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1ST SESSION

S. 1314

To expedite procedures for hazardous fuels reduction activities on National Forest System lands established from the public domain and other public lands administered by the Bureau of Land Management, to improve the health of National Forest System lands established from the public domain and other public lands administered by the Bureau of Land Management, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2003

Mr. BINGAMAN (for himself, Mr. DASCHLE, Mrs. MURRAY, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To expedite procedures for hazardous fuels reduction activities on National Forest System lands established from the public domain and other public lands administered by the Bureau of Land Management, to improve the health of National Forest System lands established from the public domain and other public lands administered by the Bureau of Land Management, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Collaborative Forest
3 Health Act”.

4 **SEC. 2. DEFINITIONS.**

5 As used in this Act:

6 (1) The term “at-risk community” means—

7 (A) an urban wildland “interface” or
8 “intermix” community as those terms were de-
9 fined by the Secretaries on January 4, 2001
10 (66 FR 753), or

11 (B) consisting of a collection of homes or
12 other structures with basic infrastructure and
13 services, such as utilities, collectively main-
14 tained transportation routes, and emergency
15 services;

16 (i) on which conditions are conducive
17 to large-scale fire disturbance events; and

18 (ii) for which a significant risk exists
19 of a resulting spread of the fire disturb-
20 ance event, after ignition, which would
21 threaten human life and property.

22 (2) The term “community protection zone”
23 means an at-risk community and an area within one-
24 half mile of an at-risk community.

25 (3) The term “Secretaries” means the Sec-
26 retary of Agriculture with respect to National Forest

1 System lands and the Secretary of the Interior with
 2 respect to public lands administered by the Bureau
 3 of Land Management.

4 (4) The term “1890 Institution” means a col-
 5 lege or university eligible to receive funds under the
 6 Act of August 30, 1890 (7 U.S.C. 321 et seq.), in-
 7 cluding Tuskegee University.

8 (5) The term “Federal lands” means public
 9 lands as defined in section 103(e) of the Federal
 10 Land Policy and Management Act (43 U.S.C.
 11 1702(e)) and the National Forest System as defined
 12 in section 11(a) of the Forest and Rangeland Re-
 13 newable Resources Planning Act (16 U.S.C.
 14 1609(a)).

15 **SEC. 3. EXPEDITED PLANNING AND IMPLEMENTATION**
 16 **PROCESS.**

17 (a) CATEGORICAL EXCLUSION.—Subject to sub-
 18 section (h), the Secretaries may find that a proposed haz-
 19 ardous fuels reduction project, including prescribed fire,
 20 that removes no more than 250,000 board feet of mer-
 21 chantable wood products or removes as salvage 1,000,000
 22 board feet or less of merchantable wood products and
 23 assures regeneration of harvested or salvaged areas will
 24 not individually or cumulatively have a significant effect
 25 on the human environment and, therefore, neither an envi-

1 ronmental assessment nor an environmental impact state-
 2 ment is required.

3 (b) PUBLIC MEETING.—Prior to implementing a
 4 project pursuant to subsection (a), the Secretaries shall
 5 conduct a public meeting at an appropriate location prox-
 6 imate to the administrative unit of the Federal lands in
 7 which the project will be conducted. The Secretaries shall
 8 provide advance notice of the date and time of the meet-
 9 ing.

10 (c) COLLABORATION.—

11 (1) The Secretaries shall identify projects im-
 12 plemented pursuant to this section through a col-
 13 laborative framework as described in the Implemen-
 14 tation Plan for the 10-year Comprehensive Strategy
 15 for a Collaborative Approach for Reducing Wildland
 16 Fire Risks to Communities and the Environment,
 17 dated May 2002, developed pursuant to the Con-
 18 ference Report to the Department of the Interior
 19 and Related Agencies Appropriations Act, FY 2001
 20 (H. Rept. 106–646) to reduce hazardous fuels. Any
 21 project carried out pursuant to this section shall be
 22 consistent with the applicable forest plan, resource
 23 management plan, or other applicable agency plans.

24 (2) The Secretaries shall ensure that local level
 25 collaboration includes Tribal representatives, local

1 representatives from Federal and State agencies,
2 local governments, landowners, other stakeholders,
3 and community-based groups.

4 (3) The Secretaries shall establish incentives or
5 performance measures to ensure that Federal em-
6 ployees are committed to collaboration.

7 (d) ACREAGE LIMITATION.—In implementing this
8 section, the Secretaries shall implement projects on an ag-
9 gregate area of not more than 20 million acres of Federal
10 lands. This amount is in addition to the existing haz-
11 ardous fuels reduction program that implements projects
12 on approximately 2.5 million acres each year.

13 (e) ADMINISTRATIVE APPEALS.—Projects imple-
14 mented pursuant to this section shall not be subject to
15 the appeal requirements of section 322 of the Department
16 of the Interior and Related Agencies Appropriations Act,
17 1993 (16 U.S.C. 1612 note) or review by the Department
18 of the Interior Board of Land Appeals. Nothing in this
19 section affects projects for which scoping has begun prior
20 to enactment of this Act.

21 (f) CONCLUSIVE PRESUMPTION.—Within—

22 (1) the community protection zone; or

23 (2) municipal watersheds in which National En-
24 vironmental Policy Act documentation and analysis
25 has been completed and no new road construction is

1 allowed, no timber sales are allowed, and no log
2 skidding machines are allowed,
3 unless there are extraordinary circumstances, the decision
4 of either Secretary that a proposed hazardous fuels reduc-
5 tion project authorized by subsection (a) is categorically
6 excluded is conclusive as a matter of law and shall not
7 be subject to judicial review. This conclusive determination
8 shall apply in any judicial proceeding brought to enforce
9 the National Environmental Policy Act pursuant to this
10 section.

11 (g) EXCLUDED FEDERAL LANDS.—This section does
12 not apply to any Federal lands—

13 (1) included in a wilderness study area or a
14 component of the National Wilderness Preservation
15 System; or

16 (2) where logging is prohibited or restricted by
17 an Act of Congress, presidential proclamation, or
18 agency determination.

19 (h) EXTRAORDINARY CIRCUMSTANCES.—For all
20 projects proposed pursuant to this section, if there are ex-
21 traordinary circumstances, the Secretaries shall follow
22 agency procedures related to categorical exclusions and ex-
23 traordinary circumstances consistent with Council on En-
24 vironmental Quality regulations.

1 (i) REDUCE FIRE RISK AND IMPROVE FOREST
2 HEALTH.—

3 (1) In order to ensure that the agencies are im-
4 plementing projects pursuant to this section that re-
5 duce the risk of unnaturally intense wildfires and
6 improve forest health, the Secretaries—

7 (A) shall not construct or reconstruct new
8 temporary or permanent roads in inventoried
9 roadless areas;

10 (B) shall maintain the integrity of mature
11 and old growth stands appropriate for each eco-
12 system type and shall focus on thinning from
13 below for all forest thinning projects;

14 (C) shall use integrated pest management
15 techniques to forestall significant fuel loading in
16 areas infested by native insects;

17 (D) shall require a slash treatment plan
18 when thinning to reduce hazardous fuels in
19 areas with insect mortality and limit timber sal-
20 vage activity to areas with fifty percent or more
21 mortality; and

22 (E) shall deposit in the Treasury of the
23 United States all revenues and receipts gen-
24 erated from projects implemented pursuant to
25 this Act.

1 (2) In addition to the requirements set forth in
 2 paragraph (1), the Secretaries shall ensure that
 3 projects implemented in municipal watersheds pro-
 4 tect or enhance water quality or water quantity.

5 (3) The Secretaries shall not use goods-for-serv-
 6 ice contracting to implement projects pursuant to
 7 this section.

8 (j) LONG-TERM FUEL MANAGEMENT.—In imple-
 9 menting hazardous fuels reduction projects pursuant to
 10 this section, the Secretaries shall ensure that—

11 (1) funding to assure completion of all phases
 12 of the project be committed by the management unit
 13 before the project begins;

14 (2) a follow-up treatment plan describing the
 15 long-term maintenance activities to keep the treated
 16 areas within the historical range of variability, and
 17 the project costs, shall accompany all proposed
 18 projects; and

19 (3) a system to track the budgeting and imple-
 20 mentation of follow-up treatments shall be used to
 21 account for the long-term maintenance of areas
 22 managed to reduce hazardous fuels.

23 (k) HAZARDOUS FUELS REDUCTION FUNDING
 24 FOCUS.—In order to focus hazardous fuels reduction ac-
 25 tivities on the highest priority areas where critical issues

1 of human safety and property loss are the most serious
 2 and within municipal watersheds, the Secretaries shall ex-
 3 pend at least seventy percent of the hazardous fuels oper-
 4 ations funds provided annually only on projects within the
 5 community protection zone or within municipal water-
 6 sheds.

7 (l) COMMUNITIES.—

8 (1) The Secretaries shall expend at least thirty
 9 percent of the hazardous fuels operations funds pro-
 10 vided annually on projects that benefit small busi-
 11 nesses that use small diameter material and woody
 12 debris removed in hazardous fuels reduction treat-
 13 ments and are located in small, economically dis-
 14 advantaged communities.

15 (2) To conduct a project under this section, the
 16 Secretaries shall use local preference contracting and
 17 best value contracting. Best value contracting cri-
 18 teria includes—

19 (A) the ability of the contractor to meet
 20 the ecological goals of the projects;

21 (B) the use of equipment that will mini-
 22 mize or eliminate impacts on soils; and

23 (C) benefits to local communities such as
 24 ensuring that the byproducts are processed lo-
 25 cally.

1 (m) MONITORING.—

2 (1) The Secretaries shall jointly establish a
3 commission to complete an assessment of the posi-
4 tive or negative impacts and effectiveness of projects
5 implemented under this section. The commission
6 shall be composed of 12 to 15 members with equal
7 representation from conservation interests, local
8 communities, and commodity interests. The Commis-
9 sion shall submit a report to Congress within 36
10 months after the date of enactment of this Act. The
11 report must include identification of the total dollar
12 value of contracts awarded to natural resource re-
13 lated small or micro-enterprises, Youth Conservation
14 Corps crews or related partnerships, entities that
15 hired and trained local people to complete the con-
16 tract or agreement, or local entities that meet the
17 criteria to qualify for the Historically Underutilized
18 Business Zone Program pursuant to section 32 of
19 the Small Business Act (15 U.S.C. 657a).

20 (2)(A) The Secretaries shall establish a
21 multiparty monitoring, evaluation, and account-
22 ability process in order to assess a representative
23 sampling of the projects implemented pursuant to
24 this section.

1 (B) The Secretaries shall ensure that moni-
2 toring data is collected and compiled in a way that
3 the general public can easily access. The Secretaries
4 may collect the data using cooperative agreements,
5 grants, or contracts with small or micro-enterprises,
6 Youth Conservation Corps work crews or related
7 partnerships with State, local, and other non-Fed-
8 eral conservation corps.

9 (3) Funds to implement this section shall be de-
10 rived from hazardous fuels operations funds.

11 (n) SUNSET.—The provisions of this section shall ex-
12 pire five years after the date of enactment of this Act,
13 except that a project for which a decision notice, or memo-
14 randum in the case of a categorical exclusion, has been
15 issued before the end of such period may continue to be
16 implemented using the provisions of this Act.

17 **SEC. 4. INSECT INFESTATIONS.**

18 (a) During fiscal years 2004 and 2008, the Secre-
19 taries jointly shall make available from funds otherwise
20 available in the Treasury, without further appropriation,
21 \$25,000,000 each fiscal year to conduct a systematic in-
22 formation gathering program on certain insect types that
23 have caused large-scale damage to forest ecosystems in
24 order to complete research that can be applied to forest
25 management treatment and product utilization.

1 (b) The Secretaries shall establish and carry out the
2 program in cooperation with scientists from universities
3 and forestry schools, State agencies, and private and in-
4 dustrial land owners. The Secretaries shall designate uni-
5 versities and forestry schools, including Land Grant Col-
6 leges and Universities and 1890 institutions, to carry out
7 the program.

8 (c) The Secretaries shall ensure that the program in-
9 cludes research on—

10 (1) determining how to best use mechanical
11 thinning and prescribed fire to modify fire behavior
12 and reduce fire risk, and to improve the scientific
13 basis for design, implementation and evaluation of
14 hazardous fuels reduction treatments;

15 (2) gathering systematic information on insect
16 types, including Emerald Ash Borers, Gypsy Moth,
17 Red Oak Borers, Asian Longhorned Beetles, and
18 Bark Beetles, that have caused large-scale damage
19 to forest ecosystems, to establish early detection pro-
20 grams for insect and disease infestation in order to
21 prevent massive breakouts, to determine the correla-
22 tion between insect mortality and fire risk in specific
23 forest types, and to test silvicultural systems that
24 use integrated pest management; and

1 (3) developing new technologies and markets
2 for value-added products that use the byproducts of
3 insect infestation or hazardous fuels reduction treat-
4 ments.

5 **SEC. 5. FIREFIGHTER SAFETY AND TRAINING.**

6 The Secretaries shall track funds expended for fire-
7 fighter safety and training and including a line item for
8 such expenditures in future budget requests.

9 **SEC. 6. BORROWING AUTHORITY FOR FIRE SUPPRESSION.**

10 (a) The Secretary of Agriculture may request up to
11 \$250 million in a fiscal year from the Secretary of the
12 Treasury to cover fire suppression costs that exceed the
13 amount of funding available to the Forest Service for fire
14 suppression in a fiscal year.

15 (b) Upon such request, the Secretary of the Treasury
16 shall make such sums available to the Secretary of Agri-
17 culture, without further appropriation.

18 (c) Upon amounts being appropriated by Congress to
19 reimburse funds transferred to the Secretary of Agri-
20 culture pursuant to this section, such amounts shall be
21 deposited in the Treasury.

1 **SEC. 7. PROHIBITION ON THE COMPETITIVE SOURCING INI-**
2 **TIATIVE.**

3 The Competitive Sourcing Initiative and the Office
4 of Management and Budget Circular No. A-76, dated
5 May 29, 2003, shall not apply to the Forest Service.

6 **SEC. 8. WILDFIRE RISK REDUCTION AND BURNED AREA**
7 **RESTORATION.**

8 (a) IN GENERAL.—During fiscal years 2004 through
9 2008, the Secretaries jointly shall make available from
10 funds otherwise available in the Treasury, without further
11 appropriation, \$100,000,000 each fiscal year to reduce the
12 risk of wildfire to structures and restore burned areas on
13 tribal lands, nonindustrial private lands, and State lands
14 using the authorities available pursuant to this section, the
15 National Fire Plan and the Emergency Watershed Protec-
16 tion program.

17 (b) COST SHARE GRANTS.—In implementing this
18 section, the Secretaries may make cost-share grants to In-
19 dian tribes, local fire districts, municipalities, homeowner
20 associations, and counties, to remove, transport, and dis-
21 pose of hazardous fuels around homes and property to—

22 (1) prevent structural damage as a result of
23 wildfire, or

24 (2) to restore or rehabilitate burned areas on
25 non-Federal lands.

1 (c) NON-FEDERAL CONTRIBUTION.—The non-Fed-
2 eral contribution may be in the form of cash or in-kind
3 contribution.

4 (d) PRIORITY.—Priority for such funds shall be given
5 to areas where the applicable local government has en-
6 acted ordinances for wildland areas requiring or pro-
7 moting brush clearance around homes and requiring fire-
8 retardant building materials for new construction.

9 (e) AVAILABILITY OF FUNDS.—Amounts appro-
10 priated in one fiscal year and unobligated before the end
11 of that fiscal year shall remain available for use in subse-
12 quent fiscal years.

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