112TH CONGRESS  
2D Session

H. R. 5960

To amend the Healthy Forests Restoration Act of 2003 to improve the response to insect infestations and related diseases and to change the funding source for the Healthy Forests Reserve Program, to codify the stewardship end result contracting and good neighbor authorities, and to amend the emergency watershed protection program to improve post fire rehabilitation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2012

Mr. Markey (for himself, Mr. Grijalva, and Mr. Luján) 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 amend the Healthy Forests Restoration Act of 2003 to improve the response to insect infestations and related diseases and to change the funding source for the Healthy Forests Reserve Program, to codify the stewardship end result contracting and good neighbor authorities, and to amend the emergency watershed protection program to improve post fire rehabilitation, and for other purposes.

1 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 “Depleting Risk from Insect Infestation, Soil Erosion, and Catastrophic Fire Act of 2012”.

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

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO HEALTHY FORESTS RESTORATION ACT OF 2003 RESPONSE

Subtitle A—Response to Insect Infestations and Related Diseases

Sec. 101. Insect infestations and related diseases.
Sec. 102. Change in funding source for healthy forests reserve program.

Subtitle B—Stewardship End Result Contracting

Sec. 121. Stewardship end result contracting projects.

Subtitle C—Good Neighbor Authority

Sec. 141. Good neighbor authority.

TITLE II—POST FIRE REHABILITATION

Sec. 201. Emergency watershed protection program.

TITLE I—AMENDMENTS TO HEALTHY FORESTS RESTORATION ACT OF 2003 RESPONSE

Subtitle A—Response to Insect Infestations and Related Diseases

SEC. 101. INSECT INFESTATIONS AND RELATED DISEASES.

(a) FINDINGS AND PURPOSES.—Section 401 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6551) is amended—

(1) in subsection (a)—
(A) by redesignating paragraphs (3) through (12) as paragraphs (4) through (13), respectively; and

(B) by inserting after paragraph (2) the following:

“(3) the mountain pine beetle is—

“(A) threatening and ravaging forests throughout the Western region of the United States, including Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, and South Dakota;

“(B) reaching epidemic populations and severely impacting over 41,000,000 acres in western forests; and

“(C) deteriorating forest health in national forests and, when combined with drought, disease, and storm damage, is resulting in extreme fire hazards in national forests across the Western United States and endangering the economic stability of surrounding adjacent communities, ranches, and parks;”; and

(2) in subsection (b)—

(A) in paragraph (2), by striking “and” at the end;
(B) in paragraph (3), by striking the pe-
period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

“(4) to provide for designation of treatment
areas pursuant to section 405.’’.

(b) DESIGNATION OF TREATMENT AREAS.—Title IV
of the Healthy Forests Restoration Act of 2003 (16
U.S.C. 6551 et seq.) is amended—

(1) by redesignating sections 405 and 406 (16
U.S.C. 6555, 6556) as sections 406 and 407, respec-
tively; and

(2) by inserting after section 404 (16 U.S.C.
6554) the following:

“SEC. 405. DESIGNATION OF INSECT AND DISEASE TREAT-
MENT AND RESEARCH PILOT PROGRAM
AREAS.

“(a) DESIGNATION OF TREATMENT AREAS.—Not
later than 60 days after the date of enactment of the De-
pleting Risk from Insect Infestation, Soil Erosion, and
Catastrophic Fire Act of 2012, the Secretary, in consulta-
tion with the Governor of each State, shall designate as
part of an insect and disease treatment and research pilot
program 1 or more subwatersheds (sixth-level hydrologic
units, according to the System of Hydrologic Unit Codes
of the United States Geological Survey) in at least 1 na-
tional forest in each State that is experiencing an insect or disease epidemic.

“(b) REQUIREMENTS.—A subwatershed designated under subsection (a) shall be—

“(1) experiencing substantially increased tree mortality due to insect or disease infestation, based on annual forest health surveys conducted by the Secretary;

“(2) at risk of experiencing substantially increased tree mortality over the next 15 years due to insect or disease infestation, based on the most recent National Insect and Disease Risk Map published by the Forest Service; or

“(3) in an area in which the risk of hazard trees poses an imminent risk to public infrastructure, health, or safety.

“(c) TREATMENT AREAS.—

“(1) IN GENERAL.—The Secretary may carry out priority projects on Federal land in the subwatersheds designated under subsection (a) to reduce the risk or extent of, or increase the resilience to, insect or disease infestation in the subwatersheds.

“(2) AUTHORITY.—Any project under paragraph (1) for which a public notice to initiate
scoping is issued on or before September 30, 2017, may be carried out in accordance with subsections (b), (c), (d), and (g) of section 102, and sections, 104, 105, 106, and 401.

“(3) EFFECT.—Projects carried out under this subsection shall be considered ‘authorized hazardous fuel reduction projects’ for purposes of the authorities described in paragraph (2).

“(4) REPORT.—Not later than September 30, 2017, the Secretary shall issue a report that includes—

“(A) an evaluation of the progress towards project goals; and

“(B) recommendations for modifications to the projects and management treatments.

“(d) TREE RETENTION.—The Secretary shall carry out projects under subsection (c) in a manner that maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 407 of the Healthy Forests Restoration Act of 2003 (as redesignated by subsection (b)(1)) is amended by striking “2008” and inserting “2017”.

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SEC. 102. CHANGE IN FUNDING SOURCE FOR HEALTHY FORESTS RESERVE PROGRAM.

Section 508 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6578) is amended—

(1) in subsection (a), by striking “IN GENERAL” and inserting “FISCAL YEARS 2009 THROUGH 2012”;

(2) by redesignating subsection (b) as subsection (d); and

(3) by inserting after subsection (a) the following:

“(b) FISCAL YEARS 2013 THROUGH 2017.—There is authorized to be appropriated to the Secretary of Agriculture to carry out this section $9,750,000 for each of fiscal years 2013 through 2017.

“(c) ADDITIONAL SOURCE OF FUNDS.—In addition to funds appropriated pursuant to the authorization of appropriations in subsection (b) for a fiscal year, the Secretary may use such amount of the funds appropriated for that fiscal year to carry out the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a et seq.) as the Secretary determines necessary to cover the cost of technical assistance, management, and enforcement responsibilities for land enrolled in the healthy forests reserve program pursuant to subsections (a) and (b) of section 504.”.
Subtitle B—Stewardship End Result Contracting

SEC. 121. STEWARDSHIP END RESULT CONTRACTING PROJECTS.

(a) In General.—Title VI of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591) is amended by adding at the end the following:

“SEC. 602. STEWARDSHIP END RESULT CONTRACTING PROJECTS.

“(a) DEFINITIONS.—In this section:

“(1) CHIEF.—The term ‘Chief’ means the Chief of the Forest Service.

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Bureau of Land Management.

“(b) PROJECTS.—The Chief and the Director, via agreement or contract as appropriate, may enter into stewardship contracting projects with private persons or other public or private entities to perform services to achieve land management goals for the national forests and the public lands that meet local and rural community needs.

“(c) LAND MANAGEMENT GOALS.—The land management goals of a project under subsection (b) may include—
“(1) road and trail maintenance or obliteration to restore or maintain water quality;

“(2) soil productivity, habitat for wildlife and fisheries, or other resource values;

“(3) setting of prescribed fires to improve the composition, structure, condition, and health of stands or to improve wildlife habitat;

“(4) removing vegetation or other activities to promote healthy forest stands, reduce fire hazards, or achieve other land management objectives;

“(5) watershed restoration and maintenance;

“(6) restoration and maintenance of wildlife and fish; or

“(7) control of noxious and exotic weeds and re-establishing.

“(d) AGREEMENTS OR CONTRACTS.—

“(1) PROCUREMENT PROCEDURE.—A source for performance of an agreement or contract under subsection (b) shall be selected on a best-value basis, including consideration of source under other public and private agreements or contracts.

“(2) CONTRACT FOR SALE OF PROPERTY.—A contract entered into under this section may, at the discretion of the Secretary of Agriculture, be considered a contract for the sale of property under such
terms as the Secretary may prescribe without regard to any other provision of law.

“(3) Term.—

“(A) In general.—Except as provided in subparagraph (B), the Chief and the Director may enter into a contract under subsection (b) in accordance with section 3903 of title 41, United States Code.

“(B) Maximum.—The period of the contract under subsection (b) may exceed 5 years but may not exceed 10 years.

“(4) Offsets.—

“(A) In general.—The Chief and the Director may apply the value of timber or other forest products removed as an offset against the cost of services received under the agreement or contract described in subsection (b).

“(B) Methods of appraisal.—The value of timber or other forest products used as an offset under subparagraph (A)—

“(i) shall be determined using appropriate methods of appraisal commensurate with the quantity of products to be removed; and

“(ii) may—
“(I) be determined using a unit of measure appropriate to the contracts; and

“(II) include valuing products on a per-acre basis.

“(5) Relation to other laws.—Notwithstanding subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a), the Chief may enter into an agreement or contract under subsection (b).

“(6) Contracting officer.—Notwithstanding any other provision of law, the Secretary or the Secretary of the Interior may determine the appropriate contracting officer to enter into and administer an agreement or contract under subsection (b).

“(e) Receipts.—

“(1) In general.—The Chief and the Director may collect monies from an agreement or contract under subsection (b) if the collection is a secondary objective of negotiating the contract that will best achieve the purposes of this section.

“(2) Use.—Monies from an agreement or contract under subsection (b)—

“(A) may be retained by the Chief and the Director; and
“(B) shall be available for expenditure without further appropriation at the project site from which the monies are collected or at another project site.

“(3) RELATION TO OTHER LAWS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the value of services received by the Chief or the Director under a stewardship contract project conducted under this section, and any payments made or resources provided by the contractor, Chief, or Director shall not be considered monies received from the National Forest System or the public lands.

“(B) KNUTSON-VANDERBERG ACT.—The Act of June 9, 1930 (commonly known as the ‘Knutson-Vanderberg Act’) (16 U.S.C. 576 et seq.) shall not apply to any agreement or contract under subsection (b).

“(f) COSTS OF REMOVAL.—Notwithstanding the fact that a contractor did not harvest the timber, the Chief may collect deposits from a contractor covering the costs of removal of timber or other forest products under—

“(1) the Act of August 11, 1916 (16 U.S.C. 490); and

'(g) PERFORMANCE AND PAYMENT GUARANTEES.—

'(1) IN GENERAL.—The Chief and the Director may require performance and payment bonds under sections 28.103–2 and 28.103–3 of the Federal Acquisition Regulation, in an amount that the contracting officer considers sufficient to protect the investment in receipts by the Federal Government generated by the contractor from the estimated value of the forest products to be removed under a contract under subsection (b).

'(2) EXCESS OFFSET VALUE.—If the offset value of the forest products exceeds the value of the resource improvement treatments, the Chief and the Director may—

'(A) collect any residual receipts under the Act of June 9, 1930 (commonly known as the ‘Knutson-Vanderberg Act’) (16 U.S.C. 576 et seq.); and

'(B) apply the excess to other authorized stewardship projects.

'(h) MONITORING AND EVALUATION.—

'(1) IN GENERAL.—The Chief and the Director shall establish a multiparty monitoring and evalua-
tion process that accesses the stewardship contracting projects conducted under this section.

“(2) PARTICIPANTS.—Other than the Chief and Director, participants in the process described in paragraph (1) may include—

“(A) any cooperating governmental agencies, including tribal governments; and

“(B) any other interested groups or individuals.

“(i) REPORTING.—Not later than 1 year after the date of enactment of this section, and annually thereafter, the Chief and the Director shall report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives on—

“(1) the status of development, execution, and administration of agreements or contracts under subsection (b);

“(2) the specific accomplishments that have resulted; and

“(3) the role of local communities in the development of agreements or contract plans.”.

(b) REPEAL OF SUPERSEDED PROGRAM.—Section 347 of the Department of the Interior and Related Agen-
cies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) is repealed.

Subtitle C—Good Neighbor Authority

SEC. 141. GOOD NEIGHBOR AUTHORITY.

(a) Definitions.—In this section:

(1) Authorized restoration services.—

The term “authorized restoration services” means similar and complementary forest, rangeland, and watershed restoration services carried out on adjacent Federal land and non-Federal land by either the Secretary or a Governor pursuant to—

(A) a good neighbor agreement; and

(B) a cooperative agreement or contract entered into under subsection (c).

(2) Federal land.—

(A) In general.—The term “Federal land” means the following land in a State located in whole or in part west of the 100th meridian:

(i) National Forest System land.

(ii) Public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)).
(B) **Exclusions.**—The term “Federal land” does not include—

(i) a component of the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Landscape Conservation System;

(ii) a National Monument, National Preserve, National Scenic Area, or National Recreation Area; or

(iii) a wilderness study area.

(3) **Forest, Rangeland, and Watershed Restoration Services.**—The term “forest, rangeland, and watershed restoration services” means—

(A) activities to treat insect- and disease-infected trees;

(B) activities to reduce hazardous fuels;

(C) activities to maintain roads and trails that cross a boundary between Federal land and non-Federal land; and

(D) any other activities to restore or improve forest, rangeland, or watershed health, including fish and wildlife habitat.

(4) **Good Neighbor Agreement.**—The term “good neighbor agreement” means—
(A) a nonfunding master cooperative agreement entered into between the Secretary and a Governor under chapter 63 of title 31, United States Code; or

(B) a memorandum of agreement or understanding entered into between the Secretary and a Governor.

(5) GOVERNOR.—The term “Governor” means the Governor or any other appropriate executive official of an affected State.

(6) SECRETARY.—The term “Secretary” means—

(A) the Secretary of Agriculture, with respect to National Forest System land; and

(B) the Secretary of the Interior, with respect to Bureau of Land Management land.

(b) GOOD NEIGHBOR AGREEMENTS.—

(1) IN GENERAL.—The Secretary may enter into a good neighbor agreement with a Governor to coordinate the procurement and implementation of authorized restoration services in accordance with this section.

(2) PUBLIC NOTICE AND COMMENT.—The Secretary shall make each good neighbor agreement available to the public.
(c) Task Orders, Contracts, and Cooperative Agreements.—

(1) In general.—The Secretary may issue a task order for, or enter into a contract (including a sole source contract) or cooperative agreement with, a Governor to carry out authorized restoration services.

(2) Requirements.—Each task order, contract, or cooperative agreement entered into under paragraph (1) shall be executed in accordance with—

(A) chapter 63 of title 31, United States Code; and

(B) the applicable good neighbor agreement.

(d) Contract and Subcontract Requirements.—

(1) Requirements for services on federal land.—

(A) In general.—For authorized restoration services carried out on Federal land under subsection (c), each contract and subcontract issued under the authority of a Governor shall include the provisions described in subparagraph (B) that would have been included in the
contract had the Secretary been a party to the contract.

(B) APPLICABLE PROVISIONS.—The provisions referred to in subparagraph (A) are provisions for—

(i) wages and benefits for workers employed by contractors and subcontractors required by—

(I) subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code; and

(II) chapter 6 of title 41, United States Code;

(ii) nondiscrimination; and

(iii) worker safety and protection.

(2) REQUIREMENTS FOR SMALL BUSINESSES.—Each contract and subcontract for authorized restoration services under subsection (c) shall comply with provisions for small business assistance and protection that would have been applicable to the contract had the Secretary been a party to the contract.

(3) LIABILITY.—The Secretary shall include provisions in each good neighbor agreement, contract, or cooperative agreement, as appropriate, gov-
erning the potential liability of the State and the Secretary for actions carried out under this Act.

(e) TERMINATION OF EFFECTIVENESS.—

(1) IN GENERAL.—The authority of the Secretary to enter into cooperative agreements and contracts under this section terminates on September 30, 2019.

(2) CONTRACT DATE.—The termination date of a cooperative agreement or contract entered into under this section shall not extend beyond September 30, 2020.

(3) CONSOLIDATED AUTHORITY.—

(A) FEDERAL AND STATE COOPERATIVE WATERSHED RESTORATION AND PROTECTION IN COLORADO.—Section 331 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 996) is repealed.

(B) FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH.—Section 337 of the Department of the Interior and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3102) is repealed.
(4) EXISTING CONTRACTS.—Nothing in the amendments made by this section affects contracts in effect on the day before the date of enactment of this Act.

TITLE II—POST FIRE REHABILITATION

SEC. 201. EMERGENCY WATERSHED PROTECTION PROGRAM.

Section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) is amended by adding at the end the following new sentence: “In evaluating landowner and land user applications for assistance under this section, the Secretary shall give priority consideration to applications submitted by landowners and land users for runoff retardation and soil-erosion preventive measures needed to remediate the effects of catastrophic wildfire on Federal land that is the source of drinking water for the landowners and land users.”.