

Statement for the Record

Forest Service

United States Department of Agriculture

For the United States House of Representatives

Committee on Natural Resources

Subcommittee on Public Lands and Environmental Regulation

October 13, 2013

Concerning

H.R.1633 the “Small Lands Tracts Conveyance Act”

The Department opposes H.R. 1633.

H.R. 1633 would provide States, units of local government, Federally Recognized Indian Tribes, and private land owners the opportunity to purchase up to 160 acres of National Forest System land or federal lands if their property adjoins the federal land. Eligible properties would include National Forest System lands or lands administered by the Bureau of Land Management that are located within the boundaries of an incorporated or unincorporated area with a population of at least 500 residents, with certain limitations that are provided in the legislation.

The bill further requires the Forest Service and Bureau of Land Management (BLM) to develop procedures for a purchase request, evaluation of the request, and an appeals process. Purchasers would pay market value if the federal property requested is bounded by only one landowner. A competitive process would be used to determine purchase price if there are two or more landowners. None of the proceeds from the sale would return to the Federal Government. Half of the proceeds from the sale would be distributed to the State where the

federal property is located, and the remaining proceeds would be distributed equally to those States with more than 33% of federal land ownership. States could only use the proceeds to purchase additional eligible parcels, or to comply with Federal requirements under the Endangered Species Act of 1973, the Federal Water Pollution Control Act or National Environmental Policy Act of 1969.

As a condition of the sale, the Regional Forester or the Director of the Bureau of Land Management would require the purchaser to comply with local land use ordinances and master zoning plans. All properties would be conveyed by quitclaim deed with all rights held by the United States included.

Our first concern is that the language defining eligible properties may be overly broad. The definition of populated areas that include incorporated and unincorporated areas with a population of 500 residents could be construed to include much of the area where NFS lands border non-federal land. Even with exclusions provided for in the bill, areas such as those with endangered species habitat or areas with exceptional resources, trust lands held for the benefit of an Indian Tribe or those lands that have an exceptional resource such as Wilderness or National Recreation Area, a large amount of the land along the federal/non-federal border would be eligible for transfer. After the property is transferred, the property along the new border would be eligible for transfer. This could result in a yearly expanding loss of the National Forest along its borders.

The Department is also concerned with conveyance of National Forest System Lands without consideration. The proceeds from the sales would be distributed between the State where the sale occurred and all States where Federal Land ownership is greater than 33% of the total land area of the State. These funds could be used only to purchase additional land parcels or for the State to comply with federal law. The benefits of the sale proceeds would go only to the states that receive the money, not the American public as a whole.

H.R. 1633 specifies that market value will be established by an appraisal submitted by the applicant, subject to Agency approval. Federal Agencies are required to comply with the

Uniform Appraisal Standards for Federal Acquisitions. Applicant appraisals not meeting these standards cannot be accepted. This could increase the time to achieve a compliant appraisal and the cost to the Federal Government because of requirements for a second appraisal. H.R. 1633 also imposes timelines for review of applications that would be difficult to meet in the best of circumstances. It would also require recipients of those proceeds to comply with certain Federal laws, with no means for ensuring compliance or enforcement.

The Forest Service already has authority under the National Forest Townsite Act to sell up to 640 acres of National Forest System Land for fair market value to any qualifying county, city, or other governmental subdivision in the 11 contiguous western states and Alaska. The lands would have to serve community objectives that outweigh the public objectives and values of retaining the lands in Federal ownership. These objectives include space for housing and for service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, public schools, public health facilities, community parks, and other recreation areas for local citizens.

Other authorities are available to the Forest Service to sell or exchange NFS lands. Under the Small Tracts Act the Forest Service can sell lands, in part, to rectify innocent trespass problems. The Forest Service Facility Realignment and Enhancement Act of 2005 allows for the sale of unneeded administrative sites. Additionally, land exchanges are authorized under a number of authorities and are the primary mechanism for land disposition.

A key component of all of these authorities is a determination that the exchange or sale of the Federal Land is within the public interest. H.R.1633 has no requirement for determining that the conveyance would be in the public interest. Further, it would require the use of categorical exclusions which we do not support. The Service uses its planning process and the NEPA process to provide opportunities to consider environmental impacts, public engagement, and mitigation opportunities, as well as to ensure that unknown or unforeseen issues are not overlooked. Failure to use these planning processes can result in a failure to provide relevant and useful information to the public and the decision makers.

The Department is also concerned with the effect of removing parcels out of federal ownership on an ad hoc basis. This would make boundary management much more difficult and expensive as the boundaries could change every year. The fragmentation that would occur along the borders of NFS land would exacerbate insect and disease management challenges.

Additionally, USDA is concerned that enactment of H.R. 1633 would exacerbate the spread of homes and communities into areas prone to wildfire magnifying or multiplying an already increasing management challenge. Studies indicate that about one-tenth of the land area occupied by housing and about one-third of all housing units in the conterminous United States are located in the Wildland Urban Interface (WUI). Almost certainly, enactment of H.R. 1633 would open up more “natural” areas for development, complicating and making more costly suppression tactics when a fire occurs. Purchase of these lands could also lead to an increase in the number of fires, since, in general, the more houses and people, the more human-caused fire ignitions occur.

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Concerning

H.R.2259 the “North Fork Watershed Protection Act of 2013

H.R.2259 would, subject to valid existing rights, withdraw National Forest System (NFS) lands located in the North Fork and Middle Fork of Flathead River watersheds in the State of Montana which are primarily managed as part of the Flathead National Forest from location, entry and patent under the mining laws and from disposition under the mineral and geothermal leasing laws. H.R.2259 would also withdrawal a small amount of land in the Kootenai National Forest. Currently there are 39 existing leases or claims in the North Fork comprising 56,117 acres and 18 existing leases or claims in the Middle Fork comprising 8,595 acres.

While USDA supports H.R.2259, I would like to clarify that although the Forest Service has surface management authority concerning mineral operations, the management of the federal mineral estate falls within the jurisdiction of the Secretary of the Interior. We defer

to the Department of the Interior on issues related to the status of the existing claims and leases.

The Forest Service administers surface resources on nearly 193 million acres of NFS lands located in 43 states and the Commonwealth of Puerto Rico. The Forest Plan for the Flathead National Forest blends areas of multiple uses in the North Fork and Middle Fork with areas of specific or limited uses elsewhere on the Forest. Under current law, NFS lands reserved from the public domain pursuant to the Creative Act of 1891, including those in H.R. 2259 are open to location, entry and patent under the United States Mining Laws unless those lands have subsequently been withdrawn from the application of the mining laws. This bill would withdraw approximately 362,000 acres from the operation of the locatable and leasable mineral laws subject to valid existing rights. This includes approximately 291,000 acres on the Flathead National Forest and approximately 5,000 acres on the Kootenai National Forest in the North Fork watershed and 66,000 acres in the Middle Fork watershed on the Flathead National Forest.

The majority of North Fork and Middle Fork of the Flathead has low to moderate potential for the occurrence of locatable and leasable minerals. A portion of the Middle Fork does have an area of high potential for oil and gas occurrence. Much of the North Fork and Middle Fork was leased for oil and gas in the early 1980s. Subsequently, the Bureau of Land Management (BLM) and Forest Service were sued and BLM suspended the leases in 1985 to comply with a District Court ruling (*Conner v. Burford*, 605 F. Supp. 107 (D.Mont.1985)).

Presently, there are no active locatable or leasable operations, including oil and gas, in the North Fork or Middle Fork.

We recognize the bill would not affect the existing oil and gas leases because they would constitute valid existing rights. We also recognize the bill would not change the court's order in *Conner v. Burford* requiring the BLM and Forest Service to prepare an environmental impact statement (EIS) under the National Environmental Policy Act before authorizing any surface disturbing activities on the affected leases.

The Flathead National Forest and Flathead County rely on the close proximity of local sources of aggregate to maintain roads economically and as a source of building materials.

We are pleased this bill would not preclude the removal and use of mineral materials, such as aggregate. The ability to continue using those local mineral materials would allow us to more easily maintain local roads, thus reduce erosion related impacts to streams and lakes in the North Fork and Middle Fork drainages.

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H.R. 3188 Yosemite Rim Fire Emergency Salvage Act.

The Rim Fire burned over 270,000 acres, of which 154,000 acres were located on the Stanislaus National Forest. The Department of Agriculture (USDA) believes that the response to this fire should be addressed with a sense of urgency and the USDA Forest Service (Forest Service) is committed to accomplish the restoration objectives in a timely manner.

H.R. 3188 would direct the Secretary of Agriculture and the Secretary of the Interior to promptly plan and implement salvage timber sales of dead, damaged, or downed timber resulting from the Rim Fire. The bill would exempt salvage timber sales from the National Environmental Policy Act of 1969, Section 14 of the National Forest Management Act of 1976, the Forest and Rangeland Renewable Resources Planning Act of 1974, the Federal Land Policy and Management Act of 1976, and laws related to the management of timber within Yosemite National Park. Salvage timber sales conducted under H.R. 3188 would not be subject to administrative review notice, comment and appeal requirements and would not be subject to judicial review in any court of the United States.

The Department strongly opposes H.R. 3188 because it exempts environmental analysis, associated public involvement, collaboration, and administrative and judicial review processes. While USDA supports efficient environmental analysis, the Agency also supports public review and believes any legislation regarding salvage activities, including the Rim Fire, needs to ensure adequate public involvement and environmental review.

As soon as conditions permitted, a Burned Area Emergency Response (BAER) team began to assess the fire and recommend actions to lessen the impact on resources and infrastructure as well as to protect human safety and life. These actions include felling hazard trees near roads, trails and campgrounds; improving and storm proofing roads to restore drainage; repairing and constructing drivable dips that remove water off the road; stabilizing and repairing trails; installing public warning signs, gates and barricades for public safety; applying mulch and chipping woody material to protect exposed soil; and protecting cultural and natural resources. Implementation of the BAER team recommendations began immediately after funding was authorized and significant progress has been made in implementing erosion control measures and other mitigations recommended by the BAER team.

The Stanislaus National Forest is currently conducting an Environmental Assessment to evaluate mitigating the risk of hazard trees along approximately 150 miles of road and areas adjacent to private property. Implementation of this phase is expected in the spring of 2014.

The Forest Service is also in the early phases of planning for additional restoration and hazard tree removal. This work may include hazard tree removal for an additional 500 miles of road, general salvage, and reduction of the potential for future catastrophic fire by reducing the fuel loading created by the Rim Fire. Reforestation efforts, and other restoration, such as meadow, range, and wildlife habitat restoration will also be considered. Capturing the economic value of the dead and dying trees through salvage will help support the accomplishment of many of these objectives.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.