

Amendment to the Amendment in the Nature of a Substitute to H.R. 8790

Offered by Mr. Westerman of Arkansas

Page 9, line 10, strike “for” and insert “of”

Page 9, line 20, insert a comma after “Service”

Page 10, line 21, insert a comma after “Service”

Page 11, strike lines 15 through 23

Page 12, strike lines 1 through 12 and insert the following:

- (b) PURPOSES.—The purposes of the Center are to—
- (1) comprehensively assess and predict fire and smoke in the wildland and built environment interface across jurisdictions to inform—
 - (A) land and fuels management;
 - (B) community, public health, and built environment risk reduction; and
 - (C) fire response and post-fire recovery; and
 - (2) provide data aggregation, real-time predictive services, and science-based decision support services;
 - (2) reduce fragmentation and duplication across Federal land management agencies with respect to predictive service and decision support functions related to wildland fire and smoke;
 - (3) promote coordination and sharing of data regarding wildland fire and smoke decision making between Federal agencies, States, Indian Tribes, local governments, academic or research institutions, and private entities;
 - (4) streamline procurement processes and cybersecurity systems related to addressing wildland fire and smoke;
 - (5) provide publicly accessible data, models, technologies (including mapping technologies), assessments, and fire weather forecasts to support short- and long-term planning regarding wildland fire and smoke risk reduction and post-fire recovery; and
 - (6) maintain the Fireshed Registry established under section 103.

Page 12, line 14, after “memorandums of understanding” insert “, contracts, or other agreements”

Page 34, line 15, strike section 121 and insert the following:

SEC. 121. COMMONSENSE LITIGATION REFORM.

(a) IN GENERAL.—A court shall not enjoin a covered agency action if the court determines that the plaintiff is unable to demonstrate that the claim of the plaintiff is likely to succeed on the merits.

(b) BALANCING SHORT- AND LONG-TERM EFFECTS OF COVERED AGENCY ACTION IN CONSIDERING INJUNCTIVE RELIEF.—As part of its weighing the equities while considering any

request for an injunction that applies to a covered agency action, the court reviewing such action shall balance the impact to the ecosystem likely affected by such action of—

- (1) the short- and long-term effects of undertaking such action; against
- (2) the short- and long-term effects of not undertaking such action.

(c) LIMITATIONS ON JUDICIAL REVIEW.—

(1) IN GENERAL.—Notwithstanding any other provision of law (except this section), in the case of a claim arising under Federal law seeking judicial review of a covered agency action—

(A) a court shall not hold unlawful, set aside, or otherwise limit, delay, stay, vacate, or enjoin such agency action unless the court determines that—

(i) such action poses or will pose a risk of a proximate and substantial environmental harm; and

(ii) there is no other equitable remedy available as a matter of law; and

(B) if a court determines that subparagraph (A) does not apply to the covered agency action the only remedy the court may order with regard to such agency action is to remand the matter to the agency with instructions to, during the 180-day period beginning on the date of the order, take such additional actions as may be necessary to redress any legal wrong suffered by, or adverse effect on, the plaintiff, except such additional actions may not include the preparation of a new agency document unless the court finds the agency was required and failed to prepare such agency document.

(2) EFFECT OF REMAND.—In the case of a covered agency action to which paragraph (1)(B) applies, the agency may—

(A) continue to carry out such agency action to the extent the action does not impact the additional actions required pursuant to such paragraph; and

(B) if the agency action relates to an agency document, use any format to correct such document (including a supplemental environmental document, memorandum, or errata sheet).

(d) LIMITATIONS ON CLAIMS.—Notwithstanding any other provision of law (except this section), a claim arising under Federal law seeking judicial review of a covered agency action shall be barred unless—

(1) with respect to an agency document or the application of a categorical exclusion noticed in the Federal Register, such claim is filed not later than 120 days after the date of publication of a notice in the Federal Register of agency intent to carry out the fireshed management project relating to such agency document or application, unless a shorter period is specified in such Federal law;

(2) in the case of an agency document or the application of a categorical exclusion not described in paragraph (1), such claim is filed not later than 120 days after the date that is the earlier of—

(A) the date on which such agency document or application is published; and

(B) the date on which such agency document or application is noticed; and

(3) in the case of a covered agency action for which there was a public comment period, such claim—

(A) is filed by a party that—

(i) participated in the administrative proceedings regarding the fireshed management project relating to such action; and

(ii) submitted a comment during such public comment period and such comment was sufficiently detailed to put the applicable agency on notice of the issue upon which the party seeks judicial review; and

(B) is related to such comment.

(e) DEFINITIONS.—In this section:

(1) AGENCY DOCUMENT.—The term “agency document” means, with respect to a fireshed management project, a record of decision, environmental document, or programmatic environmental document.

(2) COVERED AGENCY ACTION.—The term “covered agency action” means—

(A) the establishment of a fireshed management project by an agency;

(B) the application of a categorical exclusion to a fireshed management project;

(C) the preparation of any agency document for a fireshed management project; or

(D) any other agency action as part of a fireshed management project.

(3) NEPA TERMS.—The terms “categorical exclusion”, “environmental document”, and “programmatic environmental document” have the meanings given such terms, respectively, in section 111 of the National Environmental Policy Act of 1969 (42 U.S.C. 4336e).

Page 41, line 11, strike “non-federal” and insert “non-Federal”

Page 44, at the beginning of line 5 insert “a”

Page 46, line 21, strike “review” and insert “being submitted”

Page 50, line 12, strike “grasses” and insert “vegetation”

Page 50, line 18, strike “the native habitat of each such plant” and insert “their respective, native habitats”

Page 58, line 7, strike “biochar based-products” and insert “biochar-based products”

At the end of the bill, insert the following:

SEC. 306. KEEPING FOREST PLANS CURRENT AND MONITORED.

(a) IN GENERAL.—The Secretary shall—

(1) to the greatest extent practicable and subject to the availability of appropriations made in advance for such purpose—

(A) ensure forest plans comply with the requirements of section 6(f)(5)(A) of the Forest and Rangeland Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)); and

(B) prioritize revising any forest plan not in compliance with such section 6(f)(5)(A);

(2) not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C.

1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System;

(3) not later than 120 days after the date of the enactment of this Act, submit to the relevant Congressional Committees the date on which each forest plan required by such section 6 was most recently revised, amended, or modified;

(4) seek to publish a new, complete version of a forest plan that the Secretary has been directed to amend, revise, or modify by a court order within 60 days of such amendment, revision, or modification, subject to the availability of appropriations made in advance for such purpose; and

(5) maintain a central, publicly accessible website with links to—

(A) the most recently available forest plan adopted, amended, or modified by a court order as a single document; and

(B) the most recently published forest plan monitoring report for each unit of the National Forest System.

(b) **GOOD FAITH UPDATES.**—If the Secretary is not acting expeditiously and in good faith, within the funding available, to revise, amend, or modify a plan for a unit of the National Forest System as required by law or a court order, subsection (a) shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the relevant Congressional Committees summarizing the implementation of this section.