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July 16, 2024

VIA CERTIFIED MAIL AND EMAIL

Deanne Criswell, FEMA Administrator
Adrian Sevier, FEMA Chief Counsel
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Re: Attorneys General Support Recent Rulemaking Petition Addressing Extreme Heat and Wildfire Smoke

Dear Administrator Criswell and Chief Counsel Sevier,

The Attorneys General of Arizona, California, Colorado, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, and Vermont ("Attorneys General") write to support a recent request that the Federal Emergency Management Agency ("FEMA") initiate a rulemaking to recognize that extreme heat and wildfire smoke events are eligible for major disaster declarations under the Stafford Act ("the Act"), and to clarify that wildfire smoke events are eligible for Fire Management Assistance Grant ("FMAG") funding.[1] The requested rulemaking would bolster subnational efforts to respond to high-severity extreme heat and wildfire smoke events. The Attorneys General urge FEMA to fully evaluate the request in a rulemaking docket.

The proposed update to FEMA's regulations is critically important to our Offices. We work closely with our jurisdictions' emergency management agencies every day; many of our Offices represent these agencies.[2] We are also the top law enforcement officials in our respective jurisdictions, charged with overseeing the public safety and the wellbeing of our residents. The proposed changes to FEMA regulations, if adopted, would enhance the capacity of our jurisdictions to mitigate the impacts of high-severity extreme heat and wildfire smoke events before they occur—and to respond as effectively as possible to them when they do happen.[3]

Subnational jurisdictions across the country are working diligently to prepare for and to respond to extreme heat and wildfire smoke events.[4] Nevertheless, as the Act recognizes, high-severity catastrophes may require federal resources for an adequate response.[5] Similarly, clarifying that FMAG funding is available for wildfire smoke events would provide subnational jurisdictions an important tool to address a major challenge for public health and emergency

management systems.[6]

The Act's definition of "major disaster"—"*any* natural catastrophe"—plainly encompasses extreme heat and wildfire smoke events.[7] FEMA's regulatory definition of "major disaster" essentially mirrors the Act's language.[8] Extreme heat and wildfire smoke are in all respects as 'natural' as hurricanes, and their impacts are likewise catastrophic for communities across the United States. Moreover, "the losses caused by extreme heat events, aside from a portion of those related to health, are generally not covered by insurance and most are borne by individuals and public entities."[9]

Likewise, the Act plainly permits FMAG funding to address wildfire smoke. The Act authorizes the President to provide FMAG funding to any subnational government responding to a fire "that threatens such destruction as would constitute a major disaster."[10] "Destruction" should include the health effects of wildfire smoke, which can place enormous burdens on public health systems.[11] The Act also authorizes the President to provide assistance, including "…consumable supplies, and other services and assistance to disaster victims."[12] "Consumable supplies, and other services and assistance" includes items like HEPA air filtration devices and outreach programs to populations particularly vulnerable to wildfire smoke.

Although the Act by its terms authorizes major disaster declarations in response to high-severity extreme heat and wildfire smoke events, such a declaration has never been issued.[13] FEMA has also never authorized FMAG funding to address wildfire smoke—despite the Act's use of the term "destruction" and the Act's allowance of funding for assistance.[14]

The likelihood of high-severity extreme heat and wildfire smoke events is increasing due in part to climate change.[15] Rising average global temperatures have made extreme heat events longer, more intense, more widespread, and deadlier.[16] For example, climate change likely increased maximum temperatures during the 2021 Pacific Northwest Heat Dome event, which broke many local record-high temperatures, killed hundreds of people, caused electrical system blackouts, and probably contributed to wildfires in the Pacific Northwest that summer.[17]

Extreme heat caused or contributed to more than 1,000 deaths in Arizona in 2022.[18] Nationally, 2,300 people officially died from heat exposure last year; the plurality of deaths occurred in Arizona.[19] A recent study of extreme heat in California concluded that seven heat events contributed to approximately 460 deaths, thousands of hospitalizations and emergency department visits, and cumulatively cost $7.7 billion.[20] Crucially, these figures likely understate the true extent of heat-driven mortality across the country, and action by FEMA would allow for a better understanding of the true impact of such disasters.[21]

Wildfire intensity has also increased across North America in recent decades, in part because drier, warmer conditions driven by climate change reduce vegetation moisture.[22] Wildfires can produce remarkable quantities of smoke, which can travel thousands of miles. Last summer, wildfire smoke from Canada drifted south and blanketed portions of the Midwest and the East Coast, engulfing New York City in an unprecedented, orange haze.[23] Even low levels of wildfire smoke exposure have been linked to substantial increases in healthcare costs, illnesses, and deaths, especially among our most vulnerable communities.[24] As with heat, official estimates of wildfire smoke-related harms may dramatically understate the true toll.[25]

Extreme heat and wildfire smoke events are projected to become more common across the United States in the coming decades—and potentially more dangerous—as global average temperatures continue to climb.[26] Regions currently unaccustomed to deadly heatwaves or wildfire smoke plumes may soon become all too familiar.[27]

We urge FEMA to update its regulations to prepare for this hotter, smokier future. Amending FEMA's regulatory definition of "major disaster" would provide additional certainty to subnational emergency management agencies developing responses to high-severity heat and smoke events. This would enable subnational agencies to make more informed decisions about how to prioritize their emergency management investments.[28] Listing extreme heat and wildfire smoke as eligible disasters may also prompt jurisdictions not currently experiencing these disasters to proactively develop their own response plans.

Similarly, clarifying FEMA regulations to ensure FMAG funding is available to respond to wildfire smoke events would provide subnational agencies needed resources to address perhaps the deadliest and most expensive consequences of wildfires. Mitigating smoke exposure could lower healthcare spending, potentially unlocking savings exponentially greater than the FMAG money that FEMA provides.

For the above reasons, the proposed amendments to FEMA's regulations would significantly enhance subnational efforts to prepare for, mitigate, and respond to high-severity extreme heat and wildfire smoke events. Such regulatory updates are in the best interests of our emergency management agencies, our residents, and the country as a whole—especially as climate change increases the likelihood of high-severity extreme heat and wildfire smoke events. The Offices of the undersigned Attorneys General thus urge FEMA to undertake a full evaluation of the petition in a rulemaking docket.

Sincerely,

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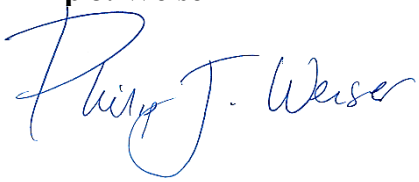
Attorney General
State of Arizona

Rob Bonta

Attorney General
State of California

Philip J. Weiser



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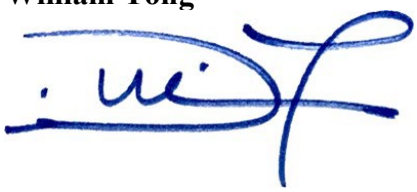

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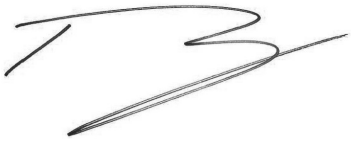

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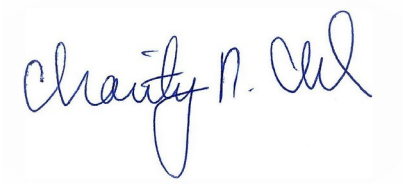

Attorney General
State of Vermont

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[1] Center for Biological Diversity et al., *PETITION FOR RULEMAKING, PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT, TO INCLUDE EXTREME HEAT AND WILDFIRE SMOKE AS MAJOR DISASTERS UNDER THE STAFFORD ACT*, June 17, 2024; 44 C.F.R. § 1.8(a).

[2] This includes emergency management agencies as well as public health agencies, forestry departments, environmental quality agencies, and others that help support responses to major disasters..

[3] Major disaster declarations under the Stafford Act unlocks funding from the Hazard Mitigation, Individual Assistance, and Public Assistance programs. These programs provide funding to individuals and to affected, subnational governments to respond to a declared disaster event. Disaster declarations also unlock funding for subnational jurisdictions' proactive efforts to reduce future disaster risk in previously declared disaster areas under the Hazard Mitigation Assistance and Building Resilient Infrastructure and Communities programs. *See generally* Federal Emergency Management Agency, *FEMA Grants,* https://www.fema.gov/grants (last visited July 5, 2024).

[4] For example: Governor Katie Hobbs, *Arizona's Extreme Heat Preparedness Plan,* March 1, 2024, https://mcusercontent.com/44a5186aac69c13c570fca36a/files/ada1d47f-83f5-4189-d835-1eec1552aeea/2024.03.01_Extreme_Heat_Prepardeness_Plan.pdf (last visited June 26, 2024); City of Phoenix, *Summer 2023 Heat Response Plan,* April 20, 2023, https://www.phoenix.gov/heatsite/Documents/Heat%20Response%20Plan%202023%20-%20For%20Gen%20Info%20Packet%20Apr19.pdf (last visited June 26, 2024); Oregon Department of Environmental Quality, *Oregon Wildfire Response Protocol for Severe Smoke Episodes*, May 22, 2024, https://www.oregon.gov/deq/FilterDocs/WFresponse.pdf (last visited June 26, 2024); New York State has developed an Extreme Heat Action Plan to guide multiagency planning and response efforts to address the current and future impacts of extreme heat, with a focus on health impacts in vulnerable communities. *See* N.Y. State, Extreme Heat Action Plan: Adaptation Agenda for 2024–2030 (June 2024), https://dec.ny.gov/sites/default/files/2024-06/extremeheatactionplan.pdf; Washington Military Department, *Comprehensive Emergency Management Plan: Wildfire Response – Severe Smoke Episodes,* May 2022, https://doh.wa.gov/sites/default/files/legacy/Documents/4300/ESF8-Appendix5-Att1-SevereSmokeEpisodes.pdf?uid=64c14163ed97a (last visited July 1, 2024); State of California, *Protecting Californians From Extreme Heat: A State Action Plan to Build Community Resilience*, April 2022, https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Climate-Resilience/2022-Final-Extreme-Heat-

Action-Plan.pdf (last visited July 8, 2024) (outlining a strategic and comprehensive set of state actions to address extreme heat); California Governor's Office of Emergency Services, *Extreme Temperature Response Plan*, May 2022, https://www.caloes.ca.gov/wp-content/uploads/2023/07/Extreme-Temperature-Response-Plan-2022.pdf (last visited July 8, 2024) (describing stat operations during an extreme temperature warning and providing guidance to state agencies, local governments, tribes, and non-governmental organizations in preparation for their heat); California Governor's Office of Planning and Research, *Extreme Heat and Community Resilience Program* (explaining that the Extreme Heat and Community Resilience Program Extreme Heat and Community Resilience Program coordinates California's response to extreme heat and "builds capacity for heat action planning –- creating frameworks to reduce the risks of extreme heat events and the Urban Heat Island effect – and project implementation in the most heat-burdened communities by providing funding and technical support").

[5] *See e.g.*, 42 U.S.C. § 5121(b) (explaining that the intent of Congress in establishing the Stafford Act is "to provide an orderly and continuing means of *assistance by the Federal Government* to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters" (emphasis added)); 42 U.S.C.A. § 5122(2) (defining "major disaster" as "any natural catastrophe …which in the determination of the President (emphasis added)).

[6] FEMA's FMAG regulations could be revised to even more clearly permit FMAG funding for wildfire smoke events. For example, we recommend FEMA modify 44 C.F.R. § 204.21 to clarify that wildfire smoke threats should be considered as part of declaration criteria.

[7] 42 U.S.C. § 5122(2).

[8] 44 C.F.R. § 206.2(a)(17).

[9] California Dep't of Insurance, *Impacts of Extreme Heat to California's People, Infrastructure, and Economy: Key Findings and Recommendations,* at 3, June 2024, https://www.insurance.ca.gov/01-consumers/180-climate-change/upload/Impacts-of-Extreme-Heat-to-California-s-People-Infrastructure-and-Economy-Key-Findings-and-Recommendations.pdf (last visited July 8, 2024).

[10] 42 U.S.C. § 5187(a).

[11] Kai Chen et al., *Canadian Wildfire Smoke and Asthma Syndrome Emergency Department Visits in New York City*, 330(14) JAMA, 1385, 1387 (2023).

[12] 42 U.S.C. § 5187(c), 5170b(a).

[13] Erica Lee, *Emergency Response to Extreme Heat: Federal Financial Assistance and Considerations for Congress*, Congressional Research Service, April 9, 2024, https://crsreports.congress.gov/product/pdf/R/R46873 at 10 (last visited June 26, 2024).

[14] Center for Biological Diversity et al., *supra* note 1, at 13.

[15] Intergovernmental Panel on Climate Change, *2021: Summary for Policymakers*, at A.3.1, https://www.ipcc.ch/report/ar6/wg1/chapter/summary-for-policymakers/ (last visited July 5, 2024); Steven Ostoja et al., *Focus on Western Wildfires*, Fifth National Climate Assessment (2023), https://nca2023.globalchange.gov/chapter/focus-on-2/ (last visited July 5, 2024).

[16] Kate Marvel et al., *Climate Trends*, Fifth National Climate Assessment (2023), https://nca2023.globalchange.gov/chapter/2/ (last visited July 5, 2024).

[17] Piyush Jain et al., *Record-Breaking Fire Weather in North America in 2021 was Initiated by the Pacific Northwest Heat Dome*. 5 Commun Earth Environ, 1, 7 (2024); Brian Stone Jr., et al., *How Blackouts during Heat Waves Amplify Mortality and Morbidity Risk,* 57 Environmental Science & Technology 8245, 8245 (2023).

[18] Arizona Department of Health Services, *Extreme Heat Preparedness,* https://www.azdhs.gov/preparedness/epidemiology-disease-control/extreme-weather/heat-safety/extreme-heat-preparedness/index.php#:~:text=In%202022%2C%20there%20were%20359,related%20deaths%20in%20the%20state., (last visited July 15, 2024).

[19] Seth Borenstein et al., *AP analysis finds 2023 set record for US heat deaths, killing in areas that used to handle the heat*, Associated Press (May 31, 2024), https://apnews.com/article/record-heat-deadly-climate-change-humidity-south-11de21a526e1cbe7e306c47c2f12438d (last visited June 26, 2024).

[20] California Dep't of Insurance, *supra* note 9, at 4.

[21] Occupational Safety and Health Administration, *Report of the Small Business Advocacy Review Panel on OSHA's Potential Standard for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings* (Nov. 3, 2023), https://www.osha.gov/sites/default/files/Heat-SBREFA-Panel-Report-Full.pdf at 2. *See also* Terri Adams-Fuller, *Extreme Heat Is Deadlier Than Hurricanes, Floods and Tornadoes Combined,* Scientific American (July 1, 2023), https://www.scientificamerican.com/article/extreme-heat-is-deadlier-than-hurricanes-floods-and-tornadoes-combined/ (last visited July 9, 2024) (despite data collection challenges, "extreme heat is the number-one weather-

related cause of death in the U.S., and it kills more people most years than hurricanes, floods and tornadoes combined.")

[22] Ostoja et al., *Focus on Western Wildfires* ("In recent decades, wildfires in the western United States have become larger, hotter, and more destructive and deadly due to a suite of factors, including climate change.")

[23] Denise Chow, *Canadian Wildfires Trigger Air Quality Alerts Across 4 U.S. States*, NBC News (May 13, 2024), https://www.nbcnews.com/science/science-news/canada-wildfires-air-quality-alerts-us-states-rcna151956, (last visited July 5, 2024).

[24] Kai Chen et al., *Long-Term Exposure to Wildfire Smoke PM (2.5) and Mortality in the Contiguous United States*, medRxiv, (June 11, 2024) at 21, https://www.medrxiv.org/content/medrxiv/early/2024/02/26/2023.01.31.23285059.full.pdf (last visited July 5, 2024).

[25] *Id.* at 20.

[26] Jangho Lee et al., *Future Temperature-Related Deaths in the U.S.: The Impact of Climate Change, Demographics, and Adaptation*. 7 GeoHealth, 1, 9-10 (2023); Ostoja et al., *Focus on Western Wildfires*.

[27]Vikki Thompson et al., *The 2021 Western North America Heat Wave Among the Most Extreme Events Ever Recorded Globally*. 8 Science Advances 1, 6-7 (2022).

[28] FEMA could also strengthen subnational emergency management investment decisions for extreme heat by providing additional state and territory allocation funding under the Building Resilient Infrastructure and Communities program, easing administrative barriers to competitive hazard mitigation grant programs, and developing a relaxed cost-benefit analysis for extreme heat-related projects.