
COUNCIL OF WESTERN STATE FORESTERS



LEGISLATIVE & POLICY UPDATE

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The *Council of Western State Foresters (CWSF) Legislative & Policy Update* provides information on issues of importance to the CWSF. This document is posted at <http://wflccenter.org/info-materials/issue-briefs/>. Please note that the items below highlight only a selection of the issues the CWSF is currently monitoring.

The CWSF Policy Director is a member of the National Association of State Foresters (NASF) Legislative Committee, comprised of the policy staff from the regional state forestry associations and the NASF. In addition, a State Forester liaison from each of the CWSF, Northeastern Area Association of State Foresters (NAASF), and the Southern Group of State Foresters (SGSF) are members of the Committee. The CWSF Policy Director acts as a lead on several national issues (wildfire and federal forest management) of priority to NASF that are also high priority for the CWSF.

Appropriations:

Fiscal Year (FY) 2016: Congress has a limited number of legislative days to negotiate and pass fiscal year (FY) 2016 spending bills before the current fiscal year concludes on September 30, 2015. While both House and Senate Appropriations Committees reported each of the 12 individual appropriations bills from their respective committees - the first time since 2009 - progress to advance individual appropriations bills has stalled. At this time a Continuing Resolution (CR) - known as a stopgap measure - will be necessary to begin FY 2016 and avert a federal government shutdown. The duration of a CR is unclear. A short-term stopgap measure has been identified as a possibility to provide more time for budget negotiations in hopes to coalesce around a year-long spending measure.

The House Interior, Environment, and Related Agencies FY 2016 bill (Interior bill) includes \$30.17 billion in funding. The bill would fund the USDA Forest Service (Forest Service) at \$5 billion. The rolling 10-year average for wildfire suppression operations would be fully funded; no additional budgeting mechanism for wildfire suppression funding is proposed. The bill fully funds Payments in Lieu of Taxes (PILT) at \$452 million, addresses forest biomass and includes provisions such as a one-year delay on any further Endangered Species Act (ESA) rulemaking by the U.S. Fish and Wildlife Service (USFWS) for the Greater Sage-grouse (sage-grouse), and prohibiting the U.S. Environmental Protection Agency (EPA) from implementing its finalized Clean Power Plan (CPP) and its Waters of the United States (WOTUS) final rule.

The Senate Interior, Environment, and Related Agencies FY 2016 bill includes \$30.01 billion in funding and provides \$1.05 billion in emergency spending for wildfires suppression needs. The bill would fund the Forest Service at \$5.1 billion. The additional emergency funding for wildfires is to be utilized if/once fire suppression funds (equivalent to the 10-year average) are exhausted. In addition, the bill offers a modification to the Wildfire Disaster Funding Act (W DFA) (See Wildfire section below for further details). Similar language and/or provisions to the House Interior bill are reflected in the Senate bill including the prohibition of an ESA rulemaking on the sage-grouse, inclusion of forest biomass language, and prohibiting EPA from implementing its finalized CPP and WOTUS rules.

Wildland Fire Suppression Funding:

Fiscal Year 2015 Wildfire Season: This year has seen a very active fire season with high severity wildfires, particularly in areas of the Western United States. To date, approximately 8.8 million acres have burned, in contrast to the annual average of 6 million acres burned by this time.¹ A National Preparedness Level 5 was reached for the majority of August creating a strain on the resources needed to meet fire suppression needs.

In late August, the Forest Service projected it would not have sufficient funds to cover the costs of suppression activities for the balance of FY 2015. Immediately following, the Agency invoked its transfer authority that involved two transfer increments, the first for \$250 million and the next for \$200 million, to total \$450 million. As part of the first increment in late August, Forest Service State & Private Forestry programs funds totaling \$30 million were transferred. In mid September, the Forest Service communicated to Congress that it would need to transfer an additional \$250 million to cover suppression costs. In total, the Forest Service has had to “borrow” \$700 million from non-fire programs to pay for 2015 fire season suppression needs.

The Wildfire Disaster Funding Act (W DFA): The companion bills in the House and the Senate (H.R. 2647 and S. 235 respectively) remain a high priority for the CWSF and NASF. The House bill has garnered 132 cosponsors and the Senate has 17 cosponsors, both with bipartisan support. The Partner Caucus on Fire Suppression Funding Solutions continues efforts to advance this legislation; over 220 organizations from across the natural resources sector support these bills. At this time, the ability to progress stand-alone legislation in both chambers remains limited.

FY 2016 Interior Appropriations: As noted above, the Senate FY 2016 Interior bill includes a modification to the W DFA. The Interior bill proposes to fully funding the rolling 10-year average for fire suppression operations in the Forest Service and Department of the Interior (DOI) discretionary appropriations before making eligible access through the disaster cap adjustment for additional suppression needs. This deviates from the W DFA that would fund 70 percent of the 10-year average (the costs associated with 98 percent of

¹ National Interagency Fire Center, National Fire Information, September 16, 2015.
<https://www.nifc.gov/fireInfo/nfn.htm>.

wildfires) in the Forest Service's and DOI's discretionary appropriations and shifts the remaining 30 percent (the top 1-2 percent of wildfires that are the most expensive) to be financed through the disaster cap adjustment. The inclusion of the modified WDFR in the Interior bill signals key senators' support of identifying a solution to federal wildfire suppression funding.

The Resilient Federal Forests Act (H.R. 2647): A forest management bill sponsored by Representative Westerman (R-AR) includes Title 9 "Major Disaster for Wildfire on Federal Land." The bill would fully fund the rolling 10-year average for fire suppression operations in annual discretionary appropriations for the Forest Service and DOI. Once discretionary funds for fire suppression are exhausted, a presidential declaration would authorize FEMA to issue funding from its Disaster Relief Fund (DRF) to the Forest Service and DOI for suppression purposes. Inclusion and passage of the legislation out of the House with the fire funding solution signals House leadership's recognition of the current wildfire problem and the support for a solution. More information on the bill can be found in the forest management section below.

The Wildfire Management Act of 2015: Ranking Member of the Senate Energy and Natural Resources Committee, Senator Maria Cantwell (D-WA), released a white paper in June 2015 titled "Wildfire Management Act of 2015." The white paper previewed a number of concepts that the Senator is interested in including a bill; expected to be released this fall. Further, during a Senate Energy and Natural Resources Committee wildfire management field hearing in Seattle Ranking Member Cantwell laid out several broad components to her bill including:

- Bolstering community preparedness, prevention and resilience;
- Updating emergency response capabilities so communities can best communicate; and
- Taking action to reduce hazardous fuels as a means of managing risk.²

The full whitepaper can be found here:

http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=0ab5f328-f73a-49da-b1b4-814d31b215bd.

Before the August recess, 11 Western Senators led by Senate Budget Committee Chairman, Mike Enzi (R-WY) made a pledge to work across party lines to find a fire budgeting solution that, in turn, ends the need for "fire borrowing" in the future. Senators who made the pledge include: Senator Enzi, Senator Murkowski (R-AK), Senator Crapo (R-ID), Senator McCain (R-AZ), Senator Flake (R-AZ), Senator Barrasso (R-WY), Senator Daines (R-MT), Senator Wyden (D-OR), Senator Merkley (D-OR), Senator Cantwell (D-WA), and Senator Tester (D-MT). The senators' pledge can be found here:

<http://www.budget.senate.gov/republican/public/index.cfm/2015/8/senators-pledge-to-work-together-on-wildfire-funding>.

² Senate Energy and Natural Resources Committee, "Cantwell and Barrasso Call for New Tools and Strategies for Fighting Fires," August 27, 2015. <http://www.energy.senate.gov/public/index.cfm/democratic-news?ID=733945a9-f119-4a4c-9768-fb8e9f6bfc22>.

Forest Management:

Resilient Federal Forests Act of 2015 (H.R. 2647): Representative Bruce Westerman (R-AR) introduced H.R. 2647 earlier this summer. The bill passed the House in July with 19 Democrats supporting the legislation. It has been referred to the Senate Committee on Agriculture, Nutrition, and Forestry.

Among other items, the Resilient Federal Forests Act seeks to increase and expedite forest management activities consistent with forest plans on National Forest System (NFS), Bureau of Land Management (BLM), and on tribal lands. The bill expedites analyses for Environmental Assessments (EA) and Environmental Impact Statements (EIS) for forest management activities developed through a collaborative process (as defined by the Healthy Forest Restoration Act of 2003), by a resource advisory committee (as determined by the Secure Rural Schools and Community Self-Determination Act of 2000), or in a Community Wildfire Protection Plan. In addition, Title I expands the ability to utilize Categorical Exclusions (CE) up to 5,000 acres for critical response actions, to expedite salvage operations, to meet forest plan goals for early successional forests, and to improve, restore and reduce the risk of wildfire. A CE up to 15,000 acres may be applied to critical response projects that are developed through the collaborative processes stated above. This bill includes a bond requirement for plaintiffs challenging projects developed through collaborative processes and restricts Equal Access to Justice Act payments. As indicated in the wildfire funding section above, Title 9 “Major Disaster for Wildfire on Federal Land,” offers a contrasting proposal to fund wildfire suppression operations for the Forest Service and DOI.

National Forest Ecosystem Improvement Act of 2015 (S. 1691): Introduced by Senator Barrasso (R-WY) in late June, S. 1691 contains some similarities to the Senator’s previous National Forest Jobs and Management Act. The National Forest Ecosystem Improvement Act was referred to the Senate Energy and Natural Resources Committee and was heard by the Committee in July.

The bill requires the Forest Service to complete ecosystem restoration projects in accordance with forest plans to accomplish one or more of the objectives outlined in sec. 103. Beginning FY 2017, and each year following, restoration treatments using mechanical methods would be completed on 1 million acres of NFS lands and another 1 million acres of NFS lands would be treated using prescribed fire. An EA would be completed for each ecosystem restoration project and include consideration of two alternatives (proposed action and no-action alternative). The use of arbitration for eligible projects as an alternative dispute resolution to judicial review would be available. There are several similarities between the S. 1691 and H.R. 2647 including bonding requirements for plaintiffs challenging an ecosystem restoration project and the expansion of CE’s in Title II for certain critical response actions, salvage operations following catastrophic events, and to meet forest plan goals for early successional forests.

The CWSF supports the broad federal forest reform principles outlined in the NASF 2013-4 Resolution (<http://www.stateforesters.org/sites/default/files/publication->

[documents/2013-4%20NASF%20Resolution%20Federal%20Forests.pdf](#)). In response to House and Senate Natural Resources Committee hearings on the forest management proposals indicated above, NASF submitted letters to committee leadership applauding the efforts to identify and directly address the barriers preventing the Forest Service from doing more to proactively manage the nation's forests. Those letters include:

- Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining Chairman Barrasso and Ranking Member Wyden found here: <http://www.stateforesters.org/sites/default/files/publication-documents/FINAL%20NASF%20SENR%20letter%20re%20S.1691.pdf>
- House Natural Resources Subcommittee on Federal Forests Chairman McClintock and Ranking Member Tsongas found here: <http://www.stateforesters.org/sites/default/files/publication-documents/Final%20NASF%20HR2647%20letter%20to%20House%20NR.pdf>

Finally, earlier this summer NASF submitted a letter to USDA Secretary Tom Vilsack supporting continued aggressive implementation of 2014 Farm Bill forest management authorities in addition to exploring new and better ways to accomplish more active federal forest management on the ground. The letter can be found here:

<http://www.stateforesters.org/sites/default/files/publication-documents/Final%20NASF%20letter%20to%20Sec.%20Vilsack%20re%20federal%20forest%20management%206.8.15.pdf>.

Good Neighbor Authority: The Forest Service released the final Good Neighbor Authority (GNA) agreement templates in late June 2015 following the approval of the templates by the Office of Management and Budget (OMB). States and Forest Service units may begin implementing the GNA authorities (2014 Farm Bill and 2014 Consolidated Appropriations Act). OMB review and approval was required as part of the Paperwork Reduction Act procedural step for developing and promulgating the new GNA agreement templates. The Forest Service hosted two webinars in early July to explain the final templates and provide assistance to states and Forest Service members interested in entering into GNA agreements. Details on the Forest Service's Good Neighbor Authorities and the final templates can be found here: <http://www.fs.fed.us/farmbill/gna.shtml>.

The CWSF strongly supports GNA as one of the tools available to the Forest Service to complete more active forest management. Throughout the Forest Service process of developing and finalizing the GNA templates, the CWSF and our sister state forestry associations contributed state foresters recommendations and input in effort to maximize the usefulness of this tool on the ground.

Waters of the United States:

The U.S. EPA and Army Corps of Engineers issued the final WOTUS rule in May 2015. The final rule was published in the federal register in late June and became effective on August

28, 2015. NASF previously commented on the draft rule in November 2014:
<http://www.stateforesters.org/sites/default/files/publication-documents/NASF%20Final%20WOTUS%20comments%2011.14.14.pdf>.

In the comments, NASF recognized that EPA and the Army Corps of Engineers proposed this new definition in response to direction from the Supreme Court of the United States and in hopes of providing more clarity to stakeholders. However, state foresters had concerns and uncertainties as to how the draft rule would impact forests and forestry practices. A number of those questions remain for the final rule.

The final rule faces legal challenges that may impact timing of implementation. There are conflicting opinions amongst states in support or in opposition to the rule. Recently, a U.S. District Court judge granted a preliminary injunction against the final WOTUS rule, temporarily blocking implementation in 13 states and leaving the status of the new rule in question in the remaining 37 states. In Congress, there have been a number of legislative proposals offered that would block implementation of the final rule. In addition to stand-alone legislation, both House and Senate FY 2016 Interior appropriations bills include language that would block the WOTUS rule. It is uncertain whether Congress will act to pass legislation to stop the final rule as the Administration has issued a veto threat on legislation that seeks to do so.

The final WOTUS Rule, Preamble and other supporting documents can be found here:
<http://www2.epa.gov/cleanwaterrule>.

Biomass and EPA Clean Power Plan:

EPA Clean Power Plan: The final EPA CPP was released in early August 2015. As written, the final rule will reduce carbon emissions from existing power plants by 32 percent – compared to 2005 levels – by 2030. The final rule sets individual state emissions reductions targets that will collectively meet the targeted carbon reduction nationwide from existing power plants. States are directed to develop a state implementation plan by no later than 2018 outlining compliance methods for planned reductions. States may also submit plans in cooperation with other states. Mandatory compliance of the final plans goes into effect in 2022. Information on the final CPP is found here:
<http://www2.epa.gov/cleanpowerplan/clean-power-plan-existing-power-plants>.

Not unlike the WOTUS rule, the CPP remains politically contentious. Varying levels of support and opposition exist in Congress, states and stakeholders. A number of states have requested that EPA stay the final rule. A number of legislation proposals in Congress seeking to block the final rule have been introduced and both the FY 2016 Interior appropriations bills contain provisions that would inhibit implementation of the CPP.

Biomass: The November 2014 release of EPA’s revised “Framework for Assessing Biogenic Carbon Dioxide for Stationary Sources” (Framework) signaled the next step in EPA’s work to address biogenic carbon emissions from stationary sources as part of its broader climate strategy. The accompanying memo from EPA Acting Assistant Administrator McCabe

discussed the Framework in the context of the CPP and the Prevention of Significant Deterioration program. Moreover, the memo indicated that the Framework would act as a resource for states and stakeholders on how the EPA will treat biogenic carbon emissions going forward. The revised Framework is undergoing additional review by the Science Advisory Board Biogenic Carbon Emissions Panel (SAB) this year.

The final CPP rule includes consideration for the use of some biomass-derived fuels and recognizes that biomass has the potential to offer a wide range of environmental benefits. The final rule references the revised Framework for consideration of the use of sustainable biomass in state plans, though it makes clear that SAB is further reviewing the framework and that the Agency intends to assess and monitor demands for biomass and its impacts on landscapes involved.

As mentioned in the FY 2016 Appropriations section above, both the House and Senate FY 2016 Interior bills include language directing the EPA to base biomass policies on the principle that forest biomass emissions do not increase overall carbon dioxide accumulations in the atmosphere so long as Forest Service Forest Inventory & Analysis (FIA) Program data shows forest carbon stocks are stable or increasing nationally. Over the summer, members of the House and the Senate sent similar bipartisan letters to EPA Administrator McCarthy, Department of Energy Secretary Moniz, and USDA Secretary Vilsack supporting biomass energy and urging that federal policies reflect the carbon neutrality of forest biomass. The Senate letter had 44 signatories and the House letter had 154 signatories.^{3,4}

The CWSF supports the growth of biomass industries to achieve land management objectives and sustain forest-based economies. We continue to work with partners to support biomass policy that captures the benefits of forest biomass as a renewable energy source. In addition, the CWSF continues to engage in the Forest Climate Working Group (FCWG) as the FCWG explores opportunities for forests within ongoing carbon and climate policy discussions.

³ Senate letter to Administrator McCarthy, Secretary Moniz, and Secretary Vilsack. June 30, 2015. http://www.collins.senate.gov/public/_cache/files/b91ae593-5004-4009-a3ba-48c972c7a3fc/Biomass%20Letter%20to%20EPA%20USDA%20DOE_6-30-15.pdf

⁴ House letter to Administrator McCarthy, Secretary Moniz, and Secretary Vilsack. July 31, 2015. <http://ribble.house.gov/sites/ribble.house.gov/files/House%20Letter%20on%20Carbon%20Neutrality%20of%20Forest%20Biomass.pdf>