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S. 1691

To expedite and prioritize forest management activities to achieve ecosystem restoration objectives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2015

Mr. BARRASSO 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 expedite and prioritize forest management activities to achieve ecosystem restoration objectives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Forest Ecosystem Improvement Act of 2015".

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—FOREST MANAGEMENT ACTIVITIES

Sec. 101. Purposes.

Sec. 102. Definitions.
Sec. 103. Ecosystem restoration projects.
Sec. 104. National restoration treatment acreage.
Sec. 105. Environmental review for ecosystem restoration projects.
Sec. 106. Alternative dispute resolution.
Sec. 107. Bonding requirements for judicial review.
Sec. 108. Performance measures; annual reports.

TITLE II—CATEGORICAL EXCLUSIONS

Sec. 201. Definitions.
Sec. 202. Categorical exclusion to expedite certain critical response actions.
Sec. 203. Categorical exclusion to expedite salvage operations in response to catastrophic events.
Sec. 204. Categorical exclusion to meet forest plan goals for early successional forests.
Sec. 205. Alternative agency consultation procedures.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMUNITY WILDFIRE PROTECTION PLAN.—The term ''community wildfire protection plan'' has the meaning given the term in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511).

(2) NATIONAL FOREST SYSTEM.—

(A) IN GENERAL.—The term ''National Forest System'' has the meaning given the term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

(B) EXCLUSION.—The term ''National Forest System'' does not include—

(i) any forest reserve not created from the public domain; or

(ii) any national grassland or land utilization project administered under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.).

TITLE I—FOREST MANAGEMENT ACTIVITIES

SEC. 101. PURPOSES.

The purposes of this title are—

(1) to establish a reliable and predicable timber supply from the National Forest System that can be harvested, processed, and sold as wood products to help fund ecosystem restoration; and

(2) to expedite and prioritize forest management activities to achieve ecosystem restoration objectives.

SEC. 102. DEFINITIONS.

In this title:

(1) RESTORATION.—

(A) IN GENERAL.—The term ''restoration'', with respect to an ecosystem, means to carry out any activity that helps to recover, establish, or maintain the resilience or adaptive capacity of an ecosystem.

(B) INCLUSIONS.—The term ''restoration'' includes any activity described in subparagraph (A) relating to—

(i) timber harvesting;

(ii) thinning;

(iii) prescribed fire; or

(iv) other vegetation manipulation in the National Forest System.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture, acting through the Chief of the Forest Service.

SEC. 103. ECOSYSTEM RESTORATION PROJECTS.

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall identify, prioritize, and carry out ecosystem restoration projects on National Forest System land in accordance with applicable land and resource management plans prepared by the Secretary for units of the National Forest System under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), if any, to accomplish 1 or more of the following objectives:

(1) To restore terrestrial habitat.

(2) To sustain water quality, water flows, or watershed health and function.

(3) To create, improve, or increase early seral habitat.

(4) To carry out a needed timber stand improvement.

(5) To reduce the risk or extent of insect or disease infestation.

(6) To reduce wildland fire severity potential.

(7) To implement a community wildfire protection plan.

(8) To establish, recover, or maintain ecosystem resiliency.

(b) EXCLUSIONS.—The Secretary may not carry out an ecosystem restoration project under this section on any area of National Forest System land—

(1) that is a component of the National Wilderness Preservation System; or

(2) on which removal of vegetation is prohibited by law.

SEC. 104. NATIONAL RESTORATION TREATMENT ACREAGE.

(a) IN GENERAL.—For fiscal year 2017 and each fiscal year thereafter, the Secretary shall accomplish restoration treatments, at a minimum, on the following acreage throughout the National Forest System:

(1) 1,000,000 acres of restoration treatment using mechanical treatment methods, of which the treatment of—

(A) not less than 400,000 acres shall be conducted using commercial thinning; and

(B) not less than 60,000 acres shall be conducted using even-aged management techniques.

(2) 1,000,000 acres of restoration treatment using prescribed fire.

(b) ASSIGNMENT.—Not later than 90 days after the date of enactment of this Act, and annually thereafter, the Secretary shall assign the annual acreage for restoration treatments, by National Forest System region, described in subsection (a).

(c) PUBLICATION.—As soon as practicable after the date of each assignment of acreage for restoration treatments under subsection (b), the Secretary shall publish the acreage that will apply, by National Forest System region, on the Internet website of the Forest Service.

SEC. 105. ENVIRONMENTAL REVIEW FOR ECOSYSTEM RESTORATION PROJECTS.

(a) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The Secretary shall prepare an environmental assessment in accordance with the National

Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for each ecosystem restoration project that accomplishes 1 or more of the objectives identified in section 103(a).

(b) PUBLIC NOTICE AND COMMENT.—In preparing an environmental assessment for an ecosystem restoration project under subsection (a), the Secretary shall provide public notice of, and an opportunity to comment regarding, the applicable project.

(c) CONSIDERATION OF ALTERNATIVES.—The Secretary shall study, develop, and describe in each environmental assessment under subsection (a)—

(1) the ecosystem restoration project as the proposed action; and

(2) a no-action alternative, the analysis of which shall include a description of the resulting environmental effects of taking no action on—

(A) forest health;

(B) habitat diversity;

(C) wildfire potential;

(D) insect and disease potential;

(E) municipal water supplies; and

(F) other economic and social factors.

(d) LIMITATIONS.—The Secretary shall limit each environmental assessment under this section to a length of not more than 100 pages.

(e) DEADLINE FOR COMPLETION.—

(1) IN GENERAL.—Not later than 180 days after the date on which the Secretary publishes a notice regarding an ecosystem restoration project in accordance with subsection (b), the Secretary shall complete the environmental assessment for the ecosystem restoration project.

(2) NO SUPPLEMENTAL ANALYSIS REQUIRED.—No supplemental analysis of an ecosystem restoration project that is the subject of an environmental assessment under paragraph (1) shall be required after the date on which that environmental assessment is complete.

SEC. 106. ALTERNATIVE DISPUTE RESOLUTION.

(a) ARBITRATION.—

(1) IN GENERAL.—The Secretary shall establish within the Forest Service an arbitration program as an alternative dispute resolution process in lieu of judicial review for the projects described in subsection (b).

(2) NOTIFICATION TO OBJECTORS.—On issuance of an appeal response to an objection filed

with respect to an ecosystem restoration project subject to an objection at the project level under part 218 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act), the Secretary shall notify each applicable individual or entity that submitted the objection (referred to in this section as the ''objector'') that any further appeal may be subject to arbitration in accordance with this section.

(b) DESCRIPTION OF PROJECTS.—The Secretary, at the sole discretion of the Secretary, may designate the following types of ecosystem restoration projects for arbitration:

(1) Projects developed through a collaborative process (within the meaning of section 603(b)(1)(C) of the Healthy Forest Restoration Act of 2003 (16 U.S.C. 6591b(b)(1)(C))).

(2) Projects identified in a community wildfire protection plan.

(3) For each applicable calendar year, not more than 2 other types of ecosystem restoration projects for each region of the Forest Service.

(c) ARBITRATORS.—

(1) APPOINTMENT.—The Secretary shall develop and publish a list of not fewer than 20 individ-

uals eligible to serve as arbitrators for the program under this section.

(2) QUALIFICATIONS.—In order to be eligible to serve as an arbitrator under this subsection, an individual shall be currently certified by the American Arbitration Association.

(d) INITIATION OF ARBITRATION.—

(1) IN GENERAL.—Not later than 7 days after the date of receipt of a notice of intent to file suit challenging an ecosystem restoration project, the Secretary shall notify each applicable objector and the court of jurisdiction that the project has been designated for arbitration in accordance with this section.

(2) DEMAND FOR ARBITRATION.—

(A) IN GENERAL.—An objector that sought judicial review of an ecosystem restoration project that has been designated by the Secretary for arbitration under this section may file a demand for arbitration in accordance with—

(i) sections 571 through 584 of title 5, United States Code; and

(ii) this paragraph.

(B) REQUIREMENTS.—A demand for arbitration under subparagraph (A) shall—

(i) be filed not later than the date that is 30 days after the date of the notification by the Secretary under paragraph (1); and

(ii) include an alternative proposal to the applicable ecosystem restoration project that describes each modification sought by the objector with respect to the ecosystem restoration project.

(e) SELECTION OF ARBITRATOR.—For each arbitration commenced under this section, the Secretary and each applicable objector shall agree on a mutually acceptable arbitrator from the list published under subsection (c)(1).

(f) RESPONSIBILITIES OF ARBITRATOR.—

(1) IN GENERAL.—An arbitrator selected under subsection (e)—

(A) shall address each demand filed for arbitration with respect to an ecosystem restoration project under this section; but

(B) may consolidate into a single arbitration all demands for arbitration by all objectors with respect to an ecosystem restoration project.

(2) SELECTION OF PROPOSALS.—An arbitrator shall make a decision regarding each applicable demand for arbitration under this section by selecting—

(A) the ecosystem restoration project, as approved by the Secretary; or

(B) an alternative proposal submitted by the applicable objector.

(3) LIMITATIONS.—

(A) ADMINISTRATIVE RECORD.—A decision of an arbitrator under this subsection shall be based solely on the administrative record for the ecosystem restoration project.

(B) NO MODIFICATIONS TO PROPOSALS.—An arbitrator may not modify any proposal contained in a demand for arbitration of an objector under this section.

(g) DEADLINE FOR COMPLETION OF ARBITRATION.—Not later than 90 days after the date on which a demand for arbitration is filed under subsection (d)(2), the arbitration process shall be completed.

(h) EFFECT OF ARBITRATION DECISION.—A decision of an arbitrator under this section—

(1) shall not be considered to be a major Federal action;

(2) shall be binding; and

(3) shall not be subject to judicial review, except as provided in section 10(a) of title 9, United States Code.

SEC. 107. BONDING REQUIREMENTS FOR JUDICIAL REVIEW.

(a) BOND REQUIREMENT.—

(1) IN GENERAL.—The judicial review of an action challenging an ecosystem restoration project under this title (referred to in this section as an ''action'') shall be subject to the bonding requirements of this section.

(2) BOND OR SECURITY.—

(A) IN GENERAL.—As soon as practicable after the date on which a complaint or appeal is filed to initiate an action, each plaintiff shall post a bond or other security acceptable to the court in an amount equal to the anticipated costs, expenses, and attorney fees of the Secretary as a defendant in the action, in accordance with a reasonable estimate of the Secretary.

(B) REQUIREMENT.—All proceedings in an action shall be stayed until the bond or security required under subparagraph (A) is posted.

(b) RECOVERY OF LITIGATION COSTS, EXPENSES, AND ATTORNEY FEES.—

(1) MOTION FOR PAYMENT.—If the Secretary prevails in an action, the Secretary shall submit to the court a motion for payment from the bond or other security posted under subsection (a), of the reasonable costs, expenses, and attorney fees incurred by the Secretary as a defendant in the action.

(2) MAXIMUM RECOVERY.—The total amount of costs, expenses, and attorney fees recovered by the Secretary under paragraph (1) may not exceed the amount of the bond or other security posted in the action.

(3) RETURN REMAINDER.—Any funds remaining from the bond or other security posed under subsection (a) after the payment of costs, expenses, and attorney fees under paragraph (1) shall be returned to the plaintiff that posted the bond or security in the action.

(c) RETURN OF BOND TO PREVAILING PLAINTIFF.—If the applicable court rules, in a final enforcement judgment, in favor of a plaintiff on all causes of each action of the plaintiff, the court shall return to the plaintiff any bond or security posted by the plaintiff under subsection

(a), plus any interest accruing during the period beginning on the date on which the bond or security was posted.

(d) EFFECT OF SETTLEMENT.—

(1) IN GENERAL.—If an action in which a bond or security was posted is resolved by settlement between the Secretary and the plaintiff, the settlement agreement may provide for sharing of the costs, expenses, and attorney fees incurred by the parties to the action.

(2) DEFERRAL.—A settlement agreement under paragraph (1) may defer the resolution of costs, expenses, and attorney fees to—

(A) further negotiation; or

(B) decision by the court.

SEC. 108. PERFORMANCE MEASURES; ANNUAL REPORTS.

(a) PERFORMANCE MEASURES.—The Secretary shall annually evaluate the degree to which the Secretary is achieving—

(1) the purposes of this title, including—

(A) the number of acres covered by ecosystem restoration projects;

(B) the number of acres treated by mechanical methods under ecosystem restoration projects;

(C) the number of acres treated using stewardship contracts and stewardship agreements under ecosystem restoration projects;

(D) the number of acres treated using timber sales under ecosystem restoration projects;

(E) the number of acres treated by prescribed fire, mowing, and other noncommercial product producing activities under ecosystem restoration projects; and

(F) to the extent practicable, a summary of acres receiving more than 1 type of treatment; and

(2) the acreage requirements established under section 104(a).

(b) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives—

(1) a report that describes, with respect to the preceding year, the results of evaluations using the performance measures described in subsection (a); and

(2) a report that describes, with respect to the preceding year—

(A) the number and substance of ecosystem restoration projects that are subject to arbitration under section 106; and

(B) the outcomes of the arbitrations under that section.

TITLE II—CATEGORICAL EXCLUSIONS

SEC. 201. DEFINITIONS.

In this title:

(1) CATASTROPHIC EVENT.—The term ''catastrophic event'' means any natural disaster (such as hurricane, tornado, windstorm, snow or ice storm, rain storm, high water, wind-driven water, tidal wave, earthquake, volcanic eruption, landslide, mudslide, drought, or insect or disease outbreak), or any fire, flood, or explosion, regardless of cause.

(2) CATEGORICAL EXCLUSION.—The term ''categorical exclusion'' means an exception to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project or activity relating to the management of National Forest System land.

(3) COLLABORATIVE PROCESS.—The term ''collaborative process'' means a process relating to the management of National Forest System land by

which a project or activity is developed and implemented by the Secretary through collaboration with interested persons, as described in section 603(b)(1)(C) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591b(b)(1)(C)).

(4) FOREST MANAGEMENT ACTIVITY.—The term ''forest management activity'' means a project or activity carried out by the Secretary on National Forest System land, consistent with the forest plan covering that land.

(5) FOREST PLAN.—The term ''forest plan'' means a land and resource management plan prepared by the Forest Service for a unit of the National Forest System pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604).

(6) SALVAGE OPERATION.—The term ''salvage operation'' means a forest management activity carried out in response to a catastrophic event, the primary purpose of which is—

(A) to prevent wildfire as a result of the catastrophic event, or, if the catastrophic event was wildfire, to prevent a reburn of the fire-impacted area;

(B) to provide an opportunity for use of forest materials damaged as a result of the catastrophic event; or

(C) to provide a funding source for reforestation and other restoration activities for the National Forest System land impacted by the catastrophic event.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture (acting through the Chief of the Forest Service).

SEC. 202. CATEGORICAL EXCLUSION TO EXPEDITE CERTAIN CRITICAL RESPONSE ACTIONS.

(a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A categorical exclusion is available to the Secretary to develop and carry out a forest management activity on National Forest System land in any case in which the primary purpose of the forest management activity is—

(1) to address an insect or disease infestation;

(2) to treat land at risk of insect or disease infestation;

(3) to reduce hazardous fuel loads;

(4) to protect a municipal water source;

(5) to maintain, enhance, or modify critical habitat to protect the habitat from catastrophic disturbances;

(6) to increase water yield; or

(7) any combination of the purposes specified in paragraphs (1) through (6).

(b) ACREAGE LIMITATIONS.—

(1) IN GENERAL.—Except in the case of a forest management activity described in paragraph (2), a forest management activity covered by the categorical exclusion granted by subsection (a) may not contain harvest units exceeding a total of 5,000 acres.

(2) LARGER AREAS AUTHORIZED.—A forest management activity covered by the categorical exclusion granted by subsection (a) may not contain harvest units exceeding a total of 15,000 acres if the forest management activity is—

(A) developed through a collaborative process;

(B) proposed by a resource advisory committee (as defined in section 201 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7121)); or

(C) covered by a community wildfire protection plan.

SEC. 203. CATEGORICAL EXCLUSION TO EXPEDITE SALVAGE OPERATIONS IN RESPONSE TO CATASTROPHIC EVENTS.

(a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A categorical exclusion is available to the Secretary to develop and carry out a salvage operation as part of the restoration of National Forest System land following a catastrophic event.

(b) ACREAGE LIMITATIONS.—A salvage operation covered by the categorical exclusion granted by subsection (a) may not contain harvest units exceeding a total of 5,000 acres.

(c) ADDITIONAL REQUIREMENTS.—

(1) ROAD CONSTRUCTION.—A salvage operation covered by the categorical exclusion granted by subsection (a) may not include any permanent road construction.

(2) STREAM BUFFERS.—A salvage operation covered by the categorical exclusion granted by subsection (a) shall comply with the standards and guidelines for stream buffers contained in the applicable forest plan, unless the standards and guidelines are modified for a specific salvage operation as part of a categorical exclusion by the Regional Forester.

(3) REFORESTATION PLAN.—A reforestation plan shall be developed under section 3 of the Act of June 9, 1930 (commonly known as the ''Knutson-Vandenberg Act'') (16 U.S.C. 576b), as part of a salvage operation covered by the categorical exclusion granted by subsection (a).

SEC. 204. CATEGORICAL EXCLUSION TO MEET FOREST PLAN GOALS FOR EARLY SUCCESSIONAL FORESTS.

(a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A categorical exclusion is available to the Secretary to develop and carry out a forest management activity on National Forest System land in any case in which the primary purpose of the forest management activity is to modify, improve, enhance, or create early successional forests for wildlife habitat improvement and other purposes, in accordance with the applicable forest plan.

(b) ACREAGE LIMITATIONS.—A forest management activity covered by the categorical exclusion granted by subsection (a) may not contain harvest units exceeding a total of 5,000 acres.

SEC. 205. ALTERNATIVE AGENCY CONSULTATION PROCEDURES.

(a) FOREST MANAGEMENT ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), for each forest management activity covered by a categorical exclusion granted by this title, the Secretary shall satisfy the applicable interagency consultation obligations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) by achieving compliance with the alternative consultation procedures established in subpart D of part 402 of title 50, Code of Federal Regulations (or successor regulations).

(2) REFERENCES.—For purposes of this subsection, all references contained in subpart D of part 402 of title 50, Code of Federal Regulations (or successor regulations)—

(A) to the term ''U.S. Environmental Protection Agency'' or ''EPA'' shall be considered to be a reference to the Secretary; and

(B) to the term ''FIFRA action'' shall be considered to be a reference to a forest management activity covered by a categorical exclusion granted by this title.

(b) INTERIM TIMELINES.—Until the date on which an alternative consultation agreement under subpart D of part 402 of title 50, Code of Federal Regulations (or suc-

cessor regulations), is entered into with respect to a forest management activity under subsection (a)—

(1) any formal or informal interagency consultation regarding the forest management activity shall be completed by not later than the date that is 30 days after the date on which the Secretary submits a written request for consultation; and

(2) a biological opinion or letter of concurrence, as appropriate, shall be issued by not later than the date that is 10 days after the date of completion of that consultation.

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