

111TH CONGRESS  
1ST SESSION

# S. 2798

To reduce the risk of catastrophic wildfire through the facilitation of insect and disease infestation treatment of National Forest System and adjacent land, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2009

Mr. UDALL of Colorado (for himself and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To reduce the risk of catastrophic wildfire through the facilitation of insect and disease infestation treatment of National Forest System and adjacent land, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “National Forest Insect  
5       and Disease Emergency Act of 2009”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

1           (1) to ensure that adequate emphasis is placed  
2           on the mitigation of hazards posed by large-scale in-  
3           festations of bark beetles and other insects through  
4           the establishment of insect and disease emergency  
5           areas;

6           (2) to ensure that increased resources are avail-  
7           able within each designated insect and disease emer-  
8           gency area to mitigate hazards associated with—

9                   (A) falling trees;

10                   (B) increased fire hazards; and

11                   (C) the restoration of National Forest Sys-  
12           tem land; and

13           (3) to make permanent, as of the date of enact-  
14           ment of this Act, existing good neighbor and stew-  
15           ardship contracting authorities.

16 **SEC. 3. DEFINITIONS.**

17           In this Act:

18           (1) **AFFECTED STATE.**—The term “affected  
19           State” includes each of the States of—

20                   (A) Arizona;

21                   (B) California;

22                   (C) Colorado;

23                   (D) Idaho;

24                   (E) Montana;

25                   (F) Nevada;

- 1 (G) New Mexico;
- 2 (H) Oregon;
- 3 (I) South Dakota;
- 4 (J) Utah;
- 5 (K) Washington; and
- 6 (L) Wyoming.

7 (2) INSECT AND DISEASE EMERGENCY AREA.—

8 The term “insect and disease emergency area”  
9 means an area of National Forest System land—

10 (A) that is located in an affected State  
11 that is not—

12 (i) designated as wilderness; or

13 (ii) an area recommended for wilder-  
14 ness in a forest land and resource manage-  
15 ment plan;

16 (B) in which an insect and disease infesta-  
17 tion emergency exists, as determined by the  
18 Secretary; and

19 (C) that is designated by—

20 (i) section 4(a); or

21 (ii) the Secretary under section 4(c).

22 (3) INSECT AND DISEASE INFESTATION EMER-  
23 GENCY.—The term “insect and disease infestation  
24 emergency” means an insect or disease infestation  
25 that has resulted in—

1 (A) a current or future increased risk of  
2 catastrophic wildland fire; or

3 (B) an increased threat posed by hazard  
4 trees to—

5 (i) utility corridors;

6 (ii) communication sites;

7 (iii) roads;

8 (iv) recreation sites;

9 (v) water structures (such as res-  
10 ervoires and water conveyance systems); or

11 (vi) other infrastructure.

12 (4) MAP.—The term “map” means the map en-  
13 titled “Insect Emergency Areas”.

14 (5) NATIONAL FOREST SYSTEM.—The term  
15 “National Forest System” has the meaning given  
16 the term in section 11(a) of the Forest and Range-  
17 land Renewable Resources Planning Act of 1974 (16  
18 U.S.C. 1609(a)).

19 (6) SECRETARY.—The term “Secretary” means  
20 the Secretary of Agriculture.

21 **SEC. 4. DESIGNATION OF INSECT AND DISEASE EMER-**  
22 **GENCY AREAS.**

23 (a) DESIGNATION.—Each area depicted on the map  
24 is designated as an insect and disease emergency area  
25 under this Act.

1 (b) MAP.—

2 (1) DUTY OF SECRETARY.—As soon as prac-  
3 ticable after the date of enactment of this Act, the  
4 Secretary shall file the map for insect and disease  
5 emergency areas designated by subsection (a) with—

6 (A) the Committee on Energy and Natural  
7 Resources of the Senate;

8 (B) the Committee on Agriculture, Nutri-  
9 tion, and Forestry of the Senate;

10 (C) the Committee on Natural Resources  
11 of the House of Representatives; and

12 (D) the Committee on Agriculture of the  
13 House of Representatives.

14 (2) FORCE OF LAW.—The map filed under  
15 paragraph (1) shall have the same force and effect  
16 as if included in this subsection, except that the Sec-  
17 retary may correct typographical errors in the map  
18 and the legal descriptions.

19 (3) PUBLIC AVAILABILITY.—The map filed  
20 under paragraph (1) shall be on file and available  
21 for public inspection in the appropriate offices of the  
22 Forest Service.

23 (c) DESIGNATION BY SECRETARY.—

24 (1) IN GENERAL.—The Secretary may des-  
25 ignate additional insect and disease emergency areas

1 in accordance with each requirement described in  
2 this subsection.

3 (2) INITIATION.—The designation of an insect  
4 and disease emergency area may be made by the  
5 Secretary—

6 (A) on the initiative of the Secretary; or

7 (B) in response to a request by any Gov-  
8 ernor of an affected State.

9 (3) DEADLINE.—If the Governor of a State de-  
10 scribed in paragraph (2)(B) requests the Secretary  
11 to designate as an insect and disease emergency area  
12 an area located in the State, the Secretary shall ac-  
13 cept or deny the request by a date that is not later  
14 than 90 days after the date on which the Secretary  
15 receives the request.

16 (4) LIMITATION ON DELEGATION.—With re-  
17 spect to National Forest System land, the Secretary,  
18 acting through the Chief of the Forest Service, may  
19 delegate the authority to make a designation under  
20 this subsection only to a Regional Forester of the  
21 National Forest System land.

22 (5) PROCEDURE.—If the Secretary designates  
23 an additional insect and disease emergency area  
24 under paragraph (1), the Secretary shall—

1 (A) publish a notice of the designation of  
2 the insect and disease emergency area (includ-  
3 ing a map of the insect and disease emergency  
4 area) in the Federal Register; and

5 (B) notify—

6 (i) each appropriate State; and

7 (ii) the appropriate committees of  
8 Congress.

9 (6) APPLICABILITY.—A designation made by  
10 the Secretary under paragraph (1) shall not be sub-  
11 ject to—

12 (A) the National Environmental Policy Act  
13 of 1969 (42 U.S.C. 4321 et seq.);

14 (B) section 322 of the Department of the  
15 Interior and Related Agencies Appropriations  
16 Act, 1999 (Public Law 105–277; 112 Stat.  
17 2681–289); or

18 (C) any other applicable law (including  
19 regulations).

20 **SEC. 5. RESPONSE TO EMERGENCY DESIGNATION.**

21 (a) PRIORITY TREATMENTS.—In carrying out the  
22 management of an insect and disease emergency area, the  
23 Secretary shall give priority consideration to—

24 (1) the removal of hazardous fuels and hazard  
25 trees on, and the restoration of the health of, Na-

1 tional Forest System land located in the insect and  
2 disease emergency area; and

3 (2) the provision of assistance to State and  
4 local governments, Indian tribes, and private land-  
5 owners for the removal of hazardous fuels and haz-  
6 ard trees on, and the restoration of the health of,  
7 each parcel of land located in the insect and disease  
8 emergency area—

9 (A) that is under the jurisdiction of the  
10 State or local government or Indian tribe; or

11 (B) the title of which is held by a private  
12 landowner; and

13 (3) the making of payments under section  
14 9011(d)(1)(B) of the Farm Security and Rural In-  
15 vestment Act of 2002 (7 U.S.C. 8111(d)(1)(B)) to  
16 each individual or entity that collects or harvests re-  
17 newable biomass from a parcel of National Forest  
18 System land located in an insect and disease emer-  
19 gency area.

20 (b) EMERGENCY FOREST RESTORATION.—In imple-  
21 menting the emergency forest restoration program under  
22 section 407 of the Agricultural Credit Act of 1978 (16  
23 U.S.C. 2206), the Secretary may make payments to an  
24 owner of a parcel of nonindustrial private forest land that  
25 is located in an insect and disease emergency area to carry

1 out emergency measures in response to an insect and dis-  
2 ease infestation emergency under this Act.

3 (c) BIOMASS.—Any biomass removed from a parcel  
4 of land located in an insect and disease emergency area  
5 shall be considered to be renewable biomass for purposes  
6 of the renewable fuel standard under section 211(o) of the  
7 Clean Air Act (42 U.S.C. 7545(o)).

8 (d) HEALTHY FOREST RESTORATION.—

9 (1) AUTHORITY OF SECRETARY.—The Sec-  
10 retary may apply each requirement described in sec-  
11 tions 104 and 105 of the Healthy Forests Restora-  
12 tion Act of 2003 (16 U.S.C. 6514, 6515) to projects  
13 that are carried out to remove hazardous fuels and  
14 hazard trees on, and to restore the health of, Na-  
15 tional Forest System land that is located in an in-  
16 sect and disease emergency area.

17 (2) JUDICIAL REVIEW.—Section 106 of the  
18 Healthy Forests Restoration Act of 2003 (16 U.S.C.  
19 6516) shall apply to each project described in para-  
20 graph (1).

21 **SEC. 6. GOOD NEIGHBOR AUTHORITY.**

22 (a) STATE FOREST SERVICES.—

23 (1) AUTHORITY OF SECRETARY.—Notwith-  
24 standing chapter 63 of title 31, United States Code,  
25 and any provisions of law related to competition, the

1 Secretary may enter into a contract (including a sole  
2 source contract) or agreement (including an agree-  
3 ment for the mutual benefit of the Secretary and the  
4 State), as appropriate and consistent with all appli-  
5 cable general and specific operating procedures es-  
6 tablished by the Forest Service for such contracts  
7 and agreements (including labor and wage require-  
8 ments), with a State to permit the State to perform  
9 watershed restoration and protection services on Na-  
10 tional Forest System land located in the State if the  
11 State is carrying out similar and complementary wa-  
12 tershed restoration and protection services on adja-  
13 cent State or private land.

14 (2) AUTHORIZED SERVICES.—Watershed res-  
15 toration and protection services described in para-  
16 graph (1) include—

17 (A) the treatment of insect-infested trees;

18 (B) the reduction of hazardous fuels; and

19 (C) any other activity that is carried out to  
20 restore or improve watersheds or fish and wild-  
21 life habitat across ownership boundaries.

22 (b) ADMINISTRATIVE PROVISIONS.—

23 (1) NATIONAL FOREST MANAGEMENT ACT OF  
24 1976.—Subsections (d) and (g) of section 14 of the  
25 National Forest Management Act of 1976 (16

1 U.S.C. 472a) shall not apply to services performed  
2 under a contract or other agreement under sub-  
3 section (a)(1).

4 (2) ASSUMPTION OF LIABILITY.—The State  
5 shall assume liability, to the extent allowed by Fed-  
6 eral, State, and local law, for the actions or omis-  
7 sions of employees or subcontractors of the State in  
8 preparing or implementing a contract or agreement  
9 under this title.

10 (3) SUBCONTRACTS.—A State may subcontract,  
11 to the extent allowed by State and local law, to pre-  
12 pare or implement a contract or agreement under  
13 this title.

14 (4) DISPUTE RESOLUTION.—Any dispute under  
15 a contract or agreement under subsection (a)(1)  
16 shall be resolved in accordance with, as applicable—

17 (A) the dispute clause of the contract or  
18 agreement;

19 (B) the Contract Disputes Act of 1978 (41  
20 U.S.C. 601 et seq.); or

21 (C) section 1491 of title 28, United States  
22 Code.

23 (e) RETENTION OF RESPONSIBILITIES UNDER NA-  
24 TIONAL ENVIRONMENTAL POLICY ACT OF 1969.—With  
25 respect to any watershed restoration and protection serv-

1 ice on National Forest System land that is proposed to  
2 be carried out by a State under subsection (a), any deci-  
3 sion required to be made under the National Environ-  
4 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may  
5 not be delegated to the State or any officer or employee  
6 of the State.

7 (d) APPLICABILITY.—

8 (1) IN GENERAL.—Subject to paragraph (2),  
9 the authority provided by this section applies only to  
10 National Forest System land located in affected  
11 States.

12 (2) SECRETARY OF THE INTERIOR.—With re-  
13 spect to public land that is located in an affected  
14 State and administered by the Secretary of the Inte-  
15 rior (acting through the Bureau of Land Manage-  
16 ment), the Secretary of the Interior may carry out  
17 activities under this section on the public land.

18 **SEC. 7. STEWARDSHIP CONTRACTING.**

19 (a) CANCELLATION COSTS.—

20 (1) IN GENERAL.—Notwithstanding any other  
21 provision of law, including section 304B of the Fed-  
22 eral Property and Administrative Services Act of  
23 1949 (41 U.S.C. 254c), the Secretary may not obli-  
24 gate funds to cover the cost of canceling a Forest  
25 Service multiyear stewardship contract under section

1 347 of the Department of the Interior and Related  
2 Agencies Appropriations Act, 1999 (16 U.S.C. 2104  
3 note; Public Law 105–277) until the date on which  
4 the multiyear stewardship contract is cancelled.

5 (2) COSTS OF CANCELLATION OR TERMI-  
6 NATION.—The costs of any cancellation or termi-  
7 nation of a multiyear stewardship contract described  
8 in paragraph (1) may be paid from any appropria-  
9 tions that are made available to the Forest Service.

10 (3) ANTI-DEFICIENCY ACT.—In the case in  
11 which the appropriations described in paragraph (2)  
12 are exhausted—

13 (A) the exhaustion shall not be considered  
14 to be a violation of section 1341 of title 31,  
15 United States Code; and

16 (B) the Secretary shall seek a supple-  
17 mental appropriation.

18 (b) PERMANENT AUTHORITY.—Section 347(a) of the  
19 Department of the Interior and Related Agencies Appro-  
20 priations Act, 1999 (16 U.S.C. 2104 note; Public Law  
21 105–277) is amended by striking “Until September 30,  
22 2013, the” and inserting “The”.

1 **SEC. 8. EFFECT.**

2       Nothing in this Act affects or diminishes the rights  
3 of any owner of private property.

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