FEDERAL FOREST
RESOURCE COALITION

FFRC Statement Regarding Pending Legislation: HR 200; The FIR Act; HR 1567, the ACRES Act; and HR 1586, the Forest Protection and Wildland Firefighter Safety Act

The following Statement is submitted on behalf of the Federal Forest Resource Coalition, which represents purchasers of Federal timber in 37 states, with over 650 member companies and affiliated associations, collectively representing over 390,000 employees. The legislation before today's hearing is of vital importance to the future of our National Forests and we urge the committee to move these bills quickly.

HR 200: The Forest Information Reform Act would clarify Congress's intent regarding existing Forest Plans and the Endangered Species Act. As this committee is aware, a small environmental group called the Cottonwood Environmental Law Center filed a suit against the Forest Service, alleging that recently adopted critical habitat designations and species listings required the agency to engage in Section 7 consultation with the U.S. Fish & Wildlife Service (FWS). This decision allowed environmental groups to seek injunctions against forest management projects, even when neither the Forest Service nor the FWS had any concerns regarding the specific projects. Instead of implementing needed management on the ground, forest managers were forced to go back and consult on the *underlying forest plans*, even if those plans were more than a quarter century old.

The decision was so egregious that the Obama Administration appealed it all the way to the Supreme Court, which unfortunately refused to take the case. Since then, the results have been nothing short of disastrous. Courts have enjoined projects which would have treated thousands of acres for hazardous fuels reduction, cancelled timber sales that would have provided badly needed fiber to markets, and possibly contributed to the severity of recent wildfires.

In the Forest Service's Northern Region, litigation based on this awful precedent has caused injunctions against projects which would have produced over 200 million board feet of lumber; that's enough to frame over 26,000 houses. In New

Mexico, environmental groups won a 13-month injunction which delayed fuels treatments on the Santa Fe National Forest. This delay may have contributed to the fuel build up that led to the Hermit's Peak escaped prescribed fire, which went on to scorch over 341,000 acres, destroying homes, watersheds, wildlife habitat, and compromising the water supplies of numerous mountain communities.

Once again, these delays do not produce conservation benefits: they merely force the land managers to sit down with FWS and discuss very old forest plans in light of "new information" like climate change. In the case of the injunction in New Mexico, every National Forest that has Mexican Spotted Owls was in the process of revising their forest plans when they were enjoined. Instead of instituting the fuels reduction project and pressing forward with the overdue plan revisions, Forest staff were forced to spend their limited time and resources discussing a plan that at the time was over 32 years old. Less than 36 months after the injunction, the Forest formally adopted a new Forest Plan, demonstrating that the forced consultation was purely dilatory and not intended to change overall management direction on the Forest.

In 2018, the Omnibus Spending bill for Fiscal Year 2019 provided that consultation was not required following the designation of new critical habitat. That legislation, which expires this month, only covered one of the "prongs" of the Cottonwood case: leaving the Forest Service exposed to charges of "new information" and other ESA technicalities. Environmental groups have continued to file suits against specific projects to force plan level consultation.

The Forest Service and Fish & Wildlife Service have limited resources and staffing. Congress should make it clear that Forest Plans are not "ongoing actions" that require consultation following plan adoption. We urge you to pass HR 200 and work to see that it is enacted as quickly as possible.

HR 1567: The ACRES Act: This legislation would require accurate reporting by Federal land managers regarding hazardous fuels treatments on Federal lands. It requires a yearly hazardous fuel reduction report based on the actual number of acres that the respective agencies treated over the past year.

The ACRES Act requires Federal land management agencies at the Departments of Agriculture and Interior to provide Congress and the public with annual reports that detail the actual, accurate acreage where hazardous fuel reduction activities took place and the region or system unit in which the acres were located; distinguish between treatments that occurred within the wildland-urban interface; show the

effectiveness of the hazardous fuels reduction work in reducing wildfire risk; convey what methods were used to reduce hazardous fuels and the cost per acre to do so; implement standardized procedures for tracking data for hazardous fuels reduction.

This bill will give the American people a more accurate accounting of how much progress Federal land managers are making in addressing our wildfire crisis. Congress has given them unprecedented authorities and resources — and the public is entitled to know what these agencies are up to. If federal land managers actively use all of the expedited authorities Congress has given them, the number of treated acres should rise rapidly. We urge you to advance this bill as quickly as possible.

HR 1586: The Forest Protection and Firefighter Safety Act: An obscure environmental group (Forest Service Employees for Environment Ethics or FSEEE) is not just suing the Forest Service over their use of aerially-applied fire retardant; they are actually asking a single Federal judge in Montana to issue a nation-wide injunction barring it's use until the Forest Service obtains a Clean Water Act permit, a process that could take years.

FFRC recently joined a diverse coalition of groups seeking to intervene in this case. In addition to communities recently devastated by wildfires, the Intervenors also include trade associations of forest products companies that own lands adjacent to national forests, as well as companies holding timber contracts on National Forests. Significant human and economic losses experienced in recent fire seasons will compound exponentially if the Court bars the Forest Service from using retardant when necessary to protect human life, homes, private lands, and the environment. In our view, the Forest Service has taken the ill-advised step of agreeing to seek a Clean Water Act permit for "discharges" of fire retardant.

While we are experiencing an unusually cold and damp winter in many areas, there are tens of millions of acres of National Forest in an unhealthy state. These overgrown, overstocked, and drought-weakened forests are tinderboxes, simply waiting for an ignition source. As the fire seasons of 2020 and 2021 demonstrated, fire managers must have access to every single tool available to contain fires once they start, and to protect communities from fires that escape initial attack.

If the environmental groups succeed in winning an injunction against the use of fire retardant, it would remove a key tool used to safely fight wildfires and put wildland firefighters, communities, and natural resources at risk at a time where wildfire is increasing in scale and scope across the United States. It beggars the imagination that the Courts are even contemplating the request for an injunction. While we're

hopeful this request will be rejected, Congress should not wait for the legal process to play itself out. Firefighters and land managers must be allowed to do their jobs of protecting life, property, and natural resources, and to be effective they must have access to every legal tool available. We urge you to advance this bill as quickly as possible.