Appropriations

On March 10, the Senate approved by a vote of 62-35, a $410 billion FY09 omnibus spending bill to fund government operations covered by the nine appropriations bills that did not pass Congress before the start of FY09.

This omnibus package was identical to the version passed by the House of Representatives on February 25. The National Forest System will receive $1.51 billion, which represents a $40.2 million increase over FY08 enacted levels and $160.3 million over President Bush’s FY09 request.

The Forest Service will receive $322.5 million for timber management, a $10 million increase over FY08 enacted levels and $328.1 million for hazardous fuels reduction efforts, which is $18 million over FY08 enacted levels. The bill includes continued funding for the Northwest Forest Plan while targeting the $10 million increase to forests located outside of the Northwest Forest Plan area with additional unfunded capability.

The BLM will receive $890.2 million, which is a $36.3 million increase over FY08 enacted levels and $25.4 million over President Bush’s FY09 request. The BLM’s O&C Lands will receive $109.9 million, a $1.4 million increase over FY08 enacted levels.

Also included are several provisions of interest to mills in California. For example, hazardous fuels funding levels for the Quincy Library Group (QLG) activities will be no less than $26.2 million. However, following the announced closure of Sierra Pacific Industries Quincy small log mill it is uncertain how the Forest Service will implement the forest management activities authorized by the QLG. Meanwhile, the bill includes language and significant grant funding to maintain the remaining forest products infrastructure in the southern Sierra’s. These initiatives were championed by Senate Interior Appropriations Chairman Dianne Feinstein (D-CA).

On February 26, the Obama Administration released preliminary details related to the FY10 budget. The budget proposal provides a $50 million increase (plus inflation) to the Forest Service for managing the National Forest System. It also fully funds the 10-year average fire suppression costs and establishes a $282 million discretionary funding reserve to provide funding for firefighting when the $1.1 billion appropriated amount is exhausted. The budget also includes $119 million in Land and Water Conservation Funding or land acquisition, which represents a $34 million increase. Final line item budget numbers for Forest Service programs are not expected out until April. /Tom Partin

Omnibus Lands Bill Update

The public lands, water, and natural resource omnibus bill, which is a collection of more than 160 bills is again being considered by the Senate. On March 16, the Senate voted 73-21 to approve a cloture
motion allowing the bill to proceed. This action follows the latest setback when on March 12 the House of Representatives fell two votes shy of passing the bill under suspension of the rules, a maneuver that shields legislation from amendments or a motion to recommit but requires a two-thirds majority for passage.

Senate leaders now plan to strip the contents of another bill that would protect Revolutionary War battlefields, and amend it with the omnibus lands bill language to gain passage in the House, as well as the Senate. By amending a bill previously passed by the House, the bill would not be subject to amendments when it returns to the House. Senate leaders have also agreed to allow a few amendments to be offered to satisfy Senator Tom Coburn (R-OK) before moving to final passage.

The omnibus would designate more than two million acres of wilderness in nine states, establish three new national park units, a new national monument, three new national conservation areas, more than 1,000 miles of national wild and scenic rivers, and four new national trails. It would also enlarge the boundaries of more than a dozen existing national park units and establish 10 new national heritage areas.

The package designates several wilderness areas in Oregon, including Mt. Hood, Copper Salmon and Spring Basin. The Obama Administration had targeted the passage of this bill for the first week or two of this Congressional session, but so far the bill has been on a rocky road. /Tom Partin

**Recent Ninth Circuit Rulings**

The good effects of last summer’s *en banc* decision in *Lands Council v. McNair* (Mission Brush) were evident in two separate rulings that were handed down on February 23 by the Ninth Circuit Court of Appeals.

In *Humane Society of the United States v. Guiterrez*, this case involved a challenge to a decision by the National Marine Fisheries Service to authorize the states of Idaho, Oregon and Washington to kill California sea lions which prey on threatened or endangered salmon and steelhead at the Bonneville Dam. The court determined that a stay of the agency’s decision pending appeal was not justified because the appellants had not shown a likelihood of winning the case on its merits. It based its conclusion on the narrow role a court plays in reviewing an agency’s actions under the language of the *McNair* decision: “We have held that review...is narrow, and [we do] not substitute [our] judgment for that of the agency.” The court also relied on the U.S. Supreme Court’s recent ruling in *Winter v. Natural Resources Defense Council* (the Navy Sonar Case, see *AFRC News* December 15, 2008), saying, “A party seeking a stay must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of relief, that the balance of equities tip in his favor, and that a stay is in the public interest.”

In an unpublished decision, *Ventana Wilderness Alliance v. Bradford*, the Ninth Circuit upheld a decision by Northern District of California Judge Phyllis Hamilton in favor of the Monterey District Ranger, Los Padres National Forest Supervisor and the Forest Service. The Alliance had challenged a decision by the agency to allow livestock grazing in a wilderness area. Relying on *McNair*, the court rejected a NEPA based challenge, saying that an agency may extrapolate data and is not required to do on-site testing in National Forest Management Act cases. It also noted, quoting *McNair*, that “the court’s task is not to engage in assessments of ‘the quality and detail of on-site analysis and make fine-
grained judgments of its worth’, but only to ensure the Forest Service has not relied on improper factors, entirely failed to consider a problem, or offered an explanation counter to the evidence before it.” /Ann Forest Burns

Ruling in Summers Case
On March 3, the U.S. Supreme Court issued a long awaited decision in Summers v. Earth Island Institute. The case revolved around a challenge by environmental groups against the Forest Service’s use of categorical exclusions (CEs) to streamline compliance with NEPA.

In a 5-4 decision authored by Justice Antonin Scalia, the court ruled the plaintiffs did not have standing to bring an action because they failed to show at least one of its members would be directly injured by a proposed action. It rejected the idea that the “statistical probability” some member of a very large organization (in this case, the Sierra Club) might stumble across an agency action on some small area and suffer harm from not having had the opportunity to comment on the project.

The original lawsuit challenged the Burnt Ridge Project on the Sequoia National Forest in late 2003. The Forest Service had approved 238 acres of post-fire salvage using CE authorities and Forest Service manual provisions. After the trial court issued an injunction, the Forest Service withdrew the project and agreed not to continue without going through conventional NEPA procedures. Earth Island continued to pursue its challenge of the CE rules aside from the specifics of any on the ground project. The Ninth Circuit upheld the trial court’s ruling invalidating two of the nine challenged manual provisions and the nationwide injunction.

Because it was able to overturn the trial court’s decision based solely on the plaintiffs’ lack of standing, the court did not reach the questions of whether the CE rules and a nationwide injunction were valid. However, the court’s position that an actual on the ground injury must be likely to occur to an identified member or members of the group makes it less likely that a blanket injunction would be considered valid in the future.

AFRC joined six other organizations in filing an amicus brief in support of the Forest Service. The Western Resources Legal Center filed an amicus brief on behalf of Douglas Timber Operators, Montana Logging Association and Montana Wood Products.

Associations Urge Use of CE Rule
Following the Supreme Court’s decision, AFRC, the American Forest and Paper Association, California Forestry Association, Croplife America, Minnesota Forest Industries and National Homebuilders Association sent a joint letter to Forest Service Chief Gail Kimbell, urging the Forest Service to reinstitute the use of categorical exclusions. Those rules provide a limited exemption from administrative appeals procedures for projects determined to have minor, predictable effects on the environment—in this case small timber salvage operations and hazardous fuels reduction projects limited by certain parameters, including size of the project and whether it might impact sensitive resources. The letter points out the use of such rules are especially important because of the need to quickly implement stimulus projects. /Ann Forest Burns
DNR Timber Sales Program

Washington DNR is two-thirds through their fiscal year. The year-to-date numbers are as follows:

- Sales offered: 69
- Sales sold: 57
- Volume offered: 322 million board feet
- Volume sold: 263 mmbf
- Volume "no bid": 58 mmbf (18 percent)
- Total revenue: $57 million
- Average Price/mbf: $216
- Overbid ratio: 24 percent

Hidden in the above numbers are recent sales activity that reflects the severe declines in the lumber market. February numbers are:

- Sales offered: 9
- Sales sold: 6
- Volume offered: 51 mmbf
- Volume sold: 35 mmbf
- Volume “no bid”: 17 mmbf (33 percent)
- Average Price/mbf: $165
- Overbid ratio: 10 percent

In other trust land activities, the Board of Natural Resources approved the purchase of 80 acres of private land within Blanchard Mountain, which is southwest of Bellingham and subject to continued interest by a variety of recreationists. An agreement was struck that protected a core of lands while replacement lands were purchased by the department. An intervening lawsuit by environmentalists has stopped the planning process but DNR continues to proceed with key land purchases. /Bob Dick

FLAME Act

On March 10, a bi-partisan group of the Senate and House of Representatives re-introduced the Federal Land Assistance, Management and Enhancement Act (FLAME). The bill addresses the funding shortages for fighting wildfires and the steep declines in land management funding. The Act provides a separate budget for fighting large wildfires, so that adequate funding is available thus avoiding the need to shift dollars from the agencies’ resource management budgets. Monies will be appropriated annually. The federal land management agencies would continue to fund initial attack and other anticipated and predicted wildland fire suppression activities within their annual budgets.

The House approved a similar bill last session, but the Senate failed to pass it. /Chuck Burley

New Biomass Definition

Senator Ron Wyden (D-OR) has introduced legislation to modify the definition of renewable biomass that was as part of the Renewable Fuel Standard (RFS) passed by Congress last session. The bill would allow biomass from federal lands to qualify as a source of renewable fuel for cars and trucks. The
current definition excludes any biomass taken from federal lands and non-industrial private lands as being considered renewable under the RFS.

Biomass could be used from Forest Service and BLM lands however, it exempts wilderness areas, wilderness study areas, roadless areas, national monuments, BLM areas managed under the National Landscape Conservation System, unroaded areas greater than 5,000 acres, and within old growth stands.

While the bill is a big step forward in the ability to utilize biomass from federal lands, several provisions raise the need for additional clarification or revisions as the bill moves forward.

The term “old growth stands” is not defined and by using the term “stands” it is unclear if it would bar the utilization of hazardous fuels from the stands that contain old growth trees. The prohibition on unroaded areas larger than 5,000 acres could be difficult to implement and hamper needed forest health projects. The bill states that biomass is only to be harvested in “environmentally sustainable quantities” and leaves it up federal land managers to make this determination.

AFRC will be working closely with Senator Wyden’s office for better clarification of these points as the legislation moves forward. While this definition only applies to the renewable fuel standard, it is likely that similar definitions will be considered for electricity produced through biomass cogeneration. /Tom Partin

Gray Wolves Delisting Affirmed
In January, the U.S. Fish and Wildlife Service (FWS) announced that they were going to delist the gray wolf in much of its range. This decision was put on hold by the Obama Administration for review. On March 6, Secretary of Interior Ken Salazar affirmed the decision calling it “…one of the great success stories of the Endangered Species Act.” Because of the conservation efforts made since the listing, Salazar stated, “Today, we have more than 5,500 wolves, including more than 1,600 in the Rockies.”

While this is good news, one has to wonder how many of these decisions are based on sound science as opposed to politics. For example, the estimated population size of the marbled murrelet is 750,000 to 1,000,000 and the FWS has not proposed delisting and at last count there were over 10,000 northern spotted owls. The gray wolf was delisted in the northern Rocky Mountain States and western Great Lakes, but will remain a protected species in Wyoming. /Ross Mickey

FS Reduces Minimum Bid Rate
In recognition of the state of the economy and current lumber prices, the Forest Service has cut its minimum bid rate by 50 percent. Minimum rates establish the lowest rate for which the Forest Service may sell timber and are now set at no less than $5 per hundred cubic feet (CCF) for the high value species, $3 per CCF for the medium value species, and $1 per CCF for the low value species. The minimum rate for nonconvertible products is $0.01 per unit of measure. The BLM has not taken similar measures which has led to many sales going no-bid in recent weeks. /Ross Mickey

Stimulus Funding Central Oregon
Forest Service Chief Gail Kimbell announced that three central Oregon counties will receive funding as part of the $10 million economic stimulus funds to create jobs clearing brush and trees to prevent disastrous wildfires. Crook County will receive $970,000 to treat 3,000 acres on the Ochoco National
Forest. Deschutes County will receive $2 million to treat 6,300 acres on the Deschutes National Forest. Jefferson County will receive $500,000 to treat over 1,000 acres on the Crooked River National Grassland of the Ochoco National Forest and $1.5 million to treat 4,000 acres on the Sisters Ranger District of the Deschutes National Forest.

Crook, Deschutes and Jefferson counties are three of the six counties in Oregon that have seen the highest increase in unemployment. The other three counties to receive funding due to high unemployment are Douglas, Josephine and Curry. /Chuck Burley

Washington Legislative Report
Several issues before the Washington State legislature are of interest to the forest products industry.

Senate Bill 5983 would have doubled up review procedures on DNR proprietary actions, including timber sales. The basis of the bill was a lawsuit by environmentalists, in which they waited until the last moment to file the suit but filed it under the wrong statute. That part of the suit never made it past the trial court but environmentalists were not to be deterred. They sought a legislative solution which would have overlain two complex review procedures on top of each other. The bill died in committee.

A joint Senate/House committee held a work session on a ban on chip exports from state trust lands during which a variety of forest industry representatives testified, most of whom said the unintended consequences would be worse than the problem it solved.

Climate change and cap/trade legislation continue to dominate environmental legislation. Numerous proposals and counterproposals are being debated and negotiated and it is uncertain what, if anything will emerge. /Bob Dick

KS Wild Spreads Lies about WOPR
It is not unusual for environmental organizations to stretch the truth about issues, but the current effort by KS Wild is “over-the-top.” In a recent e-mail campaign, KS Wild is asking recipients to send letters to Senator Ron Wyden and Secretary of Interior Ken Salazar asking them to “scrap the WOPR and work towards granting permanent protection for the amazing old-growth forests covering western Oregon's BLM lands.” Their poster child and example of how terrible the WOPR is centers on the proposed Edson Timber Sale on the Coos Bay BLM District. KS Wild states this “...is a 1400 acre clear cut above salmon-bearing streams in Oregon's Coast Range...If allowed to move forward, this destructive Bush-era plan will repeat this form of industrial logging across Oregon's remaining natural heritage.” This statement is not just a stretching of the truth but an out-and-out lie. Here are the facts about the proposed Edson project.

There are about 60 units within the proposed project. The average unit size is 23 acres and no unit is over 80 acres. All of the stands are less than 160 years old to conform to that restriction in the WOPR and most are much younger so no “old growth” would be harvested. Most of the regeneration harvest is in stands that regenerated after fires and have received no treatments. Many of these stands are overly dense, stagnated and will not respond to thinning and never provide old growth type habitat. Removing the trees and starting a new forest is the best ecological option for these areas.
The proposed sales are located in two watersheds totaling 185,208 acres. The BLM owns 6,461 acres within the two watersheds or 3.5 percent of the total area. In summary, the BLM is proposing to regenerate 0.8 percent of the watersheds, spread out over 60 units with an average size of 23 acres and will harvest no old growth. This is a far cry from the allegation that the BLM is proposing a 1,400 acre clear-cut of old growth forest. /Ross Mickey

Western Climate Initiative
For those of you that track cap-and-trade closely, you may recall the Western Climate Initiative (WCI) released its final recommendations for a regional cap-and-trade program last fall. Oregon Governor Ted Kulongoski introduced a bill this legislative session to adopt a cap-and-trade system for Oregon that is modeled after the WCI recommendations. However, the bill ran into opposition even among members of the Governor’s party, in large part due to concerns over the economy.

Oregon is not the only state to have concerns. The Utah state legislature passed a resolution in its House of Representatives urging the state to withdraw from the WCI. The measure says Utah’s natural resources are an economic advantage providing the seventh lowest electric rates in the nation. Furthermore, the state’s coal-fired power plants provide half of the nation’s electricity needs and 90 percent of the state’s needs. The resolution also finds that the costs of programs such as cap-and-trade are born by consumers and that no country or state has enhanced economic opportunities for its citizens through such policies. /Chuck Burley

2009 Oregon Innovation Plan
The Oregon Innovation Council recently released its 2009 Innovation Plan. A new addition to the plan is a proposed forestry investment initiative. The proposal, submitted by the industry, emphasizes research, technology, and efficiency efforts and calls for a $2.6 million investment. The three areas of focus are:

- Developing silviculture technologies to increase the productivity of the industry and raise the value of forest products as a result,
- Improving transportation efficiency to reduce the cost of moving materials, and
- Transferring technology—the commercialization of new forest products.

For more information go to http://www.oregoninc.org/index.shtml and http://owic.oregonstate.edu/
/Chuck Burley

Shafroth Selected
On March 10, Interior Secretary Ken Salazar announced that Will Shafroth is the new Deputy Assistant Secretary for Fish, Wildlife and Parks.

Shafroth was founder and executive director of the Colorado Conservation Trust from 2000 to 2008. The group was instrumental in helping to preserve 30,000 acres of wildlife habitat and open space in Colorado. From 1994 to 2000 Shafroth served as the first executive director of the Great Outdoors Colorado Trust Fund, which is a conservation program that Secretary Salazar helped create when he was Executive Director of the Colorado Department of Natural Resources. In his role Shafroth will work with Assistant Secretary for Fish Wildlife and Parks designee Tom Strickland who is also from Colorado. / Tom Partin
AFRC in DC
Last week, several AFRC members and staff traveled to Washington, DC to deliver a message of the urgent need to preserve forest products infrastructure and the opportunities to improve both forest health and rural economies through appropriate use of federal funding and existing authorities. Those attending were Chairman Paul Beck, Herbert Lumber; Rick Forgaard, Interfor Pacific; Rob Freres, Freres Lumber; Tom Insko, Boise Cascade; Dave Ivanoff, Hampton; Cameron Krauss, Swanson Group; Max Merlich, Columbia Helicopters; President Tom Partin and Vice President Ann Forest Burns.

Meetings were held with Representatives Peter DeFazio (D-OR), Greg Walden (R-OR) Norm Dicks (D-WA), Doc Hastings (R-WA), Cathy McMorris Rodgers (R-WA), and Kurt Schrader (D-OR); the staffs of Senators Maria Cantwell (D-WA), Dianne Feinstein (D-CA), Jeff Merkley (D-OR), Patty Murray (D-WA), Ron Wyden (D-OR) and Representative Brian Baird (D-WA). The main focus was to provide concrete examples of the current dire economic situation facing the forest products industry and the need for sufficient FY10 appropriations for agency implementation of solid forest management programs throughout the western regions.

The group also highlighted opportunities that the American Rehabilitation and Reinvestment Act created by providing stimulus dollars to aide in job retention in rural communities, while increasing the effectiveness of fire hazard reduction through mechanical thinning. This presentation was made to representatives of the White House Office of Management and Budget, the Senate Interior Appropriations Subcommittee, Senate Natural Resources Committee, House Committee on Natural Resources Subcommittee on National Parks, Forests and Public Lands, BLM and Department of Agriculture.

Although many policy level positions in the Departments of Agriculture and Interior are not yet filled, the trip was important given the many challenges our industry currently faces. We appreciate the participation of those who were able to make the journey. /Tom Partin

AFRC 2009 Annual Meeting
AFRC’s 2009 Annual Meeting is being held on April 15-17. This year’s program features speakers who will give presentations on the latest resource and legal issues facing the forest products industry. To register or for more information please contact the Portland office.

April 15
12:00 noon Golf Tournament
6:00 pm Welcoming Reception

April 16
8:00 am AFRC Membership Meeting
Steve Mealey, Mealey Timber Company
9:00 am Congressman Norm Dicks
10:00 am State Forest Management Panel
Marvin Brown, Oregon Department of Forestry
Lenny Young, Washington Department of Natural Resources
David Groeschl, Idaho Department of Lands

12:00 noon  Luncheon
            Congressman Kurt Schrader

1:30 pm    Josh Kardon, Senator Ron Wyden

2:30 pm    Federal Forest Leadership Panel
            Gail Kimbell, Forest Service Chief
            Ed Shepard, OR/WA State BLM Director

3:30 pm    Public Forest Managers’ Breakouts
            Jon Tweedale, Washington Department of Natural Resources
            Tom Tidwell, Regional Forester - Regions 1 & 4
            Randy Moore, Regional Forester - Region 5
            Mary Wagner, Regional Forester - Region 6

6:00 pm    Social Hour and Banquet

Friday, April 17

9:00 am    Congressman Greg Walden

10:00 am   Litigation’s Role in Forest Management
            Rod Fleck, City of Forks
            Scott Horngren, Haglund, Kelley, Horngren, Jones & Wilder
            Mark Rutzick, Mark C. Rutzick, Inc.