Blanchard Mountain: Challenge to DNR Compliance

by Toby Thaler
Friday, March 7, 2008

Toby Thaler is an attorney and an OFCO board member.

In the 1930s Great Depression, thousands of acres of private forest land were forfeited to the counties for unpaid taxes. The Legislature consolidated management of this "forest board" land into the state Department of Natural Resources. In exchange for giving up title, the counties were promised the timber receipts "in lieu" of the lost taxes. Unfortunately, this arrangement led to an unhealthy dynamic of local pressure for timber cutting for revenue regardless of the environmental impacts.

Some counties have become more enlightened, such as King County with its world-class recreation and "working forest" at Tiger Mountain and Mt. Si Natural Resource Conservation Area (NRCA). Whatcom County is currently negotiating return of its "forest board" lands around Lake Whatcom for park purposes and to protect Bellingham's water supply.

Blanchard Mountain is one of the most unique blocks of county "forest board" land in the state, the only place where the Cascades come down to the Sound. Blanchard contains the largest intact coastal forest on the east side of the Sound. It provides important habitat for threatened Marbled Murrelets and other late-successional ("old-growth") dependent species.

Skagit County, beneficiary of the largest acreage of "forest board" land in the state, would not countenance non-timber focused management on Blanchard Mountain. Local environmentalists have pushed back for 20 years. Under increasing pressure to resolve the conflict, Lands Commissioner Sutherland appointed an advisory committee to come up with recommendations. However, he left the long-time local activists off the invitation list. Conservation Northwest was appointed to represent them.

In short order, DNR, Skagit County and the other members of the committee, many of whom benefit from timber sales, agreed upon a "consensus" recommendation that allocates 1/3 of DNR's land to a core area, and leaves the rest for timber harvest as the primary goal. DNR conducted a minimal SEPA review, and declared that the impacts of the Blanchard "Strategies" would be "insignificant."

A number of local activists objected to DNR's conclusions, including the Mt. Baker Chapter of the Sierra Club, the Bellingham Mountaineers, Coast Watch, North Cascades Audubon, Chuckanut Conservancy (Chuckanut), and North Cascades Conservation Council (N3C). After DNR adopted the Strategies without substantial change or analysis, the latter two groups filed suit in King County Superior Court in September 2007. Intervenors on the side of DNR are Skagit County, the American Forest Resources Council (AFRC), and Conservation Northwest.

The Blanchard lawsuit is split into two claims: SEPA and non-SEPA. Under SEPA, DNR is charged with failing to properly evaluate environmental impacts by refusing to prepare an environmental impact statement (EIS). The SEPA issues will be heard in Spring 2008.

Under the non-SEPA claims, Chuckanut and N3C allege that DNR has failed to comply with the Public Lands Act (PLA). The PLA is a compilation of a century of statutes (RCW Title 79); it governs all aspects of DNR management of State forest land. At the same time as the Legislature and Congress were passing the modern environmental laws (SEPA, FPA, ESA), the Public Lands Act was amended to add a "multiple use act" (RCW 79.10.120), and a "sustained yield" requirement (RCW 79.10.300 - 340)

A proposal to replace some of the beneficiaries' timber money with a parks district would meet the various parties' needs more completely. The parks district would raise money through taxes that could be used to shift the focus of Blanchard management away from timber and toward recreation. DNR did not give the parks district proposal serious consideration, and local timber interests are fomenting litigation to keep it off the ballot.

Unlike other early '70s environmental statutes, the Public Lands Act amendments have not been the subject of much public interest litigation—until now. In the Blanchard Mountain case, judge Susan Craighead recently denied DNR's motion that environmental groups have no "standing" to sue under the Public Lands Act. Standing allows a party to obtain a ruling on the merits of their claims; the plaintiffs are within the "zone of interest intended to be protected" by the statute, and they will suffer harm if the law is not enforced.

The Blanchard standing ruling is early in the case, and its ultimate precedential value is uncertain. "But it sure is nice to win one," said attorney Toby Thaler. "Hopefully DNR can be moved toward more sustainable, less extractive management of public lands."