

**TESTIMONY of
TROY HEITHECKER, ASSOCIATE DEPUTY CHIEF
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FEDERAL LANDS**

May 23, 2023

Concerning

- H.R. 188, “Proven Forest Management Act of 2022”**
**H.R. 934, To Require the Secretary of Agriculture to Carry Out Activities to Suppress
Wildfires, and for Other Purposes**
H.R. 1450, “Treating Tribes and Counties as Good Neighbors Act”
H.R. 1726, “Continued Rapid Ohia Death Response Act of 2022”
H.R. 3522, “FIRESHEDS Act”
H.R xxx, “Direct Hire to Fight Fires”
H.R. xxx, “Emergency Wildfire Fighting Technology Act of 2023”
H.R. xxx, “Fire Department Repayment Act of 2023”
H.R. xxx, “Forest Service Flexible Housing Partnerships Act of 2023”

Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the views of the U.S. Department of Agriculture on several bills that include provisions related to the USDA Forest Service.

In addition to the bills on today’s agenda, the agency would like to call attention to the urgency to invest in our wildland firefighters. Critical infrastructure, homes, communities, and natural resources are at grave and growing risk of catastrophic wildfire. Across the country, more than 12,000 Forest Service wildland firefighters benefitted from the temporary pay increase provided by the Bipartisan Infrastructure Law (BIL), including more than 4,400 across California and Washington. Investing in our federal firefighters means averting the pay cliff that thousands of federal wildland firefighters will soon face when funds from BIL are exhausted later this year.

To continue to advance wildland firefighter pay reforms, and improve recruitment and retention rates, the President’s FY 2024 Budget request increases Federal wildland and tribal firefighters’ pay, invests more in their mental and physical health and wellbeing, improves their housing options, and expands the number of permanent firefighters. These reforms build on the temporary pay increase provided by the Bipartisan Infrastructure Law. The permanent pay

reforms require authorizing legislation, and the Administration is committed to working with congressional leaders on advancing a comprehensive legislative proposal.

We offer the views below on behalf of USDA regarding the fire and forest management related legislation being considered before the subcommittee today, and we defer to DOI on those provisions that relate to DOI administered lands.

H.R. 188, “Proven Forest Management Act of 2022”

H.R. 188, the Proven Forest Management Act, includes several provisions affecting forest management.

Section 2(a) directs the Department of Agriculture (USDA), when conducting a forest management activity on National Forest System land, to coordinate with impacted parties to increase efficiency and maximize the compatibility of management practices across such land. This aligns with the requirements of the Multiple Use Sustained Yield Act of 1960 (MUSYA), National Forest Management Act (NFMA), and the 2012 Planning Rule which are the basis of our Land Management Plans. The MUSYA calls for the harmonious and coordinated management of the various resources, and NFMA similarly calls for development of land management plans through extensive public involvement as well as coordination with other local, State and Tribal planning efforts. USDA is unclear on how this provision is intended to alter or improve the coordination and public engagement which the Forest Service already conducts.

Section 2(b) directs USDA to conduct forest management activities on National Forest System land in a manner that attains multiple ecosystem benefits, so long as the costs associated with attaining such benefits are not excessive. The Forest Service manages National Forest System lands for multiple ecosystem benefits and impacts in compliance with the Organic Administration Act of 1897 and the Multiple-Use Sustained-Yield Act of 1960 (MUSYA). As the MUSYA already directs that the renewable surface resources of the National Forest System are to be managed for sustainable multiple use goods and services, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output, we are not sure what this provision is intended to change. In addition, we are uncertain how we would apply the exception for excessive costs, as “excessive” is not defined and the intent of this provision is unclear.

Section 2(c) directs USDA to (1) establish any post-program ground condition criteria for a ground disturbance caused by a forest management activity required by the applicable forest plan, and (2) provide for monitoring to ascertain the attainment of relevant post-program conditions. Forest Service Land Management Plans and project plans incorporate standards and guidelines designed to limit the potential adverse impacts of ground-disturbing activities, and monitoring is provided for at the plan and project level. The Department would like to work with the bill sponsor to understand the intent of this provision and to clarify the language.

Section 2(d) categorically excludes certain forest management activities for reducing forest fuels from the National Environmental Policy Act (NEPA). The Department would like to work with

the bill sponsor to understand the intent of this provision and its alignment with the agency's existing authorities to conduct hazardous fuels reduction projects under the Healthy Forests Restoration Act of 2003.

Section 2(e) allows USDA, in conjunction with land adjustment programs, to enter into contracts and cooperative agreements with a qualified entity to provide for fuel reduction, erosion control, reforestation, Stream Environment Zone restoration, and similar management activities on federal lands and nonfederal lands within such programs. Recognizing the importance of cross-boundary work, the Department supports the intent of this provision, but would like to work with the bill sponsor to clarify the scope and parameters of this provision.

USDA supports many of the goals of this bill including public engagement, managing for multiple ecosystem benefits, and cross-boundary management. USDA would like to work with the bill sponsors to address the concerns noted in our testimony.

H.R. 934, To Require the Secretary of Agriculture to Carry Out Activities to Suppress Wildfires, and for Other Purposes

In January 2022, the Forest Service launched a robust, 10-year Wildfire Crisis Strategy. The strategy is designed to invest in places where wildfire poses the most immediate threats to communities and infrastructure. The strategy combines a historic investment of Congressional funding with years of scientific research and planning into a national effort that will dramatically increase the scale and pace of forest health treatments over the next decade. Through the strategy, the agency will work with states, Tribes and other partners to address wildfire risks to critical infrastructure, protect communities, and create more resilient forests.

H.R. 934 directs the Secretary of Agriculture, acting through the Chief of the Forest Service to use all available resources to suppress wildfires and to extinguish them no later than 24 hours after a fire is detected on National Forest System lands. It also requires immediate suppression of any prescribed fire that exceeds prescription and dictates that fire may only be used as a resource management tool if the fire is a prescribed fire that complies with applicable law and regulations; and that the agency may only initiate a backfire or burnout during a wildfire by order of the responsible incident commander to protect the health and safety of firefighting personnel.

By Forest Service policy, every fire receives a strategic, risk-based response that is appropriate for the circumstances and the associated threats and opportunities. Each strategy uses the full spectrum of management actions that consider fire and fuel conditions, weather, values at risk, and resource availability. Fighting fire effectively requires all the current tools available to the agency, particularly in lifesaving scenarios such as firefighter and public safety, the protection of life and property, and efforts to protect communities and infrastructure (such as electricity, bridges, and roads), cultural sites, watersheds and other natural resources.

Our goal is to minimize the number of devastating, destructive large wildland fires. Federal and non-federal resources work together whenever possible to safely and effectively contain these fires. Approximately ninety-eight percent of all reported fires are caught during initial attack. Fires that escape initial attack continue to receive full suppression action with support from available aviation assets.

For more than a century, policies that favor fire suppression have contributed to fuels buildup and dense forests that are more likely to burn. The agency also recognizes that prescribed fire can play an essential role in restoring the health of forests if they are closely managed in the right place, at the right time and for the right reason. These fires are only used in carefully selected circumstances and with assurances of no undue risk to life, property or communities, and with the appropriate resource availability to safely manage for resource benefits. By policy, these fires must also be consistent with interagency policy and Land and Resource Management Plans. Lightning ignitions help with fuels reduction, support renewal of wildlife habitat, restore ecosystem and forest health and can prevent larger, more destructive fires in the future, particularly in fire-prone and fire-adapted ecosystems. To support decision making, the agency uses the best available science and weather data to develop strategies and tactics that reduce smoke production, and secure and protect communities.

Prescribed fire is a key component of the hazardous fuels management and forest health. Prescribed fires may be ignited to reduce hazardous fuels to decrease wildfire risk to communities and critical infrastructure and to improve forest health. A burn window occurs when the prescription parameters for temperature, wind, relative humidity, air quality and other factors are met, and the necessary firefighting staff, including contingency resources are available. By policy, at the initiation of prescribed fire operations, ignitions must cease if the prescription parameters are not met and sustained. If the fire escapes, the project is declared a wildfire and receives fire suppression actions.

Backfire is a firefighting tactic and emergency action used to consume forest fuels in advance of an approaching wildfire and can change the direction of the fire. Backfire operations are conducted to reduce wildfire threats to life and property and firefighter safety. Burnouts strengthen firelines by consuming fuels to widen the fireline for containment. Burnouts are approved through Incident commanders in collaboration with agency administrators.

The Forest Service is taking serious actions to address the wildfire crisis and we appreciate the support provided through the Bipartisan Infrastructure Law and through the Inflation Reduction Act for this critical work. The agency must continue to use every tool available to reduce the current and future negative impacts from wildfire, consistent with agency policy and interagency response.

The agency has serious concerns that the bill language would remove critical resource management and firefighting tools and tactics from interagency responders who have to make life and death decisions, and therefore we cannot support this bill as written. Nonetheless, we are committed to working with Congress on how we effectively respond to wildfires and the

resources and capacity needed to do so. We would be glad to discuss our concerns with the Committee.

H.R. 1450, “Treating Tribes and Counties as Good Neighbors Act”

H.R. 1450, Treating Tribes and Counties as Good Neighbors Act, revises the Good Neighbor Authority (GNA) to require tribes and counties to retain and use revenue generated from timber sales to carry out authorized restoration work under a good neighbor agreement that generated the revenue or under other good neighbor agreements. In addition, this bill also allows states, counties, and Tribes to use retained revenue for authorized restoration projects on non-federal lands under a good neighbor agreement. Under current law, only a state is permitted to retain the revenues, and the revenues must be used for restoration projects on federal land.

GNA has been a key authority for the Forest Service to accomplish critical forest management to keep our forests healthy and productive. In FY22, 306 million board feet were sold under the Good Neighbor Authority, and 47,412 acres treated. This work has been completed through agreements with state forestry agencies, tribes, and counties. To date, the Forest Service has completed 398 Good Neighbor Agreements, with more than 85% of the agreements with state forestry agencies. There have been 19 Tribal GNA agreements, and 24 agreements with counties.

We believe expanding the authority to allow tribes and counties to retain receipts, as proposed in the bill, would significantly increase county and tribal participation in GNA, and in turn help us increase the pace and scale of needed forest management activities. On projects where a commercial timber sale is needed as a tool for hazardous fuels reduction to reduce wildfire risk to a community or infrastructure, retained receipts can be an important incentive in attracting partners to engage in this work.

Proposed language in the bill would also allow the revenue for authorized restoration projects to be used on non-federal lands under a good neighbor agreement. The ability to use this revenue on non-federal land would facilitate important cross-boundary restoration treatments, such as fuels reduction projects within a priority fireshed, as well as cross-boundary watershed restoration. This change would also allow for more strategic landscape-scale restoration activities in areas of the Wildland Urban Interface.

USDA supports H.R. 1450; however, we would like to work with the Subcommittee to fine tune language to ensure compliance with laws regarding forest product removal prior to utilizing revenue derived from timber harvested on federal lands.

H.R. 1726, “Continued Rapid Ohia Death Response Act of 2022”

This bill directs the Department of the Interior (DOI) to partner and collaborate with the USDA and the State of Hawaii to address Rapid ‘Ōhi‘a Death (ROD). In addition, the bill directs DOI to continue research on Rapid Ohia Death (ROD) and to partner with State and local stakeholders to manage ungulates in ROD Control Areas. Finally, the bill directs the Forest Service to

continue to provide financial assistance to prevent the spread of ROD and to restore the native forests of the State; and to continue to provide staff and necessary infrastructure funding to the Institute of Pacific Islands Forestry to conduct research on Rapid Ohia Death.

The Forest Service is active in the prevention, detection, and treatment of ROD in Hawaii. The agency has been a collaborative partner in addressing ROD, providing technical assistance since its early detection in 2014 and financial assistance annually since 2016. We expect to continue to support local and state agencies, university, and indigenous communities in protecting valuable forest commodities on the islands.

Ceratocystis lukuohia and *Ceratocystis huliohia* are two newly recognized fungi that have arrived in Hawai‘i and are causing a serious vascular wilt and canker disease, respectively, on ‘Ōhi‘a trees (*Metrosideros polymorpha*). The Hawaii Department of Land and Natural Resources (DLNR), with support from Forest Service and USDA’s Agricultural Research Service (ARS) as well as university researchers, leads response efforts. When potentially affected areas are identified, a response team follows up with ground surveys and takes samples of symptomatic trees. ROD remains a priority for natural resource management agencies in Hawaii.

Researchers are investigating a wide array of topics to develop science-based methods for controlling the disease, identifying resistance to the disease, and restoring ‘Ōhi‘a forests. Community outreach is an integral part of the project, including consistent messaging on the importance of ‘Ōhi‘a forests and how residents and visitors can help protect them. Limited detections on Oahu and Maui with regular surveillance indicate that the combination of strategies deployed by the ROD working groups are making a difference in protecting ‘Ōhi‘a forests across the state.

The USDA supports the intent of the Continued Rapid Ohia Death Response Act of 2022.

H.R. 3522, “FIRESHEDS Act”

The FIRESHEDS Act would amend the Healthy Forests Restoration Act of 2003 to establish emergency fireshed management areas.

This Act would, upon the request of a governor of a State, require the Secretary to designate a landscape scale fireshed in the state, within 90 days. The establishment of the fireshed would be an activity exempt from the National Environmental Policy Act. The Act also sets forth criteria for designating fireshed management areas under an agreement. USDA is concerned that these criteria are unnecessarily restrictive and may limit the ability to designate firesheds where they are needed. USDA is also concerned that this process could substitute a science based approach to fire management with a specific state or governors’ interests for a region, overriding existing land management objectives. It could also create a scenario where states could designate all areas as firesheds, in an effort to determine management or attract funding, reducing the effectiveness of the tool.

The Act would also require the Secretary and governor to jointly develop a fireshed assessment for each designated fireshed. Fireshed assessments would identify community risk and management projects for reducing threats to public health and safety. Implementation would occur through a memorandum of understanding (MOU) between the Secretary and other federal, state, private, and other organizations. USDA is concerned that Tribes were not included in the list of collaborators that can sign the MOU with the Secretary. The Act also requires that management activities in designated firesheds be proposed by a Resource Advisory Commission. USDA has concerns about these additional procedural and process requirements, including that restoration and protection work could be delayed or slowed.

This Act also establishes a broad Categorical Exclusion for fireshed management projects. USDA, in coordination with the White House Council on Environmental Quality, would like to work with the sponsor to better understand concerns about the applicability of NEPA in hazardous fuels treatments and fire preparedness to ensure any new tools will be effective in facilitating our work.

Finally, this Act also makes changes to the Good Neighbor Authority to allow states to use revenue for authorized restoration projects on non-federal lands under a good neighbor agreement. The ability to use this revenue on non-federal land would allow for cross-boundary restoration treatments such as fuels reduction projects within a priority fireshed and watershed restoration that might cross land ownership boundaries under the Good Neighbor Authority.

USDA is committed to working with States, Tribes, fire associations, non-government organizations, and other federal agencies at the landscape level to prioritize fuels reduction treatments and forest restoration projects that are the right size and in the right location to protect life, property, critical infrastructure, and natural resources.

The Forest Service's Wildfire Crisis Strategy, launched in 2022, combines a historic investment of Congressional funding with years of scientific research and planning into a national effort that is intended to dramatically increase the scale and pace of forest health treatments. As part of this effort, 21 priority landscapes, comprised of 250 high-risk firesheds, have been identified; our work in these areas is mitigating wildfire risk to around 200 communities in the West. Working with States has been critical to our efforts. We have entered into 31 Shared Stewardship Agreements covering 49 states to address urgent forest management challenges, and many have established landscape-scale firesheds which are jointly assessed by the Regional Forester and the Governor. We have also established 398 Good Neighbor Agreements with States in 38 states. USFS also has over fifty CEs under NEPA available to carry out work, in addition to other administrative flexibilities.

We appreciate every effort that Congress is making to advance the Wildfire Crisis Strategy, however we have significant concerns about additional procedural and process requirements involved in this bill. We cannot support this bill as written and would be glad to discuss our concerns further with the Committee.

H.R xxx, Direct Hire to Fight Fires

H.R. xxx, Direct Hire to Fight Fires, provides Direct Hire Authority to the Department of Agriculture and the Department of the Interior for purpose of filling agency wildland firefighting positions, including support positions.

Direct Hire Authority is a limited, expedited hiring authority that currently may be granted administratively by the Office of Personnel Management to employing agencies to fill positions in the competitive service for which there is a critical hiring need or severe shortage of candidates. This authority bypasses standard statutory veterans' preference, rating, ranking and public notice requirements, as well as re-instatement rights for individuals with prior Federal service under the competitive service for Federal civilian hiring, and can support streamlined hiring actions. The Office of Personnel Management (OPM) may issue such authority to agencies upon written request, and justification, or upon an independent assessment that there is a critical hiring need or severe shortage of candidates for specific positions.

OPM granted the Forest Service Direct Hire Authority in 2019 to fill critical fire positions in a very defined list of fire job titles, job series and pay grades. As of May 10, 2023 the agency has filled over 16,600 positions using the Direct Hiring Authority and has an additional 3,200 currently in process for a total of over 19,800 hired personnel. Although Direct Hire Authority has some limitations, the agency has benefitted from its temporary use of DHA.

The USDA would like to work with the Subcommittee and bill sponsors further to best guide longer-term hiring for wildland firefighters and support staff.

H.R. xxx, "Emergency Wildfire Fighting Technology Act of 2023"

The Forest Service collaborates with many partners to accomplish wildfire suppression across the nation and deliver aerial suppression support in the safest manner possible to our aviators, our firefighters, and the public we serve.

H.R. xxx, Emergency Wildfire Fighting Technology Act of 2023 directs the Secretaries of the U.S. Department of Agriculture and the Department of the Interior, in consultation with the National Interagency Aviation Committee and the Interagency Airtanker Board, to jointly conduct an evaluation of the container aerial firefighting system to assess the use of such system to mitigate and suppress wildfires and to share the results of the evaluation.

The Forest Service continues to research technology to improve the effectiveness and safety of aerial firefighting including, but not limited to, fire imaging, use of uncrewed aircraft systems, wildfire detection cameras, modern aircraft, aerial firefighting simulators using virtual reality, and aerial delivered retardant and water. The agency employs the most advanced and capable equipment available to meet the interagency firefighting mission.

In recent years, several companies with Container Aerial Firefighting Systems have approached the Forest Service requesting a review of their equipment for use in wildfire suppression operations. These systems deliver retardant or water in large containers, such as large cardboard boxes that are dropped by aircraft to provide a concentrated amount of retardant or water along the fireline. This technology is also referred to as Precision Containerized Aerial Delivery Systems.

The Forest Service evaluated Container Aerial Firefighting Systems and documented its observations in the Forest Service San Dimas Technology and Development Center's *2011 Precision Containerized Aerial Delivery Systems Forest Service Report*. Testing, evaluation, and approval of retardant delivery systems are conducted under the authority of the National Interagency Aviation Committee, in accordance with methods and standards established by the Interagency Airtanker Board. The evaluation occurred in 2010 during a U.S. Army test of the technical feasibility of Precision Container Aerial Delivery Systems at the Yuma Proving Grounds. Through this evaluation, the agency determined that this delivery system does not meet retardant delivery standards for coverage level, consistent delivery, delivery time, ground firefighter safety or environmental impacts. It also has an inconsistent, non-continuous drop pattern which would allow fire to burn through fuels with thin or no retardant coverage, unlike conventional airtankers that can provide consistent coverage.

Specifically, the evaluation stated that “using containerized delivery systems as a method of firefighting is a safety concern for firefighters and the public in the wildland-urban interface where we fight many of our fires.” Additional concerns were raised regarding the extensive debris that is scattered over a large area upon impact. Leaving this material on the ground anywhere is an environmental issue. The debris would be combustible and would add fuel to the fire environment. The debris is not natural to the landscape; removal would create additional cost, time, and personnel exposure concerns; debris may not be removed due to inaccessible locations; and debris may raise public and environmental concerns. There is also high risk of severe injury and/or damage to the public, firefighters, facilities and vehicles due to falling debris.

Our current system of retardant loading and delivery has an operationally effective infrastructure. Introducing a completely new system and process would add to cost, complexity, logistics, and possibly disrupt the synchronous operational tempo, both from the air, and for firefighters on the ground, which is critical to protecting lives, property, and valuable resources. Our current capabilities align very well with our requirements and modernization strategy.

The USDA appreciates the bill's intent to pursue new ideas in wildland fire suppression but does not support the incorporation of containerized systems into our suppression response given safety and operational concerns.

H.R. xxx, “Fire Department Repayment Act of 2023”

The Forest Service takes seriously its responsibility to work with many partners to accomplish wildfire suppression across the nation. The Forest Service negotiates and maintains many State Cooperative Fire Protection Agreements to ensure reciprocity for wildland firefighting services rendered on behalf of the Forest Service or that the agency provides to States and local governments.

H.R. xxx, Fire Department Repayment Act of 2023 requires the standardization of reciprocal fire suppression cost share agreements. It directs the Secretaries of the U.S. Department of Agriculture and the Department of the Interior to establish standard operating procedures related to fire suppression cost share agreements established for suppression cost share, to ensure they are in alignment with Cooperative Fire Protection Agreements, and that each agreement is reviewed and modified as necessary with State and local fire suppression organizations.

Forest Service policy FSM 3170 Cooperative Fire sets forth agency direction for the development of Cooperative Fire Protection Agreements which require approval by the Deputy Chief of State, Private and Tribal Forestry. These agreements are developed following the guidance provided in the Cooperative Fire Protection Agreements statewide template. The guidance also establishes the methodologies that signatory parties may use for cost shares agreements.

The Forest Service supports the intent of the bill and looks forward to working with the Subcommittee and bill sponsors to address our concerns.

H.R. xxx, “Forest Service Flexible Housing Partnerships Act of 2023”

Availability of housing for employees doing necessary and critical work on federal lands is increasingly challenging as the already high costs of housing continue rising quickly in many areas. This is particularly true in communities that serve as gateways to our national forests and house our employees. In fact, the Forest Service has identified lack of quality and affordable housing as a major barrier to recruiting and maintaining our workforce, and to fully address the wildfire crisis. While the bill applies only to USDA Forest Service, DOI is working cooperatively with USDA to more broadly address the issue of affordable housing in certain geographic areas where housing is unavailable or unaffordable.

Section 8623 of the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill, provided the agency with some essential tools to address affordable housing for our employees. Specifically, the 2018 Farm Bill provided the authority to enter into lease agreements with non-Federal entities in exchange for cash and non-cash consideration in the form of construction of new facilities, maintenance of existing facilities, other services, or any combination of the three. Despite some limitations, Section 8623 has been a unique and valuable authority that aids the Forest Service’s mission by supplying valuable in-kind resources, all while limiting long-term risk by providing the option to return lands to the public domain at lease expiration. In addition,

the use of a lease agreement, as opposed to a permit, offers opportunities to our non-federal partners through an arrangement that is more attractive to new capital, encouraging economic development in communities that border National Forests.

The Forest Service has been developing several pilot projects under the 2018 Farm Bill since this authority was enacted, most notably on the White River National Forest in Colorado, where at least one project plans to deliver 162 proponent-financed, affordable housing units to support the local workforce, some of which will be reserved for Forest Service employees. These early efforts are very encouraging, and we expect to expand the use of this authority into other areas if it is extended.

H.R. xxx would extend and amend the leasing authority in section 8623 of the 2018 Farm Bill. Specifically, it would expand in-kind consideration application flexibility to areas beyond the specific site being leased; set an allowable maximum lease term of 100 years; provide an explicit mechanism for lease renewal; and extend the authority for an additional 5 years.

USDA appreciates and supports the intent of this bill to enhance and extend this much needed authority. We would like to work with the Committee and bill sponsors to refine some of the new provisions to ensure that we will be able to meet the legislative intent and the focus of the bill on housing shortages while minimizing any unintended consequences or allowing for a broader range of activities than envisioned.

That concludes my testimony. Thank you for the opportunity to testify. I would be happy to answer any questions the Subcommittee may have for me.