



Registration Now Open for 2022 Annual Meeting (In-Person)

Registration is now open for AFRC Annual Meeting from April 19-21, 2022 at Skamania Lodge in Stevenson, Washington. You can view the agenda, register for the meeting and book your room by [clicking here](#).

Our annual meeting gives you unique opportunities to network with colleagues in the industry, learn about key issues and policy innovations affecting federal forest management, and meet with key federal land management executives and decision makers.

Once again we will hold our annual golf tournament on Tuesday, April 19 at Elk Ridge Golf Course, known as the “the best Northwest golf course you’ve probably never heard of.” We’ll then gather for our Welcome Reception at the Riverview Pavilion with spectacular views of the Columbia Gorge.

The agenda will feature elected officials, Washington Commissioner of Public Lands Hilary Franz, forest management and climate change experts, and federal agency leadership during the “Regional Breakout Sessions.” Stay tuned for exciting updates to our meeting agenda!

AFRC looks forward to providing a substantive and timely meeting on some of the most important issues impacting AFRC members and the timber industry. Please [register for the meeting and book your room](#) at Skamania Lodge as soon as possible, as our room block typically fills up fast! For more information, contact Cindi Kaneshige at ckaneshige@amforest.org.

The AFRC Podcast



Episode 5 Guest: Matt Comisky
AFRC Washington State Manager

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

The State of Washington is a top producer of softwood lumber and home to some of the most productive forests in the world. These include over 2 million acres of trust lands managed by the state Department of Natural Resources, which provides essential revenues for public school construction and county and community services. AFRC fights to protect and grow this program in Olympia and throughout the state. Matt Comisky, our Washington State Manager joins us to discuss the benefits of these unique lands and the challenges to their management.

[Click here to listen to Episode 5](#). Our podcast is also available on Spotify!

Washington, DC Update

AFRC and FFRC lead letter to Senate Committee leaders on Build Back Better. Senator Joe Manchin's (D-WV) December announcement that he would not support the Build Back Better legislation handed President Biden and Democrats a defeat on their signature legislative priority. As reported in the [December Newsletter](#), our industry had serious concerns with unnecessary and counterproductive policy restrictions tied to forest management funding that will hamstring the Forest Service's ability to effectively implement forest health treatments.

On January 13, AFRC and the Federal Forest Resource Coalition (FFRC) led an [industry letter](#) to leaders of the Senate Agriculture and Energy and Natural Resources committees going on record with these concerns. With recent comments by Senator Manchin expressing openness to considering Build Back Better climate change provisions, we hope the letter will encourage Congress to pursue effective approaches to improving the health of our federal forests.

Biden Administration Releases Wildfire Crisis Strategy. On January 18, Agriculture Secretary Tom Vilsack and Forest Service Chief Randy Moore traveled to Arizona to announce a [10-year wildfire crisis strategy](#) for "Protecting Communities and Improving Resilience in America's Forests." The plan identifies the need to treat an additional 20 million acres of National Forest System lands over current treatment levels to reverse the growing forest health and wildfire crisis. It also recognizes a need to treat 30 million acres of other federal, state, private and tribal lands also at risk.

Most importantly, the strategy recognizes that millions of acres of federal lands are overstocked and in need of forest health treatments and comes as the Forest Service is working to implement the Bipartisan Infrastructure Legislation, which includes about \$6 billion for hazardous fuels reduction and forest restoration activities. The Forest Service will face significant challenges ramping up treatment activities. While the agency reports annual treatment levels of approximately 2 million acres, this figure includes acres burned in wildfires that the agency considers beneficial and other "restoration" activities.

Agency data indicates that an average of about 120,000 acres annually have received commercial thinning treatments over the past five years. This is down from the previous five-year annual average of 143,000 acres receiving commercial thinning treatments. Only 84,000 acres received commercial thinning treatments in 2021. It will take a massive, coordinated effort to increase treatment levels to reach the scale identified in the wildfire crisis strategy.

Bentz Floor Speech on River Democracy Act. Congressman Cliff Bentz (R-OR) took to the floor of the U.S. House on January 12, to speak in opposition to the River Democracy Act (S. 192), legislation introduced by Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) to designate 4,700 miles of Oregon rivers, streams, draws, and gulches under the Wild and Scenic Rivers Act. The act would overlay about 3,000,000 acres of federal lands with mile-wide buffers – double the traditional ½-mile buffers – restricting management activities and adding new planning requirements to lands managed by the Forest Service and Bureau of Land Management (BLM).

Bentz opened his comments by noting that, if passed, rather than "Wild and Scenic" these lands would be "just waiting to be burned and ruined." The Congressman also spoke to the overwhelming opposition to the bill from his district: "The overwhelming majority of my sixty-two county commissioners have

serious and unanswered concerns about the dangers the act presents. Chief among them is that this designation will prevent what needs to be done to protect these watersheds – placing them in a bureaucratic wasteland where it will take years, if not decades, to initiate and then complete plans that may or may not allow the treatment activities needed right now.” The [full text](#) and a [video](#) of Bentz’s speech are available online.

Senator Wyden has dismissed previous criticisms of the River Democracy Act, including Bentz’s [November 16, 2021](#) letter sent to every county commissioner in his district. Wyden has claimed that the River Democracy Act would “turn these river corridors into fire safety corridors” with bill language requiring federal agencies to “assess wildfire risks” and prepare “fire management plans.” However, fire management plans are primarily focused on actions taken once a fire starts, rather than authorizing or directing federal agencies to use science-based forest management to reduce fuel loads and the risk of wildfires.

Below are key excerpts from a January 22 [editorial](#) by the La Grande Observer, which weighed in on Bentz’s floor speech:

“Political hyperbole aside, U.S. Rep. Cliff Bentz’s concerns raised during a floor speech of the U.S. House of Representatives regarding a bill to protect more than 4,500 miles of rivers and streams in Oregon as part of the federal Wild and Scenic Act are valid and deserve more than a passing glance by voters.”

“The bill may appear to be a winner for urban voters who wish to utilize Eastern Oregon as a handy natural resource-rich theme park for tourists, but for those who live and work in this area, its possible unintended consequences are a real worry.” */Heath Heikkila*

AFRC in the News

- Nick Smith spoke to the [Bend Bulletin](#) regarding the River Democracy Act.
- AFRC’s perspective on the Biden Administration’s wildfire and forest management strategy is discussed in a [Oregon Public Broadcasting story](#).
- Tom Partin published an oped in the [Missoulian](#), pushing back on anti-forestry critics following the release of the Biden Administration’s wildfire strategy.
- Nick Smith was interviewed by [Columbia Insight](#) regarding proposed legislation affecting the Mt. Hood National Forest.

Ninth Circuit Vacates Denial of Preliminary Injunction Projects Overlapping with Southern Sierra Nevada Fisher Population

On January 25, the Ninth Circuit issued an [unpublished memorandum decision](#) vacating the district court’s denial of a preliminary injunction implicating 31 projects on the Stanislaus, Sierra, and Sequoia National Forests. The decision came from a panel of three judges- Judges Mark Bennet and Ryan Nelson, both Trump appointees, and Judge Ronald Gould, a Clinton appointee.

Last year, Unite the Parks, Sequoia ForestKeeper, and Earth Island Institute moved for a preliminary injunction asserting [claims under NEPA and ESA](#). Plaintiffs’ ESA claim argued that FWS did not

conduct or update the estimated Southern Sierra Nevada fisher (SSN fisher) population and, instead, relied on older habitat-based models. In plaintiffs' view, these models predate the changes to the Sierra Nevada area due to bark beetle infestations, extended drought, massive wildfires, and large-scale tree die-off.

The SSN fisher was listed under the ESA in May 2020. This medium-sized carnivorous mammal is part of a geographically isolated and genetically unique population of the Pacific fisher living in the dense, mature forests of the southern Sierra Nevada Mountains. One of the greatest threats to the SSN fisher is habitat destruction through natural disturbances like drought, insect-driven infestation, and severe wildfires. Between 2012-2015, regional drought resulted in an estimated 39% decline in habitat. Many of the Forest Service's projects are designed to address these threats while ensuring that they are not likely to jeopardize the SSN fisher. In the Programmatic Biological Opinion, FWS concluded the projects at issue were not likely to jeopardize the SSN fisher based on the conservation measures and continued monitoring, the fact that activities will occur on only 1-2% of fisher habitat on forest lands each year, and that the majority of impacts will be offset by long-term beneficial effects to fisher habitat through increased forest resilience efforts.

District court Judge Drozd denied plaintiffs' request for a preliminary injunction on 31 of the 45 projects identified in their complaint. The court held that plaintiffs failed to present "the information they assert was available to defendants, when that information became available, or what type of analysis defendants would have been able to conduct prior to the issuance of the 2020 or 2021" Programmatic Biological Opinion for the SSN fisher. "Given the lack of such a showing, plaintiffs have failed to demonstrate that they have presented serious questions as to their claim based on this theory of ESA liability, let alone established their likelihood of success on the merits of that claim." The Ninth Circuit disagreed.

On appeal, plaintiffs asserted that FWS violated the ESA by not using certain raw post-2020 wildfire vegetation data to estimate the current SSN fisher population. The Ninth Circuit found that "the denial of injunction was premature as to the fisher population and should not stand at this time. We vacate that denial of injunction with regard to plaintiffs' ESA claim relating to the population of the fisher in its West Coast range." Specifically, the panel found that the record in this case was undeveloped "such that there are no identifiable grounds on which we could uphold the district court's denial of a preliminary injunction on the ESA claim as to the raw post-2020-wildfire vegetation data and the current size of the Sierra Nevada fisher population . . . Nor could we at this time conclude that the data requires injunctive relief for plaintiffs on their ESA claim relating to fisher population. We remand this issue to the district court for further proceedings on whether Unite the Parks can satisfy the standard for a preliminary injunction on the merits."

On remand, the panel requested that the district court: (1) order the Forest Service and FWS to advise the district court on whether the raw post-2020-wildfire vegetation data is compatible with existing methods or models for estimating the fisher population; (2) order the Forest Service and FWS to advise whether it would have taken too long to model a new fisher population estimate from the raw post-2020-wildfire vegetation data considering any urgent need to complete the 31 projects; (3) inquire into any other questions pertinent to whether the raw post-2020-wildfire vegetation data makes any difference in the ESA analysis of these projects, including why FWS did not use this data in formulating the 2021 Programmatic Biological Opinion, why FWS can or cannot use this data, where FWS is now in its analysis of the fisher population, and what has been done with this data; and (4) reevaluate plaintiffs'

request for a preliminary injunction on its ESA claim in light of any update to the size of the SSN fisher population based on “the best scientific and commercial data available’ when formulating a BiOp.”

The Ninth Circuit rejected the remaining ESA claims related to a fire science study and declined to address the other preliminary injunction factors beyond those addressed by the district court. Instead, the panel advised that the issues on remand are limited to whether plaintiffs can secure an ESA-based preliminary injunction based on post-2020-wildfire vegetation data, and whether the answer to this question affects the NEPA analysis.

While this is certainly a victory for plaintiffs, it is important to note that the panel stopped short of issuing a preliminary injunction or ordering the district court to grant a preliminary injunction. The Ninth Circuit’s decision merely orders the court to reconsider the motion for a preliminary injunction on plaintiffs’ ESA-based post-2020-wildfire vegetation data claim and requests the court order the Forest Service and FWS to weigh in on how that data affects their models and analysis. AFRC will be closely monitoring this case on remand. /Sara Ghafouri

Forest Service Begins Eastside Screens Monitoring

In January 2021, the Forest Service finalized a Decision on a forest plan amendment to adopt the wildlife standard of the Eastside Screens. The standard commonly known as the “21-inch rule” was replaced with a guideline that emphasizes the retention of old and large trees. Large trees were redefined as those greater than 30 inches for white and grand fir, and those larger than 21-inches for all other species; however, harvest of trees greater than these dbh sizes are permitted as the amendment was established as a flexible guideline rather than a firm standard.

The impetus for this change was partly the acknowledgment that empirical studies and science synthesis demonstrated that protection of all trees greater than 21 inches prevented restoration of historical conditions.

Also included in the January 2021 Decision was a requirement to conduct broad-scale monitoring to assess the conservation and recovery of late and old forest structure (LOS), essentially to determine whether the Amendment is effective. To make this LOS assessment, the Decision specifically directs the Forest Service to determine if large trees are increasing in number while creating appropriate species composition. The Regional Forester will conduct an annual review of monitoring data and make a decision every five years whether to continue with the guideline or shift to the “old tree standard” alternative analyzed in the Amendment EA. That standard would firmly prohibit the harvest of any trees over 150 years of age.

The Forest Service hosted a virtual workgroup last month to outline their methods and strategy for conducting this monitoring project and to hear feedback from interested stakeholders. AFRC participated in this workgroup and shared its concerns with the Forest Service’s strategy. Some of specific concerns we voiced are summarized below:

- Large scale, high severity wildfire would significantly reduce the number of large trees across the study area. How will the Forest Service account for such a variable in their monitoring?

- Measuring the amount of large trees across inventory plots is simple. How does the Forest Service propose to capture “appropriate species composition” across those plots?
- LOS is not defined exclusively by large trees per acre. How will this strategy monitor and incorporate appropriate forest structure on a site-specific basis?

The Forest Service plans to host additional periodic workgroups to continue the discussions as well as to inform a potential age-related monitoring question. The January 2021 Decision highly recommended monitoring age in addition to tree size to assess the effectiveness of the amendment. Both the scientific community and the workgroup are urged to provide input to this question through the following link: [comment submission page](#).

Ultimately, it is frustrating that the rationale for completing the 2021 Amendment was partly an acknowledgment that simply maximizing the amount of large trees on the landscape was not an effective way to attain site-specific LOS across the entire eastside of the state, and yet the current monitoring requirements for the effectiveness of the new guideline is based on the amount of large trees on the landscape. We’re hopeful that the Forest Service planning team tasked with this responsibility will develop strategies to account for the complex set of forest attributes that collectively contribute to late and old structure across the various ecotypes of eastern Oregon. */Andy Geissler*

Region 1 Looks to Ramp Up Management Despite Obstacles

For those of you who track my articles in the newsletter regarding the work being done in Region 1 and the individual forests you know those articles are mostly positive. The latest information that has come from Regional Forester Leanne Marten shows once again why they are one of the most progressive Regions in the Forest Service.

After suffering a crippling wildfire season in 2021 which saw over 420,000 acres burn, they are not only looking for the best way to handle the salvage but looking ahead at what is needed to increase the pace and scale of management in the Region. Regarding the salvage effort, the Region put together a regional strike team to focus on efficiencies in dealing with the post-fire salvage and restoration. To help expedite salvage, the Region will be asking for an Emergency Situation Determination on four of the five large fires that will be salvaged using an EA. The other smaller salvage efforts will be using the 250-acre categorical exclusion.

In FY 2021 the Region admittedly missed their target of selling 420 MMBF of timber. However, there was a trifecta of complicating issues including litigation, additional consultation with the U.S. Fish and Wildlife Service (FWS), and timber sales that went no bid. Despite these handicaps the Region hit about 80% of their target volume (not counting the firewood component).

To deal with these handicaps from FY 2021, the Region has reached out to the purchasers to ascertain why the sales went no bid last year and to try and avoid no-bid sales in FY 2022. Because of the large volume of consultation work that the FWS has to deal with, the Region has funded three additional FWS positions to help with new consultations and the backlog they are facing.

Looking ahead, Regional Forester Marten sent out the below chart to outline her expectations for accomplishments for both timber volume and acres treated for fuels reduction.

Accomplishment Goals by Pod										
	FY22		FY23		FY24		FY25		FY26	
	TIMBR-VOL-SOLD (ccf)	FP-FUELS-ALL (acres)	TIMBR-VOL-SOLD (ccf)	FP-FUELS-ALL (acres)	TIMBR-VOL-SOLD (ccf)	FP-FUELS-ALL (acres)	TIMBR-VOL-SOLD (ccf)	FP-FUELS-ALL (acres)	TIMBR-VOL-SOLD (ccf)	FP-FUELS-ALL (acres)
Eastern	190,000	34,000	200,000	36,000	210,000	38,000	215,000	40,000	220,000	50,000
Western	340,000	45,000	355,000	52,000	370,000	71,000	390,000	102,000	410,000	110,000
North Idaho	310,000	26,000	325,000	32,000	340,000	36,000	355,000	43,000	370,000	50,000
Total Anticipated Regional Target	840,000	105,000	880,000	120,000	920,000	145,000	960,000	185,000	1,000,000	210,000

Marten’s goal all along has been to build the Region’s timber sale program up to 500 MMBF which she hopes to accomplish by FY 2026 (or in 5 years). This goal is much needed by the sawmilling industry in Idaho and Montana that depends on a consistent flow of sawlogs from those national forests. During that 5-year period she also hopes to double the number of acres being treated for fuels reduction from 105,000 acres up to 210,000 acres. Considering that recent data has shown that 60 million acres of National Forest lands in the western United States needs treatment and fuels reduction work, this Region 1 plan is a step in the right direction to get many of those unhealthy acres treated. Marten noted that the new infrastructure bill may shift the numbers around to different priority areas and PODs based on future program guidance, but the trend is definitely in the right direction.

Litigation is another issue holding up projects and requiring additional work for the individual forests and for FWS when reconsultation is needed. The chart below shows the most recent list of timber sales under litigation.

	Sum of Estimated Acres	Sum of Estimated Volume (MMBF)	Count of Timber Sale Name
Montana	24119	250.05	27
Volume not under contract and complaint filed but NEPA decision not enjoined.	2456	25	3
Volume not under contract, NEPA project decision enjoined	2257	17.3	2
Volume under contract and continuing litigation, contracts not suspended	13448	146.95	15
Volume under Contract, NEPA project decision enjoined and contract suspended	3966	39.2	4
Volume under contract and continuing litigation, contract suspended	1992	21.6	3
Idaho	11043	188.3	14
Volume not under contract and complaint filed but NEPA decision not enjoined.	7197	107.8	8
Volume under contract and continuing litigation, contracts not suspended	1710	35.1	2
Volume under Contract, NEPA project decision enjoined and contract suspended	2136	45.4	4
Grand Total	35162	438.35	41

Having 41 timber sales tied up in litigation in Idaho and Montana totaling 438 MMBF (one entire year of sales volume) handicaps the Region, but they are methodically working through each case.

AFRC and our members appreciate the can-do attitude from the staff in Region 1. Their program shows a pattern of strong leadership from the top, and a desire from all the staff in the Region to meet the goals and targets given to them. I am sure this can-do approach was one of the reasons Carol McKenzie, Director of Forest Management for Region 1, was one of the co-recipients of the prestigious Richard Fitzgerald award that is presented to those who have demonstrated leadership, excellence in forest management, and outstanding commitment to working with partners in the field of forest management. We look forward to maintaining our strong partnership with Region 1 and helping them achieve their goals. /Tom Partin

AFRC Weighs in on Washington State’s “Climate Commitment Act” Plan

Last year, the Washington Legislature passed the [Climate Commitment Act \(CCA\)](#), which establishes a “comprehensive program to reduce carbon pollution and achieve the greenhouse gas limits set in state law.”

As part of the CCA, the Washington Department of Ecology is tasked with designing rules to implement a cap on carbon emissions, a system of selling and tracking emission allowances, and developing protocols for carbon offsets. Carbon “offsets” are projects or actions intended to compensate for carbon emissions from human activity. Private and public forests and wood products play a major role in climate mitigation, and carbon offsets can impact forest practices.

AFRC’s role in the process is to work to minimize both intentional and unintentional impacts of the CCA to Washington state’s timber supply that supports milling infrastructure, workforce, rural communities, and essential public services. We also used the opportunity to remind policymakers of the international, scientific consensus as expressed in the finding of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) of the United Nations:

“In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fiber or energy from the forest, will generate the largest sustained mitigation benefit.”

In other words, if the IPCC, United Nations, and renowned climate scientists from around the world are promoting sustainable forest management and wood products as a climate solution, so should Washington (and the federal government for that matter!).

We also thought it was important to debunk a new line of attack on Washington’s forest sector: reducing Washington state’s timber harvests on private and public lands – and, thus, reducing the state’s lumber production levels – would improve the state’s carbon footprint. As we clarify in our comments, data driven science shows the opposite is true: reducing timber harvests and lumber production in Washington state will likely *increase* carbon emissions and *reduce* carbon storage opportunities in the long-term.

AFRC submitted a detailed letter to the Department of Ecology on January 26 capturing our concerns, the best available science confirming the importance of wood products and active management to meeting Washington state’s climate goals, and recommendations to sustain and grow the Washington forest products sector’s existing advantage in climate solutions (growing trees, making wood products, and replanting). Our recommendations include:

1. Recognizing and supporting the contributions of the entire forest products sector and the climate mitigation benefits of wood products.
2. Considering net carbon sequestration (including in wood products), rather than focusing narrowly on forest carbon stocks;
3. Recognizing the legal and constitutional mandates that apply to Department of Natural Resources state trust lands that require timber production;
4. Recognizing the unique nature of Washington's forests, wood products industry, and forest practice laws;
5. Accounting for the ability to "multiply" the sequestration capacity of any given acre and focus on long-term sequestration potential;
6. Accounting for leakage and substitution and consider the costs of management changes; and
7. Focusing on active forest management to reduce wildfire risks and carbon emissions, make forests more resilient to climate change, and promote reforestation following wildfires.

[Our comments can be found here](#). This was a significant team effort. We appreciate the feedback we received from members, the information previously developed by NCASI and others, and the scientific and technical support Elaine Oneil provided to AFRC on a contract basis.

We strongly encourage readers interested in this process – and the intersection between forest management and climate change – to review the recommendations and science captured in our letter, and to engage in the process. AFRC will also be engaging with the Legislature on other components of the Climate Commitment Act, including future appropriations from the "[natural climate solutions account](#)" established under the act. The implementation of the CCA could have a significant impact on Washington's diverse and complex forest products industry and supply chains. */Travis Joseph*

Washington Legislative Update

The Washington Legislature convened on January 10 for a 60-day "short" legislative session. AFRC is working with legislators in support of pro-management forest policies and legislation.

On January 14, the Senate and House Natural Resources Committee held a [work session](#) to review [a report](#) prepared for the Washington State Association of Counties by Mason, Bruce and Girard outlining the economic and county revenue impacts from the Marbled Murrelet Long-Term Conservation Strategy (MMLTCS). AFRC participated in a panel that provided perspectives on the MMLTCS and the WSAC report, which found that the plan cost local counties and schools \$1.27 million in direct timber revenue and \$17.3 million every year in county-wide income.

The WSAC report only looked at the impact to state forest transfer (county) trust lands, not the impact to the federal trusts which are likely to at least double the impact felt by the counties. AFRC is engaged in efforts to mitigate for these economic impacts and the loss of timber volume available to local mills.

AFRC has also been working with the legislature on Commissioner of Public Lands Hilary Franz's Keeping Washington Evergreen legislation ([HB 1895/SB 5633](#)). The legislation would recognize the benefits of Washington's working forests, but also focuses on the reforestation needs following recent wildfires and the conversion pressures facing working forests. The legislation would require DNR to

develop a plan to conserve one million acres of forest from conversion to other non-forestry issues and reforest one million acres, including planting additional trees in urban areas.

The bipartisan legislation is being sponsored by Senators Christine Rolfes (D-Bainbridge Island) and Shelly Short (R-Addy) and Representatives Kirsten Harris-Talley (D-Seattle) and Jacquelin Maycumber (R-Republic). Unfortunately, anti-forestry activists used hearings on the legislation to level attacks on timber harvests from both private and state lands similar to testimony provided at recent Board of Natural Resource meetings around a campaign to protect so-called “legacy forests.” AFRC’s testimony focused on the climate and environmental benefits of harvesting timber in Washington state. You can view AFRC’s testimony [here](#).

AFRC has also testified on so-called “Buy Clean” legislation ([HB 1103/ SB 5659](#)) that would create new climate and labor standards for building materials used in state public works projects. AFRC is concerned that the legislation would establish standards that effectively disincentivize the use of wood products, which is the exact opposite policy that should be taken given the carbon benefits of wood versus building materials like steel and concrete. We are hopeful that the sponsors of the legislation will pull together a stakeholder group to address these and other issues before bringing a new bill forward next year.

Finally, AFRC is supporting the passage of [SB 5201](#), which would modernize public notices requirements for Department of Natural Resources timber sales. SB 5201, which was introduced in the 2021 session, originally included an important cedar and alder salvage pilot project on the Olympic Peninsula. The pilot project was included in the 2021 budget; however, the public notice and advertising sections of SB 5201 failed to pass. /Heath Heikkila

AFRC and Lewis County Move to Intervene to Defend Washington DNR’s Point Blank Timber Sale

On January 26, AFRC and Lewis County moved to intervene in an appeal challenging the Point Blank Timber Sale. *See Center for Responsible Forestry v. Washington State Department of Natural Resources*, No. 21-2-00660-21 (Lewis County Superior Court).

The Point Blank Timber Sale was approved by the Board of Natural Resources on November 2, 2021. *See [Board Meeting](#)*. This sale seeks to harvest 5,493 MBF on 82 acres of DNR-managed trust lands, located in Lewis County. The timber sale will generate approximately \$1,915,247 of critical revenue for Lewis County as one of the beneficiaries of the sale.

A newer anti-forestry association, Center for Responsible Forestry, is challenging the Point Blank Timber Sale, focusing its claims on whether DNR adequately demonstrated that the sale complies with the Old Forest Target in the South Coast Habitat Conservation Plan and the 2006 Policy for Sustainable Forests, which provides that the agency must conserve “old growth and target[] other suitable structurally complex forests to meet a 10 percent to 15 percent older-forest target for each Western Washington HCP planning unit, over 70 years.”

However, this challenge is not really about the Point Blank Timber Sale; but rather a collateral attack on the terms of the 1997 HCP and 2006 Policy for Sustainable Forests. Center for Responsible Forestry has recently appealed six DNR timber sales (i.e., About Time, Green Thomas, Point Blank, Bluehorse, Two

Years Out, and Prospero) in various superior courts, all of which raise identical claims. There are also seven additional timber sales (collectively generating 49 MMBF) on hold due to concerns around whether DNR has complied with the Older Forest Target.

Given this effort to attack DNR's timber sale program, AFRC and Lewis County joined forces to ensure that this sale moves forward. The revenue from this sale is critical to Lewis County. Since 2005, funding generated from the sale of trust land timber has ranged from 1.5% to 6% of the County's annual revenue. Proceeds from the Point Blank sale will be dispensed by the County to numerous junior taxing districts, which (based on the location of the sale) will include public schools in the Lincoln Creek area, the Timberland Regional Library, and the Riverside Fire Authority.

Obviously, this appeal is part of a bigger legal strategy by opponents of the trust mandate—like Center for Responsible Forestry—to slow down DNR timber sales, weaken the trust mandate, and shut down the forest products industry. The Grays Harbor Superior Court is set to hear the challenge to the About Time timber sale on March 14, and the Lewis County Superior Court will hear the challenge to the Point Blank Timber Sale on April 6. A positive ruling in this matter (or the challenge to the About Time timber sale) could be persuasive to courts reviewing the subsequent appeals. /Sara Ghafouri

Fourth Circuit Remands the Mountain Valley Pipeline Across the Jefferson National Forest Based on Violations of the 2012 Forest Planning Rule

On January 25, the Fourth Circuit (Judges Thacker, Gregory, and Wynn) issued an [opinion](#) in a consolidated case challenging the Forest Service's and BLM's approval of the Mountain Valley Pipeline that crosses three and one-half miles of the Jefferson National Forest. This is the second time that environmental groups have challenged the agencies' approval of the pipeline. In this subsequent appeal, Judge Thacker authored a unanimous decision that vacated the agencies' respective Record of Decisions based on violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Mineral Leasing Act (MLA).

One of the issues implicated by this appeal is an interpretation of the 2012 Planning Rule. The 2012 Planning Rule imposes “substantive requirements” for sustainability, diversity of plant and animal communities, multiple land uses, and timbering that are intended to “maintain or restore” ecological integrity and ecosystem diversity in national forests while preserving those forests for multiple uses. 36 C.F.R. §§ 219.8–219.11. The 2012 Planning Rule further provides that a forest plan “may be amended at any time,” but it requires that any such amendment be “consistent with Forest Service NEPA procedures,” 36 C.F.R. § 219.13(b)(3). The 2016 Revised Rule requires that the Forest Service, when amending a forest plan, determine which “substantive requirements” of the 2012 Planning Rule are “directly related” to the forest plan amendment and “apply” those requirements “within the scope and scale of the amendment.” 36 C.F.R. § 219.13(b)(5).

Previously, the Forest Service, using FERC's EIS, “initially decided to amend the Jefferson Forest Plan to accommodate the Pipeline but limit the amendments' applicability only to the Pipeline project. Consequently, the Forest Service's ROD modified 11 standards in the Jefferson Forest Plan that were inconsistent with the Pipeline project and waived 3 of those 11 standards.” In the previous proceeding, the Fourth Circuit had remanded the RODs to the Forest Service “to more thoroughly analyze the Pipeline's

sedimentation impacts and apply the 2012 Planning Rule’s soil and riparian resources requirements to the proposed Jefferson Forest Plan amendments for the Pipeline.” *Sierra Club*, 897 F.3d at 596, 603.

On remand, the Forest Service’s Supplemental EIS elaborated on the 2012 Planning Rule’s application to the Pipeline. “In particular, it determined that 10 of the 2012 Planning Rule’s substantive requirements were directly related to the amendments to the Jefferson Forest Plan for the Pipeline.” On appeal, petitioners argued that the Forest Service failed to apply its 2012 Planning Rule’s directly related substantive requirements within the scope and scale of the amendments to the Jefferson Forest Plan to accommodate the Pipeline, as the 2016 Revised Rule requires. In the renewed ROD, the Forest Service acknowledged that the amendments were “directly related” to these requirements, but it maintained that it has complied with the requirements because it “applied [them] to provide protection to resources without substantial lessening of protections for these resources.”

AFRC submitted an [amicus curiae brief](#) on behalf of itself, Black Hills Forest Resource Association, Colorado Timber Industries Association, Federal Forest Resource Coalition, Intermountain Forest Association, and Montana Wood Products Association because the issues on appeal threaten to undermine the ability to use site-specific Forest Plan amendments under the 2012 Planning Rule. The gravamen of petitioners’ argument is that the 2012 Planning Rule “does not simply prohibit backsliding. Rather, the substantive requirements mandate that the Forest Service affirmatively demonstrate that plan elements are sufficient to ‘maintain or restore’ various resources.” In our view, petitioners’ interpretation misreads the 2012 Planning Rule. The Rule requires inclusion of “components,” such as standards or guidelines, “to maintain or restore” the various resources. And while Forest Plans must work in the direction of maintenance or improvement of conditions, that is not the same thing as demonstrating that maintenance or restoration will in fact occur.

The Fourth Circuit disagreed. As an initial matter, the Court determined that the Forest Service and BLM erroneously failed to account for real-world data suggesting increased sedimentation along the pipeline route. With respect to the 2012 Planning Rule, the Court determined that “a forest plan ‘must include . . . components . . . to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area.’ Because the Forest Service did not sufficiently consider the Pipeline’s actual sediment and erosion impacts, . . . the amendments to the Jefferson Forest Plan may not ‘maintain’ soil and riparian resources within the scope of the 2012 Planning Rule. And because the Forest Service does not have a clear indication from FERC about the environmental impacts of the use of the conventional bore method to cross the four streams within the Jefferson National Forest, it is unclear whether the amendments to the Jefferson Forest Plan for the Pipeline will even ‘maintain’ the forest’s resources, as the 2012 Planning Rule intended.” The Fourth Circuit also stated that “‘If the Forest Service could circumvent the requirements of the 2012 Planning Rule simply by passing project-specific amendments on an ad hoc basis . . . the substantive requirements in the 2012 Planning Rule . . . would be meaningless.’”

Unfortunately, the Fourth Circuit’s interpretation undermines the Forest Service’s ability to use site-specific Forest Plan amendments under the 2012 Planning Rule. /Sara Ghafouri