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Roadless Rule Chaos Continues

On August 5, the Ninth Circuit Court of Appeals issued its long-awaited ruling on the 2005 State Petitions Roadless Rule (*California v. USDA*). The court agreed with Northern California District Court Magistrate Judge Elizabeth LaPorte and found the rule invalid. It also affirmed her ruling that the Forest Service must now comply with the 2001 Clinton Roadless Rule, at least in the area covered by the Ninth Circuit.

The court found that the Forest Service violated the National Environmental Policy Act (NEPA) by effectively repealing the 2001 rule through the use of a categorical exclusion and without proper analysis of the potential environmental consequences of the new rule. It said the agency violated the Endangered Species Act (ESA) when it determined the repeal of the earlier rule would not affect listed species. The court rejected the Forest Service's argument that the 2001 rule had not been in effect on the ground (due to an earlier injunction) long enough for its repeal to have impacted listed species.

At the time of her decision, Judge LaPorte issued an injunction against implementation of the State Petitions Rule. Wyoming Federal District Court Judge Clarence Brimmer (Tenth Circuit) then reaffirmed an earlier decision against the Clinton Roadless Rule and issued an injunction against its implementation (*Wyoming v. U.S. Forest Service*). Judge LaPorte subsequently modified her injunction to apply only to the Ninth Circuit and New Mexico. Earlier this summer, Judge Brimmer refused to modify his nationwide injunction.

On August 13, the Department of Agriculture filed a notice of appeal of Judge Brimmer's ruling to the Tenth Circuit Court of Appeals. Although the appeal was widely hailed by environmental organizations as the death of the State Petitions Rule, in all likelihood it is a necessary step to resolve the conflict between the Circuit Courts which is preventing rational administration of inventoried roadless areas. / *Ann Forest Burns*

Vilsack Speaks on Forestry

On August 14, Secretary of Agriculture Tom Vilsack made what was billed as a major announcement of a new direction and vision for America's forests. The speech, given in Seattle, focused on the importance of both public and private forests to the nation's environmental and economic health. The Secretary was joined at the event by Representative Norm Dicks (D-WA) and the Region 6 leadership team of the Forest Service.

The Secretary's remarks recognized that the threats facing our nation's forests (wildfire, insects, disease, and climate change) will require mechanical thinning activities and increased funding to address the problems. The Secretary referred to a paradigm shift away from the litigation mode

and toward cooperation and collaboration to allow federal forest management to move forward, citing the collaboration on the Colville National Forest as an example of success. He noted the decline of the forest products industry, saying sustaining the infrastructure is essential to the Forest Service's ability to restore the health of the federal forests. He also spent time talking about the need to maintain working private, state and tribal forests through continued management activities and perhaps new sources of income such as bioenergy and carbon sequestration. Not only were timber harvest activities not cited as a threat facing federal and non-federal forests, but they were recognized as a key component of sustaining these forests.

The Secretary also announced the Department will not appeal the June 30 Northern District Court of California's decision overturning the 2005 forest planning rules (*Citizens for Better Forestry v. USDA*). Forest Service Chief Tom Tidwell has been instructed to begin writing new rules.

In referring to the Department's decision to appeal the Wyoming District Court injunction against the Clinton Roadless Rule, the Secretary noted that the President has made clear his support for protecting roadless areas. The Administration supports the completed Idaho rule and the process that is underway in Colorado. /*Heath Heikkila*

Court Refuses to Vacate Rule

The D. C. District Court has refused to allow the Obama Administration to unilaterally remand and vacate a Department of Interior rule on mining reclamation (*National Parks Conservation Assoc. v. Salazar*). The rule, which was promulgated on December 12, 2008, had been challenged by the National Parks Conservation Association. In April, Secretary of Interior Ken Salazar issued a determination that the agency should have consulted under the ESA before issuing the rule. The government then asked the court to remand and vacate the rule and dismiss the lawsuit as moot. Based on an objection by the National Mining Association, an intervenor in the case, the court refused to grant the government's motion. It said the government would have to follow the same Administrative Procedures Act public notice and comment requirements to withdraw the rule as it had to put it in place. Because the court had made no decision on the merits of the plaintiff's claims about the rule, it had no basis to remand and effectively repeal it. The Department's actions in this case are remarkably similar to its recent decisions regarding the BLM's Western Oregon Plan Revisions and the Northern Spotted Owl Critical Habitat Designation (see July 24 AFRC News). / *Ann Forest Burns*

Lewis and Abbey Confirmed

On August 7, the Senate confirmed the appointments of two people in the Department of Interior. Wilma Lewis became the Assistant Secretary for Land and Minerals Management and Bob Abbey was confirmed as the Director of the Bureau of Land Management (BLM).

Wilma Lewis was previously a U.S. Attorney for the District of Columbia and the Inspector General for Interior. She was the first African American woman to hold that position. Lewis also served as an Associate Solicitor at Interior.

Secretary of Interior Ken Salazar stated "Lewis' extensive legal and managerial experience and personal integrity make her well qualified to oversee the management of Interior lands that

provide 30 percent of the nation's domestically-produced energy." The office of the Assistant Secretary for Land and Mineral Management establishes Interior policies and provides oversight to the BLM, Minerals Management Service, and the Office of Surface Mining Reclamation and Enforcement. The assistant secretary oversees management of public lands and resources including production of federal energy and mineral resources, both onshore and on the Outer Continental Shelf.

Bob Abbey has been the Nevada State BLM Director for the last eight years. He has over 32 years of experience working with state and federal land management agencies. Abbey has also earned numerous performance awards during his career including the prestigious Secretary of the Interior's Executive Leadership Award in 2004. That same year he was recognized by the Senate with a certificate of commendation for his work on behalf of the Great Basin.

As the BLM Director, Abbey will oversee 10,800 employees with an annual budget of \$1.8 billion, and manage 258 million acres of land, more than any other federal agency. Most of this land is located in 12 western states, including Alaska and make up about 13 percent of the total land of the United States and more than 40 percent of all land managed by the federal government. The BLM also administers 700 million acres of sub-surface mineral estates throughout the nation. / *Tom Partin*

Downpayment & Payment Revisions

On August 13, the Forest Service revised its downpayment and periodic payment regulation. According to the Federal Register Notice, this change will "remove obsolete references and procedures; make downpayments and periodic payments optional for stewardship contracts; allow downpayment and periodic payment amounts to be recalculated when contracts receive rate redeterminations; revise procedures for releasing downpayments; and allow downpayments to be temporarily reduced for certain delays, interruptions, or extensions." This change in regulation was initiated through a request of the Federal Timber Purchasers Committee a couple of years ago in response to the downturn in the market.

The rule makes the following changes for downpayments:

- Allows for recalculation of required downpayments when stumpage rates are adjusted due to (1) environmental modification, (2) catastrophic damage, (3) Forest Service ordered suspension or delay, or (4) emergency rate redetermination.
- Allows downpayments to be released when the estimated value of remaining timber is less than the downpayment, and sections were added for scaled sales and tree measurement scales.
- Temporary reduction in required downpayments to \$1,000 or 2 percent of the downpayment amount stated in the contract, whichever is greater, if (1) the Forest Service orders a delay for a reason other than breach, (2) a contract term addition allows a purchaser to shift operations to a sale in urgent need of removal, or (3) an extension granted pursuant to a finding of Significant Overriding Public Interest, Market-Related Contract Term Addition, or an urgent removal contract term extension.

The rule makes the following changes for Stewardship Contracts:

- Not all stewardship contracts require periodic payments.
- Downpayments are now optional for stewardship contracts. If the value of timber greatly exceeds the cost of services it is likely that the contracting officer will require a downpayment.

Please contact your sale administrator to see if any of your contracts may qualify for this relief. The new rule can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-19372.pdf> /Ross Mickey

ODF Receives Grant

The Oregon Department of Forestry announced it has received \$6.4 million in federal grants to reduce the hazard of wildfires on state and private lands. The grants are divided with \$2.5 million for state forests and \$3.9 million for private lands and are part of the American Recovery and Reinvestment Act of 2009.

The dollars for private lands will target Jackson, Josephine, Crook, Deschutes, Jefferson, Linn, and Lane counties with a total of 3,093 acres to be treated. The dollars for state-owned lands will treat a total of 3,894 acres in Douglas, Jackson, Josephine, Klamath, Marion, Linn, and Tillamook counties.

Most of the work will be contracted out, and will be put out for public bid after the Department receives the grant dollars. /Chuck Burley

Biomass and BETC Vetoes

Oregon Governor Ted Kulongoski has vetoed two energy-related bills. The first bill, HB 2940 would have qualified pre-1995 biomass power plants as renewable energy facilities under Oregon's Renewable Portfolio Standard (RPS). The 1995 cutoff date was in the 2007 bill that established Oregon's RPS and it was a purely arbitrary selection that many tried to remove at that time.

The governor's principle argument for vetoing the bill is that one of the purposes of the RPS is to spur new investment in renewable energy in Oregon and by qualifying existing plants there is no new investment. Furthermore, the governor feels qualifying earlier plants diminishes the RPS by allowing utilities to meet the targets with existing renewable facilities as opposed to new ones.

In his press release, Kulongoski also highlights how successful the RPS has been in stimulating "billions of dollars of investment in this state" helping to "make Oregon the leading state in the nation in green jobs and renewable energy."

These points definitely have merit but there are also flaws in this logic. First, it penalizes those pioneers that made investments in renewable biomass energy before the RPS was enacted. Second, it also does not recognize that forestry and forest biomass energy are green jobs that

need to be retained. Last, it would seem reasonable to think that the utilities would like the green energy produced from existing biomass plants because they can produce at or near market rates with very little, if any, taxpayer subsidies and biomass is a firm baseload as opposed to wind power that is unpredictable.

The second bill, HB 2472 would have reduced the Business Energy Tax Credit (BETC) cap from \$10 million to \$3.5 million. The BETC has been a great success in spurring investment in renewable energy in Oregon to the extent some argued it is costing the state too much. In lieu of rolling the BETC back, the governor has directed the Oregon Department of Energy (DOE) to conduct an economic analysis on renewable energy projects that qualify for the BETC (HB 2180 which the governor did sign). He also directed DOE to tighten the administrative rules that govern the BETC.

Both of these topics will be the subject of much discussion and negotiations in the next several months leading up to possible votes either to override the veto(es) in the February 2010 legislative session or pass compromise bills. /*Chuck Burley*

DNR Announces FS Pact

Last week, the Washington Department of Natural Resources (DNR) announced it will sign a “collaborative research agreement” with the Forest Service, which allows DNR’s Olympic Experimental State Forest (OESF) to participate in their Forest and Range Experiment Station. The agreement will be signed by Public Lands Commissioner Peter Goldmark and PNW station director Bov Eav, on August 25. The Forest Service has 80 research stations across the US.

The OESF is trust land tasked by law to produce income for specific beneficiaries. The experimental forest was created in 1989 as a result of a commission that studied controversial old growth harvest on DNR managed Olympic Peninsula trust land. The commission intended that the trust lands would be used as a research proving ground to explore ways to grow and harvest timber for revenue production while protecting/enhancing environmental amenities. The Olympic Natural Resources Center, is the most tangible result of the commission’s work, along with a University of Washington School of Forest Resources research center in Forks. /*Bob Dick*

AFRC Appeals Browns Project

On July 28, AFRC filed an appeal of the Record of Decision (ROD) for the Browns Project on the Shasta Trinity National Forest. The project is located near Weaverville, California, a community at high risk to wildfires. The project’s stated purpose is to provide community wildfire protection and improve forest health by reducing overstocked forest conditions.

AFRC appealed the ROD because; 1) the final decision failed to meet the purpose and need of the project and the objectives of the Forest’s Land and Resource Management Plan, 2) the planned residual canopy closure of 70 percent would not significantly reduce wildfire risk or improve stand conditions, and 3) the five year timeframe for implementation would also mean an unacceptable and unnecessary delay in community wildfire protection.

An informal disposition meeting between AFRC and the Forest Supervisor occurred on August 12. The deadline for a decision on the appeal by the Forest Service is September 13. / *Rick Svilich*

Biomass Crop Assistance Program

On July 29, USDA Farm Service Agency Administrator (FSA) Jonathan Coppess announced that biomass conversion facilities can begin signing up to participate in the Biomass Crop Assistance Program (BCAP) which will help increase production of renewable energy. The program, authorized in the 2008 Farm Bill, provides financial assistance to producers who deliver eligible material to biomass conversion facilities and the FSA will provide financial assistance for the Collection, Harvest, Storage and Transportation (CHST) of approved biomass.

Biomass Conversion Facilities (BCF) can submit applications to begin receiving matching funding for the CHST of biomass for up to \$45 per ton. BCF's are defined as facilities which produce heat, power, advanced biofuels, or bio-based products. Qualified facilities will be eligible to receive the subsidy for up to two years. The CHST subsidy is available only for eligible materials which specifically exclude "commercial materials" such as sawlogs from national forest and BLM lands. All woody biomass from private lands appear to be eligible regardless of the source. However, the agency is currently refining their definition of acceptable biomass and these definitions could change.

To become a qualified BCF, an authorized representative of the facility must complete and submit three original Memorandum of Understandings, in addition to other related forms and documents to the FSA state office for signature and approval. BCF and material owners or producers should contact their FSA state offices or visit www.fsa.usda.gov for more information. Since there is a finite amount of dollars dedicated to this program, \$20 million, it would behoove interested companies to become eligible for this program as quickly as possible. / *Tom Partin*

Colville Listening Session

On August 14, Senator Maria Cantwell (D-WA) and Representative Cathy McMorris Rogers (R-WA) hosted a listening session at the Washington State University Northpoint Campus in Spokane. The purpose was to hear about the efforts of the Northeast Washington Forestry Coalition (NEWFC) over the past six years. Following the opening remarks by Cantwell and McMorris Rogers, three panels made presentations.

The first was led off by Colville National Forest Supervisor Rick Brazell. He described the forest planning efforts over the past several years by the Colville and praised the efforts of NEWFC as an effective partner. Brazell also outlined their collaborative efforts concerning disposition of roadless areas. Lloyd McGee, forester for Vaagen Bros. Lumber Company and Chairman of the NEWFC, described the evolution of the collaborative efforts. He pointed out that the NEWFC has worked with the Colville on 22 projects and none have been appealed or litigated. Maurice Williamson, a forestry consultant and Board member, pointed out the need for additional funding to achieve the 80 million board feet per year goal of the NEWFC. Mike Peterson of the Lands Council and Board member, lauded the accomplishments of the coalition and the relative peace that has settled in as a result. Peter Gulielmino, a local cattleman,

described the concerns of the cattlemen over the planning efforts, especially the potential wilderness area classification and possible loss of grazing allotments.

The second panel focused on recreation and tourism. They spoke on the potential benefits of roadless and wilderness areas. The final panel focused on the involvement and recommendations for local governmental entities and how forest management would impact forest health, federal revenues and adjacent landowners. John Stensgar, Vice Chairman of the Colville Confederated Tribes, emphasized the forest sustainable management programs on the Colville Reservation and that the forest needed to improve the health of the forest in a more sustainable manner similar to the Colville Reservation lands.

Senator Cantwell and Representative McMorris Rogers closed by noting that the efforts of the Colville and the collaborative relationships have been noticed in Washington D.C. specifically by Agriculture Secretary Vilsack who mentioned their efforts in his recent policy speech. /*Phil Aune*

2009 Fire Statistics

While the fire season in the Western United States has been well below the extreme conditions witnessed in previous years, statistics show that nationwide we are still above the 10-year average. Currently in 2009 there have been 59,766 fire starts which have burned slightly over five million acres. The 10-year average numbers show 56,081 starts which have burned an average of about 4.5 million acres. Short-term weather again calls for temperatures increasing in the western United States and fire danger climbing. Below are the year-to-date statistics. /*Tom Partin*

| Year | Fires | Acres |
|-----------|--------|-----------|
| 2009 | 59,766 | 5,030,735 |
| 2008 | 56,778 | 3,971,076 |
| 2007 | 59,258 | 5,548,273 |
| 2006 | 74,045 | 5,994,790 |
| 2005 | 41,003 | 5,285,571 |
| 2004 | 50,774 | 5,623,787 |
| 2003 | 39,467 | 1,958,238 |
| 2002 | 55,758 | 5,264,655 |
| 2001 | 52,470 | 1,673,782 |
| 2000 | 64,556 | 4,323,707 |
| 1999-2008 | 56,081 | 4,534,663 |

Japanside News

Recent data received from Japan states that U.S. log imports are down marginally through the first five months of 2009 while US lumber imports are up. Canadian log imports are up 25 percent, while lumber imports fell 25 percent. Russian log and lumber imports are down 66 and 27 percent, respectively. European lumber imports are up almost 50 percent while log imports are negligible. Lumber imported from Europe accounts for over 40 percent of Japan's total lumber imports.

U.S. chip imports are down 30 percent, which mirrors the overall Japanese chip import market which is down by almost 50 percent. Overall log import inventory is down by 40 percent with housing starts also down by nearly 30 percent. Some of the housing drop is attributed to permit issuance delays. /*Bob Dick*