

107TH CONGRESS
2^D SESSION

H. R. 5342

To require the Secretary of Agriculture to conduct a demonstration forest management project in the Black Hills National Forest in the States of South Dakota and Wyoming.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 2002

Mr. THUNE introduced the following bill; which was referred to the Committee on Resources

A BILL

To require the Secretary of Agriculture to conduct a demonstration forest management project in the Black Hills National Forest in the States of South Dakota and Wyoming.

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 “Black Hills Charter Forest 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. Definitions.
- Sec. 3. Findings.

- Sec. 4. Purpose.
 Sec. 5. Demonstration forest management project, Black Hills National Forest,
 South Dakota and Wyoming.
 Sec. 6. Independent scientific review and monitoring.
 Sec. 7. Community management council.
 Sec. 8. Predecisional review process for demonstration project.
 Sec. 9. Stewardship contracting authority.
 Sec. 10. Retention of demonstration project receipts.
 Sec. 11. Relation to National Environmental Policy Act of 1969.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) The term “council” means the community
 4 management council appointed under section 7.

5 (2) The term “demonstration project” means
 6 the demonstration forest management project for the
 7 Black Hills National Forest in the States of South
 8 Dakota and Wyoming required by this Act.

9 (3) The term “panel” means the panel of non-
 10 Federal scientists assembled by the Secretary under
 11 section 6.

12 (4) The term “Secretary” means the Secretary
 13 of Agriculture, acting through the Chief of the For-
 14 est Service.

15 **SEC. 3. FINDINGS.**

16 Congress finds the following:

17 (1) The administrative body for the National
 18 Forest System, the Forest Service, is plagued by in-
 19 effective public involvement, management ineffi-
 20 ciency, and protracted, superfluous analyses.

1 (2) The debilitating of the Forest Service have
2 cultivated an environment of mistrust and divisive-
3 ness in forest policy, begetting a cumbersome, enfee-
4 bled process of resource management in the Black
5 Hills National Forest.

6 (3) This state of affairs represents a grievous
7 disservice to the public and the environment and are
8 indicative of an administrative process in need of re-
9 pair; and

10 (4) it is in the public interest to explore a broad
11 spectrum of progressive solutions to improve forest
12 management for, and the condition of forests in, the
13 Black Hills National Forest.

14 **SEC. 4. PURPOSE.**

15 The purpose of this Act is—

16 (1) to increase community involvement in deci-
17 sionmaking regarding the management of the Black
18 Hills National Forest;

19 (2) to evaluate alternatives in reforming the
20 current Forest Service administrative appeals proc-
21 ess for projects in the Black Hills National Forest;

22 (3) to provide the Black Hills National Forest
23 with more efficient and dynamic contracting mecha-
24 nisms to accomplish land and resource management
25 plan objectives; and

1 (4) to evaluate and implement procedural re-
2 form in the Forest Service’s administration of the
3 National Environmental Policy Act of 1969 (42
4 U.S.C. 4331 et seq.) on forest projects in the Black
5 Hills National Forest, in keeping with the law’s sub-
6 stantive intent.

7 **SEC. 5. DEMONSTRATION FOREST MANAGEMENT PROJECT,**
8 **BLACK HILLS NATIONAL FOREST, SOUTH DA-**
9 **KOTA AND WYOMING.**

10 (a) DEMONSTRATION PROJECT REQUIRED.—The
11 Secretary of Agriculture, acting through the Chief of the
12 Forest Service, shall conduct a demonstration project in
13 the Black Hills National Forest for the purpose of increas-
14 ing community involvement in decisionmaking regarding
15 the management of the Black Hills National Forest and
16 evaluating various methods, described in this Act, to im-
17 prove the management and condition of the Black Hills
18 National Forest.

19 (b) COMMENCEMENT OF DEMONSTRATION
20 PROJECT.—The Secretary shall commence the demonstra-
21 tion project upon the completion of the phase 2 amend-
22 ment, pending as of the date of the enactment of this Act,
23 to the land and resource management plan for the Black
24 Hills National Forest.

1 (c) DURATION.—The Secretary shall terminate the
2 demonstration project at the end of the 10-year period be-
3 ginning on the date the demonstration project is com-
4 menced pursuant to subsection (b).

5 (d) RELATION TO OTHER NATIONAL FOREST SYS-
6 TEM LAWS.—Except as provided in this Act, during the
7 term of the demonstration project, the Secretary shall con-
8 tinue to manage the Black Hills National Forest under
9 all of the laws and regulations governing occupancy, use,
10 and management of the National Forest System.

11 **SEC. 6. INDEPENDENT SCIENTIFIC REVIEW AND MONI-**
12 **TORING.**

13 (a) REVIEW OF ECOLOGICAL, SOCIAL, AND ECO-
14 NOMIC SUSTAINABILITY OF FOREST.—

15 (1) INITIAL REVIEW.—The Secretary shall as-
16 semble an independent panel of non-Federal sci-
17 entists to conduct an assessment, using accepted
18 measures and indicators, of the ecological, social,
19 and economic sustainability of the Black Hills Na-
20 tional Forest, taking into consideration such factors
21 as forest health, susceptibility to catastrophic fire,
22 biological diversity, and the capability of the forest
23 to sustain communities and economies.

24 (2) SUBMISSION OF RESULTS.—Not later than
25 one year after the date of the enactment of this Act,

1 the panel shall submit to the Secretary and Congress
2 a report containing the results of the assessment
3 conducted under this subsection.

4 (b) MONITORING PLAN FOR DEMONSTRATION
5 PROJECT.—The panel shall prepare a monitoring plan to
6 be used to track the implementation of the demonstration
7 project.

8 (c) REVISED REVIEW; RESUBMISSION OF RE-
9 SULTS.—At the end of the first five years of the dem-
10 onstration project and upon the completion of the dem-
11 onstration project, the panel shall revise the assessment
12 conducted under subsection (a) and resubmit it to the Sec-
13 retary and Congress.

14 (d) EFFECTS OF DEMONSTRATION PROJECT.—Using
15 the information collected from the monitoring plan, the
16 panel shall include in each revised assessment an evalua-
17 tion of the positive and negative impacts of the demonstra-
18 tion project on changes in the ecological, social, and eco-
19 nomic sustainability of the Black Hills National Forest.

20 **SEC. 7. COMMUNITY MANAGEMENT COUNCIL.**

21 (a) ESTABLISHMENT AND PURPOSES.—The Sec-
22 retary shall establish a community management council as
23 part of the demonstration project for the purpose of—

24 (1) advising the Secretary and the Supervisor
25 of the Black Hills National Forest on the broad

1 array of environmental, economic, and social issues
2 related to the management, occupancy, and use of
3 the Black Hills National Forest; and

4 (2) advising the Secretary and the Supervisor
5 in the development of binding priorities for manage-
6 ment activities on the Black Hills National Forest.

7 (b) APPOINTMENT AND MEMBERS.—The council
8 shall consist of 13 members, appointed by the Secretary
9 in consultation with the Governors and congressional dele-
10 gations of the States of South Dakota and Wyoming.
11 Members shall meet the following criteria:

12 (1) Members shall represent an equitable cross-
13 section of forest policy stakeholders.

14 (2) Members shall reside in the seven counties
15 that encompass the Black Hills National Forest:

16 (A) Pennington, Lawrence, Meade, Custer,
17 and Fall River Counties of South Dakota.

18 (B) Crook and Weston Counties of Wyo-
19 ming.

20 (3) Members shall have demonstrated a willing-
21 ness to seek compromise on complex forest issues
22 through respectful and reasonable discourse.

23 (4) Members shall have demonstrated an ability
24 to respect values, cultures, and points of view other
25 than their own.

1 (c) FOREST SUPERVISOR.—The Supervisor of the
2 Black Hills National Forest shall serve as an ex officio
3 member of the council.

4 (d) VACANCIES; GEOGRAPHIC REPRESENTATION.—
5 Vacancies on the council shall be filled in the same manner
6 as the original appointment.

7 (e) COMPENSATION.—Members of the council who
8 are not Federal employees shall serve without compensa-
9 tion.

10 (f) OTHER COUNCIL AUTHORITIES AND REQUIRE-
11 MENTS.—

12 (1) STAFF ASSISTANCE.—The council may re-
13 quest the Secretary to provide staff assistance to the
14 council from Federal employees under the jurisdic-
15 tion of the Secretary.

16 (2) MEETINGS.—All meetings of the council
17 shall be announced at least one week in advance in
18 a local newspaper of record and shall be open to the
19 public.

20 (3) RECORDS.—The council shall maintain
21 records of the meetings of the council and make the
22 records available for public inspection.

23 (4) RELATION TO OTHER LAW.—The council
24 shall be exempt from the provisions of the Federal
25 Advisory Committee Act (5 U.S.C. App.).

1 **SEC. 8. PREDECISIONAL REVIEW PROCESS FOR DEM-**
2 **ONSTRATION PROJECT.**

3 (a) **IN GENERAL.**—The Secretary shall promulgate
4 rules to establish a predecisional review process that would
5 be used during the term of the demonstration project in
6 connection with site-specific projects in the Black Hills
7 National Forest that require approval by a Forest Service
8 official in a decision notice or record of decision.

9 (b) **RELATION TO REQUIRED ENVIRONMENTAL**
10 **ANALYSIS.**—The predecisional review process shall not be
11 construed to alter or waive any environmental analysis
12 otherwise required as part of the planning or implementa-
13 tion of a project in the Black Hills National Forest.

14 (c) **REQUIRED ELEMENTS OF PREDECISIONAL RE-**
15 **VIEW.**—

16 (1) **NOTICE.**—The rules required by subsection
17 (a) shall provide for notice of a proposed decision
18 and an opportunity to request review before a final
19 decision on a site-specific project is made.

20 (2) **RIGHT TO REQUEST A PREDECISIONAL RE-**
21 **VIEW.**—For a period not to exceed 30 days from the
22 date notice is provided pursuant to paragraph (1),
23 review of a proposed decision may be requested by
24 any individual or entity, but only if the individual or
25 entity submitted written comments during the prep-

1 aration stage of the project on the issue or issues for
2 which predecisional review is sought.

3 (3) COMPLETION OF REVIEW.—The review of a
4 request for predecisional review shall be completed
5 before issuance of a final decision regarding the
6 project at issue. The review shall be completed with-
7 in 30 days after the date the request was submitted.

8 (d) EXEMPTION.—The Secretary may exempt a pro-
9 posed decision responding to an unexpected or serious
10 event that would provide relief from hazards threatening
11 human health and safety or natural resources, or provide
12 for rehabilitation and recovery of forest resources, from
13 the predecisional review rules prescribed under this sec-
14 tion.

15 (e) EXHAUSTION OF PREDECISIONAL REVIEW PROC-
16 ESS.—Notwithstanding any other provision of law, an in-
17 dividual or entity must exhaust the predecisional review
18 process before the individual or entity may bring an action
19 in court challenging a site-specific project under the dem-
20 onstration project.

21 (f) PRESUMPTION.—In any predecisional review or
22 litigation of a management activity under the demonstra-
23 tion project, the responsible official, administrative entity,
24 or court shall give deference to the expert judgment of

1 the Secretary in identifying and interpreting the scientific
2 data that is the basis for the management activity.

3 (g) RELATION TO FOREST SERVICE DECISION-
4 MAKING AND APPEALS REFORM.—Section 322 of the De-
5 partment of the Interior and Related Agencies Appropria-
6 tions Act, 1993 (Public Law 102–381; 16 U.S.C. 1612
7 note), shall not apply to activities conducted under the
8 demonstration project.

9 **SEC. 9. STEWARDSHIP CONTRACTING AUTHORITY.**

10 (a) USE OF EXISTING DEMONSTRATION AUTHOR-
11 ITY.—During the term of the demonstration project, the
12 Secretary may enter into stewardship and end result con-
13 tracts for the Black Hills National Forest in accordance
14 with section 347 of the Department of the Interior and
15 Related Agencies Appropriations Act, 1999 (as contained
16 in section 101(e) of division A of Public Law 105–277;
17 16 U.S.C. 2104 note), to accomplish the land management
18 goals specified in subsection (b) of such section.

19 (b) ADDITIONAL CONTRACTS.—The contracts en-
20 tered into under the authority of subsection (a) shall be
21 in addition to the contracts authorized under such section
22 347 or under section 338 of the Department of the Inte-
23 rior and Related Agencies Appropriations Act, 2001 (Pub-
24 lic Law 106–291; 16 U.S.C. 2104 note).

1 **SEC. 10. RETENTION OF DEMONSTRATION PROJECT RE-**
2 **CEIPTS.**

3 (a) RETENTION.—During the term of the demonstra-
4 tion project, the Secretary shall retain the monetary pro-
5 ceeds from commercial timber sales and special use permit
6 fees derived from the Black Hills National Forest. The
7 retained receipts shall be in addition to such other funds
8 appropriated or otherwise made available for the operation
9 of the Black Hills National Forest, and the receipts shall
10 not be subject to overhead assessment.

11 (b) USE.—The Secretary shall use the retained re-
12 ceipts for projects in the Black Hills National Forest, with
13 priority placed on projects related to forest health, restora-
14 tion, hazardous fuels reduction, and disease and invasive
15 species control.

16 (c) ROLE OF COUNCIL.—The Secretary shall consult
17 with the council in selecting projects under this section.

18 **SEC. 11. RELATION TO NATIONAL ENVIRONMENTAL POLICY**
19 **ACT OF 1969.**

20 In conducting the demonstration project, the Sec-
21 retary shall continue to comply with the substantive re-
22 quirements of the National Environmental Policy Act of
23 1969 (42 U.S.C. 4331 et seq.) and its implementing rules.
24 Not later than 180 days after the date of the enactment
25 of this Act, the Secretary shall promulgate rules regarding
26 implementation of the National Environmental Policy Act

1 of 1969 in the Black Hills National Forest during the
2 demonstration project, being careful to provide maximum
3 latitude to line officers and the council consistent with the
4 substantive requirements of that Act.

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