

September 29, 2015

Congressional Updates

This month the U.S. House of Representatives and Senate returned from a five week August recess. While many in the west had hoped the Congress would immediately take up fire borrowing and forest management reforms in response to this year's devastating and expensive wildfire season, the Congress has focused instead on avoiding a federal government shutdown at the end of the fiscal year (September 30).

The reasons for the budget impasse are many. However, two reasons stand out. House and Senate Democrats have insisted that Fiscal Year 2016 (FY16) funding levels override budget sequestration for both military and *non-military* discretionary spending. Republicans generally only support lifting the budget caps for military spending. A contingent of Democrats have vowed to vote against any funding bill that does not lift the caps for non-military accounts.

On the other side, following this summer's controversial undercover videos, a contingent of House Republicans have insisted no federal funding should be available for Planned Parenthood and vowed to vote against any funding bill – including a continuing resolution (CR) to keep the federal government operating at existing funding levels – that includes money for the organization.

With some Democrats insisting on higher funding levels and some Republicans insisting on defunding Planned Parenthood, it is unclear whether or not there are enough votes in the House and Senate to pass a CR, thus making a federal government shutdown possible. Speaker Boehner's announcement that he will resign on October 30 makes the budget and legislative agenda for the rest of the 114th Congress even less clear. Expect the federal funding debate to continue into the fall/winter as the Congress considers a long-term funding bill. */Travis Joseph*

Forest Management Reforms

The federal funding debate has major implications for fire borrowing and forest management reforms. A CR and/or omnibus will be the likely vehicle to pass fire borrowing and forest management legislative reforms. Several fire borrowing proposals have been discussed by the House, Senate, and Obama Administration to alleviate the need for the Forest Service and Bureau of Land Management (BLM) to "borrow" from non-fire related budget accounts to pay for wildfire suppression costs. These non-fire accounts are eventually replenished by the Congress, but the budgeting practice can be extremely disruptive to agency priorities, such as hazardous fuels reduction, salvage, K-V projects, and even timber sales (see below article).

Fixing fire borrowing is a bipartisan effort. Most proposals being discussed involve capping wildfire suppression funding at a 10-year funding average and using emergency funds to pay for additional costs. If fire borrowing is included in a funding package, forest management reforms should also be included.

The House of Representatives passed H.R. 2647, the Resilient Federal Forest Act of 2015 in June by a bipartisan vote of 262-167. The bill includes both a fix for fire borrowing and forest management reforms – such as expanded categorical exclusions for restoration and fire projects – that could be implemented immediately by the Forest Service and BLM to reduce costs, make management more efficient, and treat more unhealthy, fire prone acres.

There is a growing concern that the Congress may tackle fire borrowing and forest management reforms separately. While key members of the House, including Natural Resources Committee Chairman Rob Bishop (R-UT), have pledged that the two issues must be coupled together, thus far the Senate has been focused solely on fire borrowing. Fixing fire borrowing first would likely reduce the political momentum to pass meaningful forest management reforms in the 114th Congress.

A coalition of more than 50 national associations and stakeholders, including AFRC, sent a letter to all U.S. Senators urging the Senate to take action on both wildfire funding and forest management reforms. On September 18, the National Association of Counties sent a similar letter to leaders of the Senate Agriculture Committee urging that they take up H.R. 2647. Oregon county commissioners are preparing to send a letter to the Oregon Congressional Delegation with a similar message. Washington county commissioners are also preparing to send a letter to the Washington Congressional Delegation, which includes Senator Cantwell, the Ranking Member of the Senate Committee on Energy and Natural Resources. /Tom Partin and Travis Joseph

Fire Borrowing and Related Impacts

On September 15, Agriculture Secretary Tom Vilsack announced the Forest Service will need an additional \$250 million to help fund fire suppression, which is on top of the \$450 million request made in August. The combined \$700 million is a record amount for fire borrowing and will have to be “borrowed” from other accounts within the Forest Service budget.

Below is a breakdown of the key forestry related funds where these funds are being borrowed from:

K-V Funding	\$197 million
Restoration of Improvements	\$161 million
Salvage Sale Fund	\$63 million
Brush Disposal	\$38 million
Hazardous Fuels	\$23 million
Timber Sale Pipeline Fund	<u>\$17 million</u>

Timber Management Related Total: **\$499 million**

With over 8.8 million acres burned this year by wildfires, the Forest Service can ill-afford to have needed management dollars taken from their budgets. Currently, the Forest Service treats approximately 250,000 acres per year by mechanical thinning to reduce fuels and overcrowded forests. When fire borrowing is activated and management budgets are reduced (this year by \$499 million) the Forest Service will never get in front of the massive problem of fire-prone and unhealthy forests. /Tom Partin

House Passes Tribal Bill

On September 16, the House of Representatives approved by voice vote H.R. 2791 the “Western Oregon Tribal Fairness Act” sponsored by Representative Peter DeFazio (D-OR). The legislation will strengthen tribal authority and expand the land rights of three federally recognized tribes in southwestern Oregon. The bill has three titles:

Title I—Cow Creek Umpqua Land Conveyance

- Requires that 17,519 acres of land be held in trust for, and be part of the reservation of, the Cow Creek Band of Umpqua Tribe of Indians.
- Federal law applies to the export of unprocessed logs harvested from this land. Gaming facilities on this land would be prohibited.
- Directs the Secretary of the Interior to reclassify public domain land in western Oregon as O&C lands in equal acreage as those lands designated for the Tribe to ensure the O&C acreage is not diminished.

Title II—Coquille Forest Fairness

- Amends the Coquille Restoration Act to remove the requirement that the Department of the Interior manage the Coquille Forest consistent with adjacent federal forests (including Northwest Forest Plan forests). Unlike any other tribe in the United States, the Coquille Tribe must function under a legal anomaly with regard to managing its forest.

Title III—Oregon Coastal Lands Act

- Requires that 14,408 acres of land be held in trust for, and be part of the reservation of, the confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.
- Federal law would apply to the export of unprocessed logs harvested from this land. Gaming facilities on this land would be prohibited.
- Directs the Secretary of the Interior to reclassify public domain land in western Oregon as O&C lands in equal acreage as those lands designated for the Tribe to ensure the O&C acreage is not diminished.

H.R. 2791 would result in more timber volume than is currently produced off the Coquille Forest and O&C lands administered by the BLM. The bill is pending before the Senate. */Tom Partin*

Action on DC Cases

On August 31, AFRC joined its members Swanson Group, Rough & Ready Lumber, Seneca Sawmill Company, Seneca Jones Timber Co., Freres Lumber Co., Hull-Oakes Lumber Co., Starfire Lumber Co., C & D Lumber Co., South Coast Lumber Co., Boise Cascade Wood Products, Douglas Timber Operators; and Rob Freres, Scott Keep and Bob Ragon as individuals, in filing [a new lawsuit](#) in federal District Court in Washington, D.C. The lawsuit is aimed at forcing the BLM to fulfill its commitment under the O&C Act to sell timber from the O&C lands in western Oregon.

The lawsuit covers all six BLM Oregon Districts. The new suit known as Swanson III, combines the elements of two earlier cases – Swanson I and Swanson II.

Swanson I, filed in 2010, was decided in AFRC's favor in 2013 when Judge Leon [ruled](#) that the BLM must sell at least 80% of its Allowable Sale Quantity (ASQ) on the Roseburg and Medford Districts every year. That case also overturned the Owl Estimation Methodology (OEM) used by both the BLM and Forest Service in determining the impact of timber sales on spotted owls. Last June, the D.C. Court of Appeals held that the industry plaintiffs did not have standing because there was insufficient ground to conclude that they were harmed by the shortfall in timber sales. Because there was no standing, the Appeals Court did not rule on the legal claims and simply vacated Judge Leon's decision.

Swanson II, filed in 2014 sought to extend the ruling in Swanson I to the Lakeview, Coos Bay, Salem, and Eugene BLM Districts.

In response to the Appeals Court decision vacating Swanson I, Judge Leon asked the parties to brief whether the industry had standing in several other cases including Swanson II and the case challenging the U.S. Fish and Wildlife Service's vast expansion of spotted owl critical habitat in 2012. After considering the briefing, Judge Leon dismissed the Swanson II and spotted owl critical habitat cases. Plaintiffs are assessing whether to appeal Judge Leon's dismissal decisions.

The Swanson III case raises many of the same issues as Swanson II and is supported by additional detailed standing declarations. It remains to be seen whether Judge Leon, who is also assigned to the Swanson III case, will permit the case to move forward.

Over the last 10 years, the BLM has failed to sell 624.7 million board feet of timber, nearly one-third of the two billion board feet promised in its Resource Management Plans (RMPs). Under the O&C Act, the lands must be managed for "permanent timber production" on a sustained yield basis. AFRC hopes to have the issue that the O&C Act and RMPs require BLM to sell the sustained yield level adopted in the RMPs ultimately decided in Swanson III as it was favorably decided in Swanson I.

AFRC continues to work towards the sustainable management of all of Oregon's federal forests. When other means fail, the Association and its members must resort to litigation. */Ann Forest Burns*

Future of Klamath in Limbo

Last year over 200,000 acres burned on the Klamath National Forest. The forest has tried to complete an Environmental Impact Statement (EIS) for the Westside Salvage Project which will treat roadside hazard trees within the burned area and salvage less than 4% of the total burned acreage. The Forest Service has spent considerable dollars and staff time developing the EIS and has been prepared to sign the EIS and advertise the salvage sales since August 1.

However, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Water Board have not completed the necessary work to move the project forward. The two federal agencies have not submitted Biological Opinions on the project and the State Water Board has not issued the required waiver. None of the agencies have given the Forest Service indication when it will receive these documents. In the meantime, the EIS sits waiting for signature and the dead trees continue to lose merchantability. All three agencies have expressed concern about significant impacts that may occur with the implementation of the project. Anyone who has been around the acres proposed for treatment would logically conclude the significant impacts – namely, devastating fire - have already occurred.

The delay raises serious questions about the future of green forests, suitable owl and fish habitat, and healthy watersheds on the Klamath National Forest. With such a large amount of mortality within the fire area it is only a matter of time until this area reburns. In fact, some of the forest was burned for a second time in last year's fire! When the reburn occurs the intensity is often much greater. Even worse, when the next fire burns it will not only reburn the area, but will also likely eliminate additional acres of suitable owl habitat, create worse watershed conditions than are currently present, and cause severe sedimentation within fisheries habitat. Unfortunately, none of these areas will be replanted if they are not restored by this project. /Rick Svilich

FWS to Look at More Listings

On September 18, the U.S. Fish and Wildlife Service (the Service) published the petition findings for the possible listing of nine species in California and Nevada. The findings can be found [here](#). The Service determined petitions for the following species contained substantial information and warranted more in-depth review to list the California spotted owl, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, Panamint alligator lizard, Shasta salamander, southern rubber boa, and tricolored blackbird. However, the Service found the petition to delist the Stephens' kangaroo rat did *not* provide substantial information and did not warrant delisting at this time.

To ensure the status reviews of these species are comprehensive, the Service is requesting information from state and federal natural resource agencies and all interested parties about their biology and life history. Based on each species' status review, the Service will make one of three possible determinations:

- 1) Listing in not warranted;
- 2) Listing as threatened or endangered is warranted. In this case, the Service will publish a proposal to list, solicit independent scientific peer review of the proposal, seek input from the public, and consider the input before a final decision about listing the species is made;
- 3) Listing is warranted but precluded by other, higher priority activities. This means the species will be added to the federal list of candidate species, and the proposal to list will be deferred while the Service works on listing proposals for other species that are at a greater risk.

AFRC encourages anyone with knowledge or expertise about these species to submit comments to the Service in order to help facilitate an accurate listing determination. /Tom Partin

New Mt. Baker Snoqualmie Supervisor

On September 4, Jaime Kingsbury was announced as the new Forest Supervisor for the Mt. Baker Snoqualmie National Forest. Kingsbury will replace outgoing Forest Supervisor Jennifer Eberlien, who was promoted to a Deputy Regional Forester position in Region 5.

Kingsbury has been with the Forest Service for over 25 years and is currently the Deputy Forest Supervisor on the Coronado National Forest in Tucson, Arizona. In addition to leadership roles at the District Ranger, Deputy Supervisor and Acting Supervisor levels, she has also worked as a timber forester, fire management officer, visitor center manager, and recreation staff officer. Kingsbury holds a Bachelor of Science degree in Forest Management from Colorado State University.

AFRC welcomes Kingsbury to the Pacific Northwest. We look forward to working with her when she arrives in mid-October. AFRC would also like to thank Acting Forest Supervisor Steve Kuennen and Acting Deputy Forest Supervisor Gar Abbas for their leadership during this transition period. We look forward to continue working with them as they move back into their regular assigned duties. */Matt Comisky*

New Colville Supervisor

Rodney Smoldon has been selected as the Forest Supervisor for the Colville National Forest. Smoldon has been serving as the Acting Forest Supervisor since Laura Jo West transferred to the Coconino National Forest in Arizona.

Smoldon has an extensive history with the Colville, previously serving as the District Ranger for the Three Rivers District. He will bring his knowledge and expertise of the Forest's current needs and continue the positive growth of the Colville.

AFRC looks forward to working with Rodney and the Colville team as the Forest progresses through its Forest Plan Revision process, restoration work, and recovery from the challenging fire season. */Matt Comisky*

New AFRC Staff Attorney Announced

I am pleased to announce that Lawson Fite has accepted the position of AFRC staff attorney and will join our team on October 5.

Lawson brings experience as a trial attorney managing complex environmental litigation, as a senior litigation associate at Markowitz Herbold, P.C. in Portland. Before coming to Portland, Lawson was an honors program trial attorney for the Wildlife and Marine Resources Section of the US Department of Justice, Environmental and Natural Resources Division in Washington, D.C. where he handled Endangered Species Act civil litigation.

Lawson's duties will include representing the Association and its members in strategic litigation aimed at supporting active management of public timberlands, advising AFRC on emerging legal issues, and assisting AFRC in responding to legislative initiatives.

Lawson earned a Bachelor's degree in Environmental Science/Public Policy and a law degree – both from Harvard University.

Lawson grew up in Vancouver, Washington. A fifth-generation Northwesterner, he boasts a great-grandfather who owned and operated a lumber mill. He is familiar with our issues and anxious to use his legal experience to help our industry. */Travis Joseph*

Ward Armstrong

Ward Armstrong, a long-time forest industry lobbyist and public policy specialist passed away September 5 in Salem, Oregon.

Ward was born October 13, 1932 in Eugene, Oregon. He graduated from Newberg High School in 1950 and attended Willamette University for two years, where he met his wife and partner for life, Donna

Marie Leonard. Ward earned a forestry degree from Oregon State University and a law degree from Lewis and Clark Law School in 1966.

Ward began work as director of the Association of Oregon Counties in Salem in 1963. In 1966 he was hired as the Oregon Director of Governmental Affairs for Weyerhaeuser and eventually moved to their headquarters in Federal Way, Washington to manage the corporation's governmental affairs program.

In 1986, Ward became the Executive Director of the Oregon Forest Industries Council until his "retirement" in 1994, after which he accepted a position managing the Executive Seminar Program with Portland State University's Mark O. Hatfield School of Government. He managed that program for 10 years.

Ward is survived by his wife, children, four grandchildren and two brothers. A memorial service has been held. / *Tom Partin*