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108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 108–96 Part 2

HEALTHY FORESTS RESTORATION ACT OF 2003

MAY 16, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, 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 the Judiciary, 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, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	6
Committee Consideration	7
Vote of the Committee	7
Committee Oversight Findings	8
New Budget Authority and Tax Expenditures	8
Congressional Budget Office Cost Estimate	8
Performance Goals and Objectives	11
Constitutional Authority Statement	11
Section-by-Section Analysis and Discussion	11
Changes in Existing Law Made by the Bill, as Reported	13

19–006

Markup Transcript 15
Dissenting Views 81

PURPOSE AND SUMMARY

The purpose of H.R. 1904, the "Healthy Forests Restoration Act of 2003," is to: (1) empower the Secretary of Agriculture and the Secretary of the Interior to implement hazardous fuel reduction projects on National Forest System lands that protect communities and watersheds from catastrophic wildfire; and (2) promote other efforts that safeguard watersheds and address threats to forest and range land health, such as wildfire and insect infestation. The courts provisions set forth in the legislation are designed to expedite legal and administrative proceedings regarding governmental responses to forestry crises.

BACKGROUND AND NEED FOR THE LEGISLATION

PROCEDURAL BACKGROUND

H.R. 1904 was introduced on May 1, 2003, and referred to the Committee on Agriculture and the Committee on Resources on that same day. The Committee on Agriculture reported the bill by voice vote on May 8 and filed its Committee report (H. Rept. 108-96, Part I) the following day. The Committee on Resources marked up a Committee Print that is identical to H.R. 1904 and also discharged the bill on May 9.

H.R. 1904 was sequentially referred to the Committee on the Judiciary on May 9 for a period of time ending not later than May 16, 2003, for consideration of those provisions within its jurisdiction.

NEED FOR LEGISLATION

Federal land managers estimate that approximately 190 million acres of Federal forest lands are at unnaturally high risk of catastrophic wildfires and large-scale insect and disease outbreaks due to unhealthy forest conditions. The wildfire seasons in 2000 and 2002 were among the largest and most destructive wildfire seasons in the last half century. Last summer, Oregon, Arizona, and Colorado experienced the largest wildfires in their respective histories, causing cataclysmic damage to air quality, water quality, and wildlife habitat in each of the states and beyond.

While America's forest health crisis is often cast as a phenomena unique to western forest lands—based largely on the high profile of western wildfires—it is not. Massive pest and pathogen outbreaks are also degrading forest ecosystems in all parts of the country. In Arkansas, for example, a recent unprecedented outbreak of Red Oak Borer has infected 800,000 acres of Federal and non-Federal forest lands. This is not an isolated event.

The Healthy Forests Restoration Act of 2003 is a comprehensive plan focused on giving Federal land managers, their stakeholders, and their partners the tools to respond to this growing forest health crisis. This legislation requires the timely implementation of scientifically-supported management activities to protect the health and vibrancy of Federal forest ecosystems as well as the communities and private lands that surround them.

TITLE I—HAZARDOUS FUELS REDUCTION ON FEDERAL LANDS

This title's underlying premise is simple and clear: With 190 million acres at unnaturally high risk of catastrophic wildfire, it is unacceptable that it takes Federal land managers several years to maneuver forest health projects (like thinning and prescribed burns) through various procedural requirements. Under this title, forest management projects will still be subject to rigorous environmental analysis as well as administrative challenges and lawsuits, but these multiple processes would be completed in a matter of months, rather than years, as is currently the case.

Geographic Scope. This title establishes streamlined procedures that empower local land managers with the tools to expeditiously implement hazardous fuels reduction projects on Forest Service and BLM lands: (1) near communities in the wild land urban interface; (2) on high-risk lands in the proximity of municipal water sources; (3) on high-risk lands that encompass habitat for threatened and endangered species where Federal wildlife officials have identified catastrophic wildfire as a threat to the viability of the species; and (4) on high-risk landscapes particularly susceptible to disease or insect infestation.

Public Participation. The bill codifies the bipartisan Western Governors Association (WGA) 10-Year Strategy's robust public input and participation requirements, ensuring that interested persons will have numerous opportunities to engage decision makers during all phases of a project's development and implementation. The WGA strategy was endorsed by many government and non-government organizations, including environmental groups like the Wilderness Society. The bill also requires an additional public meeting for all projects implemented under this Act beyond that which is required currently.

Management Priorities. The bill codifies the WGA prioritization scheme, placing express priority on the reduction of hazardous conditions in the Wildland Urban Interface and in proximity to sources of municipal water.

National Environmental Policy Act (NEPA). The bill would give the Forest Service and the Bureau of Land Management (BLM) discretionary authority to limit analysis during the NEPA-phase to the proposed action only. The agencies would not be required to analyze and describe a number of different alternatives to the preferred course when implementing a hazardous fuels reduction project on lands described above. Agencies typically analyze three to five alternatives at present. One NEPA expert estimates that each alternative analyzed results in a 20% increase in the amount of analysis and documentation for the agency. Currently, it often takes multiple years to get fuels reduction projects just through the NEPA phase, an unacceptably slow pace given the immediacy and size of the wildfire threat. This provision would substantially speed that deliberative process, while simultaneously ensuring that all of the environmental effects of a project have been thoroughly analyzed and vetted with the concerned public.

Administrative Appeals. The Forest Service is the only Federal land management agency with an administrative appeals process codified in statute—a 1993 appropriation rider called the Appeals Reform Act. The Park Service and the Fish and Wildlife Service

have no formal appeals in any form. The BLM does not have an administrative appeals or review process codified in Federal statute, but has established a pre-decisional review process that gives interested parties a venue in which to seek administrative redress. The BLM process is widely viewed as being more collaborative, and less confrontational, than the Appeals Reform Act that governs the Forest Service.

A hazardous fuels reduction project implemented on at-risk lands on the Deschutes, White River, or Plumas National Forests face a significantly higher administrative appeals bar than the exact same project would encounter if implemented in Yellowstone National Park (Park Service), the Klamath Basin Wildlife Refuge (Fish and Wildlife Service), or the Canyons of the Ancients National Monument (BLM). With the National Fire Plan's emphasis on inter-agency cooperation, this makes little sense.

Against this backdrop, the legislation would provide a limited waiver of the Appeals Reform Act for projects implemented under this legislation, instead directing the establishment of an alternative review process by which persons could seek administrative redress against such projects. The Forest Service would have 90 days to draft, take comment on, and finalize this new process for administrative review. The Appeals Reform Act would continue to be applicable to timber and salvage projects as well as all other project level activities not implemented under the Act.

Judicial Review. The bill has three primary provisions pertaining to the Federal judiciary's consideration of potential actions brought against hazardous fuels reduction projects.

The bill would require preliminary injunctions granted by a Federal court against a project implemented under this Act be reevaluated every 45 days. In cases where a plaintiff seeks to extend a preliminary injunction beyond the 45-day threshold, the bill requires the agency to provide an update to the court on the status of the conditions of the forest lands at issue, including the extent to which disease or insect infestation or wildfire risks have grown since the temporary restraining order or preliminary injunction were granted. The court could extent preliminary injunctions an unlimited number of times at the end of each 45-day interval.

Currently, preliminary stays on fuels reduction projects can remain in effect for months before a court finally reaches a decision on the overarching merits of the legal challenge. These long delays can by themselves defeat the purposes of a forest treatment project, particularly if a project is aimed at stemming the spread of disease or insect infestation to uninfected forest lands. In these cases, judicial delay is just as lethal as judicial defeat for the government. Without curbing anyone's ability to pursue a full range of judicial procedures, this provision would ensure that the court remains engaged on the status of a project, including the extent to which management inaction is exacerbating wildfire and forest health risks.

The bill admonishes, in non-binding terms, Federal courts considering a legal challenge to a hazardous fuels reduction project to take all necessary steps required in order to issue a decision on the merits of the legal challenge within 100 days.

The bill directs Federal courts, when considering a challenge to hazardous fuels reduction projects, to weigh the potentially devastating environmental consequences associated with management

inaction, while giving deference to the Forest Service and BLM's scientific determinations as to the environmental utility of a project in reducing the threat of wildfire to forest ecosystems. Without this explicit statutory direction, some Federal courts have been loath to consider the devastating consequences of doing nothing to address the hazardous forest conditions.

Safeguards. The Forest Service and BLM would NOT be authorized to use the expedited analysis procedures in wilderness areas, or lands where, by Act of Congress or Presidential proclamation, the removal of vegetation is prohibited or restricted. Also, the bill's expedited authorities would not be available in National Parks or in Wildlife Refuges. Projects implemented in these areas would have to be done so under existing authorities.

Additionally, the bill provides that the Forest Service will not be allowed to build new permanent roads in Inventoried Roadless Areas under the bill's expedited procedures.

Scope. The Healthy Forests Restoration Act's streamlined procedures could be used on up to 20-million acres of Federal lands eligible under the bill's provisions, the same number of acres authorized for treatment under Representative George Miller and Representative Peter Defazio's wildfire legislation introduced in the 108th Congress (H.R. 1621).

TITLE II—BIOMASS

The biomass title would establish grant programs (authorized at $25 million combined) to encourage energy-related utilization of the otherwise valueless wood, chips, brush, thinnings, and slash removed in conjunction with projects on Federal forests and rangelands focused on reducing the threat of catastrophic wildfire and insect infestation and disease.

As the Federal Government wrestles with the wildfire crisis in the national forests, the choice is plain: either the Federal Government can spend billions of dollars removing these unmerchantable materials itself and burning them once removed, or it can take steps to develop markets which in the long run will encourage non-government entities to help pay the way for wildfire management activities, while providing a source of renewable energy for the American people. Even though there is a price tag to the biomass provisions, they will actually save the Federal Government money in the long run by creating market incentives for non-governmental entities to remove the otherwise valueless forest materials that feed catastrophic wildfire.

TITLE III—WATERSHED FORESTRY ASSISTANCE

The watershed forestry title would provide financial and technical support needed by private forest landowners to manage their lands and thereby protect water quality, restore watershed conditions, improve municipal drinking water supplies, and address threats to forest health, including catastrophic wildfire.

Authorized at $15 million over 5 years, the program would support community-based watershed forestry partnerships that address critical forest stewardship, watershed protection, and restoration needs.

TITLE IV—INSECT INFESTATION INFORMATION GATHERING

The insect research title directs the Department to conduct an accelerated program to plan, conduct, and promote research on bark beetles, the hemlock woolly adelgid, the emerald ash borer, the red oak borer, and the white oak borer.

Hemlock woolly adelgid is destroying streamside forests throughout the mid-Atlantic and Appalachian region, threatening water quality and sensitive aquatic species, and posing a potential threat to valuable commercial timber lands in Northern New England. Epidemic populations of Southern pine beetle are ravaging forests in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. In 2001, Florida and Kentucky experienced 146% and 111% increases in beetle populations, respectively. These epidemic outbreaks of Southern pine beetle have forced private landowners to harvest dead and dying trees, both in rural areas and in increasingly urbanized settings. The presence of the EAB was confirmed in Michigan last year and in Ohio early this year. This exotic pest is a threat to the over 3.8-billion ash trees found on more than 850,000 acres of forest land in Ohio alone. It also threatens between 5 and 20 percent of street trees in the upper Midwest.

The legislation would categorically exclude silvicultural (forestry) assessments of 1,000 acres or less on lands infected or at imminent risk of being infected by these insects, in an attempt to glean which techniques are most effective in slowing their rapid spread. These procedures could not be implemented on more than 250,000 acres in the aggregate. The Secretary concerned would be required to consider public input before implementing these assessments.

TITLE V—EARLY WARNING PROGRAM FOR DISEASE AND INSECT INFESTATIONS

This title would authorize and direct Federal land managers to establish early detection programs for insect and disease infestations, with an emphasis on hardwood forests, so that agencies can isolate and treat adverse conditions before they reach epidemic levels.

TITLE VI—HEALTHY FOREST RESERVE

The healthy forests reserve program is a private forest land conservation initiative that would support the establishment of conservation easements (ranging in length from 10 years to permanent with a semi-regular buyout option) on one million acres of declining forest ecosystem types that are critical to, among other things, the recovery of threatened, endangered, and other sensitive species. The program, supported by such groups as Environmental Defense, will facilitate the voluntary protection and restoration of otherwise imperiled forest ecosystems, while protecting the rights of private landowners once an easement has expired under the Endangered Species Act's safe harbor allowances. The program is authorized for 5 years at $15 million annually.

HEARINGS

No hearings were held on H.R. 1904 in the Committee on the Judiciary.

COMMITTEE CONSIDERATION

On May 14, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 1904 without amendment by a recorded vote of 18 to13, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the Committee's consideration of H.R. 1904:

Representative Baldwin offered an amendment to strike sections 104, 105, 106, and 107 of the bill. The amendment failed by a recorded vote of 12 to 17.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes			
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	17	

Chairman Sensenbrenner moved that the bill H.R. 1904 be favorably reported to the House. The motion passed by a rollcall vote of 18 to 13.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Ms. Hart	X		
Mr. Flake			
Mr. Pence	X		
Mr. Forbes			
Mr. King	X		
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn	X		
Mr. Conyers		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	18	13	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1904, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 15, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
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, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

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 5 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 those 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 patterns for similar activities, CBO estimates that these programs would cost $9 million in 2004 and $230 million over the next 5 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 5 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 those and other programs would benefit State, local, and tribal governments.

PREVIOUS CBO ESTIMATES

On May 9, 2003, CBO transmitted a cost estimate for H.R. 1904 as ordered reported by the House Committee on Agriculture on

May 8, 2003. The two versions of the bill are identical, and our cost estimates are the same.

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 (226–2860)
Impact on State, Local, and Tribal Governments: Marjorie Miller (225–3220)
Impact on the Private Sector: Cecil McPherson (226–2940)

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 objectives of H.R. 1904 are to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects for the National Forest System and the Bureau of Land Management. Once implemented, these projects will protect communities, watersheds, and certain other at-risk lands from catastrophic wildfire and will address additional threats to forest and rangeland health, including insect infestation, 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, section 8, and article III, section 1, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following is a section-by-section analysis of the provisions of the bill falling within the Committee on the Judiciary's rule X jurisdiction. An analysis of the remaining provisions may be found in the Agriculture Committee report (H. Rept. No. 108-96, part I).

Sec. 104. Environmental Analysis. Pursuant to section 104(a) and (b), the Secretary concerned (either Agriculture or Interior) must plan and conduct authorized hazardous fuels reduction projects in accordance with the National Environmental Policy Act of 1969, but she is not required to develop any alternative to the proposed agency action in the environmental assessment or impact statement which is otherwise required by the Act.

Subsections (c) through (e) enumerate public notice and meeting requirements imposed on the concerned Secretary that are designed to encourage public participation and to facilitate collabora-

tion among governments and interested parties in the development of authorized hazardous fuels reduction projects.

Subsection (f) requires the Secretary concerned to sign a decision document for each authorized hazardous fuels reduction project while subsection (g) states that she must monitor implementation of each project.

Sec. 105. Special Forest Service Administrative Review Process. Subsection (a) states that the Secretary of Agriculture, 90 days after the date of enactment, must issue final regulations to establish an administrative process that will serve as the sole means by which a person can seek administrative redress regarding an authorized hazardous fuels reduction project. Subsection (b) creates standing for a person seeking such redress by requiring that she must have submitted substantive and specific written comments during the preparation stage of the project.

Subsection (c) makes clear that the Appeals Reform Act of 1993 pertaining to Forest Service administrative appeals does not apply for those projects contemplated by H.R. 1904.

Sec. 106. Special Requirements Regarding Judicial Review of Authorized Hazardous Fuels Reduction Projects. Subsection (a) mandates that any legal challenge to an authorized hazardous fuels reduction project must be filed before the end of the 15-day period beginning on the date on which the Secretary concerned publishes in the local paper of record notice of the final agency action on the matter. This time limit supersedes any other filing deadline under law and may not be waived by a district court.

Subsection (b) states that any preliminary injunction granted regarding an authorized hazardous fuels reduction project shall be limited to 45 days. Pursuant to subsection (c), a court may renew a preliminary injunction, taking into account congressional intent that the court expedite, to the maximum extent practicable, the ongoing legal proceedings with the goal of rendering a final determination on jurisdiction, and if jurisdiction exists, a final determination on the merits, within 100 days from the date the proceeding is filed.

Finally, parties are required to submit relevant updates on any changes that may have occurred during the period of injunction to a court that is considering a request to renew the injunction. If the injunction is renewed, the Secretary concerned must notify the House Committee on Resources and the House Committee on Agriculture as well as the Senate Committee on Energy and Natural Resources and the Senate Committee on Agriculture, Nutrition, and Forestry.

Sec. 107. Standard for Injunctive Relief for Agency Action to Restore Fire-Adapted Forest or Rangeland Ecosystems. Section 107 states that when an aggrieved person seeks a prohibitory or mandatory injunction against agency action governing restoration of a fire-adapted forest or rangeland ecosystem, including an authorized fuels reduction project, the court reviewing the request must: (1) consider the public interest in avoiding long-term harm to the ecosystem; and (2) 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. Unless otherwise indicated in title I, and per section 104 of the bill, the planning and conducting of authorized hazardous fuels reduction projects must be done in accordance with the National Environmental Policy Act of 1969. Subsection (a) states that nothing in title I shall be construed to affect or bias a Secretary's use of other statutory or administrative authorities to plan or conduct a hazardous fuels reduction project on Federal land.

There is ongoing litigation within the 9th Circuit regarding the "Roadless Area Conservation Rule" and the potential prohibition of road construction in approximately one-third of the National Forest System. Subsection (b) states that nothing in title I of the bill shall prejudice or otherwise affect the consideration or disposition of this action.

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 italics 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 agen-

cies 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.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MAY 14, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present. At the request of the minority, the first item on the agenda is H.R. 1904, the "Healthy Forest Restoration Act."

I now call up bill H.R. 1904 for purposes of markup, and move its favorable recommendation to the full House. Without objection, the bill will be considered as read, and open for amendment at any point.

[The bill, H.R. 1904, follows:]

I

108TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 2003

Mr. MCINNIS (for himself, Mr. WALDEN of Oregon, Mr. POMBO, Mr. GOODLATTE, Mr. AKIN, Mr. ALEXANDER, Mr. BALLENGER, Mr. BARTON of Texas, Mr. BEAUPREZ, Mr. BERRY, Mr. BISHOP of Utah, Mr. BLUNT, Mr. BOEHNER, Mr. BOOZMAN, Mr. BRADY of Texas, Mr. BURGESS, Mr. CALVERT, Mr. CANNON, Mr. COLE, Mr. CRAMER, Mrs. CUBIN, Mr. DAVIS of Alabama, Mr. DOOLITTLE, Mr. DOOLEY of California, Mr. DUNCAN, Mrs. EMERSON, Mr. EVERETT, Mr. FLAKE, Mr. GALLEGLY, Mr. GIBBONS, Mr. GILCHREST, Mr. GINGREY, Mr. GRAVES, Mr. GREEN of Wisconsin, Mr. GUTKNECHT, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HERGER, Mr. HUNTER, Mr. ISSA, Mr. JANKLOW, Mr. JOHN, Mr. JONES of North Carolina, Mr. KOLBE, Mr. LAHOOD, Mr. LEWIS of California, Mr. LINDER, Mr. MCKEON, Mr. GARY G. MILLER of California, Mr. MORAN of Kansas, Mrs. MUSGRAVE, Mr. NETHERCUTT, Mr. NORWOOD, Mr. NUNES, Mr. OBERSTAR, Mr. OTTER, Mr. OSBORNE, Mr. OSE, Mr. PEARCE, Mr. PETERSON of Minnesota, Mr. PETERSON of Pennsylvania, Mr. PICKERING, Mr. RADANOVICH, Mr. REHBERG, Mr. RENZI, Mr. ROGERS of Alabama, Mr. ROSS, Mr. RYUN of Kansas, Mr. SANDLIN, Mr. SESSIONS, Mr. SHADEGG, Mr. SHIMKUS, Mr. SHERWOOD, Mr. SIMPSON, Mr. SMITH of Michigan, Mr. SOUDER, Mr. STENHOLM, Mr. STUPAK, Mr. TANCREDO, Mr. TAYLOR of North Carolina, Mr. TERRY, Mr. THOMAS, Mr. THOMPSON of Mississippi, Mr. THORNBERRY, Mr. TIAHRT, Mr. TURNER of Texas, Mr. TAUZIN, Mr. VITTER, Mr. WICKER, Mrs. WILSON of New Mexico, Mr. WILSON of South Carolina, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consider-

ation of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Healthy Forests Restoration Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purpose.

TITLE I—HAZARDOUS FUELS REDUCTION ON FEDERAL LANDS

Sec. 101. Definitions.
Sec. 102. Authorized hazardous fuels reduction projects.
Sec. 103. Prioritization for communities and watersheds.
Sec. 104. Environmental analysis.
Sec. 105. Special Forest Service administrative review process.
Sec. 106. Special requirements regarding judicial review of authorized hazardous fuels reduction projects.
Sec. 107. Standard for injunctive relief for agency action to restore fire-adapted forest or rangeland ecosystems.
Sec. 108. Rules of construction.

TITLE II—BIOMASS

Sec. 201. Findings.
Sec. 202. Definitions.
Sec. 203. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, and petroleum-based product substitutes.
Sec. 204. Reporting requirement.

TITLE III—WATERSHED FORESTRY ASSISTANCE

Sec. 301. Findings and purpose.
Sec. 302. Establishment of watershed forestry assistance program.

TITLE IV—INSECT INFESTATIONS

Sec. 401. Definitions, findings, and purpose.
Sec. 402. Accelerated information gathering regarding bark beetles, including Southern pine beetles, hemlock woolly adelgid, emerald ash borers, red oak borers, and white oak borers.
Sec. 403. Applied silvicultural assessments.
Sec. 404. Relation to other laws.
Sec. 405. Authorization of appropriations.

TITLE V—HEALTHY FORESTS RESERVE PROGRAM

Sec. 501. Establishment of healthy forests reserve program.
Sec. 502. Eligibility and enrollment of lands in program.
Sec. 503. Conservation plans.
Sec. 504. Financial assistance.
Sec. 505. Technical assistance.
Sec. 506. Safe harbor.
Sec. 507. Authorization of appropriations.

TITLE VI—MISCELLANEOUS PROVISIONS

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

SEC. 2. PURPOSE.

The purpose of this Act is—

(1) to reduce the risks of damage to communities, municipal water supplies, and some at-risk Federal lands from catastrophic wildfires;

(2) to authorize grant programs to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-

based product substitutes and other commercial purposes;

(3) to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape;

(4) to promote systematic information gathering to address the impact of insect infestations on forest and rangeland health;

(5) to improve the capacity to detect insect and disease infestations at an early stage, particularly with respect to hardwood forests; and

(6) to protect, restore, and enhance degraded forest ecosystem types in order to promote the recovery of threatened and endangered species as well as improve biological diversity and enhance carbon sequestration.

TITLE I—HAZARDOUS FUELS REDUCTION ON FEDERAL LANDS

SEC. 101. DEFINITIONS.

In this title:

(1) AUTHORIZED HAZARDOUS FUELS REDUCTION PROJECT.—The term ''authorized hazardous fuels reduction project'' means a hazardous fuels reduction project described in subsection (a) of section

102, subject to the remainder of such section, that is planned and conducted using the process authorized by section 104.

(2) CONDITION CLASS 2.—The term ''condition class 2'', with respect to an area of Federal lands, refers to the condition class description developed by the Forest Service Rocky Mountain Research Station in the general technical report entitled ''Development of Coarse-Scale Spatial Data for Wildland Fire and Fuel Management'' (RMRS–87), dated April 2000, under which—

(A) fire regimes on the lands have been moderately altered from their historical range;

(B) there exists a moderate risk of losing key ecosystem components from fire;

(C) fire frequencies have departed (either increased or decreased) from historical frequencies by one or more return interval, which results in moderate changes to fire size, frequency, intensity, severity, or landscape patterns; and

(D) vegetation attributes have been moderately altered from their historical range.

(3) CONDITION CLASS 3.—The term ''condition class 3'', with respect to an area of Federal lands,

refers to the condition class description developed by the Rocky Mountain Research Station in the general technical report referred to in paragraph (2), under which—

(A) fire regimes on the lands have been significantly altered from their historical range

(B) there exists a high risk of losing key ecosystem components from fire;

(C) fire frequencies have departed from historical frequencies by multiple return intervals, which results in dramatic changes to fire size, frequency, intensity, severity, or landscape patterns; and

(D) vegetation attributes have been significantly altered from their historical range.

(4) DAY.—The term ''day'' means a calendar day, except that, if a deadline imposed by this title would expire on a nonbusiness day, the deadline will be extended to the end of the next business day.

(5) DECISION DOCUMENT.—The term ''decision document'' means a decision notice or a record of decision, as those terms are used in applicable regulations of the Council on Environmental Quality and the Forest Service Handbook.

(6) FEDERAL LANDS.—The term ''Federal lands'' means—

(A) National Forest System lands; and

(B) public lands administered by the Secretary of the Interior, acting through the Bureau of Land Management.

(7) HAZARDOUS FUELS REDUCTION PROJECT.—The term ''hazardous fuels reduction project'' refers to the measures and methods described in the definition of ''appropriate tools'' contained in the glossary of the Implementation Plan.

(8) IMPLEMENTATION PLAN.—The term ''Implementation Plan'' means the Implementation Plan for the 10-year Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, dated May 2002, which was developed pursuant to the conference report for the Department of the Interior and Related Agencies Appropriations Act, 2001 (House Report 106–646).

(9) INTERFACE COMMUNITY AND INTERMIX COMMUNITY.—The terms ''interface community'' and ''intermix community'' have the meanings given those terms on page 753 of volume 66 of the Federal Register, as published on January 4, 2001.

(10) MUNICIPAL WATER SUPPLY SYSTEM.—The term ''municipal water supply system'' means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, or other surface facilities and systems constructed or installed for the impoundment, storage, transportation, or distribution of drinking water for a community.

(11) SECRETARY CONCERNED.—The term ''Secretary concerned'' means the Secretary of Agriculture with respect to National Forest System lands and the Secretary of the Interior with respect to public lands administered by the Bureau of Land Management. Any reference in this title to the ''Secretary concerned'', the Secretary of Agriculture'', or the ''Secretary of the Interior'' includes the designee of the Secretary concerned.

(12) THREATENED AND ENDANGERED SPECIES HABITAT.—The term ''threatened and endangered species habitat'' means Federal lands identified in the listing decision or critical habitat designation as habitat for a threatened species or an endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 102. AUTHORIZED HAZARDOUS FUELS REDUCTION PROJECTS.

(a) AUTHORIZED PROJECTS.—Subject to the remainder of this section, the Secretary concerned may utilize the process authorized by section 104 to plan and conduct hazardous fuels reduction projects on any of the following Federal lands:

(1) Federal lands located in an interface community or intermix community.

(2) Federal lands located in such proximity to an interface community or intermix community that there is a significant risk that the spread of a fire disturbance event from those lands would threaten human life and property in the interface community or intermix community.

(3) Condition class 3 or condition class 2 Federal lands located in such proximity to a municipal water supply system or a stream feeding a municipal water supply system that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply, including the risk to water quality posed by erosion following such a fire disturbance event.

(4) Condition class 3 or condition class 2 Federal lands identified by the Secretary concerned as an area where windthrow or blowdown, or the exist-

ence or threat of disease or insect infestation, pose a significant threat to forest or rangeland health or adjacent private lands.

(5) Federal lands not covered by paragraph (1), (2), (3), or (4) that contain threatened and endangered species habitat, but only if—

(A) natural fire regimes on such lands are identified as being important for, or wildfire is identified as a threat to, an endangered species, a threatened species, or its habitat in a species recovery plan prepared under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or in a decision document under such section determining a species to be an endangered species or a threatened species or designating critical habitat;

(B) the project will provide enhanced protection from catastrophic wildfire for the species or its habitat; and

(C) the Secretary complies with any applicable guidelines specified in the species recovery plan prepared under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(b) RELATION TO AGENCY PLANS.—An authorized hazardous fuels reduction project shall be planned and

conducted in a manner consistent with the land and resource management plan or land use plan applicable to the Federal lands covered by the project.

(c) ACREAGE LIMITATION.—Not more than a total of 20,000,000 acres of Federal lands may be included in authorized hazardous fuels reduction projects.

(d) TREE REMOVAL LIMITATION.—The Secretary concerned, in the sole discretion of the Secretary concerned, shall plan and conduct an authorized hazardous fuels reduction project so as to maintain species composition, size class distribution, and density of trees, including old and large trees appropriate for each ecosystem type covered by the project, consistent with the purposes of this title.

(e) EXCLUSION OF CERTAIN FEDERAL LANDS.—The Secretary concerned may not plan or conduct an authorized hazardous fuels reduction project that would occur on any of the following Federal lands:

(1) A component of the National Wilderness Preservation System.

(2) Federal lands where, by Act of Congress or Presidential proclamation, the removal of vegetation is prohibited or restricted.

(3) Wilderness Study Areas.

(f) PROTECTION OF ROADLESS AREAS.—The Secretary of Agriculture shall not construct any new permanent road in any Inventoried Roadless Area as part of any authorized hazardous fuels reduction project.

SEC. 103. PRIORITIZATION FOR COMMUNITIES AND WATERSHEDS.

As provided for in the Implementation Plan, the Secretary concerned shall give priority to authorized hazardous fuel reduction projects that provide for the protection of communities and watersheds.

SEC. 104. ENVIRONMENTAL ANALYSIS.

(a) IN GENERAL.—Except as otherwise provided in this title, the Secretary concerned shall plan and conduct authorized hazardous fuels reduction projects in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) and any other applicable laws.

(b) DISCRETIONARY AUTHORITY TO ELIMINATE ALTERNATIVES.—In the case of an authorized hazardous fuels reduction project, the Secretary concerned is not required to study, develop, or describe any alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared for the proposed agency action pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)).

(c) PUBLIC NOTICE AND MEETING.—

(1) PUBLIC NOTICE.—The Secretary concerned shall provide notice of each authorized hazardous fuels reduction project in accordance with applicable regulations and administrative guidelines.

(2) PUBLIC MEETING.—During the planning stage of each authorized hazardous fuels reduction project, the Secretary concerned shall conduct a public meeting at an appropriate location proximate to the administrative unit of the Federal lands in which the authorized hazardous fuels reduction project will be conducted. The Secretary concerned shall provide advance notice of the date and time of the meeting.

(d) PUBLIC COLLABORATION.—In order to encourage meaningful public participation in the identification and development of authorized hazardous fuels reduction projects, the Secretary concerned shall facilitate collaboration among governments and interested persons during the formulation of each authorized fuels reduction project in a manner consistent with the Implementation Plan.

(e) ENVIRONMENTAL ANALYSIS AND PUBLIC COMMENT.—In accordance with section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) and the applicable regulations and administrative guide-

lines in effect on the date of the enactment of this Act, the Secretary concerned shall provide an opportunity for public input during the preparation of any environmental assessment or environmental impact statement for proposed agency action for an authorized hazardous fuels reduction project.

(f) DECISION DOCUMENT.—The Secretary concerned shall sign a decision document for each authorized hazardous fuels reduction project and provide notice of the decision document.

(g) PROJECT MONITORING.—As provided for in the Implementation Plan, the Secretary concerned shall monitor the implementation of authorized hazardous fuels reduction projects.

SEC. 105. SPECIAL FOREST SERVICE ADMINISTRATIVE REVIEW PROCESS.

(a) DEVELOPMENT OF ADMINISTRATIVE PROCESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Agriculture shall issue final regulations to establish an administrative process that will serve as the sole means by which a person described in subsection (c) can seek administrative redress regarding an authorized hazardous fuels reduction project.

(b) ELIGIBLE PERSONS.—To be eligible to participate in the administrative process developed pursuant to

subsection (a) regarding an authorized hazardous fuels reduction project, a person must have submitted specific and substantive written comments during the preparation stage of that authorized hazardous fuels reduction project.

(c) RELATION TO APPEALS REFORM ACT.—Section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law 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.

(a) FILING DEADLINE.—

(1) TIME LIMIT ESTABLISHED FOR FILING.—Notwithstanding any other provision of law, to be timely, an action in a court of the United States challenging an authorized hazardous fuels reduction project shall be filed in the court before the end of the 15-day period beginning on the date on which the Secretary concerned publishes, in the local paper of record, notice of the final agency action regarding the authorized hazardous fuels reduction project. This time limitation supersedes any notice of intent to file suit requirement or filing deadline otherwise applicable to a challenge under any provision of law.

(2) WAIVER PROHIBITED.—The Secretary concerned may not agree to, and a district court may not grant, a waiver of the requirements of this subsection.

(b) DURATION OF PRELIMINARY INJUNCTION.—

(1) DURATION; EXTENSION.—Any preliminary injunction granted regarding an authorized hazardous fuels reduction project shall be limited to 45 days. A court may renew the preliminary injunction, taking into consideration the goal expressed in subsection (c) for the expeditious resolution of cases regarding authorized hazardous fuels reduction projects.

(2) SUBMISSION OF INFORMATION.—As part of a request to renew a preliminary injunction granted regarding an authorized hazardous fuels reduction project, the parties shall present the court with an update on any changes that may have occurred during the period of the injunction to the forest or rangeland conditions that the authorized hazardous fuels reduction project is intended to address.

(3) CONGRESSIONAL NOTIFICATION.—In the event of the renewal of a preliminary injunction regarding an authorized hazardous fuels reduction project, the Secretary concerned shall submit notice

of the renewal to the Committee on Resources and the Committee on Agriculture of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) EXPEDITIOUS COMPLETION OF JUDICIAL REVIEW.—Congress intends and encourages any court in which is filed a lawsuit or appeal of a lawsuit concerning an authorized hazardous fuels reduction project to expedite, to the maximum extent practicable, the proceedings in such lawsuit or appeal with the goal of rendering a final determination on jurisdiction, and if jurisdiction exists, a final determination on the merits, within 100 days from the date the complaint or appeal is filed.

SEC. 107. STANDARD FOR INJUNCTIVE RELIEF FOR AGENCY ACTION TO RESTORE FIRE-ADAPTED FOREST OR RANGELAND ECOSYSTEMS.

If an action brought against the Secretary concerned under section 703 of title 5, United States Code, involves an agency action on Federal lands in which the Secretary concerned found that the agency action is necessary to restore a fire-adapted forest or rangeland ecosystem, including an authorized hazardous fuels reduction project, the court reviewing the agency action, in considering a request

for a prohibitory or mandatory injunction against the agency action, shall—

(1) consider the public interest in avoiding long-term harm to the ecosystem; and

(2) 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.

SEC. 108. RULES OF CONSTRUCTION.

(a) RELATION TO OTHER AUTHORITY.—Nothing in this title shall be construed to affect, or otherwise bias, the use by the Secretary concerned of other statutory or administrative authorities to plan or conduct a hazardous fuels reduction project on Federal lands, including Federal lands identified in section 102(e), that is not planned or conducted using the process authorized by section 104.

(b) RELATION TO LEGAL ACTION.—Nothing in this title shall be construed to prejudice or otherwise affect the consideration or disposition of any legal action concerning the Roadless Area Conservation Rule, part 294 of title 36, Code of Federal Regulations, as amended in the final rule and record of decision published in the Federal Register on January 12, 2001 (66 Fed. Reg. 3244).

TITLE II—BIOMASS

SEC. 201. FINDINGS.

Congress finds the following:

(1) Thousands of communities in the United States, many located near Federal lands, are at risk to wildfire. Approximately 190,000,000 acres of land managed by the Secretary of Agriculture and the Secretary of the Interior are at risk of catastrophic fire in the near future. The accumulation of heavy forest and rangeland fuel loads continues to increase as a result of disease, insect infestations, and drought, further raising the risk of fire each year.

(2) In addition, more than 70,000,000 acres across all land ownerships are at risk to higher than normal mortality over the next 15 years from insect infestation and disease. High levels of tree mortality from insects and disease result in increased fire risk, loss of old growth, degraded watershed conditions, and changes in species diversity and productivity, as well as diminished fish and wildlife habitat and decreased timber values.

(3) Preventive treatments such as removing fuel loading, ladder fuels, and hazard trees, planting proper species mix and restoring and protecting early successional habitat, and other specific restora-

tion treatments designed to reduce the susceptibility of forest and rangeland to insect outbreaks, disease, and catastrophic fire present the greatest opportunity for long-term forest and rangeland health by creating a mosaic of species-mix and age distribution. Such prevention treatments are widely acknowledged to be more successful and cost effective than suppression treatments in the case of insects, disease, and fire.

(4) The by-products of preventive treatment (wood, brush, thinnings, chips, slash, and other hazardous fuels) removed from forest and rangelands represent an abundant supply of biomass for biomass-to-energy facilities and raw material for business. There are currently few markets for the extraordinary volumes of by-products being generated as a result of the necessary large-scale preventive treatment activities.

(5) The United States should—

(A) promote economic and entrepreneurial opportunities in using by-products removed through preventive treatment activities related to hazardous fuels reduction, disease, and insect infestation; and

(B) develop and expand markets for traditionally underused wood and biomass as an outlet for by-products of preventive treatment activities.

SEC. 202. DEFINITIONS.

In this title:

(1) BIOMASS.—The term ''biomass'' means trees and woody plants, including limbs, tops, needles, and other woody parts, and by-products of preventive treatment, such as wood, brush, thinnings, chips, and slash, that are removed—

(A) to reduce hazardous fuels; or

(B) to reduce the risk of or to contain disease or insect infestation.

(2) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) PERSON.—The term ''person'' includes—

(A) an individual;

(B) a community (as determined by the Secretary concerned);

(C) an Indian tribe;

(D) a small business, micro-business, or a corporation that is incorporated in the United States; and

(E) a nonprofit organization.

(4) PREFERRED COMMUNITY.—The term ''preferred community'' means—

(A) any town, township, municipality, or other similar unit of local government (as determined by the Secretary concerned) that—

(i) has a population of not more than 50,000 individuals; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation; or

(B) any county that—

(i) is not contained within a metropolitan statistical area; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at signifi-

cant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(5) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) the Secretary of Agriculture with respect to National Forest System lands; and

(B) the Secretary of the Interior with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands.

SEC. 203. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, AND PETROLEUM-BASED PRODUCT SUBSTITUTES.

(a) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to any person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products to offset the costs incurred to purchase biomass for use by such facility.

(2) GRANT AMOUNTS.—A grant under this subsection may not exceed $20 per green ton of biomass delivered.

(3) MONITORING OF GRANT RECIPIENT ACTIVITIES.—As a condition of a grant under this subsection, the grant recipient shall keep such records as the Secretary concerned may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by a representative of the Secretary concerned, the grant recipient shall afford the representative reasonable access to the facility that purchases or uses biomass and an opportunity to examine the inventory and records of the facility.

(b) VALUE ADDED GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to persons to offset the cost of projects to add value to biomass. In making such grants, the Secretary concerned shall give preference to persons in preferred communities.

(2) SELECTION.—The Secretary concerned shall select a grant recipient under paragraph (1) after giving consideration to the anticipated public benefits of the project, opportunities for the creation or

expansion of small businesses and micro-businesses, and the potential for new job creation.

(3) GRANT AMOUNT.—A grant under this subsection may not exceed $100,000.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $25,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

SEC. 204. REPORTING REQUIREMENT.

(a) REPORT REQUIRED.—Not later than October 1, 2010, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Resources and the Committee on Agriculture of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the grant programs authorized by section 203.

(b) CONTENTS OF REPORT.—The report shall include the following:

(1) An identification of the size, type, and the use of biomass by persons that receive grants under section 203.

(2) The distance between the land from which the biomass was removed and the facility that used the biomass.

(3) The economic impacts, particularly new job creation, resulting from the grants to and operation of the eligible operations.

TITLE III—WATERSHED FORESTRY ASSISTANCE

SEC. 301. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) There has been a dramatic shift in public attitudes and perceptions about forest management, particularly in the understanding and practice of sustainable forest management.

(2) It is commonly recognized that the proper stewardship of forest lands is essential to sustaining and restoring the health of watersheds.

(3) Forests can provide essential ecological services in filtering pollutants, buffering important rivers and estuaries, and minimizing flooding, which makes its restoration worthy of special focus.

(4) Strengthened education, technical assistance, and financial assistance to nonindustrial private forest landowners and communities, relating to the protection of watershed health, is needed to realize the expectations of the general public.

(b) PURPOSE.—The purpose of this title is to—

(1) improve landowner and public understanding of the connection between forest management and watershed health;

(2) encourage landowners to maintain tree cover on their property and to utilize tree plantings and vegetative treatments as creative solutions to watershed problems associated with varying land uses;

(3) enhance and complement forest management and buffer utilization for watersheds, with an emphasis on urban watersheds;

(4) establish new partnerships and collaborative watershed approaches to forest management, stewardship, and conservation;

(5) provide technical and financial assistance to States to deliver a coordinated program that enhances State forestry best-management practices programs, as well as conserves and improves forested lands and potentially forested lands through technical, financial, and educational assistance to qualifying individuals and entities; and

(6) maximize the proper management and conservation of wetland forests and to assist in their restoration as necessary.

SEC. 302. ESTABLISHMENT OF WATERSHED FORESTRY ASSISTANCE PROGRAM.

The Cooperative Forestry Assistance Act of 1978 is amended by inserting after section 5 the following new section:

"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.".

TITLE IV—INSECT INFESTATIONS

SEC. 401. DEFINITIONS, FINDINGS, AND PURPOSE.

(a) DEFINITIONS.—In this title:

(1) APPLIED SILVICULTURAL ASSESSMENT.—The term "applied silvicultural assessment" means any vegetative or other treatment, for the purposes described in section 402, including timber harvest, thinning, prescribed burning, and pruning, as single treatment or any combination of these treatments.

(2) FEDERAL LANDS.—The term "Federal lands" means—

(A) National Forest System lands; and

(B) public lands administered by the Secretary of the Interior, acting through the Bureau of Land Management.

(3) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) the Secretary of Agriculture, acting through the Forest Service, with respect to National Forest System lands; and

(B) the Secretary of the Interior, acting through appropriate offices of the United States Geological Survey, with respect to federally owned land administered by the Secretary of the Interior.

(4) 1890 INSTITUTIONS.—The term ''1890 Institution'' means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.), including Tuskegee University.

(b) FINDINGS.—Congress finds the following:

(1) High levels of tree mortality due to insect infestation result in—

(A) increased fire risk;

(B) loss of old growth;

(C) loss of threatened and endangered species;

(D) loss of species diversity;

(E) degraded watershed conditions;

(F) increased potential for damage from other agents of disturbance, including exotic, invasive species; and

(G) decreased timber values.

(2) Bark beetles destroy hundreds of thousands of acres of trees each year. In the West, over 21,000,000 acres are at high risk of bark beetle infestation and in the South over 57,000,000 acres are at risk across all land ownerships. Severe drought conditions in many areas of the South and West will increase risk of bark beetle infestations.

(3) The hemlock woolly adelgid is destroying streamside forests throughout the mid-Atlantic and Appalachian region, threatening water quality and sensitive aquatic species, and posing a potential threat to valuable commercial timber lands in Northern New England.

(4) The emerald ash borer is a nonnative, invasive pest that has quickly become a major threat to hardwood forests as a emerald ash borer infestation is almost always fatal to the affected trees. This pest threatens to destroy over 692,000,000 ash trees in forests in Michigan and Ohio alone, and between five and ten percent of urban street trees in the Upper Midwest.

(5) Epidemic populations of Southern pine beetle are ravaging forests in Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. In 2001, Florida and Kentucky experienced 146 percent and 111 percent increases, respectively, in beetle populations.

(6) These epidemic outbreaks of Southern pine beetle have forced private landowners to harvest dead and dying trees, in both rural areas and increasingly urbanized settings.

(7) According to the Forest Service, recent outbreaks of the red oak borer in Arkansas have been unprecedented, with almost 800,000 acres infested at population levels never seen before.

(8) Much of the damage from the red oak borer has taken place in National forests, and the Federal response has been inadequate to protect forest ecosystems and other ecological and economic resources.

(9) Previous silvicultural assessments, while useful and informative, have been limited in scale and scope of application, and there has not been sufficient resources available to adequately test a full array of individual and combined applied silvicultural assessments.

(10) Only through the rigorous funding, development, and assessment of potential applied silvicultural assessments over specific time frames across an array of environmental and climatic conditions can the most innovative and cost effective management applications be determined that will help reduce the susceptibility of forest ecosystems to attack by forest pests.

(11) Funding and implementation of an initiative to combat forest pest infestations should not come at the expense of supporting other programs and initiatives of the Secretary concerned.

(c) PURPOSE.—It is the purpose of this title—

(1) to require the Secretary concerned to develop an accelerated basic and applied assessment program to combat infestations by bark beetles, including Southern pine beetles, hemlock woolly adelgids, emerald ash borers, red oak borers, and white oak borers;

(2) to enlist the assistance of universities and forestry schools, including Land Grant Colleges and Universities and 1890 Institutions, to carry out the program; and

(3) to carry out applied silvicultural assessments.

SEC. 402. ACCELERATED INFORMATION GATHERING REGARDING BARK BEETLES, INCLUDING SOUTHERN PINE BEETLES, HEMLOCK WOOLLY ADELGIDS, EMERALD ASH BORERS, RED OAK BORERS, AND WHITE OAK BORERS.

(a) INFORMATION GATHERING.—The Secretary concerned shall establish, acting through the Forest Service and United States Geological Survey, as appropriate, an accelerated program—

(1) to plan, conduct, and promote comprehensive and systematic information gathering on bark beetles, including Southern pine beetles, hemlock woolly adelgids, emerald ash borers, red oak borers, and white oak borers, including an evaluation of—

(A) infestation prevention and control methods;

(B) effects of infestations on forest ecosystems;

(C) restoration of the forest ecosystem efforts;

(D) utilization options regarding infested trees; and

(E) models to predict the occurrence, distribution, and impact of outbreaks of bark beetles, including Southern pine beetles, hemlock

woolly adelgids, emerald ash borers, red oak borers, and white oak borers;

(2) to assist land managers in the development of treatments and strategies to improve forest health and reduce the susceptibility of forest ecosystems to severe infestations of bark beetles, including Southern pine beetles, hemlock woolly adelgids, emerald ash borers, red oak borers, and white oak borers on Federal lands and State and private lands; and

(3) to disseminate the results of such information gathering, treatments, and strategies.

(b) COOPERATION AND ASSISTANCE.—The Secretary concerned shall establish and carry out the program in cooperation with scientists from universities and forestry schools, State agencies, and private and industrial land owners. The Secretary concerned shall designate universities and forestry schools, including Land Grant Colleges and Universities and 1890 Institutions, to assist in carrying out the program.

SEC. 403. APPLIED SILVICULTURAL ASSESSMENTS.

(a) ASSESSMENT EFFORTS.—For information gathering purposes, the Secretary concerned may conduct applied silvicultural assessments on Federal lands that the Secretary concerned determines, in the sole discretion of the Secretary concerned, is at risk of infestation by, or

is infested with, bark beetles, including Southern pine beetles, hemlock woolly adelgids, emerald ash borers, red oak borers, and white oak borers. Any applied silvicultural assessments carried out under this section shall be conducted on not more than 1,000 acres per assessment.

(b) LIMITATIONS.—

(1) EXCLUSION OF CERTAIN AREAS.—Subsection (a) does not apply to—

(A) a component of the National Wilderness Preservation System;

(B) Federal lands where, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited; or

(C) congressionally designated wilderness study areas.

(2) CERTAIN TREATMENT PROHIBITED.—Subsection (a) does not authorize the application of insecticides in municipal watersheds and associated riparian areas.

(3) ACREAGE LIMITATION.—Applied silvicultural assessments may be implemented on not more than 250,000 acres using the authorities provided by this title.

(c) PUBLIC NOTICE AND COMMENT.—

(1) PUBLIC NOTICE.—The Secretary concerned shall provide notice of each applied silvicultural assessment proposed to be carried out under this section in accordance with applicable regulations and administrative guidelines.

(2) PUBLIC COMMENT.—During the planning stage of each applied silvicultural assessment proposed to be carried out under this section, the Secretary concerned shall provide an opportunity for public input.

(d) CATEGORICAL EXCLUSION.—Applied silvicultural assessments carried out under this section are deemed to be categorically excluded from further analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary concerned need not make any findings as to whether the project, either individually or cumulatively, has a significant effect on the environment.

SEC. 404. RELATION TO OTHER LAWS.

The authorities provided to the Secretary concerned by this title are supplemental to their respective authorities provided in any other law.

SEC. 405. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal years 2004 through 2008 such sums as may be necessary to carry out this title.

TITLE V—HEALTHY FORESTS RESERVE PROGRAM

SEC. 501. ESTABLISHMENT OF HEALTHY FORESTS RESERVE PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Agriculture shall establish the healthy forests reserve program as a program within the Forest Service for the purpose of protecting, restoring, and enhancing degraded forest ecosystems to promote the recovery of threatened and endangered species as well as improve biodiversity and enhance carbon sequestration.

(b) COOPERATION.—The Secretary of Agriculture shall carry out the healthy forests reserve program in cooperation with the Secretary of the Interior, acting through the United States Fish and Wildlife Service.

SEC. 502. ELIGIBILITY AND ENROLLMENT OF LANDS IN PROGRAM.

(a) ELIGIBLE LANDS.—The Secretary of Agriculture, in consultation with the Secretary of the Interior, shall designate rare forest ecosystems to be eligible for the healthy forests reserve program. The following lands are eligible for enrollment in the healthy forests reserve program:

(1) Private lands whose enrollment will protect, restore, enhance, or otherwise measurably increase

the likelihood of recovery of an endangered species or threatened species in the wild.

(2) Private lands whose enrollment will protect, restore, enhance, or otherwise measurably increase the likelihood of the recovery of an animal or plant species before the species reaches threatened or endangered status, such as candidate, State-listed species, rare, peripheral, and special concern species.

(b) OTHER CONSIDERATIONS.—In enrolling lands that satisfy the criteria in paragraph (1) or (2) of subsection (a), the Secretary of Agriculture shall give additional consideration to those lands whose enrollment will also improve biological diversity and increase carbon sequestration.

(c) ENROLLMENT BY WILLING OWNERS.—The Secretary of Agriculture shall enroll lands in the healthy forests reserve program only with the consent of the owner of the lands.

(d) MAXIMUM ENROLLMENT.—The total number of acres enrolled in the healthy forests reserve program shall not exceed 1,000,000 acres.

(e) METHODS OF ENROLLMENT.—Lands may be enrolled in the healthy forests reserve program pursuant to a 10-year cost-share agreement, a 30-year easement, or a permanent easement with buyback option. The extent

to which each enrollment method is used shall be based on the approximate proportion of owner interest expressed in that method in comparison to the other methods.

(f) ENROLLMENT PRIORITY.—The Secretary of Agriculture shall give priority to the enrollment of lands that, in the sole discretion of the Secretary, will provide the best opportunity to resolve conflicts between the presence of an animal or plant species referred to in paragraph (1) or (2) of subsection (a) and otherwise lawful land use activities.

SEC. 503. CONSERVATION PLANS.

(a) PLAN REQUIRED.—Lands enrolled in the healthy forests reserve program shall be subject to a conservation plan, to be developed jointly by the land owner and the United States Fish and Wildlife Service. The conservation plan shall include a description of the land-use activities that are permissible on the enrolled lands.

(b) INVOLVEMENT BY OTHER AGENCIES AND ORGANIZATIONS.—A State fish and wildlife agency, State forestry agency, State environmental quality agency, and other State conservation agencies and nonprofit conservation organizations may assist in providing technical or financial assistance, or both, for the development and implementation of conservation plans.

(c) COST EFFECTIVENESS.—The conservation plan shall maximize the environmental benefits per dollar expended.

SEC. 504. FINANCIAL ASSISTANCE.

(a) PERMANENT EASEMENT WITH BUYBACK OPTION.—

(1) PAYMENT AMOUNT.—In the case of land enrolled in the healthy forests reserve program using a permanent easement with a buyback option, the Secretary of Agriculture shall pay the owner of the land an amount equal to—

(A) the fair market value of the enrolled land less the fair market value of the land encumbered by the easement; plus

(B) the actual costs of the approved conservation practices or the average cost of approved practices, as established by the Secretary.

(2) BUYBACK OPTION.—Beginning on the 50th anniversary of the enrollment of the land, and every 10th-year thereafter, the owner shall be able to purchase the easement back from the United States at a rate equal to the fair market value of the easement plus the costs, adjusted for inflation, of the approved conservation practices.

(b) 30-YEAR EASEMENT.—In the case of land enrolled in the healthy forests reserve program using a 30-year easement, the Secretary of Agriculture shall pay the owner of the land an amount equal to—

(1) 75 percent of the fair market value of the land less the fair market value of the land encumbered by the easement; plus

(2) 75 percent of the actual costs of the approved conservation practices or 75 percent of the average cost of approved practices, as established by the Secretary.

(c) 10-YEAR AGREEMENT.—In the case of land enrolled in the healthy forests reserve program using a 10-year cost-share agreement, the Secretary of Agriculture shall pay the owner of the land an amount equal to—

(1) 75 percent of the actual costs of the approved conservation practices; or

(2) 75 percent of the average cost of approved practices, as established by the Secretary.

(d) ACCEPTANCE OF CONTRIBUTIONS.—The Secretary of Agriculture may accept and use contributions of non-Federal funds to make payments under this section.

SEC. 505. TECHNICAL ASSISTANCE.

The Forest Service and the United States Fish and Wildlife Service shall provide landowners with technical

assistance to comply with the terms of agreements and easements under the healthy forests reserve program and conservation plans.

SEC. 506. SAFE HARBOR.

In implementing the healthy forests reserve program, the Secretary of the Interior shall provide safe harbor or similar assurances, through section 7 or other authorities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), consistent with the implementing regulations of the United States Fish and Wildlife Service, to landowners who enroll land in the healthy forests reserve program when such enrollment will result in a net conservation benefit for listed species.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $15,000,000 for each of the fiscal years 2004 through 2008 to carry out this title.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. FOREST STANDS INVENTORY AND MONITORING PROGRAM TO IMPROVE DETECTION OF AND RESPONSE TO ENVIRONMENTAL THREATS.

(a) IN GENERAL.—The Secretary of Agriculture shall carry out a comprehensive program to inventory, monitor, characterize, assess, and identify forest stands (with em-

phasis on hardwood forest stands) and potential forest stands—

(1) in units of the National Forest System (other than those units created from the public domain); and

(2) on private forest land, with the consent of the owner of the land.

(b) ISSUES TO BE ADDRESSED.—In carrying out the program, the Secretary shall address issues including—

(1) early detection, identification, and assessment of environmental threats (including insect, disease, invasive species, fire, and weather-related risks and other episodic events);

(2) loss or degradation of forests;

(3) degradation of the quality forest stands caused by inadequate forest regeneration practices;

(4) quantification of carbon uptake rates; and

(5) management practices that focus on preventing further forest degradation.

(c) EARLY WARNING SYSTEM.—In carrying out the program, the Secretary shall develop a comprehensive early warning system for potential catastrophic environmental threats to forests to increase the likelihood that forest managers will be able to—

(1) isolate and treat a threat before the threat gets out of control; and

(2) prevent epidemics, such as the American chestnut blight in the first half of the twentieth century, that could be environmentally and economically devastating to forests.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 2004 through 2008.

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Chairman SENSENBRENNER. I yield to the gentleman from Virginia, Mr. Goodlatte, the Chairman of the Committee on Agriculture, for an opening statement.

Mr. GOODLATTE. Mr. Chairman, I thank you very much. I thank you for taking up this important legislation. It is very appropriate that we consider H.R. 1904, the bipartisan legislation entitled the Healthy Forest Restoration Act of 2003, as we are about to face another season with higher than average risk of wildfire in many parts of the country.

The legislation before the Committee today is a carefully crafted compromise that has cleared two other Committees. The Healthy Forest Restoration Act is intended to save and protect our forests from destruction, not the opposite, as some are falsely characterizing it.

H.R. 1904 will allow the sustainable management of forests for generations to come by giving Federal, State, and private land managers the flexibility and tools needed to ensure healthy, sustainable forests. It will do a lot more than just protect the health of our forests and ecosystems. It will also provide an economic stimulus for the communities so dependent on forestland. This bipartisan legislation balances efforts to restore, protect, and enhance forests, with efforts to promote economic and entrepreneurial opportunities in communities.

The risks associated with doing nothing are too dangerous. Our forests, communities, and citizens deserve better. Today we have the opportunity to make a true difference in the health of our forests, particularly our communities in and around forestland, something very beneficial for the public good that both sides of the aisle should rally around.

H.R. 1904 applies to and helps all regions of the United States, including public and private lands. It protects forestland, it protects wildlife, it protects watersheds, it protects human life, and will positively impact rural communities, businesses, and schools.

The President has made this a high priority. He addressed it during his State of the Union address. For these reasons, I strongly encourage Members to support the underlying legislation and to oppose all amendments.

Thank you, Mr. Chairman.

Mr. CANNON. Would the gentleman yield?

Mr. GOODLATTE. I would be happy to yield.

Mr. CANNON. Thank you, Mr. Goodlatte.

Let me just point out, as the Chairman of the Western Caucus, this is an issue of vital importance to America. We have 70 or 75 million acres that are ready to go up. The early assessments of fire vulnerability this year were low as of a few months ago, but at least in my State and also I believe in Idaho and several other States, we have had quite a wet spring. That has meant that we filled in a couple of these steps on the fire ladder so that if we get any kind of fires this year, they can be more devastating than last year. And the last year was the most devastating fire year in our recent history.

This bill is vital that we move it quickly and not amend it. I think it is very, very important. Thank you. I yield back.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. Chairman, having represented Utah for more than three terms and serving now as Chairman of the Western Caucus in the House, I am particularly attuned to the problems faced by my state and other Western states with respect to catastrophic wildfires. I want to thank the Chairman for his attention to, and prompt action, on this important legislation.

Mr. Chairman, for the people of Utah the threat of forest conflagrations is not a mere hypothetical possibility but rather a daily reality. More than 75 per cent of our state is, in fact, federal land . . . much of it forested and all of it subjected to the seasonal exigencies that make it particularly susceptible to the kind of catastrophic wildfires that we witnessed last year.

Given the fact that man and nature must share this volatile landscape, intelligent management is an absolute necessity to preserve a beneficial environment for both. Inattention to the buildup of hazardous fuels in that environment represents a monumental danger that can lead to the destruction of entire communities and, in some cases, the loss of forests and watersheds from which it may take a century or more to recover. Intelligent management also requires that the agencies entrusted with the responsibility to oversee forested environments be given the power to act expeditiously to address building dangers.

H.R. 1904 provides the tools and a proper administrative framework for federal land managers to deal with wildfire dangers. Public participation in hazardous fuel reduction projects is encouraged and administrative and judicial review is accelerated in recognition of the inherent danger to public safety.

One of the principal responsibilities of the Congress is to provide for public protection and resource conservation. Mr. Chairman, H.R. 1904 does just that at a time when recent events have so dramatically underscored the dangers to which our Western environment particularly is subject.

I thank you, and commend you again, for your expeditious consideration of this legislation and urge its support.

Mr. GOODLATTE. Yield to the gentleman from Arizona.

Mr. FLAKE. I just thank the gentleman for bringing this forward quickly. We in Arizona lost a half million acres last year; we stand to lose a lot more this year unless we do something, and in years to come. So this is important. It has been, as mentioned, a carefully crafted compromise. We worked it through the Resources Committee last week, and hope that we can speedily push it on from here. Thank you.

Mr. GOODLATTE. Mr. Chairman, I thank you. And I yield back.

Chairman SENSENBRENNER. Who on the minority side wishes to give an opening statement? The gentlewoman from Wisconsin, you have an opening statement? Well, if there is none, then, without objection, all Members may insert opening statements into the record at this point.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I first would like to commend the Chairman for exercising the Committee's jurisdiction on this legislation. When introduced on May 1, the bill was referred only to the Agriculture and Resources Committees. This was despite the fact that it contained provisions governing the judicial review of cabinet department decisions, which would be in the jurisdiction of the Judiciary Committee. Just last week, after a series of letters from myself and from the Chairman, the bill was referred to this Committee, as well.

Having said that, I have serious concerns with the provisions that are in our jurisdiction, provisions that are unprecedented in federal law and strip our judiciary of their independence. The bill imposes strict timelines on when decisions by the executive branch can be challenged and on when the court must act on such challenges. For example, a local community would have only fifteen days, including weekends, to challenge an Interior Department decision allowing controlled burns. A community would have to learn of the decision, review it, and agree to challenge it, and file the lawsuit all in that time period. Finally, the bill requires courts to

notify congressional committees of decisions to extend injunctions that have been imposed on the government.

While the independence of the judiciary is the prize of our democracy, restrictions such as these essentially convert the judicial branch into an arm of the executive. Alexander Hamilton said that the "independent spirit in the judges" enables them to stand against the "ill humors of passing political majorities;" legislation such as this demonstrates that today's passing political majority wants to use its ill humors to gut review of the Administration's environmental actions.

I hope these provisions can be removed from the bill before it is reported out of the Committee.

Chairman SENSENBRENNER. Only sections 104 through 108 inclusive are within the jurisdiction of the Judiciary Committee. And the Chair will only entertain amendments to those sections. Are there any amendments?

Ms. BALDWIN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1904, offered by Ms. Baldwin.

[The amendment follows:]

AMENDMENT TO H.R. 1904

OFFERED BY MS. BALDWIN

Strike sections 104, 105, 106, and 107.

Chairman SENSENBRENNER. Point of order is reserved.

The CLERK. Strike sections 104, 105, 106, and 107.

Chairman SENSENBRENNER. Does the gentleman persist in his point of order?

Mr. GOODLATTE. No, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman withdraws his reservation. The gentlewoman from Wisconsin is recognized for 5 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman.

While the bill's intent to reduce forest fires is laudable, I believe that this is the wrong approach. It contains provisions that are not only unnecessary but also unwise and unprecedented. Section 104 of this bill would effectively scrap the National Environmental Policy Act, or NEPA, which was landmark legislation. NEPA is the American public's guarantee of informed participation in Federal Government decisions that have an impact on public lands. NEPA operates not by requiring agencies adopt a particular course of action, but helps them combat tunnel vision by making them consider alternative approaches that could cause less environmental harm or produce greater environmental benefits.

I understand that there is a need to act quickly in some high-priority fuel reduction projects, but section 104 simply goes too far by allowing the Forest Service to conduct large-scale logging projects in areas of little risk without considering other options.

Section 105 also gives the Forest Service a blank check in designing an appeals process. Conceivably, the agency could give citizens only a few days to participate in the appeals process, impose sub-

stantial filing fees, or allow projects to proceed before completion of the process. This section creates a completely undefined process. The American public deserves to know how their voice will be heard when it comes to projects that may be in their own communities.

Sections 106 and 107 seek to restrict a core principle of our democracy, the right of Americans to seek redress in court for grievances involving the Federal Government. Section 106 attempts to limit the amount of time the public has to file a legal challenge to a mere 15 days, and this time limit which counts weekend days and holidays, is not long enough for the public to grasp how projects will affect the land they live on, the water they drink, and the air they breathe. This 15-day deadline could also create a perverse incentive to file a lawsuit against projects, since failing to do so closes the courthouse door thereafter.

Section 106 also attempts to place limitations on the time judges have to review cases and mandates they inform congressional Committees whenever they extend jurisdictions beyond 45 days. These new provisions should not be overlooked by those who say our court system is already overworked and overburdened.

And, finally, section 107 seeks a change in American legal standards by requiring courts give deference to agency findings regarding the balance of harms in deciding whether to enter a temporary restraining order, preliminary injunction, or permanent injunction in any court challenge. The standard is unprecedented in any prior law and seems designed to allow Federal agencies to determine if its actions are in the public interest and, in effect, have the determination to be presumed valid in court.

Based on my background of the Constitution's separation-of-powers doctrine, this may well intrude upon the equitable powers of the judiciary. It is my understanding that the bill sponsor, Mr. McInnis, has agreed to modify this language to direct Federal judges to give only special weight to agency claims instead of deference. This would still be unacceptable. Judges should not be prohibited from exercising their own judgments in matters that affect the public health and our natural resources.

So I urge my colleagues to accept this amendment to strike sections 104 through 107 from this bill, and yield back.

Mr. GOODLATTE. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. GOODLATTE. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. I thank the Chairman, And I speak in strong opposition to this amendment. The provisions that the gentlewoman would strike are absolutely critically important to this legislation. As the gentleman from Utah noted, we are heading into the fire season. And one of the things that needs to be done is to make sure that sensitive areas in our forests are properly treated, thinned and other things done, to make sure that we have natural fires that occur on the ground and not these catastrophic wildfires that you have seen on the news for the last few years that consume entire forests and thousands of acres.

While the difference between the one and the other is the ability to proceed administratively in a reasonable and timely fashion, this legislation creates a reasonable process under which the Forest Service can go forward with public comment, with administrative appeal, with the right to bring the action into court, but in a more timely fashion. It does some very commonsense things, like requiring that an individual who objects to a forest plan—and believe me, there are individuals who object to any kind of ground-disturbing activity of any kind by the Forest Service—they can file an appeal and not raise the key issues in the process until late in the process when it goes to court. That is not the normal judicial legal procedure, where, if you are engaged in a trial, you have to put all your evidence and all your law on the table in the trial; and, if you want to appeal it, you have to appeal based upon the record of the trial. Right now, in a Forest Service appeal, you don't need to do that. You can wait until you get to court to raise de novo issues, brand-new issues in what is effectively the appellate process.

What this has done is turned the management of our forests away from the forest professionals and toward the management of the forests by our courts, a very, very bad thing; has caused tremendous problems, particularly in the West but it has spread to include errant judicial decisions in other parts of the country as well. Let's present to the courts a judicial foundation, a record on which they can make their decision.

In addition, what this does is it makes the process more compact. And that is important, because if you are trying to get in to deal with a disease or insect infestation, a particularly severe problem in the eastern and southern United States, by the time you have been through the current process—and, by the way, this does not eliminate NEPA by any means. But by the time you get through current process, it is too late.

This bill only applies to 250,000 acres out of the hundreds of millions of acres owned by the Forest Service with regard to the insect and disease infestation issue. And with regard to fighting forest fires, it only applies to 20 million of those hundreds of millions of acres. So, in effect, it is a good way to get at the most severe places, and also a good way to show that this is a better process than the one that we have been using in the past that can grind on for years, leaving these forests untended and continuing to allow these catastrophic wildfires.

So I urge my colleagues to oppose this amendment.

Mr. CANNON. Would the gentleman yield?

Mr. GOODLATTE. I would be happy to yield.

Mr. CANNON. Thank you. I may ask for my own time later on, but let me just point out that what we are doing in this bill is quite limited and very thoughtful. This is not like the elimination of judicial review that happened as to the Black Forest in legislation that was inserted last year in appropriations language that actually totally denied the NEPA process. Many of us think that something like that would be appropriate because of the magnitude of the problem that we are faced with right now. But what we are doing here is actually maintaining a process and maintaining much of what we have learned that is good in the NEPA and other bills. But the limitations are significant in that it allows the Federal

Government to do something this year while we have a crisis, and hopefully prevent that, and get back to a different kind of process.

But the key thing here is that we are not doing a draconian thing like prohibiting judicial review of these kinds of decisions. That has happened, there is precedent for that, there is good reason for that, and we may need to come back and take a look at that kind of approach. Thank you.

Mr. GOODLATTE. I yield back, Mr. Chairman.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Can I just ask Mr. Goodlatte a question about the language on page 17, lines 6 through 14; if he might be able to tell me what that means and why we would be putting such a provision as that into statute?

Mr. GOODLATTE. Well, as I mentioned in my remarks just a few minutes ago, one of the purposes of this legislation is to make sure that because of the emergency nature of treating these acres, the acres most subject to catastrophic wildfire, if you can't get to them quickly, then the wildfires occur, the devastation occurs, and the legislation doesn't do any good. So this is simply a directive to our courts to expeditiously handle the appeals process.

Mr. WATT. I think I could understand a directive, but I don't read this to be a directive. It says Congress intends and encourages any court in which is filed a lawsuit or appeal to do certain things and to dispose of it timely, within 100 days. But I don't see any directive there. And I guess the question I am raising is whether we are just leaving—I mean, without a directive or something—without a directive, if a directive is appropriate, it just seems to me that we are leaving pretty much the state of law as it is. And I don't know, I don't think I have seen a statute that encourages the courts to do something. I mean, if we think it is so important, why wouldn't we direct it?

Mr. GOODLATTE. Would the gentleman yield?

Mr. WATT. I yield, yeah.

Mr. GOODLATTE. I thank the gentleman for yielding. The gentleman is quite correct that this is different than a number of other provisions in the bill that do direct the courts to a different process. This one gives the courts some more flexibility. There might be some circumstances in which they might need to exceed the 100 days. Therefore, without trying to tie them too closely and trying to define a circumstance that in some instances might be unworkable, we strongly encourage them to get these done within 100 days. But we do not require it.

Mr. WATT. Well, just reclaiming my time. I guess I am ambivalent about this. I mean, obviously every lawsuit that gets into court, you would like for the court to expedite it. And there are some cases where we direct the courts to expedite. But I confess, I have not seen a provision quite like this one that says we would like for you to do it but we are not going to direct you to do it, which basically says nothing.

Mr. GOODLATTE. Would the gentleman yield further on that point?

Mr. WATT. Yes. I would be happy to yield.

Mr. GOODLATTE. If the gentleman would turn his attention to the preceding page, page 16.

Mr. WATT. You mean you did it again and I missed it?

Mr. GOODLATTE. No, no. Not at all. And I think this will help clarify the situation. Section 106(b)(1) makes a 45-day action on injunctions a requirement. The court must act within that time. The reason is that, with an injunction, that is a complete holdup on taking any action on treating the land.

Mr. WATT. And I take it that provision is contrary to other provisions in the law related to injunctions?

Mr. GOODLATTE. That provision is a specific directive.

Mr. WATT. But it is different than other general injunctive law in terms of its time frames.

Mr. GOODLATTE. I am sure there are different provisions in other sections of the law. This is 45 days to get at the issue of whether one can proceed. The court has 45 days to make that determination. We would like to get to the underlying final decision expeditiously as well, but that is not as critical. Therefore, we ask them to do it in 100 days but we don't require it. The 45 days, the initial finding on whether action is emergent in nature and therefore needs to take place expeditiously, that is mandated in this bill.

Mr. WATT. Can I ask one other question? Has there been any hearings about this part of the bill that is under the Judiciary Committee's jurisdiction?

Mr. GOODLATTE. There have been numerous hearings on this legislation in both the Resources Committee and in the Agriculture Committee.

Mr. WATT. I want to know whether there have been any hearings on the part of the bill that is under the jurisdiction of the Judiciary Committee.

Chairman SENSENBRENNER. Will the gentleman from North Carolina yield?

Mr. WATT. Yes, I will yield.

Chairman SENSENBRENNER. We got this bill last Friday when the other Committee filed its report. The sequential that was given to us by the Speaker expires on Friday of this week. There really hasn't been time for a hearing. And if we don't do a markup, then we lose jurisdiction and the bill goes out on the floor. The gentleman's time has expired.

Mr. WATT. Can I ask unanimous consent for just 30 additional seconds?

Chairman SENSENBRENNER. Without objection.

Mr. WATT. And I think the problem I am having here, Mr. Chairman, is the tail seems to be wagging the dog here. Whenever we get a directive from the Speaker to do something that is inconsistent with our responsibilities as Members of this Committee, it just seems we go running around and doing things that have not been well thought out.

Chairman SENSENBRENNER. If the gentleman will yield. The Chair fought to get a sequential to this Committee. The Speaker and the other Committees did not want this Committee to have a sequential at all.

Mr. WATT. And, Mr. Chairman, I have——

Chairman SENSENBRENNER. I got us a week, and we are doing what we can in the time that is available.

Mr. WATT. I am not blaming the Chair, Mr. Chairman. I am sure you did whatever you could, but all you did was get us time to go through an irrational process that legitimizes irrationality. And we don't have any idea whether these timetables are consistent with what is reasonable under the law. And without some kind of hearings to hear the arguments on both sides or another, I honestly don't know whether I side with Ms. Baldwin or Mr. Goodlatte.

Chairman SENSENBRENNER. Well, if the gentleman will yield further. If we delay, as of Friday this bill floats away from us and goes out on the floor. You know, that is what the rules are. The gentleman's time has expired again.

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I support the amendment, and I would like to go beyond the issues raised by my colleague from North Carolina, which is into the structure of the bill that is not specifically before us but that does relate to us, because it relates to the type of judicial review. You know, we learned that Smoky the Bear actually didn't do America any favors because we built up a tremendous amount of dead wood in America's forests. I have forests near my district, and we all are aware that this is an issue that needs to be dealt with. But all of the good science indicates that the way to address that is to remove the undergrowth and the small trees in a plan that should be vigorously funded and accomplished, and not to go after the older trees; and that older trees that rot should be allowed to rot into the forest for the health of the forest.

And, unfortunately, if you take a look at the other parts of the bill—you know, why didn't I think of that? We are against forest fires, so let us cut down all the trees. I mean, what a solution. That is basically what the Interior Department is prepared to do. I think it is very clear that they are in the pocket of the logging companies. And the only—the way this is crafted, the only protection that Americans are going to get from the logging companies that have captured the Administration and the Interior Department is in the judiciary. And what this part of the bill does is eliminate even that protection for the American people and the forests for the future of this country.

So I think this is pretty outrageous. I hope that all Members will vote no. And I would yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentlelady for yielding.

The point I want to make is much, much narrower than the one she is making. I would agree that maybe other Committees ought to be the Committees that make these decisions about how you control forest fires and the public policy considerations. But when it comes to our Committee—and then they say let us prostitute the courts to achieve whatever our objectives are or prostitute the process to achieve whatever our objectives are—then I think it is our Committee's responsibility to look at whether the process is rational, the timing is rational. And I don't think we can do that in good faith to the American people and say that we as the Judiciary

Committee have done our job appropriately, regardless of how we come out on those issues, without having the time to do it.

And so I think we end up appearing that we are just engaging in a charade that—and that is not an indictment of the Chairman—the Chairman probably got what he could—but it is an indictment of the way we are running this place around here that says that whatever the bottom line the leadership decides is important is more important than the democratic and legislative process under which we are operating.

And I yield back. And for that reason, I am going to vote for Ms. Baldwin's amendment just because I don't think that—she takes these provisions out, and it seems to me that that is a better alternative than going through a charade of a process to change the process by which the court considers all of these things.

I will yield back to the gentlewoman.

Ms. LOFGREN. I thank the gentleman. I would just note that—and I do appreciate the Chairman's fight for our jurisdiction. I think all Members appreciate the fact that he has been aggressive in protecting our jurisdiction. But when you look at the scope of the review in addition to now the constraint of time, this is just a carte blanche to logging companies to wipe out forests. And I hope that Members will vote no.

And I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. I rise to strike the last.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. This is troublesome legislation. I commend the Chairman for fully exercising the Chair's ability for us to even be considered in this log-rolling process.

Now, so what are we to do this Monday morning? And that is the question. And the question is that if we don't act now, what little license we have been granted will be removed. And so with all due respect, Mr. Chairman, I would like to recommend that we both hold hearings and have a markup all between now and Thursday afternoon when we depart from this place. It may crowd our schedules, but that is what the majority leader has foisted on us.

Mr. WATT. Would the gentleman yield just for a question?

Mr. CONYERS. Of course.

Mr. WATT. Would just as acceptable an alternative not be to accept Ms. Baldwin's amendment and consider those parts of the bill separately in a time frame that we could act on? If the bill doesn't have the provisions in the bill, then they are not going to go to the floor for consideration. So it seems to me that that would be an alternative, too, although I am not—I am just thinking as we go along here.

Mr. CONYERS. No, I appreciate that, Mr. Watt, and I think that is perfectly acceptable. What we have to do to give additional support to the Chair of Judiciary is that they can't keep running this crap on us. You know, once we do this, what will it be next week or whenever?

So all I am suggesting is that somehow we craft a way—what I am proposing, that the Chair—and if we need a few minutes on this, I would be happy to accede to a recess. But between my pro-

posal and the gentleman from North Carolina's proposal, at least we will retain as much integrity for the Committee as is possible under this circumstance. I have no reason not to want to accept the Baldwin amendment, but of course that is giving people about as much notice as the leadership gave us.

So, what do you think, Mr. Chairman? I yield to you.

Chairman SENSENBRENNER. Sensenbrenner's law says this: When one puts snout in trough too far, one runs the risk of getting head chopped off.

My fear is—first of all, it is a given that there will be no extensions given on this sequential referral. I think that we are doing what we can in the time that we have available to us, and everybody will have a chance to put their views into a Committee report and that will be available to the Members when the bill comes to the floor next week.

Also, the Rules Committee, I am sure, will entertain amendments to make either the Baldwin amendment or something similar to that in order when the bill comes up.

Mr. CONYERS. Unfortunately, my experience with the Rules Committee runs exactly counter to that proposal. But maybe you know something that I don't.

Now, back to the Conyers proposal, which is this: Is that we hold hearings tomorrow; that we hold a markup either later that day, and we—and then we report the bill. I don't see why we can't do that. But to do this without a single witness—and, by the way, I have counted the makeup of the Committee. So, I mean, this is almost like a double whammy. I mean, first the leadership does it to us, and then in a Committee that is made up of 21/16, we act like we are trying, really trying to figure out how this is going to work out, when most of the votes in this Committee normally run in a very partisan——

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I want the record to be clear that this Member, and I assume a lot of others, want to express our appreciation for you fighting for the little bit of jurisdiction that we got. But as the gentleman from Michigan indicated, it is very difficult under these constraints to do the kind of work that we need to do. So I would hope that we adopt the suggestion from the gentleman from Michigan, and I yield to him for any comments that he might have.

Mr. CONYERS. Thank you, Mr. Scott.

Well, this bill was introduced on May 1, referred to the Agriculture Committee, despite the fact that it contained provisions governing the judicial review of Cabinet department decisions, which are within the jurisdiction of the Committee on Judiciary. Last week, after communications back and forth from the Chairman and myself, the bill was referred to this Committee as well.

Now, there are serious concerns with the provisions that are in our jurisdiction, provisions unprecedented in law, and that in effect strip the judiciary of its independence by imposing time lines on

decisions by the executive branch which can be challenged when the court must act on such challenges.

An example: A local community has 15 days, including weekends, to challenge an Interior Department decision allowing controlled burns. They may not be able to even get into court in that short length of time, much less be prepared. A community would have to learn of these decisions, review it, agree to challenge it, get a lawyer, file a lawsuit, all within that time period.

Now, this should insult the integrity of every lawyer on this Committee and everyone that is not a lawyer. And then it requires courts to notify the congressional Committees of decisions to extend injunctions that have been imposed on the Government.

Mr. CANNON. Would the gentleman yield?

Mr. CONYERS. Of course.

Mr. CANNON. I thank my friend. Two points that are, I think, important. In the first place, let me just remind the gentleman that we have a crisis coming. We are now——

Mr. CONYERS. Which crisis?

Mr. CANNON. We have a particular fire crisis coming, and we also have a concern about the probity of what we do in this Committee. But we have, and now in Utah, grass that is a couple feet high. We are in the middle of May.

Mr. CONYERS. But are you saying that that means that we can't hold a hearing?

Mr. CANNON. It is——

Mr. CONYERS. Between today and tomorrow? If it is so urgent, my friend, if it is so urgent, why don't we all adjust our schedules accordingly? I mean, what are you talking about? It is urgent, but yet we shouldn't have a hearing.

Mr. CANNON. My point, sir, is that the bill needs to move. And the second part——

Mr. CONYERS. And that is my point, too. Wait a minute. I am for the bill moving. I am not trying to delay the bill. I am talking about today and tomorrow. What are you doing? It is your State. It is your fire disaster. Don't you think the rest of your colleagues ought to have a hearing and listen to somebody tell us about this? You don't. And I retake my time. That is it. Thank you.

I also have a statement in support of the Baldwin amendment that I would like to introduce into the record.

Chairman SENSENBRENNER. Without objection.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I support this amendment, which strikes out the provisions of the bill that, with one hand, give the executive branch unchecked administrative power and, with the other, take away the rights of citizens and the independence of our judiciary.

Sections 104 and 105 of the bill give the executive branch virtually unchecked authority to establish administrative review and appeals procedures. For example, section 105 gives the Agriculture Secretary a blank check for streamlining the process for administrative appeals of agency determinations. The Secretary would not even be required to read any comments that might be filed with the Department.

Sections 106 and 107 intrude on the rights of litigants and the courts by imposing rigid deadlines for filing court challenges to and ruling upon agency decisions. Section 106 says any lawsuit to challenge a decision by an agency must be filed within 15 days of the issuance of that decision. If the government issues a rule allowing a controlled burn of trees, a local community near that area would have 15 days,

including weekends and holidays, to hear of the decision, review it, and file a lawsuit challenging it.

Moreover, these provisions could have ramifications far beyond this bill. First, to comply with the rigid deadlines of the legislation, courts would have to put on hold any cases dealing with civil rights, workers' rights, civil liberties, etc. Second, such egregious and anti-plaintiff proposals set a dangerous precedent for giving undue deference to agency decisions on civil rights matters.

I urge my colleagues to support this amendment.

Mr. CONYERS. And I return my time.

Chairman SENSENBRENNER. The question is on the Baldwin amendment. Those in favor will say aye.

Mr. CONYERS. Record vote.

Chairman SENSENBRENNER. Opposed, vote no.

The noes appear to have it.

Ms. BALDWIN. rollcall.

Chairman SENSENBRENNER. rollcall will be ordered.

Those in favor of the amendment by the gentlewoman from Wisconsin will, as your names are called, answer aye.

Those opposed, no.

And the clerk will call the roll.

The CLERK. Mr. Hyde.

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

[No response.]

The CLERK. Mr. Gallegly.

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no.

Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Mr. Green.

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Ms. Hart.

Ms. HART. No.

The CLERK. Ms. Hart, no.
Mr. Flake.
[No response.]
The CLERK. Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes.
[No response.]
The CLERK. Mr. King.
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Carter.
Mr. CARTER. No.
The CLERK. Mr. Carter, no.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mrs. Blackburn.
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee.
[No response.]
The CLERK. Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.

Mr. Schiff.
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez.
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye.
Mr. Chairman.
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish to cast or change their votes? The gentleman from New York, Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 12 ayes and 17 noes.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments? If there are no further amendments, a reporting quorum is present.
The question occurs on the motion to report the bill, H.R. 1904, favorably.
Those in favor will say aye.
Opposed, no.
The ayes appear to have it.
Mr. CONYERS. Record vote.
Chairman SENSENBRENNER. A rollcall will be ordered.
Those in favor of reporting H.R. 1904 favorably will, as your names are called, answer aye.
Those opposed, no.
And the clerk will call the roll.
The CLERK. Mr. Hyde.
[No response.]
The CLERK. Mr. Coble.
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye.
Mr. Smith.
[No response.]
The CLERK. Mr. Gallegly.
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye.
Mr. Goodlatte.
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye.
Mr. Chabot.
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Mr. Jenkins.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.
Mr. Cannon.
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.

Mr. Bachus.
[No response.]
The CLERK. Mr. Hostettler.
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller.
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Ms. Hart.
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake.
[No response.]
The CLERK. Mr. Pence.
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye.
Mr. Forbes.
[No response.]
The CLERK. Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Carter.
Mr. CARTER. Aye.
The CLERK. Mr. Carter, aye.
Mr. Feeney.
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye.
Mrs. Blackburn.
Mrs. BLACKBURN. Aye.
The CLERK. Mrs. Blackburn, aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.

Ms. Waters.
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no.
Mr. Delahunt.
[No response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no.
Ms. Baldwin.
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner.
Mr. WEINER. No.
The CLERK. Mr. Weiner, no.
Mr. Schiff.
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Ms. Sánchez.
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no.
Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Additional Members who wish to cast or change their vote? The gentleman from Texas, Mr. Smith.

Mr. SMITH. Vote aye.
The CLERK. Mr. Smith, aye.

Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 18 ayes and 13 nays.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by House rules, in which to submit dissenting supplemental or minority views.

DISSENTING VIEWS

We support initiatives to protect our communities from the threat of wildfires. We dissent from H.R. 1904, the "Healthy Forests Restoration Act of 2003," because that is not what this legislation would do. The bill, in the guise of limiting an alleged boom in dilatory challenges of government measures to reduce wildfire threats,[1] instead gives the executive branch unfettered administrative discretion to implement land management decisions, deters administrative and Federal court reviews of such actions, harms plaintiffs' rights, and intrudes on the independence of our courts.[2]

Such provisions are even more egregious considering that the General Accounting Office has found few, if any, delays in the implementation of projects to reduce wildfire threats.[3] As stated earlier, the alleged existence of such delays was the rationale for these provisions. It is for these reasons that H.R. 1904 is opposed by numerous organizations concerned with:

(1) the enforcement of our environmental laws (including the Natural Resources Defense Council (NRDC), The Wilderness Society, Friends of the Earth, the Endangered Species Coalition, the National Audobon Society, the World Wildlife Fund (WWF), American Lands Alliance, Defenders of Wildlife, EarthJustice, the Center for Biological Diversity, the National Environmental Trust, the Sierra Club, the National Forest Protection Alliance, and the U.S. Public Interest Research Group).[4]

(2) the fair administration of justice and the enforcement of our civil rights laws (including ADA Watch/National Coalition for Disability Rights, Alliance for Justice, Americans for Democratic Action, the Bazelon Center for Mental Health Law, the Mexican American Legal Defense and Educational Fund (MALDEF), the National Association for the Advancement of Colored People (NAACP), National Alliance of Postal and Federal Employees, the National Organization for Women (NOW), People for the American Way,

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[1] The White House, Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities (Aug. 22, 2002). Available at: http://www.whitehouse.gov/infocus/healthyforests/Healthy—Forests—v2.pdf.

[2] *See* H.R. 1904, §§ 104–107. At the full Committee markup on the bill, Rep. Tammy Baldwin (D-WI) offered an amendment that would have struck the objectionable sections, but the Majority unfortunately rejected it. *See* MARKUP OF H.R. 1904, HOUSE COMM. ON THE JUDICIARY, 108th Cong., 2d Sess. (May 14, 2003) [hereinafter H.R. 1904 Markup].

[3] *See, e.g., Few Wildfire Project Delays, GAO Finds,* WASH. POST, May 15, 2003, at A27 ("The conclusion [of the General Accounting Office report] runs counter to the case the Bush administration and Republicans in Congress have made for scaling back studies and appeals.").

[4] Letter from Natural Resources Defense Council *et al.*, to U.S. Representatives (May 8, 2003) [hereinafter *NRDC Letter*].

Planned Parenthood Federation of America, and the Religious Coalition for Reproductive Choice);[5] and

A. THE LEGISLATION WOULD GIVE UNCHECKED ADMINISTRATIVE AUTHORITY TO THE EXECUTIVE BRANCH

A primary concern with H.R. 1904 is that it proposes to give the executive branch virtually unchecked authority to implement decisions and to consider administrative appeals of such decisions. For instance, the bill empowers the relevant cabinet department by stating it would no longer be required to consider any alternatives to an original proposal when issuing forest-related decisions.[6] The heart of the environmental analysis process is for the agency to consider alternatives to its plans so that the best plan can be chosen;[7] this bill essentially turns that concept on its head and says that an agency's first idea is the best idea.

The legislation goes further and gives agencies additional power in quashing administrative appeals of their decisions. Current law, in the form of the Appeals Reform Act, imposes strict requirements on the process for administrative appeals of U.S. Forest Service decisions, such as letting public participants submit written or oral comments, requiring Forest Service employees to offer to meet with any individual who files an appeal, and the triggering of an automatic 45-day stay of Forest Service decisions.[8] The bill explicitly vitiates these protections, such that the Forest Service would be empowered not only to dismiss certain public comments and the individuals who submit them but also to proceed with its plans immediately.[9]

B. THE LEGISLATION WOULD HARM PLAINTIFFS' RIGHTS AND TIE THE HANDS OF THE COURTS

In addition, the legislation would restrict the rights of all Federal court plaintiffs and subject Federal courts to rigid deadlines. The bill's requirement that any actions filed against the United States to challenge hazardous fuels reduction projects be filed within fifteen days (including weekends and holidays) of the final notice of such projects would make it impossible to seek redress for improper or illegal agency decisions.[10] Moreover, the bill expressly provides that neither the government nor a court could waive the filing deadline under any circumstance.[11] As a result, if the government issues a decision authorizing an entity to conduct a controlled burn or cut timber in a certain wooded area, a community living near that wooded area would have fifteen days to learn of the decision, determine what it does, determine whether it affects the community's residents, decide whether to file a legal action, retain an attorney, prepare the legal documents, and file the action against the

[5] Letter from ADA Watch *et al.*, to U.S. Representatives (May 13, 2003) [hereinafter *ADA Watch Letter*].
[6] H.R. 1904, § 104(b).
[7] *NRDC Letter. See also* Letter from Lois Schiffer, Adjunct Prof. of Environmental Law, Georgetown University Law Center, *et al.*, to the Honorable James Hansen, Chairman, House Comm. on Resources, & the Honorable Scott McInnis, Chairman, House Subcomm. on Forests & Forest Health (Oct. 7, 2002) (analyzing similar provision in earlier, yet similar, legislation).
[8] 16 U.S.C. 1612 note.
[9] *See* H.R. 1904, § 105(c).
[10] H.R. 1904, § 106(a).
[11] *Id.*

entity that is exercising the decision. The fifteen-day deadline would apply regardless of weekends, holidays, or even in the event the residents of the community were evacuated from their homes because of some emergency.

Moreover, the fifteen-day limitation would apply to every other Federal law. More specifically, it would supercede any other provision in any law that pertains to notices of intent to file suit or to filing deadlines.[12] For example, at least sixty days before filing a citizen suit against an entity for non-compliance with the Clean Water Act, notice must be given to the government and the potential defendant.[13] Under this bill, if a community determined that a hazardous fuels reduction project violated the Clean Water Act, it would have only fifteen days to file suit instead of the minimum sixty days it has under current law.

The bill also seeks to impose unprecedented deadlines that would tie the hands of the courts and relegate unrelated, yet important, cases to the bottom of the pile. In suggesting that courts issue rulings on lawsuits and appeals on cases arising under the bill within 100 days of the initial filing date, section 106(c) virtually holds courts hostage to agency timing. Such a deadline also would place hazardous fuels reduction project lawsuits above all other Federal cases on the dockets, as the reduction project lawsuits would be considered first. This means that all other Federal cases, including those pertaining to terrorism, criminal violations, civil rights law, worker rights, and employment discrimination, would be delayed in favor of cases arising under this legislation.[14] It is not surprising, then, that the courts have noted that "individual actions within a category of cases inevitably have different needs of priority treatment, which are best determined on a case-by-case basis."[15]

Finally, the bill would politicize and threaten the independence of our judiciary. When reviewing decisions of Federal agencies, the courts would have to give unprecedented deference to the issuing agencies.[16] It has been noted that "this is an attempt to force courts to defer to agencies to allow projects to go forward even after the court has ruled that the agency actions are illegal."[17]

By making courts submit reports to congressional committees on decisions to extend injunctions,[18] the bill would subject the courts and even individual judges to the constant scrutiny of politicians and thus violate separation of power principles. Furthermore, while various Federal laws do require the courts to submit reports to Congress, there are two major distinctions between those laws and this bill: (1) currently, reports are filed on an annual, semi-annual, or other periodic basis and not on the basis of specific decisions;

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[12] *Id.*

[13] 33 U.S.C. § 1365(b). Such notice requirements also apply to citizen suits under the Safe Drinking Water Act (42 U.S.C. 300j-8(b)); the Clean Air Act (42 U.S.C. 7604(b)); the Resource Conservation and Recovery Act (42 U.S.C. 6972(b)); and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9659(d)).

[14] *See ADA Watch Letter.*

[15] *S. 220, the "Bankruptcy Reform Act," 2001: Hearings on S. 220 Before the Senate Comm. on the Judiciary,* 107th Cong., 1st Sess. (2001) (statement of the Honorable Edward R. Becker, Chief Judge of the U.S. Court of Appeals for the Third Circuit, on behalf of the Judicial Conference of the United States).

[16] *See ADA Watch Letter.*

[17] *NRDC Letter.*

[18] H.R. 1904, § 106(b).

and (2) currently, reports are filed by the administrative arm of the courts and not by individual judges.

C. THE LEGISLATION WAS NOT PROPERLY REVIEWED IN COMMITTEE

Finally, we note that the legislation did not receive a thorough review by the Committee on the Judiciary. Despite containing provisions regarding administrative and Federal court procedures, H.R. 1904 was referred initially only to the Committee on Agriculture and the Committee on Resources. We are pleased the Judiciary Committee not only sought and received a referral of the bill for those provisions within its jurisdiction but also held a markup before letting the bill proceed to the floor. Unfortunately, the Judiciary Committee held no hearings on these far-reaching provisions; in fact, the Majority objected to Democratic requests for a hearing on the same or next day, before the expiration of the referral, so that Members of Congress and of the public could understand the full impact of the proposed changes.[19]

In conclusion, proper administrative and judicial review of executive decisions and regulations are among the cornerstones of our system of government, which counts checks and balances as a basic tenet. This legislation attempts to eviserate these checks and balances to give cabinet and Federal agency officials virtually unchecked decisionmaking authority, seeks to subject plaintiffs and courts to rigid deadlines, and endeavors to place every Federal lawsuit except those pertaining to this legislation on the back burner. For these reasons, we respectfully dissent.

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[19] *See H.R. 1904 Markup.* Moreover, despite the Majority's assertions to the contrary, H.R. 1904 was not subject to hearings in either the Agriculture or Resources Committees.