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Wyden Introduces Eastside Bill

On December 16, Senator Ron Wyden (D-OR) announced that he is introducing legislation specific to forest health restoration and old growth protection on Oregon's eastside forests not covered by the Northwest Forest Plan. The bill, titled the "Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009," provide a management framework that ramps up the amount of national forest acres treated in the short-term while larger landscape sized projects (25,000 acres and larger) are being planned for the long-term on each forest.

Currently only about 40,000 acres are being treated each year on these forests. After enactment, acreage treated ramps up to 80,000 acres in year one, 100,000 in year two, and 120,000 in year three. Criteria for these interim projects include most of the parameters forest managers are operating under today such as: trees over 21" dbh will not be harvested, with exceptions both above and below the 21" rule; PACFISH and INFISH rules will apply to the stream buffer areas; no new permanent roads will be built unless they replace and improve upon the existing roads; and temporary roads will be obliterated following their use. These interim projects are to emphasize sawlog production through mechanical treatment.

The bill includes an authorization for \$50 million. All existing statues by which the Forest Service carries out projects, such as the Healthy Forest Restoration Act (HFRA), and future enactments will remain in place.

In a December 14 letter addressed to AFRC President Tom Partin, Senator Wyden made a commitment to 1) secure additional funding to help the Forest Service carry out the program of work under the bill; 2) work to see that more hazardous fuels funds are used to harvest merchantable sawlogs; and 3) work for an assured supply of timber to preserve the milling infrastructure which makes it possible for the Forest Service to do the work necessary to restore forest health.

In developing the bill, Wyden consulted with AFRC, our members with eastside manufacturing facilities, and environmental organizations. All those involved are committed to continued cooperation to improve forest health and assure the survival of our eastside logging and milling capacity. /*Ann Forest Burns*

HFRA II and Biomass Act

On December 8, a bipartisan group of House members including Healthy Forests Caucus co-chairs Greg Walden (R-OR) and Kurt Schrader (D-OR), along with Brian Baird (D-WA), Cathy McMorris Rodgers (R-WA), and Stephanie Herseth Sandlin (D-SD) introduced two pieces of

legislation to promote healthier federal forests, renewable biomass energy production, and economic development in rural America.

The Healthy Forests Restoration Amendments Act of 2009, or HFRA II, will provide clarifications and modifications to HFRA and will target five key points in the original law:

- Inclusion of an additional key purpose to HFRA that states the authorities can be used to “protect infrastructure in rural communities.”
- Clarify that federal land management agencies can address “necessary connected actions and forest and rangeland health restoration” through the National Environmental Policy Act (NEPA) process.
- Clarify that the agencies can use the HFRA authority to address the “existence of an infestation of disease or insects” or the fact that the presence of such may spread to adjacent lands.
- Remove the 20 million acre limitation included in HFRA.
- Clarify that if a community wildfire protection plan is in place or a forested area is classified as being the most prone to catastrophic wildfire (condition class II or III), the agency is required to evaluate only one action and one no-action NEPA alternative for the proposed project.

The Incentives to Increase Use of Renewable Biomass Act of 2009, is intended to help the renewable biomass energy industry gain a foothold by encouraging universities, public schools, hospitals, local governments and Native American tribes at non-gaming facilities to install or convert to clean biomass energy, heating or cooling systems. The legislation will:

- Improve forest health by reducing fuel loads, bug infestation and disease.
- Enhance the self-reliance of rural communities and create new jobs in rural forested America.
- Promote energy independence by expanding renewable woody biomass energy production.
- Comply with all existing environmental laws and retain's old growth protections.

Federal land managers estimate that approximately 190 million acres are at high risk of catastrophic wildfire and large-scale insect and disease outbreaks due to unhealthy forest conditions. AFRC would like to recognize the sponsors of these two pieces of legislation for taking an active role in efforts to improve the health of our federal forests and our rural communities. / *Tom Partin*

Decision on Survey and Manage

On December 17, Western Washington District Court Judge John Coughenour issued an order in *Conservation Northwest v. Rey*, a challenge to the Forest Service's and the Bureau of Land Management's (BLM's) survey and manage program for the Northwest Forest Plan. AFRC member company, D. R. Johnson Lumber Company, is a defendant intervenor. The judge ruled without hearing oral argument. The decision was based entirely on NEPA grounds and was a nearly total loss for the defendants.

Judge Coughenour ruled that only one, rather than two, no-action alternatives should have been considered in the Environmental Impact Statement (EIS); that survey and manage is working well and the agencies did not have sufficient reasons to eliminate the program; that use of the Fire Regime Condition Class approach to HFRA to eliminate the need for survey and manage was not adequately explained in the EIS; and that the stated cost of fuel treatment was invalid. Perhaps most importantly, the Court held that only regional surveys, not non-random project pre-disturbance surveys, can be used as a basis to estimate species abundance to justify eliminating a species from the program. The Court upheld the agencies' analysis of forest management and climate change. Plaintiffs raised the issue of whether the agencies should have considered the cumulative effects impact of adoption of the Western Oregon Plan Revisions (WOPR). This led to recognition by the Court of the case pending before the D. C. District Court on whether WOPR must be reinstated (*DTO v. Salazar*). The Court determined not to consider WOPR documentation as part of its ruling on the cumulative effects analysis.

The plaintiffs asked for a permanent injunction against the survey and manage program and the judge did not issue an injunction at this time. He noted that there are non-NEPA issues yet to be resolved in the case which might make a permanent injunction too sweeping a remedy and ordered the parties to submit further briefing. *Ann Forest Burns*

Region 5 Meeting

On December 7, a large contingent of congressional staffers, county elected officials and county action groups met with Region 5 Regional Forester Randy Moore to discuss the importance of the Forest Service moving forward in a timely manner with projects that have been delayed as a result of the litigation on the Sierra Nevada Framework. Among those present were the staffs of Senator Dianne Feinstein (D-CA), Representatives Wally Herger (R-CA), Tom McClintock (R-CA), Dan Lungren (R-CA) and George Radanovich (R-CA); elected officials from Siskiyou, Trinity, Shasta, Plumas, Sierra, Nevada, Placer and El Dorado counties; representatives from Plumas and El Dorado county economic action committees; and representatives of AFRC, the California Forestry Association and Sierra Pacific Industries. Unable to attend due to weather were officials from Tuolumne and Lassen counties.

On November 4, Eastern California District Court Judge Morrison England issued his long-awaited order on the Sierra Framework decision (*see* AFRC Newsletter, November 25, 2009). It requires the Forest Service to prepare a Supplement Environmental Impact Statement (SEIS) by May 1, 2010 to include a proper range of alternatives and consistent analysis and, at the project level, detailed consideration of project alternatives, including a non-commercial funding alternative for all new fuels reduction projects. In essence, each affected project is to have an action alternative to remove surface and ladder fuels only and indicate the cost that would be paid through appropriated funds, rather than through sale receipts. Moore assured those at the meeting that his office and the Office of General Council will soon have direction to the forests.

Among the issues raised during the meeting which need timely response on the part of the Forest Service, were adequate fuels treatment to reduce the impacts of large fire events on health, recreation and economics; the affect of non-treatment of forest stands on water quality and water yield; the loss of wildlife habitat during catastrophic wildfires; and the economic impact on

counties when mills shut down, as well as the impact on the ability of the Forest Service to do future forest rehabilitation treatments.

Moore stated his intent to increase the acres treated annually from the current 100,000 acres of mechanical thinning and 100,000 acres of prescribed burning in 2009 to an overall yearly average of 500,000 acres. He suggested there would be more agreement from all parties to move many projects ahead if harvesting were limited to trees 20 inches dbh and smaller. Since that limitation mirrors the 2001 Framework discredited by Judge England's recent decision, this was a disappointing suggestion.

The meeting ended without any final agreement or listing of the projects that will now move forward. Nevertheless, there was agreement that these groups will continue to meet in three and then six months to continue this important dialog. /*Bill Wickman*

O&C Funding Request Letter

On December 4, Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) and Representatives Peter DeFazio (D-OR), Kurt Schrader (D-OR) and David Wu (D-OR) sent a letter to President Obama requesting increased funding for forestry activities on the BLM O&C forest lands for the FY11 budget.

The letter outlines the important role the BLM plays in implementing the Northwest Forest Plan and providing a sustainable and predictable supply of timber harvest for local communities and the forest products industry. Due to inadequate funding, the BLM has not been able to implement much of the needed work on the ground.

The request for additional dollars will not only achieve much needed management in our forests, but will also generate economic activity and preserve vital infrastructure in rural Oregon. In addition, living wage logging and milling jobs will be created. Our thanks to Senators Wyden and Merkley and Representatives DeFazio, Schrader and Wu for their attention to these important forest lands. /*Tom Partin*

Barred Owl Experiments Proposed

For years, spotted owl researchers have known that the barred owl is having a detrimental effect on all native owls in the Northwest, including the threatened northern spotted owl. The latest Spotted Owl Recovery Plan listed the barred owl as a major threat and recommended that experiments be conducted to see if the barred owl population could be reduced via lethal or non-lethal removal. Last week, the U.S. Fish and Wildlife Service announced it is preparing an environmental analysis of possible experimental removal of barred owls from three areas in Oregon and Washington to determine if removal benefits the spotted owl. The agency is seeking public comments on the scope of the analysis that should be carried out; that is, what are the biological, social, economic and environmental effects that should be studied before the agency decides whether to conduct the experiments.

The need for the proposed research is to: 1) evaluate the response of northern spotted owl occupancy, survival, reproduction, and population trend to barred owl removal; 2) determine if barred owls can be effectively removed from an area and how much follow-up effort is required

to maintain low population levels of barred owls; and 3) determine the cost of removal in different types of landscapes. The experiments, spread across up to 14 spotted owl demographic areas, are likely to last three years and remove thousands of barred owls.

Information or comments may be sent to Field Supervisor, Oregon Fish and Wildlife Office, 2600 S.E. 98th Ave., Suite 100, Portland, OR 97266, or faxed to 503-231-6195. All comments or information should be identified as pertaining to the barred owl EIS. Comments are due January 11, 2010. /*Ross Mickey*

DNR Timber Program

In November, the Washington Department of Natural Resources (DNR) sold 66 million board feet (mmbf) of timber, which brings the year-to-date total to 315 mmbf. When harvested, that timber will return \$64 million to trust beneficiaries and DNR. Increased DNR stumpage prices and active harvest combined to increase DNR's timber revenues, rescuing the timber program from an expected substantial deficit. An increase in finished product demand and low log volumes, together with DNR's supply of larger logs which can be used to produce larger size dimension lumber, combined to create a demand for DNR timber.

DNR's recently published strategic plan questionnaire created concern because it barely mentioned trust management responsibilities and ignored beneficiaries. The survey period closed on December 10 with results expected sometime in early 2010. /*Bob Dick*

Cobbler/Wildcat Redux

In FY09, the Umatilla National Forest withdrew two major projects prior to award: Cobbler and Wildcat. An issue common to both which led to their withdrawal is the analysis of the projects' effect on undeveloped characteristics. Both projects will have new environmental assessments (EAs) prepared. The agency hopes to be able to implement both projects in 2010.

Scoping notices seeking new issues, comments, concerns, maps or new information specific to each project, have been issued. In both cases the purpose and need and alternatives considered in detail remain the same as in the previous EAs. There will, however, be some very minor changes to both projects.

Comments received on the original EAs will be included in the new EAs. If you have new information, you are encouraged to submit new or additional comments. /*Chuck Burley*

Klamath HFRA Project Challenged

The Thom-Seider Project located on the Klamath National Forest has been challenged by three environmental groups. The project was prepared using HFRA authorities and is designed to protect the communities of Hamburg and Seiad located adjacent to the Klamath River, as well as improving and protecting habitat within the Seiad Late-Successional Reserve. The three groups, Klamath-Siskiyou Wildlands Center, Environmental Protection Information Center, and Klamath Forest Alliance, filed two objections.

The objectors asked the agency to put a restriction on canopy closure within several stands; eliminate all of the helicopter harvesting, due to economics; convert it to prescribed burning; and provide a guarantee that all of the proposed 20,000 acres of prescribed burning will be completed within set timelines.

AFRC was able to submit material countering the objectors' points which will be included as part of the project report.

A resolution meeting was held on December 15. Although good progress was made during the meeting, resolution was not achieved. It now appears the forest will be able to resolve all issues, whether or not the objections are withdrawn. / *Rick Svilich*

Canceled Sale Cost Nearly \$1 Million

The Butler II/Slide fires on the San Bernardino National Forest burned in the summer of 2007. Of the 30 mmbf that burned it was estimated that 9 mmbf could be economically harvested while still meeting environmental standards. After two years of work and spending \$940,495, the Forest Supervisor agreed to delete nearly all of the merchantable volume in the proposed sales in response to an objection filed by an environmentalist to the final Environmental Impact Statement (FEIS), which was prepared using HFRA authorities. The proposed major salvage sale had been completely marked and was planned for advertisement in late spring of 2009. By making a Freedom of Information Act (FOIA) request, AFRC obtained six pages of detailed accounting information.

The volume reduction was caused by the Forest Supervisor's agreement to "delete 12 to 15 of the largest snags/acre" even though the project had been designed to fully meet snag retention standards and guidelines. The resolution of the objection was negotiated behind closed doors with a single objector, even though AFRC members had asked to be involved in the process. A few merchantable saw logs were sold from one of three proposed roadside hazard sales, and the forest took credit for additional biomass and pallet logs that were apparently sold into the local market at minimum rates after being decked using service contracts. / *Jerry Jensen*

Responding to Climate Change

On November 20, Forest Service Chief Tom Tidwell sent a memo to Regional Foresters, Station Directors, and other line officers directing them to develop strategies and plans on how the agency will respond to climate change.

In October 2008, the agency released its Strategic Framework for Responding to Climate Change (<http://www.fs.fed.us/climatechange/message.shtml>) that provides the vision, guiding principles, goals and recommended actions for pursuing the agency's mission in a rapidly changing climate. In addition, Agriculture Secretary Tom Vilsack's vision directs the agency to deal with climate change and water on high priority landscapes.

The new strategies and action plans, according to Tidwell's memo, are to "translate the [Strategic] Framework into our day-to-day operations." The plans are to include desired outcomes, strategies and specific actions for seven geographic areas and are to be limited to 20 pages. In his direction, Tidwell says a range of ecosystem services can be considered "but water should be treated as a fundamental outcome of every plan." In addition, the plans should

“articulate how science and management will interact to adapt to changing conditions and apply newly created knowledge in the future.”

One thing noticeably absent in Tidwell’s memo is whether these new strategies and plans will be subject to public review and comment. Will they be published in the Federal Register and/or will they be subject to NEPA compliance? Draft plans are to be submitted by March 1, 2010.
/Chuck Burley

Alaska Court Halts Tongass Sale

On December 7, Alaska District Court Judge John Sedwick ruled the Forest Service should have prepared a Supplemental Environmental Impact Statement (SEIS) addressing “changes in timber economics” before going forward with the Orion North Reoffer timber sale and roads construction contract on the Ketchikan-Misty Fjords Ranger District of the Tongass National Forest and enjoined further work under the contracts pending completion of the SEIS (*Tongass Conservation Society v. Cole*).

The Orion North was one of several sales included in a Record of Decision (ROD) signed in May, 1999. A long and complicated procedural history prevented its being offered and awarded for nearly a decade. In September, 2008, the Forest Service considered and rejected a request by the plaintiffs to prepare an SEIS on the grounds of a variety of changed conditions. A public works contract for the roads was then issued and the sale was awarded in July, 2009.

The Court rejected all bases for requiring an SEIS except changes in timber economics. Although the Forest Service argued that new economic information is not relevant to environmental impacts, the Court found that the economic analysis undertaken by the agency prior to the 1999 ROD had influenced its selection of alternatives under the EIS. The Court found that “[t]imber economics, and specifically ‘provid[ing] the highest economic return to the Federal Government’ while meeting resource objectives, was a significant factor in comparing alternatives and one of the main reasons for selecting [the alternative chosen].” Therefore, the Court concluded the agency acted arbitrarily by not preparing an SEIS to re-examine its alternatives in light of the significantly changed economic circumstances that prevail a decade later. The Court determined the Forest Service had adequately considered new information concerning deer, wolf viability, climate change and yellow cedar, and invasive species, so an SEIS was not required on any of those topics.

The Court issued an injunction against further action on the timber sale and roads contract until an SEIS is completed, noting that “the injunction will protect public resources just long enough to allow time for the preparation of [that] SEIS.” */Ann Forest Burns*

EAJA Attorney’s Fees Denied

In a decision rendered on December 15, the Ninth Circuit Court of Appeals reversed a decision by Oregon District Court Judge Owen Panner, denying attorney’s fees under the Equal Access to Justice Act (EAJA) to three environmental groups which sued the BLM in 2005 to stop the Willy Slide timber sale (*KS Wild v. BLM*). Because of a court ruling in another case, the BLM decided not to go forward with the Willy Slide sale. The environmental plaintiffs applied for attorney’s fees; the BLM objected; the district court sided with the plaintiffs and awarded them attorney’s

fees. The BLM then appealed to the Ninth Circuit. In reversing the district court, the Ninth Circuit ruled that the plaintiffs were not the legally “prevailing party” in the litigation, as required under the EAJA. The Court was especially critical of KS Wild’s argument that it deserved attorney’s fees because of the effect on BLM’s decision making it believed was attributable to its own victory in another, unrelated case. The Court termed this “a novel argument.” */Ann Forest Burns*

Thinning Science

A recent Pacific Northwest (PNW) Research Station Science Findings publication (Issue 117, October 2009) reported on a new analytic system that allows forest managers to assess fuel hazard treatment effectiveness, the location and capacity of processing facilities, and financial feasibility. The new tool called BioSum is based on the Forest Inventory and Analysis (FIA) database which helps foresters and analysts across the nation better inform decision makers.

Scientists recently used BioSum to assess a four-ecosystem, 28 million acre region of Oregon and northern California to see what treatments could be applied to these areas to maximize the effectiveness of reducing fire risk while returning value through biomass and merchantable timber. The measures of effectiveness of reducing fire risk were the crowning and torching indices. The torching index is a measure of the windspeed at which a fire climbs from the ground to the crown. The crowning index measures the windspeed at which a fire would spread through the crowns. In the study, merchantable trees were defined at 7-21 inches in diameter.

Researchers tested different policy scenarios and concluded that removing significant quantities of merchantable trees would be necessary to maximize treatment effectiveness based on the torching index. In fact, in the findings, PNW Research Station scientist Dr. Jeremy Fried said, “It seemed plausible that removing small trees would take care of the problem, but it turns out in most stands, you have to remove a significant fraction of trees that are 10 to 21 inches in diameter if you’re going to be effective as measured by improvement in the torching and crowning indices.” Fried also noted that the treatment that minimizes the removal of merchantable wood “tends to be a lot less effective—in fact, sometimes not effective at all.”

A copy of the report can be downloaded at <http://www.fs.fed.us/pnw/science/scifi117.pdf>.
/Chuck Burley

Cellulosic Ethanol

This month, ZeaChem, based in Lakewood, Colorado, announced it has been awarded a \$25 million federal stimulus grant for its cellulosic ethanol plant currently under construction in Boardman, Oregon. The 250,000 gallon capacity plant will convert organic material into fuel. In February 2008, GreenWood Resources Inc. signed a non-binding letter of intent with ZeaChem to provide poplar feedstock from GreenWood’s 17,000 acre tree farm near Boardman.

ZeaChem’s core technology that produces ethyl acetate will be online next year. The \$25 million grant will help ZeaChem to build and integrate components that will enable final production of cellulosic ethanol. If successful, the company hopes to expand the Boardman facility to commercial scale production in the range of 25 to 50 million gallons annually. */Chuck Burley*

Opinion: Climate-gate

All of us know of the British climate scientists' indiscretions. While they did not "fake" their research data, they came mighty close and, worse, suppressed research that might have disagreed with their global warming theories. Much has been said about climatic implications. Another element has yet to be explored: science has fallen victim to the Machiavellian notion that the end justifies the means.

Science is the rigorous exploration of a subject. There are time-honored ways to conduct science, to critique scientists' work, and how scientists conduct themselves while engaged in their work. Science today is blended with advocacy and politics with scientists all too frequently advocating their point of view, using their "scientist" title to advance personal convictions.

Climate scientists are examples of a larger problem. One well known biologist and author openly fudged his data to achieve some greater truth. Biologists apparently seeded hair traps with animal hair to prove the presence of the species. Some environmental advocates readily admit they embellish the facts to achieve their goals. Some Oregon forestry researchers rushed their research into publication before it was properly vetted, suspiciously close to a policy level discussion on the matter.

We've compromised our ability to trust science to give us the best information possible. Where does it stop? With climate? With environmental research? Medical research? Engineering research? Now is the time to take a hard look at scientific principles: the null hypothesis, a bright line between research and advocacy, peer review, and publishing in respected journals versus the media. Credibility must be returned to the scientific process. */Bob Dick*

New OFRI Directors

State Forester Marvin Brown has appointed two new directors to the board of the Oregon Forest Resources Institute for three-year terms beginning January 1, 2010.

Anne Hanschu, Forest Grove, will replace Steve Woodard, owner of Woodard Forests, as the small woodland owner representative. She and her husband, Richard, were American Tree Farm System Western Regional Tree Farmers of the Year in 2000. Their 494 acre tree farm is located near Gales Creek.

Ron Stuntzner, Coos Bay, owns and manages a family tree farm. He also operates Stuntzner Engineering & Forestry LLC with offices in Coos Bay, Forest Grove, Dallas and Brookings and has been active in educating South Coast high school students about forestry careers. He replaces Carol Whipple, of the Rocking C Ranch, as one of the three Class 1 representatives, defined by rule as those paying harvest taxes on 20 million board feet or less per year.

Gary Springer, Starker Forests, and Greg Miller, Weyerhaeuser Company, were reappointed for second three-year terms. */Ann Forest Burns*