



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

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Forest Service Water Quality Directives

On May 6, the Forest Service published in the Federal Register two separate notices and distinct sets of directives dealing with water quality.

As anticipated in the 2012 Forest Planning Rule, the Forest Service has developed a set of national Best Management Practices (BMPs) for water quality management from non-point sources. It is proposing to amend its internal Manual for Water Quality Management ([draft FSM 2532](#)) and establish a Best Management Practices Handbook ([draft FSH 2509.19](#)). The Forest Service says “these revisions would help ensure the consistent use and monitoring of BMPs and provide appropriate analyses for evaluating BMP implementation and effectiveness on a regular basis.” An explanation of the changes and directions for submitting comments, which will be accepted until July 7, can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-05-06/pdf/2014-10363.pdf>. AFRC staff will prepare and submit comments which will be posted on our website.

The Forest Service also published a proposal to amend its Watershed and Air Management directives to establish direction for management of groundwater resources on National Forest System (NFS) lands. The changes are described by the agency as “providing direction on the consideration of groundwater resources in agency activities, approvals, and authorizations; encouraging source water protection and water conservation; establish procedures for reviewing new proposals for groundwater withdrawals on NFS lands; require the evaluation of potential impacts from groundwater withdrawals on NFS resources; and providing for measurement and reporting for some larger groundwater withdrawals.” An explanation of the changes and directions for submitting comments, which will be accepted until August 4, can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-05-06/pdf/2014-10366.pdf>. A link to the manual provisions can be found at <http://www.fs.fed.us/geology/groundwater.html>.

The Forest Service is offering a one-hour webinar on the groundwater directives on Tuesday, May 20 at 1:00 p.m. EDT (10:00 a.m. Pacific). You can register at: <https://www.livemeeting.com/lrs/8002989786/Registration.aspx?PageName=lw1z0hnb0112bd70>

AFRC will be working with allied associations and members to provide comments to the groundwater directives. /Ann Forest Burns

Proposed Critical Habitat Rule Changes

On May 12, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services’) jointly issued three interrelated proposals concerning the designation of critical habitat under the Endangered Species Act. The proposals are below with some short [commentary](#) provided by AFRC member Stoel Rives, LLP.

Interagency Cooperation-Endangered Species Act of 1973, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10503.pdf>

“...the Services’ proposal would introduce an ambiguously defined lower bar for “adverse modification” under the ESA, which, if adopted, would decrease the predictability of Section 7 consultations and increase the likelihood of adverse modification findings.”

Listing Endangered and Threatened Species and Designating Critical Habitat; Implementing Changes to the Regulations for Designating Critical Habitat

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10504.pdf>

“...these proposed amendments would substantially increase (and formalize) the Services’ discretion, and increase the likelihood of critical habitat designations of vast landscapes based upon poorly defined criteria such as occurred with the now judicially invalidated designation of an area larger than the State of California as polar bear critical habitat.”

“...the proposals appear to represent a dramatic shift in the Services’ intended approaches to both designating critical habitat and to evaluating whether proposed actions may destroy or adversely modify critical habitat.”

Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10502.pdf>

“...the draft policy proposes limitations on the exclusion of lands subject to voluntary conservation measures, establishes a presumption against the exclusion of federal lands, and emphasizes that exclusions are both entirely matters of agency discretion and ‘rare.’”

AFRC will draft comments for the three proposals which are due July 11. /Ross Mickey

Snow Basin Ninth Circuit Decision

On May 8, the Ninth Circuit Court of Appeals issued an opinion in the appeal of District Court Judge Hernandez’s decision not to enjoin the Snow Basin Vegetation Management Project on the Wallowa-Whitman National Forest. (See [AFRC Newsletter July 22, 2013](#).)

Although the Ninth Circuit upheld the Forest Service on most claims, including its cumulative effects analysis and analysis regarding bull trout, the court ruled against the Forest Service on its analysis of the impacts of the withdrawal of the travel management plan and how that affects the project’s analysis of impacts on elk. The analysis of effects in the EIS assumed that the travel management plan was not adopted but also discussed the beneficial effects on elk if the plan were to be adopted. The court held that the analysis was too confusing. This is a procedural error. The court required the Forest Service to prepare a supplemental environmental impact statement (SEIS) and sent the case back to Judge Hernandez to enter an injunction pending completion of the supplemental EIS.

The Ninth Circuit did not state exactly what should be enjoined, but held that the law requires an injunction to be narrowly tailored to address the “harm” from the legal violation, which in this case is the impact of the project on elk. However, the project is designed to benefit elk by creating more forage through thinning so some of the project can proceed while the Forest Service completes the SEIS.

This decision is another indication of the need for fundamental reform of some of the laws affecting the management of the national forests to provide certainty that projects, once approved, can be promptly implemented. /*Scott Horngren*

Algoma Project to go Forward

On May 19, District Court Judge Troy L. Nunley upheld the Algoma Project on the Shasta Trinity National Forest and ruled the project could go forward.

The Algoma Project will treat about 4,600 acres in the Algoma Late Successional Reserve (LSR) on the Shasta Trinity through a combination of thinning, sanitation treatments, and fuel reductions. The primary purpose of the project is to reduce the likelihood of large scale disturbance and to protect and enhance conditions in the LSR area. Almost all of the project is within the LSR, and much of the treatment area falls within critical habitat for the northern spotted owl (NSO). Scott Timber and Franklin Logging purchased the sales in the project.

Plaintiff, Conservation Congress, raised a number of NEPA, NFMA, and ESA claims against both the Forest Service and U.S. Fish and Wildlife Service regarding the project. Plaintiff challenged the agencies’ findings that the project would destroy or adversely modify critical habitat, argued that the harvest will cause an ESA Section 9 take of spotted owls, claimed harm to snag dependent species, and argued that the NSO recovery plan required diameter limits be placed on the project. They also argued that the project was not needed to meet fuel reduction and forest health objectives because both wildfire and the spread of insects are beneficial to the forest. Finally, plaintiff also complained about cumulative effects on owl habitat and argued that the agencies’ concession that habitat will be “degraded” by the thinning supports their NEPA and ESA arguments.

Judge Nunley found none of plaintiff’s arguments convincing. First, the judge ruled that the agencies were not arbitrary and capricious in allowing treatment to proceed in NSO foraging and dispersal habitat, and that the agencies could consider long term benefits of the actions absent evidence that short term effects override the long-term benefits. Next, the judge found that there was no requirement that diameter limits be used for the project, that the agencies had considered and responded to the best available science, and that no ESA take would occur as a result of the treatment. Regarding NFMA, the judge found that project would not violate snag and down log standards, would not violate sensitive species standards, and plaintiff’s argument that the project violated the NSO recovery plan was legally unsupported. Finally, the judge ruled the Forest Service complied with NEPA in analyzing the project and addressing conflicting scientific opinions.

Overall, Judge Nunley’s opinion is a strong victory for the agencies, and the judge often noted the deference owed to them. The judge’s ruling allows Scott Timber and Franklin Logging to go forward with the project. Plaintiff has until late July to decide whether to appeal the judge’s ruling. /*Rob Molinelli*

DNR Timber Sale Program Update

In our March newsletter we reported on the status of the Department of Natural Resources timber sale program. June is the last month of FY14 for DNR and also the end of the first decade in the current Westside Sustainable Harvest Calculation (SHC). As anticipated in our March report, we expect to see significant volume offered in May and June.

Reported volume sold through April is 366 mmbf or about 68% of the anticipated target of 539 mmbf reported in March. Sale volume for May is expected to be 70 mmbf and for June 73 mmbf, which if all sales sell, DNR would end FY14 at 510 mmbf for the statewide sold volume.

With the decade coming to a close, in addition to an update of the SHC for the next decade, DNR is tasked with identifying if there is an [arrearage](#) and [how to dispose of the arrearage volume](#). DNR staff has given updates to the Board of Natural Resources regarding the arrearage volume. To date the number has continued to be in flux and ongoing analysis is taking place to determine what the Westside arrearage is and how to dispose of it in the best interest of the trusts. /*Matt Comisky*

Fuel Treatments Make Economic Sense

A recently-released [study](#) found that the economic benefits of modeled fuel treatments are 2-3 times more cost effective than non-treatment which leaves forests at risk of wildfire. The study was done in the Upper Mokelumne River Watershed in California's Sierra Nevada Mountains, which provides water for east San Francisco Bay.

Driving the study was the fact that high severity wildfires in the Sierra Nevada's pose a serious threat to people and nature. The 2013 Rim Fire in the Central Sierra Nevada's burned nearly 257,000 acres, much of it at high severity, at a cost of more than \$127 million, which does not include costs to the economy and tourism. The Sierra Nevada Conservancy, The Nature Conservancy, the Forest Service, and a diverse set of other stakeholders sought to answer the following question: "Does it make economic sense to increase investment in proactive forest management to reduce the risk of large, damaging wildfires?"

The study focused on using a collaborative process to develop a site-specific fuel-treatment scenario targeting areas of high fire risk to homes, communities and utility infrastructure, as well as post-fire sediment erosion risk to waterways. The study modeled wildfire in the Mokelumne watershed both with and without implementation of the fuels treatments scenario, and was based on conservative assumptions regarding potential costs and benefits, not a worst-case wildfire scenario.

Key findings included:

- Fuel treatments can significantly reduce the size and severity of wildfires.
- The economic benefits of modeled fuel treatments are 2-3 times the cost.
- There are many beneficiaries from increased fuel treatments, especially taxpayers.

In summary, the study shows that it makes economic sense to invest in forest management to reduce the risk of destructive, high-severity wildfires in the upper Mokelumne watershed. Although achieving such benefits requires a significant increase in the pace and scale of fuel treatments, the long-term cost savings far exceed the costs of the initial investment. To the extent that the Mokelumne is representative

of other fire-adapted forested watersheds of the Sierra Nevada and the western United States, this study makes the economic case for significantly increasing investment in fuel treatments in western forests.
/Tom Partin

GAO NEPA Report

Last month, the General Accounting Office issued a report that indicates the difficulty of understanding the full impact and costs of National Environmental Policy Act (NEPA) compliance nationwide due to the fact that government wide data on the number and type of most NEPA analyses are not readily available, because data collection efforts vary by agency. The report was conducted and presented to Representative Peter DeFazio (D-OR) who is the Ranking Member on the House Natural Resources Committee, and looked at various issues associated with completing NEPA analyses including information on (1) number and type of NEPA analyses, (2) costs and benefits of completing those analyses, and (3) frequency and outcomes of related litigation.

On the average, an EIS took 4.6 years to develop, and the cost ranged from \$250,000 to \$1.2 million. The Forest Service took longer than other agencies to complete an Environmental Analysis (18 months) while the Bureau of Indian Affairs only took one month. The Forest Service took 177 days to complete a categorical exclusion while the Department of Energy and Office of Surface Mining only took two days.

Not surprisingly, the report found that four agencies - the Forest Service, BLM, Federal Highway Administration, and the U.S. Army Corps of Engineers are generally the most frequent producers of EISs, accounting for 60 percent of the documents in 2012, according to data as reported by the National Association of Environmental Professionals. During that year, the Forest Service completed 102 EIS's or 25 percent of the total and the BLM completed 56 EIS's or 14 percent. Also not surprising is the fact that while the government prevails in most agency wide NEPA claims (86%), the Forest Service only won 54% of their suits.

Litigants generally challenged logging projects under NEPA and NFMA. Based on this report, more information on the amount of time and money that NEPA takes is needed, and the unfortunate part of the Forest Service losing a higher percentage of their cases requires the agency to pay plaintiff's attorney fees under the Equal Access to Justice Act out of their forest management budgets. */ Tom Partin*

More Management Under Farm Bill

On April 30, Forest Service Chief Tom Tidwell testified in front of the Senate Interior Environment and Related Agencies Appropriations Subcommittee that his agency was going to use the recommendations they received from 36 governors under authorization of the Farm Bill to help prioritize projects which would reduce the susceptibility to insect and disease infestations in high risk watersheds. Tidwell also reported that after reviewing all of the recommendations most will be accepted for management using HFRA authority which only requires projects to have two alternatives.

Also key to getting more acres treated will be how widespread the categorical exclusion (CE) will be used. Under the Farm Bill, collaboratives that choose to treat a watershed of 3,000 acres or less can request that an expedited CE be used in place of an EIS or EA which takes substantially longer to analyze. The new authorities should provide the agency additional cost savings, but the extent of use of this new authority may depend on increasing the Forest Service budget to plan additional projects. This

is a new tool in the Forest Service's tool box for getting more acres treated, and AFRC and our membership strongly encourage the Forest Service to quickly begin work in these designated watersheds regardless if they use the HFRA authority or prepare projects using CE's. */Tom Partin*

Siuslaw Audit Results

The Regional Office recently conducted a Log Accountability Audit on the Siuslaw National Forest. The results were quite favorable with praise being given to both the forest and timber purchasers. There were two corrections that need to be made which not only affects the Siuslaw but all forests in the Region.

1. Traffic Control Devices currently do not conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Safety signs will be required to be installed to posts/tripod to meet the MUTCD intention of visibility. In general, signs cannot be placed on the ground but must be posted on a post of appropriate height.
2. Log Load Receipts – Drivers are required to sign with their full legal signature. The truck number is useful information, but not required and is not sufficient when solely provided. Currently, some drivers are only using initials or truck number. */Ross Mickey*

Siuslaw Pre-solicitation and Stewardship Meetings

The Siuslaw sells approximately 50% of their timber program using Integrated Resource Timber Contracts. Pre-solicitation meetings will now be announced in the prospectus for these sales and scheduled for each stewardship contract around four weeks into the advertisement period. This should allow for enough time within the six week ad period to formulate enough contract knowledge to provide useful information gathering meetings.

The forest also participates in four watershed councils (Alesa, Siuslaw, Mary's Peak, and Hebo) that provide suggestions and implementation of projects funded through receipts from stewardship contracts. These groups are facilitated by [Cascade Pacific Resource Conservation & Development](#) which is a 501(c)(3) non-profit organization established in 1989 to support local communities. They are a part of a national network of nonprofit Resource Conservation & Development (RC&D) Councils. Jerry Ingersoll, Siuslaw Forest Supervisor, would like more industry participation with these groups. If you are interested, the [schedule of the meetings](#) is posted on the Cascade Pacific RC&D website. */Ross Mickey*

SAF Hires EVP

The Society of American Forester's new Executive Vice President Matt Menashes will begin his duties June 2. Menashes succeeds Michael Goergen, who left SAF in September 2013.

Menashes was most recently Director of Operations for the Association of Fish and Wildlife Agencies (AFWA) in Washington, DC. Before joining AFWA in 2010, he served as Executive Director of the National Estuarine Research Reserve Association and as President and Chief Executive Officer of the Paddlesports Industry Association. He holds degrees in Political Science and Marine Policy from the University of Delaware.

In announcing Menashes' hiring, SAF President Dave Walter describes him as “a voracious learner and strategic thinker who will implement the goals and set the direction for SAF as it works to ensure thriving forests across the nation, provide essential resources to natural resources professionals, and build strong communities among the forestry profession, its allies, related disciplines, and the public.”

AFRC looks forward to working with Matt in his new role. */Ann Forest Burns*