

**STATEMENT OF
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U.S. DEPARTMENT OF AGRICULTURE - FOREST SERVICE
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
Regarding
S.1229, Simplifying Outdoor Access for Recreation (SOAR) Act,
S.1874, Recreation Not Red Tape Act
S.1616, Federal Interior Land Media (FILM) Act,
S. 3266, Outdoor Recreation Act
S. 3264, Bikes Over Long-Distance Trails (BOLT) Act
S. 1269: Report on the effects of special recreation permits on EJ communities
December 2, 2021**

Chairman Manchin, Ranking Member Barrasso, and Members of the Committee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA), Forest Service, regarding various public land management bills.

**S.1229, Simplifying Outdoor Access for Recreation (SOAR) Act, and
S.1874, Recreation Not Red Tape Act**

The USDA Forest Service manages 155 national forests and 20 national grasslands, comprising 193 million acres in 41 states and Puerto Rico. Outdoor recreation is a significant use of these lands which contain three million acres of lakes, 400,000 miles of streams, 122 Wild and Scenic Rivers for rafting, kayaking and other watersports, and 159,000 miles of trails for horseback riding, hiking, snowmobiling, mountain biking, and more.

The Forest Service is deeply committed to connecting all Americans to the outdoors, and we value the important role played by outfitters and guides, resorts, non-profit organizations, and others as partners in connecting people to recreation opportunities in the national forests and grasslands. Outdoor recreation attracts people to visit, live, and work in gateway and rural communities and supports the health, well-being, and economic vitality of those communities. Recreation on National Forest System lands contributes more than \$13.5 billion to America's gross domestic product and supports more than 161,000 full and part-time jobs, the vast majority of which are in gateway and rural communities.¹

In fiscal year 2020, the number of recreation visits to the National Forest System rose to 168 million, which represents a 12% increase compared to 2019. Annual visitation to national forests and grasslands increases to 450 million visitors if we account for the number of people who pass

¹ 2020 National Visitor Use Monitoring survey. These numbers reflect total benefits (direct, indirect, and induced).

through these beautiful forests to enjoy the scenery and travel on our scenic roads and byways. Recreation pressure has been particularly significant on national forests close to urban areas. Now, more than any other time in recent history, people have been making their way out to the national forests as Americans turn to their public lands for respite and relaxation during the COVID-19 pandemic.

Moreover, recreation on National Forest System lands sustains more private sector jobs than any other Forest Service program and provides the single largest economic stimulus for many local communities adjacent to or within National Forest System lands. Outdoor recreation opportunities and amenities are consistently ranked as one of the primary reasons people move to rural towns and can be a leading contributor to small town economies, and the Forest Service administers over 30,000 recreation special use authorizations for activities that generate nearly \$2 billion to their special use authorization holders. In particular, the Forest Service administers 122 ski area permits and approximately 8,000 outfitting and guiding permits.

These permits enable private sector professionals and educational institutions to lead a range of activities on National Forest System lands, from whitewater rafting, downhill skiing, horseback riding, and big game hunting to youth education trips in the wilderness and scenic jeep tours. For many, these activities represent their first introduction to the outdoors, and the outfitters and guides they employ are often small businesses that generate jobs and income for local communities. Forest Service permit holders help connect Americans to their natural world and help restore mental health and maintain healthy lifestyles.

With certain exceptions discussed below, USDA supports the goals of S.1229, Simplifying Outdoor Access for Recreation (SOAR) Act, and S.1874, Recreation Not Red Tape Act. These bills improve recreational access to National Forest System lands and we look forward to working with the bills' sponsors and the Committee to effect changes necessary to achieve those goals. Our comments on these bills pertain to their effects on the Forest Service, including management of National Forest System lands. USDA defers to the U.S. Department of the Interior (DOI) as to the effects of these bills on DOI bureaus and the federal lands under their jurisdiction.

Provisions Common to S. 1229, the SOAR Act, and S. 1874, Recreation Not Red Tape Act

S. 1229 (Section 2) and S. 1874 (Section 101): Definitions

We would like to work with the Committee to ensure the definitions in these sections are consistent with existing definitions in the Federal Lands Recreation Enhancement Act and Forest Service regulations and guidance documents.

S. 1229 (Section 3) and S. 1874 (Section 102): Special Recreation Permit and Fee

The Agency is supportive of the intent of these sections. We would like to work with the Committee to ensure the provisions do not duplicate existing Forest Service policies for land use fee determination or conflict with provisions in the Federal Lands Recreation Enhancement Act

and Forest Service guidance documents governing noncommercial special recreation permits. Additionally, we would like to work with the Committee to clarify the scope of the permits to be affected by this legislation.

S. 1229 (Section 4) and S. 1874 (Section 103): Permitting Process Improvements

The Forest Service supports the overall intent of these sections. Since 2016, we have taken steps to implement several of the objectives of these sections, including reducing the number of expired permits by more than 50% in the last 5 years. Specifically, we conducted a Lean Six Sigma Analysis of our permitting process and are currently implementing recommended actions, many of which align with the intent of this bill. Additionally, in November 2020 we published a final rule revising the Forest Service's NEPA regulations, which include a revised categorical exclusion for reissuance of special use permits and a new categorical exclusion for issuance of new permits for recreational activities in locations where those types of activities are generally allowed (36 CFR 220.6(d)(11) and (12)). As with all administrative categories, both require consideration of extraordinary circumstances. We believe these actions have already met the intent of Section 4(b)/Section 103(b) and will allow the Forest Service to issue and reissue recreation special use permits efficiently while still meeting environmental requirements. Although the Agency is supportive of the intent of these sections, we are concerned that the language duplicates our current work. We would like to work with the Committee to remove any redundancy and ensure that the language accomplishes its intent.

S. 1229 (Section 5) and S. 1874 (Section 104): Permit Flexibility

The Agency is supportive of these sections. We would like to work with the Committee to better understand the intent of Section 5(c), as we have a temporary outfitting and guiding permit system established through public notice and comment in our guidance documents.

S. 1229 (Section 6) and S. 1874 (Section 105): Permit Administration

These sections would require the Forest Service to notify the public of available permit opportunities online. The Agency would like to work with the Committee to ensure that the Agency's current practices and processes of open seasons and prospectus announcements provide adequate notification of permit opportunities within our existing resource capabilities.

S. 1229 (Section 7) and S. 1874 (Section 106): Multi-Jurisdictional Permits

We support the intent of these sections to streamline permitting by authorizing issuance of a single joint permit by a lead agency for multi-jurisdictional trips. We would like to work with the Committee to provide technical changes to the bill language that would achieve this intent consistent with existing authorities that apply to each affected agency and that would ensure the language complements our existing Service First Authorities. We also would like to work with the Committee on appropriate cost recovery provisions for implementation of this program.

S. 1229 (Section 8) and S. 1874 (Section 107): Forest Service Permit Use Reviews

We support the intent of these sections and would like to work with the Committee to ensure that they do not duplicate current permitting policy.

S. 1229 (Section 9) and S. 1874 (Section 108): Liability

Subsection (a) would prohibit the Agency from administering any guidance or taking any actions related to exculpatory or liability agreements between a permit holder and their clientele. While we support authorizing use of waivers of liability, we do not support the language in this subsection, as it would preclude the Forest Service from ensuring that waivers of liability cover the United States as well as the concessioner. We would like to work with the Committee to amend this language.

Subsection (b) would exempt state governmental entities from indemnifying the United States if they are precluded by state or local law from doing so. This provision should be clarified to state the exemption would apply only to indemnity for tort and not environmental liability, since environmental liability is not limited by state law. Additionally, state governmental entities' self-insurance is generally an insufficient substitute for indemnification of the United States because states' self-insurance typically covers only state employees and cannot be extended to the United States. Commercial general liability insurance policies obtained by states do not cover the United States unless they contain an endorsement that includes the United States as an additional insured. Further, many states can unconditionally indemnify the United States under their state law, and even those states that cannot do so can typically indemnify the United States up to the liability limits under their state tort claims act. We would like to work with the Committee to make targeted changes to address these important issues.

S. 1229 (Section 10) and S. 1874 (Section 109): Cost Recovery Reform

While the Forest Service supports efforts to responsibly apply cost recovery for processing permit applications, we do not support these provisions in the bills because they would reduce our ability to process both simple and complex permit applications. Cost recovery has provided more resources to the agency for processing permit applications, thereby enabling the Forest Service to enhance customer service by processing applications faster. Small recreation service providers such as outfitters and guides are generally exempt from cost recovery fees under Forest Service regulations. Expanding the exemption as proposed in the bill would generally benefit large recreation service providers and would adversely affect customer service, thereby counteracting efficiencies gained from other provisions in the bill. The Agency believes these additional efficiencies would reduce processing times sufficiently to obviate the need to further limit our cost recovery authority.

S. 1229 (Section 11) and S. 1874 (Section 110): Extension of Special Recreation Permits

This provision would provide for renewal of an existing permit rather than issuance of a new permit upon expiration, which is the Agency's current practice for all types of special use permits. We would like to work with the Committee to preserve the Agency's ability to update permit forms, including new terms as necessary or appropriate, when a permit expires. This ability is particularly important when a permit has been in effect for many years to allow the Agency to make assessments and adjustments as needed to address current resource conditions. Additionally, the use and occupancy authorized under priority use outfitting and guiding permits are currently renewable under a Forest Service guidance document that was published for public notice and comment. Per the Administrative Procedure Act, there is no disruption of service upon expiration of an existing permit if a timely application has been submitted: the expired permit remains in effect until the application is processed. We support the intent of these sections and would like to work with the bill sponsors and the Committee to ensure these sections do not duplicate existing authority that is being fully utilized and that provides for updating authorizations when they are reissued upon expiration.

Provisions Unique to S. 1874, the Recreation Not Red Tape Act

Section 111 amends the Federal Lands Recreation Enhancement Act (FLREA) (16 U.S.C. 6804) by establishing a program to allow a purchaser to buy a federal recreation pass and a state recreation pass in the same transaction. This provision duplicates authority already available under FLREA.

Section 112 amends FLREA to mandate online sales of the America the Beautiful—the National Parks and Federal Recreational Lands Pass. This provision is unnecessary as the Forest Service and other federal land management agencies are already implementing online sales of this pass as a regular course of business.

Title II – Accessing the Outdoors

USDA supports Section 201, which would encourage the Secretary of Agriculture to work with the Secretaries of Defense and Veterans Affairs to ensure service members and veterans have access to outdoor recreation and outdoor-related volunteer and wellness programs. USDA defers to the Departments of Defense and Veterans Affairs on the portions of Title II under their jurisdiction.

Title III – Making Recreation a Priority

USDA is generally supportive of Title III and would like to work with the Committee to ensure the provisions align with implementation of other Administration priorities such as addressing climate change and racial equity and take into account the multiple-use mission of the Forest Service and statutory requirements under the Multiple Use–Sustained Yield Act.

Section 304 would establish policy and requirements for management of National Recreation Areas (NRAs). The Forest Service manages 22 NRAs, which draw visitors from across the

nation and around the world. NRAs provide both jobs and revenue to local, state, and regional economies. NRAs also contribute to the sense of place and quality of life for local communities. We look forward to improving and expanding benefits from NRAs to further strengthen economies, enhance local communities, instill public conservation values, and encourage shared stewardship. We would like to work with the Committee and bill sponsors to ensure the necessary skill sets and capacity are available and strategically placed to address the associated workload to achieve the bill's intent.

Title IV – Maintenance of Public Land

USDA fully supports the intent of Section 401 to promote volunteerism and service to enhance stewardship of, recreational access to, and sustainability of National Forest System resources and facilities. We would like to work with the Committee and bill sponsors to ensure current Agency efforts through the Volunteers in the National Forests Act and existing cooperative authorities are not duplicated.

Section 411 would direct the Secretaries of Agriculture and the Interior to establish an interagency trail management plan to uniformly maintain and manage federal trails that cross jurisdictional boundaries between federal land management agencies. USDA supports the intent of Section 411 to ensure consistency in trail management across jurisdictional boundaries. Trails crossing multiple federal jurisdictions include National Scenic and National Historic Trails, as well as hundreds and possibly thousands of other trails. In compliance with the National Trails System Act, National Scenic and National Historic Trails are managed in accordance with comprehensive management plans that establish trail-wide management guidance and trail marking standards. Additionally, federally managed trails are subject to federal land management plans. Incorporating and applying standard management tools such as the Forest Service's Trail Management Objectives and working collaboratively through the interagency National Trails System Council to implement the intent of Section 411 could be an effective means for accomplishing the objectives of Section 411 without further legislative action.

S.1616, the Federal Interior Land Media Act or "FILM Act"

Our comments on S.1616, the Federal Interior Land Media Act or "FILM Act" pertain to the impact on the Forest Service, including management of National Forest System lands. USDA defers to the U.S. Department of the Interior (DOI) on the effects of this bill on DOI bureaus and the federal lands under their jurisdiction.

S.1616 would direct USDA not to require a permit or land use fee for commercial filming, regardless of the distribution platform, if the commercial filming occurs in a location where the public is allowed, complies with visitor use policies, does not impede the experience of other visitors, will not disturb resource values and wildlife, does not require the exclusive use of a site, complies with Federal, State, and local law, and does not involve a group larger than 10 individuals. Furthermore, the bill would allow USDA to require a permit and land use fee if the

filming occurs in an area not generally open to the public, the agency accrues additional administrative costs associated with the filming, the filming occurs in a high-volume area, a set or staging equipment is required, or the filming involves a group of 11 or more individuals.

In *Price v. Barr*, a federal district court ruled that aspects of the existing commercial filming statute for the National Park Service violate the First Amendment. The National Park Service's commercial filming statute is identical to the commercial filming statute for the Forest Service and other federal land management agencies. The federal government has appealed *Price v. Barr* to the D.C. Circuit, in a case now captioned *Price v. Garland*, and is arguing that the commercial filming statute is constitutional. USDA believes that judicial resolution of this pending litigation would inform whether and how Congress legislates in this area. Accordingly, USDA would like to work with the committee and bill sponsor on this issue once a decision is rendered in the case.

S. 3266, Outdoor Recreation Act

Outdoor recreation has dramatically increased in recent years, especially as Americans turned to federal lands for respite and relaxation during the COVID-19 pandemic. National forests play a vital role in the recreation economy by supporting millions of recreation visits annually, and spending by those visitors contributes greatly to local, state and national economies. Cities and towns across the country are tapping into the business of outdoor recreation, and for good reason. They recognize that outdoor recreation and open spaces are key ingredients to healthy communities, contribute to a high quality of life, and most importantly, attract and sustain businesses and families.

The Forest Service is working to rebuild its capacity to deliver high-quality recreation opportunities and services for the public. We welcome tools that assist us in undertaking more robust recreation planning, building new partnerships, investing in innovative conservation finance agreements with the private sector, improving our infrastructure, and making the recreation economy even stronger.

In fiscal year 2019, there were 150 million visits to national forests and grasslands. Consumer spending associated with these visits supported local businesses that provide food and lodging, guides, outfitting, transportation, and other services. Recreation visitor use on National Forests supported about 153,800 jobs and contributed \$12.6 billion to the nation's gross domestic product in 2019. National Forest System lands experienced unprecedented visitation levels in fiscal year 2020 as Americans sought refuge and relaxation from outdoor experiences during the COVID-19 pandemic. In fiscal year 2020, the 168 million recreation visits supported about 161,000 jobs and contributed \$13.5 billion to the nation's gross domestic product.

The recreation industry is a powerful driver of local and national economies by providing jobs, revenue from goods, services, and tourism. The Forest Service plays a crucial role in managing federal lands that are drawing record numbers of recreationists, including campers, bikers, canoers, skiers, snowmobilers, hikers, fishers, birders, hunters, and off-highway vehicle

enthusiasts. In fact, recreation, hunting, fishing, and wildlife viewing together sustain more jobs than any other activity in the national forests and grasslands.

The S. 3266, the Outdoor Recreation Act addresses a wide variety of recreation issues on federal lands and in rural communities adjacent to federal lands. USDA supports the overall goals of this bill to improve recreation opportunities and infrastructure on National Forest System lands and looks forward to working with the Committee and the bill's sponsors to ensure these goals can be achieved and do not duplicate or conflict with existing authorities.

Title I – Increasing Recreation Opportunities

Title I seeks to increase recreation opportunities through changes in permitting and recreation planning policy as well as mandates for climbing guidance and target ranges in national forests.

USDA supports the intent of Section 101 to increase recreational use by youth groups and to better understand recreational use of federal lands by youth groups. We would like to work with the Committee to ensure the Forest Service has the authority to require a permit if needed to address liability or resource concerns and to conduct a visitor capacity assessment if legally required or appropriate based on resource impacts. We would also like to work with the Committee to ensure that it is feasible to meet any permitting deadlines while complying with all applicable environmental requirements.

Section 102 duplicates and potentially conflicts with requirements in the National Forest Management Act and existing Forest Service protocols for developed recreation site inventory, visitor use management, and operation and maintenance of developed recreation sites. In addition to these legal concerns, the assessment requirements for Forest Service land management plan revisions at 36 CFR Part 219 and Forest Service Handbook 1909.12 already require consideration of recreation opportunities and demand. This provision would require a degree of data collection and outyear speculation that would add to the challenges of revising land management plans. We are actively trying to streamline and focus such assessments, and this one-size approach would expand the time and cost of land management plan revisions.

Section 103 directs the Forest Service to issue guidance on recreational climbing on National Forest System lands, including in wilderness areas. This provision, including requirements for public notice and comment, duplicates existing law and policy. The Forest Service has developed proposed recreational climbing directives, which will be published for public comment when they have completed the tribal consultation process.

Section 104 would require the Forest Service to identify suitable locations for designated target ranges on National Forest System lands and, to the maximum extent practical, ensure that each national forest has at least one designated target range. The Forest Service would be prohibited from charging a fee for use of a target range designated under this provision. USDA does not support this provision, as the Forest Service already has authority to identify appropriate sites for construction and operation of target ranges on National Forest System lands and is doing so where there is adequate demand, a suitable site, and available funding. Assessing site suitability

for target ranges is critical because of the potential tort liability concerns they present, particularly if they are located close to homes, schools, or popular trails. Site selection may also be affected by environmental concerns associated with wildlife habitat and impacts of spent bullets. Section 104 does not take into account Section 4104(b) of the John D. Dingell, Jr. Conservation, Management and Recreation Act of 2019, which prohibits authorizing a target range on certain specified federal lands managed by the Bureau of Land Management or the Forest Service, such as congressionally designated wilderness, wild and scenic rivers, and national monuments. In addition, Section 104 would overlap with Section 4 of the Target Practice and Marksmanship Training Support Act, which facilitates the establishment of additional or expanded target ranges on federal land. Under the Federal Lands Recreation Enhancement Act (FLREA), the Forest Service is authorized to charge recreation fees for the use of target ranges operated and maintained by the Forest Service, which can be retained and spent by the Forest Service and are vital to finance continued operation and maintenance of these facilities. The agency has authority under other federal statutes to charge a land use fee to concessioners that operate and maintain target ranges on National Forest System lands.

Title II – Improving Recreation Opportunities

Title II aims to improve recreation opportunities on federal lands with requirements for providing broadband connectivity at recreation sites, increased collection of visitor data, and changes to travel management policy and procedures.

Although USDA supports the intent of Section 201 to increase availability of broadband connectivity for recreational users, we have concerns with the scope and requirements of this provision. Federal land management agencies do not provide communications services, including broadband, to the public, nor do they install, operate, or maintain equipment that provides communications services to the public. Federal land management agencies do authorize communications uses, including broadband, and we are very willing to continue working with private entities to authorize broadband infrastructure on National Forest System lands where it is feasible and in demand. It may not be feasible or commercially viable to provide broadband service at many recreation sites on National Forest System lands, which tend to be in remote locations.

Section 203 requires USDA to work in concert with other federal land managers to establish a single visitation data management and modeling system for public recreation to provide accurate, real-time visitation data at a site-specific level. USDA would like to work with the Committee and bill sponsors to better understand the purpose and goals for visitation data requirements in Section 203. As written, it is unlikely that this provision could be implemented. A single system for all agencies could not produce data with the level of precision each agency's system currently produces. Each agency currently makes its visitation data publicly available on its website.

USDA supports the goals of Section 204 to finalize summer and winter motor vehicle use designations and improve associated maps. We are working diligently to address these goals and making good progress. Nearly all Forest Service administrative units have completed their

summer motor vehicle use designations. Units where there is sufficient snow for winter motor vehicle use are moving forward with designations for that use. We are concerned that Section 204 would duplicate existing travel management authorities and in some ways contradict them. In particular, we are concerned that to the extent the designation criteria in Section 204 are different from the designation criteria in existing authorities, Section 204 would require the Forest Service to revisit every designation decision for both summer and winter motor vehicle use. The resulting work would be very time-consuming and would entail additional litigation risk. We also have technical concerns with the data and mapping requirements which we would like to address with the Committee and bill sponsors.

Title III – Investing in Recreation Infrastructure and Rural Communities

Title III addresses recreation-related investments in communities adjacent to federal lands (gateway communities), conservation finance partnerships, availability of recreation facilities during shoulder seasons, and public-private partnerships to modernize federally owned campgrounds operated by concessioners on federal lands.

USDA strongly supports the goals in Section 301 of working with rural communities to undertake comprehensive recreation planning including providing technical and financial assistance to them. We would welcome an opportunity to work with the Committee and bill sponsors to improve upon the current legislation in support of these goals, in particular, by clarifying the scope of Section 301.

Section 302 would promote conservation finance partnerships as an innovative funding model to develop and maintain recreation infrastructure on federal lands. USDA supports the goal of expanding the use of conservation finance agreements for recreation facilities and enhancing authorities to support that goal. For conservation finance to succeed at larger scales, it is critical to provide the long-term certainty needed to guarantee the agency's financial commitment to large-scale public-private partnerships that leverage external capital. It is also important to establish objective measures for determining the value of the contributions of the parties under these types of agreements. USDA would like to work with the Committee and bill sponsors on technical amendments to clarify and enhance the conservation finance agreement authority in Section 302.

Section 303 seeks to expand the availability of recreation facilities during shoulder seasons. This practice is already ongoing. The Forest Service may operate campgrounds that are not under concession during shoulder seasons and may operate campground concessions during shoulder seasons when a concessioner has not agreed to do so. The Forest Service has authority under the Cooperative Funds Act to enter into the type of agreements outlined in Section 303(c).

Section 304 authorizes a pilot program for agreements with private entities to provide for capital improvements, management, and maintenance of federally owned campgrounds operated by concessioners on federal lands. USDA would be interested in exploring the concepts of this provision further with the Committee and bill sponsors to ensure the scope of the provision is commensurate with its intent.

S. 3264 Bikes Over Long-Distance Bike Trails on Federal Lands Act

S. 3264 would require the federal land management agencies to identify at least 10 long-distance bike trails on the federal lands they manage and to identify at least 10 areas where there is an opportunity to develop or complete long-distance bike trails. Long-distance bike trails are defined as trails being at least 80 miles in length that are available to mountain biking, road biking, touring, or cyclo-cross. The bill would provide for maps and other bike trail identification materials and would require a report to congress on the identified bike trails within two years of enactment.

USDA supports the goal of S. 3264 to identify and promote long-distance biking opportunities on National Forest System lands. However, we do not believe legislation is necessary. Consistent with its multiple-use mission, the Forest Service considers mountain biking in the context of all possible types of trail uses on National Forest System trails, including hiking and horseback riding. We would welcome the opportunity to discuss biking opportunities and trail designation authorities on National Forest System lands with the Committee and bill sponsors, and if desired, to work on technical improvements that would minimize litigation risk.

S. 1269: Report on the effects of special recreation permits on EJ communities

USDA supports the intent of this bill, specifically the identification of barriers impacting environmental justice communities and permit holders when trying to access and enjoy public lands. We value the data being requested and would like to work with the Committee to ensure the language is drafted in a way that ensures successful implementation. Additionally, we would like to work with the Committee to ensure the bill accounts for current Agency efforts under Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”

That concludes my testimony, Chairman. I would be happy to answer any questions you or the other members have for me.