



NRULPC Newsletter Vol. 1, Number 3

Co-Director's Report

Task Force Meeting - February 26, 2018

We are looking forward to seeing many of you at the Task Force meeting in Tucson on February 26th from 1:00pm - 3:00pm! The agenda will include reports on the Center's activities as well as updates on Clinic courses and matters. This will also be an opportunity to meet a number of the students who are already involved in the program. Small group discussions are planned to facilitate networking and sharing of information. Please remember there will be a reception immediately following the meeting from 3:00pm - 4:00pm. Also, for those of you who can stay on, there will be a dinner at the Arizona Inn at 5:30pm for further networking (RSVPs requested).

In this issue of the Natural Resource Briefs, we feature profiles of two more of our Task Force members. In addition, Jeff Eisenberg, consultant to the Center, has also prepared a Washington D.C. update on current natural resource-related legislation. We hope you will find these summaries useful to you.

Best wishes,

George Ruyle and John Lacy, co-directors

Spotlight on Task Force Members



Kirk Johansen (Schwabe, Williamson, & Wyatt) devotes the majority of his law practice to clients in the forest products industry. He has extensive experience, beginning in 1975, representing owners of sawmills, veneer plants, Laminated Veneer Lumber (LVL) mills, plywood mills, and timberlands. Mr. Johansen was raised in the coastal timber community of Coos Bay, Oregon, and returned there after finishing law school and a clerkship on the Ninth Circuit Court of Appeals. In his 12-year stint practicing law in Coos Bay, Mr. Johansen was deeply involved in the legal and business affairs of a number of closely held forest products companies in southwestern Oregon and Northern California. In 1987, Mr. Johansen moved to Portland and became a partner in Schwabe, a move that enabled him



Doyel Shamley, Apache County Supervisor, has more than twenty years of experience in natural resource and public land issues. Mr. Shamley has served as a consultant to numerous private and public agencies regarding public land use, the Endangered Species Act, NEPA processes, watershed management, and habitat restoration. He has provided expert testimony before Congress and multiple state legislatures throughout the Western Caucus. In addition, Mr. Shamley has been an advisor to the National Border Security and Defense Summit, serves on the Board for the National Association of Counties, and is Chairman of the Arizona Prescribed Fire Council. Mr. Shamley is a decorated combat veteran and continues as a strong advocate for veterans as a lifetime member of the VFW. He formerly

to diversify his practice both geographically and in terms of industry business lines. Kirk continues to spend his summers in Oregon while wintering in Scottsdale.

served as VFW District 6 Commander for Arizona. In his spare time, Doyel enjoys all things outdoors!

Washington D.C. Update

Taxes: The “Tax Cuts and Jobs Act” of 2017

The “Tax Cuts and Jobs Act” legislation on December 22, 2017 contains several important provisions for farmers and ranchers:

- Sets a new 20-percent deduction for pass-through income from farms, ranches, and small businesses. Most farms are organized as sole proprietorships, partnerships and S corporations and are taxed at individual rates, which currently range from 10 to 39.6 percent. These operations will be able to take advantage of the new deduction. Additionally, the law sets the new top rate at 37 percent. Coupled with the pass-through deduction, the effective top rate for pass-through entities will be 29.6 percent.
- Doubles the estate tax exemption
- Preserves and expands expensing provisions

Overview of Farm Bill

The current Farm Bill expires in September 2018. The House and Senate Agriculture Committees held hearings throughout the past year, but no agreement has been reached on a final Bill. Some sectors of agriculture like fruits and vegetables have only recently received funding through the Farm Bill and their goal will be simply to maintain what they have. Most of this sector’s money is in research, although some is focused on nutrition. Fruit and vegetable producers are not seeking new amounts of money. For the rest of agriculture, much of the bargaining over public policy turns on the availability of

money. Committee leaders seem to agree that no new money will be available for the next Farm Bill. The expectation is that only existing programs will be funded at current levels. This is a problem first because commodity prices are low and the principal commodities will want additional financial support. There are also several new issues requiring funding.

Cotton and Dairy Price Support

Chief among the new issues is that both cotton and dairy producers are seeking to increase price support payments at a total cost of about \$5 billion. Cotton growers are seeking to become eligible for the Price Loss Coverage program, while dairy producers want more help from their Margin Protection Program.

Conservation Reserve Program

Another demand for new money was made by supporters of the Conservation Reserve Program (CRP). Currently, USDA is authorized to enroll 24 million acres in the program which is the lowest number of authorized acres since 1988. Generally, when commodity prices are lower, producers have a stronger interest in enrolling land in the CRP and right now prices are relatively low compared to recent years. The 10-year cost to administer a 24-million-acre program is about \$20.6 billion. Proposals have been made to raise the acreage cap from between 6 to 16 million acres, which would increase the cost of the program between \$3.4 and \$9 billion for a 10-year period, depending on how many new acres are approved by Congress.

Supplemental Nutrition Assistance Program (SNAP)

SNAP (and more minor nutrition programs) is by far the single biggest program in the Farm Bill, accounting for approximately 80% of the estimated 5-year \$489 billion cost of the 2014 Farm Bill, or approximately \$390 billion. The next largest program, crop insurance, accounts for 8% of the total cost, or about \$39 billion. Addressing SNAP will be one of the major issues in this Farm Bill. Republicans may seek to tighten existing work requirements regarding eligibility for SNAP benefits, a move not favored by the Democrats. This issue may significantly affect the ability of Congress to enact a new Farm Bill.

Environmental Protection Agency (EPA)

Under Director, Scott Pruitt, the EPA has successfully led the effort within the Administration for the U.S. to withdraw from the Paris Agreement on global climate change. Other major environmental actions during his first year were to rescind the rule on Waters of the United States; rescind the Clean Power Plan mandating the installation of less-polluting power plant equipment; and, delay the EPA's rule on regulating leaks from oil and gas wells. He also refused to rescind the EPA's endangerment finding under the Clean Air Act, which is related to the regulation of carbon and other emissions. Pruitt says his actions focus the agency on its core responsibilities of protecting clean air and water. Environmental groups are critical of these actions while they are generally supported by industry.

Endangered Species Act (ESA) Reform

There have been calls in some quarters to make changes to the Endangered Species Act. The basic obstacle to enactment of ESA reform is that it takes 60 votes in the Senate to pass legislation. The House has passed a number of bills that are viewed as having little chance of gaining consideration in the Senate. Senator John Barrasso of Wyoming chairs the subcommittee with jurisdiction over the ESA and he is not inclined to introduce legislation that is not capable of gaining the support of 60 members. The initial plan had been to introduce a bill in August last year. However, nothing has been introduced as yet.

Noteworthy Legal Activity

Superfund Insurance Requirements for Mines

A federal court deadline for EPA to set new Superfund insurance requirements for hardrock mining expired without being met earlier this month. Last year, the Obama administration put out a proposed rule employing a new formula to gauge the cost of protecting against releases of hazardous substances, the focus of the Superfund program. The EPA has met with mining interests which believe the proposed federal requirements are duplicative of existing state and federal financial assurance systems and that they would be financially harmful. Conservation groups view these existing systems inadequate to pay for mining

cleanups. EPA estimates it spent nearly \$1.1 billion between 2010 and 2014 cleaning up hardrock sites. It announced on December 1st that it would not issue a final rule imposing financial responsibility for cleanups.

Federal Preemption of State Mining Regulations

The Supreme Court rejected a petition claiming California's moratorium on suction dredging is barred by the federal Mining Act of 1872. A company seeking to mine gold argued the moratorium is barred because it "frustrates the Mining Law's purpose" of promoting mining. The Supreme Court recognized that the California Supreme Court correctly rejected that argument in Rinehart v. California, and stated "the California decision neither conflicts with any decision of this Court nor implicates any division among the lower courts warranting this Court's intervention." The Department of Justice urged the Supreme Court not to take the case.

Endangered Species Act and the Commerce Clause

A group of Utah property owners filed suit in Federal Court challenging an Obama administration barring the "take" of the Utah prairie dog on private property. The property owners argued the federal government lacked power under the commerce clause to regulate wildlife that exists in only one state. Initially, the property owners won in District Court. However, the Tenth Circuit overturned this decision in People for the Ethical Treatment of Property Owners v. U.S. Fish and Wildlife Service, finding that "piecemeal excision" of species that live purely in one state "would severely undercut the ESA's conservation purposes." On appeal to the Supreme Court, the Department of Justice opposed the property owners noting that appeals courts are unanimous in rejecting commerce clause challenges to the ESA because protections implicate commercial activity and the economy.

