



## Washington, DC Update

With just hours remaining before the end of the fiscal year, it is unlikely that Congress will find agreement to avert a government shutdown that will begin on October 1. House Speaker Kevin McCarthy (R-CA) has a slim four-vote majority and faces opposition from at least a half-dozen conservatives who are demanding large spending cuts as part of any appropriations measure. Democrats in the House and Senate oppose reducing spending levels below those included in an agreement reached earlier this year between President Biden and Speaker McCarthy to raise the debt ceiling.

On September 29, the House rejected a stop-gap bill to fund the government by a vote of 232 to 198, with 21 Republicans voting against the measure. Meanwhile, the Senate is expected to take up its own CR to put pressure on the House. The small band of conservatives in the House led by Rep. Matt Gaetz (R-FL) have threatened to force a vote to remove Speaker McCarthy from his post if he brings a Senate-passed CR up for a vote in the House where it would likely pass with support from Democrats and Republicans.

Federal agencies are beginning to issue internal guidance outlining how operations will be impacted by the shutdown. The Biden Administration will likely make any shutdown as painful as possible, particularly for programs that Republicans tend to favor. AFRC and our industry partners are in regular contact with agency leadership at the Forest Service and BLM seeking guidance for how a shutdown will impact the timber program.

Our industry is hopeful that the agencies will allow current harvest operations to continue during any shutdown, which is similar to how the agencies navigated the 35-day government shutdown in 2018. While the 2013 government shutdown was shorter at 16 days, our industry had to threaten legal action to enforce timber sale contracts to allow harvest operations to

## AFRC Emerging Leaders Program



**AFRC will host its 5th Emerging Leaders Program, November 9-10 at the Holiday Inn Downtown Missoula in Missoula, MT.** This program is intended to promote the leadership skills of those who are on a path to lead our industry in the future.

Our unique program will begin on the evening of Thursday, November 9 with a networking reception. On Friday, November 10, we will offer interactive discussions, panels and guest speakers on several important topics:

- **Forest policy**
- **Engaging public officials**
- **Coalition-building**
- **Industry leadership**
- **Communications**
- **Advocacy**
- **Community outreach**

AFRC members are encouraged to nominate participants by October 6. Special room rates are available at the Holiday Inn Downtown Missoula.

For more information, contact Nick Smith at 503-515-4206 or [nsmith@amforest.org](mailto:nsmith@amforest.org).

continue. Unfortunately, government shutdowns are extremely disruptive to the federal timber programs and provide agencies with another excuse for falling short of annual timber sale targets.

*Forestry Legislation.* On September 14, the House of Representatives passed by voice vote H.R. 1450, the “*Treating Tribes and Counties as Good Neighbors Act.*” The legislation, led by Reps. Russ Fulcher (R-ID) and Marie Gluesenkamp-Perez (D-WA) would allow tribes and counties to retain revenues from Good Neighbor Authority projects on federal lands to help fund project implementation and restoration costs. Under current law, only state forestry agencies have the authority to retain these revenues associated with GNA projects.

The legislation previously cleared both the House Natural Resources Committee and the House Agriculture Committee with strong bipartisan support. The legislation heads to the Senate for consideration, although it is widely considered a candidate for potential inclusion in the forestry title of the Farm Bill. However, the prospects for a Farm Bill look dimmer each day as a divided Congress struggles to pass routine legislation.

On September 20, the House Natural Resources Committee advanced legislation ([H.R. 934](#)) from Reps. Tom McClintock (R-CA) and Doug LaMalfa (R-CA) requiring the Forest Service to immediately suppress wildfires on Forest Service lands identified as being under extreme drought conditions or at high-risk of wildfire. The legislation also establishes new requirements for the agency’s use of backfires to aid in suppression efforts, including those set on private lands. Private forestland owners in California lost significant acreage to backfires set by the Forest Service.

AFRC President Travis Joseph sent a September 19 [letter](#) to the Committee in support of H.R. 934, which passed with bipartisan support on a voice vote. Travis wrote in part: “*If the Federal government is serious about addressing domestic emissions of greenhouse gases, one of the most important actions federal land managers can take is to aggressively suppress, contain, and extinguish wildfires during the wildfire season to avoid devastating carbon emissions that accelerate climate change and fuel a dangerous feedback loop to creating conditions for more, larger, and hotter wildfires. The safest wildfire – for people, firefighters, and the planet – is one that is put out quickly and when it is small.*”

However, during a May 23 Committee hearing on the legislation, the Forest Service [outlined](#) its concerns with the legislation: “*The agency has serious concerns that the bill language would remove critical resource management and firefighting tools and tactics from interagency responders who have to make life and death decisions, and therefore we cannot support this bill as written.*”

The Senate Energy and Natural Resources held a markup on September 21 in which it approved 21 bills by voice vote, including largely non-controversial public lands measures. Included in the markup was legislation from Senator Steve Daines (R-MT), [S. 2216](#), to release over 100,000 acres of Forest Service and Bureau of Land Management lands in Montana as Wilderness Study Areas. AFRC supported this legislation.

The Committee also approved the *Blackfoot-Clearwater Stewardship Act*, [S. 2149](#), from Senator Jon Tester (D-MT) to expand existing Wilderness areas, open lands to motorized recreation and establish a recreation area, and require the Forest Service to complete a landscape restoration assessment and 10-year schedule of restoration projects on the Seely Lake Ranger District of the Lolo National Forest. Restoration projects developed collaboratively could be carried out under streamlined authorities

available through the Healthy Forests Restoration Act of 2003. Pyramid Mountain Lumber supports the legislation.

Senator Patty Murray's (D-WA) *Wild Olympics and Wild and Scenic Rivers Act*, [S. 1254](#), was scheduled for markup, but was not brought up for a vote. AFRC received a request from Committee staff to send an updated letter outlining its concerns with the legislation. The [updated letter](#) along with three previous letters AFRC has written on the legislation were sent to the Committee and the Washington delegation on September 18. The legislation could come up for Committee action in November.

*Senator Diane Feinstein passes.* On September 28, California Democratic Senator Diane Feinstein died at the age of 90. Senator Feinstein served in the Senate for over 30 years and was engaged in forestry issues through legislation such as the Herger-Feinstein Quincy Library Group (QLG) Forest Recovery Act of 1998 and the Healthy Forests Restoration Act of 2003. Feinstein also chaired the Senate Interior Appropriations Subcommittee during the 2000s. California Democratic Governor Gavin Newsom will face a difficult decision to name a replacement when several Democrats were already vying to replace Feinstein. Newsom had previously committed to appointing a Black woman if a replacement was needed.  
/Heath Heikkila

<h2>The AFRC Podcast</h2>  <p><b>Episode 25: Forest Management at Work During 2023 Wildfire Season</b></p> 	<p>The <u>AFRC Podcast</u> is a monthly discussion examining key issues and news relating to forestry, forest products and public lands management.</p> <p>Southwest Oregon's 2023 Flat Fire gained strength in July as it burned through snags and other heavy fuels left over from the monstrous 2002 Biscuit Fire. Thankfully, firefighters enjoyed a few advantages, including a key ridgeline and a series of timber sales and fuels reduction projects that were implemented starting in 2006. In essence, the fight against this year's Flat Fire started decades ago. And similar efforts throughout the Pacific Northwest are often developed with the support of AFRC's monitoring team. In this episode, we chat with Corey Bingaman- our Western Oregon Field Coordinator- about the Flat Fire and the important work of protecting our forests green.</p> <p><u><a href="#">Click here to listen</a></u> to Episode 25. Our podcast is available on Spotify! Also now available on Apple Podcasts!</p>
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### Federal Wildfire Commission Releases Report

The Wildland Fire Mitigation and Management Commission was established by the 2021 Infrastructure Investment and Jobs Act and tasked with developing recommendations to Congress that address multiple facets of the wildfire system. The 50-member Commission includes representatives from federal agencies, state, local, and Tribal governments, non-governmental entities, academia, and the private sector. The Commission also invited input and recommendations from the public through an online portal.



The report, published this month, identified seven “overarching themes” to the Commission’s recommendations. Among those themes are Proactive Action, Enabling Beneficial Fire, and Workforce Development. A need for investments in proactive mitigation, in addition to existing investments in wildfire response, to break the cycle of damaging wildfire is highlighted and emphasized throughout the Report. To address this need, the report recommends investments in fuels reduction treatments on public and private lands and funding for planning. Mechanical thinning projects that include commercial timber harvest were identified to help reduce fire risk, restore watershed integrity, and provide wood products to the local industry, while also generating revenue that can help offset other costs.

The report emphasizes the notion that more fire is needed on the landscape, not less, and recommends expanding the practice of prescribed burning as well as allowing wildfires to burn for potential resource benefits. The “dominant paradigm” of aggressive wildfire suppression is highlighted as an obstacle to increased use of managed wildfire. The report also notes the challenge of preparing communities for increased levels of smoke associated with the expanded use of fire throughout the year.

Underpinning these and other themes is the issue of workforce capacity. Nearly all the report’s recommendations depend on a workforce capable of implementing proposed actions, particularly those actions associated with active forest management to mitigate the likelihood of high-severity wildfire. The report asserts that the scope and size of the existing workforce is not sufficient for the scale of wildfire risk reduction, response, and post-fire recovery work required now, let alone into the future. It is also noted that a federal workforce alone will not be sufficient to address the scale of work necessary to address the risk as non-federal personnel will be critical to augmenting current staffing levels. Although recommendations to address this issue are fairly ambiguous, it is clear that investments are needed to expand the necessary workforce. The full report can be found [here](#). /*Andy Geissler*

## **Forest Service Ramps Up Fuel Break Projects**

The 2021 Infrastructure Investment and Jobs Act established a Categorical Exclusion (CE) to establish and maintain linear fuel breaks to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community. Fuel breaks created under this CE can be up to 1,000 feet in width contiguous with or incorporating existing linear features and limited to 3,000 total acres. Permitted activities include mastication, commercial timber harvest, and non-commercial manual treatments.

Over the summer, several National Forests, particularly in Regions 1 and 6, began proposing fuel break projects that rely on this CE. Most projects are located in areas identified as Wildland Urban Interface (WUI) and focus fuel break establishment on key roads that can provide firefighters safer ingress and egress, while also providing defendable containment lines. Many fuel breaks are planned in accordance with established Potential Operational Delineations (PODs). PODS were developed by the Forest Service as a risk management approach to give land managers a formal process for developing landscape-scale wildfire response options before fires start.

Most noteworthy are the multiple fuel break proposals across National Forests in Region 1. In the month of September alone, six National Forests in western Montana and northern Idaho proposed a combined twelve fuel break CEs covering over 25,000 acres of treatment. The majority of these projects include some component of commercial timber removal to attain desired fuel break conditions. Additionally,

over 10,000 acres have been proposed on National Forests in Oregon; however, most of these acres will be implemented exclusively with non-commercial treatments.

While AFRC supports these projects we will continue to advocate for forest health treatments across the landscape. A fuel break project on the Mt. Hood National Forest noted that “forest stands in this area have become increasingly dense over time. This has created overcrowding and less healthy stands that are more susceptible to drought stress, disease, insect infestations, and mortality.” Active management of those stands beyond the 1,000-foot corridor is critical to improving forest health and resiliency at an appropriate scale. /*Andy Geissler*

## **Magistrate Judge Issues Findings & Recommendations in Challenge to the Eastside Screens Amendment**

On August 31, Magistrate Judge Andrew Hallman with the U.S. District Court for the District of Oregon issued his [Findings and Recommendation](#) (F&R) in the challenge to the Eastside Screens Amendment (Amendment), recommending vacatur of the Amendment’s Environmental Assessment and the preparation of an Environmental Impact Statement (EIS). See [Greater Hell Canyon Council, et al. v. Wilkes, et al., Case No. 2:22cv-00859 \(D. Or. June 14, 2022\)](#). Intervenors AFRC and Eastern Oregon Counties Association filed [objections](#) to Judge Hallman’s F&R on September 21.

The Eastside Screens were originally intended to be an interim management standard prohibiting removal of trees over 21-inches diameter at breast height (dbh) where the late old structure (LOS) forest was below its historic range of variability and the proposed harvest activity was outside of the LOS. See [February 2023 Newsletter](#). The 2021 Amendment replaces this nearly three-decades-old blanket prohibition with a more flexible guideline that allows limited removal of fire intolerant grand fir and white fir trees less than 30-inches dbh.

Judge Hallman held in favor of plaintiffs on several grounds, finding that the Forest Service: 1) violated the National Forest Management Act (NFMA) by failing to hold an administrative objection period; 2) violated the National Environmental Policy Act (NEPA) by failing to take NEPA’s required “hard look” at the effects of the Amendment on aquatic species and at the effects of moving from a standard to a guideline; 3) failed to prepare an EIS under NEPA; and 4) violated the Endangered Species Act (ESA) by failing to consult on and address the effects of the Amendment on aquatic species.

In his F&R, Judge Hallman agreed with plaintiffs’ NFMA claim and argument that the Eastside Screens Amendment was not originally proposed by the U.S. Department of Agriculture’s Under Secretary for Natural Resources and Environment and is therefore subject to an objection process. Judge Hallman found that a lower ranking agency representative proposed the Eastside Screens Amendment and therefore the Forest Service should have, but did not, allow for an objection process. See 36 C.F.R. § 219.51(b) (“plan amendments . . . proposed by . . . the Under Secretary for Natural Resources and Environment are not subject to” the objection process and “[a] decision by the Secretary or Under Secretary constitutes the final administrative determination”).

Judge Hallman’s decision mirrors a recent decision from U.S. District Court Magistrate Judge Clarke on April 27 that addressed the same challenge to the same decision in a different case and found in favor of the plaintiff on the grounds that “the Under Secretary must be involved with the proposal before signing a decision notice” in order for a forest plan amendment to be exempt from the objection process. The

decision in that case, *Blue Mountains Biodiversity Project v. Wilkes*, 1:22-cv-01500-CL, was referred to Judge Aiken after an objections process and will be considered alongside the decision in this case.

Judge Hallman also found that the Forest Service should have prepared a biological assessment for aquatic species under the ESA as part of the Section 7 consultation process. It was undisputed that the robust standards and guidelines in the Native Fish Strategy and Pacific Anadromous Fish Strategy would not change under the Eastside Screens Amendment, but Judge Hallman still concluded the Forest Service should have prepared a biological assessment for aquatic species.

Judge Hallman further found the Amendment rose to a level of NEPA "significance" such that an EIS should have been prepared, and that the Forest Service failed to take a "hard look" at the environmental impacts. The NEPA significance ruling was based, in part, on the conclusion that the NEPA context for the Amendment was a massive area because it applied to the six Eastside Forests, and because the Amendment's impacts were uncertain, including with respect to aquatic species.

However, Judge Hallman did not agree with plaintiffs' argument that the Eastside Screens Amendment was scientifically controversial under NEPA, concluding instead that the current state of the science was consistent with the Amendment. Instead, Judge Hallman agreed with Intervenor's argument that "there is not a substantial scientific dispute about the historical conditions of the eastside forests or the fact that hard diameter limits can constrain managers' ability to achieve desired species outcomes and protect eastside forests from changing fire regimes."

The Eastside Screens Amendment provides forest managers with the long-needed flexibility to improve conditions in stands outside of the LOS. Though Judge Hallman acknowledged the need for the Amendment and, more notably, that the science supporting it is not controversial, the F&R ultimately recommends more analysis and process which will further delay the Forest Service's ability to manage eastside forests to achieve historic conditions and improve resiliency.

After the briefing on the objections is complete, District Court Judge Ann Aiken will review the findings and may adopt the F&R in whole or in part or make her own determinations. /Sarah Melton

## **Washington Court of Appeals Dismisses Center for Responsible Forestry's About Time Timber Sale Appeal**

On September 26, the Washington Court of Appeals [dismissed](#) an appeal from the Center for Responsible Forestry (CFRF) upholding the About Time Timber Sale. Intervenor Murphy Company completed harvest in February and moved to dismiss the appeal, which the Appeals Court granted as moot. *See [Center for Responsible Forestry v. Washington State Department of Natural Resources, et al., No. 56964-7-II \(Wash. App. Sept. 26, 2023\)](#).*

The About Time Timber Sale was approximately 75 acres located in Grays Harbor County, in the Lower Chehalis State Forest, and managed by the Washington Department of Natural Resources (DNR). The sale was approved in September 2021, and CFRF appealed to the Washington Superior Court one month later. In addition to About Time, there were several other DNR timber sales that were appealed that raised similar claims: Point Blank, Green Thomas, Two Years Out, Taylor Downhill Sort, Goodman 1, Pivot, Bluehorse and Prospero. AFRC and Lewis County intervened in the challenge to Point Blank, but that appeal was later dismissed. CFRF challenged the About Time Timber Sale as violating the Public

Lands Act by failing to comply with the goals of the State’s 1997 Habitat Conservation Plan (HCP) and old-growth targets and the 2006 Policy for Sustainable Forests (PSF). CFRF also argued that the DNR violated the State Environmental Policy Act (SEPA) because, in its view, noncompliance with the HCP and PSF would have significant adverse environmental impacts. In March 2022, the Superior Court consolidated the About Time, Bluehorse, and Prospero appeals, and ruled in favor of DNR upholding the sales. The Superior Court found that CFRF failed to identify any arbitrary and capricious agency action under the state Public Lands Act and failed to demonstrate that DNR’s threshold determinations under SEPA were clearly erroneous. *See* [January 2022 Newsletter](#).

CFRF appealed the consolidated case to the Washington Court of Appeals, but their arguments focused solely on the About Time Timber Sale. AFRC and Lewis County submitted an amicus curiae brief in support of DNR and Murphy Company. The Court of Appeals found that CFRF’s claims were moot because the court could not grant CFRF’s requested relief. CFRF has only requested that the About Time Timber Sale be invalidated, focusing on conserving the timber to meet the requirements of the HCP and PSF. CFRF did not seek declaratory relief or request the court order mitigation measures to be implemented. Because the timber harvested was therefore no longer available for conservation, the Court held it could not provide CFRF its requested relief.

CFRC argued that, even if its appeal were moot, the public interest exception to mootness doctrine applied and therefore review of its appeal was still warranted. The Court found that CFRF’s appeal was not the “rare” moot case that should be reviewed and that there was no public interest exception to mootness present here. The Court found that making an authoritative determination to help guide DNR in this case, which focused on DNR’s specific actions taken to approve this specific timber sale, About Time, would not be useful for DNR’s future actions. CFRF’s arguments were tied to details about the About Time Timber Sale and DNR’s actions under SEPA approving the sale. Finally, the Court found that there is a high likelihood of the recurrence of court review of CFRF’s claims alleging violations of the HCP and PSF because of its other challenges to DNR timber sales.

Despite this major victory, we know that the battle isn’t over yet. AFRC will be closely monitoring future challenges to DNR timber sales that mirror the arguments raised in the About Time case. */Sarah Melton*

## **AFRC and Members Present to REAL Montana**

On September 14 and 15, AFRC staff and members presented to participants of the REAL Montana program. The program’s name comes from its focus “Resource Education and Agriculture Leadership” (REAL). The class is a comprehensive two-year program offering in-depth education and training in the agriculture and natural resource industries, including the timber industry, and has 20 students this year.

These industries in Montana are facing changes due to environmental concerns, government regulations and other challenges. REAL Montana works to address a leadership shortage in these industries by providing high quality leadership and industry training. This is the fifth class to take the program. The classes are demanding and participants dive deep





into most of Montana’s natural resource industries. The schedule and seminars are below, which includes traveling to Washington D.C. and Vietnam.

### REAL Montana Class V Schedule

	Date	Seminar	Location
<b>Year 1</b>	September 15-17, 2022	1- Teambuilding	Bozeman
	October 27-29, 2022	2- Media & Communications	Billings
	January 19-21, 2023	3- State Government	Helena
	March 6-11, 2023	4- Federal Government	Washington, D.C.
	June 22-24, 2023	5- Crop Production	Great Falls
<b>Year 2</b>	September 14-16, 2023	6- Timber Production	Kalispell
	November 2-4, 2023	7- Livestock Production	Dillon
	January 18-20, 2024	8- Hard Rock Mining	Butte
	March 1-13, 2024	9- International Trip	Vietnam
	May 1-4, 2024	10- Energy Tour & Graduation	Eastern Montana/ Billings

This month’s seminar focused on timber production where the class visited a Forest Service timber sale and heard from Tim McEntire of the Montana Logging Association about sale operations and management on National Forest System lands. They also toured the F.H. Stoltze sawmill, hosted by Paul McKenzie, Vice President, and General Manager and the Weyerhaeuser Medium Density Fiberboard Plant.



On Friday afternoon, Tom Partin, AFRC consultant, spoke about the impacts of the Equal Access to Justice Act on the National Forest timber program. Also on the panel was Sean Steinebach, Outreach Forester for Sun Mountain Lumber (*photo, left*), who talked about the importance of collaboration of forest stakeholders, and Julia Altemus, Executive Director of the Montana Wood Products Association.

Tom explained to the group several relevant facts about the Equal Access to Justice Act, including how the Act gives people or businesses with limited financial means the right to seek attorney fees and recoup other expenses related to litigation against the United States. The big factor is that EAJA allows payment to a prevailing party in an action against the United States absent a showing by the Government that its position in the underlying litigation was “substantially justified” or that special circumstances make an award unjust. The impacts of litigation by environmental groups to Region 1 have resulted in 200 mmbf of timber being tied up in Idaho and 300 mmbf of timber being tied up in Montana. That volume is more than the annual timber sale program for Region 1. The Region has paid out over \$1.5 million in attorney fees to these groups since 2018.

The forestry discussions were well received and the class had many questions about how they could help and acknowledged the importance of forest management and keeping Montana’s sawmills operating. The



REAL Montana Program has similar counterparts in Oregon, REAL Oregon Class, and Washington, AgForestry Leadership Program. AFRC is holding our Emerging Leaders Program in Missoula in November (see page 1). These programs are important for educating the leaders of tomorrow in our natural resource industries. AFRC would like to acknowledge that class participants included AFRC members Christopher Anderson, Controller for Sun Mountain Lumber and Cameron Wohlschlegel, Lands and Resource Manager for F.H. Stoltze. */Tom Partin*

### ***AFRC in the News***

- Nick Smith published an oped in the [Portland Tribune](#) explaining why active forest management is needed to protect Portland's water supply as the Camp Creek Fire burns in the watershed.
- Heath Heikkila is quoted in a [Peninsula Daily News](#) story about transfers of DNR state trust lands.
- Nick Smith published an opinion in the [Daily Inter Lake](#) and several other Montana newspapers regarding the climate benefits of forest management and wood products.