



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Federal Lands Republican Members
From: Subcommittee on Federal Lands; Aniela Butler and Brandon Miller –
Aniela@mail.house.gov and Brandon.Miller@mail.house.gov, x6-7736
Date: Wednesday, April 17, 2024
Subject: Legislative Hearing on a Discussion Draft of H.R. ____ (Rep. Westerman), “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”

The Subcommittee on Federal Lands will hold a legislative hearing on a Discussion Draft of H.R. ____ (Rep. Westerman), “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.” The hearing will take place on **Wednesday, April 17, 2024, at 10:00 a.m. in room 1324 Longworth House Office Building.**

Member offices are requested to notify Colen Morrow (Colen.Morrow@mail.house.gov) by 4:30 p.m. on Tuesday, April 16, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- A century of fire suppression and decades of mismanagement have resulted in a perfect storm of overstocked, unhealthy, and fire-prone federal forests left susceptible to wildfires, insects and disease, drought, and rising temperatures. Across the country, more than 1 billion acres are now at risk of fire.
- The consequences of our out-of-control catastrophic wildfire crisis cannot be overstated. Millions of acres are burning annually and claiming lives and property, charring wildlife habitat, releasing millions of metric tons of carbon into the atmosphere, degrading air and water quality, and racking up billions of dollars in suppression costs and damages.
- We know what needs to be done to fix this problem. There is a scientific consensus that active forest management, including thinning and prescribed burning, can return resiliency to our federal forests.
- The Discussion Draft under consideration would enable landscape-scale treatments to increase the pace and scale of forest management, empower State, Tribal, local, and private partners to get more work done on the ground, protect communities from catastrophic wildfires, encourage the utilization of wood products and support local

forest products infrastructure, and address the weaponization of our country’s environmental laws by extremist environmental litigants.

II. WITNESSES

Panel I (Administration Officials):

- **Mr. Chris French**, Deputy Chief of the National Forest System, U.S. Forest Service, Washington, D.C.

Panel II (Outside Experts):

- **Mr. Cody Desautel**, President, Intertribal Timber Council, & Executive Director, Confederated Tribes of the Colville Reservation, Nespelem, Washington
- **Ms. Hannah Downey**, Policy Director, Property and Environment Research Center, Bozeman, Montana
- **Mr. Jim Parma**, Eastern Fiber Manager, Bell Lumber and Pole, New Brighton, Minnesota
- **Dr. Kimiko Barrett**, Wildfire Research and Policy Lead, Headwaters Economics, Bozeman, Montana [*Minority Witness*]

III. BACKGROUND

[H.R. \(Rep. Westerman\), 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.](#)

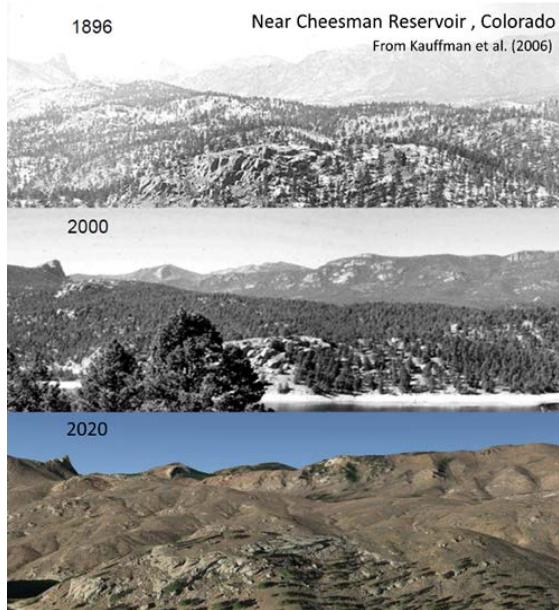
Overview

Across the country, more than one billion acres are at risk of wildland fire.¹ Federal land management agencies have identified a combined 117 million acres of federal land at high or very high risk for wildfire, representing nearly one-fifth of the overall land overseen by the agencies.² These high-risk federal forests are overloaded with dangerous dry fuels that have been allowed to accumulate through a century of fire suppression combined with a lack of thinning, prescribed burns, and mechanical treatments.³ Overstocking makes forests less resilient by increasing competition among trees for the water, minerals, and sunlight necessary to sustain a healthy forest. California, which had over 4 million acres burned in 2020, and a record-breaking “gigafire” – a term referring to a blaze that has consumed more than 1 million acres –

¹ Testimony of Christopher French, Deputy Chief, U.S. Forest Service, before the Senate Energy and Natural Resources Committee, June 24, 2021, <https://www.energy.senate.gov/services/files/AAF7DF40-2A47-4951-ADA4-4B124AD3894F>.

² Hoover, Katie, “Federal Wildfire Management: Ten-Year Funding Trends and Issues (FY2011-FY2020),” October 28, 2020, CRS, R46583.

³ Ingram, Robert G. “Robert G. Ingram: Forest Fuel Management - the Ugly Truth.” *TheUnion.com*, October 9, 2020, www.theunion.com/opinion/columns/robert-g-ingram-forest-fuel-management-the-ugly-truth/.



Historic forests experienced frequent, low severity wildfire that maintained the open, parklike forest

Fire exclusion, beginning in the late 1800's, has allowed infilling of trees and increased fuels on the landscape

Hayman Fire 2002 burned at a high severity, removing the majority of forests, potentially altering future ecosystems

Source: U.S. Forest Service, 2021.

exemplifies this situation.⁴ Before European settlement, California forests had roughly 64 trees per acre. Those same forests now have over 300 trees per acre.⁵ As a result, over 173 million trees died across the state in the past 20 years, and an estimated 36.3 million trees died in 2022 alone, a 282 percent increase from the year prior.⁶ Unprecedented drought facing the West has further weakened overgrown national forests, leaving them extremely vulnerable to wildfire. Recent research has shown that some areas are experiencing the driest conditions in 1,200 years.⁷ These

conditions have turned vast swaths of the nation's forests into ticking time bombs that can ignite with a single spark. It is no longer a matter of "if" these areas will experience catastrophic wildfire but "when."

In the last 20 years, the United States lost an average of 7 million acres per year to catastrophic wildfires, more than double the average seen during the 1990's.⁸ Since 2000, over 164 million acres have been damaged by wildfire, a collective area that is roughly three times the size of the entire State of Utah.⁹ Prior to 2015, the United States had never had more than 10 million acres burned in a single wildfire season. In the past decade, the country has now hit that ominous mark three times during some of the worst wildfire seasons on record (2015, 2017, and 2020).¹⁰ This crisis has wreaked unprecedented havoc on landscapes and communities across the Western United States. Catastrophic wildfires have destroyed lives and property, degraded air and water quality, and irreparably damaged millions of acres of wildlife habitat. A new study has shown a 246 percent increase in the number of homes and properties destroyed between 2010 and 2020 compared to the prior decade.¹¹ In the last five years, wildfires have also caused over \$22 billion

⁴ CNN, "California fire is now a 'gigafire,' a rare designation for a blaze that burns at least a million acres, 10/6/20, <https://www.cnn.com/2020/10/06/us/gigafire-california-august-complex-trnd/index.html>.

⁵ Data provided by the U.S. Forest Service.

⁶ Fehely, Devin, "California drought leading to tens of millions of trees dying in state," CBS News, July 25, 2022, <https://www.cbsnews.com/sanfrancisco/news/california-drought-leading-to-tens-of-millions-of-trees-dying-in-state/>. CNN, "Drought and disease in California forests leaves behind an estimated 36 million dead trees, survey finds," 2/10/2023, <https://www.cnn.com/2023/02/10/us/california-drought-millions-trees-dead/index.html>.

⁷ *Id.*

⁸ Congressional Research Service, "Wildfire Statistics", Katie Hoover, June 1, 2023, <https://www.crs.gov/Reports/IF10244?source=search&guid=b82a4d954677449b918a65ece823396f&index=0>.

⁹ NIFC, "Wildfires and Acres, <https://www.nifc.gov/fire-information/statistics/wildfires>.

¹⁰ *Id.*

¹¹ PNAS Nexus, "Shifting social-ecological fire regimes explain increasing structure loss from Western wildfires", Philip E. Higuera et al., March 2023, <https://academic.oup.com/pnasnexus/article/2/3/pgad005/7017542>.

in property damages.¹² Perhaps most concerning, worsening wildfires have continued to cause unthinkable and tragic losses of life, with 430 people sadly perishing in wildfires since 2013.¹³

We know what needs to be done to turn the tide of this crisis and restore our forests to healthy, resilient conditions. Despite the fearmongering of increasingly isolated, radical environmentalists, there is a scientific consensus among a broad array of stakeholders recognizing the importance of active forest management.¹⁴ In fact, research published this year “found overwhelming evidence” that forest treatments like mechanical thinning and prescribed burning reduce wildfire severity by as much as 72 percent compared to untreated areas.¹⁵ Active forest management encourages sustained, healthy growth while removing much of the dangerous fuel buildups that lead to catastrophic wildfires.¹⁶

Despite this clear consensus, land managers are still struggling to increase the pace and scale of forest management due in large part to a mixture of bureaucratic red tape, onerous regulations, and frivolous litigation. For decades, land management agencies have consistently fallen short of carrying out forest management activities at the pace and scale necessary to truly confront the wildfire crisis in a meaningful way. The U.S. Forest Service (USFS), for instance, has only been able to carry out 2 million acres of treatments annually in recent decades.¹⁷ At this paltry rate, it will take USFS over 30 years to complete the necessary treatments. Increased funding alone is insufficient to address this crisis. Despite billions of dollars from the Inflation Reduction Act and Infrastructure Investment and Jobs Act (IIJA), USFS has still failed to meaningfully ramp up the number of acres treated.¹⁸ In fact, the agency is planning to treat fewer acres this year than it did two years prior, as demonstrated in the chart on this page.

Year	Acres Treated
FY 2017	2.75 million
FY 2018	3.40 million
FY 2019	2.90 million
FY 2020	2.65 million
FY 2021	3.70 million
FY 2022	3.21 million
FY 2023	4.3 million
<i>FY 2024 (target)</i>	<i>4.20 million</i>
<i>FY 2025 (target)</i>	<i>4.0 million</i>

Source: Data compiled by HNRC Majority Staff from USFS Budget Justifications, FY 2017-FY 2025.

The National Environmental Policy Act (NEPA), in particular, is a major roadblock in improving the health of our nation’s forests.¹⁹ Vital forest management projects are often delayed or canceled as land managers divert finite agency time and resources from important management

¹² Value Penguin, “Wildfire Statistics: Damage, Fatalities, and Insurance Rates”, Lindsay Bishop, March 15, 2024, <https://www.valuepenguin.com/homeowners-insurance/wildfire-statistics>.

¹³ Statista, “Number of deaths due to wildfire in the United States from 1990 to 2023”,

Erick Burgueño Salas, November 8, 2023, <https://www.statista.com/statistics/1422130/usa-number-of-deaths-due-to-wildfires/>

¹⁴ American Forest Resource Council, “Solutions”, <https://amforest.org/solutions/>.

¹⁵ Davis, et al., “Tamm review: A meta-analysis of thinning, prescribed fire, and wildfire effects on subsequent wildfire severity in conifer dominated forests of the Western US,” *Forest Ecology and Management* Volume 561, 1 June 2024, 121885.

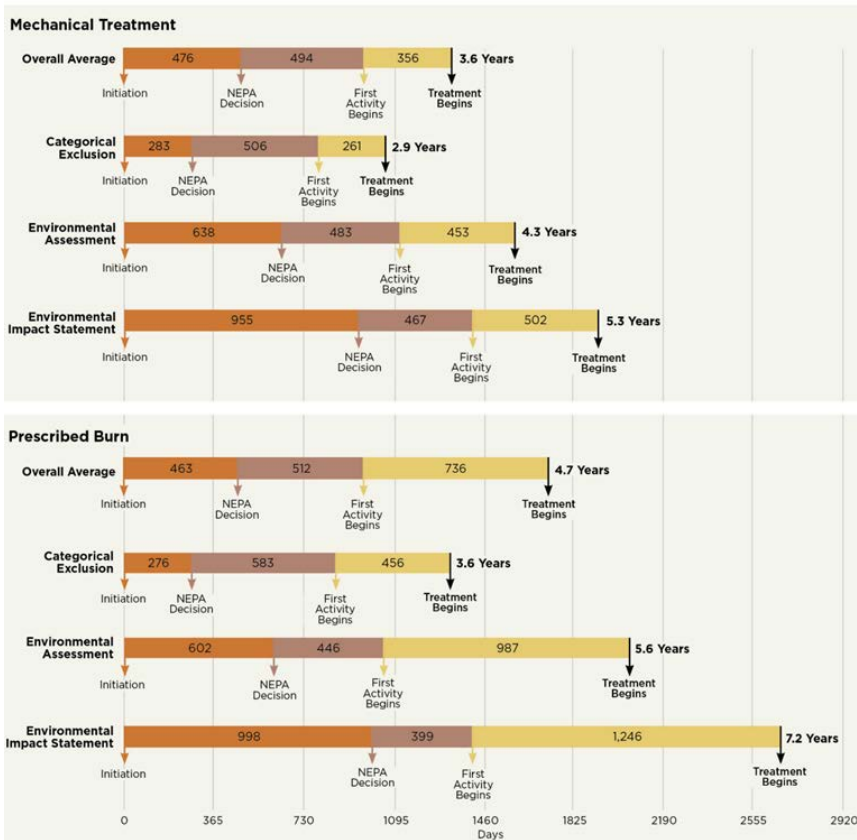
¹⁶ *Id.*

¹⁷ PERC, “Does Environmental Review Worsen the Wildfire Crisis”, Eric Edwards, Sara Sutherland, June 14, 2022, <https://perc.org/2022/06/14/does-environmental-review-worsen-the-wildfire-crisis/>.

¹⁸ P.L. 117-58. P.L. 117-169.

¹⁹ 43 U.S. Code § 1638.

Average Time to Begin Fuel Treatments by NEPA Analysis Type



Source: PERC, 2022.

activities to endless analysis to “bulletproof” NEPA documents, circular consultations with other agencies, and combating obstructionist lawsuits. For example, USFS has spent seven years and an estimated 15,000 pages of documentation analyzing a roughly 7,000-acre treatment project in the Nez-Perce Clearwater National Forest in Idaho, or approximately 0.008 percent of the National Forest acreage estimated to be at moderate to high risk of catastrophic wildfire.²⁰ In another example in Montana, USFS completed 1,300 pages of documentation for a project on the Lewis and Clark National Forest that

proposed treating roughly 330 acres per year over 20 years.²¹ In total, the Forest Service is carrying out only two percent of needed fuel reduction treatments per year²² and, at this paltry scale, will not be able to reverse the deteriorating health trends of our national forests for several decades.²³

To truly increase the pace and scale of forest management needed to address this crisis and restore health and resiliency to our nation’s forests, Chairman Westerman has released a draft forestry package (Discussion Draft) with innovative new solutions to treat forests on a landscape scale, protect communities, and encourage transparency and innovation. This is the result of the House Committee on Natural Resources’ efforts this Congress to advance innovative solutions to achieve those goals while also drawing on bipartisan negotiations and bills introduced by various Members of the Committee. The Discussion Draft also contains ten provisions that directly align with the recommendations recently released in the Wildland Fire Commission report, and many additional portions are consistent with the report’s findings.²⁴ The following background

²⁰ Data provided by FFRC.

²¹ Ibid. FFRC.

²² Fretwell, Holly, and Jonathan Wood. “Fix America’s Forests: Reforms to Restore National Forests and Tackle the Wildfire Crisis.” *PERC*, 12 Apr. 2021, www.perc.org/2021/04/12/fix-americas-forests-reforms-to-restore-national-forests-and-tackle-the-wildfire-crisis/.

²³ Ibid.

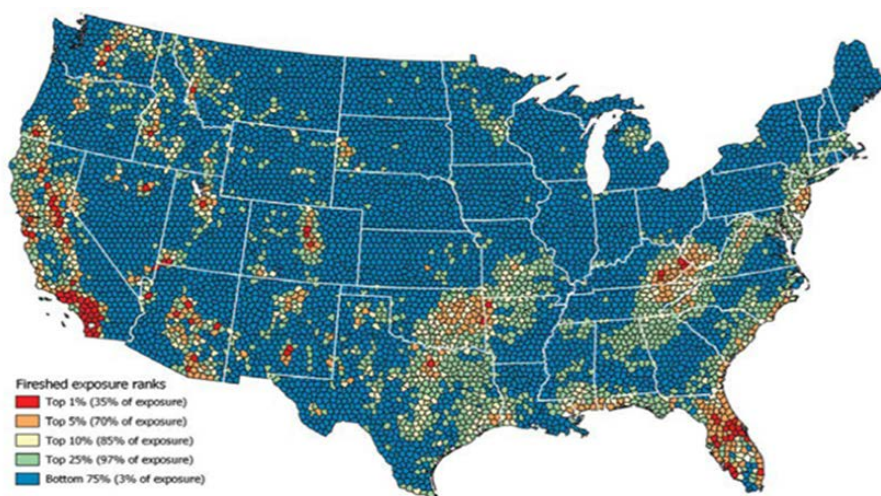
²⁴ Wildland Fire Mitigation and Management Commission, “On Fire: The Report of the Wildland Fire Mitigation and Management Commission”, September 2023, <https://www.usda.gov/sites/default/files/documents/wfmmc-final-report-092023-508.pdf>.

provides greater detail on the three titles of the Discussion Draft. For more information about the devastating impacts of the wildfire crisis, please see the House Committee on Natural Resources’ field hearing memo for [“Conservation in a Crown Jewel: A Discussion About Wildfires and Forest Health.”](#)

Title I – Landscape-Scale Restoration

Subtitle A – Addressing Emergency Wildfire Risks in High-Priority Firesheds

The enormity of the wildfire threat requires broader and more strategic forest management efforts that transcend traditional man-made boundaries. Finding ways to empower landscape-scale treatments across multiple jurisdictions is key to this effort. In an attempt to better track and manage wildfire risk, USFS scientists developed a Fireshed Registry that tracks “risk trajectories on lands where destructive wildfires are likely to originate.”²⁵ This geospatial mapping framework identified 7,688 firesheds that are, on average, about 250,000 acres in size and include planning areas that are roughly 25,000 acres each.²⁶ This cutting-edge technology is able to show the firesheds across the nation that face the greatest risk of experiencing a catastrophic wildfire that would affect nearby communities. This technology has been instrumental in formulating the basis of USFS’s 10-year “Confronting the Wildfire Crisis” strategy.²⁷



National map of the 7,688 firesheds.

Source: Dr. Alan Ager, 2021.

The results of the Fireshed Registry are very concerning. They identify hundreds of Western communities that are exposed to a predicted wildfire risk that is higher than the risks that existed just before the Camp Fire, in a horrific 2018 tragedy, leveled the California towns of Concow

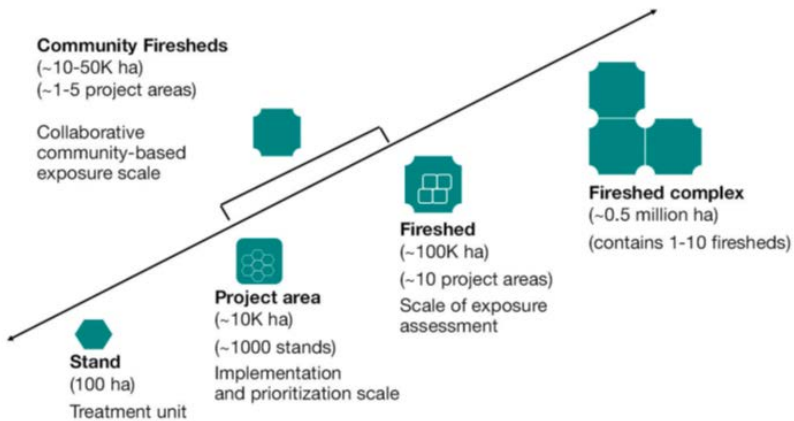
²⁵ U.S. Forest Service Rocky Mountain Research Station, “Development and Application of the Fireshed Registry”, Alan Ager et al, https://www.fs.usda.gov/rm/pubs_series/rmrs/gtr/rmrs_gtr425.pdf.

²⁶ A fireshed is a landscape-scale area that faces similar wildfire threats where a fire management strategy could affect fire outcomes. U.S. Forest Service, “The Fireshed Registry: Prioritizing forest and fuel management investments to reduce wildfire risk to developed areas”, <https://www.iawfonline.org/wp-content/uploads/2020/12/BP2-Fireshed-Registry.pdf>.

²⁷ USDA, “Secretary Vilsack Announces New 10 Year Strategy to Confront the Wildfire Crisis,” January 18, 2022, <https://www.usda.gov/media/press-releases/2022/01/18/secretary-vilsack-announces-new-10-year-strategy-confront-wildfire>.

and Paradise.²⁸ In total, USFS researchers identified 1,812 communities in the Western United States that could be significantly impacted by future wildfires, exposing an estimated 4,000 structures to wildfire on average annually.²⁹ Sobering fire models even predicted plausible extreme fire scenarios in the near future, where almost 500,000 buildings could be lost to wildfire in a single fire season.³⁰ Other scenarios identified the probability of wildfires igniting on USFS lands and burning over 1.5 million acres in Southern California, destroying 100,000 structures and putting thousands of lives at risk.³¹ As shown on the fireshed map, many Western communities are in the 10 percent highest risk firesheds, accounting for 85 percent of nationwide wildfire exposure.

Title I of the Discussion Draft utilizes this new science as an innovative blueprint to target the top 20 percent of high-risk firesheds, where many of these threatened communities are located. This will prioritize treatments in the highest-risk areas with the most degraded forest health conditions and where the



Source: Alan Ager, 2021.

greatest community and watershed risks are present. To increase the pace of treatments, Section 106 of the bill codifies emergency authorities that the Biden administration is currently using in Region 5 to address hazard trees and threats to Giant Sequoias.³² This authority has been a successful tool that allows agencies to complete critical work before completing an environmental analysis under the National Environmental Policy Act (NEPA) without waiving NEPA. This section addresses the challenge of increasing the scale of completing forest management projects by encouraging the use of existing categorical exclusions (CEs) under NEPA and removing paltry 3,000-acre limitations on those CEs in instances when USFS or the Department of the Interior (DOI) has collaborated with a state governor or Indian Tribe.

²⁸ *Id.*

²⁹ U.S. Forest Service Rocky Mountain Research Station, “Cross-Boundary Wildfire and Community Exposure: A Framework and Application in the Western U.S.” Alan Ager et al, 2019, https://www.fs.usda.gov/rm/pubs_series/rmrs/gtr/rmrs_gtr392.pdf.

³⁰ Finney MA, McHugh CW, Grenfell IC, Riley KL, Short KC. A simulation of probabilistic wildfire risk components for the continental United States. *Stochastic Environmental Research and Risk Assessment*, 2011; 25:973–1000. Short KC, Finney MA, Vogler K, Scott JH, Gilbertson-Day JW, Julie W, Grenfell IC. Spatial datasets of probabilistic wildfire risk components for the United States (270m) 2020. Available at: <https://doi.org/10.2737/RDS-2016-0034>.

³¹ Eliza Barclay, “This is a worst-possible wildfire scenario for Southern California,” *Vox*, <https://www.vox.com/2019/9/10/20804560/climate-change-california-wildfire-2019>.

³² USFS, “Giant Sequoia Emergency Response,” <https://www.fs.usda.gov/detail/r5/landmanagement/resourcemanagement/?cid=fseprd1078184#:~:text=An%20Emergency%20Response%20was%20approved,threatens%20these%20giant%2C%20iconic%20trees>. USFS, “Region 5 Post-Disturbance Hazardous Tree Management Project,” <https://www.fs.usda.gov/project/?project=60950&exp=overview#:~:text=Region%205%20Post%2DDisturbance%20Hazardous%20Tree%20Management%20Project&text=Hazard%20tree%20felling%20and%20removal,level%20analyses%20and%20nine%20decisions>.

Title I will also establish a brand-new Fireshed Center comprised of relevant land management and science-focused agencies to comprehensively assess and predict fire in the wildland and wildland-urban interface. This will reduce fragmentation and create a “one-stop shop” for predictive services that can help inform suppression and management decisions across jurisdictional landscapes. The Fireshed Center will also be tasked with maintaining an easily accessible fireshed registry for the public that provides interactive geospatial data on individual firesheds, including wildfire risk, burn history, past fuels treatments, and at-risk communities. This concept aligns with a recommendation from the Wildland Fire Commission.³³ In recognition of the importance of cross-boundary coordination, this bipartisan proposal also codifies the principles of shared stewardship between federal and state land managers to designate additional fireshed management areas.

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

The size and scope of the wildfire and forest health crisis cannot be tackled by any one entity alone. It is vital that more be done to encourage coordination and empower cross-boundary management on a landscape scale. Roughly 47 percent of Western lands are managed by the federal government, primarily under the jurisdiction of USFS and the Bureau of Land Management (BLM).³⁴ Western states, Tribes, and counties all have a significant stake in how federal lands are managed for wildfires, which continue to pose a significant threat to Western communities. Several tools have been developed to empower more state, Tribal, and local coordination on forest management and restoration work, yet many have not achieved their full potential.

A major impediment to carrying out necessary fuels management has been the loss of sawmill infrastructure. Since 2000, over 1,500 sawmills, which is one-third of the total number of sawmills in operation at that time, have closed.³⁵ The loss of this critically important infrastructure and mill capacity has greatly hampered efforts to ramp up forest management activities and process hazardous fuels, exacerbating the wildfire crisis across the nation. A lack of reliable federal timber is consistently cited as a primary cause of many of these mill closures in Western states with large amounts of federal land. Just two weeks ago, C&D Lumber, which began operations in southern Oregon in 1890, announced its permanent closure, explaining that “timber supply issues” among other challenges, “have made it impossible for us to envision a sustainable future for the company.”³⁶ Without a stable supply of timber, investments in new sawmills, which often cost more than \$100 million, make little sense for private industry.³⁷

Title I tackles these problems in several ways. First, the bill addresses technical issues with the Good Neighbor Authority (GNA) that have prevented the full participation of Tribes and

³³ *Id.*

³⁴ New York Times, “Why the Government Owns So Much Land in the West”, Quoc Trung Bui and Margo Sanger-Katz, January 5, 2016, <https://www.nytimes.com/2016/01/06/upshot/why-the-government-owns-so-much-land-in-the-west.html#:~:text=The%20United%20States%20government%20owns,owned%20by%20the%20federal%20government>.

³⁵ Congressional Budget Office, “Wildfires”, June 2022, <https://www.cbo.gov/publication/58212>.

³⁶ KQEN News Radio, “C&D Lumber Announces Permanent Closure”, April 5, 2024, <https://kqennewsradio.com/2024/04/05/cd-lumber-announces-permanent-closure/>.

³⁷ The Advocate, “More than half a billion investment in sawmills planned across Louisiana amid higher lumber prices”, Kristen Mosbrucker, July 26, 2021,

counties.³⁸ Under GNA, states, counties, and Tribes can enter into agreements with USFS or BLM, known as Good Neighbor Agreements, to conduct restoration projects, such as fuels reduction or habitat improvement. GNA has been a successful program, with over 490 projects that have started in 34 states since 2014.³⁹ This legislation allows Tribes and counties to retain receipts from GNA timber sales, similar to states, in order to incentivize greater participation in the program. Second, Title I seeks to address the problem of unreliable federal timber by permanently codifying 20-year stewardship contracting and addressing issues with the current cancellation ceiling. Stewardship contracting allows USFS and BLM to work with non-federal partners and apply the value of harvested forest products in exchange for restoration services.⁴⁰ Generally, a stewardship contract must be completed in 10 years; however, in the fiscal year (FY) 2018 omnibus appropriations bill, Congress authorized USFS and the BLM to extend contract terms to 20 years on a one-time basis on select lands.⁴¹ Making 20-year stewardship contracting permanent will encourage even more participation in this program by providing long-term stability and an assurance of a steady supply of federal timber. Finally, this Title amends the National Forest Management Act to increase the dollar value of sales the USFS can award directly to a timber purchaser with no further competitive bidding for small areas of timber.⁴² This will enable the USFS to make direct sales for small but meaningful forest management projects that benefit local logging workforces and forest management outcomes.

Subtitle C – Addressing Frivolous Litigation

Frivolous litigation and burdensome regulations remain a major impediment to increasing the pace and scale of active management on our federal lands and forests. It takes an average of 3.6 years to begin a mechanical treatment on federal lands and 4.7 years to begin a prescribed burn.⁴³ These prolonged start times are largely caused by efforts to “bulletproof” actions from potential litigation. According to a recent paper by Yale Associate Professor Zachery D. Liscow, “approximately 90 percent of the detail in environmental review statements is prompted by a desire to address any conceivable issues that might be raised in litigation.”⁴⁴ Litigation is a particular challenge for USFS, which has faced more than 150 lawsuits in the past decade “seeking to block timber projects” that have tied up 1.8 billion board feet of timber.⁴⁵ A prime example of how litigation can delay vital forest management projects can be seen in the case of the Bozeman Municipal Watershed project. This project, which would address a wildfire risk in the Custer-Gallatin National Forest that is threatening 80 percent of the City of Bozeman’s water

³⁸ Congressional Research Service, The Good Neighbor Authority on Federal Lands, January 11, 2023, <https://crsreports.congress.gov/product/pdf/IF/IF11658>

³⁹ National Association of State Foresters, “Good Neighbor Authority”, <https://www.stateforesters.org/state-defined-solutions/good-neighbor-authority/#:~:text=It%20is%20simply%20good%20government,more%20than%20490%20GNA%20projects>.

⁴⁰ Congressional Research Service, “Stewardship End Result Contracting: Forest Service and Bureau of Land Management”, Anne A. Riddle, September 27, 2022, <https://www.crs.gov/Reports/IF11179?source=search>.

⁴¹ *Id.*

⁴² 16 U.S. Code § 1604.

⁴³ Property and Environment Research Center, “Does Environmental Review Worsen the Wildfire Crisis?” Eric Edwards and Sara Sutherland, June 14, 2022, <https://perc.org/2022/06/14/does-environmental-review-worsen-the-wildfire-crisis/>

⁴⁴ Zachery D. Liscow., “Getting Infrastructure Built: The Law and Economics of Permitting”, March 28, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4775481.

⁴⁵ Federal Forest Resource Coalition, December 7, 2023, https://www.facebook.com/story.php?story_fbid=pfbid0MngkPgBDjL23eFj1xeeZpAzvvXDWhqcaqvLtCBatCynD1KW3k8zJ8rcHJEf2SnBul&id=100080394122697&paipv=0&eav=AFY4BXVWVezhfz4goRuXOaq1-fF14F11pakwAr67va7ADy7naxBL4A3qpgQJ060WOO&rd=rd.

supply, was delayed by more than 15 years due to challenges by litigious environmental groups.⁴⁶

The Discussion Draft addresses one of the most common sources of litigation for USFS, the disastrous *Cottonwood* decision. In 2015, the Ninth Circuit Court of Appeals ruled, in *Cottonwood Environmental Law Center v. United States Forest Service* (“*Cottonwood*”), that USFS must reinstate Endangered Species Act (ESA) consultation on completed forest plans when a new species is listed, when critical habitat is designated, or when new information is brought forward.⁴⁷ Since January 2016, there have been at least 35 *Cottonwood*-related lawsuits in 13 states and 57 notices of intent (NOIs) to sue involving ESA new information claims, challenging both plan-level and project-level decisions.⁴⁸ According to the USFS, “the cumulative cost to fully complete the backlog of consultations could exceed \$23,000,000 with an average estimated cost per plan of \$264,367 based on 87 plans currently identified.”⁴⁹ While the Consolidated Appropriations Act of 2018 implemented a partial fix to the *Cottonwood* ruling, this fix expired on March 23, 2023.⁵⁰ Both the Obama and Trump administrations attempted to address the *Cottonwood* decision through agency rulemaking, although those efforts were never finalized.⁵¹

In addition to these provisions, the Discussion Draft expands existing litigation reforms from IJA and the Healthy Forests Restoration Act.⁵² Specifically, this proposal protects targeted fire-shed management projects from an injunction if the plaintiff is unlikely to succeed in the case. Courts would also be required to balance harms when considering an injunction on fire-shed management projects. This proposal would also create reasonable time limits on injunctions. This proposal also addresses obstructionist litigation through the creation of an arbitration pilot program requiring litigants opposing a forest management activity to propose an alternative rather than simply opposing it. This will promote the quick resolution of litigation against forest management projects.

Title II – Protecting Communities in the Wildland-Urban Interface

Wildfires have become an increasingly severe threat to communities located in the wildland-urban interface (WUI). Since 2005, over 89,000 structures have been destroyed by wildfires, leading to an untold number of deaths and enormous personal losses.⁵³ Entire towns have gone up in smoke. Across the U.S. there are over 70,000 communities and 44 million homes at risk

⁴⁶ PERC, “Progress for the Bozeman Municipal Watershed Project”, Holly Fretweel and Jack Smith, May 14th, 2021, <https://www.perc.org/2021/05/14/progress-for-the-bozeman-municipal-watershed-project/>.

⁴⁷ *Cottonwood Environmental Law Center v. U.S. Forest Service*, No. 13-35624 (9th Cir. 2015).

⁴⁸ Information provided by the U.S. Forest Service.

⁴⁹ Chris French, Questions for the Record, House Committee on Natural Resources, March 23, 2023. <https://docs.house.gov/meetings/II/II10/20230323/115529/HHRG-118-II10-20230323-SD050.pdf>.

⁵⁰ Public Law 115-141

⁵¹ U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” published in the Federal Register on August 27, 2019, <https://www.federalregister.gov/documents/2019/08/27/2019-17517/endangered-and-threatened-wildlife-and-plants-regulations-for-interagency-cooperation>.

⁵² 16 U.S. Code Chapter 84.

⁵³ Barrett, Kimiko. “Wildfires Destroy Thousands of Structures Each Year.” *Headwaters Economics*, 4 Dec. 2020, <http://headwaterseconomics.org/natural-hazards/structures-destroyed-by-wildfire/>. Note: Dr. Barrett is the Minority’s witness at this hearing.

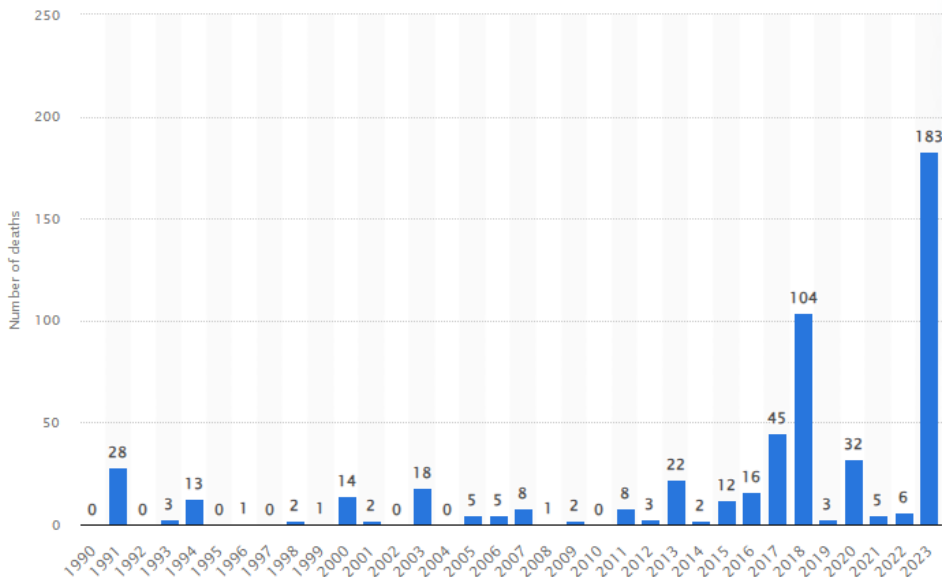
from wildfire in the WUI.⁵⁴ In recent years, the country has seen this reality tragically play out again and again as wildfires have destroyed and severely damaged several communities. In 2020, the Labor Day Fires in Oregon torched more than 1.2 million acres, destroyed roughly 5,000 homes and buildings, and killed nine people in the most destructive single wildfire event in the state's history.⁵⁵ In 2021, the Marshall Fire in Colorado became the most destructive in the state's history, burning over 6,000 acres, destroying over 1,000 homes and businesses, causing over \$2 billion in damage, and tragically claiming the lives of 2 people.⁵⁶ In 2017, the Tubbs Fire killed 22 people and destroyed 5,600 structures.⁵⁷ Just last year, a wildfire in Maui devastated the community of Lahaina, took the lives of 115 people, destroyed over 2,200 homes and structures, and caused over \$5.5 billion in damages.⁵⁸ The Maui fire was the deadliest U.S. wildfire in over a century, and many residents were only able to survive by jumping into the ocean and waiting hours for rescue.⁵⁹ Earlier this year, Texas was hit with the worst wildfire in its history. The Smokehouse Creek Fire destroyed over 1.2 million acres and 500 structures.⁶⁰ These horrific tragedies, along with the obvious vulnerabilities many communities still face, create a pressing need to address the wildfire risk to communities.



The town of Lahaina, pictured before and after, the 2023 Maui wildfire.
Source: BBC, 2023.

⁵⁴ U.S. Forest Service, “Fire Adapted Communities” <https://www.fs.usda.gov/managing-land/fire/fac>.
⁵⁵ Oregon Debris Management Taskforce, “2020 Labor Day Wildfires Hazard Tree and Debris Removal Operations”, July 2022, <https://wildfire-auth.oregon.gov/Documents/DMTF%20After%20Action%20Report.pdf>
⁵⁶ 9News, “2 years after the Marshall Fire: Some families rebuild, others stuck in limbo”, Rachel Krause, December 30, 2023, <https://www.9news.com/article/news/local/wildfire/marshall-fire/two-years-after-marshall-fire-families-rebuild/73-4e6eb4ca-20b2-4ddb-b730-bde1e2dad702>
⁵⁷ Phil Helsel, “California wildfire that killed 22 in wine country was caused by homeowner equipment, not PG&E,” 1/24/19, NBC News, <https://www.nbcnews.com/news/us-news/california-wildfire-killed-22-wine-country-was-caused-homeowner-equipment-n962521>.
⁵⁸ U.S. Fire Administration, “Preliminary After-Action Report:2023 Maui Wildfire”, February 8,2024, <https://www.usfa.fema.gov/blog/preliminary-after-action-report-2023-maui-wildfire/>
⁵⁹ NPR, “Maui’s wildfires are among the deadliest on record in the U.S. Here are some others”, Rachel Treisman, August 15, 2023, <https://www.npr.org/2023/08/15/1193710165/maui-wildfires-deadliest-us-history>
⁶⁰ Reinsurance News, “500+ structures destroyed by Smokehouse Creek fire”, Kane Wells, March 4, 2024, <https://www.reinsurancene.ws/500-structures-destroyed-by-smokehouse-creek-fire/>.

To help address this worsening problem, the Discussion Draft creates a new “Community Wildfire Risk Reduction Program” comprised of several agencies. This joint program, recommended by the Wildland Fire Commission, is tasked with advancing research and science in wildfire resilience and land management in the WUI and supporting the adoption of fire-resistant building methods and standards. Additionally, the Community Wildfire Risk Reduction Program would encourage public-private partnerships to reduce hazardous fuels in the WUI and provide assistance to communities. This program would also help create a centralized process for community grants associated with mitigating wildfire risk and create additional support for communities looking to apply for them. Title II also establishes a “Community Wildfire Defense Research Program” that will focus on advancing innovative designs to create wildfire-resistant structures and communities. This proposed program will be charged with hosting a competition for innovative, wildfire-resistant designs.



Number of deaths due to wildfires in the United States from 1990 to 2023.

Source: Statista, 2023.

Another growing concern from vulnerable communities in the WUI has been USFS response time in addressing fires that begin on federal lands. The Discussion Draft gives clear direction to USFS to immediately suppress wildfires on certain lands identified as

being under specified drought conditions or at high risk of wildfire, in addition to times when the Wildland Fire Preparedness Level is at its highest (Preparedness Level 5) and resources are strained. Within 24 hours of detecting a wildfire on USFS lands, the agency must use all available resources to extinguish the wildfire. Additionally, USFS may not inhibit the firefighting activities of state and local agencies authorized to respond to wildfires on USFS lands. Protections to ensure that these actions would still account for wildland firefighter safety are also included. This would align USFS firefighting practices with agencies like CALFIRE in the areas of the country most susceptible to experiencing catastrophic fire.

Finally, a significant risk to communities remains hazard trees within utility rights-of-way. The largest single wildfire in California state history, the Dixie Fire, ignited when a tree fell onto

electrical lines.⁶¹ Instances mentioned above, including the Maui and Texas fires, have also been linked to downed utility lines. Title II strengthens existing expedited authorities with respect to rights-of-ways to allow the clearing of hazard trees within 50 feet of utility lines instead of just 10 feet. This proposal also requires automatic approval of vegetation management plans submitted by electric utility companies after 60 days and creates a new categorical exclusion to expedite activities under a vegetation management, facility inspection, and operation and maintenance plan. These policies will help utilities address hazardous fuels in rights-of-ways to significantly reduce the threat of a catastrophic wildfire threatening a nearby community.

Title III – Transparency and Technology

Title III of the Discussion Draft focuses on fostering greater transparency and accountability at the agencies, creating new markets for low-value materials, and encouraging technological innovations. To improve accountability, the Discussion Draft would require USFS and DOI to produce yearly hazardous fuels reduction reports based on the actual number of acres that the respective agencies treated over the past year without double-counting any acreage. Recent investigative reporting uncovered agencies like USFS overstating their hazardous fuels treatment numbers by over 20 percent.⁶² The investigative reporting found that USFS counted treatments on the same pieces of land toward its risk reduction goals multiple times, even up to more than 30 times in some cases.⁶³ The discrepancy arises because USFS will record multiple treatments (i.e., mechanical thinning, prescribed burning, chipping and piling, etc.) on the same acre separately as if multiple acres had been treated. In addition to only counting acres once, the bill requires additional transparency measures to detail the location, type, effectiveness, and cost of forest treatments. Additionally, the Discussion Draft includes two studies focused on evaluating the effectiveness of USFS policies and the potential of improving customer service by establishing a Western headquarters, where 86 percent of USFS lands are located.⁶⁴

This Title also encourages the use of a new technology rooted in ancient techniques, biochar, to create desperately needed markets for excess, low-value hazardous fuels. Biochar is produced by burning biomass or organic waste (a feedstock) at very high temperatures in the absence of oxygen through a process known as pyrolysis.⁶⁵ Biochar contains numerous benefits for improving forest health, agricultural productivity, and rural economies. Because producers can create biochar from low-value materials, biochar can make forest management projects, such as thinning, more viable and cost-effective. This, in turn, improves forest health and reduces the risk of catastrophic fire. Despite the promises of biochar, commercialization of this technology is still in its early stages. This bill would create demonstration projects in each USFS and BLM region to test biochar using different feedstocks in various facilities. The bill would require 50 percent of the feedstock for these projects to come from mechanical thinning and forest health activities carried out on federal land. This proposal also directs the Secretary of the Interior to

⁶¹ NBC News, “California’s massive Dixie Fire ignited”, Tim Stelloh, January 4, 2022, <https://www.nbcnews.com/news/us-news/californias-massive-dixie-fire-ignited-tree-fell-pge-electrical-lines-rcna10973>.

⁶² NBC News, “The Forest Service is overstating its wildfire prevention progress to Congress despite decades of warning not to”, Adiel Kaplan, Monica Hersher, August 9, 2022, <https://www.nbcnews.com/news/investigations/forest-service-overstating-wildfire-prevention-progress-congress-decad-rcna41576>.

⁶³ *Id.*

⁶⁴ The Western Planner, “Federal Lands in the West: A few facts and figures”, Candace h. Stowell, <https://www.westernplanner.org/201604issue/2017/8/9/federal-lands-in-the-west-a-few-facts-and-figures>.

⁶⁵ U.S. Department of Agriculture, “Biochar”, <https://www.climatehubs.usda.gov/hubs/northwest/topic/biochar>.

conduct research on biochar uses and its carbon sequestration potential and encourages research at various academic institutions and national labs.

Lastly, Title III encourages technological innovations such as drones, artificial intelligence (AI), and machine learning to lower suppression costs, protect communities, and improve firefighting efficiencies. Technology can be an effective tool for fast fire detection, monitoring, and planning while reducing the safety risk of those on the front lines.⁶⁶ For example, drones can allow firefighting teams to monitor fires when manned flights are unable to, including during nighttime operations or in areas of thick smoke and high winds, while also eliminating aviation risks.⁶⁷ Federal spending on fire suppression averaged \$2.5 billion between 2016 and 2020.⁶⁸ Investing in new technologies that catch fires early can ultimately reduce the amount of money spent annually on fire suppression. While many state agencies and private landowners are adopting these new technologies, the federal government has historically lagged behind in testing out new wildfire suppression technologies.⁶⁹ The Discussion Draft creates a federal testbed and development pilot program to identify, test, and adopt new and innovative wildfire prevention, detection, communication, and mitigation technologies at scale.

IV. MAJOR PROVISIONS & SECTION-BY-SECTION

[Discussion Draft of H.R. _____ \(Rep. Westerman\), “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”](#)

V. COST

A formal cost estimate from the Congressional Budget Office (CBO) is not yet available.

VI. ADMINISTRATION POSITION

The administration position is unknown at this time.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. _____ \(Rep. Westerman\), 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](#)

⁶⁶ Western Fire Chiefs Association, “New Technology to Fight Wildfires”, March 30, 2023, <https://wfca.com/articles/new-technology-wildfires/>.

⁶⁷ Wildfire Today, Drones are playing an increasingly important role in fighting wildfires, October 5, 2022, <https://wildfiretoday.com/2022/10/05/drones-are-playing-an-increasingly-important-role-in-fighting-wildfires/>.

⁶⁸ *Id.*

⁶⁹ NPR, “Firefighters and researchers are turning to AI to help fight fires,” July 25, 2023, <https://www.npr.org/2023/07/25/1189901985/firefighters-and-researchers-are-turning-to-ai-to-help-fight-fires>.