## Washington DC Update

*Budget Reconciliation.* After months of intense debate and disagreements among House Republicans about the Reconciliation Bill – H.R. 1, aka the President's "One Big Beautiful Bill," the House of Representatives passed the measure on May 22 by one vote, 215-214.

As reported in the May 2025 AFRC Newsletter, the House Natural Resources Committee's portion of the reconciliation bill includes mandates for the U.S. Forest Service and Bureau of Land Management (BLM) to increase timber outputs and enter into long-term timber contracts. The specific forestry/timber provisions are found in Sections 80311-80314 of the Reconciliation bill.

AFRC is appreciative of the efforts by Committee Chairman Bruce Westerman (R-AR) and the House Natural Resources Committee to include timber provisions. We have been working to clarify and address concerns with some of the language, which were not addressed prior to House passage of the legislation.

It's now up to the Senate, which will take up the House-passed Reconciliation bill. The Senate has indicated that changes are likely. AFRC continues working with our allies in Congress to make needed technical changes and improvements to the Reconciliation bill impacting the federal timber program, contracts, and operations of AFRC members.

*FY26 Budget Request.* There are serious questions about the ability of the Forest Service and BLM to increase timber outputs due to the loss of staff as the Trump Administration seeks to shrink the size of the federal government. The agencies would also face significant budget reductions under President Trump's FY 2026 budget proposal.

On May 2, the Trump Administration released a "skinny budget" outlining President Trump's recommendations for discretionary funding levels for FY 2026. The proposal would reduce non-discretionary domestic spending by 22.6% while increasing funding for defense and border security by 13% compared to FY 2025 levels. Most federal agencies are operating under a year-long Continuing Resolution (CR) set to the FY 2024 levels.

The "skinny budget" detailed some proposed reductions. For example, the Forest Service would receive $342 million less (an 18% reduction) for salaries and expenses for managing the National Forest System. Another $50 million would be saved by eliminating funding for the Collaborative Forest Landscape Restoration Program. Meanwhile, the Forest Service operations budget would be reduced by $391 million (a 34% reduction), including salaries and facility leases.

In the explanatory document provided to Congress, the Administration indicated that its budget fully supports efforts to "improve forest management and increase domestic timber production, and the

Administration's goal of restoring federalism by empowering States to assume a greater role in managing forest lands within their borders."

On May 30, the Administration released a larger "Technical Supplement" that provides additional details on the proposed program spending levels and reductions. According to that document, funding for the management of BLM O&C lands would be cut from about $120 million annually to just $55 million – a 55% reduction.

Presidential budgets are advisory to the Congress and generally are used to highlight policy priorities of the Administration. Ultimately, it is up to the Congress to establish agency budgets. It remains to be seen if House and Senate, Republican and Democratic appropriators will stomach such drastic reductions. In recent budget hearings, Democrats have been vocal in opposing proposed reductions to domestic discretionary spending while most Republicans appear open to targeted reductions.

*USDA announces $200 million for expanded timber production.* On May 30, USDA Secretary Brooke Rollins announced a "bold" $200 million investment to "increase timber harvest, improve forest health and productivity, reduce wildfire risk, and support rural prosperity in forest communities." The funds were likely reprogrammed away from other programs and will support a new "Active Forest Management Strategy" released by the Forest Service the same day.

The new strategy "supports President Trump's Executive Order: Immediate Expansion of Timber Production" and "will deliver greater value to the public, protect natural resources, and ensure America's forests remain resilient and productive for present and future generations." AFRC is encouraged by this strategy and we are working with the Forest Service to direct this funding to regions and forests that can advance active forest management and increase timber outputs.

*Tribal Co-Management Gets Bipartisan Support.* The House Committee on Natural Resources' Subcommittee on Federal lands held a May 20 hearing on draft legislation from Rep. Kevin Hurd (R-OK) called "Fostering Opportunities to Restore Ecosystems through Sound Tribal Stewardship Act" or "FORESTS Act." The Committee memo can be read here. Two of the witnesses came from Tribes in the Pacific Northwest: Cody Desautel, Executive Director of the Colville Tribes representing the Intertribal Timber Council and Tim Vredenburg, Director of Forest Management with the Cow Creek Band of Umpqua Indians.

The FORESTS Act would enhance existing authorities and create a new statutory framework for cross-boundary Tribal co-management on federal lands to address wildfires and forest health, protect cultural resources important to tribes, and incorporate indigenous management practices.

Among other provisions, the bill amends the National Indian Forest Resources Management Act to allow Tribes to enter inter agreements with federal agencies and conduct forest management activities on federal lands under that statute, rather than the National Forest Management Act. This would be a significant new efficiency. The FORESTS Act also makes changes to GNA and Tribal Forest Protection Act authorities to make those authorities more workable for Tribal co-management.

Committee Democrats were largely positive in their questioning and comments about Tribal co-management. In fact, the Committee's Ranking Member, Jared Huffman (D-CA), recently introduced the "Tribal Self-Determination and Co-Management in Forestry Act" (H.R. 3444) to "incorporate Tribal co-management into decision-making processes."

H.R. 3444 would authorize federal agencies to enter into Tribal co-management plans, but the Forest Service would continue managing under its current broken processes that often delay or completely stymie important forest management projects. Ranking Member Huffman said that he has been promised a hearing on H.R. 3444. It is possible that the Committee could find common ground to advance Tribal co-management legislation. */Heath Heikkila*


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**U.S. Senator Steve Daines of Montana joins us for a candid discussion about the urgent need for forest management reform. Senator Daines weighs in on President Trump's recent executive orders supporting domestic timber production, the bipartisan momentum behind the Fix Our Forests Act, and why litigation reform is critical to restoring the health of our federal forests. He also addresses growing threats to wildfire response—including a lawsuit that could restrict the use of aerial fire retardants.**

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## Supreme Court Clarifies Courts' Role in NEPA in *Seven County Infrastructure Coalition v. Eagle County, Colorado*

On May 29, the U.S. Supreme Court issued its Opinion in *Seven County Infrastructure Coalition v. Eagle County, Colorado,* No. 23-975, 2025 WL 1520964 (U.S. May 29, 2025) (*Seven County*), reversing the D.C. Circuit's decision and upholding the U.S. Surface Transportation Board's (the Board) 2021 approval of a federal railway project. In April 2024, AFRC and Western Energy Alliance filed an *amicus curiae brief* in support of Seven County Infrastructure Coalition's petition of certiorari, and in September 2024, an *amicus curiae* brief on the merits. While this case does not directly involve forest management, AFRC filed its *amicus brief* because it presented an important opportunity for the Supreme Court to address the proper scope and limits of review under the National Environmental Policy Act (NEPA) and to determine whether a federal agency must analyze the environmental impacts of an action or project beyond its immediate effects.

In an 8-0 decision, with Justice Gorsuch recusing himself, the Court ruled to limit the environmental effects agencies must consider when assessing a proposed project. The Court held that the Board did not need to address the environmental effects of upstream oil drilling or downstream oil refining and needed only to address the effects of the proposed railway line.

This case centered on Seven County Infrastructure Coalition's plan to build an 88-mile railway connecting the Unita Basin with the Union Pacific Railroad Company Station in Kyune, Utah, and from there to the national rail network. Seven County Infrastructure Coalition's expected purpose for the railway would be to enable Unita Basin oil producers to transport, with greater ease and in greater quantity, waxy crude oil drilled in the Basin to refineries on the Gulf Coast. Once the railway connected the Union Pacific railroad, the train would travel through Eagle County, Colorado, and closely abut the Colorado River.

For the proposed 88-mile railway, the Board prepared an Environmental Impact Statement (EIS), which was more than 3,600 pages. The EIS addressed environmental factors of the railway, including the comparative environmental merits of alternative railway routes, the railway's impact on the Unita Basin's natural environment, impacts on vulnerable species like the greater sage-grouse, and the impact increased freight traffic caused by the railway would have on the Union Pacific line through Eagle County. While the Board recognized climate change impacts of the project in the EIS, it also explained that it was not required to analyze impacts related to the destinations or end uses of products transported by the railway.

The D.C. Circuit disagreed and faulted the Board for not sufficiently considering the environmental effects of projects separate from the railway itself—including the environmental effects that could ensue from 1) increased oil drilling upstream in the Unita Basin; and 2) increased oil refining downstream along the Gulf Coast of Louisiana and Texas. The D.C. Circuit vacated the EIS and the Board's approval of the project, and no railway construction or other project implementation activities have since occurred.

In its Opinion, the Supreme Court reversed the D.C. Circuit's decision and held that the D.C. Circuit did not afford the Board substantial judicial deference required in a NEPA case. Justice Kavanaugh, authoring the Opinion, stated that "NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decisionmaking, not to paralyze it." *Seven County*, 2025 WL 1520964, at *3. Inherent in the NEPA process is a "rule of reason," which ensures that agencies are given deference as to whether and to what extent to prepare an EIS, as opposed to the court substituting its judgment for that of the agency. *Id*. at *8.

The deference referred to in this case is different than the deference in the Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In *Loper Bright*, the Court limited the deference owed to agencies when interpreting ambiguous statutes. The Court held that in cases where a statute is ambiguous, judicial review of an agency's interpretation is reviewed de novo. It is the job of the courts, not agencies, to interpret federal law because these are primarily questions of law. *Id*. at 412. In contrast, the Court's decision in *Seven County* applies when an agency exercises discretion explicitly granted by a statute. Judicial review is conducted under the Administrative Procedure Act's deferential arbitrary and capricious standard. NEPA is a purely procedural statute and imposes no substantive constraints on the agency's ultimate decision for an approved project. Under NEPA, the only role of the court is to confirm that the agency has addressed environmental consequences and feasible alternatives. *Loper Bright* provides courts with deference when there is legal issue and interpretation of a statute because a court is better equipped to answer a question of law. On the other hand, *Seven County* provides agencies with more deference in cases where there is a factual issue because agencies are better equipped to make factual determinations when it applies to subject matter projects, like a proposed railway project.

In this case, the Board properly considered the environmental effects of the railway construction and operation but specifically refrained from detailing the effects incurred in separate projects. The Court found that NEPA dictated the Board need only consider the environmental effects of the 88-mile railway construction and operation, meaning the extent that the project could disrupt habitat, soil erosion, or pollute the air. The Board's EIS assessed these impacts, and the Court determined that nothing in NEPA requires the Board to go further to study the environmental impacts from upstream or downstream projects that are separate from the 88-mile railway.

Justice Kavanaugh clarified that the role of the courts in reviewing the sufficiency of an agency's consideration of environmental factors is a limited one, and stated the bedrock for judicial review in one word: "Deference." In a straightforward statement of what the proper judicial approach is for NEPA cases, Justice Kavanaugh wrote "Courts should review an agency's EIS to check that it addresses the environmental effects of the project at hand. The EIS need not address the effects of separate projects. Courts should afford substantial deference to the agency as to the scope and content of the EIS." *Seven County*, 2025 WL 1520964, at *13.

When the effects of an agency action arise from a separate project, NEPA does not require the agency to evaluate the effects of that separate project. Justice Sotomayor, in her concurrence, pointed to precedent, like *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004) and *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983), to say that even a foreseeable environmental effect is outside of NEPA's scope if the agency could not lawfully decide to modify or reject the proposed action, if the impacts are too attenuated from the project. In this case, the foreseeable environmental effects—downstream oil drilling and refining—are not under the Board's authority and are too far removed from the causal chain to be assigned to the Board for analysis. Thus, NEPA does not require the Board to consider these effects.

Overall, under NEPA agencies may consider the direct and indirect effects of a project, like air pollution or soil erosion, even if those effects extend outside of the geographical area of the project. However, if the project at issue might lead to the construction or increased use of a separate project, then the agency need not consider the environmental effects of that separate project. The Court stated that an agency may draw what it reasonably concludes is a "manageable line"—one that encompasses the effects of the project at hand, but not the effects of the projects separate in time or place. *Seven County*, 2025 WL 1520964, at *11.

This latest Supreme Court ruling demonstrates that the Court recognizes the necessity to not unnecessarily block the implementation of projects, a confluence of all three branches of government recognizing the need to hasten development and limit the scope of NEPA. Earlier this year, the Trump Administration rescinded the Council of Environmental Quality's NEPA regulations and guidance for greenhouse gas emissions to speed up the construction and development of projects. During the Obama and Biden Administrations, Congress passed laws that revised the NEPA process with the intent of expediting reviews and increasing efficiency.

Justice Kavanaugh's Opinion also mirrors language of a more liberal "abundance" agenda, which seeks to raise the American standard of living by investing in large infrastructure projects, like housing developments. The Court's ruling here on NEPA will have impacts for both projects that seek to promote domestic energy projects and projects that provide a higher quality of life for Americans and lower the barriers to housing.

In the forest management context, NEPA has been used by project opponents as a "tool to try and stop or slow down new infrastructure and construction projects." *Seven County*, 2025 WL 1520964, at *12. Historically, the courts' application of NEPA has created more opportunities for unnecessary delays to implement critical forest management projects that help mitigate the risk of wildfire, reduce insect infestation and disease, promote healthy forests, and contribute to building better communities. Under the current regime, fewer projects are completed and fewer projects fail to begin because NEPA has been used by anti-forestry groups to stall beneficial forest management projects through unnecessary and lengthy litigation.

The Court's ruling in *Seven County* offers a "course correction" to bring judicial review back in line with NEPA's statutory language and principles of common sense by stressing that the courts must defer to the discretion of the responsible federal agencies. *Id.*, 2025 WL 1520964, at *9. Moving forward, courts must adhere to principles of agency deference when assessing an agency's final approval of a project. /*Taylor Harwood*

## Federal Agencies Rescind the Definition of "Harm" under the Endangered Species Act

On May 19, AFRC submitted comments on the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service's (NMFS) (collectively, Services) joint Proposed Rule to rescind the regulatory definition of "harm" under the Endangered Species Act (ESA). 90 Fed. Reg. 16102 (Apr. 17, 2025). The Services received over 240,000 public comments in response to the Proposed Rule.

By way of background, Section 9 of the ESA prohibits the "take" of endangered species, which is statutorily defined to mean "harass, *harm*, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." However, the term "harm" is not defined in the ESA. Instead, the Services have each promulgated definitions of harm to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 50 C.F.R. § 17.3 (FWS); *see also* 50 C.F.R. § 222.102 (NMFS's nearly identical definition that also includes spawning, rearing, or migrating).

The Services' broad definition of "harm" has had significant economic impacts in the West, with the Services issuing incidental take statements in biological opinions for forest management projects and forest plans that impermissibly rely on habitat modification or degradation as a form of "take." The Services' regulatory harm definition was previously challenged before the U.S. Supreme Court in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995) (*Sweet Home*). In *Sweet Home*, small landowners, logging companies, and families dependent on the forest products industry in the Pacific Northwest challenged the validity of the Secretary's regulation defining "harm," particularly the inclusion of habitat modification and degradation in the definition and its application to species like the northern spotted owl. The Supreme Court's majority opinion ultimately upheld the definition based on the now overturned *Chevron* doctrine.

AFRC's comment letter supports the Services' conclusion that the regulatory definition of harm does not comport with the "single, best meaning of the ESA." Notably, the Proposed Rule does not offer an alternative definition of "harm" to replace the existing one and, instead, cites Justice Scalia's dissent in *Sweet Home* and states that no replacement is needed because "take" is already defined in the ESA. 90 Fed. Reg. at 16103. In response to the Proposed Rule, public comments have explained that providing a separate definition is unnecessary, has caused confusion, and improperly expanded "take" beyond what Congress intended.

If finalized, the Proposed Rule's rescission of the harm definition will have major implications for federal forest management. "Harm" via incidental habitat modification or degradation is the most prevalent form of "take" regulated by the Services. For that reason, most federal forest management projects result in formal consultation with the Services, even if a project is outside critical habitat, and receive an incidental take statement in the relevant biological opinion issued under Section 7 of the ESA. The recission of the harm definition would narrow the scope of federal forest management projects that are subject to consultation requirements under the ESA, which is a major roadblock to accelerating the pace and scale of active forest management—particularly when the project is located in areas where there is habitat, but the listed species do not occupy the area.

Once finalized, the rule rescinding the harm definition will likely be challenged by environmental groups and attorney generals from states like Massachusetts, California, and New York, who have expressed their public opposition to the Proposed Rule. /*Sara Ghafouri*

## Forest Service Releases National Active Forest Management Strategy

The National Active Forest Management Strategy fulfills direction from Executive Order 14225, Secretarial Memo 1078-006, and the Forest Service Associate Chief 's letter on implementation of that Memo. The Strategy identifies four areas designed to attain a three-pronged set of goals: Supporting Rural Economies and the Forest Product Industry, Reducing the Risk of Destructive Wildfire, and Building Capacity Through Workforce Alignment and Partnerships. Ultimately, the Strategy aims to increase overall timber outputs to 4 billion board feet by 2028.

The Focal Areas identified in the Strategy include 1) Capacity Building and Streamlining Implementation, 2) Environmental Compliance, 3) Shared Stewardship, Partnerships, Contracting, and Markets, and 4) Salvage and Reforestation. Embedded in these Focal Areas are directives to increase operating periods for timber sale implementation, mandate consideration of categorical exclusions for NEPA compliance, and create "support teams" focused on large-scale salvage following disturbances.

The Strategy also identifies several actions that can be taken immediately to expand timber production. Notable among those actions are the implementation of existing Forest Plans, including the timber volumes identified in them, reduction of burdensome requirements not identified in a statute, and prioritization of projects that provide for an increased supply of timber.

The Strategy was released in conjunction with a press release from the Secretary of Agriculture announcing a $200 million investment to expand timber production as outlined in EO 14225. Each Regional Office has also been tasked with developing their own strategies tailored to this National Strategy. /*Andy Geissler*

## Forest Service and Bureau of Land Management Adopt Multiple Categorical Exclusions

As part of the Fiscal Responsibility Act of 2023, federal agencies are allowed to adopt categorical exclusions (CE) listed in another agency's NEPA procedures. Over the past few months, both the Forest Service and Bureau of Land Management (BLM) have taken advantage of this allowance by adopting several CEs, many of which are relevant to vegetation management and timber production.

Notable adoptions by the Forest Service include a BLM CE under the *Emergency Stabilization* category. This CE, listed under BLM I (1)(516 DM11.9), permits, among other things, the "removal of hazard trees," which is sorely needed by the Forest Service, as many of their recent attempts to mitigate dead hazard trees posing a public safety risk have been thwarted in court by special interest groups.

The BLM adopted multiple CEs from the Forest Service including a category that permits *forest activities that are designed to meet restoration objectives* up to 2,800 acres in size and another that permits *timber stand and/or wildlife habitat improvement*. Those categories are listed under 36 CFR 220.6(e)(25) and 36 CFR 220.6(e)(6) respectively. Both CEs have been effectively used by the Forest Service on projects that generated timber products. Category-6 was notably challenged in court with the Forest Service ultimately prevailing. That category does not include an acreage limitation.

These adoptions come at an opportune time as both agencies have recently issued directives that include the consideration of streamlined NEPA compliance, including the increased use of CEs. In April, the Acting Deputy Chief of the Forest Service sent "additional guidance" to all Regional Foresters that explicitly noted the newly adopted CEs and urged each Region to prioritize their use on vegetation management projects. /*Andy Geissler*

## Mitigating Wildfire Growth Utilizing Strategic Landscape Features: Using all Tools in the Toolbox

On May 6, AFRC was invited to provide input on the South Fork Mountain Vegetation Management Project. AFRC along with Joe Puentes of Sierra Pacific Industries met with the Six Rivers and Shasta-Trinity National Forests to discuss the objectives, impediments, and implementation of the project.

The primary purpose of this proposed project is to develop a strategic fuel management zone along a critical ridgeline on the Six Rivers and Shasta-Trinity National Forest boundary. The project will provide defensible space along main roads to expedite safe evacuations and improve wildland firefighter response, safety, and suppression during wildfires. Additionally, this project looks to reduce hazardous fuels using commercial timber harvest on National Forest System lands within the project area. The desired future condition for this area will retain tree vigor with the largest tree crowns spaced to allow for future crown and bole growth which will provide shade, stand structure, and fire resilience for the longest duration and protect late-successional forest and wildlife habitats.

The South Fork Mountain Project planning area falls completely within the Trinity Forest Health and Fire-Resilient Rural Communities Landscape and the Bramlet High Risk Fireshed. The landscape encompasses 1,641,661 acres, of which 67 percent is administered by the Six Rivers and Shasta-Trinity National Forests. The project planning area encompasses 7,856 acres and follows the South Fork

Mountain ridge along most of the Mad River Ranger District eastern boundary, straddling both Trinity and Humboldt Counties.

South Fork Mountain is a prominent ridge, extending along the border of Trinity and Humboldt Counties. The project straddles the National Forest's boundary at elevations ranging from 4,000'-6,000" with the proposed fuel break spanning 1,000'-2,000'from the linear feature. Slopes range from 10-60%. The proposed fuelbreak spans approximately 25 miles through mixed conifer stands interspersed with oak woodlands and grassland openings.

AFRC was asked to provide operational expertise on steep slope timber harvesting and fuels reduction methods. Stand density targets, riparian reserves, temporary roads, soil stability, and access points were also discussed. Forest staff recognized the need to utilize a project specific forest plan amendment(s) to implement the project to meet fuels reduction objectives. The Land and Resource Management Plan (LRMP) for the Six Rivers limits tractor operations to slopes <35%. This limitation was imposed across the majority of Region 5 LRMP's in the late 1980's and early 90's to reduce soil displacement and reduce growing space loss. However, over the last 30 years, advancements in harvesting equipment engineering have demonstrated that ground-based forestry equipment can safely and effectively be utilized on slopes up to 65%. These advancements have allowed effective timber harvesting and other fuels reduction activities to occur on private timberlands in California that would not have been possible when the Region 5 LRMP's were published.

National Forests in Region 5 are constrained by outdated LRMP's and have only in recent years began to utilize project specific and general amendments to attain project objectives. Plan amendments are critical to addressing changed forest conditions and the need for landscape scale projects to effectively reduce the intensity and scale of wildfires in the Region. Modern equipment allows for effective implementation of project objectives while still providing for protection of forest resources. The cost of ground-based operations is significantly less than aerial methods and allows for a greater ability to meet non-timber resource goals. The cost of operations is fully or partially offset by the value of the timber harvested and will provide an opportunity to reinvest the value recovered to implement other project objectives.

The project field visit helped facilitate site specific discussions on harvesting techniques, roads, stand conditions, soil productivity, wildlife, and the tools available to meet objectives. AFRC appreciates the staff and leadership of the Six Rivers for the invitation, and the expertise of their team. We are looking forward to continued engagement to move our public and private forests into fire resilient conditions, provide for the safety and wellbeing of our forested communities, and meeting the timber supply needs of our nation. /*Jake Blaufuss*

## Parties Settle Challenge to BLM's N126 Late-Successional Reserve Landscape Scale Project

On May 13, Oregon District Court Judge Aiken granted the parties' stipulated remedy, settling Plaintiff Cascadia Wildlands' challenge to the BLM's N126 Late-Successional Reserve Landscape Scale Project (N126 Project) in BLM's Northwest Oregon District. *See Cascadia Wildlands v. Adcock, et al*., No. 6:22-cv-00756-AA (D. Or.). AFRC is a defendant-intervenor in the litigation.

As reported in the April Newsletter, the N126 Project is an important landscape-scale project to restore complex late-successional forests and authorizes commercial harvest, non-commercial restoration treatments, roadwork, and fuels treatments within the Late-Successional Reserve and Riparian Reserve

Land Use Allocations. The N126 Project will generate at least 380 million board feet (mmbf) over two decades through implementation of site-specific projects. AFRC members have purchased several timber sales associated with the N126 Project: Pucker Up (8 mmbf), Gone Fishin' (5.4 mmbf), Walker Point (6.9 mmbf), Upper Greenleaf (6.9 mmbf), Cefir Miles (2.6 mmbf), King Condon (16.8 mmbf), and Electric Crossing (7.9 mmbf).

On March 31, Judge Aiken issued a mixed ruling granting summary judgment in favor of the BLM and AFRC on many issues, but also granted summary judgment in favor of Cascadia Wildlands, finding that the BLM's analysis of increased sedimentation from road construction, repair, and hauling failed to provide a detailed analysis at the site-specific level; the BLM failed to appropriately consider the cumulative effects from the Deadwood Restoration Project on increased sedimentation and on impacts to the northern spotted owl; and Cascadia Wildlands had raised "substantial questions" as to whether the preparation of an EIS would be warranted because the construction of new roads may have a significant impact on the marbled murrelet.

In lieu of briefing what the appropriate remedy should be in light of Judge Aiken's ruling, and in the interest of moving important project implementation forward expeditiously, the parties entered into a stipulated remedy. The parties agreed that the BLM may proceed "with further actions and implementation, including ground operations, for the following N126 timber sales that have already been purchased" by AFRC members: "Pucker Up, Gone Fishin', Walker Point, Upper Greenleaf, Tomcat Divide, Cefir Miles, King Congdon, Hemlock Hill, and Electric Crossing" and Cascadia Wildlands "agrees not to litigate or appeal these sales."

The parties also agreed that the "BLM may proceed with further actions and implementation, including ground operations, for the following N126 timber sales that have not yet been purchased: Dueling Elk, Moke Road, North Deeded, Over Cooked, Holey Joe, Nelson Divide, and Maine Event pursuant to the terms and conditions identified in the N126" Environmental Assessment and Cascadia Wildlands "agrees not to litigate or appeal these sales."

Collectively, the BLM may proceed with implementing sales that will generate over 120 mmbf without the risk of an injunction or future litigation.

For any future sales associated with the N126 Project that were not authorized by the stipulated remedy, the BLM has agreed to remand the N126 Environmental Assessment and Finding of No Significant Impact, and to address the legal violations identified in Judge Aiken's ruling. AFRC is pleased that the parties were able to work together to reach a sensible remedy that will allow implementation of significant portions of the N126 Project to proceed without delay. /*Sara Ghafouri*

## AFRC Granted Intervention in Challenge to the Round Star Project

On May 14, Montana District Court Magistrate Judge DeSoto granted AFRC's Motion to Intervene as a matter of right in the challenge to the Forest Service's Round Star Vegetation Management Project (Round Star Project) on the Flathead National Forest. *See All. for the Wild Rockies, et al. v. Mulholland, et al.*, No. 9:25-cv-00005-KLD (D. Mont. filed Jan. 8, 2025).

AFRC is participating as defendant-intervenor because of the importance of the Round Star Project to AFRC members F.H. Stoltze Land and Lumber Co. (Stoltze Lumber), Montana Logging Association (MLA), and Weyerhaeuser-Montana. Stoltze Lumber is the purchaser of two timber sales associated with the Round Star Project, Hairy Pumpkin SBA (4 mmbf) and Roundstar GNA (3.5 mmbf). Stoltze Lumber and Weyerhaeuser-Montana have also received and processed logs from another Round Star Project sale, Roundski DXP (3.6 mmbf), purchased by Leever and Sons Forestry Management, who are members of MLA. The Forest Service is expected to offer two additional sales in Fiscal Years 2025 and/or 2026, the Rock Bottom (2.6 mmbf) and Smokin Trixie (5 mmbf) sales.

The Round Star Project is located in the Tally Lake Ranger District and has a project area of 28,300 acres, 92 percent of which is located within the wildland urban interface (WUI) as established by the 2011 and the 2020 Flathead County Community Wildfire Protection Plans (CWPPs). The project area is seven percent state-owned lands, 15 percent private lands, and 78 percent National Forest System lands. The purpose of the Project is to reduce tree densities and fuel loadings within the WUI, improve diversity and resilience throughout the project area, contribute to continued timber production, and improve recreational opportunities. The Project authorizes 6,324 acres of commercial treatments, including 580 acres of regeneration harvest and 3,469 acres of thinning, and 2,827 acres of noncommercial treatments and prescribed burning. The Project also authorizes 18.7 miles of new road construction and 3.4 miles of temporary road construction to implement project activities.

Plaintiffs Native Ecosystems Council, Alliance for the Wild Rockies, Council on Wildlife and Fish, and Yellowstone to Uintas Connection filed their initial Complaint in January, claiming violations of NEPA, the National Forest Management Act (NFMA), and Healthy Forests Restoration Act (HFRA). Plaintiffs filed an Amended Complaint in May, adding a challenge to the U.S. Fish and Wildlife Service's (FWS) Biological Opinions (BiOps) for the Project and Forest Plan under the ESA and Administrative Procedure Act (APA). Plaintiffs are requesting that the court either vacate the Forest Service's decision authorizing the Project or remand the Project back to the agency and enjoin implementation of project activities.

Plaintiffs' Amended Complaint focuses on four primary claims. First, that the BiOps do not address cumulative effects on grizzly bears from actions on State, private, and National Forest lands in the project area, and that FWS has not applied the "best available science" in violation of the ESA and NEPA, focused on road density calculations. Second, the Project does not comply with HFRA's statutory definition of WUI, which is required to qualify for an exemption to apply treatments in lynx habitat, in violation of NEPA, NFMA, and HFRA, instead using a more inclusive and overly broad definition of WUI based on the Flathead County CWPPs. Third, the Project's analysis under NEPA fails to take a "hard look" at the Project's impacts on climate change, carbon storage, and carbon sequestration. Lastly, Plaintiffs claim that the Forest Service "refuses" to prepare an EIS, in violation of NEPA and the APA. Plaintiffs argue that an EIS is necessary due to the Project's cumulative impacts, adverse effects on ESA-listed species and their habitat, and violations of the exemption to treat in lynx habitat.

The challenge to the Round Star Project presents important legal issues for our industry, including the Forest Service's ability to rely on exceptions under Forest Plan standards for treatments in lynx habitat that overlap with WUI designations, and the adequacy of the Forest Service's analysis for climate related impacts. Plaintiffs are expected to file a Motion for a Preliminary Injunction on June 6, and briefing on the merits is scheduled for late summer and fall. */Sarah Melton*

## DNR Timber Sales Litigation Update

Over the past 18 months, Legacy Forest Defense Coalition (LFDC) has led efforts to file over 32- almost identical- appeals of timber sales throughout the Washington Superior Courts. These timber sales were developed and evaluated by the Washington State Department of Natural Resources (DNR) and approved by the Board of Natural Resources. DNR has been inundated with obligations to compile the administrative records on the sales that are the subject of the appeals. Further, these timber sales are an important source of revenue for the beneficiaries of DNR state trust lands, who now face budget shortfalls due to the litigation.

The appeals are at various stages in court proceedings in the Washington Superior Courts, as LFDC has filed motions for temporary restraining orders, preliminary injunctions, administrative stays, and to compel the administrative record, as well as additional appeals of Superior Court decisions before the Washington Court of Appeals, all designed to halt and enjoin harvest activities. Below are important updates on three of these cases.

*Carrot Timber Sale Appeal in Thurston County.* On May 27, Appellants LFDC and Thurston County, Washington, filed their Opening Brief on the merits in their appeal of the Carrot Timber Sale. *See Legacy Forest Def. Coal. and Thurston Cnty. v. Wash. State Dep't of Nat. Res., et al.*, No. 24-2-00508-34 (Thurston Cnty. Super. Ct. filed Feb. 1, 2024). AFRC and Pacific, Lewis, and Wahkiakum Counties are participating as defendant-intervenors. *See* [July 2024 Newsletter].

In March, DNR filed a motion to consolidate the Carrot Timber Sale appeal with three other appeals pending in Thurston County Superior Court involving five other timber sales, leading Appellants to file a Motion for a preliminary injunction. Judge Lanese held a hearing in April and denied both Motions. Judge Lanese concluded that Appellants lacked any "clear legal or equitable right" and were unlikely to succeed on the merits of their appeal, and thus a preliminary injunction was not warranted. Appellants then filed a Notice of Appeal and Motion for Discretionary Review of that denial before the Washington Appeals Court, which is still pending. *See Legacy Forest*, No. 60837-5-II (Wash. Ct. App.).

In their interlocutory appeal, Appellants claim that Judge Lanese made an "obvious error" denying the preliminary injunction, which would allow DNR to proceed with harvest activities and render the case moot before it can be heard on the merits, misrepresenting DNR's actions and minimizing Appellants' own actions that have contributed to stretching DNR's staffing and resources so thin.

AFRC et al.'s Responses to Appellant's interlocutory appeal discusses how the Washington Superior Court should not grant discretionary review and, if the Court grants review, the Superior Court properly determined that a preliminary injunction was unwarranted because Appellants could not establish that they had any likelihood of succeeding on the merits. The Superior Court correctly determined that Appellants were unlikely to succeed on either 1) their dispute over DNR's interpretation of the agency's own policies under the Public Lands Act; or 2) contesting DNR's non-significance determination for the timber sale under the State Environmental Policy Act.

Response Briefs on the merits from DNR and AFRC et al. are due at the end of June, Appellants' Reply Brief is due mid-July, and a hearing on the merits before Judge Lanese is expected at the end of July or beginning of August.

*Freedom Timber Sale Appeal in Washington Court of Appeals.* On May 23, the Washington Court of Appeals denied an emergency motion from Appellant LFDC to vacate a bond imposed by the Pacific County Superior Court to secure an administrative stay in the appeal of the Freedom Timber Sale. *See Legacy Forest Def. Coal. v. Wash. State Dep't of Nat. Res., et al.*, No. 59607-5-II (Wash. Ct. App. May 23, 2025). AFRC is representing Stimson Lumber as defendant-intervenor.

In February, Pacific County Superior Court Judge Richter granted Appellant's Motion for an Administrative Stay Pending Appeal, which essentially serves as an injunction halting harvest activities, but required Appellant to post a bond of $240,437 by April 30 to secure the stay or it would expire. Ruling from the bench, Judge Richter explained that the bond amount reflects the estimated cost of a six-month extension from DNR on the timber sale contract, which was appropriate because Appellant's appeal would likely continue for at least six months. *See* March 2025 Newsletter.

Appellant failed to post the bond by the April 30 deadline and, on May 15, filed an Emergency Motion to Vacate the bond requirement. Respondents DNR and Stimson Lumber filed Responses opposing the Emergency Motion. In its ruling denying Appellant's motion, the Washington Court of Appeals Commissioner found that the Pacific County Superior Court properly determined a balance, supported by "substantial evidence," between Appellant's need for a stay with Respondents' "substantial" costs based on a six-month delay that would be incurred as a result of the stay—though the Commissioner also acknowledged that a twelve-month delay is possible.

On June 2, Appellant filed a stipulation to voluntarily dismiss their appeal, which is currently pending before the Washington Court of Appeals. AFRC member Stimson Lumber is now able to operate the Freedom Timber Sale uninterrupted.

*Little Lilly Timber Sale Appeal in Whatcom County.* On May 14, Whatcom County Superior Court Judge Grochmal held a hearing on a Motion to Compel the Administrative Record from Appellants Legacy Forest Defense Coalition and Center for Responsible Forestry in their appeal of the Little Lilly Timber Sale. *See Legacy Forest Def. Coal. and Ctr. for Resp. Forestry v. Wash. State Dep't of Nat. Res., et al.*, No. 24-2-01926-37 (Whatcom Cnty. Super. Ct. filed Oct. 29, 2024). AFRC member Sierra Pacific Industries (SPI) is the purchaser of the Little Lilly Timber Sale and is participating as defendant-intervenor.

Approved by the Board of Natural Resources at its October 2024 Board Meeting, Appellants shortly thereafter filed an appeal. Almost six months after filing their appeal, Appellants filed a Motion to Compel the Administrative Record. DNR and SPI filed Responses opposing the Motion to Compel. Appellants requested that the court 1) order DNR to produce the administrative record within 10 days of the court's decision on the Motion; and 2) enter an administrative stay that would prevent any logging or roadwork activities for 90 days—ostensibly so that they could proceed during that time with their case, but which is effectively a request for an injunction.

At the hearing, Judge Grochmal held in favor of Appellants in part because DNR admitted that the agency violated a state statute that requires it to provide the administrative record within 30 days and stated that DNR could provide a digital copy of the record by May 16—which the agency accomplished. Judge Grochmal also granted Appellants $2,500 in fees reasoning that, but for Appellants' Motion to Compel, DNR would not have provided the record in such a short time. However, Judge Grochmal denied Appellants' request for an administrative stay because it was in actuality a request for a preliminary injunction and therefore not properly brought before the Court. */Sarah Melton*

## AFRC Presents at Sun Mountain Partnership Meeting, Tours Wood Duck Project

On May 15, Sun Mountain Lumber Company hosted its fourth annual Partnership Meeting in Deer Lodge, Montana, drawing nearly 100 attendees. With sawmills in both Deer Lodge and Livingston, Sun

Mountain maintains strong relationships with contractors, local communities, county governments, congressional offices, and other stakeholders—reflected in the strong turnout.

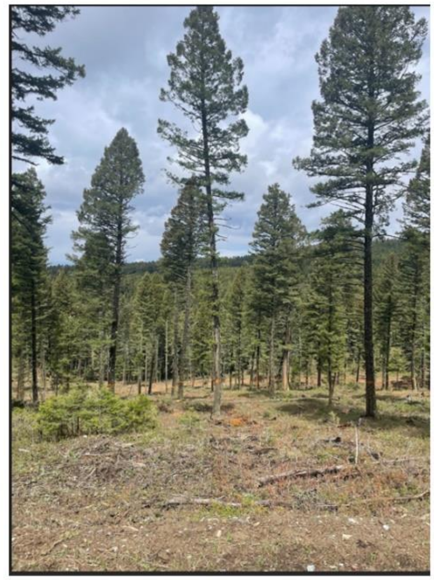
AFRC staff members Sara Ghafouri, Sarah Melton, and Tom Partin delivered a comprehensive update on timber sales from each National Forest in the region. Their presentation also covered the legal process triggered when timber sales are litigated, trends in Region 1 litigation, and key cases in which AFRC is actively representing its members. With the Forest Service managing 60% of Montana's forested land, access to federal timber is critical for Sun Mountain and the broader wood products industry.

Other presenters included Sam Scott from the University of Montana's Bureau of Business and Economic Research, Senator Steve Daines (via video), National Forest Foundation staff Maise Powell and Marlee Ostheimer, and Ben South, Deputy Regional Forester. Christopher Anderson, Sun Mountain Vice President and Controller, provided an operational update and outlook on markets and mill activity. Attendees then toured the Deer Lodge sawmill following lunch.


The following day, representatives from AFRC, Sun Mountain Lumber, the Montana Department of Natural Resources and Conservation (DNRC), and a local logging contractor visited the Wood Duck Project on the Helena–Lewis and Clark National Forest near Townsend, Montana. Sun Mountain purchased and began implementing a timber sale under this project in 2024. However, environmental groups—Alliance for the Wild Rockies, Native Ecosystems Council, and Council on Fish & Wildlife—filed a lawsuit challenging the project in February 2025.

Although harvesting began last fall, operations remain incomplete. On May 9, plaintiffs filed a motion for a preliminary injunction to halt remaining work on both Sun Mountain's timber sale and the DNRC's Good Neighbor Authority sale. A hearing was held on June 3 before Judge Dana Christensen in Missoula. Sun Mountain is participating as a defendant-intervenor.

The Wood Duck Project was designed to reduce wildfire risk in the Wildland Urban Interface, which borders private land. The 2021 Woods Creek and Deep Creek Canyon fires burned over 60,000 acres in the Big Belt Mountains, overlapping with much of the project area. Insect infestations and disease have since emerged from the burn scars, threatening surrounding green forests.



The Forest Service's proactive treatments aim to improve forest health and resiliency. As seen in completed project areas, treated Douglas-fir stands are thriving. We remain hopeful the court will allow work to continue and uphold the Wood Duck Project. /*Tom Partin, Sara Ghafouri & Sarah Melton*

## AFRC Welcomes Taylor Harwood, New Summer Law Clerk

Taylor Harwood joins AFRC as a Summer Law Clerk after finishing his second year at Lewis & Clark Law School. Taylor grew up in Chino, California, and attended the University of California at Santa Barbara (UCSB), where he graduated in 2023 with degrees in environmental studies and political science. While at USCB, Taylor developed an interest in natural resources and agricultural law, having grown up around the dairy industry in Chino and spending a lot of time in the San Bernardino National Forest. After graduating from UCSB, Taylor decided to attend law school to pursue his interest in environmental law.

During his first summer at law school, Taylor clerked with the Criminal Justice Reform Clinic (CJRC), writing parole memos for incarcerated individuals in Oregon and submitting petitions on behalf of clients under Senate Bill 819, which allows district attorney's and someone convicted of a crime to jointly ask a judge to revisit a conviction. During his second year at law school, Taylor participated in the Western Resources Legal Center (WRLC) practicum, where he wrote memoranda on Forest Service regulations and their impacts on users of public lands. Taylor's experience at WRLC influenced his decision to pursue more opportunities in environmental and natural resources law, specifically forest management on federal lands.

Taylor's time at Lewis & Clark has given him the opportunity to learn more about natural resources management on public lands, and he has gained a particular interest in forest land management because he grew up around the constant threat of wildfires near his home in Chino.

Taylor spends much of his free time outside, backpacking, camping, and gravel biking. He is very excited to join ARFC and help a team of dedicated advocates for forest health. He is excited to improve his legal writing skills and knowledge of natural resources law by working with people who care deeply about promoting healthy forests and communities. /*Taylor Harwood*