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## **Trump Administration Makes Early Personnel Moves**

In the days since Donald J. Trump was sworn in as the 45<sup>th</sup> President of the United States, we're learning more about the Trump Administration's initial personnel moves at the key natural resources departments and agencies. The first wave of political appointees has been referred to as "beachhead teams" that have landed within the various departments to oversee and coordinate agency activities. Many of these initial appointments will be temporary until the administration names subcabinet and assistant secretary positions – some of which are subject to Senate confirmation and may not be in position until the summer.

On January 18, former Georgia Governor Sonny Perdue was announced as Trump's pick for Agriculture Secretary. Being the last Cabinet position to be selected by the new Administration, it is no surprise that transition staffing at USDA has lagged a bit behind other departments. In one interesting development, on January 24, Washington State Senator Brian Dangel (R-Republic) was appointed as a Special Assistant to the Secretary and assigned to the office of the Undersecretary for Natural Resources and the Environment – the subcabinet position that oversees the U.S. Forest Service. Dangel, who is a strong proponent of federal timber management, mining, and ranching, subsequently resigned his seat in the Washington State Senate. Dangel was an early backer of Donald Trump in Washington State.

As Governor Perdue begins the confirmation process it is hoped that other key positions will be announced soon, including the Undersecretary for Natural Resources and the Environment – a position that will have a significant impact on the trajectory of the U.S. Forest Service and is subject to Senate confirmation. AFRC is part of a broad coalition supporting the selection of Erica Rhoad as the next Undersecretary. Erica is the current Staff Director of the House Natural Resources Subcommittee on Federal Lands and has nearly two decades of experience working on federal forest policy, appropriations, and legislation.

The transition process is significantly further along at the Department of the Interior. Trump's pick for Secretary, Montana Congressman Ryan Zinke, was approved by the Senate Energy and Natural Resources Committee and is expected to receive a swift confirmation vote on the Senate floor. In the meantime, Interior is being led by an experienced group of about 30 political appointees providing initial direction for agency activities.

Notable names in the initial wave of appointees include Jim Cason, who served in several assistant secretary roles in the George W. Bush Department of the Interior. Other George W. Bush alums include Melissa Simpson, who served in senior positions at Interior and USDA. Members of Zinke's congressional staff are also making the trip down Constitution Avenue to

join their boss at Interior. A handful of current and former staffers of the House Natural Resources Committee are also among the initial appointments, including posts in the Bureau of Land Management.

In one additional development, it has been reported that two other Republicans with ties to the Washington State Senate have landed on beachhead teams at the Environmental Protection Agency (EPA). Current State Senator Doug Ericksen (R-Ferndale) is working part-time with the Trump Administration overseeing communications and may be interested in being the director of the EPA Region X office in Seattle. Former State Senator Don Benton (R-Vancouver) was also named a senior White House adviser overseeing the EPA. Benton chaired the Trump campaign in Washington State and Ericksen was the deputy chair.

Again, many of these initial political staff assignments may change in the weeks and months ahead. AFRC will continue to reach out to both the beachhead teams and potential candidates for permanent Trump Administration posts. */Heath Heikkila*

## **Legislative Session Underway in Olympia**

On January 9, the Washington Legislature convened for a 105-day session, which is typical in odd years where a two-year budget is adopted. Most observers expect the Legislature to last well beyond the April 23 adjournment date as the Republican-controlled Senate and the Democrat-controlled House offer competing visions for developing a budget that is responsive to the Supreme Court's *McCleary* decision on funding education. The House and Governor Jay Inslee are pushing for increased taxes, while Republicans generally oppose tax increases. Further complicating matters are the tight margins in both chambers – each party holds just a one-seat majority.

In December, Governor Inslee submitted his budget request to the Legislature, which would increase state spending by over 20 percent (about \$8 billion) over the current biennium. The Governor's budget relies on over \$4 billion in new taxes and revenue, including a new capital gains tax, an increase in the state Business and Occupation Tax for service businesses, and a new tax on carbon pollution. Several of the tax proposals have failed at the ballot box in recent years and are unlikely to be adopted by the Legislature. Therefore, many of the funding increases proposed in the Governor's budget will also be difficult to fund.

On the forestry front, the Governor's budget proposes increased funding for improving forest health, including over \$4 million in General Funds to add increased staffing at the Department of Natural Resources (DNR) to plan and implement projects on state lands. Twenty-five million in Capital Budget funding would be provided to DNR for forest hazard reduction projects, including \$5 million for Good Neighbor Authority cross-boundary projects on federal lands. While it will be difficult to maintain these levels of funding through the legislative process, the requests provide an opportunity to highlight the need for increased active management on state and federal lands.

There are a handful of forest health related policy bills that have been introduced, including:

- [HB 1799](#) – Good Neighbor Authority (GNA) Legislation. While DNR is already working on a GNA agreement with the U.S. Forest Service, this legislation would require a demonstration project to show how the state can build staff capacity to help increase timber management activities on federal lands. The demonstration project is intended to show how this can be accomplished without reducing management on state lands by leveraging federal resources and the value of timber sold to fund the state’s work. AFRC worked with other partners to draft and introduce the legislation.
- [HB 1711](#) - State Rep. Joel Kretz’s (R-Wauconda) legislation would require the DNR to prioritize forest health treatments on state lands based on their strategic location and the rate of return the department expects to receive from the project, including the value of commercial timber removed.
- [HB 1710](#) – This legislation, also sponsored by State Rep. Joel Kretz, would exempt the salvage of “perishable fire-damaged timber” from state lands from lawsuits, appeals, and certain environmental analysis.

The recent resignation of Senator Brian Dansel (R-Republic) leaves the Senate in a 24-24 tie, which will likely slow down Senate action until Dansel’s replacement is named (it appears that State Rep. Shelly Short will move up to the Senate). This will likely add to what is expected to be a long session. /Heath Heikkila

### **Andy Geissler: Strong economy built on timber industry**

*In a recent [Register-Guard](#) op-ed, AFRC Field Forester Andy Geissler provides a unique perspective on the recent Cascade Siskiyou National monument expansion. Read an excerpt below or the full story [here](#).*

“The Jan. 12 guest viewpoint headlined ‘Expanded monument could benefit economy’ offers a strange and disturbing perspective on how economic value is placed on certain commodities, and likewise, how Oregon places value on its economy. The context is the expansion of the Cascade Siskiyou National Monument in Southwest Oregon.

The authors assert that ‘the economic value of tourism associated with an expanded monument would vastly exceed the value of timber that could be extracted.’

I believe the flaw in this approach is that it assumes that whichever commodity generates the most economic value is inherently the “best” or most useful commodity.

As a citizen of Oregon and as a consumer, I typically place the highest value on those commodities that I need the most. For example, when I go to the grocery store I purchase items such as milk and bread before I buy a bottle of wine or a six-pack of beer. If I have extra money, I’ll indulge in the wine — but really, it’s a luxury item of sorts. I think this analogy can be applied to the commodities that the authors of the guest viewpoint allude to — namely tourism, recreation and timber.” [Read the full op-ed](#). /Travis Joseph

## **Western Oregon Timber Sale Outlook**

A consistent and reliable supply of timber products sold off National Forests in western Oregon is paramount to AFRC's members and the communities they support. A steady flow of raw materials is essential to business and financial planning for the remaining milling infrastructure.

It is also critically important for timber volume to be offered in a manner that allows potential purchasers the ability to adequately review and appraise each sale prior to auction. Often, this allowance is a simple function of time. The importance of a "balanced sale schedule" is discussed regularly between AFRC, its members, and the Forest Service. This balance refers to how timber sales are distributed throughout a fiscal year (October-September). If too many sales are offered in any given month, a strain is put upon potential purchasers to substantively review the projects and prepare bids in good faith within the thirty-day advertisement period. The growing use of stewardship authority to sell timber adds to this strain as the "best value" concept used under stewardship requires a more lengthy and detailed proposal from potential purchasers. To give an example, if a given Forest chooses to offer 75 percent of its timber sale program in the month of August, potential purchasers may not have enough time to properly evaluate this program in its entirety. Since many of AFRC's members purchase timber sales off multiple National Forests there is potential for a cascading effect.

In recent years, timber sale offerings for all four western Oregon National Forests (Siuslaw, Willamette, Umpqua, Rogue River-Siskiyou) have been disproportionately advertised in the fourth quarter - July through September. Between 2012 and 2015 the proportion of sales offered during these three months exceeded 50 percent. However, last year this proportion swelled to 87 percent, creating a scenario where, in some parts of the state, potential purchasers were forced to pick and choose which sales to commit resources to.

Attracting as much interest for each individual timber sale is a goal shared by both AFRC and the Forest Service (and U.S. taxpayers). In response to this disconcerting trend, the National Forests in western Oregon are proposing a more balanced sale plan for Fiscal Year 2017, which strives to offer only 30 percent of the year's total volume in the fourth quarter.

Unfortunately, with a third of the fiscal year behind us, only one timber sale has been advertised (a small sale for less than half a million board feet). Over 40 million board feet (equivalent to more than 480 direct jobs) of sales initially planned for sale during the past four months have been delayed. In some parts of the state, such as the higher elevations of the Cascades, the heavy snow pack has likely contributed to some sales being delayed; but snow cannot be attributed for the delayed volume in its entirety. Regardless, AFRC hopes that the next four months are more productive than the previous four or its going to be another logistically challenging summer for the industry and Forest Service.

In the meantime, AFRC will continue to advocate for more tools that will allow the Forest Service to increase its efficiencies in timber sale design and development that will hopefully help create a timber sale program that is reliable and well-balanced. */Andy Geissler*

## **Colville Plan and Salvage Update**

On January 12, AFRC member companies met with the Colville National Forest to receive updated information on their 2017 timber sale program and the Colville Forest Plan revision. The Forest is on track to sell over 60 million board feet (equivalent to 720 direct jobs) which now includes an additional roadside salvage project called Jungle Salvage.

The timber burnt in the Stickpin fire of 2015 is holding remarkable well, based on recovery from those logs that are currently being milled. Based on that recovery, Vaagen Brothers Lumber approached the Forest in December asking that an additional roadside salvage project be put up for bid. The Forest put that timber sale up for bid on January 25. The Jungle Salvage project, which will harvest approximately 1.8 million board feet of dead roadside timber, also serves the purpose of removing hazardous trees and material from roads within the Stickpin fire so those roads can be reopened for public use.

Holly Hutchinson, Colville Forest Plan Revision Team lead, gave an update on the status of the Forest Plan revision. Based on the comments that were received on the draft Plan the Forest developed a final environmental impact statement (EIS). In December, the Forest sent their proposed EIS to the Regional Office for their review, and expects to submit a Biological Assessment for consultation with the U.S. Fish and Wildlife Service in February.

The Colville anticipates publishing the Draft Record of Decision in the Federal Register in July, which will begin a 60-day objection period. The Region has suggested changes to the plan that could be problematic including a new guideline for large tree management, which provides a list of exceptions for when large trees (defined as greater than 20 inches diameter at breast height) can be cut. The original proposed plan did not include the arbitrary and scientifically baseless Eastside screens and 21” diameter limits. The new Colville Forest Plan will be the first Forest Plan revision that has been completed in Region 6 in over a decade. / *Tom Partin*

## **DNR Sustainable Harvest Calculation DEIS Public Meetings Update**

The Washington State Department of Natural Resources (DNR) held its planned four informational public meetings in January to present information related to the Marbled Murrelet Long Term Conservation Strategy (LTCS) and the Sustainable Harvest Calculation (SHC) and the Draft Environmental Impact Statements (EISs) currently out for public comment.

The meetings were held in Sedro Woolley, Seattle, Port Angeles, and Cathlamet. Attendance averaged about 25-30 individuals at each meeting. Each venue had a different mix of attendees, with Port Angeles having the most trust beneficiaries’ representatives. Sedro Woolley had a good industry representation with Seattle having nearly all non-industry related attendees.

As reported last month, the first hour of the meetings was dedicated to updating the public on the MM LTCS and the SHC. The second hour was an open house format with information stations. As expected, there was no oral testimony recorded but attendees were given an opportunity to submit written comments on site, via small post cards. The open house format allowed attendees to ask questions of both DNR and U.S. Fish and Wildlife staff. DNR also had their electronic interactive “story map” available for use. This tool, along with materials presented at the public

meetings, can be found on the [DNR MM LTCS](#) website and the [DNR SHC website](#). Replays of the webinars on each topic are anticipated to be posted to these sites soon.

The comment period is running concurrently for both the MM LTCS and SHC DEISs, which ends at 5:00 p.m. on March 9. AFRC is continuing to review both DEISs and is working with its partners to develop written comments before the March 9 deadline. */Matt Comisky*

### **Take Action: Will Congress Address the Cottonwood Decision?**

There is growing bipartisan interest in Congress to address a 2015 Ninth Circuit decision in *Cottonwood Environmental Law Center v. United States Forest Service* following the United States Supreme Court's recent denial of a request by the U.S. Department of Justice (DOJ) to review the case. As reported in the [June 2016 Newsletter](#), AFRC led a coalition of a dozen organizations in filing an Amicus brief urging the Supreme Court to grant review of the case. Following the Supreme Court's denial, the focus now turns to Congress to pass legislation addressing this serious threat to a wide variety of activities on federal lands, including forest management projects.

The Ninth Circuit Court of Appeals ruled in *Cottonwood* that the U.S. Forest Service was required to reinitiate Endangered Species Act (ESA) consultation with the U.S. Fish and Wildlife Service (FWS) on a previously completed forest plan following the designation of critical habitat for Canada lynx, a species listed under the ESA. The DOJ, advocating for both the Forest Service and the FWS, argued that re-initiation of consultation on completed forest plans was not required because completed forest plans are not ongoing actions. You can learn more about *Cottonwood* by reviewing a [December letter](#) AFRC spearheaded to Congressional committee leaders urging legislative action.

In the weeks since the Supreme Court denied DOJ's review petition, a federal District Court in Montana blocked a collaborative forest project based on the *Cottonwood* decision. Litigation has also been filed in Washington, D.C. seeking to apply *Cottonwood* to forest management activities on the Superior National Forest. In December, Senators Steve Daines (R-MT) and Jon Tester (D-MT) [announced bipartisan legislation](#) to reverse the decision. The Montana Senators are now being joined by Congressman Mike Simpson (R-ID), a senior member of the Appropriations Committee, in urging a legislative solution early in the current Congress.

Will you add your voice to those urging Congress to take action? Healthy Forests, Healthy Communities (HFHC) is running a grassroots email campaign to Congress. You can send a pre-drafted email to your Senators and U.S. Representative by visiting [HFHC's Action Center](#). It takes just a couple of minutes and makes a difference. */Heath Heikkila*

### **Gorsuch Nominated to Supreme Court**

On January 31, Tenth Circuit Judge [Neil Gorsuch](#) was nominated to fill the Supreme Court seat previously held by Justice Antonin Scalia ([AFRC February 2016 Newsletter](#)) and for which the previous Administration nominated Merrick Garland ([AFRC March 2016 Newsletter](#)). Judge Gorsuch sits in Colorado; the Tenth Circuit covers Colorado, Utah, Wyoming, New Mexico, Kansas, and Oklahoma.

News reports characterized Gorsuch as in the vein of Justice Scalia. Ramesh Ponnuru, “[Neil Gorsuch: A Worthy Heir to Scalia](#),” (*National Review*); Adam Liptak, “[In Judge Neil Gorsuch, an Echo of Scalia in Philosophy and Style](#)” (*New York Times*). According to [SCOTUSblog](#), “one study has identified [Gorsuch] as the most natural successor to Justice Antonin Scalia . . . both in terms of his judicial style and his substantive approach.” Environmental [groups condemned](#) the nomination.

Like Scalia, Gorsuch is an elegant writer. His opinions read like novels, often including rhetorical flourishes. Gorsuch frequently plumbs the history of a rule of law back to early, or even medieval, days, which Scalia did with some regularity. Gorsuch appears to be a “textualist,” focusing on the meaning of individual words within statutes, while Scalia was known for being a textualist and an “originalist,” focusing on the meaning of Constitutional phrases at the time of independence.

Gorsuch seems likely to push for revival of the “nondelegation” doctrine, which holds that one branch of government may not delegate its Constitutional powers to another; in particular, Congress cannot delegate legislative powers to administrative agencies. Only one statute has been overruled under the nondelegation doctrine in the 1935 case [A.L.A. Schechter Poultry Corp. v. United States](#). Gorsuch suggested in [United States v. Hinckley](#) (10th Cir. 2008) that reading a statute to give unfettered discretion to the Attorney General would violate the nondelegation doctrine. In [Gutierrez-Brizuela v. Lynch](#) (10th Cir. 2016), he argued that “Chevron deference” is not consistent with the separation of powers. Named after a [1984 Supreme Court case](#), *Chevron* deference instructs the courts to defer to agency interpretations of ambiguous statutes. Pulling back on *Chevron* deference would limit the powers of agencies to issue regulations or policies inconsistent with judicial interpretation of statutes.

Although Gorsuch has not decided any cases regarding forest management, he has touched on issues of interest. In [Hydro Resources v. EPA](#) (10th Cir. 2010, *en banc*), he found the plaintiff company had standing where the policy at issue would require it to submit a new permit application. This is significantly more relaxed than the standard for industry standing that the D.C. Circuit has developed. [United States v. Magnesium Corp.](#) (10th Cir. 2010) deferred strongly to EPA’s interpretation of the Resource Conservation and Recovery Act, even where that interpretation was at odds with previous nonbinding guidance.

The Tenth Circuit, generally, has also issued a number of cases in line with the views of supporters of active forest management. [Forest Guardians v. Forsgren](#) (10th Cir. 2007), for example, held that no new ESA consultation on completed Forest Plans when new critical habitat is designated, is in direct conflict with the Ninth Circuit’s *Cottonwood* decision ([AFRC June 2016 Newsletter](#)). [Catron County Board of Commissioners v. FWS](#) (10th Cir. 1996), decided NEPA analysis was required for designating critical habitat, rejecting the Ninth Circuit’s decision in [Douglas County v. Babbitt](#) (9th Cir. 1995). /*Lawson Fite*

## **Job Opening: AFRC Seeks Southwestern Oregon Field Forester**

Do you love being outdoors and in the woods? Are you passionate about the local forest products industry and its contributions to economic and environmental sustainability in Western Oregon? Do you want to work for an organization that is making a difference in public land management?

AFRC is looking for a dynamic, passionate, and hard-working individual to join its team as the Southwestern Oregon Field Forester. The position will be responsible for providing professional and technical input into the planning, development, and implementation of federal agency (Forest Service and BLM) vegetation management projects to make these projects more economically and operationally viable for AFRC member companies.

Applicants should have, at a minimum, a bachelor's degree in forestry or natural resources and three years of work experience in forest management. The ideal candidate must be an excellent writer, strong team player, independent and self-motivated, and able to develop constructive relationships with federal agency staff and AFRC members. The position will be permanently based in Grants Pass, Oregon and will be supervised through AFRC's Eugene, Oregon office.

To learn more about [AFRC](#), read the full job description, and apply please click [here](#) or visit our [webpage](#). /Travis Joseph