

January 18, 2012

Interior Appropriations Bill Passed

On December 17, the Senate passed an Omnibus Appropriations bill that was approved earlier by the House of Representatives. Included in this package was the Interior Appropriations spending bill which funds the Forest Service and BLM. There was a considerable amount of good news in the bill both in budget numbers and policy language.

Forest Service Budget

Considering that most government agencies received significant reductions to their budgets, the Forest Service maintained a relatively flat budget. This indicates there is recognition by this Administration that more acres need to be treated on our national forests to achieve forest health, and treating those acres and the products they yield will create much needed jobs across the country. Key line items include:

- **Forest Products/National Forest Timber Management:** Funding for National Forest Timber Management is essentially flat at \$336 million, the FY11 level. The Forest Service is directed to improve the health and resilience of national forests and through these efforts work to achieve 3 billion board feet of timber sold.
- **Integrated Resource Restoration (IRR):** The bill funds up to \$44 million for Integrated Resource Restoration Pilot Projects in Regions 1, 3, and 4. The agency contends this new approach will increase efficiencies and help the Forest Service complete larger projects. The conference report directs that in the IRR pilots, the Forest Service “should also include traditional measures, such as timber targets and acres treated, while also including new measures such as a watershed condition framework.”
- **Hazardous Fuels:** The final bill provides \$316 million for Hazardous Fuels Reduction. While this is a slight reduction from FY11, it is far better than the earlier proposed Senate reduction of 50% for this program. Further, the report language directs the Forest Service to use hazardous fuels funding “on the highest priority projects in the highest priority area,” replacing previous direction that 75% of the funds be used in the Wildland Urban Interface.
- **Collaborative Forest Landscape Restoration Fund:** The budget fully funds this program at \$40 million. This will allow new projects to be added in FY12 with the intent of doing additional landscaped sized restoration projects.

BLM Budget

- **Level Funding:** The bill includes \$112 million for the O & C lands, which reflects a small increase. There is no directive report language on the O & C lands or public domain timber programs.
- **Hazardous Fuels:** Funds hazardous fuels at the FY11 enacted level, an increase of \$26.5 million above the President's request.

Policy Issues

The Omnibus Appropriations bill did not include an extension or funding for Secure Rural Schools payments to timber counties for FY12, despite the Administration's budget request that the payments be funded from within the Forest Service's appropriations.

The Senate currently has a stand-alone proposal to continue these payments for an additional five years. However, Natural Resources Committee Chairman Doc Hastings (R-WA) has offered a discussion draft that restores sustainable, revenue producing management to Forest Service lands. The issue will likely be taken up in late January or early February.

Other key issues addressed in the Omnibus bill include:

- **Silviculture/Forest Roads:** Prohibits the EPA Administrator from requiring permits for stormwater runoff from forest roads through FY12.
- **Forest Service Objection Process:** Requires the Forest Service to **develop and use** a pre-decisional objection process, similar to HFRA objections, rather than the current post-decisional appeal process for most projects. It is hoped that this will increase meaningful input from stakeholders, save the agency time and money, reduce litigation and help the agency make better decisions. The agency is also given the authority to immediately implement projects if an emergency is declared.
- **Hazardous Fuels Criteria:** Removes the arbitrary requirement that 75% of hazardous fuels funding be spent in the Wildland Urban Interface and instead directs the Department of Interior and Forest Service to allocate funding based on the highest priorities for reducing fire risk.
- **Forest Service Planning:** Reduces funding for forest management plans as they take years to complete, are often litigated, and rarely implemented. The new Planning Rule will likely come out in January, and based on the Draft Rule and information from the Forest Service, the Final Rule is unlikely to be helpful.
- **Equal Access to Justice Act:** Directs the Department of Interior, EPA, and the Forest Service to make publicly available detailed information on Equal Access to Justice (EAJA) attorney fees.
- **Wild Lands Prohibition:** Maintains the prohibition of funds on implementing the Secretary of Interior's Wild Lands Policy, which many contend is an effort to administratively implement pseudo Wilderness/Monument designations without Congressional approval.

While the Forest Service and BLM budgets have been approved, the Regions won't get their final allocations until the end of January and distributions to the forests most likely won't occur until mid-February. Regional timber allocations have been made, however, and targets appear to be up, although they are likely to fall short of the 3 billion board feet figure outlined in the final bill. /Tom Partin

Spotted Owl Critical Habitat Delayed

The US Fish & Wildlife Service (FWS) is proposing to once again change what they consider “critical habitat” for the northern spotted owl. Under a schedule proposed to the DC District Court by FWS, the Draft Revised Critical Habitat was to have been released on January 17. Last week, the FWS got the Court to extend the release date to February 28. This was done over the objections of the environmental intervenors who stated that “it is this sort of cavalier attitude toward deadlines that has engendered citizens’ distrust of the commitments of federal agencies.”

The delay in release of the draft has not changed the November 15 due date for adoption of the final rule. This, of course, substantially shortens the period for public review and comment on the draft, and makes it less likely that the agency will properly take comments into account.

This will be the third time the FWS has determined what land is “critical” for the conservation of the spotted owl since it was listed as a threatened species in 1990. One would think that “critical habitat” would remain fairly constant over time based on the assumption that it is identified based on the current condition of the habitat and its relative importance to the current spotted owl population. This, however, is not how critical habitat is defined by the FWS.

The FWS defines critical habitat based on whatever strategy is currently being employed to recover the species. This being the case, millions of acres that are now identified as critical habitat are not currently suitable habitat for the spotted owl and in many cases in areas that are not occupied by spotted owls.

This all stems from the original spotted owl conservation plan developed prior to the listing by the Interagency Scientific Committee (ISC) lead by Dr. Jack Ward Thomas. The ISC recommended a network of Habitat Conservation Areas (HCA’s) across Oregon, Washington and California that accommodated enough spotted owls and the habitat they need so they would persist into the future. In 1992, the FWS designated 6,887,000 acres within the ISC Habitat Conservation Areas network as critical habitat knowing that much of this land was not currently suitable, but could become so in the future.

In 1994, the Northwest Forest Plan Late Successional Reserve (LSR) system superseded the HCA network as the official recovery strategy. The FWS announced they would change the boundaries of the 1992 HCA based critical habitat to align with the new LSR boundaries, but never did. In May 2008, the FWS finalized the first official Recovery Plan for the spotted owl which updated the LSR boundaries based on data collected since the first network was developed 18 years earlier. This new network was called Managed Owl Conservation Areas (MOCA’s). Later that year, the FWS designated 5,312,300 acres inside of this MOCA network as critical habitat.

In July 2011, the FWS released a new Recovery Plan that abandoned the updated MOCA system and reinstated the 1992 LSR’s as the official network for recovery of the species. While one would expect that the new critical habitat designation due out in February would conform to this LSR network, all indications are that it will not. Instead, the agency seems to be relying on a new model developed to identify a network comprised of only currently suitable habitat. It would abandon the 20 year old strategy of relying on a network that will support a sufficient owl population and future habitat for the long term survival of the species. /*Ross Mickey*

Survey and Manage Settlement Appeal

In a January 13 filing, DR Johnson Lumber Company urged the Ninth Circuit Court of Appeals to invalidate the survey and manage backroom settlement agreement between the federal government and environmental plaintiffs approved by Western Washington District Court Judge Coughneour last July.

DR Johnson argued the settlement agreement is legally invalid because it changes the terms of the Northwest Forest Plan without following the forest plan amendment procedures of the National Forest Management Act, the Federal Land Policy and Management Act, and the National Environmental Policy Act. It requires greater survey effort for some species and highly restrictive canopy closure and tree retention limits before relief from certain survey and manage restrictions is allowed. DR Johnson also argued that applying survey and manage to O & C timberland violates the O & C Act. Finally, DR Johnson maintains that the district court erred in requiring that the agencies conduct full species review for all 400 species as a prerequisite for relieving the agencies from the survey and manage requirement. The district court ran afoul of the Ninth Circuit's *Mission Brush* ruling, which says courts cannot dictate the particular information or methods an agency must use to support its decisions. This is especially true when other data or means of analysis will support elimination of survey and manage. The *Mission Brush* ruling can be found at:

http://www.amforest.org/images/pdfs/Land_Council_v_McNair_Decision.pdf.

Briefing before the Ninth Circuit will continue over the next few months. A decision is likely to be issued this fall. /*Scott Horngren*

Congressional Redistricting and Retirements

Every decade each of the 50 states redraw Congressional districts based on census results. This process can prompt retirements, make incumbents more or less vulnerable to defeat, and launch new political careers. For example, drastic changes to California's congressional boundaries have led to several high-profile retirements among Republicans and could lead to a loss of up five GOP-held seats.

Congressman Jerry Lewis (R-Redlands), a senior member and former Chairman of the House Appropriations Committee, was first elected in 1980 has announced his retirement. Congressman Elton Gallegly (R-Simi Valley), a 12-term Congressman is retiring after he was drawn into the same district as another senior Republican. The political fate of Congressman David Dreier (R-San Dimas), a 15-term House member who chairs the Rules Committee, is uncertain due to major changes to his district. Meanwhile, 13-term Northern California Congressman Wally Herger (R-Chico), is also retiring. His district remains a safe Republican district and it appears that GOP state Senator Doug LaMalfa is the front runner to replace him.

Changes are also in store for Washington State's congressional maps due to the addition of a new 10th congressional seat due to population growth. A bi-partisan redistricting commission adopted a new map that largely favors current incumbents, but also creates a new swing district in northwest Washington. For Republicans, the new map affords Congresswoman Jaime Herrera Buetler (R-Camas) and Congressman Dave Reichert (R-Auburn) more friendly, GOP-leaning districts. The biggest winner is likely to be Olympia Democrat Denny Heck, who lost to Herrera Buetler in 2010, but is now well positioned to pick up the new Olympia-based 10th Congressional district. Finally, with 1st District Congressman Jay Inslee (D-Bainbridge Island) departing Congress to run for Governor, his open seat

will become a swing seat that runs from Redmond – home to Microsoft – all the way to the Canadian border.

Oregon narrowly missed receiving a new Congressional district in the census reapportionment. The new Oregon Congressional map is likely to most benefit Congressman Peter DeFazio (D-Springfield) by adding additional Democratic voters to his district. The 1st District, which is currently open due to the resignation of Democrat David Wu, is likely to become a bit more competitive for Republicans once the new maps take effect in November. In the meantime, Republican Rob Cornilles and Democrat Suzanne Bonamici are battling it out in advance of a January 31 special election to fill the remainder of Wu's term.

Elsewhere, Montana will see a marquee Senate race between Senator Jon Tester (D-Big Sandy) and Congressman Denny Rehberg (R-Billings). Rehberg's open House seat will likely set off another competitive election. Meanwhile, GOP-dominated Idaho is unlikely to see any changes to its Congressional delegation. /*Heath Heikkila*

Planning Rule Advisory Committee

On December 29, the Forest Service formally announced it will form a national committee to advise it on the implementation of the National Forest System Land Management Planning Rule (Planning Rule). The Final Rule is expected to be released before the end of January.

According to the December 29 Federal Register, <http://www.gpo.gov/fdsys/pkg/FR-2011-12-29/pdf/2011-33535.pdf>, the Committee will be asked to make recommendations on directives related to rule implementation, best management practices, ways to resolve ambiguities, monitoring and evaluation, ways to make collaboration with stakeholders effective, and integration of planning with landscape scale restoration activities. The notice lists categories of interest groups that the agency seeks to include on the Advisory Committee, including state and local elected officials, environmental organizations, watershed associations, dispersed recreation interests, timber industry, grazing, energy and mineral development, commercial and recreational hunting and fishing, and developed recreation.

The application deadline has been extended to February 21. Details on the nomination process are available at <http://www.fs.usda.gov/detail/planningrule/home/?cid=stelprdb5346267>.

AFRC is working with other multiple use groups impacted by the Planning Rule to assure that the agency has well-qualified nominees for the Committee. /*Ann Forest Burns*

Court Vacates Boiler MACT Stay

On January 9, Washington DC District Court Judge Paul L. Friedman ruled that EPA's May 18, 2011 issuance of a Delay Notice on implementation of rules for industrial boilers was "arbitrary and capricious." The effect of the decision is to require the industry to comply with emission standards that EPA itself states are consistent with the Clean Air Act. This ruling also reinstates the March 21, 2014, compliance date for the Boiler MACT Rule.

However, it is not at all clear that the current rules will remain in place. As noted in our December 9 Newsletter, EPA announced it is reconsidering the rules proposed last April. Those revisions are open

for comment until February 21. <http://www.gpo.gov/fdsys/pkg/FR-2011-12-23/pdf/2011-31644.pdf>;
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-23/pdf/2011-31667.pdf>.

EPA intends to announce its reconsidered proposed rules in April and issue final rules by the fall. The court is expected to rule in late fall and may make findings regarding the existing rules that both modify those rules and signal eventual modification of the EPA's reconsidered rules.

The Court's decision reinforces the need for prompt congressional passage of the EPA Regulatory Relief Act. The legislation will provide EPA with the time it needs to fully analyze and prepare a new rule. The situation is complicated by the fact that the EPA expects to complete its revision/reconsideration of the Boiler and Commercial and Industrial Incineration (CISWI) Rules by April 30. While an improvement on the original rules, EPA's reconsidered proposal is still of grave concern to wood and paper manufacturers. / *Tom Partin*

DNR Timber Program Report

Below is DNR's FY12 timber sale program through December.

Sales offered	63
Sales sold	56
Sales no-bid	7
Volume offered	245.5 mmbf
Volume sold	218.4
Volume no-bid	27.1
% Volume sold	89%
Sold sale value	\$73.5 million
Price/MBF	\$336
Overbid ratio	18%
Average bidders per sale	2.55

DNR expects to sell approximately 652 million board feet (mmbf) in FY12, of which approximately 578 mmbf will come from the westside and 74 mmbf from the eastside. DNR has made up their volume arrearage from the decade's early years and harvest should be at the sustained yield level through the rest of the harvest decade which ends in FY14. / *Jacob Groves*

Kootenai and Panhandle Forest Plans

On January 3, the Forest Service released the draft Forest Plans for the Kootenai and Panhandle National Forests. Public open houses at which Forest Service personnel will be available to answer questions about the forest planning process and how to submit comments are being held in a number of locations.

Those for the Panhandle Forest began January 10; the two remaining meetings will be held:

- January 19 - 5:00 – 7:00 p.m.
Priest Lake, Priest Lake Ranger District Office

- January 23 - 5:00 – 7:00 p.m.
Sandpoint, Sandpoint Ranger District Office

Meetings on the Kootenai Forest Plan will be held:

- January 24 - 4:00 – 7:00 p.m.
Libby –Ponderosa Room
- January 26 - 4:00 – 7:00 p.m.
Eureka – High School
- January 31 - 4:00 – 7:00 p.m.
Troy – Senior Center
- February 2 - 4:00 – 7:00 p.m.
Trout Creek – the Lakeside Motel Conference Room

The draft plans and environmental assessment documents are available online at www.fs.fed.us/kipz and can be requested by phone (208-765-7417) or by email (r1_kipz_revision@fs.fed.us). Comments will be accepted through April 1 and can be submitted at: <http://www.fs.usda.gov/main/kipz/comment>.

Efforts to revise the Forest Plans for these two forests have been ongoing since 2002 and were significantly affected by litigation challenging the Forest Planning Rule. The plans are now being completed under the 1982 procedures of the 2000 version of the Rule, as allowed by a 2009 Court order.
/Ann Forest Burns

NOAA to Interior?

As part of a government reform initiative, President Obama has proposed to merge six government agencies that primarily oversee business and trade into one agency. He also wants to move the National Oceanic and Atmospheric Administration (NOAA) from the Department of Commerce to the Department of Interior.

The President believes that Interior is a better fit for NOAA since Interior already oversees management on one-fifth of the nation’s land area including energy development, recreation, wildlife, and many activities in the marine environment. Currently NOAA manages marine mammal protection, the National Weather Service and other climate activities, coastal fisheries, and endangered marine species. In the Pacific Northwest, NOAA is a major player due to its authority over anadromous fish species such as steelhead and salmon, which spend part of their lives in both fresh water and salt water. Consequently, there is considerable overlap between NOAA and Interior.

The other six agencies to be combined include Commerce’s core business and trade functions, Small Business Administration, Office of the U.S. Trade Representative, Export-Import Bank, Overseas Private Investment Corporation, and U.S. Trade and Development Agency.

Congress has provided other Presidents in recent history the authority to streamline and consolidate government agencies, and now President Obama wants that ability for “reforms that result in more efficiency, better service and a leaner government.” / *Tom Partin*

FWS Considers Humboldt Marten

On January 12, the FWS announced that it is considering a petition to list the Humboldt marten as threatened or endangered and designate critical habitat under the Endangered Species Act.

According to the California Department of Fish and Game, the Humboldt marten is one of two races of American marten <http://www.dfg.ca.gov/wildlife/nongame/ssc/docs/mammal/species/44.pdf>. The subspecies was thought to be extinct in California until 1996 when a trail camera photographed one in the Six Rivers National Forest. Since then two other populations have been found in coastal mountains in Southern Oregon.

The agency encourages comments to be submitted by March 12. Details are available in the January 12 Federal Register notice <http://www.gpo.gov/fdsys/pkg/FR-2012-01-12/html/2012-479.htm>. / *Ann Forest Burns*

Black-backed Woodpecker Protection Sought

On December 15, the California Fish and Game Commission issued a public notice that it has accepted for consideration a petition to list the black-backed woodpecker as threatened or endangered under the state’s endangered species act. This marks the beginning of a 12 month review process by the California Department of Fish and Game which will recommend to the Commission whether the bird should be listed. Data and comments should be submitted by June 1. Details are available at <http://www.dfg.ca.gov/wildlife/nongame/publications/>.

The decision to accept the petition was controversial within the Commission, with one member favoring it because (in his opinion) the Forest Service refuses to stop logging burned stands in the Sierra Nevadas. Another member stated a belief that the bird may be rare, but is not endangered, since its population numbers are not declining. The Forest Service has presented information to the Commission questioning the need for listing.

The effort to have the species listed under state law is clearly related to litigation seeking to stop Forest Service restoration efforts around Lake Tahoe following the Angora Fire. Last July, the Eastern California District Court dismissed environmental organizations’ efforts to halt salvage logging in that area.

Given the ever increasing acreage that is being consumed by wildfire in California and other states within the bird’s historic range, it is difficult to argue that black-backed woodpecker habitat is being impacted by federal forest management. One only needs to look at fire records to see that from 2005 through 2009, California lost an average of 757,000 acres to wildfire. During that same time period, the Forest Service salvaged logged 32,639 acres or an average of 6,528 acres per year. Less than one percent of the average burned acres were actually salvage logged on public lands.

Hopefully, the Fish and Game Commission will decide not to list the black-backed woodpecker. Without forest thinning and fire salvage logging, the state's forests, watersheds, and communities are at extreme risk. / *Bill Wickman*

New DNR Asst. Division Manager

On January 3, DNR announced that Paul Bialkowsky has been chosen as its new Forest Resources & Conservation Assistant Division Manager for Product Sales. Paul takes over from Dave Gordon, who has been Acting Assistant Division Manager since Jon Tweedale moved to the Pacific Cascades Region last July. Dave now returns to his operational planning position as part of the Product Sales team.

Paul is new to DNR and to state government. He has a long family history with the timber industry, as Manager of Log Marketing and Sales for Crown Pacific, L.P. before his most recent position as an associate at Kidder Mathews Real Estate. He also held timber and log acquisition and procurement positions with Simpson Timber Company and Conifer Pacific. He is a Logging Engineering graduate of Oregon State University.

AFRC looks forward to working with Paul in his new role. /*Jacob Groves*

Dahlman New OFS Executive

Scott Dahlman has been named the new Executive Director of Oregonians for Food and Shelter (OFS). Terry Witt, OFS executive for the last 25 years, will transition to a part time position as a technical advisor to OFS, effective February 1.

A graduate of Western Oregon University in Monmouth, Scott was a public policy analyst and national affairs director for the Washington Farm Bureau before joining OFS.

AFRC welcomes Scott and looks forward to our continued collaboration with OFS. /*Ann Forest Burns*