

**STATEMENT OF
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BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FEDERAL LANDS**

April 17, 2024

Regarding:

H.R. ____, “To expedite under the National Environmental Policy Act of 1969 and improve forest management activities on National Forest System lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands to return resilience to overgrown, fire-prone forested lands, and for other purposes.”

Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA), Forest Service, regarding various Federal land management bills.

USDA has previously testified on several bills with language similar or identical to the provisions in this discussion draft. While we are continuing to analyze the discussion draft for additional feedback, we welcome the opportunity to engage with the Committee on these issues of mutual interest and to share our appreciation for your continued support of the mission of the Forest Service.

The Forest Service cares for the nation’s forests and grasslands for the benefit of all people. The agency manages 154 national forests, 20 national grasslands, and 1 tallgrass prairie to sustain both healthy landscapes and prosperous rural communities. The agency’s top priority is to maintain and improve the health, diversity, and productivity of the nation’s forests and grasslands to meet the needs of current and future generations.

The agency’s forest management focuses on restoring ecosystems, reducing wildland fire risk, maintaining forest health, and supplying sustainable forest products. Our management ensures that our national forests and grasslands are conserved, restored, and made more resilient to climate change. Healthy, resilient forests are crucial to ensure that the American public continues to have clean water and air, wildlife habitat, and recreational opportunities.

Several of the provisions in this bill relate directly to the Forest Service’s approach to wildland fire response. Our priority is to protect the health, safety and well-being of the fire management community and the public we serve. Federal agencies, Tribal nations, State and local partners, private industry, and volunteers stand together, ready to respond to wildfires again this year.

Where wildfires threaten lives, communities, and homes, we will actively use all available strategies and tools to suppress those fires and their growth. Our focus is on making sound, science-based, risk-informed decisions.

Providing critical wildfire response is essential to protect communities from exceedingly large fires that display extreme fire behavior. We are witnessing unprecedented wildfire behavior, fueled by overly dense forests and disrupted fire regimes, amplified by severe drought, climate change and extreme weather. Risk from these conditions is increased by continued development in and around forests. Fighting fire in these conditions means we need to make strategic, risk-based, and often difficult decisions about where and how to deploy firefighters and aviation assets safely.

The Forest Service’s Wildfire Crisis Strategy, launched in 2022, combines an historic investment of Congressional funding in fire science research with community wildfire risk planning in an unprecedented effort to confront the nation’s growing wildfire crisis. Leveraging contributions from States, Tribes, local governments, and partners, the Strategy dramatically increases the scale and pace of forest health treatments focused on the highest risk areas in the country. As part of this effort, 21 priority landscapes within high-risk firesheds have been identified; our work in these areas is mitigating wildfire risk for around 550 communities in the western United States.

We offer the views below on behalf of USDA regarding the fire- and forest management-related legislation being considered before the Subcommittee today, and we defer to DOI on those provisions that relate to DOI-administered lands.

Discussion Draft Summary

The discussion draft of H.R. _____ aims to “improve forest management activities on National Forest System lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands” through a variety of new programs and amendments to existing authorities. The draft bill compiles several separate bills related to wildfire risks, forest health, collaborative forest management, and other provisions included in the following titles.

TITLE I—LANDSCAPE-SCALE RESTORATION

Subtitle A—Addressing Emergency Wildfire Risks in High Priority Firesheds

Subtitle A would provide for the designation of certain areas as fireshed management areas, provide for a publicly accessible Fireshed Registry including interactive geospatial data, and establish an interagency Fireshed Center. This subtitle would also direct the Secretary of Agriculture and the Secretary of the Interior (“Secretaries”) to carry out fireshed management projects in designated fireshed management areas and enter into a shared stewardship agreement with a Governor within 90 days of receiving a request from the Governor.

Subtitle B—Expanding Collaborative Tools to Reduce Wildfire Risk and Improve Forest Health

Subtitle B would require that Tribes and counties (in addition to States) retain receipts under a good neighbor agreement and would allow the retained receipts to be used for restoration services

on federal or non-Federal land. Subtitle B would also extend the maximum term for agreements and contracts executed under the Stewardship End Result Contracting Projects authority from 10 years to 20 years and would direct the Chief to pay a 10 percent cancellation or termination cost for any long-term agreements or contracts that are cancelled or terminated. Further, this subtitle would direct the Secretaries to jointly establish intra-agency strike teams to address NEPA reviews, consultations under the National Historic Preservation Act and under the Endangered Species Act, site preparation work, and implementation of fire-shed management projects. This subtitle would raise the threshold at which timber sales must be advertised from a sale value of \$10,000 to \$55,000. The subtitle would also direct the Secretary of Agriculture to increase this threshold annually based on the Consumer Price Index of All Urban Consumers published by the Department of Labor.

Subtitle C – Addressing Frivolous Litigation

Subtitle C would prohibit a court from enjoining fire-shed management projects under this bill if the court determines that the plaintiff's claim is unlikely to succeed on the merits. This subtitle also pertains to Endangered Species Act (ESA) consultation, stating that the agency is not required to reinstate consultation under the ESA on a land management plan when a new species is listed, critical habitat is designated, or new information becomes available. Further, Subtitle C would establish a discretionary arbitration pilot program as an alternative dispute resolution process for objections to forest management activities undertaken pursuant to the Act.

Title II: Protecting Communities in the Wildland-Urban Interface

The second title of the draft bill would establish an interagency program to support coordination in reducing the risk of fires in the wildland-urban interface. This title would also require the Forest Service to use all available resources to extinguish wildfires within 24 hours of detection on National Forest System lands. This title would also establish a program for the purpose of testing and advancing innovative designs to create wildfire resistant structures and communities. Additionally, this title would amend the Federal Lands Policy and Management Act of 1976 by increasing the required right-of-way for certain electric transmission and distribution facilities. Further, this title would establish a statutory categorical exclusion for certain electric utility line rights-of-way and related matters under the National Environmental Policy Act, as well as declaring these activities exempt from ESA and the National Historic Preservation Act consultation requirements and any other applicable law. Finally, this title would require the development of an interagency strategy to enhance the domestic supply chain of seeds.

Title III: Transparency and Technology

The third title of the draft bill would establish a program for certain Federal agencies to enter into partnerships to carry out demonstration projects to support the development and commercialization of biochar. The title would also require Federal agencies to publish an annual report on the number of acres on which hazardous fuels activities were carried out in the previous year. Additionally, this title would establish a testbed pilot program for new and innovative wildfire prevention, detection, communication, and mitigation technologies. Further, this title would require the Government Accountability Office to conduct a study evaluating the

effectiveness of Forest Service wildland firefighting operations and the suitability and feasibility of establishing a new Federal agency with responsibility for responding to and suppressing wildland fire on Federal lands. Finally, this title would require the Forest Service to study potential locations for a western headquarters for the agency.

Views

USDA has previously testified before this Subcommittee and the Senate Energy and Natural Resources Committee on several of the provisions of the discussion draft of H.R. ____ and appreciates the interest from the Committee in working with the Forest Service to address concerns previously identified in testimony, as well as areas identified in new provisions of the draft bill that would benefit from further analysis and discussion.

While we would appreciate the opportunity to continue working with the Committee to analyze this discussion draft and provide feedback, we would like to take the opportunity to note some of the positions and feedback that we have provided in previous testimony or technical assistance.

USDA supports expanding the authority to retain receipts to Tribes and counties as proposed in Section 111. This authority would significantly increase county and Tribal participation in agreements executed under the Good Neighbor Authority, which would help us carry out needed forest management activities. The ability to use this revenue on non-Federal land would facilitate important cross-boundary restoration treatments.

On a number of provisions, USDA supports the intent of the language but would appreciate the opportunity to continue working with the committee to ensure workable implementation of the bill language. USDA supports the extension of a maximum term of agreements and contracts executed under the Stewardship End Results Contracting Projects authority as proposed in Section 112. USDA also supports raising the threshold at which timber sales must be advertised from a sale value of \$10,000 to \$55,000 as proposed in Section 114. USDA supports the intent of establishing interagency strike teams as proposed in section 113. For all these sections, however, we would like to continue to work with the Committee to address concerns and provide technical assistance to ensure workable implementation of the bill language.

USDA would like to work with the Committee to better understand the intent of several provisions related to implementing the National Environmental Policy Act, judicial review, and a pilot arbitration program to help the Committee meet its intent and ensure any agency concerns are addressed.

Section 122 exempts the Forest Service from reinitiating ESA consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services) on plans that have already been subject to consultation at the time they were approved, revised, or amended when a species

is subsequently listed, critical habitat is designated, or new information concerning a listed species or critical habitat becomes available.

The USDA and the Department of the Interior (DOI) realizes ESA consultation is an issue with a number of equities that need to be addressed. We are committed to continuing to work together towards a legislative solution that allows for timely decision making, while maintaining the important wildlife protections afforded by the Endangered Species Act. As drafted, the Administration has concerns and looks forward to working with the Committee and the bill sponsor to address concerns with the bill. We want to ensure clarity on how consultation for specific actions or projects can provide the American public with confidence that the agency is upholding its responsibilities to protect listed species and their habitat while providing the many benefits we gain by managing our forests.

Section 302 would establish a requirement for Federal agencies to publish an annual report on the number of acres on which hazardous fuels activities were carried out. The agency strives to improve its metrics in order to provide transparency and accountability for each dollar the agency receives to reduce wildfire risk and to accurately describe the outcomes from program implementation. The agency has a complex set of metrics for the work performed in the hazardous fuels program to reduce wildfire risk, restore and maintain fire adaptive ecosystems, and improve forest health. Currently the agency reports the number of acres invested in for treatment, the number of acres where treated has been implemented and the number of acres treated to maintain a desired condition. We continue to learn the best ways to incorporate outcome-based performance metrics into our programs using the best available science. We are working hard to prototype new outcome-based metrics. The agency currently has sufficient data, and we are working to incorporate those data into our science-based models. USDA would like to work with the Committee to better understand the intent of section 302.

Section 202 would require the Forest Service to use all available resources to carry out wildfire suppression with the purpose of extinguishing wildfires detected on National Forest System lands no later than 24 hours after they are detected. The agency has serious concerns that this language would remove critical resource management and firefighting tools and tactics from interagency responders who have to make life and death decisions. In addition, the agency has a history associated with a policy that required all fires be suppressed by 10am the next morning following detection. This policy had a direct result in the removal of fire from ecosystems which increased the number of trees and fuels in those ecosystems. The increase in fuels increased fire intensity and severity which increased fire risk to communities. Therefore, we cannot support this section.

The agency must continue to use every tool available, including the use of managed fire in certain circumstances, to reduce current and future adverse impacts from wildfire, consistent with agency policy and interagency response. Under Forest Service policy, every fire receives a strategic, risk-based response that is appropriate for the circumstances and the associated threats and opportunities. Each strategy uses the full spectrum of management actions that are tailored to fire and fuel conditions, weather, values at risk, and resource availability.

USDA looks forward to further reviewing the draft bill to better understand how these issues have been addressed, as well as to analyze the full implications of new provisions. As we continue this review, we would appreciate the opportunity to provide additional recommendations and comments, including technical amendments, before the Committee moves forward with this legislation.

Conclusion

Thank you for the opportunity to testify on the draft bill. USDA looks forward to continued work with the Committee and bill sponsors as they further develop the legislation.