

107TH CONGRESS
2^D SESSION

H. R. 5319

To improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to expeditiously address wildfire prone conditions on National Forest System lands and other public lands that threaten communities, watersheds, and other at-risk landscapes through the establishment of expedited environmental analysis procedures under the National Environmental Policy Act of 1969, to establish a predecisional administrative review process for the Forest Service, to expand fire management contracting authorities, to authorize appropriations for hazardous fuels reduction projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 4, 2002

Mr. McINNIS (for himself, Mr. HANSEN, Mr. SHADEGG, Mr. YOUNG of Alaska, Mr. RADANOVICH, Mr. DUNCAN, Mr. PETERSON of Pennsylvania, Mr. SIMPSON, Mr. TANCREDO, Mr. SOUDER, Mr. HAYWORTH, Mr. GALLEGLY, Mr. HERGER, Mr. OTTER, Mr. HASTINGS of Florida, Mrs. CUBIN, Mr. HEFLEY, Mr. GIBBONS, Mr. POMBO, and Mr. DOOLITTLE) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to expeditiously address wildfire prone conditions on National Forest System lands and other public lands that threaten communities, watersheds, and other at-risk landscapes through the establishment of expedited environmental analysis proce-

dures under the National Environmental Policy Act of 1969, to establish a predecisional administrative review process for the Forest Service, to expand fire management contracting authorities, to authorize appropriations for hazardous fuels reduction projects, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Healthy Forests Reform Act of 2002”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Definitions.

TITLE I—EXPEDITED ENVIRONMENTAL ANALYSIS UNDER NA-
TIONAL ENVIRONMENTAL POLICY ACT OF 1969 FOR FIRE RE-
DUCTION AND FOREST HEALTH MEASURES ON CERTAIN FED-
ERAL LANDS

- Sec. 101. Basis and required elements of expedited environmental analysis.
- Sec. 102. Content of analysis for fire reduction and forest health measures covered by rules.
- Sec. 103. Required consultation under Endangered Species Act of 1973.
- Sec. 104. Judicial review.
- Sec. 105. Monitoring requirements.
- Sec. 106. Annual Comptroller General audit of expedited decisionmaking process.

TITLE II—FOREST SERVICE PREDECISIONAL REVIEW

- Sec. 201. Predecisional review process for Forest Service.
- Sec. 202. Completion of review.
- Sec. 203. Negotiated settlement.
- Sec. 204. Exemption.
- Sec. 205. Exhaustion of predecisional review process.
- Sec. 206. Annual Comptroller General audit of predecisional review process.
- Sec. 207. Repeal of Forest Service decisionmaking and appeals reform.

TITLE III—IMMEDIATE COMMUNITY PROTECTION ASSISTANCE

Sec. 301. Findings.

Sec. 302. Emergency response to extraordinary circumstances affecting Federal lands.

Sec. 303. Actions to reduce bark beetle infestations, and attendant threat of catastrophic wildfire, in Routt National Forest, Colorado.

TITLE IV—STEWARDSHIP CONTRACTING AUTHORITY

Sec. 401. Stewardship contracting.

Sec. 402. Contracts.

Sec. 403. Receipts.

Sec. 404. Treatment of services received.

Sec. 405. Performance and payment guarantees under a stewardship contract.

TITLE V—AUTHORIZATION OF APPROPRIATIONS FOR HAZARDOUS FUELS REDUCTION

Sec. 501. Authorization of appropriations.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Approximately 190,000,000 acres of Na-
4 tional Forest System lands and public lands man-
5 aged by the Department of Interior are at unnatu-
6 rally high risk to catastrophic wildfire because of the
7 unhealthy build-up of forest fuels.

8 (2) By excluding natural fire processes on these
9 Federal lands over several decades, and by failing to
10 adequately reduce the forest fuels that have accumu-
11 lated in the absence of naturally occurring fire, Fed-
12 eral land managers and scores of communities face
13 the threat of wildfires that burn hotter, larger, and
14 more destructive than has been the case with
15 wildfires historically.

16 (3) The impending specter of large-scale cata-
17 strophic wildfire on these Federal lands presents a

1 clear and present threat to the health and safety of
2 scores of communities, the millions of Americans
3 who reside near these lands, and the Federal, State,
4 local, and private firefighters who will be called upon
5 to fight the eventual wildfires.

6 (4) Hazardous wildfire conditions pose signifi-
7 cant unacceptable risks to the natural environment,
8 endangering air quality and water quality and quan-
9 tity on a massive scale, threatening the biological
10 health and diversity of Federal, State, and private
11 forests and rangelands, jeopardizing the continued
12 viability of threatened species, endangered species,
13 and other wildlife species and their habitat in certain
14 areas.

15 (5) Professional foresters, fire ecologists, and
16 other environmental scientists rightly conclude that
17 an active forest management regime is the only way
18 to lessen the growing risk of catastrophic wildfire on
19 Federal forests and rangelands.

20 (6) The Secretary of Agriculture, the Secretary
21 of Interior, and other senior Federal land managers
22 assert that the legal morass of laws, regulations, ad-
23 ministrative procedures, and court decisions that
24 govern National Forest System lands and other pub-
25 lic lands impose undesirably cumbersome procedural,

1 analytical, and process-related requirements that
2 make active forest and rangeland management a vir-
3 tual impossibility on any meaningful scale.

4 (7) A June 2002 Forest Service report entitled
5 “The Process Predicament: How Statutory, Regu-
6 latory and Administrative Factors Affect National
7 Forest Management” reached the following conclu-
8 sions: “The Forest Service operates within a statu-
9 tory, regulatory and administrative framework that
10 has kept the agency from effectively addressing
11 rapid declines in forest health. The Forest Service is
12 so busy meeting procedural requirements, such as
13 preparing voluminous plans, studies, and associated
14 documentation, that it has trouble fulfilling its his-
15 toric mission: to sustain the health, diversity, and
16 productivity of the Nation’s forests and grasslands
17 to meet the needs of present and future genera-
18 tions.”.

19 (8) This report also identified excessive proce-
20 dural and documentation requirements under the
21 National Environmental Policy Act of 1969 (42
22 U.S.C. 4321 et seq.) and an administrative appeals
23 process that invites conflict and discourages collabo-
24 ration as primary sources of management gridlock.

1 (9) To implement management activities on the
2 scale needed to meaningfully reduce the specter of
3 large scale catastrophic wildfire on Federal lands,
4 Federal land managers need immediate relief from
5 certain procedural requirements that substantially
6 burden land management professionals without
7 bringing any value to the decisionmaking process.

8 (10) Procedural requirements on agency actions
9 related to reducing the risk of catastrophic wildfire
10 and promoting forest health can be made more ra-
11 tional and efficient without unduly infringing on the
12 public's right to comment on proposed agency ac-
13 tions and challenge those actions through adminis-
14 trative channels and in the courts.

15 (b) PURPOSE.—It is the purpose of this Act to em-
16 power Federal land managers to reduce hazardous fuel
17 conditions on Federal lands that threaten communities,
18 watersheds, and other at-risk landscapes through—

19 (1) the establishment of expedited environ-
20 mental analysis procedures under the National Envi-
21 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
22 seq.);

23 (2) the establishment of a predecisional admin-
24 istrative review process for the Forest Service;

1 (3) the expansion of fire management con-
2 tracting authorities for Federal land managers; and

3 (4) the authorization of appropriations suffi-
4 cient for the implementation of hazardous fuels re-
5 duction projects on Federal lands.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) **CONDITION CLASS 1.**—The term “condition
9 class 1”, with respect to an area of Federal lands,
10 means that—

11 (A) fire regimes on the lands are within
12 historical ranges;

13 (B) vegetation composition and structure
14 are intact; and

15 (C) the risk of losing key ecosystem com-
16 ponents from the occurrence of fire remains rel-
17 atively low.

18 (2) **CONDITION CLASS 2.**—The term “condition
19 class 2”, with respect to an area of Federal lands,
20 means that—

21 (A) fire regimes on the lands have been
22 moderately altered from their historical range
23 by either increased or decreased fire frequency;
24 and

1 (B) there exists a moderate risk of losing
2 key ecosystem components from fire.

3 (3) CONDITION CLASS 3.—The term “condition
4 class 3”, with respect to an area of Federal lands,
5 means that—

6 (A) fire regimes on the lands have been
7 significantly altered from their historical return
8 interval and fire frequencies have departed from
9 historical ranges by multiple return intervals;

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

12 (C) vegetation composition, structure, and
13 diversity have been significantly altered; and

14 (D) the lands verge on the greatest risk of
15 ecological collapse as a result of fire.

16 (4) CONGRESSIONAL RESOURCES COMMIT-
17 TEES.—The term “congressional resources commit-
18 tees” means the Committee on Resources of the
19 House of Representatives and the Committee on En-
20 ergy and Natural Resources of the Senate.

21 (5) DAY.—The term “day” means a calendar
22 day.

23 (6) FEDERAL LAND MANAGER.—The term
24 “Federal land manager” means—

1 (A) the superintendent of a unit of the Na-
2 tional Park System, the manager of a national
3 wildlife refuge, or the field office manager of a
4 Bureau of Land Management area; and

5 (B) the supervisor of a unit of the Na-
6 tional Forest System.

7 (7) FEDERAL LANDS.—The term “Federal
8 lands” means—

9 (A) National Forest System lands; and

10 (B) public lands administered by the Sec-
11 retary of the Interior, acting through the Na-
12 tional Park Service, the United States Fish and
13 Wildlife Service, or the Bureau of Land Man-
14 agement.

15 (8) SECRETARY CONCERNED.—The “Secretary
16 concerned” means—

17 (A) the Secretary of Agriculture or the ap-
18 propriate Federal land manager with respect to
19 the Federal lands described in paragraph
20 (7)(A); and

21 (B) the Secretary of the Interior or the ap-
22 propriate Federal land manager with respect to
23 the Federal lands described in paragraph
24 (7)(B).

1 (9) STEWARDSHIP CONTRACT.—The term
2 “stewardship contract” means a contract entered
3 into under title IV for the performance of services
4 to achieve certain land management goals for Fed-
5 eral lands.

6 (10) WILDLAND-URBAN INTERFACE.—The term
7 “wildland-urban interface” means an area of Fed-
8 eral lands that—

9 (A) meets or intermixes with areas con-
10 taining humans and their homes, structures, or
11 other human developments; and

12 (B) may be vulnerable to wildfire.

13 **TITLE I—EXPEDITED ENVIRON-**
14 **MENTAL ANALYSIS UNDER**
15 **NATIONAL ENVIRONMENTAL**
16 **POLICY ACT OF 1969 FOR**
17 **FIRE REDUCTION AND FOR-**
18 **EST HEALTH MEASURES ON**
19 **CERTAIN FEDERAL LANDS**

20 **SEC. 101. BASIS AND REQUIRED ELEMENTS OF EXPEDITED**
21 **ENVIRONMENTAL ANALYSIS.**

22 (a) EMERGENCY CIRCUMSTANCE.—The Council on
23 Environmental Quality shall treat the threat of cata-
24 strophic wildfire on Federal lands identified by the Sec-
25 retary concerned under subsection (b) as an emergency

1 circumstance for the purposes of section 1506.11 of title
2 40, Code of Federal Regulations.

3 (b) COVERED AGENCY ACTIONS.—The Council on
4 Environmental Quality shall promulgate programmatic
5 rules establishing an expedited process under section
6 1506.11 of title 40, Code of Federal Regulations, which
7 authorizes alternative arrangements in emergency cir-
8 cumstances that supersede requirements otherwise appli-
9 cable under the National Environmental Policy Act of
10 1969 (42 U.S.C. 4321 et seq.), for each agency action by
11 the Secretary concerned that the Secretary concerned cer-
12 tifies requires rapid analysis related to the reduction of
13 the risk of catastrophic wildfire and the promotion of for-
14 est health on Federal lands for the purpose of elevating
15 the status of such lands from condition class 2 or condi-
16 tion class 3 toward condition class 1.

17 (c) PRIORITY FOR CERTAIN FEDERAL LANDS.—In
18 utilizing the expedited process established under sub-
19 section (b) to implement agency actions for Federal lands,
20 the Secretary concerned shall give a priority for agency
21 actions related to the reduction of the risk of catastrophic
22 wildfire and the promotion of forest health on Federal
23 lands that are—

24 (1) located in the wildland-urban interface;

1 (2) located in the relative proximity of munic-
2 ipal watersheds and municipal water supplies;

3 (3) afflicted or imminently threatened by dis-
4 ease or insect infestation (or both); or

5 (4) windthrown or at high risk of reburn.

6 (d) CONSULTATION.—The Council on Environmental
7 Quality shall promulgate the rules under subsection (b)
8 in consultation with the Secretary concerned. The con-
9 sultation otherwise required by section 1506.11 of title 40,
10 Code of Federal Regulations, shall not apply to agency ac-
11 tions covered by the expedited process.

12 (e) REQUIRED TIME PERIODS FOR CERTAIN AC-
13 TIONS.—

14 (1) IN GENERAL.—The rules promulgated
15 under subsection (b) shall provide for the following
16 time limitations in connection with each proposed
17 agency action covered by the rules:

18 (A) Public comments must be received
19 within the 21-day period beginning on the date
20 of the release of the proposed agency action.

21 (B) A request for predecisional review
22 must be received within the 14-day period be-
23 ginning on the date on which notice of the pro-
24 posed decision is provided.

1 (C) The review officer must decide on the
2 merits of a challenge brought under the
3 predecisional review process within 30 days
4 after the date on which the request for review
5 was received.

6 (2) EXTENSION.—The Secretary concerned may
7 authorize an extension of the time limits specified in
8 paragraph (1) for a proposed agency action covered
9 by the rules promulgated under subsection (b) in
10 rare cases if the Secretary concerned considers such
11 an extension to be appropriate. However, in the case
12 of such an agency action, the expedited process
13 under the National Environmental Policy Act of
14 1969 must be completed and any subsequent appeals
15 reconciled or dismissed within 120 days after the
16 date of the release of the proposed agency action.

17 (f) RELATION TO OTHER AUTHORITY.—The expe-
18 dited process required by this section is in addition to
19 other exceptions or alternative authorities available to the
20 Secretary concerned under the National Environmental
21 Policy Act of 1969 or its implementing regulations to con-
22 duct agency actions.

23 (g) TIME FOR PROMULGATION.—The Council on En-
24 vironmental Quality shall promulgate the rules required

1 by subsection (b) not later than 90 days after the date
2 of the enactment of this Act.

3 (h) PROCEDURE.—The promulgation of the rules
4 under subsection (b) shall be made without regard to—

5 (1) the notice and comment provisions of sec-
6 tion 553 of title 5, United States Code; and

7 (2) chapter 35 of title 44, United States Code
8 (commonly known as the “Paperwork Reduction
9 Act”).

10 (i) EXCEPTION TO CONGRESSIONAL REVIEW OF
11 AGENCY RULEMAKING.—In promulgating the rules under
12 subsection (b), the Council on Environmental Quality shall
13 use the authority provided under section 808 of title 5,
14 United States Code.

15 **SEC. 102. CONTENT OF ANALYSIS FOR FIRE REDUCTION**
16 **AND FOREST HEALTH MEASURES COVERED**
17 **BY RULES.**

18 The environmental analysis required for an agency
19 action covered by the rules promulgated under section 101
20 shall be limited to an abbreviated statement by the Sec-
21 retary concerned on—

22 (1) the purpose and need of the agency action;

23 (2) the environmental effects of the agency ac-
24 tion;

1 (3) the results of consultation required under
2 section 7 of the Endangered Species Act of 1973 (16
3 U.S.C. 1536) or other provision of law, if required
4 for the agency action; and

5 (4) the general categories and themes of public
6 comment received on the agency action.

7 **SEC. 103. REQUIRED CONSULTATION UNDER ENDANGERED**
8 **SPECIES ACT OF 1973.**

9 (a) CONSULTATION PROCESS.—In the case of an
10 agency action covered by the rules promulgated under sec-
11 tion 101 for which consultation is required under section
12 7 of the Endangered Species Act of 1973 (16 U.S.C.
13 1536), the Secretary concerned shall commence such con-
14 sultation with the United States Fish and Wildlife Service
15 or the National Marine Fisheries Service, whichever is ap-
16 propriate, not later than the date on which the Secretary
17 concerned provides public notice of the proposed agency
18 action.

19 (b) COMPLETION.—Within 75 days after the date on
20 which consultation commences under subsection (a) with
21 regard to an agency action, the United States Fish and
22 Wildlife Service and National Marine Fisheries Service
23 shall conclude such consultation.

24 (c) ALLOCATION OF RESOURCES.—The United
25 States Fish and Wildlife Service and National Marine

1 Fisheries Service shall allocate such resources as may be
2 necessary and take such steps as may be necessary to en-
3 sure compliance with subsection (b).

4 **SEC. 104. JUDICIAL REVIEW.**

5 (a) PLACE AND TIME OF FILING.—An agency action
6 covered by the rules promulgated under section 101 shall
7 be subject to judicial review only in the United States dis-
8 trict court for the district in which the Federal lands af-
9 fected by the agency action are located. Any challenge to
10 the agency action must be filed in such district court with-
11 in 15 days after the date on which the agency action is
12 final. The Secretary concerned may not agree to, and a
13 court may not grant, a waiver of the requirements of this
14 subsection.

15 (b) EFFECT OF FILING ON AGENCY ACTION.—For
16 45 days after the date of the filing of a challenge to an
17 agency action covered by the rules promulgated under sec-
18 tion 101, the Secretary concerned shall take no action to
19 implement the agency action. Given this limitation on
20 agency action, and the expedited review period prescribed
21 by subsection (c), there should be no need for the review-
22 ing court to issue a restraining order or preliminary in-
23 junction.

24 (c) TIME FOR DECISION.—Civil actions filed under
25 this section shall be assigned for hearing at the earliest

1 possible date. The court shall render its final decision rel-
2 ative to any challenge within 45 days after the date on
3 which the challenge is brought, unless the court deter-
4 mines that a longer period of time is required to satisfy
5 the requirements of the United States Constitution. In
6 order to reach a decision within 45 days, the district court
7 may assign all or part of any such case or cases to one
8 or more Special Masters, for prompt review and rec-
9 ommendations to the court.

10 (d) STANDARD OF REVIEW.—The courts shall have
11 authority to enjoin permanently, order modification of, or
12 void an agency action if it is determined by a review of
13 the record that the decision that is the basis for the agency
14 action was arbitrary and capricious or otherwise not in
15 accordance with applicable law.

16 (e) PROCEDURES.—Notwithstanding any other provi-
17 sion of law, the court may set rules governing the proce-
18 dures of any proceeding brought under this section which
19 set page limits on briefs and time limits on filing briefs
20 and motions and other actions that are shorter than the
21 limits specified in the Federal rules of civil or appellate
22 procedure.

23 (f) APPEAL.—Any appeal from the final decision of
24 a district court in an action brought pursuant to this sec-

1 tion shall be filed not later than 30 days after the date
2 of decision.

3 **SEC. 105. MONITORING REQUIREMENTS.**

4 (a) MONITORING BY INDEPENDENT PANEL.—The
5 Secretary of Agriculture and the Secretary of the Interior
6 shall jointly establish an independent panel to conduct a
7 general assessment, using accepted measures, indicators,
8 and sampling techniques, of the general success of agency
9 actions covered by the rules promulgated under section
10 101 in reducing the risk of catastrophic wildfire, pro-
11 moting forest health, protecting watersheds, and sus-
12 taining biological diversity and other ecological values on
13 Federal lands. The panel shall catalogue any adverse envi-
14 ronmental effects or unforeseen ecological consequences
15 associated with the agency actions, if they occur.

16 (b) MEMBERSHIP.—The panels established under
17 this section shall consist in part of members nominated
18 by the Chairmen and ranking minority members of each
19 of the congressional resources committees.

20 (c) ANNUAL ASSESSMENT AND REPORTING.—The
21 assessment required by subsection (a) shall be performed
22 on an annual basis, and the panel shall submit to the Sec-
23 retary concerned and the congressional resources commit-
24 tees an annual report containing the results of the assess-
25 ment.

1 (d) SECRETARIAL RESPONSE.—The Secretary con-
2 cerned shall respond to the annual report of the panel,
3 and that response shall be included in the copy of the re-
4 port submitted to the congressional resources committees.

5 **SEC. 106. ANNUAL COMPTROLLER GENERAL AUDIT OF EX-**
6 **PEDITED DECISIONMAKING PROCESS.**

7 (a) ANNUAL AUDIT REQUIRED.—The Comptroller
8 General shall conduct an annual programmatic audit to
9 determine the efficacy of the rules promulgated under sec-
10 tion 101 and the other requirements of this title in—

11 (1) expediting the implementation of agency ac-
12 tions to mitigate the threat of catastrophic wildfire,
13 improve forest health, protect watersheds, and sus-
14 tain biological diversity and other ecological values
15 on Federal lands;

16 (2) yielding an informed analysis of environ-
17 mental effects associated with proposed agency ac-
18 tions;

19 (3) guaranteeing meaningful opportunities for
20 the public to comment on proposed actions, con-
21 sistent with the imperative that the Secretary con-
22 cerned move with dispatch in reducing hazardous
23 conditions on Federal lands; and

24 (4) minimizing excessive documentation and
25 analysis that do not aid informed decisionmaking

1 and slow implementation of wildfire mitigation or
2 forest health projects.

3 (b) REPORTING REQUIREMENT.—The Comptroller
4 General shall submit to the congressional resources com-
5 mittees an annual report containing the results of the
6 audit.

7 **TITLE II—FOREST SERVICE** 8 **PREDECISIONAL REVIEW**

9 **SEC. 201. PREDECISIONAL REVIEW PROCESS FOR FOREST** 10 **SERVICE.**

11 (a) ESTABLISHMENT.—The Secretary of Agriculture
12 shall establish a predecisional review process to be used
13 for—

14 (1) Forest Service actions covered by the rules
15 promulgated under section 101; and

16 (2) other proposed actions of the Forest Service
17 concerning projects and activities implementing land
18 and resource management plans developed under the
19 Forest and Rangeland Renewable Resources Plan-
20 ning Act of 1974 (16 U.S.C. 1601 et seq.).

21 (b) NOTICE.—The predecisional review process shall
22 provide for notice of a proposed decision and an oppor-
23 tunity to request review before a final decision on the
24 agency action is made.

1 (c) OPPORTUNITY TO REQUEST A PREDECISIONAL
2 REVIEW.—For a period not to exceed 14 days from the
3 date notice is provided under subsection (b) with respect
4 to a proposed decision, review of the proposed decision
5 may be requested by any person, but only if the person
6 submitted specific written comments during the prepara-
7 tion stage of the agency action on the specific issue or
8 issues for which predecisional review is sought.

9 (d) INAPPLICABILITY TO DECISIONS OF THE SEC-
10 RETARY.—The predecisional review process does not apply
11 to decisions made personally by the Secretary of Agri-
12 culture.

13 **SEC. 202. COMPLETION OF REVIEW.**

14 (a) COMPLETION.—The review of a request for
15 predecisional review shall be completed within 30 days
16 after the date the request for review was received, but in
17 no case later than the issuance of the final decision re-
18 garding the agency action.

19 (b) CORRECTION OF PROPOSED DECISION.—In lieu
20 of remanding a proposed agency action regarding which
21 the Forest Service review officer determines that the re-
22 view request has merit, the review officer, in consultation
23 with the parties, may sign a new decision so as to avoid
24 the time-consuming remand process.

1 **SEC. 203. NEGOTIATED SETTLEMENT.**

2 (a) AVAILABILITY.—Notwithstanding any other pro-
3 vision of the law, during the 30-day review period, the
4 Forest Service review officer may participate in negotia-
5 tions with the parties and other persons who submitted
6 written comments during the preparation stage of the
7 agency action in an attempt to reach settlement on the
8 appealed issues.

9 (b) DISCRETION.—The decision to accept a nego-
10 tiated settlement under this section is at the sole discre-
11 tion of the Forest Service review officer.

12 **SEC. 204. EXEMPTION.**

13 The Secretary of Agriculture may exempt from the
14 predecisional review process any proposed decision re-
15 sponding to an unexpected or serious event that would
16 provide relief from imminent hazards threatening human
17 health, property, and safety or natural resources.

18 **SEC. 205. EXHAUSTION OF PREDECISIONAL REVIEW PROC-**
19 **ESS.**

20 Notwithstanding any other provision of law, a person
21 must exhaust the predecisional review process provided
22 under this title before the person may bring an action in
23 court challenging an agency action described in section
24 201(a).

1 **SEC. 206. ANNUAL COMPTROLLER GENERAL AUDIT OF**
2 **PREDECISIONAL REVIEW PROCESS.**

3 (a) ANNUAL AUDIT REQUIRED.—The Comptroller
4 General shall conduct an annual programmatic audit to
5 determine the efficacy of the predecisional review process
6 in—

7 (1) providing meaningful opportunities for per-
8 sons to petition for administrative redress against
9 agency actions alleged to have been decided in error;
10 and

11 (2) forestalling legal challenges in the courts by
12 encouraging collaborative mediation of disputes dur-
13 ing administrative review processes;

14 (b) REPORTING REQUIREMENT.—The Comptroller
15 General shall submit to the congressional resources com-
16 mittees an annual report containing the results of the
17 audit.

18 **SEC. 207. REPEAL OF FOREST SERVICE DECISIONMAKING**
19 **AND APPEALS REFORM.**

20 (a) REPEAL.—Effective 90 days after the date of the
21 enactment of this Act, section 322 of the Department of
22 the Interior and Related Agencies Appropriations Act,
23 1993 (Public Law 102-381; 16 U.S.C. 1612 note), is re-
24 pealed.

25 (b) EFFECT ON EXISTING APPEALS.—Section 322 of
26 the Department of the Interior and Related Agencies Ap-

1 appropriations Act, 1993 (Public Law 102-381; 16 U.S.C.
2 1612 note), as in effect on the day before the effective
3 date of the repeal, shall continue to apply to decisions
4 issued before that date.

5 **TITLE III—IMMEDIATE COMMU-**
6 **NITY PROTECTION ASSIST-**
7 **ANCE**

8 **SEC. 301. FINDINGS.**

9 Congress finds the following:

10 (1) Section 706(j) of the 2002 Supplemental
11 Appropriations Act for Further Recovery From and
12 Response To Terrorist Attacks on the United States
13 requires certain forest management activities in the
14 Black Hills National Forest in the State of South
15 Dakota to proceed immediately and to completion
16 notwithstanding any other provision of law includ-
17 ing, but not limited to, the National Environmental
18 Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the
19 National Forest Management Act (16 U.S.C. 1601
20 et seq.).

21 (2) Such section also exempts these activities
22 from the notice, comment, and appeal requirements
23 of section 322 of Public Law 102–381 (commonly
24 known as the Appeals Reform Act; 16 U.S.C. 1612

1 note) and from judicial review by any court of the
2 United States.

3 (3) Extraordinary circumstances are present on
4 other Federal lands, and the same exemptions
5 should apply to land management activities by the
6 Secretary concerned to address these extraordinary
7 circumstances.

8 **SEC. 302. EMERGENCY RESPONSE TO EXTRAORDINARY CIR-**
9 **CUMSTANCES AFFECTING FEDERAL LANDS.**

10 Due to the extraordinary circumstances present on
11 the Federal lands described in this title, actions authorized
12 by this title shall proceed immediately and to completion
13 notwithstanding any other provision of law including, but
14 not limited to, the National Environmental Policy Act of
15 1969 (42 U.S.C. 4321 et seq.) and the National Forest
16 Management Act (16 U.S.C. 1601 et seq.). In addition,
17 such activities shall not be subject to the notice, comment,
18 and appeal requirements of title II of this Act or section
19 322 of the Department of the Interior and Related Agen-
20 cies Appropriations Act, 1993 (Public Law 102-381; 16
21 U.S.C. 1612 note), or to judicial review by any court of
22 the United States.

1 **SEC. 303. ACTIONS TO REDUCE BARK BEETLE INFESTA-**
 2 **TIONS, AND ATTENDANT THREAT OF CATA-**
 3 **STROPHIC WILDFIRE, IN ROUTT NATIONAL**
 4 **FOREST, COLORADO.**

5 Section 302 shall apply to actions undertaken by the
 6 Secretary of Agriculture pursuant to the Forest Service
 7 Record of Decision signed April 8, 2002, to reduce bark
 8 beetle infestations, and the attendant threat of cata-
 9 strophic wildfire, in spruce and lodgepole pine stands in
 10 the Routt National Forest in portions of Grand, Jackson,
 11 and Moffat Counties, Colorado, as based on and supported
 12 by the Bark Beetle Analysis Final Environmental Impact
 13 Statement completed in April 2002.

14 **TITLE IV—STEWARDSHIP**
 15 **CONTRACTING AUTHORITY**

16 **SEC. 401. STEWARDSHIP CONTRACTING.**

17 (a) **CONTRACTS AUTHORIZED.**—The Secretary con-
 18 cerned may enter into stewardship contracts with private
 19 persons or other public or private entities to perform serv-
 20 ices to achieve land management goals for Federal lands.

21 (b) **LAND MANAGEMENT GOALS.**—The land manage-
 22 ment goals to be accomplished using a stewardship con-
 23 tract may include one or more of the following:

24 (1) Road and trail maintenance or obliteration
 25 to restore or maintain water quality.

1 (2) Enhancement of soil productivity, habitat
2 for wildlife and fisheries, or other resource values.

3 (3) Prescribed fires to improve the composition,
4 structure, condition, and health of forests, wood-
5 lands, and rangelands or to improve wildlife habitat.

6 (4) Removal of vegetation or other activities to
7 promote healthy forest stands, woodlands, and
8 rangelands, to reduce fire hazards, or to achieve
9 other land management objectives.

10 (5) Watershed restoration and maintenance.

11 (6) Restoration and maintenance of wildlife and
12 fish habitat.

13 (7) Control of noxious and exotic weeds and re-
14 establishing native plant species.

15 (8) Any other land management goals under ex-
16 isting statutory authorities.

17 **SEC. 402. CONTRACTS.**

18 (a) AWARD PROCEDURE.—A stewardship contract
19 may be awarded on a best-value basis, including consider-
20 ation of the contractor’s performance under other public
21 and private contracts and the contractor’s ability to meet
22 performance measures in the contract. In the case of Na-
23 tional Forest System lands, the Secretary of Agriculture
24 may solicit offers and award such contracts notwith-
25 standing the requirements of subsections (a), (d),

1 (e)(1)(B), and (g) of section 14 of the National Forest
2 Management Act of 1976 (16 U.S.C. 472a).

3 (b) MULTIYEAR TERM.—Notwithstanding any other
4 provision of law, the term of a stewardship contract may
5 exceed five years but may not exceed 10 years.

6 (c) OFFSETS.—

7 (1) IN GENERAL.—The Secretary concerned
8 may apply the value of timber or forest products, or
9 other vegetative materials, removed as an offset
10 against the cost of services received in connection
11 with stewardship contracts.

12 (2) METHODS OF APPRAISAL.—The value of
13 timber or forest products, or other vegetative mate-
14 rials, used as offsets under paragraph (1) may, as
15 appropriate, be determined—

16 (A) using existing agency guidelines com-
17 mensurate with the quality and quantity of
18 products to be removed;

19 (B) through a competitive bidding process;
20 or

21 (C) using a unit of measure appropriate to
22 the products which may include valuation on-
23 site.

24 (3) EXCESS OFFSET VALUE.—If the offset
25 value of the products exceeds the value of the re-

1 source improvement treatments, the Secretary con-
2 cerned may collect any excess offset value and apply
3 it as provided in section 403.

4 (d) AUTHORITIES.—In carrying out this section, the
5 Secretary concerned may use existing contracting authori-
6 ties and procedures or may develop by regulation new au-
7 thorities and procedure.

8 (e) MONITORING, EVALUATION, AND REPORTING.—
9 The Secretary concerned shall establish a multiparty mon-
10 itoring and evaluation process that assesses community
11 acceptance of agency land management activities and im-
12 provements in the effectiveness of agency business man-
13 agement of stewardship contracting conducted under this
14 section. Besides representatives of Federal land managers,
15 participants in this process may include any cooperating
16 governmental agencies, including tribal governments, and
17 any interested groups or individuals. The Secretary con-
18 cerned shall not be required to perform multiparty moni-
19 toring and evaluation in any region where the Secretary's
20 cost, including in-kind contributions, to carry out
21 multiparty monitoring and evaluation would exceed 50
22 percent of the total cost of such multiparty monitoring and
23 evaluation.

1 **SEC. 403. RECEIPTS.**

2 (a) COLLECTION.—The Secretary concerned may col-
3 lect moneys from a stewardship contract so long as such
4 collection is secondary to the land management goals of
5 the contract.

6 (b) AVAILABILITY.—Notwithstanding any other pro-
7 vision of law, funds described in subsection (a) and section
8 402(c)(3) shall—

9 (1) be made available to the Secretary con-
10 cerned that collected the funds without further ap-
11 propriation; and

12 (2) remain available until expended.

13 (c) USE BY SECRETARY OF AGRICULTURE.—In the
14 case of funds collected by the Secretary of Agriculture the
15 funds may—

16 (1) be used by the Secretary of Agriculture for
17 activities under a stewardship contract; or

18 (2) deposited into the Knutson-Vandenberg
19 Fund authorized by the Act of June 9, 1930 (com-
20 monly known as the Knutson-Vandenberg Act; 16
21 U.S.C. 576 et seq.).

22 (d) USE BY SECRETARY OF THE INTERIOR.—In the
23 case of funds collected by the Secretary of the Interior,
24 the funds may be used by the Secretary of the Interior
25 for activities under a stewardship contract.

1 (e) COSTS OF REMOVAL.—The Secretary of Agri-
2 culture may collect deposits from contractors covering the
3 costs of removal of timber or other forest products pursu-
4 ant to the Act of August 11, 1916 (16 U.S.C. 490); and
5 the next to the last paragraph under the heading “Forest
6 Service” under the heading “Department of Agriculture”
7 in the Act of June 30, 1914 (16 U.S.C. 498), notwith-
8 standing the fact that the timber purchasers did not har-
9 vest the timber.

10 **SEC. 404. TREATMENT OF SERVICES RECEIVED.**

11 The value of services received by the Secretary under
12 a stewardship contract and any payments made or re-
13 sources provided by the contractor or the Secretary con-
14 cerned under such a contract shall not be considered to
15 be moneys received from the National Forest System or
16 other Federal lands under any other provision of law,
17 including—

18 (1) the Act of June 9, 1930 (commonly known
19 as the Knutson-Vandenberg Act; 16 U.S.C. 576 et
20 seq.);

21 (2) section 3 of the Materials Act of 1947 (30
22 U.S.C. 603); or

23 (3) provisions regarding Oregon and California
24 Railroad and Coos Bay Wagon Road Grant Lands

1 Trust Lands (43 U.S.C. 1181f and 1181f-1; 43
2 U.S.C. 1735 and 1736a).

3 **SEC. 405. PERFORMANCE AND PAYMENT GUARANTEES**
4 **UNDER A STEWARDSHIP CONTRACT.**

5 The Secretary concerned may require performance
6 and payment bonds, in accordance with sections 103-2
7 and 103-3 of part 28 of the Federal Acquisition Regula-
8 tion (48 C.F.R. chapter I, 28.103-2, 28.103-3), in an
9 amount that the contracting officer considers sufficient to
10 protect the Government's interest in the estimated value
11 of the products to be removed under the stewardship con-
12 tract.

13 **TITLE V—AUTHORIZATION OF**
14 **APPROPRIATIONS FOR HAZ-**
15 **ARDOUS FUELS REDUCTION**

16 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) AUTHORIZATION FOR THE SECRETARY OF AGRICULTURE.
18 CULTURE.—There are authorized to be appropriated to
19 the Secretary of Agriculture for the purpose of hazardous
20 fuels reduction projects on National Forest System lands
21 the following amounts:

- 22 (1) Fiscal year 2004, \$262,100,000.
23 (2) Fiscal year 2005, \$393,000,000.
24 (3) Fiscal year 2006, \$408,000,000.
25 (4) Fiscal year 2007, \$420,000,000.

1 (5) Fiscal year 2008, \$460,000,000.

2 (6) Fiscal year 2009, \$500,000,000.

3 (7) Fiscal year 2010, \$542,000,000.

4 (8) Fiscal year 2011, \$580,000,000.

5 (b) AUTHORIZATION FOR THE SECRETARY OF INTE-
6 RIOR.—There are authorized to be appropriated to the
7 Secretary of Interior for the purpose of hazardous fuels
8 reduction on Federal lands described in section 3(7)(B)
9 the following amounts:

10 (1) Fiscal year 2004, \$250,000,000.

11 (2) Fiscal year 2005, \$375,000,000.

12 (3) Fiscal year 2006, \$390,000,000.

13 (4) Fiscal year 2007, \$433,000,000.

14 (5) Fiscal year 2008, \$440,000,000.

15 (6) Fiscal year 2009, \$480,000,000.

16 (7) Fiscal year 2010, \$518,000,000.

17 (8) Fiscal year 2011, \$558,000,000.

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