



U.S. Forest Service Chief Randy Moore Confirmed for AFRC Annual Meeting



AFRC is excited to announce U.S. Forest Service Chief Randy Moore will speak at our annual meeting, April 19-21, 2022 at beautiful Skamania Lodge in Stevenson, Washington. Chief Moore will share his vision for America's national forests during the Thursday, April 21 session.

The AFRC Annual Meeting brings together leaders in industry and government for focused discussions and interactive panels on public lands management. You can register on-line, review the agenda and book your lodging at Skamania Lodge 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. Please register for the meeting and book your room at Skamania Lodge as soon as possible. Our room block expires March 19 and typically fills up fast! For more information, contact Cindi Kaneshige at ckaneshige@amforest.org.

The AFRC Podcast Episode 6: A Closer Look at Biden's 10-Year Wildfire Strategy

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

In January the Biden administration announced a new 10-year strategy called “Protecting Communities and Improving Resilience in America’s Forests.” To reverse the west's growing wildfire crisis, the strategy seeks to treat an additional 20 million acres of National Forest System lands over current treatment levels. It also comes as the Forest Service is working to implement the Bipartisan Infrastructure bill that includes about \$6 billion for hazardous fuels reduction and forest restoration activities. Heath Heikkila, our Government Affairs director, joins The AFRC Podcast to discuss the strategy and what's needed for the Biden plan to be successful. [Click here to listen](#). Our podcast is also available on Spotify!



Washington, DC Update

President Biden is set to deliver his State of the Union address this week amidst the backdrop of the war in Ukraine, high inflation and soaring energy costs, and a pandemic that appears to be declining in states across the country. With low approval ratings and his agenda largely stalled in Congress, President Biden hopes to use the State of the Union address and the pending Supreme Court nomination of Ketanji Brown Jackson to create momentum heading into the upcoming midterm election. On February 22, Congress passed another Continuing Resolution (CR) to fund the federal government through March 11. Appropriators are expected to divvy up about \$1.5 trillion in discretionary spending between the 12 appropriations bill areas while also considering additional requests related disaster relief and aid to Ukraine in the wake of the Russian invasion.

A bipartisan framework recently announced calls for parity between domestic and defense spending. This could lead to a significant increase in domestic spending and allow Democrats to reverse Trump-era cuts to agencies like the EPA and the Interior Department. If Congress can agree on a long-term spending package by then, federal agencies will have operated under a CR for nearly 5 ½ months. The lack of final budget numbers has negative impacts on many federal agency operations, including the Forest Service timber sale program as they wait to send final targets to the regions.

Climate activists press for action. Following the failure of the Build Back Better legislation to advance in Congress, climate activists are pressing for action on the \$500 billion in clean energy and climate-related funding that was included in the measure. Senator Joe Manchin (D-WV) has signaled support for some of these clean energy and climate provisions, including clean energy tax breaks. Meanwhile, Republicans believe the war in Ukraine and efforts to reduce the reliance of Europe on Russian oil and gas presents an opportunity to press Democrats to reverse President Biden’s cancellation of the Keystone XL pipeline and to support natural gas exports.

Climate Forests Campaign. A coalition of more than 70 green groups announced the creation of a “Climate Forests Campaign” to pressure the Biden Administration to protect “mature trees and forest stands” on federal lands for their carbon storage benefits. According to the group’s [website](#), the mostly anti-forestry organizations are “calling on the Biden Administration to enact a strong, lasting rule across federal public lands that protects mature and old-growth trees and forests from logging, allowing the recovery of old-growth forests that have been lost. These forests are essential to removing climate pollution and storing carbon, safeguarding wildlife, and providing clean drinking water for our communities.” The website makes no mention of the massive emissions of carbon and smoke from the forest health and wildfire crisis fueled by overstocked federal forests. /Heath Heikkila

AFRC in the News

- AFRC’s SW Oregon field tour with Congressman Bentz was covered by [KDRV-TV](#).
- AFRC’s Travis Joseph and Washington Forest Protection Association’s Jason Spadaro co-authored an opinion in the [Everett Daily Herald](#) on the climate benefits of Washington’s forest sector.
- Nick Smith published a opinion in the [Roseburg News Review](#) on the importance of post-fire salvage and hazard tree removal, and the consequences of anti-forestry litigation.

AFRC, Congressman Bentz Visit “River Democracy Act” Gulches

The U.S. Forest Service recently released its [10-year wildfire implementation plan](#) that includes the goal of treating up to an additional 20 million acres on the National Forest System to reduce the risk of catastrophic wildfire.

At the same time, elected officials in Oregon continue to craft bills that would impede federal land managers from meeting this ambitious goal. Most prominent among those bills is the so-called River Democracy Act (RDA), which would designate 4,700+ miles of “river” segments under the Wild and Scenic Rivers Act impacting more than 3 million acres in Oregon. The Forest Service alone estimates that more than 1.5 million acres of federal land in the legislative proposal face a moderate to high wildfire risk.

The Wild and Scenic Rivers Act is intended to preserve certain rivers and their immediate environments with outstanding and remarkable values in a free-flowing condition. [AFRC’s April 2021 newsletter](#) outlined the surprisingly high proportion of segments proposed in the RDA that are not classified as rivers but appeared to be intermittently flowing tributaries. Subsequent field reviews in the spring of 2021 validated those concerns that the RDA was deviating from the intent of the original Act by proposing hundreds of small creeks and gulches for inclusion into the iconic Wild & Scenic River System, many of which do not even contain flowing water for most of the year.

This month, AFRC hosted a field trip with Congressman Cliff Bentz and Jackson County Commissioner Colleen Roberts to visit some of the creeks and gulches nominated in southwest Oregon to daylight the true substance of this bill. Congressman Bentz has been one of the most outspoken critics of the bill, articulating concerns about the bill’s impacts to his constituents, rural communities, and natural resource users and stewards. [You can watch Congressman Bentz’s speech on the floor of the House of Representatives here.](#)



Photos: Congressman Cliff Bentz and AFRC president Travis Joseph speak to a reporter next to Sourdough Gulch on the Rogue River-Siskiyou National Forest. Sourdough Gulch is one among the hundreds of small creeks and dry tributaries proposed for Wild & Scenic designation under the RDA.



The field trip visited Ladybug Gulch, 1916 Gulch, 1917 Gulch (pictured to the left), 1918 Gulch, Sourdough Gulch and Lime Gulch on land managed by the U.S. Forest Service and Bureau of Land Management and offered the Congressman and commissioner a glimpse into what the RDA is truly proposing. The tour attendees were surprised not only by the attributes of the gulches, but also by the dense forest conditions adjacent to them, which are representative of the very types of overstocked forest conditions that warrant active management according to the Forest Service's 10-year Wildfire Strategy.

These gulches in southwest Oregon are not an anomaly of proposed designations in the RDA. Approximately 85% of the segments proposed are not classified as rivers and are peppered throughout the state. We welcome hosting or organizing similar field trips to daylight the substance, likely impacts, and serious concerns of the RDA. To learn more about the River Democracy Act, and to register your opinion with the bill sponsors, [click here](#). /Andy Geisler

Forest Service Receives Disaster Relief Funding; Timber Outputs Continue to Diminish

The Pacific Northwest Region of the U.S. Forest Service was allocated \$291.2 million in disaster relief supplemental funding to be directed to recovery actions associated with wildfires, floods, and other natural disasters. This allocation is a component of the \$1.36 billion of supplemental appropriations provided to the Forest Service through the Extending Government Funding and Delivering Emergency Assistance Act of 2021. Most of the funding directed to the Pacific Northwest will be allocated to National Forests in Oregon, specifically those in western Oregon impacted by the 2020 Labor Day fires. The Mt. Hood, Willamette, Umpqua, and Rogue River-Siskiyou National Forests will receive 85% of the \$252.9 million directed to Oregon. A complete breakdown of the funding allocation can be found [here](#).

According to a [press release](#) on February 16, a portion of the \$30.4 million allocated to the Rogue River-Siskiyou National Forest will be directed to the removal of fire-killed trees posing a safety hazard to forest roads caused by the Slater Fire. Similar expenditure of funds is certain for the Mt. Hood, Willamette, and Umpqua National Forests. Each attempted to removed hazard trees by selling them to the local timber industry for manufacturing into wood products; but were met with lawsuits from special interest groups that halted the removal and utilization of those fire-killed trees. Other activities proposed include road resurfacing, culvert replacements, bridge repair, hazardous material/waste removal, and nursery upgrades.

Counter to conventional thinking, this type of funding influx will likely cause the Region's timber and vegetation management programs to shrink rather than remain stable. For example, as of December 1, 2021, the Willamette National Forest's assigned timber target was 65 million board feet (MMBF). Less than three months later that target was reduced by nearly 50% to 35 MMBF following the allocation of \$78.6 million in disaster relief funding. The cause of this decline is partly of function of reprioritization

to address critical disaster relief needs and partly a function of how this supplemental funding can be used.

There are generally two operative sides to every project on U.S. Forest Service land: the planning side (NEPA analysis, wildlife & heritage surveys, timber sale layout, etc.) and the implementation side (completion of the work). Since each side is dependent on the other to achieve project success, each side must be adequately funded in a well-balanced manner. Infusions of supplemental funding, such as the disaster relief fund, have a tendency to disrupt this balance since its allocation is typically limited to the implementation side of the equation and not to the planning side.

For example, the Forest Service may allocate \$10 million of supplemental funding to resurface damaged roads. That money will be directed to the material and labor necessary to do the resurfacing. However, none of that money will enable the Forest Service to hire a new engineer to plan and oversee this work, or a new soil scientist to analyze the impacts of the roadwork. The Willamette National Forest recently pointed to engineering gaps as partial cause for the reduction of their timber outputs, as engineers are redirected from timber sale planning to disaster relief planning.

Another scenario that is currently playing out on several National Forests impacted by wildfire is related to their inability to remove and sell fire-killed trees posing a hazard to roads. The Rogue River-Siskiyou National Forest will allocate funding to fell and dispose of those hazard trees, but none of that funding will support the planning and analysis necessary to facilitate such work. Once again, the Forest Service will be compelled to redirect its current staffing resources and by doing so will likely suffer shortfalls in their vegetation management and timber programs.

If the vast majority of supplemental funding continues to be directed solely to the implementation side while the planning side is neglected, we will likely see future renditions of this year's Willamette National Forest program, only at a much larger scale. This should be a troubling sign for anyone who is interested in seeing the \$4 billion from the Infrastructure Investment and Jobs Act directed to forest management result in more acres treated for hazardous fuels reduction or elevated timber outputs. */Andy Geissler*

Washington DNR Under Pressure on Mature Forests, Trust Mandate and Past Promises

For months anti-forestry activists have been mounting a sustained campaign to pressure the Washington Department of Natural Resources (DNR) and the Board of Natural Resources (Board) to protect so-called "legacy forests" on DNR state trust lands. The campaign initially centered around a proposal by former commissioners of public lands Peter Goldmark and Jennifer Belcher who called for stopping all timber harvest activities on DNR state trust lands in western Washington as part of a climate mitigation effort. That proposal received little serious support.

In the month since then activist groups have become more organized and more aggressive in their tactics. Some of the leaders in the group have connections to anti-forestry organizations in Oregon that were at the center of efforts to shut down harvests on federal lands. Controversy about the harvest of certain older trees on state trust lands has galvanized anti-forestry activists, who regularly provide testimony at monthly Board meetings and appeal DNR timber sales in court. Their stated objectives range from shutting down all timber harvests on state trust lands to "protect the lungs of the planet" to setting aside

about 80,000 acres of older and legacy forests in addition to the nearly 170,000 acres of older and legacy forests already removed from management. They are also very active using social media and the press to amplify their message.

Last Spring DNR responded to this pressure by withholding sales from auction that include areas opposed by the activists, which has grown to seven sales totaling 49 mmbf. Additionally, field staff have recently been directed under interim guidance to remove any stands that are 5 acres or greater in size and are 120 years old or older (pre-1900) from timber sales that have not been approved by the Board.

Many of the stands within sales being held from auction, as well as the stands reportedly being removed from sales, were previously encumbered by years of delay in finalizing the Marbled Murrelet Long-Term Conservation Strategy (MMLTCS) to state trust lands Habitat Conservation Plan (HCP). When DNR finalized the plan in 2019 it cited the benefits of releasing 100,000 acres of state trust lands for harvest, including many of these older forests. DNR's latest action has beneficiaries, lawmakers, and the purchasers of DNR timber concerned that these actions directly undermine the certainty and stability that was promised through the HCP and MMLTCS.

On February 17, the chairs and ranking members of the House and Senate Natural Resources Committees, Sens. Kevin Van De Wege (D-Sequim) and Judy Warnick (R-Moses Lake) joined Reps. Mike Chapman (D-Port Angeles) and Bruce Chandler (R-Zillah) to send a [letter](#) to the Board outlining these and other concerns, noting:

“We are deeply disturbed that the predictability and stability promised by the HCP and the MMLTCS is not being realized. Trust beneficiaries, businesses, and communities reliant on DNR trust lands feel whipsawed. Between the HCP, the MMLTCS, and other policy constraints adopted by the Board nearly 50 percent of DNR’s state trust lands in western Washington are now withdrawn from sustainable timber management. Additional withdrawals will further harm rural communities, public services and threaten the ability of Washington’s forest products industry to meet our domestic demand for the climate-friendly wood products needed to build Washington’s future homes, schools, and workplaces. Sadly, these products will be imported from across the globe rather than being sustainably produced here in Washington under some of the most stringent environmental protections in the world.”

The Board has not made a formal decision or outlined a process by which it will consider reviewing its policies for old growth. AFRC is working to organize the beneficiary community and other legislators in support of DNR state trust lands and the trust mandate. Healthy Forests, Healthy Communities has also launched an [advocacy campaign](#) to generate emails to the Board supporting the timber program and current policy. /Heath Heikkila

Region 1 Completes Two Forest Plan Revisions

The Helena-Lewis and Clark (HLC) and the Custer-Gallatin (C-G) National Forests have recently completed their Forest Plan Revisions. The Final Record of Decision for the 2,883,227-acre HLC was issued in October 2021, and the Final Record of Decision for the 3,046,000-acre CG was issued in January 2022.

These National Forests with a combined area of 5,929,227 acres are important to the milling infrastructure located in central and eastern Montana and southwest South Dakota. AFRC and our members participated in the revision process to make sure forest management and timber harvest had an equal standing with those interests who want to see more and more of our National Forests set aside or locked up for single issue management purposes such as wilderness, roadless, wild and scenic, and other uses.

It goes without saying that there are many demands put on our National Forests nationwide, but outdoor recreation is very important to the National Forests in Montana. Finding a balance of all uses was a difficult process. Both Forests designated more lands for potential wilderness—seven potential wilderness areas on the HLC totaling 152,948 acres and eight potential wilderness areas on the CG totaling 139,425 acres. In addition, the HLC identified 45 rivers (approximately 361 miles), and the CG identified 30 rivers (433 miles) for consideration as wild and scenic.

The goal of both Plans is to restore the forested areas back to the Historic Range of Variability (HRV). How quickly this gets done and the expected annual timber harvest volume depends on several factors including forest management needs, budgets, interest in help from outside groups and agencies, and most importantly the number of acres where timber management is allowed. Timber management opportunities was identified into two categories: 1) acres suitable for timber harvest and 2) lands where timber harvest is allowed if it enhances other resources. See table below.

<u>Forest</u>	<u>Acres Suitable for Harvest</u>	<u>Harvest May be Conducted</u>	<u>Total</u>
HLC	667,129 acres	368,814 acres	1,035,943 acres
CG	565,536 acres	614,349 acres	1,179,885 acres

The Forests were able to estimate their decadal and annual timber sale volume using these acreages. The projected timber sale volume for the HLC is about 35 mmbf, and the CG is about 16 mmbf. These numbers are based on current Forest Service budgets, but several factors may allow these volumes to increase. First, these numbers do not include salvage and both Forests have had a lot of salvage due to insects, disease, and fire. Second, outside funding from the Montana DNRC or other parties could help put up Good Neighbor Authority projects which would be additive volume. And third, the Infrastructure bill should bring more management dollars to the Region. AFRC and our members will be working with the Forests and our partners to ramp up forest management to help get these Forests back to their HRV. /
Tom Partin

AFRC Legal Update

Favorable Ninth Circuit Ruling Regarding the Cuddy Valley Project. On February 4, the Ninth Circuit issued a [favorable ruling](#) in a challenge to the Cuddy Valley Project located on the Los Padres National Forest. *See Mountain Communities for Fire Safety et al. v. Elliott et al.*, No. 20-55660. The majority panel included two President Trump appointees—Judges Ryan D. Nelson and Kenneth K. Lee— with Sidney H. Stein, a District Court Judge sitting by designation, dissenting.

The Cuddy Valley Project is a shaded fuelbreak project, which was identified in the Mt. Pinos Community Wildfire Protection Plan and within the Los Padres National Forest Strategic Fuelbreak Assessment as “strategic for wildfire and prescribed fire management.” Many of the Jeffrey and pinyon pine trees in the project area are at “imminent risk” of bark beetle-associated mortality due to overcrowding. The project was authorized under the timber stand improvement categorical exclusion

(CE), 36 C.F.R. § 220.6(b), such that the Forest Service was not required to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) since there were no “extraordinary circumstances” present that would warrant further analysis. The timber stand improvement CE allows for “[t]imber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction” and include “[t]hinning or brush control to improve growth or to reduce fire hazard”

On appeal, plaintiffs-appellants challenged the Forest Service’s reliance on the timber stand improvement CE, arguing that “timber stand improvement” work is limited to stands in the sapling stage and commercial harvest activities do not fall within the scope of the CE. AFRC submitted an *amicus curiae* brief to address how the timber stand improvement CE is not limited to the thinning of “only sapling-sized trees” and how the Forest Service was not required to consider the “intensity factors” listed under 40 C.F.R. § 1508.27, which only relates to EAs, in its extraordinary circumstances analysis.

The majority panel held that the timber stand improvement CE “unambiguously allows the Forest Service to thin trees, including larger commercially viable ones, to reduce fire hazard without having to conduct an EIS or EA. Its plain language does not limit thinning by tree age, size, or type. Nor is thinning defined to exclude commercial thinning. If the thinning project reduces fire hazard and meets certain other conditions, [the timber stand improvement CE] greenlights the project, even if it means felling commercially viable trees.” In determining the CE’s plain language, the panel relied on the definition of “timber stand improvement” in the Society of American Foresters’ Dictionary, which was expressly referenced in AFRC’s *amicus curiae* brief.

The majority panel also held that the Forest Service did not have to examine the intensity factors when analyzing whether “extraordinary circumstances” prevented the use of the timber stand improvement CE. “To require an agency to analyze the extraordinary circumstances factors once (under resource conditions), and then again under merely renamed factors, would be ‘inconsistent with the efficiencies that the abbreviated categorical exclusion process provides.’”

Mixed Ninth Circuit Ruling Regarding the Tecuya Ridge Project. On February 4, the Ninth Circuit issued a [mixed ruling](#) in a challenge to the Tecuya Ridge Project located on the Los Padres National Forest. *See Los Padres ForestWatch et al. v. U.S. Forest Service*, No. 20-55859. The panel issuing the decision was the same panel as the Cuddy Valley Project appeal, given that the two appeals involved related issues and were located in the same geographic area. District Judge Stein, sitting by designation, was the author of the majority decision and Judge Nelson dissented with certain aspects of the decision. AFRC, California Forestry Association, and Associated California Loggers were defendant-intervenors.

The Tecuya Ridge Project is shaded fuelbreak project that overlooks the mountain communities of Lebec, Frazier Park, Lake of the Woods, Pine Mountain Club, and Pinon Pines Estates. The fuelbreak is in close proximity to the Cuddy Valley shaded fuelbreak and was also authorized under the timber stand improvement CE. The purpose of the project is to create a fuelbreak to “provide safe and effective locations from which to perform fire suppression operations,” to “slow the spread of wildland fire,” to “reduce the potential for the loss of life, property, and natural resources,” and to “increase the forest’s resilience to insects and diseases.” (*See* [November 2019 Newsletter](#)). The Tecuya Ridge Project authorized thinning 1,626 acres of forest, with approximately 1,100 acres within a protected area called the Antimony Inventoried Roadless Area (IRA). Under the “Roadless Rule,” timber harvest is generally

prohibited but allows for some exceptions. As relevant in this case, timber harvest may occur in inventoried roadless areas if the Responsible Official determines that “[t]he cutting, sale, or removal of *generally small diameter timber* is needed” to “reduce the risk of uncharacteristic wildfire effects” and “will maintain or improve one or more of the roadless area characteristics as defined in § 294.11.”

Although the panel upheld that the Forest Service’s determination that the project will “maintain or improve” the Antimony IRA’s characteristics, the majority panel determined that Forest Service’s conclusion that 21-inch dbh trees were “generally small timber” was arbitrary and capricious. The Los Padres Forest Plan defines large-diameter trees as those of over 24-inches dbh but did not define a small diameter tree. The majority panel found no record evidence to support this determination and that the Forest Service failed to articulate a satisfactory explanation – in the administrative record, in briefing, and at oral argument. As a result, the panel could remand the Forest Service to substantiate its conclusion that 21-inch dbh trees are “generally small” within the project area, consistent with the Roadless Rule. Judge Nelson dissented with respect to this aspect of the decision.

In addition, the panel upheld the Forest Service’s decision to authorize the project under the timber stand improvement CE. The panel noted that in the related Cuddy Valley Project appeal, the panel agreed with the Forest Service’s reading of the timber stand improvement CE such that the sole remaining issue was whether the Forest Service’s decision to apply the CE to the project was arbitrary and capricious because it failed to analyze fuelbreak efficacy as a potential “extraordinary circumstance” that would preclude the application of any CE to the project. The panel disagreed with plaintiffs-appellants and found that the Forest Service’s determination that no extraordinary circumstances prevented its application of timber stand improvement CE was not arbitrary and capricious, and that the agency appropriately analyzed each resource condition that should be considered in determining whether there were extraordinary circumstances related to the proposed action.

Based on this mixed ruling, the Forest Service is evaluating how to best comply with the decision with respect to the treatments in the Antimony IRA. For both the Cuddy Valley Project and the Tecuya Ridge Project appeals, plaintiffs-appellants have until March 22 to file a motion for rehearing either by the panel or en banc.

Favorable District Court Ruling Regarding the Seiad-Horse Risk Reduction Project. On February 9, Judge Nunley from the U.S. District Court for the Northern District of California issued a [favorable ruling](#) granting Federal Defendants’ and AFRC’s motions for summary judgment regarding a challenge to the Saied-Horse Risk Reduction Project on the Klamath National Forest. *See Klamath-Siskiyou Wildlands Center et al. v. Grantham et al.*, No. 2:18-cv-02785.

The project was designed following the 2017 Abney Fire to reduce safety hazards and reduce the risk of future large-scale high severity fire losses of late-successional habitat. The project included 39 miles of roadside hazard tree removal and area salvage of 1,269 acres, mostly in the Johnny O’Neil late successional reserve (LSR). The project was originally enjoined by the district court, but in a remarkable turn of events, the district court reversed course and stayed the injunction pending appeal in May 2019. *See [June 2019 Newsletter](#)*. That meant that full implementation of the project was able to occur while the case was before the Ninth Circuit. In November 2019, the Ninth Circuit reversed the district court’s grant of a preliminary injunction, and the case went back to the district court for merits briefing. *See [November 2019 Newsletter](#)*.

The parties fully briefed the merits in May 2020, and all of the commercial harvest activities were completed and the contracts closed in March 2020, before the district court issued its decision. As a preliminary matter, the district court held that the case was not moot because “the Court could order Federal Defendants to issue an environmental impact statement at any time” with respect to the remaining noncommercial aspects of the project yet to be implemented.

Regarding the merits of the case, the court first addressed whether the project complied with the Northwest Forest Plan’s Aquatic Conservation Strategy. The question before the court was whether the Aquatic Conservation Strategy permits “short-term degradation of water quality in pursuit of long-term restoration.” The court held that plaintiffs “have not provided any authority holding short-term negative consequences of an agency action necessarily violate the Aquatic Conservation Strategy,” and the court deferred to the Forest Service’s interpretation of its own Forest Plan.

Next, the court rejected plaintiffs’ challenge to the project’s compliance with the Northwest Forest Plan’s guidelines on snag retention in late-successional reserves. Plaintiffs relied on a Ninth Circuit decision in *Oregon Natural Resources Council Fund v. Brong*, for the proposition that any logging of snags likely to stand until the forest produces new snags is a violation of the Northwest Forest Plan’s guidance to focus on retaining snags. In plaintiffs’ view, *Brong* established a bright-line rule that the salvage of snags in an LSR violates Forest Plans, regardless of the facts of the particular case. A similar issue was raised in a previous AFRC case where a tribe challenged the Westside Fire Recovery Project, *Karuk Tribe v. Stelle*, 671 F. App’x 507 (9th Cir. 2016), but the Ninth Circuit upheld the salvage logging in the LSR and distinguishing *Brong*. Here, the district court similarly distinguished *Brong*, finding that the Forest Plan does not have mandatory language to retain all snags and that the agency’s objective was to prevent future wildfires, not merely economic gain. The court also rejected plaintiffs’ argument that the project did not comply with the Northwest Forest Plan’s guidance on habitat suitability for the fisher, marten, goshawk, wolverine, great gray owl, and the northern spotted owl. Finally, the court held that the Forest Service was not required to prepare an EIS for the project.

Gray Wolf Delisting Decision Struck Down by the District Court. On February 10, Judge White from the Northern District of California [granted](#), in part, plaintiffs’ challenge to the U.S. Fish and Wildlife Service’s (FWS) decision to delist the gray wolf population for two previously listed entities—the Minnesota entity and the 44-state entity. The Final Rule stated that delisting was appropriate because neither the Minnesota entity nor the 44-state entity qualified as species, subspecies, or district population segments under the Endangered Species Act (ESA), but went on to evaluate whether the entities met the ESA’s requirements to warrant continued protection. This consolidated case received national attention, with the State of Michigan, the State of Oregon, several federally recognized tribes, and other organizations filing amicus curiae briefs. AFRC joined an industry coalition [amicus curiae brief](#), with the American Farm Bureau Federation, American Sheep Industry Association, National Cattlemen's Beef Association and Public Lands Council, in support of the delisting decision.

Plaintiffs raised several arguments as to why the delisting rule was unlawful. First, the court’s decision focused on whether the government’s primary basis for delisting the gray wolf—that the gray wolf entities are not “species”—was arbitrary and capricious. The government’s position was arguably inconsistent with the lengthy regulatory history of listing various gray wolf distinct population segments and other gray wolf entities. The court concluded that there is nothing in the ESA that suggests that

Congress intended the ESA amendments to remove protections for already-listed entities. The court also noted that the delisting rule contradicted FWS's position because it went on to consider the status of the gray wolf in several configurations and apply the ESA's delisting criteria to those configurations.

Second, the court also held that FWS failed to evaluate the "full-listed" gray wolf species, and instead focused on three configurations of wolves in different entities. According to the court, the delisting rule relied on the recovery of certain "metapopulations" of the wolf in the Great Lakes and Northern Rocky Mountains (NRM) "to conclude that wolves across the entire lower 48 states no longer qualify for federal protect." The court found that this approach failed to adequately consider "the status of wolves outside of these core populations," including "lone dispersers," under statutory listing criteria.

Third, the court found that the Service's decision to combine the West Coast wolves with the NRM wolves was arbitrary and capricious. The court determined that FWS failed to address the best available science on whether West Coast wolves were genetically distinct from the NRM wolves, stating that the record did not reflect "a thoughtful and comprehensive evaluation of the best available science about the genetic relationships between wolf populations."

Fourth, the court held that the Service's interpretation of "significant portion of its range" was arbitrary and capricious. In 2014, FWS issued a policy interpreting the phrase, which was later found to be unlawful. FWS in the delisting rule stated that it now assessed significance based on "whether portions of the gray wolf range contribute meaningfully to the resiliency, redundancy, or representation of the gray wolf entity being evaluated without prescribing a specific 'threshold.'" The court held that because there was no threshold for determining what makes "any one of the factors of resilience, representation, and redundancy 'meaningful' such that the population could be considered 'significant,'" FWS's interpretation was not a reasonable construction of the phrase "significant portion of its range."

Fifth, the court evaluated FWS's threats assessment and determined it was arbitrary and capricious. Finally, the court held that FWS applied the relevant standard in reviewing plaintiffs' 2018 petition requesting one of three alternative DPS designations.

Judge White's decision remanded the delisting rule to FWS with vacatur—meaning it is no longer in effect. The court's decision is particularly concerning because it creates an almost impossible standard for FWS to delist the wolf in the future, despite the fact that the gray wolf population has seen tremendous recovery and exceeded its recovery goals by 300 percent. The government and the various defendant-intervenors have 60 days from the court's decision to file an appeal to the Ninth Circuit. AFRC would like to thank Karma Brown of Hunton Andrews Kurth LLP for her representation in this matter. /*Sara Ghafouri*

Sarah Melton Joins AFRC as Staff Attorney

Sarah Elizabeth Melton joins AFRC after returning from practicing law abroad for almost seven years. During that time, Sarah focused her private practice on European and International Business Law, including complex commercial contracts, multi-jurisdictional legal questions, and international arbitration and State investments involving acquisitions, tax, and precious mineral mining and manufacturing.

Sarah is very excited to come back to Oregon and join AFRC, and to put all of her energy, experience, and education to work for America's forests promoting active forest management and helping bring

science- and evidence-based practices back into the conversations about climate change, wildfires, and forestry. Originally from Colorado, Sarah grew up skiing in the White River National Forest, rock-hounding and hiking in the Arapaho Forest, and camping in the San Isabel.

Sarah graduated with a Juris Doctor (J.D., 2008) from Lewis & Clark Law School focused on natural resources law, including Oil & Gas, Federal Indian, and Water Law. She served on a law review, participated in practice clinics, and was a Business Law Roundtable Scholar. She served as the student member on the law school Faculty Committee, and remains active in campus life by serving on the Alumni Board as Chair of the Governance Committee.

Sarah began her legal career as a Summer Associate in civil legal aid in the Four Corners region, and as a Judicial Law Clerk with the Jicarilla Apache Tribal Court. She was also a Summer Associate with the Alaska Attorney General's Office, focused on business compliance and Alaska intervener actions in federal antitrust issues. Upon graduation, Sarah served as a judicial law clerk with the Anchorage Superior Court drafting opinions in civil appeals and criminal law, and making courtroom appearances in evidentiary matters and sentencing.

Sarah next worked as federal staffer in Washington D.C., where she served under a then-Deputy Administrative Assistant with the National Oceanic & Atmospheric Administration (NOAA). Her experience with NOAA took her back to Alaska, where she worked in fisheries management and administrative rule-making throughout the Arctic and North Pacific for the American public, small boat fishermen, coastal communities, indigenous groups, and private parties.

Her interests next turned to the economics of sustainably managed fisheries, and she took an in-house position with a financial institution serving the needs of small Alaskan communities. Her time there allowed her to attend and graduate from the Pacific Coast Banking School (PCBS, 2016) based out of the University of Washington's Foster School of Business in Seattle. Her thesis at PCBS focused on the legal issues between competing, and sometimes conflicting, state and federal banking regulations for small businesses.



Before attending law school, Sarah graduated from the University of Colorado at Boulder with a Bachelor of Arts (B.A., 2003) focused on geology, economics, and public policy. Upon graduation, she worked in the regulatory compliance and litigation department of an oil and gas exploration company based out of Wyoming. She is currently completing her master's thesis in artificial intelligence for her Master of Laws (LL.M., 2022) from the Universität Wien in Austria. When not working and studying, Sarah enjoys running, skiing, and spending her time outdoors in eastern Oregon with her two dogs—one, a rescue from Alaska; the other, from eastern Europe (photo, left). /Sarah Melton