



**George Kral Hearing request involving
*Comments of the State Foresters for a
Statutory Written Plan and Plan for
Alternate Practice
with NOAP 2022-531-01917
Nordgren HL Operation***

Authority Board/Agency



- **ORS 527.630:** Board's authority to adopt and enforce administrative rules
- **ORS 526.008:** State Forester and agency authority.



Regulatory Authority & State Forester's responsibility

- **ORS 527.670/OAR 629-605-0170:** Written plan requirements
- **OAR 629-605-0170(7)-(8):** The Stewardship Forester will notify the operator, landowner and timber owner of protected resources and that a written plan is required.
- **ORS 527.670(10):** State Forester review of written plan and comments

Regulatory Authority



- **OAR 629-605-0170(2):** Activities within 100ft of Type F, SSBT and D streams require statutory written plan. State Forester only comments
- **OAR 629-605-0170(10):** Non-Statutory Written Plans for activity as required under ORS 527.670(2). State Forester only comments
- **OAR 629-605-0173:** Plans for Alternate Practice. To waive or modify a specific practice. State Forester approves/denies plan

Regulatory Authority



- **OAR 629-605-0170(9):** Statutory written plans subject to hearing provisions
- **OAR 629-605-0170(10):** Non Statutory written plans are not subject to the contested hearing provisions
- **OAR 629-605-0173(3):** Plans for Alternate Practice as part of statutory written plan are subject to hearing provisions

Board Authority for Decision



- **ORS 527.700 / OAR 629 Division 672:** Appeals from orders of the State Forester/Hearing procedures
 - Hearing request requirements
 - Hearing process
 - Timelines
 - Stay of Operation requirements
 - BOF issues Final Order – Final Order on the State Foresters comments for the Statutory Written Plan and the Plan for Alternate Practice
 - Affirm
 - Modify
 - Rescind
 - BOF Final Order is not reviewable
 - Awarding reasonable attorney fees and expenses

Summary of Events



- Fall 2021 - Stimson started planning for “NORDGREN HL” 2022.
- 59-acre clear cut
- Pre-operation meeting – landowner and ODF geo-tech and stewardship forester
- ODF geo-tech reviewed per OAR 620-623
- January 26, 2022 Stimson filed Notification, a non-statutory written plan to address high landslide hazard locations (HLHL).

Summary of Events



- Initial review of notification for protected resources to be all non-fish bearing streams in the operation area.
- February 15, 2022
 - ODF notified of chainsaws running and information on domestic water intake in Spring Branch Creek.
 - Timber falling along Spring Branch Creek had already begun for Small Type-N stream.
- February 18, 2022 Stimson suspends activity within the RMA of Spring Branch Creek.
- ODF asks Oregon Water Resources Department to double check correct location of the registered water rights.



Summary of Events

- March 2, 2022 Statutory written plan for protection Type-D stream and a plan for alternate practice submitted.
- March 16, 2022 Comments on the statutory written plan and plan for alternate practice received by 2 neighbors of the operation

Summary of Events



March 23, 2022:

- Water Resources Department notified ODF of decision on water division on Spring Branch Creek
- ODF re-classifies Spring Branch Creek a Small Domestic-Use Stream.
- State Forester comments on statutory written plan
- State Forester approves with comments on the plan for alternate practice.

Summary of Events 2022



- April 1 - Hearing request filed to contest comments of the State Forester
- April 4 - Request determined to meet requirements for hearing request
- April 15 & 21 - 2-day hearing was held.
- April 28 - Administrative Law Judge issued the proposed orders with the record of the hearing.
- May 5 - Exception period closed.



Burden of Proof:

- The party challenging the Department's comments, bears the burden of proving, by a preponderance of the evidence, that the Board of Forestry should modify or rescind the comments of the State Forester in response to the to the Statutory Written Plan and the Plan For Alternate Practice
- Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false.

Administrative Law Judge (ALJ)

Conclusion of Law:



1. The Board of Forestry should affirm the comments of the State Forester (issued through Stewardship Forester Eric Jacobs on March 23, 2022) in response to the Statutory Written Plan and the Plan For Alternate Practice (prepared by Stimson Lumber Company and dated February 24, 2022), which were prepared pursuant to ORS 527.670(3)(a) for an operation that occurs within 100 feet of a stream determined by the State Forester to be used by fish or for domestic use.
2. Neither Appellant nor Bighorn Logging Corporation are entitled to attorney's fees and costs associated with this contested case hearing.

Administrative Law Judge (ALJ)

Proposed Orders:



- The comments of the State Forester (issued through Stewardship Forester Eric Jacobs on March 23, 2022) in response to the Statutory Written Plan and the Plan For Alternate Practice (prepared by Stimson Lumber Company and dated February 24, 2022), which were prepared pursuant to ORS 527.670(3)(a) for an operation that occurs within 100 feet of a stream determined by the State Forester to be used by fish or for domestic use should be **AFFIRMED**.
- Appellant's request for attorney's fees and costs associated with this contested case hearing should be **DENIED**. Bighorn Logging Corporation's request for attorney's fees and costs associated with this contested case hearing should be **DENIED**.



Exceptions process:

- A party may file exceptions to the proposed order.
- The exceptions must be confined to factual and legal issues that are essential to the proceeding.
- Exceptions must be based on the grounds that either:
 - A necessary finding of fact is omitted, erroneous, or unsupported;
 - A necessary legal conclusion is omitted or is contrary to law or policy; or
 - Prejudicial procedural error occurred.
- Exceptions must specify
 - The disputed finding, opinions or conclusions;
 - The nature of the suggested error; and
 - Alternative or corrective language.



Exceptions filed:

Mr. Kral filed exceptions on May 5, 2022.

- 1) Disagreement with Opinion Section (page 23, para. 2) regarding right to contested case proceeding.
- 2) Disagreement with Opinion Section (page 24, para. 3) regarding geotechnical analysis.
- 3) Exception to Opinion Section (page 22, para. 2) regarding removal of downed wood in the riparian zone.
- 4) Exception related to additional geotechnical review.

Board of Forestry

Hearings for persons adversely affected by an operation for which a written plan is required under ORS 527.670(3) - Alternatives for consideration:



Upon review and consideration of the ALJ's proposed order and the record in this case, the Board may:

- Affirm the comments of the State Foresters
- Modify the comments of the State Foresters
- Rescind the comment of the State Forester

Board of Forestry



Appeals from orders of State Forester: hearing procedure; rules; stay of operation.

ORS 527.700(7) & (9) – Reasonable attorney fees and expenses:

- (7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well-founded, or made a request primarily for a purpose other than to secure appropriate action by the board.
- (9) If the board rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board may award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

Board of Forestry

Appeals from orders of State Forester: hearing procedure; rules; stay of operation

ORS 527.700(6) – Reviewable Orders:

Per ORS 527.700(6) ...The comments of the board or of the State Forester concerning a written plan are not reviewable orders under ORS 183.480.



What now ?

- Consider the record and issue Final Order on Comments of the State Forester:
 - Statutory Written Plan comments
 - Plan for Alternate Practice comments
- Consider the record and issue Final Order on Attorney fees/costs for:
 - George Kral
 - Bighorn Logging



Questions?

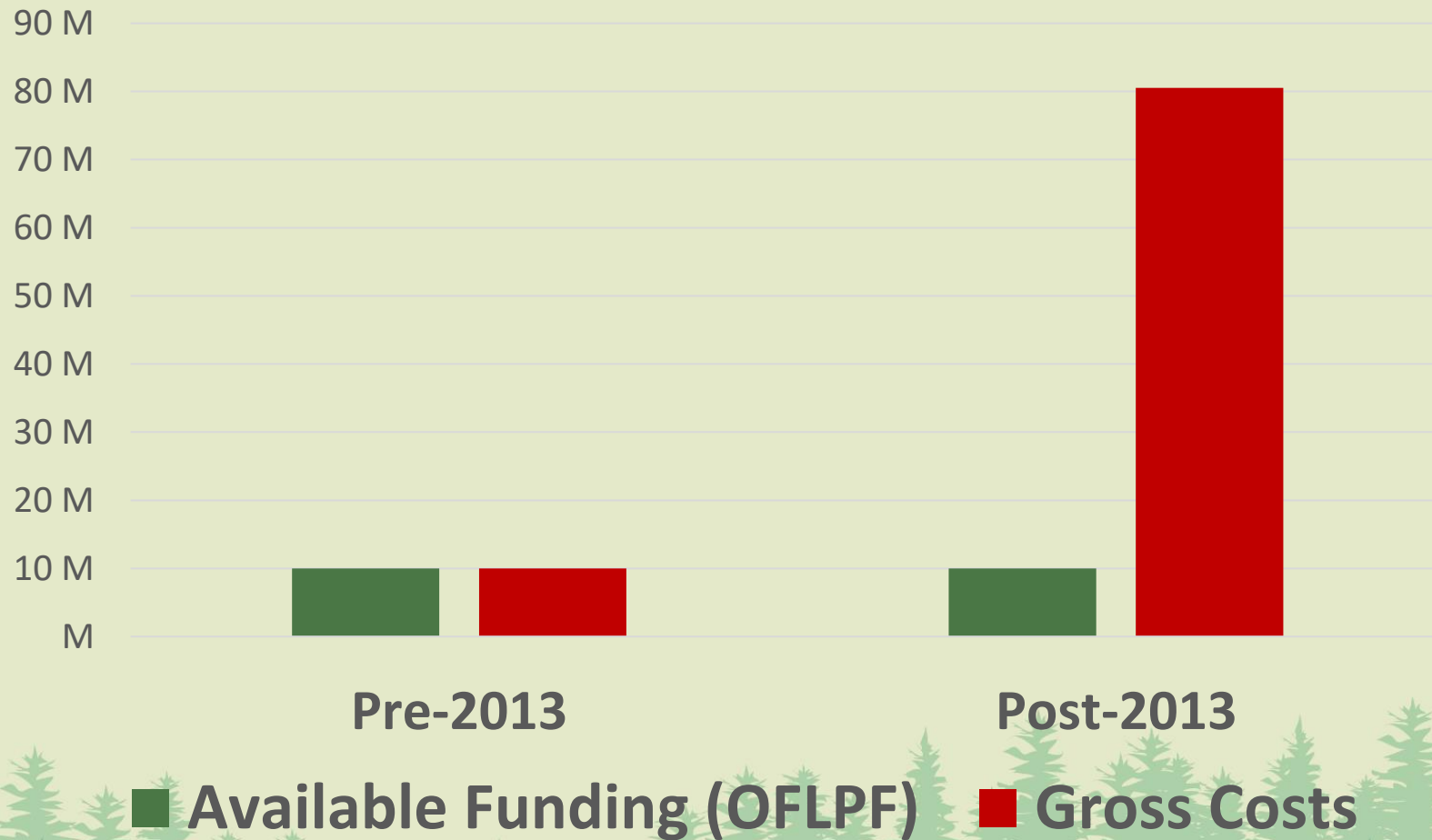


Emergency Fire Funding Fix Legislative Concepts for 2023 Legislative Session

Board of Forestry – Decision for Approval

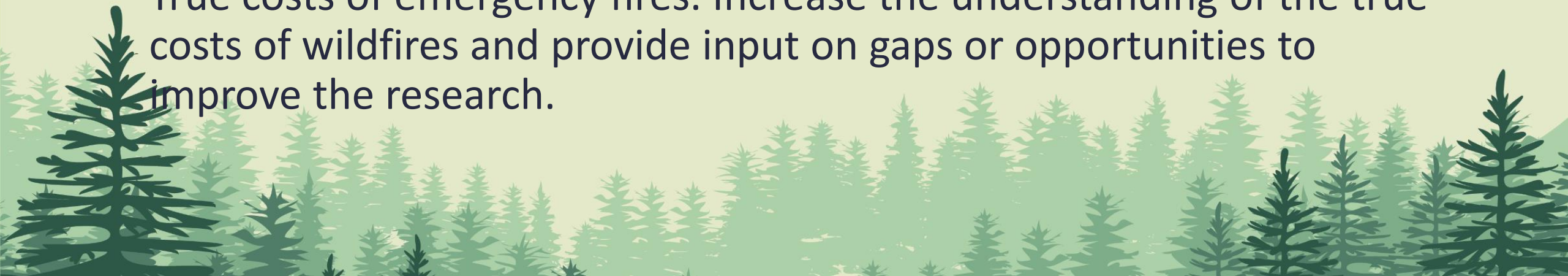
May 16, 2022

Background



Emergency Fire Funding Task Force

- Solutions to address the outcomes had to be:
 - Sustainable
 - Compatible
- State of Oregon's emergency fire suppression funding. Identify elements of a sustainable emergency fire funding system without relying on fixed operational funds or other internal resources.
- True costs of emergency fires. Increase the understanding of the true costs of wildfires and provide input on gaps or opportunities to improve the research.



Key Components

- Float Funding
- Recurring Revenue

Department Approach

- Data-driven analysis



LC #1 - Critical Float Funding

- Appropriates \$250 million in General Fund (GF) dollars to ODF
- Make the department whole by covering current unreimbursed fire costs.
- Ensure the department has access to cash resources during gap fire seasons (fire seasons that will occur prior to, and shortly after, the enacting of the legislation) until a long-term fix is in place and adequate revenues are available.
- This amount is being requested due to the department currently carrying \$100M from 2022 and before and adding 3 fire seasons to that (2023, 2024, 2025)

LC #2 – Sustainable Emergency Fire Fund

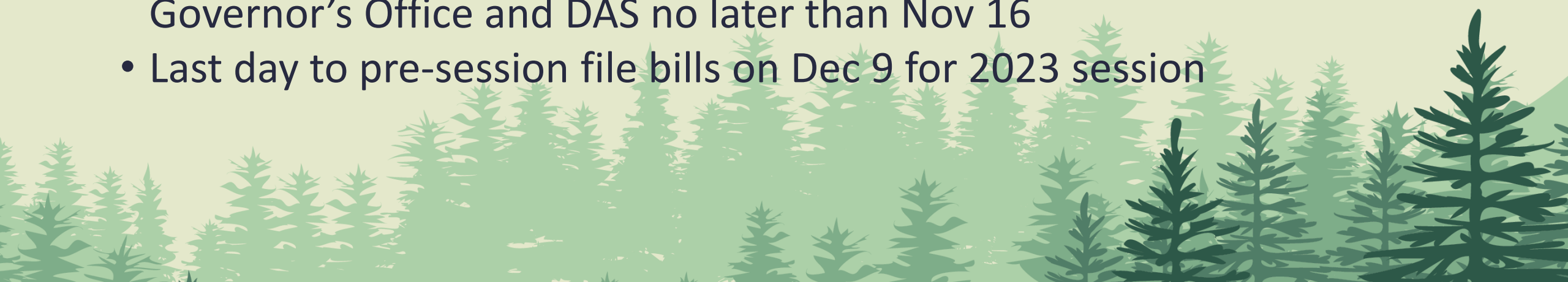
- Create the Oregon Smoky Day Fund governed by the Oregon Smokey Day Committee
 - Supersedes the OFLPF and the EFCC
 - Subcommittee of the Board, who appoints membership
- Caps the fund at 2x rolling 3-year gross average
 - Extra funding utilized for land resiliency and fuels mitigation
- Defines the need for \$61M in revolving revenue
 - Incorporates current OFLPF revenue streams into the OSDF
 - Indexed revenue based on CPI
 - Landowner contributions capped by the amount of revenue, not expenditures

Revenue Sources

- ORS 321.012 - The Legislative Assembly finds that it is in the interest of the State of Oregon that the public as a whole share responsibility for protecting the forests of this state, by making funds available from time to time for suppression of fires caused by the public.
- Most western state rely completely on the General Fund for emergency wildfire suppression costs
- Emergency board and legislative session still an important component in catastrophic scenarios



Timeline

- Final submission by department of LC on June 3
 - ODF to work with DAS and GO from June 6 to July 8
 - DAS to submit to Leg Counsel on July 8
 - ODF to work with Leg Counsel from July 8 to Oct 28
 - Leg Counsel stops all drafting on Oct 28
 - Final concepts, fiscal impact estimates and “one-page” bill summaries due to DAS for final review and approval by the Governor’s Office and DAS no later than Nov 16
 - Last day to pre-session file bills on Dec 9 for 2023 session
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Recommendation

The department recommends the Board approve the two legislative concepts as drafted by the department for submission to the Department of Administrative Services by June 3, 2022.

May 13, 2022

Oregon Board of Forestry
May 16, 2022 Special Meeting
Re: Item 4, Emergency Fire Funding Legislation Concept Decision

Chair Kelly and Members of the Board

My name is Mike Barsotti. I am a family forest landowner in the Lyons area, and Past President of the Oregon Woodlands Association (OSWA). I have served on several wildfire related studies; the most recent was the 2021 Legislative Wildfire Study Technical Advisory Group.

OSWA supports the first legislative concept that would provide a one-time General Fund amount to cover its deficit wildfire spending and reimburse the non-fire ODF departments that has supported the Fire Program.

OSWA does have several concerns with the second legislative concept. We do support the development of a publicly funded account that like the Oregon Forest Land Projection Fund is available to cover extreme fire events. Our concerns include:

- Before the successful Oregon Forest Land Projection Fund (OFLPF) is eliminated, the public funded account needs to be established. This will confirm that this effort will establish a stable, sustainable suppression fund that does not shift the burden onto forest landowners without even a change in Oregon's current suppression funding policies.
- Eliminating the forest landowner funded OFLPF to create a new fund which is to consist of both forest landowner and public dollars will only add confusion to who is paying what; and we fear, make it easier to shift more of the fire suppression costs onto landowners. Nearly every legislative session some legislators propose bills to have the landowner community carry more and more of the suppression costs and we don't need to make it easier for them.
- OSWA understands the need to increase the funds in the OFLPF as the costs of wildfires increase but simply using an inflation factor will maintain the current inequities of who pays for the fund and we cannot support that concept. For example, family forest landowners currently pay over 67 % of OFLPF revenue through the Improved Lot and Minimum Lot Assessments. Maintaining these current fund source percentages over time may not be appropriate. We recognize the suppression of wildfires that threaten homes can be more expensive, but FEMA has traditionally covered 75% or more of the costs when fires threaten homes.
- What is the future role for the insurance policy in these legislative concepts?

The general public, rural residents and forestland owners all benefit from wildfire suppression through the protection of water supplies, air quality, maintenance of wildlife habitat, recreational opportunities, quality of life, protection of public safety and personal property, and maintenance of indirect economic benefits of the timber industry. Fires close to communities, highways or railways can affect local and even regional commerce.

In summary, the general public should continue to share the cost of wildfire suppression but we need to establish a way to front load its share of funding large fire costs without damaging the existing landowner funding strategies. OSWA believes it is wiser to establish the publicly funded account before eliminating the OFLPF.

OSWA suggests you reconvene the task force that has been working on these concepts and continue the conversation. We believe that solutions could be found that would have broad stakeholder support and achieve the desired goals of the Board while creating an equitable funding stream to protect Oregon's natural resources from fire.

Mike Barsotti, OSWA
Lyons, OR