



WESTERN FORESTRY LEADERSHIP COALITION

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. Please note that the items below highlight only a selection of the issues the WFLC is currently tracking.

Appropriations

Prior to the end of federal fiscal year (FY) 2012 in late September, Congress approved a 6-month continuing resolution (CR) to fund the federal government for the first half of FY 2013 (through March 27, 2013). The CR essentially provides flat funding to begin FY 2013, with the exception of some increases in the wildland fire accounts. Based on the 10-year average, the CR included an additional \$240 million above FY 2012 spending for the U.S. Forest Service (USFS) Wildland Fire Suppression account. Additionally, the CR included language making available \$400 million to the USFS and \$23 million to the Department of the Interior (DOI) to repay funds that were transferred from non-fire accounts to fund suppression activities during FY 2012.

The inclusion of funds to repay non-fire accounts and programs impacted by the fire transfers during late FY 2012 followed a sign-on letter and outreach effort by the Partner Caucus on Fire Suppression Funding Solutions – an effort that the Council of Western State Foresters was active in – urging Congress to ensure that the transferred funds were repaid. The Partner Caucus letters and outreach also called attention to the original intent of the Federal Land Assistance, Management, and Enhancement (FLAME) Act, which was to eliminate the need to transfer monies from other agency programs to fund emergency wildfire suppression – an intent which is not currently being met. The Partner Caucus urged Congress and the Administration to ensure that in 2013 and beyond, appropriations for wildland fire provide the full 10-year average in suppression funding and do not rely on funds appropriated to the FLAME accounts to meet the 10-year average. Otherwise, the group warned that these transfers will continue to have severe negative impacts on the ability of the USFS and DOI to treat forests in advance of fire and create more resilient forest landscapes.

In late September the Senate Committee on Appropriations released a draft FY 2013 spending bill for the Department of the Interior, Environment, and Related Agencies, which includes funding for the U.S. Forest Service (available at <http://www.appropriations.senate.gov/>). It remains unclear if and how Congress will address appropriations in the legislative session following the election in November and prior to the seating of the 113th Congress in January, 2013. While the CR Congress approved in September allows additional time beyond the lame-

duck session, the release of appropriation language by the Senate Committee may signal the intent of leadership to address full-year spending prior to the close of the 112th Congress.

Finally, the potential triggering of sequestration cuts looms over all other appropriations debates. These automatic cuts were included in the Budget Control Act of 2011 and were meant to provide incentive for Congress to reach a deal that would produce at least \$1.2 trillion in deficit reduction by January 15, 2013. Congress has yet to reach such a deal and in a recent report from the Office of Management and Budget estimating the impact of sequestration on federal programs, most USFS programs would be facing an 8.2% reduction should sequestration go in to effect (report available at http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf).

Farm Bill

The 2008 Farm Bill expired at the end of fiscal year 2012 in September with no new Farm Bill to take its place. While the Senate approved their version of a 2012 Farm Bill in late June and the House Agriculture Committee has approved a Farm Bill, the House bill has not yet received a vote on the House Floor. Congress appears poised to take up the Farm Bill in the lame-duck session following the elections. It remains unclear how Congress will handle the bill – either a short term extension or a longer bill – and how it will be prioritized given that there are several big issues before Congress during the short lame-duck session.

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

Ninth Circuit Forest Roads Decision

The Supreme Court of the United States is set to hear oral argument on the matter of *Decker v. Northwest Environmental Defense Center (NEDC)* on December 3, 2012. As most are well aware, this case stems from the Ninth Circuit decision wherein the court held that a National Pollution Discharge Elimination System (NPDES) permit is required for stormwater runoff from logging roads. Under the 9th Circuit interpretation, logging qualifies as an industrial activity under EPA regulations and as such 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.

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 early September the EPA published in the Federal Register a Notice of Proposed Revisions to Stormwater Regulations to clarify that a NPDES permit is not required for stormwater discharges from logging roads. This proposed rulemaking follows an earlier Notice of Intent where the EPA outlined 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.

The comment period on the proposed rule closed on October 4, 2012 and the Council of Western State Foresters submitted comments to the EPA supporting the intent of the proposed rulemaking to clarify that the EPA never intended to regulate logging roads as industrial facilities under the Clean Water Act (available at http://wflccenter.org/infomaterials/letters_of_comment.php).

While related in subject matter, the second item above outlined by the EPA actually stems from a different 9th Circuit case decided in 2003, *Environmental Defense Center v. EPA*. In that case, the court instructed EPA to review whether or not stormwater runoff from forest roads should be regulated under Phase II stormwater regulations, which provide options for more flexible regulation than Phase I (i.e. does not require, but can include use of permits). To date, the EPA has not taken any additional public action on this item following publication of the Notice of Intent.

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

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

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