



Washington DC Update

The White House continues working with Congressional Democrats to find a path forward for the \$1.2 Bipartisan Infrastructure Framework and President Biden’s Build Back Better reconciliation package – a \$3.5 trillion proposal that lacked the necessary support of moderate Democrats in the House and Senate, including Senators Joe Manchin (D-WV) and Krysten Sinema (D-AZ).

On October 28, the White House released an updated framework for the social spending package that proposes \$1.85 trillion of spending and tax breaks coupled with nearly \$2 trillion of tax increases and other offsets. However, the latest proposal includes budgetary gimmicks and arbitrary sunsets to bring down the cost of the package. There would be immense pressure to continue the programs with additional spending that is not included in the budget score. Senators Manchin and Sinema have not firmly committed to support the latest proposal, although Senator Sinema issued a statement citing the significant progress that has been made.

When pressed for his position on the latest proposal, Senator Manchin instead responded that “this is all in the hands of the House right now,” a reference to growing impatience for House progressives to support a House vote for the Bipartisan Infrastructure Framework. The infrastructure bill is a priority for Manchin and Sinema and has been held hostage by progressives who want assurances that there are 50 votes in the Senate for the social spending package. These deep divisions within the Democratic caucus have party leaders concerned that a failure to pass President Biden’s domestic agenda could have significant repercussions at the ballot box next week, beginning with a hotly contested Virginia governor’s race.

The AFRC Podcast



Episode 2 Guest: Steve Brink, California Forestry Association

The AFRC Podcast is a monthly discussion examining key issues and news relating to forestry, forest products and public lands management.

October's episode features Steve Brink of the California Forestry Association. Steve joins us to recap the recent wildfire season and to discuss state and federal efforts to accelerate wildfire prevention and forest management throughout the state.

[Click here to listen.](#) Our podcast is also available on Spotify!

The White House’s latest proposal reportedly includes \$555 billion in clean energy and climate investments. According to a summary at [whitehouse.gov](https://www.whitehouse.gov), the package “bolsters resilience and natural solutions to climate change through a historic investment in coastal restoration, forest management, and soil conservation.” Based on our initial review of the [legislative text](#), the reconciliation bill includes approximately \$18 billion for Forest Service hazardous fuels reduction, collaborative forestry, and restoration activities, as well as conservation activities on private lands through the Forest Legacy program. The text includes various restrictions on the programs that would be funded with a focus on carbon sequestration, protecting old growth, and the Wildland Urban Interface. This funding would be on top of the over \$5 billion included in the Bipartisan Infrastructure Framework in support of federal land restoration and fuels reduction activities.

Forestry legislation gets hearing in the Senate. On October 21, the Senate Energy and Natural Resources Committee held a [legislative hearing](#) to consider nine forest-related bills, including legislation from Senator Steve Daines (R-MT) to address the *Cottonwood* litigation hook ([S. 2561](#)) and authorize a pilot for binding arbitration judicial reform for collaborative forest management projects ([S. 2564](#)). Also on the agenda were Senator Jim Risch’s (R-ID) FIRESHEDS Act ([S. 2436](#)) to streamline projects within emergency fire-shed management acres, Senator Ron Wyden’s (D-OR) legislation to streamline and mandate greater use of prescribed fire ([S. 1734](#)), and legislation from Senators Joe Manchin and John Barrasso (R-WY) to promote reforestation activities and the carbon sequestration benefits of active forest management ([S. 2836](#)). Manchin chairs the Committee and Barrasso serves as the Ranking Member.

The Administration was represented at the hearing by U.S. Forest Service Deputy Chief Chris French and Jeffrey Rupert, Director of the U.S. Department of the Interior’s Office of Wildland Fire. Non-federal witnesses included Bill Crasper, Wyoming State Forester, Paul Johnson of the West Virginia Division of Natural Resources, and Tyson Bertone-Riggs of the Rural Voices for Conservation Coalition. A recording of the hearing and witness testimony are available [online](#).

Deputy Chief French noted that forests “are burning at scales and scopes that we’ve not seen before, that are having tragic and unacceptable effects to our communities, our interagency firefighting resources, and the long-term sustainability of our nation’s forests.” French voiced appreciation for the Committee’s efforts and noted that the various bills all seek to address “different aspects” of the challenges facing the Forest Service’s efforts to increase forest management activities and indicated that the agency would like to work with the Committee to improve the proposals.

Jeffrey Rupert pointed to climate change as the cause of the worsening wildfire seasons and signaled Interior’s opposition towards proposals to streamline environmental reviews, including Senator Risch’s FIRESHEDS Act. Tyson Bertone-Riggs championed prescribed fire legislation from Senator Ron Wyden and legislation from Senator Diane Feinstein that focused largely on thinning and other fuels reduction activities near at-risk communities. Senator Wyden claimed that his bill, which would mandate greater use of prescribed fire by the Forest Service and loosen Clean Air Act restriction on prescribed fire smoke, will “give us the chance to do some of the heavy lifting in the cooler weather, and in the process avoid these infernos we see in the summer.” In reality, most federal forests are far too overstocked to safely use prescribed fire without first conducting mechanical thinning treatments.

Overall, the hearing was a positive development and comes as Chair Manchin and Ranking Member Barrasso appear committed to moving legislation to promote active forest management to reduce the size and severity of wildfires. In June, Manchin and Barrasso sent a [letter](#) to President Biden in support of proactive forest management policies and bringing “additional tools to bear in order to reduce the occurrence of deadly wildfires, help in our efforts to mitigate emissions from devastating wildfires, and sequester and store more carbon.”

Wyden Wilderness. On October 19, the Senate Energy and Natural Resources Public Lands, Forests & Mining Subcommittee [held a hearing](#) on 14 public land and wilderness bills, including legislation from Senator Wyden and Senator Jeff Merkley (D-OR). Wyden’s Oregon Recreational Enhancement (ORE) Act ([S. 1589](#)) would add nearly 60,000 acres of Forest Service and BLM lands to the Wild Rogue Wilderness area in southwest Oregon. It would also designate 98,150 acres of BLM land as a Rogue Canyon Recreation Area and 29,884 acres of BLM lands as a Molalla River Recreation Area. Finally, the legislation would also withdraw certain rivers in Curry and Josephine counties from federal mineral leasing laws. AFRC, the Association of O&C Counties, and counties in southwest Oregon expressed concerns with the ORE Act when Wyden introduced it in the last Congress.

The subcommittee also heard Merkley’s proposal ([S. 1538](#)) to expand the Smith River National Recreation Area and designate additional area rivers as Wild & Scenic. The ORE Act and Merkley’s Smith River proposal received support from the Biden Administration, which seems inclined to support proposals to “protect” more lands consistent with its 30x30 initiative. Interestingly, under the Trump Administration, the Forest Service and BLM both expressed concerns with the ORE Act’s impact on forest management and wildfire risk reduction efforts.

Firefighter Workforce Reforms. On October 27, the House Natural Resources National Parks, Forests, and Public Lands subcommittee [heard](#) two bills to improve pay and benefits for federal wildland firefighters. Among other things, [H.R. 5631](#) from Rep. Joe Neguse (D-CO) would increase wildland firefighter pay, benefits and create a full-time, permanent wildland firefighter job classification. [H.R. 4274](#) from Rep. Zoe Lofgren (C-CA) would waive limits on overtime and premium pay. Neguse, who chairs the Subcommittee, explained why he introduced the legislation “Wildfires today are really a year-round risk burning larger areas at higher intensity, and this is only projected to increase as the climate continues to warm. While Congress has acted to increase the budget for wildfire suppression, we have neglected to prioritize the well-being of those on the frontlines of these climate driven disasters — our brave, federal wildland firefighters.”

In addition to federal witnesses and witnesses representing wildland firefighters, California Forestry Association (Calforests) President Matt Diaz [offered](#) support for a permanent federal wildland firefighting force that conducts fuels reduction efforts outside of fire season, but also highlighted the urgent need for increased forest management activities to reduce wildfire risk and improve the federal government’s approach to fire suppression.

The Bipartisan Infrastructure Framework already includes funding to convert federal wildland firefighters to full-time employees and increase pay and benefits. The Neguse and Lofgren bills would codify these federal personnel changes and further increase pay and benefits.

House Republicans Introduce ESA legislation. On October 26, a group of House Republicans, including Rep. Cliff Bentz (R-OR), [introduced five bills](#) to codify Trump-era Endangered Species Act (ESA) regulations (see related article about Biden Administration effort to rollback ESA regulations). Bentz introduced [H.R. 5708](#), which would codify the Trump Administration’s definition of “habitat” for the purposes of designating critical habitat under the ESA – a regulation that was adopted in response to the US Supreme Court’s *Weyerhaeuser* decision that found that critical habitat must in fact be both critical and actual habitat. Bentz is also considering how to defend the Trump Administration’s January 2021 rule to reduce the critical habitat designation for the Northern Spotted Owl. /*Heath Heikkila*

AFRC in the News

- Matt Comisky published an opinion in the [Everett Herald](#) on the importance of DNR trust land management.
- Nick Smith spoke to [Bloomberg](#) about the importance of the forest products industry to reducing wildfire risks in the West.
- Andy Geissler and Nick Smith spoke to the [Statesman Journal](#) regarding post-fire hazard tree removal on the Willamette National Forest, and the implications of an anti-forestry lawsuit.

Washington State Supreme Court Holds Oral Argument in Case Challenging Timber Management on DNR Trust Lands

On October 21, the Washington State Supreme Court held oral argument in *Conservation Northwest et al. v. Commissioner Franz et al.*—one of the most important cases to be heard in recent history regarding trust lands managed by the Washington Department of Natural Resources (DNR). Video of the argument is [archived here](#).

The case is the most recent attempt by anti-forestry groups to undermine DNR’s [fiduciary duty](#) to manage these working forests that generate funding for beneficiaries including public schools, universities, fire districts, libraries, hospitals, and other community services.

The agency’s “trust mandate” is embedded in the state’s Constitution and Congress’ 1889

Enabling Act, which brought Washington, Montana, North Dakota, and South Dakota into statehood. This trust mandate has been confirmed in a long history of Washington Supreme Court cases, including its 1984 ruling in [County of Skamania v. State](#), which held that the State has a duty of undivided loyalty to the trust beneficiaries and a duty to manage trust assets prudently.



The Washington Supreme Court agreed to hear this matter after a Thurston County Superior Court Judge dismissed Conservation Northwest's case given that DNR's trust mandate is owed to specific beneficiaries, not "all the people." Counties, educators, labor and business groups, and even the State of Montana filed [separate amicus curiae briefs](#) before the Washington Supreme Court defending timber management on trust lands.

The question presented before the Washington Supreme Court is whether the state is required to manage trust lands for "all the people" under Article 16, section 1 of the Washington State Constitution. Wyatt Golding argued on behalf of Conservation Northwest, Martha Wehling argued on behalf of the State, and Elaine Spencer argued on behalf of the Defendant-Intervenor Beneficiary/AFRC coalition.

Conservation Northwest argued that this case is one of first impression and that Article 16, section 1's use of the phrase "for all the people" means that state trust lands should not be managed solely for specific beneficiaries, like public schools, but instead should be managed for each and every Washingtonian. Conservation Northwest argued that DNR currently manages these lands for the purpose of maximizing revenue over other interests such as recreation, wildlife, and climate resiliency.

The State and Beneficiary/AFRC coalition explained how the framework of the Enabling Act required that these lands be managed for specific trust beneficiaries. The State has generated revenue from these trust lands for institutions such as public schools for more than a century. The Beneficiary/AFRC Coalition also explained how these trust lands already support outdoor recreation, protect endangered species, and address climate change and are managed with some of the most stringent environmental regulations in the world.

Overall, only a few justices asked questions during oral argument—with Justices Stephens, McCloud, and Montoya-Lewis being the most active. Although more questions were asked of Conservation Northwest, it is hard to determine where the court is leaning given that many justices did not ask any questions. The Washington State Supreme Court typically issues decisions 6-7 months after oral argument. We anticipate a decision by April or May 2022.

AFRC is grateful for Wehling's and Spencer's strong command of their arguments, the caselaw, and the constitutional framework in response to pressing questions from the Washington Supreme Court. /Sara Ghafouri

USFS and BLM FY 2021 wrap-up

The fiscal year 2021 timber sale programs for both the BLM and U.S. Forest Service (USFS) in Washington and Oregon were heavily impacted by the 2020 Labor Day wildfires. The roughly half-million acres of USFS and BLM forest land impacted by those fires caused both agencies to drastically modify their planned 2021 timber sale programs.

The USFS Washington Office assigned a target of 760 MMBF of timber to Region 6 for FY21. This target was a continuation of a steady upward trend of timber outputs and treated acres dating back to 2017. However, the Regional Office, citing the impacts of the 2020 wildfires in western Oregon, reduced those targets by 23% down to 584 MMBF. Oddly, volume reductions were imposed not only on those Forests impacted by the wildfires, but also on Forests not impacted, such as the Olympic (54 MMBF in

FY20/20 MMBF in FY21) and the Malheur (75 MMBF in FY20/50 MMBF in FY21). Conventional thinking would identify an opportunity to harvest more timber, not less, following the 2020 wildfires in the form of salvage and hazard tree removal. However, the Forest Service’s ability and desire to conduct timber salvage has been largely diminished due to an increasingly effective litigation strategy implemented by special interest groups against the harvest of fire-killed timber resources.

As a result, the Mt. Hood National Forest has proposed timber salvage on 0% of the 103,433 acres burned in 2020; the Rogue River-Siskiyou National Forest has proposed timber salvage on 0% of the 68,707 acres burned in 2020; the Willamette National Forest has proposed timber salvage on 0.3% of the 167,679 acres burned in 2020; and the Umpqua National Forest has proposed timber salvage on 0.7% of the 37,206 acres burned in 2020. In summary, the USFS has proposed timber salvage on 0.2% of the 377,025 acres that burned in the 2020 Labor Day fires.

Ultimately, the Region sold 541 MMBF in FY21, which is 71% of their assigned target. This represents a 16 year low in timber outputs since the Region sold 475 MMBF in 2005. Preliminary targets for FY22 are set at 671 MMBF, hopefully the upward trend of timber outputs is reestablished next year.

FY-21 Target (MMBF)	760	
Forest	Regionally Assigned Target (MMBF)	Volume sold
Colville	67.0	97.3
Deschutes	40.0	38.6
Fremont-Winema	72.0	76.2
Gifford Pinchot	52.0	54.5
Malheur	50.0	17.5
Mt Baker-Snoqualmie	20.0	11.0
Mt Hood	5.0	18.7
Ochoco	20.0	5.5
Okanogan-Wenatchee	30.0	19.0
Olympic	20.0	6.3
Rogue River-Siskiyou	30.0	27.0
Siuslaw	40.0	37.9
Umatilla	35.0	31.3
Umpqua	30.0	34.8
Wallowa Whitman	33.0	33.3
Willamette	40.0	32.0
Total	584.0	540.9
Percent of Target Accomplished	71%	

The BLM, on the other hand, was able to plan and offer salvage sales on land impacted by the 2020 wildfires at a level that allowed them to exceed their assigned timber targets. Originally assigned a target of 272 MMBF, the BLM was able to organize their District level staff to prioritize timber salvage on

O&C land that resulted in an attainment of 299 MMBF. Over two-thirds of this volume was post-fire timber salvage and hazard tree removal. They were also able to repackage and sell 23 MMBF of timber sales that had not sold in previous years, bringing their total sold volume in FY21 to almost 319 MMBF.

BLM						
FY-21 Target (MMBF)	272					
District	Assigned Target	Target Volume Offered	Target Volume Offered Sold	% Target Offered Sold	Reoffered Volume Sold	Total Volume Sold
Salem	78	72.9	69.9	90%		69.9
Eugene	73	84.3	84.3	115%		84.3
Roseburg	49	85.0	85.0	173%		85.0
Coos bay	17	17.0	17.0	101%		17.0
Medford	51	35.4	35.4	69%	19.9	55.3
Lakeview	4	4.2	4.2	100%	2.8	7.0
Total	272	298.8	295.8	109%	22.7	318.5

Despite the BLM’s successful year, the scale of post-fire timber salvage on O&C Lands, where sustained-yield timber management is mandated, is concerning. As of this month, the BLM has planned timber salvage on approximately 3,000 of the roughly 125,000 acres that burned in 2021; that’s less than 3% of the impacted land. Part of their inability to increase the scale of timber salvage is the direction in their Resource Management Plans, which prohibits timber salvage on 85,000 of the 125,000 acres impacted. On the remaining lands where timber salvage is directed, approximately 15,000 acres burned at moderate and high severity on stands over the age of 40. As of this month, the BLM has planned, offered, and sold timber salvage on 20% of those 15,000 acres. AFRC is hopeful that the BLM will continue to be successful in its salvage offerings into fiscal year 2022. /Andy Geissler

Biden Administration Regulatory Update

October brought several new proposed rules from the Biden Administration aimed at reversing Trump-era reforms and proposed critical habitat designations under the ESA that will impact public lands management. Below are summaries of those rulemaking efforts and comment deadlines:

CEQ NEPA regulations. On October 7, the Council on Environmental Quality (CEQ) [published a notice](#) of proposed rulemaking to reverse several changes made under the Trump Administration to CEQ’s National Environmental Policy Act (NEPA) implementing regulations. The proposed rulemaking represents the first phase of a two-phase process to reconsider and revise the July 2020 “Update to the Regulations Implementing the Procedural Provisions of NEPA” ([2020 Rule](#)). The substance and timing of the second phase is not yet clear.

This first phase of the Biden Administration’s NEPA revisions process will implicate three NEPA regulations by abandoning CEQ’s 2020 updated regulation and reverting back to the original 1978 NEPA regulation: (1) purpose and need statement regulation (40 C.F.R. § 1502.13); (2) agency-specific NEPA procedures (40 C.F.R. § 1507.3(a)); and the definition of effects (40 C.F.R. § 1508.1(g)). The removal of the 2020 effects definition would restore the agencies’ obligation to analyze direct, indirect, and cumulative impacts, and allow agencies to analyze impacts that do not have a “reasonably close causal relationship” to the proposed action.

In this proposed rulemaking, CEQ clarified that its NEPA regulations are a floor, not a ceiling. Notably, the Biden Administration has not sought to reverse the Forest Service’s NEPA implementation rules adopted during the Trump era (See [November 2020 AFRC newsletter](#)), which modestly streamlines the agency’s environmental analysis procedures. Comments on the proposed rule are due by **November 22, 2021**.

Endangered Species Act rules: Habitat definition. The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service’s (collectively, Services) [proposed rule](#) will rescind the definition of “habitat” that was promulgated during the Trump Administration in response to the United States Supreme Court’s decision in *Weyerhaeuser Co. v. U.S. Fish and Wildlife Service*, 139 S. Ct. 361, 372 (2018) (*Weyerhaeuser*). In *Weyerhaeuser*, the Supreme Court unanimously ruled that ESA “Section 4(a)(3)(A)(i) does not authorize the Secretary [of the Interior] to designate [an] area as critical habitat unless it is also habitat for the species.” Although *Weyerhaeuser* did not require the Service to adopt a regulatory definition for “habitat,” the Services under the Trump Administration finalized a definition for “the purposes of designating critical habitat.” Now, the Services have changed course, stating that the definition of habitat “inappropriately constrain the Services’ ability to designate areas that meet the definition of ‘critical habitat under the Act.’” Comments on the proposal are due by **November 26, 2021**.

Endangered Species Act rules: Impact analysis and exclusions from critical habitat. FWS has [proposed a rule](#) to rescind the 2020 rule regarding “impact analysis and exclusions from critical habitat.” The goal of the 2020 rule was to clarify, based on agency experience, how the FWS considers impacts caused by critical habitat designations and conducts its discretionary exclusion analyses, partially in light of the *Weyerhaeuser* decision, which held that the FWS’s decisions not to exclude areas may be reviewed by courts for abuse of discretion under Administrative Procedure Act. 139 S. Ct. at 371. In FWS’s view, the Trump-era rule needs to be rescinded because it “mandates a rigid process from when the Secretary will enter into an exclusion analysis, how weights are assigned to impacts, and when an area is excluded.” FWS stated that a regulation that is differed from NMFS, 50 C.F.R. §424.19, “could result in different outcomes in analogous circumstances or for species where the Services share jurisdiction.” If the Trump-era rule is rescinded, then the Services will follow the joint policy and regulation under 50 C.F.R. §424.19. Comments are due by **November 26, 2021**.

Proposed critical habitat for Pacific marten. On October 25, FWS [proposed a rule](#) designating more than 1.4 million acres in Oregon and California as critical habitat for the Pacific marten, a small carnivorous mammal in the weasel family that lives in coastal forests. Pacific martens were listed as a threatened distinct population segment (DPS) in 2020.

The agency’s proposal would establish critical habitat for Pacific martens in five population units — four of which are entirely within southwest Oregon (Coos, Curry, Douglas, Josephine, Lane and Lincoln

counties), and one that extends into the Klamath Mountains of northwest California (Del Norte and Siskiyou counties).

However, the proposed rule would exclude 76,544 acres of timberland managed by Green Diamond Resource Co. in California. The company has previously developed conservation strategies for the Humboldt marten under agreements with the federal government and California Department of Fish and Wildlife.

A new critical habitat designation for this species would likely implement strategies that would include population monitoring, minimizing logging in Pacific marten habitat and creating slash piles to benefit the species near their natal dens. While the critical habitat designation does not necessarily preclude forest thinning and logging, AFRC believes the proposed rule could make it more difficult for land managers to do fuels reduction projects that would lessen the severity of wildfires and improve overall forest health, since Pacific martens are typically found in dense understory. Comments are due by **December 27, 2021**.

Proposed critical habitat for Southern Sierra Nevada fishers. On October 19, the FWS [proposed a rule](#) to designate 554,454 acres of critical habitat for the Southern Sierra Nevada DPS. The proposed critical habitat would be located across portions of Fresno, Kern, Madera, Mariposa, Tulare and Tuolumne counties in California. Fishers are medium-sized mammals classified in the same family as weasels, mink, martens and otters. The Southern Sierra Nevada DPS of the species was listed as endangered under the ESA in 2020.

According to FWS, habitat loss and fragmentation resulting from catastrophic wildfire is one of the biggest threats to the species, as well as tree mortality and prolonged drought. Through collaboration with federal and private partners, FWS says the rule would be compatible with land management activities “that contribute to healthy forest ecosystems and reduce the risk of wildfire.” The agency claims that other activities that are essential for fighting fires, such as road maintenance, removing hazard trees and vegetation management activities along utility lines would continue if critical habitat were designated. Comments are due by **December 20, 2021**. /Sara Ghafouri

Judge Leon Declines to Enjoin Rules Delaying Effective Date of 2021 Northern Spotted Owl Critical Habitat Designation

AFRC, along with a coalition of counties and the Association of O&C Counties, moved for a preliminary injunction against the FWS rules delaying the effective date of the January 2021 critical habitat designation for the northern spotted owl (NSO).

As reported in the [January 2021 AFRC newsletter](#), FWS finalized its 2021 NSO Critical Habitat Rule following a settlement agreement of our earlier challenge to the 2012 critical habitat designation. The 2021 Rule reduced the critical habitat designation by 3.4 million acres and was more in line with FWS’s previous designations of 6,887,000 acres in 1992 and 5,312,300 acres in 2008. The 2021 Critical Habitat Rule also recognized several million more acres of National Park, wilderness, state, and private lands that are managed to conserve NSO habitat. However, following the change in Administration, FWS abruptly—and without adequate notice and comment—issued two rules, delaying the effective date of the 2021 Critical Habitat Rule from March 16 to December 15 (Delay Rules). Because of these Delay Rules, the 2012 critical habitat designation remains in effect.

AFRC and the county coalition promptly sued in the D.C. district court to stop the delay of the 2021 Critical Habitat Rule, asking the court to invalidate the Delay Rules and reinstate the 2021 Critical Habitat Rule. The parties completed briefing on plaintiffs' motion for summary judgment in the Spring of 2021.

However, as the Delay Rules continue to be in effect, our coalition was harmed by the delay in implementing the January 2021 Critical Habitat Rule. Those harms are compounded by the catastrophic wildfire events burning on public lands that are largely unmanaged because of the expansive 2012 NSO critical habitat designation. For that reason, we filed a preliminary injunction motion to stop the Delay Rules to remove the unnecessary barrier the 2012 critical habitat designation poses on active management and other fuel reduction projects.

On October 13, Judge Leon [denied](#) the request for a preliminary injunction, finding that the plaintiffs had not shown specific, irreparable harms "stemming from th[e] consequence of the delay rules." Judge Leon also determined that the motion failed to demonstrate how enjoining the Delay Rules would "prevent any of the alleged imminent and irreparable harms." The court did not, however, determine whether our coalition was likely to succeed on the merits of their claims under the Administrative Procedure Act and Endangered Species Act. Our motion for summary judgment is still pending before the court.

Judge Leon's decision ignores how the Delay Rules inhibit fuel reduction projects on federal forests. There is no question that the critical habitat designation is at the root of the problem. In fact, the D.C. Circuit found that the 2012 critical habitat designation harms to plaintiffs to be "basic common sense." *Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 6 (D.C. Cir. 2017) (Kavanaugh, J.). And a well-respected wildlife biologist, Dr. Gary Roloff at Michigan State University, voluntarily provided a letter explaining that by inhibiting fuel management projects, the NSO critical habitat designation also harms spotted owls by contributing to massive fuel buildups on federal forests that feed habitat-destroying wildfires.

The implication of Judge Leon's denial of the preliminary injunction motion is that our coalition will need to wait for a decision on summary judgment to secure relief. We hope that Judge Leon is able to issue a ruling expeditiously given that FWS intends to finalize the NSO critical habitat designation replacement rule by December 15. /Sara Ghafouri

AFRC Holds Fall Meeting in Missoula

AFRC held its fall membership and partners meeting in Missoula, Montana on October 7. The meeting brought together a broad coalition of partners who are interested in the management of the National Forests in Region 1 and to discuss the issues impacting that management. The 43 attendees included the Forest Service, members of the forest products industry, Montana DNRC, Congressional staff, County Commissioners, and AFRC staff.

We were very pleased to have Regional Forester Leanne Marten, Deputy Regional Forester Keith Lannom, and Director of Forest Management Carol McKenzie attend and present an overview of their programs including a recap of FY21 and the outlook for FY22 including fire salvage, litigation, and other work.

Marten reported that the Region had only hit 73% of their FY21 timber target with a large part of the shortfall due to not being able to get projects through the consultation process. Projects on the Lolo were

also held up due to litigation and no-bid sales. Marten reported that the Region is moving forward with their FY22 program of work with a Regional target of 420 MMBF and that the Pod allocations will be the same as last year.

In addition to their green program, the Region is also looking at salvage opportunities. There were 420,000 acres burned in the Region, and they are looking at setting up an incident command center to oversee salvage efforts. Of the total acres burned, there appears to be at least 54,000 acres where salvage could occur according to land use allocations (42,000 acres in Montana, and 12,000 acres in Idaho). Carol McKenzie and Chris Savage will be coordinating these efforts. The Region met with each Forest where salvage opportunities are available during the week of October 11. The table included in [this link](#) shows the planned salvage.

Marten reported that the FWS is still understaffed, making it difficult to get consultation completed in a timely manner. The Forest Service currently funds two full time FWS positions and are looking at providing additional funding for two or three more positions. The Helena-Lewis and Clark Revised Forest Plan should be signed soon, while the Custer-Gallatin Revised Forest Plan should be completed by the end of the year or in early 2022.

AFRC Government Relations Director Heath Heikkila gave a report on what is happening in Washington D.C. Some of the highlights included fixes to the Cottonwood decision, fixes to the Good Neighbor Authority program to allow counties and Tribes to reinvest project revenues, extending SRS for three years, and working on the bipartisan infrastructure bill that would include an additional 3,000-acre categorical exclusion. Mike Hannah from Senator Risch's office, Dan Stusek from Senator Daines' office and Dan Jessop from Congressman Rosendale's offices also provided updates on how their offices are promoting forest health and increasing the pace and scale of management.

AFRC General Counsel Sara Ghafouri gave an update legal program activities in Montana. That work includes a challenge to the Flathead Revised Forest Plan, where anti-forestry groups are wanting to put a hold on all timber sales that have been sold under the new Forest Plan. Sara also reported on an appeal before the Ninth Circuit challenging the Custer Gallatin Forest Plan and the North Bridger, North Hebgan and Bozeman Municipal Watershed Projects. AFRC filed an amicus curiae brief on behalf of Montana-DNRC and the Custer Gallatin Working Group in July in support of the government. The claim in this appeal is that the EIS for the Custer Gallatin Forest Plan and site-specific NEPA analysis for the projects need to be supplemented because they did not address new information related to climate change.

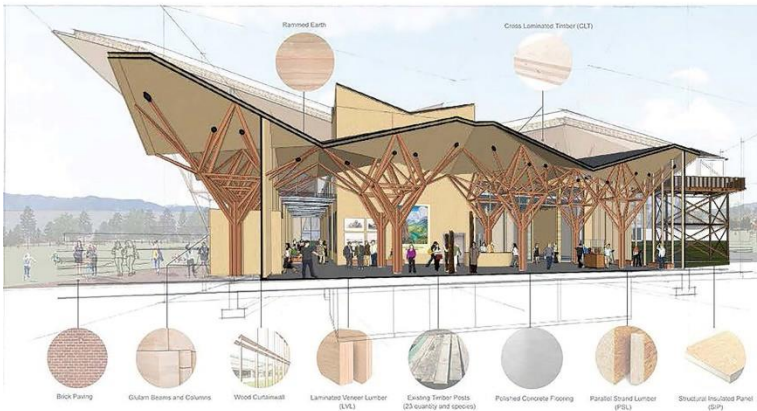
AFRC successfully moved to intervene in the Horsefly Project on the Helena-Lewis and Clark National Forest. This project is in mostly dead lodgepole and 71% of the Project is in the WUI. AFRC was also successful in intervening in the End of the World and Hungry Ridge Projects on the Nez Perce-Clearwater National Forest. Sara reported on the Ripley Project on the Kootenai National Forest. There have been two projects sold out of Ripley; the Clay Day was purchased by Stimson Lumber and is a GNA Project and the Bullseye was purchased by Thompson River Lumber. She also summarized AFRC's work on the CEQ NEPA regulations and the Forest Service NEPA regulations lawsuits.

Tom Partin, AFRC consultant in Montana, visited the 7-Mag timber sale on the Lolo National Forest to look at some tethered logging.



We were pleased to see that the Forest was allowing this ground-based machinery to be used on slopes over 45%. There is less damage to the residual stand using the mechanical feller buncher and less soil disturbance on the skid trails. We hope the Region looks at the results from this and other projects where tethered logging is being used and allows this logging method more broadly, since it can be less expensive than traditional cable logging and much cheaper than helicopter logging. / Tom Partin

National Conservation Legacy Center (Missoula, MT) Making Progress



Much progress has been made in efforts to build the [National Conservation Legacy Center](#), a museum dedicated to the history of the U.S. Forest Service and its many partners in conservation.

The Center, located in Missoula, Montana will feature both a world class design and world class exhibitions. The Museum is working with exhibition design firm, Art Processors, to develop the exhibits and the stories used to tell the history of the forest

products industry, collaboration, and critical partnerships to manage and conserve the public lands we all love.

With the large gifts received in 2020 and 2021, the National Museum of Forest Service History (a 501 (c)(3) nonprofit organization, independent of the US Forest Service) is very close to completing the \$10.5 million Capital Campaign and starting construction of the new Center.

The Museum decided to improve upon the Center’s original design from 2008 so that it maximizes the use of innovative wood products and in particular mass timber technology – a building framing system that uses large solid-wood panels for wall, floor, and roof construction.

In 2021, the Museum hired renowned mass timber architect Tom Chung, principal architect with Leers Weinzapfel Associates, to assist in a redesign of the Center. A design working group, led by Museum

Executive Director Lisa Tate and Tom Chung was established and includes many experts to help guide the design.

“As a result of this effort, the Museum has secured several partners in our project, all providing in-kind services or material donations. Finishing the Museum’s Capital Campaign is our highest priority,” Tate said. “The Center design is maximizing the use of wood and, in particular, mass timber technology. We are currently at 80% of our goal, with \$2.2 million left to raise before construction can begin of the flagship building on the Museum’s Missoula campus.”

Richard Stem, a Forest Service retiree, along with many team members that includes Phil Aune and Lynn Sprague are working with the architect and recently completed estimates of the types and quantities of wood needed for the building. The team is now contacting forest industry partners regarding donations of wood and windows. They are striving to maximize donations of building materials and services, including architectural and engineering, which reduces the funds they need to raise. Stem and the team remain optimistic that 2021 could be the year they finish the Capital Campaign.

“As part of the campaign, the donation of the lumber is critical, and we are part way there now with companies that have committed, and we are now branching out to complete the commitments and recognition that would follow in order to complete the amount needed” said Richard Stem. “Building with and showcasing innovative wood products will literally demonstrate the success story of responsible forest management, green building materials, and the importance of mills and infrastructure in meeting our shared conservation goals.”

If your company would like to support the Center’s Capital Campaign, please contact Richard Stem via [email](#) or at (303) 981-7640. To learn more about the museum, you can visit their [website](#). /Travis Joseph