

Turning Down the Heat: Negotiating Wildfire Prevention and Recovery General Information for All Roles

Exercise Background

This is a fictional four-person negotiation exercise focusing on wildfire legislation in the United States Congress. The four negotiators are professional staff on the Agriculture Committees in their respective chambers for the following Congressional Members from fictional states:

- House Agriculture Committee Chair – Rep. Sydney Smith (R-Altusa-5th)
- House Agriculture Committee Ranking Member – Rep. Alex Alvarez (D-Washgon-12th)
- Senate Agriculture, Nutrition & Forestry Committee Chair – Sen. Dana Danvers (D-Fremont)
- Senate Agriculture, Nutrition & Forestry Committee Ranking Member – Sen. Jordan Jacobs (R-Laramie)

All four Members have been appointed by their chambers' leadership to negotiate wildfire legislation which was first passed in the Senate, then amended and passed out of the House. This negotiation simulation takes place after the Senate requests a conference for both chambers to work out differences in Senate and House versions. The respective staff for each Member above meets prior to conference to pre-negotiate a possible deal.

(House and Senate Budget committees also have jurisdiction over the bill but have delegated power to their party colleagues and will not play a direct role in the conference).

The House is held by Republicans, who have a 39-seat margin over Democrats. However, as of the most recent midterm election, Democrats hold a supermajority of 62 seats in the Senate (including the Independents who almost always vote with them), eliminating the Senate Republicans' ability to leverage the 60-vote cloture threshold to block legislation and nominations.

HOUSE: 237 Republicans / 198 Democrats

SENATE: 60 Democrats / 38 Republicans / 2 Independents (who vote with Democrats)

This simulation was written by Kessely Hong, Lecturer in Public Policy, John Fogarty, Monica Giannone, and Emily Schlichting at the John F. Kennedy School of Government, Harvard University (HKS) as part of the Harvard Kennedy School's "Teaching Legislative Negotiation Project." Funding for this simulation was provided by The William and Flora Hewlett Foundation. HKS simulations are developed solely as the basis for class discussion. They are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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State Background

Altusa: Altusa is a large, rural state in the Pacific Northwest. It has been heavily affected by wildfires, especially the 5th congressional district. Altusa is the second most wildfire-prone state in the United States, and first in total potential exposure to wildfire risk. The state has a robust lumber industry that has been damaged by the fires, causing significant economic downturn in the state. Residents of the 5th district live in largely rural communities, with many working in the lumber or ranching industries. Constituents complain that timber regulations are onerous and prohibitive for industry operators.

Washgon: Washgon is situated along the northern border of the United States' western coastline. The state is home to millions of square miles of national forests. While no stranger to the occasional wildfire, the state's forests are generally considered geographically insulated from conditions conducive to far more dangerous wildfires. Residents of the 12th district regularly enjoy outdoor activities, they appreciate the high quality of air and water available, and they recognize the bounty of the region's ecosystem.

Fremont: Fremont is one of the largest states in the United States in both size and population. Fremont includes roughly half of the country's western coastline and continues down to the southern border. Fremont's forests are among the most susceptible to wildfire. Wildfires have increasingly caused far-reaching damage and have frequently caught the national spotlight in the past few years.

Laramie: Laramie is a large, sparsely populated state in the Mountain West region of the United States. While it has a large number of forests and open grasslands, Laramie has only been minorly affected by wildfires. The state is home to several large lumber operations, and also serves as the center for U.S. Forest Service's Western region's firefighting operations. Residents of Laramie live primarily in rural communities, with many families making their living in farming and ranching professions. While the smoke has been increasing as neighboring states have burned, aside from this Laramie has been largely unharmed.

Wildfire Background

Wildfires are uncontrolled fires, often around wilderness and rural areas, that can threaten to dramatically damage and uproot entire communities. From 2008 to 2017, wildfires burned, on average, 6.6 million acres annually in the United States. In the first 6 months of 2017, there were approximately 37,200 wildfires that were responsible for burning 5.2 million acres. In 2016, there were 67,700 wildfires that burned 5.5 million acres. The largest fire season on record (acreage burned) occurred in 2015, with more than 68,000 wildfires and 10.1 million acres burned.¹

Wildfire management responsibilities for fires that begin on federal land are shared by the Forest Service (FS) within the U.S. Department of Agriculture, and by the Department of the Interior (DOI). FS and DOI responsibilities include prevention, detection, response, and recovery. Congress provides annual appropriations to both FS and DOI for wildfire preparedness, site rehabilitation, and other

activities. Over the 10-year period from 2008-2017, Congress appropriated an average of \$3.72 billion annually, with \$4.18 billion combined to both FS and DOI in FY2017.²

The term “fire borrowing” describes the practice of having to borrow money from funds designated to preventing wildfires to cover costs of suppressing wildfires. Past fire seasons have seen increased wildfire suppression costs due to the increasing frequency and scale of wildfires, and from the increasing costs of modern wildfire equipment. In 2017, wildfire suppression costs were more than \$2.5 billion – the highest cost on record. At its peak, more than 28,000 wildfire-fighting personnel were dispatched, along with aircraft and other resources.³

Legislative Background

Republicans control the House and Democrats control the Senate. The President is Republican, though he won with a narrow margin.

Actions in the Senate

Two months ago, Senator Dana Danvers (D-Fremont) introduced the *Wildfire Prevention & Recovery Act of 2018 (WPRA)*. The bill was referred to the Senate Agriculture, Nutrition & Forestry (Senate Ag) Committee. Senator Danvers is the Chairwoman and Senator Jacobs (R-Laramie) is the Ranking Member. After being passed out of committee, WPRA was passed with strong bipartisan support on the Senate floor. Senators Danvers and Jacobs voted for the bill both times, to move it out of Committee and to pass it on the Senate floor.

Key provisions of WPRA would:

1. Amend the Balanced Budget and Emergency Deficit Control Act of 1985 to include progressively higher caps for wildfire disaster relief funds starting in 2020. Funds will only be available if wildfire suppression costs exceed the 10-year average cost of wildfires. Eliminates problematic practice of “fire-borrowing” from other department programs.
2. Reverse a controversial ruling by the 9th U.S. Circuit Court of Appeals in 2015, which forced the Forest Service to consult more closely with the Fish and Wildlife Service on forest projects that might affect endangered species. The 2015 ruling has held up and imperiled logging projects in 18 national areas.
3. Give utility companies responsibility to exercise reasonable care in keeping areas clear near power lines and emergency authority to remove hazard trees near power lines that cross national forests and national grasslands. It also limits those companies’ potential liabilities.

The Senate bill enjoyed strong bipartisan support after undergoing lengthy debate and moderate concessions from both sides. The bill has been championed as a product of hard work and demonstrates the potential for both sides of the aisle to reach compromise.

Actions in the House of Representatives

After passing the Senate, the bill was moved to the House of Representatives and referred to the House Agriculture Committee (House Ag), which then passed the Senate bill with the following amendments, all proposed by Chairman Sydney Smith (R-Altusa-5th) of the House Ag Committee:

Amendment 1: Changes current language regarding U.S. Forest Service vegetation management to be possibly interpreted to weaken current regulatory protections of Roadless Areas covered by the Roadless Area Conservation Rule.

Amendment 2: Restricts the environmental impact assessments required for timber production on National Forest System land to include only the impact of the logging activity proposed and the alternative of no action. This Amendment eliminates the requirement to conduct a comprehensive habitat assessment to measure the impact on endangered species.

Amendment 3: Shifts Secure Rural Schools (SRS) Title II emphasis and funding from environmental restoration and public land infrastructure to timber production. Currently, 20% of SRS and Title II funding is earmarked for non-educational use in the community, including stream and watershed restoration, road maintenance, reducing fire risks, improving water supplies, and/or stewardship projects. This Amendment would divert 50% of the 20% (non-educational funds) to fund timber production efforts, if counties receive SRS Title II funding.

The bill was then voted upon in the House and passed with all three of the above amendments. After passage, it was directed back to the Senate for consideration with the House's amendments. Upon receiving the House-amended WPRA, the Senate requested a conference with the House to negotiate differences in the two versions.

Chairman Smith voted for the bill both times, to vote it out of Committee and to pass on the House floor. Although the bill passed in the House with some Democratic support, the House Ag Ranking Member (Rep. Alex Alvarez) did not vote for the legislation either time and gave a fiery floor speech during the House's debate opposing the "partisan amendments" that were added to a clean, bipartisan Senate bill.

Conference Set-Up

The Republican Speaker of the House and leadership understand the importance of passing a wildfire funding bill that fixes the practice of "fire-borrowing" and increases caps for disaster relief. Many of their members represent districts heavily affected by recent wildfires and their constituents are watching the bill's progress carefully. Ideally, Republican leadership prefers that all the House's amendments be included in any final conference version. However, Republicans are also aware that failure to come to a deal with Democrats would hurt their reputation as being able to get things done ahead of the upcoming election.

The President's Administration supports the fully-amended House version and sees the amendments as fitting into the Administration's larger agenda. However, the President would not have opposed the clean Senate version. The President is currently keeping an eye on who in Congress can advance their

goals through messaging or legislation. The Administration is looking to Congress to identify members who can successfully work with Democrats in either chamber in moving their priorities forward. It is also rumored that the President is considering a shortlist of potential nominees for Secretary of Department of Agriculture.

Negotiation Logistics

Please read your Confidential Materials and prepare individually.

The negotiation will begin with a brief caucus with your counterpart of the same political party before meeting as a full four-person group.

You may take up to the allocated time for the full-group negotiation.

A deal may be signed with only the support of the Chairs' staffers, but such a final bill would likely be less popular, both throughout Congress (though would likely still pass) and with the American public, than a bill with the support of three or all four parties.

The four parties have the power to agree to, remove, add to, and/or modify any of the language contained within the two versions.

One copy of the agreed upon language (General Information, page 8) must be turned in to simulation administrators when the negotiation time has ended.

References

“Federal Assistance for Wildfire Response and Recovery: In Brief,” Congressional Research Service, July 27, 2017, <https://www.everycrsreport.com/reports/R41858.html>.

“Wildfire Management Funding: Background, Issues, and Fiscal Year 2018 Appropriations,” Congressional Research Service, January 30, 2018, <https://digital.library.unt.edu/ark:/67531/metadc1156866/citation/#top>.

Joseph E Taylor III, Erik Steiner, Krista Fryauff, Celena Allen, Alex Sherman, Zephyr Frank, “Follow the Money: A Spatial History of In-Lieu Programs of Western Federal Lands,” The Spatial History Project | Cesta, Stanford University, <http://followthemoney.stanford.edu/pages/SRS.html>.

Shuffield, Jonathan. “Policy Brief: Continue Revenue Sharing Payments to Forest Counties: Support the Secure Rural Schools (SRS) Program,” National Association of Counties, June 4, 2018, <https://www.naco.org/resources/continue-revenue-sharing-payments-forest-counties-support-secure-rural-schools-srs-program>.

“Secure Rural Schools Reauthorization,” USDA Forest Service, May 8, 2018, <https://www.fs.usda.gov/pts>.

¹ “Federal Assistance for Wildfire Response and Recovery: In Brief,” Congressional Research Service, July 27, 2017, <https://www.everycrsreport.com/reports/R41858.html>.

² “Wildfire Management Funding: Background, Issues, and Fiscal Year 2018 Appropriations,” Congressional Research Service, January 30, 2018, <https://digital.library.unt.edu/ark:/67531/metadc1156866/citation/#top>.

³ <https://www.usda.gov/media/press-releases/2018/03/23/secretary-perdue-applauds-fire-funding-fix-omnibus>.

Wildfire Prevention & Recovery Act of 2018 (WPRA)

Senate Provisions:

Amend the Balanced Budget and Emergency Deficit Control Act of 1985 to include progressively higher caps for wildfire disaster relief funds starting in 2020. Funds will only be available if wildfire suppression costs exceed the 10-year average cost of wildfires. Eliminates problematic practice of “fire-borrowing” from other department programs.

Reverse a controversial ruling by the 9th U.S. Circuit Court of Appeals in 2015, which forced the Forest Service to consult more closely with the Fish and Wildlife Service on forest projects that might affect endangered species. The 2015 ruling has held up and imperiled logging projects in 18 national areas.

Give utility companies responsibility to exercise reasonable care in keeping areas clear near power lines and emergency authority to remove hazard trees near power lines that cross national forests and national grasslands. It also limits those companies’ potential liabilities.

Amendments added in the House:

Amendment 1: Changes current language regarding U.S. Forest Service vegetation management to be possibly interpreted to weaken current regulatory protections of Roadless Areas covered by the Roadless Area Conservation Rule.

Amendment 2: Restricts the environmental impact assessments required for timber production on National Forest System land to include only the impact of the logging activity proposed and the alternative of no action. This Amendment eliminates the requirement to conduct a comprehensive habitat assessment to measure the impact on endangered species.

Amendment 3: Shifts Secure Rural Schools (SRS) emphasis and funding from environmental restoration to timber production. Currently, 80% of SRS funding goes to support rural schools and 20% of SRS funding is earmarked for non-educational use in the community, including stream and watershed restoration, road maintenance, reducing fire risks, improving water supplies, and/or stewardship projects. This Amendment would divert 50% of the 20% (non-educational funds) to go to fund timber production.

Results Form

Wildfire Prevention & Recovery Act of 2018 (WPRA)

Pre-Conference Committee Recommendations

(Parties may agree to, remove, add to, and/or modify existing language in Senate and House versions)

Senate provisions:

Amendments added in the House:

Amendment 1:

Amendment 2:

Amendment 3:

Any additional changes or comments:

Language supported by:

Staffer for Sen. Danvers

Staffer for Rep. Smith

Staffer for Sen. Jacobs

Staffer for Rep. Alvarez