Earthjustice ▪ Defenders of Wildlife ▪ Sierra Club ▪ League of Conservation Voters ▪ Natural Resources Defense Council ▪ The Wilderness Society ▪ Environment America ▪ Endangered Species Coalition ▪ Center for Biological Diversity ▪ Grand Canyon Trust ▪ San Juan Citizens Alliance ▪ Klamath Forest Alliance ▪ Conservation Northwest ▪ Epic-Environmental Protection Information Center ▪ Oregon Wild

Oppose S. 1966, Senator Barrasso's National Forest Logging Bill

This bill mandates legislatively prescribed logging levels for *each* National Forest across most of the western United States, while also waiving or severely undermining compliance with federal environmental laws and eliminating the public's ability to seek judicial review of logging projects that may damage their communities. Legislative timber harvest prescriptions are in direct contravention of the multiple use mandate of the Forest Service, whose land managers must set out – pursuant to locally and collaboratively-developed management plans – how best to manage each individual forest for not only timber production, but also the many vital benefits these lands provide, such as clean drinking water, fish and wildlife habitat, and hunting, fishing, hiking, and other recreational opportunities that support a multi-billion dollar outdoor industry critically important to rural communities and regional economies.

S. 1966 also strives to reinstate the discredited system of linking logging to revenue for counties. This volatile and unreliable resource extraction model was eliminated over a decade ago with the bipartisan passage of the Secure Rural Schools and Community Self-Determination Act of 2000 (otherwise known as "Secure Rural Schools" or "SRS"). S. 1966 could decimate our western National Forests for special interests without addressing the true, long-term needs of rural communities.

Just this past September, the Administration echoed these sentiments when it issued a strong veto threat against similar national forest legislation in House bill H.R. 1526. The September 18, 2013 Statement of Administration Policy made clear that the "Administration *does not support specifying timber harvest levels in statute*, which does not take into account public input, environmental analyses, multiple use management or ecosystem changes" and that it strongly opposes because of "numerous harmful provisions that impair Federal management of federally owned lands and *undermines many important existing public land and environmental laws, rules and processes*," which could "significantly harm sound long-term management of these Federal lands for continued productivity and economic benefit as well as for the long-term health of the wildlife and ecological values sustained by these holdings."[1]

Bullet Point Summary

Sec. 4(a): Legislatively Prescribes Logging Levels

- Mandates **a minimum of 7.5 million** acres be logged from national forests in the West during a 15-year period and **gives the Secretary of Agriculture sole discretion to establish a much higher level, including up to 25% of each unit's Emphasis Areas. Final logging levels are almost completely immune from review or challenge.** Science not politics should dictate logging levels, and the public should be able to weigh in on major decisions like how many millions of acres of national forest land can be logged across the west.
- Authorizes the Secretary of Agriculture to conduct logging projects in "Forest Management Emphasis Areas" **in each National Forest unit west of the 100th meridian – this impacts national forests in portions of North Dakota, South Dakota, Nebraska, Oklahoma, and Texas, and all national forests in Montana, Wyoming, Colorado, New Mexico, Washington, Oregon, Idaho, California, Nevada, Utah, Arizona, and Alaska**
- "Emphasis Areas" are defined as any national forest land "identified as suitable for timber production in a forest management plan in effect on the date of enactment" – forest plans that are revised after the bill's enactment can only reduce the number of acres designated as suitable for timber harvest if the Secretary of Agriculture determines that it will jeopardize an endangered species (section 4(d)). This provision would completely bar the Forest Service from considering

[1] *See* http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr1526r_20130918.pdf.

water quality issues, pollution, climate change and other wildlife aspects of forest health in determining logging levels.

- Only areas that are excluded from "Logging Emphasis Areas" are designated wilderness and areas where removal of vegetation is specifically prohibited by federal law – **exemptions do not include wilderness study areas, old growth, or other conservation lands, including ecologically sensitive areas unsuitable for harvest that aren't reflected in yet-to-be-updated forest management plan**
- Within 60 days of enactment, Secretary must assign logging requirements (referred to as "acreage treatment requirements") that covers up to 25% for each Emphasis Area
- **Limits Stewardship and Service contracts**, as the bill requires that logging projects must be carried out primarily pursuant to the timber sale contracting provision of the National Forest Management Act (16 U.S.C. 472a) – if different contracting methods are used, such as stewardship contracting, the USDA Secretary must provide a written record specifying the reasons
- In direct contravention of the National Forest Management Act's requirement that designation, marking, and supervision of harvesting of trees must be conducted by USDA employees in order to avoid having a conflict of interest in the purchase or harvest of such products (*see* 16 U.S.C. 472a(g)), the bill allows the Secretary to designate this authority to outside parties such as the timber industry

Sec. 4(b): Limits Environmental Review and Public Participation

- Secretary shall comply with NEPA by only completing an Environmental Assessment (EA), even if a more comprehensive review and an Environmental Impact Statement (EIS) are warranted
- EA only has to disclose and analyze the direct effects of each covered project (barred from analyzing the cumulative impacts or indirect effects of covered projects for that national forest unit)
- EA is also not required to study or describe more than the proposed action and 1 additional alternative
- EA can't exceed 100 pages in length and must be completed within 180 days of published notice of logging project
- Secretary must provide public notice of a covered project and allow opportunity for public comment – no time period is given but given that EA must be completed within 180 days of public notice, comment period will presumably be very short

Sec. 4(c): Waives ESA Consultation

- Rather than having to comply with ESA's section 7 requirements to consult with expert wildlife officials from the U.S. Fish and Wildlife Service, **the bill requires USDA to only consult within its own staff on the Forest Service to make potential wildlife jeopardy determinations** resulting from covered logging projects
- This "self-consultation" is not consultation at all and essentially waives compliance with the ESA
- USDA is also given authority to make jeopardy determinations regarding timber harvest levels – while the bill does call for consultation with DOI on this one issue (see section 4(d)), it appears to move the *determination* about jeopardy to USDA, a complete shift from current practice and wholly contrary to ESA's requirements that call for US FWS to make the determination as to when something will or will not jeopardize an endangered species

Sec. 5: Eliminates Judicial Review and Sets up Biased Arbitration Process

- Citizens can only seek administrative review of a covered project pursuant to the limited administrative review process under section 105 of the Healthy Forests Restoration Act of 2003
- **Public's ability to seek judicial review of harmful logging projects is waived**
- Instead, a special arbitration process (that must be completed within 90 days) is the "sole means" by which to challenge a decision made following the special administrative review process

- Request for arbitration must be filed within 30 days after the administrative review decision is issued and **objector must include a proposal containing changes sought to the covered project** (changes could include making the project larger and more damaging)
- Arbitration process would allow anyone who submitted a public comment on the project to intervene in the arbitration **by submitting a proposal supporting or modifying the covered project (which could include making the project larger and more damaging)** within 30 days of arbitration request
- United States District Court in the district where project is located must appoint the arbitrator
- Arbitrator cannot modify any of the proposals submitted under this section and **must select a proposal submitted by the objector or an intervening party –** arbitrator must select the proposal that best meets the purpose and needs described in the Environmental Assessment for the project **(which biases the decision toward the proposal that allows the logging project or even a potentially more harmful project to be carried out)**
- Arbitrator's decision is binding, shall not be subject to judicial review, and shall not be considered a major Federal action (which would foreclose additional NEPA review even if an objector or intervenor's new proposal is selected that has additional impacts not previously analyzed and disclosed in the Environmental Assessment for the original project)

Sec. 6: Sets up Revenue Sharing System Linked to Commodity Extraction

- Provides that 25% of the revenues derived from covered projects will be distributed to counties
- Reestablishes the discredited 25 percent revenue sharing system that was eliminated over a decade ago with the creation of Secure Rural Schools (SRS) program, which provides direct payments to counties without linking to timber receipts
- Allows some counties to "double dip" since in addition to the 25% revenue sharing payments that counties would receive from covered projects under S. 1966, some counties would still also receive their payments under the Twenty-Five Percent Fund Act of 1908

Why We Oppose S. 1966

- **Institutes Lawless Logging.** This bill replaces judges with arbitrators who are prohibited from considering whether a project complies with the law. An arbitrator can only confirm or adopt a proposal based solely on compliance with the announced purpose and need for logging. As under the notorious 1995 supplemental appropriations' Salvage Rider (applicable through Dec. 1996), timber sales would not be required to comply with bedrock protections of the public interest, including the National Environmental Policy Act, the Endangered Species Act, and years of locally and collaboratively developed land management plans under the National Forest Management Act.
- **Eliminates Environmental Safeguards.** This bill also specifically attacks the informed public engagement and improved government decision-making promoted by NEPA. No matter how large, controversial, or damaging a logging proposal, it could only be reviewed in an environmental assessment – a document valid only for projects that do not have significant impacts – and only in a drastically cramped timeframe and without regard to most, if not all, reasonable alternatives to the agency's proposal. Moreover, the bill sets the stage for future endangered species' crises by relegating review of ESA issues to a meaningless self-consultation process, shutting out the government's own expert wildlife agencies.
- **Damages Watersheds and Pollute Drinking Water.** Industrialization of public lands will damage watersheds and pollute drinking water, putting our drinking water supply at risk, as over 50% of fresh water supplies in the West come from federal forests. Intensive logging and other extractive practices dumps sediment into rivers, which can increase costs for local water utilities, cause erosion, and can alter the timing of water availability.[2]

[2] Restoring watersheds where possible from destructive logging can cost taxpayers – including counties – hundreds of millions of dollars a year in lost revenues and vital ecosystem services. For example, in 1996, Salem, Oregon was forced to spend nearly $100 million on new water treatment facilities after logging fouled the Santiam River with mud and silt. Salem is not alone; up to 124 million people nationwide receive drinking water from national forest watersheds, with an estimated $4 to $27 billion annual value.

- **Harms Businesses and Jobs that Depend on Functioning Forests.** The outdoor recreation industry directly supports 6.1 million jobs and contributes over $646 billion annually to the US economy, including $39.7 billion to state/local revenues.[3] Damaging these resources will directly impact outdoor-related businesses that generate revenue for counties and employ a range of skilled workers including sport and commercial fisherman, hunters, and anglers. The U.S. Forest Service's most recent annual visitor survey showed that national forests attracted 166 million visitors in 2011, and that visitor spending in nearby communities sustained more than 200,000 full- and part-time jobs.
- **Liquidates our Natural Heritage and is the Wrong Approach to Address County Funding.** We understand and sympathize with the tight budgets that many local governments are facing. However, this shortsighted proposal may cost taxpayers more than the revenue it generates and result in counties receiving smaller payments while also decimating the public forest land that communities rely on. It would reestablish the discredited county revenue sharing scheme that was eliminated over a decade ago because of its disastrous economic and ecological impacts. It also abandons our nation's vision of and commitment to a strong system of national safeguards to preserve America's natural heritage.
- **Economics Don't Make Sense.** Increased federal expenditures may be required in order for the Forest Service to comply with and implement the bill's requirements to offer for harvest up to 25% of each National Forest's "Logging Emphasis Areas." Moreover, it fails to provide a long-term, sustainable funding solution for our rural communities, **and will likely result in counties receiving far less in annual payments than they have received under the Secure Rural Schools program**, the current law that provides direct payments to counties without mandated logging requirements. The CBO score on the similar House bill H.R. 1526 – which also required that 25% percent of timber revenues be distributed to counties (from the bill's higher logging mandate of at least 50% of forest areas each year) – confirmed that such payments would average just over $50 million annually, which is far less than the approximately $350 million/year that counties have received annually under SRS.[4] You simply cannot cut enough to make up for what the counties are receiving now under SRS.

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[3] Outdoor Industry Association, THE OUTDOOR RECREATION ECONOMY (2012), *available at* http://www.outdoorindustry.org/images/researchfiles/OIA_OutdoorRecEconomyReport2012.pdf?167.

[4] *See* http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr1526.pdf. Moreover, the previous iteration of H.R. 1526 (H.R. 4019, 112th Congress) would have resulted in over half of the states receiving less revenue share payments as compared to their payments under the Secure Rural Schools Act even while having to decimate their National Forests with substantially increased levels of logging. For example, New Mexico's national forests would have had to increase logging by 1219% from 2010 cut levels to meet H.R. 4019's revenue target but would have received 75% *less* in funding. Similar results exist for Utah, Colorado, Nevada, and a number of other states. Headwaters Economics, CAN MANDATED TIMBER HARVESTS SAVE COUNTY PAYMENTS? AN ANALYSIS OF THE DRAFT FEDERAL FOREST COUNTY REVENUE, SCHOOLS, AND JOBS ACT 3, 7 (Feb. 16, 2012), *available at* http://headwaterseconomics.org/wphw/wp-content/uploads/CountyPayments_House_Analysis_Feb2012.pdf.