

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

June 20, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff — Chris Marklund, (x 6-7736)
Subcommittee on Federal Lands

Markup: **H.R. 2936 (Rep. Bruce 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.
June 22 & 27, 2017; 1324 Longworth HOB

H.R. 2936 (Rep. Bruce Westerman), *“Resilient Federal Forests Act of 2017”*

Summary of the Bill

The *“Resilient Federal Forests Act of 2017,”* is a compilation of the best legislative concepts introduced in this and previous Congresses to address the disastrous consequences of catastrophic wildfire and other threats to our nation’s federal forests and the Forest Service (FS) and Bureau of Land Management’s (BLM) inability to address those threats.

The legislation does the following for our federal forests:

- Utilizes tools that the FS and BLM can implement immediately to reduce the threat of catastrophic wildfire, insect and disease infestation and damage to municipal watersheds.
- Utilizes tools that the FS and BLM can implement immediately to quickly remove dead trees after wildfires (in limited areas) to pay for reforestation and rehabilitation after fire and reduce threats to infrastructure and human health and safety.
- Incentivizes collaboration and speeds the implementation of collaborative projects.
- Creates a pilot program to resolve legal challenges against forest management activities through binding arbitration, providing outside organizations the opportunity to offer an alternative to the challenged activity to be weighed against the FS or BLM proposal by an independent arbitrator.
- Simplifies environmental process requirements, reduces project planning times and lowers the cost of implementing forest management projects while still ensuring robust protection of the environment through thorough environmental review.

- Encourages and speeds wildlife habitat improvement for wild turkey, ruffed grouse, elk and deer and other “early seral” species. The FS is significantly behind on its targets for this type of wildlife habitat.
- Creates no new requirements—no new mapping, planning, or reports.
- Updates and modernizes the Secure Rural Schools law and further empowers the Resource Advisory Committees (RACs) that have brought diverse viewpoints together to solve national forest management problems.
- Provides new methods of funding FS and BLM projects such as ‘revolving funds’ for projects on national forests funded by states (Montana, New Mexico and Oregon have made efforts to fund national forest projects to prevent catastrophic wildfire).

Cosponsors

Rep. Richard Nolan (D-MN), Rep. Scott Tipton (R-CO), and Rep. Raul Labrador (R-ID)

Background

- The Federal Lands Subcommittee has held multiple hearings over the past several Congresses focusing on federal forest health and management issues. Hearings have highlighted the dire situation facing our federal forests including: degraded forest health; increased risk of wildfire, insects, disease and mortality; and, loss of economic vitality for forest communities. Unfortunately, this year promises to be another challenging wildfire season¹, again illustrating the impact of no action.
- America’s national forests are increasingly becoming overgrown, fire-prone thickets due in part, to a lack of active management, such as thinning forests to reduce fire danger. As a result, catastrophic wildfires are growing in number, size and intensity with devastating impacts to the environment.
- The FS is entrusted with managing mostly forested areas in 43 states and Puerto Rico, an area equivalent to ten percent of the continental U.S. land base.² Fifty-eight million acres of national forest are at high or very high risk of severe wildfire.³ The identified wildfire at-risk area is equal to an area almost the size of the states of Pennsylvania and New York combined. In FY 2015, the FS harvested less than 2.9 billion board feet of timber across 204,763 acres,⁴ a small fraction of the acreage in need of treatment.
- Significant concerns have been raised about the FS and BLM’s anemic forest management efforts, both in terms of administrative obstacles (e.g., cumbersome

¹ USDA and DOI 2017 Direction to Wildland Fire Leadership Memorandum, June 2, 2017

² USDA Forest Service, About the Agency, <https://www.fs.fed.us/about-agency>

³ Chief Tom Tidwell, Testimony before the Senate Committee on Energy and Natural Resources, May 5, 2015

⁴ USDA Forest Service, Fiscal Year 2017 Budget Justification, February 2017

planning processes, high costs and analysis paralysis), and legal obstacles to approving projects.

Significant Impacts of Wildfire

- *Water* -- One of the biggest post-catastrophic wildfire challenges is the impact of ash and debris on domestic water delivery and water quality. Water agencies have spent hundreds of millions of dollars to dredge reservoirs, clean intake facilities and replace burned-up infrastructure.⁵ Mudslides, flooding and erosion, which often occur on the heels of a severe wildfire, threaten water availability and water quality for forest wildlife and human populations alike.⁶
- *Wildlife Habitat* -- Agency staff rate catastrophic wildfire as one the biggest threats to endangered species habitat (such as Greater Sage Grouse and the Northern Spotted Owl) and as wildfires continue to increase in size, number and intensity, their adverse impacts to wildlife habitat grow as well. Hot, long burning fires burn nutrients out of the soils and reduce water retention, both of which are critical to reestablishment vegetation after a fire.
- *Rehabilitation Costs* -- The direct costs to the FS for responding to the impacts of catastrophic wildfire, including landslides, flooding and other threats to life, property, water quality and ecosystems have topped \$166 million from FY 2011 to FY 2016.⁷ This figure does not include costs to private landowners, counties, municipalities and water districts.
- *Reforestation Needs* -- At the beginning of FY 2017, the FS identified 1,125,931 acres (1,759 square miles) in need of reforestation treatment as a result of the impacts of catastrophic wildfire.⁸
- *Property* -- The impact to homes has been devastating. Between 2006 and 2016, the Forest Service reported that wildfires destroyed 36,827 structures.⁹
- *Human Life* -- Most tragic has been the 349 wildfire-related fatalities which have occurred over the past twenty years.¹⁰

⁵ Andy Fecko, Director of Resource Development, Placer County Water Agency, in testimony before Federal Lands Subcommittee on April 23, 2015, information provided by Jim Lochhead, Director, Denver Water Board and others.

⁶ Doug Inkley, 5 Ways Wildfires Threaten Western Wildlife, National Wildlife Federation, June 19, 2012

⁷ Total expenditures for the Burned Area Emergency Response program FY 2011 to FY 2016. Data provided by the U.S. Forest Service in response to a request from the Committee.

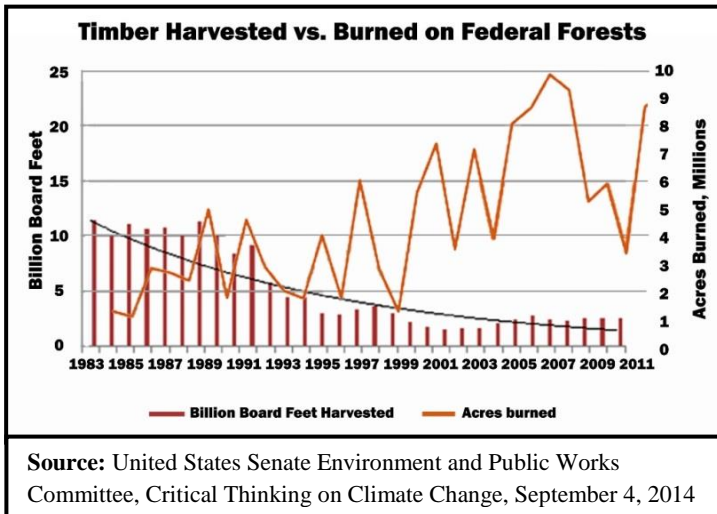
⁸ USDA Forest Service, Fiscal Year 2017 Budget Justification, February 2017

⁹ National Interagency Coordination Center (NICC) Wildland Fire Summary and Statistics Annual Reports, <https://www.predictiveservices.nifc.gov/intelligence/intelligence.htm>

¹⁰ National Interagency Fire Center, Wildland Fire Accidents and Fatalities by Year, https://www.nifc.gov/safety/safety_documents/year.pdf

Catastrophic Wildfire Impacts Grow as Forest Management Shrinks

The amount of forest areas thinned is often accomplished through commercial timber harvest. From the mid 1950's through the mid 1990's, the amount of timber harvested from the national forests averaged 10 to 12 billion board feet.¹¹ In FY 2015, the FS harvested less than 2.9 billion board feet of timber across 204,763 acres,¹² a small fraction of the acreage in need of treatment.



Beginning in 1996, the average amount of timber harvested from federal forests fell to between 1.5 and 3.3 billion board feet.¹³ Conversely, since 1996, the average annual amount of acres burned due to catastrophic wildfire totaled over 6.2 million acres per year.¹⁴

Paralyzing Impact of Litigation and Resulting Analysis Paralysis

Litigation is paralyzing one of the core missions of the Forest Service. Between 1989 and 2008, 1,125 lawsuits were filed against the Forest Service. Hundreds more have been filed during the past six years of the Obama Administration. Although more than 80 laws govern the management of the national forests, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the National Forest Management Act (NFMA) are the laws most frequently cited in litigation against the FS with NEPA cited in more than 71 percent of cases.¹⁵

Today, FS employees at the national forest level spend more than 40 percent of their time conducting planning and analysis¹⁶ instead of actively managing our federal forests. Meanwhile, more than fifty percent of the FS budget is spent fighting catastrophic wildfire.¹⁷

Outside observers note that the sheer number of federal rules and regulations governing a federal project make it almost certain a judge will find some part of the process as deficient.¹⁸ This causes over-correction, additional regulation and leads to “an increase in the cost and time

¹¹ USDA Forest Service, FY 1905-2015 National Summary Cut and Sold Data and Graphs, January 20, 2016

¹² USDA Forest Service, Fiscal Year 2017 Budget Justification, February 2017

¹³ USDA Forest Service, FY 1905-2015 National Summary Cut and Sold Data and Graphs, January 20, 2016

¹⁴ National Interagency Fire Center, Total Wildland Fires and Acres (1960-2015), https://www.nifc.gov/fireInfo/fireInfo_stats_totalFires.html

¹⁵ Robert W. Malmshemer, Testimony before the House Natural Resources Subcommittee on Federal Lands

¹⁶ USDA Forest Service, The Process Predicament, How Statutory, Regulatory, and Administrative Factors Affect National Forest Management

¹⁷ USDA Forest Service, The Rising Cost of Fire Operations: Effects on the Forest Service's NonFire Work, August 4, 2015

¹⁸ Tom Kuglin, Law of the land: How litigation has shaped the Forest Service

needed to complete NEPA documentation, but not necessarily an improvement in the quality of the documents ultimately produced.”¹⁹

What’s more, obstructionist litigants know that a successful case is not required in order to delay or halt a forest management project for months, years or indefinitely. Of cases brought against the FS between 1989 and 2008, the FS prevailed in 53.8 percent of all cases and nearly two-thirds of cases in which a judge ruled on the merits of the case.²⁰ In fact, the FS only lost 29.8 percent of cases brought against it. These relatively low chances for success led Dr. Robert Malmshemer to conclude before the Federal Lands Subcommittee that “the indirect benefits of litigation, such as publicity and delay of Forest Service action, may be as important to litigants as the direct benefits of winning a case.”²¹

Timelines for analysis have increased from several months to several years for a typical forest management project. In March of 1981, the Council on Environmental Quality (CEQ) published guidance to federal agencies noting that the preparation of an Environmental Impact Statement (EIS) for “even large and complex energy projects would require only about 12 months”²² and went on to note that completion of an Environmental Assessment (EA) “should take no more than 3 months.”²³ However, a 2014 report by the Government Accountability Office (GAO) noted that the average EIS now takes more than **4.5 years** (1,675 days)²⁴ to complete and that time to complete is increasing at a rate of more than 34 days per year.²⁵ The timeframe for completing NEPA analysis under an Environmental Assessment (EA) or Categorical Exclusion (CE) has not fared much better over time, with the Forest Service reporting to GAO it takes more than 18 months (565 days) to complete an EA and nearly 6 months (177 days) to complete a CE.²⁶

In an attempt to make modest strides toward addressing the “analysis paralysis” challenge, the FS has promoted stewardship contracting as a means of conducting necessary forest thinning projects. The agency is investing time and resources to support locally based forest collaboratives, which seek to bring diverse groups of stakeholders, such as industry, environmental groups and local governments, together to develop forest health projects and find solutions to complex natural resource management challenges.

Unfortunately, litigation persists. As Madison County, Montana Commissioner Dave Schulz noted before the Federal Lands Subcommittee in May of 2015, due to the threat of litigation from outside groups refusing to meet or collaborate with the community, what started as a consensus proposal for 100,000 acres of fire salvage and reforestation was reduced to less

¹⁹ CRS Report RL33152

²⁰ Robert W. Malmshemer, Testimony before the House Natural Resources Subcommittee on Federal Lands

²¹ Ibid.

²² CEQ, Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations. 46 Fed. Reg. 18026 (Mar. 23, 1981) as amended.

²³ Ibid.

²⁴ U.S. Government Accountability Office (GAO), National Environmental Policy Act Little Information Exists on NEPA Analyses (GAO-14-369), April 2014

²⁵ Ibid.

²⁶ Ibid.

than 2,000 acres of salvage.²⁷ “Fear of litigation prevents the Forest Service from thinking big”²⁸ and is a “significant factor in preventing responsible management of our Nation's forests.”²⁹

Devastating Impacts on our Federal Forests

Today, lawsuits intended to halt active management of federal forests account for more than 40 percent of all lawsuits brought against the Forest Service.³⁰

Agency staff rate catastrophic wildfire as one the biggest threats to endangered species habitat and as wildfires continue to increase in size, number and intensity, their adverse impacts to wildlife habitat grow as well. Hot, long burning fires burn nutrients out of the soils and reduce water retention, both of which are critical to the reestablishment of vegetation after a fire. Mudslides, flooding and erosion, which often occur on the heels of a severe wildfire, threaten water availability and water quality for forest wildlife and human populations alike.

The direct costs to the Forest Service for responding to the impacts of catastrophic wildfire, including landslides, flooding and other threats to life, property, water quality and ecosystems have topped \$166 million from FY 2011 to FY 2016. This figure does not include costs to private lands owners, counties, municipalities and water districts.

The impact of wildfires devastates homes, businesses and communities as well. Between 2006 and 2016, the FS reported that wildfires destroyed 36,827 structures. In the last two years alone, wildfires burned nearly 9,000 structures. Tragically, there have also been 349 wildfire-related fatalities over the past twenty years.

Section-by-Section Analysis

Sec. 1- Short Title and Table of Contents

Sec. 2- Definitions

Sec. 3- Rule of Application for National Forest System Lands and Public Lands.

- Unless specified in the bill, no provision of the bill applies on national forest or public lands:
 - In the National Wilderness Preservation System
 - Within an inventoried roadless area unless the forest management activity is consistent with the applicable forest plan or is allowed under the applicable roadless rule; or
 - On which timber harvest is prohibited by federal law.

Title I – Expedited Environmental Analysis and Availability of Categorical Exclusions to Expedite Forest Management Activities

²⁷ House Committee on Natural Resources Subcommittee on Federal Lands, Transcript Oversight Hearing On Litigation And Increased Planning's Impact On Our Nation's Overgrown, Fire-Prone National Forests, May 14, 2015

²⁸ Ibid.

²⁹ Ibid.

³⁰ Robert W. Malmshemer, PhD, JD, Testimony before the House Natural Resources Subcommittee on Federal Lands, May 14, 2015

Subtitle A – Analysis of Proposed Collaborative Management Activities

Sec. 101- Analysis of Only Two Alternatives (Action versus No Action) In Proposed Collaborative Forest Management Activities

- In the case of a forest management project proposed by a collaborative group, resource advisory committee, that will occur on lands identified by the Secretary of Agriculture (Secretary) as suitable for timber production, on lands designated by the Secretary as part of an insect and disease treatment program or within a community wildfire protection plan, the Forest Service must only analyze two alternatives:
 - An “action alternative”, which is the project proposed by a collaborative process, Resource Advisory Committee (RAC), by the Forest Service on lands designated as suitable for timber production, or as part of a Community Wildfire Protection Plan (CWPP); and,
 - A “no-action” alternative. The “no action alternative” must consider potential future impacts (such as insect and disease threat, catastrophic wildfire and its impacts on municipal watersheds, wildlife habitat, and other socio-economic factors).

Subtitle B – Categorical Exclusions (CE)

Sec. 111- Categorical Exclusion to Expedite Certain Critical Response Actions

- Authorizes a categorical exclusion for insect and disease, to reduce hazardous fuels loads, protect municipal watersheds, improve or enhance critical habitat, to increase water yield, produce timber or any combination of the purposes listed above.
 - Limits acreage of the CE to 10,000 acres
 - If the project is developed through a collaborative process, RAC, or CWPP then the CE is limited to 30,000 acres

Sec. 112- Categorical Exclusion to Expedite Salvage Operations in Response to Catastrophic Events

- Authorizes a categorical exclusion for areas burned by wildfire to salvage dead trees and reforest to prevent re-burn, provide for the utilization of burned trees, or to provide a funding source for reforestation.
 - Limits acreage of the CE to 10,000 acres
 - Requires projects to protect streams and stream buffers as provided in the forest plan
 - Requires the development of a reforestation plan (per existing law)

Sec. 113- Categorical Exclusion to Meet Forest Plan Goals for Early Successional Forests

- Authorizes a categorical exclusion to improve, enhance, or create early successional forests for wildlife habitat improvement.
- Directs the Secretary to maximize production and regeneration of priority species in the development of a forest management activity conducted under this section.
- Limits acreage of the CE to 10,000 acres

Sec. 114- Categorical Exclusion for Road Side Projects

- Authorizes a CE to remove hazard trees and salvage timber to protect public safety, water supply or public infrastructure.
- Clarifies:
 - The provision does not apply:
 - On lands that are part of the National Wilderness Preservation System,
 - Federal lands where vegetation removal has been prohibited by Congress,
 - In a Congressionally designated wilderness study area,
 - Where the forest management activity would not be consistent with the applicable land management plan.
 - Projects are required to be consistent with applicable land management plans
 - Public notice and scoping is required

Sec. 115- Categorical Exclusion to Improve or Restore National Forest System or Public Lands or Reduce the Risk of Wildfire

- Authorizes a CE for certain activities when the purpose of those activities is to improve, restore, or reduce the risk of wildfire on Forest System or public lands.
- Limits acreage of the CE to 10,000 acres
- Enumerates the activities for which a categorical exclusion is authorized.
- Definitions

Subtitle C – General Provisions for Forest Management Activities

Sec. 121- Compliance with Forest Plan

- Forest management activities covered by a categorical exclusion must be consistent with guidance in the Forest Plan.

Sec. 122- Consultation under the National Historic Preservation Act

- Authorizes the Secretary, when considering the impacts of a project implemented under a CE provided in the bill to conduct a phased evaluation of the project and its impacts on historic property without consultation with outside state or federal agencies.
- In cases when consultation with an outside agency under Section 106 of the National Historic Preservation Act is required, the consultation is considered completed and the project may proceed after 90 days.

Sec. 123- Consultation under the Endangered Species Act

- Amends the Endangered Species Act to remove the requirement for consultation under Section 7 for a project carried out by the FS if the project is found not likely to adversely affect a listed species.
- For projects conducted under a CE for which a Section 7 consultation is required, the action is deemed to have complied with the requirements of Section 7 after 90 days.

Sec. 124- Forest Management Activities Considered Non-Discretionary Actions

- Declares forest management activities carried out under this act are non-discretionary for the purposes of implementing the Endangered Species Act.

Title II – Salvage and Reforestation in Response to Catastrophic Events

Sec. 201- Expedited Reforestation of National Forest System Land Following Large-Scale Wildfire

- Requires a two month environmental assessment for reforestation activities
- Requires at least 75% of the burned area be reforested
- Makes available monies in the Knutson-Vandenberg Fund
- Limits the time available for public input to 30 days for public scoping, 15 days for filing an objection, and 15 days for an agency to respond to an objection. Directs the Secretary to immediately implement the project upon expiration of the time limits.

Sec. 202- Compliance with Forest Plan

- Requires all projects to comply with forest plans.

Sec. 203- Prohibition of Restraining Orders, Preliminary Injunctions, and Injunctions Pending Appeal

- Prohibits preliminary injunctions on temporary restraining orders

Title III – Alternative Dispute Resolution for Forest Management Litigation

Subtitle A – General Litigation Provisions

Sec. 311- No Attorney Fees for Forest Management Activity Challenges

- Provides that no awards for fees or expenses may be paid from the Claims and Judgement Fund established under the Equal Access to Justice Act to any plaintiff challenging a forest management activity carried out under this Act.

Sec. 312- Injunctive Relief

- Any court hearing a case regarding FS action must weigh the benefits of taking short-term action versus the potential long-term harm of inaction (fire, etc.).
- Limits the time period of a preliminary injunction to 60 days. Allows injunctions to be renewed an unlimited number of times following updated information provided to the court by the parties in the action.

Subtitle B – Forest Management Activity Arbitration Program

Sec. 301- Use of Arbitration Instead of Litigation to Address Challenges to Certain Forest Management Activities

- Directs the Secretary concerned to establish a pilot program to resolve lawsuits filed against a forest management activity. Provides that a project may be settled through arbitration at the sole discretion of the Secretary. Limits the maximum number of projects that may be arbitrated to 10 per Forest Service Region.
- Requires a demand for arbitration to be filed within 30 days after the forest management activity was initiated and requires the demand to include a proposed alternative to the forest management activity.
- Requires an intervening party in the arbitration to have submitted a public comment to the forest management activity during the development of the forest management

activity. Requires an intervening party to endorse either the forest management activity put forward by the Secretary concerned, the alternative proposal put forward in the demand for arbitration or their own proposal and allows multiple interveners to join together to submit a joint proposal. Requires a request to intervene be filed within 30 days after the demand for arbitration was filed.

- Requires the Secretary concerned to develop a list of 20 or more individuals to serve as arbitrators under this program. Requires arbitrators under this section to be certified by the American Arbitration Association.
- Requires the Secretary concerned and the objector to agree on a mutually acceptable arbitrator for the case within 14 days. If an agreement is not reached within 14 days, the Secretary concerned may appoint an arbitrator from the list.
- In resolving the arbitration, the arbitrator is required to select the forest management activity proposed by the Forest Service or an alternative proposal submitted with the demand for arbitration of an intervening party taking into account the effects of each option on forest health, habitat diversity, wildfire potential, insect and disease potential and timber production, among other considerations.
- Does not allow the arbitrator to modify any of the proposals.
- Clarifies the decision of the arbitrator shall not be considered a major federal action, is binding and is not subject to further judicial review.
- Requires that the arbitration be completed within 90 days after the demand for arbitration is filed.

Title IV – Secure Rural Schools & Community Self-Determination Act Amendments

Sec. 401- Use of Reserved Funds for Title II Projects on Federal Land and Certain Non-Federal Land

- Eliminated ‘sorting yard’ requirement
- Requires 50% of Title II funds be spent on projects which include sale of forest products and meet land management objectives.

Sec. 402- Resource Advisory Committees

- Extends Title II Resource Advisory Committee (RAC) functions, membership, and charters and allows RAC’s to function with reduced membership through FY 2022.
- Requires RAC’s to have balanced representation from environmental, industry and government interests.
- Makes conforming amendments.
- Requires new members to be appointed from within RAC geographic area or neighboring counties.
- Allows the Secretary concerned to delegate appointment of RAC members to the Regional Forester or BLM State Director.

Sec. 403- Program for Title II Self-Sustaining Resource Advisory Committee Projects

- Authorizes the Chief of the Forest Service to choose ten RAC’s that may retain revenue from projects to fund future projects that accomplish forest management objectives.

Sec. 404- Additional Use of Reserved Funds for Title III County Projects

- Allows search and rescue funding under Title III of Secure Rural Schools to also be spent on law enforcement patrols, training and equipment purchases.

Sec. 405- Treatment as Supplemental Funding

- Prohibits states from utilizing funds provided to counties through the Secure Rural Schools program to offset state funds.

Title V – Stewardship End Result Contracting

Sec. 501- Cancellation Ceiling for Stewardship End Result Contracting Projects

- Amends the Stewardship Contracting Authority so the Forest Service is no longer required to set aside money in the event a stewardship contract is cancelled³¹.

Sec. 502- Excess Value Offset

- Amends the Healthy Forest Restoration Act to dictate the use of excess funds in stances in which the value of forest products exceeds the value of the resource improvement treatments to satisfy any outstanding liabilities or other authorized stewardship projects.

Sec. 503- Payment of Portion of Stewardship Project Revenues to County in which Stewardship Project Occurs

- Requires 25% of revenue from a stewardship contract to be deposited in the county in which the project occurred. Under current law, stewardship contracting from revenue sharing with counties under the 1908 Forestry Act (unlike timber sales).

Sec. 504- Submission of Existing Annual Report

- Amends a report required under stewardship contacting authorities

Sec. 505- Fire Liability Provision

- Allows the contractor to request a stewardship contract be modified to include fire liability provisions as otherwise provided for in integrated resources timber contracts or timber sale contracts conducted pursuant to NFMA.

Sec. 506- Extension of Stewardship Contracting Maximum Term Limits

- Extends the allowable term of a stewardship contract from 10 to 20 years.

Title VI – Additional Funding Sources for Forest Management Activities

Sec. 601- Definitions

Sec. 602- Availability of Stewardship Project Revenues and Collaborative Forest Landscape Restoration Fund to Cover Forest Management Activity Planning

³¹ The Forest Service is currently required to cover potential losses in capital expenditures by a contractor in rare cases (such as if there is a significantly extended government shutdown and the contractor cannot operate as a result). This would allow the Forest Service to utilize funds which were deposited in these accounts for additional project work.

- Allows the FS to use up to 25% of Stewardship Contracting funds for planning projects. Currently the FS prohibits the use of funds for planning. This has created a backlog of projects in need of planning funds.
- Makes a conforming amendment.

Sec. 603- State-Supported Planning of Forest Management Activities

- Establishes the “State-Supported Forest Management Fund,” which allows for state or other entities to contribute funds for forest management activities.
- Allows the Fund to consist of amounts that are contributed by an eligible entity, appropriated to the Fund, or generated by forest management activities.
- Allows an eligible entity to specify and limit the types of forest management activities for which the contribution may be expended.
- Authorizes expenditures from the fund to plan, carry out or monitor a forest management activity developed through a collaborative process, proposed by a RAC, on lands identified as suitable for timber production or covered by a Community Wildfire Protection Program.
- Authorizes amounts from the Fund to be used to carry out a project through Stewardship Contracting, good neighbor authority, a timber sale, or other authority available. Revenues generated by the forest management activity shall be used to reimburse the Fund for planning costs covered by the Fund.
- Provides that revenue sharing with counties shall apply to revenues generated by activities carried out by the fund. The provisions of Knutson-Vandenberg shall apply to projects carried out using the Fund.
- Terminates the fund on September 30, 2025. Any unobligated contributions remaining in the fund at termination will be returned to the eligible entity that made the contribution.

Title VII – Tribal Forestry Participation and Protection

Sec. 701- Protection of Forest Assets through Use of Stewardship End Result Contracting and Other Authorities

- Amends section 2(b) of the Tribal Forest Protection Act of 2004. Federal Land management agencies would have 120 days to respond to tribal request for forest management on agency lands and two years to complete the analysis.
- Conforming amendments.

Sec. 702- Management of Indian Forest Land Authorized to Include Related National Forest System Lands

- Amends section 305 of the National Indian Forest Resources Management Act to give authority to Indian tribes to request to conduct forest management activities on federal lands where they have a tribal interest. They would have the authority to conduct those activities with authorities available on Indian lands.

Sec. 703- Tribal Forest Management Demonstration Project

- Authorizes demonstration projects by which tribes may contract to perform administrative, management and other functions of the Tribal Forest Protection Act.

Sec. 704- Rule of Application

- Clarifies nothing in this title diminishes or interferes with the authority or responsibility of any state to manage fish and wildlife.

Title VIII – Expediting Interagency Consultation

Subtitle A – Forest Plans not Considered Major Federal Actions

Sec. 801- Forest Plans Not Considered Major Federal Actions

- The development, maintenance or and revision of a forest plan are not subject to NEPA

Subtitle B – Agency Consultation

Sec. 811 – Consultation under Forest and Rangeland Renewable Resources Planning Act of 1974

- Amends the Forest and Rangeland Renewable Resources Planning Act of 1974 to clarify that: 1) Consultation under Section 7 of the Endangered Species Act is not required for an adopted land management plan for species listed or critical habitat designated after the adoption of the plan; 2) Consultation under Section 7 of the ESA is still required for projects conducted pursuant to a management plan and for modifications to a land management plan that would result in a significant change; and 3) for the purposes of implementing ESA a forest management activity carried out pursuant to this act shall be considered non-discretionary.

Sec. 812- Consultation under Federal Land Policy and Management Act of 1976

- Amends the Federal Land Policy and Management Act of 1976 to clarify that: 1) Consultation under Section 7 of the Endangered Species Act is not required for an adopted land management plan for species listed or critical habitat designated after the adoption of the plan; and 2) Consultation under Section 7 of the ESA is still required for projects conducted pursuant to a management plan and for modifications to a land management plan that would result in a significant change.

Title IX – Miscellaneous Forest Management Provisions

Subtitle A- Forest Management Provisions

Sec. 901- Clarification of Existing Categorical Exclusion Authority Related to Insect & Disease Infestation

- Amends the Farm Bill amendments to the Healthy Forest Restoration Act to include Fire Regime IV (Lodgepole pine) in the Insect & Disease Categorical Exclusion included in the Farm Bill. This was inadvertently left out of the original legislation even though Fire Regime I, II and III were included.

Sec. 902- Revision of Alternate Consultation Agreement Regulations

- Directs the Secretary of the Interior and Secretary of Commerce to promulgate a rule authorizing federal agencies to enter into alternate consultation agreements that would

not require formal or informal consultation under Section 7 of the ESA if an agency action is found not likely to adversely affect a listed species or critical habitat.

Sec. 903- Revision of Extraordinary Circumstances Regulations

- Directs the Secretary to initiate a rulemaking to clarify the following project characteristics do not need to be examined as part of a determining whether extraordinary circumstances preclude a CE under NEPA:
 - Whether a project is within a proposed wilderness area
 - Whether a project impacts a FS sensitive species
 - The cumulative impact of a project when added to other past, present, and reasonably foreseeable future actions
 - Whether a project may affect, but is not likely to adversely affect, a listed species or designated critical habitat
 - Whether a project may affect and is likely to adversely affect, a listed species or designated critical habitat, if the project is in compliance with the applicable provisions of the biological opinion
- Removes the requirement to perform an Environmental Impact Statement for all projects that would substantially alter a potential wilderness area.
- Requires the rulemaking be completed within 120 days of enactment of this Act.

Sec. 904- Conditions on Forest Service Road Decommissioning

- If the FS is considering decommissioning a road in a fire-prone area, the Forest Service must consult with the local government and consider alternatives before taking action. Additionally, the regional forester must sign off on any road closure in a high fire prone area. The FS has been closing and decommissioning roads at a high rate even though these roads are needed to thin forests and fight fires.

Sec. 905- Prohibition on Application of Eastside Screens Requirements on National Forest Lands

- The Northwest Forest plan interim management direction required “eastside screens” meaning no trees over 21” in diameter could be cut east of the Cascades in Oregon and Washington states. Grand Fir, a tree species with no ecological value, often grows in excess of 21” in diameter and serves as a ladder fuels for catastrophic wildfire. This provision removes this restriction on FS management and will help to reduce catastrophic wildfire.

Sec. 906- Use of Site-Specific Land and Resource Management Plan Amendments for Certain Projects and Activities on National Forest Lands

- In many parts of the country, national forests are operating under outdated forest plans (some were last updated in the 80’s and 90’s). As a result, plans may not allow the forest management necessary to successfully thin a forest to prevent catastrophic fire. This provision would allow the FS to amend forest plans in these cases. Public involvement and input is still required.

Sec. 907- Knutson-Vandenberg Act Modification

- Amends section 3(a) of the Act of June 9, 1930 to require the FS to use Knutson-Vandenberg authorities (retained receipts) for certain purchases. The section further

allows the use of Knutson-Vandenberg dollars on any national forest within the Forest Service Region. It does not allow the Secretary to charge Knutson-Vandenberg with overhead costs for forest management projects.

Sec. 908- Application of Northwest Forest Plan Survey and Manage Mitigation Measure Standard and Guidelines

- The Northwest Forest Plan Survey and Manage Mitigation Measure Standard and Guidelines shall not apply to any National Forest System lands or public lands.

Sec. 909- Reconstruction and Repair Included in Good Neighbor Agreements

- Amends good neighbor authority to include the construction, reconstruction, repair or restoration of paved or permanent roads, parking areas, public buildings or public works as allowable services in good neighbor agreements.

Sec. 910- Logging and Mechanized Operations

- Amends the Fair Labor Standards Act to allow 16 and 17 year olds to participate in a family run mechanized logging operation.

Subtitle B – Oregon and California Railroad Grant Lands and Coos Bay Wagon Road Grant Lands

Sec. 912- Amendments to the Act of August 28, 1937

- Clarifies that the timber produced from Oregon and California and Coos Bay Wagon Roads grant lands should be the greater of 500,000,000 board feet or the annual sustained yield of the lands.

Sec. 912- Coos Bay Wagon Road Grant Lands Permanent Rights of Access

- Makes rights of way established by the Secretary of the Interior on Coos Bay Wagon Road lands permanent and recordable.
- Directs the Secretary of the Interior to record the rights of way made permanent under part (a) with the county in which they are located within 60 days of the enactment of this Act.

Sec. 913- Management of Bureau of Land Management Lands in Western Oregon

- Requires Oregon BLM lands in the Northwest District, Roseburg District, Coos Bay District, Medford District, and the Klamath Resource Area of the Lakeview District to be managed pursuant to the laws governing the management of the Oregon and California and Coos Bay Wagon Roads grant lands

Title X- Major Disaster for Wildfire on Federal Land

Sec. 1001- Wildfire on Federal Lands

- Defines a major disaster for wildfire on federal lands

Sec. 1002- Declaration of a Major Disaster for Wildfire on Federal Lands

- Establishes the procedure for requesting a declaration of a major disaster for wildfire on federal lands and provides for assistance.

Sec. 1003- Prohibition on Transfers

- Prohibits the transfer of funds between wildfire suppression accounts and other accounts not used to cover the cost of wildfire suppression operations.

Cost

We don't have a CBO cost estimate for this bill at this time.

Administration Position:

Unknown at this time.

[Effect on Current Law \(Ramseyer\)](#)