

111TH CONGRESS
1ST SESSION

H. R. 2899

To address the public health and safety threat presented by the risk of catastrophic wildfire on Federal forestlands of the State of California by requiring the Secretary of Agriculture and the Secretary of the Interior to expedite forest management projects relating to hazardous fuels reduction, forest restoration, and forest health.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2009

Mr. HERGER (for himself, Mr. MCCLINTOCK, Mr. DANIEL E. LUNGREN of California, and Mr. RADANOVICH) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Natural Resources, 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 address the public health and safety threat presented by the risk of catastrophic wildfire on Federal forestlands of the State of California by requiring the Secretary of Agriculture and the Secretary of the Interior to expedite forest management projects relating to hazardous fuels reduction, forest restoration, and forest health.

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “California Catastrophic Wildfire Prevention and Commu-
4 nity Protection Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Project authority consistent with community wildfire protection plan.
- Sec. 5. Elements of eligible projects.
- Sec. 6. Environmental analysis.
- Sec. 7. Administrative and judicial review.
- Sec. 8. Acceptance and use of funds or in-kind services.
- Sec. 9. Report.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

9 (1) Forested lands under the jurisdiction of the
10 Forest Service and Bureau of Land Management in
11 California have grown into a state of unnatural den-
12 sity and structure.

13 (2) Overgrown forest conditions, in combination
14 with continued drought and other climatic cir-
15 cumstances, have left these forests at extreme risk
16 to insects, disease, and catastrophic wildfire.

17 (3) The risk of catastrophic wildfire presents a
18 very real threat to the health and safety of individ-
19 uals and communities in the wildland-urban inter-
20 face as well as to the property of adjacent private
21 landowners.

1 (4) The catastrophic, stand-replacing fires that
2 are occurring with increasing frequency as a result
3 of the forest conditions described in paragraph (2),
4 pose a threat to the health of lands, watersheds,
5 wildlife, air quality and the environment.

6 (5) Local communities and interests are willing
7 to work collaboratively to assure seamless protection
8 from catastrophic wildfire and to improve forest
9 health across public and private lands.

10 (6) The Federal Government, particularly the
11 Forest Service and Bureau of Land Management,
12 must address these conditions at the appropriate an-
13 nual pace and scale needed across the landscape to
14 have a substantial impact in reducing natural dis-
15 turbances.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) **AT-RISK COMMUNITY.**—The term “at-risk
19 community” has the meaning given that term in
20 Section 101 of the Healthy Forests Restoration Act
21 of 2003 (16 U.S.C. 6511).

22 (2) **AT-RISK WATERSHED.**—The term “at-risk
23 watershed” means a watershed—

24 (A) where there exists a high risk of losing
25 key ecosystem, wildlife, and watershed compo-

1 nents to severe fire, including post-fire disturb-
2 ances, as documented by the Secretary con-
3 cerned; and

4 (B) where there are—

5 (i) Federal lands in condition class II
6 or III, as developed by the Forest Service
7 Rocky Mountain Research Station in the
8 general technical report titled “Develop-
9 ment of Coarse-Scale Spatial Data for
10 Wildland Fire and Fuel Management”
11 (RMRS–87) and dated April 2000 (includ-
12 ing any subsequent revision to the report);
13 or

14 (ii) private lands that are located in a
15 “Very High Fire Hazard Severity Zone”,
16 as determined by the California State Fire
17 Marshal.

18 (3) COMMUNITY WILDFIRE PROTECTION
19 PLAN.—The term “community wildfire protection
20 plan” has the meaning given that term in Section
21 101 of the Healthy Forests Restoration Act of 2003
22 (16 U.S.C. 6511).

23 (4) COUNTY FIRE PLAN.—The term “county
24 fire plan” means a plan developed similarly to a
25 community wildfire protection plan with an annual

1 mitigation strategy developed through a collaborative
2 effort and formally adopted by the Board of Super-
3 visors of the county in which the forest lands cov-
4 ered by the plan are located.

5 (5) COVERED FOREST LANDS.—

6 (A) INCLUDED LANDS.—The term “cov-
7 ered forest lands” means—

8 (i) National Forest System lands in
9 California; and

10 (ii) Public land in California adminis-
11 tered by the Secretary of the Interior
12 through the Bureau of Land Management.

13 (B) EXCLUDED LAND.—The term does not
14 include land that is a component of the Na-
15 tional Wilderness Preservation System or other
16 Federal land (other than inventoried roadless
17 areas and wilderness study areas) in which the
18 removal of vegetation is specifically prohibited
19 by Federal law.

20 (6) ELIGIBLE PROJECT.—The term “eligible
21 project” means the measures and methods included
22 in a project carried out on covered forest lands by
23 the Secretary concerned for hazardous fuels reduc-
24 tion, forest health, and forest restoration.

1 (7) SECRETARY CONCERNED.—The term “Sec-
 2 retary concerned” means—

3 (A) The Secretary of Agriculture, in the
 4 case of National Forest System lands; and

5 (B) The Secretary of the Interior, in the
 6 case of public land administered by the Sec-
 7 retary of the Interior through the Bureau of
 8 Land Management.

9 **SEC. 4. PROJECT AUTHORITY CONSISTENT WITH COMMU-
 10 NITY WILDFIRE PROTECTION PLAN.**

11 The Secretary concerned shall carry out eligible
 12 projects on covered forest lands that are within or adja-
 13 cent to an at-risk community or an at-risk watershed if
 14 the eligible project is consistent with the applicable com-
 15 munity wildfire protection plan or county fire plan.

16 **SEC. 5. ELEMENTS OF ELIGIBLE PROJECTS.**

17 Eligible projects on covered forest lands shall be car-
 18 ried out in a cost-effective manner that—

19 (1) focuses on surface, ladder, and canopy fuels
 20 reduction activities; or

21 (2) implements forest restoration activities in
 22 response to severe fire, insect, or disease infestation,
 23 windthrow, or other extreme weather events or nat-
 24 ural disasters.

1 **SEC. 6. ENVIRONMENTAL ANALYSIS.**

2 (a) GENERAL RULE OF PROPOSED ACTION AND NO
3 ACTION ALTERNATIVE.—The Secretary concerned shall
4 prepare an environmental assessment or an environmental
5 impact statement pursuant to section 102(2) of the Na-
6 tional Environmental Policy Act of 1969 (42 U.S.C.
7 4332(2)) for each proposed eligible project. The Secretary
8 concerned shall study, develop, and describe the proposed
9 action and the alternative of no action. Except as provided
10 in subsection (b), the Secretary concerned is not required
11 to study, develop, or describe any alternative actions to
12 the proposed agency action.

13 (b) CONSIDERATION OF ALTERNATIVE REC-
14 OMMENDATION.—The Secretary concerned shall evaluate
15 and consider an alternative recommendation submitted by
16 the county in which a proposed eligible project is to be
17 carried out if the county determines that the proposed eli-
18 gible project is or may be inconsistent with its community
19 wildfire protection plan. The Secretary shall publish the
20 evaluation and consideration of the alternative rec-
21 ommendation in the environmental assessment or environ-
22 mental impact statement prepared pursuant to section
23 102(2) of the National Environmental Policy Act of 1969
24 (42 U.S.C. 4332(2)) for the proposed eligible project.

25 (c) EFFECT OF COUNTY EMERGENCY.—

1 (1) COUNCIL ON ENVIRONMENTAL QUALITY.—
2 Pursuant to Section 1506.11 of title 40, Code of
3 Federal Regulations, the Secretary concerned shall
4 request the Council on Environmental Quality to de-
5 velop and approve alternative arrangements for a
6 proposed eligible project if the county in which the
7 proposed eligible project is to be carried out, in con-
8 sultation with the Director of the California Depart-
9 ment of Forestry and Fire Protection, declares—

10 (A) a state of emergency; or

11 (B) the existence of a dangerous nuisance
12 to public safety, welfare, infrastructure, water-
13 sheds, wildlife habitat, or other vital assets due
14 to the accumulation of forest fuels and the as-
15 sociated risk of extreme fire on covered forest
16 lands.

17 (2) MANDATORY INFORMATION.—When re-
18 questing alternative arrangements under paragraph
19 (1), the Secretary concerned shall transmit to the
20 Council on Environmental Quality the following in-
21 formation:

22 (A) A description of the proposed eligible
23 project.

24 (B) The condition of forest fuels within or
25 near the proposed eligible project.

1 (C) The threat to public safety, welfare, in-
2 frastructure, watersheds, wildlife habitat, or
3 other vital assets due to the accumulation of
4 forest fuels and the associated risk of extreme
5 fire that the proposed eligible project is to re-
6 lieve.

7 (D) The degree to which delaying the im-
8 plementation of the proposed eligible project
9 will increase the risk of serious harm to public
10 safety, welfare, infrastructure, watersheds, wild-
11 life habitat, or other vital assets due to the ac-
12 cumulation of forest fuels and the associated
13 risk of extreme fire.

14 (E) Any other information the Secretary
15 concerned determines relevant.

16 (3) FURTHER INFORMATION.—At the request
17 of either the county in which the eligible project is
18 to be carried out or the Director of the California
19 Department of Forestry and Fire Protection, the
20 Secretary concerned shall transmit to the Council on
21 Environmental Quality information provided to the
22 Secretary concerned by the State or county con-
23 cerning the threat to public safety, welfare, infra-
24 structure, watersheds, wildlife habitat, or other vital
25 assets due to the accumulation of forest fuels and

1 the associated risk of extreme fire that the proposed
2 eligible project is to relieve.

3 (4) DEADLINE FOR ALTERNATIVE ARRANGE-
4 MENTS.—Not later than 15 days after receipt of a
5 request under paragraph (1) for approval of alter-
6 native arrangements for a proposed eligible project,
7 the Council on Environmental Quality shall submit
8 to the Secretary concerned either the alternative ar-
9 rangements for the eligible project or a statement
10 explaining why the alternative arrangements are de-
11 nied. If the Council on Environmental Quality fails
12 to comply with such deadline or denies alternative
13 arrangements, the Secretary concerned shall proceed
14 immediately and to completion on the proposed eligi-
15 ble project notwithstanding any other provision of
16 law including, but not limited to, the National Envi-
17 ronmental Policy Act and the National Forest Man-
18 agement Act (16 U.S.C. 1601 et seq.). Such actions
19 shall also not be subject to the notice, comment, and
20 appeal requirements of the Appeals Reform Act, (16
21 U.S.C. 1612 (note), Pub. Law No. 102–381 Sec.
22 322). Any action authorized by this subsection shall
23 not be subject to judicial review by any court of the
24 United States.

1 **SEC. 7. ADMINISTRATIVE AND JUDICIAL REVIEW.**

2 (a) ADMINISTRATIVE REVIEW.—Administrative re-
3 view of eligible projects shall occur in accordance with the
4 special administrative review process established under
5 section 105 of the Healthy Forests Restoration Act of
6 2003 (16 U.S.C. 6515).

7 (b) JUDICIAL REVIEW.—Judicial review of eligible
8 projects shall occur in accordance with section 106 of the
9 Healthy Forests Restoration Act of 2003 (16 U.S.C.
10 6516).

11 **SEC. 8. ACCEPTANCE AND USE OF FUNDS OR IN-KIND**
12 **SERVICES.**

13 The Secretary concerned may accept and use funds
14 or in-kind services from any public or private entity to
15 assist carrying out eligible projects under this Act.

16 **SEC. 9. REPORT.**

17 The Secretary concerned shall submit to the Com-
18 mittee on Natural Resources of the House of Representa-
19 tives and the Committee on Energy and Natural Re-
20 sources of the Senate an annual report describing all eligi-
21 ble projects conducted under this Act.

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