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Testimony of Andy Stahl  
Before the House Committee on Natural Resources  
Subcommittee on National Parks, Forests and Public Lands  
Regarding the National Forest County Revenue, Schools, and Jobs Act of 2011  
Washington, D.C., September 22, 2011

My name is Andy Stahl. I am Executive Director of Forest Service Employees for Environmental Ethics, a 10,000-member coalition of civil servants who manage our national forests and citizens who own them. Thank you, Mr. Chairman, for this invitation to discuss the draft National Forest County Revenue, Schools, and Jobs Act of 2011.

My testimony will address the following: 1) essential elements of a “trust;” 2) timber sale volumes necessary to meet the bill’s “annual revenue requirement;” 3) budgetary implications to the Treasury of meeting these timber sale volumes; 4) environmental implications; 5) effects on the stewardship contracting program; and, 6) effects on private timberland owners.

### **The County, Schools and Revenue Trust is not a True “Trust”**

A trust requires four elements: 1) a settlor who creates the trust; 2) a trust instrument that demonstrates the necessary intent to create a trust; 3) trust property, also called the trust “corpus” or “res;” and, 4) a beneficiary. The draft bill is missing one of these essential elements – the trust property. The bill misunderstands the doctrine of trusts by mistaking a trust’s earnings for the trust’s corpus. In a bona fide trust, the trust property is used to generate earnings (also called the “distribution”) which, net of the trustee’s management expenses, are paid to the beneficiary. Here, in section 102(a), the trust’s earnings from Projects are defined as the trust property itself. The bill creates something more like an entitlement program than a fiduciary trust.

The bill’s failure to identify a trust property means that the Secretary has no duty to preserve and protect that property, as is the case in a true fiduciary trust. For example, this bill would require the Secretary to cut beyond sustained yield levels if necessary to meet the annual revenue requirement (and waives existing legal caps on harvest levels), an outcome not permitted under trust doctrine that requires the trustee to protect the corpus of the trust.

By defining the “trust” as an annual revenue stream, rather than as an income-producing asset, the Forest Service will be forced to sell more timber during periods of low demand for wood and less timber when demand for wood is high – opposite to the behavior expected from a prudent trustee or private landowner. The American people – **who are the true beneficiaries of these public lands that are held in trust for all of us** – will see their trees sold at bargain-basement prices. The Secretary, as trustee, will also be required to produce the county

beneficiaries' revenue streams regardless of how much it costs American taxpayers and the Treasury to do so.

### **Timber Sale Volume Necessary to Meet the “Annual Revenue Requirement”**

For each county to receive payments equal to the average of the past four Secure Rural Schools payment years, Trust Project timber cut would have to increase by over 20 billion board feet. The additional timber cut, above current levels, necessary to simply maintain 2011 SRS payment amounts is 15.3 billion board feet.

These timber volumes vary substantially among national forests. A few national forests could cut at less than current levels, e.g., Allegheny, Chippewa, Hiawatha. Other national forests would be required to increase cutting by ten to more than a hundred times current amounts, e.g., Tonto, Coronado, Chugach, and Six Rivers.

For example, New Mexico's Gila National Forest sold 3 million board feet in the first three quarter of FY2011 at \$17.15 per thousand board feet (mbf). This low timber value would require the Gila to sell an additional 429 million board feet, 143 times current levels, to achieve the 2008-2011 SRS average annual payment of \$5.5 million, at the 75% county share provided in the bill.

For further details regarding these data and calculations, the committee can contact Headwaters Economics at <http://headwaterseconomics.org/>.

### **Budgetary Implications of Meeting the Necessary Timber Sale Volumes**

The bill obligates the Secretary, enforceable by the counties, to spend whatever appropriated funds are necessary on Trust Projects to meet the annual revenue requirement. These tax-financed costs are likely to exceed revenues and will likely cost more than the Secure Rural Schools appropriated amounts now being made to counties.

In 2010, the Forest Service spent \$158.30/mbf on its timber sale program, for a total cost of \$382 million. See <http://www.fs.fed.us/publications/budget-2010/overview-fy-2010-budget-request.pdf> (page I-2). Increasing timber sales to the level necessary to meet average SRS payments during the last four years would cost nearly \$3 billion in appropriations, net of the 20% in timber revenues the bill allocates from Trust Projects to the Forest Service. This amount is about 10 times greater than the Secure Rural Schools average annual payment from appropriations during the past four years.

The bill eliminates existing legal requirements for timber sale advertisement, competitive bidding, and open and fair competition, which could reduce Trust Project income, requiring a further increase in sales to meet the annual revenue requirement. The bill also eliminates legislative authority for the salvage sale fund and purchaser road credits, in regard to Trust Projects.

## **Environmental Implications**

If necessary to meet the annual revenue requirements, the bill authorizes Trust Projects where logging would irreversibly damage soil, slope, or other watershed conditions and waives reforestation requirements. The bill allows for Trust Projects that seriously and adversely damage fish habitat and eliminates riparian protections for streams, lakes, and other water bodies. The bill also waives legal restrictions on clearcut size and protections for soil, water, scenery, fish, wildlife and recreation where forests are logged using even-aged management.

## **Implications for Stewardship Contracting**

The Forest Service uses stewardship contracting authority granted by Congress to purchase services in exchange for timber value. The timber value is often used to pay contractors to treat woody biomass that may pose a fire hazard to nearby communities. The bill's annual revenue requirement will likely require that all available timber value be dedicated to the County, Schools, and Revenue Trust, leaving little, if any, to lessen wildland fire risk to communities.

## **Implications to Private Timberland Owners**

The bill allows the Secretary to undertake Trust Projects that would take threatened or endangered species without limit. This would shift the responsibility for species conservation from the public's national forests to owners of private timberlands, who are required to enter into habitat conservation agreements with the federal government before they can harm imperilled species.

The substantial increased federal harvest necessary to meet the annual revenue requirement will depress stumpage prices, particularly during periods of low wood products demand. This will decrease financial returns to private timberland owners. The willingness of the federal government to subsidize from appropriations the management expenses of timber sales, such as road construction and maintenance, will put private timber owners at a further competitive disadvantage. Insofar as that subsidy appears unconstrained by the bill, and enforceable by the county beneficiaries, the anti-competitive effect could be particularly dramatic in areas where timberlands are of relatively low productivity, such as the inland mountain west.

Thank you again for this opportunity to testify. I would be happy to answer any questions you may have.