



Washington, DC Update

While much of our industry's focus has been on the Biden Administration's proposed old growth rule and the ongoing Northwest Forest Plan amendment process, there were some recent developments on Capitol Hill.

Fix our Forests Act. On June 26, the House Natural Resources Committee approved the *Fix our Forests Act* ([H.R. 8790](#)), forest reform legislation sponsored by Committee Chairman Bruce Westerman (R-AR) and Representative Scott Peters (D-CA). A discussion draft of H.R. 8790 was released in April and received a hearing on April 17.

In the weeks since the hearing, Westerman and Peters slightly revised the bill to attract additional bipartisan support, which now enjoys the support of Rep. Peters and four other California Democrats. Westerman is joined by 11 Republican co-sponsors, including Reps. Lori Chavez-DeRemer (R-OR) and Tom McClintock (R-CA). The Committee considered a [substitute bill](#), which is described in a [staff memo](#).

The legislation would expand and improve existing forest management authorities, including Good Neighbor Authority, Categorical Exclusions (CEs), and Stewardship Contracting. For example, many CEs would be expanded from 3,000 acres to 10,000 acres under the legislation. Good Neighbor Authority would be amended to give tribes the same authorities as states.

The legislation also authorizes the Forest Service to map and designate "firesheds" to target the top 20 percent of high-risk areas. Forest treatments in these areas would be subject to streamlined environmental review and limitations on injunctions. The legislation also includes a fix to the Ninth Circuit's *Cottonwood* decision and expanded authorities to remove hazard trees within 150 feet of utility lines, which is likely of great interest to California Democrats.

AFRC Emerging Leaders Program



AFRC will host its 6th Emerging Leaders Program, September 12-13 at the Hilton Garden Inn in Springfield, Oregon.

This program is intended to promote the leadership skills of those who are on a path to lead our industry in the future. We will offer interactive discussions, panels and guest speakers on several important topics:

- 2024 Elections
- Forest policy
- Engaging public officials
- Coalition-building
- Industry leadership
- Communications
- Advocacy
- Community outreach

AFRC members are encouraged to nominate participants by August 9. Special room rates are available at the Hilton Garden Inn.

For more information, contact Nick Smith at 503-515-4206 or nsmith@amforest.org.

Democrats unsuccessfully offered amendments to strip provisions streamlining environmental reviews and adding references to climate change as a contributor to the forest health and wildfire crisis. Representative Val Hoyle (D-OR) successfully offered an amendment to extend two existing federal forest restoration programs, the Joint Chiefs Landscape Restoration Partnership and the Collaborative Forest Landscape Restoration Project.

While the bill was passed out of the Committee on a voice vote, Hoyle and other Democrats suggested the bill still goes too far to be viable in the Democrat-controlled Senate. While it is true that advancing any forest reform legislation remains a challenge, the Fix our Forests Act has potential to attract more bipartisan support and see action in a lame duck Congress – most likely as part of a public lands package. A recording of the committee markup is available [here](#) and a Committee press release on the bill’s passage is [here](#).

Wyden’s River Democracy Act. On June 4, Senator Ron Wyden (D-OR) quietly introduced a revised version of the River Democracy Act ([S. 4449](#)). The bill was swiftly added to the agenda of a [June 12 subcommittee hearing](#) of the Senate Energy and Natural Resources Committee, despite the fact that the text of the bill was not made available to the public – either at Congress.gov or Senator Wyden’s website. In fact, as of June 28, the text of the bill remains unavailable for public review.

During the subcommittee hearing, Wyden extolled the democratic nature of the legislation, including how the rivers proposed for designation under the Wild and Scenic Rivers Act were nominated by people across Oregon. Wyden did not ask witnesses from the U.S. Forest Service and Bureau of Land Management any questions about the bill, but indicated that he would be sending a letter with written questions.

Previous versions of the River Democracy Act proposed adding more than 4,700 miles of rivers, creeks, streams, gulches, draws and unnamed tributaries to the federal Wild and Scenic Rivers System – placing new restrictions on 3 million acres of federal lands in Oregon. The bill faced [stiff opposition](#) across rural Oregon, including from counties, cattlemen, the forest products sector, and Representative Cliff Bentz (R-OR), who went to the floor of the U.S. House to [strongly oppose](#) the legislation.



We understand that Senator Wyden’s office worked to remove some of the areas proposed for designation, including dry gulches visited by AFRC staff (*photo, left*) and Rep. Cliff Bentz for photo opportunities. While we look forward to reviewing the revised version of the bill when it is made available, we remain concerned that it will make it more difficult for the Forest Service and BLM to treat at-risk forests and protect communities and watersheds from the growing forest health and wildfire crisis.

However, Senator Wyden believes the intent of his legislation is to use the Wild and Scenic Rivers Act to promote more active management. AFRC staff will continue to provide his office with information on how Wild and Scenic designations make active management more difficult and add costly and time-consuming requirements to develop Comprehensive River Management Plans.

Congressional reaction to Biden Administration Old Growth Rule. Republicans on Capitol Hill slammed the Forest Service’s proposed rule to amend 128 forest plans nationwide to provide additional protections for old growth forests. House Natural Resources Committee Chairman Bruce Westerman issued a [statement](#), which said in part:

“As its overgrown forests turn to tinderboxes, the Forest Service should be focused on active forest management to mitigate wildfire risk, curb diseases, and give land managers critical tools for success. Unfortunately, the USFS’ misguided action will further restrict badly needed forest management efforts, taking a vital tool out of the hands of the land managers who need them most.”

Democrats were much less vocal about the proposal, although some signed onto letters authored by [Senator Wyden](#) and [Representative Doris Matsui](#) (D-CA) in support of the rule earlier this spring. Environmental groups were largely supportive but continue pressing for extending protections to mature forests. /Heath Heikkila

The AFRC Podcast



**Episode 34: Blending
Indigenous Knowledge
and western science in
forest management**



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

Native Americans have been stewards of western forests for thousands of years, yet Indigenous ecological knowledge was lost in the aftermath of Euro-American settlement, and later in the development of forest policy and public lands management. That's beginning to change. As the federal government seeks changes to forest policy, there is a renewed effort to use this knowledge, history and heritage to inform future land management decisions. At the forefront of this effort is Dr. Cristina Eisenberg, director of tribal initiatives at Oregon State University's College of Forestry. She is our guest on The AFRC Podcast.

[Click here to listen](#) to Episode 34. Our podcast is available on Spotify! Also now available on Apple Podcasts!

Forest Service Releases Draft EIS for Old Growth Amendments

On June 20, the Forest Service released a [Draft Environmental Impact Statement \(DEIS\)](#) that analyzes the impacts of amending 128 Land Management Plans (LMPs) to address old-growth forests across the National Forest System (NFS). This effort stems from [Executive Order 14072](#) that directed the agency to conduct an inventory of old growth forests on NFS lands, analyze the threats to those forests, and develop policies to address those threats.

Oddly, the Forest Service issued a Notice of Intent to prepare the DEIS that analyzes policies to address threats to old growth in December 2023 prior to completion of the threat assessment; that [threat assessment](#) was published one week prior to the DEIS and confirmed that wildfire and insects & disease

have caused the highest loss of old growth forest over the past 20 years and continue to pose the most significant future threat to those forests. The threat assessment also concluded that old growth loss was greater in areas reserved from timber harvest (wilderness, inventoried roadless areas, national Monuments) than in areas where timber harvest is allowed and encouraged. In fact, while old growth decreased in reserved areas it increased by 7.8% in areas where timber harvest is allowed and encouraged. The Forest Service noted that these results suggest that strictly reserving old-growth forests may not always ensure that they are protected from future losses.

In response to these conclusions, the DEIS proposes new management direction on 128 LMPs for the stewardship of existing and recruitment of future old-growth forest. Three action alternatives are considered and analyzed in the DEIS to meet these objectives. The first action alternative (the Proposed Action) prohibits commercial timber harvest in old-growth forests for the purpose of timber production but allows harvest to promote the composition, structure, pattern, or ecological processes necessary for old-growth forests to be resilient and adaptable to stressors. Standards are included for this alternative that would prohibit any timber harvest that causes affected old growth to no longer function as old growth following harvest. The second alternative prohibits commercial timber harvest in old growth for any purpose, including proactive stewardship. The third alternative permits commercial timber harvest in old growth for a broader range of objectives than those described in the Proposed Action.

A key component of the Proposed Action includes the creation of an *Adaptive Strategy for Old Growth Forest Conservation* where individual Forests would identify and prioritize areas for the recruitment and promotion of old-growth forests in areas that “have the inherent capability to sustain future old growth forests.” This “strategy”, if implemented as described in the DEIS, would effectively alter the management of forests not currently classified as old growth. The role of such a “strategy” in the Pacific Northwest, where 7.5 million acres are currently designated as Late-Successional Reserve under the Northwest Forest Plan and set aside for the protection and recruitment of late-seral forest ecosystems is unclear.

Finally, the DEIS asserts that the Amendment would have no effect on timber supply from the NFS and, as such, would have no effect on the forest products and logging industries. On the contrary, the DEIS suggests that the Amendment would in fact “increase pressure to harvest additional Forest Service acres.” Where such pressure would originate is also unclear as the DEIS repeatedly indicates that LMPs do not “compel any action.” However, LMPs do compel inaction through standards and guidelines similar to the ones proposed by this Amendment.

Comments on the DEIS must be submitted by September 20. The Forest Service is striving to publish a Final EIS this winter. The DEIS indicates that the Secretary of Agriculture will sign the final Decision as soon as 30 days following that publication. Regulations at [36 CFR 219.51\(b\)](#) preclude the standard public Objection period on Decisions when signed by the Secretary, which means that this Amendment would be in effect immediately following signature. /Andy Geissler

U.S. Supreme Court Agrees to Hear Case to Properly Interpret the Scope of NEPA

On June 24, the U.S. Supreme Court granted the [petition](#) for a writ of certiorari in *Seven County Infrastructure Coalition, et al. v. Eagle County, Colorado, et al.*, No. 23-975. On April 5, AFRC and Mountain States Legal Foundation filed an *amicus curiae* [brief](#) in support of the petition. Even though this matter does not involve forest management, AFRC elected to file an amicus brief because it presents

an important opportunity for the Supreme Court to address the proper scope of the National Environmental Policy Act (NEPA) and whether a federal agency must analyze the environmental impacts of an action beyond its immediate effects.

This case centers on the Seven County Infrastructure Coalition's plan to build an 88-mile rail line between Utah's Uinta Basin and the national rail network. The rail line would primarily be used to transport Uinta Basin's abundant supply of crude oil to refineries. Currently, the only transport means available is freight trucking and the rail line would connect the mostly isolated Uinta Basin to the rest of the national economy, which would directly benefit the local economy.

The rail line was approved by the Surface Transportation Board (STB), which determined that the environmental impacts of the rail line had been adequately reviewed under NEPA. The environmental impact statement prepared by the STB examined three separate alternatives and STB selected the alternative with the least environmental impact. The public participated in numerous meetings to voice concerns and support for the rail line. The STB examined all potential environmental impacts of the rail line, including the emissions associated with increased rail traffic and the potential for rail line accidents. Ultimately, the STB concluded that, with environmental mitigation efforts, construction of the 88-mile rail line could begin.

However, Eagle County, Colorado, and the Center for Biological Diversity (Plaintiffs), took issue with STB's NEPA analysis. Plaintiffs claimed that the NEPA analysis was deficient because it did not adequately examine the upstream or downstream environmental effects of the rail line. For example, Plaintiffs argued that the NEPA analysis needed to examine the environmental impacts that refining Uinta Basin oil would have, even though oil refinement would not occur on the area affected by the rail line. Further, Plaintiffs argued that the NEPA analysis did not examine the environmental impacts of increased oil drilling in the Uinta Basin. The D.C. District Court of Appeals was persuaded by these arguments and determined that the STB's NEPA analysis was deficient.

The D.C. District Court of Appeals ruled that the STB violated NEPA by not examining both upstream and downstream effects. The D.C. Circuit concluded that deference was not owed to the agency as the STB was aware that, by providing a rail line to transport oil, oil production and refinement would increase and create more environmental impacts. STB argued that it would have no way to predict how much oil would be produced nor would it be able to predict where the oil would be refined. The D.C. Circuit rejected this argument and concluded that the omission of this analysis constituted a NEPA violation.

Petitioners, Seven County Infrastructure Coalition and Uinta Basin Railway, LLC, asked the Supreme Court to evaluate the lower court's ruling that NEPA requires analysis of both the upstream and downstream effects of an agency action. In our *amicus curiae* brief, we highlighted that the lower court's ruling ignored the Congressional intent of NEPA, that the NEPA process is intended to address only the cumulative impacts of the proposed project including the past, present, and reasonably foreseeable future actions, not the upstream or downstream effects.

NEPA has been weaponized to halt beneficial forest management projects. Many projects implemented by the U.S. Forest Service and the Bureau of Land Management (BLM) are consistently hung up in the court system by NEPA claims. These forest management projects have clear public benefits, such as mitigating wildfire risk, decreasing the impacts of insect infestations, reducing the spread of disease, and promoting the overall health of our forests. The intent of NEPA was never to halt the implementation of

these beneficial projects. Instead, NEPA was designed to influence government agencies, like the Forest Service and the BLM, to examine the environmental impacts that a proposed project may have.

While this case before the Supreme Court centers on a rail line project, the Court's decision to grant review signifies the importance of clarifying the Congressional intent of NEPA. This is the first time in 20 years that the Supreme Court has addressed the scope of NEPA. A favorable ruling from the Court would set precedent on NEPA requirements and could effectively stop the practice of using NEPA as a weapon to halt projects, a practice which has continued to harm the goals of government agencies and AFRC members. AFRC intends to submit an amicus brief in support of the merits in the late summer or early fall. AFRC anticipates that oral argument will be held before the Supreme Court by the end of 2024. /Paul Hamann

Montana Court Hears Argument on Alliance for the Wild Rockies' Motion for a Preliminary Injunction on the Pintler Face Project

On June 25, U.S. District Court Judge Dana Christensen held a hearing on a [motion for a preliminary injunction](#) in the challenge to the Pintler Face Project on the Beaverhead-Deerlodge National Forest in Montana. See *Yellowstone to Uintas Connection, et al. v. U.S. Forest Serv., et al.*, No. 9:24-cv-00025-DLC-KLD (D. Mont.). AFRC members Sun Mountain Lumber, Inc., and Powell County, Montana, along with Iron Pine Company, LLC and Anaconda-Deer Lodge County, Montana, are participating as defendant-intervenors.

AFRC elected to get involved in the litigation because of its potential impacts on AFRC members and the continued viability of the local timber industry. The Project brings significant benefits to the Beaverhead-Deerlodge National Forest and the local communities whose economies depend on a reliable source of federal timber and healthy federal forestlands. The Forest Service developed the Pintler Face Project to: (1) improve the Forest's resiliency to future disturbances, such as disease epidemics and insect infestations from the mountain pine beetle; (2) decrease conifer encroachment on native grasslands, aspen, and willow stands; (3) provide a source of timber for local communities; and (4) improve the condition of local watersheds.

Well over two years after approval of the Pintler Face Project, and after nearly half of the commercial timber harvest had been completed, Plaintiffs Yellowstone to Uintas Connection, Native Ecosystems Council, and Alliance for the Wild Rockies filed their complaint alleging that the Forest Service violated NEPA and the Endangered Species Act (ESA). Three months later, just as commercial harvest was about to resume, Plaintiffs filed a motion for a preliminary injunction seeking to halt all activities implementing the Project. Plaintiffs allege that without a preliminary injunction, they would suffer irreparable harm due to the Project's effects under both their NEPA and ESA claims.

However, significant project activities have already been underway, meaning that the status quo is continued operations, not inaction. Sun Mountain Lumber has already begun implementing its two sales, Pintler Face 1, which was originally purchased by RY Timber and has 4 mmbf remaining, and Pintler Face 2, which has 10 mmbf remaining. The other two sales (Pintler Face 3 and Pintler Face 4) were purchased by Iron Pine Logging, with Pintler Face 3 completed and Pintler Face 4 recently awarded and set to commence as soon as Iron Pine completes work on Pintler Face 1 as the contractor for Sun Mountain Lumber.

Judge Christensen was very attentive during argument and seemed well-prepared, asking questions of counsel throughout the hearing. Julie Weis with Haglund Kelley, LLP, argued on behalf of Defendant-Intervenors, including AFRC's two members. Also present in support were Chris Griffith, with Haglund Kelley, and Kris McLean with Kris McLean Law Firm, LLC. Julie's arguments focused on the lack of irreparable harm under either NEPA or the ESA, how the harms of granting a preliminary injunction would far exceed the benefits of halting all operations on the Pintler Face Project, the fact that the public interest strongly supports continued implementation, and the implications of Plaintiffs' years-long delay in bringing suit and seeking an injunction (no sense of urgency or concern about Project implementation in 2021, 2022 or 2023 and hence no irreparable harm). Julie also pointed out that the U.S. Fish and Wildlife Service (FWS) is expected to issue a new Biological Opinion (BiOp) soon that will render moot Plaintiffs' ESA claim regarding the grizzly bear.

Rebecca Smith with the Public Interest Defense Center argued on behalf of Plaintiffs and focused her arguments on procedural NEPA issues regarding lynx habitat remapping and the Pintler Face Project's alleged tiering to that remapped habitat. She also took personal responsibility for the significant delay in filing the original complaint, explaining that her delay was due to her being busy with other matters and stating that her delay did not represent a lack of urgency for the alleged irreparable harms associated with the Pintler Face Project. Judge Christensen previously has found such assertions not credible.

Erika Furlong and Hayley Carpenter argued on behalf of the Forest Service and offered an exhibit showing the many cases (14) filed by the litigious Alliance for the Wild Rockies from the time of the Pintler Face Project approval through mid-May 2024, further undermining Plaintiffs' allegation that they should be excused for their years of delay in challenging the Pintler Face Project. Government counsel also argued that Plaintiffs have not met their burden of showing a likelihood of success or serious questions on the merits under NEPA or the ESA and also have not made a sufficient showing on the other needed elements for an injunction, as a result of which the court should deny Plaintiff's motion for a preliminary injunction.

There was strong support at the hearing for the Forest Service, AFRC, and Defendant-Intervenors, with over 30 people in support of the Pintler Face Project present in the courtroom. This community support demonstrates how important it is for projects, like Pintler Face, to proceed because they benefit the health of the forest and directly benefit the rural communities that depend on a reliable source of federal timber. Implementation of the Pintler Face Project is crucial to the continuation of operations for both Sun Mountain Lumber and Iron Pine. A preliminary injunction would have devastating effects on both companies because each depends on the timber from the Pintler Face Project to keep operations going (and to keep Sun Mountain Lumber's Deer Lodge, Montana mill running). Given the timing of Plaintiffs' motion, it would not be possible for Sun Mountain Lumber or Iron Pine to readily find substitute work or substitute timber volume in the unwarranted event of an injunction. Thus, jobs are directly at stake, including those of some of the people in attendance at the hearing.

While it is not certain how and when Judge Christensen will rule on the preliminary injunction, he stated that he is aware of the time-sensitive nature associated with implementing the Project's activities. Currently, the Forest Service has issued a voluntary suspension order until FWS completes its updated BiOp. We anticipate that Judge Christensen will issue his ruling in the next few weeks. /Paul Hamann

Judge Christensen Remands the Horsefly Project Back to the Forest Service

On June 27, U.S. District Court Judge Dana Christensen issued a [mixed decision](#) adopting Magistrate Judge Kathleen DeSoto's [Findings & Recommendation](#) (F&R) in the challenge to the Horsefly Vegetation Project on the Helena-Lewis and Clark National Forest. *See All. for the Wild Rockies, et al. v. U.S. Forest Serv., et al.*, No. 9:21-cv-00051-DLC (D. Mont.). AFRC is participating as Defendant-Intervenor, given that AFRC member Sun Mountain Lumber is implementing the three timber sales associated with the Project—Stud Horse, Lost Mine, and Pistol GNA (previously awarded to R-Y Timber). Additionally, the Montana Department of Natural Resources and Conservation filed an *amicus curiae* brief in support of the Project since the agency is administrating the Pistol GNA sale under the Good Neighbor Authority.

The Horsefly Project authorizes commercial and non-commercial treatments intended to improve forest health and resistance to disease and insect infestation, reduce wildfire risk, and move conditions in the approximately 21,000-acre project area closer to those desired and more diverse, of which over 70% is designated as Wildland Urban Interface in Meagher County's community wildfire protection plan. Project activities include 3,278 acres of intermediate harvest, 1,049 acres of regeneration harvest, 1,117 acres of precommercial thinning, 3,453 acres of prescribed burning, and other restoration activities for aspen, meadows, fuels reduction, and 40.7 miles of temporary road construction, followed by obliteration, over the 20-year duration of the Project—though timber harvest and road work will likely occur during the first 6 years.

Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council allege violations of NEPA, the National Forest Management Act (NFMA), and ESA in approving the Horsefly Project. Specifically, Plaintiffs challenged the Project based on road density and impacts to elk and elk habitat; failure to use Forest Plan definitions of old-growth or to comply with Forest Plan standards for old-growth; site-specific Forest Plan amendments, including exempting the Project from standards that protect elk hiding cover; the agencies' determination that the Project would not adversely affect grizzly bears; and failure to report on and disclose a decrease in active goshawk nesting.

On March 31, 2023, Judge DeSoto found in favor of Federal Defendants and Intervenor on all claims except for those regarding the goshawk, recommending that Project activities be enjoined and the Project be remanded back to the agencies to remedy NEPA and NFMA violations concerning goshawk monitoring, evaluation, and reporting. On May 31, 2024, the Forest Service notified the court that the agency had completed a new goshawk monitoring report that evaluated nest success from 2007 to 2020, which would resolve the remaining claim. Plaintiffs disagreed and filed a response. In his order adopting the F&R, Judge Christensen found in favor of the Project on four of five claims, but that the Forest Service violated both NEPA and NFMA regarding the goshawk.

In response to the Forest Service's Notice of Satisfaction on the goshawk, Judge Christensen found that this last claim can only be resolved with a new NEPA analysis. Therefore, Judge Christensen remanded the Project back to the Forest Service and issued an injunction pending the agency's compliance with NEPA. We are optimistic that the agency should be able to provide supplemental NEPA analysis on the goshawk relatively quickly, so the injunction may prove to be a temporary delay. /Sarah Melton

AFRC Successfully Intervenes in Two Separate Challenges to DNR Timber Sales

Carrot Timber Sale. AFRC has successfully intervened as defendants in support of the Washington Department of Natural Resources' (DNR) Carrot Timber Sale located in Thurston County on behalf of itself and Pacific, Lewis, and Wahkiakum Counties. See *Legacy Forest Defense Coalition, et al. v. Department of Natural Resources, et al.*, No. 24-2-00508-34 (Wash. Super. Ct. Feb. 1, 2024) (Carrot Timber Sale).

On January 3, the Board of Natural Resources approved the Carrot Timber Sale after DNR issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA). The Project authorizes 73 acres of commercial harvest in the South Coast Habitat Conservation Plan (HCP) planning unit and will generate about 3.49 mmbf. However, DNR withdrew the Carrot Timber Sale on February 21 and will likely delay awarding it until after litigation has concluded. Plaintiffs Legacy Forest Defense Coalition (LFDC) and Thurston County argue that the acres included in the Carrot Timber Sale qualify as structurally complex forests under DNR standards and policies and claim that designating them as such could help DNR meet its Older Forest Target for the South Coast HCP planning unit. DNR's own assessment, however, has determined that there are no structurally complex stands within the Carrot Timber Sale.

Plaintiffs make three claims under the Public Lands Act, SEPA, and the Uniform Declaratory Judgments Act. First, Plaintiffs argue that DNR violated the Public Land Act by approving the Project without first making a finding that the sale is in the best interests of the State. Plaintiffs argue that neither DNR, the Commissioner of Public Lands, nor the Board of Natural Resources made a published finding that the Carrot Timber Sale is in the best interests of the state, and on the contrary, argue that the sale would undermine DNR's commitment to meet its Older Forest Target in the South Coast HCP planning unit.

Second, Plaintiffs argue that the Carrot Timber Sale violated SEPA because it was based on an erroneous DNS and that DNR did not consider the direct, indirect, or cumulative impacts of the Project—specifically, the effects of the Project along with other past and planned projects in the area. Plaintiffs' SEPA claim asserts that the DNS was based on incomplete information because it failed to evaluate the extent that the Carrot Timber Sale would impact DNR's ability to meet its Older Forest Target and failed to consider whether the sale conflicts with the HCP and DNR's 2006 Policy for Sustainable Forest (2006 Policy).

Plaintiffs claim that direct and indirect impacts include violations of DNR policy and procedures; harm to protected species; and loss of habitat, biodiversity, recreation, and ecosystem services. Plaintiffs also claim that the context of other potential or planned timber sales must be considered for cumulative impacts, including the Lizard Lounge, Sparrow Hawk, Class Dismissed, Mr. Mint, Sunny, Ghost, Rad Aghast, Honey, Comb, Nuggets, Evergreen Gold, Lions Main, Hornet, Misty, Gremlin, Mild Bill, Twisted Top, and Biscuits timber sales, which Plaintiffs argue also include structurally complex forests capable of contributing to the Older Forest Target in the South Coast HCP, and that these sales will have a significantly cumulative effect on DNR's ability to meet its Older Forests Target within 70 to 100 years.

Third, Plaintiffs argue that they are entitled to declaratory relief because DNR has planned future timber sales in Thurston County in similar acres of forest and they will continue to suffer ongoing procedural and environmental harm if DNR is allowed to continue.

AFRC's intervention comes after DNR filed a motion to dismiss contesting the Uniform Declaratory Judgment Act claim, which will be the subject matter of the upcoming July 19 hearing before Judge Chris Lanese. This hearing has been pending since April 5, after the assigned judge and several other judges recused themselves from the case.

Freedom Timber Sale. AFRC has also successfully intervened in defense of the Freedom Timber Sale on behalf of AFRC member Stimson Lumber, who is the purchaser of the sale. *Legacy Forest Defense Coalition v. Department of Natural Resources, et al.*, No. 24-2-00050-25 (Wash. Super. Ct. Mar. 7, 2024) (Freedom Timber Sale). This case is in Pacific County Superior Court before Judge Donald Richter.

On January 3, the Board of Natural Resources approved the Freedom Timber Sale after DNR issued a DNS under SEPA. The Project authorizes 138 acres of commercial harvest in the Columbia HCP planning unit. Parallel to the arguments raised against the Carrot Timber Sale, Plaintiffs argue that the 135 acres qualify as structurally complex forests under DNR standards and policies, and that designating them as such would help DNR meet its Older Forest Target for the Columbia HCP planning unit. Again, DNR's own assessment has determined that there are no structurally complex stands within this sale.

Plaintiff LFDC filed an appeal of the Freedom Timber Sale and its environmental review on March 7, arguing the same legal theory as in their challenge to the Carrot Timber Sale. Plaintiff mirrors their challenge to the Carrot Timber Sale and brings nearly identical claims under the Public Lands Act, SEPA, and the Uniform Declaratory Judgment Act. First, Plaintiff argues that DNR violated the Public Lands Act by approving the sale prior to making a published finding that the sale is in the best interests of the state, and that the sale would undermine DNR's commitment to meet its Old Forest Target in the Columbia HCP planning unit.

Second, Plaintiff argues that DNR violated SEPA because the Freedom Timber Sale was based on an erroneous DNS and DNR did not evaluate the extent to which the timber sale would impact DNR's ability to meet its Older Forest Target, failed to consider conflicts with the HCP, DNR Policy, and DNR Procedures, and failed to take into account the direct, indirect, and cumulative impacts of the Project. Plaintiff claims that the context of impending sales within the Columbia HCP planning unit must be considered for cumulative impacts, including the Great Divide, Finale, Right Fork, Ten Fir, Wilson, Elochomotion, Stairway to Hemlock, Chanel Change, Yewtube, Cheap Thrills, Highway to Helmo, Happy Hemlock, Beavalo, Gimme Some Thinn, Pollo Locho, Pom Poodler, Tule, Zephyr, and Gyppo Dream timber sales, which Plaintiff argues are also structurally complex forests capable of contributing to the Older Forest Target in the Columbia HCP planning unit. Plaintiff argues these sales will have a significant cumulative effect on DNR's ability to meet its Older Forest Target within 70 to 100 years.

Third, Plaintiff argues that it is entitled to declaratory relief because DNR has future activities planned in the Columbia HCP planning unit and they will continue to suffer ongoing harm if DNR is allowed to continue.

DNR filed a motion for partial dismissal of the case contesting Plaintiff's standing as to the third claim under the Uniform Declaratory Judgment Act. Plaintiff filed a response to DNR's partial motion to dismiss asking the Court to deny DNR's motion, arguing that under the Uniform Declaratory Judgment Act, the Court has broad authority to issue a declaratory judgment and that Plaintiff meets all of the requirements.

On May 6, Plaintiff filed a motion for preliminary injunction (PI), arguing that the Freedom Timber Sale violates the Public Lands Act, DNR’s 2006 Policy, and SEPA, and that “harm is imminent” because DNR has awarded the Freedom Timber Sale to Stimson Lumber. The Court held a hearing on May 10 on DNR’s partial motion to dismiss, but delayed ruling from the bench, explaining that the Court would rule at the hearing on Plaintiff’s PI motion on May 17.

At the subsequent hearing on May 17, the Court granted DNR’s partial motion to dismiss, and thus Plaintiff’s declaratory judgment claims are no longer part of this case. Given concerns that the Court would grant Plaintiff’s request for a PI, the parties entered into an agreement prior to the hearing that DNR would voluntarily suspend operations until a merits hearing is held. The parties agreed to an expedited hearing, which is set for August 2.

Both challenges to the Carrot and Freedom Timber Sales implicate important issues for the future of DNR’s timber program, including DNR’s interpretation of its own HCP, its policy and procedures, and how to achieve its Older Forest Targets. AFRC and impacted counties are working together to ensure the DNR timber sale program continues to supply AFRC members, who are critical to the economic vitality of many rural Washington counties. /*Shannon Reny*

AFRC Visits Key Region 1 Projects During Summer Field Trips

During the second week of June, AFRC staff and members visited five National Forests in Region 1 to look at several important projects that are being planned to address forest health concerns, community protection, and the salvage of dead and dying material.



Dead Trees in Alva Campground



Douglas-fir killed by bark beetles

On June 10, we visited the Idaho Panhandle National Forest, to look at the developing Katkee Fuels Project near Bonners Ferry, Idaho. This project will create fuel breaks along private land, infrastructure, and egress routes adjacent to priority firesheds.

The project area is about 20,000 acres and will implement about 11,300 acres of hazard fuels treatments. Due to steep terrain and access issues, the Forest is looking at treating about 1,200 acres using helicopter logging. The plan is to use funds from

the Bipartisan Infrastructure Law, Inflation Reduction Act, or revenues from stumpage to pay for the helicopters to harvest the trees and deliver them to various sawmills. The Forest will then be reimbursed from the mills that took the shipments of logs from the project area. This is a very timely Project since the area had a threatening wildfire last year and the fuels in the area are very heavy.

On June 11, we visited the Lolo National Forest and toured the North Seeley Wildland Urban Interface-Highway 83 Project. This 23,000-acre Project is near Seeley Lake, Montana, and all proposed fuels reduction treatments fall within the Seeley-Swan Wildland Urban Interface designated by the Seeley-Swan Fire Plan, a component of the Missoula County Wildfire Protection Plan. The proposed fuel break treatments are adjacent to Montana State Highway 83 from Seeley Lake to the Lolo and Flathead National Forests boundaries. Besides the heavy fuels throughout most of the project area, an insect epidemic stemming from the Rice Ridge fire is killing much of the Douglas-fir in the area. In addition, the dead and dying timber is posing a real threat to the campgrounds in the heavily used recreation areas such as Lake Alva.

On June 11, we toured the East Fork Sunday Fire Salvage and Restoration Project on the Kootenai National Forest near Eureka, Montana. The Project is designed to salvage dead and dying trees, remove hazardous fuels, and plant seedlings in areas that were burned from the 2023 East Fork Fire. The Forest plans to sell three timber sales out of the burned area covering about 2,600 acres with a possible volume of over 20 mmbf.

AFRC was pleased to hear that the Forest intends to request an Emergency Situation Determination (ESD) from the Chief of the Forest Service. If an ESD is granted, the Project would not be subject to the pre-decisional objection process. Once analysis is completed and a decision signed by the Responsible Official, implementation would begin immediately. The Forest hopes to implement the Project by late fall.



Extreme burn severity found in the East Fork Fire

On June 13, we visited the Lion Hill Fuel break on the Flathead National Forest. This Project will cover roughly 195 acres and generate about 1 mmbf. The Project will connect a series of fuel breaks, thinnings, and a recent fire the Forest has been working on over the last few years to help protect the communities of Hungry Horse and Martin City, Montana. In total the three fuel breaks will cover 1,784 acres in areas of hazardous fuel conditions.

The Flathead Fuel Break Project is being proposed under Section 40806 of the Bipartisan Infrastructure Law which authorizes the construction of linear fuel breaks adjacent to existing constructed linear features, such as a road, trail, powerline, or similar feature. Fuel breaks may be up to 3,000 contiguous acres and a maximum width of 1,000 feet. Projects which fall under Section 40806 are excluded from documentation in an Environmental Assessment or Environmental Impact Statement.

The Forest also updated the purchasers on the current timber sale plan by explaining how the litigation on the Flathead Forest Plan has impacted their FY2024 and out year programs. The adverse decision centering on impassible roads and the “primary area of conservation” of Grizzly bears is now impacting

about 70% of the Forest. The Forest is trying to pivot outside of this area in order to move some projects forward.



Dense and decadent stands of lodgepole ripe for disease and wildfire

On June 14, we visited the Selway-Saginaw Project out of Dillon, Montana on the Beaverhead-Deerlodge National Forest. The project area covers 66,289 acres and is composed almost exclusively of older stands of lodgepole pine that are likely to experience severe mortality. This area avoided the extreme mountain pine beetle epidemic of the early 2000's because of severe

winters and cold temperatures that killed the beetle larva. However, there are signs of increased insect activity and stands are starting to fall down or decay. The Forest plans to treat 3,223 acres commercially in the Selway Saginaw Project area, which will produce about 54 mmbf of timber from eight timber sales over the span of several years. This Project will be a very important part of the Beaverhead-Deerlodge program for several years, with the first sales scheduled to be sold in fiscal year 2026.

AFRC would like to thank the staff from these five Forests as well as the Regional Office for putting together visits to such meaningful projects. We look forward to their implementation in the coming months. / *Tom Partin*

In Memoriam: Karl Bialkowsky



Karl Bialkowsky, long time timber industry veteran in the Columbia Gorge passed away peacefully on March 1, 2024 at the age of 88. Karl spent summers working for the USFS on the Gifford Pinchot National Forest while attending Oregon State University. He began his career in 1958 with Hegewald Timber Company in Stevenson, WA. In 1973, he moved to The Dalles, OR where he worked for Mt. Fir Lumber Company and in 1992 finished his career with Hanel Lumber Company in Hood River retiring in 1998. He was a Director on the Board of the Northwest Forestry Association, the predecessor to American Forest Resource Council and was an active participant on the Mt. Hood Timber Purchaser's committee. A celebration of life will be held Saturday, July 13, 2024, 2:00 p.m. at the Hegewald Center in Stevenson. / *Paul Bialkowsky*