

Statement for the Record
Department of the Interior
House Committee on Natural Resources
Subcommittee on Public Lands and Environmental Regulation
H.R. 818, Healthy Forests Management and Wildfire Prevention Act
H.R. 1345, Catastrophic Wildfire Prevention Act
April 11, 2013

Introduction

Thank you for the opportunity to provide the Department of the Interior's views on H.R. 818, the Healthy Forests Management and Wildfire Prevention Act, and H.R. 1345, the Catastrophic Wildfire Prevention Act. The Department received its invitation to testify on three bills less than seven days before the hearing, and is only able to provide views on the two bills that had been introduced as of the date of the invitation.

H.R. 818 and H.R. 1345 attempt to reduce the risk of catastrophic damages resulting from wildland fire by defining new forest and fuels treatments policies on public lands managed by the Bureau of Land Management (BLM) and on National Forest System lands managed by the U.S. Forest Service. The Department of the Interior supports the goals of enhancing restoration for public forests and rangelands and mitigating the risks of wildland fire by working more effectively with our partners, and supports Good Neighbor and Stewardship Contracting authorities. However, the Department cannot support measures that expedite restoration treatments, as well as commercial grazing and timber harvest, at the expense of appropriate environmental review and public involvement in federal actions, and therefore opposes H.R. 818 and H.R. 1345.

Background

The BLM is committed to sustaining the health, diversity, and productivity of forests and woodlands, which together comprise 58 million acres of public lands managed by the BLM. The mounting effects of insect infestations, disease outbreaks, prolonged drought, climate change, invasions of harmful non-native species, and the accumulation of fuels generate increased risks of catastrophic losses, including risks to life and property that may result from wildfire. These increasing pressures, coupled with increasing demands for uses of the public lands, may also result in the loss of natural and cultural resources, loss of wildlife habitat, and loss of recreational opportunities on the public lands.

Guiding all of the BLM's management actions – including forestry and fuels management – is the agency's land use planning process. This is an open, public process in which the agency's proposals for managing particular resources are made known to the public in advance of taking action. The BLM's plans are reviewed and analyzed by members of the public and stakeholders, including state, tribal, and local agencies, and the BLM must address all comments on agency proposals and make its responses available to the public.

Similarly, the BLM is committed to providing the full environmental review, including analysis of alternatives, and public involvement opportunities required by the National Environmental Policy Act (NEPA) for all agency proposals for BLM-managed lands. NEPA emphasizes public

involvement, giving Americans a role in decisions that impact lands and resources over which Federal agencies exercise management and stewardship responsibilities. America's economic health and prosperity are inextricably linked to the productive and sustainable use of our natural resources. The NEPA process remains a vital tool as we work to protect our Nation's environment and revitalize our economy.

Fire

The Department, through the Office of Wildland Fire, coordinates fire prevention, mitigation, and response both within the Department and with external federal and non-federal partners. The National Cohesive Wildland Fire Management Strategy is an unprecedented collaborative planning and risk analysis that builds on successes of the past while incorporating a new collaborative approach to restoring and maintaining resilient landscapes, creating fire adapted communities, and managing wildfire response in a complex environment. The Department's approach to hazardous fuels reduction is integrated and coordinated across vegetation types, types of insect infestation and disease, and land ownership. The Department employs an integrated, multi-agency approach to wildland fire management, and looks forward to working with the Committee, the States, and at-risk communities to restore public forests and rangelands and mitigate the risks of wildland fire.

Forest Restoration

The Healthy Forests Restoration Act of 2003 (HFRA) provides authority for hazardous fuels treatments and other forest and rangeland restoration treatments. In FY 2012, the Department of the Interior completed about one million acres of hazardous fuels reduction treatments. Over 468,000 acres of these treatments were conducted by BLM, including thinning, salvage, and prescribed burns. The mountain pine beetle epidemic is estimated by the BLM to affect forests on up to 1.7 million acres of BLM-managed public lands, changing the character and increasing the complexity of the restoration treatments that the BLM applies. The BLM takes seriously its responsibilities for protecting people, property, and resources from wildland fire, and uses a proactive approach to treat hazardous fuels.

Because the factors that cause increasing hazardous fuel loads cross jurisdictional boundaries, the BLM has increasingly adopted a landscape approach to resource conservation and hazardous fuels treatments. The BLM routinely works with partner agencies, organizations, and landowners to engage in land and watershed restoration and hazardous fuels reduction activities on federal, state, and private lands.

Stewardship Contracting

Stewardship contracting authority, established for the BLM in the FY 2003 Omnibus Appropriations Act, allows the BLM to award contracts for fuels treatment and removal, for a period of up to ten years, and to use the value of timber or other forest products removed as an offset against the cost of services received. The BLM has enjoyed many successes in using stewardship contracting authority, accomplishing goals for hazardous fuels reduction, habitat restoration, jobs and revenue growth for local communities, and protection of local communities from wildland fire. From 2003 through 2012, the BLM offered over 400 stewardship contracts on over 112,000 acres of BLM-managed lands. The BLM's future strategy for stewardship projects includes increasing the size and duration of these projects. The 2014 President's Budget

proposes to permanently authorize stewardship contracting authority for the Forest Service and BLM.

Good Neighbor Authority

Currently, the BLM is authorized through a pilot authority to enter into Good Neighbor agreements and contracts with the Colorado State Forestry Division to perform watershed restoration and protection services on BLM lands in the State of Colorado when similar and complementary work is being performed on adjacent state lands. This authority has been extended until September 30, 2013. All Good Neighbor projects must comply with applicable environmental laws and regulations, including the appropriate level of environmental review under NEPA, and must be consistent with the applicable land use plans. BLM field units are encouraged to use the Good Neighbor Authority as a tool to achieve resource work identified through the regular land use planning processes.

H.R. 818

H.R. 818 declares the bark beetle epidemic, drought, and deteriorating forest health conditions on National Forest System lands and public lands to be an “imminent threat” and empowers the Governors of states, in addition to the Secretaries of Agriculture and of the Interior, to designate “high-risk” areas on these federal lands, and to propose and require the appropriate Secretary to implement emergency hazardous fuels reduction projects within designated “high-risk” areas. The bill applies several HFRA authorities – reduced environmental analysis, special administrative review, and reduced judicial review – to the emergency hazardous fuels reduction projects as defined in H.R. 818. The bill expands Good Neighbor Authority and Stewardship Contracting Authority. The Department of the Interior supports Good Neighbor Authority and Stewardship Contracting and is committed to protecting lives, public land resources, and property from wildland fire. However, the Department opposes H.R. 818 because it restricts opportunities for public review and environmental analysis and because it would transfer authority to state Governors to direct federal resource management actions on federal lands.

Analysis

The bill’s definition and designation of “high-risk” areas is exceedingly broad. With no limitations on the size, location, or present condition of such designations, the bill provides nearly unlimited authority for state Governors or the Secretary to establish a new designation without review, analysis, or public input. The bill requires Governors to consult with county governments and affected Indian tribes, but does not require consultation with the Federal land management agency. Additionally, the inclusion of a future risk of insect infestation or disease as a criterion for identifying “high-risk” areas makes the designation meaningless, as virtually all public lands with forests or vegetation could be classified as potentially at future risk of insect infestation or disease. The BLM opposes allowing state Governors (or the Secretaries) to designate management treatments on Federal lands outside of the land use planning process – which provides for public notification, public involvement, the input of stakeholders, consideration of sound science, and the analysis of alternative management options to inform federal agency land and resource management decisions.

The bill requires that initial “high-risk” areas be designated within 60 days of enactment of the Act. This short time frame would not provide the BLM sufficient time to analyze the effects of

designations or consider input from the public, including ranchers, industry representatives, recreationists, and property owners. All of these uses could be affected by the designation of an area as “high risk,” yet the bill’s strict deadlines limit opportunities for those who use public lands to make their concerns known. The bill provides that “high-risk” areas will be designated for 20 years, which, in effect, prioritizes this work over all other work during this time frame. This long time period fails to provide opportunities to adjust course during the 20 year period to respond to new circumstances or information, emerging threats, or to unanticipated impacts or changes in resource conditions. For example, the current mountain pine beetle outbreak had not been projected 20 years ago.

Of serious concern, the bill (Sec. 6) also requires the Secretaries to implement within 60 days projects proposed by a state Governor (or Secretary) for “high-risk” public lands, notwithstanding the outcome of the review, analysis, and public participation provisions of the bill (Sec. 7) or the availability of resources. Requiring immediate implementation of projects, without consideration or analysis of impacts or public input, prevents an open, public process and precludes effective environmental analysis. The authority provided to Governors in this provision presents additional concerns, essentially shifting the authority for resource management decisions and activities on federal lands to individual state Governors. The shift would occur without regard to national objectives or interests. In addition, requiring immediate implementation of these projects would place a serious burden on available agency funding and resources, impacting the BLM’s ability to implement other BLM priorities, which include conventional and renewable energy development, other leasing and permitting activities, and existing priority restoration work.

The bill also limits environmental analysis of emergency hazardous fuels reduction projects and opportunities for public input into agency decisions on those projects through the NEPA process. In particular, the bill limits agencies’ alternatives analysis under NEPA to the proposed agency action, a “no action” alternative, and any recommendations of an at-risk community’s community wildfire protection plan. Moreover, the bill categorically excludes eligible wildfire prevention projects from NEPA analysis in certain circumstances, an exclusion that the Department believes may be too broadly applicable on public lands.

Finally, the bill excludes designated Wilderness and National Monuments from designation as “high-risk” areas. However, many other BLM lands include resources protected by federal law, including National Conservation Areas, National Scenic and Historic Trails, National Wild and Scenic Rivers, and Wilderness Study Areas. State Governors choosing to designate such areas as high risk areas would limit the BLM’s ability to comply with its obligations to protect such resources under federal law. For example, under federal law (P.L.105-83), the BLM has particular obligations to preserve and protect forest in the Headwaters Forest Reserve in California. State designation of this area as a “high-risk” area would severely curtail the BLM’s ability to manage for resources protected by federal law.

H.R. 1345

H.R. 1345 reauthorizes and expands Stewardship Contracting and Good Neighbor Authority and provides that 25 percent of stewardship contract timber sale receipts be paid to counties. The legislation also requires the implementation of eligible wildfire prevention projects in forests and

in threatened and endangered species habitat. The bill provides for a reduced period for environmental analysis for such projects, and establishes expedited administrative and judicial review. The Department of the Interior supports Good Neighbor Authority and Stewardship Contracting and is committed to protecting lives, public land resources, and property from wildland fire. However, the Department opposes H.R. 1345, because it limits public involvement in the land use planning and environmental analysis processes.

Analysis

The goals of H.R. 1345 are to provide tools for reducing wildfire potential and to mitigate the risk of catastrophic damages from wildfire. The BLM supports the extension of Stewardship Contracting Authority, but would like to discuss with the committee the impact of requiring 25 percent of stewardship contracting receipts be paid to counties. In addition, changing the requirement to obligate cancellation costs upfront sets up a process different than other contracting activities and could potentially lead to an inability to pay if unobligated funds are inadequate to cover cancellation costs at the time of cancellation. The BLM supports the extension and expansion of Good Neighbor Authority.

However, the Department does not believe that H.R. 1345 will help achieve the intended mitigation efforts as the bill does not reflect BLM's most current methods for conducting assessments and determining management practices. It would curtail the BLM's ability to use its public land use planning process to inform decision-making. The BLM uses science-based tools for assessing conditions, establishing utilization standards, and analyzing alternatives, and values both its ability to conduct science-based analyses and the input it receives from the public on the agency's proposed actions for managing particular resources.

The bill also amends the purpose of the FLAME Act to provide that FLAME funds shall be available not only for large or complex fire events but also for burn area responses, including flood prevention. Expanding authorized use of FLAME funds would reduce the amount of funds available for fire suppression. In addition, there are other programs that support burned area rehabilitation activities.

H.R. 1345 allows fuels reduction projects, including timber harvest, in Wilderness Study Areas (WSAs). The BLM opposes this provision. The BLM has developed a non-impairment criterion to meet the requirements in the Federal Land Policy and Management Act (FLPMA) that WSAs not have their suitability for wilderness designation impaired. H.R. 1345, if enacted, could result in the loss of suitability for wilderness designation in WSAs that the BLM has managed for nonimpairment since FLPMA was enacted.

The bill imposes strict deadlines for public review and environmental analysis and deems a project NEPA compliant if the agency does not meet the deadlines. The 60- and 90-day deadlines for environmental analysis provided for in the bill would limit the BLM's ability to perform important analyses that inform its decisions and would not permit a considered response to all substantive comments received during the mandatory public comment period for draft environmental impact statements.

The bill also eliminates the alternatives analysis, which lies at the heart of NEPA and is critical in informing agency decisions. In addition, the bill categorically excludes eligible wildfire prevention projects from NEPA analysis in certain circumstances; the Department believes such a categorical exclusion may be too broadly applicable on public lands. The BLM gains important information about public and stakeholder perspectives and performs important analyses during its NEPA process. The BLM opposes provisions limiting public participation through the land use planning and NEPA analysis processes.

Furthermore, the bill provides a procedure for agencies to seek approval of alternative arrangements from the White House Council on Environmental Quality in cases where a categorical exclusion is unavailable for a proposed eligible wildfire prevention project. Under existing regulations, agencies can work expeditiously with CEQ in emergency situations where potential impacts appear significant. This provision in H.R. 1345 is therefore not needed and may, in cases where emergency circumstances exist and environmental impacts of a proposed wildfire prevention project are not believed to be significant, prevent agencies from rapidly completing an Environmental Assessment for the project, thereby delaying on-the-ground action.

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