



WESTERN FORESTRY LEADERSHIP COALITION

LEGISLATIVE & POLICY UPDATE

October 28, 2013

Kelsey Delaney, Forest Policy Director, 303.445.4362, kdelaney@wflcweb.org

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 2014:** The new fiscal year (FY) began October 1, 2013 with the partial shutdown of the federal government when Congress failed to pass a FY 2014 budget or continuing resolution (CR). The shutdown lasted 16 days, ending late October 16, 2013 when Congress approved a short-term CR to open the government and avert the U.S. from defaulting on its debt. The approved CR provides funding through January 15, 2014 at the annual spending level of \$986.3 billion – essentially flat funding with sequester cuts included – and extended the debt ceiling through February 7, 2014.

The deal to open the government also established a bicameral Budget Committee tasked with developing long-term spending priorities and a unified budget plan by December 13, 2013. The CR includes provisions to repay the U.S. Forest Service (USFS) and the Department of Interior (DOI) the \$600 million and \$36 million respectively, which were transferred from non-fire accounts to pay for fire suppression in FY 2013. Finally, the bill also extends the Stewardship Contracting Authority until January 2014.

- **2015 Budget:** Following the formal budget process, the (USFS) has transmitted the Agency budget requests to the U.S. Department of Agriculture (USDA), and USDA has forwarded the request to the Office of Management and Budget (OMB). The USFS is now awaiting the ‘pass back’ of the budget with recommendations from OMB. The ‘pass back’ is expected in late November 2013.

The Council of Western State Foresters (CWSF) has, and continues to, engage with partners, coalitions, and the State Forester Legislative Team (which includes the Policy Directors from the Regional State Forester Organizations and the National Association of State Foresters (NASF) Forest Policy Director) to identify priorities for the current FY 2014 appropriations process and the 2015 Budget. Given the ongoing negotiations to set funding levels for the remainder of FY 2014, there may be a possibility that we see a delay in the FY15 budget process similar to last year where the release of the FY 2014 President’s budget request in early February 2013 was pushed back.

Farm Bill

The 2008 Farm Bill, which was previously extended by one year, expired on October 1, 2013. The authority for several programs of priority for the CWSF/WFLC including EQIP, WHIP, and CSP was previously extended through fiscal year 2014.

The Senate Farm Bill (S.954) passed by a bipartisan vote in June at a total cost of \$955 billion. The House Farm Bill followed, but a vote to approve the bill on the House floor failed. The failed vote was attributed to disagreements over the size of reductions for the Supplemental Nutrition Assistance Program (SNAP). The House later split their bill into a “farm only” bill and a nutrition bill that were passed separately and then recombined into H.R. 2624.

Both the House and Senate have selected their Farm Bill Conferees and formal negotiations will now begin to reconcile differences in the bills. Once again, cuts to SNAP are expected to be contentious as the funding difference between the House and Senate bills for SNAP totals \$36 billion over ten years. Agriculture Committee leaders are working to pass a 5-year Farm Bill by December 31, 2013 when commodity support laws would revert to 1949 law if no new Farm Bill is passed.

Both the House and Senate approved Farm Bills contain many important forestry priorities for the CWSF, and we are continuing to work with partners and Congress to support the reauthorization of a 5-year bill. Several key provisions include the reauthorization of the Stewardship Contracting Authority, the provision clarifying that Clean Water Act NPDES permits are not required for FIFRA compliant pesticide applications, the language codifying the EPA’s longstanding silvicultural rule, and the clarifying authority for the USFS to facilitate a national coordinated response to wildland fire by providing states access to resources and mobilization infrastructure (i.e. fixes the wildland fire mobilization and billing issue). The wildland fire mobilization and billing fix and reauthorization of Stewardship Contracting are included in both the House and Senate Farm Bills. The provision to protect forest roads from having to obtain a NPDES permit is currently only found in the House bill, and efforts are underway to work with the Senate to include the provision in a final Farm Bill.

Forest Management Legislation

S.327: As previously reported, Senator Barrasso (R-WY) along with Senators Enzi (R-WY), Hatch (R-UT), John (D-SD), Lee (R-UT), Thune (R-SD), Udall (D-CO), Heller (R-NV), Flake (R-AZ), Risch (R-ID), and Crapo (R-ID) introduced the Good Neighbor Forestry Act, S.327 in February 2013. The bill was referred to the Senate Energy and Natural Resources Committee, and later passed by voice vote during a markup in June.

The bill would expand the Good Neighbor Authority to all western states enabling the USFS and Bureau of Land Management (BLM) to enter into agreements with state foresters to complete forest, rangeland and watershed health projects on federal lands. Applicable activities under the authorized agreement would include treating insect and disease infected trees, reducing hazardous fuels, and other restoration improvements to forest, rangeland, and watershed health. Activities that would be excluded from the Good Neighbor Authority include construction,

reconstruction, repair, or restoration of roads or parking areas, construction alteration, repair or replacement of public building works.

H.R.1526: Originally reported as the Hastings Draft and now titled, “Restoring Healthy Forests for Healthy Communities Act,” the bill was approved by the House of Representatives in September by a 244-173 vote. The Senate is unlikely to embrace this legislation in the near future, and Senate Energy and Natural Resources Committee staff and partners are looking to the anticipated, but not yet released, Wyden proposal as the starting point for discussions in the Senate.

The expanded and approved House bill has components of previously proposed pieces of legislation including (but not limited to): extending Good Neighbor Authority, streamlining NEPA and ESA compliance, reauthorizing the Stewardship Contracting Authority, addressing forest health epidemics, creating forest demonstration areas, and the proposal from Representatives Walden (R-OR), Schrader (D-OR) and DeFazio (D-OR) that 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.

The Wildfire Prevention Act of 2013: On October 23, 2013 Representatives Raul Ruiz (D-CA), Paul Cook (R-CA), Scott Tipton (R-CO), and Jared Polis (D-CO) introduced a companion bill to S.1396, which was introduced earlier this year by Senators Udall and Inhofe. The legislation would allow states and local communities access to Federal Emergency Management Agency (FEMA) grant funds to complete wildland fire mitigation projects.

Currently, Hazard Mitigation Grants from FEMA are available to state and local governments to implement long-term hazard mitigation after a major disaster declaration. This legislation would expand eligibility for the grant program to states that received funding from FEMA through a Fire Management Assistance Grant (FMAG). States and/or localities that receive FMAG declarations would be eligible to compete for an additional 15% of the total FEMA funds allocated for fire suppression to support wildfire-mitigation efforts.

Ninth Circuit Forest Roads Decision:

The House approved Farm Bill includes language nearly identical to the Silviculture Regulatory Consistency Act (which NASF has supported) that would codify the role of state-based BMP programs in controlling stormwater discharges associated with silvicultural activities. Following the Supreme Court decision in *Decker v. NEDC*, the U.S. Court of Appeals for the Ninth Circuit is expected to remand the case to the District Court in Oregon for further proceedings. While the Supreme Court upheld the authority of the EPA to promulgate a rule excluding discharges associated with silvicultural activities from regulation under the Clean Water Act, the Court did not overturn other aspects of the Ninth Circuit decision pertaining to the point source status of discharges from stormwater control systems – such as ditches and culverts – arguably leaving some issues for the District Court to consider.

Finally, the EPA is moving forward in their effort to determine whether some subset of forest roads should be regulated under section 402(p)(6) of the Clean Water Act – while this effort is related to the *Decker v. NEDC* case, it initially stemmed from a separate Ninth Circuit decision

in *EDC v. EPA*. State Foresters continue to support the Silvicultural Regulatory Consistency Act as a mechanism to provide certainty given the ongoing legal and administrative proceedings.

Biomass:

In mid-October, the Supreme Court of the United States granted review of a narrow question stemming from a handful of petitions submitted to the Court seeking review of EPA’s greenhouse gas (GHG) regulations. Per the Order, the Court will consider “whether EPA permissibly determined that its’ regulation of GHG emission from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.”

It is possible that the Court’s decision in this case will impact the EPA’s regulation of carbon emissions from biogenic sources under the Tailoring Rule. As previously reported, the application of the Tailoring Rule to biogenic sources was delayed by the EPA until summer of 2014, however that delay was recently overturned by the U.S. Court of Appeals for the District of Columbia. The parties have sought an extension of time to seek rehearing before the DC Circuit Court. Meanwhile, the EPA is still considering how to appropriately address CO2 emissions from biogenic sources under the Tailoring Rule.

The Supreme Court is expected to issue a decision by the end of June 2014.

For more information on these or other items, please contact Kelsey Delaney, Forest Policy Director, at 303.445.4362 or kdelaney@wflcweb.org.

#####END#####