



Washington DC Update

On August 24, the U.S. House of Representatives voted along party lines, 220-212, to adopt budget reconciliation procedures that are the first step towards enacting President Joe Biden's \$3.5 trillion "Build Back Better" social spending package. The budget reconciliation procedures were first adopted by the Senate 50-49 on August 11 and would allow Democrats to pass related legislation through the Senate with a simple majority, rather than the 60-vote threshold required under Senate filibuster rules.

House Speaker Nancy Pelosi (D-CA) was forced into intense negotiations with a group of nine moderate Democrats, including Reps. Kurt Schrader (D-OR) and Jim Costa (D-CA), to secure the needed votes in the closely divided chamber. The nine moderates had sent Pelosi a [letter](#) threatening to withhold their support from the \$3.5 trillion social spending package unless the House first passed the \$1.2 trillion Bipartisan Infrastructure Framework, which the Senate passed 69-30 on August 10. Pelosi was ultimately able to secure their support by including a provision that commits the House to vote on the bipartisan bill by September 27.

House and Senate Democrats will begin drafting legislation to enact the social spending programs that President Biden has compared to the New Deal and the Great Society. The package is also expected to include tax increases on the wealthy and corporations to help offset the cost. However, it is not clear that Democrats have the support of all 50 members of the Senate Democratic Caucus or the necessary votes in the House. In addition to the nine moderate House Democrats, Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) have also signaled their discomfort with the cost of the proposal. Many House Democrats from swing districts also have little interest in taking hard votes on legislation that can't pass the U.S. Senate.

Bipartisan Infrastructure Framework. The five-year, \$1.2 trillion bipartisan infrastructure legislation includes about \$3.3 billion for "wildfire risk reduction" activities and wildland firefighters, \$2.1 billion for "ecological restoration," and several new authorities for federal forest management activities. Below is an outline of the major provisions and the allocation by department:

Wildfire Risk Reduction - \$3.3 billion

- \$500 million for "mechanical thinning and timber harvesting in an ecologically appropriate manner" (80% USDA-USFS; 20% DOI).
- \$500 million for establishing wildfire "control locations" including shaded fuelbreaks when "ecologically appropriate" (50% USDA-USFS; 50% DOI).

- \$200 million to contract “for the removal of flammable vegetation on federal land” with an emphasis on using treatment materials for “biochar and other innovative wood products” (50% USDA-USFS; 50% DOI).
- \$200 million for post fire restoration activities within three years of fire containment date.
- \$100 million for Collaborative Forest Landscape Restoration Act projects (100% USDA-USFS). *Also reauthorizes program for five years and prioritizes certain projects.*
- \$600 million for increased wildland firefighter salaries (80% USDA-USFS; 20% DOI).

Most of the funded activities must be conducted consistent with Healthy Forests Restoration Act. The legislation also includes a priority for projects: signed record of decision as of date of enactment, “strategically located” to “minimize risks from wildfires”, maximize large and old growth tree retention to promote fire-resilient stands, and create no new roads and obliterate any temporary roads.

The legislation would also create a permanent Federal wildland firefighter job series within the Forest Service and Department of the Interior, convert 1,000 seasonal to full-time employees, provides for a \$20,000 or 50% salary increase, and directs that firefighter positions should spend half of the year doing hazardous fuels reduction work.

The Forest Service and the Department of the Interior would be required to report accomplishments annually and develop a five-year treatment, monitoring, and maintenance plan for fuels reduction activities funded under this section.

Ecosystem Restoration - \$2.1 billion

- \$300 million for contracts for a minimum of 10,000 acres of ecological restoration on federal lands, including \$100 million for a capital fund to address contract cancellation ceiling (75% USDA-USFS; 25% DOI).
- \$200 million for matching payments to states and tribes for Good Neighbor Agreements (80% USDA-USFS; 20% DOI).
- \$400 million for loan guarantees or low-interest loans for wood using facilities “that purchase byproducts of restoration treatments.” Facilities must be near a unit of federal land identified as high or very high priority for ecological restoration and substantially decrease the cost of conducting ecological restoration projects.
- \$400 million to provide grants to states and tribes for ecosystem restoration on federal and non-federal lands, emphasizing cross-boundary projects.
- \$200 million for invasive pest detection, prevention, and eradication (50% USDA-USFS; 50% DOI).
- \$100 million to restore and improve recreation sites on federal land (50% USDA-USFS; 50% DOI).
- \$200 million for abandoned mine land restoration (50% USDA-USFS; 50% DOI).
- \$200 million for reforestation on both public and private lands (65% USDA-USFS; 35% DOI).
- \$80 million for a new “collaborative based, landscape-scale restoration program to restore water quality or fish passage on federal land.”

Additional Authorities

- 3,000-acre Categorical Exclusion to “establish and maintain linear fuel breaks” within up to 1,000 feet of “existing linear features, such as roads, water infrastructure, transmission and distribution lines, and pipelines of any length on federal land.” Actions must be consistent with existing forest plans and located “primarily in” WUI or water supply area. Also includes prohibition on new roads.
- Codifies the Forest Service’s existing administrative Emergency Situation Determination to streamline certain emergency salvage, reforestation, and roadside hazard tree removal projects and expands to DOI agencies. Agencies are only required to analyze the proposed action and no-action alternative with no administrative objections. Directs courts not to issue injunctions unless plaintiff is likely to succeed on the merits.
- Includes the REPLANT Act, which would direct the Forest Service to identify areas in need of reforestation and provide an additional \$80-\$90 million annually to the Reforestation Trust Fund (currently receives \$30 million annually).

President Biden discusses wildfires with Governors. On July 30, President Joe Biden [met virtually](#) with Western state governors to discuss the wildfire season. The President was joined by Vice President Kamala Harris and Governors Greg Gianforte (R-MT), Jay Inslee (D-WA), and Gavin Newsom (D-CA). Governor Gianforte highlighted the need to drastically increase active forest management across the West, including in Montana where 60% of the at-risk acres are federal managed. Governor Inslee conceded the need for increased active management but quickly pivoted to calling for a clean-energy policies to address climate change. Governor Newsom highlighted the lack of sufficient firefighters and aerial suppression assets, but also raised serious concerns with the lack of initial attack by the Forest Service noting “a culture that is too often wait and see...we can’t afford that any more.” Newsom bluntly told the President “we need your help to change the culture in terms of the suppression strategies...in this climate – literally and figuratively – to be more aggressive on these federal fires.”

On August 2, Forest Service Chief Randy Moore issued a [memo](#) to agency staff temporarily suspending “managing fires for resource benefit.” Chief Moore went on to clarify that decision is temporary:

“Let me be clear. This is not a return to the ‘10 a.m. Policy.’ This is the prudent course of action now in a situation that is dynamic and fluid. When western fire activity abates, we will resume using all the tools in our toolbox, including wildfire and prescribed fire in the right places and at the right time.” /Heath Heikkila

AFRC in the News

- Nick Smith published an oped in the [Missoulian](#) explaining why reducing wildfire risks and restoring the health of federal forests require more than money.
- Nick Smith published an opinion in the [Statesman Journal](#) supporting efforts to remove roadside hazard trees on the Willamette National Forest.
- Nick Smith published an opinion in the Roseburg [News-Review](#) on why Oregon will be less safe from wildfire and smoke if the River Democracy Act passes.

Tom Partin: Wildfires and Litigation-Both “Out of Control”

Once again, the summer of 2021 has brought a series of devastating wildfires burning across our National Forests in the West. It is a repeat performance in what has unfortunately become a regular event on overstocked and fire-prone federal lands.



Hundreds of fires have burned across the West this summer charring millions of acres and causing death, destruction, and leaving our National Forest landscapes in waste. A few of the more severe fires include the Dixie Fire that threatened and burned around Chester, California causing large evacuations, the Caldor Fire is currently threatening South Lake Tahoe, and the Bootleg Fire in Southeast Oregon burned over 400,000 acres and threatened several smaller communities including Beatty and Paisley.

As seen in the Bipartisan Infrastructure Framework, Congress has proposed to significantly increase funding for fuels management and firefighting resources. These dollars are needed to increase the pace and scale of management on our National Forests to help reduce the risk to catastrophic wildfires. Forest Service Chief Randy Moore, in one of his first speeches, outlined how the agency needs to start planning larger landscape fuels reduction and forest health projects to try to catch up with the approximately 80 million acres that are currently at risk of wildfire in our Western National Forests.

While these efforts bring optimism for reducing the risk of catastrophic wildfires, these hopes can be quickly dampened by lawsuits brought against the Forest Service by environmental groups seeking to stop much needed management. Unfortunately, the number of lawsuits and projects being litigated by these environmental groups has escalated, just like the size and severity of wildfires we are now experiencing. Region 1 of the Forest Service, which covers northern Idaho and Montana, has 21 active lawsuits impacting 415 MMBF of timber. Other Regions are experiencing a similar flood of litigation including lawsuits to stop the salvage of dead and dying timber from the devastating Labor Day fires in Oregon last September.

If we are ever to get control of our wildfires and the factors that are causing them, we must also put an end to the “out of control” litigation that threatens virtually every project being planned. These lawsuits require hundreds of hours of Forest Service personnel time to defend. This time could be much better spent planning new projects and working to reduce the fuel hazards on our National Forests. Congress has taken steps to fund much needed treatments on our National Forests, but they also need to take steps to curb the out-of-control litigation that are stopping these projects. */Tom Partin*

Magistrate Judge Clarke Upholds BLM’s North Landscape Project

On August 24, Magistrate Judge Clarke issued [Findings and Recommendation](#) (F&R) upholding the Bureau of Land Management’s (BLM) North Landscape Project located in the Klamath Falls Resource Area. The project encompasses 11,789 acres, with active management on approximately 9,000 acres that will occur over a 10-year period. The project authorizes active management solely on the Harvest Land Base land use allocation under the 2016 Resource Management Plan (RMP) and is entirely within lands managed under the O&C Act for sustained-yield timber management.

Plaintiffs Klamath-Siskiyou Wildlands Center et al. brought claims under the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). First, plaintiffs alleged that that U.S. Fish and Wildlife Service’s Biological Opinion addressing impacts to the Northern Spotted Owl (NSO) was flawed. Second, plaintiffs contended that the Revised Environmental Assessment (EA) for the North Landscape Project failed to take a “hard look” at impacts on the NSO and its critical habitat, and the BLM failed to prepare an Environmental Impact Statement (EIS).

Judge Clarke rejected all of plaintiffs’ claims and reaffirmed the O&C Act’s sustained-yield timber harvest mandate:

Plaintiffs paint a picture that the North Project will result in the elimination of more than 9,000 acres of NSO habitat in one quick timber harvest, but *the Court is satisfied that the North Project incorporates design features and protocols to ensure individual NSOs occupying the area will not be adversely affected and that timber harvest will not cause abandonment of any occupied site.* The North Project analyzes annual timber harvest from within a pool of 9,300 acres to account for flexibility in avoiding adverse effects to NSOs, and sales will likely average around 500 acres per year. . . . This Court understands the importance of protecting the NSO and other threatened or endangered species. However, *Congress was clear through the O&C Act that timber harvest must happen.* Every tree cannot be saved. NEPA does not require an agency to choose the most environmentally sound course of action following its required analysis, and NEPA does not require BLM to prove that each site-specific timber project implemented under the RMP will benefit the NSO. In reviewing Plaintiffs’ NEPA claims, the Court must determine not whether BLM chose the alternative most likely to benefit the NSO, but whether BLM “presented a ‘full and fair discussion of significant environmental impacts’”. . . . In this case, the Court finds that the government fulfilled its NEPA obligations.

In their challenge to the 2018 Biological Opinion, plaintiffs claimed that (1) it failed to consider the effects to the NSO over a timeframe relevant to the species; (2) it failed to adequately consider how recovery efforts for the NSO will be impacted and wrongfully relied on the Late Successional Reserve land use allocation; and (3) FWS’s determination that the project would not result in an incidental take was arbitrary and capricious.

One notable aspect of Judge Clarke’s ruling is his decision on plaintiffs’ claim related to incidental take. Currently, the 2016 RMP provides that BLM must avoid the incidental “take” of spotted owls until implementation of a barred owl management program is in place. With the North Landscape Project, like with other BLM projects approved under the 2016 RMP, there is a mechanism in place for stopping and reevaluating timber harvest activities if NSOs are detected in the area.

Typically, in the context of timber harvest, take results from habitat removal at the scale of an occupied NSO site. The BLM is currently required to prove that areas capable of supporting owls are unoccupied, and they do so with protocol field surveys. Failure to conduct surveys compels the BLM to assume occupancy. Both assumed occupied sites and field verified occupied sites limit the ability of the BLM to conduct timber harvest while avoiding take. This results in either timber sale units being dropped or

drastically reduced. Plaintiffs criticized the BLM for relying on survey protocols as the sole criterion for establishing the possibility of take, even though these protocols have been effectively used for decades and upheld by the Ninth Circuit. Essentially, plaintiffs are trying to raise the bar for proving take avoidance by claiming that two years of protocol surveys are insufficient.

Since the 2016 RMPs were signed, the BLM has deferred timber harvest on a significant portion of their Harvest Land Base to avoid take as a result of protocol surveys. Raising the bar even higher on occupancy determination would further degrade the BLM's ability to meet their RMP requirements for sustainable timber supply. Judge Clarke expressly rejected plaintiffs' criticism of BLM's survey protocols and their additional contention that habitat modification *per se* constitutes harm for purposes of "take."

In addition, Judge Clarke dispensed with plaintiffs' argument that an EIS was required rather than a programmatic EA. The court found that the Revised EA properly tiers to the Final Environmental Impact Statement ("FEIS") for the 2016 RMP and was not convinced "that there are any new or significant environmental effects stemming from the North Project that were not already considered in the FEIS for the 2016 RMP." Judge Clarke has not always upheld a site-specific project's tiering to BLM's analysis within the 2016 RMP's FEIS. For example, in the challenge to the Griffin Half Moon Project, Judge Clarke found that tiering to the FEIS for the great grey owl was insufficient because it lacked the necessary site-specific disclosures and merely acknowledged that the great grey owl was at risk. *Klamath Siskiyou Wild/ands Ctr. v. BLM*, Case No. 1 :19-cv-02069-CL, 2021 WL 400137, at *4, *6 (D. Or. Jan. 21, 2021). In this case, by contrast, Judge Clarke determined that the effects on NSOs is based on more than 30 years of intensive NSO research and progressive model development.

Given that Judge Clarke's ruling is an F&R, not a final ruling, the parties will have an opportunity to object to the decision within 14 days. Those objections will be reviewed by Judge McShane in the District of Oregon.

Although AFRC was not directly involved in this litigation, Judge Clarke's ruling will have an impact on other pending AFRC cases. For example, the plaintiffs who challenged the Bear Grub and Round Oak Projects have raised identical ESA arguments, which are pending in the District of Oregon before Judge Aiken. /Sara Ghafouri and Andy Geissler

Malheur National Forest Implements Firewise Project to Protect Community



The Upper Laycock Creek Road (ULCR) Firewise Community, officially recognized in 2018, made urging the Malheur National Forest to create a fuel break next to private land boundaries in their area a top priority from the outset. After the initial meetings with the District Ranger and fuels specialists, a meeting with the entire ULCR Firewise Community and the Forest Service was held in March 2019.

During the meeting, Forest Service fuels specialists agreed with the community that the ULCR Firewise Community was at significant risk of destruction from wildfire coming off National Forest lands. In June 2020 the scoping package for the Laycock Creek Firewise project was put out for comment.

Utilizing the guidelines in section 605 of the Healthy Forests Restoration Act, the Laycock Creek project was prepared with a categorical exclusion to reduce hazardous fuels. Various methods to reduce hazardous fuels were included as well as commercial and non-commercial thinning, and prescribed fire. Dense stocking levels will be reduced, as shown in the picture below left and ladder fuels removed as shown in the picture to the right.



as shown in the picture to the right.



The timber sale contract for the Laycock Creek Firewise project will be offered on September 22, 2021. An estimated two million board feet of timber will be generated, hazardous fuels next to private lands will be mitigated, and wildlife and fisheries habitats will be protected and enhanced. Sound forest management produces a multitude of benefits that lead to healthy forests and healthy communities.

/Irene Jerome

AFRC and OFIC Moved to Intervene in Challenge to FWS’s “Not Warranted” Finding for Red Tree Vole

On August 19, AFRC and Oregon Forest & Industries Council (OFIC) moved to intervene in a [challenge](#) to U.S. Fish and Wildlife Service’s (FWS) determination that the red tree vole North Oregon Coast Distinct Population Segment (“red tree vole” or “North Oregon Coast DPS”) did not warrant listing as a threatened or endangered species under the Endangered Species Act (ESA).



In December 2019, FWS determined that the red tree vole—a small, mouse-sized rodent that lives in conifer forests—did not warrant listing as threatened or endangered. In 2007, FWS received a petition from the Center for Biological Diversity, Oregon Chapter of the Sierra Club, Audubon Society of Portland, Cascadia Wildlands Project, and Oregon Wild to list the North Oregon Coast DPS as endangered or threatened. In 2011, FWS issued a 12-month finding that listing the North Oregon Coast DPS was “warranted but precluded” by other higher-priority listings, and the North Oregon Coast DPS was added to the candidate species lists.

From 2012 to 2016, FWS addressed the status of the North Oregon Coast DPS annually in its candidate notice of review, with the determination that listing was “warranted but precluded.” However, in support

of its December 2019 “not warranted” finding, FWS explained that despite some impacts from these stressors and some observed decline in abundance, the red tree vole in this area has maintained resilient populations over time, primarily in two large habitat clusters under federal management.

Currently, the Forest Service’s implementation of the Northwest Forest Plan Survey & Manage guidelines and the BLM’s implementation of its 2016 Resource Management Plans serve as the primary protection mechanisms for protection of the red tree vole. AFRC supports the FWS’s “not warranted” finding given that our tracking of vegetation management projects on Forest Service and BLM lands with the DPS area indicate that this population is ubiquitous.

AFRC has been more heavily involved in defending delisting or “not warranted” determinations by FWS. That is because unsupported species listings that fail to comply with the ESA’s strict requirements threaten AFRC members’ interests in forest health, federal timber supply, and private forest land. There is a strong need to defend FWS’s not warranted finding for the red tree vole because if plaintiffs are successful in reopening the listing decision, it would reinitiate an administrative process that could impose additional legal restrictions and burdens on AFRC members’ activities. /*Sara Ghafouri*

AFRC Congratulates Sara Ghafouri on New Role: General Counsel

AFRC is thrilled to announce that Sara Ghafouri has been promoted to the role of General Counsel. Sara joined AFRC as a Staff Attorney in February 2017 and has helped build AFRC’s dynamic legal program over the last 4.5 years. Sara will move into a senior leadership role in the organization and manage AFRC’s overall legal program, budget, strategy, and outside counsel.

The legal program will remain focused on defending and growing the public wood basket for AFRC members through offensive and defensive strategies. Ongoing and current AFRC legal priorities include: ensuring critical habitat for the Northern Spotted Owl is based on science and law; fully implementing the O&C Act in Western Oregon; developing a sound and accurate Sustainable Harvest Calculation and Marbled Murrelet plan in Washington state; and project defense in Montana, Idaho, Washington, Oregon, and California to protect timber volume, jobs, and economic opportunity in rural communities.

AFRC will be looking to grow its legal team in early 2022 with the addition of a Staff Attorney. All AFRC legal questions and business should be directed to Sara at sghafouri@amforest.org or 503-222-9505. Congratulations, Sara! /*Travis Joseph*