



WESTERN FORESTRY LEADERSHIP COALITION

LEGISLATIVE & POLICY UPDATE

November, 2011

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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. 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) 2012 status: government funding is currently provided under a Continuing Resolution (CR) which runs through November 18, 2011. A stand-alone Interior appropriations bill has not yet been passed by the House or Senate. In the House, an Interior appropriations bill was approved by the Appropriations Committee and sent to the House Floor for consideration. The bill was debated for several days and saw numerous amendments offered for consideration, but ultimately did not receive an up or down vote in the House. In the Senate, as noted in a WFLC email update on October 18, the Subcommittee recently released a draft FY 2012 funding bill; however it appears unlikely that the bill will proceed under regular order through the Subcommittee to the full Appropriations Committee.

While the process is still evolving and subject to change, it appears likely that the Interior Appropriations bill will ultimately become part of a so-called “minibus” appropriations package including one or more additional appropriations bills. The Senate has already passed one such package, which included appropriations bills for Agriculture; Commerce, Justice and Science; and Transportation, Housing and Urban Development. A conference agreement between the House and Senate on this first minibus is expected before Thanksgiving.

Meanwhile, the Senate has cleared the way for consideration of a second minibus package including appropriations bills for Energy and Water; State, Foreign Operations; and Financial Services. Because the current CR expires on November 18, this second minibus package is also expected to include an additional CR that would extend through mid-December and provide additional time for consideration of the remaining appropriations measures. However, this second minibus package could prove more politically challenging to move given the likelihood of amendments related to both the Energy and Water and Financial Services portions of the package.

Farm Bill

On October 14 leaders of the House and Senate Agriculture Committees sent a bi-partisan letter to the Joint Select Committee on Deficit Reduction (Joint Committee) outlining their recommendations related to cuts to Farm Bill programs. In their letter, the Agriculture Committee

leaders recommended to the Joint Committee that a total of \$23 billion in deficit reductions could be made to mandatory programs within their jurisdiction. The letter went on to explain that the Agriculture Committee leaders were working together on a legislative package that would achieve the \$23 billion dollar reduction to mandatory programs and further, the leaders hoped to complete that work by November 1 of this year. The completion of this legislative package has been delayed, but is expected to be completed shortly. While few details are available, it is likely that all Farm Bill programs will see cuts, including those under the Conservation title, and some programs may be consolidated. Groups such as the Forests in the Farm Bill Coalition have been actively discussing the importance of Farm Bill conservation programs with members of the Agriculture Committees in the House and Senate.

USDA Forest Service Planning Rule

The initial target deadline for the completion of the new National Forest System Land Management Planning Rule has come and gone, however there have been no indications that the agency is backing away from the goal of completing the rule this year. The House Natural Resources Committee, Subcommittee on National Parks, Forests and Public Lands recently announced an oversight hearing to take place on November 15, 2011 to look at “Forest Service Regulatory Roadblocks to Productive Land Use and Recreation: Proposed Planning Rule, Special-use Permits, and Travel Management.” *See*

<http://naturalresources.house.gov/Calendar/EventSingle.aspx?EventID=267922>.

The Council of Western State Foresters (CWSF) has been closely following the proposed rule and submitted comments to the Forest Service in May of this year identifying several concerns and suggestions for improvements to the proposed rule:

http://www.wflccenter.org/infomaterials/letters_of_comment.php. Additionally, Arkansas State Forester, and then Vice President of the National Association of State Foresters, John Shannon provided testimony outlining the perspective of State Foresters on the proposed planning rule before the House Committee on Agriculture, Subcommittee on Conservation, Energy and Forestry.

Secure Rural Schools

The authorization for the Secure Rural Schools and Community Self-Determination Act (SRS) program expired on September 30 of this year. There have been numerous discussions and proposals made related to continuing the SRS program and making changes to the way federal lands are managed. For instance, the House Natural Resources Committee has released a discussion draft of a bill, the National Forest County Revenue, Schools and Jobs Act of 2011. The approach proffered in the discussion draft legislation would create a federally managed trust for the benefit of rural schools and counties and establish an annual revenue requirement for the trust to meet based on historic gross receipts from National Forest System units.

Alternatively, HR 2852, the Action Plan for Public Lands and Education Act of 2011 introduced by Representative Bishop would authorize western states to forgo their share of receipts from sales on federally owned lands. In place of the traditional receipts, under this proposal, western states could receive a grant of 5% of the federally owned land within the state to be held in trust and sold or leased with the proceeds of any such sale or lease supporting public education. A hearing was

held in late September to consider the discussion draft and HR 2852. No additional action has been taken on either measure at this point.

In the Senate, a bipartisan group of 14 members have introduced S 1692, the County Payments Reauthorization Act of 2011, which would reauthorize the SRS program and the Payment in Lieu of taxes Program (PILT). The bill includes a 5-year extension of the SRS program and would make a 5% annual reduction in payments for each year. The bill would guarantee continued full funding for PILT through 2017. It remains to be seen whether any of the proposals in the House or Senate related to the SRS program and PILT will move.

As evidenced by the approaches being explored in the House, the expiration of the SRS program has triggered a larger discussion about federal land management models. In a recent letter to House and Senate leaders on the Natural Resources and the Energy and Natural Resources Committees, the Western Governors' Association called for a dialogue between state and federal leaders to explore potential for reforming federal land management policies. In their letter, the Western Governors highlight the potential for active management to make positive contributions to both the health of our national forests and rural communities located near national forests. See <http://www.westgov.org/letters-testimony>.

Stewardship Contracting

The Council of Western State Foresters (CWSF) has been working with a group of partners to extend the authority for Stewardship Contracting, which is set to expire in 2013. Because this authority is a contracting tool there is a strong desire to provide an extension of the authority well before its expiration to reassure those interested in utilizing the authority that it will be available in the future. State Foresters participated in a coalition letter urging leaders of the Senate Interior Appropriations committee to consider including a 10-year reauthorization of the authority within the FY 2012 budget (<http://www.stateforesters.org/publication-type/letters>).

Good Neighbor Forestry Act

S. 375, the Good Neighbor Forestry Act, was introduced by Senator Barrasso (R-WY) in February 2011 and would extend the pilot authority currently available in the state of Colorado to all states west of the 100th meridian. Members of the State of Colorado General Assembly Water Resources Review Committee recently delivered a letter to the members of the Colorado delegation in the U.S. House and Senate urging their support for legislation to extend the Good Neighbor authority. Additionally, the National Association of State Foresters recently approved a resolution that included support for expanding the Good Neighbor Authority beyond the state of Colorado. The CWSF will continue to work with partners to explore opportunities to move legislation that would expand the Good Neighbor Authority to additional states.

Forest Roads

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.

Recently, defendants in the case, including 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. Review by the Supreme Court is discretionary, and the Court only grants review of a small fraction of the cases it is asked to review in a given year.

In addition to the efforts of the parties to have the Supreme Court review the decision, the Silvicultural Regulatory Consistency Act (S 1369 and HR 2541) continues to garner bi-partisan support in the House and Senate. This bi-partisan measure would reaffirm that the state-based Best Management Practices utilized for the past 35 years to address nonpoint source pollution from forestry activities are appropriate in lieu of implementing a new NPDES requirement for forestry activities. The CWSF will continue to closely follow this issue as it proceeds through Congress and the Court.

EPA Deferral of Biomass Emissions

As previously reported, the EPA has chosen to defer the regulation of biogenic CO₂ emissions under the Tailoring Rule for three years. The agency determined that additional time was needed to examine the science of biogenic CO₂ emissions and initiate a notice and comment rulemaking to implement the appropriate accounting approach for these emissions. The EPA has created a Science Advisory Board, the Biogenic Carbon Emissions Panel, to provide advice to the agency on accounting methodologies for biogenic carbon emissions from stationary sources. The Biogenic Carbon Emissions Panel consists of 18 scientists appointed from the US Forest Service, universities and nonprofits. The CWSF will continue to closely follow this issue and to work with our partners to assist the EPA in determining the appropriate accounting approach for these emissions.

Waters of the U.S. guidance

This summer 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 agency is now moving into consultation with state elected officials as it prepares to move to a formal rulemaking process. State Foresters provided comment to the EPA on the Draft Guidance (<http://www.stateforesters.org/publication-type/reports>) and will continue to follow this issue closely as a rule is developed.

Please contact Brent Keith, Governmental Affairs Director, at 303.445.4366 or brent.keith@colostate.edu with any questions.

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