



Washington DC Update

September was a busy month for House Natural Resources Committee Chairman Bruce Westerman (R-AR), who successfully advanced several major legislative priorities. Westerman's Fix Our Forests Act ([H.R. 8790](#)) passed the full House of Representatives on September 24 by a bipartisan [268-151](#) vote. Meanwhile, the Committee also passed legislation ([H.R. 9533](#)) to amend the Endangered Species Act, and convened a hearing on [proposed legislation](#) to streamline the process for National Environmental Policy Act (NEPA) reviews.

Fix Our Forests Act. Westerman spent months working with Representative Scott Peters (D-CA) to develop legislation that could pass with bipartisan support. With 55 Democrats joining all 213 voting Republicans to send the legislation to the Senate, Westerman's efforts were well spent.

AFRC supports the Fix Our Forests Act which would strengthen and expand authorities available for active management of federal forests, including Categorical Exclusions. The bill would also increase federal forest health treatments in designated "Firesheds" by streamlining environmental reviews and limiting injunctions. It also includes a fix to the Ninth Circuit's *Cottonwood* decision. For more on the legislation, see [July Newsletter](#).

Here in the Pacific Northwest, Washington Representatives Marie Gluesenkamp Perez (D-WA-3) and Kim Schrier (D-WA-8) were the only Democrats that joined Republicans to vote for the bill. No Oregon Democrats voted in favor of the Fix Our Forests Act. Multiple California Democrats also supported the bill, including former Speaker of the House Nancy Pelosi. The full Roll Call vote can be found [here](#).

Continuing Resolution. On September 25, the House voted 341-82 to pass a Continuing Resolution (CR) to fund the government through December 20, averting a government shutdown that was advocated by former President Donald Trump and some conservative Republicans. The Senate followed suit the same day and passed the CR by a vote of 78-18 to send the bill to President Biden's desk for his signature.

House Speaker Mike Johnson (R-LA) brought the CR up for a vote after a previous effort to advance a CR coupled with a requirement to show identification to vote failed when 14 Republicans joined nearly all Democrats in opposing the legislation. With Hurricane Helene bearing down on the Gulf Coast, Congress adjourned promptly after passing the CR—earlier than expected—and is not expected to return until November 17 following the election.

Meanwhile, the Senate Energy and Natural Resources Committee was scheduled to take on a marathon slate of 79 bills on September 26 but had to postpone the markup due to Congress' early adjournment. Among the 79 bills included on the [Committee's agenda](#) was the Promoting Effective Forest Management Act ([S. 2867](#)), sponsored by Senators John Barrasso (R-WY) and Joe Manchin (D-WV), as well as

America's Revegetation and Carbon Sequestration Act ([S. 2991](#)), also sponsored by Manchin and Barrasso.

S. 2867 would require increasing targets for thinning on federal lands and greater transparency and accountability in agency reporting of acreage accomplishments. The bill would also require each local unit to utilize each of the six different expedited authorities passed by Congress in recent years. Finally, the bill would require the agencies to adhere to current agency definitions of old growth and establish an independent, science-based process for establishing new old growth definitions – effectively undercutting the Forest Service's national old growth amendment rulemaking.

Meanwhile, S. 2991 would promote increased carbon sequestration and storage through reforestation, active forest management practices, and greater use of mass timber products.

Upcoming Lame Duck Session. In addition to reaching an agreement on Fiscal Year 2025 appropriations, many in Congress will also be looking to advance their legislative priorities when Congress reconvenes after the election. Senator Joe Manchin, who is retiring from the Senate, continues pushing to pass permitting reforms for transmission and energy projects. Members in both chambers also have public lands bills that they hope to move, including Wilderness and other designations that have been stalled in Congress for over a decade. Depending on the political calculus for both parties following the results of the November election, there may be a window to pass a large Omnibus bill that could include federal forest management reforms.

Forest Service Budget Woes. Forest Service Chief Randy Moore recently convened a video conference call with agency employees to highlight the fiscal challenges facing the agency. The Forest Service is running out of one-time funding provided through the Inflation Reduction Act (IRA) and the Bipartisan Infrastructure Law (BIL). It was also forced to fund last year's cost-of-living increases provided to all federal employees out of its existing, largely flat budget provided by Congress, which is unlikely to provide the agency significant new funds in FY25 appropriations.

Chief Moore has warned that the agency will be unable to maintain all its current services as it shifts funds to paying current employees and focuses on key priorities. The Chief has issued a directive to suspend hiring for temporary and seasonal positions nationwide in FY 2025. He also told employees that “we can't get the same amount of work done with less people.”

It appears that the agency hired new permanent employees with the one-time funding sources and is now being forced to direct more of its baseline budget to maintain these employees. Many expected that agency timber outputs would increase with additional forest health treatments called for in the agency's 10-year Wildfire Crisis Strategy and funded under the IRA and BIL. Instead, outputs have declined in many regions and the agency has shifted away from specific timber and acres treated targets making it difficult to track the agency's accomplishments.

Most recently, the agency prioritized staff time and resources towards adopting the politically driven National Old Growth Amendment, a proposal to simultaneously amend 128 forest plans nationwide to “protect” old growth forests from logging. However, the agency's own data clearly shows that wildfire, insects, and disease, not logging, are the greatest threats to old growth on federal lands. After spending three years and millions of dollars to adopt new rules that will make active forest management more difficult, the Congress may have less appetite and justification to provide the agency with additional funds to address the real threats facing our federal forests. /Heath Heikkila

The AFRC Podcast



Episode 37: Understanding the Impacts of NEPA Litigation



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

The Breakthrough Institute published a [report](#) illustrating the impacts of anti-forestry lawsuits involving the National Environmental Policy Act (or NEPA). Their results found that NEPA-related litigation overwhelmingly functions as a form of delay, since most cases take years before courts ultimately rule in favor of the defending federal agency. AFRC General Counsel Sara Ghafouri returns to the AFRC Podcast to discuss NEPA litigation, and how recent and pending U.S. Supreme Court cases could affect public lands management for years to come.

[Click here to listen](#) to Episode 37. Our podcast is also available on Spotify and Apple Podcasts.

Northwest Forest Plan Amendment DEIS Now Expected in November

Last month, AFRC reported the Draft Environmental Impact Statement (DEIS) to amend the Northwest Forest Plan would be released sometime in October. The DEIS informs the public about the agency's potential actions for the amendment touching 24 million acres of Federal forests in the Pacific Northwest. It also discloses expected economic and environmental impacts of each alternative. The DEIS is now expected in early November.

[The Federal Advisory Committee \(FAC\) met in Skamania County, Washington the last week of September.](#) The meeting was organized for the FAC to provide feedback to the Forest Service on the amendment process, receive updates on DEIS progress, and to ensure the DEIS accurately reflects the 192 consensus recommendations provided to the agency by the Committee.

After meeting with and receiving feedback from the FAC, it was clear the DEIS required additional scrutiny and review before being finalized and made publicly available. The public release of the Northwest Forest Plan Amendment DEIS is expected to be followed by a minimum 90-day public comment period. Public comments will likely be due in February 2025, with a final decision and "action" being made by a new Administration.

To put this into context: the Northwest Forest Plan – which has not been substantively changed or amended in 30 years – will now be amended twice in less than six months. The Northwest Forest Plan

will first be amended by the National Old Growth Amendment in late 2024 or early 2025 and amended again months later with the Northwest Forest Plan Amendment. These major processes also coincide with implementation of a Wildfire Crisis Strategy and during a significant Forest Service budget crisis. What could go wrong? /*Travis Joseph*

AFRC Submits Comments on National Old-Growth Amendment DEIS

On September 20, AFRC submitted formal [comments](#) on the Forest Service's Draft Environmental Impact Statement for the National Old-Growth Amendment. AFRC's comments raised significant concerns that the proposed policy will hinder efforts to reduce wildfire risks on federal lands and stymie projects to conserve old-growth forests in the future.

AFRC highlighted that the amendment, which seeks to amend 128 Forest Plans nationwide, will add bureaucratic hurdles that slow down essential wildfire risk reduction projects. Our comments noted that the agency is “doubling down on its current failing management paradigm” rather than removing roadblocks to accelerate necessary and urgent forest restoration efforts.

Over the last two decades, nearly 700,000 acres of old-growth forests have been destroyed by wildfires, a trend that AFRC argued will worsen under the amendment. A joint [threat assessment](#) by the Forest Service and Bureau of Land Management found that over 70% of mature and old-growth forests are at high risk of wildfire.

That same assessment also found that in wilderness areas— or those “protected” from active management—have experienced greater losses of old-growth trees than forests where limited timber harvesting and other forms of active management are allowed.

In areas where active management has been implemented, the threat assessment found that old-growth forests have increased. This shows that careful and strategic timber harvesting is an important conservation tool. AFRC believes that instead of adding more regulatory processes, the Forest Service should focus on implementing its own Wildfire Crisis Strategy that seeks to expand and accelerate forest health treatments.

In the Pacific Northwest, where nearly 80% of federal forests are already off-limits to logging, AFRC emphasized that the region's existing policies, such as the Northwest Forest Plan, provide adequate protection. But a top-down national amendment would duplicate these efforts, encourage even more conflict and litigation, and further complicate federal land management. /*Nick Smith*

AFRC in the News

- Nick Smith published an opinion in the [Seattle Times](#) explaining why active forest management is essential to sustaining old growth.
- Travis Joseph was interviewed by [Public News Service](#) for a story on the Northwest Forest Plan amendment.
- Tom Partin published an opinion in the [Ravalli Republic](#) in support of the Gold Butterfly project on the Bitterroot NF.

Ninth Circuit Upholds Three Forest Health Projects on the Fremont-Winema National Forest

On September 25, Ninth Circuit Justices Wardlaw andumatay, and Arizona District Court Judge Collins, [upheld](#) the Forest Service’s use of a categorial exclusion (CE) to approve three projects on the Fremont-Winema National Forest. *See Oregon Wild, et al. v. U.S. Forest Serv., et al.*, No. 23-35579 (9th Cir. filed Dec. 6, 2023). Oral argument was held on September 11 at the James R. Browning Courthouse in San Francisco. AFRC participated as [amicus](#) before the Ninth Circuit and also participated as [amicus](#) at the district court level. [See March Newsletter](#).

At issue on appeal was the Forest Service’s use of a CE for timber stand and/or wildlife improvement to approve forest health projects. 36 C.F.R. § 220.6(e)(6) (CE-6). Under the Forest Service’s NEPA implementing regulations, the Forest Service is not required to complete an environmental assessment (EA) or environmental impact statement (EIS) analysis so long as certain conditions are met. For CE-6 to be applicable to a forest management project, the Forest Service must demonstrate that the project falls within the scope of CE-6, no extraordinary conditions are present, no herbicides will be utilized, and that no more than one mile of low-standard road will be constructed. But unlike many other CEs, CE-6 has no acreage limitation. The Forest Service relied on CE-6 to approve the three projects: the Baby Bear Project, which authorizes 3,000 acres of commercial thinning; the Bear Wallow Project, which authorizes 10,000 acres of commercial thinning; and the South Warner Project, which authorizes 16,000 acres of commercial thinning (the Projects).

In an unpublished opinion, the Ninth Circuit held that the Forest Service’s use of CE-6 to approve the projects at issue was not arbitrary or capricious and declined Plaintiff-Appellants’ request to implement “an undefined size or acreage limitation” on CE-6, where there is no support for such a limitation in the CE or NEPA. In interpreting the scope of the CE-6, the Ninth Circuit examined other CEs, promulgated at the same time, and determined that the lack of an acreage limitation was intentional and such a limitation cannot be imposed on CE-6.

However, the Ninth Circuit’s decision also remanded a portion of the case back to the district court for further review. The district court had held that Plaintiff-Appellant’s second claim—that CE-6 on its face violates NEPA because the Forest Service never determined that CE-6 can be applied to large forest management projects—was time barred by the applicable six-year statute of limitations. In light of the U.S. Supreme Court’s recent decision in [Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys., No. 22-1008 \(2024\)](#), Plaintiff-Appellants filed a notice of supplemental authority prior to oral argument to address the statute of limitations issue. *Corner Post* held that a claim does not begin to accrue until the plaintiff is first injured by the final agency action, not the date of the final agency action itself. Here, the Ninth Circuit held that the district court’s reliance on the six-year statute of limitations rule may be misplaced based on *Corner Post*. Because the district court did not reach the merits of this issue, the Ninth Circuit is remanding the issue for the district court to determine if Plaintiff-Appellants claim is time barred.

The Ninth Circuit’s holding allows the Baby Bear and Bear Wallow Projects to move forward but, unfortunately, the South Warner Project is tied up in a separate legal challenge. CE-6 is an important tool that allows the Forest Service to implement forest management projects to address wildfire risk, forest stand health, and improve habitat without the need to prepare a time consuming EA or EIS. The Ninth Circuit’s decision has broad implications because it reaffirms that this CE does not impose an arbitrary acreage limitation, which would have precluded the Forest Service’s ability to rely on this important tool

in areas at risk of wildfire. Instead, this ruling paves the way for sustainable forest management practices to continue without delay. */Paul Hamann*

The Gold Butterfly Saga—Why Changes to NEPA are Needed

The Bitterroot National Forest has been planning and attempting to implement the Gold Butterfly Project for nearly a decade. The Project encompasses 55,147 acres in the Sapphire Mountain Range and borders private land, Montana DNRC lands, and the Beaverhead-Deerlodge National Forest. Since 2015, the Forest Service has been developing fuels reduction and forest health strategies to protect nearby private properties and enhance local resources, such as wildlife habitat, clean water, and the conservation of older trees. The Gold Butterfly Project's main goal is to protect adjacent landowners from catastrophic wildfires which have been all too frequent in recent years.

The Project has been in the planning stages since 2017. The extensive timetable and sequence of planning, opportunities for comment, and supplemental findings are listed below:

- April 18, 2017: Pre-scoping meeting and outline of the Project.
- June 6, 2017: Forest begins preparing an Environmental Impact Statement (EIS) and formal scoping with 30-day public comment period.
- June 2019: The Final Environmental Impact Statement (FEIS) and draft Record of Decision were released beginning a 45-day objection period.
- November 15, 2019: The Final Record of Decision was signed by the Forest Supervisor.
- August 28, 2020: The Forest Supervisor withdrew the Final Record of Decision due to a legal challenge to the project and the Forest determined a project-specific amendment to the Bitterroot Forest Plan was needed to align management of old-growth stands in the project area with the best available scientific information.
- June 25, 2021: 30-day public comment period on the Draft Supplemental Environmental Impact Statement began.
- December 17, 2021: The Final Supplemental Environmental Impact Statement (FSEIS) and Draft Record of Decision were released which began another 45-day objection period.
- Ongoing in 2022: Based on new or updated information, or instructions from the Objection Reviewing Officer, specialist reports in the FSEIS were clarified.
- February 3, 2023: The FSEIS was updated, and a Notice of Availability published in the Federal Register.
- September 2024: First Timber Sale sold (Burnt Gold yielded 9.5 mmbf of timber).

AFRC and our members have been involved in the development of this Project since its inception and have provided comments at every opportunity. While we are frustrated, we understand some of the delays that occurred were due to the existing Bitterroot Forest Plan being several decades old, and new information need to be analyzed to satisfy statutes and the Courts.

Unfortunately, even with this amount of planning and the inclusion of new information and studies, some citizens remain unsatisfied with the Forest Service's efforts. This discontent became evident when two anti-forestry groups filed lawsuits to halt the Project in September.

The Gold Butterfly Project exemplifies why Congress needs to take a hard look at the NEPA process for analyzing projects. Despite efforts to expedite NEPA planning in recent years, urgently needed forest management projects continue to experience significant delays. */Tom Partin*

Forest Service Fiscal Year 2024 Wrap-up

After two years of declining timber outputs from Region 6, including a 19-year low of 460 MMBF in FY22, the Region got itself back on a trajectory of growth in FY23 by selling 584 MMBF and continued the upwards trajectory into FY24 by selling 591 MMBF. However, noteworthy for FY24 was the significant amount of non-sawtimber material contributing to their total accomplishment.

In particular, the sale programs on the Mt. Hood and Willamette National Forests were dominated by non-sawtimber material from hazard tree removal from the 2020 wildfires. The delay in removing those hazard trees caused them to lose their value and forced the Forest Service to spend millions of dollars of disaster relief funds to pay operators to cut and remove the deteriorated material.

USFS R6 - FY24						
Regional Target - 611 MMBF						
Forest	Regionally Assigned Target (MMBF)	Sawtimber (MMBF)	Non-Sawtimber (MMBF)	Permits (MMBF) - firewood, etc.	Volume sold	% Accomplishment
Colville	145.0	111.0	14.9	0.0	125.9	87%
Deschutes	28.0	20.8	5.4	3.6	29.8	106%
Fremont-Winema	66.0	49.7	6.4	7.6	63.6	96%
Gifford Pinchot	47.0	24.8	1.3	3.0	29.0	62%
Malheur	51.0	31.3	1.7	4.0	37.0	73%
Mt. Baker-Snoqualmie	10.0	4.3	0.0	0.8	5.1	51%
Mt. Hood	21.0	8.0	42.8	2.4	53.3	254%
Ochoco	11.0	4.1	1.1	2.3	7.5	68%
Okanogan-Wenatchee	33.0	30.3	1.0	7.4	38.8	118%
Olympic	19.0	15.8	0.0	1.7	17.5	92%
Rogue River-Siskiyou	33.0	24.2	6.3	2.9	33.4	101%
Siuslaw	47.0	36.4	3.3	0.7	40.3	86%
Umatilla	19.0	6.6	0.3	3.5	10.4	55%
Umpqua	25.0	22.5	1.5	0.5	24.4	98%
Wallowa Whitman	28.0	19.5	0.3	7.3	27.1	97%
Willamette	65.0	18.8	26.7	2.5	47.9	74%
Total	648.0	428.1	113.0	50.2	591.0	91%

Region 1 continued to struggle with implementing its timber sale program as they attained just over 70% of their assigned target. Of that total, 22% was in the form of permits, mostly personal-use firewood.

Adverse court rulings and complications with consultation with regulatory agencies continue to hamper the Region’s ability to attain its desired outputs.

USFS R1 – FY24

Forest	Target	Timber Sale Volume Awarded	Permits Volume	Ad. Vol. on Existing Sales	Total Accompl.
Idaho Panhandle	71.0	40.3	10.4	1.4	52.1
Nez Perce - Clearwater	71.0	66.9	7.5	6.1	80.5
Kootenai	61.0	11.8	4.6	0.5	16.9
Lolo	36.0	9.9	7.2	0.2	17.4
Flathead	40.5	27.5	6.0	2.6	36.1
Bitterroot	10.0	-	5.0	1.7	6.7
Beaverhead - Deerlodge	28.5	22.7	8.1	0.2	30.9
Helena - Lewis & Clark	20.0	3.3	6.4	0.3	10.0
Custer - Gallatin	35.0	11.8	3.8	0.1	15.7
Region	373.0	194.2	58.9	13.2	266.3

Region 5 fared better than Region 1 by attaining 90% of its target. However, like Region 6, the high proportion of non-sawtimber (a third of their overall attainment) continues to be a concern of a milling infrastructure in California that is in need of sawtimber from National Forest System lands.

USFS R5 - FY24

Regional Target - 395 Mmbf

Zone	Forest	Regionally Assigned Zone Target (MMBF)	Sawtimber (MMBF)	Non-Sawtimber (MMBF)	Volume sold
Central	Eldorado	166	29.6	3.6	33.2
	Plumas		1.4	8.5	9.9
	Lake Tahoe Basin		9.8	9.5	19.3
	Tahoe		56.2	0.6	56.8
North	Klamath	176	18.6	5.2	23.8
	Lassen		28.1	12.2	40.3
	Shasta-Trinity		29.2	29.1	58.3
	Mendocino		0	0.9	0.9
	Modoc		20.3	9.0	29.3
	Six Rivers		1.1	8.1	9.2
Southern	Sequoia	77	10.9	18.2	29.1

	Sierra		9.6	6.4	16.0
	Stanislaus		22	6.3	28.3
	Inyo		0.3	3.3	3.6
Total		419	237.1	120.9	358.0

Some of the outputs illustrated above may be adjusted throughout the month of October, however, those adjustments have never proven to be significant in past years. Fiscal Year 2025 timber programs are still being developed and finalized by each Region, although some early indications suggest that projected timber outputs will decline across many of the western Regions. /Andy Geissler

BLM Achieves Minimum ASQ for FY 2024

After a busy month, the Oregon BLM has successfully offered for sale their minimum Allowable Sale Quantity (ASQ) for Fiscal Year 2024. This comes after the Roseburg BLM District offered the entirety of their 2024 sale plan on the final day of September.

Each District’s ASQ was calculated in the 2016 RMPs on lands designated as Harvest Land Base (HLB) based on the annual productive capacity of those lands and aligned with the principles of ecological forestry. Approximately 20% of the BLM’s land base in western Oregon was designated as HLB while the remaining 80% was placed in reserves where sustained yield timber management is prohibited.

The RMPs also built in an allowable variation to that ASQ for each District “to acknowledge the practical difficulties in predicting annual implementation levels, to reflect the foreseeable year-to-year variation in BLM capacity to offer timber volume, and to facilitate sharing of staff and resources among districts.” In other words, if unforeseen circumstances occur that impact a District (i.e.: losses due to fire or disease), then they can deviate from their ASQ by as much as 40% on an annual basis (and as much as 30% on a decadal basis). An example of this occurred in 2023 when the Roseburg District was allowed to reduce their ASQ harvest from 32 MMBF down to 21 MMBF to allow focus on reforestation, following the 2020 Archie Creek Fire. Conversely, the Roseburg District exceeded their ASQ in the preceding years to account for timber salvage on that fire.

Since 2018 (the first year of decadal tracking following the 2016 RMPs), Districts have mostly offered ASQ volume at or near its calculated amount. However, FY 2024 stands out as the first year in which nearly every District has offered ASQ at or near their minimum variance. (see table below)

District	ASQ	Min ASQ	Max ASQ	2024 ASQ Contribution
		%40 Variance		
Salem	65	39	91	40.9
Eugene	53	31.8	74.2	31.8
Roseburg	32	19.2	44.8	21.7
Coos bay	12	7.2	16.8	8.6
Medford	37	22.2	51.8	28.9
Klamath Falls	6	3.6	8.4	5.4
Total	205.0	123.0	287.0	137.3

Unlike the years following the 2020 wildfires, the rationale for targeting the minimum allowable ASQ variance in FY 2024 is unclear. These volume reductions are extremely troubling for AFRC and its members who depend on a predictable and sustainable supply of timber from BLM lands. Also troubling is how the variance in the ASQ was exercised in FY 2024. Those variances were built into the RMP to allow the Agency to adapt to unforeseeable circumstances. While the Agency is awarded some discretion in determining what constitutes such a circumstance, the ambiguous application of that discretion this year is concerning. It's too soon to know if 2024 is a blip or a trend as Districts have not released their sale plans for FY 2025. /Corey Bingaman

AFRC Files *Amicus Curiae* Brief in Seminal Tree Fall Liability Case in Washington

On September 12, AFRC joined a diverse coalition and filed an [Amicus Curiae Brief](#) with the Washington Supreme Court in support of AFRC member Sierra Pacific Industries (SPI) in a seminal case about liability for leave-trees on Washington Department of Natural Resource (DNR) forestlands that subsequently fall due to wind, ice, or other natural events. *See Pub. Util. Dist. No. 1 of Snohomish, et al. v. State of Washington, et al.*, No. 102586-6 (Wash. S. Ct. filed Nov. 27, 2023).

That case severely limited the circumstances in which timberland owners and operators were immune when leave trees subsequently fall over, which is a common occurrence. While the case involved DNR lands, the statute at issue was intended to immunize all landowners, including private landowners, from liabilities related to leave trees. Members of the Coalition urging the Supreme Court to correct the decision include Washington Forest Protection Association (WFPA), Washington Association of Land Trusts, Washington State Association of Counties, Washington Farm Forestry Association (WFFA), and The Conservation Fund (Coalition), which represent the vast majority of landowners that are designing and permitting timber harvests in Washington. *See* [February Newsletter](#).

Previously, AFRC and the Coalition filed an [Amicus Curiae Brief](#) urging the Washington Supreme Court to accept review of—and reverse—the lower court's ruling. On March 6, the Washington Supreme Court granted a petition from the State, SPI, and Precision Forestry (Petitioners) to review the Court of Appeals' decision. *See Pub. Util. Dist. No. 1 of Snohomish Cnty., et al. v. State of Washington, et al.*, 534 P.3d 1210 (2023), *review granted*, 544 P.3d 34 (Wash. 2024). Upon the Supreme Court's acceptance of the case, Petitioners [Precision Forestry](#), [the State](#) and [SPI](#) each filed Supplemental Briefs with the Court, as did [Respondents](#), Barry and Kerry Chrisman, and Snohomish County Public Utility District No. 1 (PUD).

As background, in 2017, SPI purchased the Lugnut timber sale in Snohomish County, Washington. The Olney Creek runs through that area and requires a riparian management zone (RMZ) under Washington law where harvest is limited or excluded to allow trees to fall naturally. *See* [WAC 222-30-010](#). The DNR-designated RMZ surrounding Olney Creek is inside the Lugnut sale area but was excluded from timber harvest. SPI contracted with Precision Forestry to cut and process timber in Lugnut Unit 2, which was completed “up to the timber sale boundary tags” and the RMZ's edge.

In 2018, “extremely high” winds contributed to uprooting a leave-tree that fell and struck an official PUD vehicle, causing Mr. Chrisman, a PUD employee who was inside the vehicle, “catastrophic injuries.” PUD, Mr. Chrisman, and his wife filed a complaint against the State, SPI, and Precision Forestry seeking compensation for property damage, workers' compensation payments, and personal injuries. The trial court dismissed the claims as barred by RCW 79.09.330, which immunizes landowners for damages caused by leave trees.

The Court of Appeals concluded that statutory immunity under [RCW 76.09.330](#), only attaches where a landowner can show it was strictly required to leave a tree, that it does not attach to timber purchasers or operators, and that in some cases landowners will be required to provide additional protections against falling trees – such as leaving additional wind buffers standing. AFRC filed an amicus brief because the Court of Appeals’ decision is inconsistent with the legislative history and policy of RCW 76.09.330 and, more importantly, impractical because of how DNR forestlands are managed. AFRC is concerned that landowners, timber sale purchasers, and logging contractors can be held liable for tree fall incidents post-harvest.

In our *Amicus Curiae* Brief, we argue for the proper interpretation and application of RCW 76.09.330, and the scope of immunity the statute provides, so as to immunize all parties like the Petitioners from liability associated with leaving trees standing to protect public resources during a timber harvest. We highlight the scientific rationale for leaving trees standing, which play a critical role in the development of wildlife habitat, including the recovery of endangered salmon runs.

We also discuss the unique legislative history of RCW 76.09.330, which arose out of a series of stakeholder conservation agreements for forest management in Washington known as the Timber/Fish/Wildlife process that led to the Forest and Fish Report. *Amici* WFPA and WFFA were directly involved in negotiating those agreements that led to RCW 76.09.330. Finally, we also discuss the unique circumstances that landowners face when deciding where to leave trees standing during harvest, including legal and practical factors, and how landowner objectives are considered in designing and permitting a harvest.

The Amicus Coalition has a strong interest in ensuring that RCW 76.09.330 is enforced to achieve the balance of conservation and economic benefits that it was designed to attain. Oral argument before the Washington Supreme Court is scheduled for October 29 in Olympia. /Sarah Melton

Washington Court of Appeals Denies Request to Stay Freedom Timber Sale

On September 6, the Washington Court of Appeals [denied](#) Legacy Forest Defense Coalition’s (LFDC) motion for an emergency stay of DNR’s Freedom Timber Sale, which was purchased by AFRC member Stimson Lumber. *See Legacy Forest Defense Coalition v. Washington State Dept. of Natural Resources, et al.*, No. 59607-5-II (Wash. Ct. App.). AFRC is participating in this litigation on behalf of Stimson Lumber as a Defendant-Intervenor.

LFDC’s motion for an emergency stay comes shortly after Pacific County Superior Court Judge Richter denied its claims against DNR and granted judgment in favor of DNR and Stimson Lumber. *See [August 2024 Newsletter](#)*. Before the Superior Court, LFDC had unsuccessfully argued that the Freedom Timber Sale contained “structurally complex” stands which would require certain “commitments” to meet Older Forest Targets under DNR’s Habitat Conservation Plan and 2006 Policy for Sustainable Forests. Ultimately, the Superior Court deferred to DNR’s factual determination that the Freedom Timber Sale did not involve structurally complex stands and, based on that threshold issue, did not address whether DNR had further obligations under the Habitat Conservation Plan and 2006 Policy for Sustainable Forests. While the case was pending, Stimson Lumber voluntarily agreed to halt implementation but was allowed to begin operations after the court denied LFDC’s claims.

In an attempt to further delay the sale, LFDC sought an emergency stay pending appeal before the Washington Court of Appeals. In [response](#) to LFDC's request, Stimson Lumber explained that, not only did LFDC fail to present debatable issues on appeal, but that Stimson Lumber would face significant harm if implementation of the Freedom Timber Sale was further delayed. Moreover, LFDC's request for an emergency stay attempted to sidestep paying a bond, as required by the Washington Rules of Appellate Procedure.

In denying the stay request, the Court of Appeals explained that LFDC should have, but failed to, pursue a stay from the Superior Court in the first instance, and that any requests to waive paying the bond would have to be presented to that court. However, the Court of Appeals granted a short stay until October 11, so that LFDC could file its motion before the Superior Court.

As explained in our [August Newsletter](#), the Freedom Timber Sale is just one of many sales challenged by LFDC (and its predecessors) in an attempt to push their policy agenda onto the management of DNR trust lands. In fact, LFDC and its predecessors have filed 13 lawsuits, where they presented identical legal arguments, and identified 69 additional sales to be challenged. So far, LFDC and others have not succeeded on the merits of any of its claims, as four of its challenges (including this one) have been dismissed on the merits by superior courts.

We expect LFDC to file an emergency stay before the Superior Court before October 11. Additionally, we anticipate that the merits of LFDC's appeal will be resolved in late 2025. /Sara Ghafouri

Nick Smith Receives 2024 W.D. Hagenstein Communicator Award



AFRC Public Affairs Director Nick Smith was honored with the 2024 W.D. Hagenstein Communicator Award by the Society of American Foresters (SAF) at the SAF National Convention in Loveland, Colorado on September 19. The award recognizes outstanding communication efforts that advance public understanding of forestry and natural resources.

In announcing the award, SAF cited Nick's communication initiatives that have made a lasting impact on public awareness of forestry, both locally and nationally. His ability to engage diverse audiences through education, information sharing, and outreach has significantly raised awareness of the importance of sustainable forest management. A longtime member of the Oregon SAF (OSAF), Nick's leadership as Communications Committee Chair during the 2018 National SAF Convention demonstrated his dedication to SAF's mission and his ability to drive meaningful dialogue on forestry issues.

As the executive director of Healthy Forests, Healthy Communities, Nick has led innovative communication strategies, including launching a popular podcast that brings together industry leaders, scientists, and policymakers to discuss complex forestry topics in an accessible way. His Daily News Round Up service and strong social media presence, with over 265,000 followers on Facebook, have further enhanced public engagement with critical forestry issues.