

# Allegheny Forest Alliance

## Spring 2004 Newsletter

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### DISTRICT JUDGE AFFIRMS FOREST SERVICE

On March 23<sup>rd</sup>, District Judge William L. Standish upheld the defense position in the lawsuit filed against the East Side Project nearly three years ago. In essence, Judge Standish affirmed the recommendation of Magistrate Judge Ila Jeanne Sensenich, who on December 24, 2003, issued a report and recommendation that sided with defendants on nine of 10 counts brought by plaintiffs, namely the Allegheny Defense Project and other obstructionists.



The counts filed were wide ranging and included such issues as management for the creation of a black cherry monoculture, no regard for old growth, failure to follow legal mandates, and a flawed local forest plan. In the Judge's opinion, however, the Forest Service **is** managing the ANF as they are directed by law, and the East Side Project record of decision **is** appropriate in nearly all regards.

Unfortunately, the three-year time lapse between filing and decision was too much from a forest health perspective, and the remaining parts of the East Side will need to be reassessed and re-packaged due to changing conditions. Keep in mind this salvage project was initially presented in 1997 and was designed to address mortality due to infestation. It was litigated as "Mortality II," primarily under the ESA, with little or no success.

After reassessing and re-packaging in 2000, the project was renamed East Side and it too quickly fell prey to the legal system. Six years of continuous litigation have rendered this roughly 8,000-acre project virtually useless, a classic case of legal monkeywrenching promoting declining forest health.

As you can imagine, much time and indeed a great deal of money was spent defending the obvious while plaintiffs got off scott-free. They received legal services pro bono from the Law Center at the University of Pittsburgh and in some ways won even while losing. One would have to assume, however, there will be fewer issues available to litigate the next time a suit is filed, for the federal judges in Pittsburgh are going to tire of hearing the same old lame arguments presented year after year.

A copy of Judge Standish's decision can be found on our website at [www.renewableforests.com](http://www.renewableforests.com).

### COUNTIES OPT FOR SAFETY-NET

Last fall, the remaining three counties within the ANF elected to take the safety-net payment rather than remain with the traditional 25% payment. The safety-net was made possible by the passage of the "Secure Rural Schools and Communities Self-Determination Act of 2000" (PL 106-393). This new law offered counties the opportunity to take a guaranteed payment calculated from the average of the top three 25% years less 15% for set aside specifically for national forest related projects.

PL 106-393 came into effect in October of 2000 and sunsets in 2006. During the intervening six years, counties (through the advice of the school districts and townships actively involved) could opt in for up to six years in two year increments. Once the decision was made to opt in, the county was bound to the agreement for the remaining years of the law.

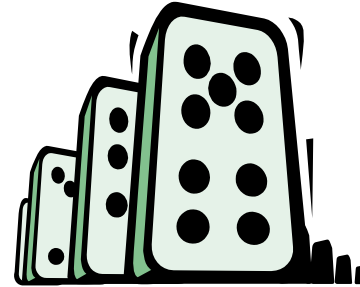


Forest County chose to enter immediately in 2001 and now the remaining three counties (Elk, McKean and Warren) followed suit in 2003. Although the amount of dollars received through the safety-net are considerably higher in comparison to the 30 year average of 25% payments, there is no inducement on the part of the Forest Service to harvest timber since the money to finance PL 106-393 comes directly from the US Treasury. Many feel this legislation does little or nothing to promote forest related industry and hence local economies and is nothing more than another government handout.

Included in this addition of the **AFA Newsletter** is an article titled "Synopsis." It outlines critical issues in PL 106-393 as they relate to the dispersion of monies received annually from the safety-net guarantee. County Commissioners in particular along with their solicitors should become familiar with this legislation in order to ensure proper accounting of these new funds.

## **THE DOMINO EFFECT OF MORE WILDERNESS**

Since the Allegheny National Forest is essentially quantified (513,000 acres), it is logical to conclude that a change in the size of one planned management area will result in a domino effect among several, if not all others. Therefore, when "Friends of Allegheny Wilderness" (FAW) seek an additional 55,000 acres of wilderness, substantial consequences will ripple across the "Land and Resource Management Plan" map affecting timber harvesting most dramatically.



There are currently 11 management areas (MA) identified on that map offering various kinds of activity. A brief description of each follows along with their current acreage.

- MA 1.0 – Mixed, even-aged forest with an early successional and seasonal roaded recreational emphasis. (7,000 acres)
- MA 2.0 – Uneven-age, shade-tolerant forest conducive to non-game species and seasonal roaded recreation. (6,000 acres)
- MA 3.0 – Even-age hardwood forest conducive to big game species and seasonal roaded recreation. (327,000 acres)
- MA 5.0 – Area designated for and managed to protect wilderness values. (9,000 acres)
- MA 6.1 – Managed for turkey, bear, cavity-nesting bird and mammal habitat primarily and conducive to seasonal semi-primitive motorized dispersed recreation. (101,000 acres)
- MA 6.2 – Even-aged forest managed to one decade for every 40 years conducive to seasonal semi-primitive non-motorized recreation. (20,000 acres)
- MA 6.3 – Strong wildlife emphasis including waterfowl and fish and conducive to seasonal semi-primitive motorized recreation. (1,000 acres)
- MA 6.4 – Area designated and managed for Allegheny National Recreation Area only. (24,000 acres)
- MA 7.0 – Large scale developed recreation areas or resorts. (1,000 acres)
- MA 8.0 – Protected and managed as unique scenic, research or natural areas having national significance. (6,000 acres)
- MA 9.0 – Forest area managed for minimal investment only to protect the environment and incidental forest user. (1,000 acres)

The FAW proposal contends the 55,000 acres of additional wilderness only focuses on areas set aside for recreation and habitat management and will have little affect on timber management. Not so for several reasons. First, we must acknowledge that there is no management in a wilderness area, whereas there is some amount of removal activity in most of the others, including timber harvesting and oil, gas and mineral extraction. For instance, even though MA 6.1 emphasizes wildlife habitat, timber harvesting is used as one means of providing it.

## **SPRING MEETING ANNOUNCEMENT**

The Board of Directors of the **Allegheny Forest Alliance** will hold its quarterly meeting for the spring of '04 on May 4<sup>th</sup> at the Kane Country Club on Route 6 east of Kane. A light lunch will be provided at noon followed by the business meeting. All Board members are encouraged to attend.



## **WHOSE OX IS BEING GORED?** *By Jack Hedlund, AFA Executive Director*

“Outsourcing” of jobs is getting a lot of press these days. The Democrats are vigorously beating that drum as the 2004 election draws near. Fact is neither party will accept responsibility for a problem clearly both have promoted. Discussion generally focuses on unemployment among factory workers. NAFTA, WTO, other free trade agreements and tax shelters are often cited as reasons.

I find it interesting that little or no attention is given to conditions in rural America where jobs have been “outsourced” for decades? Indeed, rural America is the nations best kept secret in this regard. Why, because the hinterlands do not command the necessary votes. Issues in rural America just do not rise to the level of importance similar problems command in the industrial beltway.

Consider for a moment the nation’s highways. Wouldn’t it be nice if rural America received equal consideration? With respect to education, wouldn’t it be nice to have per-pupil expenditures afforded suburban districts? The list goes on and on. But more to the point, what about jobs?



Most of northern Pennsylvania is rural and wooded. A large amount of the forested land is publicly owned. State and federal regulations over the past three decades, which by the way can be attributed to both political parties, have crippled the livelihood of most rural residents. Resource production jobs paying \$40,000-\$50,000 per year have been and continue to be “outsourced” and replaced by service jobs barely fetching minimum wage. The dismal employment trend is causing our brightest and best to leave the region for good reason.

Certainly the current outcry related to exportation of jobs is deafening now that it is affecting urban, industrial areas of our nation. It barely registered on the radar screen as it swept through rural, forested communities decades ago. This is a classic example of “Whose ox is being gored?”

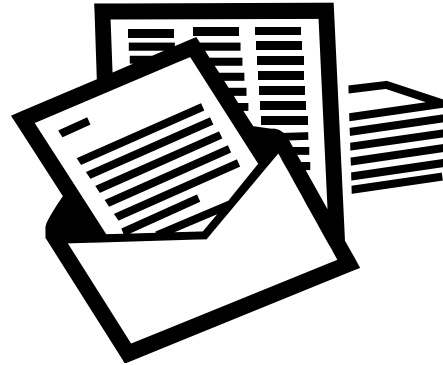
## **THANK YOU CONGRESSMAN PETERSON**

The recent announcement by the Forest Service that it was accelerating efforts to clean up the windthrow created by last July’s storm was welcomed news indeed. The original timeline extended well into 2007, which would have severely reduced the value of the downed timber.

Several reasons for the elongated timetable were cited by Forest Service personnel at the Olmsted Manor in early February. Among those reported were the lack of manpower, unit costs for sale preparation, limits on the use of categorical exclusions, Fish & Wildlife Service review, and other compelling projects. Needless to say, the industry representatives assembled at that meeting were distressed by the news.

To say the least, Supervisor Elliott's recent announcement to accelerate the process came as quite a surprise. He cited enhanced use of the "new tools" provided by the Bush Administration as the primary reason. While that is factually so, the reason for the Jekyll and Hyde is far more intriguing.

There is little doubt Congressman John Peterson played a role in that process. Not only was there new understanding of categorical exclusions, but more importantly species viability (Indiana bat) became far less of an issue across the wind-torn landscape. Rarely do such revelations occur locally without influence from above and this case is no exception. THANK YOU, MR. PETERSON.



*Sincerely,  
The Allegheny Forest Alliance*

## **SYNOPSIS**

### **P.L. 106-393**

#### **(Safety-Net Legislation)**

##### **Title I: Payments**

- Payments for federal FY 2001 through 2006 are to be made as soon after the end of the federal FY as possible.
- Start with the high three year average 1986-1999, which in the case of the ANF is FY 1996-1998 and then adjust annually after FY 2000 by 50% of CPI.
- Recipients may elect to receive safety-net payment or traditional harvest (25%) payment. Election to receive safety-net payment is effective through FY 2006. If traditional payment is elected, it is good for two years, then you can elect again. If no election is made, safety-net payment is deemed appropriate by default.
- Safety-net payments are made first out of harvest receipts with the balance coming from the US Treasury.
- If the safety-net payment is elected, 80-85% must be used for traditional purposes (i.e., roads and schools) and 15-20% must be (1) allocated to Title II - RAC Projects on federal lands, and/or (2) allocated to Title III County Projects, or (3) returned to the US Treasury.

##### **Title II: Special Projects on Federal Lands**

- Resource Advisory Committees (RACs) are to be formed and available for each unit of federal lands (units may be combined), with a minimum of one per state.
- RACs review and propose projects from only within the RAC boundary and recommend same to the Secretary of Agriculture no later than September 30.
- The Secretary of Agriculture may approve projects only if the following conditions are met: (1) consistent with federal laws; (2) consistent with existing plans; (3) has been approved by the RAC; (4) description submitted to the Secretary of Agriculture adequately describes the project; and (5) "the project will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality."
- Rejection of a project by the Secretary of Agriculture is not subject to judicial review. Approval of a project makes it a federal action for all purposes, including judicial review.

- 50% of all Title II project funds nationwide must be used for road maintenance, decommissioning or obliteration or stream and watershed restoration.
- The Secretary of Agriculture may use “best value contracting” for any contracts on projects.
- Title II projects funds are held in the US Treasury.
- For any project producing merchantable materials, 15% (for FY 2001) to 50% (for FY 2006) of projects should involve separate contracting for harvest and sale of the materials.
- RAC members appointed by the Secretary of Agriculture within 180 days (April 28, 2001) for three year terms.
- RACs consist of 15 members from three categories with five members per category.



Category 1 is labor/industry representatives; Category 2 is environmental/recreational representatives; Category 3 is state/county/schools/tribal representatives.

- Projects must receive approval of three out of five members of each of the three categories to be approved by the RAC.
- RACs terminate at the end of FY 2006, and project funds must be expended by the end of FY 2007.

### **Title III: County Projects**

- Counties may elect to use all or a portion of the 15-20% of their safety-net payments on Title III projects.
- Counties that allocate funds for Title III projects hold those funds in their own accounts.
- Title III projects must be proposed pursuant to the 45 day comment period at the beginning of which the county publishes a project description in local publications of record and sends the description to the local RAC provided one exists. The RAC does not have jurisdiction to accept or reject; that authority remains with the proposing county.
- Title III projects may include county expenditures for:
  1. Search, rescue and emergency services on federal lands and paid for by the county.
  2. Staffing of community service work performed on federal lands.
  3. Easement purchases from “willing sellers” to provide non-motorized access to public lands for hunting, fishing or other recreation as well as conservation.
  4. Forest related after-school educational opportunities.
  5. Fire prevention and planning to educate homeowners in fire-sensitive ecosystems about placement, construction, and landscaping techniques.
  6. Funds matching for Urban/Community Forest programs under Section 9 of the “Cooperative Forest Assistance Act of 1978” (P.L. 95-313).

**Reminder: Keep your membership current. Payment helps to ensure that your voice is represented in advocating multiple use of the Allegheny National Forest and other public lands. Thank you!**

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