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Final Appropriations

On October 29, the Senate followed the House in passing the FY10 Interior Appropriations Bill, which also included a Continuing Resolution through December 18 for several other appropriations bills not yet passed by Congress. The Interior Appropriations Bill funds federal land management, and fish and wildlife programs, many of which received spending boosts over FY09 levels.

Overall the bill funds the Forest Service at \$2.78 billion for non-fire budget line items, which is an increase of \$166.4 million over last year's budget and an increase of \$74 million over the Administration's request. A good portion of the new funds will go towards Legacy Road and Trail Remediation to protect resources from the impacts of damaged forest roads. The forest products line item received nearly \$8 million above the budget request and the hazardous fuels line item was increased by \$25 million. Of the funding enacted for hazardous fuels reductions activities, \$10 million was directed to large-scale forest restoration projects authorized under the Forest Landscape Restoration Act. The bill also includes \$1.855 billion for wildfire suppression, a \$526 million increase.

The Bureau of Land Management was given a \$1.1 billion budget, an increase of \$100 million over FY09. The O&C Lands budget was set at \$111.587 million, which represents an increase of \$1.8 million over 2009 levels and is equal to the Administration's request.

Flame Act Enacted

Following much discussion on how to best to fund the ever-increasing cost of wildfire suppression, House and Senate conferees incorporated into the appropriations bill the Federal Land Assistance Management and Enhancement Act (FLAME) that was passed by the House earlier this year. The FLAME Act establishes two accounts, one for the Department of Interior for \$61 million and one for the Forest Service for \$413 million. The FLAME accounts are intended to address the impacts of increasing wildfire suppression costs and their effect on other agency programs by creating a reserve fund for the largest and most expensive wildfires. The intent is that regular wildfire suppression funding combined with the FLAME accounts should fully fund anticipated wildland fire suppression requirements in advance of the fire season and prevent future borrowing from non-fire programs. The accounts are subject to normal appropriations for funding from year-to-year, and the funding levels for 2010 are not intended to represent a final method for calculating FLAME fund budgets in the future.

Congress has stated however that the use of the 10 year rolling average cost of fighting wildfires has failed to keep pace with fire suppression costs and a more predictive formula is needed to eliminate the need for transfers from other line items. / *Tom Partin*

Framework Remedy Decision

On November 4, Eastern District Court of California Judge Morrison England issued his long awaited order telling the Forest Service what it must do to continue to operate under the 2004 Sierra Nevada Framework (*Sierra Forest Legacy v. Rey*). The order follows an oral ruling on October 1 which denied a request by environmental plaintiffs and the California Attorney General for a permanent injunction which would have returned the 11 affected national forests to the unworkable 2001 Framework. In balancing whether the 2001 or 2004 Framework should be used, the Judge found “. . .the 2004 Framework offers better long-term forest health, increased protection to species in the long run by improved forest management, reduced fire risk to people and communities, and economic benefits to stagnating forest industries in the form of increased treatment facilities. As the Forest Service correctly points out, such activities not only create jobs but also sustain the infrastructure needed to properly manage forest resources; infrastructure which may be lost if treatment options are further constricted.”

Both Judge England and the Ninth Circuit Court of Appeals had previously found National Environmental Policy Act (NEPA) defects in the 2004 Framework. Because it is a programmatic document, the Judge found the appropriate remedy is to require the preparation of a Supplemental Environmental Impact Statement (SEIS) to include a proper range of alternatives and consistent analysis. At the project level, detailed consideration of project alternatives, including a non-commercial funding alternative for all new fuels reduction projects should be completed. The SEIS is to be completed by May 1, 2010.

The court noted an attempt by the plaintiffs to re-raise arguments already rejected in earlier proceedings and to discredit “thorough, reasonable expert conclusions reached by the Forest Service following considerable effort and analysis.” Characterizing this as a “battle of the experts,” Judge England cited the Mission Brush decision (*Lands Council v. McNair*) and refused to substitute his own judgment for that of the agency. Further appeals in this case are expected. / *Ann Forest Burns*

Equal Access to Justice Act Abuse

In a brief filed on October 30, attorneys representing defendant-intervenor Silver Creek Timber Company asked the Ninth Circuit Court of Appeals not to pay the exorbitant attorneys fees demanded by EarthJustice under the Equal Access to Justice Act (EAJA) for its work in defense of the Clinton Roadless Rule. EarthJustice is seeking \$189,412 in attorney fees for filing a single answering brief and oral argument in what Silver Creek’s attorneys characterize as “a garden variety” case. Although the EAJA was designed to protect the ability of ordinary citizens to seek redress for government misconduct, evidence filed by Silver Creek shows that EarthJustice is no ordinary citizen. It has \$35,922,744 in net assets, including nearly \$1.2 million invested in an offshore limited partnership and \$26 million in corporate stock. The attorney fee demand seeks between \$500 and \$600 per hour for EarthJustice's in-house attorneys, nearly three times the statutory rate allowed under the Act and in far excess of the prevailing rate for private attorneys doing this work.

The issue of abuse of the EAJA by well-heeled environmental organizations using taxpayer dollars to fund lawsuits against the government was the subject of a November 3 letter from the Western Congressional Caucus to U.S. Attorney Eric Holder. Twenty-three Representatives and Senators expressed concern that “organizations with a narrowly focused political agenda regarding the management of public lands in the west are abusing the Congressional intent of the EAJA.” The letter stated that since 1995, there has been a lack of Congressional oversight of EAJA expenditures and called on the Department of Justice to develop a central, publicly searchable database of organizations receiving funds and the amount paid out by the government. A copy of the letter is available at <http://robbishop.house.gov/WesternCaucus/News/?postid=152444>.

Recent studies by Wyoming attorney Karen Budd-Falen shows that Forest Service Regions 1, 5 and 6 paid out over \$1 million in EAJA funds between 2003 and 2005. Budd-Falen found that the EarthJustice Legal Foundation and Western Environmental Law Center are seeking attorneys fees and costs totaling \$479,242.05 for their work on the recently concluded Northern California District Court case against the Forest Service planning rules. The case resulted in the agency’s withdrawal of the 2008 rules, involved no trial work and was not appealed to the Ninth Circuit. The study is available at <http://www.westernlegacyalliance.org/resources/>.

AFRC shares the concerns of the members of the Western Caucus and the Western Legacy Alliance. We have suggested that Congress remove this incentive to litigation that has gridlocked management of our nation’s natural resources. Others have suggested reimbursements be limited to the hourly rate paid to public defenders, thus placing the defense of natural resource values on the same footing with the defense of human liberty. /*Ann Forest Burns*

FS and BLM Accomplishments

In FY09, Region 6 of the Forest Service met its timber sale target by selling and awarding 584.5 million board feet (mmbf) despite the current condition of the lumber market. Last year was equally impressive as they met 98 percent of their target by selling and awarding 628 mmbf. The 9 percent reduction in targets between FY08 and FY09 was due to an equivalent reduction in funding from the Washington Office. Region 6 also decreased its unit costs for timber sold from \$80/mbf in 2008 to \$76/mbf in 2009. Ten of the forests in the region were at 100 percent or greater in meeting their targets, and only four were below 90 percent.

AFRC continues to monitor the type of material some of the eastside forests are counting towards meeting their targets. Last year the selling of firewood, slash piles and other material unsuitable for lumber production counted upwards of 40 percent of their accomplishment. Because of the overall lack of sawlog material on the eastside from all sources, this trend must be reversed in order to maintain a viable industry with its associated contribution towards the rural economies of Washington and Oregon.

In FY09, the BLM only awarded 24 percent of its 246 mmbf target. They sold 74 percent of their target and offered 82 percent. The Medford District was only able to award 16 percent of their 48.4 mmbf target and sell 33 percent. The Roseburg District was only able to award 17 percent of their 45.3 mmbf target, but sold 52 percent. The major reason that these districts fell short of meeting their targets was that they were not able to get the US Fish & Wildlife Service

to complete spotted owl ESA mandated consultations on their sales even though the ESA requires it to be done within 90 days of submission.

Currently, the Forest Service and BLM use two different standards in determining their accomplishments. The BLM counts all volume offered for sale regardless as to whether it is sold and/or awarded. By using this standard it shows that they met 82 percent of their target. In order to maintain the industry infrastructure and jobs, AFRC believes the BLM should use the same accomplishment standards as the Forest Service, which is volume that is actually awarded. /Ross Mickey

DNR Update

DNR is approaching the halfway point for FY10 and is on track to sell its timber target. Through October, DNR offered 47 sales, of which 45 sold, totaling 249 mmbf. That timber will return \$48 million, and extrapolating into next June, FY10 sales should return \$140 million non-tax revenue for trust beneficiaries and DNR's land management funds.

DNR recently released their "State of the Trust Lands" report, which contains several important points.

- DNR's proprietary program has overspent. The agency's solution is to borrow from a companion fund to cover expenses through next year, which is not an unprecedented solution. The County Lands trusts borrowed several million dollars from the Constitutional trusts during the Great Depression. Interestingly, the debt was forgotten for several decades, and when discovered, the accrued interest totaled several hundred million dollars. The debt was extinguished through a "timber for dollars" trade.
- DNR's FY10 sales program will produce about 740 mmbf, part of which is FY09 no-bid sales. DNR plans to sell about 600 mmbf per year between FY11 and FY14, when the sustained harvest is scheduled to be recalculated.
- Log sort sales comprised 5 percent of DNR's total FY09 volume and will increase to 9½ percent of FY10's volume. Legislatively authorized annual sort sales volume is 20 percent.

The full report is available on DNR's website at <http://www.dnr.wa.gov> or from AFRC's Olympia Office. /Bob Dick

Mission Brush Saga Continues

The American Lands Council, the losing party in the July, 2008 *en banc* decision by the Ninth Circuit Court of Appeals that restored authority to federal land management agencies to rely on their own expertise in making land management decisions (*Lands Council v. McNair*), is appealing once again.

On November 18, the Council filed a Notice of Appeal of Idaho District Judge Lodge's September 30 decision on the underlying merits of the case. When the case was returned to him by the Ninth Circuit, Judge Lodge found the agency did not act arbitrarily and capriciously by relying on its own Timber Stand Management Record System and Forest Inventory and Analysis databases; was not in violation of the National Forest Management Act and had met the requirements of the National Environmental Policy Act by completing a Supplemental Final

Environmental Impact Statement. He concluded that the purpose of the project was “appropriate old growth management.” Hopefully, the Ninth Circuit will once again affirm Judge Lodge’s reasoning in favor of the agency charged with managing federal forests. /*Ann Forest Burns*

Forest Certification Dust-up

In September, a petition was filed with the Federal Trade Commission (FTC) against Sustainable Forestry Initiative, Inc. (SFI) by the Seattle-based Forest Law Center. The petition accuses SFI of deceptive and misleading advertising practices. The Forest Law Center also filed a complaint with the Internal Revenue Service alleging abuse of the corporation’s non-profit status. Both petitions are an effort to discredit the forest certification system in favor of competitor Forest Stewardship Council (FSC).

On October 20, a group of forest product companies, represented by the Washington D.C. office of Steptoe and Johnson filed a complaint with the FTC against the Forest Stewardship Council’s certification system, raising questions about the reliability of its labeling claims and suggesting that it may be guilty of anti-trust violations.

How this matter shakes out could substantially affect Washington State trust land beneficiaries. All of DNR’s forest lands are SFI certified. A portion are FSC certified. A blow to either system could have a substantial economic impact on DNR’s timber management program. / *Bob Dick*

Blanchard Mountain Oral Argument

On November 4, the Washington Court of Appeals heard oral argument in the Blanchard Mountain case (*Chuckanut Conservancy v. WA DNR*). The case revolves around the question of whether the agency should have prepared an Environmental Impact Statement under Washington’s State Environmental Policy Act before it instituted a set of management strategies designed to reduce timber harvest on trust lands in an area heavily used for recreation. The outcome could substantially impact state trust land management. Of concern is whether the court understands that there are a number of statutes, including the state Forest Practices Act and rules that limit the likelihood of adverse environmental impact from timber harvest. A decision is expected early next year. AFRC is an intervenor in the case in support of DNR. /*Ann Forest Burns*

Climate Hearing

On November 18, the Senate Energy and Natural Resources Subcommittee on Public Lands and Forests chaired by Senator Ron Wyden (D-OR) held a hearing on managing federal forests in response to climate change. The Committee heard from Dr. Kit Batten, Department of the Interior; Tom Tidwell, Chief of the Forest Service; Dr. Beverly Law, Oregon State University; Dr. Elaine Oneil, University of Washington; and Chris Wood, Trout Unlimited.

Carbon sequestration was the focus of much of the testimony. When questioned about what role federal forests should play in cap and trade, Chief Tidwell said that carbon is unlikely to be a primary driver in the agency’s future management decisions. Rather, the emphasis should be on management that increases diversity and resiliency to catastrophic events such as fire, insects and disease. In her remarks, Dr. Oneil noted the vast amounts of carbon that are released into the

atmosphere by wildfires, contrasting it with the amount of carbon healthy forests pull out of the atmosphere and the long-term storage potential of forest products, as well as their superior performance against other types of building materials which are energy-intensive to produce. Senator Wyden noted federal forest management is a source of green jobs and environmental benefits.

An archived webcast of the hearing is available at

<http://energy.senate.gov/public/index.cfm?FuseAction=Hearings.ByYear&DateDisplay=11/18/2009>. /*Ann Forest Burns*

Oregon Caves In Limbo

On November 17, the House Natural Resources Subcommittee on National Parks, Forests and Public Lands held a hearing to review several bills, including one offered by Representative Peter DeFazio (D-OR) that would enlarge the boundaries of the Oregon Caves National Monument. The bill would expand the monument to include more than 4,000 acres of the Rogue-Siskiyou National Forest, and would also transfer management of those acres from the Forest Service to the National Park Service.

However, both agencies have requested that the transfer of land be halted until a joint management plan can be developed for the surrounding forest lands. Lenise Lago, Region 6 Deputy Regional Forester, testified that the Forest Service has drafted a Memorandum of Understanding (MOU) that the Park Service is currently reviewing. The agencies believe the MOU could meet the management intent stated in the bill while keeping the land as part of the Forest Service. The expansion is an effort to set aside a buffer zone for Cave Creek which has its headwaters above the monument and provides drinking water for visitors. There has been concern about cattle grazing that currently takes place along Cave Creek on Forest Service land.

In July, the Senate Energy and Natural Resources Subcommittee on Public Lands and Forests held a hearing on companion legislation introduced by Senator Ron Wyden. During the Senate hearing, both agencies again asked for the legislation to be delayed while they worked on the MOU. Wyden has expressed frustration with the Administration's response and promised to move forward with the bill. / *Tom Partin*

Good Neighbor Authority

The "Good Neighbor Authority Program" was first established for Colorado in the 2001 Interior Appropriations Bill and later authorized for Utah. The program allows the Forest Service and BLM to contract with state foresters to reduce fuels and conduct other similar activities on federal lands. Colorado's authority was extended to 2013 in the FY10 Interior Appropriations Bill, but Utah's authority is set to expire next year.

However, the program has its supporters. Senators John Barrasso (R-WY), Tim Johnson (D-SD), Mark Udall (D-CO), Michael Bennet (D-CO), Jim Risch (R-ID), and Robert Bennett (R-UT) have co-sponsored The Good Neighbor Forestry Act, which allows the Secretaries of Agriculture and Interior to enter into cooperative agreements authorizing state foresters to provide certain forest, rangeland, and watershed restoration and protection services. The bill

would expand the authority to all states west of the 100th meridian and extends the authority until 2019.

On October 29, the Senate Energy and Natural Resources Public Lands and Forests Subcommittee held a hearing the bill. Witnesses expressed both support and reservations about the bill as currently drafted and all have agreed to work on revising it to address those concerns.
/Chuck Burley

West Fork Humptulips

AFRC recently appealed the West Fork Humptulips, a 1,900 acre thinning project on the Olympic National Forest. The restoration project could produce as much as 50 mmbf in an area that needs all the employment and timber volume it can get. AFRC appealed in an effort to convince the agency that its thinning prescription is overly conservative and will not achieve the desired future conditions set out in the project's purpose and need. Upon detailed discussions with the Olympic National Forest staff, AFRC determined that allowing the project to move ahead better serves the needs of the forest and its dependent industries and communities. Therefore, AFRC withdrew its appeal and plans to work with the forest on the early design of future projects. */Bob Dick*

Olympic NF Hosts Meetings

The Olympic National Forest recently hosted meetings in Forks, Port Angeles, Montesano and Quinault, Washington. Dean Millet, the new Forks District Ranger, outlined upcoming projects for the western Olympic Peninsula federal lands. He also listened to the concerns of local citizens on road abandonment, recreation curtailment, lack of big game habitat, and lack of timber harvest to create jobs and habitat.

Millet, a South Dakota native, is most recently from Pomeroy, Washington and appears to be a Forest Service representative who understands the rural living challenges on the Olympic Peninsula. */Bob Dick*

Wood Pellet Fuel Facility

Oregon Governor Ted Kulongoski recently announced a \$4.89 million economic recovery grant to Malheur Lumber Company to build a new wood pellet fuel facility in John Day. This stimulus funding will create 11 new jobs and retain 80 full-time jobs in the community. The American Recovery and Reinvestment Act grant came through the Forest Service and Business Oregon.

The grant will allow the purchase and installation of a drying system and two pellet-making machines. The product, compressed pine fuel pellets, will be marketed in conjunction with partner Bear Mountain Forest Product, to hospitals, schools and other commercial and government buildings in the region. In addition, they hope to increase future production by marketing to large industrial users and utility companies. */Chuck Burley*

FTPC Loses Bill Imbergamo

The National Federal Timber Purchasers Committee has maintained a presence in Washington, D.C for the last few years by financing a part-time position within AF&PA. Bill Imbergamo has staffed this since its inception and has done an outstanding job. Bill has just announced that he

has accepted a position on the Professional Staff of the Senate Committee on Agriculture, Nutrition, and Forestry. AFRC would like to thank Bill for all of his hard work and we look forward to working with him in the future. /*Ross Mickey*