

**H.R. 200, “FOREST INFORMATION REFORM
(FIR) ACT”; H.R. 1473, “TARGETING AND
OFFSETTING EXISTING ILLEGAL CON-
TAMINANTS ACT”; H.R. 1567, “ACCU-
RATELY COUNTING RISK ELIMINATION
SOLUTIONS (ACRES) ACT”; AND H.R. 1586,
“FOREST PROTECTION AND WILDLAND
FIREFIGHTER SAFETY ACT OF 2023”**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL LANDS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

Thursday, March 23, 2023

Serial No. 118–9

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.govinfo.gov>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

51–679 PDF

WASHINGTON : 2023

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CONTENTS

Hearing held on Thursday, March 23, 2023	Page 1
Statement of Members:	
Tiffany, Hon. Tom, a Representative in Congress from the State of Wisconsin	2
Kamlager-Dove, Hon. Sydney, a Representative in Congress from the State of California	4
Westerman, Hon. Bruce, a Representative in Congress from the State of Arkansas	5
LaMalfa, Hon. Doug, a Representative in Congress from the State of California	7
Prepared statement of	42
Rosendale, Hon. Matt, a Representative in Congress from the State of Montana	43
Peters, Hon. Scott, a Representative in Congress from the State of California	46
Prepared statement of	48
Statement of Witnesses:	
French, Chris, Deputy Chief for National Forest Systems, U.S. Forest Service, Washington, DC	49
Prepared statement of	51
Questions submitted for the record	55
Bronson, Ryan, Director of Government Affairs, Rocky Mountain Elk Foundation, St. Paul, Minnesota	57
Prepared statement of	59
Ellis, Steve, Chairman, Board of Directors, National Association of Forest Service Retirees, Beaver Creek, Oregon	60
Prepared statement of	62
Supplemental testimony	64
Brown, Susan Jane M., Senior Staff Attorney, Western Environmental Law Center, Eugene, Oregon	66
Prepared statement of	68
Questions submitted for the record	73
Wood, Jonathan, Vice President of Law and Policy, The Property and Environmental Research Center, Bozeman, Montana	78
Prepared statement of	80
Additional Materials Submitted for the Record:	
Submissions for the Record by Representative Tiffany	
National Association of Forest Service Retirees, Letter to Secretary Vilsack on Fire Retardant Lawsuit dated March 7, 2023	107
Public Lands Foundation, Letter of support dated March 17, 2023	107
33 Sportsmen Groups, Letter of support for a Bipartisan “Cottonwood Fix” dated March 20, 2023	45
Western Governors Association, Letter with comments on DOI-USA ESA Consultation dated April 28, 2022	109
38 Sportsmen Groups, Letter of support to Senators Manchin and Barrasso for Cottonwood fix dated July 20, 2022	110
33 Sportsmen Groups, Letter of support to Senators Manchin and Barrasso for Cottonwood fix dated October 20, 2021	112

IV

	Page
Additional Materials Submitted for the Record—Continued	
Submissions for the Record by Representative LaMalfa	
Letters of Support for H.R. 1586	
Airspray Airtankers, Paul Lane	9
Placer County Board of Supervisors, Jim Holmes	9
City of Oroville, David Pittman	10
Crane Mills, Drew Crane	11
International Wildfire Consulting Group, Dan Reese	11
Federal Forest Resource Coalition	12
Commercial Lumber and Pallet Company, Kathleen Dietrich	14
Registered Forester, Danielle Lindler	14
Supporter, Arne Hultgren	15
Orange County Fire Authority, Brian Fennessy	16
California Special Districts Association, Kyle Packham	16
Sierra County Board of Supervisors, Sharon Dryden	17
National Alliance of Forest Owners	18
City of Chico—Office of the Mayor, Andrew Coolidge	18
California Forestry Association (Calforests), Matt Dias	19
Tehama County Board of Supervisors, Bill Moule	19
City of Redding, Michael Dacquisto	20
Jefferson Resource Company, Tina Stewart	21
Supporter, Tim Seeley	21
Butte County Fire Safe Council, Darrel Wilson	22
Western Shasta Resource Conservation District, Maureen Teubert	23
American Motorcyclists Association—District 36, Dan Amador	23
Forest Landowners Association, Scott Jones	24
Overwatch Aero LLC, Jordan Hahn	25
National Wildfire Suppression Association, Deborah Miley	25
Lake Madrone Water District, Jess Vickery	26
City of Biggs, Josh Cook	27
City of Anderson, Mike Gallagher	27
Lassen County Board of Supervisors, Gary Bridges	28
Shasta County Fire Safe Council, Pamela Bates	29
United Aerial Firefighters Association	29
Analytical Moose, Rachael Brady	30
National Association of State Foresters, Kasey KC	30
National Association of Counties, Matthew Chase	31
Yankee Hill Fire Safe Council, Brenda Rightmyer	32
Sacramento Metropolitan Fire District, Dan Haverty	33
California Farm Bureau, Jamie Johansson	34
California Woman for Agriculture, Sharron Zoller	35
American Agri-Women, Heather Hampton-Knodle	35
Yuba Water Agency, Willie Whittlesey	36
International Association of Fire Chiefs & National Special Districts Coalition, Donna Black and Neil McCormick	37
Berry Creek Fire Safe Council, Denise Bethune	38
City of Shasta Lake, Jessaca Lugo	38
Placer County Water Agency, Anthony Firenzi	39
Placer County District 4 Board of Supervisors, Suzanne Jones	39
Glenn County Board of Supervisors, Grant Carmon	40
North State Planning & Development Collective, Jason Schwenkler ..	41
Butte County Board of Supervisors, Tod Kimmelshue	41
Submissions for the Record by Representative Rosendale	
Letter from Senator Steve Daines in support of H.R. 200	96

LEGISLATIVE HEARING ON H.R. 200, TO AMEND THE FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING ACT OF 1974 AND THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 TO PROVIDE THAT THE SECRETARY OF AGRICULTURE AND THE SECRETARY OF THE INTERIOR ARE NOT REQUIRED TO REINITIATE CONSULTATION ON A LAND MANAGEMENT PLAN OR LAND USE PLAN UNDER CERTAIN CIRCUMSTANCES, AND FOR OTHER PURPOSES, “FOREST INFORMATION REFORM (FIR) ACT”; H.R. 1473, TO PROVIDE FOR A PROGRAM WITHIN THE FOREST SERVICE TO DETECT, DOCUMENT, MONITOR, AND REMEDIATE THE ENVIRONMENTAL DAMAGES CAUSED BY TRESPASS CULTIVATION ON NATIONAL FOREST LANDS, AND AMEND THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT TO INCLUDE CRIMINAL PENALTIES FOR ILLEGAL PESTICIDE APPLICATION ON GOVERNMENT PROPERTY, AND FOR OTHER PURPOSES, “TARGETING AND OFFSETTING EXISTING ILLEGAL CONTAMINANTS ACT”; H.R. 1567, TO REQUIRE THAT THE SECRETARY OF AGRICULTURE AND THE SECRETARY OF THE INTERIOR SUBMIT ACCURATE REPORTS REGARDING HAZARDOUS FUELS REDUCTION ACTIVITIES, AND FOR OTHER PURPOSES, “ACCURATELY COUNTING RISK ELIMINATION SOLUTIONS (ACRES) ACT”; AND H.R. 1586, TO ALLOW THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF AGRICULTURE TO USE A FIRE RETARDANT, CHEMICAL, OR WATER FOR FIRE SUPPRESSION, CONTROL, OR PREVENTION ACTIVITIES, “FOREST PROTECTION AND WILDLAND FIREFIGHTER SAFETY ACT OF 2023”

**Thursday, March 23, 2023
U.S. House of Representatives
Subcommittee on Federal Lands
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:30 p.m., in Room 1324, Longworth House Office Building, Hon. Tom Tiffany [Chairman of the Subcommittee] presiding.

Present: Representatives Tiffany, Fulcher, Stauber, Bentz, Moylan, Westerman; Neguse, Porter, and Kamlager-Dove.

Also present: Representatives LaMalfa, Rosendale; Hoyle, and Peters.

Mr. TIFFANY. The Committee on the Federal Lands will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

The Subcommittee is meeting today to consider four forest health and wildfire prevention bills: H.R. 200, the Forest Information Reform Act, offered by Representative Rosendale; H.R. 1473, the Targeting and Offsetting Existing Illegal Contaminants Act, offered

by Representative Peters; H.R. 1567, the Accurately Counting Risk Elimination Solutions Act, offered by myself; and H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023, offered by Representative LaMalfa.

I ask unanimous consent that the following Members be allowed to participate in today's hearing from the dais: the gentleman from California, Mr. LaMalfa; the gentleman from Montana, Mr. Rosendale; the gentlewoman from Oregon, Ms. Hoyle; and the gentleman from California, Mr. Peters.

Without objection, so ordered.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I will now recognize myself for an opening statement.

**STATEMENT OF THE HON. TOM TIFFANY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. TIFFANY. America desperately needs solutions to the catastrophic wildfire and forest health crisis decimating our Federal lands and forests year after year, which is why Republicans are dedicating our first Federal Lands Subcommittee legislative hearing to this critical issue.

As I outlined in our inaugural hearing earlier this month, the Republican Majority is keeping our commitment to America by moving four forestry bills that would cut red tape, put an end to frivolous litigation, address the Biden border crisis by cutting off illegal marijuana cultivation by cartels on our Federal lands, and bringing greater transparency to government.

I would first like to talk about the litigation hamstringing our Federal land management agencies. Today, marks the expiration of a temporary legislative fix first put into place by Congress in 2018 to address the 2015 *Cottonwood Environmental Law Center v. U.S. Forest Service* court case. That decision, which conflicted with other long-standing court precedents, has empowered extreme environmentalist litigants to weaponize the Endangered Species Act to delay or stop urgently-needed forest management activities.

The decision on *Cottonwood* has done nothing to improve species protection, but has instead only created new bureaucracy, red tape, and diverted precious agency resources away from actual management to endless planning and regulatory compliance.

Since 2015, over 130 forest management projects—130 forest management projects, ranging from wildfire mitigation work to wildlife habitat restoration—have been held up in fire-prone Western states because of *Cottonwood*. Congressman Rosendale's Forest Information Reform Act offers an urgently-needed permanent fix to this misguided gift to activist litigants dedicated to shutting down responsible forest management by any means necessary.

This should not be a partisan issue. Both the Obama and Trump administrations supported overturning the *Cottonwood* decision, and the Senate Energy and Natural Resources Committee reported

similar legislation last year by a bipartisan vote 16 to 4. That is why it is unfortunate that instead of taking the threat of litigation to forest health seriously, my colleagues on the other side of the aisle have invited a serial litigant to testify here today.

This stack of papers next to me are documents from the nearly 60 active and pending lawsuits this witness disclosed ahead of this hearing. Needless to say, we have very different ideas of what it means to support our forest products industry.

But far-left environmentalists aren't content with just weaponizing Federal laws to stop active forest management projects. Now they are also endangering firefighters' lives and preventing them from extinguishing those catastrophic fires once they begin. A fringe environmental group that has been suing the Forest Service over its use of fire retardant for the past two decades is now trying to receive a nationwide injunction against the use of aerial fire retardant ahead of the upcoming fire season. Congressman LaMalfa's bipartisan Forest Protection and Wildland Firefighter Safety Act will ensure our land managers are able to continue to use fire retardant to save lives, protect communities, and contain wildfires.

We will also consider two bills today that will hold the Biden administration accountable. The first bill, which I am honored to have introduced, is the ACRES Act. This bill will bring transparency to the misleading and inaccurate way hazardous fuel treatments are reported.

We have long known the reported pace and scale of forest management has been insufficient to truly address our catastrophic wildfire crisis. According to troubling reports, this situation is even worse than we had been led to believe, as agencies have been overstating their treatments by over 20 percent. Accurate reporting is necessary to broadly track the progress made on our larger wildfire mitigation targets, as well as individual projects. The ACRES Act is a simple solution to hold our Federal agencies accountable, to see the actual work they are doing will reduce the enormous risk of wildfire.

The final bill before us today is the TOXIC Act, which is being led by Congressman Peters. This is a bipartisan effort that seeks to address the illegal cannabis sites in Federal forests that are causing significant environmental degradation, harm to wildlife, increased crime, and catastrophic wildfires.

This is a growing crisis that is being fueled by the Biden administration's open border policies. The Mexican drug cartels operating these sites are causing enormous damage. At one site alone, clean-up crews donning hazmat suits removed 3,000 pounds of waste and trash, and over 1,100 pounds of fertilizer and banned pesticides. The chemicals they use are so dangerous, one teaspoon could kill a 600-pound black bear. H.R. 1473 would mitigate the environmental damage done by these sites and subject those illegally growing marijuana on Federal lands to stricter penalties.

I want to thank the witnesses for being here, and I look forward to today's discussion.

With that, I will now recognize Ranking Member Kamlager-Dove for her opening statement.

STATEMENT OF THE HON. SYDNEY KAMLAGER-DOVE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. KAMLAGER-DOVE. Thank you, Chair Tiffany. Unfortunately, Ranking Member Neguse cannot stay for today's hearing, so I will fill in for him this afternoon. And I appreciate my Republican colleagues for making this accommodation.

Before diving into the details of the bills under consideration, I think it is important to note that under Democratic leadership for the last 4 years, this Committee helped advance historic investments in the future of our national forests and public lands. These investments support natural infrastructure, reduce wildfire risk, restore healthy ecosystems, and build safe, resilient communities. These investments are at the forefront of our effort to address the worst effects of the climate crisis, especially wildfire. It is encouraging to know that these investments are being put to work by the Biden administration this year.

Today's bill list demonstrates the breadth and complexity of issues the Forest Service handles as they oversee our cherished national forests. The agency manages millions of acres of forest land that provide clean water for millions of Americans, critical habitat for threatened and endangered species, and the backdrop for a multi-billion dollar outdoor recreation economy.

The Forest Service is also our nation's largest fire suppression agency and deals with critical challenges like the illegal production of marijuana and other illicit drugs.

All of this taken together is an enormous task, and I appreciate the hard work of everyone at the Forest Service and other land management agencies.

Now, I understand several of the bills we are reviewing today address perceived barriers to forest management that help restore ecological balance, mitigate risk, and keep communities. These are important and legitimate concerns. Wildfire risks should be taken seriously, and forest management decisions have real-world consequences.

It is also critical that Congress and the American people receive accurate, transparent, and accessible data about how projects are being planned and implemented, which is why I support the intent of Chair Tiffany's ACRES Act. However, disagreement over metrics doesn't mean we should lose sight of the need for continued investment. It also doesn't mean we should scapegoat environmental protection supported by a broad majority of Americans.

The FIR Act limits thoughtful planning when new endangered species are listed, critical habitat is designated, or new scientific information arises on Forest Service and BLM lands. This could be really problematic for newly-listed species and for adapting management plans as the impacts of climate change grow. The best available science should drive Endangered Species Act decisions, and agencies must ensure that their plans won't harm the recovery of endangered species. Instead of rolling back protections, we should provide our land management agencies with the resources they need to update plans and consult when necessary, not take tools away that could lead to better coordination and the preservation of threatened and endangered species.

Later this afternoon, we will hear from a serial justice warrior, Susan Jane Brown, a senior attorney with the Western Environmental Law Center. Ms. Brown is an expert in forest law, who actively participates in collaborative management decisions that foster stakeholder-driven and science-backed restoration outcomes in her home state of Oregon. Her testimony makes it pretty clear that the Endangered Species Act is not the boogeyman some make it out to be. And I look forward to hearing from her and the rest of today's witnesses.

And before I yield, I also want to take some time to note that this Committee must recognize that climate change is a major driver of wildfire. The fire season is now months longer, and in the coming decades wildfires are projected to continue to increase in number and size.

In fact, earlier this week, the U.N. Intergovernmental Panel on Climate Change issued its latest report. The panel's chair concluded by noting, "We are walking when we should be sprinting. The climate crisis is a global problem that requires a global solution. We are on thin ice, and that ice is melting fast."

Unfortunately, that is not happening. The House Majority is doing precisely the opposite by pushing an oil-above-all agenda, by rushing the polluter over peoples act profits over people's act to the Floor next week. H.R. 1 is designed to prioritize Big Oil's wish list and takes every opportunity for the public to participate in decisions that will impact future generations away.

Of course, natural climate solutions can help increase carbon sequestration potential, and well-designed projects can mitigate wildfire risk. These essential priorities are sidelined if we cannot find a way to lower overall emissions.

With that, I look forward to today's discussion so we can consider various perspectives on the four bills.

And I yield back, Mr. Chair.

Mr. TIFFANY. Thank you. And now I would like to recognize the Chairman of the Natural Resources Committee, Mr. Westerman.

STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. WESTERMAN. Thank you, Chairman Tiffany and Ranking Member designee Kamlager-Dove, I guess, today, and thank you to our witnesses for being here.

And it is refreshing to be in a hearing where we are actually going to talk about science, we are going to talk about the way the real world works, and we are going to talk about the problems with having healthy forests. I have always looked forward to these debates, because Republicans know that we are right on the science and we are right on the issues, especially when it comes to forest management, which these bills address today.

It is past time that we let the children be in charge that are not managing our forests. It is time to have the adults in the room to do the things that need to happen. And it is time to put a stop to the environmental litigants who are profiting off of suing the Federal Government, who in no form or fashion, I think you could say, are actually doing something to help or protect the forests.

And the record is in the data. Look at the number of fires we have had, and take the argument about climate change and more forest fires because of climate change. So, my question is, what are you going to do about it? Are you are going to keep suing and stopping forest management?

If the land can't support as many trees as it used to, you need to thin the trees out. You need to reintroduce fire that will keep these fuel loads low. And we can't just keep doing the same thing over and over, or we are going to get the same results. And now those results are even happening in our giant sequoia groves. We sequestered fire from the sequoia groves for over 100 years, and we lost nearly 20 percent of the giant sequoias on the Earth because of mismanagement, because we let trees grow up in the understory that created the ladder fuel and got the fuel up in the canopy.

It is time for the craziness to stop. And speaking of crazy, now we have people suing to not use fire retardant. So, not only are we not going to do the preventative work to keep the fires from happening or to keep the fires low, now we have people saying when the fires start, we are not going to put them out because we don't like fire retardant, which if you don't know, it is actually a fertilizer. It is some form of phosphorus fertilizer that is used for fire retardant.

So, there are some common-sense bills here today to address issues on forest management. And there is also a bill here that deals with the *Cottonwood* issue, which is doing great harm to the endangered species. We claim we have these foundational environmental laws that are to protect our environment, to protect our wildlife, and these laws are being abused, and they are harming more wildlife than they are doing good.

If we cared about wildlife, we would do the management on the forests to create the habitat so that wildlife could survive and so it could thrive. And we should be ashamed, totally ashamed, when we let our public lands grow up to where they are fire hazards, and where you can't even support wildlife because of such mismanagement on those lands.

I have said before that the ESA has become like Hotel California: you check in, but you can't check out. And we have to make the ESA work. We have to make it work for endangered species, not for people who want to sue, not for people who want to create clickbait on the Internet, and not for people who want to fundraise in the name of the environment. We have to fix these issues so that we can actually help endangered species. And I hope that is what everybody on the Committee and our witnesses are wanting to do. I think that is what the American people want to do.

Look, we all care about the environment, and there is no greater indicator of a healthy environment than a healthy forest. It gives us clean air, it gives us clean water, it gives us wildlife habitat, it gives us places to recreate. And we are blessed with abundant Federal lands in this country that have so much potential that is being so under-utilized. There are examples, great examples on Federal lands, where the right kind of management is taking place. We just need to empower the Federal land managers to do that all across the country.

I look forward to the testimony, and I yield back.

Mr. TIFFANY. Thank you, Mr. Chairman, and now I would like to recognize Representative LaMalfa to discuss the Wildland Firefighter Safety Act.

Representative LaMalfa, you are recognized for 5 minutes.

STATEMENT OF THE HON. DOUG LAMALFA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LAMALFA. Thank you, Mr. Chairman. I appreciate the opportunity, and being able to sit in on the Committee today. Good afternoon, Mr. Chairman, Ranking Member. I am glad to be part of this.

Across the West, we continue to face a wildfire crisis. In the past 5 years alone, we have seen some of the most destructive wildfires on record, especially in California. In my own district, we have seen catastrophic damage from the 2018 Camp Fire in Paradise that leveled three-quarters of the town, known as the deadliest fire in California's history. In 2021, we saw the million-acre Dixie Fire, the largest single-source fire in California history. We don't like setting those kinds of records.

Since 2000, we have averaged more than 70,000 wildfires per year and an average of 7 million acres burned annually. This acreage is more than double the average number during the 1990s, more than double in just a decade.

Since 2018, we have had four fire seasons that have exceeded 7 million acres, including 2020, when 10.1 million acres burned. In part to nearly a decade of forest mismanagement, our fires are getting bigger, hotter, and more aggressive than ever before.

As a member on the House Committee on Natural Resources, Committee on Transportation and Infrastructure, and as part of the Ag Subcommittee on Forestry, I know and have seen these issues firsthand. Like you, we are reviewing current forestry policies, evaluating how we can increase the pace and scale of proper forest management so that we can conserve forest health while removing overgrowth that increases risk of devastating wildfires.

Overhauling the current regulatory framework will not happen overnight. Removing brittle, decaying trees and dry overgrowth on tens of millions of acres of forest land will take years. Until then, until our forests are in a healthy state and a small, naturally-occurring blaze does not pose a risk of turning into another million-acre catastrophic blaze, it is essential that all wildland firefighting agencies continue to be able to utilize every single tool they can to protect forested land and nearby residents from these wildfires.

Unfortunately, environmentalists have confused protecting forested lands with preventing intervention of any kind, even if it means life or death. In the case of the *Forest Service Employees for Environmental Ethics v. the United States Forest Service*, the impetus for my bill, the plaintiff has asked for an injunction on the use of fire retardant, as my colleague, Mr. Chairman, said, until the Forest Service receives a National Pollutant Discharge Elimination System permit. It takes long just to say that name. Can you imagine how long it will be to get the permits? It will take years to obtain.

If the injunction is granted and fire retardant is not available for this fire season, the Forest Service, all of our states, tribal agencies, and counties will have to sit by should another devastating fire come, which it will, as we who live in the West know, that unfortunately, fire season is year round, and it is inevitable.

This can't wait. The 2023 fire season is already here. My state of California has already had dozens of wildfires. Thankfully, only about 64 acres have been counted as burned. It is the off season. But you look at Southern California, as dry as it usually is, we could have a catastrophe at any time. So, it is a year-round deal.

Already there are zones on forested lands where the use of fire retardant is restricted. According to the Forest Service, "It is estimated that less than one-half of 1 percent of fire retardant drops may reach the 300-foot or larger buffer zone between the drops and a sensitive area," maybe a creek or a river, particular wildlife. So, indeed, these buffers are there for that reason, to be the buffer from where the drop would end and where the sensitive area would begin.

So, when you have less than one-half percent of these drops reaching just into the buffer zone, and even more rarely getting into the actual waterway or whatever it may be, it shows that they work, the system works. Pilot planes guide the large aircraft where they need to go, and they are governed by the Forest Service. So, we know the process will work. Yet, it has gotten almost hysterical. And how we can take this tool away, especially if it is going to take years of review, we are just putting a lot of people, a lot of land, and a lot of wildlife in peril.

So, how the plaintiff can claim to want to protect the environment when they actively allow another fire to harm residents and wildlife, destroy vast areas of forest land—you heard the numbers, hundreds of thousands—and property, pollute rivers with ash and debris, and choke vulnerable people up to hundreds of miles away, it is just a complete mystery to me.

To every single Member of the Congress in this room, it is your constituents who will be put in danger if there is injunction of fire retardant. Yes, even on the East Coast, as the smoke plume from the million-acre Dixie Fire got up in the atmosphere and pushed across the country and affected large cities on the East Coast, where health alerts were put out because of fire in my district, 2,500 miles away.

So, I want to thank many of the organizations that were helpful in submitting letters of support. Mr. Chairman, I would like to ask unanimous consent to submit those letters from forest landowners, California Farm Bureau, Federal Forest Resource, et cetera. So, I appreciate that.

Mr. TIFFANY. So ordered.

[The information follows:]

Letters of Support for H.R. 1586 Submitted by Rep. LaMalfa

**AIRSPRAY AIRTANKERS
Chico, California**

March 16, 2023

Hon. Doug LaMalfa, Member of Congress
CA District 1
120 Independence Circle Suite B
Chico, CA 95973

Re: H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Mr. LaMalfa:

We greatly appreciate that you have brought forward the above Bill to Congress. The matter is of pressing concern to the effective operation of wildland fire suppression in the United States.

Retardant has proven to be a safe and effective tool in the protection of People, Property and the Environment for many years. To eliminate the use of retardant would endanger the lives of ground firefighters as well as worsen the impacts of fires.

Please let us know if there is anything additional, we can do to support this very important Bill

Sincerely,

PAUL J. LANE,
President

**COUNTY OF PLACER
BOARD OF SUPERVISORS
Auburn, California**

March 17, 2023

Hon. Doug LaMalfa, Representative
House of Representatives, 1st District of California
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Congressman LaMalfa:

On behalf of the Placer County Board of Supervisors, I am writing to express our support for H.R. 1586 Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

H.R. 1586 creates a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardant to fight wildfires. Fire retardant is an essential tool used to contain or slow the spread of wildfires. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

Currently the Forest Service and other agencies are operating under the assumption that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant because the regulations specifically state that

fire control is a “non-point source silvicultural activity” and communications from the Environmental Protection Agency dating back to 1993 indicated a permit is not required. This bill would specifically state that a permit is not required for fire retardant to fight wildfires. If fire retardant is not available for use in the 2023 fire year, firefighters and individuals living in forested communities, including Placer County would be in greater danger, and millions of acres of forested land and billions of dollars of infrastructure would be at risk.

For these reasons, we strongly support for H.R. 1586—Forest Protection and Wildland Firefighter Safety Act of 2023. If you have any questions, please reach out to Joel Joyce, Legislative and Governmental Affairs Coordinator.

Sincerely,

JIM HOLMES, CHAIR
COUNTY OF PLACER

CITY OF OROVILLE
Oroville, California

March 17, 2023

Hon. Doug LaMalfa, Member of Congress
408 Cannon House Office Building
Washington, DC 20515

Re: Letter of Support for Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Congressman LaMalfa:

As a retired Firefighter of 35 years and now Current Mayor of City in the foothills of wildfire threat zone. I write to your support for my bipartisan bill, H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023.

H.R. 1586 creates a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardant to fight wildfires. As you know, fire retardant is an essential tool used to contain or slow the spread of wildfires. Currently the Forest Service and other agencies are operating under the assumption that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant because the regulations specifically state that fire control is a “non-point source silvicultural activity” and communications from EPA dating back to 1993 indicated a permit is not required.

This bill is needed because an environmentalist group is suing the Forest Service under the Clean Water Act to require a NPDES permit to use fire retardant and they have requested an injunction on the use of fire retardant until the Forest Service receives this permit, which could take years. If the injunction is granted and fire retardant is not available for use in the 2023 fire year, firefighters and individuals living in forested communities would be in greater danger, and millions of acres of forested land and billions of dollars of infrastructure would be at risk.

I appreciate your consideration of this pressing concern. We must be able to fight wildfires with everything we have, and limiting firefighting agencies’ ability to do so flies in the face of forest conservation and our mission to protect nearby residents. Congressman Doug LaMalfa has garnered bipartisan support throughout Congress. and was joined in introduction by the following Members of Congress: Jimmy Panetta (D-CA), Dan Newhouse (R-WA), John Duarte (R-CA), Russ Fulcher (R-ID), Tom McClintock (R-CA), John Garamendi (D-CA), Austin Scott (R-GA), Amata Radewagen (R-AS), Troy Nehls (R-TX), Lauren Boebert (R-CO), Rick Crawford (R-AR), Young Kim (R-CA), Ryan Zinke (R-MT), Blake Moore (R-UT), Burgess Owens (R-UT), Mike Simpson (R-ID), Trent Kelly (R-MS), Ken Calvert (R-CA), Pete Stauber (R-MN), Darrell Issa (R-CA), Mary Miller (R-IL), Kevin Kiley (R-CA), Matt Rosendale (R-MT), Jim Costa (D-CA), Jay Obernolte (R-CA), and Harriet Hagerman (R-WY).

Sincerely,

DAVID W. PITTMAN,
Mayor, City of Oroville

CRANE MILLS
Corning, California

March 17, 2023

Hon. Doug LaMalfa, Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Letter of Support for H.R. 1586

Dear Representative LaMalfa:

I am pleased to announce Crane Mills' support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023, which would create a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardant to fight wildfires. I appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

We are currently in a period of unprecedented, catastrophic wildfires and it is imperative that fires are being fought with all available resources. Fire retardant is a vital tool that our firefighters need to have at their disposal. It has been proven to be an effective means to slow the spread of fire, protect homes, infrastructure, and communities. This act will ensure that our firefighting agencies can continue to use fire retardant, as needed, to protect the things that matter most: people, communities, infrastructure and natural resources.

Regardless of how it is applied—be it dropped from a plane, sprayed from a tanker truck, or applied by hand—retardant is an effective tool that helps keep our communities safe and our natural resources from being destroyed from damaging wildfires.

We support your efforts on H.R. 1586.

Sincerely,

DREW CRANE,
CFO

INTERNATIONAL WILDFIRE CONSULTING GROUP

March 17, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce International Wildfire Consulting Group's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

In October 2007, the USFS issued an environmental assessment and decision notice and finding of no significant impact, entitled "Aerial Application of Fire Retardant." From 2007 to 2010 significant work and policies have been engaged Nationally to ensure the safe use of retardants.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infra-

structure, and communities by reducing fire intensity and creating anchor points to assist fire crews in controlling unwanted fire.

It is imperative that we maintain our ability to fight wildfires safely, and effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites and watershed preservation, and our mission to protect nearby residents and public health.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life. We support your efforts on H.R. 1586.

Thank you,

DAN REESE

FEDERAL FOREST RESOURCE COALITION

Statement for the Record

Regarding Pending Legislation:

H.R. 200; The FIR Act; H.R. 1567, the ACRES Act; and H.R. 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.

H.R. 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, canceled 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 H.R. 200 and work to see that it is enacted as quickly as possible.

H.R. 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.

H.R. 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 its 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.

COMMERCIAL LUMBER AND PALLET COMPANY, INC.
Industry, California

March 17, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce Commercial Lumber and Pallet Companies support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

KATHLEEN DIETRICH,
Operations Manager

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

I gladly support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. I appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that our agencies maintain their ability to fight wildfires effectively. Limiting firefighting agencies' ability to slow fires will harm forest con-

servation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

I support your efforts on H.R. 1586.

Thank you,

DANIELLE LINDLER
Registered Professional Forester

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Dear Representative LaMalfa:

I am pleased to join in support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. I appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

In view of the inferior stewardship of USFS lands, it is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to slow fires, will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts to enact H.R. 1586.

Thank you,

ARNE HULTGREN

ORANGE COUNTY FIRE AUTHORITY
Irvine, California

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

I am pleased to let you know that the Orange County Fire Authority (OCFA) supports your bill H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. I appreciate your leadership on this critical issue and am grateful that the legislation has received strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire-prone communities are at risk every year from the threat of wildfire. The use of retardant when deemed necessary by highly trained and experienced Incident Commanders is critical for the survival and safety of not only our firefighters, but also the very communities and residents they are sworn to protect. I have seen time and again that using retardant slows the spread of fire, protects homes, saves infrastructure, and keeps communities safe by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting our ability to do so will harm forest conservation, threaten endangered species, imperil historic site preservation, and impede our ability to protect residents. In short, we need this tool to protect critical infrastructure and human life.

I support your efforts on H.R. 1586.

Sincerely,

BRIAN FENNESSY,
Fire Chief

CALIFORNIA SPECIAL DISTRICTS ASSOCIATION
Sacramento, California

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

The California Special Districts Association (CSDA), representing more than 1,300 special districts and affiliate organizations is pleased to support your H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support. CSDA represents all types of districts, including fire protection districts defending our forests, lives, property, and economic prosperity.

The use of retardant is a vital tool that firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again,

using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents. Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Thank you,

KYLE PACKHAM,
Advocacy and Public Affairs Director

SIERRA COUNTY BOARD OF SUPERVISORS
Downieville, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce Sierra County Board of Supervisor's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents. Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

SHARON DRYDEN,
Chair

NATIONAL ALLIANCE OF FOREST OWNERS

Statement for the Record

H.R. 1586

Washington, DC—The National Alliance of Forest Owners responded in a statement to the introduction of H.R. 1586, to allow the Secretary of the Interior and the Secretary of Agriculture to use a fire retardant, chemical, or water for fire suppression, control, or prevention activities.

“We applaud the introduction of H.R. 1586, a bipartisan bill that will support our nation’s wildland firefighters by ensuring they have the tools they need to protect our people, rural communities, and forested ecosystems from severe wildfire. The wildfire crisis is at an inflection point. Now is the time to improve and strengthen our wildfire suppression resources, not reduce or weaken them. Healthy forests support healthy communities, clean air and water, wildlife habitat, and good-paying jobs. Severe wildfires are increasingly putting these benefits at risk. The health and resilience of our nation’s forests and the rural communities they support depend on immediate and comprehensive fire suppression during fire season. Maintaining that capability should be a top priority for everyone. We look forward to working with Chairman LaMalfa and the rest of the Committee to support our nation’s firefighters as they protect the health and safety of our rural communities and the sustainability of our forests.

**CITY OF CHICO
OFFICE OF THE MAYOR
Chico, California**

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

I am pleased to announce my support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. I appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. I have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies’ ability to do so will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

I support your efforts on H.R. 1586!

Sincerely,

ANDREW COOLIDGE,
Mayor, City of Chico

**CALIFORNIA FORESTRY ASSOCIATION
(Calforests)
Sacramento, California**

March 21, 2023

Hon. Doug LaMalfa, Congressman (CA-01)
408 Cannon House Office Building
Washington, DC 20515

Re: Calforests Support for H.R. 1586

Dear Congressman LaMalfa:

On behalf of California Forestry Association (Calforests) I am writing to express strong support of H.R. 1586, which would allow the continued use of fire retardant by the Secretary of the Interior and the Secretary Agriculture during fire protection activities.

Calforests is the preeminent trade association and advocate for the state's forest industry. Collectively, our members—private forestland owners—manage nearly 3.5 million acres of forest land throughout the state and operate nearly the entirety of the state's forest products infrastructure, including sawmills, veneer mills, and biomass power plants. As the steward of a significant portion of the state's forest lands, Calforests members have a vested interest in ensuring that the fire protection system remains intact and as effective as possible.

H.R. 1586 is a bipartisan effort to ensure that our wildland firefighters maintain all tactical advantages necessary during wildfire suppression activities to assure that protection of rural communities, rural economies and natural resources are protected. Even more so, H.R. 1586 will protect those that dedicate their lives to serving the people of the United States as wildland firefighters. The associated risk of any retraction of available tools to support wildfire suppression efforts during this time of crisis in California and beyond is simply untenable.

Again, Calforests expresses strong support and looks forward to continued work with you on this critical issue.

Sincerely,

MATT DIAS,
President and CEO

**COUNTY OF TEHAMA
Board of Supervisors
Red Bluff, California**

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce the Tehama County Board of Supervisors support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have

seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We, the Tehama County Board of Supervisors, support your efforts on H.R. 1586.

Sincerely,

BILL MOULE,
Chairman

CITY OF REDDING
Redding, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Congressman LaMalfa:

We are pleased to announce the City of Redding's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bipartisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire-prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and the safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protect homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to slow fires will harm forest conservation, endangered species protection, historic site preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed by damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

MICHAEL P. DACQUISTO,
Mayor

JEFFERSON RESOURCE COMPANY

March 17, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce Jefferson Resource Company's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Thank you,

TINA STEWART

Tim Seeley

March 17, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

I am pleased to hear about your diligent navigation of H.R. 1586. As a registered Democrat, I crossed the aisle and voted for you in the last election, because I believe you are an exceptional steward of our environment as a multi-generational, successful Rice Farmer in Butte County. I trust your judgment to keep our precious natural resources safe. That is why I'm writing . . . to support H.R. 1586.

During this era of binary, all, or nothing legislation, I am hopeful all of us can recognize the need to battle wildfires more effectively. As a CAMP Fire victim of 2018, I know all too well how a small, localized fire can explode into an uncontrollable fire storm destroying everything in its path.

This is the wrong time to limit the use of Fire Retardants as a tool in combating these wildfires. While it is imperative, we correct our forest management failures, we cannot remove tools (retardants) from our firefighting toolbox at this time. If one

compares incidental use of air dropped retardants to minimize a wildfire vs the calamity of thousands of buildings, vehicles, and toxic materials going up in smoke, there is no comparison with the potential environmental destruction.

It is also encouraging to see private enterprise stepping up to mitigate past issues with the type of retardants used. Perhaps the “environmentalists” trying to sue can instead assist in removing the overabundance of fuels in our forests instead of closing the door on forest management.

Locking the door on our forests does not make wildfire risk go away.

Best Regards,

TIM SEELEY

BUTTE COUNTY FIRE SAFE COUNCIL

March 17, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce Butte County Fire Safe Council’s support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies’ ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Thank you,

DARREL WILSON,
Board Chairman

**WESTERN SHASTA RESOURCE CONSERVATION DISTRICT
Anderson, California**

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce the Western Shasta Resource Conservation District's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that wildland firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. The catastrophic wildfires that our District has experienced over the past several years have severely impacted our forests and removing this critical fire suppression tool will put the remaining forests in extreme risk.

Beyond the risk to our forests and watersheds, fire prone communities throughout the District are at risk every year from the threat of wildfire. It is critical for the survival of these communities and for the safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents. Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland—urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

MAUREEN TEUBERT,
District Manager

**AMERICAN MOTORCYCLISTS ASSOCIATION
District 36
Cottonwood, California**

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

On behalf of our 4,000 members who live, work, and recreate on public and private lands in Northern California, the American Motorcyclists Association District 36 is honored to announce our support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

As a core-team member for a forest health collaborative in the north state, I have seen lives and homes protected from being destroyed by wildfires because state and federal fire agencies were able to use retardant in a timely manner. Often those retardant air drops are danger-close and those homes are saved by heroic firefighters on the ground and pilots flying tankers.

On a personal note, my home west of Cottonwood and other homes in my neighborhood were saved when CALFIRE air tankers made precision drops of retardant just a hundred yards from my home in the fall of 2021.

Thanks for your efforts on H.R. 1586 they are greatly appreciated.

Best regards,

DON AMADOR,
Director

FOREST LANDOWNERS ASSOCIATION
Carrollton, Georgia

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Dear Representative LaMalfa:

As the sole national representative for our country's family forest landowners, we are thrilled to announce our support for H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023.

The largest threat to the domestic timber supply is the increasing number of natural disasters including hurricanes, wildfires, tornados and damaging thunderstorms. This bipartisan legislation would protect firefighters' ability to protect landowners by using a critical tool in their arsenal to combat wildfires. It is imperative that we enhance rather than hinder the resources to keep our private working forests operating so they can provide the clean air, pure water, and quality jobs that our nation depends on.

Thank you for your commitment to our nation's forest landowners. We look forward to working with you on more commonsense pieces of legislation this Congress.

Sincerely,

SCOTT JONES,
CEO

OVERWATCH AERO, LLC
Solvang, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce Overwatch Aero's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. As a provider of Type 1 unmanned aerial system (UAS) services in support of wildfires, Overwatch Aero has witnessed first-hand the destruction of these large wildfires—and we are in support of providing the best tools possible to the firefighting crews working to stop these conflagrations. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Kind Regards,

JORDAN HAHN,
Chief Executive Officer

NATIONAL WILDFIRE SUPPRESSION ASSOCIATION
Mill City, Oregon

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Hon. Jimmy Panetta, U.S. Representative
304 Cannon House Office Building
Washington, DC 20515

Dear Representatives LaMalfa and Panetta:

We are writing this letter of support to you regarding the Forest Protection and Wildland Firefighter Safety Act of 2023.

Our organization represents three hundred and twenty-six (326) member companies who supply "boots on the ground" resources to the agencies to assist with

wildfire suppression efforts nationwide. That is a workforce of over sixteen thousand (16,000) available to help in this effort.

Firefighter Safety is of utmost importance to our industry, and the ability for the agencies to be able to utilize retardant as another tool we believe that they should have access too.

We would urge members of congress to support this legislation effective immediately as with wildfire season approaching, we need all the tools available to us. By doing so you will demonstrate your commitment to protecting lives, property, and our natural resources.

If you would like any additional information on this important legislation, please let us know.

Sincerely,

DEBORAH MILEY,
Executive Director

LAKE MADRONE WATER DISTRICT
Oroville, California

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce LMWD's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Thank you,

DR. JESS C. VICKERY, PROFESSOR
Academic Senate President, Butte College;
President and Chairman, Lake Madrone Water District

CITY OF BIGGS
Biggs, California

March 15, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Dear Congressman LaMalfa:

I write to express support for H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023.

Wildfires impact the City of Biggs in many ways. We have witnessed several fires originating on Federal Lands that have displaced people and destroyed property in the last 5 years. The Forest Service needs to do more to stop catastrophic wildfires in California.

I wish to express support for H.R. 1586 to exempt firefighting from potential Clean Water Act regulations for federal, state, local, and tribal firefighting agencies.

Fire retardant is an essential tool used to contain or slow the spread of wildfires. Currently the Forest Service and other agencies are operating under the assumption that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant because the regulations specifically state that fire control is a “non-point source silvicultural activity” and communications from EPA dating back to 1993 indicate a permit is not required.

Sincerely,

JOSH COOK

CITY OF ANDERSON
Anderson, California

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce the City of Anderson’s support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies’ ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

Sincerely,

MIKE GALLAGHER,
Mayor

**LASSEN COUNTY
Board of Supervisors
Susanville, California**

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

On behalf of the Lassen County Board of Supervisors, I write in support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents. Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

GARY BRIDGES,
Chairman

**SHASTA COUNTY FIRE SAFE COUNCIL
Palo Cedro, California**

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce Shasta County Fire Safe Council's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents. Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

PAMELA BATES,
Executive Director

UNITED AERIAL FIREFIGHTERS ASSOCIATION

**Statement for the Record
on Fire Retardant Lawsuit**

March 14, 2023

The following statement from United Aerial Firefighters Association (UAFA) President John Gould reflects the opinion of its board of directors with respect to the ongoing retardant lawsuit between Forest Service Employees for Environmental Ethics (FSEEE) vs. United States Forest Service, as well as a call for Congressional action:

"UAFA notes with increasing concern the potential for a federal court to impose a restraining order against the use of aerially applied fire retardant as early as this coming fire season. Fire retardant is a proven, essential tool in assisting wildland firefighters in their fight to contain, control and defeat wildfire. As this lawsuit continues, with the potential to run into its second year, UAFA strongly supports Congressman LaMalafa's legislation, the Forest Protection and Wildland Firefighter Safety Act of 2023, which allows the federal, states, and tribal governments to continue the use of aerially applied fire retardants."

THE ANALYTICAL MOOSE

March 18, 2023

Hon. Doug LaMalfa, U.S. Representative
 408 Cannon House Office Building
 Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce The Analytical Moose's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Thank you,

RACHAEL BRADY

NATIONAL ASSOCIATION OF STATE FORESTERS
Washington, DC

March 22, 2023

Hon. Tom Tiffany, Chair
 Hon. Joe Neguse, Ranking Member
 U.S. House of Representatives
 Committee on Natural Resources
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Tiffany and Ranking Member Neguse:

The National Association of State Foresters (NASF) writes to you today in support of the bipartisan effort led by Representatives LaMalfa (R-CA) and Panetta (D-CA) to introduce H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023.

NASF represents the directors of the forestry agencies in all 50 states, five U.S. territories, three nations in compacts of free association with the U.S., and the District of Columbia. State foresters deliver technical and financial assistance to private landowners, along with protection of forest health and water resources for more than two-thirds of the nation's forests, as well as promote the stewardship of urban and community forests of all sizes across the country. We also partner with federal land management agencies through cooperative agreements and Good

Neighbor Authority to manage national forests and to deliver programs outlined in the Bipartisan Infrastructure Law and Inflation Reduction Act such as the recently announced Community Wildfire Defense Grants. While the duties of state agencies vary from state to state, all share common forest management and protection missions and most have statutory responsibilities to provide wildland fire protection on all lands, public and private.

In 2022, roughly 70,000 wildland fires burned more than 7.5 million acres.¹ State and local agencies respond to the majority of wildfires across the country; in 2022 state and local agencies were responsible for responding to 57,492 (83%) of the 69,988 reported wildfires across all jurisdictions.² State forestry agencies contribute a significant portion of the overall wildland fire suppression effort nationally in terms of resources, personnel, capacity, and funds.

Attacking wildfires when they are small is the key to reducing fatalities, injuries, loss of homes, and cutting federal, state and local fire-fighting costs. This national principle is extremely important to state foresters that are responsible for protecting over 60% of the nations' forests. Often the use of fire retardants and/or foam is the only practical way to reduce wildfire intensities and rate of spread until units on the ground can safely take suppression action. Continuing the use of fire retardants and/or foam is essential for firefighter and public safety. In some instances, it is the only tool that will allow firefighters to accomplish the job safely.

Eliminating this tool from the toolbox will severely reduce the efficacy of inter-agency suppression capabilities and will accelerate risk to the public. Adequate protection of communities, life and property, and critical infrastructure such as major communication and power line facilities through continued aerial application of fire retardant is a critical need that should continue to be recognized.

State and federal agencies rely on aviation contracts for air tankers and helicopters that aurally deliver fire retardants and/or foam. If state and federal agencies are not able to utilize aurally delivered fire retardants and/or foam, inter-agency wildfire suppression efforts will be severely impacted by the loss of this valuable fire suppression tool which could significantly increase the threat and risk to life and property.

State foresters believe continuing the use of fire retardants and/or foam, in aerial fire suppression activities, is essential for firefighter and public safety.

Sincerely,

KACEY KC,
NASF President
Nevada State Forester

NATIONAL ASSOCIATION OF COUNTIES
Washington, DC

March 22, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Hon. Jimmy Panetta, U.S. Representative
304 Cannon House Office Building
Washington, DC 20515

Dear Representatives LaMalfa and Panetta:

On behalf of the National Association of Counties (NACo), the only organization representing the nation's 3,069 counties, parishes, and boroughs, I write to express support for H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act. Thank you for your leadership in introducing legislation to protect forests and communities from catastrophic wildfire by creating a Clean Water Act (CWA)

¹National Interagency Fire Center, Historical Wildland Fire Summaries, Last accessed March 14, 2023 at <https://www.nifc.gov/fire-information/statistics/wildfires>

²*Id.*

exemption for federal, state, local, and tribal firefighting agencies to use fire retardant to fight wildfires.

Fire retardant is essential to contain and combat wildfires. Land management agencies have operated since 1993 under the assumption that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant because regulations specifically state that fire control is a “non-point source silvicultural activity.”

Unfortunately, a recent lawsuit against the Forest Service attempts to require a NPDES permit under the CWA to use fire retardant. The plaintiffs also request an injunction on the use of fire retardant until the Forest Service receives this permit, which could take years. If the injunction is granted and fire retardant is not available for use in 2023, the risk to the environment, economies and livelihoods of forested communities will be immense, as wildfires have been increasing in size, duration and destruction to communities, reaching crisis-level conditions. This would further jeopardize water supplies by requiring agencies to use limited, existing water sources to combat fires without the benefit of retardant drops, while also increasing the risk of fire spreading to the very watersheds supplying national forest counties.

H.R. 1586 would prevent this catastrophic outcome by ensuring firefighting agencies are not subject to this unnecessary level of regulation, especially in emergency situations. Agency directives prohibit the direct delivery of fire retardant into waterbodies or surrounding buffer zones except to protect life and safety. Between 2012 and 2019, out of 56,868 total retardant drops, only 376 (less than one percent) were directly into the water, due to either misapplication or to protect life and safety. This lawsuit is a solution in search of a problem. H.R. 1586 would stop this lawsuit from jeopardizing our environment and communities.

NACo stands ready to work with you to reduce the risk of catastrophic wildfire and protect communities. Counties encourage swift passage of the Forest Protection and Wildland Firefight Safety Act.

Sincerely,

MATTHEW D. CHASE,
Executive Director

YANKEE HILL FIRE SAFE COUNCIL
Yankee Hill, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Dear Congressman LaMalfa:

The Yankee Hill Fire Safe Council is writing to you in support of your bipartisan bill, H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023. We are a small nonprofit serving the community of Concow/Yankee Hill located in the Sierra Nevada foothills of Butte County, an area that has extensive history in experiencing wildland fires. Our community is surrounded and peppered by public lands and we understand how frequently they are litigated by environmental groups, when they are working to provide a necessary service for community protection. It is our mission to educate the community and increase awareness to fire risks; reduce wildfire fuel loading, conserve natural resources, participate in fire recovery efforts and prepare for other disasters.

The Yankee Hill Fire Safe Council believes it is imperative for the Forest Service and other agencies to continue to operate under the assumption National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant for fire control purposes. It is our understanding that fire control is a “non-point source silvicultural activity” and communications dating back to 1993 from EPA indicated a permit is not required. Therefore, we are in support of bill H.R. 1586 to allow the use of fire retardant under an emergency response to a threatening wildfire putting our firefighters, public, infrastructure at risk.

We must be able to fight wildfires with all the resources available to lessen the impact of forested land and our communities.

Thank you kindly,

BRENDA RIGHTMYER,
Managing Director

SACRAMENTO METROPOLITAN FIRE DISTRICT
Mather, California

March 22, 2023

Hon. Doug LaMalfa, Congressman
408 Cannon House Office Building
Washington, DC 20515

Re: **SUPPORT**—H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Congressman LaMalfa:

I write today in support of H.R. 1586 Forest Protection and Wildland Firefighter Safety Act of 2023. This important piece of legislation will help ensure that vital tools and tactics remain available for fire suppression across the State of California, and indeed our entire nation.

At a time when nine out of the top ten largest California wildfires have occurred within the past decade,¹ it is critical for the protection of life, the defense of property, and the safety of our first responders and the public alike that fire retardant remain available for use when facing these catastrophic flames. Without the availability of retardant, fire behavior can be drastically increased and many more acres become threatened or lost.

H.R. 1586—and the companion Forest Protection and Wildland Firefighter Safety Act of 2023 in the U.S. Senate—serves an essential role by clarifying that fire retardant remains a readily accessible and viable option for Federal, State, Local, and Tribal entities when used in connection for fire suppression, control, or prevention.

For these reasons, Sacramento Metropolitan Fire District supports H.R. 1586, and urges you and your colleagues to support this important piece of legislation.

Thank you for your consideration,

DAN HAVERTY,
Interim Fire Chief

¹ CAL FIRE: Top 20 Largest California Wildfires (10/24/2022)

CALIFORNIA FARM BUREAU
Sacramento, California

March 22, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

The California Farm Bureau appreciates the opportunity to provide comments in support of H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023.

California Farm Bureau is California's largest farm organization, representing approximately 28,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers, ranchers, and foresters engaged in production agriculture to provide a reliable, safe, and affordable supply of food and fiber through responsible stewardship of our natural resources.

Given the recent history of catastrophic wildfire across the western United States, California Farm Bureau strongly supports the retention of essential wildfire prevention, mitigation, and suppression tools. The Forest Protection and Wildland Firefighter Safety Act of 2023 provides a critical Clean Water Act exemption that would ensure federal, state, local, and tribal firefighting entities may continue the use of fire retardant during wildfire incidents.

An essential suppression tool, fire retardant both slows the spread of wildfire and creates a boundary line of attack for fire crews. This helps provide protection for rural communities especially those in the wildland urban interface. Additionally, the use of retardant improves firefighter safety and helps safeguard the many important social and ecological values of our forests including timber resources, wildlife, historic sites, and watersheds.

Currently, the U.S. Forest Service and other agencies are operating under the assumption that a National Pollutant Discharge Elimination System permit is not required for the use of fire retardant because regulations specifically state that fire control is a non-point source silvicultural activity. Historical communications between the Forest Service and the U.S. Environmental Protection Agency also indicate a permit is not required. The continued use of retardant in effective fire suppression is of great importance to California Farm Bureau members. Given the length of time it would take for the Forest Service to obtain such a permit, California Farm Bureau is currently participating in litigation to allow for the ongoing use of fire retardant.

The provisions of the Forest Protection and Wildland Firefighter Safety Act of 2023 are urgently important for the 2023 fire year. California Farm Bureau greatly appreciates your bipartisan approach and leadership on this critical issue.

Sincerely,

JAMIE JOHANSSON,
President

CALIFORNIA WOMEN FOR AGRICULTURE
Sacramento, California

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
 408 Cannon House Office Building
 Washington, DC 20515

Dear Representative LaMalfa:

California Women for Agriculture supports passage the bipartisan bill, H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023.

H.R. 1586 creates a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardants to fight wildfires. Fire retardant is essential to contain or slow the spread of wildfires. However, currently, the Forest Service and other agencies are operating under the assumption that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant because the regulations specifically state that fire control is a “non-point source silvicultural activity” and communications from EPA dating back to 1993 indicated a permit is not required.

Wildland fires have been devastating to California destroying forests, towns, and croplands. People have died in our state because of these fires. If not for the aerial use of fire retardants, these fires would have been even more deadly and destructive. This bill is needed because an environmentalist group is suing the Forest Service under the Clean Water Act to require an NPDES permit to use fire retardant. They have requested an injunction on using fire retardant until the Forest Service receives this permit, which could take years. If the injunction is granted and fire retardant is unavailable in the 2023 fire year, firefighters and individuals living in forested communities would be in greater danger, with millions of acres of forested land and billions of dollars of infrastructure would be at risk.

We must be able to fight wildfires with everything we have. Limiting firefighting agencies’ ability to do so flies in the face of forest conservation and our mission to protect residents.

SHARRON ZOLLER,
President

AMERICAN AGRI-WOMEN

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
 408 Cannon House Office Building
 Washington, DC 20515

Dear Representative LaMalfa:

American Agri-Women supports the bipartisan bill, H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023.

H.R. 1586 creates a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardants to fight wildfires. As you know, fire retardant is essential to contain or slow the spread of wildfires. However, currently, the Forest Service and other agencies are operating under the assumption that a National Pollutant Discharge Elimination System (NPDES) permit is not required for the use of fire retardant because the regulations specifically state that fire control is a “non-point source silvicultural activity” and communications from EPA dating back to 1993 indicated a permit is not required.

Wildland fires have devastated our Western States. They have destroyed forests, towns, croplands, wildlife, and most tragically, human lives. If not for the aerial use of fire retardants, these fires would have been even more deadly and destructive. This bill is needed because an environmentalist group is suing the Forest Service under the Clean Water Act to require an NPDES permit to use fire retardant. They

have requested an injunction on using fire retardant until the Forest Service receives this permit, which could take years. If the injunction is granted and fire retardant is unavailable in the 2023 fire year, firefighters and individuals living in forested communities would be in greater danger. Millions of acres of forested land and billions of dollars of infrastructure would be at risk.

We must be able to fight wildfires with everything we have. Limiting firefighting agencies' ability to do so contradicts forest conservation.

Respectfully,

HEATHER HAMPTON-KNODLE,
President

YUBA WATER AGENCY
Marysville, California

March 22, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: **SUPPORT**—H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

On behalf of Yuba Water Agency (Yuba Water), I am writing to communicate our support for H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023. Yuba Water was established by the State of California in 1959 to develop and promote the beneficial use and regulation of the water resources of Yuba County. Our agency is rooted in California's headwaters, and the health of our watershed, the safety of the communities we serve, and the protection of our critical water management infrastructure are all directly linked to the forests that make up a significant portion of the Yuba River watershed.

HR 1586 will provide a Clean Water Act exemption for fire retardants so that federal, state, local, and tribal firefighting agencies will continue to have this important tool available for their use. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for our communities, watershed, and the safety of fire crew members that retardants are available for use when deemed necessary. The appropriate use of retardant can mitigate the risk of catastrophic wildfires and protect homes, infrastructure, and communities by creating a boundary line of attack for fire crews. Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that can help keep our communities safe and our watersheds from being destroyed by catastrophic wildfires.

We appreciate your leadership on this critical issue and that the fact that H.R. 1586 has strong bipartisan support.

Sincerely,

WILLIE WHITTLESEY,
General Manager

**INTERNATIONAL ASSOCIATION OF FIRE CHIEFS
and
NATIONAL SPECIAL DISTRICTS COALITION**

March 22, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Dear Representative LaMalfa:

On behalf of the approximately 11,000 members of the International Association of Fire Chiefs (IAFC) and National Special Districts Coalition (NSDC) consisting of over 1,000 members providing fire protection services, we express our support for the Forest Protection and Wildland Firefighter Safety Act (H.R. 1586). The IAFC and NSDC support this legislation, because it will protect an important tool for fighting wildland fires and protecting communities from their destructive force.

The nation continues to face a costly threat from wildland fires. In 2021, there were approximately 59,000 fires burning more than 7.1 million acres, which resulted in approximately \$4.4 billion in only federal wildland fire expenses. Besides the cost to federal, state, tribal, and local agencies, these fires destroy homes, devastate capacity for critical services, and threaten Americans' livelihoods.

Fire retardants are important tools for fighting wildland fires. They can slow the spread of flames and reduce their intensity. By using fire retardants, federal, state, tribal, and local agencies can buy time to evacuate communities, protect structures, and send resources to fight a growing wildland fire. In order to protect the environment, the U.S. Forest Service (USFS) uses retardant avoidance areas to prevent pollution in waterways. When these avoidance areas were created, they resulted in approximately 30 percent of USFS lands becoming off-limits for fire retardant use.

H.R. 1586 would protect the use of this critical tool. The bill would authorize the U.S. Secretaries of Interior and Agriculture to "discharge a fire retardant, chemical, or water for fire suppression, control, or prevention activities." It also would waive the need of a permit for similar activities by the USFS, National Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Federal Emergency Management Agency; states, fire districts, and localities; and tribal governments.

The IAFC and NSDC urge the House of Representatives to consider and pass H.R. 1586. The deployment of flame retardants is a critical tool in fighting wildland fires. Even though the nation currently pays a huge price in funding, lives, and property due to the growing wildland fire crises, the loss of the use of flame retardants would foster even larger fires and cause more devastation for the American people.

Sincerely,

Fire Chief Donna M. Black
President and Board Chair
International Assoc. of Fire Chiefs

Neil McCormick
Chairman
National Special Districts Coalition

BERRY CREEK FIRE SAFE COUNCIL
Berry Creek, California

March 22, 2023

Dear Madam or Sir:

I, Denise Bethune, am writing this letter in support for Congressman Doug LaMalfa and H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023. I am a community leader in Berry Creek, a rural foothill area in Northern California. I have great concern for the safety of the area. This bill is important for firefighters to have the tools to fight these devastating wildfires.

Berry Creek has experienced the devastation of the Northwest Complex Wildfire in 2020. The impact has left our community devastated in its path. Any future communities that are threatened by a wildfire need to have all resources available to firefighters. This is a necessity! The safety of life, wildlife, forest, and property must be the priority. I have personally experienced the loss and destruction of the Northwest Complex Fire. My home was destroyed. The toxins that are released from burnt dwellings are more of a threat to the watersheds. Limiting any resources that help fight wildfires will hinder those efforts. This could potentially be catastrophic.

Please consider the importance of the bipartisan supported bill, H.R. 1586—the Forest Protection and Wildland Firefighter Safety Act of 2023. Lives could be dependent on the resources firefighters have protecting these communities.

Sincerely,

DENISE M BETHUNE,
Chairwoman

CITY OF SHASTA LAKE
Shasta Lake, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
 408 Cannon House Office Building
 Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce the City of Shasta Lake's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

As a City located in a very high fire severity zone, it is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

Very truly yours,

JESSACA LUGO,
City Manager

PLACER COUNTY WATER AGENCY
Auburn, California

March 15, 2023

Hon. Doug LaMalfa, U.S. Representative
 408 Cannon House Office Building
 Washington, DC 20515

Dear Congressman LaMalfa:

The Placer County Water Agency (PCWA) writes in support of H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023 to create a Clean Water Act exemption for federal, state, local, and tribal firefighting agencies to use fire retardant to fight wildfires. This bi-partisan legislation will safeguard that aerial fire retardant remain a critical means in our firefighting toolbox for protecting our communities, forests, critical water and energy infrastructure.

PCWA understands first-hand the ability for immediate application of aerial fire retardants, dropped from air tankers and helicopters, to halt the spread of life-threatening wildfires in a wildland-urban interface.

- In August 2021, the River Fire started at the Bear River Campground west of Colfax, California, while the region was under a Red Flag Warning due to weather and forest fuel conditions that could result in extreme wildfire behavior. Aggressive deployment of aerial attack assets (over 24 aircraft and helicopters) employing targeted retardant and water drops was able to halt the spread of this destructive wildfire and protect thousands of structures and lives.
- During September and October 2022, the Mosquito Fire consumed over 76,000 acres in the American River watershed and threatened to destroy the communities of Foresthill and Georgetown and potentially spread into the Lake Tahoe Basin. Utilizing of aviation assets for frequent water and retardant drops protected at-risk communities and critical water and energy facilities, including PCWA's Middle Fork and Oxbow powerhouses.

Again, PCWA strongly supports the passage of H.R. 1586 which recognizes the vital importance of retaining the ability to use fire retardant to fight wildfires.

Sincerely,

ANTHONY L. FIRENZI, PE
Director of Strategic Affairs

COUNTY OF PLACER
BOARD OF SUPERVISORS
Auburn, California

March 17, 2023

Hon. Doug LaMalfa, U.S. Representative
 408 Cannon House Office Building
 Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

I am in full support of your proposed legislation H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. I and the Placer County residents I represent appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep

this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

I fully support your efforts on H.R. 1586.

Very Truly Yours,

SUZANNE JONES,
District 4 Supervisor

GLENN COUNTY BOARD OF SUPERVISORS
Willows, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

We are pleased to announce the Glenn County Board of Supervisor's support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that our firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain our ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Sincerely,

GRANT CARMON,
Chairman

NORTH STATE PLANNING & DEVELOPMENT COLLECTIVE
Chico, California

March 20, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Forest Protection and Wildland Firefighter Safety

Dear Representative LaMalfa:

On behalf of the North State Planning and Development Collective, California State University, Chico, we are happy to provide this general letter of support related to forest protection and wildland firefighter safety issues.

Northern California has been ravaged by wildfire over the last several years, and our fire-prone communities remain at risk year-after-year. It is critical for the survival of our communities, forests, and safety of fire crew members to have the tools they need to slow the spread of fire as they protect homes, infrastructure, and communities. Tools such as retardant are critical to the firefighting effort as they help ensure residents' safety, help protect our workforce and infrastructure and ultimately preserve the economic vitality of our communities.

We appreciate your ongoing efforts to support the needs of our firefighters as they protect our residents and communities. For any questions, please don't hesitate to reach out.

Sincerely,

JASON SCHWENKLER,
Executive Director

BUTTE COUNTY BOARD OF SUPERVISORS
Oroville, California

March 21, 2023

Hon. Doug LaMalfa, U.S. Representative
408 Cannon House Office Building
Washington, DC 20515

Re: Support for H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Dear Representative LaMalfa:

On behalf of the Butte County Board of Supervisors, I am pleased support H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023. We appreciate your leadership on this critical issue and that the legislation has strong bi-partisan support.

The use of retardant is a vital tool that firefighters need to have at their disposal. Providing a Clean Water Act exemption so that federal, state, local, and tribal firefighting agencies can continue to use fire retardant is necessary to keep this tool available. Our fire prone communities are at risk every year from the threat of wildfire. It is critical for the survival of our communities, forests, and safety of fire crew members to utilize retardant when deemed necessary. We have seen time and again, using retardant slows the spread of fire, protects homes, infrastructure, and communities by creating a boundary line of attack for fire crews.

It is imperative that we maintain the ability to fight wildfires effectively. Limiting firefighting agencies' ability to do so slow fires will harm forest conservation, endangered species protection, historic sites preservation, and our mission to protect nearby residents.

Whether dropped from a plane, sprayed from a tanker truck, or hand applied by private homeowners, retardant is a tool that keeps our communities safe and our watersheds from being destroyed from damaging catastrophic wildfires. In the wildland-urban interface, we need this tool to protect critical infrastructure and human life.

We support your efforts on H.R. 1586.

Respectfully,

TOD KIMMELSHUE,
Chair, Board of Supervisors

Mr. LAMALFA. I am looking forward to working with the Committee and other stakeholders on today's panel to protect the health and safety and be able to use this essential tool for fighting fire in the heat of fire season. I thank you.

[The prepared statement of Mr. LaMalfa follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMALFA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act of 2023

Good afternoon. Chairman Tiffany and Ranking Member Neguse, thank you for holding this important hearing and allowing me the opportunity to testify on behalf of my legislation, the Forest Protection and Wildland Firefighter Safety Act of 2023.

Across the West, we continue to face a wildfire crisis. In the past five years alone, we've seen some of the most destructive wildfires on record, especially in California. In my district, we have seen catastrophic damage from the 2018 Camp Fire in Paradise, the deadliest fire in California's history. In 2021 we saw the million-acre Dixie Fire, the largest single source wildfire in California history.

Since 2000, we have averaged more than 70,000 wildfires per year and an average of 7 million acres burned annually. This acreage is more than double the average number during the 1990s. Since 2018, we've had four fire seasons that have exceeded 7 million acres, including 2020 when 10.1 million acres burned. In part to nearly a decade of forest mismanagement, our fires are getting bigger, hotter, and more aggressive than ever before.

As a Member on the House Committee on Natural Resources, Committee on Transportation and Infrastructure, and as the Chairman of the Agriculture Subcommittee on Forestry, I know these issues firsthand. Like you, we are reviewing current forestry policies, evaluating how we can increase the pace and scale of proper forest management so that we can conserve forest health while removing overgrowth that increases risk of devastating wildfires. Overhauling our current regulatory framework will not happen overnight. Removing brittle, decaying trees and dry overgrowth on tens of millions of acres of forested land will take years. Until then; until our forests are in a healthy state and a small, naturally occurring blaze does not pose a risk of turning into another million-acre catastrophic blaze, it is essential that all wildland firefighting agencies continue to be able to utilize every tool they can to protect forested land and nearby residents from wildfires.

Unfortunately, environmentalists have confused protecting forested lands with preventing intervention of any kind, even if it means life or death. In the case of the Forest Service Employees for Environmental Ethics v. the United States Forest Service—the impetus for my bill—the plaintiff has asked for an injunction on the use of fire retardant until the Forest Service receives a National Pollutant Discharge Elimination System permit, which will take years to obtain. If the injunction is granted and fire retardant is not available for use this fire season, the Forest Service, all States, Tribal agencies, and counties will have to sit by should another devastating fire come, and we who live in the West know that this is inevitable. This can't wait. The 2023 Fire Season is already here. In my state of California there has already been 264 wildfires and 64 acres burned.

Already there are zones on forested lands where the use of fire retardant is restricted. According to the Forest Service, "It is estimated that less than one-half of 1 percent of fire retardant drops may reach the 300-foot or larger buffer. Impacts

due to the exceptions, or from misapplication of fire retardant into water, would be rare.”

How the plaintiff can claim to want to protect the environment when they will actively allow another fire to harm residents and wildlife, destroy forested land and property, pollute rivers with debris, and choke vulnerable people up to hundreds of miles away is a mystery to me. To every single Member of Congress in this room, it is your constituents who will be put in danger if there is an injunction of fire retardant.

Thank you to the United Aerial Firefighters Association, Federal Forest Resource Coalition, Forest Landowners Association, California Farm Bureau, and 42 other organizations who submitted letters of support for this common sense, bipartisan, essential legislation.

Chairman Tiffany, I would like to ask for Unanimous Consent to enter these letters into the record.

I am looking forward to working with the Committee and other stakeholders on today's panel to protect the health and safety of rural residents and wildlife on our Federal lands.

Mr. TIFFANY. Thank you, Congressman LaMalfa. I now recognize Representative Rosendale for 5 minutes on the Forest Information Reform Act.

STATEMENT OF THE HON. MATT ROSENDALE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. ROSENDALE. Thank you so much, Mr. Chair. I appreciate you holding this hearing today. This hearing is particularly pertinent as the temporary fix provided in the Fiscal Year 2018 Consolidated Appropriation Act expires today.

My legislation, the Forest Information Reform Act, amends the *Cottonwood* requirements for re-consultation in Forest Service plans when new information is found. This legislation allows the Forest Service to incorporate new information into its current plan, rather than starting consultations with the U.S. Fish and Wildlife Service from scratch.

Specifically, my legislation amends the Forest and Rangeland Renewable Resource Planning Act and the Federal Land Policy Management Act to clarify that the Secretary shall not be required to re-initiate consultation under section 7 of the ESA on a land plan approved, amended, or revised when a species is listed, critical habitat is designated, or new information concerning a listed species or critical habitat becomes available.

Legislation is needed to fix the disastrous *Cottonwood* decision. The decision, which went against a previous court decision from the 10th Circuit, has been weaponized by radical environmental groups to use the Endangered Species Act to prevent proper forest management. The decision makes it so that if any new species are listed under the ESA, a new critical habitat is designated, or more information becomes known about a species previously listed, the U.S. Forest Service must restart an already onerous consultation process with the U.S. Fish and Wildlife Service about how the information will impact both the forest plan and specific restoration projects.

Moreover, the decision results in the Forest Service having to follow different procedures based on what part of the country they are completing restoration projects in, which adds confusion and difficulties for employees.

It shouldn't be more difficult for the Forest Service to operate in Montana than in Wyoming. The people of Montana shouldn't face a higher burden to receive necessary forest restoration projects. This decision has created new administrative and legal hurdles that make it more difficult for the Forest Service to manage forests and reduce wildfires on Federal lands.

Forest Service officials have previously testified that the decision negatively impacts their resources and their operations. Without a fix, re-consultation would be required on at least 36 national forests in the 9th Circuit, taking up to 10 years and costing multiple millions of dollars each year—valuable time and money that would be better spent restoring forests on the ground.

In 2022, as my colleague said, there would be more than 66,000 fires and more than 7 million acres burned across the country. In Montana alone, 125,000 acres burned in 2022. We need to be doing all we can to combat wildfires out West. My legislation is a key part of stopping the wildfire crisis.

We currently have 28 timber sales and 30,000 acres of forest land that is under litigation in Montana. That is land which is ready to be harvested, and yet is also at high risk of losing all value due to wildfires. Advocates for the disastrous decision argue that it is necessary for the conservation of wildlife. However, as many of the witnesses will point out, the *Cottonwood* decision has made the construction projects needed to conserve wildlife more difficult.

In my state of Montana, specifically, the Stonewall Project in the Helena-Lewis and Clark National Forest would have managed vegetation to benefit wildlife. But *Cottonwood*-inspired litigation delayed the project. As a result of the delays, wildfires burned over half of the proposed treatment area, destroying valuable wildlife habitat. The project went through years of consultation and was delayed further unnecessarily by a lawsuit.

While the 2018 omnibus bill provided a partial temporary fix that expires today, there needs to be a permanent solution. My bill is a common-sense solution that would prevent the Forest Service from facing a perpetual cycle of litigation, and allow them to chart a new era of efficiency which will benefit Montanans and those across the nation.

Thank you, Mr. Chair. I yield back.

Mr. TIFFANY. Thank you, Congressman Rosendale.

I would like to ask unanimous consent to enter this letter into the record. It is signed by 33 conservation organizations and professional organizations representing millions of natural resources professionals, sportsmen, and sportswomen, urging support for the fix to the *Cottonwood* issue. The letter cautions that, if we fail to act, this will have an adverse effect on our land managers' ability to manage our forests and make significant strides to improve forest health.

Without objection.

[The information follows:]

March 20, 2023

Hon. Bruce Westerman, Chair
 Hon. Raul Grijalva, Ranking Member
 House Committee on Natural Resources
 1324 Longworth House Office Building
 Washington, DC 20515

Re: Sportsman Support for a Bipartisan “Cottonwood Fix”

Dear Chair Westerman and Ranking Member Grijalva:

The undersigned conservation organizations and professional organizations, representing millions of natural resource professionals, sportsmen, and sportswomen are writing today to support a fix to the “Cottonwood” issue. We appreciate Representative Rosendale’s leadership on this issue and support his Forest Information Reform (FIR) Act (H.R. 200). We sincerely believe that this issue should be resolved in a bipartisan, bicameral fashion. We also support Senator Daines’ “Cottonwood” bill (S. 2561) of the 117th Congress.

Since the Ninth Circuit Court issued the 2015 *Cottonwood Environmental Law Center v. United States Forest Service* (“Cottonwood”) decision, the USFS and BLM have been required in numerous instances to reinitiate consultation at a forest or land management plan level with the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration even though the “new information” was considered at a project level. This continues to block and slow many essential USFS forest management, wildlife habitat enhancement and wildfire fuel reduction projects.

Congress recognized the critical need to address the “Cottonwood” decision when it included a provision in the Consolidated Appropriations Act of 2018 that adjusted consultation requirements for the U.S. Forest Service (USFS) and Bureau of Land Management (BLM), but with different instructions to each agency. When this provision sunsets this month (March 2023), all forests, potentially, could face frivolous litigation that halt all projects forest-wide until duplicative consultation takes place. The USFS made clear to Congress, in testimony before your Committee and the Senate Energy & Natural Resources Committee, the adverse impact this will have on their ability to manage our forests and make significant strides to improve forest health.

The FIR Act would prevent the burdensome need to reinitiate consultation on a finalized land management plan based on new endangered species information. Senator Daines’ bill (S. 2561) of the 117th Congress would prohibit those same plans from being considered a continuing federal agency action or constituting a discretionary federal involvement, while also making some Endangered Species Act (ESA) consultation requirements inapplicable. We support both approaches and appreciate your committee’s timely attention.

On October 21, 2021, the USFS testified before the Committee that unless action is taken to resolve challenges stemming from the 2015 “Cottonwood” decision, the agency will have to go through re-consultation, regardless of the merit, on over one-hundred forest plans that “will take years and cost millions of dollars,” threatening to undermine the Administration’s 10 Year Wildfire Crisis Strategy.

There is bipartisan and widespread support for a “Cottonwood Fix.” In May 2016 the Obama Administration petitioned the Supreme Court to review and overturn the case, and in January 2021 the Trump Administration initiated a rule to amend Section 7 of the ESA to address the issue. The Supreme Court rejected the original petition, and no final rule has been issued.

Delays in forest management projects caused by “Cottonwood” litigation are costly and hinder critical forest management activities, including wildfire and climate mitigation. Species listed under ESA are already considered when assessing each land management project implemented by the USFS, which will not be altered by a “Cottonwood” fix. Agencies undergo review and consultation at the project level where the potential impacts can be best evaluated. Court rulings requiring re-consultation at the plan level are duplicative and unnecessary, and injunctions delay good projects from being implemented in a timely manner.

Our organizations urge the Committee to favorably report a bipartisan “Cottonwood fix.”

Sincerely,

American Woodcock Society	National Shooting Sports Foundation
Assoc. of Fish and Wildlife Agencies	National Wild Turkey Federation
Archery Trade Association	North American Grouse Partnership
Backcountry Hunters & Anglers	Orion: The Hunter’s Institute
Bear Trust International	Pope & Young Club
Boone and Crockett Club	Public Lands Foundation
Camp Fire Club of America	Rocky Mountain Elk Foundation
Congressional Sportsmen’s Foundation	Ruffed Grouse Society
Conservation Force	Safari Club International
Dallas Safari Club	Sportsmen’s Alliance
Delta Waterfowl	Theodore Roosevelt Conservation Partnership
Houston Safari Club	The Wildlife Society
Mule Deer Foundation	Whitetails Unlimited
National Assoc. of Forest Service Retirees	Wildlife Management Institute
National Bobwhite & Grassland Initiative	Wildlife Mississippi
National Deer Association	Wild Sheep Foundation
National Rifle Association	

Mr. TIFFANY. I will now recognize Representative Peters for 5 minutes.

STATEMENT OF THE HON. SCOTT PETERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PETERS. Thank you very much, Mr. Chairman, and thank the Committee for allowing me a chance to address you about the TOXIC Act, and to discuss forest health, and for including my bill, the Targeting and Offsetting Existing Illegal Contaminants Act, or the TOXIC Act.

In 2022, almost 1 million illegally grown, unregulated marijuana plants and 33 tons of cultivation equipment, including banned pesticides, were seized from illicit grow sites on public land across California. More than 80 percent of those grow sites were affiliated with criminal organizations, and these figures only account for the sites we were able to detect.

Driven by the massive profit potential of selling unregulated marijuana, many of these grow sites are operated by drug cartels

and other organized criminal groups. These groups often use illegal pesticides smuggled into the United States because they are cheaper and more readily available than legal, regulated pesticides. Upon release, however, these chemicals poison the soil, water, and the air. These pesticides can decimate endangered species populations like Pacific fishers and spotted owls, hospitalize Forest Service agents tasked with remediation, and severely sicken consumers.

One illegal pesticide popular among trespass growers, methamidophos, is chemically similar to a nerve agent designed for chemical weapons. These illegal pesticides don't just destroy the environment, they also have the potential to poison human consumers. When cannabis plants are treated with illegal pesticides, the chemicals can be absorbed by the plant, and ultimately end up in the consumer product. Consuming cannabis that has been treated with illegal pesticides can trigger a range of negative health effects, from lingering nausea and respiratory problems to acute sickness. This is particularly concerning for medical cannabis users, who rely on the plant for relief from symptoms associated with various medical conditions, but may struggle to afford safe, market-grade cannabis at current price points.

Clearly, the stakes are high for our environment and our health. But too often, those who manage illicit grow sites receive slaps on the wrist when they are caught. Frequently, offenders who are caught smuggling or releasing these chemicals on public land are sentenced to less than a year in prison, along with fines under \$10,000. Offenders' business models are so profitable that, for large criminal syndicates, it is simply too easy to factor those insignificant penalties into the costs of doing business.

So, I thank the Chair for including the TOXIC Act in today's hearing, as well as Mr. LaMalfa for partnering with me to introduce that bill. And I am glad that after nearly 20 years of debate in Congress on trespass cultivation, we are finally moving toward a long-term solution.

The TOXIC Act will help us restore the long-term health of our ecosystems, restrict the cross-border flow of toxic contaminants, protect public health and consumers, and support regulated cannabis businesses that comply with the law.

The TOXIC Act does two things.

First, the bill gives the Forest Service more resources and authority to investigate and restore illegal cultivation sites on public lands. The Forest Service is already doing this work, but my staff collaborated closely with the agency to ensure that this bill will provide more program integrity, staffing, technology, and money to meet the scale of the destruction we are seeing in forests across the United States.

And second, the bill will help us take a hard look at how we prosecute those crimes. My bill with Mr. LaMalfa would establish parity between the penalties for smuggling illegal pesticides into the country and the penalties for deploying those pesticides on public lands. This change will trigger the U.S. Sentencing Commission to revisit its guidelines for these crimes, and ensure that we treat the use of illegal pesticides, particularly on public lands, with the severity it deserves.

Thank you, Chairman Tiffany, Ranking Member Neguse, and my esteemed colleagues on the Subcommittee for your time and consideration. I yield back.

[The prepared statement of Mr. Peters follows:]

PREPARED STATEMENT OF THE HON. SCOTT PETERS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

**H.R. 1473, the Targeting and Offsetting Existing Illegal Contaminants Act,
or TOXIC Act**

Thank you, Chairman Tiffany and Ranking Member Neguse, for convening this hearing today to discuss forest health and for including my bill, the Targeting and Offsetting Existing Illegal Contaminants Act, or TOXIC Act.

In 2022, almost 1 million illegally grown, unregulated marijuana plants and 33 tons of cultivation equipment, including banned pesticides, were seized from illicit grow sites on public land across California.

More than 80 percent of those grow sites were affiliated with criminal organizations, and these figures only account for the sites we were able to detect.

Driven by the massive profit potential of selling unregulated marijuana, many of these grow sites are operated by drug cartels and other organized criminal groups.

These groups often use illegal pesticides smuggled into the United States because they are cheaper and more readily available than legal, regulated pesticides.

Upon release, however, these chemicals poison the soil, water, and air.

These toxic pesticides can decimate endangered species populations like pacific fishers and spotted owls, hospitalize Forest Service agents tasked with remediation, and severely sicken consumers.

One illegal pesticide popular among trespass growers, methamidophos, is chemically similar to a nerve agent designed for chemical weapons.

These illegal pesticides don't just destroy the environment. They also have the potential to poison human consumers.

When cannabis plants are treated with illegal pesticides, the chemicals can be absorbed by the plant and ultimately end up in the consumer product.

Consuming cannabis that has been treated with illegal pesticides can trigger a range of negative health effects, from lingering nausea and respiratory problems to acute sickness.

This is particularly concerning for medical cannabis users, who rely on the plant for relief from symptoms associated with various medical conditions, but may struggle to afford safe, market-grade cannabis at current price points.

Clearly the stakes are high for our environment and our health. But too often, those who manage illicit grow sites receive slaps on the wrist when they're caught.

Frequently, offenders who are caught smuggling or releasing these chemicals on public lands are sentenced to less than 1 year in prison along with fines under \$10,000.

Offenders' business models are so profitable that for large criminal syndicates, it's simply too easy to factor those insignificant penalties into the cost of doing business.

I thank the Chair for including the TOXIC Act in today's hearing, as well as Mr. LaMalfa for partnering with me to introduce the bill.

I'm glad that after nearly 20 years of debate in Congress on trespass cultivation, we're finally moving toward a long-term solution.

The TOXIC Act will help us restore the long-term health of our ecosystems, restrict the cross-border flow of toxic contaminants, protect public health and consumers, and support regulated cannabis businesses that comply with the law.

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First, the bill gives the Forest Service more resources and authority to investigate and restore illegal cultivation sites on public lands.

The Forest Service is already doing this work, but my staff collaborated closely with the agency to ensure that this bill will provide more program integrity, staffing, technology, and money to meet the scale of the destruction we're seeing in forests across the United States.

And second, the bill will help us take a hard look at how we prosecute these crimes.

My bill with Mr. LaMalfa would establish parity between the penalties for smuggling illegal pesticides into the country and the penalties for deploying those pesticides on public lands.

This change will trigger the U.S. Sentencing Commission to revisit its guidelines for these crimes and ensure that we treat the use of illegal pesticides, particularly on public lands, with the severity it deserves.

Thank you, Chairman Tiffany, Ranking Member Neguse, and my esteemed colleagues on the Subcommittee for your time and consideration.

I yield back.

Mr. TIFFANY. Thank you, Congressman Peters.

We will now move on to our second panel. Let me remind the witnesses that, under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the “on” button. We use timing lights. When you begin, the light will turn green. At the end of 5 minutes the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses to testify before Member questioning.

I would like now to introduce Mr. Chris French, who is the Deputy Chief of the National Forest System for the U.S. Forest Service. Deputy Chief French is responsible for policy oversight and direction for natural resource and public service delivery programs across the 193 million acres of national forests and grasslands in the 44 states and territories that make up the National Forest System.

Deputy Chief French, you are now recognized for 5 minutes.

**STATEMENT OF CHRIS FRENCH, DEPUTY CHIEF FOR
NATIONAL FOREST SYSTEMS, U.S. FOREST SERVICE,
WASHINGTON, DC**

Mr. FRENCH. Thank you. Good afternoon, Chairman Tiffany, Ranking Member, and members of the Committee.

I am Chris French, Deputy Chief of the National Forest System at the U.S. Forest Service. I have been with the agency for more than 30 years. I was trained as an endangered species biologist and worked in fire and natural resource management my entire career. We appreciate the opportunity to provide the perspective of the USDA on the four public land bills that are under consideration today.

The Forest Service manages 193 million acres of public national forests and grasslands that provide a wide range of benefits: jobs, drinking water, food, wood and fiber, and extensive recreational opportunities. They are also the ancestral homelands of Indigenous peoples represented by nearly 574 federally recognized tribes.

They are also in crisis. Wildfire poses a growing threat to these many benefits and to forest-based communities. USDA supports the intent of H.R. 1473 and H.R. 1567, and would like to work with the bill’s sponsors and this Subcommittee on technical changes. The USDA has concerns with H.R. 200 and H.R. 1586, as drafted, and would like to work with the Subcommittee and bill sponsors to resolve those issues.

H.R. 200 addresses the long-standing, duplicative ESA re-consultation requirement on land management plans that have been approved, revised, or amended. Interpretation of these

governing laws and regulations have created a split set of rulings between Federal courts, resulting in a confusing and often redundant pathway for the agency to comply with the Endangered Species Act.

In addition, other land management agencies, such as the BLM, are not required to re-consult on their resource management plans, further creating an uneven regulatory environment. H.R. 200 addresses that confusion. We would like to work with the bill's sponsors on specific pieces to provide clarification.

The Forest Service is committed to protecting species and consulting on every project to conform to the Endangered Species Act. We routinely re-initiate project consultation when a new species or critical habitat is listed. However, requiring the Forest Service to re-initiate forest plan ESA consultation, which the Supreme Court has determined are completed Federal actions, diverts resources from the critical ongoing project-by-project consultations that provide current and specific protections to endangered species.

It appears that the intent of the bill would allow us to continue focusing on updating our land management plans while ensuring that habitat conservation and protection of endangered species continues through project-by-project consultation.

H.R. 1473 would help the Forest Service address the remediation of contaminated sites resulting from the illegal cultivation of cannabis on National Forest System lands. Illegal cannabis cultivation affects public safety and the environment with pesticides poisoning wildlife, soil, and water. Since 2017, we have fully reclaimed nearly 330 grow sites, removing over 300 pounds of trash, and more than 350 miles of irrigation pipes, and thousands of containers of illegal pesticides. This represents about a tenth of the total grow sites that we think that are out there. The support this bill gives to our remediation efforts is very appreciated.

H.R. 1567 requires the Departments of Agriculture and Interior to implement standardized procedures for tracking data related to hazardous fuels reduction activities. The USDA agrees that the thoughtful tracking and reporting of hazardous fuels treatments and reducing wildland fire risk to communities is important for accountability to the public, and can help provide a comprehensive understanding of wildland fire risk reduction.

It is also important that we are accurate and transparent in how we do our work. We would like to work with the bill's sponsors on some elements that don't address current fiscal accountability reporting requirements and limit the agency's ability to accurately reflect the breadth of the work we do to protect communities.

Finally, H.R. 1586 provides the Secretary of Agriculture and Secretary of the Interior the ability to discharge fire retardant for fire suppression, control, or prevention activities without a Clean Water Act permit. The use of fire retardant is a critical wildfire suppression tool that we will continue to use appropriately and widely to protect communities from the threats of wildfire.

We are incredibly careful and precise in our use of fire retardant. As a result, more than 99 percent of our aerial retardant drops do not affect America's waterways. We use low toxicity retardant formulas, equipment inspections, and training to achieve this.

As a possible outcome of ongoing legal action, our current use of fire retardant may now require permitting at a Federal and state level. The Forest Service is working with EPA. However, this process takes time, as permitting processes to address this type of situation do not currently exist. It looks as if it will require years of work with the EPA and multiple states to establish those permits, but we have created a pathway. We are diligently working for an administrative pathway to resolve this unexpected issue, and will continue to use retardant as a key suppression tool unless ordered not to. Thank you.

[The prepared statement of Mr. French follows:]

PREPARED STATEMENT OF CHRIS FRENCH, DEPUTY CHIEF, U.S. DEPARTMENT OF
AGRICULTURE—FOREST SERVICE

ON H.R. 200, H.R. 1473, H.R. 1567, AND H.R. 1586

Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) on several bills under the jurisdiction of the U.S. Forest Service (Forest Service).

H.R. 200—Forest Information Reform Act

The Forest Service takes seriously its responsibility to comply with the Endangered Species Act (ESA) regulations, and the health and vitality of listed species. The Forest Service's mission requires us to integrate the need to protect listed species with our obligation to carry out management actions to promote healthy and resilient ecosystems, protect our communities, support a diversity of species, and deliver many other benefits that the American people enjoy and depend on.

As you are aware, the Endangered Species Act of 1973 requires federal agencies to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (Services) when their discretionary actions might affect either ESA species or designated critical habitat. This consultation ensures that actions of federal agencies do not jeopardize listed species or adversely modify their critical habitat. Even after a biological opinion has been rendered by the Services, there are circumstances that might alter the Services' original conclusions of the action's impact on species or critical habitat which can trigger a requirement to reinstitute of consultation.

A pair of Ninth Circuit court decisions, commonly referred to as *Pacific Rivers Council (PRC)* and *Cottonwood*, which held that a new ESA listing of a species or critical habitat designation required the Forest Service to reinstitute consultation on approved land management plans because either the plan was an "ongoing action" (PRC) or because the agency retains discretion to authorize site-specific projects governed by the land management plan (LMP) (*Cottonwood*), have no basis in the ESA or its implementing regulations. LMPs provide general management direction for an entire national forest or grassland. This direction is then integrated into projects, which normally requires a second decision and ESA consultation to dictate what on-the-ground actions can be taken. A Tenth Circuit decision (commonly known as *Forsgren*) reached a different conclusion than the Ninth Circuit's conclusions in *Cottonwood*, and instead held that the Forest Service did not need to reinstitute consultation on an approved plan with the Services because LMPs are neither ongoing nor self-executing actions for purposes of the ESA.

Congress enacted legislation in the FY 2018 Consolidated Appropriations Act (CAA) so that the Secretary of Agriculture did not need to reinstitute consultation on land management plan decisions when a new species is listed or critical habitat is designated in areas covered by land management plans less than 15 years old. The CAA also provided an exemption, or "safe harbor," for reinstitution of consultation for five years from the enactment of the bill or when a species is listed or critical habitat is designated regardless of when a land management plan had been adopted. Project level consultation on every federal action was not affected by the CAA and continued.

H.R. 200 exempts the Forest Service from reinstituting consultation with the Services on plans that have already been subject to consultation at the time they were approved, revised, or amended when a species is subsequently listed, critical habitat is designated, or new information concerning a listed species or critical

habitat becomes available. It eliminates the time limits on the statutory exemption enacted in the 2018 CAA, making all land management plans exempt regardless of their age or when new ESA listings and new critical habitat designations were made. This bill would also eliminate any requirement that the Forest Service reinitiate consultation on LMPs when new information becomes available. Under Forest Service guidelines, new information is considered in project-level documents when it could influence the decision and subsequent actions that could affect a species listed under the ESA.

With the safe harbor provision in the 2018 CAA expiring today, March 23rd, about eighty-seven land management plans across the nation could now be subject to litigation. Since enactment of the CAA, the Forest Service has maintained its responsibilities in consulting with the Services on projects. Every agency action must comply with the ESA. The requirement to reinitiate consultation on LMPs that affect ESA listed species as redundant to the project-level consultations that are required. Furthermore, the Forest Service believes that concerns with new information and newly listed species and their critical habitat are adequately addressed through consultation at the project level. H.R. 200 directs that the agency is not required to reinitiate consultation on land management plans when there is new information, a new species listing, or a new critical habitat designation.

The USDA and the Department of the Interior (DOI) realizes ESA consultation is an issue with a number of equities that need to be addressed. We are committed to continuing to work together toward a legislative solution that allows for timely decision making, while maintaining the important wildlife protections afforded by the Endangered Species Act. As drafted, the Administration has concerns and looks forward to working with the Committee and the bill sponsor to address concerns with the bill. We want to ensure clarity on how consultation for specific actions or projects can provide the American public with confidence that the agency is upholding its responsibilities to protect listed species and their habitat while providing the many benefits we gain by managing our forests.

H.R. 1473—Targeting and Offsetting Existing Illegal Contaminants Act

H.R. 1473 establishes an environmental restoration program under the jurisdiction of the USDA Forest Service, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601). The goal of this bill is to identify, investigate, research, and develop solutions to and remediation of contamination resulting from the cultivation of cannabis on National Forest System (NFS) lands. The bill additionally amends the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136l(b)(2)) to amend criminal penalties identified in that Act both independently and in connection with other federal offenses.

The Forest Service faces significant challenges related to illegal cannabis cultivation on NFS lands. More than 4,000 illegal grow sites have been identified on NFS lands. These sites pose problems for Forest Service law enforcement, public safety, and the environment with pesticides poisoning wildlife, soil, and water. In 2022, Forest Service staff and partners addressed 56 cultivation sites on 10 national forests, removing 49,318 pounds of trash, 68.7 miles of plastic irrigation line, and 169 containers of banned and illegal pesticides at a cost of over \$2.3 million. The Forest Service was able to restore over 307 million gallons of surface water diversions associated with these 56 sites.

The Forest Service appreciates the bill sponsors' intent to significantly enhance the Forest Service's ability to address trespass cultivation, including cannabis cultivation. The USDA supports the enhancements. The USDA would like to work with the bill sponsors and Subcommittee on technical changes to better define the Forest Service's enforcement authority and the appropriate remediation activities to be undertaken. The ultimate outcome of this work is remediation of the damaged ecosystems and enhanced public safety.

The USDA supports the intent of the Targeting and Offsetting Existing Illegal Contaminants Act and looks forward to working with the bill sponsors and Subcommittee on technical changes to further support the Forest Service's ability to address trespass cultivation and the associated negative impacts. The Department of the Interior advises similar authority for management of DOI lands could be beneficial.

H.R. 1567—Accurately Counting Risk Elimination Solutions Act

H.R. 1567 requires the U.S. Department of Agriculture (USDA) and Department of Interior (DOI) to include a publicly available report on hazardous fuels reduction activity acres in the yearly President's Budget. This report must account for each acre only once regardless of whether multiple hazardous fuels reduction activities were carried out on that acre during the year. In addition, the report must identify

the following: the location of the acres and if they are in the wildland-urban interface; the level of wildfire risk on the first and last day of the reporting period; the types of hazardous fuels activities completed; the cost per acre by treatment type; and the effectiveness of the hazardous fuels reduction activities on reducing wildfire risk.

The bill requires the USDA and DOI to implement standardized procedures for tracking data related to hazardous fuels reduction activities. These procedures must include standardized data reviews of the accuracy and timely input of data used to track hazardous fuels reduction activities; verification methods that validate the data; an analysis of the effectiveness of the hazardous fuels reduction activities on reducing the risk of wildfire; and methods to distinguish which acres are located within and outside of the wildland-urban interface.

Further, The USDA and DOI are required to provide a report within two weeks after implementing the standardized procedures required describing the procedures and program and policy recommendations to address any limitations in tracking data related to hazardous fuels reduction activities. Not later than two years after the date of enactment, the Government Accountability Office shall conduct a study on the implementation of this Act, including any limitations with respect to reporting hazardous fuels reduction activities or tracking data related to hazardous fuels reduction activities.

The USDA agrees that accurately tracking hazardous fuels treatments and the reduction of wildfire risk to communities is important for accountability to the American public and will help provide a comprehensive understanding of wildfire risk reduction. Tracking each dollar spent can improve our understanding of the funding needed to achieve the desired risk reduction to communities and better maintain our landscapes. However, a report accounting for each acre only once would limit the ability of decisionmakers and the public to understand the connection between risk reduction and financial accountability. For example, often the same acre requires multiple treatments (3 treatments on average) in a short period of time, such as mechanical thinning first and then prescribed fire to achieve the desired risk reduction. Once this phase is complete, those acres can be moved to a maintenance strategy (the point at which low-cost thinning or burning treatments are conducted at the appropriate fire-return intervals for a given landscape, on average every 10 to 15 years). Only accounting for one phase of a multi-phased treatment would only provide a partial window to the true cost of risk reduction and resilience.

The USDA supports the reporting of treatment locations, type of treatment, and cost of treatment across the landscape annually. The timing outlined in the bill on the first and last day of the reporting cycle will require continued development of metrics. Currently, the Forest Service has metrics to evaluate fire risk to communities, however these metrics continue to evolve with continued scientific analysis. The sensitivity of these metrics to detect change in vegetative conditions at fine scale is continuing to be evaluated. Fine scale detection is critical to ensure all treatments are evaluated to determine effectiveness with reducing fire risk to communities. We expect that these metrics within an annual report will evolve and change over time. Development of the standard structure and procedures will take time and coordination both internally and with DOI.

Finally, excluding acres improved or maintained by wildfire is achievable, however, we make note that the maintenance of acres by wildfire will be critical to the long-term success of fire risk reduction to communities. As more acres are treated to reduce fire risk, they must be maintained, and one critical means for doing so is through naturally occurring fire. We want to ensure that reporting requirements will have the desired effect of both improving fiscal accountability and serving as a tool that can improve the health and resilience of our forests and communities to the threat of wildfire.

The USDA appreciates the intent of the bill and would like to work with the Subcommittee and bill sponsors to address our concerns.

H.R. 1586—Forest Protection and Wildland Firefighter Safety Act

H.R. 1586 amends the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), to provide the Secretary of Agriculture and Secretary of the Interior the authority to discharge fire retardant and other chemicals for fire suppression, control, or prevention activities. The bill exempts the Forest Service and certain other agencies from needing a permit under section 402 of the CWA.

In the western U.S., National Forests supply drinking water to almost 90 percent of the people served by public water systems. The Administration is committed to providing firefighters with the investments and tools they need to protect communities, our forests and sources of drinking water while at the same time maintaining

the integrity of the Clean Water Act. The Administration does not, however, believe that an amendment to the Clean Water Act is necessary in light of the administrative steps that are being taken.

The CWA requires National Pollutant Discharge Elimination System (NPDES) permits for any discharge of a pollutant from a point source to navigable waters of the United States. The Forest Service's position has been that an NPDES permit was not required for fire control activities based upon guidance received from EPA in 2003. On February 16, 2023, the USDA Forest Service and EPA entered into a Federal Facility Compliance Agreement to address the Forest Service's discharge of pollutants during aerial fire-retardant applications and to require the Forest Service to obtain NPDES permit coverage for discharges to waters.

Currently, there is no NPDES permit established for aerial application of fire retardant, however the Administration is working diligently to come into compliance with the Clean Water Act. The Forest Service is working collaboratively with EPA on a general permit for aerially delivered retardant. EPA estimates it will take between two to three years to develop and issue an EPA permit as well as coverage in 47 states, which issue their own permits, a process that would take about another year depending on the states' own permit timelines.

Current direction in the nationwide Aerial Application of Fire Retardant on National Forest System Land Record of Decision (Decision) from 2011 has demonstrated it is very effective at reducing retardant drops into water. The 2011 Decision prohibits delivery of fire retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety. Over the last 10 years, less than one percent of retardant drops impacted American waterways.

Aerially delivered long-term fire retardant is part of an integrated firefighting strategy and is an essential tool the Forest Service and the interagency community uses in support of ground-based firefighting resources. Long-term retardants alter the way wildfire burns, decreases fire intensity, and slows the advance of fire, even after the water they originally contained has evaporated. If the Forest Service is only able to use water from airtankers, our ability to successfully suppress fires would be significantly impacted. In addition to the impact on our wildfire response, we must consider the implications for our wildland firefighter workforce. Ensuring that we are allowed to continue using wildfire retardant to protect homes and communities is the highest priority of the administration. We believe retardant can be (and has been) delivered without compromising public health and the environment.

The USDA is committed to CWA compliance and protection of water quality and keeping our communities and wildland firefighters safe. The nation is experiencing hotter, drier and longer wildfire seasons. Wildfires are growing, both in size and severity, due in part to fuels buildup, fire exclusion, development in fire-prone areas and climate change. The dedication, bravery, and professional integrity of our wildland firefighters and support personnel is second to none. We must protect approximately 11,300 Forest Service wildland firefighters and the communities they defend, using every tool available, including fire retardant. As we work with our many partners to assist communities impacted by wildfires, we are committed, through shared stewardship, to change this trend in the coming years. While we agree with the Sponsors' view that the application of fire retardant is an essential tool for protecting communities, forests, and our firefighters, we believe we can protect this long-standing practice without amending the CWA, which is essential to protecting public health and our drinking water supplies. While the Administration cannot support this bill, we look forward to working with the bill sponsors and Subcommittee on efforts that ensure the integrity of the CWA while continuing to allow aerial retardant as part of the interagency suppression response. Nonetheless, we are reviewing a technical assistance request and look forward to working with the bill sponsors and Subcommittee on efforts that ensure the integrity of the CWA while continuing to allow aerial retardant as part of the interagency suppression response.

Thank you again for the opportunity to testify on these bills, and I welcome any questions.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. CHRIS FRENCH, DEPUTY CHIEF,
NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE

Mr. French did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. How will the Cottonwood decision effect the Forest Service's ability to execute the 10 year "Confronting the Wildfire Crisis" Strategy? How does litigation generally impact the ability of the Forest Service to execute this strategy?

Question 2. Why aren't BLM Resource Management Plans (RMPs) subject to the same re-initiation of consultation requirements as forest plans?

Question 3. In your written testimony, you explained that in the wake of the expiration of the 2018 partial Cottonwood fix, 87 forest plans across the nation could now potentially be subject to litigation.

3a) How long will this re-consultation process take, on average for an individual plan and cumulatively for all plans?

3b) How much money will this cost the Forest Service, on average for an individual plan and cumulatively for all plans?

Question 4. Does the Forest Service typically have to revise forest plans as a result of re-consultation triggered by Cottonwood-related lawsuits or challenges?

Question 5. Please provide the following information, broken down by Forest Service region:

5a) The number of active lawsuits or notices of intent to file a lawsuit currently pending against the Forest Service.

5b) The number of active lawsuits or notices of intent to file a lawsuit currently pending against the Forest Service against forest management projects.

5c) The number of lawsuits filed against the Forest Service annually from 2002–2022.

5d) The number of lawsuits filed against the Forest Service challenging forest management projects annually from 2002–2022.

5e) The number of active lawsuits or notices of intent to file a lawsuit related to Cottonwood currently pending against the Forest Service.

5f) The number of forest management projects being challenged by Cottonwood-related lawsuits or notices of intent to sue.

5g) The amount of board feet of timber being challenged by active lawsuits or notices of intent to sue.

5h) The amount of board feet of timber being challenged by Cottonwood-related lawsuits or notices of intent to sue.

5i) The amount of acres being challenged by active lawsuits or notices of intent to sue.

5j) The number of acres of designated critical habitat areas that have burned in wildfires since 2015.

5k) The number of acres of Canada Lynx critical habitat that have burned since 2015.

5l) The number of acres that have burned as a result of wildlife within the Ninth Circuit since 2015.

5m) The number of acres that have burned as a result of wildfire within the Tenth Circuit since 2015.

Question 6. On average, what is the percentage of court cases does the Forest Service prevail in or move forward with substantially similar actions?

Question 7. Of the forest management projects litigated under Cottonwood, how many did the Forest Service prevail in or move forward with substantially the same actions following required consultation?

Question 8. How many forest management projects have been litigated or had a notice of intent to sue filed on NFS land in the Ninth Circuit since the Cottonwood decision in 2015?

Question 9. How many forest management projects have been litigated or had a notice of intent to sue filed on NFS land in the Tenth Circuit since the Cottonwood decision in 2015?

Question 10. In your testimony you explain that land management plans provide general management direction for an entire national forest or grassland. These guidelines are then integrated into projects, which you emphasize “normally requires a second decision and ESA consultation to dictate what on-the-ground actions can be taken.” Can you share all the different types of on-the-ground projects that normally require ESA consultation?

Question 11. In response to questions submitted for the record from an October 21, 2021 Senate Committee on Energy and Natural Resources hearing, you stated that: “In response to the Cottonwood ruling, the Forest Service reconsulted on critical habitat for the Canada Lynx. Forest Service personnel spent an estimated 400 person days valued at approximately \$250,000 over 12 months to complete this reconsultation.”

11a) Can you provide an estimate of the total cost and number of person days that are being used by the Forest Service every year to complete all of the required ESA consultation across the agency? Of those consultations, how many are related to the Cottonwood decision?

11b) How much money and person days are being spent by the Forest Service annually on NEPA compliance?

Question 12. In response to questions submitted for the record from an October 21, 2021 Senate Committee on Energy and Natural Resources hearing, you stated that: “The Forest Service has analyzed various approaches to address the upcoming potential consultation workload after March 23, 2023. Our initial analysis estimates that the workload may take 5–10 years to accomplish and will require multiple millions of dollars per year. For example, for forests just in the Ninth Circuit, the initial required consultation would occur on 187 taxa across 36 national forests.”

12a) Since your response on October 21, 2021, has the Forest Service completed an updated assessment on the taxa and number of national forests where new consultation would be required after March 23, 2023?

12b) Approximately how many taxa covering what number of national forests would require new consultation after March 23, 2023?

Questions on H.R. 1473

Question 1. Has the Forest Service conducted an estimate of how much money Mexican drug cartels are making annually as a result of illegal cannabis growth on federal forest lands?

Question 2. What is the effect of illegal marijuana cultivation on threatened and endangered species and critical habitat?

Question 3. In your testimony, you stated there have been 4,000 illegal grow sites of marijuana identified on NFS lands. Does the Forest Service have an estimate of how many new sites are established each year? Approximately how many sites are going undetected annually?

Question 4. Please provide the following information for illegal cultivation sites addressed by the Forest Service staff and partners each year over the 2000–2022 period:

- 4a) The number of illegal cultivation sites identified.*
- 4b) The national forests where illegal cultivation sites were identified.*
- 4c) The states where illegal cultivation sites were identified in national forests.*
- 4d) The pounds of trash removed.*
- 4e) The miles of plastic irrigation line removed.*
- 4f) The number of containers of banned and illegal pesticides removed.*
- 4g) The gallons of water diverted as a result of illegal cultivation sites.*

- 4h) The value of illegal marijuana seized from illegal cultivation sites.*
- 4i) The number of illegal cannabis plants removed.*
- 4j) The total amount of money spent addressing illegal cultivation sites.*
- 4k) The number of arrests made in connection with illegal marijuana cultivation on NFS lands.*

Questions on H.R. 1586

Question 1. If the use of fire retardant had not been available in the 2022, 2021, and 2020 fire seasons, what does the Forest Service estimate the difference would have been in each of those years in the following categories:

- 1a) Lives lost (including those engaged in wildfire suppression and members of the public).*
- 1b) Acreage burned (both federal and non-federal).*
- 1c) Structures destroyed and damaged.*

Mr. TIFFANY. Thank you, Mr. French. Now I would like to recognize Mr. Ryan Bronson, who is the Director of Government Affairs for the Rocky Mountain Elk Foundation.

You have 5 minutes, Mr. Bronson.

STATEMENT OF RYAN BRONSON, DIRECTOR OF GOVERNMENT AFFAIRS, ROCKY MOUNTAIN ELK FOUNDATION, ST. PAUL, MINNESOTA

Mr. BRONSON. Thank you, Mr. Chairman, members of the Committee. I am Ryan Bronson, Director of Government Affairs for the Rocky Mountain Elk Foundation.

The Elk Foundation is a 225,000-member non-profit conservation organization with a mission to ensure the future of elk, other wildlife, their habitat, and our hunting heritage. We are headquartered in Missoula, Montana. Since our founding in 1984, we have helped conserve and enhance more than 8.6 million acres, and have improved access to 1.5 million acres. Most of these projects have occurred in the forests and sage lands of the Western United States. Our 500 chapters raise money in communities across the country to help us accomplish this mission, and work on the public multi-use lands that are impacted by the legislation you are discussing today.

Elk benefit from diverse and actively managed forests, as do most wildlife. Overgrown forests with closed canopies where sunlight cannot reach the forbs and grasses on the forest floor do not provide the food and cover that many species need. Actively managed forests provide diverse age structure of trees and diverse habitat that provides for the various life cycle stages of many species.

In addition, managed forests are more resilient to weather, insect outbreaks, and catastrophic wildfire.

This position is not unique to hunting conservation groups like mine. In August 2021, a coalition of California environmental groups and land trusts sent an urgent letter outlining the history of forest management that led to forests that are, in their words, unnaturally dense, overstocked, and choked with surface and ladder fuels. Their plea for a significantly increased level of

ecologically-based forest restoration treatments in order to turn the corner to get Federal forests back to a more resilient condition.

Unfortunately, litigious special interests have weaponized the Endangered Species Act to stop many wildfire prevention and habitat management projects. The 9th Circuit *Cottonwood Environmental Law Center v. U.S. Forest Service* decision has already delayed hundreds of projects, leading to catastrophic wildfires that have destroyed lives, property, homes, and important wildlife habitat.

There is an increased urgency today, as the temporary and partial fix that Congress provided in 2018 expires, placing more projects at risk of delay.

In April of last year, the Hermits Peak Fire in New Mexico began as a prescribed fire that got out of control. The Forest Service's wildfire review report provided several important lessons, but it was noteworthy to us that treatment was delayed from September 2019 to October 2020 by a *Cottonwood*-related injunction and by COVID staffing issues following that. A thinning project area would have had lower wildfire risk. The subsequent 341,000-acre fire has not been good for threatened Mexican spotted owls, elk, other wildlife, or people.

Fixing the *Cottonwood* decision has bipartisan support since the ruling came down. The Obama administration appealed the decision in 2016. The Trump administration addressed it with a rule that was never finalized. And in the 117th Congress, a bipartisan 16 to 4 vote in the Senate Energy and Natural Resources Committee provided us hope that a solution was in reach.

H.R. 200, the Forest Information Reform Act, would close the open loop that the *Cottonwood* decision created, and prevent redundant and costly delays for re-consultation under the Endangered Species Act. The Rocky Mountain Elk Foundation strongly supports this legislation.

Forest management for habitat improvement and for hazardous fuel reduction are often very similar. Every acre treated through thinning, prescribed burning, and other treatments help achieve the resiliency laid out in the Forest Service's 10-Year Wildfire Crisis Strategy. H.R. 1567, the ACRES Act, will help Congress and the public gain a better understanding of the state of America's forest lands and the progress or deterioration that is occurring while land agencies attempt to accelerate mitigation efforts with the new resources recently provided by Congress.

As increased funding flows to wildfire mitigation and forest management, we fear that the level of on-the-ground projects that Congress envisions will be stymied by litigation, frustrating everyone.

The Rocky Mountain Elk Foundation thanks the Committee for the opportunity to participate today. Thank you.

[The prepared statement of Mr. Bronson follows:]

PREPARED STATEMENT OF RYAN BRONSON, DIRECTOR OF GOVERNMENT AFFAIRS,
 ROCKY MOUNTAIN ELK FOUNDATION
 ON H.R. 200 AND H.R. 1567

Chairman Tiffany and Members of the Committee. I am Ryan Bronson, Director of Government Affairs for the Rocky Mountain Elk Foundation. The Elk Foundation is a 225,000-member non-profit conservation organization with a mission to ensure the future of elk, other wildlife, their habitat, and our hunting heritage. We are headquartered in Missoula, Montana.

Since our founding in 1984 we have helped conserve and enhance more than 8.6 million acres (about half the area of South Carolina), and improved access to 1.5 million acres. Most of these projects have occurred in the forests and sage lands of the western US. Our 500 chapters raise money in communities across the country to help us accomplish this mission and work on the public multi-use lands that are impacted by the legislation you are discussing today.

Elk benefit from diverse and actively managed forests, as do most wildlife. Overgrown forests with closed canopies, where sunlight cannot reach the forbs and grasses on the forest floor, do not provide the food and cover that so many species need.

Actively managed forests provide diverse age structures of trees, and diverse habitat that provides for the various life cycle stages of many species. In addition, managed forests are more resilient to weather, insect outbreaks and catastrophic wildfire.

This position is not unique to hunting conservation organizations like mine. In August 2021, a coalition of California environmental groups and land trusts sent an urgent letter outlining a history of forest management that led to forests that are “unnaturally dense, overstocked, and choked with surface and ladder fuels”. Their plea was for “a significantly increased level of ecologically based forest restoration treatments in order to turn the corner to get federal forests back to a more resilient condition.”

Unfortunately, litigious special interests have weaponized the Endangered Species Act to prevent many wildfire-prevention and habitat management projects. The 9th Circuit *Cottonwood Environmental Law Center v. US Forest Service* decision (aka. *Cottonwood*) has already delayed hundreds of projects, leading to catastrophic wildfires that have destroyed lives, property, homes, and important wildlife habitat. There is increased urgency today as the temporary and partial fix that Congress provided in 2018 expires, placing more projects at risk of delay.

We have specific examples. The Stonewall project in Montana’s Helena-Lewis and Clark Forest was a proposed vegetative management project that would have benefited elk and other wildlife, but it was delayed by *Cottonwood* litigation. In 2017 the Park Creek and Arrastra wildfires burned over half of the proposed treatment area with intensities that damaged some of the soils in the area. This was economically and ecologically costly.

In April 2022, the Hermit’s Peak Fire in New Mexico began as a prescribed fire that got out of control. The Forest Service’s Wildfire Review Report provided several important lessons, but it was noteworthy to us that treatment was delayed from September 2019 to October 2020 by a *Cottonwood*-related injunction, and by Covid staffing issues following that. A thinned project area would have had lower wildfire risk. The subsequent 341,000-acre fire has not been good for threatened Mexican Spotted Owls, elk, other wildlife, or people.

Fixing the *Cottonwood* Decision has had bipartisan support since the ruling came down. The Obama administration appealed the decision in 2016, the Trump administration addressed it with a Rule that was never finalized, and in the 117th Congress a bipartisan 16-4 vote in the Senate Energy & Natural Committee provided hope that a solution was in reach.

HR 200, the Forest Information Reform Act would close the open loop that the *Cottonwood* decision created and prevent redundant and costly delays for re-consultation under the Endangered Species Act. The Rocky Mountain Elk Foundation strongly supports this legislation.

Forest management for habitat improvement and for hazardous fuel reduction are often very similar, every acre treated through thinning, prescribed burning and other treatments help achieve the resiliency laid out in the Forest Service 10-year Wildfire Crisis Strategy. However, reporting only the acres treated may convey that more progress is being achieved than what is truly happening on the ground, and a single high risk acre may be counted multiple times as subsequent treatments occur.

HR 1567, the ACRES Act, will help Congress and the public gain a better understanding of the state of America's forest lands, and the progress or deterioration that is occurring while the land agencies attempt to accelerate mitigation efforts with the new resources recently provided by Congress.

As increased funding flows to wildfire mitigation and forest management we fear that the level of on-the-ground projects that Congress envisions will be stymied by litigation, frustrating everyone.

The Rocky Mountain Elk Foundation thanks the Committee for the opportunity to participate today.

Mr. TIFFANY. Thank you, Mr. Bronson. I would now like to recognize Mr. Steve Ellis, who is the Chairman of the National Association of Forest Service Retirees.

Prior to this role, Mr. Ellis served for 38 years with both the Forest Service and the Bureau of Land Management. Mr. Ellis has extensive experience fighting wildfires, and was once a type 3 incident commander. Mr. Ellis' daughter was also a wildland firefighter, and she was killed in action serving her country in Iraq.

Mr. Ellis, I would like to thank you for your service and your daughter's service to our nation, and you are now recognized for 5 minutes.

STATEMENT OF STEVE ELLIS, CHAIRMAN, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF FOREST SERVICE RETIREES, BEAVER CREEK, OREGON

Mr. ELLIS. Thank you, Chairman Tiffany, Ranking Member, and members of the Committee. I appreciate the chance to testify this afternoon on H.R. 1586, a crucial and timely bill to allow for the continued use of fire retardant by our nation's wildland firefighters. I am Steve Ellis, retired after 38 years of Federal service with both the Forest Service and BLM. I am currently Chair of the National Association of Forest Service Retirees.

Our organization is pleased that Congress has chosen to engage in the matter of fire retardant use. There are a few key points that I would like you to know about this issue.

First of all, we as agency retirees know a lot about fire suppression, prescribed fire, and wildland fire use. Fire management can be complex and requires the use of many important tools. Fire retardant is one of the most crucial.

As fire season has already begun this year, removing such an important tool from the tool kit is a threat to firefighter and public safety, it is a threat to watersheds, wildlife, and human health in the form of smoke.

Requiring a national permit for the use of fire retardant is not the way to go. It would take years to complete at substantial cost. Even if EPA were to develop a national permit, states would not be required to adopt it, could modify it, create their own, and that would put an additional burden on Federal and State agencies developing these state permits, and it would further complicate firefighting across state lines.

Retardant is already regulated with numerous implementation and monitoring requirements that guide safe and successful use of retardant by Federal and state agencies. Given all this, we believe Congress needs to step in to maintain the status quo and codify the

30-year exemption for the use of fire retardant. That is why we support H.R. 1586.

Now, there is a camp out there that has been attempting since about 2003 to restrict or even prohibit the use of fire retardant by the Forest Service. I recall several years ago, when the agency was ordered to take a tougher look at the possibility that routinely dropping fire retardant on wildfires from aircraft would kill fish and plants. Many positives actually came out of this.

I remember the agency taking a hard and thoughtful look at retardant, and some solid protocols were the result. Those protocols focused on protecting waterways, aquatic habitat, firefighters, and communities. The protocols also included monitoring, which I view as a positive. The monitoring found that less than 1 percent of the drops between 2012 and 2019 went directly into water. Yet, here we are again.

There isn't enough time this afternoon for me to detail to you all the instances I experienced, I am aware of where single-engine airtankers with retardant likely saved many thousand acres of critical sage grouse habitat from burning up following a lightning outbreak. There might not be enough seats back here in this hearing room to hold the number of retired Forest Service and BLM colleagues of mine who could describe instances where retardant drops were key to protecting property, people's lives, a community, key watersheds, transmission line corridors, and also keeping new starts from becoming big project fires. We call that initial attack.

There are some out there who oppose this legislation who have never been on the fire line, nor have they had to stand up at a community center or a gymnasium full of members of the community that are scared, concerned citizens to explain their actions when a wildfire is threatening a community. They simply have never had accountability for the consequences of these risky and consequential decisions. Many of my colleagues and I have been in those situations many times.

As Members of Congress know, especially those of you that are from the West, when a wildfire is threatening your constituents' community, they become panicked, they are scared, and your phone starts to ring. And then your staff calls the Forest Service or whichever agency has jurisdiction. I received many such calls during my career, and in most of these calls I was routinely asked by your staff, "Where are the airtankers? Are you using airtankers?"

We all know that fire seasons are getting longer, the fires are getting bigger. There is not enough time today for me to get into the details of why I think that is so. But what I can say is this is not the time to take the air delivery of fire retardant out of the fire practitioner's toolbox.

Thank you for engaging in this important issue to protect our natural resources, our communities, our firefighters' lives. I welcome any questions the Committee might have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Ellis follows:]

PREPARED STATEMENT OF STEVE ELLIS, CHAIR, NATIONAL ASSOCIATION OF FOREST
SERVICE RETIREES
ON H.R. 1586

H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

Chairman Tiffany, Ranking Member Neguse and Members of the Committee, I appreciate the chance to testify today on H.R. 1586, a crucial and timely bill, to allow for the continued use of fire retardant by our Nation's wildland firefighters. I'm Steve Ellis, retired after 38 years of federal service with both the Forest Service and Bureau of Land Management. I have a lot of fire management experience with both agencies. I am Chair of the National Association of Forest Service Retirees (NAFSR). We are an organization dedicated to sustaining the Forest Service mission and adapting to today's and tomorrow's challenges. Our principal beliefs and values include protecting and managing diverse lands and valued resources while providing a wide array of uses and services to the public. This includes providing for clean water and quality aquatic and terrestrial habitat. Our values also include responding professionally and responsibly in support of the agency's efforts to protect public interest and ensure public safety.

1. We know a lot about fire suppression, prescribed fire, and wildland fire use.
2. Management of fire requires the use of many important tools; fire retardant is one of the most crucial.
3. As fire season has already begun this year, removing such an important tool from the toolkit is an existential threat to firefighters and the public safety, as well as watersheds, wildlife, and smoke as a health hazard.
4. Requiring a national permit for the use of retardant would take years to complete at a substantial cost, and would create a bad precedent, putting other agricultural and silvicultural exemptions at risk.
5. Even if EPA were to develop a national permit, states would not be required to adopt it, but could modify or create their own, putting an additional burden on federal and state agencies for the development of individual state permits. This would further complicate firefighting across state lines.
6. Retardant is already regulated with numerous implementation and monitoring requirements that guide the safe and successful use of retardant by Federal and State agencies.
7. Given all this, we believe Congress needs to step in to maintain the status quo and codify the 30-year exemption for the use of retardant. That's why we support H.R. 1586.

This past fall, Forest Service Employees for Environmental Ethics (FSEEE) filed a lawsuit in Montana District Court under the "citizen suit" provision of the Clean Water Act (CWA) alleging violations of the CWA for past discharges of aerial fire retardant into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. The 2011 Aerial Application of Fire Retardant EIS delineated more than 30% of USFS land area as retardant avoidance areas and developed a tracking process to monitor inadvertent drops into water. The 2011 decision prohibits delivery of fire retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety.

In the draft 2022 Aerial Fire Retardant SEIS, the Forest Service disclosed that 376 out of 56,868 total fire retardant drops (less than one percent) made between 2012 and 2019 were directly into water, because of unintended encroachments on waterbodies, or the exception allowed to protect life and safety. FSEEE is alleging these direct drops into waterbodies violate the CWA because the Forest Service did not have a NPDES permit. The CWA requires NPDES permits for any addition of a pollutant from a point source to navigable waters/waters of the United States, which essentially means any waterway with permanent water. The Forest Service has been operating under the assumption that a NPDES permit was not required because the regulations for administering the NPDES system (40 CFR 122) specifically state that fire control is a "non-point source silvicultural activity" (40 CFR 122.27) and communications from EPA dating back to 1993 indicated a permit was not required.

Currently there is no NPDES permit established for aerial application of fire retardant. We understand that a rulemaking to establish a general permit would take 2-3 years at extensive cost. Even if EPA develops a national permit, states are not required to adopt it, but can modify or create their own. As a result, additional time would be required for the agency to obtain individual state permits. This would

further complicate firefighting across state lines and potentially create unnecessary chaos in an already complex and risk laden environment. A NPDES permit would add a large administrative burden to Forest Service wildfire operations and likely not change aerial application requirements, nor actual resource effects on the ground.

FSEEE is requesting the Forest Service not to use fire retardant until the permit is secured. This could result in fire retardant not being available for use starting this 2023 fire year and would needlessly put billions of dollars of infrastructure/assets/natural resources and millions of people at risk. More importantly, it would remove a key tool used to safely fight wildfires and put at risk local, county, state, and federal firefighters at a time where wildfire is increasing in scale and scope across the western United States. Any court ruling has the potential to be nationwide and affect the Department of the Interior (DOI), state fire agencies, and the Department of Defense (DOD), essentially all those who fight wildfires on federal, state and private lands. In our view, Congress will need to pass legislation, either to give agencies time to develop a national permit or to codify the existing fire-fighting exemption.

At a minimum, a potential solution would be to pursue a legislative fix that would allow the agency time to work through the permitting process while continuing to use fire retardant. A much better and permanent solution would be to legislate that a permit not be required, nor should any State require a permit for application of fire retardant from aircraft in connection with fire suppression activities. We support the latter. Many members of NAFSR are former wildland firefighters and understand the need and use of fire retardant as a critical tool, as well as the need to ensure its careful use. We feel that not having the option of using fire retardant in fire suppression would have huge consequences. Congress may also find it unacceptable to stand by in the middle of this summer as a wildfire threatens life, property, and valuable natural resources without the use of fire retardant.

NAFSR sees fire retardant is a necessary tool in the fire manager's toolkit. Given that the rare instances of "retardant into waterways" are either accidents or to protect property or human life, it's not clear to us what improvement could be made by the EPA. Do they disagree with the judgment calls of on the scene fire practitioners on the exceptions? Will a NPDES permit stop accidents or change implementation of the agency priority of firefighter and public safety? Since 1995, Federal Fire Policy has had human life as the #1 value. This has essentially been the doctrine for almost 30 years. Nobody wants to harm aquatic life. In fact, the aftermath of large wildfires can be an even greater threat. If using retardant is the difference between saving some of our colleagues in the green pants and yellow shirts who are in a bad spot, or say, hitting a waterway . . . our priority would be human life. I have talked to several colleagues who have either experienced or known of instances where retardant drops at the right time and place made all the difference in life and/or property protection outcomes. The bottom line is that the Forest Service has been diligent in efforts to use retardant wisely to minimize negative environmental effects and statistics show those efforts have been effective.

If there are ecological or other concerns with the use of retardant, then maybe those concerns should be specifically identified and addressed in some kind of public forum. In the meantime, we do not believe any tools should be removed from the agency's fire management toolkit.

NAFSR also supports H.R. 200, the Forest Information Reform (FIR) Act. We feel that unless actions are taken to resolve challenges stemming from the 2015 "Cottonwood" decision, the Forest Service could have to go through re-consultation, regardless of the merit, on dozens of forest plans that would take years and potentially cost millions of dollars that could better be spent elsewhere.

Thank you for the opportunity to be part of this hearing today. Also included in my testimony is an addendum that includes some important background information. I welcome any questions that subcommittee members might have.

Supplemental Testimony

National Association of Forest Service Retirees

H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

- All long-term Retardants used in airtankers are evaluated through the US Forest Service National Technology and Development Center, Wildland Fire Chemical Systems (WFCS). Evaluations are based on a number of factors including fire-retarding effectiveness, physical parameters, aquatic toxicity and human health and ecological assessments. WFCS must first evaluate and approve long-term fire retardants before their use on Federal lands. Only those fire chemicals that have been evaluated and tested by WFCS are allowed to be used in wildland firefighting.
- Long-term retardants contain retardant salts—typically agricultural fertilizers—that alter the way the fire burns, decreases the fire intensity, and slows the advance of the fire, even after the water they originally contained has evaporated. Studies conducted by the U.S. Forest Service Wildland Fire Chemical Systems Program, located at the National Technology and Development Center in Montana, show that long-term retardants retain much of their effectiveness in reducing fire intensity and spread after the water they contain has evaporated. The amount of time that long-term retardants are effective in reducing fire intensity and spread after the water they contain has evaporated varies from several days to up to one week or more depending on vegetation type, coverage levels, precipitation, and other factors.
- In 2011 the US Forest Service completed the Aerial Application of Fire Retardant Environmental Impact Statement (EIS) which delineated more than 30% of USFS administered as retardant avoidance areas and developed a tracking process to monitor inadvertent drops into water. The 2011 decision prohibits delivery of fire retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety.
- In researching aerial operation records for the draft 2022 Aerial Fire Retardant SEIS, the Forest Service found that 376 out of 56,868 total airtanker drops (less than one percent) made between 2012 and 2019 were directly into water, because of intrusions or the exception allowed to protect life and safety.
- The Clean Water Act (CWA) requires National Pollution Discharge Elimination System (NPDES) permits for any addition of a pollutant from a point source to navigable waters/waters of the United States. The Forest Service has been operating under the assumption that a NPDES permit was not required because the regulations for administering the NPDES system (40 CFR 122) specifically state that fire control is a “non-point source silvicultural activity” (40 CFR 122.27) and communications from EPA dating back to 1993 indicated a permit was not required.
- There is no NPDES permit established for aerial application of fire retardant. A rulemaking to establish a general permit will take 2–3 years for a General Permit with an additional 1+ years to obtain 47 individual state permits. Because the EPA has already delegated permitting authority to most States, the EPA’s general permit is geographically very limited. Each of the upwards of 40 individual regulatory agencies that have NPDES authority would need to go through a rulemaking to establish their own general permit using EPA’s general permit as a model. Each regulatory agency would have the opportunity to apply their own specific conditions, making the use of airtankers across the nation very difficult.
- There are many technical reasons that a new permit would be burdensome. The bottom line is that the Forest Service has been diligent in efforts to use retardant wisely to minimize negative environmental effects and statistics show those efforts have been effective. Further restrictions on the use of retardants are not only unnecessary but would likely increase the negative environmental effects that occur from wildfire, including negative effects on streams, watersheds and other important resources.
- Should the Forest Service not be able to defend liability in case brought by FSEEE, this could result in fire retardant not being available for use in the 2023 fire year and would put billions of dollars of infrastructure/assets and millions of people at risk. More importantly, it would remove a key tool used to safely fight wildfires and put at risk local, county, state and federal

firefighters at a time where wildfire is increasing in scale and scope across the western United States. Any court ruling has the potential to be nationwide and affect the Department of the Interior (DOI), state fire agencies, and the Department of Defense (DOD).

- The Forest Service has been using fire retardants for over 70 years. There are many examples of the effectiveness of fire retardant in stopping wildfire spread. One example was the 2020 Grizzly Creek Fire that started in Glenwood Canyon, CO and rapidly spread west out of the I-70 canyon corridor and into the eastern edge of Glenwood Springs, CO. The fire was caught by airtankers on the very northeast corner where the White River National Forest and City of Glenwood Springs lands meet. The Incident Management Team in charge then placed a portable retardant plant on the west bound lanes of I-70 for use by Type 1 helicopters doing bucket support with retardant for ground crews working their way up the canyon. An effective use of aviation assets and retardant in firefighting.

COMMENTARY

Wildland Fire–Use Decisions: Ecological, Social, and Political Consequences

By Steve Ellis



The lightning-caused Granite Gulch Fire burned 5,555 acres in the Eagle Cap Wilderness in the Willows-Whitman National Forest in 2009. Image: ierWeb, inc/web.mwcg.gov.

I once was asked what the more-trying and -consequential decisions I had made during my natural-resources career had been. What immediately came to mind was not a volatile and emotional issue such as wild horse and burro management, but rather the many

decisions I had made quietly and out of the public eye associated with allowing fire to play its natural role on the landscape.

These were the many go/no-go decisions I made about what was then called “wildland-fire use” on both general na-

tional forest lands and within congressionally designated wildernesses—the sort of decisions that can have tremendous ecological, social, and political consequences. They were decisions that, for the most part, had to be made in a relatively short period of time, sometimes at home on a weekend afternoon, and once while on horseback in the Elkhorn Mountains of Baker County, Oregon. During six rewarding years as forest supervisor of the Willows-Whitman National Forest, I made many such calls.

Variables I took into consideration included how many days before a season-ending weather event could be expected; distance of the ignition from management-unit boundaries; what other fires were burning on the forest and in the region; firefighting resource availability in the event more-active suppression action became necessary; fuel types and the locations of previous burns; and distance to nearby communities and private lands. My goal was to always have both ecological and sociopolitical successes, so that we would keep wildland-fire use in our toolbox.

During my tenure on the Willows-Whitman, I was fortunate to have a talented and experienced fire organization and a solid bench of district rangers who had experience dealing with wildfire. Fortunately, we never had a “go” decision get “out the door,” so to speak, but we did have a few fire-use situations that necessitated more than simply a watchful eye from an aircraft and by our fire lookouts.

For the majority of these “use fires,” the primary action we took was monitoring them once or twice a day from fixed-wing aircraft as they crept through the wilderness or general forest-area landscapes, sometimes flaring up during the peak of the daily burn period or when they moved into a patch of subalpine fir. Ecologically, they reduced fuel loading as they created a mosaic pattern on the landscape. The more such fires we had, the more we could use this tool and the resulting natural fuel breaks. “More holes in the canopy” we sometimes called it. As a result, future wildfires would theoretically be less of a threat to private land and communities outside the wilderness and national-forest boundary.

There was a handful of times we were forced to take more-aggressive suppression action to keep a fire within the prescribed fire-use management area. I recall an instance when we had two early-September lightning ignitions several miles inside the Eagle Cap Wilderness boundary. Both “go” decision fires crept slowly around for several days, with one eventually going out. The other start became quite active one mid-September day when the

humidity dropped to an unseasonably low level and a very strong surface wind started blowing from the south. The fire moved several miles in a long, linear pattern, and actually breached the wilderness boundary before a fast-moving cold front came in and winds shifted out of the north to lay the fire back on itself. This cold front was accompanied by a season-ending moisture event. On the day this fire made that long linear run, aerial retardant and helicopter bucket drops proved mostly ineffective at knocking down the head of the fire. Spotting was an issue, especially in subalpine fir. This “nail biter” for a day ultimately never breached the national-forest boundary, and essentially, produced a long, linear fuel break for management of future fires.

A late-August multiple-lightning ignition in Hells Canyon necessitated engagement of an experienced wildland fire-use team, and eventually, of a Type-2 incident-management organization based in Riggins, Idaho, to keep this natural fire within the intended management zone. It’s when naturally caused fires burn onto lands on which use is not intended that sociopolitical failures can occur. When this happens, the potential of losing fire-use authority may well become reality. This never happened to me in the six years I made extensive use of this tool in designated wilderness, primarily because I carefully considered the variables listed earlier. It also helps to have wildland-fire experience during one’s career, a basic understanding of meteorology and knowledge of what fire does in various fuel types and topography. On this fire, I authorized both chainsaw and retardant use in a few parts of the Hells Canyon Wilderness to successfully keep the fire within the intended fire-use management area. Helicopter bucket dips from the nearby Snake River also helped. We used this burn to minimize the spread of another fire in the same area a few years later.

With all the development that continues to occur in the wildland-urban interface, use of this tool can become a riskier venture. I found during my career that forest-management practices that reduce stand density and ladder fuels, combined with controlled underburning, are very helpful in reducing the wildfire threat to communities. The wise use of all these tools will help ensure healthy, sustainable forests—and the communities that depend on them—for the many uses the public values. ²⁸

Steve Ellis was supervisor of the Willows-Whitman National Forest between 2004 and 2010; he is now retired. He serves on the board of directors and is president-elect of the Pacific Northwest Forest Service Retirees Association.

Mr. TIFFANY. Yes, thank you, Mr. Ellis. I now recognize Representative Hoyle for 30 seconds to introduce our fourth witness.

Ms. HOYLE. Thank you, Mr. Chairman and Ranking Member. It is an honor to introduce Susan Jane Brown, an Oregonian, to the Subcommittee this afternoon. Ms. Brown is a senior staff attorney with the Western Environmental Law Center. Her primary focus of litigation is Federal public land forest management, but her practice includes cases involving Endangered Species Act, National Environmental Policy Act, National Forest Management Act, and other land management statutes.

She teaches forest law and policy at Lewis and Clark Law School in Oregon, a former co-chair of the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule, serves on the Federal Advisory Committee for Collaborative Forest Landscape Restoration Program, and is heavily engaged in a collaborative forest restoration in the Upper John Day Basin in Eastern Oregon.

This is the kind of collaborative approach that we need to do to bring together environmentalists, the timber industry, those of us who live in rural communities, and the wildland-urban interface who are at the forefront of seeing the effects of climate change through drier weather and extreme, intense, and long fire seasons. She is an expert in her field, and has been an invaluable resource to me, my staff, as well as former Congressman Peter DeFazio, as the 4th District is 85 percent forest land, 70 percent timber land, with a mix of Forest Service, BLM, tribal-managed lands, and private timber land. I am glad the Subcommittee will get to hear from her today as we discuss forest management. Thank you.

Mr. TIFFANY. Ms. Brown, you are now recognized for 5 minutes.

STATEMENT OF SUSAN JANE M. BROWN, SENIOR STAFF ATTORNEY, WESTERN ENVIRONMENTAL LAW CENTER, EUGENE, OREGON

Ms. BROWN. Chairman Tiffany, Ranking Member designate, and members of the Subcommittee, thank you for the opportunity to join you today to discuss H.R. 200, the Forest Information Reform Act, and H.R. 1567, the Accurately Counting Risk Elimination Solutions Act.

Thank you, Congresswoman Hoyle, for the kind introduction. I appreciate the opportunity to continue working with the Representative of Oregon's 4th Congressional District to steward our lands and waters for future generations of Oregonians and all Americans.

Thank you also to Congressman Bentz, my Congressman representing the 2nd Congressional District, for the opportunity to appear before your Committee today.

My name is Susan Jane Brown, and I am a Senior Staff Attorney for the Western Environmental Law Center, or WELC. We are based in Eugene, Oregon, with offices in Portland, Bend, and Lostine, Oregon; Seattle, Washington; Taos and Santa Fe, New Mexico; Buena Vista, Colorado; and Helena, Montana.

WELC uses the power of the law to defend and protect the American West, treasured landscapes, iconic wildlife, and rural communities. We combine our legal skills with sound conservation

biology and environmental science to address major environmental issues in the West in the most strategic and effective manner. WELC works at the national, regional, state, and local levels, and in all three branches of the government. WELC is also deeply engaged in collaborative forest conservation in Oregon, working closely with the Blue Mountains Forest Partners and Harney County Forest Restoration Collaborative on the Malheur National Forest, the Deschutes Collaborative Forest Project on the Deschutes National Forest, and the Northern Blues Forest Collaborative on the Umatilla and Wallowa Whitman National Forest, all located in eastern and central Oregon in Congressman Bentz's district.

Although I would prefer to discuss WELC's collaborative conservation efforts in Oregon, today I am wearing my proud environmental litigator hat in defense of the Endangered Species Act, our nation's premier wildlife conservation law. As a nation of laws, their enforcement is central to our democracy.

Citizen enforcement of congressional intent embodied in Federal environmental laws stems from the constitutional right of all Americans to petition their government for redress, and is part of a long and powerful history of social change. Hindering access to the courts for forest management issues should be met with criticism for the precedent that it would represent and the controversy that it would create.

The *Cottonwood* decision is not the demon that its detractors in the Forest Service make it out to be. Indeed, the premise of that decision, that forest plans are ongoing agency actions over which the agency retains exclusive control, are subject to reinitiation of consultation has been the law of the land in the 9th Circuit's jurisdiction, which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands, covering 123 million acres across 128 units of the National Forest System since 1994.

This holding has been affirmed numerous times by the 9th Circuit, and yet the Forest Service has been able to actively manage our national forests here, despite this fact. The sky will not fall today simply because the 2018 fix expires. Indeed, when new species are listed, new critical habitat designated, or new information comes to light affecting decisions made in the underlying forest plan, the Forest Service nearly always does the right thing and follows the law by re-initiating consultation to address these changed circumstances. Only rarely is litigation required to compel compliance with the law, and then most re-initiations are completed expeditiously.

The real problem that should enjoy widespread bipartisan support in solving is the fact that most of our forest plans are woefully out of date. Congress should therefore eliminate the annual Interior appropriations rider that exempts the Forest Service from the National Forest Management Act requirement to revise its forest plans not more than every 15 years. Eliminating this exemption could increase the urgency and rate at which the Forest Service revises its plans.

The Forest Service's Federal Advisory Committee on the agency's 2012 planning rule, on which I served for 6 years, including 2 years

as its co-chair, provided Secretary Vilsack with 66 consensus recommendations on how to improve and expedite the planning process. Yet, few of those recommendations have been implemented. There are lessons learned here that just are waiting to be adopted.

Moreover, Congress recently invested more than \$8 billion in new money in Forest Service land management through the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, including for forest planning and ESA consultation. The agency now has a substantial influx of funding to accomplish foundational land management planning and species consultation, which should make the need for H.R. 200 obsolete. Congress should wait and see how the Forest Service utilizes this new investment before intervening in the re-initiation process.

Thank you for the opportunity to testify today. I look forward to our conversation and answering any questions you may have.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF SUSAN JANE M. BROWN, WESTERN ENVIRONMENTAL
LAW CENTER

ON H.R. 200 AND H.R. 1567

Chairman Tiffany, Ranking Member Neguse, and members of the subcommittee, thank you for the opportunity to join you today to discuss H.R. 200, the Forest Information Reform Act, and H.R. 1567, the Accurately Counting Risk Elimination Solutions Act.

My name is Susan Jane M. Brown, and I am a Senior Staff Attorney with the Western Environmental Law Center (WELC). We are based in Eugene, Oregon, with offices in Portland, Bend, and Lostine, Oregon; Seattle, Washington; Taos and Santa Fe, New Mexico; Buena Vista, Colorado; and Helena, Montana. WELC uses the power of the law to defend and protect the West's treasured landscapes, iconic wildlife, and rural communities. We combine our legal skills with sound conservation biology and environmental science to address major environmental issues in the West in the most strategic and effective manner. WELC works at the national, regional, state, and local levels and in all three branches of government. We integrate national policies and regional perspective with the local knowledge of our 150+ partner groups to implement smart and appropriate place-based solutions.

WELC is also deeply engaged in collaborative forest conservation in Oregon, working closely with the Blue Mountains Forest Partners and Harney County Forest Restoration Collaborative on the Malheur National Forest, the Deschutes Collaborative Forest Project on the Deschutes National Forest, and the Northern Blues Forest Collaborative on the Umatilla and Wallowa-Whitman National Forests, all located in eastern and central Oregon.

I am a proud environmental litigator. My primary focus of litigation is federal public lands forest management, and my practice includes cases involving the Endangered Species Act, National Environmental Policy Act, National Forest Management Act, Oregon and California Lands Act, and other land management statutes. I am an Adjunct Professor of Law at Lewis and Clark Law School, where I have taught Forest Law & Policy to upper division law students for the past 14 years. Both my litigation and pedagogy have been heavily influenced by not only my collaborative experience, but also my tenure as Natural Resources Counsel for Congressman DeFazio, a former Member of this Committee.

Today I am testifying on H.R. 200, the Forest Information Reform Act, and H.R. 1567, the Accurately Counting Risk Elimination Solutions Act.

H.R. 200, the Forest Information Reform Act

H.R. 200, the Forest Information Reform Act, would exempt the Forest Service and Bureau of Land Management (BLM) from reinitiating consultation on applicable land management plans (forest plans) in three circumstances: 1) when a new species is listed under the Endangered Species Act (ESA); 2) when new critical habitat is designed under the ESA; or 3) when new information about a listed species or its critical habitat becomes available. The legislation is a false solution in search of a nonexistent "problem" and should not advance out of the Subcommittee.

Intentionally ignoring the dangers of climate change is reckless and myopic at best, and yet disregarding new information about climate change effects on listed species and their critical habitat is exactly what H.R. 200 does. Climate change is dramatically affecting our forests, whether manifested as increased droughts, insects, disease, floods, wildfire, species range shifts, or other effects.¹ Most forest plans are woefully out of date² and do not address how climate change could affect national forest resources and provide direction to lessen the impacts to wildlife and human communities. Ignoring these obvious ecological changes by failing to reinstate consultation on forest plans to ensure that native biodiversity is conserved for future generations is akin to burying one's head in the sand and hoping for the best. But this is not what the National Forest Management Act (or the Federal Land Policy and Management Act) require of our federal land managers: instead, the Forest Service and BLM must use the best available science to inform land management,³ and sometimes that best available science indicates that land management plans require reevaluation.

Additionally, H.R. 200's purported reliance on project-level consultation rather than plan-level consultation will not create efficiencies or conduct sufficient analysis as required by the ESA in two ways.

One, many types of forest management do not require or do not receive project-level authorization and therefore will not be subject to project-level consultation. For example, both winter and summer recreational off-road vehicle use is not subject to project-level authorization and yet often has significant adverse effects on listed species and their critical habitat. Likewise, domestic livestock grazing authorization, while subject to project-level (or, allotment-level) analysis and consultation, is woefully behind schedule and many western allotments either have no environmental analysis at all, or analysis that is decades-old. This use of the national forests also can have substantial adverse effects on listed species and critical habitats, and yet would generally escape ESA review under H.R. 200.

Two, project-level consultation intentionally looks only at the project decision under consultation and often fails to consider the cumulative effects on listed species and critical habitat of many different uses of a national forest on either that project's geography or across the entire national forest: this broadscale look only happens at the forest plan level. Consequently, a project-level consultation on a timber sale (for example) only looks at how that timber sale affects the listed species and critical habitat within that timber sale area, and not how climate change, increased wildfire occurrence and severity, and reduced water flows affect that species and its habitat that exists across the national forest. This piecemeal approach fails to capture important ecological effects at the appropriate scale.⁴ While project-level consultation is essential, it is not, alone, sufficient.

In addition to being bad policy, the justification for H.R. 200 rests on false premise. As the Subcommittee well knows, responding to the Ninth Circuit Court of Appeals' affirmation of *Pacific Rivers Council v. Thomas*, 30 F.3d 1050 (9th Cir. 1994) (*Pacific Rivers*) in *Cottonwood Law Center v. United States Forest Service*, 789 F.3d 1075 (9th Cir. 2015) (*Cottonwood*) has been of high interest to those in Congress who believe that *Cottonwood* hinders forest management within the jurisdiction of the Ninth Circuit (i.e., Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands). In response to this interest, the Congressional Research Service (CRS) released a report in August 2022 that sought to bring clarity to these claims, *Legal and Practical Implications of the Ninth Circuit's Cottonwood Environmental Law Center v. U.S. Forest Service Decision Under the Endangered Species Act*. Two important facts emerged from CRS' review.

¹United Nations Intergovernmental Panel on Climate Change (IPCC), *Synthesis Report of the IPCC Sixth Assessment Report, Summary for Policymakers*, available at https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf (March 20, 2023).

²Erin H. Ward, Katie Hoover, and Pervaze A. Sheikh, Congressional Research Service, *Legal and Practical Implications of the Ninth Circuit's Cottonwood Environmental Law Center v. U.S. Forest Service Decision Under the Endangered Species Act*, CRS Report R47201 (Aug. 2, 2022) (hereinafter "CRS"), 3.

³See, 16 U.S.C. § 1604; 43 U.S.C. § 1712(b)(2).

⁴Indeed, this approach essentially asks each project-level consultation to do the work of plan-level consultation. Because under H.R. 200 there would be no requirement to reinstate consultation on a forest plan in most cases, each project-level consultation would require more analysis in the first instance, rather than personnel being able to incorporate the more comprehensive and current forest plan-level analysis into project-level consultation, and would require personnel to reanalyze plan-level effects in each project-level analysis. This is not an efficient process.

First, CRS concluded that “Estimating or analyzing the effects of the *Cottonwood* decision (and the subsequent omnibus legislative fix) on [Forest Service, FS] operations and resources is challenging, primarily due to data constraints.”⁵ Although the Forest Service has alleged in congressional testimony and elsewhere that *Cottonwood* precludes expeditious implementation of forest management activities and that “reinitiating consultation ‘‘takes numerous resources away from getting work done on the ground,’’”⁶ CRS found that in fact

The FS has provided limited data to support or refute these claims. Similar to many other federal agencies, the FS does not routinely track or report the cost or personnel time associated with the development of forest plans or project-level decisions, engaging in consultation, or responding to administrative or judicial challenges to those decisions. For project-level planning, the FS does not routinely track the time between the publication of a decision document and the on-the-ground implementation of that project. Because of these limitations, there is insufficient baseline data with which to authoritatively identify and compare the effect specific factors may have on staffing or project development and implementation timelines. These data constraints also limit resource allocation comparisons between those national forests bound by the different circuit court decisions.⁷

It is alarming that—*based on no objective data whatsoever*—the Forest Service would allege that an appellate court decision that merely affirms what has been black letter law in the largest Court of Appeals for more than thirty years precludes mission critical work. As an agency that is statutorily bound to make land management decisions based on interdisciplinary scientific information,⁸ the Forest Service’s policy position is disappointing to say the least.⁹

Second, “CRS examined FS timber harvest data from FY2015 (the year *Cottonwood* was decided) through FY2021 and was unable to identify any noticeable difference in the overall volume of timber sold or harvested across the entire NFS and between the NFS units covered by the Ninth Circuit relative to other NFS units.”¹⁰ The lack of a causal relationship between *Cottonwood* and timber sold or harvested between the Ninth and Tenth Circuits further indicates that *Cottonwood* is not the demon its detractors suggest.¹¹

Information received from a Freedom of Information Act (FOIA) request to the Forest Service seeking data on the instances when the agency was compelled to reinitiate consultation between 2017–2020 shows that reinitiation of consultation happens rarely and can be concluded quickly. Across the 154 national forests and 20 national grasslands that comprise the National Forest System, the agency reinitiated consultation on only 7 plans per year on average,¹² most frequently (12 instances) due to the Forest Service voluntarily amending or modifying its forest plan, a situation that does not implicate *Cottonwood* or its fixes including H.R. 200.¹³ Four plans in the southwest required amendment due to a court order finding that the Forest Service failed to address the recovery of Mexican spotted owls, another situation not implicated by *Cottonwood*.

Four plans required reinitiation based on changed conditions, and two plans required reinitiation based on new information, situations where H.R. 200 would apply. In three situations new critical habitat designations compelled reinitiation and only in one situation was reinitiation required due to the listing of a new species under the ESA. Thus, less than half of the forest plan reinitiations (i.e., 10

⁵ CRS, 16.

⁶ CRS, 16 FN 111 (quoting former Forest Service Chief Vicki Christensen).

⁷ CRS, 16; *see also id.* at FN 112 (explaining that time and expense data that *was* verifiable lacked context to evaluate its significance).

⁸ 16 U.S.C. § 1604.

⁹ That the agency has steadfastly held this position in the Biden administration is perplexing, given the Administration’s purported emphasis on the use of science in decisionmaking and the need to address the biodiversity and climate crises by conserving important landscapes. *See, Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking*, 86 Fed. Reg. 8,845 (Jan. 27, 2021); Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7,619 (Feb. 1, 2021).

¹⁰ CRS, 17.

¹¹ Indeed, since *Cottonwood* merely affirms what has been the law in the Ninth Circuit since 1994 when *Pacific Rivers* was decided, and yet the national forests within the Ninth Circuit have consistently been the highest timber volume producing forests since 1994, it is a truism that neither *Cottonwood* nor *Pacific Rivers* have had any meaningfully adverse effect on timber production. *See*, United States Forest Service, *Forest Products Cut and Sold from the National Forests and Grasslands*, available at <https://www.fs.usda.gov/forestmanagement/products/cut-sold/index.shtml> (last visited March 18, 2023).

¹² The FOIA request and responsive documents are available upon request.

¹³ CRS, 3, 13.

instances) were due to situations implicated by *Cottonwood*. In addition, the FOIA response indicated that in many of these situations the agency was able to initiate and complete consultation in days or weeks without lengthy environmental documentation. The “problem” allegedly posed by *Cottonwood* is, in fact, much ado about very little and does not warrant congressional intervention involving the nation’s premier wildlife conservation law.

Although the need for H.R. 200 is neither supported by the facts nor is good policy, there are two solutions that should enjoy bipartisan support.

First, Congress should eliminate the annual Interior Department appropriations rider that exempts the Forest Service from the National Forest Management Act requirement to revise its forest plans not more than every 15 years.¹⁴ Although the Forest Service’s 2012 National Forest Management Act planning rule envisions revising plans within 3–4 years, it is questionable at best whether the agency is in fact making diligent progress toward revising the more than 100 forest plans that require updating.¹⁵ Eliminating this exemption could increase the urgency and rate at which the Forest Service revises its plans.

Second, Congress recently invested more than \$8 billion in new money in Forest Service land management through the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, including for forest planning and ESA consultation. The agency now has a substantial influx of funding to accomplish foundational land management planning and species consultation, which should make the need for H.R. 200 obsolete. Congress should wait and see how the Forest Service utilizes this new investment before intervening in the reinitiation process.

H.R. 1567, the Accurately Counting Risk Elimination Solutions Act

As a policy matter, although WELC understands the utility and ease of “counting acres,” we instead believe that land managers, the public, and decision makers should be focused on measuring the *outcomes* of land management. Until Congress directs the agencies to measure and report on outcome-based indicators of performance rather than outputs, however, WELC generally supports the premise of H.R. 1567 with two small alterations based on our direct experience with the purpose of the legislation in the context of collaborative forest management.

By way of background, as my opening statement notes, WELC is a member of several forest restoration collaborative groups in eastern Oregon. I am a founding member of the Blue Mountains Forest Partners (BMFP), which works with diverse stakeholders on the Malheur National Forest to restore large landscapes to reduce wildfire risk, conserve wildlife habitat, and contribute to economic development of rural communities dependent on national forest management. In 2012, the Malheur was designated as a Collaborative Forest Landscape Restoration Act (CFLRA) project, which brought 10 years of additional funding to the Forest Service for the collaborative implementation and monitoring of large landscape restoration projects on the Forest.¹⁶

BMFP takes our applied science, monitoring, and adaptive management very seriously. Based on the experience and knowledge of our restoration contractors and forest products industry partners, BMFP became concerned that we were not “finishing treatments,” meaning that while the commercial timber harvest always occurred, other restoration actions—prescribed burning, meadow restoration, precommercial thinning, etc.—often lagged far behind or did not occur at all: when multiple restoration actions were proposed for the same acres (i.e., precommercial thin + commercial thin + fuels treatment + wildlife enhancement + prescribed fire on the same acre), only some of the actions were actually timely completed. And yet, the Forest Service always reported substantial “acres treated” in annual budgetary and congressional reports, which did not square with BMFP’s on-the-ground experience.

With a few years of implementation of our Collaborative Forest Landscape Restoration Program (CFLRP) project under our belts, in 2018 we asked our

¹⁴ See, Pub. L. 117-103, div. G, title IV, § 407, Mar. 15, 2022, 136 Stat. 410.

¹⁵ The 21-member Federal Advisory Committee chartered to advise the Forest Service on implementation of the 2012 planning rule, on which I served for 6 years including 2 years as co-chair, provided 66 consensus recommendations to Secretary Vilsack in 2018 regarding how the Forest Service might improve and expedite its forest planning and amendment process. United States Forest Service, *Planning Rule FACA Committee, FACA Committee Recommendations* (available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd-575909.pdf) (Feb. 3, 2018). Few of those consensus recommendations have been implemented.

¹⁶ The Collaborative Forest Landscape Restoration Program (CFLRP) is incredibly successful in building social license around forest restoration and enjoys rare bipartisan support. WELC strongly supports this program and urges Congress to support its reauthorization and an expanded funding appropriation.

partners at The Nature Conservancy (TNC) to provide BMFP with an overview of the extent of our restoration work across the Forest and whether we were treating sufficient acres to reduce wildfire risk and restore ecological integrity across the landscape. Dr. Kerry Kemp, a forest ecologist with TNC and now with the Forest Service, spent months working with the Forest Service and agency databases to get a complete picture of what acres we had touched with what restoration action(s) and what action(s) remained in order to “finish” the necessary restoration BMFP and our partners believed needed to occur.

Unfortunately, we were unable to complete our review. However, we did learn that it was clear that the Forest Service’s understanding of what restoration actions had and had not occurred was completely different than the experience of contractors who were doing the actual work on the ground (and being paid by the federal government to complete that work). Whether an issue of the lack of standardized training of agency staff who use the database (employees have different ways of viewing the data based on their area of expertise), agency turnover and the lack of new staff familiarity with the Forest’s program of work, lack of a standardized definition of “complete,” or political pressure to show “acres treated” and “board feet harvested,” it was apparent that the Forest Service was double- and triple-counting acres and yet still not finishing the job in the woods.

This is not an issue of sloppy or misleading contractors either. BMFP’s restoration contractors and logger partners keep detailed records of their work in the woods and know exactly what work should occur on what acres because they are under contract to complete that work; but they also know when they aren’t able to operate on those acres due to weather, timing, or other constraints.¹⁷ Consequently, our restoration contractors and logger partners have long lists of acres that still require restoration activities, some of which have been outstanding for years if not decades.

This is not an isolated incident. BMFP participates in numerous coalitions of forest collaborative groups across the west, and nearly all of them report similar issues and frustrations. Investigative journalists have also identified this problem.¹⁸ H.R. 1567, the Accurately Counting Risk Elimination Solutions Act, would address a substantial portion of this problem by bringing transparency to the “counting acres” issue. WELC suggests two modest alterations to the legislative proposal.

First, Section 2(d)(1)(B)(i) defines “hazardous fuels reduction activity” to exclude “a wildland fire managed for resource benefits,” but this exclusion should be reconsidered before the bill advances out of the Subcommittee. The use of beneficial fire (whether prescribed or a natural ignition) for resource benefit is a significant tool in the forest restoration toolbox¹⁹ and must be encouraged if we are to successfully address the Wildfire Crisis.²⁰ The Forest Service should be able to “count” these beneficial fire acres, provided the fire in fact had positive resource benefits as most wildland fires do.²¹

¹⁷ Another issue that BMFP has identified is that the acres analyzed for restoration activities in approved National Environmental Policy Act (NEPA) documents are often much greater than the acres that the Forest Service advertises to contractors for either commercial or non-commercial treatment. Thus, acres are “left on the table” that could and should receive restoration.

¹⁸ Adiel Kaplan and Monica Hersher, NBC News, *The Forest Service is overstating its wildfire prevention progress to Congress despite decades of warnings not to* (available at <https://www.nbcnews.com/news/investigations/forest-service-overstating-wildfire-prevention-progress-congress-decad-rcna41576>) (Aug. 9, 2022).

¹⁹ Hessburg et al., *Climate, Environment, and Disturbance History Govern Resilience of Western North American Forests*, 7 FRONT. ECOL. EVOL. 239 (2019). doi: 10.3389/fevo.2019.00239

²⁰ United States Forest Service, *Confronting the Wildfire Crisis: A Strategy for Protecting Communities and Improving Resilience in America’s Forests* (available at <https://www.fs.usda.gov/managing-land/wildfire-crisis>) (Jan. 2022).

²¹ Merschel et al., *An ecological perspective on living with fire in ponderosa pine forests of Oregon and Washington: Resistance, gone but not forgotten*, TREES, FORESTS AND PEOPLE 4 (2021) available at <https://www.sciencedirect.com/science/article/pii/S2666719321000133?via%3Dihub>.

Second, after consultation with Tribes and cultural fire practitioners, the Subcommittee should consider including “cultural burning” within the scope of the legislation and consider including the following definitions in Section 2:²²

‘Cultural burn’ means the intentional application of fire to land by an Indian tribe or cultural fire practitioner to achieve cultural goals or objectives identified by a tribal ordinance, traditional tribal custom or law of an Indian tribe, such as subsistence, ceremonial activities, biodiversity or other benefits.

‘Cultural fire practitioner’ means a person associated with an Indian tribe with experience in burning to meet cultural goals or objectives, including subsistence, ceremonial activities, biodiversity or other benefits.

‘Indian tribe’ means a federally recognized Indian tribe.

Although it no longer occurs at the rate or extent as it did prior to European colonialization, cultural burning is an important tool to restore forest ecological integrity, as well as a manifestation of Indigenous sovereignty. Indigenous burning played a critical role in establishing forest ecosystems and continues to play a necessary stewardship role today. Tribes and Indigenous people across the country have used fire for thousands of years, and cultural burning practices are essential to the stewardship of plants and animals for food, fiber, and sustenance, the provision of community safety, and Tribal ceremonial, spiritual and religious practices. Thus, cultural burning should be “counted” by the Forest Service as a legitimate forest restoration action.

WELC would be pleased to work with the Subcommittee to make these alterations to H.R. 1567.

Conclusion

I look forward to discussing H.R. 200 and H.R. 1567 with the Subcommittee and answering any questions that the Subcommittee may have. Thank you for the opportunity to share my thoughts and experiences with you.

QUESTIONS SUBMITTED FOR THE RECORD TO SUSAN JANE M. BROWN, SENIOR STAFF
ATTORNEY, WESTERN ENVIRONMENTAL LAW CENTER

Questions Submitted by Representative Westerman

Question 1. Please list any payments the Western Environmental Law Center received under the Equal Access to Justice Act (EAJA) in the past 10 years. Please disclose as applicable the case name, the court, subject matter of the litigation, the type of judgment (i.e. court settlement, court decision, agency settlement, etc.), the payment date, the payment amount, and the hourly rate charged.

Answer.

WESTERN ENVIRONMENTAL LAW CENTER FEDERAL LITIGATION MATTERS FEE AWARD HISTORY FOR THE YEARS 2013 TO 2023

The following list summarizes case-specific fee and cost awards to parties represented by the Western Environmental Law Center (WELC) and paid to WELC in litigation with the federal government from 2013–2023. We have provided information regarding all payments made pursuant to all fee-shifting statutes, inclusive of the Equal Access to Justice Act.

While we provide the case name, venue, and basic subject of the case, we are unable to provide specific information regarding the fee award mechanism (out of court settlement, court-approved settlement, or court award); what percentage, in whole or in part, of the award was made pursuant to the Equal Access to Justice Act versus other fee-shifting statutes; and specific hourly rates, which change with case and context. Even with further review, it may not be possible to provide that information given how settlement agreements are negotiated. For example, fee and cost settlements typically involve, in the interest of settlement, an aggregate amount and do not involve specific hourly rates.

²² Oregon State Legislature Representative Pam Marsh has proposed these definitions as an amendment to Oregon House Bill 2985, which would create a Prescribed Fire Liability Pilot Program in the State. In turn, these definitions were borrowed from California’s Senate Bill 926, enacted into law in 2022, that created a Prescribed Fire Liability Pilot Program in that state.

Case filings and court orders and entries for each of the cases below can be accessed via publicly-available electronic court records by reference to the case number.

Saint John's Organic Farm & Peter Dill v. Gem County Mosquito Abatement District and Gem County, No. 1:04-CV-00087-BLW (D. Id.): Gem County Abatement. Payment Date: February 22, 2013, for \$20,000.

Californians for Alternatives to Toxics v. U.S. Fish and Wildlife Services, Civ. No. 2:10-cv-01477-GEB-CMK (D.E. Ca.); 12-16493 (9th Cir.): Silver King Creek. Payment Date: March 5, 2013, for \$8,000.

Community Assoc. v. Smith Brothers Dairy (purchased by Nelson Faria Dairy Inc), No. 2:04-cv-03060 (D.E. Wa.): CAFO. Payment Date: May 9, 2013, for \$74,880.

Wilderness Watch v. Wamoto and U.S. Forest Service, No. 2:10-cv-01797-JCC (D.W. Wa.): Glacier Peak. Payment Date: June 12, 2013, for \$70,000.

Citizens for a Healthy Community v. U.S. Department of Interior and U.S. Bureau of Land Management, Civ. No. 1-12-cv-01661-RPM (D. Co.): North Fork FOIA. Payment Date: September 11, 2013, for \$100,107.

Pacific Rivers Council et al. v. Shepherd, Civ. No. 3:11-cv-442-HU (D. Or.); 12-35570 (9th Cir.): WOPR, Pacific Rivers. Payment Date: December 28, 2013, for \$5,039.

Center for Sierra Nevada Conservation, Center for Biological Diversity, and Forest Issues Group v. Ramiro Villalvazo U.S. Forest Service, No. 2:09-cv-02523-LKK-JFM (D.E. Ca.): Eldorado Travel Management Plan. Payment Date: February 19, 2014, for \$26,846.

Cascadia Wildlands v. U.S. Forest Service, No. 6:12-cv-00804 (D. Or.): Goose Timber Sale. Payment Date: May 27, 2014, for \$59,787.

Cascadia Wildlands, et al. v. U.S. Bureau of Land Management, No. 6:12-cv-00095-AA (D. Or.): North Fork Overlook. Payment Date: June 16, 2014, for \$31,727.

Animal Welfare Institute v. Animal and Plant Health Inspection Service, No. 1:14-cv-00554-RCL (D. DC): Jaguar FOIA. Payment Date: August 20, 2014, for \$12,670.

Montana Wilderness Association v. Connell, Kornze, U.S. Bureau of Land Management, U.S. Dept of Interior, and Kania, No. 4:09-cv-00095-SHE (D. Mt.); 11-35818 (9th Cir.): WSRA: Missouri. Payment Date: September 11, 2014, for \$129,194.

Environmental Protection Information Center v. Lehr et al., No. 3:13-cv-02293-MMC (D.N. Ca.): Trinity Hatchery. Payment Date: September 24, 2014, for \$140,492.

The Wilderness Society v. U.S. Forest Service, No. 4:08-cv-00363 (D. Id.): Sawtooth. Payment Date: September 30, 2014, for \$115,111.

McClelland v. National Parks Service, No. 1:14-cv-01171-RBW (D. D.C.): GNP Roost FOIA. Payment Date: November 5, 2014, for \$15,033.

Greater Yellowstone Coalition v. U.S. Forest Service, No. 4:12-cv-00384 (D. Id.): Winchell-Dugway. Payment Date: December 17, 2014, for \$30,190.

Citizens for a Healthy Community and High Country Conservation Advocates v. U.S. Forest Service, Fitzwilliams, O'Byrne, Broyles and SG Interests I, LTD, SG Interests VII, LTD., No. 1:14-cv-00284-JLK (D. Co.): Forest Service SUPO. Payment Date: February 6, 2015, for \$22,515.

Friends of the Wild Swan v. Ashe, No. 9:13-cv-00057 (D. Mt.): Lynx. Payment Date: May 13, 2015, for \$104,060.

Native Fish Society v. National Marine Fisheries Service, No. 3:12-cv-00431 (D. Or.): Sandy River Hatchery. Payment Date: May 14, 2015, for \$49,399.

WildEarth Guardians v. U.S. Fish and Wildlife Service, Civ. No. 14-1828 (RMC) (D. D.C.): Lynx FOIA. Payment Date: August 12, 2015, for \$6,500.

Environmental Protection Information Center v. Ayer et al., No. 3:13-cv-00656-MMC (D.N. Ca.): Mad River. Payment Date: August 31, 2015, for \$59,156.

Cascadia Wildlands v. U.S. Forest Service, No. 3:15-cv-00860-PK (D. Or.): Wolf FOIA. Payment Date: December 11, 2015, for \$4,413.

Powder River Basin Resource Council v. U.S. Bureau of Land Management, No. 1:15-cv-00695-RBW (D. D.C.): Buffalo RMP FOIA. Payment Date: December 31, 2015, for \$8,411.

Klamath-Siskiyou Wildlands Center, Center for Biological Diversity, and Klamath Forest Alliance v. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and U.S. Fish and Wildlife Service, No. 3:13-cv-03717-NC (D.N. Ca.): FGS HCP. Payment Date: January 14, 2016, for \$200,637.

The National Trust Historic Preservation, et al. v. Raymond Suazo, et al., No. 2:13-cv-01973-DGC (D. Az.): Sonoran Desert. Payment Date: February 12, 2016, for \$182,352.

Powder River Basin Resource Council, et al. v. U.S. Bureau of Land Management, No. 1:15-cv-01684-KBJ; Civ. No. 15-0695 (D. D.C.): NTL-4a FOIA. Payment Date: September 23, 2016, for \$12,305.

McKenzie Flyfishers, Steamboaters v. McIntosh, Patterson, Aguilar, No. 6:13-cv-02125-TC (D. Or.): McKenzie Chinook. Payment Date: October 31, 2016, for \$210,927.

Cascadia Wildlands, et al. v. Woodruff, et al., Civ. No. 3:15-cv-05132-RJB (D.W. Wa.): WA Wildlife Services. Payment Date: November 17, 2016, for \$69,699.

Montana Environmental Information Center v. U.S. Bureau of Land Management, No. 4:11-cv-00015-SHE (D. Mt.): MT BLM Climate. Payment Date: February 22, 2017, for \$18,451.

Klamath-Siskiyou Wildlands Center, et al. v. Macwhorter and Waldo Mining District, No. 1:12-cv-01900-PA (D. Or.): Suction Dredge. Payment Date: February 22, 2017, for \$34,812.

WildEarth Guardians v. U.S. Fish and Wildlife Service, No. 16-01983 CKK (D. D.C.): Sonoran Desert Tortoise FOIA. Payment Date: March 15, 2017, for \$12,000.

Friends of Toppenish Creek v. Department of Health & Human Services and The Indian Health Service, No. 1:16-cv-03013-SAB (D. Wa.): IHS FOIA. Payment Date: March 15, 2017, for \$4,441.

WildEarth Guardians v. Kraayenbrink, et al., No. 4:14-cv-00488-REB (D. Id.): Idaho Predator. Payment Date: April 19, 2017, for \$7,641.

Montana Backcountry Hunters and Anglers, et al. v. U.S. Forest Service, No. 9:16-cv-00110-DLC (D. Mt.): Divide Elk Security. Payment Date: May 24, 2017, for \$25,244.

Defenders of Wildlife v. Zinke, Kurth, Idaho Farm Bureau Federation, Wyoming Farm Bureau, Montana Farm Bureau Federation, Washington Farm Bureau, Idaho State Snowmobile Association, Colorado Snowmobile Association, Colorado Off-Highway Vehicle Coalition, American Petroleum Institute, Montana Petroleum Association, Western Energy Alliance, No. 9:14-cv-00246-DLC (D. Mt.): Wolverine Listing. Payment Date: June 16, 2017, for \$200,879.

WildEarth Guardians, Conservation Northwest, Oregon Wild, Cascadia Wildlands, and Wilderness Workshop v. U.S. Department of Interior, Zinke, Kurth, and U.S. Fish and Wildlife Service, No. 9:14-cv-00270-DLC (D. Mt.): Lynx Critical Habitat. Payment Date: June 16, 2017, for \$94,216.

Diné CARE v. U.S. Office of Surface Mining Reclamation and Enforcement, No. 12-cv-1275-JLK (D. Co.): Navajo Mine. Payment Date: August 25, 2017, for \$220,000.

Sierra Club Inc. v. BNSF Railway Co., No. 2:13-cv-00967-JCC (D.W. Wa.): Washington Coal Train. Payment Date: September 22, 2017, for \$227,266.

WildEarth Guardians v. U.S. Office of Surface Mining Reclamation and Enforcement, No. 1:17-cv-01151-JEB (D. D.C.): SO3349 FOIA OSM. Payment Date: November 1, 2017, for \$4,500.

Friends of the Wild Swan, et al., v. Vermillion v. Montana Trappers Association, et al., No. 9:13-cv-00066-DLC (D. Mt.): Lynx Trapping. Payment Date: February 15, 2018, for \$144,031.

Cascadia Wildlands and Oregon Wild v. Carlton and American Forest Resource Council, No. 6:16-cv-01095-JR (D. Or.): Loafer Timber. Payment Date: March 8, 2018, for \$76,034.

WildEarth Guardians and Kootenai Environmental Alliance v. Animal and Plant Health Inspection Service, No. 1:17-cv-1153-KBJ; CDV 12-1075 (D. D.C.): Wildlife Services FOIA. Payment Date: April 12, 2018, for \$10,000.

WildEarth Guardians v. U.S. Office of Surface Mining Reclamation and Enforcement, No. 1:17-cv-00758-APM (D. D.C.): Spring Creek FOIA. Payment Date: April 12, 2018, for \$5,650.

Montana Environmental Information Center v. U.S. Office of Surface Mining Reclamation and Enforcement, No. 9:15-cv-00106-DWM (D. Mt.): Signal Peak NEPA. Payment Date: April 12, 2018, for \$121,500.

Sierra Club, et al., v. Zinke, No. 3:17-cv-3804-EDL (D. Ca.): BLM Methane 705 Stay. Payment Date: October 31, 2018, for \$37,788.

WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:17-cv-01149 (D. D.C.): SO3349 FOIA BLM. Payment Date: December 10, 2018, for \$9,000.

WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:18-cv-0551-TNM (D. D.C.): FOIA. Payment Date: May 31, 2019, for \$3,299.

Diné Citizens v. USEPA, No. 18-71481 (9th Cir.): Four Corners Power Plant NPDES. Payment Date: June 28, 2019, for \$19,806.

WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:18-cv-00121-RCL (D. D.C.): FOIA. Payment Date: June 30, 2019, for \$1,369.

Western Organization of Resource Councils, et al. v. U.S. Bureau of Land Management, et al. and Cloud Peak Energy, et al., No. 4:16-CV-00021-BMM (D. Mt.): Powder River Basin RMP. Payment Date: June 30, 2019, for \$230,227.

San Juan Citizens Alliance, et al. v. U.S. Bureau of Land Management, No. 1:16-cv-00376-JOB-JHR (D. NM.): Santa Fe National Forest lease sale. Payment Date: July 8, 2019, for \$62,248.

Sierra Club, et al., v. Bernhardt, No. 3:17-cv-7186-WHO (D. Ca.): BLM Methane Suspension Rules. Payment Date: July 24, 2019, for \$73,780.

WildEarth Guardians v. Scruggs and Montana Trappers Association, et al., No. 9:16-cv-00065-DWM (D. Mt.): Lynx CITES. Payment Date: September 24, 2019, for \$144,477.

Center for Biological Diversity, et al. v. Zinke, et al. & Safari Club International, et al. v. Zinke, et al., No. 4:15-cv-00019-JGZ (D. Az.): Mexican Wolf. Payment Date: December 18, 2019, for \$193,799.

WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:18-cv-0890-APM (D. D.C.): FOIA. Payment Date: December 30, 2019, for \$737.

Willamette Riverkeeper and Conservation Angler v. U.S. Army Corps of Engineers and Aaron Dorf, No. 6:17-cv-00801-MC (D. Or.): Santiam Hatchery. Payment Date: December 31, 2019, for \$130,000.

WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:17-cv-01849 (D. D.C.): BLM online oil and gas leasing FOIA. Payment Date: December 31, 2019, for \$13,000.

WildEarth Guardians, Oregon Wild, The Sierra Club, and Great Old Broads for Wilderness v. Jeffries, No. 2:17-cv-1004-SU (D. Or.): Ochoco Summit Trail. Payment Date: December 31, 2019, for \$145,000.

Diné CARE v. Bernhardt, No. 1:15-cv-00209-JB-LF (D. NM.): Mancos APD. Payment Date: February 19, 2020, for \$107,854.

Wilderness Workshop, Western Colorado Congress, Natural Resources Defense Council, Sierra Club v. U.S. Bureau of Land Management, et al., No. 1:16-cv-01822 (D. Co.): Colorado River RMP. Payment Date: June 5, 2020, for \$118,421.

Montana Environmental Information Center v. U.S. Office of Surface Mining Reclamation and Enforcement, No. 19-2977 (D. D.C.): OSM Rosebud FOIA. Payment Date: July 31, 2020, for \$2,500.

Montana Environmental Information Center and Sierra Club v. U.S. Office of Surface Mining, Reclamation, and Enforcement, Civ. No. 19-3019 (D. D.C.): OSM Bull Mountains FOIA. Payment Date: September 23, 2020, for \$2,064.

WildEarth Guardians v. Bernhardt, No. 4:19-cv-00441-CKJ (D. Az.): Sonoran Desert Tortoise ESA. Payment Date: December 30, 2020, for \$23,524.

Citizens for a Healthy Community; High Country Conservation Advocates; Center for Biological Diversity; WildEarth Guardians; and Wilderness Workshop; v. U.S. Bureau of Land Management, David Bernhardt, Dana M. Wilson, U.S. Forest Service, Sonny Perdue, Chad Steward, and SG Interests I, LTD.; and SG Interests VII, LTD., No. 1:17-cv-02519 (D. Co.): Bull Mountain MPD. Payment Date: December 31, 2020, for \$61,248.

WildEarth Guardians, et al. v. U.S. Bureau of Land Management, et al., No. 4:18-cv-0073-BMM (D. Mt.): Montana leasing. Payment Date: December 31, 2020, for \$90,440.

Helena Hunters and Anglers Association, et al. and Alliance for the Wild Rockies, et al., v. Leanne Marten, et al., and Stae of Montana and Montana Bicycle Guild, Inc., No. 19-cv-0047-DLC (D. Mt.): Challenge to Forest Service's decision to use of areas inside two Inventoried Roadless Areas in the Helena National Forest, as part of the Tenmile-South Helena project. Payment Date: April 30, 2021, for \$199,000.

Wilderness Workshop, Center for Biological Diversity, Living Rivers Colorado Riverkeeper, Sierra Club v. U.S. Bureau of Land Management, No. 1:18-cv-00987 (D. Co.): Challenge to Piceance lease sales. Payment Date: December 11, 2021, for \$20,670.

WildEarth Guardians v. U.S. Bureau of Land Management, No. 1:18-cv-00233 (D. D.C.): FOIA. Payment Date: December 31, 2021, for \$3,697.

WildEarth Guardians v. U.S. Bureau of Land Management, Civ. No. 18-1020-CRC (D. D.C.): FOIA. Payment Date: February 4, 2022, for \$2,950.

Crow Indian Tribe v. U.S.A., No. 17-cv-89 (D. Mt.): Restoring endangered species protections for the Greater Yellowstone Ecosystem population of grizzly bears. Payment Date: February 24, 2022, for \$432,426.

Friends of the Wild Swan, et al., v. Haaland, No. 9:20-cv-00173-DWM (D. Mt.): Challenge to Fed decision not to prepare lynx recovery plan, following earlier order from the court. Payment Date: April 20, 2022, for \$101,012.

American Whitewater v. Electron Hydro, LLC, No. 2:16-cv-00047-JCC (D. Wa.): Challenge to hydroelectric project on Puyallup River in Washington that takes ESA-listed Chinook and steelhead and bull trout. Payment Date: May 18, 2022, for \$223,903.

The National Trust for Historic Preservation v. Haaland, No. 2:16-cv-05008-PHX-MHB (D. Az.): Challenge to BLM decision to allow target shooting in Sonoran Desert National Monument. Payment Date: July 31, 2022, for \$110,000.

Friends of the Clearwater v. Probert, No. 3:21-cv-00056-BLW (D. Id.): Griffin Half Moon timber sale. Payment Date: July 31, 2022, for \$46,000.

WildEarth Guardians and Montana Environmental Information Center v. Haaland and Spring Creek Coal, LLC, No. CV 17-80-BLG-SPW-TJC (D. Mt.): Spring Creek Coal NEPA. Payment Date: September 8, 2022, for \$103,500.

WildEarth Guardians v U.S. Dept of Interior et al., Civ. No. 19-2974 (D. D.C.): Carlsbad Resource Management Plan FOIA. Payment Date: September 9, 2022, for \$19,000.

Cascadia Wildlands, Klamath-Siskiyou Wildlands Center, Oregon Wild, Soda Mountain Wilderness Council, and Willamette Riverkeeper v. US Bureau of Land Management and B&G Logging and Construction, LLC, No. 6:21-cv-01313-AA (D. Or.): BLM salvage CX rulemaking. Payment Date: October 15, 2022, for \$30,000.

Citizens for a Healthy Community v. U.S. Bureau of Land Management, Civ. No. 1:20-cv-2484 (D. Co.): Uncompahgre Resource Management Plan. Payment Date: December 20, 2022, for \$75,607.

WildEarth Guardians v. Williams, No. 9:20-cv-00097-DLC (D. Mt.): Challenge to Fed decision not to list wolverine. Payment Date: December 21, 2022, for \$61,499.

Diné CARE v. Bureau of Land Mgmt., No. 1:20-CV-00673-KG-JHR (D. NM.): Challenge against BLM oil and gas leasing decisions under NEPA. Payment Date: March 9, 2023, for \$142,043.

WildEarth Guardians v. Haaland, Nos. 9:20-cv-00181-DWM; 9:20-cv-00183-DWM (D. Mt.): Challenge to Fed decision not to list wolverine. Payment Date: March 20, 2023, for \$147,868.

Question 2. Please list any current or pending litigation against the Federal Government to which you or your organization is a party filed between the period starting with March 23, 2023 and ending on the date in which you submit a response to this question. Please disclose as applicable case name, docket number, the court, and subject matter of the litigation.

Answer. None.

Mr. TIFFANY. Thank you, Ms. Brown. I would like to introduce Mr. Jonathan Wood, who is the Vice President of Law and Policy for the Property and Environment Research Center, PERC. Mr. Wood is an experienced attorney specializing in environmental and constitutional law. PERC is an independent non-profit dedicated to the advancing of conservation through markets, incentives, property rights, and partnerships.

Mr. Wood, you are now recognized for 5 minutes.

STATEMENT OF JONATHAN WOOD, VICE PRESIDENT OF LAW AND POLICY, THE PROPERTY AND ENVIRONMENTAL RESEARCH CENTER, BOZEMAN, MONTANA

Mr. WOOD. Thank you and good afternoon, Chairman Tiffany, and thank you to Ranking Member Kamlager-Dove and the other members of the Committee for the invitation to participate in this discussion on needed reforms to restore our nation's forests, to protect wildlife habitat, and to tackle the wildfire crisis.

The one thing left out of that description of PERC is that we are based in Bozeman, Montana, and I want to mention that and stress that in the intro because Montana really has been ground zero for *Cottonwood* and litigation against forest restoration generally.

We did a study a couple of years ago looking at where litigation is filed in challenging forest restoration projects. And the most popular district for these cases to be filed is in the district of Montana. In fact, there are only two districts alone, the Eastern District of California and in Montana, that are responsible for more than half of the cases challenging forest restoration.

One of the targets of the *Cottonwood* case was the Bozeman Municipal Watershed Project on the outskirts of town. The project is designed to protect from wildfire the main source of Bozeman's drinking water, and it would also protect really valued recreational areas where I and my neighbors take our kids to learn how to hike, to appreciate nature, and to enjoy the outdoors.

In *Cottonwood*, the 9th Circuit held, as you have heard from the other witnesses—and, I will note, contrary to the ESA's text, Supreme Court precedent, and 10th Circuit precedent—that the Forest Service must perpetually re-consult with the Fish and Wildlife Service on its existing forest plans every time a new species is listed, critical habitat is designated, or its ambiguous term—new information is discovered.

The case contributed substantially to a 15-year delay in the Bozeman Municipal Watershed Project. It unnecessarily kept my town at risk that a catastrophic wildfire would mar viewshed, scorch wildlife habitat and recreation areas, and leave the city with a mere 3 days of drinking water. That delay produced no benefit for any listed species. Today, the project is finally being implemented, precisely the way it had been proposed more than a decade earlier.

Congress quickly responded to *Cottonwood* by enacting a temporary fix, saving other communities from this fate. Today, however, that fix expires. Unless Congress acts promptly to fix *Cottonwood*, as Congressman Rosendale's FIR Act proposes, the Forest Service will immediately have to re-consult over dozens of national forest plans. It estimates that work will take 5 to 10 years and cost several million dollars, time and money the agency simply doesn't have during today's wildfire crisis.

The temporary fix's expiration could not happen at a worse time. The Forest Service faces an 80-million-acre forest restoration backlog, affecting 40 percent of the land managed by the agency. This backlog leaves our forests with excess fuels, more vulnerable to insects and disease, and less resilient to climate change and drought. The backlog fuels catastrophic wildfires that are more likely to threaten old-growth trees, wipe out wildlife habitat, and cause erosion that degrades watersheds and fisheries.

Even mighty giant sequoias that have withstood life in California's rugged Sierra Nevada mountains for thousands of years are at risk. The National Park Service estimates as many as 1 in 5 of the world's remaining sequoias have been killed by wildfires since 2020.

Wildfire emissions are also a major climate concern, with a single year's fire able to wipe out decades of hard-won emissions reductions. The Forest Service has not been able to implement forest restoration projects at the scale needed to shrink this backlog. Recently, it has treated an average of about 4 million acres per year. And the agency's non-intuitive way of tracking and reporting that progress can exaggerate their progress in closing this restoration backlog.

Chairman Tiffany's ACRES Act would fix this problem by requiring the agency to report its forest restoration efforts in a way that would be more accessible to the public, and easier to track accountability.

The Biden administration has set ambitious goals to increase forest restoration work over the next decade. Meeting these lofty but critical targets will require greater efficiency in the often years-long process of developing, approving, and implementing forest restoration projects. *Cottonwood* would add new obstacles to forest restoration. It will also slow or stop projects essential to protecting wildlife habitat, including for endangered and threatened species.

On the other hand, the re-consultation required by *Cottonwood* would not help recover species. As the 10th Circuit explained to Forest Guardians, forest plans are not self-implementing. They are, the court explained, "more akin to roadmaps, creating a vision" for future forest management. These plans can only affect listed species to individual projects, and those already go through

consultation and re-consultation to address impacts to native-listed species, designated critical habitat, or discovered information.

And I will close by reminding the panel of the Obama administration's assessment of *Cottonwood*, a case which it fought in the 9th Circuit and tried to have a return in the Supreme Court. That assessment was correct, and it was that *Cottonwood* threatens to "cripple the Forest Service and BLM's land management functions," and distract from on-the-ground species recovery efforts.

Thank you again for the opportunity to speak to you, and I look forward to your questions.

[The prepared statement of Mr. Wood follows:]

PREPARED STATEMENT OF JONATHAN WOOD, VICE PRESIDENT OF LAW AND POLICY,
PROPERTY AND ENVIRONMENT RESEARCH CENTER (PERC)

ON H.R. 200 AND H.R. 1567

Main Points

- Closing the Forest Service's 80-million-acre forest-restoration backlog is essential to conserve forests, maintain wildlife habitat, and tackle the wildfire crisis.
- The Forest Service cannot shrink the backlog if it remains bogged down by bureaucracy and litigation.
- In *Cottonwood*, the Ninth Circuit invented an unnecessary bureaucratic obstacle to forest restoration and encouraged litigation to upend this work, while producing no benefits for listed species.
- Numerous conservation organizations and three presidential administrations have supported fixing *Cottonwood* to streamline needed forest restoration.

Introduction

Chairman Tiffany, Ranking Member Neguse, and members of the committee, thank you for the invitation to participate in this important discussion on forest conservation and, especially, how the Ninth Circuit's controversial *Cottonwood* decision¹ interferes with the Forest Service's ability to restore forests, protect wildlife habitat, and tackle the wildfire crisis.

My name is Jonathan Wood and I'm the vice president of law and policy at the Property and Environment Research Center. PERC is the national leader in market solutions for conservation, with over 40 years of research and a network of respected scholars and practitioners. Through research, law and policy, and innovative applied conservation programs, PERC explores how aligning incentives for environmental stewardship produces sustainable outcomes for land, water, and wildlife. Forest health has been a primary focus of PERC's research and policy efforts including major reports on policies that discourage collaborative forest restoration and prescribed burning.² Founded in 1980, PERC is nonprofit, nonpartisan, and proudly based in Bozeman, Montana.

Bozeman has been ground-zero for *Cottonwood* and for litigation challenging forest restoration generally. In fact, one of the targets of the *Cottonwood* case was the Bozeman Municipal Watershed Project in PERC's backyard.³ The project area is the main source of Bozeman's water. It's also where I (like countless other Bozeman residents) teach my kids to hike, appreciate nature, and enjoy the outdoors. The *Cottonwood* case, brought by self-described "radical environmentalists,"⁴ contributed substantially to a 15-year-delay in the project and kept Bozeman exposed to the risk that a catastrophic wildfire would mar our viewshed, scorch

¹ *Cottonwood Environmental Law Center v. Forest Service*, 789 F.3d 1075 (9th Cir. 2015).

² See Holly Fretwell & Jonathan Wood, *Fix America's Forests: Reforms to Restore National Forests and Tackle the Wildfire Crisis*, PERC Public Lands Report (2021); Jonathan Wood & Morgan Varner, *Burn Back Better: How Western States Can Encourage Prescribed Fire on Private Lands*, PERC Policy Report (2023).

³ See *Cottonwood*, 789 F.3d at 1080. See also Forest Service, *Bozeman Municipal Watershed Project Record of Decision* (2010).

⁴ See John Meyer, Sen. Steve Daines ought to take a hike in our forests, *Bozeman Daily Chronicle* (June 21, 2022).

wildlife habitat and cherished recreation areas, and leave the city with a mere 3 days of drinking water.⁵

Our national forests face an 80-million-acre backlog in needed restoration—a backlog that leaves our forests with excess fuels, more vulnerable to insects and disease, and less resilient to climate change and drought.⁶ The Forest Service has struggled to treat more than a few millions of those acres per year.⁷ And as reflected in Chairman Tiffany’s ACRES Act (H.R. 1567), the Forest Service’s method of tracking and reporting these acres has historically overstated the agency’s progress toward clearing the backlog.⁸

To tackle the wildfire crisis fueled by this backlog, the Biden administration has developed an ambitious strategy to significantly increase its forest restoration work over the next decade, including treating an additional 20 million acres of national forest above the business-as-usual rate.⁹ Meeting that lofty but critical target will require greater efficiency in the years-long process of developing, approving, and implementing forest restoration projects.¹⁰

Allowing the temporary *Cottonwood* fix to expire and the Ninth Circuit’s decision to go into full effect would be a significant and unnecessary setback for forest conservation.¹¹ That’s why the Obama, Trump, and Biden administrations have expressed concern about *Cottonwood*,¹² why PERC and other conservation groups have supported a fix,¹³ and why legislative proposals to reverse it, like Representative Rosendale’s FIR Act (H.R. 200), have consistently received bipartisan support.¹⁴

The Restoration Backlog Fueling the Wildfire Crisis

According to the Forest Service, forty percent of the acres in the national forest system need restoration to address excess fuels, invasive species, disease and insect infestations, and other conservation challenges.¹⁵ When the Department of the Interior’s 54-million-acre restoration backlog is added in,¹⁶ the total area needing urgent help is larger than the state of California. The wildfire crisis is the most visible symptom of this problem but it is not the only one. Due to the backlog, many western forests are stocked full with overly dense, unhealthy, and dying stands that

⁵ See *BMWP Record of Decision*, *supra* n. 3 at 6.

⁶ See Forest Service, *Forest Products Modernization* (last visited Mar. 17, 2023). See also *Fix America’s Forests*, *supra* n. 2 at 4–16.

⁷ See Forest Service, *USDA Forest Service Celebrates Historic Investments in 2022* (Feb. 6, 2023) (reporting that the Service treated 3.2 million acres in 2022); *Fix America’s Forests*, *supra* n. 2 at 4.

⁸ See Accurately Counting Risk Elimination Solutions (ACRES) Act, H.R. 1567. See also GAO, *Wildland Fire Management: Additional Actions Required to Better Identify and Prioritize Lands Needing Fuels Reduction* (2003); GAO, *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats* (1999).

⁹ See Forest Service, *Confronting the Wildfire Crisis: A Strategy for Protecting Communities and Improving Resilience in America’s Forests* (2022).

¹⁰ See Eric Edwards & Sara Sutherland, *Does Environmental Review Worsen the Wildfire Crisis?*, PERC Policy Brief (2022). See also *Confronting the Wildfire Crisis*, *supra* n. 9 at 30 (predicting that existing “shovel ready” projects could be completed in years 1 and 2 of the plan); Forest Service, *National Prescribed Fire Program Review* App. A 21 (2022) (identifying the need to “streamline required environmental analysis and consultations”).

¹¹ See Congressional Research Service, *Legal and Practical Implications of the Ninth Circuit’s Cottonwood Environmental Law Center v. U.S. Forest Service Decision Under the Endangered Species Act* (2022) (discussing the temporary *Cottonwood* fix Congress enacted in 2018).

¹² See *Pet. for Cert.*, *U.S. Forest Serv. v. Cottonwood*, No. 15-1387 (filed June 10, 2016); Fish & Wildlife Serv., *Proposed Rule to Amend Consultation Requirements*, 86 Fed. Reg. 2373 (January, 12, 2021); Deputy Chief Christopher French, Forest Service, Response to Questions for the Record, Senate Comm. on Energy and Natural Res. Hearing on S. 2561 (October 21, 2021) (hereinafter Deputy Chief French QFR). For ease of access, this document is appended to this testimony.

¹³ See Letter from PERC and Other Conservation Organizations to Senators Schumer, Carper, Manchin, Capito, and Barasso (Sept. 20, 2022); News Release, *Daines, Tester, Simpson, Peterson Introduce Legislation to Reverse Disastrous Court Ruling* (Mar. 9, 2017) (noting support from the National Wildlife Federation, Trout Unlimited, Boone and Crockett Club, Congressional Sportsmen’s Foundation, Wildlife Management Institute, and other conservation groups).

¹⁴ See Letter from Senators Daines, Risch, Tester, Crapo, and King to the President (Jan. 31, 2023) (urging the President to support a permanent *Cottonwood* fix); Congressional Sportsmen’s Found., *Two CSF Conservation Priorities Pass Senate Committee with Strong Bipartisan Support* (July 25, 2022).

¹⁵ See *Fix America’s Forests*, *supra* n. 2 at 4.

¹⁶ GAO, *Wildland Fire: Federal Agencies’ Efforts to Reduce Wildland Fuels and Lower Risk to Communities and Ecosystems* (2019).

provide lower quality habitat, are more vulnerable to insects and disease, and are less resilient to climate change and drought.¹⁷

As with any complex phenomenon, no single factor fully explains declining forest health or the wildfire crisis. A changing climate has increased the risk of drought and extended the west's "wildfire season."¹⁸ A massive jump in the number of people living near or recreating in forests has increased opportunities for human-caused ignitions.¹⁹ But the largest factor, according to a study by Forest Service scientists, is excessive forest density and the buildup of fuels due to decades of failed fire suppression policies.²⁰

Fire is nothing new to western forests, which are adapted to flames due to climate, terrain, and Indigenous tribes' use of controlled fire for millennia.²¹ However, recent catastrophic wildfires are far more destructive than historical fire regimes. They are more likely to threaten old-growth trees, wipe out habitat for wildlife, and cause erosion that degrades watersheds and fish habitat.²² Even mighty giant sequoias—some of which have withstood life in California's rugged Sierra Nevada mountains for thousands of years—are at risk. The National Park Service estimates that 10–20% of the world's remaining members of this species have been killed by wildfires since 2020.²³ Wildfire emissions are also a major climate concern. California's record wildfire year in 2020, for example, released twice the amount of emissions that the state cut between 2003 and 2019.²⁴

Since 2005, the United States has three times eclipsed 10 million acres burned by wildfires in a year—an unfathomable total just a few decades ago—with the vast majority of that acreage concentrated in the West.²⁵ And due to growing populations near forests, modern fires also threaten communities and property in ways not seen before.²⁶ Nearly 100,000 structures have burned in wildfires since 2005, with two-thirds of that destruction occurring since 2017.²⁷ California's Camp Fire in 2018 was the deadliest and most destructive in that state's history, killing 85 people and destroying most of the town of Paradise, CA in less than 24 hours.²⁸

Forest restoration efforts, including mechanical thinning and prescribed fire, are urgently needed to reduce wildfire damage and promote forest resilience. The effectiveness of these tools was demonstrated in 2021 during Oregon's Bootleg Fire, which ultimately burned more than 400,000 acres.²⁹ Firefighters reported that where both treatments had been applied, fire intensity was reduced, the crowns of trees were left intact, and the blaze became a more manageable ground fire. Reports also indicated that an area where scheduled prescribed burns had been delayed suffered more damage than areas where treatments had been completed.³⁰

The Forest Service has simply not been able to keep up with forest restoration needs. From 2009 to 2018, it averaged restoration treatments on less than 4 million acres per year.³¹ But this does not mean that the Service would catch up in 20 years, as dividing an 80-million-acre backlog by 4 million acres per year would suggest. The Forest Service tracks acres treated in a non-intuitive way that precludes such easy comparison. If a Forest Service projects calls for treating 1,000 acres with commercial thinning, non-commercial thinning, piling and burning, and broadcast burning over 4 years, it may count this project as 4,000 acres treated: 1,000 commercially thinned in year 1; 1,000 non-commercially thinned in year 2; 1,000 pile-burned in year 3; and 1,000 prescribed burned in year 4. For more than two decades, the GAO has criticized the Forest Service's approach as creating perverse incentives and generating misleading data.³² Requiring accurate reporting on

¹⁷ See *Fix America's Forests* n. 2 at 8–13.

¹⁸ See *Burn Back Better*, *supra* n. 2 at 4.

¹⁹ See *id.*

²⁰ See Sean A. Parks et al., *High-Severity Fire: Evaluating Its Key Drivers and Mapping Its Probability Across Western US Forests*, Environmental Research Letters (2018).

²¹ See *Burn Back Better*, *supra* n. 2 at 4.

²² See *Fix America's Forests*, *supra* n. 2 at 8–10.

²³ See Dr. Kristen Shive, et al., *2021 Fire Season Impacts to Giant Sequoias* (last visited Mar. 19, 2023).

²⁴ Michael Jerrett, Amir S. Jina, Miriam E. Marlier, *Up in smoke: California's greenhouse gas reductions could be wiped out by 2020 wildfires*, 300 Env'tl Pollution 119888 (2022).

²⁵ See *Fix America's Forests*, *supra* n. 2 at 10–11.

²⁶ See *Burn Back Better*, *supra* n. 2 at 4.

²⁷ Headwaters Economics, *Wildfires Destroy Thousands of Structures Each Year* (2022).

²⁸ National Institute of Standards & Technology, *New Timeline of Deadliest California Wildfire Could Guide Lifesaving Research and Action* (Feb. 8, 2021).

²⁹ See *Burn Back Better*, *supra* n. 2 at 5.

³⁰ See Sara Sutherland & Eric Edwards, *How Environmental Red Tape Inflames Wildfire Risk*, PERC Reports (2022).

³¹ See *Federal Agencies' Efforts to Reduce Wildlife Fuels*, *supra* n. 16.

³² See *Wildland Fire Management*, *supra* n. 8; *Western National Forests*, *supra* n. 8.

treated acres, Chairman Tiffany's proposed ACRES Act (H.R. 1567) would help address this problem and better ensure responsible management.

The Bozeman Municipal Watershed Project and the *Cottonwood* Decision

In 2004, the Custer-Gallatin National Forest and the city of Bozeman, Montana determined that wildfire risks threatened 80% of the city's water supply, along with valuable wildlife habitat, recreational areas, and homes and infrastructure. The Forest Service and the city began work on a plan to fix the problem by restoring a forested area on the outskirts of town.³³

Carrying that plan out, however, would prove much more difficult. It took three years to prepare a draft NEPA analysis.³⁴ While the Forest Service was working on finalizing it, a federal court reversed the delisting of the local grizzly bear population, triggering additional Endangered Species Act analysis and delaying a final decision.³⁵ When that analysis was completed, several organizations objected to it. The Forest Service resolved those objections in 2011 and formally approved the project, 7 years after the process began. At that point several especially litigious organizations filed lawsuits challenging the project.³⁶

In *Cottonwood*, an environmental litigation group challenged the Bozeman Municipal Watershed Project and two other projects under the Endangered Species Act. In 2009, while the projects were being developed, the Fish and Wildlife Service designated nearly 10,000 square miles within the Greater Yellowstone Ecosystem as critical habitat for the Canada lynx.³⁷ In analyzing the project, the Forest Service thoroughly considered this development and concluded that the project would have no impact on the critical habitat.³⁸ Nonetheless, the plaintiffs demanded the project be stopped because the Forest Service had not re-initiated consultation with the Fish and Wildlife Service over a forest plan that had been completed years before the critical habitat designation was made.³⁹ A federal court issued an injunction blocking the project while the litigation played out.⁴⁰

Section 7 of the Endangered Species Act requires federal agencies to consult with the Fish and Wildlife Service (or, for aquatic species, the National Marine Fisheries Service) whenever any "action" it authorizes, funds, or carries out is likely to jeopardize a listed species or adversely modify its critical habitat.⁴¹ The statute suggests consultation is a one-time event that must be completed within 90 or 180 days of when the federal agency requests the Fish and Wildlife Service's opinion.⁴² However, the Fish and Wildlife Service has, by regulation, defined it as a continuing obligation. Under that regulation, the agency must re-consult for at least some actions whenever a new species is listed, new critical habitat is designated, or "new information" is discovered.⁴³ Thus, agencies routinely reconsult over ongoing projects, including forest restoration projects.

The question in *Cottonwood*, however, was whether the Forest Service must also reinitiate consultation over the forest plan. These plans provide a general road map for future management decisions but do not authorize any on-the-ground activity.⁴⁴ That must be done through a subsequent action, like the Bozeman Municipal Watershed Project, that goes through its own environmental analysis and ESA consultation. Prior to *Cottonwood*, the apparent answer to this question was "no." The Supreme Court had, interpreting essentially identical language in the National Environmental Policy Act, held that land management plans like this are not continuing actions and, therefore, do not require supplemental analysis.⁴⁵ The Tenth Circuit had considered the precise question in *Cottonwood* and held that once

³³ See *BMWP Record of Decision*, *supra* n. 3.

³⁴ See *id.*

³⁵ See *id.*

³⁶ See *Salix v. Forest Service*, 944 F. Supp. 2d 984 (D. Mont. 2013); *Alliance for the Wild Rockies v. Krueger*, 950 F. Supp. 2d 1196 (D. Mont. 2013). Between 2007 and 2017, more litigation challenging forest restoration projects was filed in the District of Montana than anywhere else in the country. See *Fix America's Forests*, *supra* n. X at 38 (reporting that Montana had 50% more of this litigation than the second-place district, the Eastern District of California). A handful of especially litigious groups are responsible for this concentration.

³⁷ See Susan Gallagher, *Protected land for lynx expands*, Seattle Times (Feb. 25, 2009).

³⁸ See *BMWP Record of Decision*, *supra* n. 3 at 26.

³⁹ See *Salix*, 944 F. Supp. 2d 984.

⁴⁰ *Id.*; *Alliance for the Wild Rockies*, 950 F. Supp. 2d 1196.

⁴¹ 16 U.S.C. § 1536(a).

⁴² *Id.* § 1536(a)(3) (referring to "prospective agency action"); *id.* § 1536(b) (setting deadlines for completing consultation).

⁴³ 50 C.F.R. § 402.16.

⁴⁴ *Forest Guardians v. Forsgren*, 478 F.3d 1149 (10th Cir. 2007).

⁴⁵ *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 73 (2004).

a federal land management plan is issued the action is complete and Section 7's consultation requirement no longer applies.⁴⁶

The Ninth Circuit went the other way, holding that federal agencies must reinitiate consultation at the forest plan level whenever there is a new species listed, critical habitat designated, or any other new information.⁴⁷ Essentially reading the word “action” out of the statute, the court held that so long as an agency could take some future hypothetical action affecting the species, like amending an existing forest plan, then it must perpetually consult over past, completed actions—even those that have no on-the-ground impact on the species.⁴⁸

The Obama administration urged the Supreme Court to reverse this outlier decision, explaining that it “has the potential to cripple the Forest Service and BLM's land-management functions” and to distract the Fish and Wildlife Service from activities that could actually benefit listed species.⁴⁹ Unfortunately, the Supreme Court declined to review the Ninth Circuit's aberrant decision.⁵⁰

Soon after the Supreme Court passed on the case, the Forest Service requested consultation with the Fish and Wildlife Service. That process would take nearly a year, with several rounds of back-and-forth between the two agencies.⁵¹ According to the Forest Service, this single reconsultation cost the agency more than \$250,000.⁵² And, ultimately, it concluded that the forest plan was not likely to destroy or adversely modify lynx critical habitat and, therefore, required no change.⁵³

In 2020, 16 years after the project was initiated, the federal court lifted the injunction and allowed the project to finally proceed. Notably, the extended delays and mountain of additional paperwork did not result in any material change to the project or benefit to any species. The project is being implemented today in exactly the way it was proposed more than a decade ago. But the attorneys who brought the case made \$300,000 in attorney's fees paid by the government.⁵⁴

And, of course, the litigation group behind *Cottonwood* promptly filed a new lawsuit challenging the project, arguing that all of the analysis should be redone yet again because a new scientific study had been published.⁵⁵ That case, fortunately, didn't go very far and the project is currently being implemented.⁵⁶

The Need for a *Cottonwood* Fix

Soon after the Supreme Court declined to review *Cottonwood*, Congress responded by passing a temporary fix. That fix provided that neither the Forest Service nor the Bureau of Land Management needed to reinitiate consultation over completed land management plans, with certain qualifications, whenever a new species is listed or critical habitat is designated.⁵⁷ That decision staved off, even if only temporarily, *Cottonwood*'s full negative effects.

Even so, the exceptions to the temporary fix have given a preview of what's to come without a permanent fix. According to the Forest Service, 27 lawsuits had been filed and another 49 had been threatened as of October 2021.⁵⁸ Those cases resulted in five injunctions.⁵⁹ Today, the temporary fix expires and, without further action from Congress, we're about to see the full effect of the Ninth Circuit's decision.

Congressman Rosendale's Forest Information Reform Act (H.R. 200) would permanently fix *Cottonwood* by clarifying that perpetual reconsultations over forest plans are not required. Notably, it would not affect reconsultation over individual projects to implement these plans and, therefore, would not sacrifice any species conservation.

⁴⁶ *Forest Guardians*, 478 F.3d 1149.

⁴⁷ *Cottonwood Environmental Law Center*, 789 F.3d at 1084–88.

⁴⁸ *Id.*

⁴⁹ See Pet. for Cert., *supra* n. 12.

⁵⁰ *Forest Serv. v. Cottonwood Env't L. Ctr.*, 137 S. Ct. 293 (2016).

⁵¹ See Fish and Wildlife Service, *Biological Opinion on the Effects of the Northern Rockies Lynx Management Direction on Designated Critical Habitat for Canada Lynx* (2017).

⁵² Deputy Chief French QFR, *supra* n. 12 at 1–2.

⁵³ See *Biological Opinion on the Effects of the Northern Rockies Lynx Management Direction*, *supra* n. 51 at 31.

⁵⁴ See Stipulated Settlement Agreement, *Cottonwood Envtl. Law Ctr. v. Forest Service*, 12-cv-45 (Apr. 27, 2017).

⁵⁵ See Helena Dore, *Federal judge tosses lawsuit against three southwest Montana timber projects*, *Bozeman Daily Chron.* (Dec. 19, 2020).

⁵⁶ See *id.*

⁵⁷ P.L. 115-141, § 208, 132 Stat. 1065 (2018).

⁵⁸ Deputy Chief French QFR, *supra* n. 12 at 2.

⁵⁹ See *id.*

A Cottonwood fix is necessary to reduce the forest-restoration backlog and tackle the wildfire crisis

In 2022, the Biden administration released a 10-year strategy to tackle the wildfire crisis, which calls for restoring 20 million acres of national forest system land over and above the Forest Service's usual workload.⁶⁰ To meet that ambitious but essential goal, the agency needs a reliable and efficient process for developing, approving, and implementing forest restoration projects. Unfortunately, the current process is slow and cumbersome. A recent study by PERC found that on average it takes 3.6 years after the environmental review process is initiated to begin on-the-ground work for a project involving mechanical treatment and 4.7 years for a project involving a prescribed burn.⁶¹ If an environmental impact statement is required, these timelines shoot up to 5.3 and 7.2 years, respectively.⁶² For litigated projects, tack on an additional 2 years.⁶³ The Wildfire Crisis Strategy's 10-year goals cannot be met if projects are tied up for most of that time in paperwork.

Without a permanent fix, *Cottonwood* would add additional delays and bureaucracy to forest restoration projects not captured in the above figures. According to Forest Service estimates, the temporary fix's expiration means that the agency must reinitiate consultation over 187 species across 36 national forests.⁶⁴ This will take the agency 5–10 years to complete at a cost of several million dollars—money which, otherwise, could fund on-the-ground restoration work.⁶⁵ Vicki Christiansen, the former Forest Service Chief, summed up the problem well: “the consequences are severe . . . [T]his Cottonwood decision is duplicative . . . It takes numerous resources away from getting work done on the ground.”⁶⁶

Endangered and threatened species and other wildlife may pay the price for bureaucratic delays. In 2011, the Klamath National Forest proposed a project to reduce wildfire risks in northern spotted owl habitat.⁶⁷ For 10 years, the project was held up due to objections over impacts to the owl.⁶⁸ Ultimately, 2021's Antelope Fire “burned through the site before a single chainsaw touched a tree, destroying the owl habitat that the environmental groups were trying to save,” according to the Sacramento Bee.⁶⁹ And the negative impacts to wildlife can continue long after the last flame is put out. In New Mexico, Rio Grande cutthroat trout are still struggling a decade after a catastrophic wildfire burned through Bandelier National Monument.⁷⁰

Although *Cottonwood* is limited to the Ninth Circuit, its effects will be felt far beyond. The Ninth Circuit covers Arizona, California, Oregon, Washington, Idaho, Montana, Alaska, and Hawaii, states which contain a disproportionate share of the national forest system.⁷¹ When forests in these states burn, they release smoke that travels hundreds of miles, exposing countless communities to harmful pollutants.⁷² They also threaten landscapes and species valued by people around the country and, indeed, around the world.⁷³

Projects in neighboring states may also be affected if litigants can find a way of filing cases challenging them in the Ninth Circuit. Such stark differences in the law among circuits encourages forum shopping. In 2019, an environmental litigation group filed a case in Arizona seeking to block forest restoration projects throughout Region 3, which includes all of New Mexico.⁷⁴ The Forest Service identified the injunction from that case—and the region's foresters need to catch up after missing

⁶⁰ See *Confronting the Wildfire Crisis*, *supra* n. 9.

⁶¹ See *Does Environmental Review Worsen the Wildfire Crisis?*, *supra* n. 10 at 8.

⁶² See *id.*

⁶³ See *id.* at 9–10.

⁶⁴ Deputy Chief French QFR, *supra* n. 12 at 2.

⁶⁵ See *id.*

⁶⁶ See *Legal and Practical Implications*, *supra* n. 11 at 10.

⁶⁷ See Ryan Sabelow & Dale Kasler, *Wildfire scientists push back against CA environmentalists*, Sacramento Bee (Oct. 17, 2021).

⁶⁸ See *id.*

⁶⁹ See *id.*

⁷⁰ See Susan Montoya Bryan, *Post-wildfire conditions result in poor recovery for fish*, AP (Mar. 10, 2023).

⁷¹ See *Fix America's Forests*, *supra* n. 2 at 16. 85% of cases challenging forest restoration projects are filed in courts within the Ninth Circuit. See *id.* at 38.

⁷² See Nadja Popovich & Josh Katz, *See How Wildfire Smoke Spread Across America*, N.Y. Times (July 21, 2021). See also EPA, *Why Wildfire Smoke is a Health Concern* (last accessed Mar. 2, 2023).

⁷³ See Kyle Dickman, *To Save Sequoias From Wildfire, We Must Save Them From Ourselves*, Outside (July 13, 2022).

⁷⁴ See *WildEarth Guardians v. Fish & Wildlife Service*, 416 F. Supp. 3d 909 (D. Ariz. 2019).

a year of their work because of it—as a factor in the prescribed burn that grew out of control and became the 340,000-acre Hermit's Peak fire.⁷⁵

Reversing Cottonwood would not undermine the Endangered Species Act

While reversing *Cottonwood* would remove a significant obstacle to forest restoration, it wouldn't sacrifice protections for species. As the Tenth Circuit explained in *Forest Guardians*, forest plans and similar land management plans are not self-implementing.⁷⁶ They are, the court explained, “more akin to ‘road maps’ . . . creating a vision” for future forest management decisions.⁷⁷ These plans can only affect listed species by being implemented through individual projects. And all of these projects must already go through consultation and address impacts to newly listed species, designated critical habitat, or discovered information.

Fixing *Cottonwood* would also not interfere with implementation of the Endangered Species Act. The rule announced in the case did not exist during the statute's first four decades. It has never applied in most of the country. And even where and when it has applied, Congress has sharply limited its application through the temporary fix. Thus, allowing the decision to go fully into effect is likely to upset settled implementation of the Endangered Species Act, rather than the reverse, by significantly increasing the burden on the Fish and Wildlife to do a significant number of duplicative consultations that distract from its on-the-ground efforts to recover species.

Cottonwood's supporters claim that it is essential to species conservation and imposes virtually no burdens on the Forest Service.⁷⁸ But their arguments are self-refuting. One claimed a document “debunked” any argument that *Cottonwood* produces delays because the Custer-Gallatin National Forests' reconsultation over the lynx critical habitat took less than 4 months.⁷⁹ But the document actually shows that the consultation took nearly a year.⁸⁰ The Forest Service was only able to limit the delay this much by devoting 400 employee days to the work at a cost of \$250,000.⁸¹ Another group asserts that fixing *Cottonwood* would “gut” the consultation process.⁸² The only example they cite for this hyperbolic assertion is a reconsultation over several frog species in the Sierra Nevadas.⁸³

But that reconsultation resulted in no change to the forest plan or benefits to the species, it was simply duplicative.⁸⁴ And, of course, these examples do not reflect what would happen now that the temporary fix is expiring and the Forest Service suddenly faces 5–10 years' worth of reconsultations to complete all at once at a cost of time and money the agency doesn't have to spare.⁸⁵

⁷⁵ See Forest Service, *Gallinas-Las Dispensas Prescribed Fire Declared Wildfire Review* (2022).

⁷⁶ See 478 F.3d at 1154.

⁷⁷ See *id.* at 1155.

⁷⁸ See Bart Johnsen-Harris & Lauren McCain, *Cottonwood Overhaul Threatens Strength of the ESA*, Defenders of Wildlife (Dec. 22, 2022); Press Release, *Completion of Northern Rockies Lynx Analysis Discredits Montana Senators' Rationale for Weakening Endangered Species Act*, Center for Biological Diversity (Dec. 4, 2017).

⁷⁹ See *Completion of Northern Rockies Lynx Analysis*, *supra* n. 78.

⁸⁰ See *Biological Opinion on the Effects of the Northern Rockies Lynx Management Direction*, *supra* n. 51 at 1, 4 (stating that the consultation was initiated on Nov. 2, 2016 and concluded on Oct. 18, 2017).

⁸¹ Deputy Chief French QFR, *supra* n. 12 at 2.

⁸² See *Cottonwood Overhaul Threatens Strength of the ESA*, *supra* n. 78.

⁸³ See Letter from Alaska Wilderness League, et al., to House and Senate Leadership (Dec. 13, 2022).

⁸⁴ See also Fish and Wildlife Service, *Amendment of the Programmatic Biological Opinion on Nine Forest Programs on Nine National Forests in the Sierra Nevada of California for the Endangered Sierra Nevada Yellow-legged Frog, Endangered Northern Distinct Population Segment of the Mountain Yellow-legged Frog, and Threatened Yosemite Toad* 2, 58 (June 15, 2017) (deeming the Forest Service's existing standards and best management practices were already sufficient). These groups have also emphasized the remarkably short amount of time spent on this consultation (10 days). But this amount of time is misleading. In that case, the Forest Service had previously consulted after the Service proposed critical habitat for the frogs and toad and prospectively addressed and regulated the proposed areas as if they had already been designated. See *Programmatic Biological Opinion on Nine Forest Programs on Nine National Forests in the Sierra Nevada of California for the Endangered Sierra Nevada Yellow-legged Frog, Endangered Northern Distinct Population Segment of the Mountain Yellow-legged Frog, and Threatened Yosemite Toad* (Dec. 19, 2014). See also *California Cattlemen's Assoc. v. Fish & Wildlife Service*, 369 F.Supp.3d 141 (D.D.C. Mar. 27, 2019) (denying grazing permittees' standing to challenge the critical habitat designation because the Forest Service began regulating to conserve “essential habitat” more than a decade earlier and the designation led to no new restrictions).

⁸⁵ See Deputy Chief French QFR, *supra* n. 12 at 2.

Cottonwood was wrongly decided

Finally, Congress should fix *Cottonwood* because the Obama administration's position in the case was correct and the Ninth Circuit's decision was not. The Endangered Species Act does not impose a free-floating consultation requirement for federal agencies. Instead, it requires that they consult over any "action" they approve, fund, or carry out that is likely to harm species or their critical habitats.⁸⁶ This limits consultation to proposed or ongoing agency actions. Once a forest plan or other land-use plan is finalized, the action is complete and the consultation requirement no longer applies.⁸⁷ This conclusion is compelled by the logic of a 2004 Supreme Court decision.⁸⁸ And it is explicitly confirmed by the Tenth Circuit.⁸⁹

The Ninth Circuit, on the other hand, essentially read the action requirement out of the statute. According to it, so long as an agency has the power to potentially take some future action that might affect a species, it must perpetually reconsult over its past, completed actions. As the Obama administration warned in urging Supreme Court review of the case, there is no limiting principle to this theory. Unless it is reversed, there's no reason to expect it to be limited to forest plans and other land management plans. Instead, every agency could have to repeatedly consult over every regulation they've ever issued every time a new species is listed, critical habitat is designated, or a new study comes out.⁹⁰ And supporters of *Cottonwood* have already indicated they want to stretch the decision to other agencies.⁹¹ Neither the Fish and Wildlife Service nor other federal agencies have the bandwidth for such an unlawful, unprecedented, and unnecessary expansion of the consultation requirement.

Conclusion

Shrinking the 80-million-acre restoration backlog that fuels the wildfire crisis is an urgent conservation challenge. *Cottonwood* erects unnecessary red tape and encourages special-interest litigation that would hinder the Forest Service's ambitious 10-year goals in the Wildfire Crisis Strategy. Allowing the temporary *Cottonwood* fix to expire and the decision to fully go into effect would be a serious setback to forest restoration. Congress should act now to fix the Ninth Circuit's errant decision.

Mr. TIFFANY. Thank you, Mr. Wood, for your testimony. The Chair will now recognize Members for 5 minutes. We will start with Representative Fulcher from Idaho.

Sir, you have 5 minutes.

Mr. FULCHER. Thank you, Mr. Chairman, and thank you to our panelists for coming and speaking today. I appreciate your input, expertise, and your work.

I have a few questions, but I would like to start with Mr. French. I didn't get to hear all of your testimony, but I was able to read it, and I wanted to touch base in regard to the fire retardant issue. We have a piece of legislation on that, obviously, coming up here. Share, if you will, to me and to the Subcommittee here, on what would happen with the Forest Service's ability to fight fires if that tool was not in the toolbox?

Mr. FRENCH. So, the question is if we lost the ability to use retardant?

Mr. FULCHER. Yes.

Mr. FRENCH. It would be a critical loss of an essential tool we have to protect communities. In the last 12 years, we have dropped

⁸⁶ 16 U.S.C. 1536(a).

⁸⁷ See Pet. for Cert., *supra* n. 12 at 28–32.

⁸⁸ See *Southern Utah Wilderness Alliance*, 542 U.S. at 73.

⁸⁹ See *Forest Guardians*, 478 F.3d at 1154–55.

⁹⁰ See Pet. for Cert., *supra* n. 12 at 28–32.

⁹¹ See Letter from Alaska Wilderness League, *supra* n. 83 at *3 (suggesting *Cottonwood* be applied to the Environmental Protection Agency, Army Corps of Engineers, Department of Transportation, Federal Emergency Management Agency, and other agencies).

more than 81,000 times retardant in order to create critical space for our firefighters to go in and reduce the intensity of fires before they come into communities.

It is an essential tool for us out West. And as a past firefighter, I can't imagine sending ground folks in to fight fires if you have not gone through and pre-treated or reduced areas from their intensity with retardant. It would be crippling.

Mr. FULCHER. Thank you for that, and for the perspective. While you are on here, I want to do another question with you, and this has to do with the FIR Act. I think that you had mentioned in your testimony, at least in the written testimony, that the Forest Service had some concerns with the FIR Act, and that is the legislation Mr. Rosendale has. Is that the case, and can you share what that might be?

Mr. FRENCH. Yes. I think, in terms of the FIR Act, there are some specific call-outs to the role of project level consultation that we would like to work with you on to be more specific in the language, as an example. Those are some of the spaces that we would like to focus on.

Mr. FULCHER. So, it is a language issue, or there is a fundamental problem in the approach?

Mr. FRENCH. No, there is definitely a language issue that requires some clarification on how it is applied.

Mr. FULCHER. OK. All right. Thank you for that.

Mr. Bronson, if I could talk to you just for a moment here. You had an interesting comment with your testimony that litigious special interests have weaponized the Endangered Species Act. And beyond just fixing a major issue, the *Cottonwood* decision, what other reforms would you recommend to solve that problem?

Mr. BRONSON. Well, Mr. Chairman, Representative Fulcher, that is a big question.

I think, fundamentally, that the Endangered Species Act lays out some very clear restoration goals and processes. The problem with this specific issue with *Cottonwood* is the fact that we have a loop that they keep returning back again any time new information comes on. It makes it hard to manage, going forward. So, that is specifically here.

But I think the other issues relating to the use of the Equal Access to Justice Act, where folks are, frankly, making money filing suits again and again over these issues, those are probably our top concerns.

Mr. FULCHER. Thank you for that. I can't disagree.

I have about 1 minute left here. Mr. Wood, you also talked about the *Cottonwood* decision. In 30 seconds or so, paint a picture from your perspective what the West would look like if every single forest plan or resource management plan had to be redone every time a new endangered species challenge comes up.

Mr. WOOD. Yes. So, I think the best example to look at is what happened with the Mexican spotted owl litigation that delayed forest restoration work in New Mexico and Arizona for over a year, and ultimately led to a wildfire there.

If you have dozens of existing forest plans that have to go through re-consultation all at the same time, the Forest Service doesn't have the ability to do that. It is not going to be a matter

of weeks, like some of the cherry-picked examples that supporters of *Cottonwood* cite. It is going to take years. And in the meantime, projects are not going to be able to go forward because you cannot invest resources or do on-the-ground work while you are consulting at the forest plan level.

Mr. FULCHER. Great. Thank you, Mr. Wood, panelists.

Mr. Chairman, I yield back.

Mr. TIFFANY. Thank you, Representative Fulcher. Next, I would like to recognize the Ranking Member, Representative Kamlager-Dove.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair.

Ms. Brown, in your testimony, you noted how frequently the Forest Service re-initiates these consultations at the landscape level scale. There are approximately 154 national forests. How many per year re-initiate consultations on their plan, and what is the main reason that they do so?

Ms. BROWN. Thank you, Congresswoman. I appreciate that question.

Usually, the reason that the Forest Service re-initiates consultation is because of an underlying change in the action, meaning that the Forest Service is actually changing its forest plan on its own, in response to either amending the plan to incorporate, for example, new information or new provisions, or is revising their plan. So, usually, the agency itself is re-initiating consultation, as it should, under the law.

Ms. KAMLAGER-DOVE. And how many, do you think?

Ms. BROWN. I think the number is pretty low. It is around seven per year, I believe.

Ms. KAMLAGER-DOVE. OK, great. Now, on these rare occasions where re-initiation occurs, it is my understanding that the U.S. Fish and Wildlife Service has to complete a biological opinion. And when this occurred in the national forests in the Sierra Nevada for several species of endangered frogs, how long did it take to complete?

Ms. BROWN. I think it took 11 days.

Ms. KAMLAGER-DOVE. OK. And under this legislation, if the Forest Service or BLM learned that climate change, worse droughts, or wildfires were occurring and harming endangered salmon, or bull trout, or spotted owls, or amphibians, or any species, could they re-initiate consultation at the landscape scale to address the impacts of climate change?

Ms. BROWN. Yes, they could, and they should do so.

Ms. KAMLAGER-DOVE. OK. Mr. French, do you agree or disagree with these answers?

Mr. FRENCH. I definitely disagree with the context of some of the answers.

The example we use: Often, when you hear about the time frames for consultation, they don't take into consideration literally the months and sometimes years it takes of negotiations to develop the analyses to support those. The last one that we did, as an example here, that looked at the Lynx Amendments that we did in Region I, that was over 400 personnel days that took us to get there, and it was nearly a quarter of \$1 million, and it took well

over a year. And that is more the typical space that we find ourselves in.

More importantly, every project that was held up had gone through specific consultation, and there was no change to all those plans that we re-consulted on, because all the standards and guides essentially were fine for what we were doing. So, there was really no conservation benefit.

Ms. KAMLAGER-DOVE. OK. So, when you say you disagree with the context, it is really my questions, not necessarily her answers.

Mr. FRENCH. Well, I disagree with the—I mean, you could—

Ms. KAMLAGER-DOVE. I have a limited amount of time, so I am going to reclaim my time and go on.

Ms. Brown, we are hearing arguments that the 9th Circuit's *Cottonwood* decision was wrongly decided because forest plans are not ongoing actions that require consultation. Do you agree with this assessment?

Ms. BROWN. No, I don't. The 9th Circuit Court of Appeals in *Pacific Rivers Council v. Thomas* in 1994 held that forest plans are ongoing actions and, therefore, because the agency retains control over those plans, that re-initiation is required under the Endangered Species Act. So, it has been the law of the 9th Circuit since 1994. There have been several other cases that have come to the same conclusion in addition to the *Cottonwood* case, and yet we have been able to manage our lands just fine since 1994.

So, I don't think that the *Cottonwood* case is really the boogeyman that folks hold it out to be. And it is interesting that we are now in this place when this has been the standard case law for the vast majority of our national forests for many years.

Ms. KAMLAGER-DOVE. Thank you. And my last question to you is, if you can just elaborate on why the FIR Act is not needed, in your opinion.

Ms. BROWN. Yes, I think that the Endangered Species Act works the way that Congress intended it to act. There is a two-phase approach. One, we are doing consultation on forest plans to undertake that large-picture view to make sure that our forest plans have the standards, and guidelines, and objectives in them in order to conserve and recover listed species. And then we need to take an individualized project-level look, as well, so that you look at how that plan is playing out in a particular place with additional information.

So, both levels of consultation provide information back to the Forest Service to make sure that they are, in fact, meeting their congressional obligations under the Endangered Species Act.

Ms. KAMLAGER-DOVE. Thank you for that.

Mr. Chair, I yield back.

Mr. TIFFANY. The gentlewoman yields. Next, I would like to recognize Mr. Bentz from Oregon.

Mr. BENTZ. Thank you, Mr. Chair, and my first question—I heard the statement that our forests are doing just fine, but perhaps I misunderstood that.

Ms. Brown, was that what you meant to say, that our forests are doing just fine under the current planning? I just heard that phrase a few minutes ago.

Ms. BROWN. Yes, I think that, legally, the forests are doing as is required by Congress. If your question is, could we do better in terms of our management of those lands, yes, I would agree with you, as we are trying to do in eastern Oregon with our collaborative work in your district.

Mr. BENTZ. Right. And to that end, the folks here would probably be interested in knowing that I think the reason it is working is the collaboration effort is good. Of course, it takes years, and it takes everybody around the table. But the only reason that it finally ultimately works is because some of that which is removed actually pays for the cost of removal.

And I have seen pictures of the log decks in that area, so I know that is exactly what is happening. So, the real challenge is to try to get people convinced, as you have tried to do, and I applaud your efforts, to allow the removal of actually merchantable timber in the process of cleaning up the forests. And that, to me, is a key element of any activity. Otherwise, you can't pay for it.

So, are you here willing to testify today that, indeed, being able to take merchantable timber off the land when we are trying to repair the forests, if you will, is an acceptable element of any of these plans?

Ms. BROWN. Yes, I am. I believe that there are areas of our forests that can pay for their way out of the woods. There are also probably more millions of acres that are going to require and have required congressional investment in order to pay to get that stuff off the land.

But yes, there can be a mix of activities, particularly as long as we have multiple-use management laws on the books.

Mr. BENTZ. Right, and thank you for that.

Mr. ELLIS, there is a constant refrain about the climate change. It is almost used, when we hear those two words, as an excuse, or maybe even something that we Republicans are blamed for. It is our fault almost that there is climate change.

And then there is a quick movement away from the actual fact of hotter and drier, which it is, longer seasons—the need to delay getting back into the forests and actually do something about it. We call it adaptation, I think. Because we know it is getting hotter, we know it is getting drier, and we need to get into the woods and fix it. Yet, the type of processes that apply to these absolutely essential activities delay, and delay, and delay. And the *Cottonwood* decision will delay things. There is no doubt of it.

But what is your thought? Is there a reason that justifies doing yet another study, when we know millions of acres are going to burn down? Is there something that is so much more important that we study it while we watch it burn? Or shouldn't we get in and do something about it to try to protect our forests first?

I mean, I am just asking. Should we study this thing until we all burn up, or should we get in the forests and do something about it?

Mr. ELLIS. Well, with regards to the current legislation, our organization does support the bill. The Forest Service has so much on their plate with the monies coming down through infrastructure and their 10-year strategy, which is a good strategy for addressing the restoration, especially in these fire sheds, to have to go back

on their already existing plans, it is going to cost them money, it is going to take staff time.

But back on your question about climate change, climate change is real. We are all feeling it, and it is affecting the forests, our rangelands. And our organization thinks the Forest Service has a good 10-year strategy in place. I think it is important in implementing the strategy to work with the communities. That is going to be very important for success—

Mr. BENTZ. Mr. Ellis, I appreciate the work—and by the way, don't get me wrong, it is getting hotter. It is getting drier. There is no doubt of it, and none of us dispute it. The real thing that I dispute is we don't seem to be adapting to it quickly enough by getting in the forests and trying to save them, particularly when it comes to the sequoias.

And one last question. I will go back to Ms. Brown for a second, and it is kind of a blunt question. The temporary *Cottonwood* fix will expire this month if Congress doesn't provide a permanent fix. Do you or your clients plan to file litigation against the Forest Service in Region 6 using *Cottonwood* as a precedent?

And if so, where do you believe it will be triggered, on what national forests and what current forest management plans? If you are not, then that is good, too. That is better, actually.

Ms. BROWN. As an attorney yourself, you probably are aware that if I did have such plans I couldn't disclose those for an ethical breach.

Mr. BENTZ. Well, I am glad you don't have any. That sounds correct. I am happy to hear you are not going to be suing on that kind of a basis.

With that, I yield back, Mr. Chair.

Mr. TIFFANY. The gentleman from Oregon yields back. I would like to recognize Representative Stauber for 5 minutes.

Mr. STAUBER. Thank you very much, Mr. Chair. I would like to welcome a very good friend of mine who is a logger and trucker from Northern Minnesota. He and his family harvest the wood that we produce in Northern Minnesota. Mr. Peter Wood, he is part of the Associated Contract Loggers and Truckers of Minnesota. I have been out with him, and it is something to see, he, and his daughter, and son harvest those crops in Northern Minnesota in such a professional way. Peter is sitting to the right, he has his boots on if need be, if we need something harvested, he is ready to go.

Peter, thank you for being here today.

Deputy Chief French, good to see you again. And I want to thank you for joining us today.

First of all, thank you for your willingness to work with my friend and colleague, Mr. Rosendale, on H.R. 200. Fixing *Cottonwood* needs to be a high priority. As you mentioned in your testimony, many forest plans are set to expire. Both of the plans in my district, the Superior and Chippewa plans, are in very late stages. And just a few months ago, the U.S. Fish and Wildlife Service uplisted the northern long-eared bat to endangered, despite no human cause whatsoever.

[Slide.]

Mr. STAUBER. And as you can see behind me, the range of the northern long-eared bat is massive. My district, along with all of

the Midwest, and most of the East are completely engulfed in northern long-eared bat habitat.

Mr. French, under *Cottonwood*, will every new northern long-eared bat roost discovered on forest system lands create the possibility of a new "information lawsuit" at the project level?

Mr. FRENCH. It certainly could.

Mr. STAUBER. Repeat.

Mr. FRENCH. Yes, it could.

Mr. STAUBER. OK. When safe harbor expires for plans such as the Chippewa and Superior, will this set up a whole new level of liability for consultation?

Mr. FRENCH. Yes, what will happen as of today is that we have 87 plans that have one of those triggers, either a new listing, new species, or new information that we would need to start re-consultation on.

Mr. STAUBER. So, some claim this re-consultation is not onerous because it is limited to 135 days. In your experience, does consultation actually occur within that time frame?

Mr. FRENCH. No. And I want to be thoughtful here, because we have a very good working relationship with the Fish and Wildlife Service and NOAA Fisheries.

When you start the official clock and you create that time frame, there are literally usually months, and months, and months, sometimes years, of work that goes into a particular consultation. I did it for years. I mean, that was part of my role in this agency. I think, across the board, if you talk to any of our biologists, we routinely never meet that deadline.

I will say that the Fish and Wildlife Service and the leadership there are working diligently to help change that.

Mr. STAUBER. I agree, we do need to change that. Again, thank you very much, Mr. French, for your willingness to work on H.R. 200 with my good friend, Mr. Rosendale. We need to solve this problem.

Mr. Ellis, in my minute and 32 seconds here, thank you for joining us. I am a proud co-sponsor of Mr. LaMalfa's legislation because we need to be doing all that we can to suppress wildfires. I am worried about the Biden administration's lack of seriousness here. If a nation-wide ban takes effect, how much more danger should wildland firefighters expect to face as they try to fight catastrophic wildfires?

Mr. ELLIS. It is a problem. As a former firefighter, there are many times where I ordered retardant, or been on fires that had retardant. As I said in my testimony, it is a critical tool to stay in the toolbox.

Mr. STAUBER. It would put firefighters' lives in danger, correct?

Mr. ELLIS. Yes, firefighters and the public, not to mention the public and people living in these communities.

Mr. STAUBER. Thank you. I will just say that, first off, thanks for your service. To allow this Administration to put a blanket ban on—I think is derelict. As a witness here today, you just supported Mr. LaMalfa's legislation in a way that many people don't understand. They don't look at the human toll and the concern for our firefighters out in our forests that are fighting these forest fires to

protect all of us, including the forests, and our lives. And I want to thank you for that.

And I want to thank all the witnesses for your testimony, taking the time to come here to be at this hearing.

And, Mr. Chair, I yield back.

Mr. TIFFANY. The Representative yields. Now, I would like to recognize the Representative from California.

Ms. PORTER. Thank you so much.

Ms. Brown, we are told that because consultation occurs at the project level, that it doesn't need to happen again at the plan level. But it is my understanding that there are binding decisions made in plan-level documents like the placement of roads, or areas designated for off-road vehicle use that could, in fact, have impacts on newly-listed species.

Is it your understanding that all we need is project-level consultation to ensure land management decisions are not jeopardizing endangered species?

Ms. BROWN. No, Congresswoman, I do believe that we need to do consultation at both levels for the reasons that you just pointed to. For example, off-road vehicle use, including winter off-road vehicle use, is something that is authorized in the forest plan, and there are no subsequent project-level decisions that deal with that once that decision is made that we can go in certain areas off-roading, both winter and summer recreation. There is no further authorization that is required. So, it is important to take a look at that plan level to make sure that that authorization doesn't jeopardize listed species or their critical habitat.

So, this legislation would obviate that view when, in fact, that might actually be the action that is pushing a listed species toward extinction.

Ms. PORTER. So, it is the plan level consultation currently that helps us see the cumulative impacts across the landscape or a given region.

Ms. BROWN. That is right.

Ms. PORTER. Are there other decisions included—can you think of any—I mentioned the off-road vehicle use or the creation of a road. Do you have any other examples, if you can think of any, that are examples of things put in at the project level that could end up being a problem down the road, and that we need to see at the plan level?

Ms. BROWN. Yes, I think there are some other types of examples. One, are long-term authorization decisions that are made once, and then we implement those decisions over long periods of time that are authorized by the forest plan.

So, for example, mining is one such example. Grazing is another type of example. We are very behind on our environmental analysis and consultation on grazing decisions, and yet those are authorized initially in the forest plan itself. So, if we are not looking at the forest plan that actually addresses some of those longer-term authorizations, we are missing a big piece of the puzzle.

Ms. PORTER. Thank you very much. I yield back.

Mr. TIFFANY. Thank you. Next, I would like to acknowledge Representative Moylan for 5 minutes.

Mr. MOYLAN. Thank you, Mr. Chairman. Just a question for Mr. Steve Ellis.

Sir, I thank you for your 38 years of firefighting service there, and I understand, with your experience with these fires—you are here today, at least. You knew exactly how to take care of our forests and other people that you helped out throughout that service. So, thank you, sir.

And in your testimony, you mentioned that you are aware of instances where these retardant drops, at the right time and place, make all the difference in life and property protection for the final outcomes. And sir, with all your experience, I would just like you to continue to express to us the importance of what this is with your frontline examples when it comes down to it.

Explain more if these retardant drops can make such a difference in these types of wildfire situations.

Mr. ELLIS. Well, Congressman, I mean, there are many examples out there you could come up with in 38 years. I think one that comes to mind for those of you familiar with Blaine County, Idaho, Sun Valley and Ketchum, Idaho. Back in the 1980s, I had a call one night. An aircraft had come out of the Sun Valley Airport and gone into the mountainside. It was tragic. All lives were lost. I think a Boise News reporter was on that flight, as I recall.

So, my people and I went up there, and we were working direct. That means we were working a line burning out between the fire and—the mountainside was on fire between the fire and the community down above Hailey. Obviously, we don't use retardant at night. In daytime, we would have put it down, but in the morning we had the airtankers going, and we put some down on top to keep it from looping around toward Ketchum. Everybody knows about Ketchum, Idaho, if you head north that way. And then also, to assure it wouldn't move down into the community where the houses were, and we caught it. And a tragic loss of life, a small aircraft. I could give you a lot of them. But that is one that comes to mind.

Mr. MOYLAN. I appreciate you stressing the point, and I thank you once again for what you have done and appreciate all the work you continue to do to educate us on the right thing to do here, as the Committee. So, thank you very much.

Mr. Chairman, I yield back. Thank you, sir.

Mr. TIFFANY. The Representative yields. Next, I would like to recognize Mr. Rosendale for 5 minutes.

Mr. ROSENDALE. Thank you, Mr. Chairman. First, I request the unanimous consent to enter into the record a letter of support from Senator Daines, who has the companion bill in the Senate for my FIR Act.

Mr. TIFFANY. So moved.

[The information follows:]

UNITED STATES SENATE

March 23, 2023

Chairman Bruce Westerman
Committee on Natural Resources
1324 Longworth House Office Bldg
Washington, DC 20515

Ranking Member Raúl Grijalva
Committee on Natural Resources
1332 Longworth House Office Bldg
Washington, DC 20515

Dear Chairman Westerman, Ranking Member Grijalva, and Members of the Committee:

I write in support of the legislative hearing the Subcommittee on Federal Lands will hold on Congressman Rosendale's Forest Information Reform (FIR) Act, which takes up the important question of fixing the disastrous consequences that came from the 2015 *Cottonwood Environmental Law Center v. U.S. Forest Service* (*Cottonwood*) decision.

The *Cottonwood* decision has caused significant damage by delaying necessary forest management work, which has hampered wildfire mitigation efforts and wildfire restoration projects on our public lands and National Forests leading to a higher risk of wildfire. For example, a proposed forest management project in the Lewis and Clark National Forest of Helena, Montana, was delayed by *Cottonwood* litigation. Soon after, the Park Creek and Arrastra Wildfires burned over half of the proposed treatment area damaging forest health and valuable wildlife habitat. Unfortunately, this cycle of litigation delays and wildfire is not a unique occurrence. *Cottonwood* litigation can involve multiple states and multiple forests in the same delays. This happened to five national forests in New Mexico and one in Arizona that were embroiled in *Cottonwood* litigation, which delayed forest management work and put at risk millions of acres of national forest. In the wake of these delays, the Hermits Peak Fire became the largest wildfire in New Mexico's history. A permanent fix is urgently needed to stop the frivolous attacks against responsible forest management.

In 2018, Congress included a partial *Cottonwood* fix in the Consolidated Appropriations Act, which amended consultation requirements for the Forest Service and BLM. National Forest System lands and BLM lands were exempted from re-initiation of consultation, under certain circumstances, but this fix expires today. This hearing on the FIR Act is timely as the Committee will hear updates from the Forest Service on the expected result of this expiration. In 2021, at a Senate Energy and Natural Resources hearing, Deputy Chief of the National Forest System, Chris French testified that approximately one hundred forest plans will have to immediately initiate a re-consultation as a result of the expiration, which would cost millions of dollars over several years, not to mention the possibility of even more litigation that would slow or stop forest management projects. This would be devastating for forested communities as we enter the 2023 fire season.

A *Cottonwood* fix is critical for forest and ecological health and has enjoyed bipartisan support in the Senate. Last Congress, the Senate Energy and Natural Resources Committee passed my bill that would fix the 9th Circuit's *Cottonwood* decision, S. 2562, by voice vote. It is time we get this permanent fix signed into law and I thank the Committee for the persistent work in this shared goal.

I look forward to working with you, the House of Representatives in its entirety, and my colleagues in the Senate to send a *Cottonwood* fix to President Biden's desk.

Sincerely,

STEVE DAINES,
United States Senator

Mr. ROSENDALE. Thank you so much. Very good. I am going to start with Mr. French.

Mr. French, I am trying to set a historical perspective here on exactly what has been going on in the Forest Service. It seems to me that, basically, you used to be an enterprise unit, and that the

Forest Service used to generate revenue back into the Federal Government.

[Chart.]

Mr. ROSENDALE. If we look at the chart right behind me here—it is a little bit crooked—but you can see that at one time, going back into 1989, the Forest Service, adjusted by inflation, was generating \$2.9 billion a year, \$2.9 billion a year of revenue, which certainly was going to take care of covering the costs for the Forest Service, and then generate revenue for the people across this nation.

And in Fiscal Year 2021, that value has been reduced to about \$152 million, one-twentieth of the actual revenue that they used to generate back in 1989. Does that seem like it is accurate to you? I mean, do I have something that is wrong, or—

Mr. FRENCH. I mean, the total volume—if you are referring to timber harvest from that time to this time has declined, significantly declined, especially in terms of the amount of merchantable sawlogs that we offer, which is where that revenue and market base would be from.

Mr. ROSENDALE. Sure. So, how long, on average, do the consultations take between the Forest Service and the U.S. Fish and Wildlife Service? Because we continue to get conflicting information here.

Mr. FRENCH. Well, again, I will talk on my own experience.

Like I said, it used to be under consultation approaches, even in the 9th Circuit, before the *Cottonwood* decision, if we did see an issue that we thought we needed to re-initiate and do at a longer, larger scale, we could do that within our own time frames if we saw something that we thought that made sense for it. But we could continue on with our project-level consultations, and those would look at both what the effects of that project were, and also we have to disclose our foreseeable actions, our past actions, look at that cumulatively. And when we get issued a biological opinion from the Fish and Wildlife Service, they look at the effects within the range of the species. These take a long time.

I mean, they have 135 days. I will tell you, just as an example, the one I gave you before took over a year for us to accomplish. The ones in New Mexico that were referred to before took us well over a year to accomplish. I just met with all the regional foresters across the agency last Monday, and their No. 1 concern that they brought up to me was the length of time it was taking for us to do consultation.

Mr. ROSENDALE. Exactly. I appreciate that. I am going to go to Mr. Wood.

Mr. Wood, it is so good to have you here from Bozeman. I have gone up on the watershed for Bozeman, and recognized that 80 percent of the city's water comes from that area. And to think that it took 15 years to sign off on a plan that did not deviate at all from what was proposed 15 years ago to me is frightening, because there could have been an absolute tragedy there if there had been a fire and that watershed had been damaged.

So, my question is, what are the impacts of the delays for the broader Forest Service management? What are the impacts and

risks involved in not taking care of those management practices when they are first proposed?

Mr. WOOD. Yes. So, the risk is we currently have an 80-million-acre forest restoration backlog. That will grow if we don't start doing work at much larger scale and reducing it. And as long as that restoration backlog remains, we will have wildfire risks, we will have degraded habitat, we will have worse watersheds.

It is not just people that pay the cost, but towns like Bozeman certainly would. We got very lucky that we didn't have a fire in those 15 years, but our endangered and threatened species are also paying the price for past management decisions.

Mr. ROSENDALE. Thank you.

And we have heard testimony from Ms. Brown that we really don't have that much of a delay when we are doing this additional investigation. But I can tell you we have 28 sales that are being held up in Montana right now, covering 30,000 acres.

If we could have the next slide brought up.

[Slide.]

Mr. ROSENDALE. For the 10 years between 1983 and 1993, harvested timber acres outpaced wildfires. It outpaced wildfires. So, we have the timber down below, and we have the wildfire acres up above here. And as you can see, from 1983 to 1993, timber being harvested outpaced the acreage that was being burned. And you can see what happens.

Thank you, Mr. Chair, for giving me just one more moment.

You can see what happens as the timber being harvested has gone down. It is amazing that the total acres that are being destroyed by wildfires has increased dramatically in those time periods.

Thank you very much, Mr. Chair. I yield back.

Mr. TIFFANY. The gentleman yields. I would like to recognize the gentleman from California, Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman, once again, and I appreciate my colleague from Montana bringing those charts there, and pointing out in graphic detail what we are looking at with the load of inventory we have in our forests. And it seems to make perfect sense, the correlation there between fire and the overloaded inventory.

Let me consult here with our witness on—I would like to—for Ms. Brown here real quick—by the way, my staff assistant you may have seen here a little while ago wants to send “Go Pios” to you. You are a Pioneer, Lewis and Clark? Yes, OK.

Ms. BROWN. Yes.

Mr. LAMALFA. No one else will probably get that, but—

Ms. BROWN. No, Mr. Bentz is gone.

Mr. LAMALFA. Did you ever get to go see the train museum up there?

Ms. BROWN. I have not.

Mr. LAMALFA. Oh, it is excellent. Go look up 4449, the locomotive. Anyway—

[Laughter.]

Ms. BROWN. Thank you for the tip.

Mr. LAMALFA. So, as several of my colleagues have mentioned here in the situation we have seen ourselves getting in, the forest

condition, 40 or 50 years now, there is a lot of frustration on this panel, as well.

The consultations were just talked about. What do you see as the win in the length of time the consultations are taking, versus getting out and doing the type of thinning, and managing, and harvesting that would, I think, by Mr. Rosendale's chart, show that there is a direct relation in over-population in the forests and the intensity of fire?

Ms. BROWN. Well, I do think that, through the consultation process, both at the project level and at the plan level, we are gaining information about how our land management actions are affecting listed species, and through that process are also able to take mitigation actions to ensure that those actions don't unnecessarily harm listed species or their critical habitat.

And I do agree that in many cases and in many places we should be doing more science-based, active restoration.

I think what would be a fruitful area of conversation is to actually dig a little deeper in terms of why is it taking the Forest Service as long as it is to consult, along with Fish and Wildlife Service and National Marine Fisheries Service. Is this a staffing concern? Is it a funding concern? And I think those questions could use a deep dive.

Mr. LAMALFA. Could it be that if, when they do the work, that someone finds it to be incomplete and it turns into a lawsuit because, oh, you forgot to do this, you didn't do that, on a particular species that they somehow left off the list, or what have you?

And it seems that those are tools used by those that don't want us to be out in the woods to stop and stall, even post-fire. What do you think of that?

Ms. BROWN. Sometimes that is true. That is the nature of the judicial system, that we have tools to hold the Federal Government and agencies accountable, and oftentimes we use those tools.

But I also do believe that there are ways to get ahead of these issues through collaboration, for example, through thoughtful forest planning, through thoughtful, large landscape planning like the collaborative Forest Landscape Restoration Program. There are ways to address those issues.

Mr. LAMALFA. Yes, it seems that one was, you might say, more aggressive forest management harvest 50 years ago versus what Mr. Rosendale's charts are showing is that the bogging down is what is causing us to lose. Wildfires used to be more commonly thought of as a big fire, maybe 5,000 acres. Now, commonly, it is 100,000 acres any more. So, it seems the process we are talking about is actually going backward toward fire safety.

And with longer drought periods, we are just getting into more trouble.

Ms. BROWN. Well, if I might, Congressman, I do believe—and it is actually a fact—that we used to harvest far more timber than we do today. And as a result of that kind of management, we are also facing an extinction crisis in a lot of ways. We have also degraded water quality in a lot of ways. Now, I think we have learned a lot in those past 50 years, and our science has advanced

in terms of how we can more sensitively manage our lands and reduce wildfire risk.

We also used to put out fires consistently, and what the best available science tells us today is that that was actually a mistake, and we need to find a way to reintroduce fire in a thoughtful and safe way.

Mr. LAMALFA. Yes, and we are so far behind, though, now it is really hard to introduce the fire, so we have to do a lot more mechanical harvest and find a narrow window of time in the winter or whatever that you can actually burn things, which I support. We probably were over-aggressive on putting out everything instantly.

Anyway, I thank you. Mr. Chairman, I will yield back.

Mr. TIFFANY. The gentleman yields. I think we have gotten through all of our panel, and I am going to take 5 minutes here to ask a few questions.

Mr. Bronson, what we heard earlier is that re-initiation of the process just takes a few days, that there isn't that much that is involved with it. Could you comment about the effect in the *Cottonwood*-related injunction that helped lead to the Hermits Peak Fire? Did those delays not affect that?

Mr. BRONSON. Mr. Chairman, I think clearly, the fact that we had overgrown habitats not necessarily in the burn area, but adjacent to it, but also in the prescribed fire area that had not been mechanically thinned prior to that, and the fact that management had been held up for a long time, and there was an urgency that was felt by the agency that led to the eventual prescribed fire getting out of control and becoming a wildfire.

So, clearly, those delays in the prevention of that mechanical thinning for over a year were contributing factors.

Mr. TIFFANY. Yes, because I show those delays as being, like, 13 months. Is that correct?

Mr. BRONSON. Correct.

Mr. TIFFANY. Yes. Deputy Chief French, why should Wisconsin firefighters come to the West if you are not going to use that retardant?

I have friends, I know many DNR personnel that work in fire in the Wisconsin Department of Natural Resources. They regularly go out West. If fire retardant is not going to be used, why should they go out West and risk their lives?

Mr. FRENCH. Thank you, Chairman. We will continue to use retardant as long as we are allowed to, and when retardant is necessary in order to reduce wildfire severity, in order to bring in ground crews. If we cannot use it, we will not put ground crews in that position.

Mr. TIFFANY. So, if you can't put ground crews in, what happens?

Mr. FRENCH. We have to try to manage that fire in a different way, maybe from a much further place. I mean, I want to be clear. For us, retardant is an essential needed tool for us to suppress fires.

Mr. TIFFANY. Mr. Ellis, what is this going to look like if they can't use retardant?

Mr. ELLIS. Well, it is a problem. If you can't use retardant, you are going to put more public at risk, you are going to put more fire-

fighters at risk, infrastructure, you are going to have higher cost in property loss. It is just such a key tool.

As far as your firefighter strategy, if you get big fires and what you end up is going back into what we call a point protection type of situation, where in those large fires we just figure out key areas we want to try to defend, defend them the best you can. But you are going to have more fires, bigger fires. You are going to have more fires that are small, that you would normally catch small, get larger.

Mr. TIFFANY. Mr. French, is your agency going to aggressively defend your ability to use this fire retardant?

Mr. FRENCH. Absolutely.

Mr. TIFFANY. Mr. Wood, tell me about the 9th Circuit. We are saying that the law is simply being used as being written, and stuff like that. Is the 9th Circuit viewed as mainstream amongst the various circuits in the United States?

Mr. WOOD. No. Historically, it has been overturned by the Supreme Court at a much higher rate than other circuits, especially on forest management.

As I mentioned, two districts are responsible for a vast majority of litigation. I believe the overall number is something like 80 percent of cases are filed in the 9th Circuit, and that is true even for forest regions that span both the 9th and 10th. Litigants have an incentive, and do, file cases in the 9th Circuit instead of the 10th, take advantage of their law.

Mr. TIFFANY. So, if you want to shut down natural resources production in America, the 9th Circuit is the place to go.

Mr. WOOD. Based on the current law over injunctions and *Cottonwood* and other—yes, you would have the easiest time, because there you could just prove the procedural violation. You wouldn't have to deal with the substance.

Mr. TIFFANY. So, we see significantly different decision-making that comes out of the 9th Circuit versus some of the others around the country?

Mr. WOOD. Absolutely. The 10th Circuit has explicitly rejected the 9th Circuit's approach on *Cottonwood*, and the Supreme Court's decision in Southern Utah Wilderness Alliance casts serious doubt on it.

Mr. TIFFANY. So, my time has expired here.

We are going to move to a second round of questions here. Any objection?

No, then I would like to recognize Mr. Rosendale for 5 minutes.

Mr. ROSENDALE. Thank you, Mr. Chair, I appreciate that. I do have a couple more questions.

I want to go to a specific project. We have been talking pretty broad about the general condition of forests and forest health here, but we have the Stonewall Project in the Helena-Lewis and Clark National Forest, and that would have managed—specifically managed—vegetation to benefit wildlife, specifically. But *Cottonwood*-inspired litigation delayed the project. So, I am going to divide this into two separate questions.

How would this project have benefited? I want to get the environment from you, Mr. Wood, and then following, if you could tell me

how would it have benefited wildlife, Mr. Bronson, in Montana. So, if you could, please.

Mr. WOOD. So, the question is how would it benefit the environment different than wildlife? So, I shouldn't address—

Mr. ROSENDALE. Yes, let him adjust the wildlife. We are going to have you address the environment. How would that have benefited the environment?

Mr. WOOD. So, wildfire risk is a huge problem for water quality and air quality. We, in Montana, breathe the trees that burn in California and Oregon. So, when we don't address these projects quickly, the environmental consequences are not limited to the area, they spread wherever the smoke goes.

Mr. ROSENDALE. Mr. Bronson? Wildlife.

Mr. BRONSON. The Stonewall Project in Montana involved elk management objectives that were trying to increase the quality of grazing, opening up some areas and reducing canopy cover, so that there was improved grass and forb production, which is what elk eat. It was specifically aimed at improving the habitat to benefit the elk in the area.

One of the things that we have seen in Montana and in other places is that in 1984, when the Elk Foundation started, elk spent most of their time on Federal national forest land. And we are seeing more and more that elk are not spending as much time on that public land, because the improved habitat on private land, industrial forests and places, that is where the elk are spending more of their time, and that is creating additional problems.

One of the problems in Montana is that elk sometimes are impacting agriculture on private lands. Well, those elk didn't used to do that, because they were on the national forests. And it is because of declining habitat quality on the national forests.

Mr. ROSENDALE. Thank you very much, Mr. Bronson.

[Chart.]

Mr. ROSENDALE. And I would say that probably the declining condition of the forests has a lot to do with this graph that we see here, where we used to have probably 20 times more forests being harvested, which created that understorage that they would actually be able to consume, instead of having the old-growth forests, which wildlife does not—I am not a biologist.

What wildlife would we find in these old forests that are choked out with dead—

Mr. BRONSON. Not very much, especially the older filled-in conifer forests. Red squirrels are one of the mammalian species that are present, but a lot of the species that many of us are focused on and care about, they do require openings, they require edge habitat. They require a more diverse mix of forests. Large stands and large tracts of old growth are not as productive for most wildlife species.

Mr. ROSENDALE. Thank you so much. And, again, what we see is this broad range between what used to be harvested out of the forests, where the wildfires were, the acreage that they consumed, and where it has grown to today.

Now, I am not a scientist, but it doesn't take a rocket scientist to figure out that when you decrease the amount of timber that you are taking out of the forests, is it safe to say, Mr. Wood, that it

is going to come out of the forests in the form of smoke instead of logs?

Mr. WOOD. Yes, absolutely. And I agree with Ms. Brown's comment earlier that commercial timber harvesting is what funds the non-commercial harvesting that has to happen. A lot of the greatest fire risk comes from small-diameter trees and brush, but we can't afford to get that out if we are not doing commercial timber harvesting.

Mr. ROSENDALE. And finally, Mr. Bronson, if I could, I have seen the land after a wildfire has gone through it. And because of the excessive fuel supply that is there, typically those lands are sterile for quite some time. They have ruined the air quality, as we have had other witnesses state before, that we end up breathing the timber that is burning in California in my home state of Montana. But we also see a deteriorating land quality, we see water quality, we see fisheries, and they are destroyed for many, many years.

Would you say that we are putting other animals at risk of being listed on the Endangered Species Act by the destruction of so much habitat?

Mr. BRONSON. We certainly are reducing the quality of habitat, which is diminishing species and populations. Yes.

Mr. ROSENDALE. Thank you very much. Mr. Chair, I would yield back.

Mr. TIFFANY. The gentleman yields. I would like to recognize Representative LaMalfa for another 5 minutes.

Mr. LAMALFA. Thank you again.

In the Forest Service testimony, it was expressed that the Biden administration opposes touching the Clean Water Act. So, Mr. French, based on your understanding of our bill, does this amend the Clean Water Act?

Mr. FRENCH. My understanding of the bill is it wouldn't require us to have a permit under the Clean Water Act.

Mr. LAMALFA. Pardon?

Mr. FRENCH. My understanding of the way the bill is constructed, the way I read it, it wouldn't require us to have a permit for discharge under the Clean Water Act.

Mr. LAMALFA. But it doesn't change the Clean Water Act.

Mr. FRENCH. It doesn't change the underlying fundamental law, no.

Mr. LAMALFA. All right. OK. Because what we are talking about with this material, its typical application is about 85 percent. It is a mix, 85 percent water, 10 percent the ammonium phosphate fertilizer, and then about the other 5 percent would be clay and other materials that make it stick, a sticker like we refer to in agriculture. So, the vast majority of this material is basically inert to any environmental issue.

So, I don't understand what is being expressed here, other than another ploy to prevent the normal operations of putting out fire. I don't understand that. So, it is water, fertilizer, and a little bit of a sticker material to make it stick to the foliage. So, the problem here is one that I don't understand.

And as we have heard plenty today is that, without this material, we are in big trouble. And one of the reasons we named it as we did is that it is also going to be helpful for firefighters who

we put in the line of fire, so to speak, and the safety of them being involved is critical, as well.

So, when you mentioned a minute ago it might require the Forest Service to take a retreat position and have a fire be much farther and much wider to find a way to defend it if we don't have these tools, is that what I heard you say?

Mr. FRENCH. It can be, depending on the tactics of that particular fire. We have gone through environmental disclosures on the use of retardant, and we use low toxicity and materials, and we have not found significant effects.

Now, having said that—or I should say we have disclosed the effects, and they were determined to be acceptable in the space we are in. And as was mentioned earlier, we have done a lot to create best management practices, training, buffers in order to reduce any potential risk.

Mr. LAMALFA. And this is done at the Forest Service guidelines.

Mr. FRENCH. Yes.

Mr. LAMALFA. It isn't by some private party. So, they are following your guidelines.

Mr. FRENCH. Correct.

Mr. LAMALFA. And what we have expressed over and over again is that, using this material, you have a buffer zone. So, the plane, the helicopter drops it. There is maybe a 300-foot zone. None of it can hardly even get from the drop zone—maybe a little bit into the buffer, that is what buffers are for, and in the rare instances where there has been a water issue, my understanding anecdotally is that that water space was monitored, and no harm came to any wildlife or fish.

So, we are talking about a pretty safe material here. And those folks that are trying to thwart that are really putting a lot of land, a lot of acres, a lot of wildlife, and a lot of people and communities in great harm.

Let me touch on the other bill that I am working with Mr. Peters on, and I appreciate his help and being in partnership with him on that, on a good bipartisan bill. So, Mr. French, when we are talking about these horrendous chemicals that—me, as a farmer in my real life, we had a hard time keeping the ones we use, the label current and the ability to use them. And these folks are getting to use things that have been illegal in this country or were never legal in this country.

What are you really seeing on these sites?

I have been to the sites up in Siskiyou County, Northern California. What are we doing here when we can hardly keep the retardant available to us, yet so little is being done on these illegal grow sites for marijuana and such?

Mr. FRENCH. It is a mess. I mean, we have to go in, and we are spending millions of dollars because often we don't know what materials were used. And then, when we do find containers, you can see that they are very dangerous to humans. So, we have to go in and treat it as a contaminated site.

Mr. LAMALFA. Quickly, do you find the environmental groups are as worried about these chemicals as they are the retardant and other measures to go fight fire?

Mr. FRENCH. I can't speak to that, Congressman.

Mr. LAMALFA. OK. All right.

Thank you, Mr. Chairman.

Mr. TIFFANY. The gentleman yields. I am going to take another 5 minutes here for a second round of questioning.

Ms. BROWN, have you ever sued one of the cartels for the damage they are doing in the national forests?

Ms. BROWN. No.

Mr. TIFFANY. When you have litigated, have you ever measured the emissions from fires to incorporate into your lawsuits?

In other words, the additional emissions that are going to happen as a result of a lawsuit that delays a project, have you ever incorporated that in as one of the balancing factors that the judges should take into account?

Ms. BROWN. Congressman, as far as I know, none of my litigation has actually caused or resulted in a wildfire. So, no.

Mr. TIFFANY. As far as you know. How many sawmills have closed in the Western United States?

You saw that chart where we went from the harvest that we were at, and where we are at now. How many sawmills across the West have closed?

Ms. BROWN. I couldn't answer that, but I would say a substantial number.

Mr. TIFFANY. Do you know how many people are unemployed as a result of those sawmills being closed?

Ms. BROWN. I could not answer that.

Mr. TIFFANY. Yes, I had a very good friend who was actually my college roommate at the University of Wisconsin River Falls, who went out West and went up to the glacier area, and he used to write poignant letters to me in the early 1990s, telling about how they are shutting us down, and we are losing so many employees. We are losing mills, one after another. It was a terrible story, and all due to this litigation.

Have you ever served on a fire line like Mr. Ellis is referring to?

Ms. BROWN. No, I have not, but through my collaborative work I have kept a mill open.

Mr. TIFFANY. Mr. French, so if *Cottonwood* expires and that spreads throughout the country, how many forest plans across the country will be vulnerable to re-consultation if there is not action by Congress?

Mr. FRENCH. Our estimate as of yesterday on the expiration today, is that there are 87 plans currently in need of re-consultation when the safe harbor expired today.

Mr. TIFFANY. How long would you guess—I mean, how long is typical that it will take for that re-consultation? How many days, months, years?

Mr. FRENCH. It is different. Every single plan is different. Our earliest estimation, which we have been working on for, actually, well over a couple of years, is likely somewhere between 5 and 10 years and tens of millions of dollars.

Mr. TIFFANY. Five to 10 years to get through those projects that have to go back through re-consultation?

Mr. FRENCH. For us to do consultation on the plans right now that are subject to re-consultation with the expiration of the safe harbor, that is our best estimate right now.

And, again, that is different, forest by forest.

Mr. TIFFANY. So, it is not 13 days, it is 5 to 10 years.

Mr. FRENCH. Well, in totality of what I just gave, and we are adding more as we don't get plans revised.

Mr. TIFFANY. How is that going to affect the ability to execute your 10-year wildfire strategy?

Mr. FRENCH. It diverts a lot of natural resource biologists and others that would be surveying projects and doing consultation on fuel reduction projects.

And that is one of our biggest challenges, is that our non-fire workforce in the last 15 years has declined so much that every little extra thing we put in the system just causes our ability to do things to decline.

Mr. TIFFANY. How are you doing hiring people?

Mr. FRENCH. We are doing better than we did a year ago. It is still unacceptable. We have—

Mr. TIFFANY. So, it is like—if I may interject—it is like the rest of America. You talk to any employer, public or private, they are having a hell of a time finding people.

Mr. FRENCH. Our biggest issue is housing, the salaries we pay, the availability. We did increase last year, but not at a rate we need to.

Mr. TIFFANY. And that, folks, is why you can't say, "Congress, throw more money at the problem. Hey, and we will fix it," because there are not enough bodies to do the work unless you can get the cartels to come and help you. Maybe you could do it that way.

Mr. WOOD, do you believe that the current method of reporting hazardous fuels treatments will be adequate to measure whether the target of 20 million acres is achieved, if we continue to do things as we are?

Mr. WOOD. No, based on the current reporting process, the public won't know whether you actually reduce the backlog by 20 million acres or 5. It is incredibly difficult to tell right now.

Mr. TIFFANY. So, it is important to pass the ACRES Act.

Mr. WOOD. Yes.

Mr. TIFFANY. OK. Well, I am going to close things up here.

First of all, I want to recognize two constituents of mine, the gentleman Henry Schienebeck, who serves as the Executive Director for the Great Lakes Timber Professionals, an organization that covers both Michigan and Wisconsin, widely respected, and the president of the association, Matt Jensen. I am so glad that you are here and visiting us in Washington, DC. I hope your visit has been productive.

And then I would like to ask unanimous consent to enter into the record these letters urging Congress to protect the continued use of fire retardant as a tool against wildfires from the following: California Farm Bureau; the Public Lands Foundation; National Association of Forest Service Retirees.

[The information follows:]

Public Lands Foundation (PLF)
Arlington, Virginia

March 17, 2023

Hon. Deb Haaland, Secretary of the Interior
1849 C Street NW
Washington, DC 20036

Dear Secretary Haaland:

On behalf of the Public Lands Foundation (PLF), I am writing you about a potentially serious issue facing the public lands and the wildland fire management agencies this coming fire season. This past fall the Forest Service Employees for Environmental Ethics (FSEEE) filed a lawsuit in the Montana District Court under the “citizen suit” provisions of the Clean Water Act (CWA) alleging violations of the CWA for past discharges of aerial fire retardant into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. The FSEEE is requesting that the U.S. Forest Service, and by extension other Federal fire management agencies, not use aerial applications of fire retardant until a permit is secured. This could potentially result in aerially applied retardant not being available for use in 2023, putting the public natural resources, infrastructure, and people at risk.

As you are aware, aerial fire retardant use is a big part of the Federal wildland fire response. It has been safely and responsibly used for decades under the assumption that a NPDES permit was not required because the regulations for administering the NPDES system (40 CFR 122) specifically state that fire control is a “non-point source silvicultural activity” (40 CFR 122.27). Communications from EPA dating back to 1993 also indicated that a permit was not required. The loss of this important tool through court order would have a nationwide effect on Department of the Interior agencies, the U.S. Forest Service, Department of Defense, and state fire agencies.

The National Association of Forest Service Retirees (NAFSR) recently sent a letter to Secretary Tom Vilsack on this issue (see attached). The letter lays out the issue in detail as well as suggesting some solutions. The PLF is in total agreement with the letter and encourages the Department to help find a solution to this important issue.

Thank you for your consideration.

Sincerely,

MARY JO RUGWELL,
President

National Association of Forest Service Retirees (NAFSR)
Ft. Collins, CO

March 7, 2023

Hon. Tom Vilsack
Secretary, U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Vilsack:

This past fall, Forest Service Employees for Environmental Ethics (FSEEE) filed a lawsuit in Montana District Court under the “citizen suit” provision of the Clean Water Act (CWA) alleging violations of the CWA for past discharges of aerial fire retardant into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit.

The 2011 Aerial Application of Fire Retardant EIS delineated more than 30% of USFS land area as retardant avoidance areas and developed a tracking process to monitor inadvertent drops into water. The 2011 decision prohibits delivery of fire

retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety.

In the draft 2022 Aerial Fire Retardant SEIS, the Forest Service disclosed that 376 out of 56,868 total fire retardant drops (less than one percent) made between 2012 and 2019 were directly into water, because of intrusions or the exception allowed to protect life and safety. FSEEE is alleging these direct drops into waterbodies violate the CWA because the Forest Service did not have a NPDES permit.

The CWA requires NPDES permits for any addition of a pollutant from a point source to navigable waters/waters of the United States. The Forest Service has been operating under the assumption that a NPDES permit was not required because the regulations for administering the NPDES system (40 CFR 122) specifically state that fire control is a “non-point source silvicultural activity” (40 CFR 122.27) and communications from EPA dating back to 1993 indicated a permit was not required. Overturning this 30-year-old exemption would set a bad precedent, opening a Pandora’s box, and likely putting other agricultural or silvicultural exemptions at risk.

Currently there is no NPDES permit established for aerial application of fire retardant. A rulemaking to establish a general permit would take several years and cost millions of dollars that could better be spent elsewhere. Even if EPA develops a national permit, states are not required to adopt it, but can modify or create their own. This would further complicate firefighting across state lines. A NPDES permit would add a large and wasteful administrative burden to Forest Service operations and would likely not change aerial application requirements, nor actual resource effects on the ground.

FSEEE is requesting the Forest Service not to use fire retardant until the permit is secured. This could result in fire retardant not being available for use starting this 2023 fire year and would needlessly put billions of dollars of infrastructure/assets/natural resources and millions of people at risk.

More importantly, it would remove a key tool used to safely fight wildfires and put at risk local, county, state, and federal firefighters at a time where wildfire is increasing in scale and scope across the western United States. Any court ruling has the potential to be nation-wide and affect the Department of the Interior (DOI), state fire agencies, and the Department of Defense (DOD), essentially all those who fight wildfires on federal, state and private lands.

In our view, Congress will need to pass legislation, either to give agencies time to develop a national permit or to codify the existing firefighting exemption. At a minimum, a potential solution would be to pursue a legislative fix that would allow the agency time to work through the permitting process while continuing to use fire retardant.

A much better and permanent solution would be to legislate that a permit not be required under this section, nor should any State require a permit, for application of fire retardant from aircraft in connection with fire suppression activities. We support the latter.

Many members of NAFSR are former wildland firefighters and understand the need and use of fire retardant as a critical tool, as well as the need to ensure its careful use. We feel that to not allow the use of fire retardant in fire suppression would be unconscionable.

The Congress would also find it unacceptable to stand by in the middle of this summer as a wildfire threatens life, property, and valuable natural resources without the use of fire retardant. Legislating during such an emergency is certainly less desirable than acting now.

Sincerely,

STEVE ELLIS,
Chair

Mr. TIFFANY. In their letter, the National Association of Forest Service Retirees writes correctly that to not allow the use of fire retardant in fire suppression would be unconscionable.

So, I would really like to thank all the witnesses for taking the time and treasure to come here to Washington, DC to testify. I am hoping that our Committee and our Subcommittee is going to be out and around America, not just Washington, DC here, as we go

forward. I know the Chairman of the Full Committee has expressed that, and we really look forward to getting out to visit America as we go through this session of Congress.

Members of the Subcommittee may have some additional questions for the witnesses, and we will ask you to respond to those in writing. Under Committee Rule 3, members of the Subcommittee must submit questions to the Committee Clerk by 5 p.m. on Tuesday, March 28, 2023. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Subcommittee is adjourned.

[Whereupon, at 4:33 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submissions for the Record by Rep. Tiffany

WESTERN GOVERNORS' ASSOCIATION Denver, CO

April 28, 2022

Hon. Deb Haaland, Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Hon. Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretaries Haaland and Vilsack:

As we collectively begin the work to responsibly implement provisions of the Infrastructure Investment and Jobs Act (IIJA, Pub. L. 117-58), Western Governors are concerned about the effect some procedural rules may have on the ability to expedite project implementation on public lands. A specific example is the requirement to reinitiate endangered species consultations of existing management plans following any new information.

This requirement has the potential to block or delay essential land management activities, wildlife habitat enhancement, and wildfire fuel reduction projects on federal lands. If new information triggers re-initiation of consultation at the project level, the U.S. Forest Service and Bureau of Land Management should not be required to have new consultation at the plan level. Forest Plans and Resource Management Plans should incorporate new information according to the timelines already established in statute.

Because species considerations are already incorporated at the project level, this change would neither affect how species are managed nor how habitat concerns are addressed. It would simply ensure that an entire Forest Plan or Resource Management Plan is not reopened due to the site-specific considerations of a local project. Modifying this requirement would avoid unnecessary and duplicative administrative processes and expedite other management activities already approved under Forest Plans and Resource Management Plans.

Western states are eager to increase the pace and scale of restoration activities on western forests and rangelands, mitigate the potential effects of uncharacteristic wildfire, and to support fire-adapted communities in the West. Western Governors stand ready to assist you in these important endeavors.

Sincerely,

Brad Little
Governor of Idaho
Chair, WGA

Jared Polis
Governor of Colorado
Vice Chair, WGA

July 20, 2022

Hon. Joe Manchin
Chairman
Senate Committee on Energy &
Natural Resources
306 Hart Senate Office Building
Washington, DC 20210

Hon. John Barrasso
Ranking Member
Senate Committee on Energy &
Natural Resources
307 Dirksen Senate Office Building
Washington, DC 20210

Re: Support for the Bipartisan, Manchin/Daines Substitute Amendment to S. 2561—“*Cottonwood Fix*”

Dear Chairman Manchin and Ranking Member Barrasso:

The undersigned conservation organizations, representing millions of natural resource professionals, sportsmen, and sportswomen are writing today to request the Senate Committee on Energy and Natural Resources favorably report the Bipartisan Manchin/Daines, Amendment in the Nature of a Substitute to S. 2561, the “*Cottonwood Fix*”.

Since the Ninth Circuit Court issued the 2015 *Cottonwood Environmental Law Center v. United States Forest Service* (*Cottonwood*) decision, the Forest Service (USFS) and Bureau of Land Management (BLM) have been required to reinitiate consultation with the Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration on Land Management and Forest Management Plans at the programmatic level when new Endangered Species Act (ESA) information came to light. This continues to block and slow many essential USFS forest management, wildlife habitat enhancement and wildfire fuel reduction projects.

On October 21, 2021, the U.S. Forest Service (USFS) testified before the Committee that unless action is taken to resolve challenges stemming from the 2015 *Cottonwood* decision, the agency will have to go through re-consultation, regardless of the merit, on over one-hundred forest plans that “will take years and cost millions of dollars,” threatening to undermine the Administration’s 10 Year Wildfire Crisis Strategy.

There has been bipartisan and widespread support for a “*Cottonwood Fix*.” In May 2016 the Obama Administration petitioned the Supreme Court to review and overturn the case, and in January 2021 the Trump Administration initiated a rule to amend Section 7 of the ESA to address the issue. The Supreme Court rejected the original petition, and no final rule has been issued.

Congress recognized the critical need to address the *Cottonwood* decision when it included a provision in the Consolidated Appropriations Act of 2018 that adjusted consultation requirements for the USFS and BLM, but with different instructions to each agency. The 2018 provision was only a partial “*fix*” providing the USFS an exemption from re-initiation of consultation only for critical habitat designations and species listings. Regarding BLM, Section 209 of the 2018 Act also provided a partial “*fix*” by exempting only grant lands under the Coos Bay Wagon Road Reconveyed Lands Act and Oregon and California Revested Lands Act from re-initiation of reconsultation for new species listings and critical habitat designations.

When this provision sunsets in March 2023, all forests, including those outside of the Ninth Circuit, will be subject to this unjustified, ambiguous procedural requirement. The USFS made clear to Congress, in testimony before this Committee, the adverse impact this will have on their ability to manage our forests and make significant strides to improve forest health.

Delays in forest management projects caused by “*Cottonwood*” litigation are costly and hinder critical forest management activities. Species listed under ESA are already considered when assessing each land management project implemented by the USFS. Agencies undergo review and consultation at the project level where the potential impacts can be best evaluated. Court rulings requiring reconsultation at the plan level are duplicative and unnecessary, and injunctions delay good projects from being implemented in a timely manner.

According to the National Interagency Fire Center, wildfires have burned nearly 5.5 million acres throughout the U.S. in 2022 and 52 million acres since 2016, with over 65% of the wildfires impacting federal lands. There is precedent for Congress to address “*Cottonwood*” and action is urgently needed end harmful and unnecessary delays in federal forest management activities, including the management work funded by the Bipartisan Infrastructure Investment and Jobs Act.

Our organizations would like to express our gratitude to Senators Daines and Manchin for their leadership in addressing this critical issue and it is with a sense of urgency to adequately manage our federal forests, that we support and urge the Committee to favorably report the bipartisan, Senator Manchin/Daines Substitute Amendment to S. 2561, the “*Cottonwood Fix*”.

Sincerely,

American Woodcock Society	National Rifle Association
Archery Trade Association	National Shooting Sports Foundation
Association of Fish and Wildlife Agencies	National Wild Turkey Federation
Backcountry Hunters & Anglers	North American Grouse Partnership
Boone & Crockett Club	Orion: The Hunter’s Institute
California Waterfowl Association	Pheasants Forever
Camp Fire Club of America	Pope & Young Club
Congressional Sportsmen’s Foundation	Public Lands Foundation
Conservation Force	Quail Forever
Council to Advance Hunting and Shooting Sports	Rocky Mountain Elk Foundation
Dallas Safari Club	Ruffed Grouse Society
Delta Waterfowl	Safari Club International
Ducks Unlimited	Sportsmen’s Alliance
Houston Safari Club	The Wildlife Society
Izaak Walton League of America	Theodore Roosevelt Conservation Partnership
Mule Deer Foundation	Whitetails Unlimited
National Assoc. of Forest Service Retirees	Wild Sheep Foundation
National Bobwhite Conservation Initiative	Wildlife Management Institute
National Deer Association	Wildlife Mississippi

Hon. Joe Manchin
Chairman
Senate Committee on Energy &
Natural Resources
306 Hart Senate Office Building
Washington, DC 20210

Hon. John Barrasso
Ranking Member
Senate Committee on Energy &
Natural Resources
307 Dirksen Senate Office Building
Washington, DC 20210

Re: “*Cottonwood Fix*”

Dear Chairman Manchin and Ranking Member Barrasso:

The undersigned conservation organizations, representing millions of natural resource professionals, sportsmen, and sportswomen are writing today to request that Congress take immediate action to address harmful and unnecessary delays in federal forest management activities caused by the *Cottonwood Environmental Law Center v. United States Forest Service* (*Cottonwood*) decision.

Since 2015 when the Ninth Circuit Court issued the *Cottonwood* ruling, the Forest Service (USFS) has been required to reinitiate consultation with the Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), and the National Oceanic and Atmospheric Administration on Land Management and Forest Management Plans at the programmatic level when new Endangered Species Act (ESA) information came to light. This has blocked and slowed many essential USFS forest management, wildlife habitat enhancement and wildfire fuel reduction projects.

There has been bipartisan and widespread support for a “*Cottonwood Fix*.” In May 2016 the Obama administration petitioned the Supreme Court to review and overturn the case, and in January 2021 the Trump administration initiated a rule to amend Section 7 of the ESA to address the issue. The Supreme court rejected the original petition, and no final rule has been forthcoming from USFWS.

Congress also recognized the critical need to address the *Cottonwood* decision when it included a provision in the Consolidated Appropriations Act of 2018 which adjusted consultation requirements for the USFS and BLM, but with different instructions to each agency. The 2018 provision was only a partial fix providing the USFS an exemption from reinitiation of consultation only for critical habitat designations and species listings and only through March 23, 2023. Regarding BLM, Section 209 of the 2018 Act also provided a partial “fix” by exempting only grant lands under the Coos Bay Wagon Road Reconverted Lands Act and Oregon and California Revested Lands Act from re-initiation of reconsultation for new species listings and critical habitat designations.

Delays in forest management projects caused by “*Cottonwood*” litigation are costly, duplicative and hinder critical forest management activities. Species listed under ESA are already considered when assessing each land management project implemented by the USFS. Agencies undergo review and consultation at the project level where the potential impacts can be best evaluated. Court rulings requiring reconsultation at the plan level are duplicative and unnecessary and injunctions delay good projects from being implemented in a timely manner. Current consultation regulations must be clarified to prevent frivolous lawsuits that seek to block projects that improve habitat for big game and other wildlife and reduces vulnerability of forests to catastrophic wildfire, insects and disease.

According to the National Interagency Fire Center, since 2016 wildfires have burned over 46 million acres throughout the United States, with over 65% of the wildfires impacting federal lands. While a regulatory “fix” may be possible, the federal regulatory process is cumbersome, time consuming and will lead to additional litigation. There is precedent for Congress to address “*Cottonwood*” and action is urgently needed lest the important management work that will potentially be

funded by the Bipartisan Infrastructure Funding bill will be tied up in courts. It is with a sense of urgency to get this important work done on the ground that we support and urge congressional action to provide a “*Cottonwood Fix*”.

Sincerely,

American Woodcock Society	Orion: The Hunter’s Institute
Archery Trade Association	Pheasants Forever
Backcountry Hunters and Anglers	Pope & Young Club
Boone & Crockett Club	Professional Outfitters and Guides of America
California Waterfowl Association	Public Lands Foundation
Camp Fire Club of America	Quail Forever
Congressional Sportsmen’s Foundation	Rocky Mountain Elk Foundation
Conservation Force	Ruffed Grouse Society
Delta Waterfowl	Safari Club International
Houston Safari Club	Sportsmen’s Alliance
Mule Deer Foundation	The Wildlife Society
National Bobwhite Conservation Initiative	Theodore Roosevelt Conservation Partnership
National Deer Association	Whitetails Unlimited
National Forest Service Retiree Assoc.	Wild Sheep Foundation
National Rifle Association	Wildlife Management Institute
National Shooting Sports Foundation	Wildlife Mississippi
National Wild Turkey Federation	

