

The Honorable Tom Tiffany
Chairman
House Committee on Natural Resources
Subcommittee on Federal Lands
Washington, D.C. 20515

The Honorable Joe Neguse
Ranking Member
House Committee on Natural Resources
Subcommittee on Federal Lands
Washington, D.C. 20515

Dear Chairman Tiffany, Ranking Member Neguse, and members of the House Committee on Natural Resources Subcommittee on Federal Lands:

On behalf of our millions of members and supporters, our organizations write to express our opposition to Chairman Westerman's discussion draft, "A bill to expedite under the National Environmental Policy Act of 1969 and improve forest management activities on National Forest System lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands to return resilience to overgrown, fire-prone forested lands, and for other purposes," being heard before the Subcommittee on April 17, 2024. We respectfully request that this letter be included in the hearing record. Although we recognize that a few small components of this legislation are positive, the vast majority of this bill would harm communities, the climate, lands, water and biodiversity, and we are fully **opposed to this draft legislation as a whole**.

Our organizations recognize the challenge in addressing threats posed by climate change as well as unsustainable forest management. We oppose several provisions and support some provisions of the proposed legislation. We caution, however, that active management, especially where checks and balances embodied in federal environmental laws are exempted, is not a panacea for climate change-induced effects on our federal forests. Active management takes many forms including damaging logging and road building projects that can increase risk of uncharacteristic fire, such as increasing road density and removing large old trees that confer fire resilience. Additionally, we object to the bill provisions that limit judicial review. Our organizations welcome the chance to be part of this critical discussion, and we recommend the following actions based on each section of the bill.

Title I: Landscape Scale Restoration

Subtitle A - Addressing Emergency Wildfire Risks in High Priority Firesheds

This section of the legislation amends the Healthy Forests Restoration Act (HFRA) by adding "Emergency Fireshed Management," which establishes fireshed management areas and allows governors to enter into Shared Stewardship agreements with USDA to conduct management projects in identified firesheds. Fireshed management areas must be landscape-scale, in the top 20% of firesheds at risk of wildfire exposure, and may contain federal and nonfederal lands. Once identified, USDA and the respective governor will conduct a fireshed assessment that identifies wildfire risk and at-risk communities in the fireshed and potential fireshed management projects, and then prioritizes projects based on risk reduction.

Although fireshed projects must comply with forest plans, plans are often decades old, and this provision creates a Categorical Exclusion (CE) without an acreage limitation to implement

fireshed projects, and exempts projects from administrative review. Injunctions against unlawful projects in the Wildland Urban Interface are prohibited.

We ask you to **oppose this subtitle**, which allows for unlimited logging and other activities within designated fireshed management areas to be categorically excluded from necessary NEPA review with emergency exemptions. A fireshed, as delineated by the Forest Service, is typically 250,000 acres, and fireshed management areas comprise multiple firesheds. Along with unlimited logging, this section calls for fuel breaks, removal of dead and dying trees (trees which are essential for forest health and regeneration), chemical treatments, mechanical thinning, and grazing to be used as fireshed management projects on federal and non-federal lands on 20% (of 7,688) firesheds at higher wildfire exposure. While no one argues against the importance of protecting communities from wildfires, this subtitle promotes logging and other ecologically damaging activities on an unprecedented scale under the guise of wildfire risk reduction. Authorizing massive forest management projects without objective and detailed environmental and administrative review, which limits public engagement and the use of best available science, is unacceptable.

Subtitle B - Expanding Collaborative Tools to Reduce Wildfire Risk and Improve Forest Health

One aspect included in **Section 111** is to extend the retention of revenues under good neighbor agreements to Tribes, giving them parity with states. We **support this provision** because, at minimum, Tribes should be extended the same authority as states, as sovereigns. However, our organizations recommend that Congress evaluate the success of good neighbor authority before extending the authority permanently. Specifically, we recommend an analysis to determine whether revenues are being spent in accordance with the law and making sure revenue retention is not creating a perverse incentive to increase timber harvests when doing so may not be in the best interest of the health of the forests or the safety of communities.

Subtitle C - Addressing Frivolous Litigation

Section 121 of the bill contains several provisions that severely limit long standing judicial review standards for certain Forest Service and Bureau of Land Management actions. It inappropriately applies a severe 30-day limit on any court-ordered preliminary injunction, and also dramatically limits the time to seek judicial review to 120 days after final agency action. This abbreviated time frame places an undue burden on interested parties and communities with limited resources and would likely have the unintended consequence of leading to more litigation, not less, as interested parties may be forced to file suit to protect their legal rights. Section 121 also prohibits any judicial review of claims challenging the inappropriate use of a categorical exclusion by an agency under NEPA. We therefore ask you to **oppose this provision** of the bill.

Section 122 of this bill would weaken the ESA by broadly exempting the U.S. Forest Service and the Bureau of Land Management from the regulatory requirement under Section 7 of the ESA to reinitiate consultation when new information indicates that implementation of land management plans may be harming threatened or endangered species in a manner that was not previously anticipated. Reinitiation of consultation at the forest plan level is imperative

because it provides the only mechanism to change management practices and apply them uniformly at the landscape scale, thereby avoiding extinction-by-a-thousand-cuts from consultation that occurs solely at the project level. Exempting the Forest Service from the requirement to reinitiate consultation would codify climate denial. Even as national forests suffer more and more effects from the worsening climate crisis, this provision would permanently exempt the Forest Service from ever modifying any forest plans to protect listed species from changing climate conditions. The result of this legislation could send countless species on an inevitable path towards extinction. We therefore ask you to **oppose this provision** of the bill.

Section 123 would trample on access to justice principles in our democracy by stifling citizens' ability to seek redress through our courts, instead channeling many agency final actions into secretive binding arbitration proceedings. This provision would force certain public challenges to final agency actions through an unprecedented internal and "binding" agency arbitration process with final decisions "not... subject to judicial review." The arbitration process created by this bill specifically anticipates outsourcing management decisions on public lands to private entities, including resource extraction industries, which will create a high likelihood of abuse and mismanagement. The binding arbitration process also effectively eliminates due process and public notice and comment protections, as well as environmental analysis and interagency and Tribal consultation requirements, because there is no requirement that an alternative selected by the arbitrator receive public, interagency, or Tribal review. For more information about why this provision is so harmful, please see Senate Report 115-429.¹ We therefore ask you to **oppose this provision** of the bill.

Title II: Protecting Communities in the Wildland Urban Interface

Our organizations **support Section 201**, which creates a Community Wildfire Risk Reduction Program to promote interagency coordination and reduce the risk of wildfires in the Wildland Urban Interface (WUI). This includes coordination on advancing research and science, and also supporting fire resistant building codes and standards, which are proven to be the most effective means of keeping communities safe in the event of a wildfire. This section also streamlines the grant process for federal technical and financial assistance, making it easier for communities to get the help they need to prepare for and respond to a wildfire crisis.

Our organizations **oppose Section 202**, which requires the Secretary of Agriculture to suppress all wildfires not later than 24 hours after the fire is detected and to suppress all prescribed fires that exceed prescriptions to burn. The bill also prevents the Secretary from using fire for resource benefit unless the fire is prescribed, and limits the use of backburns to control wildfires. This approach has been tried and tested before in the form of the "10:00 a.m. policy" implemented in the first half of the 20th century, in which the Forest Service was tasked with extinguishing any ignited wildfire by 10:00 a.m. the following day. This policy of fire suppression and exclusion, combined with worsening effects of climate change, is what has led to larger and more frequent wildfires. These extreme events have strained resources, damaged property, and in some cases, destroyed communities.

¹ <https://www.congress.gov/congressional-report/115th-congress/senate-report/429/1>

Both western fire science and Indigenous Knowledge tell us that fire has always played a critical role in our country's landscapes, and that we must work to restore fire regimes to our landscapes. Ecologically based thinning and fire – prescribed burning, Indigenous-led cultural burning, and managed wildfire – should play a key role in accomplishing this goal. Research shows that managed wildfire rarely results in destructive outcomes to people and property. In fact, the Southwest Ecological Restoration Institutes state that “expanding managed wildfire use has long-term health, safety, and risk reduction benefits.”² Unfortunately, this provision would eliminate the government's discretion in managing wildfire on the National Forest System and would steer us back towards an era of fire suppression.

Section 203 is another provision which **our organizations support**. This section expands the Joint Fire Science Program to include a Community Wildfire Defense Research Program. This program will test and advance innovative designs to improve the wildfire resistance of structures and communities, including home hardening, building materials, subdivision design, and landscape architecture. The innovations promoted by this program will help save communities and lives in the event of a wildfire.

Section 205 creates a new categorical exclusion (CE) for the development and approval of vegetation management, facility inspection, and operation and maintenance plans for electric utility line rights-of-way. The forest management activities conducted under this section would not be subject to ESA consultation or section 106 of the NHPA, exemptions that our organizations oppose. There is no evidence that this authority is necessary, given that the Forest Service in particular has dozens of existing CEs that could be used for this purpose; and we note that the Regulatory Flexibility Act authorized federal agencies to utilize the CEs of all other federal agencies, extending the Forest Service's CEs to the BLM for that agency's use. We **oppose this section** and legislative proposals that seek to expand the use of CEs further.

Thank you for your consideration of these comments and suggestions.

Sincerely,

Alaska Wilderness League
Alaska Wilderness League Action
Alta Peak Chapter, California Native Plant Society
American Bird Conservancy
Bark
Buffalo Field Campaign
Californians for Western Wilderness
Cascade Forest Conservancy
Center for Biological Diversity
Central Sierra Environmental Resource Center
Conservation Northwest

² Independent Analysis of Managed Wildfire by the Southwest Ecological Restoration Institutes, July 2023

Earthjustice
Endangered Habitats League
Endangered Species Coalition
Environment America
Environmental Law & Policy Center
Environmental Protection Information Center
FOUR PAWS USA
Friends of Merrymeeting Bay
Friends of the Inyo
Great Lakes Wildlife Alliance
GreenLatinos
Heartwood
Howling For Wolves
Kettle Range Conservation Group
Klamath Forest Alliance
Klamath Siskiyou Wildlands Center
Los Angeles Audubon Society
National Wolfwatcher Coalition
Natural Resources Defense Council
North Central Washington Audubon Society
Northcoast Environmental Center
Northeastern Minnesotans for Wilderness
Greater Hells Canyon Coalition, Endangered Species Coalition
Primate Conservation Inc
Resource Renewal Institute
SAFE Alternatives for Our Forest Environment
Save Our Wild Salmon Coalition
Sierra Club
Sierra Forest Legacy
Silvix Resources
Soda Mountain Wilderness Council
Southern Environmental Law Center
Southern Utah Wilderness Alliance
Standing Trees
The Urban Wildlands Group
United Plant Savers
WE ACT for Environmental Justice
Western Environmental Law Center
Western Nebraska Resources Council
WildEarth Guardians
Winter Wildlands Alliance
Zoo New England: Franklin Park Zoo & Stone Zoo