

Tools: Best Practices for Forest Collaboratives Engaging in Litigation

Summary

In 2017, the Panhandle Forest Collaborative (PFC) filed an amicus brief in support of the U.S. Forest Service's (Forest Service) decision to salvage timber after the Tower and Grizzly Fires on the Idaho Panhandle National Forest (IPNF). The PFC's involvement in the legal challenge had a positive impact on the judicial ruling that allowed the projects to proceed. The following case study examines the factors that led this forest collaborative to have an influential voice in the case. Interviews with IPNF staff, PFC members, and attorneys involved in the litigation lend insight into the conditions that enabled the PFC to provide compelling support in court for the IPNF's actions.

"You know a collaborative is working when other members of the group are advocating not only for their own issues, but for the issues of others in the group as well—when the timber industry supports managing some areas as wilderness, and conservation groups supportive active forest management for the benefit of local economies."

- PFC Member

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1. The PFC reached consensus in deciding to support the projects

Having worked together well for years, members of the PFC had developed strong relationships. After the 2015 Tower and Grizzly fires burned parts of the IPNF, one PFC member raised the issue of fire salvage with the group. He suggested the PFC urge the IPNF to pursue selling the viable timber while the window of opportunity for economic value remained open. The PFC's Forest Projects Committee drafted a set of recommendations to the IPNF staff regarding how to conduct fire salvage such that it would protect old-growth, harvest only dead and dying trees, and avoid lightly burned areas. The trust that members of the group had built with one another enabled the PFC have open and honest discussion, allowing them to come to consensus on the decision to approve sending a letter to IPNF staff expressing the PFC's support for a set of focused salvage and restoration projects, so long as the salvage was conducted in accordance with PFC's recommendations.

This was a bold move for the PFC, who had never before actively supported a salvage sale. Those members representing the timber industry were aware that they would likely need to respond to complaints that the projects would not salvage enough timber. On the other hand, those representing conservation organizations knew they could potentially be criticized for supporting fire salvage, a management action that environmental groups usually oppose. In interviews, members of the PFC explained they were willing to defend their supportive stance because:

- a. The PFC had undergone an intensive collaborative process to ensure their members' diverse interests were all included in the recommendations, and
- b. IPNF staff subsequently incorporated PFC's recommendations into their project design.

Ultimately, PFC members felt they were able to find common ground toward achieving the group's overall objectives, not just reach a compromise that was a result of bargaining in the pursuit of their own interests.

Links

- Panhandle Forest Collaborative website: <https://sites.google.com/site/panhandleforestcollaborative/home>
- Collaboration Resources: <https://www.nationalforests.org/collaboration-resources>

2. The PFC's diverse set of stakeholders maintained their support for the projects

In autumn of 2016, the Alliance for the Wild Rockies challenged the Tower and Grizzly Fire Salvage and Restoration Projects in court. One of the claims in their legal complaint was that IPNF staff had failed to adequately involve the public in the decision-making process. In May of 2017, the U.S. District Court in Idaho denied the plaintiff's motion for preliminary injunction (a request to halt the project). The plaintiff immediately appealed this ruling. The case then went to Ninth Circuit Court of Appeals, who, in early 2018, upheld the lower court's ruling, thereby allowing the projects to proceed.

In response to the legal challenge, the PFC decided to file an *amicus* brief in the District Court, and later in the Court of Appeals, urging the judge to deny the plaintiff's motion for preliminary injunction. Their brief highlighted that the PFC represented a diverse group of stakeholders, including elected officials, community members, local landowners and representatives from environmental organizations, outdoor recreation organizations, and timber companies. The PFC explained that the Tower and Grizzly Fire Salvage and Restoration Projects received support from such diverse interests because the IPNF had modified their project plan to address environmental concerns, and that the group saw an urgent need to remove dead and dying timber while it still retained value and could fund future restoration efforts. The PFC also submitted a letter to the Ninth Circuit Court to clarify that the PFC had proactively offered their recommendations to IPNF staff well before the project began. This clarification was in response to questions to government counsel during oral argument that insinuated that IPNF staff had actively sought the support of the PFC for the projects.

According to the attorney for the defendant intervener, American Forest Resource Counsel (AFRC), the *amicus* brief was a valuable contribution. In the attorney's view, PFC demonstrated to the Court that the fire salvage and restoration projects were indeed in the public interest, as the IPNF had thoroughly considered public input.

3. The attorney respected the PFC's collaborative process when drafting the *amicus* briefs

A forest collaborative is a non-traditional legal client. When working with forest collaboratives, it behooves the attorneys filing legal pleadings on their behalf to embrace the principles of collaboration. The AFRC attorney did so in this case by attending multiple PFC meetings (making the long drive to attend in-person when possible). Once the group decided to file the *amicus* brief, he coordinated closely with the PFC to revise the draft until it included the precise language that could be approved by the collaborative. By honoring the PFC's collaborative process, the AFRC attorney earned the trust necessary for the group to feel comfortable participating in litigation.

4. IPNF staff were responsive to the PFC's recommendations

PFC members representing conservation organizations remarked how crucial it was that the Forest Service's was open to incorporating PFC's proposed environmental protections into the project design. It was the responsiveness of IPNF staff to these recommendations that allowed PFC members to defend the projects before the broader environmental community. When a collaborative achieves full consensus in supporting a Forest Service decision, and the Forest Service integrates public input, all members of the collaborative are able to maintain their support for the agency action in the face of subsequent controversy and even legal challenges.

Key Takeaways

The lessons learned in this case by the PFC, IPNF staff, and the attorneys provide a roadmap for supporting forest collaboratives to engage in litigation. Ultimately, a collaborative group is most likely to make a compelling defense for a controversial decision when that group has experienced an effective and documented collaborative process both internally and with external partners.