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## **Murrelet Remains Listed**

On June 12, the US Fish & Wildlife Service (FWS) issued another 5-year status review on the marbled murrelet that concluded the population in Washington, Oregon and California are a Distinct Population Segment (DPS) and therefore should remain listed. This decision reverses their August 31, 2004 status review which maintained the listing, but found the original DPS designation to be in error based on the 1996 DPS Policy.

The marbled murrelet was listed as threatened on October 1, 1992 and critical habitat was designated on May 24, 1996. At the time of the court ordered listing, the FWS stated in the Federal Register Notice that it was unsure that the DPS finding was correct and pledged to review this decision within 90 days, but never did.

In 1996, the FWS and the National Marine Fisheries Service developed a joint policy that intended to clarify the meaning of DPS. Three basic principles guided the development of the policy: 1) the intent of the framers of the ESA to use it to protect genetic diversity; 2) the 1979 directive that the government agencies involved list populations "sparingly" and 3) the stipulation in the ESA that listing decisions be based "solely on the best scientific and commercial data available." The marbled murrelet DPS was not reviewed as a result of this clarification.

AFRC has pursued numerous legal avenues over the past five years to have the agency recognize that the murrelet's listing was not valid since the original DPS was in error. One of which was filing a delisting petition on May 28, 2008. The FWS accepted the petition by determining that it "may be warranted" and a decision was due on May 28, 2009. We are still waiting for the formal response.

AFRC continues to disagree with the listing based on the biological fact that there is only one, continuous, interbreeding population of marbled murrelets extending from northern Alaska to southern California which numbers up to 1,000,000 individuals. */Ross Mickey*

## **Tidwell Named Chief**

On June 17, Agriculture Secretary Tom Vilsack announced that Tom Tidwell is the new Chief of the Forest Service. Tidwell was the former Regional Forester for the Northern Region. He brings 32 years of experience including service on eight different national forests across three regions. He has worked at all levels of the agency in a variety of positions, including District Ranger, Forest Supervisor, and Legislative Affairs Specialist in the Washington Office.

One of Tidwell's first jobs will be to finalize allocations for the remainder of the \$1.15 billion of stimulus dollars that the Forest Service has to spend. To date, the agency has spent \$643 million, but is facing scrutiny on how some projects were selected, as well as from some states like Wyoming that wasn't originally slated to receive any stimulus money. Tidwell also helped craft a policy on roadless areas in Idaho and hopes to use that effort as a model in his new job as the debate over roadless areas continues. / *Tom Partin*

## **Wyoming Roadless Injunction Holds**

On June 15, Wyoming District Court Judge Clarence Brimmer refused to suspend or modify his nationwide injunction against the 2001 Clinton roadless rule. The government and Wyoming Outdoor Council (WOC) had asked Judge Brimmer to suspend his injunction or to limit its application to Wyoming.

In his order, Judge Brimmer reiterated his conclusion that the Forest Service had violated the National Environmental Policy Act (NEPA) when it promulgated the 2001 rule by "neglecting to consider all the potentially negative environmental impacts that a new rule would have on the environment." He further noted there are "numerous protections" for federal forests other than the roadless rule, so "a free-for-all. . .resulting in the obliteration of our nation's forests" predicted by WOC "simply is not the case." Although he "appreciates the reality of the situation faced by the [F]orest [S]ervice [in enforcing two conflicting injunctions]" the judge found he could not "in good conscience" limit the injunction.

The injunction, issued in the Tenth Circuit Court of Appeals, is in conflict with one issued against the 2004 Bush roadless rule in the Ninth Circuit Court of Appeals by Northern District of California Magistrate Judge Elizabeth LaPorte. Judge LaPorte had earlier limited her injunction to the Ninth Circuit and New Mexico. Both cases are on appeal to their respective Circuit Courts. Ultimate conflicts between circuits may be resolved by the U.S. Supreme Court. / *Ann Forest Burns*

## **New Wilderness, Wild & Scenic Bills**

Last week, four bills were introduced that would set aside more of Oregon's federal forest lands. Senator Ron Wyden (D-OR) introduced three bills that would create the Devil's Staircase Wilderness, expand the Oregon Caves National Monument, and add stream segments to the Rogue Rivers Wild and Scenic Area.

The proposed Devil's Staircase Wilderness totals 29,650 acres, 23,257 on the Siuslaw National Forest and 6,123 on the Coos Bay BLM District and is located north of the Umpqua River in Douglas County. This proposal includes many plantations from the 1960's through the 1980's. It also includes 10.7 miles of road and has a 13.3 mile road running through the middle of the entire proposed wilderness area that will be buffered out.

The proposed Oregon Caves expansion would transfer 4,080 acres of dry, mixed conifer forest in the Rogue-Siskiyou National Forest to the National Park Service. Due to fire suppression, the forests proposed in this expansion have fuel loading that put them at high risk to wildfire classified as condition Class III. AFRC has several concerns with this bill, but the most pressing

is that more than half of the acres to be set aside are scheduled for fuels treatments, which need to move forward in order to lower the risk of wildfire.

The added stream segments to be included in the Rogue Rivers Wild and Scenic Area total approximately 143 miles. Only four segments totaling 19.2 miles were found suitable for wild and scenic designation during a suitability study that was conducted by the BLM during their 1995 Resource Management Plan. The suitability study looked at whether or not stream segments meet the standards of permanently free flowing and containing at least one outstanding remarkable value.

Representative Kurt Schrader (D-OR) introduced the fourth bill that would designate 21.3 miles of the Molalla River as Wild and Scenic. *Jacob Groves*

### **Interior Funding Bill Moving**

On June 18, the House Appropriations Committee voted to approve the Interior and Environment Appropriations Bill, which includes funding for the Interior Department and Forest Service. The committee voted to restore \$107 million to a wildland fire contingency fund requested by the administration. President Obama's budget called for \$357 million for the fund, which would only be tapped if federal agencies exhausted regularly budgeted money for wildfire suppression. The House Interior Subcommittee however, had only approved \$250 million and instead targeted the leftover funds to wildland fire management efforts, such as hazardous fuels reduction. The committee offset the increase by reducing program funds at the Environmental Protection Agency.

Notable Forest Service account increases included \$2.37 billion for wildland fire management, \$132 million more than the administration requested and \$378 million for hazardous fuels reduction which is \$63 million over the administration's request. The bill would also give the Forest Service a \$154 million boost in non-fire funding line items including the legacy road and trail program which will receive \$100 million and a modest \$4 million increase in the forest products line item bringing it to \$336.7 million. The administration's new \$50 million "Protecting National Forests" initiative was zeroed out in the bill and the funding was instead used to increase the legacy road and trail program. More to come when the \$32.3 billion measure reaches the House floor.

### ***Interior (BLM) Budget***

The bill would provide \$10.97 billion for the Interior Department which is \$897 million above FY09 levels and provides the BLM with a \$1.13 billion budget which is \$87 million above current levels. The O&C Land program is funded at the President's requested level of \$111.5 million which is \$1.6 million above the FY09 enacted level. The committee provided the administration's requested level despite a recent letter from Representatives Kurt Schrader and Greg Walden (R-OR) requesting additional O&C forest management funding in light of the need for increased management activities on these lands and the dire economic situation facing Oregon's rural communities and forest products industry.

### *Senate Up Next*

On June 23, the Senate Appropriations Subcommittee marked up its version of the 2010 Interior Bill. On the whole, the Senate subcommittee was far less generous than their House counterparts by setting Interior and Environment account spending at \$200 million less than the House version, although the committee has recommended increases to several key line items. The Senate version recommended \$338 million for national forest timber management, which represents a \$5 million increase over current funding levels. It also provided \$556 million for hazardous fuels reduction activities at the Forest Service and BLM, an increase of \$23 million, and \$1.86 billion for suppression activities, which fully funds the ten-year average and provides the reserve account requested by the administration. We will have final numbers after the Senate Appropriations Committee meets to consider the Interior measure. /Tom Partin

### **Senate Energy Bill**

On June 17, the Senate Energy and Natural Resources Committee voted 15-8 to approve energy legislation that will impose a national renewable electricity standard, overhaul federal financing for “clean energy” projects, establish a suite of efficiency measures, mandate new federal electricity-transmission siting power, and allow wider oil and gas leasing in the eastern Gulf of Mexico.

The renewable electricity standard (RES) requires utilities nationwide to source 15 percent of their power from renewable sources like biomass, wind, and solar by 2021; however, environmentalists have called for a renewable standard of 25 percent by 2025 and are opposed to the lower requirement.

One important component of this bill will be how the renewable biomass definition treats biomass that is removed from federal forests. While the current definition is an improvement compared to the Renewable Fuel Standard, the legislation includes a definition that is over eight pages and puts significant restrictions on biomass from federal lands. /Tom Partin

### **House Climate and Energy Bill**

The 1,201-page “American Clean Energy and Security Act of 2009” introduced by Representatives Henry Waxman (D-CA) and Edward Markey (D-MA) is expected to come to the House floor on June 26. The legislation’s cap and trade provisions would require U.S. industries to reduce Greenhouse Gas Emissions 17 percent below 2005 levels by increasing prices on carbon-based energy. Since the legislation passed the House Energy and Commerce Committee several weeks ago, proponents have been negotiating with key undecided members in the hopes of securing the votes necessary for House passage.

Last week, the Congressional Budget Office (CBO) released an analysis which predicted the legislation would increase energy costs by approximately \$890 per household. The CBO estimated that through a series of allowances and dividends back to taxpayers, the average household would see an increase in energy costs of about \$175. Republicans have criticized it as a massive tax increase on American consumers and businesses, which will result in massive job losses, increased government spending and the creation of a speculative carbon trading system. Republican estimates indicated that American households would pay between \$770 and \$1,380 more per year for energy and other consumer items.

The legislation also includes a definition of renewable biomass within a new Renewable Energy Standard. The House definition more closely mirrors the renewable biomass definition introduced by Representatives Stephanie Herseth-Sandlin (D-SD) and Greg Walden in the last Congress. However, the House definition includes a prohibition on biomass harvested from mature and old growth trees as well from mature and old growth stands. No definitions were provided for these terms, which is likely to lead to unnecessary confusion, litigation and agency paralysis. It is likely that this provision will disqualify biomass from hazardous fuels reduction and vegetation management activities in the many forests most in need of these activities. Representative Peter DeFazio (D-OR) was a major player behind the negotiations that led to this biomass definition. Walden remains opposed to it as does Representatives Brian Baird (D-WA) and Kurt Schrader.

President Obama has been heavily lobbying for House passage of the legislation. /*Heath Heikkila*

## **East Fork II Decision**

On June 4, Judge Garland Burrell ruled in favor of the Forest Service on the East Fork II project. The project has been in court three times. The original timber sale, Texas Spider, was awarded to Trinity River Lumber Company in September 2005. It was originally appealed by EPIC, Conservation Congress, and two individuals. That appeal was upheld by the Regional Forester. Following the completion of a new NEPA document by the forest, the Eastern District Court of California lifted the injunction and approximately 45 percent of the sale volume has been harvested.

On October 20, 2008 a complaint was filed in the Eastern District Court again on this very same project. This time it was challenged by Conservation Congress, Citizens for Better Forestry and two individuals. The complaint covered many of the same issues that had been previously addressed in the past court cases including: 1) failure to adequately disclose and analyze environmental impacts for a variety of species and resource issues, 2) failure to prepare an EIS, 3) failure to prepare supplemental NEPA analysis, 4) failure to comply with sensitive species survey requirements, and 5) failure to comply with management indicator species requirements.

Following this latest decision the plaintiffs have subsequently filed a motion for appeal to the Ninth Circuit Court of Appeals and are asking for an injunction on all activities. One has to wonder if this important fuels reduction project will ever be completed. / *Rick Svilich*

## **Attorney Fees Denied**

On June 9, a Ninth Circuit Court of Appeals 3-judge panel denied attorney fees under the Equal Access to Justice Act (EAJA) to a group of environmentalists which challenged the Forest Service's 2000 forest planning rule in the *Citizens for Better Forestry v. USDA* case.

Following a 2003 ruling by the Ninth Circuit that the plaintiffs had standing to sue the Forest Service under NEPA and the Endangered Species Act (ESA), the Forest Service withdrew the 2000 final planning rule and issued a new rule. The environmentalists then sought attorney's fees under the EAJA and ESA. A magistrate judge for the Northern District of California ruled

that they were entitled to attorney fees under the EAJA only. The Forest Service appealed on the grounds that the court had not granted plaintiffs any relief in its lawsuit.

The Ninth Circuit reversed the District Court's award of attorney fees noting that while the plaintiffs' suit may have contributed to the Forest Service's decision to withdraw the 2000 planning rule, "the Supreme Court has made it clear that being a catalyst for such change is not enough to support a claim for attorneys' fees under the EAJA."

The plaintiffs were represented by the Western Environmental Law Center in Eugene, which funds its litigation in part on attorney fees recovered from the government. /*Ann Forest Burns*

## **DNR Timber Program Results**

The Washington Department of Natural Resources (DNR) fiscal year ends on June 30. Below is the sale information through May:

Sales Offered *	145
Sales Sold	121
Sales no-bid	23
Sales Pending	1
Volume Offered	535 mmbf
Volume Sold	437
Volume no-bid	97
Price/MBF	\$190
Overbid Ratio	21 percent
Avg. Bidders	2.7

\*All Sales

DNR intends to offer 114 mmbf in June, which would bring the yearly offering to 649 mmbf. Sold sales are less than that due to nearly 100 mmbf of no-bid sales. Revenues will come in at only \$100 million of which DNR gets a management fee that varies between 25 and 30 percent depending on the trust timber being harvested. Due to depressed timber markets, management fees and the funds in which they are deposited have suffered causing layoffs and restructuring within DNR.

In other related news, Washington's legislature raised the Contract Log Sales quota from 10 percent of total volume to 20 percent in the belief that it will increase revenues. DNR will ramp up to the 20 percent over several years. /*Bob Dick*

## **Biomass Grants**

Earlier this month the Department of Agriculture awarded \$11.85 million to five Oregon counties to create clean energy jobs and reduce the risk of wildfire. The dollars, part of the American Recovery and Reinvestment Act, go to projects in Douglas, Grant, Harney, Jefferson, and Linn Counties.

Douglas County received \$300,000 to evaluate the economic value of using portable pyrolysis units for in-woods conversion of biomass into bio-oil and bio-char and test the impacts of bio-char application on forest sites. Douglas County also received \$800,000 to fund projects to collect and bundle woody biomass from private forest lands to be used at a local power plant. Another \$500,000 goes to Douglas County to fund a project developed by the Oregon Department of Forestry. The project reduces hazardous fuels on small woodland owners' properties and will be used as fuel at two local co-gen facilities.

Jefferson County received \$5 million for a boiler at the Warm Spring Power and Water Enterprises to be used to produce steam for electricity.

Grant and Harney Counties received \$5 million for the design and installation of a biomass pellet plant. The new facility will use biomass from a 10 year stewardship fuels reduction contract. Linn County received \$250,000 to assist T2, Inc. increase operating efficiency and year-round access for conducting fuel treatments. /Chuck Burley

## **Fuel Reduction Study**

A recent study published in the Proceedings of the National Academy of Sciences reports that only 11 percent of fuel reduction projects conducted under the National Fire Plan were within the wildland urban interface (WUI) plus an additional 1.5 mile buffer around it. This is compared to the 50 percent goal set by the Healthy Forests Restoration Act. The scientists analyzed a database of over 44,000 projects in the western states through 2008 and found that only 3 percent were within the WUI itself.

Part of the problem according to the report is that 71 percent of the WUI is privately owned. Thus one recommendation is that more effort be focused on private lands.

However, officials in Central Oregon have disagreed with this finding—at least as it applies to their region. In a June 18 article in *The Bend Bulletin* Bill Aney, the Region 6 fuels specialist, stated that the agency puts at least half of their effort into the WUI. The Bulletin article continued, “the Deschutes National Forest has treated twice as many acres near communities as acres in remote areas — with 83,833 acres in the wildland-urban interface and 35,929 acres outside it, according to Forest Service figures.” /Chuck Burley

## **Community Protection Questioned**

The community of Weaverville, California has been threatened by wildfires numerous times during the past decade and since 2001 approximately 35,000 acres have burned. During those fires, a total of 35 structures and 29 vehicles were destroyed and the community had gone through several mandatory evacuations.

For the past several years the Shasta Trinity National Forest has been working on the Browns Project which is designed to provide community wildfire protection along the northern edge of Weaverville. This month, the Final Environmental Impact Statement (FEIS) was signed. The driving purpose and need was to reduce ground and ladder fuels to reduce the risk for rapidly spreading crown fire and to improve forest health, growth and sustainability where overstocked forest conditions exist.

One action identified in the EIS is the need to reduce overstory crown density in overstocked forest conditions. Even though the entire project is located within Matrix land allocation, the deciding officer selected an alternative which would treat 200 fewer acres and restrict canopy closure to 70 percent. The decision has also been made to phase this project in over several years.

One would think with the critical nature of protecting the community of Weaverville the project would be prioritized for rapid implementation and that a larger reduction in canopy closure would be sought to meet both short and long-term objectives of community protection and improving forest health. */Rick Svilich*

### **Jones Appointed to OFRI Board**

Oregon State Forester Marvin Brown has appointed Ray Jones to the Oregon Forest Resources Institute (OFRI) Board of Directors. He will fill out the unexpired term of Matt Donegan, Co-President, Forest Capital Partners. This board position is one of three representing companies which pay state timber harvest taxes on at least 100 million board feet per year.

Jones is Vice President of Resources for Stimson Lumber Company in Portland. Prior to joining Stimson, he worked for Roseburg Forest Products.

OFRI was created by the Oregon Legislature in 1991 to improve public understanding of the state's forest resources and to encourage environmentally sound forest management. It is funded by a dedicated harvest tax on forest products producers and does not receive monies from the state's general fund. */Tom Partin*

### **Evergreen Goes Electronic**

Following months of work by its founder, Jim Peterson, and anticipation by the forestry community, Evergreen Magazine is now available in its new online format at [www.evergreenmagazine.com](http://www.evergreenmagazine.com)

The site features content relevant to forestry issues throughout the West, including editorials and guest columns from a number of sources. All prior editions of Evergreen are available on the site.

Congratulations to Jim on the successful culmination of months of hard work bringing this valuable educational tool into an electronic format. */Ann Forest Burns*