

**Statement for the Record
U.S. Department of the Interior**

**House Committee on Natural Resources
Subcommittee on Federal Lands**

Discussion Draft of H.R. ____ (Rep. Westerman), “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.”

April 17, 2024

Chairman Tiffany, Ranking Member Neguse, and members of the Subcommittee, thank you for the opportunity to provide this Statement for the Record on the discussion draft. The Department of the Interior (Department, DOI) notes its strong preference to testify on bills after they have been introduced. Given the breadth of subject matter contained in the text of the bill, the Department did not have adequate time to conduct an in-depth analysis and receive input from the many agencies impacted, and it did not have sufficient time to develop the detailed, thorough testimony that is appropriate for a hearing on these matters in time for the hearing. We are providing the following preliminary comments on the 75-page draft bill but would like to preserve the opportunity to submit additional input on the bill after it is introduced, if necessary. The Department defers to the U.S. Department of Agriculture (USDA) on provisions of the draft bill impacting USDA Forest Service (USFS) programs.

The Biden-Harris Administration recognizes that all Americans are impacted by the heavy burdens that accompany wildfires, which are being made more intense by climate change. The Department works closely with the USFS, states, Tribal Nations, and local communities to reduce wildfire risk and restore the ecological health of our forests and rangelands.

The success of DOI’s Wildland Fire Management program is predicated on coordination with our interagency, state, and Tribal partners. These partnerships are vital to the Department’s success in carrying out its stewardship responsibilities, particularly fuels management work and post-wildfire restoration efforts; they are also integral to the interoperable approach that is the hallmark of the nation’s wildfire response activities.

Any efforts to increase fuels management, or in general improve Wildland Fire Management work, will be more successful with authorization of permanent, comprehensive wildland firefighter pay reform, as proposed and included in legislative proposals accompanying the President’s Budgets for Fiscal Years 2024 and 2025.

Title I – Landscape Scale Restoration

Title I, Subtitle A of the draft bill, *Addressing Emergency Wildfire Risks in High Priority Firesheds*, would designate fireshed management areas; establish a Fireshed Center and firesheds registry to support coordinated wildland fire data, science, and technology with Federal and non-

Federal partners; facilitate shared stewardship agreements with states and Tribes; and limit National Environmental Policy Act (NEPA) requirements for hazardous fuels treatments in fire-shed management areas.

Several provisions of the draft bill align with recommendations made in the Wildland Fire Mitigation and Management Commission Final Report (Report) to Congress. The Report recommends greater cooperation among partners to actively invest in technologies and mitigation strategies to reduce wildfire risk and to increase the pace of scale of hazardous fuels treatments on Federal, non-Federal, and Tribal lands. The Department also notes that there is a nexus between the USDA's 10-year *Wildfire Crisis Strategy* – which identifies the priority fire-sheds that the discussion draft proposes to designate as fire-shed management areas – and the Department's 5-Year *Monitoring, Maintenance and Treatment Plan to Address Wildfire Risk*. Both strategies establish roadmaps for collaboratively addressing wildfire risk and building resilience across landscapes.

The Department would like to work with the Sponsor and the Subcommittee to ensure that the proposed fire-shed management areas would be established with DOI data and input and appropriately incorporate landscape prioritization. Similarly, the Department recommends that membership and appointments to the proposed interagency Fire-sheds Center created by section 102 of the bill be given equal DOI and Tribal consideration. Additionally, there is potential overlap between the responsibilities of the Fire-shed Center and the Joint Office for Wildfire Science and Technology that is proposed in the President's Budget for Fiscal Year 2025. The Department is exercising flexibilities under the current suite of management authorities provided by Congress, including implementing procedures for several categorical exclusions for hazardous fuels to reduce wildfire risk and protect communities, infrastructure, and natural and cultural resources. We remain committed to ensuring that appropriate environmental reviews and analyses are considered for particular projects. The Department would like to work with the Sponsor and the Subcommittee on definitions and other technical changes in this Title to ensure that DOI and Tribal interests, goals, and priorities are addressed.

Subtitle B of Title I, *Expanding Collaborative Tools to Reduce Wildfire Risk and Improve Forest Health*, amends the Agricultural Act of 2014 to allow revenue and payments under Good Neighbor Agreements (GNA) received from timber sales to be retained and used by the applicable Governor, Tribe, or county for restoration services under GNAs and for the administration of GNAs through 2029. Additionally, Subtitle B would amend the Healthy Forests Restoration Act of 2003 to allow the BLM and USFS to enter into stewardship contracting projects to retain and expand existing forest product infrastructure and increase the maximum allowable period for a contract from 10 to 20 years for all contracts. In the event of a cancellation of a contract lasting more than five years, the bill directs the agency to provide 10 percent of the agreement or contract amount to the entity providing services. Lastly, the discussion draft also directs the DOI and USDA to establish intra-agency strike teams to assist NEPA reviews, preparation, and implementation associated with fire-shed management projects within the fire-shed management areas that would be designed by the bill.

As a general practice, the BLM provides full funding for multiyear projects even though the BLM has the authority to fund these contracts incrementally. The BLM notes that providing incremental funding would necessitate the inclusion of cancellation and termination clauses in the event that the BLM is not provided appropriations to fund obligations beyond the current fiscal year. If the BLM awards a contract that is not fully funded at award, requiring a fixed 10 percent cancellation or termination cost may be inadequate in some cases and too much in others, depending on the nature of the project and site. The Department would appreciate the opportunity to work with the Sponsor and the Subcommittee to include a mechanism in the bill that provides suitable cancellation and termination costs.

Subtitle C of Title I, *Addressing Frivolous Litigation*, contains reforms related to litigation of fire management plans; limits the obligation to reinitiate consultation under the Endangered Species Act (ESA) on approved BLM land use plans when a new species is listed or critical habitat is designated or new information reveals effects on listed species or critical habitat that were not previously considered; and establishes a discretionary arbitration process pilot program as an alternative dispute resolution process for objections or protests to forest management activities designated by the Secretary concerned. The Department has not had adequate opportunity to review and analyze these provisions and would like to preserve the opportunity to submit additional input on these provisions.

Title II – Protecting Communities in the Wildland Urban Interface

Title II, sections 201-203 of the discussion draft would authorize a DOI Community Wildfire Risk Reduction Program to support interagency coordination in reducing wildfire risk in the wildland urban interface and a Community Wildfire Defense Research Program to promote research and investments into wildfire resistant designs; address wildfire suppression policies; and expand research for community wildfire defense.

The Department welcomes the opportunity to facilitate partnerships with local communities and private entities through the creation of these two programs. However, the Department notes that other Federal agencies may be better suited to implement and administer the proposed Community Wildfire Risk Reduction Program, which we understand to be a broad-based technical assistance and grants program. Furthermore, DOI notes that other Federal agencies, such as FEMA and the U.S. Fire Administration, should be equal partners in the proposed Community Wildfire Defense Research Program considering their ongoing involvement in funding research into wildfire resistant technologies and structures. Finally, although the suppression provisions of Title II, section 202 apply only to the USFS, they have broad implications to interagency wildfire response efforts, present potential legal issues, and – in the long-term – run counter to our collaborative efforts to effectively reduce wildfire risk on Federal and Tribal lands.

Title II, section 204 amends section 512(a) of the Federal Land Policy and Management Act (FLPMA) by changing the definition of “hazard tree” to include trees or parts of trees that, if they fell, would be likely to come within 50 feet, instead of 10 feet, of an electric powerline. Additionally, section 204 would require agency consultation with private landowners when identifying hazard trees for removal on private lands. Finally, section 204 reduces approval timelines for vegetation management, facility inspection, and operation and maintenance plans

from 120 days to 60 and 67 days, respectively, for plans and modifications and, in each case, makes approval automatic at that point.

The BLM is working to protect electric powerlines and associated infrastructure in the event of catastrophic wildfire. In several states, the BLM is coordinating with electrical utility companies to identify areas of high risk for wildfire and is sharing risk assessment data to assist utility companies with identifying areas for vegetation treatments. Consistent with BLM policy, power companies may reduce risk in their rights-of-way (ROW) through local vegetation management plans and maintenance operation plans. Electrical utility companies are not required to notify the BLM of maintenance or mitigation work along the ROW if it is determined there is high risk for wildfire. Pursuant to section 512 of FLPMA, the BLM also published new regulations to address the risks of wildfire to and from powerlines on BLM-managed public lands on April 12, 2024. The Department would like to work with the Sponsor and the Subcommittee to ensure that the bill language is consistent with current regulations and supports amending section 512 to facilitate removal of hazard trees within 50 feet of electric powerlines.

Title II, section 205 of the discussion draft establishes a categorical exclusion for the development and approval of plans submitted under section 512(c)(1) of FLPMA and the implementation of any routine activities conducted under such a plan. The use of this CX would not be allowed in established wilderness areas, nor would it extend to the establishment of a new permanent road. The Secretary would be required to decommission any temporary roads not later than three years after the action is completed. Finally, the activities authorized for the use of the proposed CX would be exempt from section 7 of the ESA, section 106 of the National Historic Preservation Act (NHPA), or any other applicable law.

It is important to note that the BLM already has some CXs that it can rely on for compliance with NEPA for certain projects that facilitate emergency stabilization work after a wildfire and that can be used to manage fuel load and trees which are dead, dying, diseased, injured, or which constitute a safety hazard in certain circumstances. The Department supports the goals of the discussion draft to enhance and expedite actions to reduce wildfire risk in powerline ROWs. However, the Department believes that new CXs are better developed through the established administrative agency process than through legislation. In addition, we are concerned that the proposed CX's waiver of the requirements set forth in the ESA and NHPA, and its exemption from the requirements of all applicable laws, could jeopardize the continued existence of threatened and endangered species, or result in damage to important historic and cultural resources, and have other serious unintended consequences. We would appreciate the ability to provide technical assistance regarding its scope and to clarify whether extraordinary circumstances would apply.

Further Title II, section 206 directs the Secretaries of the Interior, Agriculture, and Defense to jointly develop and submit to Congress the "Seeds of Success" strategy to enhance the domestic supply of seeds, increase interagency coordination, and provide a comprehensive approach to native plant materials development and restoration. The BLM currently has a Seeds of Success Program and a National Seed Strategy for Restoration and Rehabilitation. Additionally, the BLM participates in the Plant Conservation Alliance, a public-private collaboration among 17 federal

agency Members and more than 400 non-federal Cooperators working to protect native plants by ensuring that native plant populations and their communities are maintained, enhanced, and restored. The BLM would like to work with the sponsor to increase the capacity and ability of these existing efforts.

Title III – Transparency and Technology

Title III, section 301 of the discussion draft directs USDA and DOI to establish demonstration projects on USFS- and BLM-managed lands to support the development and commercialization of biochar. It also authorizes a competitive grant program to carry out research and development. Biochar is created when plant materials – such as wood, bark, switchgrass and the like (generally referred to as “biomass”) – are heated in a low or no oxygen atmosphere. Biomass resulting from fuels reduction treatments or logging activities can be used to produce biochar, which can then be used to enrich soil and sequester carbon that would otherwise be released into the atmosphere if biomass were left aboveground to decompose, or if it were burned.

The BLM has explored uses for biochar as early as 2012 through an agreement with Utah State University, Utah Biomass Resources Group. More recently, in 2023, the BLM and USFS generated biochar from otherwise unusable biomass resulting from the 2020 Holiday Farm Fire in Oregon. The BLM continues to study how biochar can be used to benefit soil as well as the cost of generating biochar relative to other biomass use alternatives. The Department is open to further research regarding developments of biochar technology and efforts to improve cost efficiency of its use.

Title III, section 302 of the draft bill would establish reporting requirements for hazardous fuels projects and establish a program for testing new wildfire prevention, detection, communications, and mitigation technologies. The Department notes that many of the reporting requirements outlined in section 302 are redundant with metrics that are required by other legislation, do not fully account for annual hazardous fuels acres treated, or may not be currently feasible. We would like to work with the Sponsor and the Subcommittee on modifications to this section to address these issues.

Title III, section 303 would require the DOI and USDA to establish a deployment and Testbed Pilot Program for new and innovative wildfire prevention, detection, communication, and mitigation technologies. The Department notes that it is already investing in innovative technologies to protect communities and the public from wildfire risk. The Department would like to work with the Sponsor and the Subcommittee on technical edits to section 303 of the draft bill to ensure that the definitions of “covered agency” and “covered entity” are sufficiently broad to cover all potential partners and that the key priority technologies and priority areas address current wildland fire management needs.

Indian Tribes and Tribal Lands

Finally, the Department is committed to improving the stewardship of our Nation’s Federal forest lands by strengthening the role of Tribal communities in Federal land management, honoring Tribal sovereignty, and supporting the priorities of Tribal Nations. The Department is concerned that the discussion draft does not provide Tribes with the same opportunities for partnerships as would be available to States. The discussion draft also omits the Bureau of Indian Affairs (BIA)

from the bill's list of Federal land management agencies. The Department notes that Tribes and the BIA collectively manage over 18 million acres of Tribal and allotted trust forest lands, respectively.

Forest and ecosystem health does not stop at the border of Tribal lands, making it imperative that Tribes and the BIA be treated as co-equal to states and other Federal land management agencies. The Department would like to work with the Sponsor and the Subcommittee to ensure parity for Tribes, Tribal lands, and the BIA. The scope of work necessary to reduce wildfire risk in fireheds will require the judicious use of prescribed fire. The cultural use of fire by Tribes is essential and may offer new solutions to ongoing barriers. We also note that the draft bill contains inconsistent terminology related to Tribes and Tribal Governments. The Department would like to work with the Sponsor and the Subcommittee to ensure the proper terms are used in each section to ensure the correct Tribal entity is captured for the intended purpose. Finally, Tribes often have historic, cultural, and spiritual ties and reserved treaty rights to non-Tribal lands, such as state and Federal lands, and we recommend requiring Tribal consultation to ensure that Tribes are afforded the opportunity to provide input on management of non-Tribal lands and on which data is made publicly available.

Conclusion

Thank you for the opportunity to provide this Statement for the Record.