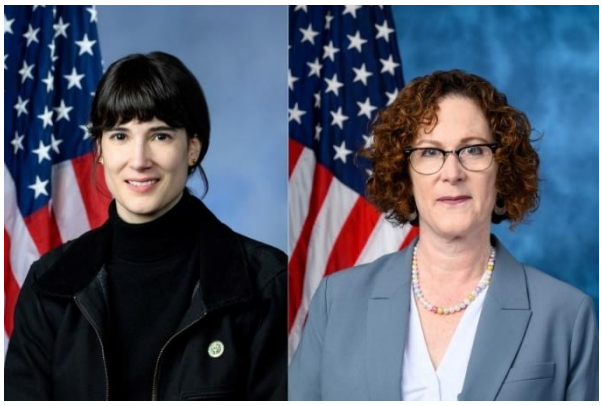
AFRC Annual Meeting: Bipartisan and Focused on Solutions. Register Today!

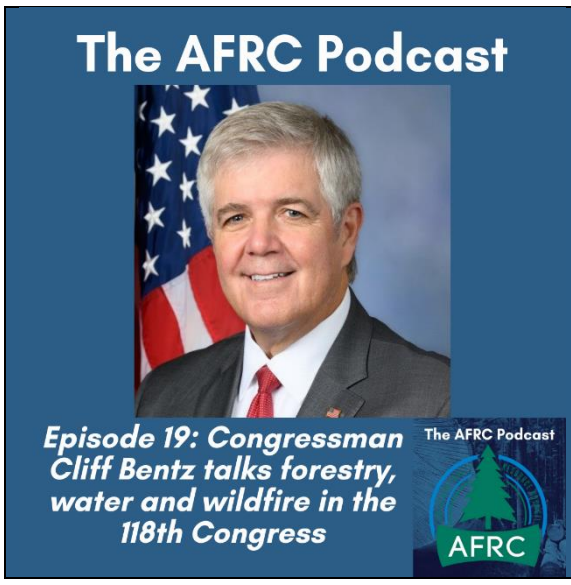
We're pleased to announce several exciting additions to the agenda for the AFRC annual meeting, April 11-13 at Skamania Lodge in Stevenson,



New members of Congress, Reps. Marie Gluesenkamp Perez (D-WA) and Val Hoyle (D-OR) will headline a congressional panel on Wednesday, April 12 (*photos, right).* Rep. Cliff Bentz, Chair of the U.S. House Subcommittee on Water, Wildlife and Fisheries, will be our keynote speaker on Thursday, April 13.

Joe Furia, Executive Director of the World Forestry Center will discuss "Social Change and Wildfire" and the importance of empowering new voices in the forestry conversation. Merv George, Supervisor for Rogue River-Siskiyou National Forest and Dave Larson, Southern Oregon Director, Oregon Department of Forestry will discuss effective wildfire suppression tactics and efforts to protect communities and forest resources.

Our agenda also includes the popular staples of our annual meeting, including the AFRC Golf Open, regional breakout sessions with public lands managers, a timely political update from Federal Forest Resource Coalition's Bill Imbergamo and AFRC's Heath Heikkila, and much more. It is not too late to register. Visit our annual meeting page and join us at Skamania Lodge!



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

As Representative for Oregon's 2nd Congressional District, Cliff Bentz represents Oregon's largest district. It is home to wide swaths of federally-owned forests that have been heavily impacted by severe wildfire, insects and disease. He's determined to improve federal forest management, and as an experienced attorney specializing in water law, is well equipped to tackle water issues that are important to his district. In February, he was named Chairman of the House Natural Resources Subcommittee on Water, Wildlife, and Fisheries.

Click here to listen to Episode 19 with Rep. Bentz. Our podcast is available on Spotify! Also now available on Apple Podcasts!

Washington DC Update

Biden Administration Releases Budget. In early March the Biden Administration released their FY 2024 budget proposal that includes a nearly 10 percent increase in funding for the U.S. Forest Service, with much of the increased spending dedicated to hazardous fuels reduction and pay increases for firefighters. The Administration proposes spending $60 million for the "hiring and purchase" of zero emission passenger motor vehicles and the installation of electric vehicle charging stations on national forests, yet funding for road maintenance is reduced by $2 million- keeping road funding below the FY 2013 appropriation level.

The budget would also increase the Forest Service's timber program by five percent, projecting timber outputs to climb this fiscal year (from 2.9 to 3.4 billion board feet). While this would represent a 30-year high in volume, the Administration expects timber outputs to plateau at that level in 2024.

The reception to the President's budget was mixed on Capitol Hill as Senate and House Appropriations Subcommittees opened hearings on the Forest Service's FY 2024 budget. Subcommittee Chair Jeff Merkley (D-OR) said the proposed budget, combined with funds from the Infrastructure bill and Inflation Reduction Act will "increase" forest resilience adding, "everywhere I go in Oregon, I hear people say let's do everything we can to make the forests more resilient, to defend our communities, to keep our towns from being wiped out by blow-torch style fires."

However, during House hearings, Subcommittee Chair Mike Simpson (R-ID) pointed to the significant investments already made in fuels reduction and forest management, and said his subcommittee "intends to engage in active oversight" to "ensure value for the taxpayers and to avoid waste, fraud, and abuse." Notably, in a separate hearing Republicans told the Department of the Interior "it must do more with less."

During questioning, Rep. Derek Kilmer (D-WA) said the Olympic National Forest in his district missed their timber target by 70 percent last year. He also lamented the lack of timber harvesting on the Forest:

> *"Every year I come to this hearing and I just plead with you, as I've pleaded with your predecessors because, in our region and on the Olympic, we are just failing. We are failing to produce meaningful harvest levels, not just to support communities, but to support forest health. I sent a bipartisan letter with 20 of my colleagues asking how the Forest Service will prioritize increasing active forest management for healthier ecosystems and for sustainable timber outputs. We have not heard back."*

With Republicans committed to reducing federal spending, it's unclear whether the Administration and both parties in Congress will agree on spending bills and avoid a government shutdown. AFRC will continue to work closely with the Federal Forest Resource Coalition to secure adequate funding for Forest Service and BLM timber programs and other essential line items.

Federal Lands Subcommittee Hearings. It was a busy month for the House Natural Resources Public Lands Subcommittee on forestry issues. On March 8, the Subcommittee held a hearing on "Conservation with a Purpose," including witnesses from the rural west, native tribes, and others.

Subcommittee Chairman Tom Tiffany (R-WI) said federal lands "are facing a suite of unprecedented crisis, bleak forest health conditions, and catastrophic megafires, crumbling infrastructure and

skyrocketing deferred maintenance, environmental degradation at our Southern border, disappearing access and recreation opportunities, overcrowding and diminished economic opportunities for local communities."

Tiffany noted there are over 640 million acres of federal lands, which is 28 percent of the country's land mass, and said "true conservation" on federal lands "has become increasingly hamstrung by a preservationist agenda pushed by extreme environmentalists." He also said preservationist policies have limited the ability of public land managers to use scientific land management techniques, and those policies were not yielding promised environmental benefits.

Phil Rigdon from the Intertribal Timber Council (and Yakima Tribal nation) said tribal forest managers view every resource as important when making land management decisions. "In a time not all that long ago, this used to be called multiple use management and it was practiced on federal lands." Now, he said, "too often, we see federal land managers crippled by single use designations like Wilderness areas and those type of things." He said restrictions "virtually eliminate the ability to respond to bugs, insects and disease." Video of the complete hearing can be found here.

On March 23, the Subcommittee held a legislative hearing on bills to exempt aerial firefighting retardant from Clean Water Act permitting requirements (HR 1586 by Rep. Doug LaMalfa (R-CA), permanently fix the disastrous "Cottonwood" decision (HR 200 by Rep. Matt Rosendale (R-MT)), and to require uniform, accurate reporting of hazardous fuels reduction treatments (HR 1567, Rep. Tom Tiffany (R-WI)). You can watch the hearing and read the testimony at this link.

Tiffany noted that LaMalfa's bipartisan retardant bill was necessary because of a lawsuit where the plaintiffs are seeking a nationwide injunction to block the use of retardant this summer (see related article in this newsletter). He said LaMalfa's bipartisan bill would ensure that "our federal land managers would be able to continue to use fire retardant to save lives, protect communities, and contain wildfires."

On Cottonwood, the Rep. Tiffany said the decision conflicted with previous precedents and has "done nothing to improve species conservation" while "diverting resources to endless compliance and analysis." He noted that over "130 projects from wildfire to wildlife" had been disrupted by Cottonwood litigation. "Instead of taking the issue seriously, my colleagues on the other side of the aisle have invited a serial litigant to testify here today," referring to Susan Jane Brown from the Western Environmental Law Center, one of the witnesses at the hearing.

Tiffany said his bill (HR 1567, the ACRES Act) "would bring transparency to misleading and inaccurate way hazardous fuels treatments are reported." He said it appears agencies have been overstating their treatments "by over 20 percent" and called his bill "a simple solution" that would lead to greater transparency. /*Nick Smith and Bill Imbergamo*

Washington Legislative Update

It has been a very challenging legislative session on Department of Natural Resources (DNR) state trust land issues. With less than 25 days remaining in the legislative session, several policy bills and budget provisos remain in play.

State Trust Lands and Climate Commitment Act Funding. On February 28, the Department of Ecology held its first auction under the state's cap-and-trade law, the Climate Commitment Act (CCA), generating

nearly $300 million from 6.18 million allowances sold. The legislature is now flush with this new funding.

On March 23, a proposed Senate Operating Budget was released that included $83 million in CCA funding to remove DNR state trust lands from sustainable timber harvests, mandate the development of a new ecological forestry "management and conservation plan" for DNR state trust lands, and authorize the Department of Ecology to make recommendations for the management of state lands to benefit carbon sequestration. On March 27, Senator Kevin Van De Wege (D-Sequim) successfully offered four amendments to remove these provisions and agreed to work with Committee Chair Christine Rolfes (D-Bainbridge Island) to develop an alternative package.

On March 29, Van DeWege offered an amendment on behalf of Rolfes and Senator Joe Nguyen (D-Seattle) that would direct $70 million in CCA funds at purchasing private forestlands to replace up to 2,000 acres of older, currently operable DNR state trust lands that would be withdrawn from management. The balance would replace state trust lands previously encumbered under the Habitat Conservation Plan for state lands. $10 million would also be provided to DNR for silvicultural activities on state trust lands and $3 million for additional analysis and policy development. AFRC has a number of concerns with the amendment that was adopted and will be working with the sponsors to address them as it is conferenced with the House budget, which had lower levels of CCA funding directed at DNR state trust lands.

Trust Land Transfer Legislation, HB 1460. DNR's proposed legislation to expand the Trust Land Transfer (TLT) program is entering the final stages of the legislative process. Nearly 71,000 acres of state trust lands have been lost since the inception of the TLT program. AFRC was able to secure amendments that limit the value of TLT transactions that can be advanced at a time and limits additional TLT proposals until DNR spends at least 50% of previously appropriated funds to purchase replacement lands. The legislation also requires the legislature to provide 100% of the value for replacement lands, rather than the 20% DNR has been receiving.

DNR ecosystem services legislation, HB 1789. This legislation to authorize DNR to sell carbon offsets and other ecosystem services has been subject to extensive debate and negotiation. As currently drafted the bill would allow DNR to enter into carbon offset projects for reforestation, afforestation, urban forestry, biochar, and aquatics. DNR would not be authorized to enter into "improved forest management" projects, which are subject to intense debate and controversy. However, the Board of Natural Resources would be required to report to the Legislature by June 30, 2025 to request additional project authorities.

DNR Cedar and Alder pilot. The Senate operating budget also includes $175,000 for DNR to continue implementing a pilot project to evaluate the costs and benefits of marketing and selling cedar salvage, alder, and other hardwood products. */Heath Heikkila*

Coalition Seeks to Defend the Forest Service's Use of Aerial Fire Retardant

In October 2022, Forest Service Employees for Environmental Ethics (FSEEE) filed a complaint in the U.S. District Court for the District of Montana challenging the Forest Service's nation-wide use of aerial fire retardant by failing to obtain a National Pollution Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). *See Forest Service Employees for Environmental Ethics v. U.S. Forest Service*, No. 9:22-cv-00168-DLC (D. Mont.). Under the CWA, an NPDES permit is required for the discharge of a pollutant into "navigable waters."

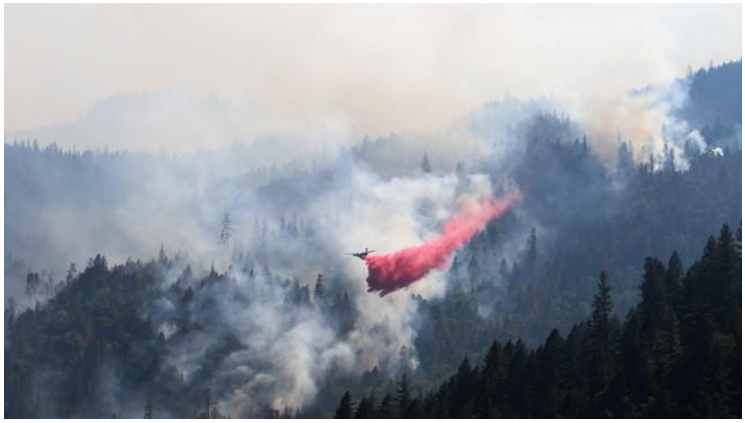


Photo Attributed to KRCR/Adam McAllister

FSEEE has a history of challenging the Forest Service's aerial use of fire retardant. In 2003, FSEEE prevailed on its challenge to the Forest Service's aerial use of fire retardant for failure to conduct the National Environmental Policy Act (NEPA) analysis and section 7 consultation under the Endangered Species Act (ESA).

In 2005, FSEEE again prevailed on its challenge to the Forest Service's aerial use of fire retardant because the Forest Service's analysis under NEPA, prepared as a result of FSEEE's 2003 lawsuit, was inadequate. There, the district court ruled that the agency had to complete a more thorough NEPA process by December 31, 2011. *See FSEEE v. U.S. Forest Service*, 726 F.Supp.2d 1195 (D. Mont. 2010). In 2011, the Forest Service issued a Record of Decision on the Nationwide Aerial Application of Fire Retardant on National Forest System Land (Record of Decision).

The Record of Decision authorizes the Forest Service's aerial use of fire retardant except for designated avoidance areas, e.g., within 300 feet of waterways, in order to protect species listed as endangered or threatened under the Endangered Species Act. Since 2012, the Forest Service has documented its use of aerial fire retardant and found that, between 2012 and 2019, the Forest Service made approximately 600,000 drops of fire retardant totaling just over 100,000,000 gallons of fire retardant. However, out of these 600,000 drops, less than 1 percent were dropped into navigable waters because of misapplication or under the agency's exception to protect life and safety, including firefighter safety.

FSEEE moved for summary judgment expeditiously, filing a modest nine-page motion in January 2023 seeking to enjoin the Forest Service from using aerial fire retardant across the nation until the agency receives an NPDES permit. Part of the Forest Service's integrated firefighting strategy during the wildfire season is the application of aerial fire retardant. There is a range of instances when the Forest Service relies on aerial fire retardant, depending on the topography, location, and intensity of the fire, along with the availability of resources, among other factors. Although the use of fire retardant may not always put a wildfire out, it does slow the spread of fire and is effective in protecting life and property.

In its opposition to the motion for summary judgment, the Forest Service concedes that the agency has misapplied fire retardants into navigable waters and that an NPDES permit is required under the CWA. The Forest Service asserts, however, that as of February 2023, it has commenced the process to obtain the necessary permits that will authorize the discharge of aerial fire retardants into navigable waters and entered into a Federal Facilities Compliance Agreement with the EPA that intends to bring the agency into full compliance with all applicable laws and regulations for discharges. Because this process of receiving the requisite NPDES permits at the federal level, and corresponding state permits with 47 states, it will take two and a half years to complete, the Forest Service explains that it will have to discharge until 2025 without a permit.

On March 16, 2023, AFRC moved to intervene in support of the Forest Service and to oppose FSEEE's request for a nation-wide injunction along with a broad coalition, including: Town of Paradise, Butte County, and Plumas County, California, Rural County Representatives of California, National Alliance of

Forest Owners, Federal Forest Resource Coalition, California Forestry Association, Montana Wood Products Association, Oregon Forest Industry Council, Washington Forest Protection Association, California Farm Bureau, California Women for Agriculture, and National Wildfire Suppression Association.

On March 30, Judge Christensen denied the Coalition's motion to intervene but allowed participation as an *amici curiae*. The district court determined that "intervention as of right" was unwarranted because the Forest Service adequately represented the Coalition's interests given that they share the same ultimate objective as the government, which is the continued use of aerial fire retardants to fight wildfires. In the court's view, the Coalition "have not made any showing, let alone a compelling one, that [the Forest Service] is unwilling to make, or incapable of making, all of [the Coalition's] arguments or that [the Coalition] would offer any necessary elements to the proceeding that [the Forest Service] would neglect." The district court also denied permissive intervention because the motion to intervene was untimely since it was filed the same day that FSEEE's motion for summary judgment was fully briefed. However, the district court has allowed the Coalition to participate as *amici curiae*, with the *amici* brief due on April 14. Judge Christensen also set a hearing for FSEEE's motion for summary judgment on April 21, allowing the Coalition to have 15 minutes of argument.

Although AFRC is disappointed regarding Judge Christensen's ruling, the Coalition's participation as *amici* in this matter will help demonstrate that a nationwide injunction against the aerial use of fire retardant is not in the public's interest. If the court grants FSEEE's motion for summary judgment and enjoins the aerial use of fire retardant nationally, then the Forest Service would not be able to use fire retardant aerially until they get an NPDES permit—which, at the brink of this year's wildfire season, could put billions of dollars of infrastructure and millions of people at risk.

While this matter is pending, Congress is trying to put forth a legislative fix. Representative LaMalfa introduced House Resolution 1586, "Forest Protection and Wildland Firefighter Safety Act of 2023," which would create a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardant to fight wildfires. See Press Release. The House of Natural Resources Subcommittee on Federal Lands held a hearing on House Resolution 1586, where Steven Ellis, Chairman of the National Association of Forest Service Retirees, testified in support of the bill. However, the likelihood that a legislative fix can be achieved in a timely fashion is uncertain. /*Kade Weathers*

AFRC Legal Win! Judge McShane Upholds the BLM's 2020 Rule Eliminating the Protest Process

On March 27, U.S. District Court Judge Michael J. McShane granted summary judgment in favor of the Bureau of Land Management (BLM) and Defendant-Intervenors and upheld the agency's 2020 Rule eliminating the protest process, which previously resulted in unnecessary and bureaucratic delays to timber harvests and fuel reduction projects on BLM-managed lands. AFRC and Douglas County intervened in the litigation in support of the BLM to defend the 2020 Rule.

In October 2021, three anti-forestry groups filed a lawsuit challenging the BLM's "Mine Your Manners" timber sale in the Northwest Oregon District, a sale approved after the BLM eliminated the protest process. The lawsuit sought to invalidate the 2020 Rule and reinstate the agency's previous protest process, alleging that the BLM failed to explain its "changed position" in compliance with the U.S. Supreme Court's seminal case, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), and violated the Federal Land Policy and Management Act (FLPMA).

Although the original purpose of the 1984 Protest Rule was to "expedite implementation" of forest management decisions, over time special interest groups took advantage of the protest process, using it as a mechanism to unnecessarily delay or preclude forest management projects by simply filing a protest that would result in an automatic stay of the forest management decision. The BLM would not give "full force and effect" to protested timber sales until the BLM had issued a decision denying the protests. This duplicative public engagement process had no meaningful environmental benefit because it would occur *after* public input during the NEPA planning process had been received, the agency's environmental analyses had been completed, and land management decisions had been approved.

In AFRC's experience, anti-forestry groups' protests often contained hundreds of pages of numerous protest points that were simply a rehash of previous NEPA comments or had little to do with advancing the purposes and need for the project. The BLM was then required to formally respond to each protest point, resulting in a broken process that drained agency resources while delaying much-needed forest management projects. The BLM's own review of 1,560 timber sale decisions between 2002 and 2017 revealed that 26% of the total volume of those sales were protested, and the average time between advertisement and award of those protested sales was 251 days.

Judge McShane upheld the 2020 Rule and Mine Your Manners timber sale, finding that the BLM adequately explained its change in policy from the 1984 Protest Rule and that the 2020 Rule complied with FLPMA. The court acknowledged that the BLM had provided "good reasons" for eliminating the protest process, noting that the "data shows that the average time between advertisement and approval of an unprotested timber sale is 34 days, in stark contrast to the 251 average days for a protested sale" and that "72% of protested sales were eventually approved, 44% of protested sales where then appealed to the IBLA, and 79% of appealed sales were approved for contracts." The court went on to explain that the "BLM's desire to streamline its forest management process so that it can effectuate decisions pertaining to wildfire risk and meet its timber sale obligations under the O&C Act is a legitimate reason for changing its policy, and the Final Rule eliminating the protest process is rationally connected to that reason."

Plaintiffs also argued that the BLM violated FLPMA's policy provision requiring the BLM "to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking," 43 U.S.C. § 1701(a)(5). In response to the BLM's and AFRC's arguments that this provision is unenforceable, Judge McShane concluded this broad policy directive "can prove useful in interpreting agency regulations and implementing provisions of the FLPMA," but it does not "alone impose specific, mandatory obligations on [the] BLM." Judge McShane noted that another FLPMA provision requires the BLM to establish procedures that give the public "an opportunity to participate in [] the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. § 1739(e).

Judge McShane ultimately concluded that even without the protest process, the BLM has adequately provided for public participation and administrative review of final forest management decisions. With respect to public participation, Judge McShane rejected plaintiffs' "contention that the protest process is required to assure adequate public participation," finding that there is no support for that interpretation in the statutory framework. Instead, "FLPMA grants BLM discretion to structure its adjudication procedures in ways that provide adequate public participation opportunities in land management decisions." As explained above, the BLM continues to provide adequate participation through the NEPA process. With respect to objective administrative review, Judge McShane rejected plaintiffs' argument that the "BLM's elimination of the protest process and automatic stay renders forest management

decisions 'final agency actions' with no meaningful administrative review." The court noted that the 2020 Rule "did not alter the public's ability to appeal BLM forest management decisions to the [Interior Board of Land Appeals]," which is not part of the BLM or Solicitor's Office, and the public may "request a stay of the decision pending appeal."

AFRC is pleased that the district court upheld the BLM's 2020 Rule. The BLM's changes to the protest process actually improves public participation by allowing the public to comment on projects earlier in the process, while at the same time enabling the BLM to meet its sustained-yield mandate on O&C lands. AFRC would like to thank Dominic Carollo and Nolan Smith from Carollo Law Group, LLC for their representation of Defendant-Intervenors. /*Sara Ghafouri*

Ninth Circuit Win! Court Upholds the South Fork Stillaguamish Vegetation Management Project

On March 27, in an unpublished memorandum decision, the Ninth Circuit affirmed the district court's decision to uphold the South Fork Stillaguamish Vegetation Management Project (South Fork Stillaguamish Project) on the Mt. Baker-Snoqualmie National Forest. AFRC intervened on behalf of Hampton Lumber Mills-Washington, Hampton Tree Farms, and Skagit Log and Construction.

The South Fork Stillaguamish Project is a much-needed thinning project focused on treating 30 to 50 percent of the second-growth stands that the Forest Service identified as a high priority. The Project seeks to manage Late Successional Reserves on a landscape-scale to enhance habitat conditions for old forest-associated species, with an emphasis on nesting habitat for the marbled murrelet and northern spotted owl. The Project also seeks to restore vegetation composition and structural diversity within Riparian Reserves areas, while protecting and enhancing fish habitat and aquatic organism passage. The Project involves 1,060 acres of non-commercial thinning of densely stocked stands and 2,000 to 3,300 acres for commercial thinning of stands, but no stands over 80 years old would be thinned. The Darrington Collaborative supported the Project, noting that the Project provides "a balance between several important values on the Forest" and that the Collaborative believes that "these treatments, over time, will increase the diversity, habitat value, and resilience of these stands and the landscape."

One of the central issues on appeal was whether the Project complied with the Northwest Forest Plan's "no net increase in roads" requirement within Key Watersheds. The Project relies on only open, stored, and temporary roads to facilitate the thinning activities and, in fact, would result in a net decrease of 18.6 road miles. During oral argument, plaintiff-appellants North Cascades Conservation Council et al. (the Council) focused their argument on the impacts from temporary roads. The Council argued that because the 27 miles of temporary road work could last the entire duration of the Project's 10-to-20 year lifespan, there would be a net increase in road miles unless the construction was concurrently offset by the decommissioning of roads.

The Ninth Circuit issued the unpublished decision (meaning it does not have precedential value) a little over a month after oral argument was held before Judges Fletcher, Paez, and VanDyke. *See* February 2023 Newsletter. Interestingly, two out of the three judges have a track record of unfavorable rulings against the Forest Service. Most notably, Judge Fletcher authored the majority decision in *EPIC*, which enjoined the Forest Service's use of the road maintenance categorial exclusion to remove hazard trees along roads in response to the Ranch Fire on the Mendocino National Forest. *See* August 2020 Newsletter. And Judge Paez authored the infamous *Cottonwood* decision, which Congress has been

trying to pass a legislative fix. *See* House Subcommittee on Federal Lands Hearing on H.R. 200 (Forest Information Reform Act).

The Ninth Circuit's opinion rejected all of the Council's claims against the Project. With respect to the roads issue, the three-judge panel acknowledged that "at oral argument, [the Council] appeared to concede that the amount of roads in the Project area can temporarily increase without violating the prohibition. And all the roads that the Project will add to the Project area will be decommissioned at the end of the Project."

The Ninth Circuit also found that, based on both the administrative record and the government's assurances during oral argument, all temporary roads will be decommissioned at the end of each contract. The Court also explained that "[e]ven assuming that a project could violate the 'net increase' prohibition by adding 'temporary' roads that indefinitely increase the amount of roads in the Project area, the roads in this case will be sufficiently transitory to comply with the regulation," "[a]nd because all the temporary roads will be decommissioned, and no baseline is necessary, [the Council's] other arguments fail to show the Project violates the 'net increase' prohibition." The Ninth Circuit also explained why the Council's remaining claims related to woodpeckers, sensitive species, survey and manage species, and the Forest Service's reasonable range of alternatives analysis also failed.

The Ninth Circuit's decision is well timed, as the normal operating period for Hampton Lumber's and Skagit Log and Construction's contracts begins on June 1. This volume will help support operations of Hampton Lumber's Darrington mill, which employs approximately 170 people in Darrington's community of 1,400 people. Given this favorable Ninth Circuit ruling, AFRC hopes that the Mt. Baker-Snoqualmie National Forest will begin advertising the remaining sales associated with this Project. /*Sara Ghafouri*

Lolo Plan Revision Officially Underway

On March 16, the Lolo National Forest published a Notice of Intent announcing they are initiating the Forest Plan Revision process. This process starts with the assessment phase where the Forest Service invites other government agencies, Tribes, non-governmental parties, and the general public to share information about social, economic, and environmental conditions of the Lolo and the broader landscape.

AFRC and its members have been involved in the revision since December 2022 when the Forest solicited input on the structure of the public engagement process. As mentioned in AFRC's December 2022 Newsletter, several natural resource user groups including the forest products industry, grazing, and mining communities were not identified as potential public outreach stakeholder groups in the January Draft Public Engagement and Participation Strategy Summary document.

Since that time, AFRC and several of our members including Sun Mountain Lumber, Stoltze Lumber, Idaho Forest Group, Montana Logging Association, Powell County, Mineral County and others have formed a coalition to ensure our interests are represented throughout the revision process, including representation at all of the workshops and District Ranger meetings. To address our concerns about the importance of the forest products industry and local economics, the coalition sent a letter to the Forest's planning team outlining pertinent issues with the process to date.

In January, the Forest Service began hosting multiple webinars and meetings designed to inform the assessment phase of the revision. The 2012 Planning Rule requires the responsible official to identify and

evaluate existing information relevant to the plan area for a variety of resources during the assessment phase. To date, the Lolo has focused its assessment on Wild and Scenic Rivers, Species Diversity, and Wilderness.

During the weeks of March 7 and March 14 the Revision Team held a webinar and workshops on the topic of Wild and Scenic River Eligibility. We learned that the Forest has identified 682 potential waterways for inclusion in the Wild and Scenic River system. For any of the 682 potential Wild and Scenic River candidates, the Forest must determine if that river has any "Outstandingly Remarkable Value" as defined in the federal Wild & Scenic Act. Categories of outstandingly remarkable values include recreational, scenic, geological, fisheries and terrestrial wildlife, historical, cultural, and other similar river values.

AFRC and other coalition members are concerned about the impact to active management in the Wild and Scenic buffer areas (usually a quarter mile or larger) that accompany the designation. When placed upon the map of the Forest, a significant amount of the Forest would be covered by these buffers if those potential waterways were included in the system. To highlight those concerns, the Coalition sent an additional letter to the Revision Team stating our concerns with the potential impacts of additional Wild and Scenic designations.

More information on the revision process can be found on the Forest Service's website hub. Anyone interested in the process can also sign up by sending an email to *SM.FS.LNFRevision@usda.gov*. */Andy Geissler and Tom Partin*

AFRC Seeks to Defend Three Thinning Projects Authorized under the Timber Stand Improvement Categorical Exclusion

On March 29, AFRC filed an *amicus curiae* brief with the U.S. District Court for the District of Oregon in support of the U.S. Forest Service in a challenge to three forest health treatment projects on the Fremont-Winema National Forest: the Baby Bear Timber Stand and Wildlife Habitat Improvement Project (Baby Bear Project), the South Warner Habitat Restoration Project (South Warner Project), and the Bear Wallow Timber Stand and Wildlife Habitat Improvement Project (Bear Wallow Project). *See Oregon Wild, et al. v. U.S. Forest Serv., et al*., Case No. 1:22-cv-01007-MC (D. Or. filed July 12, 2022).

The Baby Bear Project will treat tree stand overcrowding and conifer encroachment through commercial thinning and prescribed burning on up to 3,000 acres. The Bear Wallow Project authorizes 10,000 acres of commercial thinning to improve deer habitat and alleviate aspen stand suppression, and will be implemented in partnership with the Oregon Department of Forestry through the Good Neighbor Authority. The South Warner Project authorizes 16,000 acres of commercial thinning that will improve habitat for whitebark pine and provide treatment for aspen and mountain mahogany stands. The estimated 75 million board feet from these three Projects, along with other planned projects on the Forest, is expected to contribute to the Fremont-Winema's annual timber program over the next 7 to 10 years.

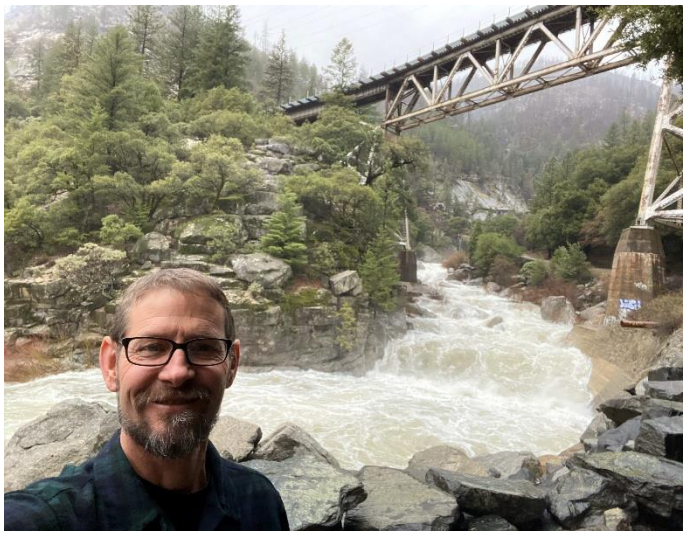
The Forest Service approved these three Projects under the "timber stand and/or wildlife habitat improvement" categorical exclusion (CE-6), which permits project implementation without preparation of further analyses under NEPA if the project (1) will improve timber forest health and wildlife habitat; (2) does not include herbicide use; (3) does not require more than 1 mile of road construction; and (4) does not present extraordinary circumstances for certain resource conditions that would warrant further NEPA analyses.

In their challenge to the Forest Serice's use of CE-6, Oregon Wild and WildEarth Guardians (plaintiffs) are seeking an interpretation of CE-6 that would impermissibly narrow its scope by excluding commercial thinning projects even though the Ninth Circuit recently interpreted CE-6 to encompass commercial thinning. AFRC was successful in defending CE-6 in two parallel appeals before the Ninth Circuit. *See* February 2022 Press Release; February 2022 Newsletter. AFRC moved for leave to file an *amicus curiae* brief because plaintiffs are seeking to bring an untimely facial challenge to CE-6 under the guise of an "as-applied" challenge.

Plaintiffs' proposed interpretation, which conflicts with settled Ninth Circuit case law, would impede the Forest Service's ability to rely on CE-6 for commercial thinning projects aimed at reducing wildfire risks and improving forest health and wildlife habitat, and has broad implications for other forest health projects on National Forest lands during a time of unprecedented wildfire events. AFRC's *amicus curiae* brief highlighted that plaintiffs' request to preclude commercial thinning from CE-6 or impose an acreage limitation has no support in the agency's regulatory text, context, or case law. In addition, AFRC's brief highlights how the Forest Service has relied on CE-6 to include commercial harvest long before President Trump's 2018 Executive Order requesting agencies to streamline NEPA. This case remains pending before Judge Michael McShane and a hearing has not been scheduled yet. /*Sarah Melton*

Jake Blaufuss Joins AFRC as Northern California Field Coordinator

AFRC is excited to welcome Jake Blaufuss as its Northern California Field Coordinator. This is a new position within AFRC that reflects its members' dedication to growing its on-the-ground presence in California. Jake will be based in Quincy and is responsible for monitoring Forest Service vegetation management projects on the Six Rivers, Mendocino, Shasta-Trinity, Klamath, Lassen, Modoc, Plumas, and Tahoe National Forests.



Jake brings a wealth of knowledge and expertise to AFRC through his work for the Collins Pine Company and Sierra Pacific Industries. Jake received a B.S in forestry resources management from The University of Montana in 2005. He is also a California Registered Professional Forester.

During his time with Collins Pine Company, Jake was responsible for timber sale preparation, administration, and silvicultural prescription development. He was also responsible for log procurement and supervision of the log yard at Collin's mill in Chester, CA. In addition to the daily supervision and management of the log yard and the sourcing of timber to meet the needs of the mill, Jake developed and implemented resource management plans and purchase agreements for small to medium size landowners.

Most recently Jake was the Division Forester with Sierra Pacific Industries where he sourced, appraised, and purchased high quality timber from private, state, and federal landowners for the company's facility in Quincy, CA. In this position Jake routinely provided comments and input on Forest Service vegetation

management projects and regularly engaged in communication with Forest Service staff on project feasibility and operational and contractual components.

Jake grew up in Plumas County and will continue to live in Quincy with his wife and two teenage daughters, where he also coaches girls' basketball. Jake is an avid backcountry skier and enjoys traveling and backpacking with his family. We are very excited to have Jake join our team! */Andy Geissler and Nick Smith*