



American Forest Resource Council
5100 S.W. Macadam Avenue, Suite 350
Portland, Oregon 97239
Phone: (503) 222-9505
Fax: (503) 222-3255
E-mail: info@amforest.org
www.amforest.org

January 23, 2013

Forest Roads Case

As reported in [our last newsletter](#), on November 30, the last business day before the Supreme Court was scheduled to hear arguments in [Decker v. NEDC](#) and [Georgia-Pacific West v. NEDC](#), EPA finalized a rule (published in the [Federal Register December 7](#)) declaring that forest roads are not industrial activities subject to National Pollutant Discharge Elimination System (NPDES) permits. This left the fate of that case in limbo.

On January 8, the Supreme Court granted a request by the State of Oregon to be allowed to file further information on the effect of the new EPA rule. All the parties - the state, industry, and the environmental organizations, had until January 22 to file further briefs. This makes it unlikely that we will hear more on how the Court will dispose of the case until late February, at the earliest. We continue to hope the Court will decide the case on its merits.

In other developments, on January 4, the Northwest Environmental Defense Center (NEDC) filed a Petition in the Ninth Circuit seeking court review of the rule. The Petition references the cases that were argued before the Supreme Court on December 3. It is clear NEDC intends to continue to pursue every available avenue to require permits for logging roads. This is entirely consistent with what their attorney told the Court during oral argument.

All of this makes it clearer than ever that the best solution to this problem would be passage of the Silviculture Regulatory Consistency Act, which was introduced in the last Congress as [HR 2541](#) and [S 1369](#). Passage of that legislation would make it clear that Congress intends for forest roads to be regulated under Best Management Practices, rather than via permits. That system has resulted in consistent improvements over the last 30 years in control of sedimentation from forest roads. */Ann Forest Burns*

Subcommittee to Review NEPA

Representative Rob Bishop (R-UT) has been named chairman of the newly recasted House Natural Resources Subcommittee on Public Lands and Environmental Regulation. As chairman, Bishop has announced that he plans to take a closer look at laws that are stymieing land management activities on much of the federal lands in the west.

In particular the new subcommittee will have jurisdiction over environmental reforms including NEPA which has plagued land managers and their ability to quickly move projects forward on public lands including timber sales, grazing permits, and oil and gas leasing. Oversight over NEPA was previously maintained within the jurisdiction of the full Natural Resources Committee.

Also drawing scrutiny from Bishop is the Antiquities Act, a 1906 law that allows presidents to designate national monuments which can prohibit multiple use without the consent of Congress. This Act was used in Bishop's home state in 1996 by then President Bill Clinton when the Grand Staircase-Escalante National Monument was created. The Monument contains 1,880,461 acres of land in southern Utah and encompasses the largest land area of all U.S. National Monuments. A great deal of focus will be put on this Act during President Obama's second term, which has historically been the time Presidents have chosen to use this authority.

Bishop's desire for change in these two acts will likely be opposed by Subcommittee Ranking Member Raul Grijalva (D-AZ) who has strongly defended NEPA and has encouraged the President to use the Antiquities Act in his second term. Congressman Grijalva also happens to be the preferred candidate of the environmental community to replace Ken Salazar as the next Secretary of Interior.

Regardless of the final outcomes from this Committee, having a review of NEPA and the problems that are resulting from its implementation will be a good endeavor. Currently it is taking about 70% of the Forest Service's land management budget to comply with planning and environmental review for projects, leaving only 30% for implementation and work on the ground. Certainly it would seem that some streamlining could occur in a time when the Forest Service and other government agencies are in dire need of increased efficiencies. / *Tom Partin*

Hidden Cost of Wildfire

In light of the recent notice by National Oceanic and Atmospheric Administration that 2012 was the warmest year on record in the continuous U.S., a look back at the 2012 wildfire activity with an eye to the future is warranted. Wildfires burned over 9 million acres in 2012 with a suppression price tag of almost \$2 billion dollars.

An article in the January/February 2013 National Fire Protection Association Journal takes a closer look at the real costs of wildfire and says "The federal government will soon announce its 2013 budget for wildfire management activities, and there is no reason to think that the price tag will be any less than it was last year. One of the problems associated with this very large number is that it's often interpreted as the "cost" of wildfire, when in fact it's more like the tip of the iceberg of what wildfire actually costs. Focusing solely on suppression costs can blind us to a long list of additional direct, indirect, and associated costs, including damages to utilities and other facilities, timber and agricultural losses, evacuation aid to displaced residents, long-term rehabilitation costs to watersheds and other affected areas, post-fire flooding mitigation and damage, business revenue and property tax losses, public health impacts from smoke, and, in some cases, the tragic loss of human life. Costs such as private property losses are often included in media coverage of fires, but even these figures can hide associated costs that are buried in the details or are difficult to calculate." The full article can be viewed at:

<http://www.nfpa.org/publicJournalDetail.asp?categoryID=&itemID=59868&src=NFPAJournal>

The Barry Point fire that started by lightning on August 5, 2012 burned on the Fremont-Winema National Forest in south central Oregon, on the Modoc National Forest in northern California, and on private lands in both states highlights the discussion above. The fire exhibited severe and extreme fire behaviors from the beginning because of heavy fuel loads combined with extremely dry conditions which led to significant spotting. Further issues with communications compounded the problem. The fire was contained on August 27 with 93,000 acres burned. In addition to the huge losses of timber,

watershed, wildlife, and other values on national forest lands, there are at least 6 grazing permittees and 38 landowners in Oregon that were directly affected, with property in or adjacent to the fire perimeter. At least 24 had losses or damage in the fire or due to suppression activities. No homes were lost, but several were threatened and required structure protection. Private economic losses included livestock, (including injury, death of animals, and loss of animal body weight), forage, fences and corrals, and timber. Additional private property was affected in California.

The current wildfire suppression model begs the question “Can wildfire be fought both aggressively and safely?” Ultimately it once more boils down to the treatment of these heavy fuel loads before wildfire strikes. A recent report titled “National Forest Health Restoration – An Economic Assessment of Forest Restoration on Oregon’s Eastside National Forests” says that for every \$1.00 invested in forest management saves \$1.45 in direct fire suppression costs. A third party review was conducted on the Barry Point fire. That report can be found at:

http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5406416.pdf. /Irene Jerome

Victory for Idaho Roadless Rule

On January 7, the Ninth Circuit Court of Appeals [affirmed](#) a 2011 decision by Idaho District Court Judge B. Lynn Winmill which found valid the 2008 Idaho Roadless Rule covering 9.3 million acres of National Forest lands. (See, [AFRC Newsletter, February 24, 2011](#).)

The Circuit Court panel, which consisted of Judges Alarcón, Trott, and Paez, stated that after “scouring” the agency and court records, they were convinced “the inclusive, thorough, and transparent process resulting in the challenged rule conformed to the demands of the law and is free of legal error.” Judge Winmill had ruled that the Forest Service complied with both NEPA and the ESA when it adopted the rule.

The Idaho Mining Association, Idaho Association of Counties, the Kootenai Tribe and Governor Butch Otter were granted full intervenor status in the case over the plaintiffs’ objections.

Idaho’s state-based rule was written under the 2005 State Petitions Roadless Rule (also known as the Bush-era Roadless Rule) which replaced the 2001 Clinton Roadless Rule. The 2005 roadless rule was declared invalid by the Ninth Circuit in 2009. Idaho and Colorado’s rules, the only roadless plans adopted under the State Petition rule, were not invalidated by the 2009 court ruling. /*Ann Forest Burns*

Coho and Steelhead CH Proposed

On January 14, the National Marine Fisheries Service (NMFS) published a [notice](#) that it is proposing to designate 2,288 miles of freshwater and estuarine habitat in Oregon and Washington as critical habitat for the [lower Columbia River coho](#) and 1,880 miles in the Puget Sound as [Puget Sound steelhead](#) critical habitat. Both are listed as threatened under the ESA.

NMFS will be accepting comments on the proposal until April 15. Requests for public hearing must be made by February 28. Details can be found in the Federal Register notice.

The ESA gives NMFS the authority to exclude lands from designation where the benefits of doing so outweigh the benefits of designation. Currently, the agency proposes to exclude some lands within the larger boundaries of its proposal, primarily those already covered by a Habitat Conservation Plan. */Ann Forest Burns*

Polar Bear CH Thrown Out

On January 11, Alaska District Court Judge Ralph Beistline issued an [Order](#) granting Summary Judgment in *Alaska Oil and Gas Association and American Petroleum Institute v. Salazar*, in which the plaintiffs challenged the U.S. Fish and Wildlife Service's (FWS) designation of 187,157 square miles as polar bear critical habitat.

The Court found that the FWS failed to show that the areas designated contained "physical or biological features essential to the conservation of the species," as required by the ESA, and failed to properly respond to input from the State of Alaska.

In his conclusion, Judge Beistline noted "There is no question that the purpose behind the Service's designation is admirable, for it is important to protect the polar bear, but such protection must be done correctly. In its current form, the critical habitat designation presents a disconnect between the twin goals of protecting a cherished resource and allowing for growth and much needed economic development. The current designation went too far and was too extensive."

The ruling vacates the critical habitat designation and sends it back to the FWS, which can revise and reissue, if they choose. The plaintiffs may appeal to the Ninth Circuit.

The Alaska District Court's decision is an important reminder that, in designating critical habitat, the FWS must keep within the Congressionally mandated constraints of the ESA. */Ann Forest Burns*

Malheur 10-Year Stewardship Contract

The Malheur National Forest held three public meetings, two in John Day, Oregon on January 11 and one in Burns, Oregon on January 17 seeking public comment on their proposed 10-year stewardship contract. The timber action plan on the forest is to offer 55 mmbf in FY13 and FY14 and ramping up to about 75 mmbf in FY15 and beyond. The percentage of volume to be included in the 10-year stewardship project on an annual basis will be between 20 and 80 percent of the annual volume offered from the forest with the actual percentage of volume yet to be determined. The timber sales included in the 10-year contract will be located forest wide and the contract will be awarded to one successful bidder for the entire 10-year term of the project. The forest is seeking public input on:

- What percent of the annual program volume should be in the contract?
- What is the definition of "local" for best value criteria?

Information and comment forms can be obtained at <http://www.fs.usda.gov/detail/malheur/home/?cid=STELPRDB5403809> or by contacting Pattie Hammett, Public Information Officer, at 541-575-3000. */Irene Jerome*

Vilsack In, Salazar Out

Both Secretary of Agriculture Tom Vilsack and Interior Secretary Ken Salazar have let President Obama know their intentions for service to the President as he begins his second term. Vilsack, who served as Governor from 1999-2007 and made a short run for the Presidency in 2007, announced on January 14 that he will return as Secretary of Agriculture.

Ken Salazar, a native of Colorado told the President on January 16 that he plans to return home following eight years of work in Washington DC, four years as Secretary of Interior and four years as a U.S. Senator from Colorado. Salazar also served as Attorney General of Colorado prior to his election to the United States Senate.

Vilsack, whose Department oversees the Forest Service has been a supporter of getting more forested acres treated to avoid large catastrophic fires, and has encouraged the agency to accomplish more with flat or declining budgeted dollars by finding management efficiencies and streamlining processes. The Forest Service hopes to ramp harvest targets up from 2.4 billion board feet in 2010 to a projected 3.0 billion harvest level by FY14.

Salazar leaves the Department of the Interior after making little progress to address the paralysis affecting the management of the BLM O&C forest lands in western Oregon. Early in his tenure as Secretary, Salazar attempted to withdraw the Western Oregon Plan Revisions that took five years and millions of dollars to develop. Since then, the BLM has lacked any clear direction from Washington and has attempted to manage the forests to prevent any and all controversy. The result has largely been light-touch thinnings in young stands. The agency is quickly running out of these “non-controversial” stands, and if the recent spike in administrative protests and litigation on BLM lands is any indication it will only get worse. Salazar also embraced concepts offered by Drs. Norm Johnson and Jerry Franklin to bring new techniques of harvest to the O&C lands in the form of Pilot Projects to return some forms of regeneration harvest to the landscape. These projects have been also protested by environmental groups. Now the BLM has begun a new round of planning that won't be completed until at least 2015, leaving that agency without a clear direction forward.

Compounding the problems for the BLM is the fact that they have been without a Director since last May when then Director Bob Abbey retired. Assistant Director Mike Pool has been interim director, but has announced that he will be retiring soon. */Tom Partin*

Kitzhaber on Federal Forests

On January 9, Oregon Governor John Kitzhaber urged the Oregon Board of Forestry to take a more aggressive role in managing Oregon's federal forests. He used the analogy based on his physician background that it is ludicrous not to spend a few pennies up front to manage someone's blood pressure instead of waiting until they have stroke and have to spend billions. Of course he was referring to the fact that the federal government spent almost \$2 billion last year in fire suppression and only \$350 million on forest management.

The Governor feels strongly about the state having a role, and has proposed putting \$4.5 million in lottery-backed bonds to help fund local and federal forest collaboratives and on the ground projects. These dollars will be allocated to three elements: 1) staffing, 2) Science and Technical Assistance, and 3) Small Grant Program for helping individual forests fund projects with boots on the ground.

AFRC President, Tom Partin also testified before the Board highlighting the need for a new direction on the O&C BLM lands, and for increased management on Oregon’s eastside federal forests to maintain the existing infrastructure. The Board formed an ad hoc committee consisting of Tom Insko, Nils Christoffersen, and Cindy Williams to review strategies for improving federal forest management and will report back to the full Board at their July meeting. The Board also agreed that federal forest management would be an emerging issue that they would add to their regular work plan. / *Tom Partin*

Western Oregon Sales Update

The following table outlines the current status of timber sales in Western Oregon that have been protested or appealed by individuals and conservation groups, or litigated in court. It is important to note that only 64% of sold BLM timber sales were awarded due to protests and appeals. This fact only exemplifies why a new management direction is needed on O&C lands in Oregon. / *Andy Geissler*

FOREST/ BLM District	EA/EIS	Sale Name	Volume Affected (MMBF)	APPEAL/ LITIGATION	APPELLANT - LITIGANT	STATUS
Willamette NF	Goose	Pegasus	1.5	Litigation	Oregon Wild, Cascadia Wildlands	Awarded
		Ten	8.8	Litigation		Awarded
		Golden	6.5	Litigation		Awarded
		Rest of Goose EA	10.3	Litigation		NA
	Pioneer Gulch	NA	12.7	Protested	Dick Artley	NA
Salem BLM		Northfork Overlook	12.5	Litigation	Cascadia Wildlands, Oregon Wild, Benton Forest Coalition	Unawarded
		Airstrip	3.0	Litigation		Unawarded
		Rickard Creek	7.0	Litigation		Unawarded
Coos Bay BLM	Wagon Road Pilot EA	Wagon Road Pilot	6.0	Protested & appealed	Oregon Wild/Cascadia Wildlands/Umpqua Watersheds	Unawarded
Roseburg BLM	Roseburg Secretarial Pilot EA	Buck Rising	2.0	Protested	Judith Moore, Cascadia Wildlands, Myrtle Creek Rural Community Partnership	Awarded
		White Castle	6.5	Protested	Oregon Wild, Myrtle Creek Rural Community Partnership	Unawarded
	Johnson Cleghorn	Johnson Cleghorn	5.6	Protested & appealed	Cascadia Wildlands	Unawarded

Medford BLM		Sampson Cove	2.6	Litigation	KS Wild, Oregon Wild, Cascadia Wildlands, Soda Mountain Wilderness, Center for Biological Diversity	Unawarded
		Cottonwood	3.2	Litigation	KS Wild, Oregon Wild, Cascadia Wildlands	Awarded
	Rio Climax EA	Rio Rumble	1.1	Litigation	KS Wild, Oregon Wild, Cascadia Wildlands	Unawarded
		Rio Power	0.6	Litigation		Unawarded
		Rio Sag	0.8	Litigation		Unawarded
		MC Thin	1.0	Litigation		Unawarded
		Cheney Slate	1.3	Protested & appealed		Unawarded
		Deer North	1.2	Litigation	Deer Valley NRCA	Awarded
		Far Out	6.0	Protested & appealed	KS Wild	Unawarded
		Speaking Coyote	6.9	Protested	KS Wild & 8 others	Unawarded
		London Peak	1.2	Protested	9 protests from individuals	Unawarded
		Heppsie	2.9	Protested	KS Wild	
		Total Volume	111.2			

Rasure Named Regional Forester

Nora Rasure will replace Harv Forsgren as Regional Forester for the Forest Service Intermountain Region (R-4), based in Ogden, Utah. That Region covers 13 National Forests and one National Grassland in Nevada, Utah, western Wyoming, southern Idaho and a small portion of California. Key forests in that Region for timber that AFRC members depend on are the Boise and Payette, located in Southern Idaho. Rasure had most recently served as Acting Regional Forester in Region 9, and one of her previous assignments was Forest Supervisor on the Colville National Forest in Region 6. / *Tom Partin*

EPA Releases Boiler MACT Rules

On December 21, 2012 the EPA released its final Boiler Maximum Achievable Control Technology (MACT), Incinerator, and Non-Hazardous Secondary Materials rules. Information on the new rules and how they differ from past proposals is available on the EPA's website at <http://www.epa.gov/airquality/combustion/actions.html>. / *Ann Forest Burns*

2013 Annual Meeting

AFRC will be holding its Annual Meeting April 2-4 at Skamania Lodge in Stevenson, Washington. Please make plans to joins us to hear the latest on public timber issues from key congressional leaders, leaders in our public timber arena, and from others having an impact on public timber supply. Registration and hotel information is available on our website www.amforest.org.