



---

---

## WESTERN FORESTRY LEADERSHIP COALITION

---

---

### LEGISLATIVE & POLICY UPDATE

May, 2012

Brent Keith, Governmental Affairs Director: 303.445.4366, [brent.keith@colostate.edu](mailto:brent.keith@colostate.edu)

The *Western Forestry Leadership Coalition (WFLC) Legislative & Policy Update* provides information on issues of importance to the WFLC and our partner groups. This document is posted at [www.wflcweb.org/infomaterials/issue\\_briefs.php](http://www.wflcweb.org/infomaterials/issue_briefs.php). Please note that the items below highlight only a selection of the issues the WFLC is currently tracking.

#### Appropriations

Interior, Environment & Related Agencies fiscal year (FY) 2013 status update: As detailed in the February *WFLC Fiscal Year 2013 U.S. Forest Service Budget Review* ([http://www.wflccenter.org/news\\_pdf/412\\_pdf.pdf](http://www.wflccenter.org/news_pdf/412_pdf.pdf)), on February 13, 2012 President Obama released the expanded budget for federal FY 2013, including a proposed budget for the U.S. Forest Service (USFS) of **\$4.86 billion, a \$15.5 million increase from FY 2012 enacted levels**. The President's Budget includes several significant provisions that impact western forestry issues:

- Consolidates budget line items (BLIs) for the Cooperative Fire Protection programs (State Fire Assistance and Volunteer Fire Assistance) – the President's Budget would consolidate these two programs under the Wildland Fire Management appropriation, and thus the BLI for these programs under the State & Private Forestry assistance appropriation is zeroed out. Additionally, State Fire Assistance would be cut by more than \$13 million from FY 2012 enacted levels under the President's Budget.
- Consolidates funding of Forest Health Management (Federal and Cooperative Lands) BLIs under the State & Private Forestry appropriation with roughly flat funding.
- Proposes a new \$18 million Landscape Scale Restoration BLI under State & Private Forestry. Funding for the new BLI does not include any new money, but would come from the 15% of Cooperative Forestry Assistance Act program dollars that have been used to fund the Competitive Resource Allocation program.
- Proposes to expand and make permanent the Integrated Resource Restoration (IRR) BLI which currently has pilot authority in Regions 1, 3 and 4.
- Requests full funding for the Collaborative Forest Landscape Restoration (CFLR) program in FY 2013.

The Senate held an oversight hearing with Chief Tidwell testifying on the FY 2013 President's Budget for the USFS on April 18, 2012. Neither the House nor Senate has released their version of the Interior, Environment & Related Agencies funding bill for 2013. Given the condensed legislative calendar in this election year, the timeline for completing the appropriations package is not clear. It is likely that a continuing resolution (CR) to provide funding from the end of FY 2012 through some time past November of this year will be needed. In fact, Chairman of the House Interior Appropriations Subcommittee Mike Simpson recently expressed doubt that his panel's FY 2013 bill will reach the House floor before the end of this summer.

Further complicating passage is the fact that the Interior Appropriations bill is one of the more controversial appropriations measures. Chairman Simpson expects the same kind of interest and flurry of policy rider amendments that we saw last year relating to specific actions of the Environmental Protection Agency and species protection issues under the Endangered Species Act. Nonetheless, Chairman Simpson recently stated that he expects to mark up an Interior Appropriations bill in June of this year.

### **Farm Bill**

On April 26 the U.S. Senate Committee on Agriculture, Nutrition and Forestry voted out of committee the Food and Jobs Reform Act (Farm Bill) of 2012. The next step for the Farm Bill in the Senate will be consideration by the entire body on the Senate Floor. The House has not yet released Farm Bill language, but is expected to hold a hearing this week on conservation and forestry issues. Relevant items included in the conservation and forestry titles of the Committee-approved language include the following:

- Consolidation of the Environmental Quality Incentives Program (EQIP) and the Wildlife Habitat Incentives Program (WHIP).
- Reauthorization of the Conservation Stewardship Program (CSP) and removal of the 10% cap on forestry acres enrolled in the program.
- Provides permanent authority for the Stewardship Contracting to the U.S. Forest Service and Bureau of Land Management.
- Provides authorization of \$10 million to carry out the Forest Resource Assessments and Strategies (Forest Action Plans) through the life of the Farm Bill (FY 2017).
- Provides direction to the U.S. Forest Service to achieve a fully annualized inventory through the Forest Inventory & Analysis (FIA) program in all states. Suggests that the USFS look at achieving this through a re-evaluation of critical core data, increasing cooperation with state forestry agencies and looking at other methods to improve efficiency.
- Amends the Healthy Forest Restoration Act to require the Secretary of Agriculture, when requested by the Governor of a state, to designate at least one emergency

treatment area in each National Forest that is experiencing a decline in forest health attributed to insect or disease infestations.

- Repeals authority for several programs, including
  - o Watershed Forestry Assistance Program
  - o Cooperative National Forest Products Marketing Program
  
- Subjects several Cooperative Forestry Assistance Act programs to a funding cap, including
  - o Forest Legacy (\$200 million cap)
  - o Urban and Community Forestry (\$50 million cap)
  - o Forest Stewardship (\$50 million cap)
  - o Community Forest and Open Space Conservation (\$50 million cap)
  - o International Forestry (\$10 million cap)
  - o Community Wood Energy (\$50 million cap)

### **USDA Forest Service Planning Rule**

The new National Forest System Land Management Planning Rule was released and published in the Federal Register on April 9, 2012 (available at <http://www.fs.usda.gov/planningrule>). The CWSF actively participated in the public comment period for the draft rule and the forums held by the USFS throughout the process of developing the new Planning Rule. The CWSF will continue to engage as the USFS moves forward with developing Directives to implement the new Planning Rule and stands up the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule. Nominations for the National Advisory Committee have been submitted, but appointments have not yet been made.

### **9<sup>th</sup> Circuit Forest Roads Decision**

As previously reported, the decision of the U.S. Court of Appeals for the Ninth Circuit in *Northwest Environmental Defense Center v. Brown* held that a National Pollution Discharge Elimination System (NPDES) permit is required for stormwater runoff from logging roads. Under the court's interpretation, logging qualifies as an industrial activity under EPA regulations and stormwater runoff from logging roads that is collected and conveyed through ditches and culverts before being discharged into navigable waters constitutes a point source under the Clean Water Act and requires a NPDES permit.

Last year the State of Oregon, and numerous *amici*, including 26 state Attorneys General, filed briefs with the Supreme Court of the United States urging the Court to review the decision of the Ninth Circuit. Following that request, the Supreme Court formally requested a brief from the Solicitor General on the Administration's position concerning Supreme Court review. The Solicitor General is expected to file a brief with the Court very soon. Of course, review by the Court is discretionary, and the Court can only grant review to a small fraction of the cases it is asked to review annually.

In Congress, language was included in the FY 2012 Appropriations bill that required the EPA to retain current regulations exempting forest practices from permitting under the Clean Water Act

through FY 2012. A bill to codify the regulation exempting forestry activities from NPDES permitting, the Silvicultural Regulatory Consistency Act (S 1369 and HR 2541), continues to garner bi-partisan support in the House and Senate. This bill would reaffirm that the state-based Best Management Practices utilized for the past 35 years are appropriate in lieu of implementing a new NPDES requirement for forestry activities.

Within the Administration, recent news reports suggest that the EPA and the U.S. Forest Service have been in talks to craft an administrative solution. The same sources suggest that a Notice of Intent for a rulemaking from the EPA could be released as early as this week. The CWSF continues to closely follow this issue.

### **Waters of the U.S. guidance**

In the summer of 2011 the EPA released agency guidance on identifying "waters of the United States." This definition is significant because the EPA's authority to regulate under the Clean Water Act extends only to waters of the U.S. There is a substantial history behind this guidance going back to the Supreme Court's 2006 decision in *Rapanos v. United States*, 547 U.S. 715 (2006) where the Court split in a 4-1-4 decision. The decision did not change EPA's jurisdiction to regulate traditional navigable waters, interstate waters or adjacent wetlands. However, the new guidance adopts Justice Kennedy's "significant nexus" test which includes a fact specific analysis to determine when waters fall within EPA's jurisdiction.

The EPA has sent the final guidance to the Office of Management and Budget for approval, however many believe that the guidance could be held up at OMB for longer than the typical 90-day review. State Foresters provided comment to the EPA on the Draft Guidance (<http://www.stateforesters.org/publication-type/reports>) and will continue to follow the guidance and any rulemaking the EPA may undertake on this issue.

Please contact Brent Keith, Governmental Affairs Director, at 303.445.4366 or [brent.keith@colostate.edu](mailto:brent.keith@colostate.edu) with any questions.

#####END#####