for increased timber harvest, especially in these times of very low timber prices. I do not see a strong environmental bias in the current plan not do I believe the Oregon Forest Practices Act is the appropriate standard for management of the state forests.

Office Phone: (503) 986-1723 · Email: sen.jackiedingfelder@state.or.us
District Address: P.O. Box 13432, Portland, OR 97213 - District Phone: (503) 493-2804

I appreciate the time that Chair Blackwell has taken this session to visit with my colleagues and me regarding forest management in Oregon. I know that you have taken a public stand against HB 3072. My intent with this letter is not to direct your decision-making. Rather, I simply want to make it clear that you should not read the interest in HB 3072 as reflective of everyone in the legislature. There is, in fact, interest in more conservation on these lands as well. As you proceed, I encourage you to take your time and to keep an anchor in sound science.

Sincerely,

Jackie Dingfelder
State Senator
Senate District 23

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I filed the foregoing **PETITION FOR RECONSIDERATION** on July 30, 2009 by mailing the original and one copy thereof by first class priority mail return receipt requested via the United States Postal Service to:

Oregon Board of Forestry
2600 State Street
Salem, OR 97310

I further certify that I served the foregoing **PETITION FOR RECONSIDERATION** on July 30, 2009, by mailing two copies thereof by first class mail with the United States Postal Service to:

Attorney General John Kroger, OSB # 077207
David Leith, DOJ Special Litigation Unit, OSB # 933412
Oregon Department of Justice
1162 Court Street, Suite 400
Salem, Oregon 97301-4096

Of Attorneys for Respondent Board of Forestry

I further certify that I served the foregoing **PETITION FOR RECONSIDERATION** on July 30, 2009, by mailing one courtesy copy by priority mail via the United States Postal Service to:

Michael Carrier, Natural Resources Policy Director
Governor's Natural Resources Office
900 Court Street NE
Salem, OR 97301

Respectfully submitted,

Ralph O Bloemers

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