

WHAT I LEARNED IN COURT TODAY

Travis Joseph, President, American Forest Resource Council

At AFRC one of our most important tools – and one of the most important services we offer our members – is our legal program. AFRC not only *advocates* for responsible forest management on public lands by working directly with the agency and interested stakeholders. We also have a legal team that aggressively *defends* good projects in court when challenged by opponents of active management.

Last week, I was at the Federal Courthouse in Eugene to observe oral arguments of a legal challenge to one of those projects. Within minutes of walking into the courtroom, I was struck by the irony of the exercise. To my left, to my right, directly in front of me, and directly behind me were 20-foot high **wood**-paneled walls (probably manufactured locally by an AFRC member). The lawyers – including the environmental plaintiffs – were sitting behind ornate **wood** desks and the audience sat on **wood** benches and **wood** chairs. The judge called the hearing to order by wrapping the gavel made of **wood** on her, wait for it, **wood** dais.

And the topic of discussion for the day: is it ok to use some of the billions of trees in Oregon, a renewable resource, to make the very things right in front of our faces?

After the judge thanked legal counsel for their extensive briefing materials, which amounted to hundreds of pages of legal analysis, maps, and discussion of all the steps the Forest Service undertook to design the project, the “show” began. Not knowing the intimate details of the project (AFRC monitors 45 national forests and BLM units on 75 million acres of public land), I was anxious to understand the premise of the plaintiff’s legal challenge. I was waiting for the fireworks.

Was the plaintiff going to claim the Forest Service was planning a massive “clearcut” of “old growth” near a favorite campground? Such accusations always get the public’s attention.

Or, perhaps the plaintiff would argue the Forest Service was planning to authorize logging on the banks of Umpqua River near a well-known fishing hole? That would get people fired up.

Or, maybe the plaintiff was simply going to claim that managing a tiny fraction of the Umpqua National Forest would mean the extinction of the spotted owl? I mean, no judge wants to greenlight the extirpation of an entire species, right?

As it turns out, the legal challenge had little to do with the substance of the proposed project at all. In fact, the project was aimed at thinning overstocked forests, restoring meadows, and making the landscape more resilient to fire. The project was also planned on forestlands zoned as “Matrix” – the very lands intended for timber production under the Northwest Forest Plan. I was confused. So, what’s the problem? Isn’t this exactly what environmental activists want the Forest Service to be doing?

The problem, according to the plaintiff, was the process. The Forest Service had *only* spent hundreds of hours and tens of thousands of taxpayer dollars preparing an “Environmental Assessment” (EA). The plaintiff argued such analysis and public outreach was insufficient – the Forest Service should have prepared a longer, more expensive document called an “Environmental Impact Statement” (EIS). Forget that an EA is more than legally sufficient to disclose the impacts of the project to the public. Forget the Forest Service made changes to the project to accommodate concerns from the public. The plaintiff wanted an EIS (the same document used when analyzing a massive, permanent infrastructure project like building an interstate), not an EA.

Why, you ask? That’s the question the judge was trying to get to the bottom of. The Forest Service had already completed a comprehensive, multi-year, six-figure, taxpayer-funded EIS for the overarching forest plan that governs management of the entire Umpqua National Forest. Should the Forest Service be required to complete a second EIS for *every* project that is tied to the forest plan?

Would such a requirement lead to significant changes to the project? Highly unlikely. The requirement would lead to the very same outcomes but take significantly more time and cost more money.

Would such a requirement encourage more members of the public to learn more about the project and engage with the Forest Service? No. In fact, the opposite is likely to occur. The public will be even less likely to read a 500 – 1,000 page document than a 200-page document. Public disclosures required by the National Environmental Policy Act should be more accessible and consumable by the average person interested in public lands, not less so.

So, what is the whole point of this exercise?

As someone who served in Federal government for eight years, I deeply respect the checks and balances of our government. Holding our government accountable, demanding that it be transparent, and petitioning the government when it blatantly violates the law provides the very foundation of our democracy.

But in this case, and in dozens of cases AFRC defends in court, that rarely seems to be the point of the legal challenge. It's not about the owl. It's not about clean water. It's not about public access, or even about "protecting" our forests. Unfortunately, all too often, legal challenges focus on extremely technical components of the process, rather than on the substance of the project and whether or not the project violates the well-intended Federal statutes to protect the public, the environment, and those that depend on our public lands.

And that's not a good thing for the judicial system (what happens when there's a truly legitimate claim or grievance?), for engaging and educating the public about land management decisions, the taxpayer who foots the bill for the legal proceedings and often the plaintiffs' attorney fees, the morale and expertise of the Forest Service, or for the timely and science-based management of Federal forests in response to climate change, fires, disease, and insect infestations.

We need a better process. There has to be a more equitable way of holding our government accountable while not incentivizing or rewarding obstructionist behavior. At AFRC, we want to work with those truly interested in a different, more efficient, more accessible, more transparent approach. - *Travis Joseph ... <http://amforest.org/>*