

To: Partner Caucus on Fire Suppression Funding Solutions  
Other Interested Persons

From: Caitlyn Pollihan, Fire Suppression Lead, National Association of State Foresters  
Cecilia Clavet, Policy Analyst, The Wilderness Society

Re: **The FLAME Act of 2009**

Date: November 3, 2009

On October 29, 2009, the House and the Senate passed the Interior, Environment, and Related Agencies Appropriations Act, 2010, which included Title V – The 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.

#### **Conference Committee Report Language – FLAME Act of 2009**

The report language notes that the changes from the previous FLAME Act(s) in the conference agreement (details below) strengthen the “workability and usefulness” of the previous Act(s) while retaining MOST major provisions. The changes are intended to make the FLAME Act consistent with other wildfire suppression reforms recommended in the Administration budget request such as risk-informed wildfire suppression reforms and the expanded use of the Wildland Fire Decision Support System.

Conferees expect that changes in the agencies’ (USDA Forest Service (USFS) and the Department of the Interior (DOI)) appropriations accounts along with the FLAME Act will lead to improved transparency regarding true costs of fire preparedness and suppression activities. The Conferees “expect these budget reforms to be accompanied by a commitment from the Administration that **fire readiness and suppression activities will not be funded at the expense of other programs**, and that any non-fire program transfers will be accounted for and reported in a transparent manner and will promptly be repaid” (FY2010 Interior Conference Report, p.86 – emphasis added).

#### **BILL SUMMARY**

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 in FY2010. The Funds address the impacts of increasing wildfire suppression costs and their effects on other agency programs. These 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. Furthermore, agencies are expected to develop new methods for formulating fire suppression funding estimates for Wildland Fire Management (WFM) and the FLAME Funds. Furthermore, Congress stated that the use of “the 10-year rolling average has failed to keep pace with

actual funding requirements and has led to significant disruptions as agencies borrow from non-fire programs accounts when funds are exhausted” (p.72). In future years, the WFM and FLAME Fund accounts “**should fully anticipate wildland fire requirements and prevent future borrowing from non-fire programs**” (p.72, emphasis added).

These two funds will reduce 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. The Flame Act of 2009 retains the provision that requires the secretaries to notify Congress when 60 days of funds remain in the respective 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.

The language retains the requirements for the Agencies to report to Congress on a quarterly basis on the use of FLAME funds. This accountability will 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. Additionally, 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.

### **SECTION-BY-SECTION BILL SUMMARY**

Below is a summary of Title V of the Interior Appropriations bill which includes the FLAME and Cohesive Wildfire Management Strategy. Report language is also included in italics.

#### **SECTION 502 FLAME Wildfire Suppression Reserve Account**

- The FLAME Wildfire Suppression Reserve fund for the Department of the Interior AND for the Department of Agriculture is established.
- Only the Secretaries of Interior and Agriculture can make a declaration to access the funds.
- The purpose of the funds is to cover the costs of large or complex wildfire events and to act as a reserve when wildfire suppression funding and federal emergency response in the appropriations accounts are exhausted.
- The FLAME Funds are authorized to be funded at levels necessary to carry out the section.
- It is Congress' intent for FY2011 and in the future that the Presidential requests for the funds should not be less than what the respective secretaries indicate an agency needs.
- It is the sense of Congress that amounts in the funds in excess of the estimated necessary amount should be designated as amounts to meet "emergency needs", that supplemental requests should be made 30 days prior to the Funds being exhausted and that FLAME Fund

funding should supplement wildfire suppression and federal emergency response dollars in the Wildland Fire Management appropriations account.

*The conferees intend that amounts provided through the FLAME Funds, together with amounts provided through the Wildland Fire Management appropriations account, should fully fund anticipated wildland fire suppression requirements in advance of fire season and prevent future borrowing from non-fire programs (p.86).*

*[T]he Conferees direct the Secretaries to develop new methods for formulating fire suppression funding estimates for the Wildland Fire Management and FLAME Fund appropriations account as part of their 2011 budget request [and to] consider data regarding actual prior-year fire suppression expenditures, predictive modeling, and any other criteria... (p.86).*

*[T]he Conferees also expect the [Forest] Service to analyze current readiness requirements and to submit a realigned preparedness budget in fiscal year 2011 that accurately reflect anticipated readiness costs instead of relying on large-scale shifts to the suppression appropriation (p.86).*

- FLAME Funds are available until spent and the secretary must notify the Congressional Committees when 60 days of funding remain. Funds can be transferred from the DOI FLAME Fund to the USDA FLAME Fund if one has insufficient funds, but no more than \$100 million can be transferred in a fiscal year.
- The FLAME Funds are to be used for activities separate from annual wildfire suppression activities through the transfer of funds from FLAME into the Wildland Fire Management.
- In order to access the funds, the secretary concerned must issue a declaration based on the following criteria –
  - Individual wildfire incident:
    - Fire covers 300 or more acres, or
    - Significant complexity, severity or threat posed by the fire to human life, property, or resources, OR,
  - The cumulative costs of suppression and emergency response activities for a specific secretary will exceed (within 30 days) all appropriated dollars for wildfire suppression and federal emergency response (this amount includes emergency suppression funds but does not include regularly appropriations dollars within the FLAME Funds).

*Conferees expect the Agencies to develop a streamlined declaration process to minimize administrative burden and ensure funding is made available in an expedited manner (p.87).*

- The FLAME Fund can be used on state, private and tribal land based on existing agreements where the secretary concerned assumes responsibility for wildfire suppression activities.
- The secretaries will still request funds within the regular appropriations process for regular wildfire suppression activities that do not meet the above declaration criteria (in other words, they are still responsible for requesting funds for the annual suppression account).

- No funds may be transferred from non-fire accounts to the annual wildland fire management accounts unless the FLAME Funds and the annual accounts will be exhausted within 30 days.
- Annual reports from each secretary will be submitted to the Congressional Committees and the public describing the expenditures from the funds and any recommendations for administrative control and oversight of the funds.
- Reporting: In an effort to improve budgeting and funds, the Secretaries will submit estimates of anticipated wildfire suppression costs for the fiscal year; the methodologies used to create that estimate will be subject to independent review. The estimates must be submitted in March, May and July each year as well in September, if the relevant appropriations bill has not been enacted. The estimate will be based on climate, weather and relevant data, models and other analytical tools.
- The FLAME Funds will be terminated after three fiscal years in which no appropriations or withdrawals from the Funds occur. Any remaining monies will be transferred to the wildfire fire management account.

#### SECTION 503 Cohesive Wildfire Management Strategy

- One year after enactment, the Secretary of the Interior and the Secretary of Agriculture will jointly submit a report to Congress containing a cohesive wildfire management strategy consistent with previous GAO recommendations.
- Elements required to be addressed include:
  - Identification of the most cost-effective way to allocate the fire management budget,
  - Reinvestment in non-fire programs,
  - Appropriate management response to wildfires,
  - Assessing communities level of risk,
  - Hazardous fuels monies allocated on a priority basis,
  - Impact of climate change on frequency and severity of wildfires, and
  - Effects of invasive species on wildfire risk.
- The strategy shall be revised at least once during each five year period after submission of the strategy.

#### **For more information, please contact:**

Caitlyn Pollihan, Executive Director, Council of Western State Foresters, and NASF Fire Suppression Lead, [c.pollihan@colostate.edu](mailto:c.pollihan@colostate.edu), (303) 445-4363

Cecilia Clavet, Policy Analyst, The Wilderness Society, [cecilia\\_clavet@twc.org](mailto:cecilia_clavet@twc.org), (202) 256-8725