

**Statement for the Record
USDA Forest Service**

**House Natural Resources Committee
National Parks, Forests and Public Lands Subcommittee
Concerning**

H.R. 244, Advancing Conservation and Education Act

H.R. 1267, B-47 Ridge Designation Act

H.R. 2611, Public Lands Telecommunications Act

H.R. 3682, Land Grant and Acequia Traditional Use Recognition and Consultation Act

H.R. 5040, AIR Safety Act of 2019

H.R. 7099, Land Conveyance in Arizona

H.R. 7045, National Forest System Land Study in Hawai'i

June 18, 2020

Thank you for the opportunity to provide a Statement for the Record regarding the Administration's position on several bills that would affect the USDA Forest Service.

H.R. 244, Advancing Conservation and Education Act

H.R. 244 would allow the western states of Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming to relinquish state trust land within an eligible area of Federal land as specified in the bill, including certain National Forest System lands, and to select replacement land from land administered by the Bureau of Land Management within those States. As the bill pertains to the Forest Service, the eligible areas of National Forest System land include lands designated as a national monument, a national volcanic monument, a national recreation area, a national scenic area, an inventoried roadless area, a unit of the Wild and Scenic Rivers System, a wilderness study area, or a Land Use Designation II under Section 508 of the Alaska National Interest Lands Conservation Act.

The bill would facilitate the conveyance of State-owned inholdings to the United States, allowing for more unified and efficient management of National Forest System (NFS) land, and would enable the States to select replacement lands of which they could make more productive use for the benefit of schools and other public purposes. Under the bill, any determination to accept a State relinquishment of a State land grant parcel within a unit of the NFS would require consultation with the Secretary of Agriculture. The Department supports the goals of H.R. 244.

H.R. 1267, B-47 Ridge Designation Act

H.R. 1267 would designate a currently unnamed mountain ridge located on the Gallatin National Forest near Emigrant Peak in Montana as the "B-47 Ridge." The bill would also authorize a plaque memorializing the 1962 crash of a B-47 to be placed on this ridge. The plaque would honor the four-man crew that perished in the crash. The proposed location of the memorial is

within steep and rugged designated back country with no trail access near the top of Emigrant Peak. We have encouraged proponents to consider an alternate location whose conditions may better facilitate public access to the memorial, such as the Old Chico Cemetery. The Department supports honoring the brave individuals who have served our country and died tragically in this ridgetop crash. The Department supports the goals of H.R. 1267 and wishes to work with the sponsor on the bill to address our comments.

H.R. 2611, Public Lands Telecommunications Act

Communications uses on federal lands managed by the Bureau of Land Management (BLM) and the Forest Service are governed by the same statutory authority, the Federal Land Policy and Management Act (FLPMA). Accordingly, since 1996, the BLM and the Forest Service have adopted the same policies, including the same rental fees, for communications uses on federal lands. Industry stakeholders value and rely on this consistency and predictability in the agencies' fee schedules and policies. The BLM has, through annual appropriations, the authority to retain and spend up to \$2 million of communications use rental fees collected. The agencies otherwise do not currently have the authority to retain and spend the rental fees.

In addition to a rental fee required by FLPMA, section 8705 of the 2018 Farm Bill, as amended, requires the Forest Service to charge for, and authorizes the agency to retain and spend, a new programmatic administrative fee for communications use authorizations to cover the costs of the agency's communications site program. The authority only applies to the Forest Service, and fees collected under this authority are appropriated annually by a recurring provision in the Interior Appropriations Act.

H.R. 2611 amends FLPMA and authorizes the Secretary of the Interior to set rental fees for communications uses on lands under the jurisdiction of the BLM, the National Park Service, Fish and Wildlife Service, and the Bureau of Reclamation, based on the footprint of the communications facilities. The bill allows the DOI agencies to retain rental fees and use those fees "to the extent and in such amounts as are provided in advance in appropriation Acts" for administration of communications use authorizations. Section 3(c) provides for the rental fee schedule "to reflect current communication technologies, including the physical footprint of such technologies."

H.R. 2611 could result in the Forest Service and the BLM charging different rental fees for communications uses. This discrepancy would be counter to decades of interdepartmental effort to charge similar fees. The disparity in administration of communications uses by the two largest federal land management agencies would defeat the Administration's goal for consistency among federal agencies in administering broadband uses to promote access by unserved and underserved rural communities to reliable and affordable broadband services. USDA does not support being added to the bill because it would result in the Forest Service retaining communications use rental fees in addition to the new programmatic administrative fee for communications use authorizations the agency must charge and will retain and spend under the 2018 Farm Bill, causing the agency to retain revenue for communications uses in excess of the agency's costs to administer its communications site program.

USDA supports the goal of facilitating the establishment and maintenance of new and existing communications sites, but does not support this bill as drafted because it creates misalignment between the Forest Service and the DOI agencies. We look forward to collaborating with the Committee further on this important issue to establish a consistent authority between USDA and DOI to retain and spend communications use rental fees collected.

H.R. 3682, Land Grant and Acequia Traditional Use Recognition and Consultation Act

The lands in northern New Mexico that became part of the National Forest System, managed by the Forest Service, have a rich and unique history dating back hundreds of years. The natural resources on the forests have been and continue to be fundamental to the interconnected economic, social, and cultural vitality of the state, which is home to federally recognized tribes and pueblos, land grant communities, acequia associations, traditional Hispanic communities, and contemporary residents. The people of northern New Mexico, their culture and traditions, and their knowledge of the land must be recognized and treated as unique resources.

The Forest Service recognizes that it has an obligation to provide for multiple use and sustained yield across the forest, to comply with applicable laws in managing NFS lands, and to provide service to all publics.

H.R. 3682 would provide for consultation between USDA and the governing bodies of land grant-mercedes and acequias in New Mexico and provide an administrative process to determine the historic-traditional boundaries of land grant-mercedes. Notably, H.R. 3682 applies only to specific communities exclusive to the southwestern United States and impacts only the USDA Forest Service Southwestern Region within the Forest Service. The Region understands the significance of addressing the unique and important historic and cultural setting of northern New Mexico. However, the requirements outlined in the bill are unclear, restrictive, duplicative of existing processes, and create substantial administrative burden and delay not only to the Forest Service, but to the public we serve.

H.R. 3682, in Section 4, further requires USDA to provide opportunity for notice and comment to governing bodies of qualified land grant-mercedes on any proposed development, revision, or amendment of a management plan, or on the preparation of any detailed statement required under the National Environmental Policy Act (NEPA). It also requires analysis of the effects of such actions on the ability of the relevant community users and governing body of the qualified land grant-merced to carry out historical-traditional uses, and mitigation of adverse effects. USDA believes these requirements are already met through existing regulations for notice and comment opportunities at 36 CFR 219 and 218, and the procedural regulations for NEPA at 40 CFR 1500 and 36 CFR 220.

Land grant-mercedes are recognized as cooperators in the forest planning process. For the past three years, the northern New Mexico national forests have held quarterly meetings with all interested land grant heirs. Draft forest plans for the Cibola, Carson, and Santa Fe National Forests each dedicate specific attention to Northern New Mexico Traditional Communities and Uses. This is a direct reflection of efforts by the Forest Service to collaborate with land grant-

mercedes during the land management planning process. These plans will serve as an enduring commitment by the Forest Service to the communities of Northern New Mexico.

To the extent Section 4 is deemed necessary, USDA would like to work with the committee and the bill's sponsors to clearly define "management plan" as a Land Management Plan under the National Forest Management Act (16 USC § 1604). USDA also recommends greater specificity to ensure that actions such as project-specific Land Management Plan amendments or other environmental analyses that are unrelated to and do not affect the qualified governing body of a land grant-merced be exempted from these requirements, especially the positive requirement for no fewer than 2 meetings. Clarification is also needed as whether the requirements for notice and comment are intended to be in addition to or be included as part of existing requirements under NEPA and forest planning regulations. Land grant-mercedes are recognized by the State of New Mexico as a political subdivision with no taxation authority. Further, the Land Grant Council was created by New Mexico Statute (§ 49-11-3) to support, advise, and assist land grants, as well as serve as a liaison between land grants and local, state, and federal governments. For that reason, the State of New Mexico Land Grant Council is responsible for maintaining mailing and electronic addresses of each governing body of qualified land grant-mercedes, which renders Section 4(c) unnecessary.

Section 5 of the bill requires USDA to waive fees to obtain a permit for a historical-traditional use by a community user or governing body of a land grant-merced.

Section 7 requires the estimation of timelines for completion of any required NEPA analyses associated with requests for permits from the governing body of a land grant-merced and notification of any changes in those estimations to the affected governing body and the Congress. USDA would like to work with the bill's sponsor to ensure that these additional administrative requirements do not create a burden that could exacerbate any issues in timely responsiveness to permit requests.

The Region has worked with the New Mexico Acequia Association and New Mexico Acequia Commission to develop regional policy for management of acequias since 2013. In 2019, the Regional Forester signed the Acequia Guidance Document, which aims to strengthen relationships and collaboration between the Forest Service, acequia governing bodies, and partners, as well as provide acequia communities with consistent decision-making across NFS lands. The Forest Service is committed to collaboration and transparency that addresses the unique needs of our local communities, and it is to that end that the Region has designated a State Government Liaison to ensure a consistent point of contact.

Most importantly, the Forest Service would like to highlight that the evaluation and mitigation sections of H.R. 3682 would conflict with the existing consultation requirements of tribal governments. Additionally, the process for determination of historical-traditional boundaries does not take into consideration that nearly all NFS lands within the State of New Mexico would be considered historic land grant-mercedes boundaries, which would conflict with tribal historic boundaries. For the above reasons, USDA opposes H.R. 3682 in its current form.

H.R. 5040, Air Safety Act of 2019

Firefighter and public safety are the top priorities in wildfire management. Unauthorized Unmanned Aircraft System (UAS) flights near a wildfire could cause serious injury or death to firefighters and pilots who are in the air, as well as firefighters and public citizens who are on the ground. Aerial firefighting aircraft, such as airtankers and helicopters, fly at very low altitudes, the same altitudes as UAS flown by the general public, creating the potential for mid-air collision that could be fatal for aviation and ground firefighters, as well as members of the public. Firefighting aircraft typically fly in smoky, windy, and turbulent conditions. Safety depends on knowing what other aircraft are operating in the airspace and where they are at all times, and is compromised by the presence of unauthorized UAS activity.

Unauthorized UAS flights can lead fire managers to suspend aerial wildfire suppression operations until the UAS has left the airspace and fire managers are confident the unauthorized UAS will not return. Suspending air operations decreases the effectiveness of wildfire suppression operations, threatening lives and property. Suspended air operations could also delay transportation of firefighters to different locations and add to costs of fighting the fire. There was a total of 21 unauthorized UAS incursions during suppression operations in 2019. Of the 21 reported, 10 forced suspension of aerial wildland fire suppression operations and 6 occurred on NFS lands.

H.R. 5040 would direct BLM, in consultation with the Forest Service, to conduct a study of the effects of drone incursions on the suppression of wildfires on lands managed by DOI and USDA. Under section 2(b), BLM is directed to determine the number of occurrences in which a drone incursion interfered with wildfire suppression efforts along with the effects of each such occurrence. The study will also evaluate the feasibility and effectiveness of various actions to prevent drone incursions. USDA supports the goals of H.R. 5040 and we welcome the opportunity to work with the committee and bill sponsor to make technical changes to the bill that would better align the required study contents with current agency reporting capabilities.

H.R. 7099, Land Conveyance in Arizona

H.R. 7099 directs the Forest Service to convey 13.3 acres of NFS lands as well as an easement on Forest Service Road 9201D to the Arizona Board of Regents in exchange for 7.5 acres (a portion of an inholding owned by the Board on the Coconino National Forest). The Forest Service is supportive of land exchange proposals that are consistent with Forest land and resource management plans. The Coconino National Forest's 2018 Forest Plan identifies criteria defining circumstances under which NFS lands can be conveyed, such as isolation of parcels from other NFS lands, resolution of innocent encroachments, and improving forest system management. The parcel identified for conveyance to the Arizona Board of Regents on behalf of the University of Arizona Experiment Station is not consistent with the criteria identified in the Forest Plan.

The only means of accessing the parcel of Federal land to be exchanged is through NFS lands, and thus this bill also requires the Forest Service to grant an easement on Forest Service Road 9201D to the University of Arizona Experiment Station.

Additionally, a primary objective of the Forest Service land adjustment program is to achieve an optimal land ownership pattern that provides for the protection and best management of NFS resources. Conveyance of this tract would create an isolated parcel of private land, or inholding, within the Coconino National Forest, which is not consistent with the Forest Service policy and direction to consolidate NFS lands within a forest unit. Should the Arizona Board of Regents choose to sell the property in the future, the Forest Service would be obligated to try to purchase it again in order to fulfill the intent of the land management program and to minimize encroachment on NFS lands.

USDA does not support this legislation. The land exchange process is complex and costly, and is therefore best utilized as a vehicle for land adjustments that serve the public interest. We welcome the opportunity to work with the University of Arizona Experiment Station on alternative options including a special use permit. We acknowledge that this request stems from ongoing complexities in managing an experimental range station through a term grazing permit. We acknowledge that the experimental range station is a benefit to everyone and in particular to the grazing industry. We are supportive and want to help it thrive. We are happy to invest in discussions to address the University's interests through a special use permit.

H.R. 7045, Study on lands that could be included in a National Forest in Hawai'i

H.R. 7045 would require the Secretary of Agriculture to conduct a study on lands that could be included in a national forest in Hawai'i. The identified lands would support the conservation of biodiversity; support or expand the research mission of the Institute of Pacific Islands Forestry; promote shared stewardship, including with indigenous populations, the State of Hawai'i and non-profit organizations; and support the international programs of the Forest Service related to forest conservation, threatened, endangered, and migratory species, invasive species control, and reforestation.

This bill would require the Secretary to conduct a study to identify available land on the islands of Hawai'i, including Maui, Moloka'i, Lāna'i, O'ahu and Kaua'i that could be included in a national forest in Hawai'i. The Secretary would be required to conduct the study in coordination with the Hawai'i Department of Land and Natural Resources and the Hawai'i Department of Agriculture, and to consult with both organizations. The Secretary may also consult with other governmental or nonprofit entities as the Secretary determines appropriate.

No later than three years after enactment of this Act, the Secretary would be required to submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives that identifies available land within the study area that could be included in a National Forest in Hawai'i; the ownership status of the land within the study area; any undeveloped land in the study area that may be at risk of development; and any actions that could be carried out to preserve the open and undeveloped character of the land within the study area. A study is the first step in identifying lands with the grassroots support of local communities that could be included in a national forest in Hawai'i.

While we do not believe legislation is necessary, we are happy to continue to work with the bill sponsor on this issue.