

112TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
112-331

MILITARY CONSTRUCTION AND VETERANS
AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2055



DECEMBER 15, 2011.—Ordered to be printed

DIVISION E—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

The following statement is an explanation of the effects of Division E, which makes appropriations for the Department of the Interior, the Environmental Protection Agency (EPA), the Forest Service, the Indian Health Service, and related agencies for fiscal year 2012. Language contained in House Report 112-151 providing specific guidance to agencies regarding the administration of appropriated funds and any corresponding reporting requirements carries the same emphasis as the language included in this explanatory statement and should be complied with unless specifically addressed to the contrary herein.

In instances where the House report speaks more broadly to policy issues or offers views that are subject to interpretation, such views remain those of the House and do not reflect the views of the conferees unless otherwise repeated in this statement. In cases where the House report or the statement of managers directs the submission of a report, such report is to be submitted to both the House and Senate Committees on Appropriations. Where this explanatory statement refers to the Committees or the Committees on Appropriations, unless otherwise noted, this reference is to the House Subcommittee on Interior, Environment and Related Agencies and the Senate Subcommittee on Interior, Environment and Related Agencies.

The conferees expect that each department and agency funded in this Act will follow the directions set forth in this Act and the accompanying statement, and will not reallocate resources or reorganize activities except as provided herein or otherwise approved by the Committees through the reprogramming process as described in this report. Funding levels for appropriations by account, program, and activity, with comparisons to the fiscal year 2011 enacted level and the fiscal year 2012 budget request, can be found in the table at the end of this division.

Unless expressly stated otherwise, any reference to "this Act" or "at the end of this statement" shall be treated as referring only to the provisions of this division.

Oversight—The EPA, Forest Service, and Department of the Interior are directed to report to the Committee no later than 60 days following enactment of this Act on steps taken to address management weaknesses and implement reforms identified by the Government Accountability Office (GAO) and each agency's IG during House oversight hearings held on March 1, 2011 (Department of the Interior); March 2, 2011 (EPA); and March 10, 2011 (U.S. Forest Service).

Making Litigation Costs Transparent—The EPA, Forest Service, and Department of the Interior are directed to provide to the House and Senate Committees on Appropriations, and make publicly available no later than 60 days after enactment, detailed Equal Access to Justice Act (EAJA) fee information as specified in House Report 112-151.

Reprogramming Guidelines—The following are the procedures governing reprogramming actions for programs and activities fund-



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DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND
 RELATED AGENCIES APPROPRIATION BILL, 2012

JULY 19, 2011.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. SIMPSON, from the Committee on Appropriations,
 submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2584]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the Department of the Interior, the Environmental Protection Agency, and Related Agencies for the fiscal year ending September 30, 2012. The bill provides regular annual appropriations for the Department of the Interior (except the Bureau of Reclamation and the Central Utah Project), the Environmental Protection Agency, and for other related agencies, including the Forest Service, the Indian Health Service, the Smithsonian Institution, and the National Foundation on the Arts and the Humanities.

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examine funding mechanisms for the SRFs that are sustainable in the long-term.

The Committee notes that the EPA's overall budget has grown significantly in recent years. In calendar year 2009, the agency received over \$25 billion in combined stimulus funding and regular appropriations, a staggering sum nearly equivalent to the subcommittee's entire allocation this year. Based on this recent history, it should come as no surprise that the agency faces significant spending cuts under the subcommittee's current funding allocation. Funding for the EPA was reduced by \$1.6 billion, or 16 percent, from the fiscal year 2010 enacted level in the fiscal year 2011 Continuing Resolution. An additional reduction of \$1.5 billion, or 18 percent, from the fiscal year 2011 enacted level is proposed in this bill putting overall funding for the EPA well below fiscal year 2006 enacted levels.

COSTS OF LITIGATION AND LACK OF TRANSPARENCY

The Committee is concerned that many of the legitimate goals of the Forest Service, the BLM, and other agencies under the Committee's jurisdiction are undermined by litigation filed in an effort to shift land management decisions from the agencies tasked by Congress with those responsibilities to the courts, regardless of merit. It is apparent that many activist groups are using the Federal court system to stop any activity of which they disapprove. The outcome of such lawsuits becomes less important, really, than tying up a specific issue in the courts as long as possible.

Not only does the rising cost of litigation seem to indicate that the very existence of some organizations is predicated on their ability to file lawsuits challenging public policy and existing primarily to prevent worthy projects from moving forward, but it also undermines the work of this Committee.

As litigation costs siphon funding away from critical priority programs, agencies are forced to divert budgets intended for effective land management away from carrying out activities associated with their congressionally-directed missions. The Committee is alarmed that some state and field offices currently spend more than half of their current budget on responding to litigation. The Committee is also deeply concerned that these costs, which are paralyzing many national forests and field offices, are not accounted for by the agencies. It becomes impossible for this Committee to write an accurate or responsible budget when the costs of litigation are neither accounted for nor available.

The Equal Access to Justice Act (EAJA) authorizes a court, under certain circumstances, to award reasonable attorneys fees and expenses to a party who prevails against the United States in a civil action. A provision within EAJA (28 U.S.C. ss 2412(d)(4)) directs an agency to pay an EAJA award out of its annual budget with the obligation resting on the agency to make and account for these payments.

The Committee has learned that neither the Department of Justice nor the Department of the Interior, EPA, or the Forest Service comprehensively track EAJA fee payments, identify the funds used to pay EAJA fees, nor routinely make this information publicly available. Accordingly, the Committee directs the Department of the Interior, the EPA, and the Forest Service to provide to the

House and Senate Committees on Appropriations and make publicly available, no later than 60 days after enactment of this Act, and with each agency's annual budget submission thereafter, the following information: detailed reports on the amount of program funds used; the names of the fee recipients; the names of the Federal judges; the disposition of the applications (including any appeals of action taken on the applications); and the hourly rates of attorneys and expert witnesses stated in the applications that was awarded, for all EAJA fee payments awarded as a result of litigation against any of the Department of Interior bureaus, the EPA, or the Forest Service, or their respective employees. The report shall also include the information listed above for litigation relating to the Endangered Species Act and the amounts, outside of EAJA awards, paid in settlement for all litigation, regardless of the statute litigated.

The Committee is also deeply concerned that Federal courts are exceeding their constitutional authority and sequestering agency resources contrary to Congressional direction. In recent years, members of the judicial branch have compelled the Fish and Wildlife Service to list, or consider listing, as endangered or threatened species particular species even though focusing on these particular species is contrary to the priorities established by the agency and affirmed by Congress via appropriations. Finite appropriated funds have been redirected and reallocated to satisfy these judicial edicts. This judicial redirection of monies provided to the Service by Congress is contrary to the established separation of powers principle and in derogation of the constitutional power of the purse vested in Congress. The Committee urges the Service, and the Department, to be diligent in objecting to judicial overreach and orders regarding the Endangered Species Act that effectively sequester agency resources.

EXPIRED AUTHORIZATIONS

No less than 56 agencies and/or programs under the purview of the Interior, Environment, and Related Agencies Subcommittee remain unauthorized or have an expired congressional authorization of appropriations (see "Appropriations Not Authorized by Law" at the back of the report). Together these unauthorized agencies and programs comprise \$7,248,023,000, or 26 percent, of this fiscal year 2012 appropriation bill. Continual appropriation for unauthorized programs circumvents the rigorous process of legislative review and revision.

The Endangered Species Act (ESA) is a prime example of an authorization long since expired that is overdue for additional Congressional review. No less than 2,018 species have been added to the threatened and endangered lists over the lifetime of the Act, of which only 21 have been recovered. Any other program with such a poor success rate would have long since been terminated. Originally enacted in a successful effort to save the nation's iconic bald eagle from extinction, the Act has become so highly contentious, political, and litigious that it has become a policy failure.

Wolves are a case in point. Wolf populations in the Northern Rocky Mountains (NRM) and the Western Great Lakes (WGL) are recovered and should be delisted, in part because States have sound management plans in place, according to the scientific agen-