

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5376

To enhance the authorities of the Secretary of Agriculture and the Secretary of the Interior to reduce catastrophic wildfire threats to communities and the environment.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2002

Mr. COMBEST (for himself, Mr. STENHOLM, Mr. GOODLATTE, Mr. HANSEN, Mr. MCINNIS, and Mr. BERRY) (all by request) 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

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## A BILL

To enhance the authorities of the Secretary of Agriculture and the Secretary of the Interior to reduce catastrophic wildfire threats to communities and the environment.

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. EMERGENCY HAZARDOUS FUELS REDUCTION**

4 **PLAN.**

5 (a) IN GENERAL.—Subject to subsection (c) and not-  
6 withstanding the National Environmental Policy Act of  
7 1969, the Secretaries of Agriculture and the Interior shall

1 conduct projects consistent with the Implementation Plan  
2 for the 10-year Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to  
3 Communities and the Environment, May 2002, developed  
4 pursuant to the Conference Report to the Department of  
5 the Interior and Related Agencies Appropriations Act,  
6 2001 (House Report 106–646) to reduce hazardous fuels  
7 within any areas of Federal land under the jurisdiction  
8 of the Secretary of Agriculture or the Secretary of the Interior that are outside of Congressionally designated Wilderness Areas and that the appropriate Secretary determines qualifies as a fire risk condition class three area.  
9 Any project carried out under this section shall be consistent with the applicable forest plan, resource management plan, or other applicable agency plans.

16 (b) PRIORITY.—In implementing projects under this  
17 section, the Secretaries of Agriculture and the Interior  
18 shall give highest priority to—

- 19 (1) wildland urban interface areas;
- 20 (2) municipal watersheds;
- 21 (3) forested or rangeland areas affected by disease, insect activity, or wind throw; or
- 22 (4) areas susceptible to a catastrophic reburn.

23 (c) ACREAGE LIMITATION.—  
24

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), in implementing this section, the Secre-  
3           taries of Agriculture and the Interior shall treat an  
4           aggregate area of not more than 10,000,000 acres  
5           of Federal land.

6           (2) ADDITIONAL ACRES.—If the limitation in  
7           paragraph (1) is reached, the Secretaries of Agri-  
8           culture and the Interior may treat additional acres  
9           of Federal land that qualifies as fire risk condition  
10          class three.

11          (d) PROCESS.—The Secretaries of Agriculture and  
12          the Interior shall jointly develop—

13               (1) notwithstanding the Federal Advisory Com-  
14               mittee Act, a collaborative process with interested  
15               parties consistent with the Implementation Plan de-  
16               scribed in subsection (a) for the selection of projects  
17               carried out under this section consistent with sub-  
18               section (b); and

19               (2) in cooperation with the Secretary of Com-  
20               merce, expedited consultation procedures for threat-  
21               ened or endangered species.

22          (e) ADMINISTRATIVE PROCESS.—Projects conducted  
23          under this section shall not be subject to—

24               (1) administrative review by the Department of  
25               the Interior Office of Hearings and Appeals; or

1           (2) the Forest Service appeals process and reg-  
2           ulations.

3           (f) JUDICIAL REVIEW.—

4           (1) REVIEW OF PROJECTS.—Any application for  
5           judicial review under this or any other law of a  
6           project selected under this section shall—

7                   (A) be filed in the Federal District Court  
8                   for the district in which the Federal lands are  
9                   located within 60 days after legal notice of the  
10                  decision to conduct a project under this section  
11                  is made to the public in a manner as deter-  
12                  mined by the appropriate Secretary;

13                   (B) be completed not later than 360 days  
14                   from the date such request for review is filed  
15                   with the appropriate court unless the District  
16                   Court determines that a longer time is needed;  
17                   and

18                   (C) not provide for the issuance of a tem-  
19                   porary restraining order or a preliminary in-  
20                   junction

21           (2) PROCESS REVIEW.—The processes devel-  
22           oped under subsection (d) shall not be subject to ju-  
23           dicial review.

24           (g) RELATION TO OTHER LAWS.—The authorities  
25           provided to the Secretaries of Agriculture and the Interior

1 in this section are in addition to the authorities provided  
2 in any other provision of law, including section 706 of  
3 Public Law 107–206 with respect to Beaver Park Area  
4 and the Norbeck Wildlife Preserve within the Black Hills  
5 National Forest.

6 **SEC. 2. STEWARDSHIP CONTRACTING.**

7 (a) IN GENERAL.—The Secretary of Agriculture or  
8 the Secretary of the Interior may enter into stewardship  
9 contracts with private persons or other public or private  
10 entities to perform services to achieve land management  
11 goals for the national forests and other Federal lands.

12 (b) LAND MANAGEMENT GOALS.—The land manage-  
13 ment goals to be accomplished using a contract under sub-  
14 section (a) may include—

15 (1) road and trail maintenance or obliteration  
16 to restore or maintain water quality;

17 (2) enhancement, restoration and maintenance  
18 of soil productivity, habitat for wildlife and fisheries,  
19 or other resource values;

20 (3) use of prescribed fires to improve the com-  
21 position, structure, condition, and health of forests,  
22 woodlands, and rangelands or to improve wildlife  
23 habitat;

24 (4) removing vegetation or other activities to  
25 promote healthy forest stands, woodlands, and

1 rangelands, to reduce fire hazards, or to achieve  
2 other land management objectives;

3 (5) watershed restoration and maintenance; and

4 (6) control of noxious and exotic weeds and re-  
5 establishing native plant species.

6 (c) CONTRACTS.—

7 (1) AWARD PROCEDURES.—

8 (A) FOREST SERVICE.—In connection with  
9 contracts under subsection (a), for the purposes  
10 of meeting the requirement for selling timber or  
11 forest products at not less than the appraised  
12 value pursuant to section 14 of the National  
13 Forest Management Act of 1976 (16 U.S.C.  
14 472a), the Secretary of Agriculture may take  
15 into account the value the services received  
16 from the contractor and may consider the con-  
17 tractor's performance under other public and  
18 private contracts and the contractor's ability to  
19 meet performance measures and outcomes con-  
20 sistent with the goals of subsection (b) with re-  
21 spect to the contract.

22 (B) DEPARTMENT OF THE INTERIOR.—In  
23 connection with contracts under subsection (a),  
24 the Secretary of the Interior may award the  
25 contract on a best-value basis, including consid-

1           eration of the contractor’s performance under  
2           other public and private contracts and the con-  
3           tractor’s ability to meet performance measures  
4           and outcomes consistent with the goals of sub-  
5           section (b) with respect to the contract.

6           (2) MULTI-YEAR TERM.—Notwithstanding any  
7           other provision of law and subject to any such re-  
8           quirements as the Director of the Office of Manage-  
9           ment and Budget may prescribe, the term of any  
10          contract entered into under subsection (a) may ex-  
11          ceed 5 years but may not exceed 10 years.

12          (3) OFFSETS.—

13                (A) IN GENERAL.—The Secretary of Agri-  
14                culture and Secretary of the Interior may apply  
15                the value of the removed timber or forest prod-  
16                ucts, or other vegetative materials, removed as  
17                an offset against the cost of services received in  
18                connection with contracts under subsection (a).

19                (B) METHODS OF APPRAISAL.—The value  
20                of forest products, other vegetative materials, or  
21                timber used as offsets under subparagraph (A)  
22                shall, be determined —

23                        (i) using existing agency guidelines  
24                        commensurate with the quality and quan-  
25                        tity of products to be removed;

1 (ii) through a competitive bidding  
2 process; or

3 (iii) using a unit of measure appro-  
4 priate to the contracts.

5 (C) EXCESS OFFSET VALUE.—If the offset  
6 value of the products exceeds the value of the  
7 resource improvement treatments, the Secretary  
8 of Agriculture and the Secretary of the Interior  
9 may collect any excess offset value and apply it  
10 as provided in subsection (d).

11 (d) RECEIPTS.—

12 (1) IN GENERAL.—The Secretary of Agriculture  
13 and the Secretary of the Interior may collect monies  
14 from a contract under subsection (a) so long as col-  
15 lection is secondary to the land management goals in  
16 subsection (b).

17 (2) USE.—Notwithstanding any other provision  
18 of law and subject to any such requirements as the  
19 Director of the Office of Management and Budget  
20 may prescribe, funds described in paragraph (1) and  
21 subsection (c)(3)(C) shall—

22 (A) be made available to the Secretary that  
23 collected the funds without further appropria-  
24 tion and remain available until expended;



1 (B) in the case of funds collected by the  
2 Secretary of Agriculture—

3 (i) be used by the Secretary of Agri-  
4 culture for activities under a contract au-  
5 thorized by this section; or

6 (ii) deposited into the Knutson-Van-  
7 denberg Fund authorized by the Act of  
8 June 9, 1930, commonly known as the  
9 Knutson-Vandenberg Act (16 U.S.C. 576  
10 et seq.); and

11 (C) in the case of funds collected by the  
12 Secretary of the Interior be used by the Sec-  
13 retary of the Interior for activities under a con-  
14 tract authorized by this section.

15 (3) RELATION TO OTHER LAWS.—The value of  
16 services received by the Secretary of Agriculture and  
17 the Secretary of the Interior under a contract au-  
18 thorized by this section and any payments made or  
19 resources provided by the contractor or the Secre-  
20 taries under such a contract shall not be considered  
21 to be monies received from the National Forest Sys-  
22 tem or other Federal lands under any other provi-  
23 sion of law, including, but not limited to—

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

4 (B) section 3 of the Materials Act of 1947  
5 (30 U.S.C. 603); or

6 (C) provisions regarding Oregon and Cali-  
7 fornia Railroad and Coos Bay Wagon Road  
8 Grant Lands Trust Lands (43 U.S.C. 1181f  
9 and 1181f-1; 43 U.S.C. 1735 and 1736a).

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

19 (f) PERFORMANCE AND PAYMENT GUARANTEES  
20 UNDER A SERVICE CONTRACT.—The Secretaries may re-  
21 quire performance and payment bonds, in accordance with  
22 sections 103-2 and 103-3 of part 28 of the Federal Ac-  
23 quisition Regulation (48 C.F.R. Chapter 1, 28.103-2,  
24 28.103-3), in an amount that the contracting officer con-  
25 siders sufficient to protect the government’s interest in the

1 estimated value of the products to be removed under con-  
2 tract under subsection (a).

3 (g) AUTHORITIES.—In carrying out this section, the  
4 Secretary of Agriculture and the Secretary of the Interior  
5 may use existing contracting authorities and procedures  
6 or may develop by regulation new authorities and proce-  
7 dures.

8 (h) REPORTING REQUIREMENTS.—To ensure ac-  
9 countability and a full cost accounting of work completed  
10 under this authority, the Secretaries shall be required to  
11 separately track the full costs of individual contracts and  
12 the value of the forest products exchanged for such work.  
13 The Secretaries shall report annually to the Congress on—

14 (1) the status of development, execution, and  
15 administration of contracts authorized under sub-  
16 section (a);

17 (2) the specific accomplishments that have re-  
18 sulted; and

19 (3) the full cost of projects completed under  
20 contracts entered into under subsection (a) including  
21 a separate accounting of—

22 (A) the value of services received;

23 (B) payments received from the sale of  
24 timber and forest products; and

1 (C) the difference between the payments  
2 received for such timber and forest products  
3 and the fair market value for such timber and  
4 forest products.

5 **SEC. 3. REPEAL.**

6 Section 322 of the Department of the Interior and  
7 Related Agencies Appropriations Act, 1993, Public Law  
8 102–381 (commonly known as the “Appeals Reform Act”;  
9 16 U.S.C. 1612 note), is repealed.

10 **SEC. 4. BALANCE OF SHORT-TERM AND LONG-TERM ENVI-**  
11 **RONMENTAL HARMS.**

12 (a) FINDINGS.—Congress finds that—

13 (1) past land management practices, particu-  
14 larly fire suppression, have severely altered many  
15 fire-adapted forest and rangeland ecosystems;

16 (2) such severely altered ecosystems are less re-  
17 siliant and more vulnerable to long-term harm by  
18 fire, drought, insects, disease, loss of biological di-  
19 versity, and by exotic or invasive species;

20 (3) such degradation and replacement of native  
21 fire-adapted forest and rangeland ecosystems causes  
22 irreparable harm to the public interest by increasing  
23 risk to public health, safety, property, and dimin-  
24 ishing the biological productivity of the land and  
25 natural resources of the Nation, including loss of

1 forest and rangeland resources, native species, habi-  
2 tat for threatened and endangered species, recre-  
3 ation opportunities, watershed protection, soils, and  
4 the economic and social values that depend upon  
5 such resources;

6 (4) mechanical thinning of forests and range-  
7 land, reduction of natural fuels through prescribed  
8 fire, and similar land management practices are nec-  
9 essary to restore the diversity and resilience of na-  
10 tive fire-adapted forests and rangelands; and

11 (5) the public interest in such restoration, in-  
12 cluding avoiding irreparable harm to forest and  
13 rangeland ecosystems if restorative action is not  
14 taken, typically outweighs the short-term effects of  
15 restoration projects on the quality of the water, air,  
16 soils, and habitat of threatened and endangered spe-  
17 cies.

18 (b) STANDARD FOR INJUNCTIVE RELIEF.—In any  
19 action under section 703 of title 5, United States Code  
20 or any other law for writs of prohibitory or mandatory  
21 injunction against agency action in which the agency has  
22 found that such action is necessary to restore fire-adapted  
23 forest or rangeland ecosystems, the reviewing court shall  
24 consider the public interest in avoiding long-term harm to  
25 such ecosystems and shall give deference to any agency

1 finding, based upon information in its administrative  
2 record, that the public interest in avoiding the short-term  
3 effects of such action is outweighed by the public interest  
4 in avoiding long-term harm to such ecosystems.

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