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## WESTERN FORESTRY LEADERSHIP COALITION

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### LEGISLATIVE & POLICY UPDATE

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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**

Prior to adjourning for August recess, leadership in the House and Senate announced that a bipartisan agreement had been reached to move forward with a 6-month continuing resolution (CR) to fund the federal government for the first half of fiscal year (FY) 2013. This leaves a narrow window in September following recess and the Republican and Democratic National Conventions to move the CR before the end of the current fiscal year, FY 2012, on September 30.

Most expect the 6-month CR to be “clean” in that it is not likely to include many policy riders, or provisions that aren’t immediately necessary to fund the federal government. In past years, such policy riders have included language to prevent the Environmental Protection Agency from requiring permits under the Clean Water Act for stormwater runoff from forest roads, but such provisions may be more difficult to include in the proposed 6-month CR. Assuming the agreed upon CR is approved in September, it remains unclear what mechanism will be used to provide funding for the second half of FY 2013. The House Appropriations Committee has approved an FY 2013 Interior Appropriations Bill but the Senate has not. As such, all options are still on the table including moving individual bills, an omnibus appropriations bill or additional CRs. The November elections and the makeup of the 113<sup>th</sup> Congress will be a major driver in determining how the Congress will handle funding the federal government through the remaining 6 months of FY 2013.

Assuming the agreed upon CR moves forward for the first half of FY 2013, several provisions included in the President’s budget will be on hold. These include budget line item consolidations for the Cooperative Fire Protection programs (State Fire Assistance and Volunteer Fire Assistance) and funding for the new Landscape Scale Restoration budget line item. Additionally, the bill approved by the House Appropriations Committee contains several provisions of interest such as an amendment to the Clean Water Act to exempt silvicultural activities from permitting under the Clean Water Act and to extend the Good Neighbor Authority. The House bill also includes cuts to some key programs such as State Fire Assistance, Urban and Community Forestry and Forest Stewardship. We will continue to follow this process and provide additional updates as appropriate.

## **Farm Bill**

More questions than answers remain about how Congress will handle reauthorization of the Farm Bill. The current 5-year Farm Bill is set to expire at the end of the current fiscal year in September. The Senate approved their version of a 2012 Farm Bill in late June. While the House Agriculture Committee has approved a Farm Bill, the bill has not yet received a vote on the House Floor. While there were several efforts aimed at moving a 1-year extension of the current Farm Bill along with a drought relief package in the House prior to Congress adjourning for August recess, those efforts ultimately failed. Instead, the House approved only the drought relief package. This leaves a short time in September for the House to work on an extension or a full 5-year bill and even less time for the House and Senate to hold conference negotiations should a full 5-year bill pass out of the House.

The House Agriculture Committee Approved bill and the Senate approved bill both contain several forestry provisions beyond conservation programs. In the Senate, these provisions include a permanent authority for Stewardship Contracting and authority to utilize the Healthy Forest Restoration Act authorities to treat forest insect or disease infestations if requested by the Governor of a state. Meanwhile, the House Agriculture Committee approved bill contains language that would provide a 5-year extension of the Stewardship Contracting Authority, expand the Good Neighbor Authority to all states with National Forests, and similar language related to treatment authorities on federal lands with insect and disease infestations with additional language expanding the size of treatments that qualify as categorical exclusions under the National Environmental Policy Act.

We will continue to closely follow the Farm Bill process and provide additional updates once Congress returns in September and a path forward becomes clear.

## **Recent Legislation, Hearings and Rulemakings**

- Senators McCain, Feinstein and Nelson recently introduced the Wildfire Suppression Aircraft Transfer Act of 2012 (S. 3441). The bill would allow the U.S. Forest Service to receive 14 C-27J aircraft following a declaration by the Department of Defense that such aircraft are excess. The National Association of State Foresters delivered a letter of support to the bill sponsors outlining the importance of federal, state and local wildland fire aircraft in responding to fires. The letter is available at <http://www.stateforesters.org/sites/default/files/publication-documents/080312%20NASF%20Support%20Letter%20for%20S%203441.pdf>.
- Wyoming State Forester Bill Crapser recently testified on behalf of the Council of Western State Foresters (CWSF) before the House Natural Resources Committee on "*The Impact of Catastrophic Forest Fires and Litigation on People and Endangered Species.*" Throughout his testimony, Crapser outlined how the lack of forest management across much of the West has left life and property vulnerable to catastrophic wildfire. The WFLC "*True Cost of Wildfire in the Western U.S.*" was cited by Crapser as an example of the growing impacts and costs of wildfire on our forest resources and communities. Crapser told members of the Committee that "[w]e need to break the current cycle of continued forest fuel accumulation and larger, more destructive wildland fires. We need

to refocus our efforts to actively and sustainably managing all forests.” The full testimony is available at <http://wflccenter.org/infomaterials/testimonies.php>.

- The House Transportation and Infrastructure Committee recently passed the Silviculture Regulatory Consistency Act (H.R. 2541). This bill would affirm that the longstanding state-based best management practices (BMPs) are the appropriate mechanism to address any water quality issues associated with stormwater runoff from silvicultural activities. The legislation stems from a decision of the U.S. Court of Appeals for the Ninth circuit wherein the court held that a permit was required for stormwater discharges associated with silvicultural activities. A similar bill has been introduced in the Senate (S. 1369), but has not yet been considered by the Senate. Please see below for an update on the status of the Ninth Circuit decision pending before the Supreme Court and recent action by the U.S. EPA concerning forest road discharges.
- **Secure Rural Schools extension:** a one-year extension, with a 5 percent cut from 2011 funding levels, for the Secure Rural Schools program was included in the surface transportation reauthorization bill approved by Congress and signed by the President earlier this summer. This 1-year extension provides a short window for Congress to continue to work on ways to provide a long-term reauthorization or move one of several bills pending before the House Natural Resources Committee that would reform management of National Forests with the goal of providing additional income to local communities.
- **Predecisional Administrative Review Process:** the U.S. Forest Service recently proposed a rule to utilize the predecisional administrative review process which is intended to improve and accelerate decision making for all projects and activities implemented under land management plans. The proposed rule comes in response to language included in the FY 2012 omnibus appropriations package that directed the agency to utilize the predecisional review process under the Healthy Forests Restoration Act in place of the administrative review process. The U.S. Forest Service is accepting public comment on the proposed rule through September 7, 2012. The rule is available at <https://www.federalregister.gov/articles/2012/08/08/2012-19302/project-level-predecisional-administrative-review-process#h-8>. The CWSF is working to provide comment on the proposed rule.

### **Ninth Circuit Forest Roads Decision**

Prior to adjourning for the summer, the Supreme Court of the United States granted the request by the state of Oregon and industry defendants to review the decision of the U.S. Court of Appeals for the Ninth Circuit in *Decker v. Northwest Environmental Defense Center (NEDC)*. The Ninth Circuit previously held that a National Pollution Discharge Elimination System (NPDES) permit is required for stormwater runoff from logging roads. Under the 9<sup>th</sup> Circuit 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.

The briefing before the Supreme Court on the request to review the 9<sup>th</sup> Circuit decision included an *amicus* brief signed by 26 state Attorneys General and a brief by the Solicitor General of the U.S. urging the Court not to review because the EPA is moving forward with a rulemaking to address this issue, but nonetheless stating that the 9<sup>th</sup> Circuit holding was incorrect. It appears that the briefing schedule on the merits of the case should allow for oral arguments to be heard before the end of the current calendar year. As such, the Supreme Court could release the final decision in this matter as early as late winter or spring of 2013, but no later than the end of the Court's term in the summer of 2013.

Meanwhile, the U.S. EPA has been actively working to address the issue of stormwater runoff associated with silvicultural activities. The agency has signaled that it intends to continue this work even though the decision by the Supreme Court could render some, if not all, of their efforts moot.

In May of this year the EPA released a Notice of Intent (NOI) to Revise Stormwater Regulations to Specify that a National Pollutant Discharge Elimination System (NPDES) Permit is not required for Stormwater Discharges from Logging Roads. In the NOI the EPA outlines their intent to move forward in two separate tracts:

1. To propose revisions to Phase I of the stormwater regulations to specify that discharges from logging roads are not stormwater discharges associated with industrial activity; and
2. To study the water quality impacts of all forest roads and existing Best Management Practices (BMPs) to determine if any additional measures from the EPA under Phase II of the stormwater regulations are necessary to ensure water quality.

Only item 1 above is directly related to the matter before the Supreme Court in *Decker v. NEDC*. The decision of the 9<sup>th</sup> Circuit is premised on the determination that logging road discharges are associated with industrial activity (phase I), therefore the EPA can get out from underneath the holding of the 9<sup>th</sup> Circuit by specifying that logging road discharges are not associated with such industrial activity.

The second item above stems from a 9<sup>th</sup> Circuit case decided in 2003, *Environmental Defense Center v. EPA*, wherein the court instructed EPA to review whether or not stormwater runoff from forest roads should be regulated as a Phase II source, which provides options for more flexible regulation than Phase I (i.e. does not require, but can include use of permits). As such, the EPA has combined these two issues under the NOI and has signaled that it intends to continue moving both forward as the Supreme Court reviews the decision of the 9<sup>th</sup> Circuit in *Decker v. NEDC*.

We will continue to closely follow this issue as it progresses before the Court, Congress and in the Administration.

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