

**STATEMENT OF
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U.S. DEPARTMENT OF AGRICULTURE – FOREST SERVICE
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FEDERAL LANDS**

January 31, 2024

Regarding:

H.R. 674, “Root and Stem Project Authorization Act of 2023”

H.R. 4297, “Bolts Ditch Act”

H.R. 6994, “Restoring Our Unopened Trails for Enjoyment and Safety (ROUTES) Act”

H.R. 7072, “Wabeno Economic Development Act”

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.

H.R. 674, “Root and Stem Project Authorization Act of 2023”

HR 674 authorizes the Forest Service and BLM to enter into an agreement with a person for a project on federal land that was developed through a collaborative process and that meets local and rural community needs. The person entering into the agreement would initially provide all or a portion of funding necessary to complete any necessary environmental analysis. The Secretary would use this funding to select and pay a contractor on a set list to conduct the analysis, and if choosing to move forward with the project the Secretary would solicit bids and then enter into a Stewardship contract or agreement (16 U.S.C. 6591c) to carry out the project. Any receipts generated by the project that would normally go to the Treasury would be used to repay the person providing initial funding for the environmental analysis.

The Administration is supportive of increasing capacity and working collaboratively with partners to facilitate efficient and science-based forest management but would like to work with the committee to better understand how a root to stem project would work and to offer additional technical assistance to ensure authorities do not already exist to achieve the intent of the proposed legislation and that we are able to implement it effectively.

For example, requiring the agencies to use a list of contractors provided to Congress would provide less flexibility to the agencies in fulfilling their environmental analysis obligations. We would like to better understand the intent of creating such a list and discuss possible issues including setting fair and transparent criteria and vetting of contractors to be on the list, ensuring a contract with a person on the list is the best value for the government in terms of price reasonableness, quality control, and liability for unfinished or poorly done environmental

analysis. We would also like to better understand if this authority is intended to supplant the new Section 107(f) in NEPA that allows project sponsors to prepare NEPA documents under the supervision of the agency.

Additionally, we would like to better understand the committee's intent concerning repayment of initial funding for the environmental analysis, and work with the committee to understand the benefits and challenges for federal land managers associated with full versus partial upfront payment. For most projects using contracts or agreements under the stewardship authority, either revenue is not generated or any revenue that is generated becomes retained receipts for use on additional stewardship contracting projects, rather than being deposited into the Treasury.

The Stewardship authority requires that stewardship contracting projects achieve land management goals for the national forests, and that they meet local and rural community needs. Because HR 674 requires that any project that moves forward will use a Stewardship contract or agreement to carry out the project, we recommend clarifying in the bill language that when a person submits a proposal for a root and stem project, it should not only meet local and rural community needs but also help achieve tribal interests and the land management goals for the national forests. We believe this will lead to more projects being carried out under this potential future authority.

Finally, we would like to work with the sponsor to clarify the role that participants in the collaborative process have in settlement negotiations. A participant in the collaborative process may not be a necessary party to litigation and therefore not a necessary party to a settlement. Guaranteeing participation in settlement negotiations may therefore result in unnecessary complication and delay. We also want to ensure the conflict-of-interest requirements appropriately safeguard against self-dealing on the part of the person submitting the proposal. We also believe that defining the term "person" could avoid future confusion about the ability of an organization or business entity to submit a proposal.

The Administration also recommends that the Committee seek Department of Interior (DOI) input on provisions that apply to DOI.

H.R. 4297, "Bolts Ditch Act"

H.R. 4297, the "Bolts Ditch Act," seeks to resolve issues associated with the use and maintenance of Bolts Ditch near the Town of Minturn, Colorado. The headgate and approximately 450 lineal feet of the ditch are located within the Holy Cross Wilderness Area on the White River National Forest. These features were included within the Holy Cross Wilderness Area when Congress passed the Colorado Wilderness Act designating this Wilderness Area in 1980. The structure and ditch were constructed in 1882 and previously delivered water to Bolts Lake via Bolts Ditch. Section 1101(a) of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (the "Dingell Act," Public Law 116-9) was enacted in 2019, requiring the Secretary of Agriculture to issue a special use authorization to the Town of Minturn for nonmotorized access and use for the purposes of the diversion of water and use, maintenance, and repair of Bolts Ditch and Bolts Ditch headgate. Presently, the Town of Minturn has no right to water from Bolt's Ditch. In 2021, the Town of Minturn filed an Application for Water Rights

and Approval of Plan for Augmentation and Exchange in Case No. 21CW3030. This application includes the Bolts Ditch. No decree concerning water rights has been issued for this case as of January 2024.

H.R. 4297, the “Bolts Ditch Act,” would amend Section 1101(a) of the Dingell Act to additionally require the Secretary of Agriculture to issue special use authorizations to the Upper Eagle River Regional Water Authority and Eagle River Water and Sanitation District for the same use and access as currently mandated for the Town of Minturn, i.e. nonmotorized access and use of the Bolts Ditch Headgate and the Bolts Ditch, for the purposes of the diversion of water and use, maintenance, and repair of the ditch and headgate.

Given the location of these features within the Holy Cross Wilderness, maintenance, repair, and operation of these permanent facilities may have minor impacts on the Wilderness character of the area. Additionally, Bolt’s Ditch is located on Cross Creek, which was identified as an eligible Wild and Scenic River by the White River National Forest Plan in 2002. The plan directs that each eligible stream identified will be managed to maintain eligibility until a suitability study can be completed. Individual suitability studies can be initiated when a project is proposed that may alter the free-flowing character or would affect the resources that made the stream eligible. The action of diverting water to Bolt’s Ditch may impact the suitability of Cross Creek, but no study has yet been undertaken to confirm that potential outcome.

USDA does not oppose H.R. 4297 but anticipates minor impacts to Wilderness resources and a potential impact to Wild and Scenic River suitability if the bill is enacted.

H.R. 6994, “Restoring Our Unopened Trails for Enjoyment and Safety (ROUTES) Act”

H.R. 6994, the Restoring Our Unopened Trails for Enjoyment and Safety Act or “ROUTES Act,” requires the reopening of covered recreation sites closed due to natural disasters. The Administration does not support the bill as currently drafted, but we would like to continue working with the bill sponsor and the Subcommittee to address the goal of expediting the restoration of recreation opportunities for public use and enjoyment following natural disasters.

The ROUTES Act would apply to “covered recreation sites,” which the bill defines as a trail, campground, developed day-use recreation site, or road that is located on “Interior recreational lands” or National Forest System (NFS) lands and operated by the Secretary concerned. As defined, the scope of this bill would affect all roads (not just those providing primary recreation access) and all trails under Federal jurisdiction in all types of areas, including wilderness areas and campgrounds and developed day-use recreation sites. If a covered recreation site were fully or partially closed to public use due to a natural disaster, the bill would mandate the reopening of the site within two years after the date on which the natural disaster ends. The bill would establish a categorical exclusion (CE) from documentation in an environmental assessment or an environmental impact statement under the National Environmental Policy Act (NEPA) for repair and restoration of covered recreation sites and hazard tree removal at or along covered recreation sites. The bill would specify that the CE would still be subject to the extraordinary circumstances provisions of 40 CFR 1501.4 that would limit the ability to rely on the CE and would authorize use of emergency response provisions in 36 CFR 220.4(b) for hazard tree removal at or along

covered recreation sites for up to two years following a natural disaster. Additionally, the bill would require the Secretary to report to Congress not later than two years after its enactment on the number of covered recreation sites that are closed due to natural disasters and the number of covered recreation sites reopened utilizing authorities in the bill.

The Forest Service manages 193 million acres of national forests and grasslands across 43 States and territories. These lands include more than 370,000 miles of NFS roads, 13,400 bridges, 163,000 miles of NFS trails, and 30,000 recreation sites (10,700 of which are developed recreation sites). Forest Service units prioritize keeping recreation sites, NFS trails, and NFS roads open to the best of their ability with the resources available to them. The primary challenges NFS units face in providing safe, accessible recreation opportunities following a natural disaster are financial resources and staff capacity, rather than a lack of legal authorities.

As with lands managed by other Federal agencies, not all roads, trails, and recreation sites are located in sustainable locations. Natural disasters can lead to dramatic changes to local environments, and as drafted the bill lacks flexibility to address circumstances where repairs may be complex, such as altering design or site location for rebuilding, or where a recreational site may be totally destroyed or eliminated, or where conservation of fish, wildlife and their habitats are impacted. For example, if roads, trails, campgrounds or other facilities are completely washed away, rebuilding could result in campgrounds existing in a flood plain, or reconstituted trails that would now border a newly created cliff face. Additionally, recreational lands as described in the bill may be managed by third parties, including concessioners or lessees. And on certain federal lands, habitat restoration and other conservation priorities may have to be initially addressed prior to any repair work. In all these cases, it may not be feasible or even desirable to reopen and may not be possible within the timeframe provided in the bill. Likewise, there may be safety issues that necessitate longer term closures.

The Forest Service currently has the legal authorities it needs, including CEs, to reopen NFS trails, NFS roads, and federally owned campgrounds and day-use developed recreation sites closed by wildfire and other natural disasters. These existing authorities include CEs for repair and maintenance of trails (36 CFR 220.6(d)(4)); repair and maintenance of recreation sites and facilities (36 CFR 220.6(d)(5)); post-fire rehabilitation activities on roads, trails, and facilities (36 CFR 220.6(e)(11)); and removal of debris after other disturbances (36 CFR 220.6(e)(19)). Hazard tree removal is covered by existing CEs at 36 CFR 220.6(d)(4) (roads and trails) and (d)(5) (recreation sites and facilities). The emergency response provision requires further clarification of its scope, intent, and avoidance of conflicts with existing law and other provisions of this bill to achieve its intended effect.

Because the ROUTES Act would mandate reopening of closed recreation sites by an arbitrary two-year deadline, without exception and regardless of whether all needed safety mitigation work has been completed, the Administration has significant concerns about risk exposure for the recreating public and liability exposure for the United States. This bill would remove agency discretion to consider other management options or approaches to fit the local circumstances. The arbitrary deadline would also create additional risk to Federal employees and contractors by constraining risk management decisions regarding whether to remove hazards, including hazard trees.

While the Administration does not support the bill as currently drafted, we would be pleased to work with the bill sponsor and the Subcommittee to address the goals of the bill and the underlying challenge of adequate agency resources and capacity to manage and expedite the provision of recreation opportunities to the public following natural disasters. The Administration also recommends that the Committee seek Department of Interior (DOI) input on provisions that apply to DOI.

H.R. 7072, “Wabeno Economic Development Act”

H.R. 7072, the Wabeno Economic Development Act, would require the Secretary of Agriculture, acting through the Chief of the Forest Service, to convey a parcel of approximately 14 acres of National Forest System (NFS) land located in the Chequamegon-Nicolet National Forest to Tony's Wabeno Redi-Mix, LLC. The parcel, located on the Lakewood-Laona Ranger District, is adjacent to and southwest of the Town of Wabeno and can be accessed off of Smith Rd. The parcel is surrounded on three sides by private land and adjacent to other Forest Service land on the fourth side to the south. It contains upland northern hardwood with a year of origin of 1927.

Subject to provisions in this Act, if the Tony's Wabeno Redi-Mix, LLC offers to acquire the NFS property for market value, the Secretary shall, not later than 180 days after receiving the offer, convey to Tony's Wabeno Redi-Mix, LLC all right, title, and interest of the United States in and to the property as described in the Act. As a condition of the conveyance, Tony's Wabeno Redi-Mix, LLC would be required to pay an amount equal to the market value of the land to be conveyed and all costs associated with the conveyance including for surveys, appraisals, and any environmental analysis required by Federal law.

The Act would also require the Department of Interior (DOI), in consultation with other federal agencies, industry stakeholders, and states to review federal permitting processes related to stone, sand, and gravel development on federal land, and to submit a report on this topic to the committee within 180 days of enactment. This report would overview current federal permitting processes and associated economic impacts, identify inefficiencies, and recommend legislative or administrative actions to streamline processes.

We look forward to working with the Chairman and committee as HR 7072 moves forward and recommend the Committee seek DOI input on provisions under their jurisdiction.