

Washington lands chief proposes tax for wildfire prevention

By **DON JENKINS**
Capital Press

Washington Lands Commissioner Hilary Franz proposed Monday taxing insurance policies to raise \$63 million a year to prevent and fight wildfires.

The \$5-per-policy tax would apply to home, auto and other types of property and casualty insurance. The proposal varies only slightly from one that insurance companies successfully opposed last year.

Franz said the money would allow the Department of Natural Resources to carry out long-range plans to thin forests and reduce the risk of catastrophic wildfires.

“Strategic plans are only as good as the funding that comes forward to implement them. Otherwise, they are simply piles of paper on a shelf,” she said at a press conference in Tumwater.

Franz last year backed a proposal to raise the tax that insurance companies pay on



Ted S. Warren/Associated Press File

In this Aug. 21, 2015, photo, an air tanker drops fire retardant on a wildfire burning near Twisp, Wash. The state commissioner of Public Lands released a proposal Monday that would provide \$63 million each year to fight wildfires and take steps to prevent them in the first place.

gross receipts.

Insurance companies argued that a tax on their revenue would force them and their customers to pay for something that benefits everyone. Northwest Insurance Council President Kenton Brine said Monday that directly taxing policy holders was no better.

“People are not going to be thrilled about getting higher taxes right now,” he said. “You can’t get a more regressive tax than this one.”

Franz said that the tax could pay for 42 more firefighters, 15 more firetrucks and crew leaders, one helicopter and more training for volunteer firefighters. The

money also could fund forest thinning, controlled burns, replanting burned areas and other measures to protect property.

As proposed, the money could not be tapped, or raided, for emergency fire suppression. The DNR annually asks lawmakers for a separate appropriation

to cover the actual costs of fighting fires.

House Environmental Committee Chairman Joe Fitzgibbon, D-Burien, said he will introduce a bill to impose the tax and direct its spending.

Fitzgibbon said climate change will make wildfires worse and that preventing blazes will be less expensive than fighting them.

“This is an approach that will save us money in the long run,” Fitzgibbon said.

Representatives from the Washington Fire Chiefs, The Nature Conservancy and American Lung Association endorsed the proposal at the press conference. There were no Republicans there.

Rep. Tom Dent, R-Moses Lake, joined Franz a year ago to support a wildfire-spending plan. The idea of taxing insurance policies came later.

“There was a lot of push-back on that, me included,” Dent said Monday.

Dent said he still back

many of Franz’s ideas for spending the money, but he opposes raising taxes.

“I think there is plenty of money,” Dent said. “We need to narrow down our priorities.”

Without raising taxes on insurance companies, lawmakers this year appropriated about \$38 million in the current two-year budget for fire prevention and suppression by the DNR.

Besides arguing that it was unfair to single them out to pay for fire prevention, insurance companies said higher taxes would put them at a disadvantage in selling policies in other states.

A DNR spokesman said the agency tried to alleviate the concern by directly taxing policy holders.

Brine said the industry is still concerned about having to collect the the tax and how the revenue will be interpreted by tax and insurance regulators in other states.

Halloween trademark sparks agritourism dispute

Two companies claim ownership of ‘Nightmare on 9’ trademark

By **MATEUSZ PERKOWSKI**
Capital Press

A trademark dispute has erupted between a Washington farm and a haunted house company over a popular Halloween event that may prove instructive for other agritourism operations.

The Thomas Family Farm and the SeattleHaunts attractions company have both filed lawsuits seeking damages and to stop the other from using the “Nightmare on 9” trademark, which refers to the Washington State Route 9 along which the farm is located.

Both complaints acknowledge the farm and the operator were involved with the first annual “Nightmare on 9”

haunted house in Snohomish County in 2012 and that they parted ways after the 2018 Halloween season.

However, the two disagree about who devised the trademark concept and about their initial roles in operating the event.

The lawsuit filed in state court by Thomas Family Farm claims the idea originated with the farm, which also paid a commercial designer for the logo, while SeattleHaunts provided the labor in 2012 and was afterwards hired as a contractor to run the operation.

The farm also alleges it registered the trademark with the Washington Secretary of State last year.

SeattleHaunts, meanwhile, claims in federal court that it was an equal partner with the farm during the 2012 event and provided contract services afterwards, with its owner creating the “Nightmare on 9” name and hiring



U.S. Copyright Office

A trademark dispute has erupted between a Washington farm and a haunted house company over the logo used for a popular Halloween event in Snohomish County, Wash.

the designer.

The haunted house company claims the farm’s trademark registration was “fraudulent” and filed “under a false claim of ownership,” while SeattleHaunts obtained a valid copyright for “Night-

mare on 9” from the federal government in 2019.

Without commenting on the specifics of the dispute, adjunct trademark law professor Robert Cumbow of Seattle University said it’s critical for parties involved

in such ventures to establish a trademark rights agreement as early as possible.

While negotiating such matters may be awkward when everyone is getting along, it can create a “messy situation” when such relationships fracture, said Cumbow, who is also an intellectual property attorney with the Miller Nash Graham & Dunn law firm.

“At that point, you’re both going to wish you put something in writing,” he said.

Under the law, the owner of the trademark isn’t the person who came up with the concept but rather who initially relied on it to offer goods or services to the public, Cumbow said. “It’s not who thought of it, it’s the first person to actually use the trademark.”

When an entity or partnership that owns a trademark breaks up without a contractual agreement about ownership, “it does become very,

very difficult,” he said.

While not technically required by law, registering a trademark with the state or federal governments will also bolster an argument of ownership, he said. “Registration gives you the presumption of validity in your trademark ownership.”

Without a contract or clarity about who starting using the trademark first, a court will generally look to the relationship between parties and any other written agreements that may provide a clue as to ownership, he said.

The goal of trademark law is to prevent confusion among members of the public as to who is the actual provider of a sought-after good or service, Cumbow said.

A court may decide both parties in a dispute own a trademark and then impose limitations on its use, but there have been cases where courts held that neither party owned it anymore, he said.

Environmentalist calls for discussions on Snake River dams

By **MATTHEW WEAVER**
Capital Press

Stakeholders need to begin talking about the possible impacts to Northwest communities if four dams on the Snake River are removed, says the leader of a group that advocates their removal.

“I don’t see any reason why we can’t make a transition to a free-flowing lower Snake River and do so in a way that leaves agricultural communities either whole or with additional opportunities,” Joseph Bogaard, executive director of Save Our Wild Salmon, based in Seattle, told the Capital Press.

Environmental groups have for years called for the removal of the Ice Harbor, Lower Monumental, Little Goose and Lower Granite dams, citing their impacts on federally protected salmon and, more recently, orcas.

Bogaard said the conservation and fishing communities are committed to finding ways to help ensure greater certainty for all involved, including fishing and farming communities.

“I don’t think it’s something we do overnight, I don’t



Save Our Wild Salmon

Joseph Bogaard is executive director of the Save Our Wild Salmon Coalition.

think it takes 10 years,” he said. “I think we can, with a plan and political leadership and support and buy-in of key stakeholders, this is something that can be done in three to five years.”

Bogaard pointed to “a lot of evidence, analyses and studies that have looked at the science and economics” around the dams, arguing that they are “high-cost and low-value dams with services that, while they’re important and there’s communities that rely on them, they are replaceable.”

“There’s quite a bit of evidence that suggests that some of the services currently provided by the dams, can be feasibly and affordably replaced, if we work together (and) put together the kinds of plans that involve timelines, dollars and programming to ensure the communities that currently rely on those dams or reservoirs can transition to alternative means of delivery, say irrigation water or moving transportation on land rather than on the river, or electricity,” he said.

Advocates for maintaining the dams argue that taking them out would not benefit salmon or orcas to the degree that environmentalists say, and would negatively affect trade. Barges use the Snake and Columbia rivers and pass through the locks at the dams to take grain to market downstream and supplies to farms upstream.

Pacific Northwest Waterways Association executive director Kristin Meira recently called environmentalists’ arguments simplistic, saying they are touting the idea that one action in one area would lead to species recovery.

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