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**TESTIMONY OF MICHAEL GEARHEARD,  
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ENVIRONMENTAL PROTECTION AGENCY, REGION 10**

**BEFORE THE OREGON BOARD OF FORESTRY/ENVIRONMENTAL QUALITY  
COMMISSION  
OCTOBER 21, 2004**

Good afternoon Chairs Reeve and Hobbs and Commission and Board members. My name is Mike Gearheard. I'm the Director for the Office of Water and Watersheds for the Environmental Protection Agency's Region 10 office. Thank you for the opportunity to share our thoughts with Commission and Board members.

Today I intend to discuss the EPA's role in Oregon water quality issues, our general support of the proposed forestry rule changes under consideration by the Board of Forestry, as well as some areas where we believe additional rule changes are important to assure adequate protection for water quality and fish.

**EPA's role.** The EPA has the overall national responsibility to implement the Clean Water Act, in partnership with states and tribes. Important responsibilities include approving state Water Quality Standards, overseeing delegated state point-source permit programs, approving Total Maximum Daily Loads (TMDLs) and TMDL listings, and approving state non-point source and coastal zone management programs. We work very closely with the Oregon Department of Environmental Quality (DEQ) on these efforts.

In addition, EPA provides technical and financial support to states and tribes. Where states and tribes fail to carry out Clean Water Act responsibilities, or when directed by the Courts, EPA is required to take the actions needed to meet national water quality goals.

Finally, EPA is responsible for overall implementation of the Safe Drinking Water Act, in partnership with the Oregon Department of Human Services and DEQ.

**Relationship of ESA and CWA.** Due to the extensive Endangered Species Act (ESA) listings of fish throughout much of Oregon, EPA must consult with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Fish and Wildlife Service on a wide range of EPA actions under the Clean Water Act and other federal regulatory laws. Much of our review and approval work in Oregon (e.g., State water quality standards and non-point source control programs) is done in close coordination with NOAA Fisheries and the U.S. Fish and Wildlife Service. We place significant importance on the needs of the ESA listed species and use the best available science and detailed peer review to support EPA's approval actions.

**Legal and Other Constraints.** There are other constraints on EPA besides the ESA. For

example, EPA's review of proposed water quality standards and TMDLs takes place in the context of a national program subject to headquarters guidance and legal precedent. EPA also needs to meet trust responsibilities to tribes. Moreover, Oregon is well known for its environmental advocacy and related litigation. Many of the decisions made by regulatory agencies have been subject to legal challenge. Recent court decisions here in the Ninth Circuit may have the effect of blurring the distinction between how point sources and nonpoint sources, including activities such as forestry, are regulated. I fully expect legal challenges will continue.

**Forestry and Water Quality.** EPA recognizes that Oregon has been a pioneer in developing forest practice rules and regulations. We also understand that Oregon's forest practices and the riparian protection rules are key to ensuring that drinking water sources, water quality standards, and aquatic habitat are protected on 12 million acres of non-federal forest land in Oregon. Because forest practices have such a direct and important affect on water quality and salmonid spawning and rearing habitat, the proposed forest practices rule changes have significant implications for the EPA. We have closely tracked the long and complex effort to review and amend forest practices regulations in Oregon.

Studies conducted in Oregon of current forest practices indicate that existing forestry rule best management practices (BMPs) do not consistently meet water quality standards or fully provide riparian functions important to water quality and fish. EPA has also independently assessed the Oregon Department of Forestry's Shade Study data, TMDLs, and the broader body of science related to forestry in the Pacific Northwest and concluded that water quality is not fully protected under Oregon's existing forest practices.

It is our position that protecting water quality and meeting salmon recovery goals on private forest lands in Oregon will require changes to State Forest Practices. The EPA believes that the effort currently underway provides the Board and EQC the opportunity to revise forest practice rules in a way that can make a significant positive difference in protecting Oregon's water quality, for its uses as a drinking water source and habitat for salmon and trout .

EPA strongly supports the Oregon Plan and the proposed Forest Practices Act (FPA) improvements - but with important caveats. We recognize voluntary efforts on the part of forest landowners, watershed councils, soil and water conservation districts, and others are an important part of the water quality, salmon, and watershed restoration program. But adequate agency programs, including the Forest Practice Rules, are also critical to successful protection and restoration efforts, as one of the four foundations of the Oregon Plan. Science oversight and monitoring with adaptive management are the two other key foundations of the Oregon Plan and successful watershed restoration. These last two components are necessary for demonstrating forest practice adequacy.

The rule-making and voluntary measures proposed by the Board of Forestry are improvements over the existing Forest Practice Rules; however, we are not confident that they can be relied upon to meet Oregon's water quality standards. Besides the proposed rule changes under consideration we believe that additional improvements to the rules are needed to ensure that water quality standards will be met and that beneficial uses such as domestic water supplies and fish habitat will be fully protected. The primary areas where additional rule improvements are needed include riparian protection and protection of high risk, landslide prone areas.

Riparian management areas are the primary Forest Practice Rule mechanism for protecting water quality. Expert reviews and research have identified the need for increased protection of riparian management areas in Oregon for both fish and non-fish streams to provide riparian functions important for fish and water quality. Protection for high risk, landslide prone areas has also been identified as key for water quality and aquatic habitat protection. Increased protection for these two critical areas could help address well documented impacts from forest practices to shade, large wood delivery, sediment retention and routing, and stream channel conditions that directly and indirectly affect water quality and aquatic habitat for fish.

Attached to my written testimony are several past EPA comment letters, from 1999, 2001, and 2003, related to Oregon Forest Practices that provide additional information and explanation for the above recommendations and conclusions.

I want to again thank Chairs Reeve and Hobbs and the rest of the Commission and Board members for the opportunity to provide this testimony and would be happy to answer questions you may have at this time. Dave Powers, our Regional Manager for Forests and Rangelands, and I are both available at any time to discuss these issues further with you.

