

Testimony of Dylan Kruse, Policy Director, Sustainable Northwest
U.S. Senate Committee on Environment and Public Works
Hearing on the Wildfire Prevention and Mitigation Act of 2017
October 25, 2017

Chairman Barrasso, Ranking Member Carper, members of the committee, thank you for the opportunity to testify today. My name is Dylan Kruse, and I am the Policy Director at Sustainable Northwest, as well as a member of the leadership team of the Rural Voices for Conservation Coalition. Sustainable Northwest is a regional non-profit located in Portland, Oregon working on forest, range, energy, and water-related initiatives to resolve conflict and maintain healthy working landscapes that are good for community and economic well-being. The Rural Voices for Conservation Coalition is a West-wide network of practitioners committed to collaborative, equitable, long-lasting solutions to natural resource challenges that are grounded in people and place. Both organizations are committed to enhancing the quality of life in rural communities and the continuation of a natural resource-based economy in the West.

I appreciate the opportunity to speak with you all today about wildfire, forest management, and ecosystem restoration, as the subject matter could not be more relevant or urgent. Nearly nine million acres have burned on federal lands in 2017. Ash and smoke have made air quality unsafe across the West. Almost \$3 billion in taxpayer dollars have been spent on fire suppression this year -- a historical record. And the tragic loss of life and homes in California reminds us again what's at stake. This shift to more severe and expensive fire seasons has been called the new normal, and that is a terrifying prospect. It is indeed time for action.

Sustainable Northwest is a strong supporter of active management and wildfire risk reduction that sustains ecosystem resiliency, supports natural resource livelihoods, and protects human life and property. We were instrumental in the creation of some of the nation's first forest collaboratives, and proudly continue our work today to develop solutions to natural resource challenges that maintain working lands and promote responsible environmental stewardship.

Unfortunately, the concepts proposed in the Wildfire Prevention and Mitigation Act will do little to address the underlying challenges affecting the health of our federal forestlands, and omit critical opportunities to address the rising costs of wildfire management and threats to communities. We are troubled by proposals that short cut environmental laws, create additional levels of bureaucracy, and introduce unnecessary and redundant new authorities that are likely to cause increased tension and threats of litigation in land management planning and decision-making.

Areas of Concern

First and foremost, we recommend considering the three titles in the bill independently, as they address disparate issues, and any bipartisan and productive solutions that they may contain are compromised in an otherwise controversial package.

Regarding Title I of the bill, we recognize the need for a legislative solution to conflicting court decisions about consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act at the programmatic level following the listing of a new species or designation of new critical habitat. We commend the committee for prompting a swift resolution to this matter, but believe the title can be improved from its present form. We urge the Committee to work with interested parties to improve the legislation based on two principles: 1) That forest restoration projects should be permitted to proceed in

a timely manner, and; 2) That we should not diminish the integrity of the Endangered Species Act. We believe that it is possible to retain the agency's obligation to reinstate consultation, but not allow for projects to be enjoined while consultation is being completed. Plan level consultations have been demonstrated to have both conservation and efficiency benefits, but agencies should not be required to conduct them when they are unnecessary or redundant.

We are particularly troubled by the following provisions in Title III of the bill:

- **Section 311. Environmental Assessments:** Discretion and timely decision-making are imperative in the production of any environmental review, and we expect federal agencies to exercise prudence and responsibility in the deployment of staff and financial resources. However, we believe the Forest Service should retain independent decision-making authority that relies on its technical and scientific expertise when selecting the appropriate criteria and level of detail to be incorporated into an analysis. Elimination of the ability to conduct Environmental Impact Statements and examine a range of alternatives when it may be warranted is particularly concerning. A greater emphasis on efficiency and satisfying minimum thresholds of sufficiency are encouraged in preparation of environmental reviews, but arbitrary page limits and deadlines for document production are unnecessary.
- **Section 313. Stewardship End Result Contracting Projects:** Changes in this section would undermine the fundamental purpose, intent, and benefits of stewardship contracting authority, and propose a revenue sharing model that will provide little to no financial benefit to the majority of the nation's rural counties. A recent analysis showed that sharing 25% of retained receipts with counties would generate just \$4.3 million nationwide, while resulting in less partner match, fewer management outcomes, and reduced direct investment in service work and jobs in forest and watershed restorationⁱ. Rural public lands counties need a permanent and sufficient funding solution to resolve their fiscal needs, and this proposal provides minimal relief.
- **Section 314. Pilot Alternative Dispute Process:** Introducing a binding arbitration process with agencies and restricting the ability of the public to file formal legal challenges undermines long-standing and essential tenets of our democratic process. While we appreciate the intent to reduce the threat of litigation and expedite legal resolution, we have yet to see meaningful evidence to suggest that arbitration will result in an outcome different or more efficient than existing judicial review. Furthermore, the prevalence and impact of litigation is often exaggerated. A recent Government Accountability Report showed that only two percent of fuel reduction projects from 2006 - 2008 were litigated, affecting approximately one percent of acres proposed for management.ⁱⁱ Litigation and threat of a challenge to a forest management project is extremely frustrating for many partners, but it should not serve as justification to alter core judicial principles.
- **Section 332 – 336. Categorical Exclusions:** While we agree there is a pressing need to increase the pace, scale, and quality of federal forest restoration, the federal land management agencies already have extensive tools and authorities to complete necessary management objectives. This is certainly not for a lack of streamlined review mechanisms. The Forest Service handbook lists at least 25 existing categorical exclusions, as well as five additional authorities provided in statuteⁱⁱⁱ. Despite the range of exclusions already available to agencies, they are used sparingly due to the need for more detailed analyses, an appropriate focus on larger landscape scale

planning, and increased threats of legal scrutiny and challenges. Proposed Categorical Exclusions in the bill could also be considered redundant. Categorical Exclusions already exist for insect and disease infestation treatments of up to 3,000 acres in the 2014 Farm Bill. Reduction of hazardous fuels and protection of municipal water sources is addressed in the Healthy Forests Restoration Act of 2004. Finally, the Forest Service already has a Categorical Exclusion for salvage logging of up to 250 acres.

This is not to say that periodic review of management tools and opportunities to improve the efficiency of the NEPA process is not warranted. We are pleased to note that Forest Service NEPA experts have already initiated a comprehensive review of existing environmental review authorities, opportunities for increased efficiency, and recommendations for additional management tools that will eliminate burdensome review and expedite the NEPA process. Our recommendation is to let agency experts complete this procedure and propose new categorical exclusions and NEPA efficiencies based on experience and data driven analysis.

More planning work is needed to address the extent of our management needs, but it is also worth noting that we are failing to fully implement projects that have already completed the NEPA process. As a result, there is a massive backlog of fuels reduction and forest health improvement actions that are cleared for implementation, but have yet to be carried out due to inadequate funding. It is imperative that we focus our attention on using the extensive options already available, and implement projects that are currently sitting on the shelf.

Alternatives for Success

In contrast to the broad reform concepts in the proposed legislation, we suggest a more targeted approach that directly addresses the causes of extreme wildfire, budgets and incentives, and bipartisan solutions to restore the health and resilience of our federal forests. This can be done by more effectively utilizing existing Congressional authorities, embracing the concept of shared stewardship, supporting local knowledge and innovation, and providing adequate investment in the agencies that are tasked with management and protection of our federal lands. I would propose to the committee that we already have the tools needed to address these challenges, and that we must support implementation with a corresponding investment to get the work done. We offer the following recommendations for consideration by the Committee as it continues to debate these issues.

Fix the fire funding problem

The most urgent and immediate opportunity for Congress is to change the way we fund wildfire suppression. This dilemma has been examined at length for several years, but it bears repeating, as a solution is needed more urgently than ever. Unlike other natural disasters, the Forest Service and Department of Interior are required to plan and pay for wildfire response out of their annual budgets. But longer fire seasons, increased development in the wildland-urban interface, and millions of forest acres with saturated fuel loads are leading to skyrocketing costs of wildfire response. In recent years, more than 50 percent of the Forest Service budget has been consumed by wildfire suppression, and by 2025, it could be upwards of 67 percent^{iv}. To make matters worse, in bad years like 2017 when the agencies exceed their annual allocation, they are forced to borrow from other programs to cover costs. This includes some of the very programs that help restore forests and make them resilient to future wildfires. This is a counterproductive and outdated mechanism that needs to be changed immediately. Unfortunately, the Wildfire Prevention and Mitigation Act of 2017 fails to address this core deficiency.

Seek a comprehensive solution

Alternative bipartisan proposals, such as the recently introduced Wildland Fires Act of 2017, more effectively address the causes and effects of extreme wildfire, and provide corresponding resources to prepare for and prevent future costly wildfires. This includes funding to at-risk communities to plan and prepare for wildfires, investment in forest products infrastructure and workforce to complete land management, and incentives for cost savings and authorization of surplus funds to complete additional restoration and wildfire risk reduction.

Use the tools we already have

There is no shortage of policies, authorities, and tools that facilitate working in partnership across ownership boundaries. The 2014 Farm Bill permanently authorized the Stewardship Contracting Authority, Good Neighbor Authority, state insect and disease designations with an accompanying Categorical Exclusion, and designation by description and designation by prescription in timber sales. These tools have been readily embraced by federal, state, and non-governmental partners, but have just recently been adopted and have ample room for expansion.

For example, over 30 states have signed Master Stewardship Agreements to utilize Good Neighbor Authority, but nearly all of them were executed in just the past two years. Furthermore, 57 million acres of National Forest System lands have been designated as at risk for insect and disease infestations under the 2014 Farm Bill authority, and are permitted to use a Categorical Exclusion to treat up to 3,000 acres of a landscape. As of January 2017, 74 projects have already been proposed, and 63 are using the Categorical Exclusion.

The takeaway is that there is significant room for creativity, flexibility, and innovation within existing policies, programs, and authorities to unlock efficiencies and improved outcomes. Rather than rushing towards further policy reform, it is best to first use the tools we have, develop a track record of performance, and then make amendments as necessary.

Support collaboration and shared stewardship

The past decade has seen a demonstrable shift in federal agencies' embrace of collaboration in the project planning and decision-making process. Today, Oregon and Washington are home to 33 forest collaboratives, including at least one group on each of the region's 17 national forests. This philosophy has expanded to rangelands, culminating in comprehensive partnerships between landowners, local, state and federal governments, and non-governmental organizations addressing issues like Sage Grouse conservation.

We have ample evidence that collaboration is working across the West. For example, in eastern Oregon's dry forest ecosystems, 63% of acres with signed Forest Service NEPA decisions in the past five years have incorporated input from local collaborative groups. Since 2009, the average NEPA decision area with collaborative involvement is 24,000 acres, and just 10,000 acres without collaborative involvement. Collaboration has also contributed to a 45% increase in the annual average of acres with signed NEPA decisions between 2012 and 2015 compared to 2009 – 2011.

This success is not limited to Oregon. The Collaborative Forest Landscape Restoration Program showcases national examples of how collaborative, landscape scale restoration produces diverse and outsized results for its level of investment. The acreage across the 23 CFLRP landscapes represents roughly 11% of total National Forest System lands not in wilderness or roadless area designation. However, in 2016, these acres provided 20% of the Forest Service's hazardous fuels reductions accomplishments, 15% of the timber volume sold, 16% of the terrestrial habitat enhanced, and 30% of

the forest vegetation improved. A recent academic review of internal and external CFLRP partners showed that 75% of respondents said the program resulted in decreased conflict, 61% said they had seen decreased litigation, and 27% said they had found ways to make consultation under the Endangered Species Act more efficient.

As we seek to increase the pace and scale of restoration, federal agencies should adopt collaborative recommendations to the maximum extent possible, especially when consensus can be attained. State – federal partnerships also require agencies to move beyond bureaucratic constraints and seek creative solutions for enhanced outcomes. This means fostering a culture where agency staff are empowered to take risks and are rewarded for behavior that results in innovation, efficiency, and enhanced results.

Get ahead of the problem

We have an opportunity and obligation in the West to reduce the impact of future events. For too long Congress has fallen back on a reactive approach to uncharacteristic wildfire instead of proactively addressing the causes. In Oregon and Washington alone, there are over 2 million acres of forestland that have already received environmental review and approval for restoration, but have yet to be carried out due to inadequate funding^v. These projects will reduce fuel loads, improve forest and watershed health, and allow fire to return in a way that can be controlled and as a benefit to the land. But doing so would require \$350 million distributed over several appropriations cycles^{vi}. We have shovel ready work and landscape level solutions, but Congress must be willing to pay for them. Doing so will protect fire fighters and communities, put people to work in the woods, and decrease the massive costs of future wildfire suppression. It's time to stop playing catch up, and get ahead.

Invest accordingly

Implementation of the landscape level planning and collaborative agreements that have been facilitated in recent years is imperative, but will only be accomplished with appropriately scaled investment from Congress. This includes full funding for collaborative large landscape initiatives and programs that cut across ownership boundaries, leverage private resources, and achieve integrated outcomes. However, the suggested funding levels for the Department of Interior and Department of Agriculture in President Trump's FY 2018 budget propose a dire and unnecessarily austere vision for our federal lands and rural communities. If adopted, these funding levels would jeopardize the ability of state and federal agencies to implement commercial and restoration activities on public lands. Rather, we should sustain land management agency funding levels as included in the FY 2017 omnibus appropriations bill. In particular, this should include full funding for collaborative, all lands management programs, including the Collaborative Forest Landscape Restoration Program, continued investment in the Joint Chief's Restoration Partnership, and support for implementation of state Sage Grouse conservation plans.

Coupled with surge funding to address the backlog of forest restoration, infrastructure, and wildfire risk reduction needs, significant gains could be made in the next decade to improve the health of our federal landscapes, create good paying jobs in natural resource industries, and secure the safety and well-being of rural and urban communities across the West.

ⁱ <http://www.ruralvoicescoalition.org/issue-papers/#stewardship>

ⁱⁱ U.S. Government Accountability Office, "Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008," GAO-10-337, Report to Congressional

Requesters, March 2010), available at <http://www.gao.gov/assets/310/301415.pdf>

ⁱⁱⁱ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3826583.pdf

^{iv} <https://www.fs.fed.us/sites/default/files/2015-Fire-Budget-Report.pdf>

^v Forest Service communication, October 2017

^{vi} Forest Service communication, October 2017