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Ninth Circuit Rules in Favor of Common Sense: Wildfires Are Emergencies

Portland, Ore. – Last week, the Ninth Circuit ruled in favor of logic and common sense: massive wildfires on public lands are emergencies that often threaten lives, property, and natural resources. The Court’s ruling backed a decision by the Forest Service to build a community protection line – a fuel break – to safeguard families and homes near Lake Chelan during last year’s Wolverine Fire.

The Wolverine Fire was a severe fire that lasted over two months, burning over 62,000 acres along Lake Chelan. The fire threatened 936 homes and structures and resulted in a series of evacuation orders. The months-long wildfire smoke choked the surrounding recreational areas. In the interest of public safety, fire managers decided to remove vegetation along a 300-foot-wide community protection line to help stop the fire’s spread. The Forest Service relied on emergency authority to construct the protection line in order to ensure people could get to safety if the fire continued to spread, and to protect homes. The emergency authority allows the Forest Service to act when necessary before preparing lengthy and duplicative environmental paperwork. Without this authority, the Forest Service could have been forced to divert resources, personnel, money, and time away from immediately responding to the fire.

After the fire was out, the Forest Service was sued for its proactive efforts. The plaintiff, Forest Service Employees for Environmental Ethics (FSEEE), argued with a straight face that wildfire events are not “emergencies” and thus cannot enable the use of emergency authorities that explicitly allow for the Federal Government to respond quickly in times of crisis. FSEEE also argued forest fires are viewed as a common occurrence in the western United States, therefore FSEEE reasoned that they are not “unforeseen.”

“First responders and firefighters deserve our thanks and appreciation for helping protect families and homes from these dangerous wildfires – not lawsuits,” said AFRC president Travis Joseph. “This lawsuit was a slap in the face to the brave, hardworking women and men who face extraordinary threats in real time. Retroactively suing the Forest Service over the definition of the word ‘emergency’ to force the agency to do more paperwork during legitimate crises is pathetic.”

The Ninth Circuit rejected FSEEE’s argument and concluded, “While it is true that fires happen every year, it defies plain language and common sense to conclude that no individual fire – or its course, intensity, or duration – could be unforeseeable. It is unreasonable to argue that forest fires can never present emergency situations when viewed at the time the fire is raging.”

“We are pleased that the Ninth Circuit issued its ruling acknowledging the common sense understanding that wildfires can be emergencies,” stated AFRC staff attorney Sara Ghafouri, who submitted an *amicus* brief on behalf of Lake Wenatchee Fire & Rescue. “With the upcoming wildfire season approaching, it is critical more than ever for the Forest Service to have the ability to rely on its emergency regulation authority and act quickly when attempting to mitigate harm to vulnerable, nearby communities.”

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About the American Forest Resource Council

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. AFRC does this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. It works to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. The goal of AFRC’s programs and initiatives is to advance its members’ ability to practice socially and scientifically responsible forestry on both public and private forest lands.