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WESTERN FORESTRY LEADERSHIP COALITION LEGISLATIVE & POLICY UPDATE

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Caitlyn Pollihan, Executive Director: 303-445-4363: C.Pollihan@colostate.edu

This *Western Forestry Leadership Coalition (WFLC) Forestry Legislative & Policy Update* provides information on issues of importance to the WFLC and our partner groups. This document is posted at www.wflcweb.org/infomaterials/issue_briefs.php. For more information on these forestry issues and legislation, please contact Caitlyn Pollihan. Please note that these ten items are not an exhaustive list of issues the WFLC is currently tracking.

1. Fire Suppression Funding Fix – FLAME Act – Enacted 10/30/09

This issue has been the number-one focus and priority for State Foresters. On October 29, 2009, the House and the Senate passed the Interior, Environment, and Related Agencies Appropriations Act, 2010, which included Title V – The Federal Land Assistance and Management Enhancement (FLAME) Act of 2009. President Obama signed this bill into law on October 30, 2009. Many Congressional champions and organizations interested in solving the ongoing, and increasing, problems with wildfire suppression emergency costs have been pushing for the FLAME Act to be enacted.

The FLAME Act of 2009 establishes two FLAME Funds in the Department of Interior, Environment, and Related Agencies Appropriations Act of 2010; one for the Department of the Interior funded at \$61 million and one for the Forest Service funded at \$413 million. The Funds are intended to address the impacts of increasing wildfire suppression costs and their effects on other agency programs by reducing the need for agencies to transfer funds to wildfire suppression from other agency programs, which have historically led to considerable disruptions to important program functions.

FLAME Funds: The funds are subject to normal appropriations for funding from year-to-year. The funding levels for FY2010 are not intended to represent a final method for calculating FLAME Fund budget requests in future years and the agencies are expected to develop new methods for formulating fire suppression funding estimates for Wildland Fire Management (WFM) and the FLAME Funds.

The funds can only be used after a secretarial declaration that a fire is large or complex or if annual suppression accounts are depleted. The conferees are expected to develop a streamlined declaration process to ensure funds are made available in the most efficient manner.

FLAME Reporting: The agencies must report to Congress on a quarterly basis on the use of FLAME funds. This accountability is intended to help Congress and the Agencies avoid last minute emergency actions. The conference report language encourages well-thought-out suppression planning from year to year through a new approach to budgeting for both the FLAME funds and the WFM appropriation. The report language of the bill included many positive statements relative to the FLAME Act and the need for a new approach to wildland fire suppression budgeting. The report noted that Congress expects the Administration to move away from using a 10-year rolling average in estimating future fire costs and to use a more predictive formula that will eliminate the need for transfers. Congress further expects the administration to keep their commitment to appropriately and fully estimate suppression costs, but not at the expense of other agency programs. It was also noted that future 'borrowing' scenarios should be prevented.

FLAME Next Steps: Now that the FLAME Act has been approved, we have moved into the implementation and funding stage. The Partner Caucus on Fire Suppression Spending Solutions, created to advocate for the need to

solve this important problem, will now be focusing on the agencies' implementation of the funds and advocating that Congress fully fund the FLAME Funds for the USFS and DOI.

For more detailed information on the FLAME Act, please see the CWSF issue brief posted at http://www.wflcweb.org/infomaterials/issue_briefs.php.

2. FY10 Appropriations- Enacted 10/30/09

The FY10 Interior Appropriations bill was signed into law by the President on October 30, 2009. The National Association of State Foresters (NASF) and the Council of Western State Foresters (CWSF) were pleased with the conference report for the 2010 Department of the Interior and Related Agencies Appropriations. The conference agreement includes a 16% increase for State and Private Forestry Programs, along with a 23% increase for S&PF programs funded through the Wildland Fire Management appropriation. These increases can be attributed to the collaborative efforts of state foresters and partners to promote programs and projects that benefit private forest lands throughout the nation.

Highlights of the Fiscal Year 2010 appropriations bill include:

- \$71 million for Forest Inventory and Analysis
- \$110 million for State Fire Assistance (Base Program and Wildland Fire)
- \$60 million for Cooperative Forest Health Management (Base Program and Fire)
- \$30 million for Urban and Community Forestry
- \$29 million for Forest Stewardship
- \$79 million in Forest Legacy, of which \$500,000 will be used to develop regulations for the Community Forests and Open Space Conservation Program established in the 2008 Farm Bill. The Forest Service is also instructed to use the project rankings submitted with the 2010 President's Budget.
- The Conference Committee removed an amendment from the Senate version of the bill that would prevent Forest Service American Recovery and Reinvestment Act funds from being used in the District of Columbia. It is still unclear how the agency will interpret additional report language limiting future Forest Service stimulus funds to wildland fire management projects.
- The Conference Committee included a provision eliminating the need for the USFS to reprogram funds related to the competitive allocation of a percentage of S&PF appropriated dollars.

3. Good Neighbor Authority

There has been much focus on the Good Neighbor Authority (GNA) this year. Currently Colorado and Utah are the only states that have the ability to use the GNA. The CO GNA was extended until 2013 via the Interior Appropriations bill. Utah's authority is set to expire next year and was not extended in this bill.

Sen. Barrasso (R-WY), Sen. Johnson (D-SD), Sen. Udall (D-CO), Sen. Bennet (D-CO), Sen. Risch (R-ID) and Sen. Bennett (R-UT) co-sponsored S. 1122 which broadens the GNA authority for use across the west and extends the authority until 2019. The Senate Energy and Nat Resources Committee held a hearing on this bill in late October. The USFS expressed concern with the bill as written, as did other organizations, and all have committed to work together to revise the bill to address those concerns. Support for the authority itself was evident in testimony and comments from the Senate ENR committee members. Concerns centered on the retention of federal environmental requirements/regulations by the USFS and labor issues. The sponsors of the bill are now working to address the concerns with the bill in order to move the legislation forward. The CWSF is working to support the reauthorization and broadening of the GNA and has committed to work with committee members and partners to address the concerns with the authority.

4. Forest Landscape Restoration Act – Enacted 10/30/09

The Forest Landscape Restoration Act (FLRA) was introduced by Senator Bingaman (D-NM) and Congressman Grijalva (D-AZ) as companion bills [S. 2593 and H.R. 5263] in the 110th Congress. The FLRA was designed to address landscape-scale forest health problems by establishing a program that will fund large landscape-scale

projects, up to 50,000 acres, for restoration purposes. The program encourages collaboration, utilization of the best available science, local economic development, and leveraging local resources with national and private resources. The program included authorized funding of \$40 million per year for 10 years. The money can be used for up to 50% of the implementation costs of a landscape-scale project and will be matched with money for planning and carrying out the project from the involved Forest Service Region and other sources.

The FLRA was included in the FY10 Interior Appropriations bill and \$10 million in funding was secured through hazardous fuels appropriated dollars. The USFS recently released the guidance on how to apply for the program. This guidance is available at <http://www.fs.fed.us/restoration/CFLR/index.shtml>.

Although many organizations were advocating for the FLRA to be a stand-alone restoration line item, the new program was authorized without its own dedicated funding. Proponents of the new program are advocating full funding of FLRA at \$40 million for FY11 and are communicating that message to the USFS, the Office of Management and Budget and Congress.

7. Climate Change Legislation

American Clean Energy and Security Act, House Version –Passed the House 6/09

The bill included (among other things):

- A definition of 'renewable biomass' which identifies the feedstocks that can contribute towards a Federal RES (or RPS). The definition is similar to that found in the 2008 Farm Bill, but included problematic language which would limit the amount of biomass from 'late-successional' federal forests (i.e. those that would benefit most from forest health treatments)
- A carbon offset credit program from domestic agriculture and forestry sources
- A natural resources adaptation fund which sets aside allowances for natural resource adaptation activities which would be carried out by various Federal and State agencies. The fund would use a percentage of the revenues to support adaptation activities on the national forest system as well as on S&PF lands.

Clean Energy Jobs and American Power Act – Kerry-Boxer Climate Bill: At the end of September, Senators Kerry (D-MA) and Boxer (D-CA) introduced their version of climate legislation (referred to Senate EPW) based (in large part) on the bill that came out of the House. Their bill includes a definition of renewable biomass which includes a number of unfavorable restrictions on both public and private forests, a carbon offset credit program that considers forest-carbon offset projects (e.g., afforestation, reforestation, improved forest management) as possible project types and a natural resource adaptation fund similar to that passed in the House. This bill was worked on and voted out of the Senate Environment and Public Works Committee in late November, 2009 by a vote of 11-1, but is not expected to secure the 60 votes needed for approval from the Senate.

Bingaman's Energy Bill: Senator Bingaman (D-NM) introduced an energy bill which was voted favorably out of the Senate ENR Committee this past spring. His bill included a definition of 'renewable biomass' which identifies the type of feedstocks that can contribute towards a Federal RES (or RPS). This definition has a number of restrictions regarding the types of renewable biomass from public (e.g., diameter limits in old-growth) and private forests (e.g., quirky guidelines which attempt to prevent conversion of 'native' forests to plantations) which can qualify for a renewable electricity credit. This legislation is expected to be part of the climate/energy final package in the Senate.

Compromise Bill: Senator Kerry, Senator Graham (R-SC) and Senator Lieberman (I-CT) are drafting a compromise bill as an alternative to the Kerry-Boxer bill which will attempt to garner the 60 votes needed to pass the Senate. While the bill has not yet been introduced, a number of Senate Committees including the Senate Agriculture Committee and Senate Energy and Natural Resources are holding hearings and possible markups during the remainder of 2009 and into early 2010. A floor vote on the final climate/energy legislation is not expected until spring 2010.

8. EPA Regulations on the Renewable Fuel Standard

The 2007 Energy Independence and Security Act (EISA) made changes to the Renewable Fuels Standard (RFS) Program including:

- Requiring 36 billion gallons of renewable fuel to be produced or dispensed by 2022.
- Limiting the crops and crop residues used to produce renewable fuels through a restrictive 'renewable biomass' definition. EISA does not recognize biomass from new plantations (i.e. those established on non-federal lands after enactment of EISA) and from Federal lands as an eligible feedstock which can be converted to a renewable fuel credit.

A narrow interpretation by EPA of an already-restrictive definition of renewable biomass will severely limit the ability to meet renewable fuels targets and will therefore miss opportunities to improve forest health on both public and private lands. Both the CWSF and NASF (alongside others in the forestry community) submitted comments encouraging EPA to broadly interpret the biomass definition found in EISA. The comments included recommendations for a verification program that would ensure biomass is consistent with the EISA renewable biomass definition and recommendations regarding what constitutes a "plantation", "ecologically sensitive forest", "areas at risk of wildfire" and other important forest-related terms. The comment period regarding the changes to the RFS program closed at the end of September, 2009. The CWSF letter of comment is posted at http://www.wflccenter.org/news_pdf/341_pdf.pdf

NASF alongside others are planning meetings with EPA to reinforce the need to broadly interpret the EISA definition and to provide further recommendations regarding a verification program.

9. National Forest Insect and Disease Emergency Act of 2009 – Introduced in Senate 11/09

Senator Mark Udall (D-CO) and Senator Jim Risch (R-ID) introduced the *National Forest Insect and Disease Emergency Act of 2009* [S. 2798] in November, 2009. A companion bill is expected to be introduced in the House of Representatives. This legislation would create insect and disease infestation emergency areas using a map showing the bark beetle mortality in the western United States. The Secretary of Agriculture would give priority to the management of those areas, both on NFS lands and state, private and tribal lands. This could result in a focusing of appropriated funds solely on those emergency areas to the detriment to other parts of the west and the rest of the country. There are provisions in the legislation for the Good Neighbor Authority (see #3 above) and the elimination of the cancellation ceiling for stewardship contracting.

The CWSF and NASF will be working with the sponsors of this legislation and the House companion bill to address areas of concern.

10. BLM Contract Extension Act –Introduced in the House on 10/09

Representatives Peter DeFazio (D-OR), Dennis Rehberg (R-MT) and Kurt Schrader (D-OR) introduced the *Bureau of Land Management (BLM) Contract Extension Act* [H.R. 3759]. The legislation allows for the Secretary of the Interior to grant economy-related contract extensions for timber contracts between the Secretary and timber purchasers. The bill currently only includes the BLM and there is interest in the inclusion of the USFS and the Secretary of Agriculture in this legislation. The CWSF will be working with the bill sponsors on this possibility and the benefits of the Secretary of Agriculture having the ability to extend certain timber contracts as defined in this piece of legislation.

Please contact Caitlyn Pollihan: 303-445-4363 with any questions.

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