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

Budget and Appropriations

- **Fiscal Year 2013:** Earlier this year Congress approved a continuing resolution (CR) to fund the federal government through the remainder of fiscal year (FY) 2013 avoiding a government shutdown that would have occurred after March 27. The full-year CR provided essentially flat funding, however all budget line items will be subject to reductions because Congress failed to reach agreement around spending reductions that were necessary to avert automatic spending cuts outlined in the Budget Control Act of 2011 – commonly known as the sequester. With no deal in place meeting the requirements of the Budget Control Act, the automatic cuts triggered under the sequester became effective on March 1, 2013. Federal agencies are still working to apply the required reductions, however it appears that most federal domestic programs will be subject to a 5.3% reduction.

- **2014 Budget:** On April 10, 2013, two months after the statutory deadline, President Obama released the expanded budget for FY 2014, including a proposed budget for the U.S. Forest Service of \$4.835 billion, a \$29 million reduction from FY 2013 full-year CR levels. A Western Forestry Leadership Coalition U.S. Forest Service Budget Review document is available on the WFLC website at http://wflcweb.org/infomaterials/issue_briefs.php with additional details about proposed program-specific funding levels. Please note that the FY 2013 levels referenced in the document do not include the approximate 5.3% reduction under sequestration. The President's budget did not provide funding levels for FY 2013 with the sequestration cuts applied.

With the release of the President's Budget, appropriations hearings are in full swing in both the House and Senate Appropriations committees; however a timeline for consideration and approval of individual appropriations bills is not yet clear. The process is already behind as the Congress was focused on funding for the remainder of FY 2013 and negotiations seeking a deal to avert the sequester for the first few months of the new Congress. We will continue to closely follow the appropriations process and provide additional updates as appropriate.

Farm Bill & Stewardship Contracting

As previously reported, the last minute deal to avert the first fiscal cliff back in December of 2012 included provisions to extend the 2008 Farm Bill through the remainder of FY 2013. Prior to the one-year extension included in that package, Congress had allowed the 2008 Farm Bill to expire at the end of the fiscal year in September of 2012. The newly seated 113th Congress has been working behind the scenes to pull together language for the new Farm Bill and both House and Senate Committees appear close to marking up their respective bills. Chairwoman Stabenow (D-MI) of the Senate Committee on Agriculture, Nutrition and Forestry has stated that she intends to hold a markup in May. Likewise, Chairman Lucas (R-OK) of the House Committee on Agriculture has announced plans to hold a markup on May 15.

There are several key forestry provisions involved in Farm Bill considerations that we will be closely following. One of the top priorities is the permanent authorization or extension of the authority for the U.S. Forest Service to enter in to Stewardship Contracts. The current authority for Stewardship Contracting is set to expire at the end of the current federal fiscal year in September. At this time, partner organizations and Hill staff who are supportive of permanent authority or extension believe that the Farm Bill provides the best vehicle for moving legislation to continue the authority. The Farm Bill approved by the Senate in the previous Congress included language that would have provided permanent authority to the U.S. Forest Service for Stewardship Contracts. However, the House failed to approve any Farm Bill language so none of the provisions from the Senate bill became law.

There is broad bi-partisan support for Stewardship Contracting and we will continue to work with partner organizations to navigate the Farm Bill process and will provide additional updates as the Committees begin marking up legislation.

Forest Management Legislation

Several bills targeting the management of the National Forest System and other federal forests have been introduced in the 113th Congress. Bills in both the House and Senate would expand the Good Neighbor Authority beyond the states of Colorado and Utah, provide expedited authority to treat forests impacted by insects and disease, and two bills in the House would change authorities for management of federally owned forest lands.

- **S. 327:** In February Senator Barrasso (R-WY) along with Senators Enzi (R-WY), Hatch (R-UT), Johnson (D-SD), Lee (R-UT), Thune (R-SD) and Udall (D-CO) introduced the Good Neighbor Forestry Act, S. 327. The bill would expand the Good Neighbor Authority to all western states enabling the U.S. Forest Service and Bureau of Land Management to enter into agreements with state foresters to complete forest, rangeland and watershed health projects on federal lands.

Senator Udall along with Senators Bennet (D-CO), Baucus (D-MT) and Wyden (D-OR), also recently introduced the National Forest Insect and Disease Treatment Act (not yet assigned a number). The bill would require the U.S. Forest Service to treat one or more subwatersheds within each National Forest with an insect or disease epidemic impairing forest health. Expedited treatments would be supported by the authorities of the Healthy Forest Restoration Act of 2003.

- **H.R. 1345:** In the House, Representative Gosar (R-AZ) introduced the Catastrophic Wildfire Prevention Act of 2013 along with several co-sponsors. This bill would expand the Good Neighbor Authority to all states with federal forest lands. Additionally the bill would extend Stewardship Contracting and allow expedited treatment of “at-risk” federal forest lands.
- **H.R. 818:** Representative Tipton (R-CO) has introduced the Healthy Forest Management and Wildfire Prevention Act, along with several co-sponsors, to address the bark beetle epidemic. This bill would also expand the Good Neighbor Authority to all states with federal forest lands. Further, it would expand utilization of authorities originally provided under the Healthy Forest Restoration Act of 2003 and provide the Governor of a state with authority to designate high-risk areas for application of the expedited authorities.
- **Hastings Draft:** House Natural Resources Chairman Doc Hastings (R-WA) recently released draft legislation that would establish Forest Revenue Reserve Areas within the National Forest System. These revenue reserve areas would be managed to provide a dependable source of revenue for rural counties and schools and be subject to expedited NEPA and ESA reviews. In addition, the bill would provide a temporary extension of the Secure Rural Schools Act.
- **O&C Lands:** A bi-partisan proposal from Representatives Walden (R-OR), Schrader (D-OR) and DeFazio (D-OR) would establish the Oregon and California Railroad Grant Lands Trust (O&C Trust) for the benefit of O&C Trust counties administered by a board of trustees appointed by the Governor. The trust corpus would be composed of a subset of the approximately 2.4 million acres currently under management by the Department of the Interior as Oregon and California revested grantlands. Under the proposal, the remaining O&C Lands would be transferred to the U.S. Forest Service and receive designations as a national monument, wilderness area and a wild and scenic river.

Ninth Circuit Forest Roads Decision

On March 20 the Supreme Court of the United States released a decision in the forest roads case, *Decker v. NEDC*. In the majority opinion by Justice Kennedy, seven justices agreed to reverse the decision of the U.S. Court of Appeals for the Ninth Circuit. Justice Scalia wrote a separate opinion concurring in part and dissenting in part. Justice Breyer did not participate in the case. The opinion of the Court is available at <http://www.supremecourt.gov/opinions/slipopinions.aspx>.

In the majority opinion, the Court reversed the decision of the Ninth Circuit finding that (1) as an initial matter that the District Court had jurisdiction to hear the case; (2) that the recent rulemaking by the Environmental Protection Agency (EPA) amending the Industrial Stormwater Rule did not make the case moot; and (3) the EPA's preamendment Industrial Stormwater Rule – which exempted discharges of channeled stormwater runoff associated with logging roads from permit requirements under the National Pollutant Discharge Elimination System (NPDES) – was permissible under the Clean Water Act.

This decision followed oral argument in the case back in December of 2012 and a rulemaking by the EPA that was finalized only one business day before oral argument. The release of the rulemaking, which some viewed as having a substantial impact on the case, immediately before oral argument raised many questions about how the Court would ultimately handle this case. In response to the rulemaking, the Court issued an order on January 8, 2013 requesting supplemental briefing from the parties on the impact of the new EPA rule.

Before the Order on supplemental briefing from the Supreme Court, NEDC filed a separate Petition for Review of the new EPA rule in the U.S. Court of Appeals for the Ninth Circuit. The challenge to the new EPA rule appears to be in jeopardy following the decision from the Supreme Court, however the petition has not yet been dismissed or withdrawn. The next action in that case is expected in June of this year.

Under the Notice of Intent published in May of 2012 by the EPA, we are still monitoring efforts by the Agency to undertake a study of water quality impacts of forest roads and existing Best Management Practices (BMPs) to determine if any additional measures from EPA are necessary to ensure water quality. This larger review of “forest roads” comes in response to a partial remand in *Environmental Defense Center v. EPA*, a 2003 case out of the Ninth Circuit. The Agency has stated it is considering using the broad authority under §402(p)(6) of the Clean Water Act to regulate discharges from forest roads in a manner that would not require permits.

While the recent Supreme Court decision was a victory for state-based BMPs, there are still many questions about what sort of regulation, if any, EPA may ultimately propose for any subset of forest roads that they identify as requiring additional attention. Given this uncertainty, members of Congress are working with several partner organizations to reintroduce the Silviculture Regulatory Consistency Act to provide additional clarity.

For more information on these or other items, please contact Brent Keith, Forest Policy Director, at 503.507.0550 or bkeith@wflcweb.org.

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