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Western Caucus Legislative Analysis

H.R. 2936 - Resilient Federal Forests Act Rep. Bruce Westerman (AR-04)

On the House Floor:

Today, November 1, 2017, the House will consider H.R. 2936, the Resilient Federal Forests Act, a bill introduced by Representative Bruce Westerman (AR-04). This bipartisan legislation takes a two-pronged approach to forestry reform by: 1) Providing tools and removing barriers to effective forest management practices by federal land management agencies, and 2) Creating a new wildfire disaster sub-account subject to appropriations which the Departments of Interior and Agriculture can draw upon in the event that wildfire suppression accounts are depleted, thereby ending the practice of “fire-borrowing.”

Summary:

Introduction

Comprehensive forestry reform is years in the making. The scale and destruction wrought by wildfires has been steadily increasing year after year. This last year was the most expensive fire season on record; the federal government spent nearly \$2.5 billion to suppress fires across more than 8.8 million acres. These issues have only worsened the longer they’ve remained unaddressed at the federal level.

Complications arising from seasonal catastrophic wildfires are numerous. Property damage, displacement of homeowners and severely decreased air quality are the major first-order effects. House Energy and Commerce Chairman Greg Walden recently led a hearing examining the environmental and air quality impacts of worsening wildfires to dramatic effect. It is well-established that carbon release from a large wildfire is immense – for scale, a large wildfire’s emissions are often greater than the total vehicle emissions from vehicles across an entire state over the course of a year.

The tangle of problems and costs caused by catastrophic wildfires are themselves rooted in inefficiencies and misallocations at the level of agency review processes, the judicial system, and poor federal funding mechanisms. The overall effect of these systemic causes of wildfires is to direct resources away from active forestry management – reinforcing the likelihood and severity of catastrophic wildfires in the first place.

This bipartisan bill adopts forward-thinking active management strategies that will combat catastrophic wildfires before they get started. Specifically, H.R. 2939 addresses each of these systemic causes of wildfires by instituting the following:

Funding Fix

“Fire borrowing” is a practice in which the United States Forest Service’s – having quickly expended appropriated funds in its wildfire suppression account early in the wildfire season – uses its funds designated for other purposes in order to fund fire suppression. As has been the case in recent years, even fire borrowing has not ensured adequate funding for fire suppression, and subsequent disaster supplementals are necessary to get through the season. This practice is backwards from an appropriations standpoint. The fact that Forest Service raids the accounts intended for the very management that will prevent wildfires in subsequent years means that a funding fix is in order if we are to reduce the severity and frequency of catastrophic wildfires.

H.R. 2936 provides a mechanism fix by establishing a wildfire sub-account within FEMA’s Disaster Relief Fund. This bill establishes no new mandatory spending. Rather, the sub-account will be subject to Congressional appropriations, distinct from appropriations for the parent account. If either Agriculture via the Forest Service, or Interior via the Bureau of Land Management utilize the entirety of their accounts appropriated for wildfire suppression, they can request that the President declare a “major disaster” for wildfire. Subsequent to such a declaration, the President would then direct that funds in the new sub-account be transferred for immediate fire suppression use.

It should be noted that funds appropriated for the general Disaster Relief Fund at FEMA will not “compete” for allocation with the wildfire sub-account, as the accounts will be appropriated distinctly from one another.

Finally, agencies would be barred from transferring funds from their other accounts into their fire suppression accounts, i.e. from engaging in “fire borrowing.” When traditional accounts are depleted, agency heads’ next, and only, course of action is to initiate the process of requesting funds for the wildfire disaster account.

Expedited Regulatory Review

Another reform within H.R. 2936 authorizes expedited regulatory and agency review processes for forest management. Management projects which work to combat wildfires and ensure forest health would be subject to “categorical exclusions” under the National Environmental Policy Act (NEPA). Far from imposing environmental damage, such activities work to prevent ecological damage caused by unnatural wildfire and therefore are worthy of NEPA exclusion. Likewise, activities subject to a categorical exclusion would be exempt from the Endangered Species Act (ESA)’s consultation requirements provided the activity is unlikely to adversely affect a listed species. Agency consultation, if required by ESA, is also expedited.

Forestry Litigation Reform

Management strategies must be consistently implemented in order to be effective in preventing catastrophic wildfires. Legal challenges by external organizations have had the effect in past years of halting management activities that, though they are later given the judicial green-light, required resolution far quicker than the courts could provide, i.e., the window for management to be effective in preventing fires had come and gone. Because our forests don’t always run according to the docket schedules of the courts, this can obviously prove problematic.

In response, H.R. 2936 establishes a seven-year pilot program that requires litigating parties to come to the table in binding arbitration and settle on solutions. Agriculture and Interior would have discretion over those cases which are to be arbitrated as opposed to litigated, providing them greater flexibility in experimenting with and determining the kinds of cases that are likely to be effectively arbitrated. In arbitration – a 90-day process – legal challengers to a forestry plan must provide an alternative to the activity being challenged, which is then considered against the original Forest Service or BLM proposal by the outside arbitrator. This pilot program is expected to keep the pace of management going at a speed necessary for the upkeep of healthy forests. The bill also limits the length of preliminary court injunction against forestry activities to 60 days on a renewable basis, a modified period which is appropriate given the timeliness of the activity in question.

Secure Rural Schools (SRS) modifications

The bill includes provisions aimed at bolstering revenue directed towards the SRS program. Namely, the bill would require that 50% of the funds for projects on federal land be directed towards uses that include the sale of forest products. This will have the net effect of increasing funding streams for SRS and increasing overall educational resources in those communities surrounded by federal land exempt from local property taxes.

The bill includes other SRS provisions aimed at ensuring that SRS payments are not provided in lieu of state funding and that program payouts are classified appropriately by counties and states to maximize educational funding.

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Read statements by House Natural Resource Chairman Rob Bishop and Majority Leader Kevin McCarthy [HERE](#). Read Chr. Rob Bishop's op-ed on forestry reform [HERE](#). Bill text can be found [HERE](#).

[Similar legislation](#) introduced by Rep. Westerman passed the House of Representatives on a bipartisan vote of 262-167 in the 114th Congress.

What They Are Saying:

Click [HERE](#) to see a list of groups in support of H.R. 2936.

Speaker Paul Ryan - *"The Resilient Federal Forests Act addresses the obstructionist litigation by requiring litigants opposing forest management activity to come to the table rather than just saying "no." The legislation also incentivizes and rewards collaboration and encourages local participation in forest health projects. This legislation also fixes the fire "borrowing" issue, making sure these agencies have the funds they need to fight wildfires throughout the summer, and to start managing our forests proactively."*

House Majority Leader Kevin McCarthy - *"California is recovering after the worst wildfires in our state's history. This tragic disaster puts new emphasis on Congress to fix our fire management and suppression programs. This bill makes necessary changes to how forest management programs are funded and includes reforms to keep our forests healthy and less susceptible to the types of fires that ravaged our state this month. With the House acting on this bill next week, the Senate – including California's Senators – should follow suit in short order to prepare our communities against future wildfire threats."*

National Association of State Foresters - *"NASF represents the heads of state forestry agencies in all fifty states, the District of Columbia and the US Territories... We feel the ['Resilient Federal Forests Act of 2017'] would indeed create the end results our members support as our members want to see more active management of federal forest lands. Expedited planning and analysis, prompt response to catastrophic events, alternative dispute resolution, greater collaboration and less costly litigation are all outcomes that for which we strongly advocate."*

National Association of Counties & Western Interstate Region – “On behalf of the National Association of Counties (NACo) the only organization representing the nation’s 3,069 counties, parishes, and boroughs, and the Western Interstate Region (WIR), we write to express support for H.R. 2936, the Resilient Federal Forests Act of 2017. Thank you [Rep. Westerman] for your leadership in introducing legislation to promote the active management of our nation’s federal lands and forests, reduce the risk of catastrophic wildfire and promote collaborative approaches to address natural resource management challenges.”

National Lumber and Building Material Dealers Association – “The ‘Resilient Federal Forests Act’ strikes a balanced approach in managing the national forest system by making more land available for logging in an environmentally sustainable way. Poor land management during the past 30 years has led to declining health of national forests. This has resulted in fewer jobs and productivity in the forest sector, fewer board feet of domestically produced lumber entering the market, and a marked increase in acreage ravaged by insects, disease and fire.”

National Association of Home Builders – “On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to express NAHB’s strong support for The ‘Resilient National Forests Act of 2017’ and express our appreciation to the House Committee on Natural Resources for continuing this important discussion on the health of our nation’s forest. Better forest management practices that are also mindful of environmental considerations will help strengthen the housing supply chain and promote affordable housing opportunities for all Americans.”

National Cattlemen’s Beef Association – “H.R. 2936 is proactive, common sense legislation... It is scientifically proven that proper timber management and rangeland management through grazing is the key to maintain healthy forests and preventing catastrophic wildfires.”

Intertribal Timber Council – “The Executive Board of the Intertribal Timber Council (ITC) supports H.R. 2936, the ‘Resilient Federal Forests Act of 2017,’ sponsored by Rep. Bruce Westerman. We wish to particularly express our strong support for Title VII, which will enhance tribal input and involvement in the restoration of federal forest lands. Such restoration projects are sorely needed to improve forest health and reduce threats to lands held in trust for Indians as well as non-trust federal land upon which Indian tribes access for traditional, subsistence and treaty guaranteed purposes.”

Coalition of 25 outdoor recreation and conservationist groups - “Our nation’s federal lands play a vital role in maintaining healthy forests that are resilient to threats at a landscape level from fire, pests, disease and insects. Through incentives and expedited process, consistent with informed science, the bill will help ensure that timber harvest and the creation of young forest habitat for wildlife remains viable on US Forest Service (USFS) and Bureau of Land Management (BLM) lands. Additionally, it remedies the budget fire funding problem (borrowing from other line items) that our country faces when fighting catastrophic wildfires.”

Cost:

According to Congressional Budget Office Analysis, enacting H.R. 2936 would cost \$20 million over the 2017-2027 period subject to necessary appropriations. Direct spending would be increased by \$6 million over 2019-2027, as part of the provisions providing payments to certain Oregon counties.

Title XI of the bill was added by the Rules Committee Print after CBO had scored. It would allow appropriation’s into the wildfire sub-account to be eligible for funding under the Disaster Cap adjustment. This is a potential increase in the Disaster Cap, and not of actual spending, and therefore this adjustment found in the Rules print would not score under CBO scoring procedures (wherein only appropriated funds utilizing increased caps score).

Amendments:

- I. **Schrader (D-OR)**: This amendment would strike timber production from the list of forest management activities designated for categorical exclusion.
Chairman Gosar recommends a 'No' vote
- II. **Khanna (D-CA)** - Amendment No. 2 - Strikes Subtitle B of Title III, the Forest Management Activity Arbitration Pilot Program, from the bill
Chairman Gosar recommends a 'No' vote
- III. **O'Halleran (D-AZ)** - Amendment No. 3 - Strikes sections 801 and 903
Chairman Gosar recommends a 'No' vote
- IV. **Cardenas (D-CA)** - Amendment No. 4 - Requires the Secretary of Agriculture, in consultation with other relevant Departments, to conduct a study to evaluate the feasibility, safety and cost effectiveness of using unmanned aerial vehicles for the purposes of supporting wildfire response and suppression as well as forest restoration and management
Chairman Gosar recommends a 'Yes' vote
- V. **DeFazio (D-OR)** - Amendment No. 5 - Adds land exclusions to Sec. 913, including Yaquina Head Outstanding Natural Area, Wild and Scenic Rivers Act, Wilderness Act, lands managed under the National Trails System
Chairman Gosar recommends a 'Yes' vote
- VI. **LaMalfa (R-CA)** - Amendment No. 6 - Directs OPM to create a "wildland firefighter" occupational series
Chairman Gosar recommends a 'Yes' vote
- VII. **Pearce (R-NM)** - Amendment No. 7 - Establishes a pilot program to demonstrate effective tools and techniques for safeguarding natural resources
Chairman Gosar recommends a 'Yes' vote

Constitutional Authority:

The sponsor has stated that Congress has the power to enact this legislation pursuant to Article IV, Section 3, Clause 2: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

More Information:

If you have questions about H.R. 2936, please contact Cody Burkham in Congressman Westerman's office at Cody.Burkham@mail.house.gov.

If you have questions about this policy analysis or for the Congressional Western Caucus, please contact Jeff Small at jeff.small@mail.house.gov or Tanner Hanson at tanner.hanson@mail.house.gov.