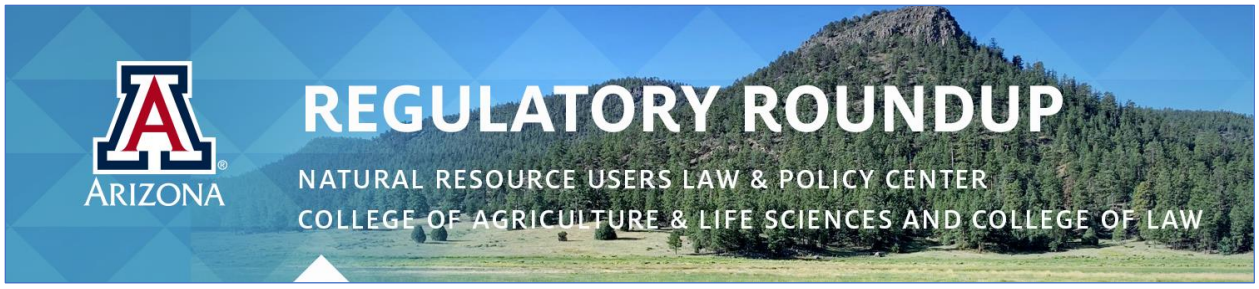


REGULATORY ROUND-UP

Issue 3 – December 30, 2021

Solving the Wildfire Mitigation Quagmire

Now that the Infrastructure Investment and Jobs Act has passed, the bill brings to Arizona a portion of the allocated $8.25 billion[1] forest management and wildfire resilience funds and possibly more (also see Western Lands Western Waters Blog: Fighting Fire with Fire: Proposed Legislation Would Address the Fire Deficit by Lea Schram von Haupt). Throwing billions at the wildfire mitigation problem will help but will it solve the quagmire? Recommendations for policy solutions to the ecologically and politically complex issues surrounding wildfire mitigation abound in the scientific literature as well as in NGO and federal agency technical reports and research.[2] Some of those policy recommendations include staffing, agency funding barriers, business sector capacity.[3,4,5]

Our November 16, 2021 Advisory Board Panel Discussion revealed a few additions to these lists. According to panelist and board member Doyel Shamley, based on his experience with Apache Sitgreaves National Forest, there are many internal and interagency actions that create barriers to implementation of contracts even if funding is in place. These barriers (e.g., ADOT seasonal gate locks to forest roads are not accounted for in contract timelines, changing conditions, lack of staff to complete timely specialist reports, continuity of staffing) impact the sustainability of industry tasked for thinning and removal. U of A Professor Don Falk started the discussion with an overview of how ecosystems are already changing and the ecological on the ground consequences of climate change and increased wildfires on forest structure and vegetation type conversions. Falk notes how ecosystem change and the term resiliency don't fit well in a policy framework for land management purposes.[6]

Some of the vegetation type conversions mentioned by Falk, are likely a result of an eightfold increase in high severity fires since 1985.[7] Suppression and post fire remediation budgets have been 3 times larger[1] than fire prevention fuel reduction and forest health budgets. How do we break the cycle and accelerate the implementation of mechanical thinning and prescribed burns on the massive 80 million acreage[3] needed to restore forests? The largest effort ever to take on this type of forest restoration solution, The Four Forest Initiative (Four FRI), continues to have troubles with contract implementation and timelines. This Collaborative Forest Landscape Restoration Program initiative after 9 years of Phase 1 has accomplished fuel treatments

(commercial mechanical thinning 232,612 ac; prescribed/wildfire 573,648 ac) on over 800,000 acres.[8] How do we shorten these timelines to accomplish the work faster? There are 92,000 acres remaining that still need thinning under phase 1 contracts. The phase 2 request for proposals was cancelled in September 2021 by the US Forest Service. The timely infusion of funding may help move phase 2 forward. However, according to a Four FRI September 14, 2021 announcement these are some of the outstanding items to solve before Phase 2 can proceed:

- Economic price adjustment and cancellation ceiling requirements
- Acreage and volume of material to be offered
- Biomass treatment and road maintenance requirements

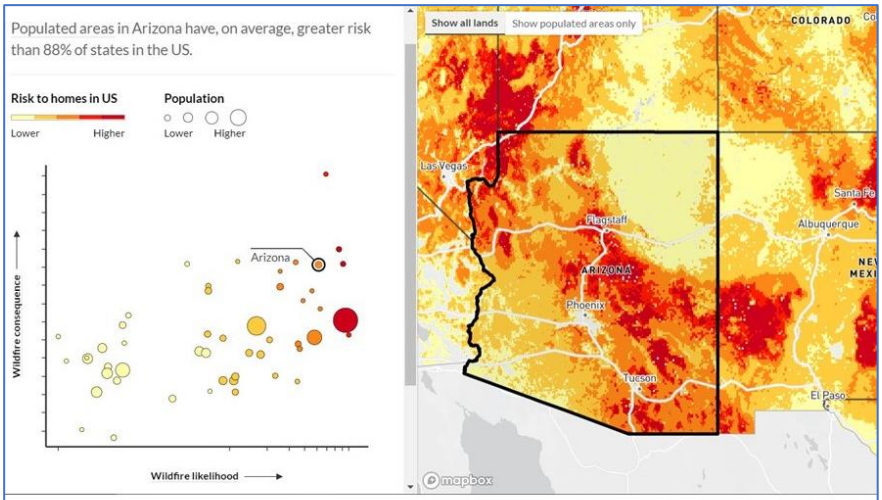
A Four FRI announcement November 9, 2021 from USDA Forest Chief Randy Moore, notes that there are plans to "focus on resolving and improving conditions for industry success by addressing factors like cost and risk reduction, incentives, market conditions, availability of raw material, transportation plans, and fire liability risks." To understand industry concerns and innovations, NAU's Ecological Restoration Institute held the *Innovations in Forest Operations and Biomass Utilization in the Southwest Conference*, November 17-18, 2021. Many of the presentations (click supplementary materials) demonstrate some encouraging product innovations from small diameter trees (those typically targeted in thinning projects). Many of these product innovations, peeled poles, bundled firewood, biochar, end grain flooring and walls, wood straw, wood concrete to name a few, have been supported by the USDA USFS Community Wood Energy Grants and Wood Innovations Grant programs. Those granting programs are currently accepting new applications for the next round of funding.

USDA Forest Service Wood Innovations Program

Wood Innovations Funding Program, applications due Wednesday, January 19, 2022. View the recording of the Pre-application Webinar from November 9, 2021.
Community Wood Energy and Wood Innovation Program Grants, applications are due Wednesday January 19, 2022.

Threat Level and Prioritization

A recent map from the USFS Communities at Risk, places Arizona in the 88th percentile of higher risk. Considering the attributes of the last 2 fire seasons in Arizona (Telegraph – 2021 and Bighorn – 2020), we also have to mitigate risk from lower elevation desert invasive grasses as a restoration focus.



USDA Forest Service Wildfire Risk to Communities https://wildfirerisk.org/explore/0/04/

Control of invasives was noted by (Covington and Vosick, 2016)[9] and more recently in (Wilder et al. 2021),[10] (see Figure 1). These lower elevation areas in need of invasives reduction should not be overlooked when funding is doled out.

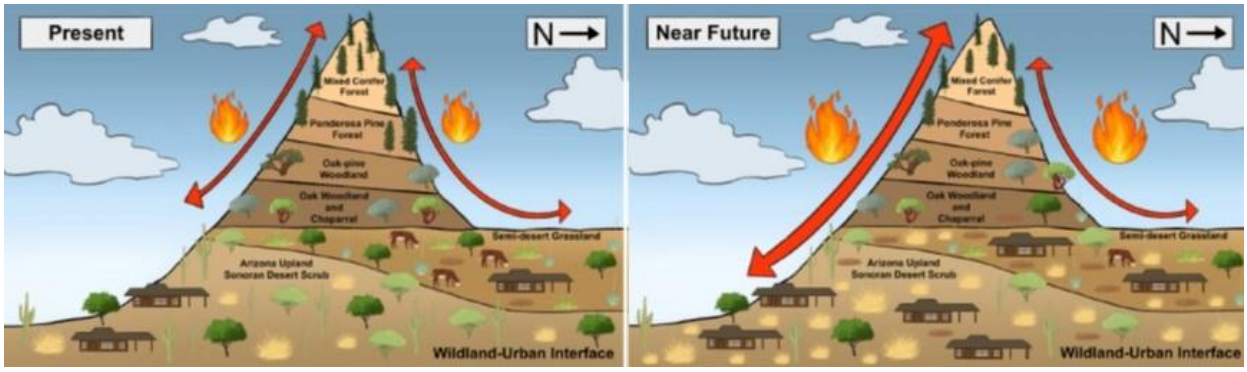


Figure 1 source Wilder et al 2021.

Prioritization of exposure risk helps identify areas needing fuels reduction to focus on first. However, communities may need to collaborate to assess additional areas in need. The IIJA has allocated $100 million for five years to the Collaborative Forest Landscape Restoration (CFLR) Program and related activities. The IIJA also establishes $10 million for a Community Wildfire Defense grant program, for communities located in USFS identified areas of high or very high hazard potential. These grants will be no more than $250,000 and can be used to create a community wildfire protection plan (CWPP) and to implement projects if the community already has a CWPP less than 10 years old. The IIJA establishes a 180 day requirement for funds availability (subject to appropriations), so communities should be pre-planning now for a potential May 2022 application period. Check this site for more information about developing a CWPP.

Additional help for private lands may come from the IIJA established ecosystem restoration program matching grants to states ($400 million) through the Department of Interior (DOI). The DOI and USDA will also each have 100 million to detect, prevent and eradicate invasive species on federal and non-federal lands. The ecosystem restoration program will also provide $400 million in financial assistance to facilities that process restoration byproducts. This could take the form of "low-interest loan or a loan guarantee, to an entity seeking to establish, reopen, retrofit, expand, or improve a sawmill or other wood-processing facility in close proximity to a unit of Federal land that has been identified for ecosystem restoration."[11]

The IIJA appropriated $180 million for 2022 to 2023 for the Joint Chiefs Landscape Restoration Partnership (JCLRP). This program "coordinates eligible activities conducted on National Forest System land and State, Tribal, or private land across a forest landscape to improve the health and resilience of the forest landscape," (IIJA 2021). Before the IIJA, the Fort Huachuca Sentinel Landscape Restoration Project within the Coronado National Forest, was budgeted for FY21 a total of over $900 thousand from the JCLRP. See the Landscape Restoration Project Proposal Map and use layers to view the JCLRP locations in Arizona. Another avenue communities might

take for restoration and fuels reduction is through the IIJA funding to the Bureau of Reclamation. The IIJA allocated $100 million Cooperative Watershed Management Program of the WaterSMART programs. This new infusion of funding in theory will address many of the issues surrounding wildfire mitigation, prevention planning and post fire restoration processes.

[1] Senator Sinema (email newsletter December 1, 2021)

[2] Johnston, J.D., et al. 2021. Mechanical thinning without prescribed fire moderates wildfire behavior in an Eastern Oregon, USA ponderosa pine forest. Forest Ecology and Management 501: 119674.

[3] Wibbenmeyer, M, and L Dunlap. 2021. "Wildfires in the United States 102: Policy and Solutions." Resources for the Future.

[4] Fretwell, H., and Wood, J. 2021. Fix America's Forests Reforms to Restore National Forests and Tackle the Wildfire Crisis. PERC Public Lands Report.

[5] Bertone-Riggs, T., and Johnston, J. 2021. Fighting Fire with Fire: Policy Options to Increase the Use of Prescribed Fire on National Forests. Rural Voices for Conservation Coalition.

[6] Falk, D. 2016. The Resilience Dilemma: Incorporating Global Change into Ecosystem Policy and Management. Arizona State Law Journal 48(1): 145–156.

[7] Parks, S.A., and Abatzoglou, J.T. 2020. Warmer and Drier Fire Seasons Contribute to Increases in Area Burned at High Severity in Western US Forests From 1985 to 2017. Geophys. Res. Lett. 47(22). doi:10.1029/2020GL089858.

[8] USFS Four FRI Monthly Update Tables August 2021.

[9] Covington, W.W., and Vosick, D. 2016. Restoring The Sustainability Of Frequent-Fire Forests Of The Rocky Mountain West. Arizona State Law Journal 48(1(Spring)): 23. Available from https://arizonastatelawjournal.org/wp-content/uploads/2016/04/Covington_Final.pdf.

[10] Wilder, B.T., Jarnevich, C.S., Baldwin, E., Black, J.S., Franklin, K.A., Grissom, P., Hovanes, K.A., Olsson, A., Malusa, J., Kibria, A.S.M.G., Li, Y.M., Lien, A.M., Ponce, A., Rowe, J.A., Soto, J.R., Stahl, M.R., Young, N.E., and Betancourt, J.L. 2021. Grassification and Fast-Evolving Fire Connectivity and Risk in the Sonoran Desert, United States. Front. Ecol. Evol. 9: 655561. doi:10.3389/fevo.2021.655561.

[11] IIJA 2021. https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

Revoked Navigable Waters Protection Rule and WOTUS

Though WOTUS is still under rulemaking, the EPA and Army Corps, published the proposed rule to revert back WOTUS to pre-2015 definitions. See the federal register revised proposed rule here. Comments are due by February 7, 2022. Public engagement on the rulemaking process will continue with the selection of nominated regional roundtable discussions that will occur in early 2022. With any luck, the roundtable formulated by the Arizona Farm Bureau, will be selected; with NRULPC Clinic Director, Priya Sundareshan as one of 15 participants. Additional public engagement hearings on the proposed rule are scheduled for January 12, 13 and 18, 2022. The deadline to register is January 7, 2022.

Endangered Species Act

Mexican Wolf

The comment period on proposed changes to Mexican Wolf experimental population status and recovery. For details on the proposed rule use this link. USFWS will hold two more information and public hearings, (registration information). See public information session times and contacts, information session scheduled for January 11, 2022 from 5:30 p.m. to 7 p.m., Mountain Time, followed by a public hearing from 7 p.m. to 9 p.m., Mountain Time. Comment on the proposed rule extended until Jan 27, 2022.

Cactus ferruginous pygmy-owl

On December 22, 2021 the USFWS has proposed that the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), once again receive protections and be listed as threatened. If finalized this would include a section 4(d) rule. See the Federal Register for submitting comments by February 22, 2022. A virtual public meeting will be held on January 25, 2022.

Wind and Solar Farms in Farm Country: Addressing Land Use Conflicts

The National Agricultural Law Center will host a webinar, Wednesday, January 19, 2022, 12 -1 pm EST. This webinar reviews land consumption, local opposition and co-location issues with siting wind and solar facilities in farm country. Registration link.

Proposed State Implementation Plan (SIP) Action on Air Quality Standards

A comment period on the ADEQ proposed revisions to fine particulate matter and ozone standards is active from December 13 to January 13, 2022. To comment see the proposed revisions to the standard or requirements to e/mail in comments, or register for the January 13, 2022 public hearing.

Public Participation in Agency Rule Making

A nice resource on multiple ways that the public can participate in Agency Rule Making processes. This article from Harvard Environmental and Energy Law Program highlights how agencies approach obtaining input from the public. Before there is a notice of proposed rulemaking (NPRM) agencies often announce a pre-proposal, or request for information (RFI) that go onto the federal register as a non-rulemaking docket, or advanced notice of proposed rulemaking (ANPRM). This site also gives links on how to write effective public comments. Perhaps not as well-known is one last avenue for public comment on proposed rules that are still in the review process is through the Office of Information and Regulatory Affairs (OIRA) through scheduling EO 12866 meetings.

Happy New Year from the Regulatory Roundup