

From: Tama, Jason P. EOP/NSC
Sent: Friday, May 20, 2022 9:20 PM
To: Harrell, Meryl - OSEC, Washington, DC
CC: Babington, Sean - OSEC, Washington, DC
Subject: RE: Contacts for next 4 days

Ok, thank you!

From: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Sent: Friday, May 20, 2022 6:29 PM
To: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Cc: Babington, Sean - OSEC, Washington, DC <Sean.Babington@usda.gov>
Subject: RE: Contacts for next 4 days

Hi Jason,

Confirming that the pause was initiated: <https://www.fs.usda.gov/news/releases/statement-forest-service-chief-randy-moore-announcing-pause-prescribed-fire>

On the Colorado incident, here's the latest:

- There is retardant around the whole fire
- There is some precipitation that is helping conditions
- Precipitation is continuing with light to no winds

Conditions are better than they were last night. I'll plan to update you in the morning, and happy to talk at any time.

Thanks,
Meryl

From: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Sent: Friday, May 20, 2022 5:30 PM
To: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Cc: Babington, Sean - OSEC, Washington, DC <Sean.Babington@usda.gov>
Subject: RE: Contacts for next 4 days

Hi Meryl,

Anything more on this? And can you confirm that pause was initiated today? If so, is that something that's announced publicly or just internal?

Thanks,
Jason

From: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Sent: Thursday, May 19, 2022 10:37 PM

To: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Subject: Re: Contacts for next 4 days

Absolutely, will keep you posted if we hear more tonight. The Region just shared that 100 homes have been evacuated.

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From: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Sent: Thursday, May 19, 2022 10:34:48 PM
To: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Cc: Babington, Sean - OSEC, Washington, DC <Sean.Babington@usda.gov>
Subject: RE: Contacts for next 4 days

Ok, thank you for keeping us looped on this.

From: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Sent: Thursday, May 19, 2022 10:30 PM
To: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Cc: Babington, Sean - OSEC, Washington, DC <Sean.Babington@usda.gov>
Subject: Re: Contacts for next 4 days

Thanks, Jason. It's early but fuel and wind conditions aren't favorable. It's currently at 370 acres, and they're hitting it with aircraft as best they can. There are reports of 2 structures lost at this time, one likely a secondary home.

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From: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Sent: Thursday, May 19, 2022 10:15:53 PM
To: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Cc: Babington, Sean - OSEC, Washington, DC <Sean.Babington@usda.gov>
Subject: RE: Contacts for next 4 days

Meryl,
 Thanks for flagging this for us, and appreciate the forward leaning response from USFS and Chief Moore. I will let folks know over here.

What's your assessment of risk associated with this fire in terms of potential for major growth? Or too early to tell?

Jason

From: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>
Sent: Thursday, May 19, 2022 9:32 PM
To: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>

Cc: Babington, Sean - OSEC, Washington, DC <Sean.Babington@usda.gov>
Subject: RE: Contacts for next 4 days

Jason,

We have just learned of another escaped prescribed burn in southwest Colorado near Montrose (estimated 12.8 miles southwest of Montrose). Information is still coming in from the region as firefighters on the ground are focused on their suppression efforts. Initial information is:

- The Simms Prescribed Burn on the Grand Mesa Uncompahgre & Gunnison National Forests (GMUG) was a planned 180 acre broadcast burn that escaped this afternoon and was declared a wildfire shortly thereafter.
- There are structures in the area in immediate threat and some evacuations have been issued. It is not directly threatening Montrose proper.
- Firefighters are doing everything they can to suppress the fire. We have three large air tankers, a helicopter, and multiple crews enroute. A Type 1 Incident Command Team has also been mobilized.

The Regional Forester and his team are making contacts with their congressional members and staff and other key stakeholders.

Chief Moore will be having an emergency meeting tomorrow with the FS Executive Leadership Team and all Regional Foresters. Following that meeting, his intention is to publicly announce a national pause of prescribed burning nation-wide and to conduct a thorough program review in 90 days to ensure that we can continue to use this critical tool effectively in the long-term.

My cell is 202-(b) (6) : please reach out with questions. As more information comes in, I will keep you informed.

Best,
Meryl

From: Dawe, Christine -FS <christine.dawe@usda.gov>

Sent: Wednesday, May 18, 2022 8:10 PM

To: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>

Cc: Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>; Lichtenstein, Mark - FS <mark.lichtenstein@usda.gov>

Subject: Contacts for next 4 days

Jason, as I mentioned I'll be out through Sunday. Back in Office Monday about noon EDT.

Meryl's cell:202-(b) (6)

Mark's cell: 202-(b) (6)

Christine Dawe, Senior Advisor

Office of the Under Secretary

Natural Resources and Environment

United States Department of Agriculture (USDA)

406-(b) (6)

christine.dawe@usda.gov

We welcome the opportunity to meet with you:

If you're an external stakeholder and you would like to meet with members of our leadership and/or staff, please click [HERE](#) to kick off the scheduling process.

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From: Dawe, Christine -FS
Sent: Wednesday, December 7, 2022 12:18 PM
To: Kozey, Elizabeth H. EOP/NSC
CC: Wilkes, Homer - OSEC, Washington, DC; Moore, Randy -FS; Rivera, Jaelith- FS; Scardina, Anthony -FS; Marsolais, Jeff- FS; Perez, Jerome - FS; Fisher, Sarah -FS; Coleman, Angela - FS; Harrell, Meryl - OSEC, Washington, DC; Delgado, Andrea - OSEC, Washington, DC; Tama, Jason P. EOP/NSC
Subject: Re: Request to brief of Fire Retardant issues

Hi Liz, We can make either time work but prefer the morning

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From: Kozey, Elizabeth H. EOP/NSC <(b) (6) nsc.eop.gov>
Sent: Wednesday, December 7, 2022 11:23:23 AM
To: Dawe, Christine -FS <christine.dawe@usda.gov>
Cc: Wilkes, Homer - OSEC, Washington, DC <Homer.Wilkes2@usda.gov>; Moore, Randy -FS <randy.moore@usda.gov>; Rivera, Jaelith- FS <Jaelith.Hall-rivera@usda.gov>; Scardina, Anthony -FS <anthony.scardina@usda.gov>; Marsolais, Jeff- FS <Jeffrey.Marsolais@usda.gov>; Perez, Jerome - FS <jerome.perez@usda.gov>; Fisher, Sarah -FS <sarah.fisher@usda.gov>; Coleman, Angela -FS <angela.coleman2@usda.gov>; Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>; Delgado, Andrea - OSEC, Washington, DC <Andrea.Delgado@usda.gov>; Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Subject: RE: Request to brief of Fire Retardant issues

Good morning Christine,

Thank you for reaching out. Is your team available to brief Jason and I this Friday, December 9th? We have availability 10:00-11:30 or 2:30-4:00.

Thank you,
Liz

Elizabeth Kozey
Deputy Senior Director | Resilience and Response Directorate
National Security Council | The White House
Desk: 202 (b) (6)
Cell: 202 (b) (6)
Email (b) (6) nsc.eop.gov

From: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Sent: Monday, December 5, 2022 8:13 PM
To: Dawe, Christine -FS <christine.dawe@usda.gov>; Durkovich, Caitlin A. EOP/NSC <(b) (6) nsc.eop.gov>

Cc: Wilkes, Homer - OSEC, Washington, DC <Homer.Wilkes2@usda.gov>; Moore, Randy -FS <randy.moore@usda.gov>; Rivera, Jaelith- FS <Jaelith.Hall-rivera@usda.gov>; Scardina, Anthony -FS <anthony.scardina@usda.gov>; Marsolais, Jeff- FS <Jeffrey.Marsolais@usda.gov>; Perez, Jerome - FS <jerome.perez@usda.gov>; Fisher, Sarah -FS <sarah.fisher@usda.gov>; Coleman, Angela -FS <angela.coleman2@usda.gov>; Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>; Delgado, Andrea - OSEC, Washington, DC <Andrea.Delgado@usda.gov>; Kozey, Elizabeth H. EOP/NSC <(b) (6) nsc.eop.gov>

Subject: RE: Request to brief of Fire Retardant issues

Christine,
Thanks for flagging and thanks again for hosting us last week.

Liz Kozey or I will reach out to discuss and figure out next steps.

Tks,
Jason

From: Dawe, Christine -FS <christine.dawe@usda.gov>
Sent: Monday, December 5, 2022 3:24 PM
To: Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>; Durkovich, Caitlin A. EOP/NSC <(b) (6) nsc.eop.gov>
Cc: Wilkes, Homer - OSEC, Washington, DC <Homer.Wilkes2@usda.gov>; Moore, Randy -FS <randy.moore@usda.gov>; Rivera, Jaelith- FS <Jaelith.Hall-rivera@usda.gov>; Scardina, Anthony -FS <anthony.scardina@usda.gov>; Marsolais, Jeff- FS <Jeffrey.Marsolais@usda.gov>; Perez, Jerome - FS <jerome.perez@usda.gov>; Fisher, Sarah -FS <sarah.fisher@usda.gov>; Coleman, Angela -FS <angela.coleman2@usda.gov>; Harrell, Meryl - OSEC, Washington, DC <Meryl.Harrell@usda.gov>; Delgado, Andrea - OSEC, Washington, DC <Andrea.Delgado@usda.gov>
Subject: Request to brief of Fire Retardant issues

Jason and Caitlin,

We have a challenging issue on the table related to the use of fire retardant and (b) (5) DPP [REDACTED]

[REDACTED]. Jason feel free to call to discuss further and arrange a time that works for you and Caitlin.

Thank you

Christine Dawe, Senior Advisor

Office of the Under Secretary

Natural Resources and Environment

United States Department of Agriculture (USDA)

406- (b) (6)

christine.dawe@usda.gov

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FullerBennett, Harald - OGC, DC

Subject: Fire retardant - Interagency Meeting
Location: <https://pitc.zoomgov.com/j/1614436486?pwd=T2ZVYWRRYmZyQmJFN2IhbmlYTONKUT09>
Start: Tue 1/24/2023 3:30 PM
End: Tue 1/24/2023 4:00 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: Siegert, Zachary A. EOP/CEQ

Meeting to discuss the Fire Retardant issue currently pending before USDA, DOI and EPA to share the current state of play and align on next steps.



Hi there,

Zach Siegert, CEQ is inviting you to a scheduled ZoomGov meeting.

[Join Zoom Meeting](#)

One tap US (b) (6) # or
 mobile: (b) (6)

Meeting <https://pitc.zoomgov.com/j/1614436486?pwd=T2ZVYWRRYmZyQmJFN2IhbmlYTONKUT09>

URL:

Meeting (b) (6)

ID:

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ID:

Passcode: (b) (6)

SIP: (b) (6)

Passcode: (b) (6)

FullerBennett, Harald - OGC, DC

Subject: Fire Retardant Small Group Meeting
Location: Zoom; https://pitc.zoomgov.com/j/1618305818?pwd=Z2FYTzl1SEFOKzRHOu1zUjc4d0NhZz09

Start: Thu 2/9/2023 1:30 PM
End: Thu 2/9/2023 2:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Tama, Jason P. EOP/NSC

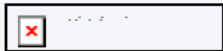
Colleagues,
 NSC and CEQ will host another interagency sync on Fire Retardant to share latest updates and align on next steps. If helpful to share invite with relevant DOJ staff, we are ok with that and defer to USDA and EPA on getting this invite to the right folks.

Rough Agenda:

(b) (5) DPP [Redacted]

Tks,
 Jason

Jason Tama
 Senior Director for Resilience
 National Security Council
 202-(b) (6) (office)
 202-(b) (6) (cell)



Hi there,

Jason Tama is inviting you to a scheduled ZoomGov meeting.

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One tap US: (b) (6) # or

mobile: (b) (6) #

Meeting <https://pitc.zoomgov.com/j/1618305818?pwd=Z2FYTZl1SEFOKzRHOu1zUjc4d0NhZz09>

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- +1 646 964 1167 US (US Spanish Line)
- +1 551 285 1373 US
- +1 669 216 1590 US (San Jose)
- +1 415 449 4000 US (US Spanish Line)

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International numbers

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H.323: (b) (6)

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ID:

Passcode (b) (6)

SIP: (b) (6)

Passcode (b) (6)

From: Donnay, Jacob - FS, DC
Sent: Wednesday, March 22, 2023 10:48 PM
To: Rodgers, Marshall J. EOP/OMB; Babington, Sean - OSEC, DC; Pidot, Justin R. EOP/CEQ; Tama, Jason P. EOP/NSC
CC: Harding, Stephenne S. EOP/CEQ; Lee-Ashley, Matt G. EOP/CEQ; Ferguson, Katharine - OSEC, DC; Scardina, Anthony - FS, DC; Mckinley, Duncan - FS, DC; Delgado, Andrea - OSEC, DC; Collier, Ellis - OSEC, DC
Subject: RE: DUE ASAP Today - Revised Testimony on HR1586 - Fire Retardant re: USFS testimony for Hearing this week: (LRM: [MJR-118-18])
Attachments: USDA Testimony_combined_HNR_03232023_Final.docx; USDA Testimony_combined_HNR_03232023_Final.pdf

Hi Marshall-
The attached was sent to the committee.
Many thanks,
Jake



Jake Donnay
Director

Forest Service
Legislative Affairs

p: 202-205-1617

c: 571 (b) (6)

jacob.donnay@usda.gov

201 14th Street, SW
Washington, DC 20024

www.fs.fed.us



Caring for the land and serving people

From: Rodgers, Marshall J. EOP/OMB <(b) (6) omb.eop.gov>
Sent: Wednesday, March 22, 2023 10:26 PM
To: Babington, Sean - OSEC, DC <Sean.Babington@usda.gov>; Pidot, Justin R. EOP/CEQ <(b) (6) ceq.eop.gov>; Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Cc: Harding, Stephenne S. EOP/CEQ <(b) (6) ceq.eop.gov>; Lee-Ashley, Matt G. EOP/CEQ <(b) (6) ceq.eop.gov>; Donnay, Jacob - FS, DC <jacob.donnay@usda.gov>; Ferguson, Katharine - OSEC, DC <Katharine.Ferguson@usda.gov>
Subject: RE: DUE ASAP Today - Revised Testimony on HR1586 - Fire Retardant re: USFS testimony for Hearing this week: (LRM: [MJR-118-18])

Thanks all.

Jake – based on our earlier conversation I don't think we need to review the clean copy. Please go forward to the committee and send us a clean final copy for our records.

From: Babington, Sean - OSEC, DC <Sean.Babington@usda.gov>
Sent: Wednesday, March 22, 2023 10:19 PM
To: Pidot, Justin R. EOP/CEQ <(b) (6) ceq.eop.gov>; Rodgers, Marshall J. EOP/OMB <(b) (6) omb.eop.gov>; Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>
Cc: Harding, Stephenne S. EOP/CEQ <(b) (6) ceq.eop.gov>; Lee-Ashley, Matt G. EOP/CEQ <(b) (6) ceq.eop.gov>; Donnay, Jacob - FS, DC <jacob.donnay@usda.gov>; Ferguson, Katharine - OSEC, DC <Katharine.Ferguson@usda.gov>
Subject: Re: DUE ASAP Today - Revised Testimony on HR1586 - Fire Retardant re: USFS testimony for Hearing this week: (LRM: [MJR-118-18])

USDA is comfortable with this version. We're working on cleaning up the edits and Jake with FS leg affairs will send soon. A very sincere thanks to all of you for working with us on this.

Best,
 Sean

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From: Pidot, Justin R. EOP/CEQ <(b) (6) ceq.eop.gov>
Sent: Wednesday, March 22, 2023 7:26 PM
To: Rodgers, Marshall J. EOP/OMB <(b) (6) omb.eop.gov>; Tama, Jason P. EOP/NSC <(b) (6) nsc.eop.gov>; Babington, Sean - OSEC, DC <Sean.Babington@usda.gov>
Cc: Harding, Stephenne S. EOP/CEQ <(b) (6) ceq.eop.gov>; Lee-Ashley, Matt G. EOP/CEQ <(b) (6) ceq.eop.gov>
Subject: RE: DUE ASAP Today - Revised Testimony on HR1586 - Fire Retardant re: USFS testimony for Hearing this week: (LRM: [MJR-118-18])

Hi Sean,

Here's a revised version with text that has been further modified from what I read to you. NSC and CEQ are both comfortable with this.

Justin

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**TESTIMONY of
CHRIS FRENCH, DEPUTY CHIEF
UNITED STATES DEPARTMENT OF AGRICULTURE—FOREST SERVICE**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES— SUBCOMMITTEE ON FEDERAL
LANDS**

MARCH 23, 2023

Concerning

**H.R. 200, Forest Information Reform Act
H.R. 1473, Targeting and Offsetting Existing Illegal Contaminants Act
H.R. 1567, Accurately Counting Risk Elimination Solutions Act
H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023**

Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) on several bills under the jurisdiction of the U.S. Forest Service (Forest Service).

H.R. 200 – Forest Information Reform Act

The Forest Service takes seriously its responsibility to comply with the Endangered Species Act (ESA) regulations, and the health and vitality of listed species. The Forest Service’s mission requires us to integrate the need to protect listed species with our obligation to carry out management actions to promote healthy and resilient ecosystems, protect our communities, support a diversity of species, and deliver many other benefits that the American people enjoy and depend on.

As you are aware, the Endangered Species Act of 1973 requires federal agencies to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (Services) when their discretionary actions might affect either ESA species or designated critical habitat. This consultation ensures that actions of federal agencies do not jeopardize listed species or adversely modify their critical habitat. Even after a biological opinion has been rendered by the Services, there are circumstances that might alter the Services’ original conclusions of the action’s impact on species or critical habitat which can trigger a requirement to reinitiate of consultation.

A pair of Ninth Circuit court decisions, commonly referred to as *Pacific Rivers Council (PRC)* and *Cottonwood*, which held that a new ESA listing of a species or critical habitat designation required the Forest Service to reinitiate consultation on approved land management plans because either the plan was an “ongoing action” (*PRC*) or because the agency retains discretion to authorize site-specific projects governed by the land management plan (LMP) (*Cottonwood*), have no basis in the ESA or its implementing regulations. LMPs provide general management direction for an

entire national forest or grassland. This direction is then integrated into projects, which normally requires a second decision and ESA consultation to dictate what on-the-ground actions can be taken. A Tenth Circuit decision (commonly known as *Forsgren*) reached a different conclusion than the Ninth Circuit's conclusions in *Cottonwood*, and instead held that the Forest Service did not need to reinitiate consultation on an approved plan with the Services because LMPs are neither ongoing nor self-executing actions for purposes of the ESA.

Congress enacted legislation in the FY 2018 Consolidated Appropriations Act (CAA) so that the Secretary of Agriculture did not need to reinitiate consultation on land management plan decisions when a new species is listed or critical habitat is designated in areas covered by land management plans less than 15 years old. The CAA also provided an exemption, or "safe harbor," for reinitiation of consultation for five years from the enactment of the bill or when a species is listed or critical habitat is designated regardless of when a land management plan had been adopted. Project level consultation on every federal action was not affected by the CAA and continued.

H.R. 200 exempts the Forest Service from reinitiating consultation with the Services on plans that have already been subject to consultation at the time they were approved, revised, or amended when a species is subsequently listed, critical habitat is designated, or new information concerning a listed species or critical habitat becomes available. It eliminates the time limits on the statutory exemption enacted in the 2018 CAA, making all land management plans exempt regardless of their age or when new ESA listings and new critical habitat designations were made. This bill would also eliminate any requirement that the Forest Service reinitiate consultation on LMPs when new information becomes available. Under Forest Service guidelines, new information is considered in project-level documents when it could influence the decision and subsequent actions that could affect a species listed under the ESA.

With the safe harbor provision in the 2018 CAA expiring today, March 23rd, about eighty-seven land management plans across the nation could now be subject to litigation. Since enactment of the CAA, the Forest Service has maintained its responsibilities in consulting with the Services on projects. Every agency action must comply with the ESA. The requirement to reinitiate consultation on LMPs that affect ESA listed species as redundant to the project-level consultations that are required. Furthermore, the Forest Service believes that concerns with new information and newly listed species and their critical habitat are adequately addressed through consultation at the project level. H.R. 200 directs that the agency is not required to reinitiate consultation on land management plans when there is new information, a new species listing, or a new critical habitat designation.

The USDA and the Department of the Interior (DOI) realizes ESA consultation is an issue with a number of equities that need to be addressed. We are committed to continuing to work together towards a legislative solution that allows for timely decision making, while maintaining the important wildlife protections afforded by the Endangered Species Act. As drafted, the Administration has concerns and looks forward to working with the Committee and the bill sponsor to address concerns with the bill. We want to ensure clarity on how consultation for specific actions or projects can provide the American public with confidence that the agency is upholding its responsibilities to protect listed species and their habitat while providing the many benefits we gain by managing our forests.

H.R. 1473 – Targeting and Offsetting Existing Illegal Contaminants Act

H.R. 1473 establishes an environmental restoration program under the jurisdiction of the USDA Forest Service, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601). The goal of this bill is to identify, investigate, research, and develop solutions to and remediation of contamination resulting from the cultivation of cannabis on National Forest System (NFS) lands. The bill additionally amends the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136l(b)(2)) to amend criminal penalties identified in that Act both independently and in connection with other federal offenses.

The Forest Service faces significant challenges related to illegal cannabis cultivation on NFS lands. More than 4,000 illegal grow sites have been identified on NFS lands. These sites pose problems for Forest Service law enforcement, public safety, and the environment with pesticides poisoning wildlife, soil, and water. In 2022, Forest Service staff and partners addressed 56 cultivation sites on 10 national forests, removing 49,318 pounds of trash, 68.7 miles of plastic irrigation line, and 169 containers of banned and illegal pesticides at a cost of over \$2.3 million. The Forest Service was able to restore over 307 million gallons of surface water diversions associated with these 56 sites.

The Forest Service appreciates the bill sponsors' intent to significantly enhance the Forest Service's ability to address trespass cultivation, including cannabis cultivation. The USDA supports the enhancements The USDA would like to work with the bill sponsors and Subcommittee on technical changes to better define the Forest Service's enforcement authority and the appropriate remediation activities to be undertaken. The ultimate outcome of this work is remediation of the damaged ecosystems and enhanced public safety.

The USDA supports the intent of the Targeting and Offsetting Existing Illegal Contaminants Act and looks forward to working with the bill sponsors and Subcommittee on technical changes to further support the Forest Service's ability to address trespass cultivation and the associated negative impacts. The Department of the Interior advises similar authority for management of DOI lands could be beneficial.

H.R. 1567 – Accurately Counting Risk Elimination Solutions Act

H.R. 1567 requires the U.S. Department of Agriculture (USDA) and Department of Interior (DOI) to include a publicly available report on hazardous fuels reduction activity acres in the yearly President's Budget. This report must account for each acre only once regardless of whether multiple hazardous fuels reduction activities were carried out on that acre during the year. In addition, the report must identify the following: the location of the acres and if they are in the wildland-urban interface; the level of wildfire risk on the first and last day of the reporting period; the types of hazardous fuels activities completed; the cost per acre by treatment type; and the effectiveness of the hazardous fuels reduction activities on reducing wildfire risk.

The bill requires the USDA and DOI to implement standardized procedures for tracking data related to hazardous fuels reduction activities. These procedures must include standardized data reviews of the accuracy and timely input of data used to track hazardous fuels reduction activities; verification methods that validate the data; an analysis of the effectiveness of the hazardous fuels

reduction activities on reducing the risk of wildfire; and methods to distinguish which acres are located within and outside of the wildland-urban interface.

Further, The USDA and DOI are required to provide a report within two weeks after implementing the standardized procedures required describing the procedures and program and policy recommendations to address any limitations in tracking data related to hazardous fuels reduction activities. Not later than two years after the date of enactment, the Government Accountability Office shall conduct a study on the implementation of this Act, including any limitations with respect to reporting hazardous fuels reduction activities or tracking data related to hazardous fuels reduction activities.

The USDA agrees that accurately tracking hazardous fuels treatments and the reduction of wildfire risk to communities is important for accountability to the American public and will help provide a comprehensive understanding of wildfire risk reduction. Tracking each dollar spent can improve our understanding of the funding needed to achieve the desired risk reduction to communities and better maintain our landscapes. However, a report accounting for each acre only once would limit the ability of decisionmakers and the public to understand the connection between risk reduction and financial accountability. For example, often the same acre requires multiple treatments (3 treatments on average) in a short period of time, such as mechanical thinning first and then prescribed fire to achieve the desired risk reduction. Once this phase is complete, those acres can be moved to a maintenance strategy (the point at which low-cost thinning or burning treatments are conducted at the appropriate fire-return intervals for a given landscape, on average every 10 to 15 years). Only accounting for one phase of a multi-phased treatment would only provide a partial window to the true cost of risk reduction and resilience.

The USDA supports the reporting of treatment locations, type of treatment, and cost of treatment across the landscape annually. The timing outlined in the bill on the first and last day of the reporting cycle will require continued development of metrics. Currently, the Forest Service has metrics to evaluate fire risk to communities, however these metrics continue to evolve with continued scientific analysis. The sensitivity of these metrics to detect change in vegetative conditions at fine scale is continuing to be evaluated. Fine scale detection is critical to ensure all treatments are evaluated to determine effectiveness with reducing fire risk to communities. We expect that these metrics within an annual report will evolve and change over time. Development of the standard structure and procedures will take time and coordination both internally and with DOI.

Finally, excluding acres improved or maintained by wildfire is achievable, however, we make note that the maintenance of acres by wildfire will be critical to the long-term success of fire risk reduction to communities. As more acres are treated to reduce fire risk, they must be maintained, and one critical means for doing so is through naturally occurring fire. We want to ensure that reporting requirements will have the desired effect of both improving fiscal accountability and serving as a tool that can improve the health and resilience of our forests and communities to the threat of wildfire.

The USDA appreciates the intent of the bill and would like to work with the Subcommittee and bill sponsors to address our concerns.

H.R. 1586 – Forest Protection and Wildland Firefighter Safety Act

H.R. 1586 amends the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), to provide the Secretary of Agriculture and Secretary of the Interior the authority to discharge fire retardant and other chemicals for fire suppression, control, or prevention activities. The bill exempts the Forest Service and certain other agencies from needing a permit under section 402 of the CWA.

In the western U.S., National Forests supply drinking water to almost 90 percent of the people served by public water systems. The Administration is committed to providing firefighters with the investments and tools they need to protect communities, our forests and sources of drinking water while at the same time maintaining the integrity of the Clean Water Act. The Administration does not, however, believe that an amendment to the Clean Water Act is necessary in light of the administrative steps that are being taken.

The CWA requires National Pollutant Discharge Elimination System (NPDES) permits for any discharge of a pollutant from a point source to navigable waters of the United States. The Forest Service's position has been that an NPDES permit was not required for fire control activities based upon guidance received from EPA in 2003. On February 16, 2023, the USDA Forest Service and EPA entered into a Federal Facility Compliance Agreement to address the Forest Service's discharge of pollutants during aerial fire-retardant applications and to require the Forest Service to obtain NPDES permit coverage for discharges to waters.

Currently, there is no NPDES permit established for aerial application of fire retardant, however the Administration is working diligently to come into compliance with the Clean Water Act. The Forest Service is working collaboratively with EPA on a general permit for aerielly delivered retardant. EPA estimates it will take between two to three years to develop and issue an EPA permit as well as coverage in 47 states, which issue their own permits, a process that would take about another year depending on the states' own permit timelines.

Current direction in the Nationwide Aerial Application of Fire Retardant on National Forest System Land Record of Decision (Decision) from 2011 has demonstrated it is very effective at reducing retardant drops into water. The 2011 Decision prohibits delivery of fire retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety. Over the last 10 years, less than one percent of retardant drops impacted American waterways.

Aerially delivered long-term fire retardant is part of an integrated firefighting strategy and is an essential tool the Forest Service and the interagency community uses in support of ground-based firefighting resources. Long-term retardants alter the way wildfire burns, decreases fire intensity, and slows the advance of fire, even after the water they originally contained has evaporated. If the Forest Service is only able to use water from airtankers, our ability to successfully suppress fires would be significantly impacted. In addition to the impact on our wildfire response, we must consider the implications for our wildland firefighter workforce. Ensuring that we are allowed to continue using wildfire retardant to protect homes and communities is the highest priority of the administration. We believe retardant can be (and has been) delivered without compromising public health and the environment.

The USDA is committed to CWA compliance and protection of water quality and keeping our communities and wildland firefighters safe. The nation is experiencing hotter, drier and longer wildfire seasons. Wildfires are growing, both in size and severity, due in part to fuels buildup, fire exclusion, development in fire-prone areas and climate change. The dedication, bravery, and professional integrity of our wildland firefighters and support personnel is second to none. We must protect approximately 11,300 Forest Service wildland firefighters and the communities they defend, using every tool available, including fire retardant. As we work with our many partners to assist communities impacted by wildfires, we are committed, through shared stewardship, to change this trend in the coming years. While we agree with the Sponsors' view that the application of fire retardant is an essential tool for protecting communities, forests, and our firefighters, we believe we can protect this long-standing practice without amending the CWA, which is essential to protecting public health and our drinking water supplies. While the Administration cannot support this bill, we look forward to working with the bill sponsors and Subcommittee on efforts that ensure the integrity of the CWA while continuing to allow aerial retardant as part of the interagency suppression response. Nonetheless, we are reviewing a technical assistance request and look forward to working with the bill sponsors and Subcommittee on efforts that ensure the integrity of the CWA while continuing to allow aerial retardant as part of the interagency suppression response.

Thank you again for the opportunity to testify on these bills, and I welcome any questions.

**TESTIMONY of
CHRIS FRENCH, DEPUTY CHIEF
UNITED STATES DEPARTMENT OF AGRICULTURE—FOREST SERVICE**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES— SUBCOMMITTEE ON FEDERAL
LANDS**

MARCH 23, 2023

Concerning

**H.R. 200, Forest Information Reform Act
H.R. 1473, Targeting and Offsetting Existing Illegal Contaminants Act
H.R. 1567, Accurately Counting Risk Elimination Solutions Act
H.R. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023**

Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) on several bills under the jurisdiction of the U.S. Forest Service (Forest Service).

H.R. 200 – Forest Information Reform Act

The Forest Service takes seriously its responsibility to comply with the Endangered Species Act (ESA) regulations, and the health and vitality of listed species. The Forest Service’s mission requires us to integrate the need to protect listed species with our obligation to carry out management actions to promote healthy and resilient ecosystems, protect our communities, support a diversity of species, and deliver many other benefits that the American people enjoy and depend on.

As you are aware, the Endangered Species Act of 1973 requires federal agencies to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (Services) when their discretionary actions might affect either ESA species or designated critical habitat. This consultation ensures that actions of federal agencies do not jeopardize listed species or adversely modify their critical habitat. Even after a biological opinion has been rendered by the Services, there are circumstances that might alter the Services’ original conclusions of the action’s impact on species or critical habitat which can trigger a requirement to reinitiate of consultation.

A pair of Ninth Circuit court decisions, commonly referred to as *Pacific Rivers Council (PRC)* and *Cottonwood*, which held that a new ESA listing of a species or critical habitat designation required the Forest Service to reinitiate consultation on approved land management plans because either the plan was an “ongoing action” (*PRC*) or because the agency retains discretion to authorize site-specific projects governed by the land management plan (LMP) (*Cottonwood*), have no basis in the ESA or its implementing regulations. LMPs provide general management direction for an

entire national forest or grassland. This direction is then integrated into projects, which normally requires a second decision and ESA consultation to dictate what on-the-ground actions can be taken. A Tenth Circuit decision (commonly known as *Forsgren*) reached a different conclusion than the Ninth Circuit's conclusions in *Cottonwood*, and instead held that the Forest Service did not need to reinitiate consultation on an approved plan with the Services because LMPs are neither ongoing nor self-executing actions for purposes of the ESA.

Congress enacted legislation in the FY 2018 Consolidated Appropriations Act (CAA) so that the Secretary of Agriculture did not need to reinitiate consultation on land management plan decisions when a new species is listed or critical habitat is designated in areas covered by land management plans less than 15 years old. The CAA also provided an exemption, or "safe harbor," for reinitiation of consultation for five years from the enactment of the bill or when a species is listed or critical habitat is designated regardless of when a land management plan had been adopted. Project level consultation on every federal action was not affected by the CAA and continued.

H.R. 200 exempts the Forest Service from reinitiating consultation with the Services on plans that have already been subject to consultation at the time they were approved, revised, or amended when a species is subsequently listed, critical habitat is designated, or new information concerning a listed species or critical habitat becomes available. It eliminates the time limits on the statutory exemption enacted in the 2018 CAA, making all land management plans exempt regardless of their age or when new ESA listings and new critical habitat designations were made. This bill would also eliminate any requirement that the Forest Service reinitiate consultation on LMPs when new information becomes available. Under Forest Service guidelines, new information is considered in project-level documents when it could influence the decision and subsequent actions that could affect a species listed under the ESA.

With the safe harbor provision in the 2018 CAA expiring today, March 23rd, about eighty-seven land management plans across the nation could now be subject to litigation. Since enactment of the CAA, the Forest Service has maintained its responsibilities in consulting with the Services on projects. Every agency action must comply with the ESA. The requirement to reinitiate consultation on LMPs that affect ESA listed species as redundant to the project-level consultations that are required. Furthermore, the Forest Service believes that concerns with new information and newly listed species and their critical habitat are adequately addressed through consultation at the project level. H.R. 200 directs that the agency is not required to reinitiate consultation on land management plans when there is new information, a new species listing, or a new critical habitat designation.

The USDA and the Department of the Interior (DOI) realizes ESA consultation is an issue with a number of equities that need to be addressed. We are committed to continuing to work together towards a legislative solution that allows for timely decision making, while maintaining the important wildlife protections afforded by the Endangered Species Act. As drafted, the Administration has concerns and looks forward to working with the Committee and the bill sponsor to address concerns with the bill. We want to ensure clarity on how consultation for specific actions or projects can provide the American public with confidence that the agency is upholding its responsibilities to protect listed species and their habitat while providing the many benefits we gain by managing our forests.

H.R. 1473 – Targeting and Offsetting Existing Illegal Contaminants Act

H.R. 1473 establishes an environmental restoration program under the jurisdiction of the USDA Forest Service, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601). The goal of this bill is to identify, investigate, research, and develop solutions to and remediation of contamination resulting from the cultivation of cannabis on National Forest System (NFS) lands. The bill additionally amends the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136l(b)(2)) to amend criminal penalties identified in that Act both independently and in connection with other federal offenses.

The Forest Service faces significant challenges related to illegal cannabis cultivation on NFS lands. More than 4,000 illegal grow sites have been identified on NFS lands. These sites pose problems for Forest Service law enforcement, public safety, and the environment with pesticides poisoning wildlife, soil, and water. In 2022, Forest Service staff and partners addressed 56 cultivation sites on 10 national forests, removing 49,318 pounds of trash, 68.7 miles of plastic irrigation line, and 169 containers of banned and illegal pesticides at a cost of over \$2.3 million. The Forest Service was able to restore over 307 million gallons of surface water diversions associated with these 56 sites.

The Forest Service appreciates the bill sponsors' intent to significantly enhance the Forest Service's ability to address trespass cultivation, including cannabis cultivation. The USDA supports the enhancements The USDA would like to work with the bill sponsors and Subcommittee on technical changes to better define the Forest Service's enforcement authority and the appropriate remediation activities to be undertaken. The ultimate outcome of this work is remediation of the damaged ecosystems and enhanced public safety.

The USDA supports the intent of the Targeting and Offsetting Existing Illegal Contaminants Act and looks forward to working with the bill sponsors and Subcommittee on technical changes to further support the Forest Service's ability to address trespass cultivation and the associated negative impacts. The Department of the Interior advises similar authority for management of DOI lands could be beneficial.

H.R. 1567 – Accurately Counting Risk Elimination Solutions Act

H.R. 1567 requires the U.S. Department of Agriculture (USDA) and Department of Interior (DOI) to include a publicly available report on hazardous fuels reduction activity acres in the yearly President's Budget. This report must account for each acre only once regardless of whether multiple hazardous fuels reduction activities were carried out on that acre during the year. In addition, the report must identify the following: the location of the acres and if they are in the wildland-urban interface; the level of wildfire risk on the first and last day of the reporting period; the types of hazardous fuels activities completed; the cost per acre by treatment type; and the effectiveness of the hazardous fuels reduction activities on reducing wildfire risk.

The bill requires the USDA and DOI to implement standardized procedures for tracking data related to hazardous fuels reduction activities. These procedures must include standardized data reviews of the accuracy and timely input of data used to track hazardous fuels reduction activities; verification methods that validate the data; an analysis of the effectiveness of the hazardous fuels

reduction activities on reducing the risk of wildfire; and methods to distinguish which acres are located within and outside of the wildland-urban interface.

Further, The USDA and DOI are required to provide a report within two weeks after implementing the standardized procedures required describing the procedures and program and policy recommendations to address any limitations in tracking data related to hazardous fuels reduction activities. Not later than two years after the date of enactment, the Government Accountability Office shall conduct a study on the implementation of this Act, including any limitations with respect to reporting hazardous fuels reduction activities or tracking data related to hazardous fuels reduction activities.

The USDA agrees that accurately tracking hazardous fuels treatments and the reduction of wildfire risk to communities is important for accountability to the American public and will help provide a comprehensive understanding of wildfire risk reduction. Tracking each dollar spent can improve our understanding of the funding needed to achieve the desired risk reduction to communities and better maintain our landscapes. However, a report accounting for each acre only once would limit the ability of decisionmakers and the public to understand the connection between risk reduction and financial accountability. For example, often the same acre requires multiple treatments (3 treatments on average) in a short period of time, such as mechanical thinning first and then prescribed fire to achieve the desired risk reduction. Once this phase is complete, those acres can be moved to a maintenance strategy (the point at which low-cost thinning or burning treatments are conducted at the appropriate fire-return intervals for a given landscape, on average every 10 to 15 years). Only accounting for one phase of a multi-phased treatment would only provide a partial window to the true cost of risk reduction and resilience.

The USDA supports the reporting of treatment locations, type of treatment, and cost of treatment across the landscape annually. The timing outlined in the bill on the first and last day of the reporting cycle will require continued development of metrics. Currently, the Forest Service has metrics to evaluate fire risk to communities, however these metrics continue to evolve with continued scientific analysis. The sensitivity of these metrics to detect change in vegetative conditions at fine scale is continuing to be evaluated. Fine scale detection is critical to ensure all treatments are evaluated to determine effectiveness with reducing fire risk to communities. We expect that these metrics within an annual report will evolve and change over time. Development of the standard structure and procedures will take time and coordination both internally and with DOI.

Finally, excluding acres improved or maintained by wildfire is achievable, however, we make note that the maintenance of acres by wildfire will be critical to the long-term success of fire risk reduction to communities. As more acres are treated to reduce fire risk, they must be maintained, and one critical means for doing so is through naturally occurring fire. We want to ensure that reporting requirements will have the desired effect of both improving fiscal accountability and serving as a tool that can improve the health and resilience of our forests and communities to the threat of wildfire.

The USDA appreciates the intent of the bill and would like to work with the Subcommittee and bill sponsors to address our concerns.

H.R. 1586 – Forest Protection and Wildland Firefighter Safety Act

H.R. 1586 amends the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), to provide the Secretary of Agriculture and Secretary of the Interior the authority to discharge fire retardant and other chemicals for fire suppression, control, or prevention activities. The bill exempts the Forest Service and certain other agencies from needing a permit under section 402 of the CWA.

In the western U.S., National Forests supply drinking water to almost 90 percent of the people served by public water systems. The Administration is committed to providing firefighters with the investments and tools they need to protect communities, our forests and sources of drinking water while at the same time maintaining the integrity of the Clean Water Act. The Administration does not, however, believe that an amendment to the Clean Water Act is necessary in light of the administrative steps that are being taken.

The CWA requires National Pollutant Discharge Elimination System (NPDES) permits for any discharge of a pollutant from a point source to navigable waters of the United States. The Forest Service's position has been that an NPDES permit was not required for fire control activities based upon guidance received from EPA in 2003. On February 16, 2023, the USDA Forest Service and EPA entered into a Federal Facility Compliance Agreement to address the Forest Service's discharge of pollutants during aerial fire-retardant applications and to require the Forest Service to obtain NPDES permit coverage for discharges to waters.

Currently, there is no NPDES permit established for aerial application of fire retardant, however the Administration is working diligently to come into compliance with the Clean Water Act. The Forest Service is working collaboratively with EPA on a general permit for aerielly delivered retardant. EPA estimates it will take between two to three years to develop and issue an EPA permit as well as coverage in 47 states, which issue their own permits, a process that would take about another year depending on the states' own permit timelines.

Current direction in the Nationwide Aerial Application of Fire Retardant on National Forest System Land Record of Decision (Decision) from 2011 has demonstrated it is very effective at reducing retardant drops into water. The 2011 Decision prohibits delivery of fire retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety. Over the last 10 years, less than one percent of retardant drops impacted American waterways.

Aerially delivered long-term fire retardant is part of an integrated firefighting strategy and is an essential tool the Forest Service and the interagency community uses in support of ground-based firefighting resources. Long-term retardants alter the way wildfire burns, decreases fire intensity, and slows the advance of fire, even after the water they originally contained has evaporated. If the Forest Service is only able to use water from airtankers, our ability to successfully suppress fires would be significantly impacted. In addition to the impact on our wildfire response, we must consider the implications for our wildland firefighter workforce. Ensuring that we are allowed to continue using wildfire retardant to protect homes and communities is the highest priority of the administration. We believe retardant can be (and has been) delivered without compromising public health and the environment.

The USDA is committed to CWA compliance and protection of water quality and keeping our communities and wildland firefighters safe. The nation is experiencing hotter, drier and longer wildfire seasons. Wildfires are growing, both in size and severity, due in part to fuels buildup, fire exclusion, development in fire-prone areas and climate change. The dedication, bravery, and professional integrity of our wildland firefighters and support personnel is second to none. We must protect approximately 11,300 Forest Service wildland firefighters and the communities they defend, using every tool available, including fire retardant. As we work with our many partners to assist communities impacted by wildfires, we are committed, through shared stewardship, to change this trend in the coming years. While we agree with the Sponsors' view that the application of fire retardant is an essential tool for protecting communities, forests, and our firefighters, we believe we can protect this long-standing practice without amending the CWA, which is essential to protecting public health and our drinking water supplies. While the Administration cannot support this bill, we look forward to working with the bill sponsors and Subcommittee on efforts that ensure the integrity of the CWA while continuing to allow aerial retardant as part of the interagency suppression response. Nonetheless, we are reviewing a technical assistance request and look forward to working with the bill sponsors and Subcommittee on efforts that ensure the integrity of the CWA while continuing to allow aerial retardant as part of the interagency suppression response.

Thank you again for the opportunity to testify on these bills, and I welcome any questions.

From: Lee-Ashley, Matt G. EOP/CEQ
Sent: Friday, March 24, 2023 12:24 PM
To: Ferguson, Katharine - OSEC, DC; Babington, Sean - OSEC, DC
Subject: RE: Fix

(And granted, it's not much better or more accurate, but do appreciate the effort). Will do my best to manage reactions here.

From: Lee-Ashley, Matt G. EOP/CEQ
Sent: Friday, March 24, 2023 12:17 PM
To: 'Ferguson, Katharine - OSEC, DC' <Katharine.Ferguson@usda.gov>; Babington, Sean - OSEC, DC <Sean.Babington@usda.gov>
Subject: RE: Fix

Story headline and subhed has been updated. Thank you

From: Ferguson, Katharine - OSEC, DC <Katharine.Ferguson@usda.gov>
Sent: Friday, March 24, 2023 9:05 AM
To: Lee-Ashley, Matt G. EOP/CEQ <(b) (6)@ceq.eop.gov>; Babington, Sean - OSEC, DC <Sean.Babington@usda.gov>
Subject: RE: Fix

On it. -K

From: Lee-Ashley, Matt G. EOP/CEQ <(b) (6)@ceq.eop.gov>
Sent: Friday, March 24, 2023 8:52 AM
To: Ferguson, Katharine - OSEC, DC <Katharine.Ferguson@usda.gov>; Babington, Sean - OSEC, DC <Sean.Babington@usda.gov>
Subject: Fix

Good morning,

This story and headline is inconsistent with the Administration's position and USFS testimony. Please have your comms team correct this ASAP.

Thank you.

-Matt

Biden admin backs fire retardant bill that skirts permits

A top Forest Service official said the agency supports legislation to allow the continued use of fire retardant without first obtaining water pollution permits.

BY:
SCOTT STREATER
| 03/24/2023 06:16 AM EDT

A firefighting plane drops a load of fire retardant over a smoldering hillside in Middletown, Calif., in 2015. Elaine Thompson/AP Photo

E&E DAILY | A senior Forest Service official told a House panel Thursday that the agency supports the goals of a bipartisan bill that would allow it to continue using fire retardants to battle large blazes without having to first obtain water pollution permits.

Forest Service Deputy Chief Chris French told the Natural Resources Subcommittee on Federal Lands that the agency has only minor "technical" revisions it would like to make to [H.R. 1586](#), which would shield fire retardant dropped by aircraft from a potential court-ordered injunction forbidding its use without a permit.

French also vowed that the Forest Service would continue using fire retardant to fight wildfires "until we're ordered not to."

The "Forest Protection and Wildland Firefighter Safety Act," introduced last week by Reps. Doug LaMalfa (R-Calif.) and Jimmy Panetta (D-Calif.), received support from others at the hearing.

The bill aims to block a potential court injunction requested by the environmental group Forest Service Employees for Environmental Ethics in a lawsuit seeking to prevent the retardants from unintentionally seeping into waterways, where they are potentially toxic to aquatic plants and animals.

The bill — which already has 28 co-sponsors, including California Democratic Reps. John Garamendi and Jim Costa — would ensure the Forest Service could continue to drop the fire retardants from airplanes to protect firefighters and communities without first obtaining a National Pollutant Discharge Elimination System permit.

"Until our forests are in a healthy state and a small, naturally occurring blaze does not pose a risk of turning into another million-acre catastrophic blaze, it's essential that all wildland firefighting agencies continue to be able to utilize every single tool they can to protect forested land and nearby residents from these wildfires," LaMalfa said.

French said the Forest Service has policies in place to protect the waterways, including a 300-foot buffer from waterways when the retardant is dropped.

"We are incredibly careful and precise in our use of fire retardant," he said. "As a result, more than 99 percent of our aerial retardant drops do not affect American waterways."

Nevertheless, the Forest Service has applied for a federal permit from EPA.

French noted they do not know when that permitting process will be completed. "It looks as if it will require years of work with EPA and multiple states to establish those permits," he said.

Its loss would be significant, French said, as aerial fire retardant is usually dropped in areas ahead of fire crews "in order to create critical space for our firefighters to go and reduce the intensity of fires before they come into communities."

It also makes conditions safer for the firefighters themselves, he said.

"As a past firefighter, I can't imagine sending ground folks in to fight fires if you have not gone through it, pretreated, or reduced areas from their intensity with retardant," he said. "It would be crippling."

Steve Ellis, who chairs the National Association of Forest Service Retirees, said he agreed.

"Fire management can be complex and requires the use of many important tools. Fire retardant is one of the most crucial," Ellis said. "As fire season has already begun this year, removing such an important tool from the toolkit is a threat to firefighter and public safety; it's a threat to watersheds, wildlife and human health in the form of smoke."

He added, "Requiring a national permit for the use of fire retardant is not the way to go."

Real or 'perceived' obstacles?

Thursday's subcommittee hearing included three other bills that address issues affecting national forestland management practices, as well as wildfire fighting activities ([E&E Daily](#), March 21).

The top one was [H.R. 200](#), sponsored by Rep. Matt Rosendale (R-Mont.).

Rosendale's bill would undo what he termed a "disastrous" 9th U.S. Circuit Court of Appeals ruling from 2015 that resulted in the Forest Service having to reconsult with the Fish and Wildlife Service on formal forest management plans when new information on endangered species arises.

The decision in *Cottonwood Environmental Law Center v. Forest Service* adds an extra procedure that both the Obama and Trump administrations opposed in court.

"We need to be doing all we can to combat wildfires out West," Rosendale said. "My legislation is a key part of stopping the wildfire crisis."

Congress in 2018 adopted a temporary safe harbor provision shielding the Forest Service from the mandates, but it expired Thursday, French said.

He said the result is that the agency has estimated it may have to reopen endangered species consultation with FWS on 87 land management plans that could take a decade to complete.

French and Republican supporters of the Rosendale bill said this is an unnecessary barrier to proper forest management, diverting resources needed to mitigate national forest and grasslands from the threat of wildfires.

While there are some technical issues the Forest Service wants to correct in the bill, French said they support the overall intent, which he said "would allow us to continue focusing on updating land management plans while ensuring that habitat conservation and protection of endangered species continues through project-by-project consultation."

But Rep. Sydney Kamlager-Dove (D-Calif.), listed Rosendale's bill and the overall GOP handwringing over the consultation requirements as among her "perceived impediments" to forest management.

So did Susan Jane Brown, a senior staff attorney at the Western Environmental Law Center.

"The *Cottonwood* decision is not the demon that its detractors in the Forest Service make it out to be," Brown said.

The time it takes to complete consultation with FWS has been greatly overstated, Brown said, and the court ruling has actually allowed the Forest Service to better understand how forest management decision impact endangered species.

Taking this away, Kamlager-Dove said, "could be really problematic" for, among other things, "adapting management plans as the impacts of climate change grow."

She added, "Instead of rolling back protections we should provide our land management agencies with the resources they need to update plans and consult when necessary, not take tools away that could lead to better coordination and the preservation of threatened and endangered species."

Other bills

The subcommittee hearing also featured [H.R. 1473](#), introduced earlier this month by Rep. Scott Peters (D-Calif.) and LaMalfa, which targets illegal cannabis growing operations on federal lands.

French said the Forest Service supports the intent of the "Targeting and Offsetting Existing Illegal Contaminants Act," which calls for restoration of forestland that has been damaged by "trespass cannabis cultivation" and for stronger penalties for those convicted of applying unapproved chemical pesticides on Forest Service lands, such as for cultivation of cannabis.

Peters said during the hearing that last year "almost 1 million illegally grown, unregulated marijuana plants, and 33 tons of cultivation equipment, including banned pesticides were seized from illicit grow sites on public land across California."

The chemicals in the banned pesticides "poison the soil, water and air," pose a danger to endangered species and have resulted in the hospitalization of "Forest Service agents tasked with remediation and severely sicken consumers," he said.

French told the subcommittee that since 2017, the Forest Service has "fully reclaimed nearly 330 grow sites, removing over 300 pounds of trash and more than 350 miles of irrigation pipes and thousands of containers of illegal pesticides."

Subcommittee Chair Tom Tiffany (R-Wis.) called the issue a "growing crisis."

Also debated Thursday was [H.R. 1567](#), which Tiffany introduced this month.

The "Accurately Counting Risk Elimination Solutions (ACRES) Act," would require annual reports to Congress from the Forest Service and Interior Department on hazardous fuels removal from lands they oversee.

"This bill will bring transparency to the misleading and inaccurate way hazardous fuel treatments are reported," Tiffany said.

Like Peters' bill on stopping illegal marijuana grows on federal lands, Tiffany's bill appeared to draw bipartisan support.

"It is also critical that Congress and the American people receive accurate, transparent and accessible data about how projects are being planned and implemented, which is why I support the intent of Chair Tiffany's 'ACRES Act,'" Kamlager-Dove said.

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From: Ferguson, Katharine - OSEC, DC
Sent: Friday, March 24, 2023 12:45 PM
To: Lee-Ashley, Matt G. EOP/CEQ; Babington, Sean - OSEC, DC
Subject: RE: Fix

So you are aware, our comms director reports that the reporter was completely unresponsive completely. Our team reached out to the editor. Not sure if the reporter made the change and just doesn't want to talk to us about it or something else. -K

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Subject: Fix

Good morning,

This story and headline is inconsistent with the Administration's position and USFS testimony. Please have your comms team correct this ASAP.

Thank you.

-Matt

Biden admin backs fire retardant bill that skirts permits

A top Forest Service official said the agency supports legislation to allow the continued use of fire retardant without first obtaining water pollution permits.

BY:

SCOTT STREATER

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A firefighting plane drops a load of fire retardant over a smoldering hillside in Middletown, Calif., in 2015. Elaine Thompson/AP Photo

E&E DAILY | A senior Forest Service official told a House panel Thursday that the agency supports the goals of a bipartisan bill that would allow it to continue using fire retardants to battle large blazes without having to first obtain water pollution permits.

Forest Service Deputy Chief Chris French told the Natural Resources Subcommittee on Federal Lands that the agency has only minor "technical" revisions it would like to make to [H.R. 1586](#), which would shield fire retardant dropped by aircraft from a potential court-ordered injunction forbidding its use without a permit.

French also vowed that the Forest Service would continue using fire retardant to fight wildfires "until we're ordered not to."

The "Forest Protection and Wildland Firefighter Safety Act," introduced last week by Reps. Doug LaMalfa (R-Calif.) and Jimmy Panetta (D-Calif.), received support from others at the hearing.

The bill aims to block a potential court injunction requested by the environmental group Forest Service Employees for Environmental Ethics in a lawsuit seeking to prevent the retardants from unintentionally seeping into waterways, where they are potentially toxic to aquatic plants and animals.

The bill — which already has 28 co-sponsors, including California Democratic Reps. John Garamendi and Jim Costa — would ensure the Forest Service could continue to drop the fire retardants from airplanes to protect firefighters and communities without first obtaining a National Pollutant Discharge Elimination System permit.

"Until our forests are in a healthy state and a small, naturally occurring blaze does not pose a risk of turning into another million-acre catastrophic blaze, it's essential that all wildland firefighting agencies continue to be able to utilize every single tool they can to protect forested land and nearby residents from these wildfires," LaMalfa said.

French said the Forest Service has policies in place to protect the waterways, including a 300-foot buffer from waterways when the retardant is dropped.

"We are incredibly careful and precise in our use of fire retardant," he said. "As a result, more than 99 percent of our aerial retardant drops do not affect American waterways."

Nevertheless, the Forest Service has applied for a federal permit from EPA.

French noted they do not know when that permitting process will be completed. "It looks as if it will require years of work with EPA and multiple states to establish those permits," he said.

Its loss would be significant, French said, as aerial fire retardant is usually dropped in areas ahead of fire crews "in order to create critical space for our firefighters to go and reduce the intensity of fires before they come into communities."

It also makes conditions safer for the firefighters themselves, he said.

"As a past firefighter, I can't imagine sending ground folks in to fight fires if you have not gone through it, pretreated, or reduced areas from their intensity with retardant," he said. "It would be crippling."

Steve Ellis, who chairs the National Association of Forest Service Retirees, said he agreed.

"Fire management can be complex and requires the use of many important tools. Fire retardant is one of the most crucial," Ellis said. "As fire season has already begun this year, removing such an important tool from the toolkit is a threat to firefighter and public safety; it's a threat to watersheds, wildlife and human health in the form of smoke."

He added, "Requiring a national permit for the use of fire retardant is not the way to go."

Real or 'perceived' obstacles?

Thursday's subcommittee hearing included three other bills that address issues affecting national forestland management practices, as well as wildfire fighting activities ([E&E Daily](#), March 21).

The top one was [H.R. 200](#), sponsored by Rep. Matt Rosendale (R-Mont.).

Rosendale's bill would undo what he termed a "disastrous" 9th U.S. Circuit Court of Appeals ruling from 2015 that resulted in the Forest Service having to reconsult with the Fish and Wildlife Service on formal forest management plans when new information on endangered species arises.

The decision in *Cottonwood Environmental Law Center v. Forest Service* adds an extra procedure that both the Obama and Trump administrations opposed in court.

"We need to be doing all we can to combat wildfires out West," Rosendale said. "My legislation is a key part of stopping the wildfire crisis."

Congress in 2018 adopted a temporary safe harbor provision shielding the Forest Service from the mandates, but it expired Thursday, French said.

He said the result is that the agency has estimated it may have to reopen endangered species consultation with FWS on 87 land management plans that could take a decade to complete.

French and Republican supporters of the Rosendale bill said this is an unnecessary barrier to proper forest management, diverting resources needed to mitigate national forest and grasslands from the threat of wildfires.

While there are some technical issues the Forest Service wants to correct in the bill, French said they support the overall intent, which he said "would allow us to continue focusing on updating land management plans while ensuring that habitat conservation and protection of endangered species continues through project-by-project consultation."

But Rep. Sydney Kamlager-Dove (D-Calif.), listed Rosendale's bill and the overall GOP handwringing over the consultation requirements as among her "perceived impediments" to forest management.

So did Susan Jane Brown, a senior staff attorney at the Western Environmental Law Center.

"The *Cottonwood* decision is not the demon that its detractors in the Forest Service make it out to be," Brown said.

The time it takes to complete consultation with FWS has been greatly overstated, Brown said, and the court ruling has actually allowed the Forest Service to better understand how forest management decision impact endangered species.

Taking this away, Kamlager-Dove said, "could be really problematic" for, among other things, "adapting management plans as the impacts of climate change grow."

She added, "Instead of rolling back protections we should provide our land management agencies with the resources they need to update plans and consult when necessary, not take tools away that could lead to better coordination and the preservation of threatened and endangered species."

Other bills

The subcommittee hearing also featured [H.R. 1473](#), introduced earlier this month by Rep. Scott Peters (D-Calif.) and LaMalfa, which targets illegal cannabis growing operations on federal lands.

French said the Forest Service supports the intent of the "Targeting and Offsetting Existing Illegal Contaminants Act," which calls for restoration of forestland that has

been damaged by "trespass cannabis cultivation" and for stronger penalties for those convicted of applying unapproved chemical pesticides on Forest Service lands, such as for cultivation of cannabis.

Peters said during the hearing that last year "almost 1 million illegally grown, unregulated marijuana plants, and 33 tons of cultivation equipment, including banned pesticides were seized from illicit grow sites on public land across California."

The chemicals in the banned pesticides "poison the soil, water and air," pose a danger to endangered species and have resulted in the hospitalization of "Forest Service agents tasked with remediation and severely sicken consumers," he said.

French told the subcommittee that since 2017, the Forest Service has "fully reclaimed nearly 330 grow sites, removing over 300 pounds of trash and more than 350 miles of irrigation pipes and thousands of containers of illegal pesticides."

Subcommittee Chair Tom Tiffany (R-Wis.) called the issue a "growing crisis."

Also debated Thursday was [H.R. 1567](#), which Tiffany introduced this month.

The "Accurately Counting Risk Elimination Solutions (ACRES) Act," would require annual reports to Congress from the Forest Service and Interior Department on hazardous fuels removal from lands they oversee.

"This bill will bring transparency to the misleading and inaccurate way hazardous fuel treatments are reported," Tiffany said.

Like Peters' bill on stopping illegal marijuana grows on federal lands, Tiffany's bill appeared to draw bipartisan support.

"It is also critical that Congress and the American people receive accurate, transparent and accessible data about how projects are being planned and implemented, which is why I support the intent of Chair Tiffany's 'ACRES Act,'" Kamlager-Dove said.

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