

## **Myths and Facts about the Walden-Baird Bill to Eliminate Forest Protections**

**By Amy Mall**

The following inaccurate claims are made in documents developed in support of the Forest Emergency Recovery & Research Act (FERRA) by Congressmen Walden:

1. Claim: “According to scientists published in the peer reviewed Journal of Forestry...science and experience have shown that removing dead and dying trees can help repair damage to forests.....”

Fact: The scientific paper referenced [“Effects of Wildfire on Soils and Watershed Processes,” Ice, George C. et al, Journal of Forestry, September 2004, pp. 16-20] concludes that further monitoring and research are needed to refine management practices to salvage timber. This paper says that soil disturbance and sediment loss occur even from extremely minimal activities such as “hand felling, logging over snow, no new roads.” The Walden bill would not require these minimal activities, but would allow much more drastic attacks on the landscape.

2. Claim: “Examples include the catastrophic 2001 Gap Fire on the Tahoe National Forest, in which a two year delay in removing dead and dying trees due to appeals resulted in a \$1.35 million loss in the marketable value of the timber.”

Fact: The appeals on the Gap Fire project caused a 90-day delay. This cost estimate comes from an unpublished agency report that used a tiny number of logs – only one or two logs in the larger size categories – to develop an estimate. The Gap Fire project is also a striking example of how salvage logging can increase fire risk to communities. As late as 2004, flammable slash from the 2002 project was still on the ground.

3. Claim: “The FERRA....complies fully with all other environmental laws.”

Fact: FERRA would weaken requirements of the Endangered Species Act (Sections 104(e)(1) and 105(c)(1)), with mandates that could include allowing the killing of endangered species. FERRA would require that logging comply with the results of other statutory processes only to the extent feasible or practical, which could be used by the agency to dispense with compliance (Sections 104(e)(2) and 105(c)(2)).

4. Claim: “No healthy live green trees will be authorized for harvesting under FERRA in any way or in any section of the legislation.”

Fact: FERRA would allow its exemptions from NEPA to be used when logging trees “regarding which mortality is highly probable...” (Section 105(b)(2)(B).) Needless to say, this includes every tree in our national forests.

5. Claim: “The FERRA requires an expedited NEPA procedural review used successfully in 1998 by the Clinton Administration in Texas....”

Fact: FERRA does not authorize anything like the same procedure used by the Clinton Administration and other previous administrations for true NEPA emergencies. FERRA instead uses the same name as that procedure – “alternative arrangements” – without any of its essential features. The actual alternative arrangements procedure requires Council on Environmental Quality approval at every step, allows on-the-ground activities only until normal NEPA processes can be completed, and maximizes public involvement. The Walden bill instead usurps this name to create an enormous *carte blanche* waiver from NEPA for an unlimited amount of projects to be implemented without any required CEQ approval.

6. Claim: “Under the FERRA the public will be able to litigate federal forest recovery projects. The process for litigation is identical to HFRA...”

Fact: Due to the sufficiency language in FERRA (Section 103(b)), the public does not have the same opportunities to legally challenge projects as it does in HFRA. FERRA would dramatically reduce the public’s ability to get courts to stop shoddy, harmful, and mischaracterized logging projects.

7. Claim: “The FERRA requires thorough environmental review...”

Fact: While the bill’s sponsors may consider the review they have created to be “thorough,” FERRA does not in any way meet the NEPA requirements for a full review. In a recent statement, more than 200 law professors who are NEPA scholars stated that, “The full examination of alternatives is the heart of the [NEPA] process. Indeed, without this examination, it is hard to see what purpose the NEPA process serves.” FERRA does not require that any alternative responses to recovery be studied other than the agency’s first impulse, contrasted with doing nothing. The only requirement is a vague, standardless, unenforceable directive to include “an analysis of the environmental effects ... and how such effects will be minimized or mitigated.” A generic one page statement would meet this requirement, on its face.

8. Claim: “The FERRA secures the public’s right to appeal ... federal forest recovery projects...”

Fact: For many projects, the FERRA would allow at most 30 days between a proposal for logging and the agency’s final decision, far too short for the public to have any real opportunity to appeal.

9. Claim: “Habitat snags will remain as will other material to diminish erosion and restore habitat.”

Fact: The bill does not require any trees to be left behind. It specifies only vaguely worded consistency with forest management plans, which may or may not require

snags and are subject to revision under new Bush regulations that eliminate most environmental standards and safeguards.

10. Claim: “The FERRA would increase the amount of peer reviewed scientific research conducted and made available to the public, federal land managers, and policymakers, ensuring that post catastrophic federal forest recovery projects are based on peer reviewed science.”

Fact: Peer review only requires for research protocols and pre-approved practices, not for actual specific projects. In addition, there are no standards for selecting peer review panels, or requirement that peer review results be incorporated by the agencies. Moreover, the bill exempts any peer review panel from the Federal Advisory Committee Act’s requirement that panels be balanced.

11. Claim: “Any temporary roads created in the restoration process must be removed upon completion of the project.”

Fact: The Forest Service currently has a road maintenance backlog of approximately \$10 billion nationwide. There are poor environmental standards for temporary roads and, even if removed, they can be as damaging as permanent roads. “Accelerated surface erosion from roads is typically greatest within the first years following construction. . . . Thus, even ‘temporary’ roads can have enduring effects on aquatic systems.” [Beschta, Robert L. et al, “Postfire Management on Forested Public Lands of the Western United States,” *Conservation Biology*, August 2004, Page 963.] Even the Forest Service itself reports that, “The use of temporary roads may have the same long lasting and significant ecological effects as permanent roads.” [Roadless Area Conservation Final Environmental Impact Statement, U.S. Forest Service, November 2000, Volume I, page 2-18.]

12. Claim: “This [HFRA] pre-decisional appeals process provides critical information from the public and concerned groups to the agencies at the beginning of the planning process, creating an environment of collaboration to help the agency make better decisions.”

Fact: The HFRA regulations are full of barriers to public participation. They do not ensure adequate time for comments, make it hard for the public to get information, and create hurdles to members of the public who want to protest a project. One example: legal notices are not allowed to include due dates. A 2004 project in Virginia offered less than a week for scoping comments. Moreover, under FERRA, many projects will be required to go from rough proposal to final decision in no more than 30 days, and could do so much faster than that. The public will not be able to provide “critical information” relevant to specific projects in that timeframe, and far less will the agency be able to incorporate public input, let alone foster an atmosphere of actual collaboration.

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