

**STATEMENT OF  
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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
FEBRUARY 6, 2014**

**CONCERNING**

**The National Forest Jobs and Management Act of 2014 (S. 1966)**

Chairman Wyden, Ranking Member Murkowski, and members of the Committee, thank you for inviting me here today to testify on the National Forest Jobs and Management Act of 2014 (S. 1966) sponsored by Senator Barrasso. With our many partners, Secretary Vilsack and the USDA Forest Service share your commitment to increase the pace and scale of forest restoration and management in our National Forests. Restored acres and timber volume is up on the National Forests and we must continue to invest in current management regimes and not lose focus on legislative changes that may only polarize and create more conflict. However, USDA cannot support the bill as it is currently written.

We must manage and restore more acres to reduce the threat of catastrophic wildfire, to address insects and disease, and to restore the ecological health of forests for the benefit of all Americans. We greatly appreciate recent efforts in Congress to provide key authorities through the FY 2014 Consolidated Appropriations Act (highlighted below) that are essential in carrying out our work. The Forestry Title in the recently enrolled Farm Bill also includes additional tools that will assist the Forest Service, along with our partners, to improve the condition of the Nation's forests.

We cannot address the management of the National Forests without addressing the fire budgeting challenge. The Forest Service and Department of the Interior have had to increasingly transfer money from non-fire programs to fight fires due to longer fire seasons and more acreage of forests and rangelands burning each year. But, this is not just a problem of fire borrowing during difficult fire years. The Forest Service once spent 10%-15% of its budget on fire – today we spend over 40%. As a result, over the long term, the Forest Service has had to shift resources away from forest management and other activities. We support efforts by Chairman Wyden, Senator Crapo and others to address this issue in a way that both ends the disruptive practice of fire transfers and provides resources to manage and restore our forests so they are more resilient to wildfire.

S. 1966 aims to “provide for the restoration of the economic and ecological health of National Forest System (NFS) land and rural communities.” The Forest Service strongly agrees that more forest management and restoration work needs to occur, but cannot support the bill as it is currently written as it rolls back key environmental safeguards, diminishes public participation, sets artificial management targets in statute, and leads to potentially more conflict (including

potentially more objections and challenges), not less, in regards to management of the National Forests. We are implementing the following approaches to increase the pace of restoring the health of our National Forests and Grasslands.

**The Agency is saving costs by gaining efficiencies in our environmental review process under the National Environmental Policy Act (NEPA) and other regulatory responsibilities and stewardship commitments.** We are identifying NEPA efficiencies by focusing on improving Agency policy, learning, and technology. These NEPA process improvements are designed to provide certainty and integrate the applicable review and permitting processes. This will improve the overall planning process to increase decision-making efficiencies and result in on-the-ground restoration work getting done more quickly, collaboratively, and across a larger landscape. The Agency has initiated a NEPA learning networks project to learn from and share the lessons of successful implementation of efficient NEPA analyses and develop and institutionalize a more integrated and predictable planning process that will provide for timely and better decisions. The goal of this effort is to ensure that the Agency's NEPA compliance is as efficient, cost-effective, and up-to-date as possible. Specifically we are looking at expanding the use of focused Environmental Assessments (EAs), identifying any additional categories of actions that may be appropriately excluded from documentation in an EA or an Environmental Impact Statement (EIS), and applying an adaptive management framework to the planning process whether a Categorical Exclusion, EA, or EIS is prepared in conjunction with other processes under statutory and regulatory regimes including the Endangered Species Act (ESA), Clean Water Act, and Clean Air Act.

We are implementing Section 428 of the 2012 Consolidated Appropriations Act, which authorized the Agency to establish a pre-decisional objection process for projects. Considering public concerns before a decision is made aligns with and strengthens our collaborative approach to forest management increasing the likelihood of resolving potential concerns, and resulting in better, more informed decisions. The Agency also believes the predecisional objections process will aid efforts to be more efficient with documenting environmental compliance and stewardship with the goal of providing better outcomes for our communities and our environment. *We greatly appreciate the provision included in the FY 2014 Consolidated Appropriations Act and the recently enrolled Farm Bill which allow categorical exclusions to remain unencumbered by administrative procedures that are not commensurate with the nature of these decisions.*

**The Forest Service is utilizing the Collaborative Forest Landscape Restoration (CFLR) Program to restore large landscapes.** Currently, 23 CFLR projects are underway that emphasize restoration across large scale landscapes in order to reestablish natural fire regimes and reduce the risk of uncharacteristic wildfire. In addition to finding efficiencies in planning and treating larger landscapes, CFLR emphasizes collaboration. Through work with partners, land managers are able to leverage funding, knowledge, and support to accomplish additional work on the ground. In FY 2012, these projects exceeded the targets for the majority of performance measures. In addition to proposed projects under CFLR, we are developing and implementing broad-based, landscape scale, project planning whenever appropriate.

**The Agency is completing restoration activities utilizing stewardship contracts and timber sale contracts.** In FY 2012, 25 percent of all timber volume sold was under a stewardship contract. Stewardship Contracting includes forest product removal (goods) and restoration projects (services), which are offset by the value of the goods. Further, stewardship contracting allows the Forest Service to use best value contracting to evaluate contractors' proposals. Stewardship contracting authorities enable the Agency to fund watershed and wildlife habitat improvement projects, invasive species removal, road decommissioning, and hazardous fuels reduction activities. This builds public support for forest management activities. The permanent reauthorization of stewardship contracting is critical to our ability to collaboratively restore landscapes at a reduced cost to the government by offsetting the value of the services received with the value of forest products removed. *We greatly appreciate the provision included in the recently enrolled Farm Bill and FY 2014 Consolidated Appropriations Act to extend the Stewardship Contracting Authority.*

**The Forest Service is conducting watershed restoration activities on NFS and adjacent state and private forest land.** In 2000, Congress authorized the Forest Service to undertake a pilot program referred to as "Good Neighbor" in Colorado and granted authority for the program in Utah in 2004. This legislation authorizes the Forest Service to enter into cooperative agreements or contracts with state foresters to conduct certain watershed restoration activities—such as reducing hazardous fuels, addressing insect outbreaks, and improving drainage to prevent sediment from eroding into forested watersheds—on NFS land. Although projects are conducted by the State, projects on Federal land remain subject to our Federal management and stewardship responsibilities, many of which cannot be delegated to a tribal, state or local governments. *The Forest Service greatly appreciates efforts by Congress to permanently extend this authority and expand its use to other states through the FY 2014 Consolidated Appropriations Act and the recently enrolled Farm Bill.*

**The Agency is reviewing our business practices.** We are reviewing our business practices around timber sale preparation, specifically regarding designation of timber for harvest and accounting for merchantable volume, to determine how to reduce the cost to the government for selling timber.

### **S. 1996**

Title I of S. 1996 would authorize the Secretary of Agriculture to carry out covered projects (projects involving the management or sale of national forest material) in Forest Management Emphasis Areas (areas of national forest land in western forests that are identified as suitable for timber production in the forest plan). The bill would direct that timber sale contracts would be the primary means of carrying out covered projects and would set a target of 7.5 million acres to be treated over a 15 year period.

S. 1966 would modify the process for NEPA compliance in carrying out covered projects, and could be read to modify the consultation process under the ESA by directing that the Forest Service make the determinations required under section 7 of the ESA. Covered projects would be subject to notice and comment during development of the EA and to a predecisional objection process. In lieu of seeking judicial review after completion of the objection process, S. 1966 would establish a fifteen year pilot program that requires the use of arbitration instead of judicial

review as the sole means to challenge for a covered project in a Forest Management Emphasis Area (FMEA).

The bill also contains other provisions relating to the distribution of timber receipts generated by covered projects and requires the agency to develop performance measures to evaluate whether targets for acres treated are achieved.

We share Senator Barrasso's commitment to improving the management of the NFS. The Administration has a number of concerns with the legislation, as drafted, and cannot support it in its current form. We offer the following observations and concerns regarding S.1966:

- The mandate to identify, prioritize, and carry out projects on 7.5 million acres lands identified as suitable for timber production represents roughly a three-fold increase in workload beyond our current restoration efforts and is beyond our existing capacity. A significant amount of new funding would be needed to accomplish the targets set forth in S. 1966 without having to redirect funds from other essential programs and initiatives within the Agency. In addition, S. 1966 prohibits the Forest Service from reducing the acreage deemed suitable for timber production in any subsequent forest plan revision which would, among other things, reduce the agency's ability to engage in adaptive management of the area based on the best available science, particularly in combination with the target harvest requirements;
- The Forest Service is responsible for upholding numerous Federal laws (e.g., Clean Water Act, Clean Air Act, National Historic Preservation Act, and the ESA). Compliance with these laws generally occurs in association with the NEPA process and will require more time than the 180 day time limit (set forth in S. 1966) to complete an EA or other appropriate environment review under NEPA. As a general matter, the Administration cannot support arbitrary deadlines in the NEPA process, as they have the potential to constrain decision-making, lead to rushed or incomplete analyses, and potentially lead to more litigation and delay;
- The provision regarding ESA consultations is unclear as to what is intended. The provision could be read either as authorizing Forest Service employees to make determinations required under Section 7 of the ESA in lieu of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) as presently called for by the ESA, or as requiring the Forest Service to use qualified individuals to make those ESA determinations that are already within the Forest Service's authority or responsibility under the ESA. To the extent that S. 1966 is suggesting that the Forest Service take over ESA compliance responsibilities from FWS and NMFS, it is not clearly stated and, in any event may cause confusion and controversy that could negate any efficiency gained. To the extent the provision is only intended to require the Forest Service to use qualified professionals to make ESA judgments that are already within the Forest Service's purview under the ESA, the provision is still ambiguous because it is unclear what it meant by a qualified professional;
- Further clarification is needed regarding the requirement for indirect or cumulative effects analyses and the public comment process as part of the EA. To the extent that this portion of S. 1966 eliminates the typical NEPA requirement to analyze the indirect and cumulative effects of a proposed action, it will significantly diminish the nature and quality of the information available to the public and the decision-maker;

- The Agency fully supports collaboration with our partners and stakeholders from all interest areas as one way to be more efficient, through a shared understanding of the desired condition, across the landscape. In some Forest Service Regions, litigation remains a challenge we face in striving to increase our restoration efforts. The Forest Service has limited experience with arbitration and will need to complete a technical and legal review relating to its use within the Agency. As an initial matter, we have concerns with the mandatory nature of Sec. 5 of S. 1966 and the lack of standards to guide selection of and decision by an arbitrator. We are also concerned with the strict limitations on the potential remedy available to an arbitrator, the lack of reviewability, and the very short timeframe during which arbitration must be completed. That said, we are willing to explore the use of non-binding, reviewable arbitration (through a collaborative approach) on a trial basis before implementing such a change nationwide; and
- Clarification is needed regarding the process to determine location, extent and determination of lands that are suitable for timber production in the designated FMEA.

We have recognized for some time the importance of increasing our restoration efforts and continue to explore new and existing tools to become more efficient. We are making progress and need to continue investing in existing land management programs and tools included in the recently enrolled Farm Bill. S. 1966 could undermine many of those efforts. We want to work with the Chairman, Ranking Member, Senator Barrasso and other members of the Committee to build on the authorities provided in the FY 2014 Consolidated Appropriations Act and through the Forestry Title of the recently enrolled Farm Bill. We look forward to continued dialogue to identify ways to increase restoration efforts on the National Forest System.