

112TH CONGRESS  
1ST SESSION

# S. 487

To ensure that private property, public safety, and human life are protected from flood hazards that directly result from post-fire watershed conditions that are created by wildfires on Federal land.

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## IN THE SENATE OF THE UNITED STATES

MARCH 3, 2011

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To ensure that private property, public safety, and human life are protected from flood hazards that directly result from post-fire watershed conditions that are created by wildfires on Federal land.

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.**

4       This Act may be cited as the “Burn Area Flood Pre-  
5       vention Act of 2011”.

6       **SEC. 2. PURPOSE.**

7       The purpose of this Act is to ensure that private  
8       property, public safety, and human life are protected from

1 flood hazards that directly result from post-fire watershed  
2 conditions that are created by wildfires on Federal land.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ADMINISTRATOR.—The term “Adminis-  
6 trator” means the Administrator of the Federal  
7 Emergency Management Agency.

8 (2) AFFECTED AREA.—The term “affected  
9 area” means the area that—

10 (A) suffered damage as a result of wildfire  
11 or flash flooding beginning on June 20, 2010;  
12 and

13 (B) is depicted on the Arizona Division of  
14 Emergency Management map entitled “Schultz  
15 Flood #1 Operations Map” and dated August  
16 3, 2010.

17 (3) FEDERAL LAND.—The term “Federal land”  
18 means—

19 (A) public lands (as defined in section 103  
20 of the Federal Land Policy and Management  
21 Act of 1976 (43 U.S.C. 1702));

22 (B) units of the National Park System;

23 (C) refuges of the National Wildlife Refuge  
24 System;

1 (D) land held in trust by the United States  
 2 for the benefit of Indian tribes or members of  
 3 an Indian tribe; and

4 (E) the National Forest System (as de-  
 5 fined in section 11(a) of the Forest and Range-  
 6 land Renewable Resources Planning Act of  
 7 1974 (16 U.S.C. 1609(a)).

8 (4) SECRETARY.—The term “Secretary” means  
 9 the Secretary of the Army, acting through the Chief  
 10 of Engineers.

11 (5) TASK FORCE.—The term “Task Force”  
 12 means the Schultz Fire Flooding Area Task Force  
 13 established by section 6(b).

14 **SEC. 4. CLARIFICATION OF FLAME WILDFIRE SUPPRES-**  
 15 **SION RESERVE FUND AUTHORITY.**

16 Section 502(c) of the Federal Land Assistance, Man-  
 17 agement, and Enhancement Act of 2009 (43 U.S.C.  
 18 1748a(c)) is amended by inserting “and burn area re-  
 19 sponses, including flood prevention,” after “events”.

20 **SEC. 5. INSURANCE COVERAGE FOR PRIVATE PROPERTIES**  
 21 **AFFECTED BY FLOODING FROM FEDERAL**  
 22 **LANDS.**

23 Section 1306(c)(2) of the National Flood Insurance  
 24 Act of 1968 (42 U.S.C. 4013(c)(2)) is amended—

1           (1) in subparagraph (A), by striking “or” at  
2 the end;

3           (2) in subparagraph (B), by striking the period  
4 at the end and inserting “; or”; and

5           (3) by adding at the end the following:

6                   “(C) the initial purchase of flood insurance  
7 coverage on a determination by the Director  
8 that the waiting period should be waived for  
9 private property that is affected by flooding on  
10 Federal land affected by wildfire.”.

11 **SEC. 6. SCHULTZ FIRE FLOODING AREA ASSISTANCE.**

12           (a) FINDINGS.—Congress finds that—

13                   (1) on June 20, 2010, the Schultz wildfire  
14 began burning in the Coconino National Forest on  
15 Federal land that is located approximately 4 miles  
16 north of the City of Flagstaff, Arizona;

17                   (2) the Schultz Fire burned for 10 days, de-  
18 stroyed more than 15,000 acres of Forest Service  
19 land, and prompted the evacuation of approximately  
20 400 homes before being 100 percent contained on  
21 June 30, 3010;

22                   (3) the Schultz Fire severely burned a large  
23 portion of the forest along the steep terrain on the  
24 east side of the San Francisco Peaks, leaving little  
25 ground vegetation to absorb and retain rainwater;

1           (4) on July 6, 2010, the Forest Service Burn  
2 Area Emergency Response Team issued a hydrology  
3 specialist report that assessed post-fire watershed  
4 conditions and determined that there was a constant  
5 daily flooding threat to nearby communities from  
6 summer monsoon storms;

7           (5) on July 7, 2010, community meetings were  
8 held urging residents to purchase flood insurance for  
9 the affected area, which had not previously been des-  
10 ignated as a flood plain;

11           (6) on July 20, 2010, after nearly 2 inches of  
12 rain fell in less than 1 hour, flash flooding occurred  
13 in the unincorporated communities downstream from  
14 the Schultz wildfire burn area in Coconino County;

15           (7) widespread flooding and debris disrupted  
16 public infrastructure, damaged approximately 32  
17 homes in the communities of Doney Park, Timber-  
18 line, Hutchison Acres, and Wupatki Trails Estates,  
19 and killed a 12-year-old girl;

20           (8) affected homeowners who purchased flood  
21 insurance were not eligible for coverage under the  
22 National Flood Insurance Program at the time of  
23 the loss because of the statutorily mandated 30-day  
24 waiting period before flood insurance coverage takes  
25 effect; and

1           (9) because the Schultz Fire occurred on Forest  
2           Service land and has affected private property, pub-  
3           lic safety, and human life, the Federal Government  
4           is obligated to provide an appropriate level of dis-  
5           aster assistance, including Federal flood insurance  
6           to homeowners.

7           (b) SCHULTZ FIRE FLOODING AREA TASK FORCE.—

8           (1) ESTABLISHMENT.—There is established the  
9           Schultz Fire Flooding Area Task Force.

10          (2) MEMBERSHIP.—The Task Force shall con-  
11          sist of members who have expertise in Federal dis-  
12          aster management and assistance, flood prevention  
13          and mitigation, forestry, wildfire management and  
14          recovery, civil engineering, soil conservation, or wa-  
15          tershed protection, including representatives from—

16                (A) the Federal Emergency Management  
17                Agency;

18                (B) the Corps of Engineers;

19                (C) the Forest Service;

20                (D) the Natural Resources Conservation  
21                Service;

22                (E) the United States Geological Survey;

23                (F) State and local governments;

24                (G) community-based organizations and  
25                other interested parties; and

1 (H) any other entity the Administrator de-  
2 termines to be appropriate.

3 (3) CHAIR.—The Administrator shall be the  
4 Chair of the Task Force.

5 (4) DUTIES.—For the affected area, the Task  
6 Force shall—

7 (A) coordinate the efforts of the entities  
8 represented on the Task Force to immediately  
9 implement interim flood protection systems, in-  
10 cluding the retention of water retention basins;

11 (B) identify existing and potential—

12 (i) funding;

13 (ii) technical assistance;

14 (iii) general investigations; and

15 (iv) construction of short-term flood  
16 protection projects; and

17 (C) carry out a detailed study of the af-  
18 fected area to evaluate the potential of inte-  
19 grating projects and programs of the Corps of  
20 Engineers, the Federal Emergency Management  
21 Agency, and the Department of Agriculture into  
22 a comprehensive, long-term flood protection sys-  
23 tem for the affected area including—

24 (i) an evaluation of existing hazardous  
25 flood conditions in the affected area;

1           (ii) identification of additional risks  
2           associated with flood events in the affected  
3           area that would be equal to or greater than  
4           the July 20, 2010, flood event; and

5           (iii) a sediment and geotechnical anal-  
6           ysis that describes soil conditions and the  
7           risk level for landslides.

8           (5) REPORT.—Not later than 60 days after the  
9           date of enactment of this Act, the Administrator  
10          shall submit to the appropriate committees of Con-  
11          gress a report describing the findings and work of  
12          the Task Force.

13          (6) APPLICATION OF THE FEDERAL ADVISORY  
14          COMMITTEE ACT.—The Task Force shall not be con-  
15          sidered an advisory committee under the Federal  
16          Advisory Committee Act (5 U.S.C. App.).

17          (c) DISCLOSURE OF EQUAL ACCESS TO JUSTICE ACT  
18          PAYMENTS.—

19          (1) IN GENERAL.—Not later than 30 days after  
20          the date of enactment of this Act, the Attorney Gen-  
21          eral shall submit to Congress a report on the  
22          amount of fees and other expenses awarded pursu-  
23          ant to section 2412 of title 28, United States Code,  
24          and section 504 of title 5, United States Code, in



1 connection with the Jack Smith/Schultz Fuels Re-  
2 duction Healthy Forest Restoration Project.

3 (2) INCLUSIONS.—The report under paragraph  
4 (1) shall include—

5 (A) the name of the party seeking the  
6 award of fees and other expenses;

7 (B) the name of the administrative law  
8 judge in the case;

9 (C) the disposition of the application, in-  
10 cluding any appeal of action taken on the appli-  
11 cation; and

12 (D) the hourly rates of attorneys and ex-  
13 pert witnesses awarded, as stated in the appli-  
14 cation.

15 (3) AGENCY COOPERATION.—The Secretary of  
16 Agriculture shall provide the Attorney General with  
17 such information as is necessary for the Attorney  
18 General to carry out this section.

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