

**April 26, 2013**

## **Survey & Manage Settlement Rescinded**

On April 25, the Ninth Circuit Court of Appeals invalidated a settlement agreement between the Forest Service, BLM, and the Northwest's major environmental groups involving the survey and manage program of the Northwest Forest Plan which required surveys and restrictive harvest buffers for protection of hundreds of fungi, lichens, bryophytes, mollusks, amphibians, arthropods, and the red tree vole. The settlement agreement was entered into following two years of closed door negotiations after the District Court in Washington held that the agencies' EIS to eliminate survey and manage violated the National Environmental Policy Act (NEPA). The settlement agreement required greater survey effort for some species and highly restrictive canopy closure and tree retention limits before relief from certain survey and manage restrictions is allowed. DR Johnson Lumber Company, the intervenor in the case, argued that the settlement agreement was invalid because it changes the terms of the Northwest Forest Plan without following the required public participation and forest plan amendment procedures of the National Forest Management Act, the Federal Land Policy and Management Act, and NEPA. The Ninth Circuit agreed.

The ruling does not do away with survey and manage and its application will continue to constrain timber harvest. However, the ruling means the environmentalists cannot reach a sweetheart deal with the Obama Administration through a settlement to change the terms of the Northwest Forest Plan. If the agencies cannot change the Northwest Forest Plan through a settlement agreement, then the ruling will support a claim that the agencies by themselves cannot change the terms of the plan by, for example, simply abandoning regeneration harvest and essentially adopting a thinning only approach to forest management without amending the plan.

The court left open the question of whether survey and manage violates the O & C Act and cannot be applied to the O & C lands because the court concluded the issue was not properly raised in the challenge to the consent decree. /*Scott Horngren*

## **Rough and Ready Announces Closure**

It is with great sadness to report that on April 17, Jennifer Phillippi, CEO and co-owner of Rough and Ready Lumber Company announced the closure of their Cave Junction, Oregon sawmill. The mill which has always been in the family ownership just recently celebrated its 90<sup>th</sup> year in business, and employed 85 people, providing family wage jobs and benefits that helped to support Cave Junction and the other Illinois Valley communities.

Rough and Ready is the last remaining sawmill in Josephine County, which once supported a total of 22 sawmills. It is simply a tragedy that the mill which is surrounded by BLM and Forest Service timberlands had to shut down because it couldn't find enough timber to remain in operation. "It's like sitting in a grocery store not being able to eat while the produce rots around you," stated Phillippi.

Rough and Ready sits amid forestland owned 80 percent by the federal government—over 2.7 million acres—but for 20 years, the mill has had virtually no access to federal timber.

Compounding the problem is the fact that Rough and Ready had recently been the successful bidder on at least three BLM sales, all of which are under litigation and can't be awarded or operated. The closing of this sawmill should send a very loud message to our Congressional Representatives, policy makers, and agency personnel that the current system our government is using to manage the federal forests is broken beyond repair. There is absolutely no reason that a well-run, family-owned operation that provided needed jobs to rural residents should be idled. Our hearts go out to the Phillippi family and the employees of Rough and Ready! / *Tom Partin*

## **Annual Meeting a Success**

AFRC's 2013 Annual Meeting that was held on April 2-4 at Skamania Lodge in Stevenson, Washington was a big success. The number of attendees from the forest products industry was up, and even with sequestration, agency attendance from the Forest Service and BLM was strong.

The opening Keynote address was delivered by Congressman Kurt Schrader (D-OR). He outlined the importance of the O&C bill that he has sponsored and the need to restore active forest management on our federal forests. Robert Bonnie, Senior Advisor to Agriculture Secretary Tom Vilsack, presented a very positive message of restoring more acres to reduce the threat of wildfire and to preserve existing infrastructure.

A panel of three attorneys, Elaine Spencer, Ron Yockim and Scott Horngren, who regularly represent AFRC and its members, provided their perspectives on using the judicial system to defend the harvest of timber from public lands.

Dr. Peter Goldmark, Washington Commissioner of Public Lands, was our luncheon speaker who spoke about DNR's efforts to maintain a strong timber sale program while dealing with the issues of providing murrelet habitat and developing a new sustained yield calculation for the lands they manage.

Special thanks goes out to all of the personnel from the Forest Service, BLM and DNR who took the time to give us their perspectives on their programs and what they will deliver in the coming year.

At the Board of Directors meeting, Duane Vaagen was voted in as Chair and several other Board and Executive Committee appointments were approved. AFRC thanks all of our members and presenters for making this a successful event. Mark your calendars now for our 2014 meeting April 22-24 at Skamania Lodge. / *Tom Partin*

## **Hearing on Forest Management Bills**

On April 11, the House Natural Resources Committee, Chaired by Doc Hastings (R-WA), held a hearing on a series of bills that would bolster management on national forests, restore timber receipt revenue and economic activity to rural counties and communities, and deal with insect and disease problems on forests where outbreaks are epidemic and wildfire risks are severe.

The most sweeping bill HR 1526, titled "Restoring Healthy Forests for Healthy Communities Act" was introduced by Chairman Hastings and is meant to restore active management on the national forests and timber revenue to counties through four main features:

- Requires the Forest Service to actively manage its commercial timberlands to produce revenues.
- Requires the Forest Service to harvest at least half of the sustainable yield of timber on its commercial timberlands each year as required by law since 1908, and share 25% of the receipts with the counties.
- Requires projects to complete NEPA and ESA consultations, but streamlines the process to avoid lengthy delays, frivolous lawsuits, and bureaucratic red tape.
- Will provide a short-term extension of Secure Rural School (SRS) payments to allow counties to transition back to payments from active forest management.

AFRC staff attorney Scott Hornngren testified on behalf of AFRC and the Federal Forest Resource Coalition (FFRC) weighing in on the importance of managing our federal forests and the positive impacts that could have. Hornngren's written testimony emphasized four points.

- Designate an adequate and appropriate land base with the clear objective and mandate for active, sustainable timber management.
- Provide additional certainty to county governments, local communities, and industry by making legislative reforms to address the analyses and legal paralysis crippling the management of our federal forests.
- Identify and accelerate forest restoration treatments in critical areas where insects, disease, and hazardous fuel accumulation threaten entire forests and ecosystems.
- Explore alternative approaches for managing some federal forests, including through the application of trust mechanisms and state forest management.

The Committee also heard testimony from Oregon Congressmen Peter DeFazio (D), Kurt Schrader (D), and Greg Walden (R) regarding their bi-partisan legislation that would place a portion of the O&C lands under trust management with an explicit timber management mission. The bill titled the "O&C Trust, Conservation and Jobs Act" would put roughly 1.5 million acres of BLM's 2.6 million acres of O&C timberlands into a trust to be managed on a sustained yield basis under federal law as it applies to state and private lands. Annual harvest levels would be in excess of 500 mmbf, which is the minimum called for in the O&C Act of 1937, and the projected revenues returned to counties would be approximately the same that they were receiving under the SRS payments at their original levels. The Oregon delegation has been asking for a hearing on their proposal for over a year, so this represented a significant victory. Douglas County Commissioner Doug Robertson and Oregon Governor John Kitzhaber's Forestry and Conservation Advisor, Tom Tuchmann also testified on the proposal.

The Committee also considered three bills regarding the need to reduce excessive fuel loading in our forests and to treat forests ravaged by insects or disease. HR 818, the "Healthy Forest Management and Wildfire Prevention Act" sponsored by Scott Tipton (R-CO) would give Governors greater authority to propose projects addressing forest health epidemics on national forests. HR 1345, the "Catastrophic Wildfire Prevention Act of 2013" sponsored by Paul Gosar (R-AZ) promotes treating the forests to improve forest health, public safety and wildlife habitat through grazing and forest thinning projects. HR 1442, the "Depleting Risk from Insect Infestation, Soil Erosion, and Catastrophic Fire Act" sponsored by Ed Markey (D-MA) was also reviewed.

Finally, the Committee heard HR 1294, the “Self-Sufficient Community Lands Act” sponsored by Raul Labrador (R-ID). His bill would permit Governors to appoint a Board of Trustees to manage a portion of national forests to benefit local communities. This legislation grew out of a specific proposal for the Idaho Department of Lands to manage approximately 200,000 acres of national forest land. The legislation would apply nationwide.

The Forest Service and Chief Tom Tidwell came under withering criticism from members of the committee during the hearing. Most of the members represent rural districts with large amounts of national forest land and are clearly fed up with the status quo on our federal forests. There seems to be growing momentum in Congress to reverse the alarming forest health and wildfire trends, provide revenues to local counties, and provide jobs in rural, forested communities that have been devastated. The Committee is expected to take action soon on several of these bills or combine them into one comprehensive bill to send to the Senate for their consideration. */Tom Partin*

## **President’s Timber Budget**

On April 10, President Obama released his Fiscal Year 2014 budget request which includes budget proposals for the Forest Service and BLM. The Forest Service budget proposes large cuts in the hazardous fuels funding (\$115.95 million) and roads funding (\$38.34 million). Together the impacts of these cuts will reduce timber harvests from the projected FY13 level of 2.8 billion board feet down to 2.38 billion board feet in FY14. This is also a reduction from the 2.64 billion board feet that was actually harvested in FY12. If enacted, the proposed cut in roads funding would exacerbate recent cuts, taking that account from \$236 million in FY11 down to \$145 million in FY14 – a nearly 40% reduction.

Line items within the fire budgets on the other hand were given large increases in anticipation of the looming fire season and skyrocketing costs of fighting wildfires. For instance, the Fire Preparedness line item was up by \$53.14 million and Suppression was up by a whopping \$145 million or 27.25%. The budget again proposes the Integrated Resource Restoration line item (IRR), which would consolidate funds from Wildlife and Fisheries, Forest Products, Vegetation and Watershed Management, Legacy Roads & Trails, and Hazardous Fuels funds to create a \$756.788 million line item. Currently IRR is only being used as pilots in Regions 1, 3 and 4. Funding for the CFLRP projects would also continue, with only a slight decrease.

The BLM O&C forest management program fared better than the Forest Service. Overall funding for the O&C lands is \$115.54 million, which is up from \$112.55 million in FY13. The Resource Management line item was increased by \$3.83 million. The BLM budget justification indicates that approximately \$1.7 million of this will be spent on the development of new Resource Management Plans and \$1.8 million on forest management, including complying with survey and manage and the new spotted owl critical habitat. Timber sale volumes are predicted to remain stable, near the 197 mmbf level, which is far below the minimum 500 mmbf called for in the O&C Act. The volume of timber actually awarded by the BLM has fallen significantly short of their promised timber sale volumes in recent years due to a failure by the agency to swiftly resolve administrative protests and appeals.

## ***Budget Hearings***

On April 16, following the rollout of the proposed FY14 Forest Service budget, the Senate Energy and Natural Resources Committee held a hearing on the budget. Both Chairman Ron Wyden (D-OR) and Ranking Member Lisa Murkowski (R-AK) blasted the budget, especially the reduction in the timber sale

program and reduced hazardous fuels funding. Senator Murkowski commented how the agency's budget request struck her as a significant departure from multiple use management and more closely resembled a budget request for the National Park Service.

The House Interior Appropriations subcommittee held a hearing on the Forest Service budget request on April 26. At an April 16 public and outside witness hearing held by the same subcommittee, Bill Imbergamo, FFRC Executive Director, offered budget recommendations and testified that the reduction in timber harvest would cost about 7,000 jobs in rural America. AFRC and FFRC have been working with members in the House and Senate to address the major deficiencies within the Administration's Forest Service budget request. */Tom Partin*

### **Insect/Disease Bill Introduced**

On April 17, three Democratic Senators Ron Wyden, Mark Udall (CO) and Max Baucus (MT), joined lead sponsor Michael Bennett (CO) to introduce legislation aimed at addressing the need to remove dead or dying trees damaged by disease, bark beetle, and other insect infestations. The idea of expediting such treatments is popular in Colorado, which is ground zero for massive pine beetle infestations and recent catastrophic wildfires. Colorado politicians also hope to rebuild a forest products industry in their state.

The bill S. 745 titled the "National Forest Insect and Disease Treatment Act of 2013" would amend the Healthy Forests Restoration Act (HFRA) to require the Secretary of Agriculture, in consultation with state Governors, to designate as part of an insect and disease treatment program one or more subwatersheds in at least one national forest in each state that is experiencing an insect or disease epidemic. After the end of an initial 60-day period, the Secretary could designate additional subwatersheds as needed to address insect and disease threats.

Subwatersheds that can be designated must be experiencing "substantially increased" tree mortality due to insect or disease infestation based on annual forest health surveys conducted by the Secretary. Projects within these areas would be considered hazardous fuels reduction activities under HFRA and would receive many of the law's authorities. The legislation requires that projects "maximize the retention of old-growth and large trees" to the extent that this promotes resilient forests. The bill would provide a \$200 million annual authorization to carry out the work in fiscal years 2014-018, but securing actual increased appropriations will be difficult. */Tom Partin*

### **Associations Weigh in on Wilderness**

AFRC, Associated Oregon Loggers, Douglas Timber Operators, and the Southern Oregon Timber Industries Association sent a letter to Oregon Senators Ron Wyden and Jeff Merkley in advance of an April 25 hearing of the Public Lands Subcommittee of the Senate Energy and Natural Resource Committee to consider a number of public lands bills, including the "Oregon Treasures Act of 2013." The letter outlined their members' opposition to the passage of additional wilderness and wild and scenic designations unless they are coupled with, or preceded by, the enactment of a meaningful legislative resolution to the paralysis affecting federal forest management in western Oregon. The bill includes the proposed "Wild Rogue Wilderness" and "Molalla Wild and Scenic River" designations in western Oregon.

While the letter specifically addressed proposed wilderness and wild and scenic areas in Oregon, it is AFRC's belief that additional wilderness or other land set-asides should only be considered throughout the west if there is a resolution that is also tied to the sustainable land management issues that have been plaguing our forests and communities for the last two decades. /Tom Partin

## **Forest Service Adopts Objection Rule**

On March 27, the Forest Service published the [final rule](#) for filing objections to proposed projects, including timber sales. Section 428 of the FY12 Appropriations Act directed the Forest Service to come up with rules to replace the current administrative appeals process with a pre-decisional administrative review process modeled on the objection process used for HFRA projects. AFRC submitted [comments](#) on the [draft rule](#) which were published in the Federal Register on August 8, 2012.

The new rule, which is similar to the objection process mandated by the HFRA, replaces the Forest Service appeals process with a pre-decisional objection process requiring those concerned about a project to register their concerns before, rather than after, a decision is announced. Only those who file an objection under the new rule will be eligible to file litigation challenging the decision. /Ann Forest Burns

## **Planning Rule Correction**

On April 19, the Forest Service [published](#) a correction to the [2012 Planning Rule](#) to include language from the National Forest Management Act (NFMA), [16 U.S.C. 1604 \(g\)\(3\)\(D\)](#). The revision clarifies that timber harvest levels may be increased where intensified management practices, such as reforestation, thinning and tree improvement, justify an increase.

The amendment responds directly to one of the claims of violation of NFMA made in the [lawsuit](#) filed by FFRC, AFRC and others against the Planning Rule last August. See, [AFRC Newsletter August 28, 2012](#). The opening briefs on cross motions for summary judgment are due May 14. /Ann Forest Burns

## **WGA Weighs in on National Forest Management**

On April 16, the same day Congress was holding hearings on the Forest Service budget, the Western Governors' Association sent a letter to Agriculture Secretary Tom Vilsack urging the Forest Service to accelerate its efforts to increase forest management activities. The letter outlined how the forests of the west have fallen victim to insects and disease and have become a huge fire risk. The letter also pointed out that only 30% of the Forest Service budget is going towards forest management while 70% goes to fire control, administrative support, research, and other programs.

In the letter, the Governors call for finding new and inventive ways of doing business and getting the forests treated, including through greater cooperation with the forest products industry; "We request that the Forest Service provide state-by-state specifics on how many additional acres it plans to treat through the Restoration Strategy over the next five years, including how much biomass, board feet, and other forest health and restoration projects are envisioned. We would also like to work with you to convene a forest industry task group to identify ways that the timber industry can assist with forest management."

Clearly the Governors are not pleased with the status quo on the federal land management policies within their respective states and want to preserve the existing infrastructure and stated so in writing, "By improving forest management through the use of the private sector, we also help support our

declining forest industry and suffering rural economies. Our forest industries are already faced with low margins and limited markets; if we lose these industries, any restoration efforts will suffer a significant blow.”

AFRC applauds the WGA for taking this proactive step by asking Secretary Vilsack to ramp up management on our western forests and increase the money going to forest management, for the sake of the forests, our forest products industries, and our rural communities. We hope they will call upon AFRC members to participate in the forest industry task group. /Tom Partin

## **EIS Ordered on Goose Project**

On March 26, Oregon Federal District Court Judge Aiken issued an opinion requiring the Forest Service to prepare an Environmental Impact Statement (EIS) for the Goose Project on the Willamette National Forest.

The plaintiffs, Cascadia Wildlands and Oregon Wild, argued that the Environmental Assessment (EA) did not adequately discuss the environmental effects of the project on the interspecies competition between barred owls and spotted owls and the effects of thinning in riparian reserves. The court held that the existing EA adequately disclosed those environmental effects. Nonetheless, because the acknowledged uncertainty regarding the interspecies competition between the owls triggers one of ten factors of significance requiring the agency to do an EIS, the court ruled that additional step must be taken. Therefore, the Forest Service will have to repeat the same discussion but place an EIS label on the cover of the document before the timber sales can proceed. The court held that there were other significant factors that triggered the preparation of an EIS including road construction into a “potential wilderness area.”

The Goose Project is a 38 mmbf landscape-scale thinning project representing a substantial volume of timber from the Willamette. It is a multi-purpose project intended to reduce fire risk adjacent to the community of McKenzie Bridge, provide timber and family-wage jobs for Oregonians, and improve wildlife forage for deer, elk and other species.

In the meantime the three timber sales already sold are enjoined and none of the future sales from the Goose Project can be sold pending the publication of the relabeled document. /Scott Horngren

## **Preliminary Injunction Filed on Snow Basin**

The plaintiffs in *League of Wilderness Defenders/Blue Mountain Biodiversity Project et al v. Connaughton* filed a motion for preliminary injunction to halt the Snow Basin Project, a 40 mmbf landscape-scale restoration and fuel reduction project representing about a two year supply of timber on the Wallowa-Whitman National Forest. The Forest Service also wants to move multi-storied old forest to pine dominated single storied old forest.

Plaintiffs argue that the goals of the project could be achieved by thinning small trees only and argue that they are likely to succeed on the merits of their ESA and NEPA claims. The ESA claim argues that the Forest Service and Fish and Wildlife Service failed to formally consult because they incorrectly concluded that bull trout were not found in the project area. Plaintiffs claim NEPA violations for not considering the cumulative impacts of logging, grazing, and road activities, and the climate change

impact of removing carbon by harvesting large trees. They also argue that a supplemental EIS was required because the project relied on a travel management plan that was later withdrawn.

Plaintiffs argue they will be irreparably harmed because they will be no longer able to use the area for hiking, camping, photographing wildlife, and for “recharging their spiritual batteries.”

Intervenors are Baker and Union Counties, the Oregon Small Woodlands Association, Boise Cascade Wood Products, AFRC and a nearby landowner. The Western Resources Legal Center is co-counsel in the case. The preliminary injunction hearing is scheduled for July 8. /*Scott Horngren*

## **Forest Roads Case Continues**

On April 22, the U.S. Supreme Court issued the official judgment returning the forest roads case (*Decker v. NEDC* and *Georgia Pacific-West v. NEDC*) to the Ninth Circuit Court of Appeals for a decision consistent with the high court’s March 20 ruling (See, [AFRC Newsletter March 22, 2013](#)). Northwest Environmental Defense Center (NEDC), the Plaintiff in the original case, immediately filed a motion designed to keep the case alive in the Ninth Circuit.

The motion asks the Ninth Circuit to essentially reinstate the portion of its ruling overturning the silvicultural rule and to provide instructions to the District Court on how to address the case following the Supreme Court’s ruling. NEDC argues that, although the Supreme Court reversed the Circuit Court’s ruling that logging roads are industrial activities, it did not rule on whether runoff from logging roads requires a point source permit. Attorneys for the State of Oregon and the forest products industry will have an opportunity to respond.

NEDC’s motion makes it clear that it intends to continue to use Clean Water Act litigation to force forest landowners, including the federal government, to obtain National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act, rather than being regulated through Best Management Practices (BMPs).

The solution lies with Congress. To date, legislation similar to last year’s [Silvicultural Regulatory Consistency Act](#) has not been introduced. AFRC hopes members of Congress will take heed and move a bill forward soon. /*Ann Forest Burns*

## **Jewell Confirmed**

On April 10, the Senate voted 87-11 to confirm Sally Jewell as the next Secretary of Interior replacing Ken Salazar who recently stepped down. Jewell whose prior job was heading up the outdoor retail giant Recreational Equipment Inc. (REI) had faced strong questioning from some western Senators such as Lisa Murkowski regarding her views on managing the vast number of acres overseen by the BLM and the Interior Department.

Jewell who is also a former oil engineer and commercial banker has never served in public office. The lopsided Senate vote was likely due to Jewell’s strong performance during her confirmation hearing by answering a number of tough questions. While 11 Senators voted against Jewell, none of them spoke against her during the floor debate. /*Tom Partin*

## **Sherman Announces Departure**

On April 8, Harris Sherman, Under Secretary for Natural Resources & the Environment at the Department of Agriculture, announced he is stepping down. A statement issued by USDA outlined his rationale: "I am a Westerner at heart and, after four years, I am feeling a strong "tug" from that direction, particularly from my family in Colorado and California. Although this has been a difficult decision for me, I think it is a good time to make a transition. My plan is to remain at USDA until May 8, 2013 to assist in the transition."

While at USDA Sherman worked on the new Planning Rule that many believe represents a further departure from multiple use, and released a restoration strategy that calls for treating millions of acres within national forests to combat bark beetles, invasive species, and address climate variations which in turn will reduce the threat of wildfire. Part of this strategy includes recognition of the need for increased Forest Service timber harvest levels. We wish Undersecretary Sherman the best as he returns home.

*/Tom Partin*

## **Baucus to Retire**

On April 23, Senator Max Baucus (D-MT) announced that he would not seek reelection. Baucus, who chairs the powerful Senate Finance Committee and is a senior member of the Agriculture committee, has paid special attention to the interests of forestry, cattle and grain producers in advancing trade and farm policy. Baucus joins a number of other senior Democratic Senators in announcing his retirement, including Tim Johnson (SD), Jay Rockefeller (WV), Carl Levin (MI), and Tom Harkin (IA).

Several sources have reported that Baucus was considered one of the most vulnerable Democrats in the upcoming election, and former Montana Governor Brian Schweitzer will be at the top of Democrats' list as the candidate for the seat.

With Baucus' retirement the chairmanship of the Finance Committee would likely fall to Senator Ron Wyden who currently chairs the Senate Energy and Natural Resources Committee. More to come on this story as the 2014 election draws near. */ Tom Partin*

## **Healthy Forests, Healthy Communities**

Healthy Forests, Healthy Communities (HFHC), a new grassroots coalition, has established a presence online, through earned media efforts and is issuing a daily email news roundup on federal forest management issues.

HFHC was created to support Congressional action to pass a comprehensive and permanent solution to restore the health of our rural counties and federal forest lands. It supports a lasting solution that assures active, sustainable forest management, stable revenue sharing for local governments and more jobs in our rural, forested communities.

AFRC is pleased to support HFHC's efforts. You can lend a hand by visiting HFHC's webpage <http://www.healthyforests.org> to sign up to learn more about the issues facing our federal forests and the communities that depend on them. You can also "[Like](#)" HFHC on its [Facebook Page](#) or "[Follow](#)" their [Twitter feed](#).

Please share these links and spread the word among your friends, family, and associates--anyone who would like to address the crisis in our timber-dependent communities by promoting active, sustainable management of our federal forests. /*Ann Forest Burns*