

**STATEMENT OF
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UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES**

JUNE 23, 2011

CONCERNING

**H.R. 2170, STREAMLINING FEDERAL REVIEW TO FACILITATE RENEWABLE
ENERGY PROJECTS,**

**H.R. 2171, TO PROMOTE TIMELY EXPLORATION FOR GEOTHERMAL
RESOURCES UNDER EXISTING GEOTHERMAL LEASES, AND FOR OTHER
PURPOSES,**

AND

**H.R. 2172, TO FACILITATE THE DEVELOPMENT OF WIND ENERGY RESOURCES
ON FEDERAL LANDS**

Mr. Chairman, Members of the Subcommittee, I am Joel Holtrop, Deputy Chief of the U.S. Forest Service. Thank you for the opportunity to share the Agency's views on three renewable energy bills currently before you for consideration.

Recognizing the important role that renewable energy can play in strengthening America's energy independence and in fulfilling the agency's mission, the USDA Forest Service (USFS) supports the goal of the proposed legislation to facilitate the development of renewable energy resources on lands within the National Forest System (NFS). We also acknowledge the need identified in these bills to streamline procedures for approving and implementing the development of these resources. However, we are concerned that the approaches contained in H.R. 2170, 2171 and 2172 could have unintended consequences that ultimately serve to undermine progress towards those goals.

In recent years the USFS has addressed the challenge of contributing to the nation's renewable energy needs in a multitude of ways. Hydroelectric power, although not addressed by the proposed legislation, represents one of the agency's largest contributions to the nation's renewable energy needs: NFS lands host over 16,000 MW of installed hydropower generating

capacity, the second most among federal agencies. Regarding geothermal power, as of April 2011 there were 137 geothermal leases producing equivalent electricity for 60,000 homes on approximately 155,000 acres of NFS lands. In wind energy, as of May 2011 the agency has received at least 18 inquiries for meteorological testing projects to explore wind energy production; of these, 11 progressed to the proposal or application stage, and of those 11, five have gone on to receive permits while the remaining six are currently in processing. And for solar energy, although we have received no formal applications for utility or other large-scale commercial solar facilities to date, we do anticipate some applications for solar energy facilities in the future on some of the roughly 3 million acres of NFS land that have been identified as suitable for that purpose.

Biomass energy production presents an especially important opportunity for the NFS to increase America's energy independence while also meeting many other objectives at the core of our mission, such as restoring healthy forests, supporting local economies and communities, and improving water quality. This is the case because biomass products are harvested for energy production in connection with vegetation management projects undertaken for a wide variety of purposes, including hazardous fuels reduction, habitat improvement, timber production, salvage, pre-commercial thinning, maintenance of roads, campgrounds, and various rights-of-way, and other purposes. In FY2010 nearly 3.3 million green tons were harvested on NFS lands for energy production, in the form of small-diameter trees and shrubs, tree-harvest debris and other woody plant matter.

Approval and implementation of these renewable energy efforts, like that for most other USFS activities, takes place under a complex and wide-ranging body of requirements that has evolved over decades of legislative action, administrative policy and judicial review. In some cases, negative unintended effects of the accumulated direction continue to impact the agency's ability to fulfill its mission. We support efforts to achieve improvements in this respect. However, we are concerned that the approaches put forth in these bills could inadvertently lead to increased appeals, more frequent litigation, and missed opportunities for constructive input that will ultimately serve to undermine progress toward that goal. We believe other approaches have greater promise and we would welcome the opportunity to explore them further.

I will now point out some specific concerns regarding the proposed legislation.

H.R. 2171: H.R. 2171 would exclude "the drilling of a well to test or explore for geothermal resources on lands leased by the Department of the Interior" (DOI) from provisions of the National Environmental Policy Act of 1969 (NEPA) requiring preparation of an environmental impact statement. Projects would be excluded when they result in no more than 5 acres of total disturbance, require no new road construction, and are to be completed within 45 days including restoration of the site to pre-existing condition, among other criteria.

In most cases, DOI's Bureau of Land Management (BLM) has the lead for preparing NEPA documentation for geothermal projects on NFS lands leased by the DOI, with the USFS participating as a cooperating agency. However, an interagency agreement pursuant to Section 225 of the Energy Policy Act of 2005 (P.L. 109-58) requires coordination between the two agencies on surface management issues relating to geothermal activities on NFS lands.

As it applies to NFS lands, the projects meeting the criteria set forth in this legislation would also meet the eligibility criteria for an existing categorical exclusion (CE) from NEPA documentation requirements found at 36 CFR 220.6(e)(8), for short-term mineral, energy, or geophysical investigations, as long as specified extraordinary circumstances do not exist.

We support the use of existing statutory and administrative CEs in situations where their application is determined to be appropriate. To help in making this determination, the regulations specify several resource conditions that the agency must consider in determining whether extraordinary circumstances warrant further analysis and documentation in an EA or EIS, and therefore preclude the use of a CE (36 CFR 220.6(b)). These provisions are important in helping to protect Congressionally designated special areas, Native American religious or cultural sites, archaeological sites, habitat for certain categories of sensitive, threatened or endangered species, and other special landscape features.

Conversely, we are concerned that the proposed legislation would preclude the agency from documenting an EIS for any project meeting the specified criteria, thereby removing protections for extraordinary circumstances that are otherwise provided by the regulations for CEs and increasing the possibility of unanticipated resource damage. We also have a more general concern that broad-scale efforts to exclude or otherwise limit documentation of environmental analysis may generate uncertainty and skepticism that has a negative effect on stakeholder collaboration, increasing the likelihood of appeals and litigation as a result.

Given the above concerns, we cannot support this bill and concur with the DOI position to oppose this bill.

H.R. 2172: H.R. 2172 would exclude certain meteorological site testing and monitoring activities associated with wind and solar energy production from NEPA. Projects would be excluded when they result in no more than 5 acres of total disturbance, require minimal off-road access and no new road construction, and are to be decommissioned within 5 years including restoration of the site to pre-existing condition, among other criteria.

Projects meeting the criteria set forth in this legislation would also meet the eligibility criteria for an existing categorical exclusion (CE) from NEPA documentation requirements found at 36 CFR 220.6(e)(3), as long as specified extraordinary circumstances do not exist. Approving the construction of a meteorological sampling site is explicitly mentioned as an example where this CE can be applied.

As mentioned earlier, we support the use of existing statutory and administrative CEs in situations where their application is determined to be appropriate, including the regulations that help make that determination by specifying the extraordinary circumstances that preclude such use. These protections are helpful in many respects, including those that sometimes exist for wind testing proposals, like visual impacts from ridge top development and the potential impacts on migratory birds and bats.

Similar to our concerns regarding H.R. 2171 above, a requirement to exclude documentation of environmental analysis may lead to unanticipated resource damage in some cases, and a chilling effect that increases the likelihood of appeals and litigation.

The legislation also sets forth a requirement that issuance or denial of permits for such projects take place within 30 days after receipt of receiving an application, and that any denial clearly state the deficiencies resulting in that decision and provide opportunity for remedy. By contrast, USFS regulations at 36 CFR 251.58(c)(7) require grant or denial of an application such as this one that is subject to a processing fee within 60 days from receipt of the processing fee. This provision raises concerns about whether the proposed legislation's shorter timeline is consistent with agency capacity.

Although we support the goal of streamlining procedures for development of renewable energy resources on NFS lands, we cannot support this bill given the above concerns.

H.R. 2170: H.R. 2170 requires that a Federal agency shall consider and analyze only the proposed action and the "no action" alternative when reviewing any proposed renewable energy project on Federal lands, including proposals to produce energy from solar power, geothermal power, wind, biomass or other sources. The bill further requires, in complying with NEPA, that consideration of public comments be limited to those that specifically address the proposed action and/or the no action alternative rather than other potential alternatives.

We acknowledge that there are cases where it can be appropriate to limit alternatives to a proposed action and no action alternative. Examples include certain land exchanges where a willing seller is interested in a specific parcel, or various types of special uses involving unique landscape attributes, or certain vegetation management projects where there is broad-based support for urgent action and an effective treatment clearly presents itself. In the latter case, legislation can play a critical role in establishing effective parameters that guide decisionmaking and maintain public support, as is the case with hazardous fuels projects and the Healthy Forests Restoration Act of 2003 (P.L. 108-148).

However, in all these cases the agency has limited discretion to determine whether this approach is appropriate; the expectation remains that we are to analyze multiple alternatives unless the proposed-action/no-action approach is deemed justifiable. Indeed, it is our experience that analysis of multiple alternatives often produces better decisions that garner greater acceptance across a broader range of stakeholders, and provides additional opportunities to work with proponents to improve environmental mitigations. Furthermore, we are concerned that broad prohibitions on analyzing or considering input on multiple alternatives may have a negative effect, generating uncertainty and skepticism that increases the likelihood of appeals and litigation. This can cause delays in implementation even if the agency position is most frequently upheld, or lead the agency to more frequently select the no-action alternative.

Although we support the goal of streamlining procedures for development of renewable energy resources on NFS lands, we cannot support the proposed legislation given the above concerns.

Conclusion: Thank you for this opportunity to discuss proposals to improve the ability of the U.S. Forest Service to meet the nation's renewable energy needs. This concludes my prepared statement, and I would be pleased to answer any questions you may have.