



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: House Committee on Natural Resources Republican Staff
Date: Wednesday, May 17, 2023
Subject: Markup of 8 bills

The House Committee on Natural Resources will hold a markup on **Wednesday, May 17, 2023, at 10:00 a.m.** in room 1324 Longworth House Office Building. The bills to be considered include: H.Con.Res.34 (Rep. Stauber), H.R. 3195 (Rep. Stauber), H.R. 200 (Rep. Rosendale), H.R. 1586 (Rep. LaMalfa), H.R. 2989 (Rep. McCarthy), H.R. 359 (Rep. Gonzalez-Colon), H.R. 886 (Rep. Bonamici), and H.R. 663 (Rep. Gallego).

Member offices are requested to notify Madeline Bryant (Madeline.Bryant@mail.house.gov) by 4:30 p.m. on Tuesday, May 16, 2023, to confirm their Members attendance at the mark-up.

I. KEY MESSAGES & TOP LINE ACTIONS

- Bills expected to move by regular order:
 - H.Con.Res.34 (Rep. Stauber), Expressing disapproval of the withdrawal by the Secretary of the Interior of approximately 225,504 acres of National Forest System lands in Cook, Lake, and Saint Louis Counties, Minnesota, from disposition under the United States mineral and geothermal leasing laws;
 - H.R. 3195 (Rep. Stauber), “*Superior National Forest Restoration Act*”;
 - H.R. 200 (Rep. Rosendale), “*FIR Act*”;
 - H.R. 1586 (Rep. LaMalfa), “*Forest Protection and Wildland Firefighter Safety Act of 2023*”;
 - H.R. 2989 (Rep. McCarthy), “*Save Our Sequoias Act*”
- Bills expected to move by unanimous consent:
 - H.R. 359 (Rep. Gonzalez-Colon) “*Fort San Geronimo Preservation Act*”
 - H.R. 886, (Rep. Bonamici), “*Save Our Seas 2.0 Amendments Act*”; and
 - H.R. 663 (Rep. Gallego), “*Native American Child Protection Act*”.
- The following bills will have an amendment in the nature of a substitute (ANS): H.R. 3195, H.R. 200; H.R. 1586; H.R. 2989. Members should draft any amendments to the ANS.

II. EXPECTED LEGISLATION

H.Con.Res.34 (Rep. Stauber), Expressing disapproval of the withdrawal by the Secretary of the Interior of approximately 225,504 acres of National Forest System lands in Cook, Lake, and Saint Louis Counties, Minnesota, from disposition under the United States mineral and geothermal leasing laws.

H.Con.Res.34 would utilize the authority under the Federal Land Management Policy Act of 1976 (FLPMA) to convey the disapproval of the House of Representatives regarding the mineral withdrawal of approximately 225,504 acres of National Forest System lands in Cook, Lake, and Saint Louis Counties, Minnesota. This withdrawal, finalized in January 2023, prevents the development of valuable deposits of copper, nickel, cobalt, and other mineral commodities for 20 years. Should resolutions of disapproval pass both chambers of Congress, the mineral withdrawal in question would be rescinded. As written in current law, FLPMA resolutions of disapproval do not require presentment to the President to go into effect.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

Staff contacts: Rebecca Konolige (Rebecca.Konolige@mail.house.gov) and Ashley Nichols (Ashley.Nichols@mail.house.gov)

H.R. 3195 (Rep. Stauber), “*Superior National Forest Restoration Act*”

H.R. 3195 would rescind Public Land Order 7917, which withdraws 225,504 acres of the Superior National Forest for 20 years. This bill also requires that any Mine Plans of Operations in the Superior National Forest currently pending at the Bureau of Land Management, and any Mine Plans of Operations submitted or resubmitted in the next 7 years, must be reviewed within 18 months. Finally, this bill requires the reissuance of every mineral lease in the Superior National Forest, preference right lease, and prospecting permits that have been canceled since January 31, 2021. The reissuance of such leases or permits is not subject to judicial review. All of these provisions taken together would effectively cancel the administrative withdrawal in northern Minnesota finalized by the Biden administration, restore mineral rights to prospective developers in the area (including Twin Metals Minnesota), and require the prompt review of any Mine Plans of Operations for potential future development.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

Staff contacts: Rebecca Konolige (Rebecca.Konolige@mail.house.gov) and Ashley Nichols (Ashley.Nichols@mail.house.gov)

H.R. 200 (Rep. Rosendale), “*FIR Act*”

H.R. 200 would provide a permanent fix to the Cottonwood Decision that has been disastrous for forest management. In 2015, the Ninth Circuit Court of Appeals ruled in Cottonwood

Environmental Law Center v. United States Forest Service (“*Cottonwood*”) that the U.S. Forest Service (USFS) must reinitiate 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.¹ This decision has led to significant challenges for the Forest Service’s management of National Forest System lands, especially in Region 1. 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.² Completing re-consultation has required the USFS to spend an estimated 400 person days valued at approximately \$250,000 over a 12-month period.³ The Consolidated Appropriations Act of 2018 implemented a partial fix to the *Cottonwood* ruling: an exemption from the re-initiation of consultation but only for species listings and critical habitat designations (not new information) and only for 5 years (through March 23, 2023).⁴

Urgently passing a full, permanent fix to the *Cottonwood* decision is paramount, as the partial legislative fix enacted by Congress in the FY 2018 Omnibus has now expired. Resolving this issue is critically important for the protection of our nation’s forests and public lands and the prioritization of critical agency resources. H.R. 200 is the latest example in a long, bipartisan history that has spanned multiple administrations and Congresses to enact a *Cottonwood* fix. In May of 2016, the Obama administration petitioned the Supreme Court to review and overturn the *Cottonwood* precedent.⁵ The Trump administration supplemented that effort by crafting a proposed rule, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” published on January 12, 2021, to fix the *Cottonwood* precedent.⁶ Unfortunately, the Biden administration has refused to finalize that rule. In addition, Congress took bipartisan action advancing legislation in the Senate Energy and Natural Resources Committee last year by a bipartisan 16-4 vote to reverse *Cottonwood*’s precedent.⁷ Unfortunately, Congress failed to pass this fix by the end of the 117th Congress, making the passage of the FIR Act necessary and urgent.

An amendment in the nature of a substitute (ANS) will be offered by Representative Rosendale that includes technical changes to more clearly define the ESA Section 7 consultation triggers addressed by the legislation.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

¹ *Cottonwood Environmental Law Center v. U.S. Forest Service*, No. 13-35624 (9th Cir. 2015)

² Information provided by the U.S. Forest Service.

³ Chris French, Questions for the Record, Senate Energy and Natural Resources Committee, 6/24/21, https://naturalresources.house.gov/uploadedfiles/french_responses_to_qfrs_10.21.21_senr_cmte_hrg_daines.pdf

⁴ Public Law 115-141

⁵ *No. 15-1387 in the Supreme Court of the United States - Scotusblog*, https://www.scotusblog.com/wp-content/uploads/2016/07/15-1387-cert_petition.pdf.

⁶ 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>.

⁷ Lowery, Reilly. “Three Major Daines Bills One Step Closer to Becoming Law.” *Senator Steve Daines*, 14 Sept. 2022, <https://www.daines.senate.gov/2022/07/21/three-major-daines-bills-one-step-closer-to-becoming-law/>.

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H.R. 1586 (Rep. LaMalfa), “Forest Protection and Wildland Firefighter Safety Act of 2023”

H.R. 1586 would protect the continued use of fire retardant, which is a critically important wildfire suppression tool to save lives, protect structures, and contain wildfires. Currently, the Forest Service and other agencies are using fire retardant with the understanding that a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA) is not required. The regulations for administering NPDES permits specifically states fire control is a “non-point source silvicultural activity”, and therefore exempt from the requirements to obtain a permit.⁸ Unfortunately, the continued use of fire retardant is currently in jeopardy as an extremist environmentalist group is suing the Forest Service to require a NPDES permit.⁹ This pending lawsuit has the potential to create a devastating nation-wide injunction that will affect the Department of the Interior (DOI), state fire agencies, and the Department of Defense (DOD). This would put millions of people and billions of dollars of infrastructure at risk.¹⁰ A years-long paperwork process should not stand in the way of protecting lives.

The “Forest Protection and Wildland Firefighter Safety Act of 2023” would protect the continued use of fire retardant by (1) authorizing USFS and DOI to use fire retardant in fire suppression, control, or prevention; and (2) exempting the use of retardant by USFS and DOI from permitting requirements under the CWA. This is a bipartisan bill that is being co-lead by Representative Panetta (D-CA). Senator Lummis (WY) is leading companion legislation in the Senate.

An amendment in the nature of a substitute (ANS) will be offered by Representative LaMalfa that includes technical assistance from the Forest Service.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

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H.R. 2989 (Rep. McCarthy), “Save Our Sequoias Act”

The Save Our Sequoias (SOS) Act, which was re-introduced on Arbor Day 2023 by a bipartisan group of 50 lawmakers, would provide emergency tools and resources to land managers to take immediate action to protect Giant Sequoias from wildfires, insects, and drought.¹¹ Giant Sequoias are facing an unprecedented and existential threat that could push the species to

⁸ 40 CFR 122.27.

⁹ *Forest Service Employees for Environmental Ethics vs. U.S. Forest Service*, Case 9:22-cv-00168-DLC Filed October 11, 2023, United States District Court of Montana.

¹⁰ Letter from National Association of Forest Service Retirees to Secretary Vilsack, March 7, 2023.

¹¹ H.R. 2989, <https://www.congress.gov/bills/118th/congress/house-bill/2989?q=%7B%22search%22%3A%5B%22hr+2989%22%5D%7D&s=1&r=2>. (The bill has 23 Democratic/27 Republican cosponsors).

extinction in the next 25 years.¹² Giant Sequoias, which can live for more than 3,000 years, are among the most fire-resilient tree species on the planet. Yet in the last few years, catastrophic wildfires have decimated nearly one-fifth of the world's Giant Sequoias. We have reached a tipping point. Decades of inadequate forest management, combined with worsening drought conditions and rising temperatures, have created an environment that is killing these trees at an alarming rate never seen before in history.

The legislation would: codify the existing Giant Sequoia Lands Coalition (GSLC); enhance shared stewardship and interagency coordination; develop a Giant Sequoia Health and Resiliency Assessment to prioritize forest management projects; create a comprehensive reforestation strategy; and provide robust public and private funding for Giant Sequoia restoration. H.R. 2989 also codifies existing USFS regulations that the agency utilizes during emergencies (i.e., wildfires) so that land managers can respond *proactively* to this crisis, rather than waiting *reactively* to respond once a fire has already started.¹³ This was modeled off of similar authorities used by the State of California and developed in close collaboration with entities in the GSLC.

Under the bill, land managers would still be required to comply with all environmental laws including the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act. In fact, the bill sets forth specific guidelines for compliance with these laws, including creating a categorical exclusion for ecologically based Giant Sequoia Protection Projects that meet certain requirements. Due to the limited range of Giant Sequoias, this legislation is targeted and would not create any new precedents. In fact, precedent already exists for establishing a regionally specific categorical exclusion in California.¹⁴ In 2022, companion legislation was introduced in the Senate by California Democratic Senators Feinstein and Padilla.¹⁵

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

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H.R. 359 (Rep. Gonzalez-Colon), “Fort San Geronimo Preservation Act”

H.R. 359 would establish Fort San Gerónimo del Boquerón as an affiliated area of the National Park System (NPS). Affiliated areas are sites managed and owned by nonfederal entities but for which the NPS provides technical or financial assistance under the terms of a formal agreement. In 2020, the NPS published a special resource study and found Fort San Gerónimo is nationally significant, met suitability criteria, and had strong public support to enhance the interpretation and preservation of the site.¹⁶ Fort San Gerónimo del Boquerón is a small, two-level, stone masonry fort located at the easternmost point of the islet of San Juan, Puerto Rico. Part of the

¹² Mariposa County Resource Conservation District, “Last of the Monarchs,” <https://vimeo.com/685657372/c526d9ece1>.

¹³ 36 CFR 220.4, <https://www.ecfr.gov/current/title-36/chapter-II/part-220/section-220.4>.

¹⁴ Public Law 114-322 (the WIIN Act) created a 10,000-acre categorical exclusion for the Lake Tahoe Basin in California. The categorical exclusion created by this legislation is 5,000 acres (including 2,000 acres within groves and a 3,000-acre grove buffer zone).

¹⁵ S. 4833 (Feinstein), “Save Our Sequoias Act,” 117th Congress, <https://www.congress.gov/bill/117th-congress/senate-bill/4833>.

¹⁶ Special Resource Study / Boundary Study Fort San Gerónimo and Other Related Resources, January 6, 2020, <https://parkplanning.nps.gov/document.cfm?parkID=522&projectID=32695&documentID=102615>.

massive fortification system built by Spanish military engineers between the 16th and 19th centuries to protect San Juan from foreign invasions. Fort San Gerónimo became a centerpiece of the city’s first line of defense, and the site is the sole surviving fortification on the Island. The fort was eventually acquired by Puerto Rico in 1949 and is now owned and managed by the Institute of Puerto Rican Culture, a state government agency in Puerto Rico.¹⁷ The bill passed out of Committee by unanimous consent during the 117th Congress.

Hearing information, including testimony, from the 117th Congress may be viewed [here](#) and the hearing memo may be viewed [here](#).

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H.R. 886 (Rep. Bonamici), “*Save Our Seas 2.0 Amendments Act*”

H.R. 886 would make several changes to the statute (P.L. 116- 224) authorizing the Marine Debris Foundation (Foundation). Some changes are minor, including requiring the Secretary of Commerce to approve appointments to the Foundation’s Board of Directors, allowing the Foundation to locate its office outside the District of Columbia, and directing the Foundation to develop best practices for conducting outreach to Indian tribes and tribal governments.

The bill, as introduced, would also make significant changes to current law, including provisions allowing for up to twelve percent of appropriated funds to be used for administrative expenses and expanding the Foundation’s ability to utilize appropriated funds to pay salaries for an additional two years. Current law allowed appropriations to pay for salaries for eighteen months beginning in December of 2020. Lastly, H.R. 886 would allow the Foundation to match grants provided by non-governmental organizations, regional organizations, Indian tribes, Tribal organizations, and foreign government entities. The bill does not extend any authorizations of appropriations.

Chairman Westerman has an amendment that would remove language giving the Foundation the ability to use up to 12 percent of appropriated funds for administrative expenses and salaries for an additional two years.

The bill has seven cosponsors, including Resident Commissioner Jenniffer Gonzalez Colon (R-PR) and is sponsored by Senator Dan Sullivan (R-AK) in the Senate.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

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¹⁷ Special Resource Study / Boundary Study Fort San Gerónimo and Other Related Resources, January 6, 2020, <https://parkplanning.nps.gov/document.cfm?parkID=522&projectID=32695&documentID=102615>.

[H.R. 663](#) (Rep. Gallego), “*Native American Child Protection Act*”

H.R. 663 would reauthorize three programs administered by the Department of Health and Human Services and the Department of the Interior that are intended to prevent cases within Indian communities where child abuse, neglect, family violence, and trauma may occur, and to provide treatment for victims of Indian child sexual abuse. The authorization for the Indian Child Protection and Family Violence Prevention Act programs expired in 1997. The bill also makes several technical changes to the underlying statute, requiring agency reports on grant awards and performance. While advocates cite the Indian Child Protection and Family Violence Prevention Act as the only federal dedicated child abuse prevention and victim treatment program for tribal governments, Congress has only appropriated approximately \$5 million for its programs.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo prepared by Republican staff in the 116th Congress may be viewed [here](#).

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III. CBO SCORES

None available.

IV. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 200](#)

[H.R. 2989](#)

[H.R. 886](#)

[H.R. 663](#)