



Washington DC Update

With it looking increasingly likely that Republicans will win one or both chambers of Congress in the November election, Democrats are eager to advance Wilderness bills and other measures to set aside federal lands from multiple use management while they are still in the majority.

On May 3, the Senate Energy and Natural Resources Committee convened to consider 14 public lands bills, including the “Wild Olympics” ([S. 455](#)) and “CORE Act” ([S. 173](#)) Wilderness proposals that have been pending before Congress for many years. The Committee approved eight of the less controversial bills focused on recreation, boundary adjustments, and land conveyances, but deadlocked in a 10-10 party-line vote on three of the more controversial bills.

In voting no on Wild Olympics, the CORE Act and federal mineral withdrawal legislation in the Pecos watershed of New Mexico ([S. 182](#)), committee Republicans were vocal in their opposition to legislation removing more public lands from responsible production of energy, minerals, and timber – particularly at a time when the Russian invasion of Ukraine has increased awareness about the importance of energy and natural resources independence.

Democrats may still bring the three bills to the floor under the rules for the 50-50 divided Senate, but it is encouraging to see all 10 committee Republicans vote no on legislation that seeks to set aside millions of acres of federal land that is already managed under some of the strongest environmental protections in the world. Three bills, including legislation from Senator Jeff Merkley (D-OR) to expand the Smith River National Recreation Area and designate additional Wild and Scenic Rivers ([S. 1538](#)) in southern Oregon, were withdrawn and did not receive action. These bills may be considered along with other pending public lands bills at the next Senate Energy and Natural Resources business meeting -- including the River Democracy Act ([S. 192](#)) sponsored by Senator Ron Wyden (D-OR). Senator Steve Daines (R-MT) has also received a commitment for a vote on his legislation ([S. 2561](#)) to provide a legislative fix to the *Cottonwood* decision that has been used to block critical forest health and fuels reduction projects in Montana and beyond.

The House Natural Resources National Parks, Forests, and Public Lands Subcommittee held a hearing on May 11 to review four bills, including three to enact new restrictions on millions of acres of federal lands across the West. Included were Rep. Earl Blumenauer’s (D-OR) new Mt. Hood legislation ([H.R. 7665](#)), a House version of the Smith River National Recreation Area and Wild and Scenic legislation ([H.R. 7329](#)) introduced by Rep. Jared Huffman (D-CA), and legislation from Rep. Ruben Gallego (D-AZ) to codify the Clinton-era Roadless Rule ([H.R. 279](#)) to prohibit logging, development and road building on 58.5 million acres – more than 31 percent of the National Forest System.

The primary focus of the hearing was on the Roadless Rule legislation, which is [co-sponsored by 92 House Democrats](#) including 33 from California Oregon, and Washington. Similar legislation has been introduced each Congress since 2002 but has never advanced in the face of Republican opposition. While the Biden Administration testified in support of bill, it did identify technical fixes needed to maintain the limited flexibility that does exist for management activities in roadless areas.

The Confederated Tribes of Warm Springs' Bobby Brunoe provided [testimony](#) on Blumenauer's Mt. Hood legislation, which would expand the current 34,550-acre National Recreation Area on Mt. Hood by an additional 350,000 acres while designating an additional 7,500 acres of Wilderness and 93 miles of Wild and Scenic Rivers. The legislation also includes "a groundbreaking model of tribal co-management directing the Forest Service to co-develop a management plan with the Confederated Tribes of the Warm Springs to protect and enhance Tribal Treaty resources within agreed-upon Treaty Resource Emphasis Zones."

The Treaty Resource Emphasis Zones will be established through a Memorandum of Understanding (MOU) with the Tribe to "protect and enhance Treaty resources or to protect the Reservation from wildfire" and applies "to any area within the boundaries of the National Forest in which the Tribe retains Treaty rights." The MOU is required to establish objectives for vegetation, botanical, wildlife habitat, and wildfire risk reduction treatments, including targets for acres treated to reduce wildfire risks and acres restored for deer and elk habitat, habitat for cultural plant communities, and other Treaty resources in the Zones.

In its testimony, the Forest Service voiced support for the bill's intent but expressed concern about its ability to effectively implement the tribal co-management provisions. In January, AFRC sent a [comment letter](#) to Rep. Blumenauer in response to a December discussion draft of the legislation. AFRC's letter cited concerns about the impact the legislation would have on the Forest Service's meager timber management program, efforts to implement forest health treatments to reduce the risk of wildfire and restore forests and public access following wildfires.

The Grasshopper Restoration Project on the Mt. Hood National Forest provides a perfect example of concern. The Forest Service recently removed portions of this collaborative fuels reduction project that were within the current National Recreation Area because it determined that stand-replacing wildfire was not "uncharacteristic" for the area and therefore could not be implemented consistent with limitations for timber harvesting that "maintains or restores the composition and structure of the ecosystem by reduction the risk of *uncharacteristic* wildfire."

Interestingly, the Blumenauer bill isn't pure enough for Oregon Wild, which recently [outlined](#) why it can't support a bill that "includes vague and sloppy legislative language that will actually encourage additional logging and environmental degradation across this beloved landscape." While it is unlikely that the bill will advance given the limited time remaining in the current Congress, AFRC will continue engaging with Rep. Blumenauer and the Oregon Congressional delegation on potential legislative solutions to address wildfires and the challenges facing the Mt. Hood National Forest.

Direction from Forest Service Chief Randy Moore. Over the last month Forest Service Chief Randy Moore has issued two key directives to Forest Service staff. In an [April 25 directive](#) to Forest Service Regional Foresters, Moore outlined his expectation that field staff use the expedited authorities provided

by Congress and the agency to implement hazardous fuels reduction projects. While the memo does provide some qualifications, it is a welcome development as the agency struggles to increase treatment levels with the record funding provided by Congress through the Bipartisan Infrastructure law.

On May 20, Chief Moore [directed a 90-day suspension](#) of all prescribed fires on National Forest System lands in the aftermath of the 315,000-acre Hermits Peak Fire on the Santa Fe National Forest, which was caused by escaped Forest Service prescribed fires. While the directive didn't signal a move away from prescribed fire as a tool, it did note that "it was imperative not only to understand what happened in relation to recent prescribed fire escapes, but also to ensure that our prescribed burn program nationwide is anchored in the most contemporary science, policies, practices and decision-making processes." /*Heath Heikkila*

The AFRC Podcast



Episode 9: AFRC's Travis Joseph to appear with Montel Williams on 'Balancing Act'



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

What do AFRC President Travis Joseph and celebrity talk show host Montel Williams have in common? They both think the way we currently manage our forests and protect our communities from wildfires don't make any sense. In early May, Travis traveled to South Florida for a taping of Balancing Act, a program on the Lifetime Channel. Now in its 20th year, Balancing Act is described as a show that "delivers sensible solutions and essential information in a fun, entertaining format." Travis appeared with Montel and Olga Villaverde for a segment called "Be The Change." Travis joins The AFRC Podcast to discuss his appearance and what the hosts learned about forest management.

[Click here to listen to Episode 9.](#) Our podcast is available on Spotify! Also now available on Apple Podcasts!

Federal Timber Purchasers Committee Meets in Sacramento

The Federal Timber Purchasers Committee (FTPC) met in person on May 17-19 with Forest Service and Bureau of Land Management (BLM) leadership for the first time in over two years. The group gathered in Sacramento, California to discuss the state of the federal timber program and its future trajectory.

Forest Service leadership from the Washington Office opened the meeting by highlighting key components of the leader's intent from the Chief, which will likely guide the agency's land management paradigm for the next several years.

- Wildfire Risk reduction to infrastructure and communities.
- Managing for healthy and resilient ecosystems.
- Restoration of post-fire damaged landscapes.
- Sustain and growth of the forest products industry.

The wildfire risk reduction component, which has been a driver of forest management on Forest Service and BLM land for the past decade, is being elevated in earnest through the Bipartisan Infrastructure law investments in 10 initial key landscapes across the west. However, despite these supplemental investments and the prioritization of the forest products industry in the Chief's intent, the Washington Office still has not assigned timber targets to the 10 Regions. This marks the first time in recent history that the FTPC was unable to discuss the status of the agency's timber program in the context of assigned targets during its spring meeting. How the Forest Service plans to meet its national target of 3.4 billion board feet absent regional targets remains unclear.

The group also discussed possible contract mechanisms for addressing what will likely be a spike in non-commercial service work associated with the investments in the wildfire risk reduction effort. The Forest Service outlined its desire to use blanket-purchase-agreements (BPAs) to expedite the award and execution of Integrated Resource Service Contracts (IRSCs). These agreements would be regionally based and updated annually with the goal of establishing a comprehensive list of contractors interested and able to perform necessary work ranging from timber harvesting to hazardous fuels mastication. Only those operators on the BPAs will be able to bid on IRSCs.

With the expectation that these new investments will result in a significant increase in the amount of acres treated, the group acknowledged a need to accelerate the agency's environmental analysis capabilities. The Forest Service clarified that recently authorized NEPA tools including the determination of NEPA Adequacy (DNA) and the 2,800-acre Restoration Categorical Exclusion (CE) are available for local units to use. The Washington Office also expressed support for the continued use of "condition-based" analysis as a means to treat larger landscapes in a timely manner. Industry noted the availability of the existing 3,000-acre HFRA CE for hazardous fuels reduction and insect & disease treatment but noted that it could only be used on landscapes formally designated under HFRA Section 602. The group agreed that additional designations in key landscapes may be warranted to assist with their expedited treatment to reduce hazardous fuels.

The committee had a panel discussion on opportunities to transport timber products across market areas via rail when surplus conditions exist locally for those products. The case study provided involved a recent spike in fire-killed hazard trees removed along Forest Service roads in California. Due to the species mix and rapid deterioration of those products, the Forest Service and purchasers identified a potential scenario where local markets could not process the material in a timely manner and an opportunity to transport them to mills in other market areas capable of utilizing them. The project is still a work in progress and must address numerous factors before being implemented but has the potential of increasing utilization and supporting mills in need under certain circumstances.

Finally, the Forest Service indicated a goal of reopening its offices on June 6, but acknowledged that much of its staff will continue to have options for a hybrid work environment based on their job responsibilities. The committee is planning to meet again this fall in Region 1, possibly in Coeur d'Alene, Idaho. /*Andy Geissler*

Basin Creek Project Developed to Protect Water Supply Near Butte, Montana

The Basin Creek drainage in the Beaverhead-Deerlodge National Forest provides a good portion of the water supply for Butte, Montana, which is managed by the Butte-Silverbow Water District. Construction of the Basin Creek Dam was started in 1892 and still has the original granite boulder base. A concrete addition to the top of the dam was added to increase the storage capacity (left photo). This reservoir provides an average of 7 million gallons of water per day to the City of Butte. For over 100 years the quality of the water was very good and did not require special filtration or treatments. In the early 2000's, however, the mountain pine beetle started devastating the stands of lodgepole found in the Basin Creek drainage killing those trees and ultimately causing them to fall down and cover the landscape with heavy fuels (right photo).



This abundance of fiber and decaying material on the ground permeated into the water system spiking the number of particulates and contaminates in the water. The pollutant levels ultimately created the need for a \$30 million+ water treatment plant. AFRC toured the Butte Silverbow Treatment Plant with its manager Jim Keenan. While the plant is state of the art, Mr. Keenan is cautioning users of the water system that its filtration and cleaning devices could not withstand the load of charcoal, additional fiber, and siltation if a wildfire occurred in the drainage.



Currently there is an effort underway to implement restoration treatments in the watershed to lessen the threat of wildfire, insects and disease. The Butte-Silverbow District owns a very small amount of property around the perimeter of the reservoir, while the majority of the watershed is owned by the Forest Service. The District has conducted some hand thinning work on their lands (left photo), but thousands of acres of Forest Service lands in the basin need both commercial and non-commercial treatments. Jim Keenan has prepared an [overview](#) of some of the work and funding they have received to date. There is momentum building for more forest management activities in the area. District Ranger Tim Lahey, the Beaverhead-Deerlodge Collaborative, Montana Logging Association, Sun Mountain Lumber, and the entire Montana Congressional delegation support the need for this work.

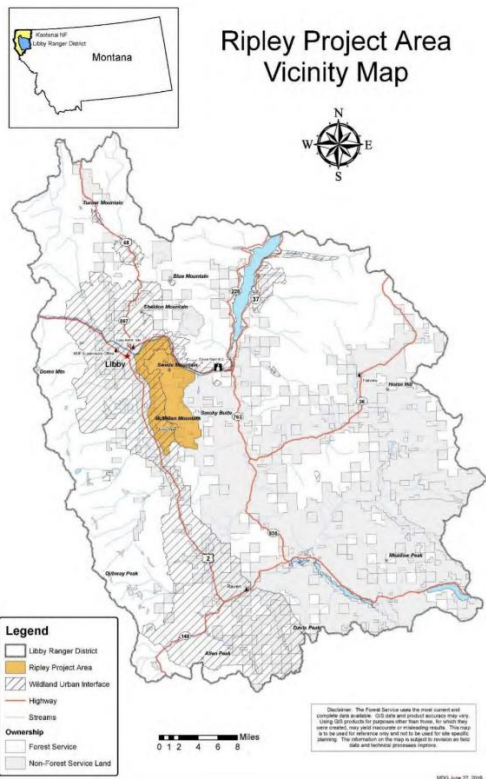


Complicating any proposed treatment is the lack of access into the drainage and having a roadless area located on the westside of the basin. The stakeholders are doing reconnaissance of the area to develop a proposed plan using various access points and restoration methods to implement treatments. AFRC saw firsthand the challenges of getting treatments done on the ground, and we applaud the efforts to treat this area. Without management, it is just a matter of time before a catastrophic wildfire occurs in the drainage. We are hopeful a proposed plan of action will be developed in the next few months. /Tom Partin

Judge Christensen Grants Preliminary Injunction Against Ripley Project

On May 6, Judge Christensen from the U.S. District Court of the District of Montana held a hearing on Plaintiff Alliance for the Wild Rockies' (AWR) motion for a preliminary injunction against the Ripley Project on the Kootenai National Forest. The preliminary injunction seeks to enjoin the Clay Day GNA and Bullseye timber sales that are set to begin operations on or around July 5. The hearing was well attended by the Forest Service and supporters of the project, including representatives from AFRC, Montana Department of Natural Resources and Conservation (DNRC), the Kootenai Forest Stakeholders Coalition, Stimson Lumber, and Lincoln County.

Appendix A – Project Vicinity Map



The project is located near Libby, Montana and 40 percent of the project area is in the Wildland Urban Interface. AFRC intervened as defendants on behalf of itself, Lincoln County and the Kootenai Forest Stakeholders Coalition. [See November 2021 Newsletter.](#)

On May 25, Judge Christensen [granted](#) AWR's request for a preliminary injunction. AWR's motion was based on two of its Endangered Species Act (ESA) claims. First, AWR argued that it raised "serious questions" (a factor required for a preliminary injunction) as to its claim that the agency did not adequately analyze the cumulative impacts of state and private actions within the 25-year period of the project in the Biological Opinion for the grizzly bear.

The government argued that they adequately assessed the cumulative impacts within the project area by taking a "worst case scenario" approach and assuming those state and private lands provided no secure habitat for grizzly bears,

incorporating that assumption into the environmental baseline. The Biological Opinion's cumulative impacts analysis concluded that "[w]hile some activities on non-federal land may contribute to cumulative effects at some point in the future, large Forest ownership within which human access is restricted by regulation and topography would help to reduce the impacts of larger residential human populations on grizzly bears." The court criticized the government's approach, finding that this "no secure habitat assumption" does not appear in the cumulative effects analyses of either the Biological Assessment or Biological Opinion.

The court concluded that: "Even if Defendants' 'worst-case scenario' argument did not appear to be an impermissible *post-hoc* justification for their actions . . . , it would require the Court to endorse the agencies' approach of relying on factual assumptions the agencies know to be incorrect to dodge their statutory and regulatory duties to obtain, disclose, and analyze the best scientific and commercial data available concerning reasonably certain State or private activities within the action area during the formal consultation process." The court further noted that the Cabinet-Yaak Ecosystem grizzly bear population

is currently at 45 bears, and the Grizzly Bear Recovery Plan requires approximately 100 grizzly bears as the minimum viable population, thus making the Cabinet-Yaak Ecosystem population of grizzly bears “especially vulnerable.”

Second, AWR claimed that the Forest Service failed to receive a “species list” from FWS, which would indicate any species that may be present in the project area, and that the agency’s “no effect” determination for the lynx was not adequately based on whether lynx “may be present” in the area. The court determined that the Forest Service “conceded” that it did not obtain a species list and, in the alternative, did not provide a list to FWS or seek FWS’s concurrence or revision. “Instead, [the Forest Service] defend[ed] its approach by claiming that it ‘did prepare and adopt a lynx biological assessment’ that determined that ‘lynx would not be present in the Ripley action area and that the Ripley Project would therefore have no effect on lynx.’” In the court’s view, the agency inappropriately put the cart before the horse.

The court went on to criticize the government’s conduct:

Although not essential to the Court’s findings or opinion, the Court observes the evidentiary sandbagging effect Defendants’ apparent non-compliance with the ESA places on plaintiffs seeking injunctive relief for ESA violations. Defendants’ underdeveloped cumulative effects analyses for the grizzly bear and so-called “biological assessment” for the lynx deprive Defendants, the public, and the Court of sufficient information on which to conclude those species will not be jeopardized by the Ripley Project, while Defendants rely on the information vacuum of their own making to refute Plaintiff’s assertions of likely irreparable injury to those species.

The court found the other preliminary injunction factors in favor of AWR—i.e., irreparable harm, balance of the equities and public interest.

Finally, the court declined to require AWR to post a bond. The government expressed concern that, for the 396 acres of non-commercial activities implicated by the preliminary injunction, the government will lose \$600,000 of federal grant funding for non-commercial fuels reduction work if it is not used by the end of the fiscal year. The court, however, encouraged the “parties to confer and move to modify the injunction as appropriate to the extent that further disclosure of information between the parties reveals that specific activities scheduled to begin during the pendency of this litigation would not irreparably harm [AWR’s] interests.”

For now, all project activities are enjoined during the pendency of this case. A hearing before a magistrate judge on the merits has not been scheduled. /*Sara Ghafouri*

New Challenge on the Kootenai Involving the Knotty Pine Project

On May 17, the Center for Biological Diversity (CBD), Alliance for the Wild Rockies, Native Ecosystems Council, Yaak Valley Forest Council, and WildEarth Guardians (plaintiffs) filed a complaint on the Knotty Pine Project on the Kootenai National Forest.

The Knotty Pine Project authorizes commercial harvest on approximately 5,000 acres that will generate about 37.7 million board feet (MMBF), 4,757 acres of prescribed burning, 35 miles of road reconstruction, 11.6 miles of road reopening, and temporary road construction. The project will be implemented over a ten-year period.



Photos taken by Tom Partin from an AFRC site visit last year show an area of dense forest (left) the Forest Service would like to treat in the Knotty Pine Project area, and an area of treated lands (right) depict what the area would look like when the project is finally implemented.

In their [complaint](#), plaintiffs raise three claims. First, plaintiffs contend the Forest Service violated NEPA by failing to take a “hard look” at the impacts of the “[p]ersuasive and ongoing illegal road usage” in the project area and the increase in road densities on Cabinet-Yaak Ecosystem grizzly bear populations.

The Knotty Pine Project is wholly within Bear Management Unit 12, which has certain standards for open motorized road density, total motorized road density, and secure habitat. Second, plaintiffs assert that the Forest Service violated the National Forest Management Act by failing to comply with Access Amendment Standards for Bear Management Unit 12. Third, plaintiffs allege that the Forest Service violated NEPA by failing to prepare an Environmental Impact Statement since the project will have significant impacts on unique characteristics in the area, cumulatively significant impacts, and would adversely affect the grizzly bear.

Plaintiffs’ also filed a 60-day [notice of intent](#) to sue on May 17 asserting that, among other things, FWS’s Biological Opinion for the grizzly bear failed to consider private and state roads in analyzing the project’s effects on grizzly bears. This is a similar argument that was made in the Ripley Project litigation. Plaintiffs will likely amend their complaint to incorporate their ESA arguments once the 60-day notice period expires. AFRC is closely monitoring this case. /Sarah Melton

Video: The Grizzly Corridor Model: An Adaptive Management Approach



Wildlife managers in NW Montana are working to increase local grizzly bear populations at a time when large swaths of forests are at high risk of wildfires, insects and disease. Unfortunately, efforts to improve forest health and resiliency on the Kootenai National Forest continue to be stymied by lawsuits over alleged impacts to the species. This video highlights an innovative project on nearby private land aimed at thinning fire-prone forests, while providing a travel corridor for grizzlies moving up and down the Bull River Valley. This approach shows it's possible to meet the needs of this species while protecting our communities and forests from devastating fires. This video was produced by Healthy, Forests, Healthy Communities in partnership with The Evergreen Foundation. [Click here to watch.](#)

Ninth Circuit Affirms Dismissal of Custer Gallatin Forest Plan Challenge

On May 6, the Ninth Circuit issued a [memorandum decision](#) affirming Judge Morris’s dismissal of Cottonwood Environmental Law Center’s (Cottonwood) challenge to the 1987 Forest Plan and three site-specific projects on the Custer Gallatin National Forest—the Bozeman Municipal Watershed, North Hebgen, and North Bridger Projects—claiming that the Forest Service violated NEPA by failing to supplement its NEPA analyses based on “significant new information” related to climate change. AFRC filed an amicus brief on behalf of the Custer Gallatin Working Group and Montana DNRC in support of the Forest Service. See [July 2021 Newsletter](#).

As an initial matter, even though the Custer Gallatin issued a Revised Forest Plan in February 2022, the court in a footnote found that Cottonwood’s appeal was not “moot” since Cottonwood was seeking to enjoin site-specific projects that were approved under the 1987 Forest Plan. Mootness occurs when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. In the court’s view, vacatur of the Forest Plan could provide Cottonwood some relief.

As to the merits, the Ninth Circuit held that the Forest Plan was not an “ongoing agency action” and, therefore, the agency does not have an obligation to supplement its Forest-level NEPA analysis based on “significant new information.” The court also found that Cottonwood did not properly allege “significant new information” that would require supplementation of the respective project-level NEPA analyses for the Bozeman Municipal Watershed and North Hebgen Projects. In the court’s view, “the announced revision of the Plan, absent more, does not necessarily portend changes to the human environment, and the tree markings do not constitute ‘significant’ information.” As to the North Bridger Project, the court noted that the project was authorized under the Farm Bill CE (16 U.S.C § 6591b), and that Cottonwood

failed to both challenge the CE and provide any support for its contention that the project was implementing an inadequate Forest Plan.

Because the Ninth Circuit affirmed the district court's dismissal of Cottonwood's complaint without leave to amend, the court did not address Cottonwood's appeal of the district court's denial of its motion for a preliminary injunction.

On February 2, before the Ninth Circuit hearing, Cottonwood filed a new action against the Revised Custer Gallatin Forest Plan, claiming that the agency violated NEPA by failing to take a "hard look" at a 2017 National Academy of Sciences Article. The Article states that "when thinning is combined with the expected warming, unintended consequences may ensue, whereby regeneration is compromised and forested areas convert to nonforest." This article is the same "significant new information" that was at issue in Cottonwood's appeal. This case is currently pending before the district court, and a joint status report is due in July.

AFRC appreciates working with both Montana DNRC and the Custer Gallatin Working Group in defense of the Custer Gallatin Forest Plan and these three projects. /Sara Ghafouri

AFRC in the News

- Sierra Pacific Industries' Centralia sawmill and AFRC are featured on [Northwest Public Broadcasting](#).
- Travis Joseph and AFRC members are featured in a [Capital Press](#) story on Northwestern and Southeastern sawmilling infrastructure.
- Nick Smith is interviewed by the [Associated Press](#) regarding the Biden Administration's Executive Order and definition of "old growth."

Funding Boost for Collaborative Forest Landscape Restoration Program

The Forest Service [recently announced](#) the allocation of \$31.1 million of appropriated funding and funding from the Bipartisan Infrastructure law to 15 projects funded through the Collaborative Forest Landscape Restoration Program (CFLRP) for fiscal year 2022 (FY22). Among those are three projects that received funding in previous years in Oregon and California, and 12 newly funding projects including two in California, three in Oregon, and two in Washington. Total investments for FY22 in the Pacific Northwest Region and California are \$16 million and \$6.76 million respectively.

The CFLRP dates back to 2009 when it was initially authorized by Congress to encourage collaborative, science-based ecosystem restoration of priority forest landscapes. It was most recently reauthorized in the 2018 Farm Bill. These investments represent yet another component of a recent surge of supplemental funding directed at the Pacific Northwest Region. In January, the region received \$291.2 million in disaster relief supplemental funding, followed by \$29.1 million from the Bipartisan Infrastructure law.

One of the 12 newly funded projects is the Rogue Basin Landscape Restoration Project in southwest Oregon, which will be funded at a 10-year level of \$30 million (\$3 million per year) with a 50% match for a grand total of \$60 million. The project area encompasses the entire Rogue River basin from the Pacific

Ocean up to Crater Lake National Park and includes public land managed by the Rogue River-Siskiyou National Forest (RRSNF), and the Medford and Coos Bay BLM Districts. The [project proposal](#) indicates that treatments funded by the CFLRP will occur primarily on the RRSNF, including three of the top ten fireheds identified by the Region as having the highest potential for mechanical treatments to mitigate the risk of high severity wildfire near communities.

According to a Forest Service [press release](#), the funding will be administered by the RRSNF in collaboration with the [Rogue Forest Partners](#) coordinated by the Southern Oregon Forest Restoration Collaborative (SOFRC). This group of partners has indicated a goal of treating an additional 145,000 acres over the 10-year CFLRP funding period. While a portion of these treatment acres are not expected to yield commercial timber products, the project proposal anticipates nearly 26,000 acres of commercial treatments yielding approximately 83 MMBF annually of additional timber volume, according to the [SOFRC website](#). Treatments will initially be focused on the Applegate and Illinois Valleys followed by a focus around the communities of Butte Falls, Prospect, Brookings, Agness, and the Elk River watershed.

This funding infusion provides an opportunity for the RRSNF to elevate its level of active forest management; however, one of the Forest's primary obstacles to achieving this level remains effective project analysis through the NEPA process, which is a factor that CFLRP funding may not be able to address. The project proposal includes a table on page 19 that outlines the RRSNF's NEPA strategy and timeline for projects targeted by the proposal. Several of those projects are already behind schedule, including the Stella Project, which the proposal estimated to be completed by the Fall of 2020, but is still awaiting a final decision as of April 2022. There are opportunities to leverage outside partners to assist with NEPA analysis, but the status quo has generally placed the entire NEPA task on RRSNF staff, therefore making investments in Forest Service staff a critical need to effectively utilize the \$60 million CFLRP funding to its full potential. /*Andy Geissler*

District Court Denies Renewed Preliminary Injunction Against 18 Projects that Overlap with Southern Sierra Nevada Fisher Population

Four months after the Ninth Circuit vacated the district court's denial of a preliminary injunction that implicated 31 projects on the Stanislaus, Sierra, and Sequoia National Forests, the district court issued a [new decision](#) denying plaintiffs' renewed request for a preliminary injunction. As explained in our [January 2022 Newsletter](#), the Ninth Circuit remanded the case back to the district court with the following instructions: (1) order the Forest Service and U.S. Fish and Wildlife Service (FWS) to advise on whether the raw post-2020-wildfire vegetation data is compatible with existing methods or models for estimating the Southern Sierra Nevada (SSN) fisher population; (2) order the Forest Service and FWS to advise whether it would have taken too long to model a new SSN 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 (BiOp), why FWS can or cannot use this data, where FWS is now in its analysis of the SSN 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."

On remand, the district court denied plaintiffs' request for a preliminary injunction against 18 of the 31 projects. After the supplemental declarations and briefing, the district court determined that the government adequately demonstrated it was not feasible for the Forest Service or FWS to update the SSN fisher population estimate using the "raw post-2020 wildfire vegetation data," and that there is no timeline as to when a new SSN fisher population estimate could be generated from that data. According to the government, it would take years to update the population estimate. In the court's view, the government persuasively argued the ESA does not require the Forest Service or FWS to extend the section 7 ESA consultation process from 2021 to 2024 in order to wait for a new population estimate. The district court found that plaintiffs failed to demonstrate "serious questions" (a requirement for a preliminary injunction) as to their claim that defendants violated the ESA by failing to consider the "raw post-2020 wildfire vegetation data" to estimate the current SSN fisher population before issuing the 2021 BiOp.

As to plaintiffs' NEPA claim, the district court concluded that its prior analysis remains unchanged even after considering plaintiffs' new arguments. The court determined that the Forest Service took a hard look at the consequences of the 2020 Creek wildfire with respect to the Exchequer project, and that plaintiffs' "disagreement" with the agency's conclusions is insufficient to show that it was arbitrary and capricious.

The parties are now directed to complete briefing on defendants' pending motion to dismiss the case. This decision is a big victory for the Forest Service and AFRC members, who were awarded several of the implicated timber sales. /Sara Ghafouri

Recently Filed Actions on the Los Padres National Forest

On April 27, three separate, but very similar, lawsuits were filed challenging the Reyes Peak Forest Health and Fuels Reduction Project located on Pine Mountain in the Los Padres National Forest. The three complaints were filed by the: 1) City of Ojai; 2) County of Ventura; and 3) Los Padres ForestWatch, Keep Sespe Wild Committee, Earth Island Institute, American Alpine Club, Center for Biological Diversity, Patagonia Works, and California Chaparral Institute (collectively, plaintiffs).

The project authorizes activities intended to improve forest health, remove safety hazards, and reduce the unstable tree stand conditions and biomass accumulations that have resulted from over a century of fire suppression and flawed past management practices, contributing to extreme wildfire danger. The stands in the project area are experiencing elevated levels of disease, insect infestation, extreme drought, and associated tree mortality. Habitat in the project area for endangered and threatened species such as the California Spotted Owl is vulnerable to large, high-severity fires. About 41 percent of the project area overlaps with the Sespe-Frazier Inventoried Roadless Area (IRA). The 2001 Roadless Rule allows limited harvest activities, including the removal of generally small diameter trees for the purpose of reducing uncharacteristic wildfire risk.

The Forest Service authorized harvest activities on 750 acres under the timber stand improvement categorical exclusion (CE), 36 C.F.R. § 220.6(e)(6), which allows "[t]hinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand." This CE was recently upheld by the Ninth Circuit. See [February 2022 Newsletter](#). In their complaints, plaintiffs allege the Forest Service inappropriately relied on the timber stand improvement CE and, instead, is required to prepare an Environmental Assessment or Environmental Impact Statement under NEPA. Plaintiffs assert that FWS wrongly determined that the project will "likely not adversely affect"

the California condor, an endangered species, and its critical habitat because the project authorizes the removal of trees up to 64 inches at diameter breast height. One of the project's goals, however, is to retain large diameter trees in the project area. Plaintiffs also take issue with the Forest Service's compliance with the Roadless Rule because the activities are not limited to "generally small diameter" trees and fails to protect the IRA's "wild character."

Plaintiffs' other arguments include procedural infractions, such as failing to file annual reports on the use of CEs under the Healthy Forest Restoration Act; failing to collaborate with plaintiffs and consult with local Tribes; failing to specify which CEs would be used in Project's scoping letter. Plaintiffs also argue that the project violates the Forest Plan by failing to protect the project area's "High Scenic Integrity" and its "undeveloped character and natural appearance." Plaintiffs further claim that this project purports to be a community protection project but it is far outside the wildlands urban interface areas as defined by the Forest Plan. /Sarah Melton

AFRC Completes Montana Swing with Sun Mountain Lumber and MLA



AFRC General Counsel Sara Ghafouri outlines legal work at Sun Mountain Lumber meeting.

AFRC General Counsel Sara Ghafouri and Consultant Tom Partin were in Montana during the week of May 16 to look at developing projects, meet with the Forest Service and member companies, and present at the Sun Mountain Lumber Company's inaugural Partnership Meeting and Montana Logging Association's 46th Annual Membership Meeting.

The Sun Mountain Partnership Meeting was held in Deer Lodge with nearly 50 people representing groups that partner with that company in various aspects of their operations. Speakers included Bryce Maxwell, Montana National Heritage Program; Mike Niccolucci and Steve Hayes, Bureau of Business and Economic Research; Jim Keenan, Butte-Silverbow

Water District; and Bryan Lorengo, Montana Logging Association.

Sara and Tom participated in the final panel of the day. Sara provided a very comprehensive report of the legal work that the AFRC team is working on in Montana, regionally, and nationally. AFRC is representing the industry in several key lawsuits involving timber sales on the Helena-Lewis and Clark and Custer-Gallatin forests, which are key to Sun Mountain's operational needs. Tom reported on his work which includes tracking individual projects and the overall Forest Service timber outputs in the Sun Mountain working area.

Sherm Anderson, owner of Sun Mountain was the special luncheon speaker. He spoke about the history of Sun Mountain (purchasing from LP) and the improvements that he has made and plans for the future. Two [videos](#) of tethered logging prepared by J. Shar Logging were also shown.

In addition to Partnership Meeting, Sun Mountain hosted a tour of their sawmill and recently completed planer operations. Sherm Anderson stated that the \$40 million investment will help increase the volume and quality of lumber that they produce and sell.

The Montana Logging Association 46th Annual Meeting was held in Butte and was well attended. Tom participated on a panel with David Haupt, Timber Management Assistant for Region 1, and Bryan Graham, Forest Products Director for Logging Professionals Insurance. David Haupt gave a thorough outline of the new funding that Region 1 will receive from the infrastructure bill. Some of the funding will go to project implementation, and some will be used to hire much needed additional staff in the planning and implementation phases of projects they are working on. Tom gave an in-depth look at the projects being planned and the expected volumes for each National Forest.



AFRC Consultant Tom Partin updates MLA members.

Tom also had the opportunity to look at six projects that are in various stages of development including the Bitterroot Front on the Bitterroot National Forest, Superior North, Highway 83, and Sawmill Petty on the Lolo National Forest, and the Basin Creek and Fleecer Project on the Beaverhead-Deerlodge National Forest. These projects will make up a good portion of the upcoming timber sale programs for these three Forests. AFRC will be engaged with these projects by providing input and comments and following them through to implementation. /Sara Ghafouri and Tom Partin

AFRC Organizes Field Tour on Salmon-Challis National Forest

The Salmon-Challis National Forest is usually recognized for outstanding backcountry values provided by the Frank Church River of No Return Wilderness and recreational values provided by high-end ski resorts such as Sun Valley.

However, the need to manage the forests and vegetation in appropriately designated administrative areas still remain. AFRC recently worked with the Salmon-Cobalt District to gather industry input on the viability of removing commercial timber from the Stormy planning area near Salmon, Idaho. Logging and mill representatives joined Forest Service personnel from the District to tour accessible portions of the Stormy area.



The tour proved to be extremely beneficial to Forest Service personnel and promoted a sense of optimism for a potential raw materials source in this area for the industry. The industry provided input on logging systems design, general information on utilizable species and log sizes as well as emphasizing how absolutely critical it is to build flexibility into contracts. Describing end results in the NEPA and following through with “end results” contracts will facilitate industry’s ability to work with the agency and achieve land management objectives.



At one time there were four sawmills in the Salmon area. Forest Service personnel lamented several times over the loss of that infrastructure during the field trip and how helpful it would be both for treating the landscape and utilizing the merchantable logs that will be generated from the Stormy project. Which goes to prove that “you don’t know what you’ve got till it’s gone,” as Joni Mitchell and others so eloquently put to music over the years. */Irene Jerome*