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Double Court Victory

In an important ruling on June 26, District of Columbia federal district court Judge Richard Leon [ordered](#) the BLM to sell more timber and stop using a flawed computer model to predict owl use on the forests.

BLM must sell its ASQ

The Judge ruled that the BLM violated the O&C Act by failing to sell timber on its Medford and Roseburg Districts at the level specified in its existing resource management plans (RMPs).

For the Medford District, the declared annual sustained yield is 57 million board feet (mmbf), rather than the FY13 target level of 19 mmbf. For Roseburg, the level is 45 mmbf, not the FY13 target of 29 mmbf. The sustained yield numbers come from BLM's 1995 RMPs.

The increase of 54 mmbf annually would create or retain nearly 500 forest sector jobs and an approximately equal number of indirect jobs, such as teachers, grocers and car dealers.

The O&C lands have an inventory of 75 billion board feet of standing timber. Their annual sustained yield is 1.2 billion board feet. According to figures compiled by the BLM, as of 2008, the annual sustained yield capability of the Medford District is 174 mmbf; and the Roseburg District is 198 mmbf. The agency's failure to balance growth and removals is not only a violation of law, but contributes to unhealthy forest conditions that will carry forward for many decades.

Although the June 26 decision is specific to the Medford and Roseburg districts, there is another case before the same judge that was filed in 2011 by the Carpenter Industrial Council, AFRC and others, which seeks to require BLM to sell timber in compliance with the O&C Act on all its districts.

Use of phantom owl generator forbidden

In another aspect of the case, the Judge forbid the BLM, U.S. Fish and Wildlife Service (FWS) and the Forest Service to continue using the so-called Owl Estimation Methodology (OEM), a flawed method for estimating the number of owls affected by timber management activities, unless they comply with the public notice and comment requirements of the federal Administrative Procedures Act. As described in a July 14 [editorial](#) in the Eugene Register Guard by AFRC staff member Ross Mickey, the OEM is a computer program that generates virtual owls on the landscape, most often where none actually exist. The agencies then manage around these phantom owls, which has had a major impact on timber harvest levels.

In 2007, the Ninth Circuit Court of Appeals ruled in *ONRC v. Allen* that the spotted owl consultation process being used was invalid because the FWS either had to quantify the amount of incidental take that would occur or document why quantifying take was not possible. In reality, it is impossible to know how many owls are in an area and equally impossible to know how many owls will be taken as a result of land management activities. There are a number of reasons for this. First, the invasion of the barred owl has made the spotted owl increasingly hesitant to verbalize its presence for fear of being attacked. Second, spotted owl pairs will only respond to survey “calling” when they are protecting a nest, so pairs that are not raising young remain silent. Finally, there are resident single owls that occupy areas that will not respond to calling. For these reasons quantifying the number of owls in an area is impossible.

Regardless of this, in response to the 2007 ruling, the FWS, Forest Service and BLM decided to create a process that would estimate the number of owls that might be in an area then use take guidelines that the FWS had rescinded eight years earlier to estimate the amount of take that might occur. This process “takes” owls that don't exist and can lead to the same non-existent owl being “taken” over and over and over again.

On July 11, the plaintiffs in the case, Swanson Group Mfg. LLC, Rough and Ready Lumber Company, AFRC, Douglas Timber Operators and Washington Contract Loggers Association, sent a letter to the Regional Foresters for Forest Service Regions 5 and 6, the Washington-Oregon State Director of BLM and the State Supervisor of the U.S. Fish and Wildlife Service forwarding an [alternative to the use of the OEM](#). Use of that alternative would comply with current case law and avoid the necessity to go through extensive rulemaking.

AFRC hopes the BLM, Forest Service and FWS will act quickly to comply with the Judge’s order to sell more timber and to conduct spotted owl consultations in compliance with the law. */Ann Forest Burns and Ross Mickey*

Snow Basin Injunction Denied

On July 17, the district court in *League of Wilderness Defenders v. Connaughton* denied the plaintiffs’ motion for a preliminary injunction of the Snow Basin Project. The Snow Basin Project is an 11,000 acre, 48 mmbf landscape scale project designed to reduce fuels and improve forest health on land designated for timber management under the Wallowa-Whitman Forest Plan. Intervenors in the case include Baker County, Union County, the Oregon Small Woodlands Association, AFRC, Boise Cascade, and Chary Mires an adjoining landowner. The intervenors are represented by AFRC and the Western Resources Legal Center.

The court emphasized that a preliminary injunction “is an extraordinary remedy never awarded as of right . . . that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” The court held that plaintiffs were not likely to succeed on the merits of their claims because the Environmental Impact Statement (EIS) adequately analyzed the environmental impacts of the project on bull trout and carbon sequestration. The court also found that the cumulative effects of grazing were adequately considered. Finally, the court ruled that the decision not to approve the travel management plan was not significant new information that required a supplemental EIS. The court held that the balance of harm and public interest of proceeding with or halting the project did not tip sharply

in favor of plaintiffs or defendants. Because plaintiffs were not likely to succeed on the merits, and the balance of harm did not tip sharply in their favor, the court denied the injunction.

This is a win for the communities and economy of northeast Oregon because the remaining timber sale program for the Wallowa-Whitman, along with forest health and fuel reduction work, can now proceed before the end of the fiscal year. /*Scott Horngren*

DNR MM Interim Strategy Turned Back

On July 11, King County Superior Court Judge Bruce Heller issued a decision that dealt a blow to the efforts of the Washington Board of Natural Resources (BNR) to meet the revenue needs of trust beneficiaries while fulfilling its obligations for marbled murrelet management under the 1997 State Trust Land Habitat Conservation Plan.

The BNR adopted a revised interim strategy for marbled murrelet management in southwest Washington in May, 2012. (See, [AFRC Newsletter, May 26, 2012](#).) The FWS concurred with the Board's action, which would have freed up acres known not to be occupied by the murrelet while deferring harvesting in other areas considered more valuable to the murrelet in the future, pending completion of a Long-Term Conservation Strategy now being negotiated. (See, [AFRC Newsletter June 26, 2013](#).) Harvest of the deferred acreage is permitted under the existing Incidental Take Permit issued in 1997.

Seattle Audubon and Olympic Forest Coalition (OFCO) sued to overturn the revised strategy on State Environmental Policy Act grounds. Judge Heller deliberated for four months following oral argument before ruling that a full EIS should have been completed prior to adoption of the interim strategy.

Since 2011, OFCO and others have repeatedly threatened to sue the BNR if it approved harvest on the acres the revised interim strategy would have protected. In the face of the July 11 ruling, BNR may have no choice but to sell timber from those acres if it is to meet its fiduciary obligation to Wahkiakum and Pacific counties which depend upon timber harvest revenues to provide public health and safety to their citizens. /*Ann Forest Burns*

Farm Bill Passes House

On July 11, in somewhat of a surprise move, the House approved the revised Farm Bill (HR 2642) by a 216-208 vote. The revised bill is an agriculture only bill that does not reauthorize nutrition programs; and due to this change, it received no Democratic votes, and had 12 Republicans vote against it. A full Farm Bill including the nutrition package failed to make it out of the House on June 20 by a vote of 195-234. At this point, the bill theoretically moves to Conference with the Senate. However, House Agriculture Committee Chairman Frank Lucas (R-OK) announced that a formal Farm Bill conference with the Senate will have to wait until the House decides what to do with a standalone nutrition (food stamps) measure. Lucas said that he cannot "in good faith" press GOP leaders to appoint conferees until he works to craft a bill cutting food stamp funding.

The House bill reduces spending by \$12.9 billion over the next decade and totals \$196 billion, far below the \$939 billion found in the entire package, including the nutrition component. The bill also makes significant changes to an existing law which requires a Farm Bill to be passed or revert back to a 1940 era policy that would cause widespread price spikes for food and dairy items. It has been this threat that has led to periodic revisions and passage of all previous Farm Bills.

The House Farm Bill includes numerous positive forestry provisions:

- An amendment stating no permits are needed for point source pollution sources on forest roads
- Repeals the Administrative Appeals Act to address a court ruling affecting projects approved with a Categorical Exclusion (CE)
- Extends Stewardship Contracting for 5 years, puts a cap on fire liability
- Expanded forest health response provisions, including a 10,000 acre CE
- Expanded Good Neighbor Authority
- Designation by description and prescription authority
- CE for salvage after declared disaster
- “Know your customer” provisions directing the Forest Service to analyze how the national forests are meeting the needs of nearby wood consumers

More to come in the next few weeks as the House devises a nutrition package and discussions with the Senate continue related to a potential conference. / *Tom Partin*

Call for Fire Funding Reform

On June 28, Senate Energy and Natural Resource Chairman Ron Wyden (D-OR) and Ranking Member Lisa Murkowski (R-AK) joined with Senators Mark Udall (D-CO) and Jim Risch (R-ID) in sending a letter to the White House Office of Management and Budget and the Secretaries of Agriculture and Interior asking for an “action plan” on how to improve budgeting for fire suppression and prevention on federal lands. They noted that at a June 25 hearing they found the current approach “unacceptable.”

The Senators stated “Federal fire program budgets, wildfire frequency and intensity, and associated losses have been a concern for many years. Because the Administrations annual budget requests to Congress propose to fund the increasing 10-year rolling average for wildland fire suppression costs significant decreases in funding for the non-fire program including those that keep wildfire suppression costs down, such as hazardous fuels reduction, cost-share program for the acquisition of apparatus with local partner agencies, and assistance for community wildfire planning have occurred.”

The letter also points out that twenty years ago, fighting fires accounted for 13 percent of the Forest Service budget; last year it was over 40 percent. The Senators outlined their concerns regarding the dramatic cuts to the hazardous fuels treatments proposed in the President’s FY14 budget request by stating “the Forest Service treated 1.87 million acres for hazardous fuels in FY12, but expects to treat only 685,000 acres in FY14. Our understanding is that these cuts were based on OMB’s continued skepticism about the efficacy of hazardous fuels treatments. We whole-heartedly disagree with OMB on this point.” / *Tom Partin*

Wildfire and Forest Management Hearing

On July 11, the House Natural Resources Subcommittee on Public Lands and Environmental Regulations held a hearing focusing on the need for increased forest management to address forest health and reduce the risk of catastrophic wildfire. The hearing came just a few days after the tragic loss of 19 firefighters in the Yarnell fire in Arizona.

Members of Congress who have had catastrophic wildfires or forest health crisis in their states testified included: Doug Lamborn (R-CO), Scott Tipton (R-CO), Paul Gosar (R-AZ), and Ann Kirkpatrick (D-AZ). Other witnesses were: Jim Hubbard, Deputy Chief, U.S. Forest Service; James Douglas, Senior Advisor, Department of Interior; Phil Rigdon, Yakima Indian Nation; Joe Duda, Deputy State Forester of Colorado; Chris Topik, The Nature Conservancy; and Chuck Roady, Vice President and General Manager of F.H. Stoltze Land and Lumber Company.

All witnesses agreed that more thinning and restoration is needed on our nation's public forests to reduce the threat of catastrophic wildfires; however the reasons why more work isn't getting done were debated. Litigation, NEPA, and ESA were all listed as reasons why projects are slow to be prepared and often held up in the courts. The Colt Summit restoration project on the Lolo National Forest was pointed to by Chuck Roady as a project that took years to analyze and had support from a broad range of interests, but ended up being appealed, litigated and delayed by an environmental organization that wasn't part of the local collaborative.

The proposed reduction of hazardous fuels funding was cited by Congressman Peter DeFazio (D-OR) as a real deterrent to getting more acres treated, and he strongly advocated that these reduced funds be put back into the FY14 budget. All members also agreed that stewardship contracting authority needs to be reauthorized before it sunsets in September.

The hearing was timely since fire season and related activities are beginning throughout most of the West. It also gave the witnesses an opportunity to present their case as to why more acres need treatment before more catastrophic wildfires have an opportunity to destroy millions of acres, take more lives, and destroy communities. / *Tom Partin*

Malheur 10-Year Stewardship

After numerous iterations, it appears that the highly touted Malheur 10-Year Stewardship will be an Integrated Resource Service Contract (IRSC). This IRSC will contain 70 to 80 percent of the timber volume offered for sale on that forest with the intent that the contract "complete crucial restoration work accomplished through commercial product removal and forestry related service work activities while assisting local economies."

According to Fed Biz Ops, this solicitation will result in an arrangement of a single award, Indefinite Delivery, Indefinite Quantity, performance-based contract, spanning 10 years from the date of award. Pricing of work on a ton or level-of-effort basis will be used for determining price reasonableness for award purposes. The government cannot predetermine the precise quantities that will be ordered during the contract period, but the maximum quantity of products to be removed could be about 3,500,000 green tons. The acres of restoration treatments to be performed may range between 180,000 and 500,000 acres over the 10-year period of the contract and will be located throughout the entire Malheur National Forest.

A series of four public meetings were held with three of them via video teleconference from various locations. A July 9 meeting was held in Seneca, Oregon and featured a field trip. Numerous questions and concerns remain which AFRC recently articulated in a letter to the Forest Supervisor. Highlights of that letter are:

- Does the Forest Service have the authority to offer a stewardship project of this magnitude to one purchaser and reduce the remaining timber sale program so dramatically considering the forest purchase history? That is, does Stewardship Contracting replace other programs?
- Malheur National Forest timber has been purchased over the last 10 years by a diverse group of eastside industries. This IRSC has the potential to adversely affect those historic purchasers who are not awarded the contract.
- The inability to limit the fire liability for this contract is a big concern and AFRC urged the forest to again put in a \$300,000 liability cap on this project.
- AFRC recommended that a base price for saw and non-saw be developed independently using a recent index to capture current values of the saleable material.
- The transparency in how the RFP's will be evaluated remains a large concern and AFRC recommended an open forum following the selection to discuss how the successful bidder was selected.

AFRC thanks the Malheur staff for the hard work put into increasing the harvest levels on the forest, but has serious concerns with the project and the lack of transparency. */Irene Jerome*

Wyden Reintroduces Eastside Legislation

On July 16, Senator Ron Wyden introduced a revised version of his “Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act.” This version includes a number of unexpected changes, including a new prohibition on harvesting any live tree 150 years of age or older, unless the Secretary determines that it is necessary for safe administrative, public, or special use. The previous versions sought to prohibit the harvest of trees greater than the 21-inch diameter limit in the Eastside Screens. This version permanently establishes the 21-inch diameter limit, the 150 year age prohibition, and the requirement that riparian protections under future forests plans meet or exceed those of PACFISH/INFISH. These restrictions sunsetted after 15 years under the previous version of the legislation.

The legislation also establishes a new “Pilot Landscape” designation for forests with Collaborative Forest Landscape Restoration Act (CFLRA) projects, which include the Malheur, Deschutes, and Fremont-Winema National Forests. That designation would provide the following:

- A priority for projects on these three forests within the overall eastside restoration acreage targets established by the bill;
- The ability to use stewardship contracting retained receipts for future project planning;
- A statutorily directed Large Scale EIS for projects in dry forest types that are a product of collaboration, although the actual legislative language makes it likely that further site-specific NEPA analysis will be needed for individual projects, thus adding an entirely new layer of NEPA planning for projects.
- A carve out of 5 percent of the Forest Service State and Private/Forest Health-Federal Lands appropriation each year, which would provide approximately \$2.4 million to these three forests this year.

None of the “Pilot Landscape” provisions would apply to the Wallowa-Whitman, Umatilla, and Ochoco National Forests, but all of the other restrictions and requirements of the legislation would. Meanwhile, it is likely that salvage projects would be extremely difficult or impossible for the Forest Service to

defend from litigation under the legislation. The industry has repeatedly requested a savings clause making it clear that the legislation does nothing to encourage or limit salvage, but it has not been included.

AFRC's eastside member companies only became aware of the legislation after it was introduced without an announcement by the Wyden office. It appears that the legislation will proceed forward since it has been scheduled for a subcommittee hearing before Senator Wyden's Senate Energy and Natural Resources Committee in Washington, D.C. on July 30. /Heath Heikkila

Shortfalls on the Umpqua

The Umpqua National Forest will fall 10 mmbf short of its assigned target this year and 10 mmbf short of its assigned target again next year. One major factor contributing to this shortfall is the fact that the Umpqua is running out of second growth plantations to thin. This is no big surprise as the forest has been aware of this reality for quite some time. Plantation thinning has been the status quo since the inception of the Northwest Forest Plan, and environmental groups have pointed to it as the solution to the problem of how the National Forests are going to stay in the timber management business in perpetuity. Those familiar with the principles of sustainable timber management can see the flaws in that theory, and now with the Umpqua's timber program faltering, that reality will hopefully become evident to those still in denial. The reality is the Forest Service and BLM cannot thin their way to a sustainable timber supply, they can't even thin their way to their assigned target! The fact is that harvesting in older stands requires additional surveys and generally speaking, more in-depth analysis; not to mention the imminent appeals that will follow. Without proper planning and initiative to keep the timber program on track, 20 mmbf shortfalls are no big shock.

The plantation thinning cliff is not unique to the Umpqua. The Rogue River-Siskiyou National Forest is also facing similar challenges that will require them to begin harvesting timber in older stands. The Rogue is already falling short of their target this year, and they're still operating under plantation thinning. It will take a lot more than thinning what scattered plantations remain, along with shaded fuel breaks to get these programs back on track. The Willamette National Forest has begun analyzing regeneration harvests of mature stands of timber over the last couple years to prepare for transitioning away from a thinning only program. If the Umpqua and Rogue River-Siskiyou are to step up and meet their assigned targets they'll have to do the same. If anything positive comes from the shortfalls of the Umpqua's timber program over the next couple years, let's hope it's an end to the silly assumption that thinning is the solution. /Andy Geissler

DNR Management Fee Increase

On July 2, the Board of Natural Resources voted to approve a management fee increase. This increase in the fee retained by DNR from timber sale receipts will bring the Resource Management Cost Account Fund to 29% and the Forest Development Account Fund to 25%. It is anticipated that this will generate approximately \$10.1 million in additional revenue for DNR management funds. These funds will be used for silvicultural activities, access acquisition to trust lands, strategic investment in data (LiDAR, inventory, etc.) and capital investments (agriculture, commercial real estate, etc.). Additionally, those funds will be used to help with the Marbled Murrelet Long-term Conservation Strategy, Sustainable Harvest Calculations, and the Olympic Experimental State Forest Plan. These three major planning activities are currently ongoing simultaneously and the increase in revenue to the management funds should help with the challenges created by running these at the same time. /Matt Comisky

State Funds Eastside Forestry Efforts

Oregon Governor John Kitzhaber's 2014-15 biennial budgets include a proposal to help fund management on Forest Service lands in eastern Oregon. The Governor's dry-side federal forest investment proposal was supported in part by the Oregon legislature by allocating \$2.885 million to eastside forests, which is short of the full \$4 million requested.

Senate Bill 5521 provided \$2.885 million in lottery funds to the Department of Forestry for the Governor's dry-side forest health collaboration effort and development of a new business model to improve federal forest project management and technical and scientific support. In administering the funding, the department is authorized to also consider a small grant program and a limited duration liaison position, from the funds at the department's discretion. The small grants are to be administered by the Oregon Watershed Enhancement Board (OWEB) using the Board's existing expenditure limitation. The position, if created, will be the state's point of contact for the Forest Service, congressional delegation, local forest collaborative groups, and the state Legislative Assembly. The Department is directed to report to the Legislature in February 2014 on specific plans, expected outcomes, progress, and the amount of federal funding and support provided to the collaboration.

AFRC thanks Governor Kitzhaber for making federal forest health a priority in Oregon, and we look forward to working with the Governor's Office, Oregon Department of Forestry, and OWEB in making sure these needed funds go to worthy projects on Oregon's eastside federal forests. / *Tom Partin*

Mt. Baker Snoqualmie Sustainable Roads Initiative

The Mt. Baker Snoqualmie National Forest is in the process of conducting a public involvement outreach to try and identify priority roads important to stakeholders. This is in response to the significant reduction in road maintenance budget dollars they have experienced in recent years. The forest currently has a road network of approximately 2,500 miles, and the 2013 funding for road maintenance is \$250,000. This equates to their estimate of being able to maintain about 628 miles or 25% of their road network. Funding for maintenance was on a declining trend until the 2008 recession. As part of various stimulus bills this funding increased, and was \$688,000 for 2012. Much if not all of this additional funding is no longer available in coming years so the forest is trying to plan for how they will maintain their road network. As part of the 2005 Travel Management Rule the forest is required to complete this planning by 2015.

So how can you, your organization, and your employees get involved? Participation can either be by attending one of the remaining public meetings or by visiting www.mbssustainableroads.com. On the website you can find more information on the process and more importantly take a short survey to express your opinions. The survey can be found under the [questionnaire tab](#); it will take a few minutes of your time but can provide valuable information and input to the process. It is very important that your views and opinions are captured as part of the process. / *Matt Comisky*

DeFazio Wins Ranking Member

On July 18, Congressman Peter DeFazio received unanimous approval from the House Democratic Caucus to become the new ranking member of the House Natural Resources Committee. Raul Grijalva (D-AZ), who had competed for the position, withdrew his name from consideration when it became clear he did not have the support within the caucus to reverse the previous day's 33-16 vote of the Democratic Steering Committee.

DeFazio has been a strong advocate for finding solutions to the gridlock crippling our federal forests and rural communities. He along with Congressmen Kurt Schrader (D-OR) and Greg Walden (R-OR) developed legislation to restore a balance to the management of the 2.5 million acres of O&C timberlands in western Oregon. AFRC is pleased that Congressman DeFazio is the new ranking member and we look forward to working with him and his staff to find balanced solutions to the management of our federal forests. / *Tom Partin*

Bonnie and Harden Nomination Hearing

On July 23, the Senate Agriculture, Nutrition and Forestry Committee will consider the nominations for two top positions in the Agriculture Department. Robert Bonnie has been nominated for undersecretary of natural resources and Krysta Harden for deputy secretary.

Robert has served at USDA since 2009 as a senior policy adviser. Prior to joining the department, he worked for more than a decade at the Environmental Defense Fund (EDF) where he was the vice-president of land conservation and wildlife; and managing director of the EDF's Center for Conservation Incentives. If confirmed, Robert would replace Harris Sherman who left earlier this year to return to Colorado. Robert spoke at this year's AFRC Annual Meeting and we look forward to continuing to work with him in his new position.

Harden has held the position of chief of staff since 2011 and was previously assistant secretary for congressional relations at USDA. Prior to that assignment, Harden served for four years as the chief executive of the National Association of Conservation Districts. If confirmed, Harden would be USDA's No. 2 official after Secretary Tom Vilsack. / *Tom Partin*