

THE SUSTAINABLE FOREST BILL



Background Regarding the Forests of Southern Oregon

The forests of southwestern Oregon are among the most complex in the world. We have the convergence of geology, topography, climate systems, and remnant rare vegetation populations that occur here and nowhere else in the world (The “Klamath Knot”.) The Sierra Nevada or central or northern Oregon programmatic approaches are not appropriate for forests in southwestern Oregon. Our forests are so complex that expensive and customized treatments are needed. Further complications result from increased settlement in the “Wildland-Urban Interface” and structure protection complicates fire suppression efforts; and the complex “checkerboard” ownership patterns make it even more challenging to manage public lands and protect residences and property and lives.

Historically, the relationship between fire and our forest ecosystems in southwest Oregon and northern and central California is one of frequent, low severity fires; a relationship that has been disrupted by fire suppression and managing agencies for nearly the past 80 to 100 years, in the interest of maximizing/protecting timber resources. It has not worked, and has created the very dangerous and volatile situation we are currently faced with. Our forests are, indeed, overstocked, crowded, unhealthy, and not fire resilient. Climate change and drought-induced insect infestations have exacerbated the situation.

Commercial logging is only one small part of what can be done on some lands in order to restore forests to a more fire resilient state. Many more acres of our forests need treatments that COST money, rather than returning income to the treasury in the form of logging receipts. Many treatments, such as clearing out the dense, “dog hair” undergrowth (thick, dense stands of small diameter fir and pine) are crucial to accomplish, but it’s costly to implement. Sometimes, part of the overstory can be commercially harvested to help pay for this, but in more cases, more non-commercial work is needed than will be paid for by the logging.

Funding is needed to support those treatments in our forest. THIS IS CRUCIAL! Commercial logging cannot solve it ALL! We need funding for non-commercial hazardous fuels treatments,

such as understory shrub and pole thinning, piling, and pile burning; plus broadcast underburning in those areas where conditions are appropriate for such. Cutting brush and slash, hand piling, and burning is extremely expensive but is VITAL to protecting our forests in SW Oregon. As we learned this summer in the Rogue Valley, a month-long episode of thick smoke can be devastating, especially for people with respiratory issues. Relaxing the smoke restrictions for controlled burns so that more prescribed fire can be used would be beneficial. An effort to educate the public about shorter-term smoke from prescribed fire versus long-term smoke from wildfires would help garner public support for these programs. H.R. 2936 addresses none of these concerns.

Explanation of H.R. 2936

On October 30, 2017 The House of Representatives approved Rep. Westerman's bill, H.R. 2936, the "Resilient Federal Forests Act of 2017". This bill was co-sponsored by Greg Walden. The bill is intended to expedite National Environment Policy Act (NEPA) review for U.S. Forest Service projects in order to improve forest management on federal and Tribal lands and reduce fire risks. As written, H.R. 2936 is the loggers' solution to wildfire management, but fails to address treatments such as clearing understory shrub and pole thinning, piling, and pile burning.

The bill changes the way the Forest Service conducts various activities related to forest management, introducing "expedited" Environmental Reviews and Salvage Operations. Additionally, the bill exempts lawsuits challenging certain forest management activities from the Equal Access to Justice Act (EAJA).

Expedited Environmental Reviews and Salvage Operations: H.R. 2936 expedites certain activities related to managing forests, including environmental 3 assessments and harvesting of salvage timber after natural disasters or certain other events.

WHAT THIS MEANS:

H.R. 2036 eliminates the National Environmental Protection Act process on National Forest System lands(Federal forest lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands by

(1) expanding the categories of Forest Service activities that are excluded from the NEPA analysis,

(2) requiring expedited environmental assessments for other Forest Service activities which limit the depth of the agency's NEPA analysis

(3) limiting the consideration of alternatives for some Forest Service activities to only the proposed action and taking no action at all, and

(4) designating forest management plans as a categorical exclusion, therefore not requiring NEPA.

(1) Expanded categorical exclusions:

Categorical exclusions are a category of actions which do not individually or cumulatively have a significant effect on the human environment...and...for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

However, H.R. 2936 would give these exclusions to projects that could have significant effects on the environment and would exclude public involvement from the process.

Title I, Subtitle B of H.R. 2936 designates a long list of activities as categorical exclusions—thereby not requiring an environmental assessment or environmental impact statement under NEPA. In particular H.R. 2936 excludes a forest management activity where the primary purpose is to address insect or disease infestation; reduce hazardous fuel loads; protect municipal water source; maintain, enhance or modify critical habitat for an endangered species to protect it from catastrophic disturbance; increase water yield; or produce timber where the acreage is less than 10,000. ***The bill allows these categorical exclusions to apply to an area up to 30,000 acres if it is developed through a collaborative process, proposed by a resource advisory committee, or is part of a community wildfire protection plan.***

Subtitle B also extends categorical exclusions to salvage operations in response to catastrophic events; forest plan goals for managing and creating early successional forests (the young forest development stage after a disturbance such as fire or clear cutting); roadside projects such as removing hazard trees or salvaging timber for purposes of public health or safety; activities such as removal of trees and vegetation and livestock grazing for the purposes of restoration or prevention of wildfire. These exclusions are all currently limited to a unit size of 10,000 acres. ***Again, this bill increases the applicable area from 10,000 to 30,000 acres.***

Salvage logging projects are currently limited to 250 acres for a categorical exclusion. Under H.R. 2936 the limit for salvage logging would increase to 10,000 acres. (See 36 CFR 220.6(e)(13)). *Under this broad language, clearcutting will be permitted in an area of 15-square-miles (10,000 acres) without requiring consideration of the environmental consequences under a NEPA review, however H.R. 2936 does still require that all activities under the Act must comply with requirements in existing forest plans.*

(2) Expedited environmental assessments for salvage logging and reforestation activities:

Title II of the bill requires that the Forest Service complete an environmental assessment within 60 days for a salvage logging operation or a reforestation operation after large-scale wildfires and other natural disturbances. The expedited NEPA process for salvage logging builds upon the categorical exclusion allowed for salvage logging operations on 10,000-acre units provided under Title I. It requires that the Forest Service complete an environmental assessment within 60 days. In both cases, the NEPA process is weakened to limit the consideration of the environmental impacts of salvage logging.

(3) Forest Management Plans are not Major Federal Action:

Title VIII of H.R. 2936 provides that forest management plans are not a major federal action for the purposes of NEPA, changing the Forest Service's current practice of creating an environmental impact statement when producing or amending a forest management plan. (See FSH 1909.12 Land Management Planning Handbook Chapter 20 – Land Management Plan 21.13 Opportunities for Coordinating Planning and NEPA Activities.)

(4) Endangered Species Act exemptions:

Finally, the bill also imposes expedited review procedures for consultation for actions covered by the bill pursuant to the National Historic Preservation Act and the Endangered Species Act (ESA). ***Consultations that are not completed within a ninety-day window are deemed to conclude that the proposed actions are in compliance with those Acts.*** In addition, ***a provision of the Act states that all actions covered by the bill are deemed to be "non-discretionary actions" for purposes of the ESA, which may effectively exempt all actions covered by the bill from the ESA.*** This could be a very serious issue for endangered species whose habitat is on Forest Service lands.

Elimination of Certain Restrictions on Timber Harvesting. The bill would prohibit the Forest Service from enforcing provisions in existing land use plans that limit timber harvesting in certain areas to trees less than 21 inches in diameter. Because ***CBO expects that under the bill the Forest Service would shift certain timber sales from areas with low value timber to areas with higher-value timber,*** enacting this provision would probably increase offsetting receipts from timber sales relative to current law.

Lawsuits Related to Certain Activities Related to Forest Management. H.R. 2936 would exempt lawsuits related to certain forest management activities from EAJA, which requires the federal government to pay attorneys' fees for certain plaintiffs that prevail in lawsuits against the United States. Based on information from the Forest Service regarding the number of plaintiffs likely to be affected, CBO estimates that enacting those provisions would reduce direct spending.

Note: H.R. 2936 places several limits on the ability of litigation to challenge the NEPA process. *The bill creates an arbitration program which would permit the Secretary to arbitrate certain objections to forest management activities instead of subjecting them to judicial review. Second, the bill would prevent the award of attorneys fees in challenges of forest management activities, Third, H.R. 2936 would prohibit a court from stopping a salvage logging project through a preliminary injunction or a restraining order. Finally, the bill also limits injunctive relief to 60 days, although it allows a renewal of the injunction.*

ORGANIZATIONS OPPOSING H.R. 2936

American Bird Conservancy
Audubon Society of Corvallis
Audubon Society of Portland
Bark
Californians for Western Wilderness
Cascade Forest Conservancy
Cascadia Wildlands
Coast Range Association
Conservation Northwest
Defenders of Wildlife
Earth Justice
Environmental Protection Information Center (EPIC)
Forests Forever
Forest Unlimited
Geos Institute
Great Old Broads for Wilderness
Klamath Forest Alliance
Klamath Siskiyou Wildlands Center
League of Conservation Voters
National Parks Conservation Association
Northcoast Environmental Center
Olympic Park Associates
Oregon Hikers
Oregon Wild
Pacific Rivers
Safe Alternatives for our Forest Environment
Salem Audubon Society
San Luis Valley Ecosystem Council (Colorado)
Soda Mountain Wilderness Council
Southern Oregon Climate Action Now (SOCAN)
The Nature Conservancy
The Wilderness Society
Umpqua Watersheds, Inc.
Western Environmental Law Center

WildEarth Guardians