

**Statement of  
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Under Secretary  
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U.S. Department of Agriculture**

**Before the  
Committee on Agriculture  
United States Senate  
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Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) regarding S. 61, S. 755, S. 1100, S. 1110, S. 1671, S. 1712, S. 1733, and S.1744.

**S. 61, “Kisatchie National Forest Land Conveyance Act”**

S. 61 provides for conveyance of National Forest System lands to private ownership in an area of the Kisatchie National Forest that is inter-mixed with private land. The proposed conveyance involves two parcels: the smaller is two acres and the larger parcel is surrounded by private land. These National Forest lands are encumbered with 34 recreational residences, associated infrastructure, and 10 boat houses. Much of the acreage has lost its National Forest character. The isolated and highly developed nature of the Federal lands, combined with the uses occurring on the private land immediately adjacent to it, makes it more suitable for private ownership. The agency supports the intent of S. 61, however we cannot support provisions in the bill that conflict with property transfer requirements in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). We look forward to working with the Committee to make needed technical changes in the language to that will also meet the objectives of the bill.

**S. 755, “Tennessee Wilderness Act”**

S. 755, the “Tennessee Wilderness Act” would designate seven parcels totaling 19,556 acres as wilderness in the Cherokee National Forest in eastern Tennessee. The Department strongly supports this legislation as the areas proposed for wilderness designation in S. 755 were recommended for designation as wilderness by the Forest Service in the development of its 2004

Land and Resource Management Plan (Forest Plan) for the Cherokee National Forest and have been managed as recommended wilderness since that time. Public involvement was an integral part of the Forest Plan revision process. Individuals, groups, other agencies and various organizations were involved with the identification of recommended Wilderness. For years, this proposal has garnered bipartisan support from Tennessee businesses, organizations, and community leaders. The U.S. Forest Service has testified in the past that it strongly supports this bill.

### **S. 1100, “Prescribed Burn Approval Act of 2015”**

S. 1100 would prohibit the Forest Service from authorizing a prescribed burn on Federal land under certain high risk conditions, unless prior approval is obtained from State and local officials. In addition, the bill would establish a special new claims process outside the Federal Tort Claims Act (FTCA) for payment for damages to private property incurred by an escaped prescribed burn, would make the United States strictly liable for any such damage, and would require a report to Congress on the number and location of all prescribed burns each year and a list of prescribed burns that were authorized by State and local officials.

Prescribed burns, however, are a very important management tool to achieve forest management objectives for not only the Forest Service, but also our partner organizations, including The Nature Conservancy, the National Wild Turkey Federation, and the States. The National Cohesive Wildland Fire Management Strategy, which was collaboratively developed by a wide range of stakeholders, including States, supports increased use of prescribed burns. In 2014 the agency conducted prescribed burns on 1,357,791 acres of National Forest System lands. We understand that there are risks inherent in use of prescribed burns, and sometimes prescribed fires escape; the agency works diligently to reduce this risk. In FY 2014 the agency conducted 4,363 prescribed burns; only one escaped.

The Agency agrees that an accelerated claims process could benefit individuals who have suffered damages resulting from an escaped prescribed fire when these unfortunate events occur. However, USDA has serious concerns with the bill in its current form. For example:

Section 2 of the bill, includes both ignited fires as well as naturally occurring wildfires allowed to burn to meet management objectives in the definition of “prescribed burn.” Inclusion of the latter type of fire could have nation-wide implications for wildfire response because it would require State and local approval for some wildfire response decisions. This would hamper the wildfire response and lead to increased costs, public safety issues, more complicated response actions, and resource damages.

Section 3(a) would require the Forest Service to adhere to indicators of fire danger at the county level before conducting prescribed burns, unless prior approval is obtained from State and local officials. Currently, fire danger is determined locally on a forest-by-forest basis; the Chief of the Forest Service does not make fire danger declarations. Additionally, the Grassland Fire Danger Index (GFDI) forecast from the National Weather Service (NWS) is not available nationwide and is not well suited for use outside of the Great Plains. Most grassland burning occurs during dormant or curing conditions in the Spring or Fall, which is during “high” fire danger conditions, so by default this bill would require State and local approval for almost all prescribed fire projects in the grasslands.

In addition, section 3(c) of the bill waives the sovereign immunity of the United States for damages, imposes strict liability on the Government for any damages caused by a prescribed burn, and implies establishment of a claims process. All of this would be outside the bounds of the Federal Tort Claims Act (FTCA) and its incorporated State law liability standards that Congress enacted to process such claims.

The bill imposes on the government full liability for all losses but does not allow for consideration of extenuating circumstances or the degree to which an adjacent landowner’s actions contributed to the extent of the damages incurred (e.g., buildings that do not comply with applicable fire codes, properties that are not cleared of vegetation as required by local ordinance, or loss of livestock trespassing on NFS lands). The budgetary impacts of this are unclear, but could be substantial. The bill requires payment for “substantiated claims” within 120 days of receipt but is silent as to the source of funding for such payments. This bill would have implications far beyond USDA, and removes the Department of Justice from its current

supervisory role over the administrative claims process for these types of claims. In addition, the agency is concerned that by assuming a role in the approval process, State and local governments may also be assuming liability for damages.

### **S. 1110, “National Forest System Trails Stewardship Act”**

The Administration supports the goals of S. 1110. This bill would require the Secretary, within 2 years of enactment of the Act, to publish a strategy in the Federal Register to significantly increase the role of volunteers and partners in trail maintenance. The bill also requires the Secretary to study opportunities to use fire crews for trail maintenance; adopt regulations and policies to ensure that financial risks from volunteer liability are shared agency-wide; select 9 to 15 priority areas for increased trail maintenance accomplishments; enter into cooperative agreements with any State, tribal, local governmental and private entity to carry out the Act; and establish a pilot program on at least 20 administrative units to offset all or part of the land use fee for an outfitting and guiding permit holder by the cost of construction, improvement, or maintenance of NFS trails, trailheads, or developed sites.

We appreciate the focus of the bill on addressing the Forest Service’s trails maintenance backlog. The 2013 GAO Trails Maintenance Report confirmed that the Forest Service has over \$314 million in deferred trails maintenance. The Forest Service is working with trails partners and other interested parties to develop a comprehensive Framework for a Sustainable Trails System that will guide management and stewardship of our trails for decades. Many of the elements highlighted in S. 1110 will be integrated into the National Trails Framework, including the emphasis on working with volunteers and partner organizations. We believe that this Framework will address NFS trail concerns in a comprehensive manner, and we look forward to working with the Committee to ensure the long-term stewardship of our network of trails.

With respect to Section 4(d), we agree that volunteer liability needs to be addressed for our trail partners. We would like to work with the Committee on language that adequately addresses this concern.

In reference to Section 4(c), fire suppression crews are primarily funded under the Preparedness and Suppression budget line items in the Wildland Fire Management Account. However, after completion of pre-season training and other preparedness work, if fire crews are not assigned to suppression work, the crew's host unit will typically assign them to assist other program areas. When fire levels or indices are low, the fire crews are more readily available for work in other program areas. However, when fire levels or indices are high, fire crews are less available for other types of work, especially in remote locations, where their ability to respond quickly may be restricted.

Section 7 of the bill would require the agency, within one year of enactment, to establish a pilot program on not less than 20 administrative units to offset all or part of the land use fee for an outfitting and guiding permit by the cost of the work performed by the permit holder to construct, improve, or maintain NFS trails, trailheads, or developed sites that support public use under terms established by the Secretary. The Agency would welcome the opportunity to work with the Committee on clarifications to this section of the bill. This authority has the potential to help us address trail maintenance backlogs on NFS lands.

However, we would need to sort out details related to oversight, enforcement, training, equipment audits, certification for use of specialized equipment, such as saws, availability of tools and materials required for construction and maintenance, accountability regarding offset of the land use fee, and the potential need to change operating plans for these permits. We would also need to ensure that applicable requirements were met in advance of the work performed.

As written, the bill would result in loss of funds currently returned to the fee area for maintenance by Forest staff, supervised volunteers, and paid youth corps crews. Further, the bill does not address workers' compensation insurance, tort liability, or bonding requirements.

### **S. 1671, "National Forest Foundation Reauthorization of 2015"**

S. 1671 extends the authority in the National Forest Foundation Act to provide matching funds to the National Forest Foundation and extends the authorization of appropriation through FY 2018. USDA strongly supports this bill.

The National Forest Foundation (NFF), chartered by Congress, engages Americans in community-based and national programs that promote the health and public enjoyment of the 193-million-acre National Forest System, and administers private gifts of funds and land for the benefit of the National Forests. The NFF is governed by an independent, private-sector Board of Directors who volunteer their time, expertise, and philanthropic interests to support the organization's mission.

The NFF's program accomplishments from 2001 to 2013 include completing 1,548 projects with results that include:

- 14,445 miles of trail restored or maintained;
- Nearly 4.4 million trees and shrubs planted;
- More than 500,000 acres of fuel reduction completed or planned;
- 120,247 people volunteered 1,524,230 hours with an estimated value of \$33.7 million;
- 46,013 youth employed or engaged;
- Approximately 80,000 acres of invasive weeds treated;
- 117,253 acres of wildlife habitat restored or maintained; and,
- More than 3,000 miles of streams surveyed or restored.

Through the Matching Awards Program and fundraising campaigns, the NFF attracts private support to help meet the challenges of caring for the National Forest System. Over the past three years the NFF has leveraged \$4.30 for every \$1 of Federal appropriated funds invested through the grant programs and involved 39,000 volunteers in projects and programs that are aligned with the Forest Service's priorities. In addition to the Federal Matching Awards Program, the NFF is in its final year of a \$125 million *Treasured Landscapes* campaign, the current total in this unique public-private partnership is over \$113 million. NFF has also facilitated over 100 stakeholder meetings to help build consensus around conservation activities.

### **S. 1712, "The National Forest Small Tract Act Amendments of 2015"**

The Small Tracts Act has served the Forest Service well since it was originally passed in 1983. It has provided the discretion to resolve a range of management problems through conveyance of

small, unmanageable parcels and those occupied by encroachments, but only if the conveyance is in the public interest. The Small Tracts Act is a critical tool for national forests, as it provides a way to address local land concerns, consolidate land ownership, improve land management, reduce administrative costs, and can enhance public access to public land.

S.1712 amends the original Act to add three additional categories of parcels eligible for conveyance, including isolated, inaccessible parcels and parcels already under permit for permanent uses, such as cemeteries and landfills. It also allows the agency to retain the proceeds from the sale of these lands and use the funds to acquire recreational access, to complete recreation related deferred maintenance, and to address facility needs. The bill retains the existing safeguards in place to protect public resources.

The Department supports S.1712. It is similar to a legislative change proposed in the President's FY15 budget proposal. We would like to work with the Committee on the provision permitting the diversion of funds to deferred maintenance projects. In addition, we would like to work with the Committee on minor modifications to the language, which would allow the proceeds to be available without further appropriation and would allow the authority to include up to one additional acre abutting permitted cemeteries to address imminent capacity issues.

**S. 1733, "A bill to establish a forest incentives program to keep forests intact and sequester carbon on private forest land of the United States"**

S. 1733 establishes a forest carbon incentives program. The Administration supports efforts to enhance carbon storage in the nation's forests and in forest products. Presently forests and forest products offset nearly 14% of annual greenhouse gas emissions<sup>1</sup>, providing a critical buffering capacity to combat climate change. This capacity is at risk over the coming decades due to anticipated increases in climate-related stressors, such as fire, insects and disease, and projected increases in development pressure. The Administration recognizes that many of the investments needed to maintain and enhance forest carbon stocks, including forest restoration, private forest

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<sup>1</sup> First Biennial Report of the United States and America.  
<http://www.state.gov/documents/organization/219039.pdf>

retention, markets for wood products, and urban forestry, also have important co-benefits for the environment and for community economic development.

There are more than ten million non-industrial forest landowners in the U.S. The forests land they own makes up about 360 million acres, about half of the forested acres in the U.S. Ninety five percent of these forested lands consist of holdings of 100 acres or less and fully sixty percent are held in parcels of 10 acres or less. These lands make up a significant proportion of the carbon currently being sequestered today and a significant proportion of our potential to sequester carbon in the future.

We would like to work with the Committee to address some technical and capacity issues with the bill. For example, small landowners may have difficulties meeting reporting and monitoring requirements.

**S.1744, “Chattahoochee-Oconee National Forest Land Adjustment Act of 2015”**

Since this bill was just recently introduced, the agency has not had sufficient time to review the language. The agency may support this land conveyance authority; however, we will review the language in more detail and would like to work with the sponsor on the bill language.