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**September 24, 2012**

## **Congress Passes Continuing Resolution**

In what has become the norm in Washington DC, Congress left town last week without passing appropriations bills for Fiscal Year 2013, which begins October 1. Rather they have passed a “Continuing Resolution” (CR) to fund the government for six months through March 27, 2013. The CR was made necessary by lack of action on the 12 individual spending bills. This year, the House passed six of the 12 spending bills while the Senate did not bring any of the bills to the floor.

The CR will avoid a government shutdown and will also give Congress more time in the lame duck session to focus on solutions to the long-term deficit problem and the debate over extending the soon to expire Bush-era tax cuts. A Government Accountability Office report revealed the showdown last year over the debt limit cost the federal government \$1.3 billion as the Treasury Department paid premium borrowing rates to keep funds flowing. Unfortunately for management agencies like the Forest Service and BLM, it does not give them a firm budget for the coming year, and they must take a conservative approach to hiring people and contracting work for the short-term.

The CR is very disappointing from a forest management perspective since many positive provisions were in the House Appropriations bill, including increased funding for timber management activities. The bill also would have provided broader use of silvicultural tools like designation by description and designation by prescription, expansion of the good neighbor policy, and a continuation of the prohibition on Clean Water Act permits for forest roads.

Overall the CR will fund the government at a spending level of \$1.047 trillion, about \$8 billion above FY12 levels, which equates to a .6% increase to agency budgets.

### *Fire Borrowing Addressed*

Due to the extreme wildfire situation in the west, and the overspending of fire suppression accounts in late August, the Forest Service began transferring funds from other management accounts to cover the high firefighting costs. Fortunately the CR includes an additional \$800 million earmarked for the Interior Department and Forest Service for wildfire suppression. These funds will be used to pay back the accounts the agencies borrowed from. This is a definite help since the Forest Service and BLM are already strapped for timber management dollars. AFRC joined a coalition of over 90 conservation, state government, management, and other groups in sending letters to Congress and the Administration asking them to restore these fire funds and provide adequate funding for the FLAME Act to prevent future transfers. The CR also sets the 10-year average for suppression costs for the first half of FY13 at a higher and more accurate level. /Tom Partin

## Forest Roads Case

The Clean Water Act forest roads case issue continues to garner attention from all three branches of government.

### *Supreme Court*

A total of [15 amicus briefs](#) were filed in support of the State of Oregon and industry appellants in the appeal of the Ninth Circuit decision in *NEDC v. Brown* (see [AFRC newsletter July 23, 2012](#)). AFRC was joined on its brief by the [Public Lands Council](#), [National Cattlemen's Beef Association](#), [Montana Wood Products Association](#), [Arkansas Forestry Association](#), [Federal Forest Resource Coalition](#), [Minnesota Forest Industries](#) and [Intermountain Forest Association](#), which focused on the potential impacts on public land. Thirty-one state attorneys general, including Alaska, Idaho, Montana and Washington, joined Arkansas' attorney general on a brief. The [Society of American Foresters](#) was the lead on a brief that included [National Association of State Foresters](#), [Association of Consulting Foresters](#), [Forest Service Retirees](#) and forestry academics and professionals who focused on the success of best management practices (BMPs) as the best way to minimize the effects of forest roads on water quality. The number and breadth of the amicus briefs should put the appellants in a strong position before the Court.

The Northwest Environmental Defense Center has until October 16 to file its response. The appellants will then have until November 15 to reply. Oral argument is scheduled for December 3, with a decision from the Court likely to come in spring.

### *Rulemaking proposal*

On September 4, the Environmental Protection Agency (EPA) [proposed](#) a revision to the Clean Water Act stormwater rules designed to clarify that stormwater discharges from logging roads do not require a National Pollutant Discharge Elimination System (NPDES) permit. Comments on the proposed rule are due October 4.

AFRC has asked EPA to suspend rulemaking pending a ruling by the U.S. Supreme Court in *NEDC v. Brown*. That way, the regulatory landscape left by the high court's ruling would be clear. Piecemeal rulemaking before then is most likely to result in further lawsuits by those who oppose timber harvesting and will use any grounds to stop forest management.

AFRC [commented](#) last June on an earlier EPA Notice of Intent for rulemaking. (See [AFRC newsletter June 22, 2012](#).) We remain concerned that no rule will provide the certainty needed to resolve this issue.

If the EPA does not suspend or grant an extension of the rulemaking deadline, AFRC will post comments on its website.

### *Congress*

The one year moratorium on forest road permitting by EPA, which passed as a rider to the 2012 Appropriations Bill, expires September 30. The Continuing Resolution does not include another such extension. This places every federal forestry decision vulnerable to challenge by a citizen's suit. Like the ESA, the Clean Water Act requires a 60-day notice of intent to sue.

Should those notices begin to appear, it will be another clear indication that Congress needs to step forward to provide a permanent solution. AFRC continues to work for the passage of the Silviculture Regulatory Consistency Act. The House bill ([HR 2541](#)), originally sponsored by Representatives Jaime Herrera Beutler (R-WA) and Kurt Schrader (D-OR), now has over 60 sponsors. A companion bill ([S 1369](#)), sponsored by Senator Mike Crapo (R-ID) and 27 others, is pending in the Senate. The Act would amend the Clean Water Act to regulate silvicultural activities as non-point sources of pollution, effectively leaving forest roads under the BMP schemes of the various states. It may be up to the lame duck Congress to finally act on this bill. */Ann Forest Burns*

## Legal Victory on EAs

In a significant [opinion](#) issued on September 20, the Ninth Circuit emphasized that an environmental assessment (EA) is not subject to the same requirements as an environmental impact statement (EIS). The case, *Earth Island Institute v. Forest Service*, involved a challenge to the EA prepared to salvage and rehabilitate the area damaged by the Angora Fire near Lake Tahoe.

Previous Ninth Circuit opinions have indicated that the requirements for an EA are not similar to the requirements for an EIS. The Angora opinion builds on those cases and makes a definitive statement that where the Council on Environmental Quality (CEQ) regulations impose an analytical requirement for an EIS, that requirement does not apply by implication to an EA. The Ninth Circuit explained that “a court should not impose upon the agency its own notion of which procedures are 'best' or most likely to further some vague, undefined public good.” Plaintiffs complained that the Forest Service had not responded to comments discussing black-backed woodpecker studies submitted by Dr. Chad Hansen. But the court held that “the duty to disclose and respond to responsible opposing viewpoints imposed by [the CEQ regulations] applies only to [EISs], not [EAs].”

The court also held that “an agency's obligation to consider alternatives under an EA is a lesser one than under an EIS” and that an EA need only consider a no action alternative and a preferred alternative. The court rejected the plaintiffs’ claim that the Forest Service violated the National Environmental Policy (NEPA) by not considering an alternative that would limit removal of all snags greater than 16 inches in diameter. The court held that leaving these snags “weighing more than 1 ton per tree, would not achieve the Project objective of reducing the risk of severe wildfire.” When the purpose of the project is to reduce fire risk, “the Forest Service need not consider alternatives that would increase fire risk.”

Finally, the court explained that, under the 1982 viability planning rule as amended by the 2000 interpretative rule, the species viability requirements apply only to the extent that they are incorporated into the relevant forest plan. The court found that the Lake Tahoe Basin Management Unit (LTBMU) Forest Plan did not incorporate any species monitoring requirements for viability at the project level. Therefore, population monitoring was only required at the forest level under the LTBMU plan. Significantly, the court also held that, at the project level, the Forest Service need not assess the habitat quality and quantity for species if there is no population monitoring requirement at the project level. Additionally, the court held that since the Forest Service was not required to monitor populations at the project level, it also did not have to determine the quantity and quality of habitat needed for viability at the project level, given that the analysis of habitat quality and quantity for a species is in effect a proxy for population monitoring. Therefore, an absence of detailed information about the habitat quality and

quantity to “maintain viability” of the blacked-backed woodpecker at the project level did not violate the National Forest Management Act (NFMA).

This case is a significant victory for common sense in NEPA and NFMA compliance by the Forest Service in the Ninth Circuit. Its implementation by the agency should free up resources that can be better used to improve the health of our federal forests and the infrastructure that depends upon them.  
*/Scott Horngren*

## **Farm Bill Stalls**

Congressional efforts to reauthorize federal Farm Bill programs have stalled despite Senate passage of a Farm Bill in June and House Committee passage of a Farm Bill in July. With the expiration of the Farm Bill, the Department of Agriculture will be unable to enroll new participants in several rural conservation programs - however existing recipients would continue to receive their allotments with passage of the CR.

Meanwhile, several forestry related provisions that were included in the House Committee bill will not see action. These include a five-year reauthorization of the stewardship authority; authorization for the Forest Service to hire back retirees to provide technical services for conservation-related programs and authorities on National Forest System lands; and expansion of the Good Neighbor Authority, which would allow the Forest Service to contract with states to do hazardous fuels reduction and other projects. Additionally, the House bill included an amendment by Representative Kristi Noem (R-SD) that would have allowed the Forest Service to categorically exclude (CE) from NEPA forest health treatments on identified “critical areas” of up to 10,000 acres. It also included a legislative provision clarifying that CE’s are not subject to appeal or protest following a federal court decision in California.

While Farm Bills in the past have not usually addressed key public forestland issues, the House version had some very important components needed for better management on our federal forests. Unfortunately, it does not appear that Congress will take action on a Farm Bill until next year. */Tom Partin*

## **2012 Fire Statistics**

Obviously the 2012 wildfire year has been a tough one, not only for the number of acres burned, but also on the cost of resources it has taken for fire suppression. As previously mentioned the Forest Service is well over their 10-year average wildfire spending limit and is now borrowing from other funds, which fortunately will be paid back under the CR.

It is important to note from the table below that the number of fires is down, but the acres burned are significantly higher. This is a factor of fuels buildup and the potential for catastrophic wildfires occurring across a larger part of the landscape. It is also worth questioning, why the Forest Service and BLM are always able to borrow money to put out fires after ignition, but funds and resources are woefully short for treating our forests and reducing the hazards before they burn. */ Tom Partin*

<b>Year-to-date statistics</b>		
2012 (1/1/12 - 9/20/12)	Fires: 47,053	Acres: 8,482,785
2011 (1/1/11 - 9/20/11)	Fires: 58,776	Acres: 7,664,941
2010 (1/1/10 - 9/20/10)	Fires: 47,569	Acres: 2,721,628
2009 (1/1/09 - 9/20/09)	Fires: 69,991	Acres: 5,555,377
2008 (1/1/08 - 9/20/08)	Fires: 67,816	Acres: 4,716,276
2007 (1/1/07 - 9/20/07)	Fires: 70,816	Acres: 8,072,405
2006 (1/1/06 - 9/20/06)	Fires: 82,599	Acres: 8,968,517
2005 (1/1/05 - 9/20/05)	Fires: 51,551	Acres: 8,117,108
2004 (1/1/03 - 9/20/04)	Fires: 59,443	Acres: 7,705,975
2003 (1/1/03 - 9/20/03)	Fires: 48,410	Acres: 3,129,878
<b>10-year average</b>		
2003-2012	Fires: 60,723	Acres: 6,376,024

## **AFRC Protests BLM Sale**

AFRC is generally in the position of helping the BLM defend timber sales that are protested and litigated by environmental activists. It is very rare that AFRC protests a BLM timber sale and it is only done in extreme situations. One of these situations recently occurred on a Medford District sale covered under the [Friese Camp Forest Management Project](#). AFRC [protested](#) the project because the BLM chose an alternative under the EA for the project that is not consistent with the Northwest Forest Plan (NWFP) or the O&C Act.

The District has begun to implement the [forest restoration strategies](#) (commonly referred to as “ecological forestry principles”) developed by Drs. Jerry Franklin and Norm Johnson, without considering whether the application is in line with the NWFP, which is the currently adopted Resource Management Plan. In the Friese Camp Project EA, the District identified stands that are in need of regeneration and displayed an alternative that treated these stands in accordance with the NWFP. Instead of choosing that alternative, the District decided to thin these stands using the Franklin and Johnson restoration forestry principles. In this case, these treatments will not maximize the accomplishment of the purpose and need of the project, are not consistent with the NWFP, and will reduce the District’s ability to meet the requirements of the O&C Act.

Taking their cue from environmental activists, the media tried to portray the protest as being out of step with local industry or supporting big companies over small. AFRC does not make the decision to protest a BLM project lightly. In this case, our members decided it was important to call the agency out for ignoring the Northwest Forest Plan. /Ross Mickey

## **Lawsuits Coming Fast and Furious**

More than 10 recent timber sales under the Northwest Forest Plan are now subject to lawsuits primarily challenging thinning sales, most of which are in Matrix, the area of the NWFP where timber production is emphasized.

The sales include Cottonwood, Rio Rumble, Rio Power, Rio Sag, MC Thin, Sampson Cove, Deer North, North Fork Overlook, and Airstrip on the Medford and Salem BLM Districts, and the Pegasus, Ten, and Golden sales as part of the Goose Project on the Willamette National Forest. Oregon Wild, Cascadia Wildlands, and Klamath-Siskiyou Wildlands Center are the main plaintiffs.

The lawsuits are being filed despite the fact that these plaintiffs have argued the controversy over timber harvest could be resolved if the agencies just emphasized thinning of younger stands. The most recent suits filed in the last month against the MC Thin, Deer North, and Airstrip sales raise numerous claims. They include the environmental assessments failed to consider the threat of the barred owl to the spotted owl; the agency should not try to eliminate mistletoe from the forest because it is impossible to do so and mistletoe is beneficial to forest wildlife; the agency needs to consider surveys for red tree voles conducted by plaintiffs and need to eliminate large portions of harvest units to create red tree vole buffers; and that BLM is violating the Federal Land Policy and Management Act because it has not determined whether special status species are present in the sale area prior to harvest.

Purchasers have intervened in many of the sales and the Cottonwood is the first sale to be subject to a court ruling after a motion for preliminary injunction hearing occurs on October 3. */Scott Horngren*

## **Big Game Foraging Habitat**

The Middlefork Ranger District of the Willamette National Forest has been a leader in innovative strategies to meet ecological goals. The 2006 [Jim's Creek Savanna Restoration Project](#) is a prime example, where the District restored oak savanna habitat by removing the invasive conifers. Jim's Creek was a small demonstration project which was to serve as the model for restoring thousands of acres of oak savanna, which provides prime habitat for big game species. Expanding this highly successful strategy never occurred because of the Survey and Manage requirements that pertain to the red tree vole, which is present almost everywhere on the District.

One of the needs the District was trying to address in the project is that of big game foraging habitat. Because the Forest Service is unwilling to implement the NWFP and regenerate older stands within the Matrix (which comprises less than 10% of the land base), big game habitat is virtually non-existent on federal lands in the area.

The Middlefork has once again come up with an innovative solution, but this time it totally missed the mark. The District recently released an analysis of 37,195 acres in the southern portion which they call the [Pioneer Gulch](#) project area. About 13% of the project area (4,695 acres) is comprised of stands that are in the stem exclusion stage. Of these stands, about 940 acres have trees of suitable size, density, and species that are ready to be commercially thinned now. The rest of the project area is comprised of stand initiation stage (about 11% or 4,136 acres), understory re-initiation stage (36% or 13,516 acres), old growth (34% or 12,689 acres), and special habitats, water, and non-forest (combined 6% or 2,159 acres). The proposed action would treat approximately 1,237 acres of 40–60 year old plantations with

commercial thinning (940 acres), fuelbreaks (133 acres), and big game forage habitat (164 acres). All of these acres are classified as Matrix under the NWFP.

To create big game foraging habitat, the District is proposing to cut down the conifer regeneration in 164 acres of previously regenerated stands that mainly incorporated the shelterwood system. Even though their analysis concludes that if left alone these stands would “continue to grow and fill in,” the District proposes to convert these plantations into brush fields. AFRC opposes this approach to meeting the need for big game foraging habitat, especially on land designated as Matrix.

Within the Pioneer Gulch project area, 500 acres have been identified as mature stands that should be treated by either thinning or group selection. This is where the District should be looking to meet the need for big game foraging habitat. Instead, all treatment in these mature stands were eliminated “due to the recent Survey and Manage Settlement Agreement (2011) requiring surveys for red tree voles, the costs associated with red tree vole habitat retention, and the high probability of finding tree vole nests in these stands.” This is a perfect example of how the need to fulfill Survey and Manage requirements leads to bad forest management and wildlife propagation decisions. */Ross Mickey*

### **DNR Timber Program Report**

Below is DNR’s FY13 timber sale program through August.

Sales offered	13
Sales sold	9
Sales no-bid	4
Volume offered	53.3 mmbf
Volume sold	37.5
Volume no-bid	15.8
% Volume sold	71%
Sold sale value	\$10.5 million
Price/MBF	\$279
Overbid ratio	26%
Average bidders per sale	2.1

DNR expects to sell approximately 614 mmbf in FY13, of which 554 mmbf will come from the westside and 60 mmbf from the eastside. */Jacob Groves*

### **Sequestration Impacts**

Congress is facing a looming January 4, 2013 deadline that could trigger significant automatic spending cuts required by the 2011 debt limit deal and the failure of the “Super Committee” to come to an agreement on an alternative budget deal. The “sequestration” spending cuts will impact both defense and non-defense programs. Discretionary non-defense programs like the Forest Service would be hit with an 8.2% reduction, which equates to a \$431 million cut and would reduce individual programs in the following way:

Wildland Fire Management:	\$172 million
National Forest System:	\$129 million
Capital Improvement and Maintenance:	\$34 million
Land Acquisition:	\$4 million

Assuming these cuts are apportioned across the programs evenly, this would take \$18.8 million from the timber management account and could impact the total sale program by over 200 mmbf. Obviously these cuts would be deep, and could take years to rebound from due to loss in personnel and drops in short-term harvest levels as well as future project planning. / *Tom Partin*

### **Cal Joyner Promoted**

On August 31, Forest Service Chief Tom Tidwell announced three leadership changes. Cal Joyner was appointed as the new Associate Deputy Chief for the National Forest System, Thelma Strong will be the new Chief Financial Officer, and Mary Beth Lepore will be the Director, Human Resources Management. All three positions are located in the Washington D.C. office.

AFRC and our members worked closely with Cal when he worked in Region 6 as the Director of Natural Resources, and later as the Deputy Regional Forester. Cal is currently the Director of Forest Management in the Washington D.C. Office. AFRC congratulates all three dedicated Forest Service employees in their promotions, and we look forward to working with them in the future to improve the health and management on our public forests. / *Tom Partin*