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Governor Opposes WOPR

On December 8, Oregon Governor Ted Kulongoski issued a six page letter asking the Bureau of Land Management (BLM) not to adopt the Western Oregon Plan Revisions (WOPR) and to reopen the public comment period. The BLM has spent nearly five years on the WOPR planning process and worked closely with county governments, state agencies and the general public throughout. Given the fact that the BLM worked with every relevant state agency to solicit input and address relevant concerns, it is hard not to conclude the Governor chose politics over the people of Oregon.

The Governor was given 60 days to review the plan for state law consistencies. He did not find any inconsistencies, but instead cited a number of principles identified in his comments on the Draft Environmental Impact Statement. Specifically:

- he questioned the BLM's decision not to formally consult under the Endangered Species Act;
- the lack of information on global warming effects;
- protection of municipal water intakes; and
- potential recreation use conflicts with private property owners.

He also stated a belief that there will be insufficient support for plan implementation at the Congressional level and fears needed appropriations would not be available. The Governor's political ploy aims to delay implementation of the WOPR until the new Administration can block it upon taking office.

The WOPR's final plan calls for setting over half of the 2.1 million acres of timberland aside for endangered species. Further, no harvest of any timber over 160 years of age would take place for the first 15 years so that further assessments of spotted owl populations can be carried out. The Governor's decision is an assault on sustainable forestry and Oregon's rural communities where an additional 5,000 jobs would have been created under the new plan.

Ironically, the Governor's letter indicates general support for the 502 million board foot annual harvest level and the associated generation of approximately 65 percent of the historic O&C Act county timber receipt funding. With the latest - and likely last - extension of the Secure Rural Schools coming in 2011, the Governor's attempted obstruction should be of particular concern in rural Oregon.

Under the BLM's planning rules, the State Director must determine whether or not to accept the Governor's recommendations and communicate his decision to the Governor.

AFRC has expressed disappointment and frustration that the Governor would play politics with a balanced plan that took 5 years of collaborative effort to complete. / *Tom Partin*

Ninth Circuit Upholds HFRA Project

On November 6, in a ruling reminiscent of its recent en banc decision in the Mission Brush case, the Ninth Circuit Court of Appeals upheld the Middle East Fork Project on the Bitterroot National Forest. The case was argued in December 2007, but had been stayed pending the court's en banc decision. The project continued while the case was in court.

A key issue was whether the Forest Service had violated NEPA by committing too many resources to the project prior to completing NEPA review and issuing a Record of Decision. The court determined that an expenditure of over \$200,000 to mark trees on 400 acres before the Record of Decision was signed was not an impermissible commitment. Environmental groups had also challenged the NEPA process on the grounds that the final EIS did not mention 11,000 public comments opposing the project and that they had been excluded from a press conference announcing the decision. The court found these contentions without merit.

The court also upheld the Forest Service's determinations on technical issues such as sensitive species, soils, and wildlife.

Julie Weiss of Haglund, Kelley, Horngren, Jones and Wilder, represented the defendant interveners, including AFRC member Rocky Mountain Log Homes. / *Ann Forest Burns*

ESA Rule Revisions Finalized

On December 11, the Bush Administration revised the regulations that clarify the Endangered Species Act consultation process. The draft rules were published on August 15 and were revised based on received public comments.

Under the newly revised rules, federal agencies must still follow all existing consultation procedures, except in specific and limited instances where an action is not anticipated to adversely impact any potential listed species and that action fulfills one of the following criteria:

- The action has no effect on a listed species or critical habitat.
- The action is wholly beneficial.
- The effects of the action cannot be measured or detected in a manner that permits meaningful evaluation using the best available science.
- The effects of the action are the result of global processes and cannot be reliably predicted or measured on the scale of species current range.
- Would result in an insignificant impact to a listed species, or are such that the potential risk of harm to a species is remote.

AFRC submitted written comments on the draft proposed rules and supported efforts to streamline the consultation process but expressed concern some of the language of the proposed regulations did not achieve the desired result. Until the specific language of the final rules is available for review, it is unclear if our concerns have been addressed.

The regulations must be finalized and published in the federal register before December 19 in order to become effective before the new Administration takes office. The regulations could face uncertainty because President-elect Barak Obama has stated that he would work to reverse the regulations, which would require restarting the lengthy rulemaking process. Representative Nick Rahall (D-WVA) said he would seek to overturn the regulations using the Congressional Review Act after consulting with other democratic leaders. The rarely used law allows Congress to review new federal regulations. */Ann Forest Burns*

Hastings To Replace Young

Representative Doc Hastings (R-WA) will succeed Representative Don Young (R-AK) as the Ranking Member on the House Natural Resources Committee in the 111th Congress. Young who has been plagued recently by scandals stepped down on December 10.

While Hastings is not listed as member of the Natural Resources Committee, he is fourth in seniority due to a leave of absence he took to serve on the Rules Committee. Hastings is currently the second-ranking Republican on the Rules Committee and serves as the Ranking Member of the House Ethics Committee. It is unclear if he will continue to serve on either committee when he assumes the Natural Resources Committee ranking slot.

Hastings represents central Washington and is knowledgeable on key northwest natural resources issues, including salmon recovery and the importance of hydroelectric power, forest management, wildfires and the northern spotted owl. */Tom Partin*

Obama Filling Cabinet

The Obama Transition Team is working feverishly to fill Cabinet positions in the waning weeks of the Bush Administration. The higher profile offices such as Secretary of State and Secretary of Defense took first priority to fill. Still yet to be named are the Secretary of Agriculture and Secretary of Interior, both of which are very important to the management of our nation's forests. Below is a list of offices filled to date.

Cabinet Members

- Senator Hillary Rodham Clinton (D-NY) - Secretary of State
- Robert Gates - Secretary of Defense
- Timothy Geithner, President of the NY Federal Reserve Bank - Secretary of the Treasury
- Janet Napolitano, Governor of Arizona - Secretary of Homeland Security
- General Eric Shinseki - Secretary of Veterans Affairs
- Bill Richardson, Governor of New Mexico - Secretary of Commerce
- Tom Daschle, Former Senator from South Dakota and Senate Majority Leader - Secretary of Health and Human Services
- Eric Holder, former Deputy Attorney General - Attorney General

Other Rumored Nominees

- Steven Chu, Director of the Lawrence Berkeley National Laboratory - Secretary of Energy
- Nancy Sutley, Los Angeles deputy mayor - Council on Environmental Quality

- Lisa Jackson former chief of the New Jersey Department of Environmental Protection - Environmental Protection Agency

Names that have been suggested for Secretary of Interior

- Representative Mike Thompson (D-CA)
- Representative Raul Grijalva (D-AZ)
- Kevin Gover - previous U.S. Assistant Secretary of Indian Affairs

Names that have been rumored for Secretary of Agriculture

- Charlie Stenholm - Former Democratic Congressman from Texas
- Senator Ken Salazar (D-CO)

It is expected that all Cabinet positions will be filled by year's end. / *Tom Partin*

DNR Timber Program Update

DNR's trust timber program is just under halfway through FY09. With a target of 700+ million board feet (mmbf), here is the tally of sales:

Sales Offered:	42
Sales Sold	34
No-bid Sales	8

Volume Offered	179 mmbf
Volume Sold	148
Volume No-bid	31

Timber Value:	\$33 Million
Price/MBF	224.00
Overbid Ratio	26 percent

DNR has sold 20 percent of its volume target, about normal for this time of the year. DNR's FY10 target is 700 mmbf. / *Bob Dick*

Goldmark Begins Transition

Dr. Peter Goldmark, Washington Commissioner of Public Lands-elect, recently announced he will revamp DNR's fire program to provide a more immediate initial attack and, "... squabble about who is paying for it later." He also will ensure the agency's priorities are consistent with the Puget Sound Partnership and Puget Sound cleanup.

Dr. Goldmark's transition team has several familiar names. State Representative Hans Dunshee (D-Snohomish) leads the budget effort. Dunshee is Vice-Chair of House Appropriations and sits on the Capital Budget and Ecology and Parks Committees. The Forest Lands transition group is headed by Becky Kelley, climate campaign director for the Washington Environmental Council. Kelley holds a bachelors degree in international studies from the University of Oregon and is a long-time environmental activist.

Goldmark's most immediate and crucial test will come early with the FY10 budgeting process that will begin this winter. Washington is facing a \$7 billion projected revenue shortfall that will affect all agencies in the FY 10-12 biennium, which begins July 1, 2009. DNR will face a serious budget reduction in its FY10 general fund budget and on the proprietary (trust land management) budget that is funded out of declining trust revenues. /*Bob Dick*

Region 5 Meeting

Beth Pendleton, Region 5 Deputy Regional Forester recently met with AFRC members and staff and the California Forestry Association Public Resources Committee.

She outlined emphasis areas for the region, which include: 1) restoration projects including contracts for three million seedlings and restoring recreation facilities; 2) \$75 million for hazardous fuels work which will go to the northwestern area of the region and the Sierras for fuel reduction; 3) strategic improvement in NEPA quality; 4) improving forest plan revisions, particularly in the Quincy Library Group and Sierra Forests and accelerating the timeframe for the forest plans to be completed within three to four years and 5) the region is working to improve biomass utilization and the forests are being encouraged to work with potential investors. Pendleton acknowledged that program accomplishment is not good, and that litigation is the major problem. The Office of General Counsel has a new leader and the region is trying to narrow the range of issues that can be appealed to minimize litigation.

Issues discussed by the group included examples of where the Forest Service allowed individuals to submit comments after the comment period was closed and projects with completed NEPA that did not go forward due to minor changes in conditions. The group emphasized the need for the Forest Service to stand by their processes and to push back on appellants and plaintiffs.

There were many concerns with the Project Activity Levels and the need to return variance authority to the local level. The southern Sierra forests had numerous shutdown days, but the region was unsure if 2008 was a weather anomaly or an indication of increasing severity due to climate change.

A discussion of ccf vs. mbf scaling was held. Members continue to point out that the industry standard is mbf and that the State of California taxes on mbf.

Pendleton also announced that Angela Coleman will be the new Deputy Regional Forester for State and Private Forestry. /*Bruce Van Zee*

Forest Inventory Report

The first 5-year forest inventory report for Oregon's public and private lands has recently been released. The report: Oregon's Forest Resources, 2001-2005: Five-Year Forest Inventory and Analysis Report was prepared by the Pacific Northwest Forest Inventory and Analysis (FIA) Program which conducts inventories in Alaska, California, Oregon, Washington, Hawaii, and the Pacific Islands.

The FIA had previously produced 10-year reports but the 1998 Farm Bill changed that process so data is now posted annually and 5-year reports are produced. In addition, the 5-year reports include a broader range of topics than has typically been reported before.

Key findings include a reduced rate of conversion over the past decade, the majority of old growth is on federal lands, and the amount of large catastrophic wildfires is less than originally thought. This last finding has received a lot of press attention.

Upon closer examination of the analysis, the findings aren't quite that clear—particularly regarding the fire issue. Javier Goirigolzarri, a principal in Communities for Healthy Forests, looked into the report and provided some interesting observations.

The data collected in the FIA analysis separates federal, state, tribal, other public, industrial and private lands information, but is lumped together. One needs to go to the separate data sets in order to understand what has been happening and it is rather cumbersome to draw conclusions.

When the data on individual fire information is examined it becomes clear the majority of Oregon's big fires begin on remote Forest Service lands such as wilderness and roadless areas. Recent wildland fire use policies adopted by most of the national forests makes this situation worse. The report says only 570,000 acres of forest land burned in 2002, but does not report that 95 percent of it was federal land which equates to losing nearly 4 percent of Oregon's national forest lands that year alone. It also did not report how little reforestation has occurred after these fires.

The report also states that forest health conditions are ok, but that does not reflect what we see now. Granted the data for the report goes through 2005 but it still should have picked up on a trend of increasing bug and disease infestation. The extensive bug kill on the Deschutes and Fremont-Winema National Forests are evidence of this. */Chuck Burley*

Umatilla County Opts Out

The East Oregonian reported several weeks ago that the Umatilla County Board of Commissioners decided to opt out of the reauthorized Secure Rural Schools county payments program. Instead the county will look to the Payment in Lieu of Taxes (PILT) program for federal receipts. Commissioner Hansell advocated for this shift because of the full funding for PILT this year, the county's ability to determine how the funds will be used, and the program's sustainability.

Under the Secure Rural Schools program, Umatilla County would have received \$1.13 million this year. Under PILT it will receive \$950,000, which are discretionary funds. */Chuck Burley*

Regional Haze Rule

The Oregon Department of Environmental Quality (DEQ) is releasing for public review and comment a proposal to reduce air pollution in wilderness areas and national parks in Oregon. This involves the adoption of the Oregon 2008 Regional Haze Plan that was developed in response to federal regional haze rules that apply to wilderness areas and national parks (known

as Class 1 areas). There are twelve Class 1 areas in Oregon including Crater Lake National Park and eleven wilderness areas.

The Environmental Protection Agency adopted the Regional Haze Rule in 1999. It is intended to improve visibility in all Class 1 areas over the next 60 years. It focuses on improving Class 1 area visibility on the haziest days (the worst 20 percent) and ensuring no degradation on the clearest days (the best 20 percent). States will be required to work together to improve visibility through interstate planning and implementation of regional strategies.

The public comment period ends January 16, 2009 and DEQ will hold five public hearings. The Oregon Environmental Quality Commission will make a final decision on this rulemaking at its April 2009 meeting. For more information, visit www.deq.or.us/aq/haze/. /Chuck Burley

Forest Service and Climate Change

The Forest Service has released its Strategic Framework For Responding to Climate Change. The document states that climate change is one of the greatest challenges to sustainable management that forests and grasslands have ever faced. Therefore, climate change impacts must be fully integrated into the agency's planning and actions.

According to the document, the Forest Service has a unique opportunity and responsibility to sustain forests and grasslands in the United States and internationally making it imperative to understand and respond to the effects of climate change. The document provides a strategic framework for the Forest Service to guide current and future actions to meet the challenge of climate change.

For a copy of the report go to:

www.fs.fed.us/psw/topics/climate_change/pdf/2Oct08StrategicFramework.pdf . /Chuck Burley

Roadless Rule Saga Continues

On December 2, N. District of California Magistrate Judge Elizabeth LaPorte issued an order modifying her injunction against the 2005 Roadless Rule. The injunction is now limited to New Mexico and the nine states within the Ninth Circuit. Her October 11, 2006 injunction not only invalidated the 2005 rule, but reinstated the 2001 Clinton Roadless Rule.

Last summer, Wyoming District Court Judge Clarence Brimmer issued a nationwide injunction against the Clinton Rule, placing the two courts in direct conflict. Judge LaPorte's modification does little to clear up the confusion.

Judge LaPorte's earlier ruling against the State Petition Rule is being appealed to the Ninth Circuit Court of Appeals. Oral arguments were heard October 20, but no decision has been issued. / *Ann Forest Burns*

Navy Sonar Decision

The November 13 decision by the US Supreme Court in the Navy Sonar Case sets important sideboards on how a District Court determines whether to grant a preliminary injunction against proposed governmental action when the challenge is based on environmental law. The case

overturned a Ninth Circuit Court of Appeals decision and is important to forestry interests. The lower courts had held that where a plaintiff demonstrates a likelihood of winning at trial, a preliminary injunction should be issued if there is a mere “possibility” of irreparable harm before a final decision can be reached. The Supreme Court ruled that the proper standard is that irreparable harm is “likely.” The court also ruled that the particular circumstances of the situation and the specific public interests in allowing a project to continue must be taken into account.

The American Forest and Paper Association filed an amicus brief in the case arguing against the Ninth Circuit’s criteria for issuing injunctions which have long interfered with the ability of federal agencies to manage forest land. / *Ann Forest Burns*

Religious Freedom on Public Lands

On December 11, the Ninth Circuit Court of Appeals issued an *en banc* decision that the federal government had not violated either the Religious Freedom Restoration Act (RFRA), the National Historic Preservation Act (NHPA), or NEPA when it approved the use of artificial snow at a ski area in the Coconino National Forest in Northern Arizona. The artificial snow made from waste water contains 0.0001% of human waste.

The Tribes contended that application of the artificial snow on an area that holds long-standing religious and cultural significance would desecrate the land, deprecate their religious ceremonies, and cause injury to their religious sensibilities. The court found “that there are no plants, springs, natural resources, shrines with religious significance, or religious ceremonies that would be physically affected by the use of such artificial snow. No plants would be destroyed or stunted; no springs polluted; no places of worship made inaccessible, or liturgy modified. The plaintiffs continue to have virtually unlimited access to the mountain, including the ski area, for religious and cultural purposes. On the mountain, they continue to pray, conduct their religious ceremonies, and collect plants for religious use.” Thus, the court concluded “the sole effect of the artificial snow is on the plaintiffs’ subjective spiritual experience.”

Under the RFRA, the test is whether governmental action imposes a “substantial burden” on religious freedom. The court found “where, as here, there is no showing the government has coerced the plaintiffs to act contrary to their religious beliefs under the threat of sanctions, or conditioned a governmental benefit upon conduct that would violate the plaintiffs’ religious beliefs, there is no ‘substantial burden’ on the exercise of their religion.”

Arizona District Court Judge Rosenblatt upheld the Forest Service’s project, but was later overturned by a three judge panel. This decision overturns the three judge panel and affirms the district court. The full court's decision, which included a vigorous dissent by three of the eleven *en banc* judges, is based on a detailed of the RFRA and the Ninth Circuit and US Supreme Court decisions that address the protections Congress intended to provide when it passed the act in 1993. The court disregarded and NHPA questions raised by the Tribes. / *Ann Forest Burns*

National Biofuels Action Plan

In an effort to meet President Bush's "Twenty in Ten" goal and the Renewable Fuel Standard targets in the Energy Independence and Security Act of 2007, the Biomass Research and

Development Board developed the National Biofuels Action Plan (NBAP) to accelerate the development of a sustainable biofuels industry. The Board is co-chaired by the Department of Agriculture (USDA) and the Department of Energy (DOE).

The Board determined that meeting aggressive production targets requires enhanced interagency collaboration among the senior decision makers from ten federal agencies and the White House. The NBAP identifies key research challenges and defines clear interagency actions critical to developing the science and technology needed to make next-generation, cellulosic biofuels cost-effective so as to grow a biofuels industry and supply chain in a sustainable manner.

For more information about the NBAP and other USDA and DOE efforts, visit the following websites www.usda.gov/energy and www.eere.energy.gov. /Chuck Burley

Washington Log Truck Study

A recent study of log trucker safety issues found that log trucker accident rates (2004-2005) declined 11 percent, while all commercial truck accidents increased 15 percent. Drivers have an average age of 55 and over 25 years of experience. And therein lies the next challenge. Truckers, like all baby boomers, are getting close to retirement and skilled drivers are not entering the driver pool at a high enough rate. Between 1998 and 2006 the number of registered log trucks declined by 36 percent. Log truck driving is a risky business, and drivers reported that the worst part of the job was worsening traffic and deteriorating road conditions. /Bob Dick