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Supreme Court Victory in Forest Road Case

On March 20, the U.S. Supreme Court [ruled](#) 7-1 to overturn the Ninth Circuit Court's decision that forest roads are subject to the National Pollutant Discharge Elimination System (NPDES) requirements of the Clean Water Act. This is a significant victory for public timber purchasers and others who depend on federal forest lands, as well as for state and private forestland owners.

Last fall, AFRC filed an amicus brief with the Supreme Court on the implications of the decision for federal lands. We were joined on the brief by Public Lands Council, National Cattlemen's Beef Association, Montana Wood Products Association, Arkansas Forestry Association, Federal Forest Resource Coalition, Intermountain Forest Association and Minnesota Forest Industries.

In its decision, the Court found that Environmental Protection Agency (EPA) interprets its own regulation to exclude logging roads from NPDES requirements and that, because the agency's interpretation is reasonable, it should be accorded deference by the courts. Justice Kennedy, writing for the majority, referred to the type of Best Management Practices (BMPs) contained in Oregon's statutes and forest practices rules as justification for EPA's actions in not requiring permits.

Oral arguments took place December 3, 2012. On November 30, EPA finalized a rule (published in the [Federal Register December 7](#)) declaring that forest roads are not industrial activities subject to NPDES permits. The Court held that the rule amendment did not make the case moot because there was a possibility the environmental organizations would go after the industrial defendants for monetary damages based on unlawful discharges prior to the effective date of the amendment. By overturning the Circuit Court's ruling, the decision eliminated that threat.

The Northwest Environmental Defense Center (NEDC) filed a petition in the Ninth Circuit in early January seeking court review of the amended rule. There is no doubt NEDC intends to continue to pursue every available avenue to require permits for logging roads. It is apparent that the best solution to this problem would be passage of a bill like the Silviculture Regulatory Consistency Act, which was introduced in the last Congress as [HR 2541](#) and [S 1369](#), to make it clear that Congress intends for forest roads to be regulated under BMPs, rather than via permits. Use of BMP's has resulted in consistent improvements over the last 30 years in control of sedimentation from forest roads based on the type of state statutes and rules noted in the Supreme Court's ruling.

Our congratulations and thanks to the State of Oregon, Georgia-Pacific West, Hampton Tree Farms, Stimson Lumber, Swanson Group, American Forest and Paper Association, Oregon Forest Industries Council and Tillamook County, who petitioned to have the Ninth Circuit ruling overturned and to the many amici who weighed in to make this victory for common sense a reality. *Ann Forest Burns*

Spotted Owl Critical Habitat Challenged

On March 21, AFRC joined the Carpenters Industrial Council, Siskiyou County, Hampton Affiliates, Murphy Company, Rough & Ready Lumber, Perpetua Forests Company, Seneca Sawmill Company, Seneca Jones Timber Company, Swanson Group and Trinity River Lumber Company in [filing a suit](#) in federal District Court in Washington, D.C. against the Secretary of Interior and the Director of the Fish and Wildlife Service to overturn the latest northern spotted owl critical habitat designation. The rule was published in the [Federal Register](#) on December 4, 2012 and became effective January 3, 2013.

The final critical habitat covers 9.29 million acres of mostly Forest Service and BLM lands and 291,570 acres of State of Oregon lands, nearly double the 5.3 million acres designated in 2008. The proposal will have a significant impact on the ability to manage forests throughout the range of the northern spotted owl in Oregon, California and Washington. Although FWS officials state that “active management” will not be entirely prohibited in critical habitat areas, the necessity to engage in inter-agency consultations will undoubtedly have a chilling effect on forest manager’s efforts and cause a shift, to the extent that is possible, into other areas. This, in turn, could have the unintended consequence of increasing the environmental effects on those smaller areas where operations continue to be feasible.

The designation creates the necessity for federal management agencies to consult with the FWS in order to be able to conduct many management activities. This will have the effect of further curtailing timber harvest on public lands, with a consequent impact on revenues to counties from public timber sales. The milling infrastructure throughout the West will be negatively impacted by tightened supply of raw material and an increased cost for what logs are available. This is likely to lead to fewer shifts and perhaps mill closures, eliminating the living wage jobs of mill workers in our rural communities, at a time when lumber is needed to supply the building industry throughout the West.

AFRC submitted extensive [comments](#) on the draft rule, as well as information from the [National Council for Air and Stream Improvement](#) and [Western Ecosystems Technology, Inc.](#) explaining the deficiencies and flaws in the draft rule. Those deficiencies and flaws were not corrected in the final rule. AFRC strongly believes that the [modeling process](#) used has resulted in a flawed habitat designation. Meanwhile, the lack of consideration given to the prevention of catastrophic wildfires and impacts from the barred owl raises serious questions about the FWS’ approach to recovering the owl.

After considerable study and review, AFRC has determined that the rule is fatally flawed in a number of ways, including:

- violation of the O&C Act’s requirement to manage those lands for a permanent sustained yield and to offer the allowable sale quantity annually;
- failure to follow required notice and comment procedures prior to adopting the rule and to respond to major public comments, including those of AFRC and the counties;
- reliance on erroneous modeling techniques and on untested and unreliable predictions;
- errors in determining the area occupied by the species at the time it was listed and the primary constituent elements of habitat needed for the survival of the species;
- failure to properly account for the likely impact of the barred owl on the future survival of the species; and
- reliance on an erroneous Economic Analysis of the impacts of the rule change.

It is indeed unfortunate that the FWS chose to ignore the comments of AFRC, the impacted counties in Washington, Oregon and California, and federal land managers, while promulgating another set of rules which violate the Endangered Species Act while having little or no effect on the decline of the spotted owl which is now more threatened by wildfire and barred owls than by forest management activities.
/Ann Forest Burns

Sequestration and FY13 Forest Management

Following Congress' inability to reach a compromise on a national budget at the end of February, sequestration automatically kicked in which reduced all non-defense, discretionary spending by 5%. The actual impact will likely be approximately 8% since we are well into the current fiscal year.

Meanwhile, the Senate and House have passed a Continuing Resolution (CR) for the remainder of FY13. Unfortunately, the final version of the CR makes further cuts to the National Forest System and to the agency's Capital Improvement and Maintenance budget. The CR also falls short of providing enough wildfire suppression funding to cover what many expect to be a very expensive fire year, which is likely to result again in "fire borrowing" from other accounts. The funding reductions were the product of Senate Appropriators and were adopted despite opposition in the House, which had been significantly more generous to the agency in its CR.

The Senate bill cuts all National Forest System programs, other than the Timber Management line item, an additional 1.1% below the sequester level, and also makes a further 6% reduction in Capital Improvement & Maintenance. This presents a double problem because roads funding is needed to provide access into forest management operations and with management funds being dropped as well, the issues are compounded. Fire borrowing would only hinder the situation further.

The Department of Agriculture previously estimated that due to the 5% reduction in the budget brought on by the sequester, the Forest Service would reduce the amount of timber sold by 400 mmbf, a 15% reduction. AFRC is not sure how a 5% reduction in funding can equate to a 15% reduction in timber harvest, and no definitive answer has been given for this discrepancy. It has left many to wonder if it is another example of the Administration seeking to make the sequester cuts as painful as possible.

In an effort to mitigate the Forest Service budget problems, Senators John Boozman (R-AR) and John Barrasso (R-WY) introduced amendments that would have redirected federal land acquisition spending back towards management and operations of National Forests, Parks, and BLM lands. Unfortunately, these amendments did not receive a vote before the Senate passed the CR by a vote of 73-26 on March 20. */Tom Partin*

Budget Resolutions and Federal Forests

The House and Senate have been debating competing budget resolutions, which outline overarching spending and taxation policies for FY14 and beyond. Each chamber's budget takes a very different approach. Notable amendments specific to federal forests were added to the budget in each chamber.

In the House, Representative Kurt Schrader (D-OR) offered an amendment that would provide a "reserve account" for a possible extension of Secure Rural Schools (i.e. guaranteed County payments) provided any extension was paired with legislation that "requires sustained yield timber harvests obviating the need" for guaranteed payments and would be deficit neutral, which would likely require

identifying offsets elsewhere in the budget. Schrader was joined in strong support by Representative Reid Ribble (R-WI), and the amendment was adopted by a unanimous voice vote. By contrast, the Senate Budget prepared by Chairman Patty Murray (D-WA) includes a reserve account for a possible reauthorization of Secure Rural Schools payments, but it does not require long term forestry legislation and only requires that it be deficit neutral.

Senator Jeff Merkley (D-OR) offered an amendment “aimed at putting people to work in the woods and improving the health of our overgrown forests,” it passed with bipartisan support. This amendment provides added budget authority for Congress to move legislation to improve federal forest land management by “increasing timber production, protecting communities from wildfires, enhancing forest resilience to insects and disease, and improving forest ecosystem without running afoul of budget rules.” Addressing any budget points of order could be important down the road if Forest Service or BLM reform legislation reaches the Senate floor. / *Tom Partin*

Recent House and Senate Hearings

On March 13, the House Agriculture Subcommittee on Conservation, Energy, and Forestry held a hearing on National Forest Management and its Impacts on Rural Economies and Communities.

Subcommittee Chairman G.T. Thompson (R-PA) noted “Our National Forest system is currently threatened by land mismanagement, invasive species outbreaks, endless litigation against productive land use, including expanded timber harvests and natural resource development, and a host of other problems that result in fewer jobs, more fire-prone forests, and communities struggling to make ends meet.” Chairman Thompson also outlined the need to manage the National Forests to reduce fire suppression costs and stimulate rural employment. Forest Service Chief Tom Tidwell testified that improved lumber markets were providing an opportunity to manage the National Forests and, in response to a question, said that biomass for energy “would never be the driving force behind their land management” program.

On March 19, the Senate Committee on Energy and Natural Resources held a hearing on the future of secure rural schools payments entitled “Keeping the Commitment to Rural Communities: Options for reauthorizing and reforming the Secure Rural Schools and Community Self-Determination Act (SRS) and Payments in Lieu of Taxes.” The purpose of the hearing was to examine the options and challenges related to possible reauthorization and reform of two payment programs for local governments - the recently expired SRS and the Payment in Lieu of Taxes (PILT).

Witnesses for the hearing included: Tom Tidwell, Forest Service Chief; Pamela Haze, Deputy Assistant Secretary for Budget, Finance, Performance and Acquisition, Department of Interior; Anne-Marie Fennell, Director Natural Resources and Environment Team, Government Accountability Office; Jay O’Laughlin, Professor of Forestry and Policy Sciences, University of Idaho, College of Natural Resources; Mark Haggerty, Policy Analyst Headwaters Economics; Paul Pearce, President National Forest Counties and Schools Coalition; and Ryan Yates, Associate Legislative Director, Legislative Affairs Department, National Association of Counties.

Committee Chairman Ron Wyden (D-OR) spoke about a “two prong approach” in which he would extend the Secure Rural Schools payments in the short-term and work on a long-term plan to manage the forests and provide greater funding certainty to counties. The Senator also outlined his position that any

increase in harvest had to include protection for old-growth trees, clean water and habitat. Wyden spoke many times about his desire to see revenues from all activities on federal lands and waters shared with resource-dependent communities across the country. It appears his focus is to tap offshore oil and gas revenues to provide a permanent funding source for payments to western timber dependent counties. It is hard to understand how such an approach will create jobs in the forests, however, and the only true winners might be oil producing communities along the Gulf Coast and Alaska with the private sector jobs that would be created. Wyden also emphasized that counties that are seeking new taxes within their boundaries are taking the correct approach about becoming self-sufficient. Lane County and other southwest Oregon counties are proposing property tax increases to close budget gaps created by declining SRS payments.

Witness Jay O’Laughlin proposed placing some federal forests into a trust status similar to how Washington and Idaho manage their timberlands. O’Laughlin suggested that increasing the federal timber sale program represented a true triple win solution for the health of communities and federal forests. Committee Republicans, including Senators Lisa Murkowski (R-AK) and John Barrasso (R-WY), were skeptical about continued SRS payments and correctly noted that any long term solution must include the management of these lands.

Counties Weigh-In

Following the hearing, Doug Robertson, President of the Oregon based Association of O&C Counties, issued an open statement to Senators Wyden and Jeff Merkley (D-OR) stating that they were disappointed with their priorities, including the re-introduction of Wilderness bills and a newly proposed tribal land bill without any long term solution to county payments. Regarding issues in the hearing Robertson stated “It is time to move beyond the one-year band aid of diminishing safety net payments and solve the underlying problems.”

Revenue-Sharing Bill Introduced

In what appears to be a companion to Senator Wyden’s two pronged approach for finding new resources to pay for county payments, Senators Lisa Murkowski and Mary Landrieu (D-LA) introduced a bill that would share more federal energy revenues with other states.

The bill titled the “Fixing America’s Inequities with Revenues Act” or “FAIR Act” would ensure that coastal states receive at least one-fourth of the revenues from oil and gas and renewable energy produced off of their shores and would dedicate half of the revenues from onshore renewable energy sources to those states where they were located.

Senator Wyden who had previously visited with Murkowski about using royalties from energy revenues to help fund county payments is not a cosponsor of the bill at this time, but has expressed optimism that a bill like this could move forward. / *Tom Partin*

Supreme Court Grants Petition on Framework

The Supreme Court has decided to review yet another Ninth Circuit Court decision that invalidated an environmental impact statement under the Ninth Circuit’s strained interpretation of NEPA. In *Pacific Rivers Council (PRC) v. Forest Service*, the Ninth Circuit invalidated the 2004 Sierra Nevada Framework programmatic management plan amendment for the Sierra Nevada National Forests rejecting the Forest Service’s argument that it could defer detailed analysis of the effect of the

amendments on fish until site-specific projects were proposed where more detailed information could be collected. However, the Ninth Circuit held that NEPA requires the Forest Service to consider any possible environmental effect “at the earliest possible time.”

The Supreme Court accepted review to determine whether NEPA requires “programmatic amendments, to analyze every type of environmental effect that any project ultimately authorized under the amendments throughout the 11 affected forests might have if it was reasonably possible to do so when the programmatic amendments were adopted, even though any future site-specific project would require its own appropriate environmental analysis before going forward.” The Supreme Court will also decide whether PRC had standing and whether PRC’s challenge was ripe given that PRC failed to identify any site-specific project, it objected to that was authorized by the 2004 Sierra Framework. /*Scott Horngren*

New Blue Mountain Strategy

Forest Service Region 6 Regional Forester Kent Connaughton has put a new program in place for eastside forests located in the Blue Mountains of Oregon and southeast Washington. The Eastside Restoration Strategy was established because according to Connaughton “There are compelling ecological, social, and economic imperatives to accelerate the amount of forest restoration occurring on the National Forests in eastern Oregon and Washington. With our current approach and workforce we are actively restoring only a fraction of the number of acres we *need* to be treating to just keep pace with growth.”

Bill Aney, with the Umatilla National Forest, has been appointed as the Eastside Restoration Coordinator for this new strategy. According to Aney, he has identified four general areas of work:

1. Assemble a dedicated planning team
2. Explore collaborative models
3. Identify a project of appropriate scale and value
4. Communications and alignment

In referring to this new approach, Aney said, “The eastside restoration strategy has an obvious high level of support and interest. It is taking some time to develop a vision, establish some structure around the program and begin to understand the potential of the strategy. Internal and external communication will be critical over the next few months to ensure we have a common picture of the status and potential of the effort.”

Connaughton has on more than one occasion said that “We need to double the pace and scale of restoration on the east side.” He has now set that effort into action and we certainly hope he can achieve those goals. /*Tom Partin*

Northern California Province Salvage Update

There were five large fires last summer that occurred on the Northern California Province forests. The Mill and North Pass Fires on the Mendocino, the Stafford and Bagley Fires on the Shasta Trinity and the Goff Fire on the Klamath. Of these five fires, the Mendocino and Shasta Trinity continue to work on salvage/restoration efforts on three of the fires.

The Klamath explored opportunities on the Goff Fire but dismissed salvage efforts because the entire land base was constrained by an Inventoried Roadless Area (IRA). The only logging system that could be used was helicopter. Following input from the helicopter industry it was determined there were too many safety issues with powerlines and roads to make a feasible offering.

The Mendocino has issued a Draft Environmental Assessment for the Mill Fire Salvage/Restoration effort. This project will salvage approximately 560 acres of LSR and Matrix and 33 miles of roadside hazard trees. The forest has dropped the salvage efforts for the North Pass Fire due to cumulative impact, soil, road, and water quality issues. These concerns would have required formal consultation for threatened and endangered fish species and also create a considerable amount of consultation with the water quality board. These two consultation processes would have severely delayed the project, due to increased timelines, making much of the material unmerchantable by the time consultation was completed. It would have also required an EIS for the project.

The Shasta Trinity continues to work on salvage efforts for both fires. Since most of the Bagley fire is inaccessible and falls within an IRA category they are planning roadside hazard removal only. This project is currently out for scoping with plans to treat roadside hazard trees on approximately 19 miles (735 acres). The Stafford Fire Salvage has not yet had public scoping, which is creating a concern for timely salvage. The current volume projection is 5 mmbf. Any further delays will create considerable merchantability issues once NEPA is finished. */Rick Svilich*

The Bybee Project

The Rogue River-Siskiyou National Forest timber sale volume for FY14 will come from two environmental analyses: Eden Ridge on the Powers District and Bybee on the High Cascades District. In all likelihood these two projects will generate all of the volume for FY15 as well. Both projects are highly controversial and may likely draw appeals; Eden Ridge for extensive road construction and Bybee for its proximity to Crater Lake National Park.

The analysis for the Bybee Project was completed in January and the public comment period ended last month. The project proposes to harvest 45 mmbf of timber through thinning on 3,078 acres, shelterwood removal on 438 acres and regeneration harvest on 106 acres. The sale area is on Matrix lands that share a boundary with the western edge of Crater Lake National Park. A campaign by Environment Oregon collected approximately 10,000 form letters by marketing the project as destroying old growth in the Crater Lake Wilderness; a wilderness which does not actually exist. Regardless, the Forest Service is currently sorting through these form letters, as well as hundreds of pages of additional substantive comments, prior to issuing a decision on how to move forward with the project. Without any shelf volume to fall back on, the Rogue River-Siskiyou's timber sale program for the next two years will depend heavily on the outcome of the Bybee Project. */Andy Geissler*

AFRC in DC

AFRC members and staff traveled to Washington, D.C. the week of February 25 to participate in the Federal Forest Resource Coalition board meeting and a series of meetings with Administration officials and Congressional offices. Attending were Mark Bosetti, Sierra Pacific Industries; Cameron Krauss, Swanson Group; Buck Fullerton, Boise Cascade; Bob Boeh, Idaho Forest Group; Wade Mosby, Collins Companies, Duane Vaagen, Vaagen Bros. Lumber and AFRC staff Tom Partin, Ann Forest Burns and Heath Heikkila.

Meetings were held with Robert Bonnie, Senior Advisor to the Secretary of Agriculture, Harris Sherman, Undersecretary of Agriculture and Butch Blazer, Deputy Undersecretary of Agriculture; Sally Ericson, Office of management and Budget; Doug McKalip, White House Rural Affairs, and Jay Jensen, CEQ. AFRC members also met with numerous Congressional offices and bring a focus on the need to better manage our national forests and to maintain existing infrastructure and the jobs those industries provide in our rural communities.

AFRC appreciates the effort that companies make to send their representatives back to Washington D.C., and the compelling stories they bring regarding the need for more and better management on our federal forests. / *Tom Partin*

Jewell Nomination and Hearing

On March 7, the Senate Energy and Natural Resources Committee held a confirmation hearing on President Obama's nomination of Sally Jewell to become Secretary of Interior. Jewell faced intense questioning on how she would balance conservation and development on hundreds of millions of acres of public lands, since the Department of Interior is the largest land manager in the United States. Key themes of the questioning revolved around how she would regulate the controversial technique of hydraulic fracturing, new permitting for oil and gas leases, and her thoughts on managing timberlands her Department would oversee.

Senator Lisa Murkowski, the committee's ranking member, expressed concern with Jewell's lack of experience with public land management policies. Jewell, the CEO of outdoor retail giant REI, was criticized by some Republican Senators over her role as a board member of the National Parks Conservation Association and her support of outgoing Interior Secretary Ken Salazar's former "wild lands" policy, which was introduced in late 2010 at REI's flagship store in Denver. The policy, which sought interim protections for wilderness-quality lands, was later revoked as a result of Republican protests.

While she pledged to provide certainty and clarity to industry, she did not offer specifics on the BLM's fracking rule or whether she would take steps to increase production of oil and natural gas on federal tracts. While domestic oil and gas production has soared over the past several years, the majority of that growth has occurred on private lands outside Interior's control. Jewell did say that she endorsed sustainable forest management as it pertains for management of the 2.6 million acres of O&C lands in western Oregon.

On March 21, the Committee voted 19-3 to send Jewell's nomination to the full Senate. The lopsided vote was likely made possible by a deal struck with Murkowski to reconsider a likely FWS decision related to building a road through a National Wildlife Refuge to connect an isolated Alaskan coastal community. The Senate is likely to vote on the nomination in April. / *Tom Partin*

2013 Annual Meeting

There is still time to register for AFRC's 2013 Annual Meeting being held April 2-4 at Skamania Lodge in Stevenson, Washington. The theme of our meeting is "2013: Moving Forward with Optimism."

Representative Kurt Schrader will be our keynote speaker on April 3. Other featured speakers are Robert Bonnie, Senior Advisor for Environment and Climate to Secretary of Agriculture Tom Vilsack and Dr. Peter Goldmark, Washington Commissioner of Public Lands.

We will also feature a panel of the top legal talent that represents AFRC as we defend timber harvesting on public lands. They will bring you up-to-date on recent cases and even some victories.

Agency personnel will be with us to provide updates on public timber programs at the national, regional and Washington State levels. The breakout sessions will allow members to have a frank dialogue with people from Forest Service Regions 1, 4, 5 and 6, the BLM and the Washington DNR.

The meeting will begin on April 2 with our golf tournament followed by the opening reception. April 3 will feature a full slate of meetings, social hour and dinner. The meeting will conclude on April 4 with a half day of meetings and AFRC's Board of Directors meeting and luncheon.

Registration and hotel information is available on our website: www.amforest.org.