



Washington, DC Update

Congress will return from its annual August recess on September 9. With the end of Fiscal Year (FY) 2019 looming at the end of September, observers expect the Congress to adopt a Continuing Resolution (CR) to fund the government well into November. House Democrats have passed nearly all their annual appropriations bills through Committee, including the Interior Appropriations bill, but the Senate is far behind in moving its individual appropriations bills.

As reported in the [July Newsletter](#), the July debt limit and budget deal reached between the Congress and President Trump will increase discretionary spending by \$325 billion over the next two fiscal years – FY20 and FY21. This will likely make reaching an agreement between the House and Senate much more likely on FY20 appropriations. The White House also seems eager to avoid another government shutdown particularly as a weakening economy and the ongoing US-China trade dispute remains in the headlines.

Meanwhile, the Congressional Budget Office (CBO) recently released updated budget [projections](#) for FY19-FY29. Despite taking in record revenue in 2018, the U.S. Treasury is piling up debt at an alarming rate. In fact, the deficit is expected to be \$896 billion this year and exceed \$1 trillion in 2020. CBO projections indicate that the overall debt will increase by nearly \$12 trillion over the next decade, at which point entitlement spending and interest payments on the debt will command 86% of all federal revenues in 2029.

IN THIS ISSUE

- DC Update
- AFRC Comments on NEPA Regulations
- ESA Regulations Released
- Washington State/DNR Updates
- Bull Run Appeal Dismissed
- AFRC Urges Supreme Court to Fix Trail Ruling
- FWS Rejects Salamander Petition
- Region 1 Leadership Team Finalized
- Save the Date: 2020 Annual Meeting

Daines-Feinstein Federal Forest Legislation? On August 1, Senators Steve Daines (R-MT) and Diane Feinstein (D-CA) announced that they are working together to develop bipartisan legislation to improve management and speed up restoration of national forests in their states. Senator Daines serves on several Senate committees that oversee federal forest management and has been a strong advocate for forest management reforms since he was first elected to Congress in 2012. Montana has been ground zero for legal challenges seeking to block needed forest health treatments and has seen extensive damage from catastrophic wildfires in recent years. Senator Feinstein has served in the U.S. Senate since 1992 and is a senior member of the Appropriations Committee. She is also no stranger to forestry legislation having written and passed the Herger-Feinstein Quincy Library Group Act of 1998.

While the legislation has not been formally released or introduced, we expect it to include provisions to further expedite federal forest health treatments in overstocked stands, accelerate post-fire restoration and reforestation, and focus on the removal of woody biomass and dead and dying trees.

Proposed BLM Headquarters Relocation Draws Fire from Democrats. The Department of the Interior is moving forward with its plan to move the BLM's headquarters to Grand Junction, Colorado. However, Democrat leaders of the House and Senate Interior Appropriations Subcommittee, Senator Tom Udall (D-NM) and Rep. Betty McCollum (D-MN), recently sent a letter outlining their strong opposition to the proposal and demanding that Interior "immediately suspend its efforts to relocate" the BLM.

Interior set an August 26 deadline for commercial property owners to submit proposals for available office space to the General Services Administration, which oversees federal properties and offices for federal workers. A senior Interior official recently indicated that the Administration believes there is adequate office space in the area to accommodate the move by the end of September and has set an occupancy date of September 16. The Administration has identified 323 headquarter positions that will be affected, but only 177 of those positions are currently held by BLM employees in Washington, D.C. Interior estimates that about 45 of those employees will either chose to retire or find other jobs in the D.C. area to avoid transferring.

For his part, Interior Secretary David Bernhardt continues pointing to the benefits of moving the BLM to the West, where it oversees the management of massive swaths of the country. At a recent event in Colorado, Bernhardt told the audience "It's very easy to be 2,500 miles away and make a decision about a piece of land you know nothing about." /*Heath Heikkila*

AFRC Comments on Proposed Revised NEPA Regulations

The next step of the Forest Service's work to streamline Environmental Analysis and Decision Making (EADM) now proceeds, with the comment period on the [proposed revised NEPA regulations](#) closing on August 26. The agency received a total of 41,924 [public comments](#), including comments from AFRC and other industry groups, on its carefully data-driven proposal. AFRC also joined and incorporated the [comments](#) of the Federal Forest Resource Coalition.

AFRC's [comments](#) suggested specific changes to certain portions of the rules to make them easier to understand and apply. Our comments also provided support for the new proposed restoration Categorical Exclusion (CE), which would permit treatment of up to 7,300 acres (including 4,200 acres of commercial thinning) without using more extensive NEPA documentation.

This restoration CE is supported by the Forest Service's examination of its past practices, particularly where it has found that an activity is not likely to have a significant environmental impact, thus an environmental impact statement (EIS) is not required. An EIS often takes the Forest Service 3-5 years to complete with costs exceeding \$1 million. Because forest restoration projects are well in line with past agency actions and involve management techniques that are commonly used and well-understood, a CE makes sense. Our comments encouraged the Forest

Service to build on this restoration CE to establish additional categories where experience shows an EIS would be unnecessary, and to clarify applications of existing CEs.

While many believe “more is better,” streamlined and focused NEPA documents will improve the quality of decisions and projects and will allow the agency to do more with existing resources. Overly dense documents, or using too high a level of analysis, obscure the key issues from the public and agency decisionmakers. The current procedures are an example where, ironically, rules created to communicate more information can result in knowing less.

While some may be concerned that the Proposed Rule would cause the Forest Service to “increase” the use of CEs, it is important to keep in mind that these are actions which do not have significant environmental impact and do not present extraordinary circumstances. Moreover, the *number* of actions using a CE is not particularly illuminating, as it should include issuance of many special use permits and the like.

AFRC’s comments pushed back against some groups and commenters who have characterized the Proposed Rule as “cutting out” public involvement. These groups’ hyperbole reflects misunderstandings of the Proposed Rule and of NEPA itself. The Forest Service has been conducting activities similar to those identified in the restoration CE for many years. It has done a deep dive on the effects of such work and found that significant environmental effects are not likely to occur. This is backstopped by the requirement to consider whether extraordinary circumstances exist. The public involvement provisions here are appropriately tailored to the scope and extent of specific projects and are consistent with the CEQ regulations. Moreover, any and all activities authorized through the restoration CE must comply with all federal environmental laws and the underlying Forest plan where the activity takes place.

The Forest Service expects to issue a final rule in the summer of 2020. /*Lawson Fite*

Endangered Species Act Regulations Released

For the first time in 33 years, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services) issued final revisions to regulations implementing the Endangered Species Act (ESA). The new rules are designed to bring consistency to the implementation of the ESA across the two agencies. In an August 12 press release, Interior Secretary David Bernhardt stated, “The best way to uphold the [ESA] is to do everything we can to ensure it remains effective in achieving its ultimate goal—recovery of our rarest species. The Act’s effectiveness rests on clear, consistent, and efficient implementation.”

The final rules apply to Sections 4 and 7 of the ESA. Generally, Section 4 deals with adding or removing species from the Act’s protection and designating critical habitat. FWS rescinded its blanket Section 4(d) rule, which allowed threatened species to receive all the protections that endangered species automatically receive through Section 9 of the ESA. This regulatory change allows FWS threatened species protection to be in line with NOAA Fisheries, which has not employed a blanket 4(d) rule. This new rule does not apply retroactively to threatened species for which the take prohibitions already apply.

In addition, the final rules related to Section 4 clarify that the Services will utilize the same statutory factors for listing a species to delisting a species. Finally, with respect to the designation of critical habitat, the final rule provides a requirement that the Services first evaluate whether areas that are occupied by a species are sufficient to support conservation of the species before designating essential unoccupied critical habitat. The Services go on to explain the term “essential” unoccupied habitat means that it is “reasonably certain both the area will contribute to the conservation of the species and the area contains one or more of the physical or biological features essential to the conservation of the species.”

The Services made clear that this rule does not attempt to definitely resolve the full meaning of the term “habitat,” which was at issue in the recent Supreme Court case, *Weyerhaeuser Co. v. U.S. FWS*, 139 S. Ct. 361 (2018), ([November 2018 Newsletter](#)) but it does address the ruling by adding the requirement that an unoccupied area must have one or more physical or biological features essential to conservation.

The final rules also address the implementation of Section 7, which requires Federal agencies, in consultation with the Secretaries of the Interior and Commerce, to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. The revisions help clarify the interagency consultation process, making it more efficient and consistent.

The final rules go into effect in mid-September and can be found [here](#).

Several groups have already filed suit against the rules in the U.S. District Court for the Northern District of California. /*Sara Ghafouri*

Washington State and DNR Updates

Washington Legislative Tours. AFRC staff organized two recent mill tours for Washington state legislators to learn more about the wood products manufacturing sector and the importance of the Washington State Department of Natural Resources (DNR) timber sale program. Sierra Pacific Industries (SPI) hosted both tours with the first taking place on August 13 at SPI’s new Shelton mill and the second on August 21 at its Burlington mill.

Senator Christine Rolfes (D-Bainbridge Island), chair of the Senate Ways and Means Committee, attended the tour in Shelton. As usual, SPI did a great job showcasing this state-of-the-art facility and outlining the most pressing issues facing our industry, including log supply and workforce development. Senator Rolfes asked many great questions and walked away impressed by the industry’s use of technology.

The DNR timber sale program was front and center in Burlington where the mill relies on DNR timber for a large portion of its log supply. Four state representatives joined the tour – Rep. John Lovick (D-Mill Creek), Rep. Bill Ramos (D-Issaquah), Rep. Sharon Shewmake (D-Bellingham), and Rep. Luanne Van Werven (R-Lynden). Lovick is currently serving as the interim Speaker of the House. Ramos and Shewmake both serve on the House Natural Resources Committee. In

addition to touring the mill, the legislators were given an overview of the DNR timber sale program.

In July, Rep. Jacquelin Maycumber (R-Republic), Rep. Keith Goehner (R-Dryden), and Rep. Mike Steele (R-Chelan) participated in AFRC organized tours of the Colville and Okanogan-Wenatchee National Forests. The tours provided legislators a greater appreciation for the major policy, legal, and implementation issues limiting forest management activities on federal lands.

DNR Marbled Murrelet LTCS Update. DNR is close to finalizing its proposed Marbled Murrelet Long Term Conservation Strategy (LTCS) that it will submit to the U.S. Fish and Wildlife Service (FWS) in the form of a proposed amendment to the 1997 State Lands Habitat Conservation Plan (HCP). DNR staff will provide a [briefing](#) to the Board of Natural Resources at its September 3 meeting and we understand that notices of availability for the Final EIS and HCP amendment will appear in the Federal Register on or about September 20.

Throughout the planning process, AFRC and beneficiaries have submitted extensive comments on the LTCS outlining our concerns. One primary focus has been the misuse of [p-stage](#) classifications to identify suitable murrelet habitat without sufficient on-the-ground verification. AFRC's field reviews have shown substantial acres being proposed for set asides lack key murrelet habitat attributes and will not develop into murrelet habitat for many, many decades (see below picture). Conversely, areas slated for harvest have been mistakenly identified as p-stage "habitat," triggering mitigation requirements. AFRC has serious concerns that the agencies are using a tool to classify habitat that does not have any information on whether stands actually contain critical biological features used by murrelets. In other words, p-stage is the wrong tool for the job.



In the months since the Revised Draft EIS comment period closed on December 6, 2018, DNR staff have been working to finalize the LTCS and prepare responses to the comments. DNR has also incorporated minor changes to its habitat data layers and the analytical framework that underpins the LTCS. It is possible that these changes could result in modest reductions to the 43,000 acres being proposed for set asides under DNR's preferred alternative, Alternative H. However, the LTCS will likely still set aside tens of thousands of acres of non-habitat at an immense cost to the trust beneficiaries (schools, hospitals, rural fire districts, etc.), including large Special Habitat Areas (SHAs) where no management will be allowed for decades.

Additional concerns about the evaluation of take and mitigation have recently surfaced. First, DNR is being "debited" for about 8,500 acres of narrow slivers of p-stage "habitat" that DNR would be permitted to harvest during the LTCS (known as take). Yet, the FWS is giving DNR zero mitigation "credit" for about 28,000 acres of similar, narrow slivers that were set aside in 1997 as part of the HCP. The acreage impact of this double standard for calculating take and mitigation potentially exceeds the difference between the Interim Strategy (~33,000 acres) and DNR's preferred alternative, Alt. H (~43,000 acres).

It also appears that DNR has agreed to set aside an additional 500-600 acres of trust lands, which were not classified as potential habitat using the p-stage tool at the request of the Washington Department of Fish and Wildlife. If true, this could undermine DNR's reliance on the p-stage tool to identify and value murrelet habitat and would represent another double standard if DNR does not also honor requests to *remove* stands that have been identified by the p-stage tool as possible habitat but on-the-ground verification reveals those stands lack the elements needed by the murrelet. AFRC and the beneficiaries have identified numerous areas where this is an issue. DNR expects to receive a decision from the FWS on the proposed LTCS this fall and the Board of Natural Resources to vote to accept the HCP amendment in December. DNR is also forecasting a December decision on the Sustainable Harvest Calculation and the related policies for riparian harvest and arrearage. /Heath Heikkila

Ninth Circuit Dismisses Bull Run Appeal on Mootness Grounds

The Bull Run Hazard Tree Removal Project is a public safety project authorizing the removal of dead or dying trees along 50.2 miles of road on the Sequoia National Forest in response to the 2016 Cedar Fire. If the hazard trees were not removed, the Forest Service would have been forced to close those affected roads from public access.

The project was authorized under the Forest Service's road repair and maintenance Categorical Exclusion (road maintenance CE), 36 C.F.R. § 220.6(d)(4), since it only authorized removing dead and dying trees that had the potential to strike the road or road users.



Bull Run Project Area

When the project was challenged in court, AFRC intervened on behalf of our member Sierra Forest Products, which held the timber sale contract to implement 1,307 acres out of the 3,500-acre project. At the district court, plaintiffs' argued, among other things, that the Forest Service was unable to rely on the road maintenance CE since the project involved the commercial harvest of timber and exceeded the 250-acre limitation under the timber salvage CE, 36 C.F.R. § 220.6(e)(13), which in their view was the applicable CE. The district court denied plaintiffs' motion for summary judgment and plaintiffs then appealed to the Ninth Circuit. ([July 2018 Newsletter](#)). The only issue on appeal was whether the commercial aspect of the hazard tree removal activity could fall under the road maintenance CE *or* whether the 250-acre harvest cap under the timber salvage CE applied.

Plaintiffs' did not seek to enjoin the commercial aspect of the project while the appeal was pending before the Ninth Circuit. Sierra Forest Products completed the commercial timber sale in December 2018. [Oral argument](#) was held on August 6 in Anchorage, Alaska before Judges Tallman, Ikuta, and N.R. Smith. AFRC Staff Attorney Sara Ghafouri and the Federal Government both argued that the case was moot and should be dismissed.

On August 14, a week after oral argument was held, the Ninth Circuit issued an unpublished [memorandum decision](#), dismissing the appeal based on mootness. The Ninth Circuit explained

that the mootness exception of “capable of repetition, yet evading review” did not apply because plaintiffs “could have sought a stay of the challenged tree removal activities pending appeal in this case” and “[w]here a ‘prompt application of a stay pending appeal can preserve an issue for appeal, the issue is not one that will evade review,’” reaffirming previous Ninth Circuit case law.

Because the Ninth Circuit never reached the merits, the question of whether the road maintenance CE includes commercial hazard tree removal is still live. The Forest Service has a long-standing practice of using the road maintenance CEs in this manner. It is critical for the Forest Service to implement routine road maintenance projects in an expeditious manner, rather than undertaking a lengthy NEPA process in response to fire events along roadways that can put the public at eminent risk.

There are two cases pending before the district court in the Eastern District of California on this same issue. *Sequoia ForestKeeper et al. v. Carlson et al.*, 1:18-cv-00331-LJO-SAB (E.D. Cal.) (involving the Spear Creek Project on the Giant Sequoia National Monument) and *Sequoia ForestKeeper et al. v. Benson et al.*, 1:19-cv-00134-AWI-BAM (E.D. Cal.) (involving the Pier Fire Project on the Sequoia National Forest). We will have to wait and see whether the Ninth Circuit will have the opportunity to revisit this important legal question. /Sara Ghafouri

AFRC and Industry Coalition Urge Supreme Court to Fix Mistaken Trail Administration Ruling

On July 23, AFRC filed a [brief](#) supporting the Forest Service’s request ([petition for certiorari](#)) urging the Supreme Court to review the [case](#) of *U.S. Forest Service v. Cowpasture River Preservation Association* and a companion [case](#), *Atlantic Coast Pipeline, LLC v. Cowpasture River Preservation Association*. Our brief was joined by 12 allied groups representing members of the forest products industry throughout the country.

The case concerns the Forest Service’s issuance of a special use permit for a pipeline to cross the Appalachian Trail in Virginia’s George Washington National Forest. The Fourth Circuit [ruled](#) that the designation of the Secretary of the Interior as the administrator of the Appalachian Trail under the [National Trails System Act](#) conferred jurisdiction over the land to the National Park Service even within the National Forest. This precluded the Forest Service’s issuance of the permit under the [Mineral Leasing Act](#). There are about 60 National Forest System units that are currently or potentially traversed by similar trails.

The case has troubling implications throughout the country where trails administered by the Department of the Interior cross Forest Service land. The ruling could impede the ability of the Forest Service to grant rights of way as well as interfere with needed management projects. In some instances, the Forest Service is asked to create “buffers” for trails that are not consistent with governing forest plans. By potentially transferring jurisdiction of substantial chunks of the National Forest System to the National Park System, the ruling could create additional obstacles to active management throughout the System.

Our brief highlighted two main issues. First, the Fourth Circuit fundamentally misunderstood public land laws, equating “administration” of a trail with “jurisdiction” over land. Second, the decision threatens to impede sorely needed active management. At a time where forest health is

in a state of emergency (80+ million acres nationwide), and the need for active management is broadly recognized to reduce risk of severe fire, the decision below could have grave consequences.

We expect the Supreme Court will decide by October whether to take the case. If it does, a decision would likely be issued by [June](#) 2020. *Amicus* briefs were also filed by [trade unions](#), [business interests](#), and 16 states including West Virginia, Idaho, and Montana.

AFRC appreciates the support of our partners in this effort and the research assistance of our summer legal extern Nolan Smith. */Lawson Fite*

FWS Rejects Petition to List Siskiyou Mountain Salamander

After completing initial review of an ESA petition for the Siskiyou Mountains Salamander (*Plethodon stormi*), the FWS issued a negative “90-day” [finding](#), meaning it will not conduct a status review or add it to the ESA lists.

The [Siskiyou Mountains Salamander](#) is a brown, medium-sized salamander found exclusively in southern Oregon and northern California, specifically in the Applegate and Grider drainages. These salamanders live in the crevices within rock outcroppings in older forest stands.

In March 2018, several groups submitted a petition to FWS requesting that the salamander be listed as an endangered or threatened species. This is not the first time FWS has reviewed petitions urging the listing of the Siskiyou salamander. A 2006 90-day finding determined that, though timber harvest and fire had the potential to impact the distinct localities of the species, because the Siskiyou salamander lives in numerous distinct localities within the Siskiyou Mountains, it will be resilient to potential negative effects of fire and forest management. A 2007 90-day finding declared that a more in-depth review of the species and its habitat was appropriate. After conducting a status review, FWS published a 12-month finding that the Siskiyou Mountains currently support a strong population of the salamander in over 500 locations. FWS found that federal land management regulations such as the Northwest Forest Plan protect the salamander’s habitat.

The recent 90-day finding noted that the petition lacked information to support “assertions that the activities or conditions they identify as potential threats—logging, habitat fragmentation, fire, roads, mining, developed recreation, disease, and climate change—affect the species negatively.” FWS also rejected claims that the BLM’s 2016 Resource Management Plans change the existing regulatory mechanisms to an extent that requires listing.

This finding is a positive development for species conservation and responsible land management in the region. AFRC will continue monitoring for potential litigation. */Nolan Smith*

Region 1 Rounds Out Leadership Team

Earlier this summer, Region 1 Regional Forester Leanne Marten appointed Keith Lannom and Melany Glossa as the Region’s new Deputy Regional Foresters. Keith was previously the Forest Supervisor on the Payette National Forest and Melany was a Deputy Regional Forester in Region 9.

Keith began his Forest Service career at the Southern Research Station Forest Inventory and Analysis unit in Mississippi. He also served as a Remote Sensing Analyst for the Remote Sensing Applications Center in Utah; District Ranger on the Cherokee National Forest in Tennessee; and Deputy Forest Supervisor on the White Mountain National Forest in New Hampshire.

Melany began her Forest Service career as a NEPA planner on the White River National Forest in Colorado and later moved into the Forest Planner position. She also served as the Ecosystem Staff Officer on the Nez Perce National Forest in Idaho, District Ranger on the Willamette National Forest in Oregon, and the Forest Supervisor on the Hoosier National Forest in Indiana and Beaverhead-Deerlodge National Forest in Montana.

In a recent announcement, David Haupt has accepted the Timber Management Assistant position with the Region's Management group. David is currently the Timber Management Officer on the Lolo National Forest. Prior to working in Region 1, David worked in Regions 5 and 6 as a timber operations staff officer, district silviculturist, sale preparation and planning forester, and timber sale administrator. His primary responsibilities will center on strategic planning around the Region's forest management programs, delivery of the Region's forest products program, and analysis of emerging and critical sustainability issues. David will transition into his new position on September 30.

AFRC looks forward to working with Keith, Melany and David in their new roles in the Region.
/Tom Partin

Save the Date! AFRC's Annual Meeting: Celebrating 20 Years in 2020.

