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Idaho Conservation League

PO Box 844, Boise, ID 83701

208.345.6933

Mr. Archie Gray
Service and Regulatory Program Manager, Forest Practices Act
Idaho Department of Lands
3284 W. Industrial Loop
Coeur d'Alene, Idaho 83815

Sent by email and Fax:
agray@idl.idaho.gov

September 19, 2013

RE: Idaho Forest Practice Act changes pertaining to the Streamside Protection Rule (Section 20.02.01.030.07.e.ii), Docket No. 20-0201-1301 (aka Shade Rule)

Dear Mr. Gray,

Thank you for considering our comments on the Forest Practices Act proposed rule changes. Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, we represent over 20,000 supporters, many of whom have a deep personal interest in ensuring our forests are managed sustainably and that Idaho's clean water is protected.

The Idaho Conservation League has significant experience in forest management issues. We serve on several forest restoration collaboratives in Idaho, including on the Payette, Boise, Salmon-Challis, Nez Perce-Clearwater, and Panhandle National Forests. Each of these collaborative efforts has components of active forest management and timber production, as well as watershed restoration and water quality protection programs.

Background

As we noted in our comments submitted in October 2012 and again in June 2013, while riparian areas may collectively be small in size, they are of great importance with respect to water quality protection and other values. Forested riparian areas serve numerous purposes: a source of shade to keep waters cool enough to support fisheries, a filtration system to prevent uncharacteristic amounts of sediment from polluting waterways, a source of coarse woody debris for stream habitat, and as habitat for riparian-dependent species. Healthy functioning riparian areas are critical in restoring 303(d) listed waterways so they satisfy beneficial uses. In addition, riparian

protection zones can prevent other streams from becoming 303(d) listed in the future. As such, it is critical that the Shade Rule provide sufficient assurance that water quality will be protected, maintained and conserved consistent with existing water quality standards.

Further, listed fish species cannot adequately be recovered in Idaho without the active partnership of state, private and industrial forestland owners and managers. The Forest Service and the Bureau of Land Management implement more protective prescriptions (INFISH and PACFISH) to ensure that timber harvest and other federal land management practices improve and maintain habitat for these species. However a significant portion of this habitat is located on private and state lands, thus requiring complimentary efforts to recover these species. While we recognize that private and state lands operate under different management schemes, it is critical that management standards here are based on sound science and complement other programs.

Based on the anticipated impacts of climate change (hydrology, timing of snowmelt, precipitation and other factors), we feel that maintenance and enhancement of cold water should be a priority.

Rule Analysis

While we recognize the complexity associated with revising the shade rule, we remain concerned that it has taken so long to develop this proposal, and that if it is found to be inadequate through on-the-ground monitoring, that it could take another 10-15 years to implement any future modifications. As such, we feel that it is critical to implement a conservative approach that can ensure compliance with existing water quality standards into the future.

As we've pointed out before, it is important to recognize the need for a change to ensure compliance with Idaho Water Quality Standards. In 2000, the Idaho Forest Practices Water Quality Audit (Final Report) recommended that changes in the shade rule "be made so that it will better protect or maintain stream temperatures preferred by the fishes that occur there." While we continue to feel that the proposal may provide better protection than the existing rule, we remain unconvinced that the proposed rule will effectively maintain temperatures preferred by fish that currently occur in Idaho's waters. We are concerned that the rule will not ensure compliance with Idaho Water Quality Standards or with existing Total Maximum Daily Loads (TMDLs). In order to better meet the intent of this rule change, we continue to urge that IDL 1) consider a no-cut buffer; 2) link the inner and outer zones and 3) guarantee monitoring to evaluate effectiveness of the revised rule.

We do appreciate the fact that the IFPA Advisory Committee acknowledged the findings of the 2000 Forest Practices Audit, and undertook revision of the Shade Rule. At the same time, we feel that the proposed rule is insufficient to curtail degradation of riparian areas, and to protect to Idaho's water quality consistent with state water quality standards and existing TMDLs.

Our ongoing concerns relate to:

- The need for a simple, easily understood and measurable no harvest buffer,
- Linkage between the inner and outer streamside zones (i.e. before timber harvest can proceed in the outer zone, the inner zone must meet minimum standards), and
- The need for ongoing effectiveness monitoring and accountability.

Fundamentally, we are concerned that the proposed rule changes will be insufficient to ensure protection and adherence to State Water Quality Standards and TMDLs. For waterbodies that do not currently meet water quality criteria, IDAPA direction requires no reduction in water quality. For these streams, we are concerned that this rule would fail this test. In particular, we are concerned that the Relative Stocking ratios proposed would authorize a reduction of water quality below existing condition, in violation of IDAPA direction. Our understanding is that the scientific basis and modeling applied to evaluate the rule change relied upon an assumption that both the inner and outer zones would meet the minimum Relative Stocking levels. Based on the disclosure that the inner and outer zones are not linked, we question the accuracy of the modeling. Further, because modeling failed to accurately depict the potential reduction in streamside shade, we feel that the proposal to amend this rule is arbitrary.

We continue to recommend that IDL include a 2nd option that incorporates a no-harvest buffer. A no-harvest buffer would be easier to understand, implement and enforce and far more likely to be effective in meeting water quality standards. Having a consistent no-harvest buffer would also help meet TMDL shade requirements for 303(d) listed streams and help prevent future listings as Idaho's climate and runoff patterns continue to change. In addition, riparian areas with diverse age classes of trees offer greater resilience to wildfires than riparian areas with single-aged stands. Idaho DEQ has offered similar feedback during FPAAC meetings where they supported the simplicity of a no harvest buffer, pointing out that it would avoid non-compliance issues. We continue to suggest a minimum of a 75-foot no cut buffer.

We also feel that ongoing monitoring of the effectiveness of any revised Shade Rule should be incorporated as a component of this rulemaking. Effectiveness monitoring and accountability to ensure that the Shade Rule is meeting the intent of the FPAAC and existing water quality standards is crucial. Whether it's incorporated as part of the Shade Rule, or considered separately, we feel that accountability and monitoring, with required feedback loops, should be included.

While we recognize that "constitutional takings" concerns were expressed in response to the original shade rule, which proposed a no-cut buffer, we do not feel that an optional no-cut buffer would invite similar concerns.

We also continue to have concerns around the failure to address protections for large trees. Large trees are particularly important in providing benefits within riparian areas, and play a critical role in increasing the resiliency to fires and other disturbances and in providing long-lasting snags for wildlife habitat and aquatic structure. Large trees are also below historic levels in many private and state-managed stands.

In addition to the above mentioned concerns, we continue to have concerns that trees directly adjacent to the stream could be logged, and that sensitive riparian areas are not protected from skidding activities.

Thank you again for considering our comments. Please keep us on the mailing list for this rulemaking. We look forward to working with IDL and the FPAAC to ensure that regulations

provide for the protection of Idaho's water quality, while simultaneously ensuring the health of Idaho's timber economy. Please feel free to contact either of us if you have any questions or need any additional information.

Sincerely,



John Robison
Public Lands Director
(208) 345-6942 x 13
jrobison@idahoconservation.org



Jonathan Oppenheimer
Senior Conservation Associate
(208) 345-6942 ext. 26
joppenheimer@idahoconservation.org