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VALLES CALDERA PRESERVATION ACT OF 2005

FEBRUARY 23, 2005.—Ordered to be printed

Filed, under authority of the order of the Senate of February 17, 2005

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

R E P O R T

[To accompany S. 212]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 212) to amend the Valles Caldera Preservation Act to improve the preservation of the Valles Caldera, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 212 is to amend the Valles Caldera Preservation Act to improve the preservation of the Valles Caldera, and for other purposes.

BACKGROUND AND NEED

The Valles Caldera National Preserve (Preserve) is a 94,000-acre parcel of land in northern New Mexico that was acquired by the Federal Government and is managed by a special trust. The Valles Caldera Preservation Act directed the Secretary of Agriculture (Secretary) to acquire the Baca Ranch and to manage it as a preserve. Further, the law established the Valles Caldera Trust (Trust), a governmental corporation to manage the Preserve.

Since passage of the Valles Caldera Preservation Act in 2000, the Trust has experienced some growing pains. Some of the Federal policies on management and personnel do not meet the needs of the Trust and some of the policy simply needs to be clarified so the Trust and the Forest Service can more effectively address the issues faced by the Trust.

S. 212 addresses issues that have arisen to help facilitate and ensure that the Trust can operate in a cost efficient and effective manner.

LEGISLATIVE HISTORY

S. 212 was introduced by Senators Domenici and Bingaman on January 31, 2005. A similar bill (S. 1582) was introduced by Senators Domenici and Bingaman in the 108th Congress. The Subcommittee on Public Lands and Forests held a hearing on September 11, 2003 (S. Hrg. 108–196). At its business meeting on April 28, 2004, the Committee ordered the bill favorably reported with an amendment in the nature of a substitute (S. Rept. 108–269). The Senate passed S. 1582, as amended, by unanimous consent on September 15, 2004.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on February 9, 2005, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 212.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the “Valles Caldera Preservation Act of 2005”.

Section 2(a) amends section 104(e) of the Valles Caldera Preservation Act (16 U.S.C. 698v–2(e)) by removing the willing seller limitation from the original law and by directing the Secretary to acquire the minority mineral interests at the Preserve. It requires these interests to be acquired with available funds or through a declaration of taking if negotiations are unsuccessful by the date 60 days after enactment of the Act. Further, any difference between the estimated just compensation by the Secretary and the amount awarded shall be paid from the permanent judgment appropriation authorized by section 1304 of title 31, United States Code.

Subsection (b) amends section 106(e) of the Valles Caldera Preservation Act (16 U.S.C. 698v–4(e)) by clarifying that the Trust shall determine the character of, and necessity for, any obligations and expenditures of the Trust and the manner in which obligations and expenditures shall be incurred and paid.

Subsection (c) amends section 106(g) of the Valles Caldera Preservation Act (16 U.S.C. 698v–4(g)) to allow the members of the Board of Trustees, the executive director and one additional employee of the Trust to solicit donations to the Trust.

Subsection (d) amends section 106(h)(1) of the Valles Caldera Preservation Act (16 U.S.C. 698v–4(h)(1)) to allow the Trust to retain monies received from claims, judgments, or settlements arising from activities occurring on the Baca Ranch or the Preserve after October 27, 1999.

Section 3 amends section 107(e) of the Valles Caldera Preservation Act (16 U.S.C. 698v–5(e)) to allow the chairman of the Board of Trustees to be compensated for each day the chair is engaged in the performance of duties for the Board of Trustees. Compensation will not exceed 25 percent of the annual rate of pay for level IV of the Executive Schedule.

Section 4a amends section 108(c)(3) of the Valles Caldera Preservation Act (16 U.S.C. 698v-6(c)(3)) to clarify that the Trust may not dispose of real property, but may dispose of and sell forage, forest products, or marketable renewable resources.

Subsection (b) amends section 108(g) of the Valles Caldera Preservation Act (16 U.S.C. 698v-6(g)) to direct the Secretary, in consultation with the Trust, to develop a fire preparedness, suppression, and emergency rehabilitation services plan for the Preserve that is consistent with the management plan developed by the Trust and to provide those services on a non-reimbursable basis. The Secretary may also provide presuppression and nonemergency rehabilitation and restoration services on a reimbursable basis.

COST AND BUDGETARY CONSIDERATIONS

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

FEBRUARY 15, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 212, the Valles Caldera Preservation Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll and Deborah Reis.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 212—Valles Caldera Preservation Act of 2005

Summary: S. 212 would amend Public Law 106-248, which established the Valles Caldera Preserve in New Mexico and created the Valles Caldera Trust, a government-owned corporation, to manage the preserve. The amendments to the existing law would enable the Secretary of Agriculture to acquire, by condemnation, certain subsurface rights to the preserve's Baca Ranch area if the Secretary cannot negotiate a voluntary sale with the current owners. If condemnation is necessary, the owners would be entitled to just compensation as determined by a court. The bill would specify that any difference between the Secretary's estimate of the value of the subsurface rights and the amount awarded by the court would be paid from the permanent claims and judgments fund.

Assuming that the Baca Ranch subsurface rights would be acquired by a government declaration of taking (a method of condemnation), CBO estimates that enacting S. 212 would increase direct spending by about \$3 million over the 2005-2008 period. Enacting the bill would not affect revenues.

S. 212 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of State, local, or tribal governments. In the event that the Secretary of Agriculture uses a dec-

laration of taking to acquire certain mineral interests of the Baca Ranch, such an acquisition would constitute a private-sector mandate as defined by UMRA. The cost of the mandate would be the fair market value of the mineral interests and expenses incurred by the private-sector owners in transferring those interests to the Federal Government. Based on information from Government resources, CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates (\$123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 212 is shown in the following table. The costs of this legislation falls within budget function 300 (natural resources and environment) and 800 (general government).

	By fiscal year, in millions of dollars—										
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
	CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	0	0	0	1	0	0	0	0	0	0	0
Estimated Outlays	2	0	0	1	0	0	0	0	0	0	0

Basis of Estimate: For this estimate, CBO assumes that S. 212 will be enacted during fiscal year 2005 and that the federal government will assume ownership of the Baca Ranch subsurface rights soon thereafter. Based on information provided by land management agencies regarding the value of mineral rights, the historical “premiums” paid for property acquired by litigation, and the length of time typically required to resolve similar takings proceedings, we assume that a court would award a total of \$3 million in compensation to the owners of the subsurface rights over the 2005–2008 period.

As provided by the bill, \$2 million of the expected judgment award (equal to the government appraisal of the subsurface value) would be derived from existing appropriations for land acquisition, and \$1 million (the estimated excess of the award over the appraised value) would be paid from the permanent claims and judgments account. Because we expect that the \$2 million of previously appropriated funds would not have been spent in the next several years in the absence of the legislation, using that amount to pay a portion of the judgment would increase mandatory outlays. We expect that the \$2 million would be paid to the property owners or deposited with the court when the agency takes possession of the subsurface rights in 2005. Using the permanent claims and judgments account to pay the difference between the total award and the appraised value would increase both budget authority and outlays by \$1 million.

Estimated impact on state, local, and tribal governments: S. 212 contains no intergovernmental mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimated impact on the private sector: In the event that the Secretary of Agriculture uses a declaration of taking to acquire certain mineral interests of the Baca Ranch, such an acquisition would constitute a private-sector mandate as defined by UMRA. The cost of the mandate would be the fair market value of the min-

eral interests and expenses incurred by the private-sector owners in transferring those interests to the federal government. Based on information from government sources, CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates (\$123 million in 2005, adjusted annually for inflation).

The bill would direct the Secretary of Agriculture to acquire the mineral interests without the sellers' consent should negotiations for a sale fail after 60 days. Should those negotiations fail, the Secretary of Agriculture would be required to file a declaration of taking with the court. The declaration of taking would force the owners of the geothermal and mineral interests to give up ownership in exchange for a sum equal to the fair market value as determined by the court. According to an appraisal done by the Forest Service in 2001, the mineral and geothermal interests on the Baca Ranch that are privately held have a fair market value of almost \$2 million. In December 2001, the Forest Service's offer for purchase of the interests based on this appraisal was rejected.

Estimate prepared by: Federal Costs: Megan Carroll and Deborah Reis; Impact on State, Local, and Tribal Governments: Marjorie Millier; and Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, 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. 212.

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. 212.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at a hearing on September 11, 2003.

STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND THE ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee:

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S. 1582—Valles Caldera Preservation Act of 2003

S. 1582, introduced by Senators Domenici and Bingaman, would make modifications to Public Law 106-248, the Valles Caldera Preservation Act. The Administration would have no objection to S. 1582, if amended, to address

concerns regarding the Federal competitive service, fire-fighting expenditures and the permanent Judgment Fund.

The Valles Caldera National Preserve located in central New Mexico is a unique landmass, with nationally important scientific, cultural, historic, recreational, ecological, wildlife, and fisheries values. In passing the Valles Caldera Preservation Act in 2000, Congress recognized those values and established the National Preserve as an experiment in public land administration that incorporates elements of public and private administration so as to promote long-term financial stability consistent with the protection of the natural resources and the sustained yield for timber production, and domesticated livestock grazing. Under the terms and conditions of the 2000 Act, Secretary of Agriculture Ann Veneman authorized the Valles Caldera Trust to assume management of the National Preserve in August 2002. The Trust, comprised of 9 members appointed by the President, now oversees the management of the Preserve.

S. 1582 would:

Direct Federal agencies to classify rates of compensation and classification of Trust employees so that these employees are not precluded from consideration for Federal competitive service based on their current employment;

Allow the Board of Trustees to designate any Trust employee to solicit donations (under current law, only the Trustees may solicit donations);

Allow the Board of Trustees to set the compensation of the chair, subject to certain limitations;

Clarify that the prohibition against the disposal of real property by the Trust does not include the sale or other disposal of forage, forest products or marketable renewable resources;

Allow the Trust, subject to the laws applicable to Government corporations, to determine the character and necessity for any obligations and expenditures of the Trust and the manner in which expenditures and obligations shall be incurred, allowed, and paid;

Authorize the Trust to utilize the permanent judgment appropriation provided under section 1304 of title 31, U.S.C., for a claim, judgment, or settlement against the Trust; and

Direct the Secretary to provide, to the extent generally authorized at other units of the National Forest System, fire suppression and rehabilitation services and wildland fire severity funding for extraordinary preparedness. (The Secretary of Agriculture currently may provide pre-suppression, suppression and rehabilitation services at the request of the Trust, subject to reimbursement.)

The Administration has several concerns with S. 1582.

First, it should limit the number of Trust employees that may accept gifts in order to minimize the potential for fraud, conflicts of interest, or other ethical concerns.

Second, we have been advised that the Department of Justice opposes section 2(e) of the bill, regarding the eligibility of the Trust to pay claims, judgments, and settlements from the permanent judgment appropriation at 31 U.S.C. Sec. 1304 (the "Judgment Fund"). In general, government corporations like the Trust should pay judgments and settlements out of their own funds. Because the Trust is an autonomous corporation with its own funds and an entity whose liabilities are properly charged to corporate funds, it is appropriate for the Trust to continue to satisfy judgments and settlements against it out of Trust funds.

Third, OPM advises that Section 2(a) of the bill would extend to excepted service employees of the Trust a preferential opportunity to apply for competitive service positions elsewhere that are not open to Federal employees generally, thereby creating an inequity between Trust employees and excepted service employees throughout Government who have no such opportunity.

Fourth, complex or large fires can require the expenditure of extensive fire fighting and emergency stabilization and rehabilitation resources. However, the bill provides no limitation, by time or amount, to the funds that could be provided to the Trust under these proposed authorities. The original act provides an expectation that the Trust should work toward the goal of financial sustainability. We assume S. 1582 continues that expectation with regard to fire suppression. The measure could be improved with the inclusion of language to establish limits of duration and funding for expenditures associated with firefighting together with appropriate levels of reimbursement.

In addition, the intent of Sec. 4(b)(2) for the Secretary to provide "rehabilitation" needs to be clarified as to whether the intent is for the Secretary to provide emergency stabilization or rehabilitation. These are two different programs. Emergency stabilization funds come from the wildland fire emergency operations account and are meant to protect persons, property and resources immediately after a large and damaging wildfire. Rehabilitation activities are longer term and are conducted through other ongoing management activities funded under different program appropriations. We believe that the bill should focus solely upon emergency stabilization activities on the Preserve, subject to the same time and amount limitations discussed earlier related to firefighting.

In addition, section 4(b)(2) would delete the current authority for the Secretary to provide the Trust presuppression activities subject to reimbursement. We believe it is appropriate for presuppression and rehabilitation activities to be provided by the Forest Service, under a cooperative agreement, with reimbursement by the Trust.

This concludes my statement. I would be pleased 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, changes in existing law made by the bill, S. 212, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

VALLES CALDERA NATIONAL PRESERVE AND TRUST

Public Law 106–248 (16 U.S.C. 698V Et Seq.)

TITLE I—VALLES CALDERA NATIONAL PRESERVE AND TRUST**SEC. 101. SHORT TITLE.**

This title may be cited as the “Valles Caldera Preservation Act”.

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SEC. 104. ACQUISITION OF LANDS.

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(e) OUTSTANDING MINERAL INTERESTS.—**[The acquisition]**

(1) **IN GENERAL.**—*The acquisition* of the Baca Ranch by the Secretary shall be subject to all outstanding valid existing mineral interests. **[The Secretary]**

(2) **ACQUISITION.**—*The Secretary* is authorized and directed to negotiate with the owners of any fractional interest in the subsurface estate for the acquisition of such fractional interest **[on a willing seller basis]** for not to exceed its fair market value, as determined by appraisal done in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions. **[Any such]**

(3) **ADMINISTRATION.**—*Any such* interests acquired within the boundaries of the Upper Alamo watershed, as referred to in subsection (b), shall be administered by the Secretary of the Interior as part of Bandelier National Monument.

(4) **AVAILABLE FUNDS.**—*Any such interests shall be acquired with available funds.*

(5) DECLARATION OF TAKING.—

(A) IN GENERAL.—*If negotiations to acquire the interests are unsuccessful by the date that is 60 days after the date of enactment of this paragraph, the Secretary shall acquire the interests pursuant to section 3114 of title 40, United States Code.*

(B) SOURCE OF FUNDS.—*Any difference between the sum of money estimated to be just compensation by the Secretary and the amount awarded shall be paid from the permanent judgment appropriation under section 1304 of title 31, United States Code.*

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SEC. 106. THE VALLES CALDERA TRUST.

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(e) GOVERNMENT CORPORATION.—

(1) IN GENERAL.—The Trust shall be a Government Corporation subject to chapter 91 of title 31, United States Code (commonly referred to as the Government Corporation Control Act). Financial statements of the Trust shall be audited annually in accordance with section 9105 of title 31 of the United States Code.

(2) REPORTS.—Not later than January 15 of each year, the Trust shall submit to the Secretary and the Committees of Congress a comprehensive and detailed report of its operations, activities, and accomplishments for the prior year including information on the status of ecological, cultural, and financial resources being managed by the Trust, and benefits provided by the Preserve to local communities. The report shall also include a section that describes the Trust's goals for the current year.

(3) ANNUAL BUDGET.—

(A) IN GENERAL.—The Trust shall prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after the date of acquisition of the Baca Ranch under section 104(a).

(B) BUDGET REQUEST.—The Secretary shall provide necessary assistance (including detailees as necessary) to the Trust for the timely formulation and submission of the annual budget request for appropriations, as authorized under section 111(a), to support the administration, operation, and maintenance of the Preserve.

(4) OBLIGATIONS AND EXPENDITURES.—*Subject to the laws applicable to Government corporations, the Trust shall determine—*

(A) the character of, and the necessity for, any obligations and expenditures of the Trust; and

(B) the manner in which obligations and expenditures shall be incurred, allowed, and paid.

(f) TAXES.—The Trust and all properties administered by the Trust shall be exempt from all taxes and special assessments of every kind by the State of New Mexico, and its political subdivisions including the counties of Sandoval and Rio Arriba.

(g) DONATIONS.—**[The Trust may solicit]** *The members of the Board of Trustees, the executive director, and 1 additional employee of the Trust in an executive position designated by the Board of Trustees or the executive director may solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other private or public entities for the purposes of carrying out its duties. The Secretary, prior to assumption of management of the Preserve by the Trust, and the Trust thereafter, may accept donations from such entities notwithstanding that such donors may conduct business with the Department of Agriculture or any other department or agency of the United States.*

(h) PROCEEDS.—

(1) IN GENERAL.—Notwithstanding sections 1341 and 3302 of title 31 of the United States Code, all monies received from donations under **[subsection (g)]** *subsection (g), from claims, judgments, or settlements arising from activities occurring on the Baca Ranch or the Preserve after October 27, 1999, or from the management of the Preserve shall be retained and shall be*

available, without further appropriation, for the administration, preservation, restoration, operation and maintenance, improvement, repair, and related expenses incurred with respect to properties under its management jurisdiction.

(2) FUND.—There is hereby established in the Treasury of the United States a special interest bearing fund entitled “Valles Caldera Fund” which shall be available, without further appropriation for any purpose consistent with the purposes of this title. At the option of the Trust, or the Secretary in accordance with section 110, the Secretary of the Treasury shall invest excess monies of the Trust in such account, which shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturity.

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SEC. 107. BOARD OF TRUSTEES.

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(e) ORGANIZATION AND COMPENSATION.—

(1) IN GENERAL.—The Board shall organize itself in such a manner as it deems most appropriate to effectively carry out the activities of the Trust.

(2) COMPENSATION OF TRUSTEES.—[Trustees] *Except as provided in paragraph (3), Trustees shall serve without pay, but may be reimbursed from the funds of the Trust for the actual and necessary travel and subsistence expenses incurred by them in the performance of their duties.*

(3) CHAIR.—[Trustees]

(A) SELECTION.—*Trustees shall select a chair from the membership of the Board.*

(B) COMPENSATION.—*On request of the chair, the chair may be compensated at a rate determined by the Board of Trustees, but not to exceed the daily equivalent of the annual rate of pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) in which the chair is engaged in the performance of duties of the Board of Trustees.*

(C) MAXIMUM RATE OF PAY.—*The total amount of compensation paid to the chair for a fiscal year under subparagraph (B) shall not exceed 25 percent of the annual rate of pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code.*

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SEC. 108. RESOURCE MANAGEMENT.

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(c) AUTHORITIES.—

(1) IN GENERAL.—The Trust shall develop programs and activities at the Preserve, and shall have the authority to negotiate directly and enter into such agreements, leases, contracts and other arrangements with any person, firm, association, organization, corporation or governmental entity, including without limitation, entities of Federal, State, and local govern-

ments, and consultation with Indian tribes and Pueblos, as are necessary and appropriate to carry out its authorized activities or fulfill the purposes of this title. Any such agreements may be entered into without regard to section 321 of the Act of June 30, 1932 (40 U.S.C. 303b).

(2) PROCEDURES.—The Trust shall establish procedures for entering into lease agreements and other agreements for the use and occupancy of facilities of the Preserve. The procedures shall ensure reasonable competition, and set guidelines for determining reasonable fees, terms, and conditions for such agreements.

(3) LIMITATIONS.—【The Trust may not dispose】

(A) IN GENERAL.—*The Trust may not dispose* of any real property in, or convey any water rights appurtenant to the Preserve. 【The Trust】

(B) MAXIMUM DURATION.—*The Trust may not convey any easement, or enter into any contract, lease, or other agreement related to use and occupancy of property within the Preserve for a period greater than 10 years.* 【Any such】

(C) TERMINATION.—*The easement, contract, lease, or other agreement shall provide that, upon termination of the Trust, such easement, contract, lease or agreement is terminated.*

(D) EXCLUSIONS.—*For the purposes of this paragraph, the disposal of real property does not include the sale or other disposal of forage, forest products, or marketable renewable resources.*

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(g) LAW ENFORCEMENT AND FIRE MANAGEMENT.—【The Secretary】

(1) LAW ENFORCEMENT.—

(A) IN GENERAL.—*The Secretary shall provide law enforcement services under a cooperative agreement with the Trust to the extent generally authorized in other units of the National Forest System.* 【The Trust】

(B) FEDERAL AGENCY.—*The Trust shall be deemed a Federal agency for purposes of the law enforcement authorities of the Secretary (within the meaning of section 15008 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559g)).* 【At the request of the Trust, the Secretary may provide fire presuppression, fire suppression, and rehabilitation services: *Provided*, That the Trust shall reimburse the Secretary for salaries and expenses of fire management personnel, commensurate with services provided.】

(2) FIRE MANAGEMENT.—

(A) NON-REIMBURSABLE SERVICES.—

(i) DEVELOPMENT OF PLAN.—*The Secretary shall, in consultation with the Trust, develop a plan to carry out fire preparedness, suppression, and emergency rehabilitation services on the Preserve.*

(ii) CONSISTENCY WITH MANAGEMENT PROGRAM.—*The plan shall be consistent with the management program developed pursuant to subsection (d).*

(iii) *COOPERATIVE AGREEMENT.*—*To the extent generally authorized at other units of the National Forest System, the Secretary shall provide the services to be carried out pursuant to the plan under a cooperative agreement entered into between the Secretary and the Trust.*

(B) *REIMBURSABLE SERVICES.*—*To the extent generally authorized at other units of the National Forest System, the Secretary may provide presuppression and nonemergency rehabilitation and restoration services for the Trust at any time on a reimbursable basis.*

