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Washington, DC Updates

Legislative Update. As we reported in the [June Newsletter](#), the House Natural Resources Committee passed the Resilient Federal Forests Act of 2017 (H.R. 2936 – Rep. Westerman – AR) on June 27. The legislation builds upon the proposal from the last Congress to streamline federal forest management projects. The legislation also includes some new provisions, including technical corrections to the O&C Act of 1937 to clarify that the BLM is required to annually offer for sale the greater of 500 million board feet (mmbf) of timber or the sustained yield. AFRC staff prepared a condensed section by section of H.R. 2936, which is available [here](#).

The House Agriculture Committee, which has shared jurisdiction over the legislation, was unable to consider H.R. 2936 before the House left for the August Recess. It is possible that the House will take the legislation up when it returns in September, although there are indications that the Administration may be opposed to the fire funding solution that was included in the Westerman bill. There is broad support in Congress – particularly among Democrats – for ending the practice of fire borrowing, but some budget hawks and officials at the Federal Emergency Management Administration have concerns. On the other hand, moving the Westerman bill to the floor without a fire funding fix would likely result in the loss of an already limited number of Democratic votes.

One stand-alone fire funding solution, the Wildfire Disaster Funding Act (WDFDA), has been stalled in Congress for years. One of its primary sponsors, Senator Mike Crapo (R-ID), recently included a modified version of WDFDA in legislation to reauthorize the federal flood insurance program, which expires in September. While it is possible that a fire funding solution could move forward as part of this or another legislative vehicle unrelated to federal forest reforms, continued opposition from key budget hawks make that unlikely.

The Agriculture Committees in both chambers continue convening hearings to gather information ahead of an anticipated 2018 Farm Bill Reauthorization. The 2014 Farm Bill included a robust forestry title, including the 3,000-acre insect and disease categorical exclusion and a nationwide Good Neighbor Authority. AFRC will be working to include additional federal forest management reforms as part of any Farm Bill Reauthorization.

At this point, it is not clear whether forest management reforms will advance as part of stand-alone legislation such as H.R. 2936 (the Westerman bill), as part of a broader Farm Bill, or perhaps packaged with an extension of the Secure Rural Schools program, which continues to enjoy support from key members of the Senate – including Senators Orin Hatch (R-UT) and Ron Wyden (D-OR), the Chair and Ranking Member of the Senate Finance Committee.

Earlier this month, Senator Wyden re-introduced S. 1548, the “Oregon Wildlands Act.” The legislation, also introduced during the last Congress, would designate approximately 200,000 acres as wilderness or national recreation areas and add more than 250 miles to the Wild and Scenic River System in Western Oregon. The Trump Administration [testified](#) in support of S. 1548 during a July 26 Senate Energy and Natural Resources Committee hearing. AFRC sent a [letter](#) to the Committee and the Administration expressing its concerns and calling for a comprehensive solution to Western Oregon public land management issues.

Appropriations. The House and Senate Appropriations Committees have begun their work to develop spending bills for Fiscal Year 2018. We expect funding levels to be tight for domestic discretionary spending as a Republican controlled House and Senate seek to increase defense spending while attempting to constrain overall government spending levels. The House Appropriations Committee recently marked up its Fiscal Year 2018 Interior spending bill, which included a modest \$2.5 million increase for both the Forest Products and Hazardous Fuels Reduction accounts, but significant reductions to other Forest Service programs, including Capital Improvement & Maintenance. The Forest Service land acquisition budget would be reduced by over 50 percent, or \$28.7 million.

The BLM Oregon and California Grant Lands program would be cut by an additional \$2.7 million to \$104.3 million. Fortunately, this is \$14.5 million higher than the Trump Administration’s proposed budget request for the O&C program. AFRC will continue advocating for increased funding for the O&C program, but are encouraged by the following language included in the Committee Report:

The Committee remains concerned with the Bureau’s failure to comply with the principles of sustained yield timber harvests under the Oregon and California Revested Lands Act of 1937. Within the funds appropriated for the Oregon and California Grant lands, the Bureau is directed to prioritize funding for timber production to achieve at least the 278 million board feet Allowable Sale Quantity promised in the new Resource Management Plan for Western Oregon. Further, the Committee is troubled by the disparity in timber targets compared with timber awarded and harvested on some districts. The Bureau is directed to prioritize responses to administrative protests on timber sales in a timely manner and to report timber sale accomplishments in volume of timber sold and awarded, rather than merely the volume offered for sale.

Trump Administration National Monument Reviews. AFRC has also been closely following Interior Secretary Zinke’s review of National Monuments designated under the Antiquities Act. On July 15-16, AFRC members, AFRC staff, and O&C County Commissioners were joined by Congressman Greg Walden to tour and discuss the Cascade-Siskiyou National Monument (CSNM) in Southern Oregon. Also attending the roundtable meeting were staff from the offices of Senator Wyden and Senator Merkley, who oppose changes to the CSNM. The Secretary also met with Governor Kate Brown and other proponents of the monument expansion during his time in Southwest Oregon.

Secretary Zinke is scheduled to provide a final report with his recommendations to the President on or before August 24. While it is not clear what potential changes to the CSNM, if any,

Secretary Zinke will propose, AFRC is encouraged by the Secretary's level of engagement and recognition of the inadequate process that led to President Obama's expansion of the CSNM.

AFRC also led a coalition letter to Secretary Zinke suggesting modifications to the Giant Sequoia National Monument (GSNM) in California, which was joined by the California Forestry Association and associations representing California loggers. The letter urged the Secretary to reduce the size of the GSNM from over 300,000 acres to a size much closer to 90,000 acres of Giant Sequoia groves and associated buffer areas to allow more active management in those adjacent areas to better protect the groves. The local county also passed a resolution in support of reducing the size of the GSNM. It is not clear whether Secretary Zinke plans to make a site visit to the GSNM.

Trump Transition Update. The Trump Administration remains well behind schedule in nominating and securing Senate confirmation of key political officials. The Administration has yet to name a USDA Undersecretary of Natural Resources and the Environment, which oversees the U.S. Forest Service. The Deputy Undersecretary position, which is not subject to Senate confirmation, also remains unfilled. By comparison, the Bush Administration had named Dave Tenny to the Deputy position on its first day. The Administration recently announced the nomination of a Deputy Secretary Stephen Censky, CEO of the American Soybean Association.

Fortunately, the Department of the Interior is further along. On July 24, the Senate finally confirmed David Bernhardt as Interior Deputy Secretary, where he is expected to bring significant legal and policy expertise. Many of the Department of the Interior appointed positions not subject to Senate confirmation have also been filled. AFRC has provided these individuals background and solutions for the management of the O&C lands and other key issues.

Also reported in the [June Newsletter](#), Secretary Zinke recently reassigned dozens of career staff members of the Senior Executive Service (SES) currently serving within the BLM, USFWS, and other Interior agencies. Thus far, no similar personnel moves have been made at the Forest Service and it is unlikely significant changes will be made until the political leadership has been put in place. /Heath Heikkila and Travis Joseph

Full Ninth Circuit Declines to Hear White Castle Appeal: On to the Supreme Court?

On July 19, the Ninth Circuit denied the petition for rehearing *en banc* of the decision to dismiss the appeal of the White Castle case. AFRC attorneys, led by Scott Horngren, filed the petition on behalf of Scott Timber Co. and Carpenters Industrial Council. (AFRC [June Newsletter](#)). Scott Timber purchased the timber sale and Carpenters is the union at the mill. The White Castle project would harvest only 187 acres and would not result in a take of any spotted owls. Nevertheless, the U.S. District Court found an EIS was required.

The only remaining step in the legal process, which is under consideration, is to file a petition for *certiorari* with the United States Supreme Court. ("*Certiorari*" is the Latin equivalent of "we wish to be more fully informed"). The key considerations in such a petition include whether the ruling of one of the Courts of Appeals conflicts with rulings of other Courts of Appeals, and

whether an issue is of substantial national importance. Here, the Ninth Circuit stated a “general rule” that intervenors cannot appeal a remand decision if the government does not appeal. This “general rule” is particularly inappropriate in a case, like White Castle, on whether an EIS is required. While anti-management groups can always challenge the decision of an agency *not* to prepare an EIS, industry has no way to challenge a decision that an EIS is required. Because the government does not appeal as frequently as a private litigant, this “rule” also causes more anti-management decisions to stay on the books.

Unlike the Ninth Circuit, most other courts apply a more detailed test to determine when and whether an intervenor can appeal a remand on its own. These tests, to the extent they burden intervenor appeals unequally, violate fundamental tenets of intervention. They are also inconsistent with the court rule on intervention. In 2017, the Supreme Court reviewed one case on intervention, [Town of Chester v. Laroe Estates](#), where it decided that an intervenor-plaintiff seeking additional relief from the original parties must have Article III standing. AFRC submitted an *amicus* [brief](#) in that case to ensure that rights of defendant-intervenors were protected.

The deadline to file a petition for *certiorari* is October 17. The Supreme Court usually takes 60-90 days to decide whether to take a case. /*Lawson Fite*

AFRC Attorneys to Defend Singletary DNR Sale at August Court Hearing

AFRC and Sierra Pacific Industries, represented by Miller Nash attorney’s Diane Meyers and Elaine Spencer, were granted intervention on June 30 in the lawsuit regarding the Singletary DNR timber sale near Gold Bar, Snohomish County, Washington. Several environmental groups filed suit in May (AFRC [May Newsletter](#)), unsatisfied with partial reconveyance that had already reduced the sale by 21 acres and 7.4 MMBF and deprived beneficiaries of \$1,140,000 in trust revenue.

Plaintiffs allege violations of the Public Lands Act, Forest Practices Act (FPA), and the Washington State Environmental Policy Act (SEPA). The Public Lands Act claim asserts the Board did not act in the best interests of the state. The FPA claim alleges there is no valid Forest Practices Application. Under SEPA, plaintiffs allege the reconveyance requires new SEPA analysis and/or invalidates the prior SEPA analysis.

The parties agreed to an expedited resolution schedule, with briefing completed on July 28. The hearing is scheduled for August 10 in front of Snohomish County Superior Court Judge Millie Judge, and a quick decision is expected. /*Lawson Fite*

Judge Upholds Use of Emergency NEPA Authority to Construct Wolverine Firebreak

On July 11, Judge Rice from the Eastern District of Washington [granted](#) the government’s cross motion for summary judgment in *Forest Service Employees for Environmental Ethics v. USFS* and found that the construction of the community protect line or firebreak complied with the National Environmental Policy Act (NEPA).

FSEEE challenged the Forest Service's use of its emergency response regulation, 36 C.F.R. § 220.4(b), which allows the agency to take any immediate action necessary to control the impacts of an emergency before preparing NEPA analysis or documentation. The Wolverine Fire located on the Okanogan-Wenatchee National Forest burned over 62,000 acres and, based on the imminent threat to nearby communities, the Forest Service relied on its emergency response regulation to begin the construction of a 20-mile firebreak consisting of a 300-foot wide thinning of vegetation to stop the spread of the fire to nearby communities. AFRC filed an *amicus curiae* brief on behalf of Lake Wenatchee Fire & Rescue (LWFR), an all-volunteer fire department with four stations that serve the communities that were impacted by the fire.

The court determined that the Forest Service's emergency response regulation, 36 C.F.R. § 220.4, complies with NEPA and CEQ's regulations that allow alternative arrangements for actions necessary to control the immediate impacts of an emergency. The court rejected plaintiff's argument that the Wolverine Fire was not an emergency, "Plaintiff's argument that a wildfire is not an emergency is **without merit and contrary to common sense**. Just because wildfires are common and their general existence is foreseeable, the danger created by any specific wildfire is not so foreseeable and can create an emergency situation with little or no forewarning." The plaintiff has filed a notice of appeal to the Ninth Circuit.

AFRC intends to file an *amicus curiae* brief on behalf of LWFR in the Ninth Circuit. AFRC appreciates the support from our allies in this case. /Sara Ghafouri

AFRC Comments on Streamlining BLM's Planning and NEPA Processes

On July 24, AFRC submitted [comments](#) on how BLM could better streamline planning and NEPA analysis. BLM requested input on six topics: (1) Focused Analysis: How can the BLM reduce duplicative and disproportionate analyses? (2) User-friendly Planning: How can the BLM help state and local governments, tribal partners, and other stakeholders understand and participate in the planning process? (3) Transparency: How can the BLM foster greater transparency in the NEPA process? (4) Being Good Neighbors: How can the BLM build trust and better integrate the needs of state and local governments, tribal partners, and other stakeholders? (5) Reducing Litigation: How can the BLM create legally defensible documents and avoid the delays associated with legal challenges? and (6) "Right-sized" Environmental Analysis: How can the BLM more closely match the level of NEPA analysis to the scale of the action being analyzed? This was not an official comment period, so BLM will not provide any response to comments and, instead, will incorporate the information from the public into a report to Secretary Zinke due later this year.

AFRC comments included redefining BLM "accomplishments" to mean a timber sale has been offered, sold, and awarded; modify BLM's regulations and/or policies related to protests to include content-based requirements to help BLM districts better identify the protester's concerns and help shorten the timeline for responses; institute a regulatory rather than a policy requirement that all protests shall be responded to within 45 days, so that the sale may be awarded within 90 days of auction; institute a policy of giving sales "full force and effect" once the protest is denied to adequately address delays associated with administrative appeals; remove timber sales from Interior Board of Land Appeals process; implement a page limitation for

environmental assessments prepared under NEPA; and institute an internal policy that encourages tiering its project level analysis to the RMPs when appropriate to accomplish more concise NEPA analysis.

AFRC is hopeful that BLM will revise its regulations and policies to improve its planning and NEPA processes. /Sara Ghafouri

Lolo Beefing Up Sale Program

On July 18, AFRC members, staff, and local government officials met at the St. Regis Community Center with staff from the Forest Service Region 1 office and Lolo National Forest. AFRC President Travis Joseph gave an update on national legislation, budgets, and litigation. Nick Smith from Healthy Forests, Healthy Communities presented a video outlining the success of the West Bend project on the Deschutes National Forest. Regional and local Forest officials gave updates on their FY17 targets and projects.

Following the meeting, the group toured the Redd Bull project which is being developed on the Superior Ranger District. The project area encompasses roughly 81,000 acres of National Forest System lands. Management options are still being discussed in the pre-scoping phase on the approximately 52,000 acres that are designated as suitable for timber production. The Forest hopes to have the final EIS completed by September 2019, with timber sales most likely coming out over a 4-5 year period with potential volume estimates approaching 200 mmbf. AFRC and our members salute the Lolo for looking at this large landscape sized project, and engaging the public early in the process. The Lolo's FY17 timber program is going to exceed initial volume estimates with the Copper King Fire salvage netting about 14 mmbf.

A big thanks goes to AFRC member Tricon Timber for organizing the day's events and providing morning snacks and lunches. An article on the meeting and field trip in the local paper can be viewed [here](#). /Tom Partin

Colville Forest Update

On July 20, AFRC members and staff met with Colville National Forest personnel to provide updates on the Forest. In addition to the timber sale program, Forest Supervisor Rodney Smoldon reported on the progress or lack thereof on the Forest Plan Revision. New plans are not being reviewed at the Washington Office due to staff shortages, thus it will be October or later before the Washington office reviews and edits the Plan and publishes it in the Federal Register.

The Forest is doing fantastic work on its current and 5-year timber sale program. In addition to the regular timber sale program of roughly 55 mmbf, the Forest has asked for and received \$170,000 from the Regional Office for the Block of Nine Good Neighbor Agreement project. The volume from the project will be about 5 mmbf of additive volume. Additionally, the Washington Office timber management program will contract out the work for the Trout Lake Insect & Disease categorical exclusion. This project is expected to yield 16 mmbf of additional volume in the near term as well.

The Colville should be recognized for making use of all the management tools the Forest Service currently has in its tool box. In addition, the second part of the A-Z project is moving forward

and is additive to the Forest's planned timber harvest. With all the ongoing projects to be sold this year, including A-Z, the Colville will be approaching a sales program of 90 mmbf, which is not bad for a Forest of only 850,000 acres! /Tom Partin

Implementation Challenges of BLM's New Plan

The BLM released its 2016 Resource Management Plan (RMP) last August, and since then each affected District has been grappling with how to best implement it. The BLM's land base analyzed under this RMP was partitioned into "land allocations," each with its own set of management objectives. These allocations are spatially mapped in the RMP and represent firm lines on the ground. With the land base allocation dedicated to sustained yield timber management significantly reduced in size from the previous plan, the implementation seems simple at first glance – target those reduced acres for active management. With fewer acres available, and detailed harvest models created for every acre, the decision on where to go should be easy. However, as the Butte Falls Resource Area of the Medford District is learning, the decision on where to go may be theoretically easy but not necessarily feasible on the ground.

The Resource Area recently published the first Environmental Assessment (EA), titled Elk Camel, analyzed under the 2016 RMP. Being the first out of the gate allows it to serve as a prototype of how this plan may be implemented. In line with the aforementioned reduced land base, the lands allocated for even-aged sustained yield timber production represent a mere 3% of the Elk Camel project area. In a perfect world, this 3% would be concentrated in a single area, which would permit practical access to these acres. Unfortunately, the 2016 RMP plan does not reflect a perfect world, and that 3% is scattered throughout the other 97% of the land base. This scattering comes with challenges, namely securing access to the 3% in a manner that will permit economically and operationally viable timber harvest. Similar challenges largely didn't exist under the BLM's previous management plan since land allocations were designated with a broader brush approach – rarely did more than one land allocation occur in a single section. Under the new plan, you often must squint your eyes to discern each land allocation as they are mapped (in some cases, individual sections contain up to five separate land allocations!).

Here's the problem: some of the 97% of the project area that won't be managed contains allocated lands where ground disturbing activities, such as road construction, are not permitted. For stands without current road access, new construction is typically necessary to facilitate an economical timber sale. Without roads you can't access landings, and without landings you can't access timber. The alternative is helicopter yarding, which aside from being expensive, also typically warrants some road and/or landing construction to facilitate a reasonable flight path. These challenges were front and center during a BLM hosted field trip to the Elk Camel project area in July.

One of the few stands allocated to sustained yield timber management on Elk Camel is in an area with no road access and partially surrounded by lands allocated as "District Designated Reserve (DDR)." Much of this land allocation restricts road and landing construction. During the field trip, the Butte Falls lead layout forester outlined his efforts to gain access to this unit. In the end, he discovered that not only did the DDR restrict his ability to build a road into the potential harvest unit, but it also restricted his ability to build a helicopter landing to facilitate a flight distance short enough to make the sale pencil out economically. The outcome: the harvest unit

was deemed uneconomical to harvest and ultimately dropped from consideration. The question that AFRC raised is how many units like this exist in those acres designated for sustained yield timber production across western Oregon? And what is the BLM’s plan for those units? If the BLM wishes to maintain the level of timber harvest it promised in its new management plan, the harvest of those units will need to be swapped out with similar units in other land allocations or identified elsewhere on the landscape. The alternative is for the BLM to modify the restrictions in the 2016 RMP for the DDR lands that are currently hamstringing the Butte Falls Resource Area from managing their timber resources in a sustainable manner. /Andy Geissler

DNR FY17 Timber Sale Program Wrap Up

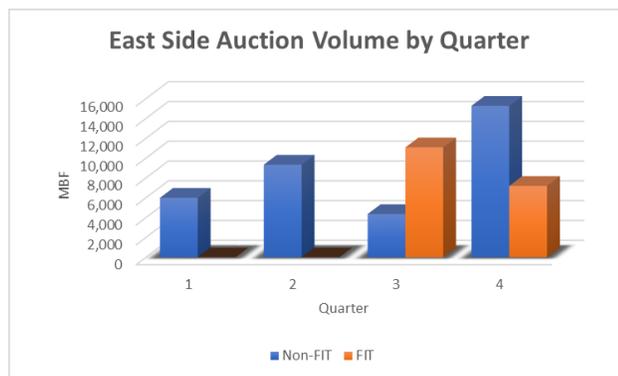
The Washington Department of Natural Resource’s FY17 timber sale program ended on June 30. As reported by DNR, between July 2016 and June 30, 2017 DNR offered for auction 128 timber sales, for a total of 522.3 mmbf statewide. There were 127 sales sold for a total volume of 521.8 mmbf. The one unsold sale was Twayblade SWT in Northwest Region, which was a 593,000 bf small wood thinning.

Westside volumes continue to provide the majority of DNR’s timber sale volume with approximately 498 mmbf brought to auction.

Volume distribution throughout the year continued to see about 64% of the total westside volume offered in the last half of the fiscal year. The first and second quarters of the year only saw about 12% and 23% respectively of the westside volume offered for sale. At the Region level, volumes fluctuated month to month, sometimes significantly within Regions. Volumes were greatest in the November to May timeframe, with the PC Region having no sales in July or June of the fiscal year.



Northeast and Southeast Regions provided approximately 53 mmbf of sale volume with about 18 mmbf in Forest Improvement Treatment (FIT) sales. Eastside volumes also saw variances throughout the year with about 56% of the non-FIT and 100% of the FIT volume coming in the last six months of the fiscal year. Traditionally the NE Region has targeted about 45 mmbf per year of harvest of trust lands. The Southeast Region continues to provide only about 5-10 mmbf of volume into the market place. Northern Spotted Owl management, forest health, and impacts to capacity from the “Great Recession” remain as limiting issues in this Region.



DNR is still operating under the Sustainable Harvest Level target of 550 mmbf/year. Progress is continuing to update the Sustainable Harvest Calculation. Ongoing discussions by the Board of Natural Resources regarding the impacts of new potentially lower harvest levels, including impacts brought on by the Marbled Murrelet Long Term Conservation Strategy, and effects on the beneficiaries and the purchasing community will be occurring over the next couple of months. /*Matt Comisky*

Washington Legislature Update

The Washington Legislature adjourned on July 20, after needing three special sessions beyond the 105-day regular session. It is the longest legislative session in history and one of the most contentious. The biggest challenge was reaching an agreement on a new two-year operating budget that was responsive to the *McCleary Decision*, where the state Supreme Court found that the state wasn't adequately funding basic public education.

The Legislature did pass a new two-year operating budget just hours before the end of the biennium, averting a partial government shutdown. However, conflict over another recent state Supreme Court decision related to rural residential water wells led to a political stalemate on a two-year capital budget, which funds infrastructure and other public works projects. With both sides dug in on the so-called *Hirst Decision*, it appears that the capital budget will have to wait until later this year, or next.

Earlier versions of the capital budget included \$15 million for forest health initiatives at DNR, including increased thinning across different land ownerships, prescribed fire, and Good Neighbor Authority projects on federal lands. DNR was also counting on this funding to maintain its forest health staff, which is essential to any effort to ramp up the use of the Good Neighbor Authority in Washington. It is possible that the Legislature will reach agreement on *Hirst* and a capital budget in the months ahead or it might have to wait until November when the control of the Senate will be determined in a special election.

The Legislature also passed two forest health bills during the regular session. House Bill 1711, sponsored by Rep. Joel Kretz (R-7th District), would establish a revolving account and some criteria for prioritizing forest health treatments on state trust lands. Senate Bill 5546, sponsored by Sen. Brad Hawkins (R-Wenatchee), would require DNR to develop a plan to treat one million acres of forests across all ownerships by the year 2033. Unfortunately, without increased funding it is unlikely that DNR will be able to significantly increase forest management activities.

AFRC will continue to advocate for a clear focus on DNR's management of state trust lands and the opportunity to utilize the Good Neighbor Authority to accelerate pace and scale of active management on federal lands. /*Heath Heikkila*

AFRC Welcomes New Member: Southport Forest Products

AFRC is thrilled to welcome Southport Forest Products/Lumber Co. to the association. Southport was founded in 1998 by Jason Smith and Jim Lyons. Smith and Lyons shared the vision of creating a lumber manufacturing facility to produce higher value products from underutilized pulp logs. The concept evolved into a highly efficient, high speed, high tech

manufacturing operation which is one of the most efficient lumber and wood chip manufacturing operations in North America.

Southport Forest Products operates a small log sawmill and whole log chipping facility in Coos Bay, Oregon. In 2005, Southport completed construction of a new sawmill on a newly acquired site on Coos Bay. The new sawmill's performance yields substantially higher lumber recovery per ton of log input while at the same time reducing manufacturing costs through improved efficiencies in the mill.

Southport's products include dimensional lumber, wood chips, planer shavings, hog fuel and logs for resale. Its dimensional lumber customers include lumber wholesalers, retailers and big box centers and chip customers are pulp and paper mills located in the Pacific Northwest as well as Japan and China. Southport's expertise, innovation, and advocacy for healthy public forestlands will provide a significant contribution to AFRC's membership. /*Travis Joseph*