

Federal Spending Bill Changes Wildfire Suppression Funding and Other Forestry Initiatives

The \$1.3 trillion [Consolidated Appropriations Act of 2018](#), which was signed into law on March 23, 2018, (the Act) includes bipartisan measures to fundamentally change how the U.S. Forest Service and other federal agencies pay for wildfire suppression. The Act also addresses forest resilience to wildfire and other forest management initiatives, including hazardous fuels removal projects, wildfire hazard severity mapping and Endangered Species Act consultation around land management plans. These policies are relevant to anyone owning or managing lands adjacent to federal forest lands, obtaining timber from federal lands or engaged in stewardship and other federal forest management contracting, and otherwise interacting with the Forest Service and Bureau of Land Management regarding federal lands and wildfire prevention, suppression and mitigation.

Wildfire Suppression Funding

The Act targets the persistent problem of "fire-borrowing," whereby record wildfire seasons have forced the Forest Service and other agencies to tap into non-fire accounts to fund wildfire suppression. The fire-borrowing practice has depleted funds for forest management, prescribed burning and other fire-prevention work, and has been the subject of various proposed legislative corrective measures for many years. The Act sets aside more than \$20 billion over 10 years in an emergency fund that can be accessed when agency firefighting budgets are depleted.

The Act's key provisions related to wildfire suppression are as follows:

- Appropriates funds for wildfire suppression at a rate of \$2.25 billion in FY 2020, increasing by \$100 million annually to \$2.95 billion in FY 2027. This accounts for projected increases in wildfire costs and is designed to prevent borrowing from non-fire programs. In practice, the funding will be available to the Forest Service and U.S. Department of the Interior when the agencies estimate they are within 30 days of running out of wildfire suppression funds.
- Appropriates an additional \$500 million above the 10-year average for wildfire suppression in FY 2018. Appropriators indicated a similar amount will be available in FY 2019 to cover suppression costs until access to the new funding mechanism becomes available in FY 2020.
- Directs agencies to undertake cost-benefit analysis of wildfire suppression operations and overall reporting of fire management and spending, by fire.

Resilience to Wildfire and Other Forest Management Initiatives

The Act also includes the following measures related to forest resilience to wildfire and other federal forest management initiatives:

- Amends the Healthy Forests Restoration Act of 2003 to categorically exclude a range of hazardous fuels reduction projects from environmental review under the National Environmental Policy Act. The categorical exclusion applies to projects encompassing no more than 3,000 acres.

The Act does not go as far as the proposed [Resilient Federal Forests Act of 2017](#) (HR 2936) which passed the U.S. House of Representatives last November. That bill would extend a categorical exclusion to

projects of up to 10,000 acres or, where a project is collaboratively developed, up to 30,000 acres.

- Expands qualifying hazardous fuel reduction projects under the Healthy Forests Restoration Act to include fuel breaks and firebreaks.
- Expands wildfire hazard severity zone mapping to inform evaluations of wildfire risk and prioritize fuels management needs. The Act directs the Forest Service to develop and publish maps appropriate for community-level use in at-risk communities.
- Overrides a U.S. Circuit Court of Appeals decision requiring renewed Endangered Species Act consultation in areas governed by existing land management plans. In *Cottonwood Environmental Law Center v. U.S. Forest Service*, 789 F.3d 1075 (9th Cir. 2015), the court held that the Forest Service must reinitiate consultation with the U.S. Fish and Wildlife Service and consider changes to its existing land management plans after an expanded critical habitat designation for the Canadian lynx. The Act exempts the Forest Service from additional ESA consultation around existing land management plans unless the plan is at least 15 years old and at least 5 years have passed since the ESA listing or critical habitat designation or the date of enactment of the Act, whichever is later.
- Amends the Federal Land Policy and Management Act to add provisions for additional guidance, planning and other measures for utility transmission and distribution line vegetation management directed at enhancing grid reliability and reducing wildfire risk.
- Expands the Good Neighbor Authority which allows the Forest Service to enter into cooperative agreements with state foresters to work on neighboring federal lands.
- Guarantees, for two years, payments of more than \$300 million per year for the Secure Rural Schools timber receipts county payments program. That program expired after FY 2015. The Act restarts Secure Rural Schools payments to states, including retroactive payments for 2017.
- Allows stewardship contracts to extend to 20 years, assisting industry to invest and expand capacity to create additional markets for wood products to facilitate forest restoration and resiliency work.

© 2018 Perkins Coie LLP

Authors



Christian Termyn

Counsel

CTermyn@perkinscoie.com [415.344.7018](tel:415.344.7018)



Christian Termyn

Counsel

CTermyn@perkinscoie.com [415.344.7018](tel:415.344.7018)

Explore more in

[Environment, Energy & Resources](#) [Energy Infrastructure & Clean Technology](#) [Forest Products](#)

Related insights

Update

[Securities Enforcement Forum DC 2024: Priorities in the Election's Wake](#)

Update

[The New Administration's Impact on Retailers](#)