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Contract Suspensions Overturned

On October 17, Oregon Federal District Court Judge Panner issued an [Order](#) which immediately lifted suspensions of federal timber contracts nationwide.

The Order came out of a lawsuit by AFRC, Murphy Company, High Cascade and South Bay Timber filed on October 14 challenging the government's right to suspend contracts during the government shutdown which began October 1. The Order allowed purchasers and operators to return to work immediately without waiting for government authorization.

Also on October 17, letters were issued by the [Forest Service](#) and the [Bureau of Land Management](#) directing contracting officers to immediately begin notifying contractors that suspension orders were being lifted because the government shutdown has ended. The letters authorize issuing verbal notice with written follow-up. The government moved to dismiss AFRC's case, saying the letters resolved the issue of shutdowns, but AFRC's attorneys held out for a ruling that would allow an immediate return to work.

Judge Panner's Order is a Temporary Restraining Order (TRO), common in the very early stages of litigation before there has been an opportunity for the Court to be fully briefed on the merits of the case. One of the criteria is that the plaintiffs must be likely to win the case in the end. The TRO ends October 28. Based on the letters to the field, the suspensions should be lifted long before the temporary order expires.

After, only about twenty minutes of argument, AFRC's request for relief was granted in the form of a nationwide Order immediately lifting suspensions of all federal timber contracts. The Judge agreed with AFRC's skepticism that the government could act quickly enough to satisfy contractors' immediate needs to resume work. In deciding to issue a TRO so that work could resume on all contracts immediately, he noted the importance of taking advantage of fall weather when the woods are accessible to build a log deck before the winter snows and rains. Additionally, the Judge appeared to sympathize with AFRC's argument that contractors should not have to wait on the federal bureaucracy to officially lift the suspensions, when contractors were ready and willing to resume work.

While Judge Panner's ruling did not address the ultimate merits of AFRC's case, it provides much needed relief to contractors and communities that depend on the national forests and BLM for timber harvest. AFRC must now decide how best to use this ruling and the pending case to prevent future contract suspensions in the event of another government shutdown.

The issue began on October 1, with Congress' failure to reach an agreement to fund the federal government and allowed the first major shutdown of government services in nearly two decades. Because of this lapse in appropriations, and the [Antideficiency Act](#), a law originally passed in 1870 which bars federal employees from spending money or creating an obligation without approval from Congress, federal workers were sent home and agencies like the Forest Service and BLM made plans to begin discontinuing the work of contractors. In the following days and weeks the two agencies began sending out suspension and stop-work orders to various contractors informing them that logging operations would have to cease.

AFRC took the position from the beginning that the Forest Service and BLM's decisions to stop contractors from working was illegal, and would cause serious harm to mills who were in the process of building their winter decks. AFRC worked to communicate our members' concerns throughout all levels of the agencies in an effort to keep contractors up and running to get work done before the weather changed.

On October 8, AFRC and the Federal Forest Resource Coalition (FFRC) joined in a [letter](#) to Undersecretary of Agriculture Robert Bonnie urging the Forest Service not to violate the terms of timber sale contracts and stewardship contracts by requiring purchasers and operators to suspend operations during the government shutdown. The same information was communicated to the BLM State Director Jerry Perez. Nonetheless, the agencies pushed forward with their ill-advised strategy, continuing to issue stop-work and suspension orders.

It was in response to the Forest Service's and BLM's refusal to recognize that there was no valid legal basis for suspending contract operations that AFRC joined the lawsuit.

Now that the federal government has re-opened and contractors are back in the woods, the dust has settled for the moment. Congress, however, has given the country few assurances this situation won't happen again. The recently-passed budget deal merely extended temporary funding for the government until mid-January, making the possibility of another government shutdown a real possibility given today's political climate. Regardless of what happens in Washington, AFRC's positive legal result and the work it and its members put into achieving it should provide assurances that AFRC will be ready in the event another such shutdown occurs. */Ann Forest Burns and Rob Molinelli*

AFRC in DC

A group of AFRC members and staff travelled to Washington DC during the week of September 30, for meetings with the Administration and key Congressional offices. The trip coincided with the fall FFRC meeting. Highlights of the meeting included meetings with Forest Service Chief Tom Tidwell and newly confirmed Undersecretary of Agriculture Robert Bonnie.

Chief Tidwell stated that the big fire years in 2012 and 2013 indicate now, more than ever, active management is needed on our national forests. He also noted that fire is the biggest threat to endangered species such as the spotted owl, and that harvest is needed to ensure we maintain early seral stages of plant development that other wildlife species depend on. He mentioned that 14% of all carbon sequestration in the U.S. is done by our national forests. However, as early as 2030, national forests could become net emitters of carbon because of wildfire, mortality, and other forest health issues.

The Chief stated his agency needed to find more efficient ways of doing business including shortening NEPA planning, using designation by prescription, developing large scale projects, and moving away from single species protection. His agency will be actively pursuing salvaging opportunities and using the Emergency Situation Determination tool when salvage is needed to be done quickly.

Tidwell also pointed out that since 2002 even with inflation, the National Forest System budget has seen reductions due a growing share of the Forest Service budget going to fighting wildfires, which greatly reduces the acreage that is mechanically treated to prevent those fires.

Undersecretary Bonnie also hit on many of the same points the Chief made earlier in the day, and outlined how important our industry is in getting the forest health work done on the national forests. Long-term his goal is to boost acres treated and hence deliver more volume to our facilities. AFRC and FFRC continue to support the harvest of the Allowable Sale Quantity from each national forest, which totals 6.2 billion board feet nationwide.

With Congress shutting down on October 1, all appointments with Administrative offices were cancelled; however Congressional offices were open, and our collective group called on many of the western House and Senate members to discuss the recent passage of H.R. 1526, the “Restoring Healthy Forests for Healthy Communities Act” and the need for the Senate to take up the legislation or offer their own federal forest reform legislation. The group also discussed making sure that the important forestry provisions in the House Farm Bill are adopted in any House-Senate conference.

The final order of business for FFRC was to appoint Duane Vaagen of Vaagen Brothers Lumber, in Colville, Washington as the new President. He succeeds Howard Hedstrom from Hedstrom Lumber, in Grand Marais, Minnesota. Both men were very instrumental in the formation of FFRC, which represents federal timber purchasers on the national scene. / *Tom Partin*

Farm Bill to Conference

On October 11, the House voted 223-189 to direct negotiations to begin with the Senate to develop a new five-year Farm Bill. The Senate passed their version of the Farm Bill in June. After failing to secure sufficient votes to pass its Farm Bill, the House split it into two parts and passed them separately in July and September. While the Farm Bill is best known for programs that provide support for crop subsidies, food stamps and other Agricultural related issues, there are a number of important forestry provisions in play in both versions. Some of the key provisions include:

- Both the House and Senate versions would reauthorize stewardship contracting authority for the Forest Service and BLM. The Senate would make it permanent, the House for five years.
- The House bill would allow all states to use the Good Neighbor Authority to provide the Forest Service the ability to work with states to accomplish important forest health work on the National Forest System.
- The House bill would direct the Forest Service to designate critical areas with deteriorating forest health conditions and extend Healthy Forest Restoration Act (HFRA) authorities. A new 10,000 acre Categorical Exclusion (CE) would be created to expedite forest management projects in

these areas. The Senate bill does not include a CE, but includes a more limited expansion of HFRA authorities to treat insect and disease infestations.

- The House bill would expand the use of designation by description and designation by prescription on all timber sales, not just stewardship contracts.
- The House bill would also ensure that approved projects using CE's are not subject to administrative appeals.
- It also includes a legislative fix to the Ninth Circuit's decision that forest roads are point sources of pollution under the Clean Water Act.

The key players heading into the Farm Bill conference include Senator Debbie Stabenow (D-MI) and Representative Frank Lucas (R-OK) both of whom Chair the Agriculture Committee in their respective Houses. Here in the Northwest, Senator Max Baucus (D-MT), and Representatives Kurt Schrader (D-OR), and Suzan DelBene (D-WA) were appointed to the conference committee. We hope conferees will support these provisions that could be of real benefit to getting more acres treated on our national forests in any compromise Farm Bill that emerges. /*Tom Partin*

Yosemite Rim Fire Salvage Bill

On October 3, the House Natural Resources Subcommittee on Public Lands and Environmental Regulation held a hearing on H.R. 3188, the "Yosemite Rim Fire Emergency Salvage Act" which was introduced on September 28 by Representative Tom McClintock (R-CA).

The bill states that the Forest Service, BLM and the National Park Service shall promptly plan and implement salvage sales of dead, damaged, or downed timber resulting from the Yosemite Rim wildfire. Additionally, the bill would require expedited implementation of projects by requiring that salvage sales conducted under this Act proceed immediately and to completion notwithstanding any other provision of law including NEPA, NFMA, FLMPA, the Forest and Rangeland Renewable Resources Act Planning Act, and other laws related to the management of timber within Yosemite National Park. Further, salvage sales conducted under this Act would not be subject to Administrative or Judicial Review in any court of the United States.

Tom Partin, AFRC President, testified on the need for expedited salvage authorities, noting that, "Extreme Events call for Extreme Actions. The fire which destroyed over 250,000 acres of forestland and burned over a billion board feet of timber needs to be quickly salvaged to capture the value of the timber and allow reforestation activities to take place. The revenue could be used to replant young trees and rehabilitate and restore thousands of denuded acres including key watersheds that provide drinking water to many California communities and cities including San Francisco."

AFRC wants to thank Representative McClintock for bringing this bill forward in an effort to quickly salvage dead timber; restore forests that were destroyed as the result of this catastrophic wildfire; and establish new forests and healthy watersheds from the revenues that will be generated from the salvage. /*Tom Partin*

Gifford Pinchot Collaboration

As of late, there has been an increased interest in the use of Collaboratives on many national forests. From Representative Derek Kilmer's (D-WA) interest in a Collaborative on the Olympic National Forest to the newly formed North Central Washington Forest Health Collaborative on the Okanogan/Wenatchee National Forest, this tool for obtaining consensus on forest management has been in the news lately. With this interest comes the continued discussion of their effectiveness in providing real solutions for rural communities and the ability to maintain the existing milling infrastructure. We have seen success and failure of the process around the west. This is especially the case when it comes to projects providing needed timber volume for the existing infrastructure and quality jobs in our rural communities. It is often easiest to point to the failures, but in this case we are highlighting the Polepatch Huckleberry Enhancement Project on the Gifford Pinchot National Forest, which at this point in its development shows potential for being a success.

The project began with a letter to the forest dated July 17, 2009 from the Pinchot Partners and the Cowlitz Indian Tribe. The [Pinchot Partners](#) are an active Collaborative promoting projects on the forest. The letter expressed concerns over the impact of encroaching trees on the production of huckleberries. Extensive surveys of the areas mapped by the Cowlitz Tribe were conducted by the Forest Service in August 2011. Using criteria including plant association, existing huckleberry cover, road proximity and local knowledge, a group of stands were identified, which were believed to have a high positive response to treatment. The project was further developed through consultation with the Pinchot Partners and the Cowlitz tribe, including a field trip to the project area in July 2012. The proposal was analyzed in the Cowlitz Huckleberry project decision memo, resulting in the [Polepatch EA](#).

The [Decision Notice and Finding of Non-Significance for the Polepatch EA](#) was signed on September 3. Once fully implemented, this project will primarily use a mix of thinning and prescribed fire to accomplish the goals of huckleberry enhancement. The thinning component is expected to produce up to 11 mmbf of timber harvest through both ground based and cable harvesting. Due to the elevation of the project area, it is anticipated that a sale announcement will be in fourth quarter of fiscal year 2014. Currently, the appeal period is still open, and assuming the project makes it through the appeal stage and is fully implemented, it has the potential to be an example of the Collaborative tool being used for a successful outcome. The key to success is a committed group of stakeholders with a defined mission and goals, and the willingness of the forest to work with the stakeholders. By keeping their eye on the big picture, the Collaborative was able to create a project that benefits the local communities and the environment. */Matt Comisky*

Paul Cole 1926-2013

The AFRC family is sad to report that forest industry leader and businessman Paul B. Cole passed away on September 13. Most of us knew Paul as the General Manager and CEO of Rosboro, a position that he held for over 60 years.

Paul was born in Rosboro, Arkansas and moved to Oregon when his father and others formed Rosboro Lumber in Springfield, Oregon. He attended University High School, then joined the Navy and served in World War II. Following his naval service, Paul attended Willamette University where he received a bachelor's degree in business.

In 1949 Paul married his wife Nonnie and began working in the sales department for Rosboro, before becoming CEO in 1958. Paul was very active in many community organizations and wood products associations. Paul was a true outdoor enthusiast enjoying snow skiing, hiking, and traveling. He is survived by his wife Nonnie, daughter, Debbie Ogburn, son-in-law Jeffrey and grandson Dennis Ogburn. Our best wishes go out to Paul's entire family. /*Tom Partin*