

December 21, 2012

Forest Roads Case

On December 3, the U.S. Supreme Court heard [oral arguments](#) on the Clean Water Act forest roads case (*Decker v. NEDC* and *Georgia-Pacific West v. NEDC*). The Court really did not hear much about the merits of the case because the Environmental Protection Agency (EPA) issued a [rule](#) the Friday before which exempts logging roads from the National Pollutant Discharge Elimination System (NPDES) permit requirements of the Act. That forced the Court and attorneys to spend most of their time on whether there is still a live legal dispute and how the Court should treat the case in light of the new rule.

In the face of the Court's congratulations that his clients seemed to have gotten all they needed via the EPA rule, industry's attorney Jim Bishop urged the Court to go ahead and decide the case on its merits. As was clear from the arguments made by NEDC's attorney, those who challenged the failure of the EPA to require NPDES permits before are not going to be satisfied now with the new rule and more litigation will follow.

So far, the Court has given no indication of what it will do with the case. Among its choices are to affirm the Ninth Circuit without comment; to vacate the Ninth Circuit Court's decision and send the case back there for a new decision; to dismiss the case under the theory that Supreme Court review was "improvidently granted" because the administrative agency seems to have resolved the petitioners' problems by issuing a regulation; or to write a full opinion (either on the merits or on the issue of mootness). The longer the Court is silent, the better the chances are that it is working on a full decision.

In the face of the uncertainty created by the EPA's issuance of a new rule, it is more important than ever that Congress act to pass the Silvicultural Regulatory Consistency Act companion bills that have been introduced in both the House ([HR 2541](#)) and Senate ([S 1369](#)). The bills would amend the Clean Water Act to regulate silvicultural activities as non-point sources of pollution and exempt silvicultural activities from any permit requirements under the Clean Water Act. This would effectively leave forest roads under the Best Management Practices schemes of the various states. Unfortunately, Congress has its attention turned elsewhere right now. /*Ann Forest Burns*

New Spotted Owl Critical Habitat

On November 21, the U.S. Fish and Wildlife Service (FWS) released the final critical habitat designation for the spotted owl. The [final rule](#) was published in the Federal Register on December 4 and will become effective on January 3, 2013.

The final critical habitat covers 9.29 million acres of mostly Forest Service and BLM lands with 291,570 acres of State of Oregon lands. While the final acreage is less than the draft rule, the proposal will have a significant impact on the ability to manage these forests. Although FWS officials state that "active management" will not be entirely prohibited in critical habitat areas, the necessity to engage in inter-

agency consultations will undoubtedly have a chilling effect on forest manager's efforts and cause a shift, to the extent that is possible, into other areas. This, in turn, could have the unintended consequence of increasing the environmental effects on those smaller areas where operations continue to be feasible.

Last July, AFRC submitted extensive [comments](#), as well as information from the [National Council for Air and Stream Improvement](#) and [Western Ecosystems Technology, Inc.](#) explaining the deficiencies and flaws in the draft rule. Those deficiencies and flaws do not appear to have been corrected in the final rule.

AFRC strongly believes that the modeling process used has resulted in a flawed proposal. Meanwhile, the lack of consideration given to the prevention of catastrophic wildfires and impacts from the barred owl raises serious questions about the FWS' approach to recovering the owl.

AFRC staff and attorneys continue a thorough review of the final rule which, with its Environmental Assessment and Economic Analysis, comprises over 1,300 pages, to determine whether the final rule complies with the requirements of federal statutes. /Ross Mickey

Forest Health Assessment

A significant report has been released titled "[National Forest Health Restoration: An Economic Assessment of Forest Restoration on Oregon's East Side National Forests](#)." The report prepared for Governor John Kitzhaber and Oregon's legislative leaders was funded by the Oregon Forest Resources Institute, The Nature Conservancy, Sustainable Northwest, Association of Oregon Counties, and the Oregon Business Council.

This assessment looks at the question posed by Governor Kitzhaber and other legislative leaders "*If Oregon doubled the average number of acres treated on its east side National Forests annually to benefit and restore forest ecosystem health on Oregon's dry-side national forestlands, then what would that cost and what would be the benefit?*" **The report showed that every \$1 million spent on forest management treatments will generate \$5.7 million in economic returns**, and equally important, the forests will become healthier.

The study area focused on all National Forests east of the Cascade Crest (excluding eastern portions of the Mt. Hood and Rogue River-Siskiyou National Forests). While this report looks only at eastern Oregon Forests, it could be easily argued that all interior forests throughout the western United States would have similar dynamics.

Some key findings include:

- Dry-side forests are overly dense and unhealthy, and as a result, Forest Service managed forests experience more and worse fires than is natural. Forests that in the past might have withstood low intensity surface fires are now at risk of devastating crown fires.

- Reduced management has decreased timber supply and hurt many families in eastern and south central Oregon; **one in five people live in poverty**. Between 2006 and 2011, food stamp use and welfare payments tripled to \$298 million. In 2010, Oregon distributed \$470 million in unemployment insurance claims to people in the study areas.
- An investment in forest health restoration has the potential to save millions of dollars in state and federal funds by creating jobs and by avoiding costs associated with fire suppression, social service programs and unemployment benefits.
- The Forest Service spends on average \$40.8 million in forest restoration activities per year in eastern Oregon. From that investment 2,310 jobs are created, generating \$90.5 million in total income, accounting for \$231.5 million in total industrial output, and contributing \$3.6 million in total state tax revenue.
- **For every \$1 the Forest Service spends on forest restoration, the agency avoids a potential loss of \$1.45 in fire suppression.**
- A program to increase the pace of forest restoration will protect and retain invaluable ecosystem services that provide clean air, clean water, wildlife habitat, recreational opportunities, and other services that are threatened by degraded forest health.

The main take away from this study is that forest health restoration activities have the potential to save millions of dollars in state and federal funds by creating jobs and by avoiding costs associated with fire suppression, social service program and unemployment benefits.

The report should be mandatory reading for anyone interested in our interior forests, our rural communities and our decimated forest products industry that is trying to hang on and survive. / *Tom Partin*

Committee Chairmanships

The Senate and House have made a number of committee assignments and named full committee Chairman and Ranking Members for the 113th Congress. Several members of the Northwest Congressional delegation have picked up added clout, including Senator Jeff Merkley (D-OR) and Representative Jaime Herrera Beutler, (R-WA) who were both added to the Appropriations Committee in their respective chambers.

Senate Majority Leader will once again be Harry Reid (D-NV) and the Minority Leader will be Mitch McConnell (R-KY). Speaker of the House will be John Boehner (R-OH) and House Minority Leader will be Nancy Pelosi (D-CA). Key committees that deal in forestry issues are listed below, however the Chairmanship of the Interior Appropriations subcommittee could change due to the recent passing of Senator Daniel Inouye (D-HI).

<u>House Committee</u>	<u>Chairman</u>	<u>Ranking Member</u>
Agriculture	Frank Lucas (R-OK)	Colin Peterson (D-MN)
Appropriations	Hal Rogers (R-KY)	Nita Lowey (D-NY)
Interior Appropriations	Mike Simpson (R-ID)	Jim Moran (D-VA)
Energy and Commerce	Fred Upton (R-MI)	Henry Waxman (D-CA)
Natural Resources	Doc Hastings (R-WA)	Ed Markey (D- MA)

<u>Senate</u>	<u>Chairman</u>	<u>Ranking Member</u>
Agriculture	Debbie Stabenow (D-MI)	Pat Roberts (R-KS)
Appropriations	Barbara Mikulski (D-MD)	Richard Shelby (R-AL)
Interior Approps.	Jack Reed (D-RI)	Lisa Murkowski (R-AK)
Energy and Nat. Res.	Ron Wyden (D-OR)	Lisa Murkowski (R-AK)
EPW	Barbara Boxer (D-CA)	David Vitter (R-LA)

Congress will begin session on January 3, and President Barack Obama’s second inauguration takes place on January 21. / *Tom Partin*

Sizing Up Restoration Treatments

Last summer, the House Natural Resources Committee held a hearing during the peak of the fire season (or at least the peak that occurred in Colorado and New Mexico, which was followed by several other peaks in Idaho, Montana, Oregon, and elsewhere). At that hearing, Mary Wagner, Associate Chief of the Forest Service, said the agency “restored” 3.7 million acres in 2011. The Committee staff decided to ask a few questions about that big number. Earlier this week the answers finally came through the bureaucracy and the House of Representatives mail irradiation process. They are – revealing.

Total Acres “Restored”	3,700,000
Acres “Restored by Prescribed Fire”	1,081,318 (29% of the total)
Acres “restored by Wildland fire Burning within Prescription”	400,957 (10% of the total, 37% of the prescribed burn acres)
Acres “restored” by “lake habitat restoration, water and soil resource improvement, reforestation, noxious weed treatment, and rangeland vegetation improvement”	2,563,595 (69% of the total)
Acres Mechanically Treated	1,136,405 (30% of the total)
Acres Pre-commercially Thinned	145,928 (3.9% of the total)
Acres Commercially Thinned	195,477 (5.2% of the total)

While there is some crossover between the different treatment categories, the numbers do provide a snapshot of the Forest Service’s restoration-focused forest management programs.

The agency reports that they only harvested merchantable material (no word on how much biomass is included in that term) from the acres commercially thinned. This means that the agency's restoration program did not produce a single salable product on almost 95% of the "acres restored," and they counted twice as many acres burned in wildfires as "restored" as received commercial thinning. Yet 90% of their restoration did not involve thinning of any kind. /*Bill Imbergamo, Federal Forest Resource Coalition*

DNR Timber Program Report

Below is DNR's FY13 timber sale program through November.

Sales offered	44
Sales sold	40
Sales no-bid	4
Volume offered	165.9 mmbf
Volume sold	150.2
Volume no-bid	15.7
% Volume sold	91%
Sold sale value	\$42.0 million
Price/MBF	\$280
Overbid ratio	42%
Average bidders per sale	2.47

DNR expects to sell approximately 614 mmbf in FY13. Approximately 554 mmbf will come off the westside and 60 mmbf off the eastside. /*Jacob Groves*

BLM Awards Regeneration Sale

In 2010, Secretary of Interior Ken Salazar directed several BLM districts in Western Oregon to prepare and implement timber sales that were designed to demonstrate principles of ecological forestry as described by Drs. Jerry Franklin and Norm Johnson, including the use of regeneration harvests on "moist forests." To date, the only thing that has been demonstrated is how opponents of timber harvesting can successfully delay a project through extensive protests and appeals. However, now three of these timber sales have been prepared, auctioned and bid on by potential purchasers. Unfortunately, the BLM received 147 pages of protests from five appellants on these timber sales that bogged down the Coos Bay and Roseburg BLM staff with the task of responding. Despite this delay, AFRC requested that the BLM stand by their NEPA analysis and award these sales to the high bidder. It has been the BLM's policy to allow the Interior Board of Land Appeals (IBLA) 45 days to review and respond to such appeals before any such award would be implemented. However, these 45 days often come and go with no response from the IBLA and consequently no award from the BLM.

Some of this gridlock ended earlier this month when the Roseburg BLM District awarded the Buck Rising Timber Sale, a moist forest regeneration harvest. The Field Manager of the South River Resource Area opted to go full force and effect on this sale by awarding the contract after IBLA's 45 days had expired with no response to the district. He and his staff felt confident that they had completed

a thorough and quality analysis that would withstand the appeal they received. Operations began on December 13 as the first trees in a BLM regeneration harvest hit the ground in quite a long time.

AFRC encourages the other BLM districts to follow Roseburg's lead in sending the message to timber harvesting opponents that they cannot halt any project they desire simply by submitting a lengthy and verbose protest letter. */Andy Geissler*

Shasta Trinity Defends Projects

For some environmental groups the Shasta Trinity National Forest apparently can't do anything right. Every NEPA document signed by the forest is challenged and almost every decision made for the last several years has been appealed and/or litigated.

Conservation Congress has filed litigation on four projects recently. Two of these projects received no bids, while the other two were awarded and contain a total of 63.9 mmbf. The latest projects to be challenged are the Algoma Project and the Porcupine Project. The Algoma Project is being litigated by Conservation Congress and the Porcupine Project (23.1 mmbf) has been appealed by Conservation Congress, KSWILD, and EPIC.

All of the projects that have been challenged on the Shasta Trinity are commercial thinning projects designed to reduce dense stocking levels. These sales were well designed with the intent of protecting communities, reducing the risk of insect and disease outbreaks, maintaining forest health, ecosystem restoration, and reducing the risk of catastrophic wildfire. All of the projects propose responsible forest management in order to meet all the stated objectives. It is becoming apparent these groups have no desire to implement responsible and necessary land management activities on the Shasta Trinity, which includes the need to control stocking levels, especially in the eastside pine type. They state they want responsible management as long as the projects only removes small trees. What they don't understand is removing only small trees does nothing to protect long term sustainability of the national forest land base. Their goal to stop necessary projects will ultimately end up destroying the very forests they think they are protecting. */Rick Svilich*

FWS Reviewing Caribou Listing

On December 19, the FWS [announced](#) that it will conduct a review of the listing status of the southern Selkirk Mountains Woodland Caribou. This is in response to a delisting petition received in May, 2012 from the Pacific Legal Foundation representing Bonner County in Idaho and the Idaho State Snowmobile Association.

On November 28, the FWS [announced](#) its final critical habitat designation for the southern Selkirk Mountains Woodland Caribou. The final designation included 30,010 acres in Washington's Pend Oreille County and Idaho's Boundary County. All of the land designated as critical habitat is on federal lands managed by the Forest Service.

The final designation was reduced drastically, after an extensive comment period, from the original proposed designation of 375,552 acres. One of the primary factors the FWS considered in the reduction of acres from the original proposal was comments from peer reviewers that reevaluated the geographical area that was occupied by the southern Selkirk Mountains Woodland Caribou population at time of listing. */Jacob Groves*

Stoel Rives Honored

AFRC member Stoel Rives has been named the Most Admired Professional Services Firm in Oregon, according to a [survey](#) conducted by the *Portland Business Journal*.

For this category, 1,800 CEOs and top-level managers throughout the state were asked to rate law firms and accounting firms on such attributes as innovation, quality of product or service, community service, branding and quality of management. Other categories include manufacturing, technology, commercial real estate, financial services, professional services, health care and nonprofits. For 2012, Bob's Red Mill was named "most admired" in the agriculture and forest products category.

AFRC congratulates Stoel Rives and thanks them for their continued work on behalf of our industry.
/Tom Partin