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AFRC Goes to Washington

AFRC members and staff were in Washington, D.C. March 15-17 for two dozen meetings with key Congressional and Administration officials, as well the Federal Forest Resource Coalition (FFRC) board meeting. The meetings provided another opportunity for our industry to weigh in on the need for legislation to increase the pace and scale of federal forest management activities and fix our nation's broken approach to funding wildfire suppression. The group also focused on several regional issues that limit responsible forest management activities in the West.

On the legislative front, all eyes remain on the Senate Energy and Natural Resources Committee where Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) have committed to move fire and forest management legislation forward in the Senate. Unfortunately, action on federal forestry/fire legislation has been delayed by the Committee's work on comprehensive energy legislation. Based on AFRC's meetings in D.C. it appears that the Committee will turn its attention to forestry legislation next month following the spring Congressional recess.

Meetings also focused on our industry's appropriations priorities for the Forest Service and Bureau of Land Management (BLM), which includes directing more funding to timber management and road maintenance accounts. AFRC members and staff also advocated for the wider utilization of authorities the industry has helped secure for the agency, including Designation by Prescription, Good Neighbor Authority, the insect and disease Categorical Exclusion (CE), and the expanded Knutson Vandenberg (K-V) authority.

During the FFRC board meeting, Frank Beum, Acting Director, USFS Forest Management, and Chris French, Director, USFS Ecosystem Management Coordination, provided an overview of the Fiscal Year 2016 timber sale program (3.2 billion board feet target) and agency utilization of streamlined authorities. They also updated the group on the status of the search for a new permanent director of Forest Management following the departure of Bryan Rice earlier this year.

Joining AFRC staff for the trip were the following association members: Bob Boeh, Idaho Forest Group; Mark Bosetti, Sierra Pacific Industries; Steve Brink, California Forestry Association; Buck Fullerton, Boise Cascade; and Ron Schneider, WKO. These trips provide a unique opportunity to connect with champions of our industry on Capitol Hill – both old and new – and highlight the tremendous contributions of AFRC's members to improve the health of our federal forests and rural communities. Please contact us if you have questions about the Washington, D.C. visits or would like to join us on our next trip later this year. */Heath Heikkila*

Washington State 2016 Election

The 2016 election season in Washington State will be busy. In addition to the Presidential election, there are a number of key state-wide races, including: Governor, Commissioner of Public Lands, and Superintendent of Public Instruction. Ballots will also include competitive races for seats in the state legislative, county commissioner boards, and other local positions. Given the significant potential to impact the priorities of the forest products industry and rural communities, AFRC is closely monitoring the following key statewide elections.

Governor. Currently, there are six candidates running for Governor in 2016. The incumbent, Jay Inslee (D), and William “Bill” Bryant (R) appear to be the current front runners based on fundraising and name recognition. The other four candidates include one Republican, one Independent, one Socialist, and one “other” candidate, none of whom have declared any campaign funds raised as of March 15. The Governor’s direct influence on the forest products industry includes appointing members to the Forest Practices Board, the new Forest Products Sector lead position within the Department of Commerce, and the Governor’s seat (typically filled by a designee from the office) on the Board of Natural Resources (BNR).

Commissioner of Public Lands. The race for Commissioner of Public Lands currently includes the incumbent, [Peter Goldmark](#), fellow Democrat, [Karen Porterfield](#), and Libertarian, [Steven Nielson](#). Commissioner Goldmark is running for his third term and has support from timber, aquaculture, tribal, and agriculture interests. This is Karen Porterfield’s first run for the Commissioner of Public Lands position. Porterfield ran unsuccessfully against Dave Reichert for Congress in 2012. Based on filings with the Public Disclosure Commission, her most notable campaign contributions to date have come from Martha Kongsgaard, wife of Peter Goldman of the Washington Forest Law Center. The third candidate, Steven Nielson, has not reported any fund raising numbers as of March 18.

Superintendent of Public Instruction. The office, currently held by Randy Dorn, has a seat on the Board of Natural Resources as the school beneficiary representative. Mr. Dorn has announced he does not plan to seek re-election, which will open an important seat on the BNR. Currently five candidates have filed to run for Superintendent of Public Instruction. [Chris Reykdal](#) and [Erin Jones](#) have raised the most money to date. Both Reykdal and Jones have backgrounds in education as teachers and administrators. Reykdal has also been serving in the Washington State Legislature for the last five years.

AFRC will continue to monitor these important races and report on them throughout the election season. Results of the 2016 election season will have an important impact on AFRC’s members, the forest products sector, and rural communities alike. */Matt Comisky*

Region 6 Timber Sale Targets Finalized

The Forest Service Washington and Regional Offices have finally set timber sale targets for Region 6 and individual Forests. The table below compares Fiscal Year 2015 (FY15) targets to Fiscal Year 2016 (FY16) targets. Overall, Region 6 targets will remain the same except the distribution between Forests will change. In FY15, Region 6 had a target of 613 mmbf, but only accomplished 585 mmbf. The Region’s FY16 target is 612 mmbf. AFRC is looking forward to partnering with the Forest Service to accomplish the target, or above, in 2016. Conservatively, at least 300 jobs are at stake if the Region’s accomplishments remain below its own goals. */Ross Mickey*

Forest	FY15 Target	FY16 Target
Colville	52	45
Deschutes	49	50
Fremont-Winema	57	60
Gifford Pinchot	30	32
Malheur	69	75
Mt. Baker-Snoqualmie	16	14
Mt. Hood	30	35
Ochoco	14	17
Okanogan-Wenatchee	34	35
Olympic	35	23
Rogue River-Siskiyou	42	29
Siuslaw	36	39
Umatilla	29	32
Umpqua	21	33
Wallowa-Whitman	25	26
Willamette	76	69
Total	613	612

2015 Medford BLM Monitoring

The BLM evaluates the effects to northern spotted owl habitat on all of their forest thinning treatments by estimating post-harvest canopy cover percentage. This is the percentage of the sky that is blocked by forest canopy if a person were to look directly up from any given point within a forest stand. While prescribed thinning levels vary from unit to unit, the BLM develops prescriptions that are designed to maintain required canopy cover levels on their treated stands.

In 2014, the Medford BLM District discovered four forest thinning projects that failed to maintain forest canopy levels consistent with those required by the U.S. Fish & Wildlife Service (the Service) to minimize disturbance to the spotted owl. The Service responded by requesting additional information from the BLM to determine the extent of the “problem.” As a result, the BLM designed and implemented a district wide monitoring effort in order to determine if there was a systemic failure in project implementation across the district or if the implementation failures found in the four projects were isolated cases. The field review was focused on projects implemented since 2008 and were selected in a random fashion resulting in a selection of units scattered across the Medford District. The final sample included 1,304 acres across 73 thinning units (25% of the total units).

Results of this effort showed that six of the 73 units sampled were thinned below permitted canopy cover levels. Three of these six units fell short to within 10% of the minimum allowed canopy level. Results also showed that 36 of the 73 units exceeded allowed canopy levels by over 10%. Additionally, 18 of the 73 units exceeded the standards by over 50%!

Not only do these results clearly indicate that there is no systemic failure across the district in meeting minimum canopy cover levels, but they also reveal a trend in the Medford District of retaining *too much* canopy (i.e. not thinning to prescribed levels). The “implementation problem” that the Service alluded

to seems to be a problem of underperformance rather than overcutting. AFRC will be engaging the BLM in addressing the question of whether these results indicate an adverse effect on forest health and on the level of timber products that should be harvested. /*Andy Geissler*

Montana National Forest Health Report

The Evergreen Foundation recently released a [special report](#) outlining the dire conditions of National Forest land in Montana. The report, “Montana’s National Forests: Burning an Empire” reveals sobering statistics that outline just how unhealthy and prone to catastrophic wildfires Montana’s public forests are. Of Montana’s 22.5 million acres of forestland, 11.4 million acres - or 60% - is managed by the U.S. Forest Service. Forest Service lands in Montana grow roughly 6.8 billion board feet of timber per year. However, due to insects, disease, and wildfire, 89.9 percent of that wood fiber dies annually. By contrast, 312 million board feet of timber is sold annually from National Forests in Montana, or 4.6 percent of the annual growth.

In addition to reporting on the state of National Forests in Montana, the report also contains interviews with several prevalent Montanans that have come together to address the many problems facing the state’s public lands. Those interviewed include: Montana Governor, Steve Bullock; Peter Kolb, PhD Forest Ecologist at the University of Montana; Former Forest Service Chief Dale Bosworth; and Christine Dawe, Director of Natural Resources for Region 1.

The report is a good resource for AFRC members and sadly confirms Montana’s forest health crisis that nearly 50 percent of Montana’s forest lands have been significantly affected by insects, disease and wildfire in recent years. /*Tom Partin*

Colville Plan Comment Period Extended

On March 14, the Colville National Forest announced that the comment period for Colville National Forest Draft Revised Land and Resource Management Plan will be extended by 45 days. The public comment period began on February 19 with the original comment period set to end on May 19. Notice of the extended comment period will be published in the Federal Register on March 25, extending the comment period to July 5. AFRC will be submitting substantive comments and urges those interested in the Plan do to the same. /*Tom Partin*

Westside Fire Recovery Project

The Klamath National Forest has finally – after 1.5 years of consultation with federal agencies to complete biological opinions required by the NEPA process – signed the Record of Decision for the Westside Fire Recovery Project. The NEPA effort is one of the largest in the Klamath’s history, resulting in five fire salvage timber sales totaling approximately 39 million board feet (mmbf). The Forest originally planned to offer 10 sales totaling over 100 mmbf. But due to expensive and time-consuming delays, which are now causing deterioration to the wood products on a large scale, advertised volume will be greatly reduced. Unfortunately, the delays in the consultation process resulted in a substantial missed opportunity that would have benefited forest restoration, local communities and economies, and the remaining milling infrastructure.

Incredibly, but perhaps unsurprisingly, even after all of this hard work, the National Marine Fisheries Service and the Klamath National Forest are being sued. The Karuk Tribe, Environmental Protection Information Center, Klamath Riverkeeper, and Klamath Siskiyou Wildlands are hoping to stop this very

important recovery project. AFRC is moving to intervene in the lawsuit on behalf of its members, Siskiyou County, and two local landowners. The project is essential to reducing future fire risk, restoring a healthy forest, and protecting local communities and neighboring landowners. /*Jerry van Hees*

Merrick Garland Nominated to Supreme Court

On March 16, President Obama nominated Merrick Garland, Chief Judge of the District of Columbia Circuit, to replace Justice Antonin Scalia on the Supreme Court. Garland has been described in many news reports as a “moderate” and was praised by Sen. Orrin Hatch (R-UT) a few days before the nomination. Garland has sat on the D.C. Circuit since his 1997 nomination by President Clinton. Like four current members of the Court (and Justice Scalia and President Obama), Garland is a graduate of Harvard Law School. He clerked for legendary Second Circuit Judge Henry Friendly and Supreme Court Justice William Brennan before beginning law practice in Washington, D.C. Garland then served as an Assistant U.S. Attorney and in the USDOJ Criminal Division, supervising the prosecution of the Oklahoma City bombers and Ted Kaczynski.

The D.C. Circuit handles more regulatory challenges than any other Circuit, so Garland has decided many cases related to federal agency action. He was a member of the three-judge panel in [Swanson Group v. Jewell](#) (2015), where the D.C. Circuit determined that Swanson Group, AFRC, and others did not have standing to enforce the O&C Act, and vacated the injunction issued by Judge Leon requiring BLM to sell its Allowable Sale Quantity in the Medford and Roseburg Districts. Garland’s most prominent Endangered Species Act (ESA) opinion was [Rancho Viejo, LLC v. Norton](#) (2003), which upheld the ESA, the listing of the arroyo toad, and resulting changes to a development project, as constitutional under the Commerce Clause. In the 2002 case of [Gerber v. Norton](#), Garland wrote an opinion overturning a habitat conservation plan and incidental take permit because the U.S. Fish & Wildlife Service had failed to release a map of mitigation areas during the public comment period, and had failed to minimize the impacts of the take. Garland also wrote an opinion in [Fund for Animals, Inc. v. Norton](#) (2002), reversing the district court and finding that the Mongolian government could intervene in an ESA listing case.

One prominent analyst, Tom Goldstein of SCOTUSblog, [described](#) Garland as having “strong views favoring deference to agency decision-makers. In a dozen close cases in which the court divided, he sided with the agency every time.” However, Garland tended to defer to the government less in the environmental arena. Goldstein [states](#), “On environmental law, Judge Garland has in a number of cases favored contested EPA regulations and actions when challenged by industry, and in other cases he has accepted challenges brought by environmental groups. This is in fact the area in which Judge Garland has been most willing to disagree with agency action.” Based on this analysis, one environmental publication [summarized](#): “Greens can breathe easy. But not too easy.” Republicans in the U.S. Senate have vowed to block any Obama appointment to the Supreme Court. /*Lawson Fite*

Use of State Conservation Agreements Upheld

On March 1, the D.C. Circuit issued a decision in [Defenders of Wildlife v. Jewell](#), a challenge to the decision of the U.S. Fish & Wildlife Service (the Service) not to list the dunes sagebrush lizard, a species native to New Mexico and Texas. The case has implications for the Service’s evaluation of conservation programs, such as Candidate Conservation Agreements with Assurances (CCAA). The

Service recently [announced](#) a proposed CCAA in Washington for Pacific fisher and a CCAA in Oregon is under development.

In the dunes sagebrush case, the Service initially proposed the species for listing in 2010 after determining that existing regulatory mechanisms were not adequate to protect the lizard. In particular, there was not sufficient coverage of the species' Texas range. Between the 2010 proposal and 2012 no-list decision, however, the Service observed that the New Mexico agreements had been successful and entered into a 30-year CCAA with the Texas Comptroller and other interests. At the time of the no-list decision, the Service determined that conservation measures covered 95% of habitat in New Mexico and 71% in Texas.

Defenders of Wildlife challenged this decision. The D.C. Circuit ruled, "Upon reviewing the Service's consideration of the Texas plan, the success it had already achieved, and its likely continued success based on the progress under the New Mexico agreements, we conclude that the Service adequately explained its basis for relying on the Texas plan." The court noted that the Service relied on the high level of enrollment in the plan as well as payment of \$773,000 in enrollment fees. The court also deferred to the Service's evaluation of the specific methods of the plan, concluding, "The Texas plan may not be foolproof, but neither is every regulatory regime." */Lawson Fite*

Giustina and Hull-Oakes Honored

AFRC congratulates its members Giustina Land and Timber Company and [Hull-Oaks Lumber Company](#) who were recently named Northwest Oregon Area Operator of the Year by the Oregon Board of Forestry. Based on a recommendation by the Long Tom Watershed Council, the two companies contributed the labor, expertise, and equipment for the installation of culverts exceeding Oregon Forest Practices rules and standards in order to open five miles of stream for coastal cutthroat trout to spawn and access cold water habitat. In its [video](#) posting of the award, Oregon Department of Forestry personnel noted that the AFRC companies have repeatedly exceeded best practices in stream protection. Thanks to Giustina Land and Timber Company and Hull-Oaks Lumber Company for their stewardship of Oregon's incredible natural resources. */Ann Forest Burns*

OSHA Penalties Increase

On behalf of AFRC member Ward Insurance, please be aware of the below announcement. Contact Jamie Trenter (jamie@wardinsurance.net), Director of Marketing, Wood Products at Ward Insurance with any questions.

Beginning Aug. 1, 2016, the [Bipartisan Budget Act of 2015](#) (Act) gives OSHA the authority to increase the maximum penalties it imposes on employers who violate occupational safety and health standards.

What You Should Know

For 25 years, OSHA did not adjust the maximum penalty amounts. The Act allows OSHA to adjust the maximum penalty amounts to reflect inflation, as determined by the consumer price index.

OSHA is required to implement the new maximum penalty amounts in two phases:

- An initial catch-up adjustment; and
- An ongoing subsequent adjustment period.

OSHA can make cost-of-living adjustments, expected to be between 80% and 150% of current OSHA penalty levels, to account for the previous 25 years of non-adjustment. The Act also gives OSHA the discretion to increase the current maximum penalty amounts by less than the cost-of-living adjustment, if it determines that the increase will:

- Impact the economy negatively; or
- Result in social costs that outweigh the benefits of the full increase.

OSHA will publish how it will implement the first inflation adjustment by **July 1, 2016**. The first adjustment must become effective **Aug. 1, 2016**. Then, beginning Jan. 15, 2017, OSHA will publish annual increases every January the Act is in effect.

The table shows the speculated 80% to 150% increases and how those increases would affect maximum OSHA penalty amounts in 2016.

Violation	Current Maximum	Amount of Increase		Increased Penalty Amount	
		80 %	150 % (max)	80 %	150 % (max)
Non-serious	\$7,000	\$5,600	\$10,500	\$12,600	\$17,500
Serious	\$7,000	\$5,600	\$10,500	\$12,600	\$17,500
Willful or Repeated	\$70,000	\$56,000	\$105,000	\$126,000	\$175,000
Willful (Resulting in Death)	\$10,000	\$8,000	\$15,000	\$18,000	\$25,000
Uncorrected	\$7,000	\$5,600	\$10,500	\$12,600	\$17,500