Alaska Wilderness League ▪ American Bird Conservancy ▪ Center for Biological Diversity ▪ Defenders of Wildlife ▪ Earthjustice ▪ High Country Citizens' Alliance ▪ Klamath-Siskiyou Wildlands Center ▪ League of Conservation Voters ▪ San Juan Citizens Alliance ▪ Southern Environmental Law Center ▪ Sierra Club ▪ Oregon Wild ▪ The Wilderness Society

Fact Sheet: Oppose H.R. 1526, the "Restoring Healthy Forests for Healthy Communities Act"

Title I: "Restoring the Commitment to Rural Counties and Schools" (Rep. Hastings)

- This portion of the bill would establish a replacement for the Secure Rural Schools and Self-Determination Act of 2000 (otherwise known as "Secure Rural Schools" or "SRS" that authorizes payments to counties with public forest land) by requiring the Forest Service to achieve a minimum logging volume target and reestablishing the discredited 25 percent revenue sharing system that was eliminated over a decade ago with the creation of SRS.
- Requires the Secretary of Agriculture to designate "Forest Reserve Revenue Areas" on every national forest within 60 days, which must include "all National Forest System lands identified as commercial forest land capable of producing twenty cubic feet of timber per acre." This sets an unprecedently low bar for lands that can be used as commercial timber lands and would cover a significant amount of the national forest system.
- The only exemptions from automatic designation as a Revenue Area are for designated wilderness, where the removal of vegetation is specifically prohibited by Federal statute, and National Monuments. These exemptions do not include roadless areas, wilderness study areas, old growth, or other conservation lands, so these lands could be opened to mandatory logging. Once a Forest Reserve Revenue Area is established, its acreage cannot be reduced.
- In Revenue Areas, the Forest Service would have a legally-enforceable fiduciary obligation to produce a mandated minimum amount of commercial timber (no less than 50% of the sustained timber yield of the Revenue Area) for the financial benefit of local "beneficiary" counties. A county could potentially sue the federal government for failing to meet the logging volume target, even if the Forest Service didn't have adequate funding from Congress to develop timber sales.
- In order to achieve the mandatory logging volume, the Forest Service would have to increase extraction activities to unprecedented and unsustainable levels, effectively resulting in widespread clear-cuts and other intensive logging of our national forests.[1] The Forest Service would also be forced to spend whatever it takes to achieve the mandated logging levels.[2]
- NEPA review would be either eliminated or severely limited. The bill creates a new Categorical Exclusion (no NEPA review) for any logging project in Revenue Areas that impacts up to 10,000 acres or is proposed in response to a potential or actual "catastrophic event" (broadly defined) regardless of acreage. For practical purposes, this would eliminate NEPA requirements for nearly all projects in the Revenue Areas. For other projects that impact more than 10,000 acres, the bill requires that only a more condensed and expedited Environmental Assessment (cannot exceed 100 pages in length and must be completed within 180 days) must be prepared without any analysis of alternatives (only the proposed action is to be described), along with limited cumulative effects' analysis, and no additional NEPA analysis shall be required to implement any portion of a project.
- Endangered Species Act compliance is also severely limited. Regardless of a project's impacts on listed species, the Secretary of Agriculture is required to issue a "no jeopardy" determination. The Fish and Wildlife Service or the National Marine Fisheries Service must respond to this "no jeopardy" determination by providing a written response within 30 days. If the Forest Service's "no

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[1] Based on Rep. Hastings' county payments bill from the 112th Congress that mandated the Forest Service achieve a minimum logging *revenue* target (H.R. 4019), Headwaters Economics determined that based on 2010 timber prices, the timber cut required to meet H.R. 4019 would be 33.2 billion board feet, **15 times greater** than the actual 2010 national timber cut of 2.1 billion board feet, and **nearly 3 times higher than the record single-year timber cut** of 12.7 billion board feet in 1987. Headwaters Economics, Can Mandated Timber Harvests Save County Payments? An Analysis of the Draft Federal Forest County Revenue, Schools, and Jobs Act (Feb. 16, 2012), *available at* http://headwaterseconomics.org/wphw/wp-content/uploads/CountyPayments_House_Analysis_Feb2012.pdf. Similar drastically increased cut levels would likely be required to meet the logging *volume* target set out in H.R. 1526.

[2] An analysis by Headwaters Economics estimated that at current administrative costs of preparing and administering timber sales under H.R. 4019, an **increase of $1.8 billion to $5.9 billion in federal spending would be required above the $378 million/year** on average paid to counties under the Secure Rural Schools County Payments Act from 2008-2011. Headwaters Economics, Can Subsidized Timber Save County Payments? An Analysis of the Draft National Forest County Revenue, Schools, and Jobs Act (Sept. 21, 2011), *available at* http://headwaterseconomics.org/wphw/wp-content/uploads/CountyPayments_House_Proposal_Analysis.pdf. The Congressional Budget Office's May 11, 2012 score of H.R. 4019 also estimated that enactment would increase net direct spending by about $2.6 billion over a 10-year period. Similar increases in federal spending would likely be required to meet the minimum logging volume target set out in H.R. 1526.

jeopardy" determination is rejected, the written response must include recommendations for measures (such as how to avoid jeopardy in a matter still consistent with the purpose of the proposed project), and the wildlife agencies must also complete formal consultation within a deadline of only 90 days.

- Federal environmental laws are effectively repealed under this title. Compliance with this title's limited NEPA, ESA, and Forest and Rangeland Renewable Resources Planning Act requirements "serves as the sole means" for complying with NEPA "and other laws applicable" to Revenue Area projects. The Secretary of Agriculture can also modify land and resource management plans if "necessary" to achieve the bill's requirements.
- The Healthy Forests Restoration Act's limited administrative appeals process and judicial review provisions apply to all projects, and judicial review is further limited by requiring any plaintiff to post an up-front bond covering all estimated defense costs and attorneys fees. This would effectively preclude almost all judicial review for citizens.
- The beneficiary counties would receive 25 percent of the revenue generated from logging sales. Much of the remaining timber revenue would be deposited in the "K-V Fund" and the "Salvage Sale Fund," which are existing mechanisms to avoid timber receipts going into the federal treasury.

Title II: "Healthy Forest Management and Catastrophic Wildfire Prevention" (Reps. Tipton & Gosar)

- This title resembles a combination of H.R. 818 and H.R. 1345.
- Governors (without having to consult with the Forest Service or BLM) can designate "high-risk areas" of federal land based on current or future risk of fire, insects, drought, and undefined "deteriorating forest health conditions."
- Inventoried roadless areas, old growth, wilderness study areas, and other sensitive areas can be designated. Only designated wilderness, areas where vegetation removal is specifically prohibited by Federal statute, and National Monuments are excluded. Although the bill provides that designation of high-risk areas must be consistent with land and resource management plans, it allows the Secretary concerned to modify plan standards and guidelines to accommodate designations.
- "High-risk areas" "should be" designated no later than 60 days after enactment but may be designated anytime as consistent with the legislation. Areas are designated for 20 years but can be renewed indefinitely by the Governor.
- Once areas are designated, Governors may develop "fuels reduction" or "forest health" projects, which are broadly defined and specifically include logging activities. Such projects shall then be submitted to the Forest Service or BLM for implementation.
- Although projects submitted by Governors are given priority, the Secretary of Agriculture or Interior is also authorized to implement "fuel reduction" or "forest health" projects in "at-risk" forests (also broadly defined). Projects are defined to be virtually anything including commercial logging, livestock grazing (even though grazing encourages the spread of highly flammable cheatgrass), and projects that impact threatened and endangered species habitat.
- Federal environmental laws are effectively repealed under this title. Projects only have to comply with the limited NEPA, ESA, and Forest and Rangeland Renewable Resources Planning Act's requirements set out in Title I. In addition, any Title II "fuels reduction" or "forest health" project that take place within 500 feet of infrastructure are categorically excluded from NEPA review altogether.
- The Healthy Forests Restoration Act's limited administrative appeals process and judicial review provisions apply to all Title II projects, and judicial review is further limited by requiring any plaintiff to post an up-front bond covering all estimated defense costs and attorneys fees. This would effectively preclude almost all judicial review for citizens.

Title III: "Oregon and California Railroad Grant Lands Trust, Conservation, and Jobs" (Reps. DeFazio, Walden, & Schrader)

- Title III of H.R. 1526 would turn over an unspecified amount of public forest lands in western Oregon that are primarily and currently managed by the Bureau of Land Management (BLM) to a timber trust. The pool of acreage that could be turned over are any areas that have tree stands predominantly 125 years or younger from the 2.1 million acres of Oregon & California Railroad Grant lands and the 400,000 acres of Oregon Public Domain lands.

- These forests would remain public lands in name only and instead would be controlled by a Board of Trustees, who is appointed by the Governor of Oregon, to manage for the sole purpose of maximizing annual revenues from timber production for the benefit of 18 counties in western Oregon where these lands are located. The Board would be required to use any timber harvest technique including clearcutting to meet this obligation.
- Half of the Trust lands would be managed on 100-120 year rotations, while the other half can be managed on a rotation schedule at the discretion of the Board of Trustees.
- Inventoried roadless areas, along with Late Successional Reserves and Riparian Areas designated under the Northwest Forest Plan, are all subject to inclusion in the Trust. Exempted from inclusion are those lands as of January 1, 2013 that are designated Wilderness, national wild and scenic rivers, federal lands within the National Landscape Conservation System, federal lands designated as "areas of critical environmental concern," National Parks, National Monuments, and National Recreation Areas.
- All Federal environmental laws, including NEPA and the ESA, would be waived and the public lands placed in the O&C Trust would be managed by the Board as if they were privately owned timberlands, subject to the state Oregon Forest Practices Act.
- More than 600,000 acres of critical habitat for one or more terrestrial species protected under the ESA would be managed as industrial forestlands. The ecological effects modeling done for Oregon Governor Kitzhaber show that this Trust proposal would clearcut 27 percent of the designated critical habitat for the threatened northern spotted owl in the O&C landscape in the next 50 years and eventually 44 percent of the owl's entire ESA-designated habitat on BLM lands. In addition, Title III further provides that as long as Trust projects comply with the state Oregon Forest Practices Act, the Board's management of the O&C Trust shall be deemed to comply with the ESA's section 9 take prohibition.
- Roads in the Trust lands are to be entirely managed by the Board of Trustees, which must comply with the federal Clean Water Act's requirements to the extent applicable to private lands through the use of best management practices under the state Oregon Forest Practices Act.
- Judicial review is limited by creation of a 60-day statute of limitations for any challenges to any provision of this Title, which must be brought in the U.S. Court of Appeals for the District of Columbia Circuit. No preliminary injunctive relief or stays pending appeal are permitted. Judicial review of management decisions by the Trustees can be brought by O&C counties only, except to the extent a claim could be brought against a private landowner for the same action.
- In addition, an estimated additional 54,000 acres of public forests currently managed by the BLM would be transferred to Coos County and managed with a similar mandate to maximize annual revenues. Revenues would go exclusively to Coos and Douglas Counties.
- *Some protective aspects of the bill*: BLM lands in western Oregon not transferred to the timber trust (824,866 acres of forests generally older than 125 years) would be transferred to the Forest Service; however exchanges would be exempted from some federal laws. These lands would be managed under existing federal laws and the Northwest Forest Plan. An unknown subset of these lands would be permanently protected if they were defined as "old growth forest" by a committee established under the bill. This title also establishes 88,620 acres of new Wilderness, 128 miles of new Wild and Scenic Rivers, and repeals some provisions of the Oregon and California Lands Act of 1937. However, such designations will not be construed to interfere with the authority of the Secretary of Interior or Agriculture to conduct potentially aggressive logging in these areas under the guise of wildfire prevention. Five percent of the Trust's annual net operating revenue is required to be deposited into a Conservation Fund for use on conservation easements, watershed restoration, etc.

Title IV: "Community Forest Management Demonstration" (Rep. Labrador)

- This title resembles a previously introduced bill, H.R. 1345.
- Authorizes the transfer of federal management of National Forest areas to locally-controlled and state-appointed boards (who "shall assume all management authority"). Although national forests are currently managed for a broad spectrum of interests (in accordance with the Forest Service Organic Act, Multiple-Use Sustained-Yield Act, and National Forest Management Act), under this Title, areas would be managed to serve a limited number of local economic interests, including unsustainable commercial logging.

- At the request of a state-appointed boards (referred to as "advisory committees"), consisting of local elected officials and timber, grazing, and recreational/off-road vehicle interests, the Secretary of Agriculture *must* establish locally-controlled trusts areas (referred to as a "community forest demonstration area") for any National Forest requested by the board. Only designated Wilderness, lands on which vegetation removal is prohibited by federal law (which potentially does *not* include roadless areas), National Monuments, and areas in which Forest Service first assumes administration jurisdiction in Title III are exempted from being included in trust-controlled areas.
- These lands, which must be at a minimum 200,000 acres per state, would be managed by the board as a locally-controlled trust for the sole purpose of generating revenue for counties and local governments. The boards do not have to consult with the U.S. Forest Service before any initiating any projects or practices on trust-controlled areas (only must consult with Indian tribes and any applicable forest collaborative group).
- Up to 2,000,000 acres of National Forest System land nationwide may be established as trust-controlled areas that are managed solely by state boards.
- Federal laws are effectively repealed. Federal protections, including NEPA, the Clean Water Act, the Endangered Species Act, federal laws and regulations governing procurement by federal agencies, and "other federal laws" (except for the Native American Graves Protection and Repatriation Act) no longer apply. Lands are treated as state- or privately-owned forests lands for purposes of management and must comply with applicable state laws and regulations.
- Federal government remains responsible for providing (and paying for) all fire pre-suppression, suppression, and rehabilitation services on all trust-controlled areas.
- Revenues generated by the Board-managed lands will be distributed to local and county government units currently in an amount proportional to the funds received under title I of the Secure Rural Schools and Community Self-Determination Act of 2000. Boards may also "retain such sums" as "necessary" to fund the management and related expenses of trust areas.

Title V: "Reauthorization and Amendment of Existing Authorities and Other Matters"

- While the intensive logging projects necessary to achieve Title I's mandatory logging volume targets are implemented, Title V mandates that the Secretary of Agriculture shall distribute to (1) each Title I "beneficiary county" and (2) any other county that received a direct Secure Rural School payment in fiscal year 2010, a payment equal to their respective 2010 SRS amount no later than February 2014. Total SRS payments in 2010 equated to around $374 to $389 million.
- After 2014, all county payments will return to the 25 Percent Payment Act of 1908 Act program (the law that links payments to current timber receipts), which was largely discredited and replaced by the passage of SRS in 2000.[3] The 1908 25 Percent Payment Act is amended so that payments are based on 25 percent of *all amounts received for the applicable fiscal year* only, rather than an annual average of the applicable fiscal year plus each of the preceding 6 fiscal years.
- Title V also authorizes the Secretary of Agriculture and Secretary of Interior to enter into cooperative agreements with state foresters to conduct projects on Forest Service and BLM public forest land nationwide. This "good neighbor" provision contains no requirement that projects be done on only those federal lands that are adjacent to state forest land, contains no exclusions for ecologically sensitive areas like Wilderness and National Monuments, and also expands the types of projects that state foresters can do on public forest land, such as commercial logging.

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For the above listed reasons, we strongly urge you to oppose H.R. 1526, the "Restoring Healthy Forests for Healthy Communities Act," at the markup before the House Natural Resources Committee on Wednesday July 31, 2013.

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[3] The declining timber market between 1980 and 2000 resulted in decreased 25 Percent Payment Act payments for counties, causing significant county budget shortfalls. This led the 106th Congress to pass SRS in 2000 in order to stabilize payments, remove the reliance on boom and bust timber receipts, and reduce perverse logging incentives.