

**August 28, 2012**

## **Planning Rule Lawsuit Filed**

On August 13, AFRC and a broad group of national and regional interests filed a lawsuit in federal court in Washington, D.C. to overturn the [Forest Planning Rule](#) adopted by the Forest Service last April. The [Complaint](#) alleges the 2012 Rule:

- establishes “ecological sustainability” as an overriding objective of national forest management, to take precedence over the purposes of conservation of water flow and assurance of a continuous supply of timber set out in the Organic Act and the five objectives listed in the Multiple-Use Sustained-Yield Act (MUSY) (outdoor recreation, range, timber, watershed, and wildlife and fish);
- violates the Organic Act by mandating the provision of “ecosystem services” on par with the objectives of the MUSY Act;
- places maintenance of viable populations of plant and animal species of conservation concern ahead of statutorily mandated multiple use objectives;
- violates the National Forest Management Act (NFMA) by limiting the scope of agency decision making by requiring reliance only on “best available scientific information” to the exclusion of other information, such as commercial data;
- unlawfully restricts salvage and sanitation logging; and
- violates the MUSY Act and NFMA by narrowing the definition of permissible recreation on national forest lands.

The Federal Forest Resource Coalition, of which AFRC is a founding member, is named as the lead plaintiff in the case. Other plaintiffs are Alaska Forest Association, American Sheep Industry Association, BlueRibbon Coalition, California Association of 4 Wheel Drive Clubs, California Forestry Association, Minnesota Forest Industries, Minnesota Timber Producers Association, Montana Wood Products Association, National Cattlemen’s Beef Association, Public Lands Council, and Resource Development Council for Alaska.

The case will be based on a review by the Court of the administrative record and is likely to be decided through motions without a trial. /*Ann Forest Burns*

## **Focus On Forest Health Bills**

With fires again raging in western states due in large part to overcrowded forests that are insect or disease riddled, more proactive federal forestry legislation continues to gain attention in Congress. It would seem that the perfect storm is brewing to finally get some much needed federal forestry legislation passed in either the lame duck session of this Congress or in the next Congress.

The need for legislation is centered on three key issues that are now in play. First, over half of the Forest Service and BLM lands are in an unhealthy state, with overcrowding, and insect and disease problems. These conditions leave the forests ripe for wildfire and this year has been a severe one. To date, there have been **43,104 wildland fires** which have burned a total of **7,106,319 acres**. The ten-year average for wildfires as of August 23 is **54,504 wildland fires** with **5,510,332 acres burned**. Looking at these numbers it appears that while the number of fires is down, the intensity and size of fires is going up. This can be attributed to heavy fuel buildup and warmer and drier conditions.

Second, the future of Secure Rural School county payments remains uncertain at best. While a one-year reauthorization at 95% of the 2011 payments was included in the recently passed Transportation bill, the program expires again later this year. The payments have been ratcheted down over the last few years and many counties are facing insolvency even with the one-year extension. Some counties have also chosen to save the money received in the last round of payments rather than hire employees back because there is no guarantee of future payments.

Third, rural communities and counties need jobs that can be generated from managing the public timberlands. For every 1 million board feet of timber harvested there is approximately 18 jobs (direct and indirect) created. These timber jobs will be the catalyst that will once again make our rural communities thrive.

#### *Tipton Bill*

On July 9, Representative Scott Tipton (R-CO) introduced H.R. 6089 entitled the “Healthy Forest Management Act of 2012.” The legislation received a hearing in the House Natural Resources Committee on July 20 and was passed by the Committee on August 1 by a vote of 28-19.

The bill includes some of the forest health and good neighbor authority provisions that were in the House Agriculture Committee Farm Bill to address the bark beetle epidemic, drought, deterioration of forest health conditions, and high risk of wildfires on National Forest and BLM lands. The legislation calls for expanding the authorities established in the Healthy Forests Restoration Act of 2003 to provide emergency measures for high-risk areas identified by states. It would also reauthorize Stewardship Contracting through 2017 and provide a Categorical Exclusion from NEPA for all forest health treatments within 500 feet of public infrastructure, facilities and roads.

The bill would also expand the “good neighbor” authority which allows the Forest Service to contract with states to do hazardous fuel reduction on National Forests, and allows Governors to identify areas at high risk for a catastrophic wildfire. These areas would then be eligible for expedited forest health treatments with some limits on required analysis. An amendment offered by Representative Tipton during committee markup was adopted to reduce the requirements for an environmental report in case of an emergency hazardous fuel reduction project.

#### *Barrasso Bill*

Senator John Barrasso (R-WY) has also drafted federal forest management legislation entitled the “Federal Forests Restoration Act of 2012.” Senator Barrasso serves as the Ranking Member on the Senate Public Lands and Forests Subcommittee. The legislation represents the first real effort coming out of the Senate to develop a sustainable approach to generate revenues for local governments while increasing sustainable timber management activities on the federal forests.

While the legislation is still in draft form and subject to change, it would streamline timber production activities on those areas deemed as suitable timberland in forest plans (approximately 23 percent of the 190 million acre National Forest System). It also seeks to establish a revenue fund to benefit local governments through enhanced receipt sharing from revenue generating projects, including timber sales.

Similar to other recent proposals, the legislation would expand the Healthy Forests Restoration Act's streamlined NEPA, appeals and judicial review authorities to the revenue generating projects in suitable timber areas.

It is unclear if the legislation will see any action given the limited time remaining in the current Congress, but it does represent a positive sign that proposals may begin to see action in the Senate. */Tom Partin*

## **Litigation and Fire Impacts**

What are the real impacts that are all too often the result of frivolous appeals and litigation on our public lands? One watershed in Northern California, the North Fork of the Feather River paints a pretty clear picture. The majority of this watershed is located in Plumas County with its confluence entering Lake Oroville in Butte County. Since 1999, approximately 250,000 acres of this watershed has burned. Now due to the Chips Fire (which is still not contained) an additional 50,000 acres has been destroyed. So in just over 10 years, one watershed, two counties, several hydro-electric facilities, untold natural resources, and numerous wildlife species are paying the price for environmental groups suing the Forest Service over the well-being of individual species, how they prepare an Environmental Assessment or Environmental Impact Statement and stopping forest management projects.

At the heart of the debate are two primary pieces of legislation; the National Environmental Protection Act (NEPA) and the Equal Access to Justice Act (EAJA). NEPA was legislated to require all federal agencies follow set policy and direction to assure that "major" federal actions were offered for review and comment to the public. Since NEPA was enacted in 1969, little oversight and updating of this law have not occurred. Today, NEPA is used to test whether the agency's written documents are adequate or fallible to the appeals filed by various environmental groups. Unfortunately, the decisions as to whether a project can move forward and the forest getting treated may center on protecting a single species while the eventual demise of a whole ecosystem as well as the communities and counties takes place.

Environmental groups or individuals have taken little or no responsibility for the ever increasing catastrophic wildfire losses in areas where they appealed projects; rather they are more than eager to blame industry and federal agencies for causing the problem. Today, however most appeals and litigation are on projects where thinning is recommended and trees harvested are in 10 to 16 inches diameter, hardly old growth timber. It is these same thinning projects that need to be implemented if we ever want our ecosystem, watershed and forest health put back into a more historic natural state.

NEPA was intended for "major" federal actions, and local monitoring and research findings show the majority of all thinning projects do not cause harm to species or other resources. NEPA also allows for such projects to be accomplished by Categorical Exclusions (CEs) and need not follow a lengthy and exhaustive review. By using CEs, projects would get completed in a timely manner as well as saving millions of dollars in unnecessary analysis and document writing. Our court system appears to have

little compassion for the ecosystem or the human element that is also required to be considered in all NEPA documents.

The second piece of legislation impacting federal forest management is EAJA. In 1980 EAJA was passed to give ordinary citizens the ability to recover attorney fees and costs in cases against the federal government. As the 1980 conference committee report for EAJA explains, the Act's premise is that individuals and small businesses did not seek review of unreasonable government actions because of the expense involved, which was compounded by the disparity in expertise and resources between the government and the individual or business involved. A prevailing plaintiff under EAJA may recover fees against the government, but if the government prevails, the plaintiff cannot recover their attorney fees.

EAJA was amended in 1985 and again in 1996 to allow non-profit 501(c)(3) organizations to recover fees. Since then, lawsuits by non-profit organizations have proliferated. By June 2004, there were 7,100 environmental lawsuits. A well-intended law has now become the primary fundraiser for many organizations as they regularly sue the government, and prevent projects from moving forward. Between 1980 to the mid 1990's, the U.S. Treasury paid \$34 million in legal fees under EAJA for cases filed against the government. In 1995 Congress and the agencies halted tracking and reporting of payments made through EAJA.

The EAJA sets eligibility limits on recovery. An individual's net worth must be no more than \$2 million and a business must have less 500 employees and a net worth of no more than \$7 million. But 501(c)(3) non-profits are not subject to these income limits and environmental groups who have tens of millions of dollars in assets, can still recover EAJA compensation of legal fees and expenses when they prevail in a lawsuit.

How does all of this fit with the North Fork of the Feather River Watershed and the approximate 300,000 acres burned since 1999? Three of the fires had projects planned and at least one signed decision that were held up by litigation. The first was the Flea Project that started in 2005 with its original scoping and was appealed - then in 2008 the Camp Fire occurred in the planning area and burned over 200 homes with one fatality. The Moonlight Fire was the largest single fire that burned 65,000 acres and had designed projects that were never implemented. Finally, the Creeks Project that was started in 2006, had a signed decision, was litigated, and just had a second signed decision to be approved this month, is now part of the Chips Fire.

Instead of having forest health projects that would have been implemented and provided protection to all forest resources as well as providing jobs in our rural county, we now have total devastation covering hundreds of thousands of acres.

Unfortunately, the majority of these acres that are lost to wildfire do not catch the attention of either local or national news because they are not destroying homes and property. In the longer term, they are impacting all of us in more ways through the loss of a sensitive ecosystem, watershed values, recreation opportunity and eventual social and economic impacts to our rural communities and counties. /Bill Wickman

## **Owl CH Economic Impact Underestimated**

In March, the US Fish & Wildlife Service (FWS) issued a [draft proposal](#) to designate almost 14 million acres as “critical habitat” for the spotted owl. This was followed up in May with an [economic analysis](#) which was prepared by Industrial Economics. AFRC submitted [extensive comments](#) on both of these documents pointing out numerous flaws and asking for the proposal to be withdrawn.

Because of the short comment period, the affected Counties did not have time to conduct a thorough review, therefore the FWS granted them additional time. The National Forest Counties and Schools Coalition hired the non-profit Sierra Institute for Community and Environment to conduct a review of the true economic impacts of the proposed critical habitat designation. That [review](#) was released on August 22.

The Executive Summary of Sierra Institutes review states:

“Industrial Economics’ assessment is insufficient in its documentation of cumulative socioeconomic impacts and current socioeconomic conditions. Their interpretation of the charge of “determining whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation” is overly narrow. As an assessment, the report does not comport with sound socioeconomic assessment science and lacks a sufficiently comprehensive evaluation of potential impacts. While acknowledging a loss of over 30,000 jobs in the timber industry from 1990 to 2010, Industrial Economics argues that these losses were offset by regional population gains of 15% and an 18% employment increase in the decade of the 1990s. Industrial Economics errs by assuming: 1) job gains in the 1990s offset job losses in the 2000s, 2) regional population and job increases directly offset timber industry job declines, and 3) employment gains (and losses) are equally distributed across the region. They report regional job increases of only 3% in the 2000s, and do so without analyzing impacts associated with the Great Recession, which hit hard many of counties where critical habitat areas are designated.

In discussing timber harvest impacts, Industrial Economics bases its incremental change analysis on a period in which there is a severe downturn in the economy and wood products industry. This results in an undercount of likely impacts. Estimates of harvest totals are generalized and not linked to subunit timber harvest totals, resulting in estimates that, as they acknowledge, “could vary materially from future actual timber harvest...”

The final critical habitat designation is expected to be completed by November 15. /*Ross Mickey*

## **Forest Service Issues Objection Rule**

On August 8, the Forest Service issued a [draft rule](#) for filing objections to proposed projects, including timber sales. The Fiscal Year 2012 Appropriations Act (see [AFRC newsletter January 18, 2012](#)) 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 [Healthy Forest Restoration Act](#) projects.

Under the proposed rule, only those who file specific comments during the scoping process on an Environmental Assessment or Environmental Impact Statement will have standing to file an objection to

a proposed decision. The objection process would be the only means of administrative appeal and a necessary step before seeking judicial review.

Comments on the draft rule are due September 7. AFRC is reviewing the draft and will post our comments on our website. */Ann Forest Burns*

## **Willamette Ecological Forestry**

This month Drs. Norm Johnson & Jerry Franklin accompanied employees of the Willamette National Forest and other invitees on a field trip to the McKenzie District to discuss the implementation of principles outlined in their 2009 paper on “Restoration Forestry.” In particular, the discussion focused on the implementation of regeneration harvests similar to the two “pilot projects” on the Coos Bay and Roseburg BLM districts.

The two objectives identified were to create “quality early seral habitat” and balance out the age-class distribution across the Matrix land on the forest. The first of these objectives would result in a post-harvest scenario that focuses on a light planting prescription (150-200 TPA) and encouragement of competing brush species to thrive. The second objective would result in targeting stands for regeneration in an age class that the Forest Service has identified as being in surplus; in most cases this is the 60-80 year old age class. AFRC cautioned the Forest Service, as it did the BLM, that certain stakeholders will oppose regeneration harvests regardless of how they are packaged, and that this repackaging will often be used against them when the time comes for protest and litigation.

At the end of the day the Forest Service seemed eager to pursue this type of treatment, but recognized that direction from the regional office or higher would be needed to do so, and it seems likely that they will be requesting that direction. */Andy Geissler*

## **Colville Blowdown**

On July 20, a significant wind event in Ferry County, Washington caused three fatalities and several thousand acres of timber to blowdown. The blowdown began at the southern end on the Colville Indian Reservation and proceeded north to (and perhaps beyond) the British Columbia border.

The good news is the Forest Service has been aggressively locating and preparing the blowdown patches of timber for salvage sales. The blowdown occurred in two main areas on the Colville National Forest within an approximately 3,000 acre area. The estimate, at this point, is that 500 acres will be salvaged. The remaining salvage areas are very small or inaccessible. Time is of the essence in this effort since 60% of the total volume is large diameter ponderosa pine which may develop blue stain or other defects, and the Forest Service needs to get the planning and award of the sales done quickly. It is refreshing to see the Forest Service take an aggressive approach to salvaging this timber and supplying this much needed material to the local infrastructure. */Maurice Williamson*

## **Perez Named State Director**

On August 27, Acting BLM Director Mike Pool announced that Jerome E. (Jerry) Perez will be the new Oregon/Washington BLM State Director, replacing Ed Shepard who retired on June 1. Perez is currently the Deputy Regional Forester for the Forest Service's Intermountain Region headquartered in Ogden, Utah.

Prior to his current position, Perez was Forest Supervisor of the Daniel Boone National Forest, Deputy Forest Supervisor of the Stanislaus National Forest and National Litigation Coordinator in Washington D.C. In addition he has served as a Brookings Institution Fellow in the United States Senate and with the Peace Corps in Guam.

Perez is a native of Poughkeepsie, New York, and holds a JD from the Catholic University of America and a Bachelor of Science in Forest Resources Management from West Virginia University.

AFRC and our members look forward to working with Jerry, and welcome him and his wife Rita to the Pacific Northwest. His starting date is yet to be determined. / *Tom Partin*

## **New Wallowa-Whitman Supervisor**

On August 10, Regional Forester Kent Connaughton announced that Wallowa-Whitman National Forest Supervisor Monica Schwalbach is taking a new job with the Pacific Northwest Research Station in Portland.

During her time as Supervisor, Schwalbach unveiled a Travel Management Plan that would have prohibited motor vehicles on 3,900 miles of roads on the Wallowa-Whitman. Her decision angered many local residents, who advocated for no roads to be closed to motor vehicles. She subsequently withdrew the decision and the Wallowa-Whitman is currently revising the Travel Management Plan. Schwalbach was successful in working with numerous stakeholders in moving the long awaited Snow Basin Vegetation Management plan forward.

Kevin Martin, current Forest Supervisor on the Umatilla will assume the interim supervisor role on the Wallowa-Whitman. John Laurence, program manager for the Forest Service office in Portland, will assume the interim supervisor role on the Umatilla. / *Irene Jerome*