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108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 108–96 Part 1

HEALTHY FORESTS RESTORATION ACT OF 2003

MAY 9, 2003.—Ordered to be printed

Mr. GOODLATTE, from the Committee on Agriculture, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1904]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 1904) to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BRIEF EXPLANATION

H.R. 1904 contains six titles of authorities giving federal agencies greater opportunity to undertake a variety of land management activities designed to reduce the risk to U.S. forest and rangelands from catastrophic wildfire, disease and insect infestation.

Title I creates procedures allowing federal land managers to carry out hazardous fuel reduction projects on certain federal forest and rangelands. Title II authorizes two grants programs to promote the removal and utilization of forest biomass for energy and value-added products. Title III establishes a new watershed forestry assistance program designed to maintain and improve water quality in forested landscapes. Title IV directs the Forest Service to con-

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duct systematic information gathering on certain insect types that have caused large-scale damage along with early detection programs and treatments to prevent the spread of infestation. Title V authorizes a Healthy Forest Reserve Program to voluntarily protect private land ecosystems that are critical to the recovery of threatened or endangered species. Finally, Title VI directs the Secretary of Agriculture to develop a comprehensive program to inventory and monitor forest stands for the purpose of maintaining forest health.

PURPOSE AND NEED

Forest and rangeland ecosystems in the United States are being decimated at an alarming rate by large scale catastrophic wildfire and massive outbreaks of disease, insect infestation and invasive species. Federal foresters estimate that an astounding 190 million acres of land managed by the Secretary of Agriculture and the Secretary of Interior are at an unnatural height of risk to catastrophic wildfire. Of that, over seventy million acres are at extreme risk to catastrophic wildfire in the immediate future. The summers of 2000 and 2002 were the two largest and most destructive fire seasons in the last fifty years. And, at this very moment, we are days away from the beginning of the 2003 fire season where communities in much of the interior West, south/central Alaska, portions of California, western Great Lake states and northern Maine are bracing for an above normal fire season due to dangerously dense forest fuel conditions, persistent drought, limited winter snowfall and early snow melts.

For the past hundred years, land managers have aggressively moved to suppress wildland fire in all forms, including nature's periodic small scale burnings that restore and rejuvenate forest ecosystems. The unintended result of this policy is a decades-long build up of forest fuel, woody biomass and dense underbrush. In some areas, tree density has increased from fifty trees per acre to as many as five hundred trees per acre, according to the Forest Service and fire ecologists. These unnaturally dense forests are only the next lightning strike or escaped camp fire away from exploding into a large-scale wildfire.

Forest ecologists, professional land managers and many environmental groups agree—the exploding incidence of catastrophic wildfire and disease and insect infestation pose a massive threat to the health, diversity and sustainability of America's forests. Colorado's Hayman Fire provides a startling example of the kind of enduring environmental degradation that unnatural wildfire can cause. That fire dumped colossal loads of mud and soot into Denver's largest supply of drinking water, annihilated several thousand acres of cathedral-like Ponderosa Pine old growth, pushed one globally-rare species to the brink of extinction, and created the worst air pollution conditions in Denver's recorded history. Other massive fires during the 2002 fire season claimed a similar environmental toll. Oregon's record-setting Biscuit fire turned 80,000 acres of prime old growth habitat for the endangered northern spotted owl into a sterile blackened wasteland. Similarly, the Rodeo-Chediski fire in Arizona ravaged over 100,000 acres of habitat, including twenty sensitive nesting sights, for the endangered Mexican Spotted Owl.

But, such consequences are hardly limited to the natural resource environment. In 2002, hundreds of homes and other structures were destroyed, and thousands more were evacuated. Twenty-three firefighters lost their lives. The American taxpayer spent in excess of $1.5 billion to contain the blazes of 2002. And, rural economies that rely on tourism suffered significant financial losses.

Using 21st century techniques, technology and know-how, professional land managers can restore America's cherished landscapes back to a healthy, natural condition. Through the use of environmentally-smart thinning, prescribed burns, and other scientifically validated management practices, overstocked forests can be returned to a natural balance, and the risks of catastrophic wildfire, insect and disease infestations reduced. One scientific assessment found that the only available means of protecting the nation's forest ecosystems from the ravages of wildfire is the prompt implementation of these management techniques on a large, landscape scale.

Today, 190 million acres of federal forest and rangeland are threatened to be engulfed by catastrophic wildfire. Yet, estimates suggest that federal land managers will treat only about 2.5 million acres each year because of the extraordinarily lengthy procedural and documentation requirements that federal land managers face. This inability to act is unconscionable. The premise of the Healthy Forests Restoration Act is simple and clear: Given the massive threat that catastrophic wildfire, disease and insect infestation pose to the health of our pristine forest ecosystems, species habitat, air and water quality, and the safety of thousands of communities, it is unacceptable that it takes federal land managers upwards of several years to maneuver forest health projects through a maze of procedural and analytical requirements that do little to inform constructive decision-making.

During Committee consideration of H.R., 1904, concerns were raised regarding the impact of the bill on the conservation or anadromous fish and new road construction. It is the Committee's intent that nothing in this bill should affect the level of analysis required for the protection of anadromous fish through the establishment of buffers, or the planning and construction of a road which will comply with all applicable laws regarding fish passages and sedimentation. This intent is reflected in correspondence, included in this report, between the Department of Agriculture and Congressman Mike Thompson of California.

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, May 8, 2003.

Hon. MIKE THOMPSON,
Cannon House Office Building,
Washington, DC.

DEAR CONGRESSMAN THOMPSON: Enclosed please find USDA's response to questions submitted on May 6, 2003 regarding the April 30, 2003 hearing on the Healthy Forests Initiative. Thank you for your questions and your willingness to take proactive steps to protect our forests, watersheds and communities from catastrophic fires. You also requested language addressing changes to H.R. 1904. This is attached.

If you have any further questions, please contact Tina J. Terrell, Legislative Affairs Staff.

Sincerely,

MARK REY,
Under Secretary,
Natural Resources and Environment.

Enclosures.

HEARING ON THE HEALTHY FORESTS INITIATIVE, HOUSE OF REPRESENTATIVES, COMMITTEE ON AGRICULTURE

1. Are there safeguards in place to help prevent sedimentation of streams throughout the thinning projects? This includes buffer zones along Class 1, 2 and 3 streams as well as upslope sedimentation protections. This is of great importance to the communities in the Pacific Northwest where nearly every community is affected by threatened or endangered anadromous fish.

Answer: In implementing projects, including thinning projects, under the Health Forests Initiative, units will be required to plan and conduct hazardous fuels reduction projects in a manner consistent with the land and resource management plan. Each forest plan identifies standards and guidelines for protecting riparian areas. It is through the proper application, monitoring and updating of these State certified and United States Environmental Protection Agency approved practices and procedures that the Forest Service will meet its obligations for compliance with water quality standards.

National Forests in California must adhere to very strict standards and guidelines that have been incorporated into land and resource management plans from the Northwest Forest Plan, the Sierra Nevada Framework, and other large-scale management plans developed to protect threatened and endangered species. Riparian reserves that have been designated in the Northwest Forest Plan would be protected under the Aquatic Conservation Strategy, as standards and guidelines were developed that prohibit and regulate activities in these areas. These riparian reserves include those portions of a watershed directly coupled to streams and rivers, that is, the portions of a watershed required for maintaining hydrologic, geomorphic, and ecologic processes. The widths or buffers of a riparian reserve is identified in the Northwest Forest Plan and applies to all watersheds until a watershed analysis is completed or a site-specific analysis is conducted.

When implementing hazardous fuels reduction projects on national forests, Best Management Practices (BMP's) would be implemented to minimize impacts on the watershed, and monitoring would occur to evaluate the implementation and effectiveness of the BMP's.

2. Thinning projects may require the building of additional roads on either public or private lands. Will considerations be made for fish passage and stream sedimentation reduction for all new roads constructed under this legislation?

Answer: Yes, consideration will be given to maintain or develop fish passages. All hazardous fuels reduction projects must be conducted in a manner that is consistent with the land and resource management plan. As stipulated in the answer to #1, standards and guidelines will be followed, including those guidelines that

refer to protecting riparian areas and reducing impacts to streams from sedimentation. Roads that are built to access hazardous fuels reduction projects will either be used in future years, or be decommissioned, and the area re-vegetated and restored.

If a road is to be used in future years, the unit will have to include this road in their Roads Analysis Process, which is required by the January 2001 Forest Service Road Management Policy. This policy provides a method to evaluate the amount of road that a national forest can sustain indefinitely in full compliance with environmental and safety laws at the current maintenance funding levels. Roads analysis is required as part of the Forest Land Management Plan revision process.

In protecting fish passage on existing roads, the agency has completed surveys of most culverts in Region 10 (Alaska), Region 6 (Oregon and Washington), Region 4 (Utah and southern Idaho) and portions of Region 1 (Montana and northern Idaho). Surveys are being conducted in other Regions, including California. We are currently addressing known passage problems on a priority basis in key watersheds. We are identifying sites in coordination with our federal, state and tribal partners and are seeking to maximize the return on our investments by selecting sites that will provide the greatest increased access to priority habitat with the least investment.

3. Will environmental and stream protection laws apply to activities conducted under Title II—Biomass?

Answer: Yes. When a unit identifies a biomass-thinning projects as a hazardous fuels reduction project, an environmental analysis will be conducted. The level and intensity of the analysis will depend on the scope and location of the individual project. All hazardous fuels reduction projects shall be planned and conducted in a manner consistent with the relevant land and resource management plan and all existing environmental laws and regulations.

4. There are documented concerns from firefighters and foresters that the focus for fuels reduction should be within the urban interface. Although the bill places a priority on these areas, shouldn't we devote a high percentage of the reduction activities within these areas to protect communities and watershed?

Answer: For FY 2001 and FY 2002, the Hazardous Fuel program accomplishments included treatment of over 2.6 million acres, of which nearly 1.4 million acres, or 52 percent, were in the wildland/urban interface.

A Memorandum of Understanding for the development of a collaborative fuels treatment program among the Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the National Park Service, the National Association of State Foresters, and the National Association of Counties was signed in January 2003. The purpose of this Memorandum of Understanding is to provide the framework of a process for the signers to collaborate on the annual selection of a fuels treatment program of work within their respective jurisdictions to provide for community protection and enhance the health of forests and rangelands. We believe this arrangement will result in the best combination of fuels treatments across all jurisdictions in both the wildland/urban interface and the non-wildland/urban interface areas.

5. Why doesn't the Secretary need to make environmental concessions in areas that have documented insect infestations and how does the Secretary consider what is considered an invasive threat?

Answer: The priority is for areas that should be documented insect infestations, to implement vegetation projects quickly to ensure an infestation is eradicated, and restoration and rehabilitation can occur.

The National Invasive Species Council, of which the Department is a member, defines an invasive species as (1) non-native (or alien) to the ecosystem under consideration and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Non-invasive species that cause or may cause significant negative impacts and do not provide an equivalent benefit to society are a significant threat.

From 1997–2001, tree mortality caused by bark beetles was detected by aerial surveys on approximately 14 million acres of forestland. Overall, about 70 million acres of all forested lands are at risk to future mortality from insects and diseases; 33 of the 70 million acres are on NFS forestland (based on the current Insect and Disease Risk Map).

A separate analysis shows nearly 73 million acres of NFS forestland are prone to catastrophic fire based on current condition and departure from historic fire regimes (Fire Regimes 1 & 2 and Condition Classes 2 & 3). Based on these two maps, approximately 9.5 million acres are at risk to both pests caused mortality and fire.

Invasive species of insects, diseases and plants continue to impact our native ecosystems by causing mortality to, or displacement of, native vegetation. Invasive species also negatively impact federally listed endangered species. The National Fire Plan has enhanced our efforts to prevent and suppress insect and disease outbreaks. Insect and disease prevention and suppression treatments were completed on 1.6 million acres of forest lands in 2002.

Finally, you inquired about the procedures for amending or revising the standards and guidelines in land and resource management plans. As indicated in my answers to question #1 and #2, a hazardous fuels reduction project must be consistent with a land and resource management plans. All national forests must complete a land and resource management plan as stated in the National Forest Management Act of 1976 (NFMA). NFMA also requires Land and Resources Management Plans (LRMPs) be revised every 15 years. This requirement recognizes that LRMPs need to be examined periodically to ensure management assumptions and guidance is correct, and new scientific information becomes available. The primary process for ensuring that planning direction is kept current is the amendment process.

A forest plan may also be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly or when changes in Resource Planning Act policies, goals, or objectives would have a significant effect on forest level programs. During the monitoring and evaluation process, an agency's interdisciplinary team may recommend a revision of the forest plan at any time. Revisions are not effective until considered and approved in accordance with the requirements for the development and approval of a forest plan. The Forest Supervisor shall review the conditions on the land covered by the plan

at least every 5 years to determine whether conditions or demands of the public have changed significantly. All amendments and revisions are subject to public notice and comment, environmental review under the National Environmental Policy Act, and administrative appeal.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title; table of contents

Gives the Act a short title of "Healthy Forests Restoration Act of 2003." Lists table of contents.

Sec. 2. Purpose

Lists the purposes of this Act, including: to reduce the risks of damage to communities, municipal water supplies and federal lands from catastrophic wildfire; to authorize grant programs to improve the commercial value of forest biomass; to enhance efforts to protect watersheds and address threats to forest and rangeland health; to promote systematic information gathering to address the impacts of insect infestation on forest and rangeland health; to improve the capacity to detect insect and disease infestations at an early stage; and to benefit threatened and endangered species, improve biological diversity and enhance carbon sequestration.

TITLE I—FOREST HEALTH ON NATIONAL FORESTS AND PUBLIC LANDS

Sec. 101. Definitions

Defines the terms: authorized hazardous fuels reduction project, condition class 2, condition class 3, day, decision document, federal lands, hazardous fuels reduction project, implementation plan, interface community and intermix community, municipal water supply system, Secretary concerned, threatened and endangered species habitat.

Sec. 102. Authorized hazardous fuels reduction projects

Allows for authorized hazardous fuels reduction projects on federal lands that: (1) are located in an interface or intermix community, (2) are located in proximity to such communities, (3) are condition class 3 or 2 and located in proximity to a municipal water supply (or a perennial stream, including rivers and other permanent natural flowing water sources feeding a municipal water supply), (4) are condition class 3 or 2 and have been identified as an area where windthrow, blowdown, the existence or threat of disease or insect infestation poses a threat to forest or rangeland health, or (5) contain threatened and endangered species.

Requires projects to be planned and conducted in a manner consistent with land and resource management plans or an applicable land use plan.

Limits the acreage available for authorized hazardous fuels reduction projects to 20,000,000 acres.

Gives the Secretary concerned sole discretion to plan and conduct an authorized project within certain parameters, including tree diameter size, tree density and species composition.

Prohibits the Secretary concerned from conducting an authorized hazardous fuels reduction project on the following federal lands: a component of the National Wilderness Preservation System, federal lands where the removal of vegetation is prohibited or restricted by a Congress or a presidential proclamation, or wilderness study areas.

Prohibits the construction of any new permanent roads in any inventoried roadless area.

Sec. 103. Prioritization for communities and watersheds

Gives priority to authorized hazardous fuel reduction projects which provide for protection of communities and watersheds.

Sec. 104. Environmental analysis

Gives the Forest Service and Bureau of Land Management discretionary authority to limit the analysis ordinarily required under the National Environmental Policy Act ("NEPA") to the proposed agency action, meaning the agencies would not be required to analyze and describe a number of different alternatives to the preferred course.

Codifies the public participation requirements set out in the Western Governors Association 10-year wildfire management strategy for use in conducting hazardous fuels reduction projects.

Directs the Secretary concerned to sign a decision document for each authorized hazardous fuels reduction project and provide notice of that document.

Requires the Secretary concerned to monitor the implementation of authorized hazardous fuels reduction project.

Sec. 105. Special Forest Service administrative review process

Directs the Secretary of Agriculture to establish an administrative review process for the Forest Service within 90 days after the enactment of this Act that will serve as the sole means by which a person can seek administrative redress regarding an authorized hazardous fuels reduction project.

Limits the administrative process to be developed to persons who have submitted specific and substantive written comments during the preparation stage of the project.

Clarifies that the Appeals Reform Act, section 322 of P.L. 102–381, 16 U.S.C. 1612 note, does not apply to an authorized hazardous fuels reduction project.

Sec. 106. Special requirements regarding judicial review of authorized hazardous fuels reduction projects

Establishes a time limit for filing a challenge to an authorized hazardous fuels reduction project to 15 days within notice of the final agency action.

Limits the duration of any preliminary injunction granted on an authorized project to 45 days subject to renewal.

Requires a court in which an action or an appeal is filed to render a final determination within 100 days of when the complaint or appeal is filed.

Sec. 107. Standard for injunctive relief for agency action to restore fire-adapted forest or rangeland ecosystems

Directs the court, in considering a request for injunctive relief, to consider the public interest in avoiding long-term harm to the ecosystem.

Directs the court to give deference to any agency finding that the balance of harm and the public interest in avoiding the short-term effects of the agency action is outweighed by the public interest in avoiding long-term harm to the ecosystem.

Sec. 108. Rules of construction

Clarifies that nothing in this title shall be construed to affect or limit the use of other authorities by the Secretary concerned to plan or conduct a hazardous fuels reduction project on federal lands.

Clarifies that nothing in this title shall be construed to prejudice the consideration or disposition of any legal action concerning the Roadless Area Conservation Rule.

TITLE II—BIOMASS

Sec. 201. Findings

Lists Congressional findings as to the need for forest management activities to be conducted, including the removal of biomass.

Sec. 202. Definitions

Defines the terms: biomass, Indian tribe, person, preferred community, Secretary concerned.

Sec. 203. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, and petroleum-based product substitutes

Establishes a biomass commercial use grant program to extend assistance to any person who owns or operates a facility that uses biomass as a raw material to produce energy.

Establishes a value-added grant program to extend assistance to persons to offset the cost of projects to add value to biomass.

Authorizes $25 million for each of the fiscal years 2004 through 2008.

Sec. 204. Reporting requirement

Requires the Secretary of Agriculture, in consultation with the Secretary of Interior, to submit a report describing the results of the grant programs by October 1, 2010 to: House Agriculture Committee, Resources Committee, Senate Agriculture Committee, Senate Energy and Natural Resources Committee.

TITLE III—WATERSHED FORESTRY ASSISTANCE

Sec. 301. Findings and purpose

Lists Congressional findings relating to the need for protection of watershed health in forest management practices. Describes the purpose of this title.

Sec. 302. Establishment of Watershed Forestry Assistance Program

Authorizes the Secretary, acting through the Forest Service, to provide technical, financial and related assistance to private forest landowners through the State foresters and equivalent state officials. Focuses assistance to the purpose of expanding state forest stewardship capacities and activities through best management practices to improve watershed health.

Includes a technical assistance program to protect water quality and a watershed cost-share program. Directs the Secretary to make awards under the cost-share program to communities, non-profit groups (which would include conservation districts) and non-industrial private forest landowners for watershed forestry projects.

Authorizes $15 million for each of the fiscal years 2004 through 2008. Directs the Secretary to devote at least 75 percent of the funds appropriated in a fiscal year to the cost-share component.

TITLE IV— ACCELERATED INFORMATION GATHERING TO ADDRESS INSECT INFESTATIONS

Sec. 401. Definitions, findings, and purpose

Defines the terms: applied silvicultural assessment, federal lands, Secretary concerned, 1890 institutions.

Lists Congressional findings as to insect infestation, resulting damage and need for assessment and treatment.

States the purposes of this title.

Sec. 402. Accelerated information gathering regarding bark beetles, including southern pine beetles, hemlock wooly adelgids, emerald ash borers, red oak borers and white oak borers

Directs the Department of Agriculture, acting through the Forest Service and U.S. Geological Survey, to conduct an accelerated program to plan, conduct, and promote systematic information gathering on certain insect types that have caused large-scale damage to forest ecosystems.

Directs the Secretary to assist land managers in the development of treatments and strategies to improve forest health and reduce the susceptibility of forest ecosystems to future infestations.

Directs the Secretary to disseminate the results of such information gathering, treatments and strategies.

Directs the Secretary to establish and carry out the program in cooperation with scientists from universities and forestry schools, state agencies and private and industrial landowners.

Sec. 403. Applied silvicultural assessments

Enables the Secretary concerned to conduct applied silvicultural assessments on federal lands that the Secretary determines in its sole discretion are at risk for infestation with certain named pests. Limits such assessment areas to 1,000 acres per assessment. Applies an overall acreage limitation to 250,000 acres.

Requires the Secretary to provide notice of each applied silvicultural assessment proposed to be carried out. Requires the Secretary to provide an opportunity for public input.

Creates a categorical exclusion from further analysis under NEPA which eliminates the Secretary's responsibility to make any

findings as to whether the project has a significant effect on the environment.

Sec. 404. Relation to other laws

Clarifies that the authorities provided to the Secretary concerned in this title are supplemental to authorities provided in any other law.

Sec. 405. Authorization of appropriations

Authorizes the appropriation of such sums as may be necessary to carry out this title in fiscal years 2004 through 2008.

TITLE V—HEALTHY FORESTS RESERVE PROGRAM

Sec. 501. Establishment of Healthy Forests Reserve Program

Establishes a Healthy Forests Reserve Program within the Forest Service to restore degraded forest lands and to promote the recovery of endangered species.

Directs the Secretary of Agriculture to carry out the program in cooperation with the Secretary of the Interior, acting through the United States Fish and Wildlife Service ("FWS").

Sec. 502. Eligibility and enrollment of lands in program

Directs the Secretary of Agriculture, in consultation with the Secretary of the Interior, to designate rare forest ecosystems to be eligible for the reserve program. Limits enrollment to 1 million acres.

Allows lands to be enrolled pursuant to a 10-year cost-share agreement, a 30-year easement or a permanent easement with a buyback option. Leaves the enrollment method up to the owner.

Sec. 503. Conservation plans

Requires participating landowners to develop a conservation plan with the FWS describing the land use activities to be permitted on enrolled lands.

Sec. 504. Financial assistance

Sets forth the payment structure for 10-year, 30-year and permanent enrollment options as well as the procedure to exercise a buyback option in the case of a permanent easement.

Sec. 505. Technical assistance

Directs the Forest Service and FWS to provide landowners with the technical assistance necessary to comply with the terms of agreements and easements created in this program.

Sec. 506. Safe harbor

Directs the Secretary of the Interior to provide a safe harbor under section 7 of the Endangered Species Act to participating landowners when such enrollment will result in a net conservation benefit for listed species.

Sec. 507. Authorization of appropriations

Authorizes $15 million for each of the fiscal years 2004 through 2008.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Forest stands inventory and monitoring program to improve detection of and response to environmental threats

Requires the Secretary of Agriculture to carry out a comprehensive program to inventory, monitor, characterize, assess and identify forest stands in units of the National Forest System and on private lands with the consent of the landowner.

Directs the Secretary, in carrying out this monitoring program, to develop a comprehensive early warning system which will enable forest managers to treat the land before a threat to forest health gets out of control.

Authorizes $5 million for each of the fiscal years in 2004 through 2008.

COMMITTEE CONSIDERATION

I. HEARINGS

In response to the catastrophic wildfires of the 2000 season, Congress urged the Administration to develop a comprehensive plan for reducing the fire hazard, and rehabilitating burned areas. This effort resulted in the National Fire Plan, and the Comprehensive Strategy for Implementing the Fire Plan. The Plan is a collaborative effort of the Department of Agriculture, Interior, the States, Counties, and numerous private conservation, environmental and interest groups. In August 2002, the President announced the Healthy Forest Initiative (HFI), in response to a catastrophic fire season (the season of 2002).

On April, 30, 2003, the Committee on Agriculture held a hearing on the President's Healthy Forests Initiative which identifies real solutions to some of the problems facing our forests and the communities surrounding them.

The first panel of witnesses included Mark Rey, Under Secretary for Natural Resources and the Environment of the U.S. Department of Agriculture, Rebecca Watson, Assistant Secretary for Land and Minerals Management of the U.S. Department of the Interior, Dale Bosworth, Chief of the U.S. Forest Service, and Pete Roussopoulos, Director of the Southern Research Station for the U.S. Forest Service.

The second panel included Steven Koehn, Maryland State Forester, National Association of States Foresters from Annapolis, Maryland, Dr. John Helms, Professor Emeritus at the University of California Berkeley on behalf of the Society of American Forester from Berkeley, California, Mr. James Walls, Executive Director of Lake County Resources Initiative in partnership with Sustainable Northwest from Lake County, Oregon, and Mr. Jeffrey Hardesty, U.S. Director of Global Fire Initiative of the Nature Conservancy from Gainesville, Florida.

II. FULL COMMITTEE CONSIDERATION

The Committee on Agriculture met, pursuant to notice, with a quorum present, on May 8, 2003, to consider H.R. 1904, the Healthy Forests Restoration Act of 2003, and other pending business.

Chairman Goodlatte called the meeting to order and made an opening statement as did Ranking Member Stenholm. Without objection, H.R. 1904 was placed before the Committee and open for amendment at any point. Counsel was then recognized to give a brief summary of the bill.

Mr. Lucas of Oklahoma was recognized to offer and explain an amendment to limit technical assistance to the Environmental Quality Incentive Program (EQUIP), Farmland Protection Program (EPP), Grasslands Reserve Program (GRP), and the Wildlife Habitat Incentives Program (WHIP). Discussion occurred and without objection, the amendment was withdrawn.

Mr. Udall of Colorado was then recognized to offer and explain an amendment to require the Forest Service and Bureau of Land Management to determine priorities for fuel reduction projects after consultation with State Foresters and consideration of the recommendations of statewide advisory councils. Discussion occurred and by voice vote, the amendment failed.

Mr. Udall was then recognized to offer and explain a second amendment to restore priority community protection, a sunset clause, and administrative stays to Title I. Discussion occurred and by a voice vote, the amendment failed.

Mr. Udall was recognized to offer and explain a third amendment to exempt additional lands from insect assessments under Title IV and prohibit the use of herbicides in insect assessments on lands in municipal watersheds. Discussion occurred and by a voice vote, the amendment failed.

Mr. Udall was again recognized to offer and explain a fourth and last amendment to the bill to delete section 403(d), permitting applied silvicultural assessments on Federal lands. Discussion occurred and by a voice vote, the amendment failed.

Mr. Thompson of California was recognized to discuss report language regarding buffer zones along Class 1, 2, and 3 streams and conditions on road construction. Discussion occurred, and without objection, the report language was accepted.

There being no further amendments, Mr. Stenholm reminded Members in which the spirit this Committee has always operated under in the acceptance of Minority, Additional or Dissenting Views to a committee report.

Chairman Goodlatte then advised Members that pursuant to the rules of the House of Representatives that Members have 2 calendar days to file such views with the Committee.

Mr. Stenholm moved that H.R. 1904, be adopted and reported favorably to the House with the recommendation that it do pass.

By voice vote, the motion was agreed to in the presence of a quorum, H.R. 1904 was ordered favorably reported, without amendment to the House of Representatives.

Mr. Stenholm then moved that pursuant to clause 1 of rule XXII, that the Committee authorize the Chairman to offer such motion as may be necessary in the House to go to conference with the Senate on H.R. 1904, or a similar Senate bill. Without objection, the motion was agreed to.

Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee.

Chairman Goodlatte thanked all the Members and adjourned the meeting subject to the call of the chair.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, H.R. 1904 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 2003.

Hon. BOB GOODLATTE,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1904, the Healthy Forests Restoration Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 1904—Healthy Forests Restoration Act of 2003

Summary: CBO estimates that H.R. 1904 would authorize the appropriation of $70 million in 2004 and $350 million over the 2004–2008 period to research and restore forests on federal, state, and private lands. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost $12 million in 2004 and $278 million over the next five years. Enacting this legislation could affect offsetting receipts (a credit against direct spending), but CBO estimates that any such effects would total less than $500,000 a year.

H.R. 1904 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA)

and would impose no costs on state, local, or tribal governments. CBO assumes that states' participation in the watershed forestry assistance programs authorized by this bill would be voluntary. Federal funds authorized for these and other programs would benefit state, local, and tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1904 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level	70	70	70	70	70
Estimated outlays	12	41	61	80	84

Basis of estimate

For this estimate, CBO assumes that H.R. 1904 will be enacted before the end of fiscal year 2003 and that amounts estimated to be necessary to implement the bill will be provided each year. Estimates of outlays are based on historical spending patterns for similar activities. Provisions that would affect spending subject to appropriation and direct spending are described below.

Spending subject to appropriation

S. 1904 would specifically authorize the appropriation of $60 million in 2004 and $300 million over the 2004–2008 period for the Forest Service and the Department of the Interior (DOI) to support research and restoration of federal, state, and private forests. The bill would authorize those agencies to make grants to eligible entities that use biomass to produce energy, provide states with technical and financial assistance to support watershed management, purchase conservation easements from private landowners, and assess the health of federal and private forests. Based on information from the agencies and historical spending patters for similar activities, CBO estimates that these programs would cost $9 million in 2004 and $230 million over the next five years.

Based on information from the Forest Service and DOI about the level of effort required to investigate infestations of forests by insects and to develop treatments to reduce the risk of infestation, CBO estimates that S. 1904 would authorize the appropriation of $10 million a year over the 2004–2008 period. We estimate that fully funding these activities would cost $3 million in 2004 and $48 million over the next five years.

Direct spending (including offsetting receipts)

Title I would authorize expedited procedures for planning and conducting certain projects to reduce the risk of wildfires on certain federal lands managed by the Forest Service or the Bureau of Land Management (BLM). Under the bill, those expedited procedures would limit some environmental assessment requirements and shorten administrative and judicial appeals. According to the Forest Service and BLM, the expedited procedures could affect the timing of some projects that generate offsetting receipts, such as timber harvests, that the agencies plan to conduct under current

law. Based on information from the agencies, however, CBO estimates that any subsequent change in offsetting receipts would total less than $500,000 annually.

Intergovernmental and private-sector impact: H.R. 1904 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. CBO assumes that states' participation in the watershed forestry assistance programs authorized by this bill would be voluntary. Federal funds authorized for these and other programs would benefit state, local, and tribal governments.

Previous CBO estimate: On May 7, 2003, CBO transmitted a cost estimate for S. 14, the Energy Policy Act of 2003, as introduced on April 30, 2003. A provision in that bill is substantively similar to a provision of H.R. 1904 that would authorize grants to eligible entities that use biomass to produce energy, and our estimates of the cost of such grants ($25 million a year) are the same under both bills.

Estimate prepared by: Federal costs: Megan Carroll; impact on state, local, and tribal governments: Marjorie Miller; impact on the private sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objections of this legislation are to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects of National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 6 OF THE COOPERATIVE FORESTRY ASSISTANCE ACT OF 1978

SEC. 6. WATERSHED FORESTRY ASSISTANCE.

(a) GENERAL AUTHORITY AND PURPOSE.—The Secretary, acting through the Forest Service, may provide technical, financial, and related assistance to State foresters and equivalent State officials for the purpose of expanding State forest stewardship capacities and activities through State forestry best-management practices and other means at the State level to address watershed issues on non-Federal forested lands and potentially forested lands.

(b) TECHNICAL ASSISTANCE TO PROTECT WATER QUALITY.—

(1) IN GENERAL.—The Secretary, in cooperation with State foresters or equivalent State officials, shall engage interested members of the public, including nonprofit organizations and local watershed councils, to develop a program of technical assistance to protect water quality, as described in paragraph (2).

(2) PURPOSE OF PROGRAM.—The program under this subsection shall be designed—

(A) to build and strengthen watershed partnerships that focus on forested landscapes at the local, State, and regional levels;

(B) to provide State forestry best-management practices and water quality technical assistance directly to nonindustrial private forest landowners;

(C) to provide technical guidance to land managers and policy makers for water quality protection through forest management;

(D) to complement State and local efforts to protect water quality and provide enhanced opportunities for consultation and cooperation among Federal and State agencies charged with responsibility for water and watershed management;

(E) to provide enhanced forest resource data and support for improved implementation and monitoring of State forestry best-management practices.

(3) IMPLEMENTATION.—The program of technical assistance shall be implemented by State foresters or equivalent State officials.

(c) WATERSHED FORESTRY COST-SHARE PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a watershed forestry cost-share program to be administered by the Forest Service and implemented by State foresters or equivalent State officials. Funds or other support provided under such program shall be made available for State forestry best-management practices programs and watershed forestry projects.

(2) WATERSHED FORESTRY PROJECTS.—The State forester or equivalent State official of a State, in coordination with the State Forest Stewardship Coordinating Committee established under section 19(b) for that State, shall annually make awards to communities, nonprofit groups, and nonindustrial private forest landowners under the program for watershed forestry projects described in paragraph (3).

(3) PROJECT ELEMENTS AND OBJECTIVES.—A watershed forestry project shall accomplish critical forest stewardship, watershed protection, and restoration needs within a State by demonstrating the value of trees and forests to watershed health and condition through—

(A) the use of trees as solutions to water quality problems in urban and rural areas;

(B) community-based planning, involvement, and action through State, local and nonprofit partnerships;

(C) application of and dissemination of monitoring information on forestry best-management practices relating to watershed forestry;

(D) watershed-scale forest management activities and conservation planning; and

(E) the restoration of wetland (as defined by the States) and stream-side forests and the establishment of riparian vegetative buffers.

(4) COST-SHARING.—Funds provided under this subsection for a watershed forestry project may not exceed 75 percent of the cost of the project. Other Federal funding sources may be used to cover a portion of the remaining project costs, but the total Federal share of the costs may not exceed 90 percent. The non-Federal share of the costs of a project may be in the form of cash, services, or other in-kind contributions.

(5) PRIORITIZATION.—The State Forest Stewardship Coordinating Committee for a State shall prioritize watersheds in that State to target watershed forestry projects funded under this subsection.

(6) WATERSHED FORESTER.—Financial and technical assistance shall be made available to the State Forester or equivalent State official to create a State best-management practice forester to lead statewide programs and coordinate small watershed-level projects.

(d) DISTRIBUTION.—

(1) IN GENERAL.—The Secretary shall devote at least 75 percent of the funds appropriated for a fiscal year pursuant to the authorization of appropriations in subsection (e) to the cost-share program under subsection (c) and the remainder to the task of delivering technical assistance, education, and planning on the ground through the State Forester or equivalent State official.

(2) SPECIAL CONSIDERATIONS.—Distribution of these funds by the Secretary among the States shall be made only after giving appropriate consideration to—

(A) the acres of nonindustrial private forestland and highly erodible land in each State;

(B) each State's efforts to conserve forests;

(C) the acres of forests in each State that have been lost or degraded or where forests can play a role in restoring watersheds; and

(D) the number of nonindustrial private forest landowners in each State.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 for each of the fiscal years 2004 through 2008.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, May 9, 2003.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN POMBO: On May 8, 2003, the Committee on Agriculture ordered favorably reported H.R. 1904, the Healthy Forests Restoration Act of 2003, without amendment. The bill was referred primarily to the Committee on Agriculture, with an additional referral to the Committee on Resources.

As you know, H.R. 1904 is a critical part of the President's Healthy Forest Initiative and the Leadership of the House plans on scheduling the bill for consideration by the full House of Representatives as early as next week. Therefore, I respectively request that the Committee on Resources waive further consideration of bill.

Of course, by allowing this to occur, the Committee on Resources does not waive its jurisdiction over H.R. 1904 or any other similar matter for all purposes. Finally, in the event a conference with the Senate is requested on this measure, I will support the naming of members from the Committee on Resources to the conference committee.

Thank you for your cooperation in which our respective Committees have worked together and I look forward to working with you in the future on matters of shared jurisdiction.

Sincerely,

BOB GOODLATTE,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, May 9, 2003.

Hon. BOB GOODLATTE,
Chairman, Committee on Agriculture,
Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter requesting that the Committee on Resources not insist in its additional referral of H.R. 1904, the Healthy Forests Restoration Act of 2003. The Committee on Resources has had a long-standing and active interest in forest health issues in public forest, and I have enjoyed working with you, Forests and Forest Health Subcommittee Chairman McInnis and your staff on this critical contribution to the President's Healthy Forest Initiative.

Knowing your interest in expediting consideration of this bill by the full House of Representatives in advance of the upcoming fire season, I agree to allow the Committee on Resources to be discharged from further consideration of H.R. 1904. This action does not waive the Committee's jurisdiction over any provision in H.R. 1904 or similar provisions in other bills. In addition, I ask that you support my request to have the Committee on Resources represented on the conference on this bill, if a conference is necessary. Finally, I ask that you include this letter in the Committee's bill report or the Congressional Record during debate on H.R. 1904 when it is considered by the House of Representatives.

Thank you again for your leadership on this issue and I look forward to working with you again on matters of mutual interest.

Sincerely,

RICHARD W. POMBO,
Chairman.

DISSENTING VIEWS OF REPRESENTATIVE MARK UDALL

INTRODUCTION

I have serious concerns about several aspects of H.R. 1904. But, above all, I am disappointed with the manner in which this legislation has been developed and considered.

I do think we need to act to protect our communities and their water supplies, by reducing the built-up fuels that add to the fire dangers that threaten them.

That's why I have introduced legislation to expedite those thinning projects. It is also why last year I joined with my Colorado colleague, Representative McInnis, and other Members to develop the bill the Resources Committee approved last year.

I voted for that bill last year. And if H.R. 1904 was the same as that bill, I would vote for it again. But this is not the same bill.

Instead of building on the work the Resources Committee did last year, the Resources and Agriculture Committees were presented with a quite different measure—one that adds a long list of new provisions while omitting some of the key parts of the bill I voted for last year. Some of the new provisions may be desirable, but others clearly will be controversial.

It seems to me it would be better to keep the focus on speeding up work to reduce the risks to our communities and their water supplies. Adding new issues and new controversies can only complicate matters and make it more difficult to pass a bill to accomplish those goals.

I fear that going forward with H.R. 1904 as it stands means missing an opportunity to shape a bill that can attract much broader support. I also fear that the bill as it stands will exacerbate disputes and lead to increased conflicts and litigation.

That is why, as both the Resources and Agriculture Committees considered this legislation, I sought to revise it so it would more closely resemble the bill reported by the Resources Committee last year. Unfortunately, those efforts were not successful, and so I am not able to support the legislation as it stands.

Now, let me take this opportunity to explain my views and concerns in more detail.

BACKGROUND

Many western communities are at risk of unusually severe wildfires. The cause is a combination of severe drought, the overgrown conditions of many federal forest lands resulting from past fire-suppression policies, and the growing number of settlements pressing against or into forested areas. I have consistently worked to reduce those risks.

Last year's terrible fires in Colorado and other States were a dramatic confirmation of those risks, but my concerns began much ear-

lier. Since my first election to Congress, I have made it a point to visit parts of Colorado that have been burned by very severe wildfires or that are at risk of similar fires. I have walked areas that have been treated through controlled fires and mechanical thinning and seen the dramatic difference that such treatments can make in reducing wildfire risks. I have been to the front lines of a burning wildfire—the Big Elk Meadows fire near Estes Park—and have talked with homeowners, foresters, forest ecologists, forest users and conservationists to try to better understand what strategies can reduce the risks to lives and property.

As a result, I am convinced we need to do more to reduce the risks to our communities, our water supplies, and our citizens. That is why I have introduced legislation (H.R. 5098 of the 106th Congress; H.R. 3948 of the 107th Congress; H.R. 1042 of the 108th Congress) to expedite the work of removing excessive fire-prone materials and to require the government to focus its efforts in the areas where this work will have the most immediate benefit for the most people.

H.R. 1904 purports to share some of these purposes—but it also includes provisions I consider not only unnecessary but unwise and inappropriate.

ENVIRONMENTAL ANALYSIS AND PUBLIC INVOLVEMENT AS RELATED TO FUEL-REDUCTION PROJECTS

I do not think our national environmental laws are the obstacle to improving our response to the wildfire-related risks to our communities. So, I see no real need to make any fundamental changes in those laws.

This is not to suggest that our national environmental laws are beyond improvement, nor that we cannot explore ways to reduce bureaucracy and lawsuits. But I think we should be very cautious about proposals to lessen public involvement in decisions about the management of the federal lands.

I think a better approach is to increase public involvement during the planning and other initial stages of fuel-reduction projects. That was the purpose of an amendment I offered during the markup of the bill. The idea is to make it less likely those projects will be delayed by controversies or lawsuits, by developing support at the front end for projects that are urgently needed, narrowly tailored and scientifically sound. Toward that end, the amendment would have built on the public collaboration provisions already in the bill, to make it a truly cooperative program.

The amendment called for creation of statewide advisory councils to work with the Forest Service and the BLM on the selection of specific projects. These councils would include broad representation of interests and would include scientific participation, and would develop projects in a collaborative fashion so as to avoid opposition, delays and appeals at the back-end when projects are being implemented. I think this would be a good way to foster real community involvement in developing good projects and so reduce controversies, resulting in faster action to protect people's lives and property. A similar approach has shown real promise in New Mexico, which is why similar provisions are included in H.R. 1042, which I intro-

duced with my colleague and cousin, Representative Tom Udall. I regret that this amendment was not adopted.

H.R. 1904 as reported would permit the Forest Service and the Bureau of Land Management (BLM) to implement a fuel-reduction project without the full documentation normally required by section 102(2) of the National Environmental Policy Act of 1969 (NEPA).

I do not think such provisions are necessary, because NEPA has not been a major obstacle to progress in reducing risks to communities and water supplies. Instead, the main obstacles have been inadequate focus on the highest-priority areas and a failure by the relevant land-managing agencies—under both the last Administration and this one—to do enough to develop and implement narrowly-tailored thinning projects that can enjoy broad support.

Accordingly, I think any provisions such as those in section 104 of H.R. 1904 should apply only for a temporary period, after which Congress can consider whether to extend them.

The bill reported by the Resources Committee had such a sunset clause, but Title I of H.R. 1904 does not. I offer an amendment to add one to the bill; rejection of that amendment is one reason I cannot support the bill as it now stands.

PRIORITY AREAS FOR FUEL-REDUCTION PROJECTS

I think the highest priority for fuel-reduction work needs to be on the forest lands where accumulated fuels present the most immediate risks to our communities—those within the wildland/urban interface, or the "red zone," as it is called in Colorado—and to municipal water supplies. These are the places where forest conditions present the greatest risks to people's lives, health, and property, and so they should be where our finite resources—time, money, and people—are concentrated.

To properly focus on these areas, we have to properly identify them. In that regard, I have no quarrel with the provisions of H.R. 1904. By referring to lands within either an "interface" or "intermix" community, it provides an appropriate limitation on the discretion of the agencies without drawing an arbitrary mileage line that would not appropriately reflect the reality that a community's exposure to the risk of wildfire depends on terrain, forest conditions, and other factors that can vary greatly from one place to another and over time.

However, proper focus also requires assured priority status for funds to carry out projects to protect communities and their water supplies. The bill reported by the Resources Committee last year required that at least 70% of the funds provided for fuel-reduction purposes be used for such projects—but no similar provision is included in H.R. 1904. I offered an amendment to restore the provision, and failure of the Committee to adopt that amendment is another major reason I cannot support the bill as it now stands.

"ANALYSIS PARALYSIS," APPEALS, AND JUDICIAL REVIEW

As was true of legislation introduced in the 107th Congress, H.R. 1904 clearly reflects the premise that the land-managing agencies are laboring under procedural burdens that unnecessarily delay work on fuel-reduction projects.

I think that premise has not been proved beyond doubt.

The Chief of the Forest Service has testified that the agency has been slow to act to reduce the risks of catastrophic wildfire because of "analysis paralysis," meaning that the fear of appeals or litigation has made Forest Service personnel excessively cautious in the way they formulate and analyze fuel-reduction (and other) projects.

The chief may be correct in that diagnosis—certainly he is in a better position than I am to evaluate the mental states of his subordinates. But it is important to remember that the Chief has also testified that he does not think revision of the environmental laws is required in order to treat this condition—and on that point I am in full agreement.

And if fear of appeals and litigation is the cause of "analysis paralysis," how realistic is that fear? Over the last year or more, there has been considerable debate over that point, in Congress and in the press. I think it is fair to say that debate has been more heated than enlightening, and that the question remains unresolved. I am not convinced that the case has been fully made that the ability of people to seek administrative or judicial review of Forest Service decisions has had such adverse effects that stringent limitations on those processes are essential.

Nonetheless, I think some streamlining of the administrative appeals process would be appropriate for high-priority fuel-reduction projects. That is why I supported provisions on this subject that were included in the bill reported by the Resources Committee last year and why similar provisions are included in H.R. 1042, which I introduced with Representative Udall of New Mexico earlier this year.

However, H.R. 1904 does not include similar provisions. Instead, in section 105, it merely directs the Secretary of Agriculture to develop a new administrative appeals process for such projects. This amounts to giving the Secretary a blank check, which I think is not the best way to proceed with regard to so important a matter.

In addition, the bill as reported includes provisions related to judicial review that I raise very serious questions.

The bill reported by the Resources Committee last year also included provisions dealing with judicial review. They were less far-reaching than those in sections 106 and 107 of H.R. 1904, but the only reason that I could support their inclusion in last year's bill was the fact that the bill also included an automatic stay of agency action until the completion of administrative and judicial reviews. This is another provision of last year's bill that is not included in H.R. 1904. I offered an amendment to restore it, and the rejection of that amendment is another major reason I cannot support H.R. 1904 as it stands.

In the absence of any automatic stay, I think it would be better if sections 106 and 107 were not part of this bill. I am very concerned by expert analyses suggesting that they would place new and unprecedented restrictions on judicial review, and seem designed to have the effect of unfairly and arbitrarily shutting the court house door on our citizens, making the federal government less accountable to the public in the management of our public lands and national forests.

Section 106 says that "Notwithstanding any other provision of law" an action in U.S. court challenging an authorized fuel-reduc-

tion project must be filed within 15 days after an agency decision is made public. This time limit, which counts weekend days and holidays, supercedes any notice of intent to file suit requirement or filing deadline otherwise applicable to a challenge under "any provision of law."

This raises the prospect that through a backdoor approach, the bill in effect is amending the Clean Water Act, the Endangered Species Act and a host of other laws which could be applicable to federal agency actions. For example, a Clean Air Act-based challenge by a local government to prescribed burning on public lands would be precluded after 15 days. It is difficult to conceive that many local governments across the country could consider complex federal plans and authorize and bring lawsuits within 15 days. Private parties, of course, would face the same practical and logistical challenges.

I am also very concerned that the limitation would force appellants to anticipate litigation from the onset of the environmental analysis process. The deadline essentially would create a use-it-or-lose-it situation, wherein the appellant must either have the appeal pre-prepared, or else scramble madly to meet such an unrealistic deadline. Ultimately, this subsection seems likely to create a perverse incentive to file lawsuits against fuel reduction plans, since failing to do so closes the court house door thereafter.

Section 106(a)'s notice requirement also raises concern. It provides that the Secretary publish notice of final agency action of fuels reduction project in the "local paper of record." In areas that have multiple newspapers, a troubling situation could arise if the Secretary published notice in more than one paper. If, for instance, two or more different local papers published the notice on different dates, the appellant could potentially miss the deadline because it relied on the wrong newspaper. As amazing as this seems, this scenario is definitely within the realm of possibility. It well might make better sense to publish the final agency decision in the Federal Register to ensure predictability and certainty of the dates of publication that are beyond dispute.

Further, this part of the bill tilts excessively in favor of the federal agencies, which already have very broad discretion.

Section 107 sets what I understand to be a new standard for injunctive relief by mandating that courts must give deference to any federal agency determination of the balance of harms and the public interest. Notably, unlike the filing deadline and other provisions included in section 106, this new standard of deference applies not only to hazardous fuels reduction projects, but to any agency action on federal lands that the agency decides is "necessary to restore a fire-adapted forest or rangeland ecosystem." The boundaries of this provision are very unclear, at best, because most forest and rangeland ecosystems have evolved so as to adapt to fire—suggesting that deference would be given to essentially any agency action.

I am concerned that Section 107 seems intended to allow federal agencies to determine the public interest and might make it excessively difficult for even misguided agency actions to be corrected.

The section mandates that a court "give deference to any agency finding, based upon information in the administrative record, that the balance of harm and the public interest in avoiding the short-

term effects of the agency action is outweighed by the public interest in avoiding long-term harm to the ecosystem." This standard—which I am told appears to be unprecedented in any prior law—seems designed to allow a federal agency to determine whether its own plan is in the public interest and, in effect, to have that determination be presumed valid by the court.

In other words, I am told there is a serious chance that this standard would allow a federal agency to make a unilateral decision regarding what it construes to be in the public's best interest, put in the administrative record, and then bootstrap that decision in federal court. I am told that this well may violate the Constitution's separation of powers doctrine because it seeks to intrude upon the equitable powers of the judiciary. My understanding is that the courts currently exercise the authority to consider the public interest or to defer to the agency when reviewing agency action and considering whether an injunction should be issued. I am concerned that section 107 appears intended to prohibit judges from exercising their judgment by directing the court to defer to the agency's balancing of the harms.

This problem would be made worse if a standard based upon an agency's balancing of the harms should become routine in cases involving agency compliance with NEPA, so that even if plaintiffs would prevail on the merits they would have had a very difficult time getting an injunction to halt an improper activity.

There is also a serious question about the propriety of having the Resources and Agriculture Committees include provisions addressing judiciary review. That is not properly within the power of the Resources or Agriculture Committee to determine, since under the House rules such matters would seem to be within the jurisdiction of the Judiciary Committee—a concern raised by a letter from the Ranking Member of that Committee.

OTHER SHORTCOMINGS OF REPORTED BILL

In addition to the aspects of Title I discussed above, H.R. 1904 includes a number of other problematical provisions.

TITLE II—BIOMASS

For example, Title II, like a corresponding part of the energy bill (H.R. 6) developed in the Resources Committee, deals with use for biomass purposes of material removed from forest lands in order to reduce fuel loads. I am a supporter of biomass, and I think the biomass title is one of the better parts of that energy bill. So, I do not object to its inclusion in H.R. 1904. However, I think it should be more tightly focused.

Title II would provide people who own or operate biomass plants with cash grants, which could be used to buy material removed from the forests in order to reduce fuel loads. I think that additional subsidy should be used only to buy material taken from the areas of highest priority—the "wildland-urban interface," or "red zones"—that are nearest to communities, the places where people's lives and property are most at risk. In the Resources Committee, I offered an amendment to make that change. I regret that it was not adopted.

TITLE IV—INSECT INFESTATIONS

As I said during the Committee's markup, I would prefer that Title 4 be completely eliminated—for two reasons.

First, I have serious concerns about the broad scope of its provisions and am not convinced that such sweeping legislation is necessary.

Second, I fear that its inclusion will make the bill more controversial than necessary, and so make it that much harder to pass a sound, balanced bill to expedite needed work to protect our communities and their water supplies.

In the Resources Committee, I offered an amendment that would have deleted this title entirely. I regret that the amendment was not adopted. In the Agriculture Committee, I offered two amendments intended to make the title less problematical.

The first of these amendments would have narrowed the scope of the Title, in several ways.

It would have expanded the list of lands that would be off-limits to the "applied silvicultural assessment" projects authorized by section 403. It would have exempted the lands the Forest Service's own forest plans recommend for protection as wilderness. It also would have exempted the inventoried roadless areas that are covered by the Forest Service's roadless conservation rule. And it would have exempted any other lands that are now being managed in a way that preserves Congressional options about their possible designation as wilderness in the future. I proposed those changes because while section 403 already exempts wilderness areas and some wilderness-study areas, I think the bill should give the same status to the other lands that are being managed as potential wilderness areas, and to the roadless areas that have such high environmental and ecological value. The amendment also would have explicitly banned use of herbicides in municipal watersheds. The fact that this amendment was not adopted is another reason I am unable to support the bill as reported.

My second amendment to Title IV, which I also offered on behalf of Representative Hill, would have deleted the provision of section 403 that says the "applied silvicultural assessments" are "categorically excluded" from review under NEPA. I think that provision is one of the most troubling parts of the entire bill.

To start with, section 404 defines these "assessments" very broadly. It says they can include "any vegetative or other treatment . . . including timber harvest, thinning, prescribed burning, and pruning" or any combination of those.

And, under section 403, the Forest Service or BLM could carry out these activities on any Federal lands that the agency—in its sole discretion—determines either has an infestation problem or is at risk of insect infestation. That is very broad, too—in fact, it seems practically unlimited, since almost any land with trees is at some risk of infestation.

I am not disputing that insects can be a serious problem. And there may be a need for drastic actions to try to prevent insect damage, now or in the future. But I certainly see no reason we should exempt those actions from complying with any of the environmental laws.

If these projects are necessary and sound, they can withstand scrutiny under NEPA. And if they are unnecessary or not well-designed, a NEPA review can bring that out. That is what NEPA is for, why it is on the books. The Udall-Hill amendment would not have banned these projects. It would just have provided for them to be reviewed in the usual way.

That does not necessarily mean there would have to be an environmental impact statement in every case, because under NEPA, there would be a case-by-case decision about what kind of documentation was required. In some cases, that might mean that an environmental assessment—an EA—would be enough. But if a project was big enough—and, under section 403, each "treatment" could involve up to 1,000 acres—then a full environmental impact statement might be necessary. And, of course, cumulative impacts of multiple projects should not be overlooked. That is what the law provides now. I think it should continue to apply. That was the point of the amendment—not to prohibit these projects, but to have them comply with the law. The fact that this amendment was not adopted is another major reason I cannot support H.R. 1904 as reported.

CONCLUSION

I do think it is appropriate for Congress to act to improve the effectiveness of the way the Forest Service and Bureau of land Management are undertaking to reduce the risks of catastrophic wildfires to the lives, health, and property of people living in communities near federal forest lands. That is the purpose of the legislation—H.R. 1042—I introduced earlier this year.

However, I think H.R. 1904 is not well-designed to accomplish that goal. That is why I have sought to improve it. I will continue to work for its improvement and for enactment of more appropriate and responsible legislation.

MARK UDALL.

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