



September 2017

Wildfires and Forest Management Reform

While the hurricane relief efforts in Puerto Rico, Florida, and Texas continue to garner the headlines, Congress devoted significant attention to the need for legislation to fix the nation's broken federal forest management policies and reform wildfire suppression budgeting. Over 8.5 million acres burned thus far in 2017 and the Forest Service is on track to spend over \$2.4 billion on suppression efforts, setting a new record. There have been numerous editorials, op-eds, and news coverage about the need for forest management reforms on Federal lands. Below is a list of some of the most recent activity in Congress, prompted by this year's devastating wildfires:

- September 6 - Senator Steve Daines (R-MT) went to the Senate floor to highlight Montana's wildfire season and call for bipartisan legislation to put an end fire borrowing, analysis paralysis, and frivolous litigation. Daines also sent a letter to new Forest Service Chief Tony Tooke calling for action.
- September 8 - Representative Greg Walden (R-OR) introduced legislation (H.R. 3715) to expedite recovery and restoration activities in the Columbia River Gorge National Scenic Area in the wake of the Eagle Creek Fire. Congressman Walden has also spoken about the severe air quality concerns caused by the wildfires at Energy and Commerce Committee hearings.
- September 13 - Senator Daines joined Senator John Barasso (R-WY), Representatives Greg Walden, Bruce Westerman (R-AR), Cathy McMorris Rodgers (R-WA), and Forest Service Chief Tony Tooke to once again call for action on forest management reforms.
- September 13 - Representative Kurt Schrader (D-OR) went to the House floor to call for forest management reforms and specifically cited the environmental litigation that has been blocking needed management activities.
- September 26 - A half-dozen U.S. Senators, including Senators Steve Daines and Ron Wyden (D-OR), joined Agriculture Secretary Sonny Perdue for a briefing at Forest Service headquarters to discuss the record-breaking fire season and the need to end fire borrowing. The Secretary has devoted a significant effort towards reforming the wildfire funding, but has been largely silent on the need for forest management reforms.
- September 27 - AFRC's Lawson Fite testified before the Senate Environment and Public Works Committee and the House Natural Resources Oversight & Investigations Subcommittee on the need to reform broken federal forest management and fire funding practices (see article below).

On October 2, a broad coalition of 65 organizations representing the forestry sector, local governments, and conservation organizations sent a [letter](#) to Congressional leadership urging them to move federal forest management reforms with any fire funding fix. The effort, which

was led by AFRC and FFRC, was meant to highlight the need to address the underlying forest health crisis, rather than merely addressing the symptom of fire borrowing. The same day a [letter](#) spearheaded by The Nature Conservancy was sent to Congressional leadership urging them to act on the latest version of the Wildfire Funding Disaster Act, which is solely focused on a fire funding fix.

More activity is expected in the coming weeks. The House Energy and Commerce Subcommittee on the Environment is scheduled to hold a hearing on October 4 to explore the effect wildfires are having on air quality. As the Chairman of the powerful House Energy and Commerce Committee, Congressman Walden is in a key position to highlight the disastrous effects of these megafires and the need to change how the federal government manages its forests and fights wildfires. The Murphy Company's Knox Marshall is set to testify at the October 4 hearing. We also expect the Western Caucus, a large group of Senators and Representatives from the West, to voice their support for a comprehensive forest management and fire funding fix.

In September, Congress passed a stop-gap funding measure to maintain government operations through December 8 and provided an initial \$15 billion in hurricane relief and a payback of management funds the Forest Service was forced to borrow when it exhausted its appropriated wildfire suppression funding. We expect another hurricane relief supplemental bill in October, which could provide a legislative vehicle for forest management and/or fire funding reforms. The Congress will also need to take up an appropriations measure in December and may also need to amend the Budget Control Act to provide relief from aspects of the sequester and budget caps affecting defense and non-defense programs, which could serve as additional legislative vehicles for forest management reforms. /Heath Heikkila

Fite Completes a Doubleheader

In a rare occurrence, AFRC General Counsel Lawson Fite testified before two Congressional Committees on the same day. First up on September 27 was a Senate Environment and Public Works Committee hearing entitled "*Hearing on Forest Management to Mitigate Wildfires: Legislative Solutions*" led by full Committee Chairman John Barrasso (R-WY). Lawson testified in support of bipartisan legislation (S. 605) authored by Senators Daines and Jon Tester (D-MT) to reverse the nonsensical *Cottonwood Decision* and federal forest management reform legislation (S. 1731) introduced by Senator John Thune (R-SD), which includes many provisions from the Resilient Federal Forests Act (H.R. 2936 - Westerman).

Lawson outlined the urgent need for management reforms to address the impact of litigation, as well as the need to streamline current laws to reduce the time and cost to plan, analyze, and implement federal forest management projects. Republican members tended to echo these points, while Democrat Senators largely pointed to climate change and the need for a fire funding fix. Prior to the witness panel, Senators Orin Hatch (R-UT), Steve Daines, John Thune, and Jon Tester all testified in support of their legislative proposals and active forest management.

There was an encouraging amount of agreement between the witnesses on the need to adopt wildfire funding and federal forest management reforms. In fact, National Wildlife Federation President Collin O'Mara endorsed linking the two and noted that it would be a significant victory

for our forests. Senator Jeff Merkley (D-OR), who serves on the Committee, spoke about the impacts of the Eagle Creek fire in the Columbia River Gorge and pointed to stewardship contracts and collaboration as successful models in Oregon. The Senator also expressed a concern about re-igniting the timber wars and efforts to log the “fire resistant” trees. It was not clear if there were specific projects the Senator was concerned with or if his comment was driven by a perception that the industry was promoting such an approach – we intend to follow up with the Senator’s office. The list of witnesses, their written testimony, and a webcast of the hearing can be viewed at the [Committee’s website](#).

That afternoon, Lawson appeared before the House Natural Resources Oversight & Investigations Subcommittee, which is chaired by Congressman Bruce Westerman. The hearing entitled “*Exploring Solutions to Reduce Risks of Catastrophic Wildfire and Improve Resiliency of National Forests*,” got off to a less than cordial start when the Ranking Democrat - Congressman A. Donald McEachin of Richmond, Virginia - complained that this was the fourth hearing with a similar focus on federal forest management and wildfires. The Republican members, most of whom represent Western districts, expressed their support for holding another hearing on this critical issue.

The Minority members and their witness, Dominick DellaSala of the Goes Institute, doubled down on the climate change message. DellaSala also discounted the efficacy of forest thinning in reducing the size and severity of catastrophic wildfires, which didn’t play well with the panel’s Republican members – many of whom cited examples of wildfires that were successfully contained due to past thinning treatments.

Lawson was joined on the Majority side by Phil Rigdon of the Yakama Nation and Ravalli County (Montana) Commissioner Greg Chilcott, who both provided strong support for active forest management. The list of witnesses, their written testimony, and a webcast of the hearing are available at the [Committee’s website](#). /Heath Heikkila

Court Decides Challenges to Western Oregon RMP Can Stay in D.C.

AFRC and the Association of O&C Counties each filed [suit](#) against BLM’s unlawful Western Oregon Resource Management Plans (RMP) in [August 2016](#). Both cases assert that the RMPs violate the O&C Act’s requirement that the lands be managed for “permanent forest production.” The RMPs set aside 80% of the O&C lands into reserves where sustained-yield timber production is not possible, violating the Act.

The Obama Administration almost immediately moved to transfer the cases to the U.S. District Court for the District of Oregon, apparently intending to capitalize on the more hospitable judicial environment of the Ninth Circuit. Over several months, despite delays in compliance by BLM, AFRC obtained thousands of pages of documents revealing deep involvement by D.C. officials in development of the RMP. (See [February 2017 Newsletter](#)). For example, Interior official Jim Lyons gave private briefings to the *New York Times* on the RMPs. BLM assembled a D.C. based “strike team” to handle responses to protests on the plan. Still, the government insisted that the cases challenging the RMPs did not have enough connection to D.C. for the court to respect AFRC’s and AOCC’s choice of forum.

On September 25, Judge Leon denied the motions to transfer without comment. This means that the cases will be decided in the District of Columbia Circuit rather than the Ninth Circuit. The government must file its answer to the complaints within 30 days and briefing on the merits of the case will begin shortly thereafter. */Lawson Fite*

Frog Project Finally Cleared

Judge Anthony Ishii of the Eastern District of California issued an order on September 15 permitting the Frog Project to proceed. The Frog Project proposes to improve forest stand health on 1,630 acres in the Sequoia National Forest by thinning small understory trees to reduce stand density. The project has a long and tortured history. It was first proposed in 1999 and Sierra Forest Products acquired the contract to operate the first sale on the project in 2001. Operations commenced in 2004 but were halted by the McNally Fire. Litigation followed and the U.S. District Court, Northern District of California (Judge Charles Breyer) issued a preliminary injunction in 2005 and a permanent injunction in 2006. The court found that a supplemental NEPA review was warranted due to new information about the status of Pacific fisher in the southern Sierras.

The initial injunctions remained in place for seven years. In 2013, the Forest Service completed a revised Environmental Assessment and the court dissolved the injunction. Sierra Forest Products resumed operations in 2015, getting to about 80% completion on its contract. Shortly before the 2016 operating season, Sequoia ForestKeeper filed a lawsuit, claiming that the 2013 revised EA needed to be supplemented because of effects on fisher habitat arising from the recent mortality epidemic in the southern Sierras. This encapsulates the litigation problem on public forests; if projects like Frog were not delayed by litigation, the healthy forest would have resisted many of the impacts of the severe drought.

The Forest Service suspended Frog in order to obtain some additional vegetation data in light of the recent insect/disease epidemic. In April 2017, the Forest Service, having completed its analysis of the data, determined not to prepare a supplemental EA for Frog and issued a Supplemental Information Report (SIR).

Judge Ishii's order came with just enough time to complete operations in 2017. The court's thorough 60-page opinion found the Forest Service's SIR and its decision on supplementation were not arbitrary or capricious. In particular, the court found the Forest Service took a hard look at the relevant factors and appropriately determined conditions were not significantly different from those analyzed in 2017. There continues to be a need for forest health treatments in this area and the Forest Service determined any impacts in the short term would be well balanced by improvements to forest health and resilience. The court also found the project complies with Forest Plan standards for maintaining canopy cover.

The Forest intends to offer the second Frog sale in 2017. The first sale, now 16 years old, is finally expected to be complete by the end of October. */Lawson Fite*

Singletary Sale Overturned, More Process to Come

First proposed in 2014, the Singletary DNR timber sale was approved by the Board of Natural Resources in early 2017. The sale is in Snohomish County near the town of Gold Bar and not far

from Wallace Falls State Park. After the Board approved the sale, Snohomish County formally requested reconveyance, pursuant to statute, of 25 acres in the middle of the sale. DNR reconfigured the smaller sale and proceeded to auction in May. Opponents of timber harvest immediately filed suit in the Snohomish County Superior Court.

A hearing on the merits was held August 10, before Judge Millie Judge in Everett. AFRC and Sierra Pacific Industries were represented by Diane Meyers of Miller Nash Graham & Dunn. The hearing focused on whether DNR had adequately accounted for changed circumstances as a result of the reconveyance and whether DNR could rely on trees within the reconveyed areas as mitigation.

The next day, August 11, the Court granted plaintiffs' appeal. The judge found that DNR had failed to adequately explain the conclusion in its SEPA addendum that the request for reconveyance had not resulted in significant changes in effects. The court did not address AFRC's argument, based on clear statutory language, that SEPA is not a requirement on a timber sale.

DNR decided not to appeal and intends to vacate the sale. AFRC and SPI did not appeal. DNR plans to conduct a community engagement process, beginning with a community meeting on October 3 and a community field trip on October 7, before conducting further management in the area. All parties interested in continued fulfillment of DNR's trust mandate are encouraged to participate in this process. In the meantime, beneficiaries including the Sultan School District, Sno-Isle Library, and Evergreen Health Monroe are deprived of significant trust revenues in the tens and hundreds of thousands of dollars.

The story of the Singletary Timber Sale shows the importance of industry and trust beneficiaries standing up for effective management of DNR lands. */Lawson Fite*

A New Nominee for the Ninth Circuit

In early September, President Trump [announced](#) the nomination of [Ryan W. Bounds](#) to serve as a Circuit Judge on the United States Court of Appeals for the Ninth Circuit. If confirmed, Bounds will fill a vacancy created when Circuit Judge Diarmuid O'Scannlain assumed senior status.

Bounds is an [Assistant United States Attorney](#) for the District of Oregon, where he prosecutes criminal cases involving fraud and environmental crimes on behalf of the United States. Bounds was previously special assistant to President George W. Bush for justice and immigration policy and was, during the Bush Administration, chief of staff and deputy assistant attorney general for the Justice Department's Office of Legal Policy. Bounds is a native of Hermiston, OR and served as a law clerk to Judge O'Scannlain. He is president of the [Portland Lawyers Chapter](#) of the Federalist Society, a group of conservative lawyers, judges, professors, and students.

With this profile, Bounds would likely continue in the conservative legal tradition of Judge O'Scannlain. However, his prospects for confirmation are uncertain. Immediately after the nomination, Oregon Senators Merkley and Wyden [wrote](#) to the White House protesting that Bounds had not proceeded through the judicial selection committee supervised by the two

Senators. They have declined to return a “blue slip” on behalf of Bounds to the Senate Judiciary Committee for nomination. Wyden and Merkley [recommended](#) the President nominate Oregon U.S. District Judge Marco A. Hernández for the position. Judge Hernández was originally nominated by President Clinton, then renominated by President George W. Bush and confirmed by the Senate. Hernández handled the Snow Basin litigation in 2014.

The “blue slip” is a [tradition](#) in which US Senators can give or withhold their blessing for a judicial nominee from their state. The process gives the party that does not control the White House leverage over a good number of the president’s nominations. It is different from the filibuster, which required 60 votes to ensure a nominee would be confirmed. The filibuster was [abolished](#) for judicial nominees in April with the confirmation of Justice Neil Gorsuch. The filibuster continues in place for any legislation that is not purely budget-related.

Some Senate Republicans have encouraged elimination of blue slips, at least for Court of Appeals nominees. Others have hesitated. The ultimate decision is in the hands of Senator Chuck Grassley (R-IA), who chairs the Senate Judiciary Committee.

Three Democratic state senators have [urged](#) Senators Wyden and Merkley to drop their opposition to the Bounds nomination. Senators Lee Beyer (D-Springfield), Betsy Johnson (D-Scappoose) and Arnie Roblan (D-Coos Bay) joined Republican lawmakers in a letter supporting the nomination. The letter raised the concern that if Bounds is not confirmed, the President might appoint a non-Oregonian to the seat.

Meanwhile, District Court Judge Anna Brown has assumed senior status, creating another vacancy. Judge Brown was appointed by President Clinton and previously served on the Multnomah County Circuit Court. Judge Brown presided over the fall 2016 trial relating to the occupation of the Malheur National Wildlife Refuge headquarters. */Lawson Fite*

AFRC Joins *Amicus* Brief on Value of Timber in Eminent Domain Cases

AFRC, the National Federation of Independent Business, and American Farm Bureau Federation filed a Supreme Court *amicus* [brief](#) on September 21 in support of *certiorari* in [Jarreau v. South Lafourche Levee District](#). Pacific Legal Foundation also filed an [amicus brief](#).

The issue in this case is whether business losses that are the direct and foreseeable result of a taking of property must be compensated under the Fifth Amendment. In this case, the condemned property was the source of specialized dirt that was under contract for extraction. The Louisiana Supreme Court held that the value of the dirt contract was not compensable in the eminent domain proceeding. The dirt farmer got an award of \$12,000 instead of receiving the value of the dirt on the property, losing nearly \$150,000.

The Louisiana Court of Appeals’ decision is inconsistent with a lengthy tradition of Legislative and Congressional recognition that timber resources, as well as other agricultural commodities, have value separate and apart from the land on which they grow. As a stark example, the O&C Act, requires management of over two million acres in western Oregon for “permanent forest production.” The O&C Act provides that the timber on these lands “shall be sold, cut, and

removed in conformity with the princip[le] of sustained yield. ...” But at the same time, Congress severely restricts any sale or disposal of the underlying land.

The Supreme Court is likely to decide whether to take the case by the end of 2017. If the Court takes the case, a decision could be issued as early as June 2018. */Lawson Fite*

Ninth Circuit Lets Sunny South Project Operations Begin

After the Sunny South Project was upheld on the merits in the district court, both the district court and Ninth Circuit denied an injunction pending appeal, meaning treatments can begin before significant amounts of merchantable bug-killed timber are lost to deterioration.

Plaintiffs Center for Biological Diversity and Earth Island Institute appealed U.S. District Court Judge Vince Chhabria’s August 16 decision upholding the Sunny South Project on the Tahoe National Forest. This case is the first to challenge the use of the insect and disease categorical exclusion (CE) under the 2014 Farm Bill. The Farm Bill CE authorizes projects to treat up to 3,000 acres in designated areas without preparing an EA or EIS under the National Environmental Policy Act. AFRC intervened in the case on behalf of Sierra Pacific Industries (SPI), who purchased the timber. As reported in our [August Newsletter](#), Judge Chhabria determined that the designation of a landscape under the Farm Bill does not require its own NEPA process. With respect to the Forest Service’s use of the Farm Bill CE for the Sunny South Project, the court affirmed the Forest Service’s finding that, despite short-term impacts on California spotted owls, there were no extraordinary circumstances which would preclude the agency from utilizing the CE.

While on appeal, plaintiffs moved for an injunction pending appeal with the district court. On September 15, Judge Chhabria denied the motion, stating that “neither the public interest [n]or the balance of hardships in this case supports enjoining the Sunny South Project.”

Plaintiffs immediately filed a similar motion in the Ninth Circuit, requesting that the court halt project implementation in California spotted owl Home Range Core Areas. Two Ninth Circuit judges, Judges Rawlinson and Bybee, denied plaintiffs’ emergency motion for an injunction pending appeal. Their one-page order, issued on September 25, denied both the emergency motion for an injunction and the request for expedited briefing. SPI can begin much-needed operations immediately while the case is pending. */Sara Ghafouri*

Monument Report Includes Cascade-Siskiyou National Monument

As our [August Newsletter](#) indicated, August 24 was the deadline for Secretary Ryan Zinke’s report to President Trump regarding his review of 27 national monuments created under the Antiquities Act. While the Department of the Interior provided a press release and brief summary of the process, the full report was not publicly released. The White House is reviewing the report and its recommendations.

On September 18, the text of Secretary Zinke’s report, or at least a draft version of the report, was leaked to the [Washington Post](#). It is unclear whether this version is the final report to the President, since there is no initial or signature from Secretary Zinke. The report included recommendations about the Cascade-Siskiyou National Monument (CSNM), with some

encouraging references regarding the O&C Act. The report language regarding CSNM is as follows:

- *Cascade-Siskiyou National Monument (CSNM) was established by Presidential Proclamation No. 7318 on June 9, 2000, and was originally 65,000-acres. It was expanded by almost 48,000 acres through Presidential Proclamation 9564 on January 12, 2017.*
- *The CSNM is located in Jackson and Klamath Counties, Oregon, and Siskiyou County, California, and is managed by the BLM.*
- *The original 2000 designation was the first monument to protect biodiversity. The expansion purported to create a necessary “buffer” to support the biodiversity objects outlined in the original CSNM.*
- *In 2015, legislation was introduced that would have protected most of the areas in the proposed monument expansion through conservation and recreation designations.*
- *The CSNM contains within its borders a 24,707 acre Wilderness Area designated by Congress in the 2009 Omnibus Public Lands Management Act.*
- *The Wilderness Area was expanded to its current size in 2010 with the acquisition of two privately owned inholdings.*
- *Encompassed within the exterior boundary of the original CSNM is 19,818 acres of private land (23.2%), and within the boundary of the extension is 32,677 private acres (38.3%), for a total of 52,485 acres of privately owned lands. This is 30 percent of the total area within the external exterior boundaries of the CSNM.*
- *The expansion also covers 16,591 acres of harvest land base for sustained yield timber production on Oregon and California Railroad Revested Lands (O&C Lands).*
- *The expansion would reduce timber offer by BLM for sale by 4-6 million board feet per year.*
- *These are lands statutorily set aside for permanent forest production under the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (O&C Act).*
- *The 2000 CSNM monument designation required a study to assess the compatibility of grazing with the biodiversity of the area and the subsequent study found threats to riparian objects. As a result, grazing has largely diminished in the original CSNM area. Many allotments were bought out as a result of a larger land package deal in the 2009 Omnibus Public Lands Management Act.*
- *Motorized transportation was prohibited in the original CSNM designation. The expansion area only allows for motorized transportation after a transportation-management plan is completed. The plan has not been initiated as of this time. Due to poor maintenance, remaining usable roads in CSNM are unpassable and unsuitable for use.*

Recommendations:

- *The Proclamation should be amended, through the use of appropriate authority, including lawful exercise of the President’s discretion granted by the [Antiquities] Act, to protect objects and prioritize public access; infrastructure upgrades, repair and maintenance; traditional use; tribal cultural use; and hunting and fishing rights.*
- *The boundary should be revised, through the use of appropriate authority, including lawful exercise of the President’s discretion granted by the [Antiquities] Act, in order to*

reduce impacts on private lands and remove O&C Lands to allow sustained-yield timber production under BLM's governing Resource Management Plans, until revised regional management plan achieves sustainable timber yield;

- *The management plan should be revised to continue to protect objects and prioritize public access; infrastructure upgrades, repair and maintenance; traditional use; tribal cultural use; and hunting and fishing rights.*
- *The DOI should work with Congress to secure funding for adequate infrastructure and management needs to protect objects effectively.*

In a [press release](#), AFRC President Joseph said: “We cannot comment on whether this leaked document accurately reflects the findings and recommendations in the final report to the President. However, reconsideration of the illegal Cascade-Siskiyou Monument expansion would be a positive step. Congress already set aside these lands eighty years ago for the specific purpose of sustainable timber production in the ‘O&C’ Act, and the President - regardless of party - doesn’t have the authority to rewrite the law. We filed suit against the monument expansion because President Obama’s proclamation violated the O&C Act and exceeded his Antiquities Act authority. We encourage Secretary Zinke and President Trump to take action to follow the law.”

AFRC’s litigation challenging the expansion of the CSNM remains pending in the U.S. District Court in Washington, D.C. The government submitted a status report on September 27 requesting an additional 60-day stay: “Because Presidential action based on the recommendations could ultimately affect the existing monument designation and its size in ways that could affect this litigation, future deferral of judicial proceedings is warranted.” AFRC filed its own status report opposing any request for a stay because there are no assurances that presidential review of Secretary Zinke’s report will be conducted within a particular timeframe and, more importantly, presidential action may not resolve the legal issues presented in AFRC’s challenge of the monument expansion. /Sara Ghafouri

AFRC Intervenes in Challenge to Joey and Bald Mountain Projects

On August 29, AFRC moved to intervene on behalf of Sierra Forest Products to support the Joey Project on the Sequoia National Forest and the Bald Mountain Project on the Sierra National Forest. Sierra Forest Products holds the contract on Joey Project and one of the contracts on Bald Mountain Project. Judge Ishii granted Sierra Forest Products’ motion to intervene on September 28.

Last year, plaintiffs Sequoia ForestKeeper and Earth Island Institute brought a lawsuit and alleged that the Forest Service violated NEPA by proceeding with the projects without analyzing “significant new circumstances” regarding the “drought-related, massive die-off” of trees in the Sierra Nevada area. According to plaintiffs, the changed forest conditions have affected the baseline conditions for the Pacific fisher, the California spotted owl, and the northern goshawk. The case also challenged the Summit CE Project on the Sequoia National Forest; however, that project has been turned into a service contract due to wood deterioration and is unlikely to be actively litigated.

The Joey Project will treat 6,153 acres using a combination of hand and mechanical fuels reduction and tree thinning in the Wildland-Urban Intermix (WUI) defense and threat zones. The treatments of mixed conifer units and pine-dominated stands will generate approximately 2.353 million board feet (MMBF).

The Forest Service developed the Bald Mountain Project with the support of the Dinkey Collaborative to reduce hazardous fuels and restore ecological components within the Dinkey Landscape Restoration Project area. The project proposes approximately 5,728 acres of treatment and includes logging activities in Pacific fisher habitat, spotted owl and northern goshawk territories. The timber volume for both of these projects, almost 17 MMBF, is extremely important to Sierra Forest Products and our other members active in the southern Sierras.

The Forest Service suspended Joey and Bald Mountain for the 2017 operating season to evaluate new data collected after the recent wave of tree mortality. The Forest Service expects to issue a determination in October on whether supplemental NEPA analysis is required for Joey, and around the same time for Bald Mountain. It is likely that the case will move to active litigation shortly thereafter. /Sara Ghafouri

Ninth Circuit Ruled That an EIS is Not Required to Put Up Parking Lot

In *Wild Wilderness v. Allen*, Wild Wilderness (a group representing non-motorized users) challenged the Forest Service's approval of building Kapka Sno-Park, a parking lot that is designed for motorized recreationalist. One of the issues on appeal was whether the Forest Service had violated NEPA by first issuing a draft EIS but then issuing a finding of No Significant Impact (FONSI) and a final EA in its place. Wild Wilderness claimed that the Forest Service was required to provide an explanation of why it had changed its mind. The Ninth Circuit acknowledged that Wild Wilderness "offers no support for this novel procedural requirement" and held that "[w]hile the Forest Service was obligated to explain why an EIS was not necessary, and did, there was no additional requirement that the Forest Service explain why it chose to comply with its own procedural requirements in a certain way."

Wild Wilderness also claimed that the Forest Service violated NEPA by failing to provide a convincing statement of reasons that Kapka Sno-Park would not significantly affect the environment. The Ninth Circuit affirmed the district court's conclusion that the degree to which the project affects the environment was not lightly to be "highly controversial," noting that controversial does not refer to whether or how passionately people oppose the action. The Ninth Circuit stated, "The anecdotal evidence about snowmobiler preferences that Wild Wilderness marshaled for this factor did not rise to the level of the sorts of scientific controversies that would substantially undermine the reasonableness of the Forest Service's conclusions."

This Ninth Circuit ruling upholding the Forest Service switch from the EIS to the EA is an important win for the agency. It also illustrates the absurdity of requiring an EIS for modest forest management projects, with trees that will be replanted and regrow, while permanent alterations to the landscape like runways and parking lots do not need such extensive documentation. /Sara Ghafouri

Murrelet Long Term Conservation Strategy Planning Grinds On

The work on DNR's Marbled Murrelet Long Term Conservation Strategy continues to grind on to the path of completion. An effort, which at the signing of the 1997 HCP, was anticipated to be complete in the early 2000s. The current draft EIS that was released nearly a year ago presents six different alternatives including the No Action Alternative. As we reported in our [August Newsletter](#) the Board asked for three additional alternatives, which DNR staff presented to the Board at their regular September meeting. No volume numbers or economic impacts were available at the meeting. The Board had some discussions about the alternatives but took no action.

In preparation for the October 3 Board meeting, DNR released a presentation on September 27 which contains another alternative proposed by staff, based on the feedback they received at the September Board meeting. The "new" Alternative proposes to create 626,000 acres of Long Term Forest Cover. This is approximately 6,000 additional acres set aside from those within the current "Interim Strategy." Adoption of this proposal would bring the total acres of Long Term Forest Cover to approximately 48% of the total forested land base DNR manages within the planning area. All of the proposed Alternatives would push Long Term Forest Cover to nearly 50% of the land base DNR is mandated to manage for the benefit of trust beneficiaries.

It is anticipated the Board will use the October meeting to review all of the Alternatives and then vote at the November meeting on a Preferred Alternative. Once a Preferred Alternative is selected, staff will prepare to release a revised DEIS and an application to the U.S. Fish and Wildlife Service for an updated Incidental Take Permit. Based on the recent timeline by DNR, it will be May 2019 before a final EIS is completed. */Matt Comisky*

Note of Thanks

As Fiscal Year 2017 (FY17) comes to an end for the Forest Service, I want to reflect on this past year and say thank you to the National Forests that I follow for all of their hard work. In my work for AFRC, I track the timber sale programs on the Colville, Deschutes, Idaho Panhandle, Kootenai, Lolo, Mt. Hood, and Okanogan-Wenatchee National Forests. AFRC members and staff meet with the forests regularly to track their progress, comment on projects, and defend them in court if necessary. I am pleased to report that all of these forests hit their FY17 timber targets. Some forests exceeded their targets, a couple of forests had reduced targets due to unusual circumstances, and in some cases the targets included a higher percentage of non-saw than AFRC members prefer. From my perspective, it is important to note that these forests do take their timber targets seriously and I believe most are well positioned to ramp up and increase the pace and scale of management that is so desperately needed.

Colville National Forest—The Colville is the little Forest that "can" produce timber. Supervisor Rodney Smoldon has been hitting and/or exceeding targets using large landscape planning areas. He also put forward the A-Z project that required the successful bidder to perform the NEPA work and get approval before the project could be implemented. The Colville is currently working on a Good Neighbor Authority project and Farm Bill insect and disease project which will be additive to the regular timber program. The Colville met its FY17 target of 58 MMBF with an additional 9 MMBF coming from the A-Z project.

Deschutes National Forest—The Deschutes has been one of the constant timber producers over the past decade. Supervisor John Allen has done a good job of integrating the strong recreation demands of this Forest with managing timber. The Deschutes hit its FY17 timber target of 52.7 MMBF; however, nearly half of that volume was non-saw. The Forest is working hard to treat some of the higher fuels areas across the landscape which has seen many large wildfires during the past decade. The Forest is positioned well for the future given upcoming projects in the Kew, Lex, Ringo and Green Ridge planning areas.

Idaho Panhandle National Forest—The Panhandle has been steadily ramping up their program since Mary Farnsworth became Supervisor. The Panhandle's FY17 program of 54 MMBF was met but was basically a deferral of their FY16 green timber sale program that was setback a year to allow the Forest to successfully sell the Tower and Grizzly fire salvage sales in FY16. The Forest has been proactive in using the Good Neighbor Authority and Farm Bill CEs and has also produced a comprehensive 10-year timber plan.

Kootenai National Forest—The Kootenai did not hit its target in FY16 due to the Oly Moly project being held up. However, Region 1 boosted its target level to 70 MMBF for FY17 to make up last year's volume. Despite numerous fires this summer, Chris Savage and his team sold 71.4 MMBF. The Forest still has a number of projects tied up in litigation including the East Reservoir project.

Lolo National Forest—The Lolo did an outstanding job of successfully implementing two salvage sales totaling 12 MMBF on the Copper King fire that burned during the summer of 2016. One sale went to auction in June, which is very quick considering the Forest used an EA to analyze the salvage. The Copper King timber volume plus the 7-Mag reoffer sale helped Tim Garcia and his team sell 60 MMBF, which is nearly double their usual timber target. The Lolo had six large project fires this summer, which will impact the FY18 program.

Mt. Hood National Forest—The Mt. Hood had a reduced timber sale program in FY17 due to over achieving their target in FY16 (albeit that program was heavy to dead lodgepole). Lisa Northrup and her team hit their target of 25 MMBF with a good portion of that volume (16 MMBF) coming from the Goat Stew project. The Mt. Hood is positioned for success in the next few years given large planning areas being analyzed including Hunter, Polallie Cooper, Crystal Clear Restoration and North Clack. The Forest has discussed growing its timber target in out years with the Regional Office.

Okanogan-Wenatchee—The Okanogan-Wenatchee hit its timber target of 35 MMBF due in large part to selling the Huck project which contained 28 MMBF. The potential for this Forest is much higher than 35 MMBF, but Mike Williams and his staff are dealing with internal issues regarding management on Late Successional Reserve lands that have timber over 80 years of age. Unfortunately, many of the decisions needed on a management strategy are out of the Forest's hands and are being assessed by the Regional Office. This issue, plus the need to re-consult on several other projects, have hamstrung the Forest and the FY18 program is very tentative. Two active collaboratives, the North Central Washington Forest Health Coalition and Little Naches Working Group, have committed resources in an attempt to help the Forest increase its pace and scale of management. Unfortunately, no improvements will be seen until

these internal issues are resolved. There is hope with the Upper Wenatchee Pilot Project, Mt. Hull, Swauk Pine and other planning areas awaiting management direction and later implementation.

As we reflect on this year's extreme wildfire season, many members of Congress are rightfully pushing for legislation that would commit more tools for active management on our national forests. Region 1 is already looking at ways to increase pace and scale of management with a flat or diminishing budget. AFRC is encouraged by this can-do attitude and is optimistic the progress we have seen on several of our National Forests can be applied agency-wide by the new Chief of the Forest Service, Tony Tooke. */Tom Partin*