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## WESTERN FORESTRY LEADERSHIP COALITION

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### LEGISLATIVE & POLICY UPDATE

November 2014

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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

**Fiscal Year 2015:** In mid-September Congress enacted a short-term continuing resolution (CR) to begin the 2015 fiscal year (FY). The CR continues funding for the federal government until December 11, 2014 at which time Congress will need to either vote to enact another CR or pass a omnibus spending package to supply federal agencies the funding they need for the remainder of the fiscal year. The current CR is a clean bill, meaning that very few policy provisions were attached – there were no provisions related to the Interior, Environment, and Related Agencies Subcommittee bill. The CR carries over the FY 2014 spending levels and maintains policy provisions that were included in the Consolidated Appropriations Act of 2014.

Top appropriators in Congress have expressed interest in passing an omnibus spending package for the balance of FY 2015 during the upcoming lame duck session. The likelihood of an omnibus will be more apparent once the lame duck session begins in mid-November. With a new Republican majority beginning in the 114<sup>th</sup> Congress, another short-term CR is a possibility as it would buy time for the new majority to re-write appropriations bills early next calendar year.

The Interior, Environment, and Related Agencies subcommittee bill continues to be a high profile bill mainly due to its funding of the Environmental Protection Agency (EPA) and differing opinions by members in Congress about several proposed EPA rulemakings. The Administration's proposed change to the funding structure of wildfire in the USDA Forest Service (Forest Service) and the Department of the Interior's (DOI) budgets (similar to the Wildfire Disaster Funding Act) is a possibility for consideration in an omnibus. This remains speculation and uncertainty persists as to if/how these items may be addressed.

The Council of Western State Foresters (CWSF) continues to assist the National Association of State Foresters (NASF) Legislative Team (which includes the Policy Directors from the Regional State Forester Organizations, the NASF Forest Policy Director and a State Forester liaison from each region) on appropriations and budget priorities (such as the Wildfire Disaster Funding Act) and provides information and assistance on programs important to western states.

**Fiscal Year 2016:** The Forest Service, DOI and other Federal Agencies are well into their planning for FY 2016 appropriations. Drafts of agencies budget requests have been submitted to

the White House Office of Management and Budget (OMB) for review before being passed-back approximately the end of November.

The NASF legislative team and our partners are beginning to consider appropriations priorities for the next fiscal year. Several funding recommendation letters by partners and Coalitions that the CWSF engages with have been submitted to OMB in an effort to influence the development of the Administration's FY 2016 budget proposal. CWSF will work with our regional forestry association counterparts (Southern Group of State Foresters and the Northeastern Area of State Foresters) and NASF to identify our collective FY 2016 priority program funding recommendations before the release of the Administration's proposed budget early next year.

### **Wildland Fire Suppression Funding**

The FY 2014 wildfire season ended on a milder note than previously expected and the need for major transfers by the Forest Service and DOI from their agencies non-fire programs were not necessary. Nevertheless, it was recently reported that the Forest Service spent above its appropriated 10-year rolling average in 2014 in order to pay for suppression expenditures but the Agency was able to cover the shortfall with previous unobligated funds. Prior to the ending of the fiscal year, the Agency also had to prepare for the possibility that fire suppression funds would run out and transfers would need to occur. To prepare, the Agency had to delay and defer on-the-ground projects, new grants and agreements, and other agency activities that help complete the preventative work needed to reduce wildfire risk.

**Wildfire Disaster Funding Act:** The Wildfire Disaster Funding Act (WDFFA) companion bills were introduced in the Senate (S.1875) and the House (H.R.3992) in late 2013 and early 2014 with the proposal to restructure how wildfire suppression operations are funded for the Forest Service and DOI. Initial cosponsors were Senators Ron Wyden (D-OR) and Mike Crapo (R-ID) and Representatives Mike Simpson (R-ID) and Kurt Schrader (D-OR). Both bills have garnered bipartisan support with 136 cosponsors on the House bill and 18 cosponsors on the Senate bill. The Administration supported a similar restructuring to wildfire suppression funding in its FY 2015 budget justification.

To date there have not been any scheduled committee hearings. There were several attempts throughout the year to include the WDFFA language as part of a broader legislative vehicle but those efforts were unsuccessful. The remaining opportunity this year for passage of the WDFFA is an omnibus appropriations package. The Senate Interior Subcommittee included language mirroring the WDFFA in their draft bill earlier this year. In addition all members of the House Interior Subcommittee are cosponsors of the WDFFA. The Partner Caucus on Fire Suppression Solutions (CWSF participates) supports the passage of WDFFA and continues to work with Congress, the Administration and partners to find a solution that will end the need to future fire transfers.

**Flame Act Amendments of 2014:** In July 2014 Senators John McCain (R-AZ), John Barrasso (R-WY) and Jeff Flake (R-AZ) introduced the FLAME Act Amendments of 2014 (S.2593). The bill has three titles: (1) FLAME Act Amendments, (2) Forest Treatment Projects, and (3) Forest Stewardship Contracting.

In Title 1, the Senators offer another proposal to stop fire transfers at the Forest Service and DOI that would fully fund, within the agencies annual discretionary budgets, anticipated fire expenditures found in the FLAME forecast models, in FY 2014 that would have been \$1.9 billion. In addition, the bill would require the agencies to annually appropriate an amount equal to 50% of total suppression funding for hazardous fuels projects, as authorized by the Healthy Forest Restoration Act and the Tribal Forest Protection Act, in order to allow the Forest Service and DOI the option to utilize another \$1 billion through a suppression cap adjustment.

Title 2 of the FLAME Act Amendments is very similar to Senator Barrasso's S.1966, National Forest Jobs and Management Act of 2014. It would require the Forest Service to set a target of mechanically treating at least 7.5 million acres in designated Forest Management Emphasis areas over a 15-year period. More information on the National Forest Jobs and Management Act can be found in the May 2014 Legislative Update. The final title outlines similar legislation to Senator Flake's S.1300, the Stewardship Contracting Reauthorization and Improvement Act. It would adjust the way the Forest Service allocates money for Stewardship Contracting cancellation ceilings.

There are 4 Republican cosponsors on the bill. There have been no scheduled hearings or markups on the legislation in the Senate Energy and Natural Resources Committee.

### **Administration Rulemakings**

**Waters of the United States (WOTUS):** The release of the proposed rule by the EPA and the U.S. Army Corps of Engineers in April 2014 has resulted in debate within Congress and by many stakeholders and partners on what waters should fall under federal jurisdiction of the Clean Water Act. The public comment period, originally set to close in August, was extended twice and will close mid-November. It's been speculated that continued controversy on the WOTUS rule could create a target on the FY 2015 Interior, Environment and Related Agencies appropriations bill for members who oppose the draft rule to attached a provision that would stall or block its completion.

State Foresters collectively worked to develop comments on the proposed WOTUS rule. The comments site specific concerns with the application of the current proposal while recognizing the continuation of the silvicultural exemption, and the understanding that EPA is proposing this modification to the WOTUS definition following several Supreme Court decisions. To read more on the proposed rule and the concurrently released Interpretive Rule please see the WFLC May 2014 Legislative Update on our website or go to: <http://www2.epa.gov/uswaters>.

**EPA Clean Power Plan:** In June 2014 the EPA released its proposed rule, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." Commonly called the Clean Power Plan, the proposed rule would enforce the regulation of CO2 emissions from existing electric generating units (EGUs i.e. power plants) under Section 111(d) of the Clean Air Act. Under this plan CO2 emissions from existing power plants would need to be reduced 30% below 2005 levels nationwide by 2030.

The plan sets state-specific targets for carbon emissions reductions from existing power plants with an interim goal of 2020 and a state's final reduction goal to be achieved by 2030. If a final

rule were issued, states would have one year to develop a State Implementation Plan (SIP) or a multi-state implementation plan to achieve set emissions reduction targets. EPA selected 4 “building blocks” the agency considers as the Best System of Emissions Reductions (BSER) to meet emissions reductions. In place of prescriptive methods to meet emissions targets, the proposed plan issues these 4 building blocks for states and regions to use as guidelines to achieve reductions equivalent to the BSER. They are:

1. Improving efficiency at EGUs through heat rate improvements.
2. Substituting generation from less carbon-intensive EGUs.
3. Substituting low or zero-carbon generation (renewables) for generation at EGUs.
4. Increasing demand-side energy efficiency to reduce generation required at EGUs.

The public comment period on the proposed rule closes December 1, 2014 (<http://www2.epa.gov/carbon-pollution-standards/how-comment-clean-power-plan-proposed-rule>). The EPA recently issued a notice of data availability (NODA) that seeks public comment on emerging technical issues and data related to the Clean Power Plan rulemaking (<http://www2.epa.gov/sites/production/files/2014-10/documents/20141028noda-clean-power-plan.pdf>). Several alternatives presented for consideration and comment in the NODA are in response to questions, suggestions and concerns that were raised by stakeholders during public hearings, webinars, conference calls, and Agency meetings with stakeholders and states. The deadline for comments related to the NODA is also December 1, 2014.

Similar to the WOTUS rule, the draft Clean Power Plan appears to be hotly contended by the Congress. Republican leadership (soon to be the majority party in Congress) has speculated about efforts to potentially block implementation of the proposed rule. Alternatively, the Administration and proponents of the rule would like to avoid proposals to block the rule in an effort to finalize the plan in an appropriate timeframe. Outside of Congress, there are varying opinions from states and impacted stakeholders.

The NASF legislative team participates on the Forest Climate Working Group, which is comprised of a broad group of natural resources and forestry organizations that support the role that forests play in carbon sequestration and our nation’s changing climate. The group continues to monitor this issue and others related to the Administration’s climate change agenda. The NASF legislative team and our partners are also awaiting the release of the EPA’s biogenic carbon accounting framework that will outline how the Agency plans to account for biomass carbon emissions. State foresters and our partners believe biomass can and should serve as an alternative to fossil fuels carbon emissions particularly where biomass is a reliable and abundant energy source. State Foresters previously recommended that as long as forest carbon stocks nationally are stable or increasing, biogenic carbon results in no net increase of carbon in the atmosphere.

### **President’s Climate Action Plan**

The Council on Environmental Quality (CEQ) released the Climate and Natural Resources Priority Agenda in October 2014 as part of the President’s broader Climate Action Plan. The priority agenda sets a series of public and private sector commitments to improve management of our natural resources. The agenda notes the critical role that forests and forestry plays in carbon

sequestration and climate and includes executive actions to address areas such as wood products utilization including tall wood building, forest carbon, FIA, engaging forest owners, growing urban forests, and more. Many of these recommendations mirror those that were suggested by the Forest Climate Working Group. More information on the Natural Resources Priority Agenda can be found here:

[http://www.whitehouse.gov/sites/default/files/docs/enhancing\\_climate\\_resilience\\_of\\_americas\\_natural\\_resources.pdf](http://www.whitehouse.gov/sites/default/files/docs/enhancing_climate_resilience_of_americas_natural_resources.pdf).

## **Farm Bill**

The CWSF and WFLC continue to engage in the implementation of the Agricultural Act of 2014 (Farm Bill). Among other items, Sec. 8204 (Insect and Disease Infestation) and Sec. 8206 (Good Neighbor Authority) remain top priorities for our western members.

Shortly after the WFLC 2014 Spring Meeting the Forest Service issued the formal designation of 45.6 million acres of landscape-scale insect and disease infestation areas on National Forest System (NFS) lands in 36 states. The Farm Bill provision allows for projects carried-out in the designation areas to utilize streamlined NEPA authorities as part of the Healthy Forest Restoration Act (HFRA) and up to a 3,000-acre categorical exclusion (CE) in accordance with the statute requirements.

Several Forest Service Regions are beginning to plan for the use of the CE. Others already have “NEPA ready” projects that fall within designated I&D areas. In some cases those projects may be completed first before seeking future projects that will use the authorities provided in the provision. The CWSF and the WFLC are interested in working with the western states and Forest Service Regions to advance projects within designated I&D areas and the CWSF will continue to engage with the Forest Service Washington Office (WO) to offer our support.

The NASF legislative team, with CWSF leading the efforts, continues to engage with the Forest Service WO on the progress of the Good Neighbor Authority (GNA). State foresters are appreciative of the Forest Service’s decision to implement both the Farm Bill GNA authority and the Consolidated Appropriations Act of 2014 GNA authority. The application of both authorities will allow for Forest Service Regions and states to select the “best” authority to meet project-specific needs. State foresters recommend that the Agency keep the application, guidance and direction as simple and as flexible as possible to allow for the maximum use of the tool. The Forest Service WO is working to complete agency direction for the implementation of GNA and have maintained an open line for communication and discussion about next steps with state foresters.

## **Northern Long-eared Bat (NLEB)**

In response to a petition received from the Center of Biological Diversity requesting that the NLEB (found in 39 states) be listed as threatened or endangered, the U.S. Fish and Wildlife Service (USFWS) determined that a listing was warranted. The Agency issued a proposal in October 2013 to list the bat as endangered under the Endangered Species Act (ESA) and requested public comment. In June 2014, a six-month extension was published in the federal

register with a second comment period. A final decision about listing the NLEB will need to be issued no later than April 2015.

During the initial comment period the NASF legislative team and the NASF Forest Resources Management Committee developed comments siting concerns that a federal endangered species approach will focus on restricting forest management when, in actuality, white-nose syndrome (fungus-caused disease) is the primary and most significant cause of NLEB decline (<http://www.stateforesters.org/nasf-letter-us-fish-and-wildlife-public-comments-northern-longeared-bat-january-2-2014>). NAASF has led efforts related to the NLEB on behalf of NASF and all state foresters. Recent activities may warrant another opportunity for states and interested stakeholders to provide input on the decision to list the species. CWSF will continue to monitor NLEB activity and work with the NASF legislative team as appropriate to support for continued forestry management.