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Interior Approps Bill Passed

On June 20, the House Appropriations Subcommittee on Interior, Environment and Related Agencies passed a \$28 billion draft FY13 spending bill. The bill, which includes funding for the Forest Service, BLM, U.S. Fish and Wildlife (FWS) and EPA took a \$1.2 billion dollar reduction from the FY12 spending level and is \$1.7 billion below the President's request.

Hit hardest by the reduced bill was the EPA, which would see their budget falling from \$8.4 billion down to \$7 billion (a 17 percent reduction). If enacted, the cuts would come on top of extensive cuts over the last two years and amount to over a \$3 billion reduction since 2010. Committee Republicans indicated that the proposed cuts to EPA were in response to excessive, job-killing regulations being issued by the agency.

While the budget for the Interior Department is up \$57 million from last year, it is \$79 million below the President's requested level. Several agencies within Interior would see large reductions; including the FWS whose budget would take a 21 percent hit falling from over \$1.5 billion down to \$1.2 billion. The BLM O&C lands will be funded at \$110 million which is \$2 million below the President's request. While the Committee report outlining the specific funding splits is not yet available, the reductions may come at the expense of Secretary Salazar's "Western Oregon Strategy" and new resource management planning activities.

The Forest Service would receive \$4.7 billion, which is an \$86 million increase from the 2012 budget. There are also some very positive provisions in the bill, including a \$6 million increase for the National Forest Timber Management program, designation by prescription authority for forest management projects, and a legislative fix to a recent court decision requiring Administrative Appeals for projects undertaken with Categorical Exclusions. The bill would also allow the continued use of the 1982 and 2000 forest planning rules, continue the prohibition on Clean Water Act permits for forest roads, provide a one-year extension of the Herger-Feinstein Quincy Library Group Act, and provide an expansion of the Good Neighbor Authority, currently only available in Colorado, to all Western states.

As large wildfires continue to burn in Colorado, New Mexico, Wyoming and Arizona, \$3.2 billion is included for wildfire fighting and prevention programs for both the Forest Service and Interior Department. This is a \$6 million increase over the current year, including full funding of the 10-year average wildland fire suppression costs for both Interior and the Forest Service. The bill also includes a one-year authorization for mandatory funding of the Payments-in-lieu-of-Taxes (PILT) program. Finally, the bill would cut land acquisition funding from its current level of \$322 million to \$66 million.

/Tom Partin

Wildfire Update

Fires in the western United States continue to burn out of control and threaten even more residences and structures as hot weather remains in the forecast and millions of acres of dead and diseased federal timber remain ripe for burning. Colorado, which has burned over 85,000 acres and many structures, has seen the warning signs for large catastrophic wildfires building for the last few years with vast acreages of lodgepole pine dying off to insect infestations, and virtually no action taken to protect or thin the forests. Colorado has also lost most of its sawmilling infrastructure due to litigation, appeals and the inability of the Forest Service to offer timber sales.

The fires are a direct reflection of what will happen to all of our federal forests without sustainable management. One can only hope that some sanity will prevail within Congress to ensure our forests are treated rather than being set off limits to responsible management because of special interest groups. States are crying out for help to treat their national forest and BLM lands. Perhaps that is why we are seeing a number of legislative proposals to institute reforms, including trust management proposals for the Forest Service and BLM O&C lands.

The southwestern United States is facing the hot dry weather this year which makes dead, diseased and unhealthy forests ripe for burning. As weather patterns change, every region of the United States will experience these types of dry conditions in the future and the same future for their forests.

Fire Statistics

Nationally, fires to date this year total 25,144 with 1,144,573 acres burned. The ten year average to date is 34,873 fires with 1,712,284 acres burned. The difference between this year and other years is that in the past many early season fires have occurred in Alaska which usually pose little threat to communities and the forests have little commercial value. This spring and early summer the fires have occurred more frequently in forests adjacent to communities like Fort Collins, and have consumed not only commercial forest lands but also a number of residences and other structures. While Colorado has scorched 85,000 acres, New Mexico has been ground zero for catastrophic wildfires with nearly 350,000 acres burned—oh and by the way New Mexico has virtually no industry infrastructure left either to treat the forests (is there perhaps a pattern here?)

Air Tanker Update

The fleet of Forest Service air tankers which started the season at 11 was reduced to nine on June 3 due to two separate incidences involving P2V tankers. One crash killed two crew members on the Utah-Nevada border, and another plane had to do a belly landing on a runway south of Reno, Nevada. With fire season in full force, on June 13, Congress passed legislation sponsored by Senator Ron Wyden (D-OR) to speed the Forest Service's ability to contract and acquire seven new air tankers. The makeup of the new tanker contracts include:

- Two BAe-146s in 2012 from Neptune Aviation Services Inc.
- One BAe-146 in 2012 and one BAe-146 in 2013 from Minden Air Corp.
- Two MD87s in 2013 from Aero Air LLC.
- One Avro RJ85 in 2013 from Aero Flite Inc.

The cost of this new fleet, while urgently needed for suppression activities, is in itself very staggering. The annual contract price for the seven aircraft is \$30 million, not counting fuel costs estimated to be another \$7.5 million, and if the aircraft isn't used, there is also a cancellation fee. The best estimate for a 10-year expense for just these seven aircraft is \$519.3 million. It should also be noted that each contract has the option, if funds are available, of bringing on an additional five aircraft for a total of 35 new planes. This would bring the total cost over a 10-year period to \$3.116 billion. The Forest Service could meaningfully increase forest management activities with that amount of money while the forests are green instead of shelling out all this money to fight wildfires fueled by unhealthy forests. / *Tom Partin*

Victory on Mudflow Project

This week our industry received a significant victory regarding management in spotted owl habitat when Judge Karlton of the Eastern District of California denied a motion for preliminary injunction in *Conservation Congress v. Forest Service* for the Mudflow Vegetation Management Project on the Shasta-Trinity National Forest. The project involved thinning, some of which occurs in spotted owl critical habitat and excluded all nesting, roosting, foraging habitat from harvest, but the Forest Service and FWS concluded the thinning would “degrade” owl foraging habitat. The agencies did not engage in formal consultation because they determined there would be no adverse effects on the spotted owl or adverse modification of critical habitat. Plaintiffs claimed that these conclusions violated the Endangered Species Act.

The ruling is significant in several important areas. First, the court held that complete removal of critical habitat is not necessarily adverse modification or destruction under the ESA. The project contained multiple landings that would result in harvest of all the trees completely eliminating the habitat on those landings. Relying on a favorable Ninth Circuit decision that held “[a]n area of a species’ critical habitat can be destroyed without appreciably diminishing the value of a critical habitat for the species’ survival or recovery,” the court held that that the landing construction was not adverse modification.

Second, the court held that habitat “degradation” from thinning did not mean that there was an adverse effect on the owl or adverse modification of critical habitat requiring ESA formal consultation between the Forest Service and FWS. The court explained:

Plaintiff’s argument hangs upon “its conflation of the technical and colloquial meanings of the word ‘degrade.’ In essence, Plaintiff argues that, according to the USFS and the FWS, ‘degradations’ will occur to the critical habitat, and that ‘a large amount of degradation from repetitive timber sale projects, even if designed to benefit the Owl over the long-term, simply must have some short-term impacts to the Owl and are likely impeding its recovery.’ Although Plaintiff’s argument appears facially valid, the argument loses its force in a regulatory world in which words are not given their plain meanings. According to the Biological Assessment, ‘degraded’ is defined as ‘a reduction in some habitat components,’ without a loss of ‘function at the current habitat level.’ . . . In light of a definition of “degrade” that could mean “beneficial to habitat function,” and absent further proof to the contrary, the court is unable to agree with Plaintiff that a series of “degradations” will necessarily have an adverse effect upon the Northern Spotted Owl critical habitat.

Third, the court concluded that the Forest Service adequately addressed the short-term effect of thinning on spotted owl prey. The Forest Service did so through excluding harvest of nesting roosting and high quality foraging habitat within spotted owl core areas, by retaining the function of foraging habitat in the areas being thinned and by imposing a seasonal restriction on timber harvest during the breeding season.

Finally, the court upheld the analysis of the effects of thinning on the spotted owl and barred owl interaction. Although the original biological assessment did not address the barred owl, the court held that FWS's second letter of concurrence acknowledged the possibility of barred owls displacing spotted owls and did not minimize the threat of barred owls in its analysis. Significantly, the court held that under the regulations, the content of a biological assessment is discretionary and there are no strict requirements for what a biological assessment must include.

Congratulations to Sierra Pacific Industries and their attorney Julie Weis of Haglund, Kelley, Jones & Wilder on this important victory. /*Scott Horngren*

Labrador Bill

On June 21, Congressman Raul Labrador (R-ID) introduced the “Self-Sufficient Community Lands Act of 2012.” The legislation proposes a new model for replacing expired Secure Rural Schools payments with trust-based forest management to provide revenue and jobs in rural communities. Labrador’s legislation would authorize demonstration areas, in partnership with states, to encourage local forest management in order to generate revenues required to fund local services. The concept was first brought to Mr. Labrador’s attention by a bi-partisan group of county commissioners in Idaho. The purpose of the Act is to generate dependable economic activity for counties and local governments through sustainable forest management.

The legislation would create ‘community forest demonstration areas’ to allow the governor of a state to appoint local boards of trustees to assume management of selected National Forest acreage. The governor would then petition the Secretary of Agriculture to cede management of the demonstration acreage to the appointed board. The land would remain in federal ownership and Wilderness areas or other areas where vegetation removal is prohibited under law would not be eligible for inclusion. Each demonstration area would consist of at least 200,000 acres of National Forest System land identified for inclusion by the Board of Trustees. The legislation is not specific to just one state.

The Board of Trustees would include:

- One member who holds a county or local elected office appointed from each county or local governmental unit containing community forest demonstration area land.
- One member who represents the commercial timber, wood products, or milling industry.
- One member who represents persons holding federal grazing or other land use permits.
- One member who represents recreational users of National Forest System land.

In short the bill calls for the Board to conduct projects on the community forest demonstration areas using the laws and regulations applicable to management of state forest lands, with the result being to return revenues back to the counties to replace Secure Rural Schools payments. /*Tom Partin*

Lynx Mapping Halts Project

A decision from the District of Idaho has halted the Split Creek precommercial thinning project on the Caribou-Targhee National Forest because it ruled that revisions to lynx habitat maps violated NEPA and ESA. The court held “that the Forest Service’s failure to prepare an Environmental Impact Statement for a decision that ultimately opened approximately 400,000 acres of previously protected land to precommercial thinning violated NEPA.” *Native Ecosystems Council v. Forest Service*. The Split Creek project involved 7,000 acres of precommercial thinning.

In response to efforts to list the Canada Lynx, in 2000 federal agencies developed a Canada Lynx Conservation and Assessment and Strategy (LCAS) as an interim and guiding conservation strategy for lynx on federal lands. The LCAS required the Forest Service and the FWS to delineate Lynx Analysis Units (LAUs) upon which direct, indirect, and cumulative effects from site-specific projects could be analyzed. The LAUs mapped in 2001 covered 1,134,779 acres of the Caribou-Targhee National Forest. The 2001 LAU map was revised in 2005 based on better information about what qualifies as lynx habitat and the LAUs were reduced by approximately 400,000 acres. Precommercial thinning is generally prohibited within the LAUs but allowed outside the LAUs. The court held that the Forest Service violated NEPA because it failed to prepare an EIS to take a “hard look” at the significant effects resulting from the revision of the LAU maps. The court also held the agencies failed to assess whether the adoption of the 2005 map would jeopardize the lynx or its habitat which is in violation of the ESA. Therefore, 400,000 acres are now again off-limits to precommercial thinning until the Forest Service prepares an EIS regarding lynx habitat mapping. A strong criticism by the timber industry is that the Forest Service never considered alternative acreages and locations to the vast areas it mapped as lynx habitat, alternatives to the definition of lynx habitat, or alternatives that would allow different silvicultural treatments within mapped lynx habitat.

Given the tremendous bark beetle infestations occurring throughout the West and associated wildfires, the Forest Service would also be violating NEPA and ESA if they don't reconsider the mapping for the entire 1,134,779 acres of lynx habitat. /*Scott Horngren*

DNR Sued Over Murrelet

On May 29, Seattle Audubon Society and the Olympic Forest Action filed a lawsuit in King County (Seattle) Superior Court challenging the minor amendment to the state trust lands Habitat Conservation Plan (HCP) adopted by the Board of Natural Resources on May 1. (see [AFRC Newsletter May 22, 2012](#)). The groups claim that a full Environmental Impact Statement should have been prepared under the State Environmental Policy Act, rather than through a Declaration of Nonsignificance.

A second lawsuit on the same grounds filed on May 31 by the Columbia River Alliance for Nurturing the Environment (CRANE) in Thurston County (Olympia) Superior Court was withdrawn on June 4 without explanation.

The Board’s action, which frees up approximately 10-12 million board feet of timber for harvest outside occupied marbled murrelet habitat, was fully supported by the FWS, which formally approved the minor amendment by a letter dated May 29.

AFRC has filed an unopposed Motion to Intervene in the lawsuit to represent the interests of purchasers of state timber. /*Ann Forest Burns*

EPA Forest Roads Response

Although as of the date of this newsletter, the Supreme Court has not yet said whether it will review the Ninth Circuit forest roads Clean Water Act case (see, [AFRC newsletter October 21, 2011](#)), the Environmental Protection Agency is moving forward with its [Notice of Intent](#) to make new rules regarding forest roads (see, [AFRC newsletter May 22, 2012](#)).

AFRC submitted written [comments](#) to EPA stating our concerns about how this process might affect forest roads on federal lands. The Forest Service alone has approximately 378,000 miles of roads under its jurisdiction covering 193 million acres. The administrative cost of obtaining and tracking compliance with these permits would run to the tens of thousands of dollars annually. Because forest roads on federal lands are built and maintained under stringent contract and best management practices (BMP) standards, imposing Clean Water Act permit requirements would impose an expensive administrative process with no commensurate benefit to environmental quality. Rather, resources that would otherwise be available for forest road maintenance and improvement would be diverted to paperwork administration.

AFRC will present testimony at a listening session EPA has scheduled on June 27 from 9:00 a.m. – 12:00 noon, at the Columbia Center in Seattle, WA (701 5th Ave - Seattle, WA 98104, 29th floor auditorium.) We are urging EPA to hold additional listening sessions in other states so that our members' concerns over the impacts of any federal permit process for forest roads would be adequately addressed.

Unfortunately, EPA rulemaking, no matter in what form, will not result in the certainty needed to resolve this problem. Should the Supreme Court decide not to grant review of the case, Congress should act to preserve the silvicultural exemption from the Clean Water Act permit requirements. AFRC will continue to work toward that goal. */Ann Forest Burns*

Owl Critical Habitat Hearing

On June 20, the official public hearing by the FWS on the proposed Northern Spotted Owl Critical Habitat and supporting Economic Analysis and draft Environmental Impact Statement, (these documents and other information is available at <http://www.fws.gov/oregonfwo/>) was held in Portland and seemed to be a “non-event.” Fewer than 20 people attended; of those, only seven presented oral testimony: County officials from Skamania County, Washington; Douglas County, Oregon; and Siskiyou County, California; AFRC; and representatives of three environmental organizations.

[AFRC's testimony](#) focused on the fatal flaws in both the critical habitat designation and the economic analysis. We asked FWS to completely redo both to comply with the provisions of the Endangered Species Act.

[FWS' computer modeling process](#) for critical habitat layers a number of errors on top of one another, and uses elements specifically not intended for the kind of analysis done. The ESA requires that critical habitat be only those acres “occupied at the time of listing” of the species and/or “essential for the conservation of the species.” The process used by FWS cannot distinguish which among the 14 million acres proposed for designation contain the physical or biological features essential for the conservation of the species and which do not. According to a recently updated owl habitat suitability assessment by

the USDA Pacific Northwest Research Station, only 26% of the FWS proposal is comprised of “highly suitable” habitat; and 50% is classified “unsuitable or marginal.”

The Economic Analysis is also fatally flawed. It misrepresents the current situation and severely underestimates the impacts designation will have on timber harvest and the resulting economic loss and impacts on local communities. Surprisingly, the analysis assumes that all of the recommendations made in the recently adopted Spotted Owl Recovery Plan are already being fully implemented. Based on that assumption, it finds the economic impact of the critical habitat negligible. When the draft Recovery Plan was under review, requests for an economic assessment were met with the response that economics would be considered during critical habitat designation. Thus, FWS has leap-frogged over the question of how its actions will affect the economy across the range of the spotted owl.

Written comments on the three spotted owl documents are due to FWS by July 6. AFRC will be submitting extensive comments and analysis. */Ann Forest Burns*

Roadless Amicus Brief

On June 18, AFRC joined with the BlueRibbon Coalition and California Association of 4WD Clubs (Cal4) on an amicus brief to the U.S. Supreme Court supporting petitions by the State of Wyoming and the Colorado Mining Association for review of the Tenth Circuit Court of Appeals ruling upholding the Clinton Roadless Rule. Several amicus briefs supporting the petitions for Supreme Court review were also filed by counties, states and various interest groups.

AFRC has opposed the 2001 Clinton Roadless Rule because it creates a blanket, nationwide system for dealing with inventoried roadless areas, basically making them de facto wilderness areas. In 2009, the Ninth Circuit struck down a 2005 modification to the roadless rule which allowed states to petition for adoption of roadless rules tailored to the needs of that state. An earlier 2007 decision by Wyoming District Court Judge Brimmer which ruled against the 2001 rule was later overturned by the Tenth Circuit which is subject to the petition for certiorari.

In the amicus brief, AFRC, the BlueRibbon Coalition and Cal4 argue that Congress intended planning for roadless areas to occur at the local forest level through the planning process under the National Forest Management Act (NFMA), not in a blanket nationwide rule which fails to take into account the unique aspects of the forest in the context of overall multiple use. The roadless rule also explicitly prohibits the Forest Service from reconsidering the land use and management restrictions during forest plan revisions which directly conflicts with NFMA.

The Supreme Court is expected to decide in the fall whether to hear the case. */Scott Horngren*

Sustainable Forest Action Coalition

The Sustainable Forest Action Coalition (SFAC) whose mission is to connect county, community organizations and coalition members in the healthy sustainable management of our forest ecosystems continues to grow in support as well as issues and concerns. SFAC has provided informational support for twenty counties in northern and central California and also to Douglas County in Oregon and Carbon County in Wyoming. The group meets with Region 5 Regional Forester, Randy Moore and his staff on a bi-annual basis and coordinates with congressional members from the areas that the coalition represents.

On June 15, SFAC held a meeting to discuss and provide information on the issue of jobs in these small rural counties, what they have lost, and how they might reestablish jobs. It is estimated that these 20 counties have lost over 21,000 direct, induced, and indirect jobs because of impacts related to various public land regulations and restrictions. Attendees included the County Board of Supervisors, industry representatives, staff from the area's four Congressional offices and Senator Dianne Feinstein's office.

Issues such as Secure Rural Schools, hazardous fuels funding, NEPA, Equal Access to Justice Act (EAJA), various environmental protection agency rules, stewardship contracting, and Travel Management Plans were discussed. SFAC representatives provided highlights of current issues and concerns within each of these areas that they felt were having profound negative effects on the counties social and economic wellbeing.

It was pointed out that in Region 5 from 2005-2009, 41 percent of all national forest timber sales and projects were litigated. Information collected from Westlaw research also highlighted how out of balance attorney fees and settlements are in relation to environmental lawsuits versus those involving veterans and seniors. For veteran cases, the average attorney fee (last 15 cases), was \$172.74/hour and average awarded fees were \$12,046.90. For senior cases, average attorney fees were \$171.93/hour and average awarded fees were \$6,154.97. For environmental cases where most of the attorneys say they work for non-profit organizations; their average fee is \$490.73/hour and the average award is \$645,711.

SFAC will continue to work on the many federal and public land issues that must have changes made if these counties are to survive. /*Bill Wickman*

Save Our Forests Video

Save Our Forests is an educational video initiated and funded in Grant County, Oregon using public monies provided through Title III funds (PL 106-393). The concept of the video is to reach out and inform a broad audience on some of the issues facing our public forests and our communities in eastern Oregon and the inland west. The critical nature of a balanced approach to forest management is emphasized.

Professionals who make their home in Grant County prepared the script, did the filming and provided the marketing strategy. To date the film has received very positive feedback from a broad spectrum of viewers not associated with the forestry community. The film was accepted by the International Movie Database, the world's largest database for films and is both listed and posted for viewing on that site. To view the video go to: <http://www.savingourforests.com/Watch-The-Video.html>. / *Irene Jerome*

Kitzhaber's Natural Resource Team

Oregon Governor John Kitzhaber has appointed two people to his State Natural Resource team. Tom Tuchmann will serve as Forestry and Conservation Finance Adviser, focusing on solutions for Oregon & California Lands (O&C Lands), working with the Department of Forestry on other federal forest issues, and developing conservation finance opportunities to conserve private working forests throughout the state.

Tuchmann is president of U.S. Forest Capital, advising clients on projects that benefit forest resources and enhance local economies. He will dedicate 50% of his time working for Governor Kitzhaber while retaining his position at U.S. Forest Capital. Tuchmann's first priority will be working directly on the O&C lands management issue to help find solutions that balance economic and conservation attributes, break any land management gridlock, and increase employment and investment in Oregon's timber communities.

Tuchmann previously served as Western director and special assistant to the U.S. Secretary of Agriculture, where he successfully directed negotiations and implementation of the \$480 million Headwaters Forest Agreement. He also served as director of the U.S. Office of Forestry and Economic Development, where he led the development and implementation of President Clinton's Northwest Forest Plan.

Gabriela Goldfarb will serve as a Natural Resources Policy Advisor. She has had extensive experience with salmon recovery and ocean and coastal issues and will bring that background to Oregon's efforts in those areas.

Prior to joining the Governor's office, Goldfarb worked as an environmental consultant and as Deputy Director of For the Sake of the Salmon. She also served as Federal Programs Manager for the California Coastal Commission and as Senior Consultant for a toxics regulatory consulting firm. Ms. Goldfarb will be working on a variety of issues including toxics, air quality and ocean and coastal matters.

Tuchmann and Goldfarb joined the Kitzhaber team in early June. */Tom Partin*