



April 17, 2024

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

The Honorable Joe Neguse  
Ranking Member  
House Committee on Natural Resources  
Subcommittee on Federal Public Lands  
U.S. House of Representatives  
Washington, D.C. 2051

Dear Chairman Tiffany, Ranking Member Neguse, and Members of the Federal Lands Subcommittee:

On behalf of our more than one million members and supporters, The Wilderness Society (TWS) writes to express views on 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.

TWS supports many of the goals of Chairman Westerman's discussion draft. We recognize the enormous amount of work necessary to restore our forests to a healthy and resilient state, and we welcome the chance to be part of these discussions. TWS also has significant concerns about some of the bill's provisions, such as ones that weaken bedrock environmental laws and limit judicial review. Below are suggestions for specific sections of the bill.

Section 2 defines "hazardous fuels management" as "any vegetation management activities that reduce the risk of wildfire, including mechanical thinning, mastication, prescribed burning, cultural burning, timber harvest, and grazing." TWS suggests changing the phrase "reduce the risk of wildfire" to "reduce the risk of uncharacteristically severe wildfire." This change will make it clear that Congress recognizes wildfire as an essential, beneficial, and natural part of the landscape, which is supported by both western fire science and long-held Indigenous Knowledge. We also recommend adding wildland fire use to the list of included vegetation management activities.

### **Title 1**

**Section 101** establishes the designation of fireshed management areas. As written in the draft bill, the designation of firesheds may cover more than 350 million acres (the Wildfire Crisis Strategy identified 250 high risk firesheds, and the 2019 Rocky Mountain Research Station identified 7,688 firesheds. 20 percent of these 7,688 firesheds comes to 1,538 firesheds, and with an average size of 250,380 acres per fireshed, the total acres encompassed by Section 101(a)(1)(A-B) equals 385 million acres). We are concerned that legislatively designating an area of that magnitude will hamper the agencies' ability to prioritize. Additionally, one criterion for identifying firesheds in the top 20 percent for wildfire exposure is "wildfire exposure to municipal watersheds." In this instance, TWS recommends quantifying the risk to watersheds, as opposed to just using exposure as the sole metric. For example, it is possible for an area to



have high exposure, but that exposure is low risk. This is an issue we recommend addressing throughout the bill.

**Section 103** of the discussion draft calls for the creation of a publicly available Fireshed Registry, which will include data on wildfire exposure, past forest management treatments, planned forest management treatments, status of permits and authorizations, project costs, and more. We believe increasing transparency in the project development and permitting processes and creating a one-stop-shop for information on individual firesheds will be beneficial to the many stakeholders who are involved in or impacted by wildfire and management activities designed to mitigate risk.

**Section 104** directs the Administration to enter into shared stewardship agreements with state Governors who request it. The main concern we have with the wording in this section is the use of “shall,” which mandates that the Secretary concerned enter into a shared stewardship agreement. The use of a mandate in this instance will allow state governments to unilaterally dictate all terms of such an agreement. To avoid this imbalance, we recommend changing “shall” in Section 104(a) to “shall seek to.”

**Section 105** establishes Fireshed Assessments, which are to be jointly created by the relevant federal agency and Governor of each respective state. These Assessments will identify within each fireshed management area wildfire exposure risks, at-risk communities, and potential management projects to mitigate risks. The legislation further prioritizes potential management projects based on their ability to reduce exposure to communities, reduce exposure to municipal watersheds, reduce risk of forest type conversion, and protect critical infrastructure and wildlife habitat.

TWS supports the creation of Fireshed Assessments and corresponding prioritization of management projects. The type of coordination between federal, Tribal, state, and local governments called for in this section is necessary to create comprehensive plans that can tackle the large task of improving the health and resilience of our forests.

As currently written, the Fireshed Assessments are heavily weighted towards hazardous fuels management. One area of improvement we see is to rework the prioritization to place more emphasis and prioritization on mitigation in the built environment because this will have the greatest impact on protecting and reducing risk for communities and critical infrastructure. Given the important role state Governors will play in the development of Fireshed Assessments, it seems increasingly appropriate to focus resources and attention on the built environment, as opposed to wildlands, where the risk is lower. As the recent Wildfire Commission report stated, “it is important to note that focus on the natural environment alone is unlikely to fully reduce wildfire-related loss (Calkin et al., 2013; Cohen, 2008; Mortiz et al., 2014.) There is a critical need to also focus actions within the built environment.”<sup>1</sup>

TWS has several concerns with **Section 106**, which states, among other provisions, that agencies shall carry out fireshed management projects, that these projects are categorically excluded from the National Environmental Policy Act (NEPA) environmental assessment and environmental impact statement requirements, and that acreage limitations contained in the

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<sup>1</sup> ON FIRE: The Report of the Wildland Fire Mitigation and Management Commission, Sept 2023, Page 33. <https://www.usda.gov/sites/default/files/documents/wfmmc-final-report-09-2023.pdf>



Healthy Forests Restoration Act (HFRA) and Infrastructure Investment and Jobs Act (IIJA) do not apply to fireshed management projects.

While we agree with the desire to expedite the necessary work that must be done on our national forests, these management projects have the potential to be very large, with significant impacts on the landscape. A thorough NEPA analysis will ensure that any impacts to the ecosystem and local communities are considered and that community involvement and buy-in are prioritized. We know NEPA is not the cause of permitting delays, and while certain lawsuits may gather press and attention, very few NEPA decisions are litigated. To be exact, only one in 450 NEPA decisions is litigated,<sup>2</sup> and as we have heard from agency officials, the best way to achieve an efficient review process is to ensure agencies are adequately funded and staffed.<sup>3</sup> A more effective way to ensure timely project approval and implementation is to properly invest in agency capacity, resources, and retention of staff to aid in expedited reviews. Additionally, as stated by U.S. Forest Service Chief Randy Moore, 85 percent of all work done by the Forest Service is currently implemented under CEs (categorical exclusions).<sup>4</sup> This is a startling figure that suggests, at minimum, that additional CEs are unwarranted. Additionally, a CE is defined as “a class of actions that a federal agency has determined...do not individually or cumulatively have a significant effect on the human environment.”<sup>5</sup> It would be inappropriate to claim that land management projects in excess of 3,000 acres have no significant impact; therefore, the acreage limits contained in HFRA §§ 603(c)(1), 605(c)(1), and 606(g) and IIJA § 40806(d) should not be expanded.

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. TWS also recommends 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.

**Section 113** calls for the creation of intra-agency strike teams to assist with implementation of the fireshed management projects, reviews of NEPA, the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA), and more. We believe encouraging agencies to coordinate in this way will have a positive impact on the review processes; however, we ask the Committee to evaluate the requirements of the makeup of these strike teams. The bill currently states that strike teams cannot exceed 10 members, and these members can be representatives of the federal government, private contractors, and volunteers. We believe the legislative text

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<sup>2</sup> Ruple, John C. and Race, Kayla M., “Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases,” SJ Quinney College of Law, University of Utah.

[https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1008&context=stegner\\_pubs](https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1008&context=stegner_pubs)

<sup>3</sup> Oversight Hearing, Modernizing NEPA for the 21<sup>st</sup> Century, <https://www.congress.gov/115/chrg/CHRG-115hhrg27722/CHRG-115hhrg27722.pdf>

<sup>4</sup> Legislative Hearing, H.R. 2989, “Save Our Sequoias Act,” Committee on Natural Resources U.S. House of Representatives, Wednesday, May 10, 2023, Serial No. 118-22, Page 31.

<https://www.congress.gov/118/meeting/house/115639/documents/HHRG-118-II00-Transcript-20230510.pdf>

<sup>5</sup> Categorical Exclusions, <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>



should include a minimum number of federal employees and language that ensures a balance of volunteer members so that no one sector is given outsized influence.

**Section 121** places strict limits on a court's ability to issue injunctive relief and places mandates on what factors a court must weigh when making these decisions. This section also prevents judicial review of fire management projects unless certain factors are met. Although the provisions in this section are meant to prevent, or at least reduce, legal challenges that result in project implementation delays, the judicial branch represents a critical check on the agency's power that should not be eroded, one that is oftentimes the only resort to stakeholders who have been wrongly ignored or excluded from project development. Additionally, further restricting when legal challenges can be brought before a court could have the opposite effect – we could see an increase in legal challenges, particularly those that have a low likelihood of success, because parties opposed to the agency's decision are rushed to file. These types of unnecessary delays would be better prevented by ensuring an inclusive and transparent project development process, rather than placing restrictions on legal challenges.

**Section 122** 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 re-initiate 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. The ESA's Section 7 consultation process is a vitally important safeguard for more than 400 ESA-listed species that occur in the National Forest System and 300 listed species that inhabit BLM (Bureau of Land Management) lands. The wildfire crisis poses a risk to many listed species but so can ill-informed, poorly conducted forest treatments, especially large-scale treatments that can span large swaths of a species' habitat, which could certainly be the case here. Proper planning and management of these federal public lands offer the best opportunity for recovery of many of these imperiled species whose unique requirements for survival occur on federal lands.

**Section 123** of the bill allows the agency to force many management challenges through an internal and binding agency arbitration process that eliminates the possibility of judicial review in federal courts. This section of the bill usurps the Constitution's Article III power given to the courts and vests it instead with the executive branch, thus shielding the agency from the checks and balances of an independent judiciary. While agencies frequently conduct quasi-judicial proceedings, all of those decisions are ultimately "final agency actions," appealable to federal courts and judicial oversight as the Constitution intended. Instead, section 123 improperly cuts Article III courts out.

## **Title II**

TWS supports **Section 201**, which creates a program to support interagency coordination around community wildfire risk reduction. As this Committee knows, wildfire risks are relevant to several administrative agencies, and increasing intergovernmental coordination and simplifying processes for communities to access information and assistance is vital.

**Section 202** requires the government to extinguish fires on the National Forest System within 24 hours after the fire is detected. This misguided 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. Both western fire science and long-held Indigenous Knowledge have taught us that fire has



always played a critical role in our country's landscapes. Fire exclusion and suppression have led to larger, more frequent, and more dangerous wildfires, which have strained resources, damaged property, and in some cases, destroyed communities. The answer to solving the wildfire crisis is not to continue this pattern, but to break it. Research shows that managed wildfire, which is the use of natural ignitions, such as lightning, to allow fire to fulfill its natural role on the landscape, rarely results in destructive outcomes to people and property.<sup>6</sup> In fact, the Southwest Ecological Restoration Institutes state that "expanding managed wildfire use has long-term health, safety, and risk reduction benefits."<sup>7</sup> Section 202 would make this impossible by eliminating the government's discretion in managing wildfire on the National Forest System and would return us to an era of total fire suppression that is partially to blame for the current untenable situation.

**Section 205** creates a new CE for the development and approval of vegetation management, facility inspection, and operation and maintenance plans for electric utility line rights-of-way. In addition to falling under a CE, all forest management activities conducted under this section would also not be subject to ESA consultation or section 106 of the NHPA. As stated above in the discussion of Section 106, the vast majority of activities conducted by the Forest Service are accomplished using a CE, and additional CEs or expansions of existing CEs are unwarranted.

TWS supports the goals of **Section 302**. Many different stakeholders, from Native Tribes to state and local governments to industry and nongovernmental organizations, all have an interest in where and how forest management activities take place. The language in Section 302 will require a clear reporting of where treatments are happening, the level of wildfire risk to specific areas, the cost and effectiveness of treatments, and much more. We greatly appreciate the level of transparency this will provide, and we believe it will lead to smarter decisions and increased accountability. We encourage the Committee to review and incorporate the performance measure recommendations included in the Wildfire Commission Report.

Thank you for considering our views.

Sincerely,

Lydia Weiss  
Senior Director, Government Relations  
The Wilderness Society

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<sup>6</sup> Independent Analysis of Managed Wildfire by the Southwest Ecological Restoration Institutes, July 2023

<sup>7</sup> Independent Analysis of Managed Wildfire by the Southwest Ecological Restoration Institutes, July 2023