



## Federal Forest Resource Coalition

### Uncontrolled Litigation, Uncontrolled Fires: A Case Study:

2012 is shaping up to be yet another big year for wildfires. As of August 30, over 44,000 fires have scorched more than 7.2 million acres. While only 1.8 million acres of these fires have burned on Forest Service lands, several fires demonstrate that badly needed forest health projects which could have reduced fire intensity, rate of spread, and damage to resources, if they were not blocked by appeals and litigation. While large timber fires continue to burn in Oregon, Washington, Montana, and Idaho, this paper will focus on the experiences of one watershed in Northern California which dramatically demonstrates the real impacts of appeals and litigation on our public lands.

The majority of the watershed of the North Fork of the Feather River is located in Plumas County, California. Typical of Forest Service ownership in this region, this mixed conifer forest is badly overstocked and in need of thinning to allow re-establishment of natural fire regimes. The Forest Service attempted to do this in several projects, all of which were stymied by appeals and litigation.

Since 1999, approximately 250,000 acres of this watershed has burned. Now due to the Chips Fire an additional 74,000 acres has been destroyed. So in just over 10 years, one watershed, two counties, several hydro-electric facilities, untold natural resources, and numerous wildlife species are paying for an approach to management which allows a few environmental groups to block all constructive management, ostensibly to benefit a few species.

**Policy of Delay:** At the heart of the debate are two primary pieces of legislation; the National Environmental Policy Act (NEPA) and the Equal Access to Justice Act (EAJA). NEPA requires all federal agencies to assure that they “look before they leap” on “major” federal actions; after analysis by staff, the options are offered for review and comment to the public. Today, the courts hold NEPA documentation on even modest forest management projects to a very strict standard of review, testing whether the agency's written documents answer every objection raised

in appeals filed by environmental groups. Unfortunately, the decisions as to whether a project can move forward may center on “protecting” a single species, while the long-term health of a whole ecosystem (as well as the communities and counties that depend on it) declines.

Today, most appeals and litigation are on projects where thinning is recommended and trees harvested are in 10 to 16 inches diameter, hardly old growth timber. It is these same thinning projects that need to

**BTU Fire, Plumas NF 2008**



be implemented if we ever want our ecosystems, watersheds, and forest health put back into a more “natural” state.

NEPA was intended for "major" federal actions, and local monitoring and research findings show the majority of all thinning projects do not cause harm to species or other resources. NEPA also allows for such projects to be accomplished by Categorical Exclusions (CEs) and need not follow a lengthy and exhaustive review. By using CEs, projects would get completed in a timely manner as well as saving millions of dollars in unnecessary analysis and document writing.

Environmental groups have chosen to appeal and litigate even these modest thinning projects, and they have done so largely by taking advantage of changes to the Equal Access to Justice Act (EAJA). The Act, which was originally intended to level the playing field for individuals defending their rights before vastly better funded Federal agencies, was amended in 1985 and 1996 to allow 501(c)(3) organizations to recover legal fees. Since then, lawsuits against reasonable forest management projects have proliferated.

**Needed Projects, Unnecessary Delays:** How does all of this fit with the North Fork of the Feather River Watershed and the more than 300,000 acres burned since 1999? Three of the fires took place where thinning projects were planned but were delayed or blocked by litigation. The first was the Flea Project<sup>1</sup>, which started in 2005 with its original scoping and was appealed - then in 2008, the Camp Fire (part of the BTU Lightning Complex) occurred in the planning area and burned over 200 homes and caused one fatality. This fire one of many wildfires which burned over 1 million acres and caused significant air pollution in Shasta and Plumas Counties<sup>2</sup>.



**Destroyed Homes, BTU Lightning Complex, 2008**

The Moonlight Fire in 2007 burned 65,000 acres and had designed projects that were never implemented. This fire consumed 22 California Spotted Owl “Protected Activity Centers” and 7 areas of

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<sup>1</sup> Federal Register, Thursday, August 30, 2007 (Vol. 72, No.168, pp. 50096- 50098).

<sup>2</sup> Review of Evidence Regarding Claimed Exceptional Events Leading to 24-hour PM 2.5 Exceedances, U.S. Environmental Protection Agency, Region 9, March 11, 2010.

goshawk habitat. The Forest Service found that areas which had been treated experienced less damage than those which remained in an overstocked condition<sup>3</sup>.

Finally, the Creeks Project that was started in 2006<sup>4</sup>, had a signed decision, was litigated, and just had a second signed decision to be approved this month, is now part of the Chips Fire. This fire has burned over 74,000 acres, and has had a visible toll on wildlife habitat. Luckily, no structure have been lost<sup>5</sup>.

The Quincy Library Group website shows these projects are among the 105 that have been appealed or litigated in the Plumas, Tahoe, and Lassen National Forests in the last 12 years. In 2007 and 2008, appeals or litigation blocked some 21 projects which could have treated 98,100 acres of forest, produced 317 Million Board Feet of timber, and 473,000 tons of biomass<sup>6</sup>. Instead of having forest health projects that would have been implemented and provided protection to all forest resources as well as providing jobs in this economically distressed rural county, we now have total devastation covering hundreds of thousands of acres.

Unfortunately, the majority of these acres that are lost to wildfire do not catch the attention of either local or national news because they are not destroying homes and developed property. In the longer term, they are impacting all of us in more ways through the loss of a sensitive ecosystem, watershed values, recreation opportunity and eventual social and economic impacts to our rural communities and counties.

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<sup>3</sup> FIRE BEHAVIOR AND EFFECTS RELATING TO SUPPRESSION, FUEL TREATMENTS, AND PROTECTED AREAS ON THE MOONLIGHT FIRE, Forest Service Fire Behavior Assessment Team, June, 2008.

<sup>4</sup> Final Environmental Impact Statement Creeks II Forest Restoration Project: Volume 1. July 2012.

<sup>5</sup> <http://inciweb.org/incident/3052/>

<sup>6</sup> <http://www.qlg.org/pub/act/appeals.htm>