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GOOD NEIGHBOR FORESTRY

SEPTEMBER 10, 2013.—Ordered to be printed

Mr. WYDEN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 327]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 327) to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements with State foresters authorizing State foresters to provide certain forest, rangeland, and watershed restoration and protection services, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Good Neighbor Forestry Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) AUTHORIZED RESTORATION SERVICES.—The term "authorized restoration services" means similar and complementary forest, rangeland, and watershed restoration services carried out—

(A) on Federal land and non-Federal land; and

(B) by either the Secretary or a Governor pursuant to a good neighbor agreement.

(2) FEDERAL LAND.—

(A) IN GENERAL.—The term "Federal land" means land in a State located in whole or in part west of the 100th meridian that is—

(i) National Forest System land; or

(ii) public land (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)).

(B) EXCLUSIONS.—The term "Federal land" does not include—

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

(ii) Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress or Presidential proclamation (including the applicable implementation plan); or

(iii) a wilderness study area.

(3) FOREST, RANGELAND, AND WATERSHED RESTORATION SERVICES.—

(A) IN GENERAL.—The term "forest, rangeland, and watershed restoration services" means—

(i) activities to treat insect- and disease-infected trees;

(ii) activities to reduce hazardous fuels; and

(iii) any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.

(B) EXCLUSIONS.—The term "forest, rangeland, and watershed restoration services" does not include—

(i) construction, reconstruction, repair, or restoration of roads or parking areas; or

(ii) construction, alteration, repair or replacement of public buildings or works.

(4) GOOD NEIGHBOR AGREEMENT.—The term "good neighbor agreement" means a cooperative agreement or contract (including a sole source contract) entered into between the Secretary and a Governor to carry out authorized restoration services under this Act.

(5) GOVERNOR.—The term "Governor" means the Governor or any other appropriate executive official of an affected State.

(6) ROAD.—The term "road" has the meaning given the term in section 212.1 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(7) SECRETARY.—The term "Secretary" means—

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

(B) the Secretary of the Interior, with respect to Bureau of Land Management land.

SEC. 3. GOOD NEIGHBOR AGREEMENTS.

(a) GOOD NEIGHBOR AGREEMENTS.—

(1) IN GENERAL.—The Secretary may enter into a good neighbor agreement with a Governor to coordinate the procurement and implementation of authorized restoration services in accordance with this section.

(2) PUBLIC AVAILABILITY.—The Secretary shall make each good neighbor agreement available to the public.

(b) TIMBER SALES.—

(1) IN GENERAL.—Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a(d) and (g)) shall not apply to services performed under a cooperative agreement or contract entered into under subsection (a).

(2) APPROVAL OF SILVICULTURE PRESCRIPTIONS AND MARKING GUIDES.—The Secretary shall provide or approve all silviculture prescriptions and marking guides to be applied on Federal land in all timber sale projects conducted under this Act.

(c) RETENTION OF NEPA RESPONSIBILITIES.—Any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any authorized restoration services to be provided under this Act on Federal land shall not be delegated to a Governor.

PURPOSE

The purpose of S. 327 is to authorize the Secretaries of Agriculture and the Interior to enter into cooperative agreements with State foresters authorizing State foresters to provide certain forest, rangeland, and watershed restoration and protection services on National Forests and public lands.

BACKGROUND AND NEED

In 1998, Forest Service and State Forestry officials in Colorado developed a proposal to improve coordination across federal, state, and private boundaries during hazardous fuels, insect and disease, and watershed restoration projects. As a result of those discussions, a rider was added to the Interior Appropriations bill for fiscal year 2001 that authorized a four-year pilot program. Under the program, "the Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the Colorado State Forest Service to perform watershed restoration

and protection services on National Forest System lands in the State of Colorado when similar and complementary watershed restoration and protection services are being performed by the State Forest Service on adjacent State or private lands." Public Law 106–291, § 331(a) (2000). The so-called "Good Neighbor" provision also authorized the State to carry out the work "with subcontracts utilizing State contract procedures," but required the Forest Service to retain the responsibility to comply with NEPA. In 2004, the authority was extended for an additional 5 years and was expanded to include the Bureau of Land Management and projects in the State of Utah. The authority in Utah also was expanded to no longer require complementary projects to be performed on adjacent land. Public Law 108–447, §§ 336–337 (2004).

Since 2000, the States of Colorado and Utah have used the authority to carry out approximately $1.4 million of work on 40 projects in Colorado and 15 in Utah on 2,800 acres of federal land (almost all Forest Service). In February of 2009, the Government Accountability Office (GAO) issued a report (GAO–09–277) on the use of the authority, its successes, and challenges. The GAO reported that Federal and State officials in Colorado and Utah believed that the authority increased project efficiency and effectiveness, and enhanced federal-state cooperation. The GAO also cited a number of concerns with the use of the authority and considerations that should be taken into account if the authority were to be extended or expanded.

The current authority for Good Neighbor pilot projects in Colorado and Utah expires on September 30, 2013. S. 327 would expand the authority across National Forest and BLM lands in the West and include a broader range of eligible projects.

LEGISLATIVE HISTORY

Senators Barrasso, Enzi, Hatch, Lee, Johnson of South Dakota, Thune, and Udall of Colorado introduced S. 327 on February 13, 2013. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 327 on April 25, 2013. At its business meeting on June 18, 2013, the Committee ordered the bill favorably reported with an amendment in the nature of a substitute.

In the 112th Congress, Senator Barrasso introduced identical legislation, S. 375. The Subcommittee on Public Lands and Forests held a hearing on S. 375 on May 25, 2011 (S. Hrg. 112–131). A similar bill, S. 1122, was introduced by Senator Barrasso in the 111th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 1122 on October 29, 2009 (S. Hrg. 111–223).

Similar "Good Neighbor" authority also was included as section 6 of S. 2798, a bill to reduce the risk of catastrophic wildfire through the facilitation of insect and disease infestation treatment of National Forest System and adjacent land, and for other purposes, introduced by Senators Udall of Colorado, Risch, and Crapo. The Committee reported S. 2798 on a voice vote with an amendment in the nature of a substitute on September 27, 2010 (S. Rept. 111–313). No further action was taken in the Senate on either S. 1122 or S. 2798.

COMMITTEE AMENDMENT

The amendment in the nature of a substitute makes three major changes in the bill. First, the substitute excludes wilderness areas,

wilderness study areas, and areas where the removal of vegetation is prohibited or restricted by an Act of Congress or Presidential proclamation from the definition of "federal land" on which authorized restoration services can be performed under the bill. Second, the substitute excludes construction, reconstruction, repair, or restoration of roads or parking areas, and the construction, alteration, repair, or replacement of public buildings or works from the definition of "forest, rangeland, and watershed restoration services" eligible for Good Neighbor agreements. Third, the substitute requires the Secretary to provide or approve all silviculture prescriptions and marking guides in all timber sales conducted on Federal land under the Act. The amendment is explained in detail in the section-by-section analysis, below.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 18, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 327, if amended as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, "Good Neighbor Forestry Act".

Section 2 defines key terms used in the Act.

Section 3 authorizes the Secretary of Agriculture to enter into good neighbor agreements with a Governor to carry out authorized restoration services.

Subsection (b) exempts timber sales made under a cooperative agreement between the Secretary and a Governor from subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a(d) and (g)).

Paragraph (2) directs the Secretary to approve all silviculture prescriptions and marking guides in all timber sale projects conducted under good neighbor agreements on Federal land.

Subsection (c) retains the Federal government's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

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S. 327 would authorize the Department of the Interior and the Forest Service to enter into cooperative agreements or contracts with state foresters in western states to provide forest, rangeland, and watershed restoration and protection services on lands administered by those agencies. Based on information provided by the affected agencies, CBO estimates that implementing the legislation would have no impact on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, the affected agencies have the authority to enter into contracts with private companies to carry out various activities to conserve federal lands. S. 327 would allow those agencies to contract with state foresters to accomplish similar work in areas where state and federal lands are located in close proximity. Be-

cause the bill provides an alternative approach to completing projects that would otherwise be carried out by the affected agencies or private contractors, CBO estimates that implementing the legislation would have no impact on the federal budget.

Any proceeds from timber sales conducted under an agreement authorized by the bill would be treated as receipts to the federal government as under current law; therefore, CBO estimates that enacting the bill would not affect direct spending.

S. 327 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 327.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 327, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 327, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Land Management and the Forest Service at the April 25, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on S. 327 follows:

STATEMENT OF JAMIE CONNELL, ACTING DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for inviting the Department of the Interior to testify on S. 327, the Good Neighbor Forestry Act. The bill authorizes the Secretary of the Interior to enter into cooperative agreements or contracts with a state forester to provide forest, rangeland, and watershed restoration and protection services on lands managed by the Bureau of Land Management (BLM). The Administration supports Good Neighbor Authority and we would like to work with the Committee to make some minor technical corrections. We welcome opportunities to enhance our capability to efficiently manage our natural resources through a landscape scale approach that crosses a diverse spectrum of land ownerships.

BACKGROUND

The BLM is increasingly taking a landscape-scale approach to managing natural resources on the public lands. Recent drought cycles, catastrophic fires, large-scale insect and disease outbreaks, the impacts of global climate change, and invasions of harmful non-native species all threaten the health of the public lands. They also tax a land manager's ability to ensure ecological integrity, while accommodating increased demands for public land uses across the landscape.

The BLM engages in land restoration and hazardous fuels reduction activities with interagency partners and affected landowners to expand and accelerate forest ecosystem restoration. The "Good Neighbor" concept provides a mechanism to facilitate treatments across the landscape, inclusive of all ownerships, and enhances relationships between Federal, state, and private land managers.

In Fiscal Year (FY) 2001, Congress authorized the U.S. Forest Service to allow the Colorado State Forest Service (CSFS) to conduct activities such as hazardous fuels reduction on U.S. Forest Service lands when performing similar activities on adjacent state or private lands. The BLM received similar authority in Colorado in FY 2004, as did the U.S. Forest Service in Utah. The BLM used this "Good Neighbor" authority beginning in 2006 in the agency's Royal Gorge Field Office. Through an assistance agreement with the CSFS, the BLM accomplished a fuels reduction and mitigation project within and adjacent to the Gold Hill Subdivision of Boulder County. The Gold Hill Project treated a total of 372 acres of wildland urban interface consisting of 122 acres of BLM land, 27 acres of U.S. Forest Service land, and 223 acres of private land. All of these acres were identified as priorities within the Gold Hill Community Wildfire Protection Plan. Through the assistance agreement, the CSFS delineated the areas to be treated within the Gold Hill Project, managed the project, administered contracts, monitored firewood removal, and monitored forestry and fuels projects on BLM and U.S. Forest Service lands. No timber was harvested or sold from the BLM lands. The BLM and the U.S. Forest Service conducted the project planning and fulfilled NEPA requirements on their respective lands.

The project area consisted of small parcels of Federal lands interspersed with state and private lands. Since all the landowners used the same State contract, treatments were accomplished concurrently and with consistency in treatment methods, thereby achieving hazardous fuels reductions across a larger area to reduce the risk of wildfire. Efficiencies were also realized by utilizing a single contractor to treat one large project area. The BLM also realized savings in personnel resources. Although the project area was located nearly 200 miles from the BLM field office, CSFS personnel were in the immediate vicinity and were able to conduct the field work for the BLM. In addition, the CSFS regularly worked with private landowners

in the area and easily gained access through the private lands to conduct work on the Federal lands, which allowed the work to begin quickly. Simplified state contracting procedures also expedited the project. The project was completed in 2008.

A February 2009 GAO report examined state service contracting procedures regarding transparency, competitiveness, and oversight, and found that the state requirements generally addressed each of these areas. (GAO–09–277). The GAO issued two recommendations to the BLM: 1) To develop written procedures for Good Neighbor timber sales in collaboration with each state to better ensure accountability for federal timber; and 2) To document how prior experiences with Good Neighbor projects offer ways to enhance the use of the authority in the future and make such information available to current and prospective users of the authority. The BLM completed the final corrective action plan incorporating these suggestions in September of 2010.

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S. 327 provides for the Secretaries of Agriculture and Interior to enter into cooperative agreements and contracts with state foresters in any state west of the 100th meridian, to provide forest, rangeland, and watershed restoration and protection services on National Forest System land or BLM land. The success that the BLM experienced in using the Good Neighbor authority in Colorado as a cross-boundary management tool would be available under S. 375 to all BLM-managed lands throughout the west. The authority provided by the bill is discretionary; each BLM office could determine on a case-by-case basis whether or not the Good Neighbor authority is a desirable option. All Good Neighbor projects would be undertaken in conformance with land use plans and comply with the National Environmental Policy Act, if applicable.

Section 3(a) of the bill would authorize the Secretary to enter into a cooperative agreement or contract with a state Forester. For clarification, the BLM suggests an amendment to the language to add "notwithstanding the Federal Grants and Cooperative Agreements Act."

The provisions in section 3(b) authorize services to include activities that treat insect-infected trees; reduce hazardous fuels; and any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat. There is no requirement that the BLM-managed lands be adjacent to state or private lands to be eligible for services. This expansion of authority could be beneficial in watershed restoration projects where state and Federal lands might not be immediately adjacent to one another, but are within the same watershed.

Accordingly, this expanded authority could enhance the effectiveness of landscape-scale treatment.

CONCLUSION

Thank you for the opportunity to testify about Good Neighbor Authority and S. 327. The Department of the Interior and the BLM welcome opportunities to engage in efforts that can advance cooperation of all landowners, improve the effectiveness of restoration and fuels treatments, and provide cost-effective tools for managing natural resources. I would be happy to answer any questions.

STATEMENT OF JAMES M. PEÑA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Ranking Member Barrasso, and members of the Committee, thank you for inviting me here today to testify regarding S. 327, the Good Neighbor Forestry Act.

S. 327 would authorize the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements or contracts with State foresters authorizing State foresters to provide certain forest, rangeland and watershed restoration and protection services in states west of the 100th meridian.

Activities that could be undertaken using this authority include: (1) activities to treat insect infected trees; (2) activities to reduce hazardous fuels; and (3) any other activities to restore or improve forest, rangeland and watershed health, including fish and wildlife habitat. The bill would authorize the states to act as agents for the Secretary and would provide that states could subcontract for services authorized under this bill. The bill would require federal retention of decision making under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). The authority to enter into contracts or agreements under the bill would expire on September 30, 2019.

We support Good Neighbor Authority (GNA), but would like to work with the Committee to make some minor technical corrections. We know our Nation's forests face forest health challenges, which must be addressed across diverse land ownerships. In these times of limited resources, it is important to leverage workforce and technical capacities and develop partnerships for forest restoration across all lands. To that end, we look forward to continuing our work with the committee and states.

This concludes my testimony and I would be happy to answer any questions that you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 327 as ordered reported.

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