

STATEMENT OF
MARK REY
UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
REBECCA WATSON
ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT
DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
CONCERNING
H.R.1904, THE HEALTHY FORESTS RESTORATION ACT OF 2003
S.1314, THE COLLABORATIVE FOREST HEALTH ACT
AND
S.1352, THE COMMUNITY AND FOREST PROTECTION ACT

JULY 22, 2003

Mr. Chairman:

On May 20, 2003, President Bush called on Congress to move as quickly as possible to pass the Healthy Forests Restoration Act of 2003(H.R. 1904) and get it to his desk for signature. We appreciate your willingness to schedule this hearing today on H.R. 1904 and two other forest health bills, S.1314, and S.1352. The Departments of Agriculture (USDA) and the Interior (DOI) strongly support H.R. 1904. We would like to work with the Committee to make technical amendments to clarify and strengthen H.R. 1904. The Administration opposes S.1314 and S.1352 because the focus of these bills is too narrow and because neither bill contains the flexible, comprehensive approach to forest health and hazardous fuels reductions set out in H.R.1904.

Background

The need for action to restore our Nation's public forests and rangelands to long-term health has never been greater. Catastrophic fires are just one consequence of the deteriorating forest and rangeland health that now affects more than 190 million acres of public land, an area twice the size of California. Last year alone, wildfires burned over 7.2 million acres of public and private lands, leading to the destruction of over 800 structures and the evacuation of tens of thousands of people from hundreds of communities. Although wildland fire activity so far this year has been one-third less than the average of the last ten years, we have seen some indications of the potential for destructive wildfires. On June 17, 2003, the Aspen Fire blew out of the Pusch Ridge Wilderness in southern Arizona and overwhelmed the community of Summerhaven, Arizona destroying 329 homes, businesses and other structures. This fire was declared contained on July 15, 2003, nearly a month after it started. We are seeing some critical

situations in the southwest, and northward. Large portions of thirteen western states and parts of Alaska and Hawaii have the potential for above average fire activity this fire season.

In addition to fire, Federal forests and rangelands across the country face unusually high threats from the spread of invasive species and insect attacks. Insects and pathogens have historically existed in our forests and rangelands. However, the frequency, extent and timing of recent outbreaks are out of the ordinary. Changes in tree stand density, as well as in species composition and structure, due to decades of excluding or immediately suppressing fire, the lack of active management, and extended drought, are factors that have significantly affected insect infestation outbreak patterns. The result is the death of millions of trees across millions of acres in California, Utah, Arkansas, Michigan, Minnesota, the Mid-Atlantic States and the South. Often when these areas burn with uncharacteristic intensity, they become very susceptible to invasive species, further prolonging poor forest and rangeland health.

While Federal, State and local land managers have attempted to restore forest and rangeland health and prevent these catastrophic wildfires and infestations, their efforts have been severely hampered by unnecessary and costly procedural delays that can prevent them from acting in a timely manner to protect communities and avert ecological crises. Excessive analysis, ineffective public involvement, and management inefficiencies trap land managers in costly procedural delays, where, in some cases, a single project can take years to move forward. In the meantime, communities, wildlife habitat and forests and rangelands continue to suffer. Fires and insect infestations that begin on public lands can spread to private lands as well, causing significant property damage and threats to public health and safety. The Aspen fire in Arizona is a case in point.

Recognizing the impending crisis, President Bush proposed the Healthy Forests Initiative in August 2002. The President directed Federal agencies to develop several administrative and legislative tools to restore deteriorated Federal lands to healthy conditions and assist in executing core components of the National Fire Plan. Since the President's announcement last August, Federal agencies have taken several regulatory steps to implement components of the Healthy Forests Initiative.

The Secretaries have taken several administrative actions to accomplish these objectives, which include the following:

- Endangered Species Act Guidance – On December 11, 2002, the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) issued joint guidance documents to facilitate and improve the design, review, approval and implementation of HFI projects. The guidance allows multiple projects to be grouped into one consultation and provides direction on how to consider and balance potential short- and long-term beneficial and adverse impacts to endangered species when evaluating projects. The goal is to recognize that project-specific, short term adverse impacts need to

be weighed against the longer-term watershed level benefits such projects will achieve.

- CEQ Memorandum & Model Environmental Assessment Projects -CEQ Chairman Connaughton issued guidance addressing the preparation of model environmental assessments (EA) for fuels treatment projects. The guidance addresses the purpose and content of an EA, specifically, that EAs should be focused and concise. These guidelines are now being applied on both Forest Service and DOI agency fuels treatment projects and some of these model EAs are now out for public comment.
- Appeals Process Reform – Both USDA and DOI made rule changes designed to encourage early and meaningful public participation in project planning, while continuing to provide the public an opportunity to seek review or appeal project decisions. This allows more expedited application of hazardous fuels reduction projects.
- Categorical Exclusions (CE) – Both USDA and DOI have established new categorical exclusions, as provided under the National Environmental Policy Act, for certain hazardous fuels reduction projects and for post-fire rehabilitation projects. These new CEs shorten the time between identification of hazardous fuels treatment and restoration projects and their actual accomplishment on the ground. The agencies have compiled an extensive scientific record demonstrating that similar projects did not result in significant environmental effects either individually or cumulatively.
- Proposed Section 7 Counterpart Regulation - FWS and NOAA Fisheries have proposed Section 7 joint counterpart regulations under the ESA to improve Section 7 consultation procedures for projects that support the National Fire Plan. The proposed regulations would provide, in some situations, an alternative, to the existing Section 7 consultation process by authorizing the agencies to make certain determinations without project-specific consultation and concurrence of the FWS and NOAA Fisheries.

The recently passed Consolidated Appropriations Resolution, 2003 (PL 108-7) contains stewardship contracting authority, which gives agency land managers a critical tool to implement projects necessary to achieve land management goals. This provision allows the BLM and the Forest Service to enter into long-term stewardship contracts with the private sector, non-profit organizations, local communities, and other entities. In FY 2003, the Bureau of Land Management will implement stewardship contracting on a limited basis, and the Forest Service will implement stewardship contracting much as it did during the pilot program. Joint agency guidance for long-term implementation is currently out for public comment. For the permanent authority, programmatic direction will include, among other things, descriptions of goals, monitoring, and treatment of receipts.

We believe these administrative actions will provide Federal land managers with important tools they need to restore these lands to a condition where they can resist disease, insects, and catastrophic fire. However, the Administration believes that the additional tools and authorities that are provided in H.R.1904 are still needed to address the severity of forest health conditions in a meaningful timeframe.

H.R. 1904

Title I of H.R. 1904 would improve processes which now significantly contribute to costly delays, and allow timely implementation of critical fuels reduction projects. The title would provide more efficient procedures for USDA and the DOI to plan and conduct hazardous fuels projects on up to 20 million acres of Federal land that are most at-risk from wildfires while preserving public input in agency decision-making. The title would allow the agencies to focus the proposed alternatives they would have to analyze for proposed hazardous fuels reduction projects, but otherwise would maintain requirements for public notice and input. We believe this authority would provide the agencies with the latitude necessary to reduce the risk of damage to communities and municipal water supplies and at-risk Federal lands from catastrophic wildfires. Projects would be selected through a collaborative process involving local, tribal, state, Federal and non-governmental entities as described in the 10-Year Comprehensive Strategy and Implementation Plan. National program allocations and local project selections would attempt to optimize wildfire risk mitigation over time. Title I would require the Secretary of Agriculture to establish an administrative review process for these projects as an alternative to the current legislatively mandated appeals process. The title also would clarify the standard for injunctive relief against actions that are necessary to restore fire-adapted forests or rangelands and would provide timeframes for judicial review.

Title II of H.R. 1904, which parallels already existing authority, would authorize a \$25 million grant program for each of the fiscal years 2004 through 2008. The Secretaries would be authorized to make grants to persons who own or operate a facility that uses biomass or to make grants to persons to offset the cost of projects to add value to biomass. This authority would help encourage investment in energy generation and other commercial utilization of low value or non-merchantable biomass, including wood, chips, brush, thinnings, and slash removed to reduce hazardous fuels, to reduce the risk of disease or insect infestation, or to contain disease or insect infestation.

Title III of H.R. 1904 would authorize a \$15 million program within the Forest Service for each of the fiscal years 2004 through 2008, to provide State forestry agencies technical, financial and related assistance for the purpose of expanding State capacity to address watershed issues on non-Federal forested lands. This authority, which parallels existing authority, would allow USDA and DOI to work collaboratively with other interests to manage and conserve non-Federally forested lands.

Title IV of H.R. 1904 would require the Secretaries of Agriculture and the Interior, with the assistance of universities and forestry schools, to develop an accelerated program on certain Federal lands to combat infestations by bark beetles, including Southern pine

beetles, hemlock woolly adelgids, emerald ash borers, red oak borers, and white oak borers. This title also would authorize the Secretaries to conduct applied silvicultural assessments on certain Federal lands. An assessment of a site of not more than 1,000 acres would be deemed to be categorically excluded from further documentation under the National Environmental Policy Act. We believe this will allow us to quickly design and test methods of responding to insect outbreaks.

Title V of H.R. 1904 authorizes a \$15 million Healthy Forests Reserve Program within the Forest Service working in cooperation with the Secretary of the Interior, for each of the fiscal years 2004 through 2008 for the purposes of protecting, restoring and enhancing degraded forest ecosystems on private lands to promote the recovery of threatened and endangered species. This authority also parallels existing authority for the Forest Service.

Title VI of H.R. 1904 would direct the Secretary of Agriculture to carry out a comprehensive program to inventory, monitor, characterize, assess and identify forest stands nationwide. In carrying out such a program, the Secretary would also be directed to develop an “early warning system” for potential catastrophic threats to forests. Title VI authorizes \$5 million for each of the fiscal years 2004 through 2008.

S.1314 and S.1352

While the USDA and DOI appreciate the emphasis in S.1314 and S.1352 on the wildland-urban interface, these bills impose restrictions that would likely impede rather than facilitate implementation of hazardous fuels reduction projects. The restrictions in S.1314 and S.1352 that limit funding of hazardous fuels reduction treatments to areas within an arbitrary, one size fits all distance from a community may have unintended adverse consequences. For example, in several recent incidents, communities have been threatened by fires that began outside the fuel treatment limits proposed in S. 1314 and S. 1352, and then moved close to – or through – communities. Resources in the path of the fires including watersheds, local infrastructure and wildlife habitat suffered damage that also affected these communities. The requirement to limit hazardous fuels reduction projects to the area proposed by these bills is actually contrary to the 10 Year Comprehensive Strategy and Implementation Plan which calls for projects to be implemented at the local level in a broad collaborative manner. In addition, Federal land managers need the flexibility to conduct hazardous fuels reduction and restoration treatments in areas identified by application of sound science and land management experience, rather than by an arbitrary distance.

In addition, S.1352 focuses on forested lands, and not the other woodlands and rangelands managed by the BLM and the Forest Service. Many communities at risk from catastrophic wildland fire may not be bordered by forests. Other vegetation types, such as grasslands in condition class 1, and especially grasslands and shrublands infested with invasive species may pose more serious risks to individual communities than condition class 3 forested lands. It would be better to allow for the exercise of informed

management flexibility by agency professionals with local collaboration, to identify the specific high risk areas based on actual conditions in that area.

Additionally, the public participation provisions in S.1352 seem to duplicate existing processes. Further, S.1352 provides for a petition process during scoping or public comment. It is unclear how or whether the petition provision, which is an appeals process, fits with the expedited appeals process also provided for in the bill. Both the DOI and the USDA have public notice and NEPA scoping processes already in place. Those processes assure opportunities for public input. In addition, allowing a petitioner to seek protective designation for large trees or old growth has the potential to create controversy on a tree-by-tree basis. We need to focus on hazardous fuels reduction projects based on science, not on individual trees.

Both S.1314 and S.1352 establish categorical exclusions from detailed NEPA documentation for certain fuels reduction projects. Categorical exclusions are, in general, established by rulemaking procedures to provide for more efficient review of actions for which an agency has sufficient information to find that, except where there are extraordinary circumstances, the category of actions do not, individually or cumulatively, have a significant effect on the environment. USDA and DOI agencies have already completed such a comprehensive review of hazardous fuels reduction activities and established by rule 2 new categorical exclusions. Because the agencies' categorical exclusions for hazardous fuels treatment and post fire rehabilitation are new and just now being implemented, we believe that legislation on this matter is not necessary at this time.

Also, S.1314 places significant limitations on implementation of the stewardship contracting authorized by section 323 of P.L.108-7 (the Consolidated Appropriations Resolution, 2003). We believe this impedes our goal of restoring forest and rangeland health cost-effectively. Stewardship contracting authority is a much needed tool to help agencies address the enormity of the forest and rangeland health challenge. It is based on collaboration and cost effective fuels treatment. Both USDA and DOI have begun to implement this authority. We are still in the public comment phase on joint agency guidance for stewardship contracting.

S.1314 would prohibit the ability of the Secretary of Agriculture to implement the Administration's Competitive Sourcing Initiative. The Administration strongly opposes this provision. A Statement of Administrative Policy issued July 16, 2003 concerning restrictions to competitive sourcing found in H.R.2691, the Department of Interior and Related Agencies Appropriations Bill, FY 2004, recommended the President veto the bill if the final version contained this restriction.

S.1314 would also establish a mandatory spending account to cover excessive fire suppression costs for the Forest Service. The Administration opposes the creation of this type of mandatory spending account because there is uncertainty about how it would affect the agency's ability to transfer funds from other accounts for emergency fire suppression activities.

Finally, S.1352 authorizes grants for biomass utilization, but limits eligibility to facilities located within the boundaries of an eligible community. An eligible facility should be defined as one that supports an eligible community, but it should not be restricted to those facilities located within the boundaries of the community. In order to lessen transportation costs, an operator may decide to locate its facility closer to where the biomass is found, rather than the community where it is to be processed. What is important to the community is that such a facility is close enough to allow for reasonable commuting by employee residents of the community.

Conclusion

Mr. Chairman, USDA and DOI are committed to working with Congress, State, local and tribal officials and the public to advance common-sense solutions to protect communities and people, and to restore forest and rangeland health. All of the bills considered today are based on the premise that active management is necessary to restore and maintain healthy forests in some areas, and that the current legal and regulatory framework does not allow this management to occur in a timely way. Overall, we find that H.R. 1904 provides the much needed authorities sought by the President's Healthy Forest Initiative to achieve these goals. We strongly support H.R. 1904 and look forward to working with the Committee as it moves through the legislative process.

Thank you for the opportunity to comment on these three bills. We will be glad to answer any questions you may have.