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**Before the
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING**

Regarding

S. 4431 – THE EMERGENCY WILDFIRE AND PUBLIC SAFETY ACT OF 2020

September 16, 2020

Chairman Lee, Ranking Member Wyden, members of the Subcommittee, thank you for the opportunity to appear before you today to present the views of the U.S. Department of (USDA) Forest Service regarding S. 4431 – the Emergency Wildfire and Public Safety Act of 2020. My testimony only pertains to provisions affecting the Forest Service and National Forest System (NFS) lands.

Our nation is enduring a devastating wildfire year, one that has cut destructive swaths through states like California, Oregon, Washington, Colorado and Arizona and made more difficult by the ongoing COVID-19 pandemic. As of September 14, 2020, there have been 42,270 fires that have burned 6,712,663 acres across all jurisdictions. These fires threaten urban and rural communities, farm and rangeland, municipal water supplies and important wildlife habitat and are stark reminders of the need to partner with communities to prepare for wildfires, while also proactively creating healthy, fire-resilient conditions on NFS lands. We know the scale of our forest work must increase to meet the scale the problem. A crucial element needed to achieve more ambitious goals is the development commercial markets for forest products made from low-value trees in forests at high-risk of large wildfires. It is also important to work together with State and community partners to protect critical infrastructure and allow post-fire restoration and reforestation activities to occur in an effective and efficient manner.

To address this threat, in 2018, President Trump issued Executive Order (EO) 13855, directing active management of America’s forests and rangelands to reduce wildfire risk. The EO includes specific targets to reduce accumulated vegetation and increase active forest management. The Forest Service surpassed expectations and accomplished its highest forest management outcomes in 20-years, improving forest conditions and reducing wildfire risk on over 4 million acres through timber harvest, removing hazardous fuels like dead and downed trees, and combating disease, insect and invasive species infestations. But even with these achievements we know we must do much more.

As part of its budget request, the Department submitted to Congress a package of legislative reforms to improve forest management and reduce wildfire risk. The proposals are intended to support healthy forests and rangelands and aid in efforts to protect homes, watersheds and critical infrastructure from catastrophic wildfires. The Department supports enactment of these

proposals and recommends that they be included in S. 4431 to allow the Forest Service to expedite work on the ground to help reduce the risk of catastrophic fire.

S. 4431 is a comprehensive bill designed to increase wildfire preparedness and post-fire response through a variety of measures, including a new statutory categorical exclusion for linear fuel breaks, allowing for the export of unprocessed timber from dead and dying trees on NFS land in California, and establishing a new landscape-level program for management activities designed to improve forest conditions and reduce wildfire risk. USDA appreciates Senators Feinstein and Daines' attention to these important issues and supports the intent and goals of the bill. Through our testimony we offer several comments and observations meant to improve the language of the bill, and we would like to work with the Subcommittee and bill sponsors to address these issues.

Title I—Wildfire Mitigation Projects

Section 101 establishes a new landscape-level program for management activities designed to improve forest conditions and reduce wildfire risk. The bill requires the Secretary of Agriculture, in consultation with the Secretary of the Interior, to select three Western forest landscapes that meet certain criteria within 90 days of enactment. Governors will propose forest landscape projects (FLPs), and the Secretary of Agriculture must consult with the Secretary of Interior and Governor of the state that submitted the proposal to determine the final three project selections. Projects cannot exceed 75,000 acres and must include one or more management activities (the installation of fuel breaks, mechanical thinning, and controlled burns). Section 101 offers abbreviated environmental analyses under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) if the project meets certain conditions. Finally, the bill exempts the selection of the forest landscapes from NEPA or other applicable law, and limits where lawsuits can be filed and the length of injunctions.

USDA is committed to working at larger scales and collaboratively with our Federal, Tribal, state and local partners, as well as all members of the public in order to proactively use our resources to create resilient landscapes; these are also the goals of the program established in section 101. However, the provision duplicates a number of existing authorities. USDA also finds that the effectiveness and utility of the program will be diminished by a number of provisions that are overly prescriptive and do not allow the necessary flexibility to address local, on-the-ground conditions. We would like to work with the Subcommittee and bill sponsors to address these issues while still meeting the objectives of the section.

Section 102 amends the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to require the Secretaries of Agriculture and Interior, to the extent practicable, to expedite the permitting and placement of wildfire detection equipment in areas at risk of wildfire and expand the use of satellite data to assist wildfire response. USDA supports the ability to permit and place wildland fire detection equipment on NFS land, where possible, in a timely manner.

Section 103 establishes a new statutory categorical exclusion (CE) for linear fuel breaks up to 1,000 feet in width adjacent to, and incorporating, roads, trails, transmission lines and pipelines

and that are intended to reduce the risk of wildfire on Federal land. The bill limits vegetation treatments carried out under this CE to 3,000 acres, and requires treatments to be located in the Wildland Urban Interface (WUI), or, if outside the WUI, to areas designated under section 6591a(b) of HFRA within Condition Classes 2 or 3 in Fire Regime Groups I, II, or III that contain very high wildfire hazard potential.

USDA appreciates the intent behind establishing this new CE and supports the goal of reducing hazardous fuels near roads, trails and other critical infrastructure. The language limits fuel breaks established in the CE to the WUI or areas within certain condition classes and fire regimes; if enacted, the agency would not have the ability to use this tool in lodgepole pine forest types, which encompass large landscapes in much of the West. USDA would like to work with the bill sponsors to broaden the areas on NFS land where this authority could be applied.

USDA also finds that the list of forest management activities allowed under the CE is limiting given the variety of conditions and landscapes where the tool might be used. USDA would like to work with the sponsors of the bill to discuss the possibility of focusing on intended outcomes rather than on lists of permissible activities.

Section 104 establishes a new statutory tool that authorizes the Secretary of Agriculture to determine that an emergency situation exists (to make an emergency situation determination (ESD)) if immediate implementation of a decision is needed to provide relief from hazards threatening human health and safety, or to mitigate threats to natural resources. The section authorizes the Secretary to carry out certain emergency actions on 10,000 acres per an ESD, including the reconstruction of existing utility lines and the replacement of underground cables. It exempts an ESD from administrative review and environmental analysis under NEPA or any other applicable law; the emergency activities to respond to the ESD would be subject to a reduced responsibility for consideration of alternatives under NEPA and not be subject to the Agency's predecisional objection process. USDA is generally supportive of section 104 and would like to work with the bill sponsors to address technical concerns.

Section 105 addresses the Ninth Circuit's adverse ruling in *Cottonwood Environmental Law Center v. United States Forest Service*, 789 F.3d 1075 (9th Cir. 2015) as it applies to the re-initiation of consultation on land management plans under section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)) when new information is revealed. The provision exempts the Secretaries of Agriculture and Interior from reinitiating consultation on a land management plan or resource management plan based on new information but only if that information does not meet the threshold criteria. Section 105 defines "new information" to establish the threshold criteria. While USDA concurs that a legislative solution to permanently fix the Ninth Circuit's decision is warranted, this provision raises significant issues and we would like to work with the Subcommittee and bill sponsors to address those concerns.

Section 106 amends section 404(f)(12) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(f)(12)) to allow hazard mitigation assistance to be used for installation of fire-resistant wires and infrastructure and the undergrounding of wires. USDA does not have concerns with this section.

Title II—Biomass

Section 201 authorizes the Secretary of Energy to issue grants, loans, and loan guarantees to expand infrastructure for facilities that convert biomass from NFS and Bureau of Land Management lands in high hazard areas to heat, power or bio-based products, and to remove and transport dead/dying or low-value trees.

Over 63 million acres of NFS lands, or 32 percent of the total 193 million acres, are at high or very high hazard of large wildfires. Building markets for biomass can help increase the pace and scale of hazardous fuel reductions in forests across America by reducing the cost per acre of treatments on national forests and other lands while also creating good paying jobs in rural communities.

The Forest Service has extensive expertise building markets for biomass. This includes decades of experience helping to establish biomass facilities through our Wood Innovations Program and before that, through the agency's Woody Biomass Utilization Grants. We provide technical assistance, support for equipment purchases, and are engaged with a network of specialists for biomass energy projects. Additionally, the Forest Service offers expertise with timber harvest logistics and key connections to states and landowners for harvesting.

Title III—Timber Exports

Section 301 amends the Forest Resources Conservation and Shortage Relief Act of 1990 (Act) (16 U.S.C. 620(a)) to provide that unprocessed timber included in a hazardous fuels reduction treatment on NFS land in California may be determined to be surplus and therefore not subject to the export prohibition; the agency is required to undertake rulemaking in order to make the surplus determination.

This section also amends the Act to add an exemption from the export prohibition for unprocessed surplus timber originating from a dead or dying tree on NFS land in California if domestic mills do not take the unprocessed timber. Section 301 defines "dead" and "dying" and requires the agency to issue an annual list that establishes the species and sizes of trees that are considered to be surplus. Rulemaking will be required to issue the list after the inaugural list. The authority sunsets in 5 years.

Expanding commercial markets for wood from forests affected by large die-off events like insect and disease infestations is a critical component in the effort to create healthier, fire-resilient conditions in forested landscapes. USDA recognizes the need for an effective and timely solution to this problem, particularly in places like California, and supports the goals of this Title. However, as drafted, section 301 would create significant implementation challenges. Dead and dying trees must be removed quickly in order to maintain commercial value. A determination that each individual tree is dead or dying, and therefore surplus and exportable, is logistically unfeasible and would delay implementation. Further, the bill provides only limited relief from the rulemaking requirements for making determinations that timber is surplus and therefore exportable; the requirement to engage in annual rulemaking would further delay implementation and may result in an inability to sell the wood due to a loss of commercial value. USDA would

like to continue working with the Subcommittee and bill sponsors to achieve the Title's objectives.

Title IV—Other Matters

Section 401 directs the Secretary of Agriculture to establish a competitive grant program for workforce development in the forestry sector, including construction work, and for K-12 education on the forestry sector. The Forest Service currently has authority to enter into cooperative agreements with public or private agencies, organizations, institutions, or persons to engage in job training and development programs. Further, the Forest Service provides workforce training and education to students through its U.S. Department of Labor authorized Job Corps Civilian Conservation Centers, and is currently expanding its trade offerings in forest conservation and wildland firefighting. USDA supports forestry education and receives numerous benefits from the forest sector workforce. We would like to work with the Subcommittee and the bill sponsors to ensure that any new authorities build on existing programs.

Section 402 directs the Secretaries of Agriculture and Interior to establish a center to train individuals in prescribed fire and wildfire mitigation methods. The bill requires the center to be located in the Western United States and directs the Secretaries to consult with the Joint Fire Science Program to solicit and evaluate proposals for the location of the center. As an initial matter, we suggest that the National Wildfire Coordinating Group is the most appropriate group to provide input on any expansion or establishment of these type of training opportunities. While the existing National Interagency Prescribed Fire Training Center is in Tallahassee, Florida, course work and experiential learning is conducted in a wide variety of locations across the United States. In addition, there are national interagency training centers in Tucson, Arizona and McClellan, California that offer a wide variety of learning opportunities. USDA supports the goals of Section 402 and would like to work with the Subcommittee and the bill sponsors to recognize existing efforts by the agency and its partners to provide prescribed fire training.

Conclusion

Each year, based on the 10-year average, approximately 67,000 wildfires burn about 7 million acres of Federal, Tribal, state and private land and destroy approximately 4,300 structures. As of September 2, 2020, 4,053 structures have been destroyed by wildfires. While the number of structures destroyed last year was below average (1,000 structures), the previous two years were well-above average with over 25,000 structures destroyed in 2018, and over 12,000 structures destroyed in 2017. Urban development continues to encroach into wildland areas. Large wildfires also pose risk to utility infrastructure, municipal watersheds, recreation areas and important wildlife habitat. Actions, treatment and coordination are required to make communities and our national forest more resilient to large wildfires. S.4431 sets forth similar objectives and we thank Senators Feinstein and Daines for finding bipartisan solutions to very important issues. We look forward to working with the Subcommittee and sponsors of this bill to address the concerns outlined above.

Thank you for the opportunity to testify on this bill, and I welcome any questions.