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.

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

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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Burn Area Flood Prevention Act of 2011”.

SEC. 2. PURPOSE.

The purpose of this Act is 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.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

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

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

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

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

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

   (B) units of the National Park System;

   (C) refuges of the National Wildlife Refuge System;
(D) land held in trust by the United States for the benefit of Indian tribes or members of an Indian tribe; and

(E) the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))).

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

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

SEC. 4. CLARIFICATION OF FLAME WILDFIRE SUPPRESSION RESERVE FUND AUTHORITY.

Section 502(c) of the Federal Land Assistance, Management, and Enhancement Act of 2009 (43 U.S.C. 1748a(c)) is amended by inserting “and burn area responses, including flood prevention,” after “events”.

SEC. 5. INSURANCE COVERAGE FOR PRIVATE PROPERTIES AFFECTED BY FLOODING FROM FEDERAL LANDS.

Section 1306(c)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(2)) is amended—
(1) in subparagraph (A), by striking “or” at the end;

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

(3) by adding at the end the following:

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

SEC. 6. SCHULTZ FIRE FLOODING AREA ASSISTANCE.

(a) FINDINGS.—Congress finds that—

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

(2) the Schultz Fire burned for 10 days, destroyed more than 15,000 acres of Forest Service land, and prompted the evacuation of approximately 400 homes before being 100 percent contained on June 30, 2010;

(3) the Schultz Fire severely burned a large portion of the forest along the steep terrain on the east side of the San Francisco Peaks, leaving little ground vegetation to absorb and retain rainwater;
(4) on July 6, 2010, the Forest Service Burn Area Emergency Response Team issued a hydrology specialist report that assessed post-fire watershed conditions and determined that there was a constant daily flooding threat to nearby communities from summer monsoon storms;

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

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

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

(8) affected homeowners who purchased flood insurance were not eligible for coverage under the National Flood Insurance Program at the time of the loss because of the statutorily mandated 30-day waiting period before flood insurance coverage takes effect; and
(9) because the Schultz Fire occurred on Forest Service land and has affected private property, public safety, and human life, the Federal Government is obligated to provide an appropriate level of disaster assistance, including Federal flood insurance to homeowners.

(b) Schultz Fire Flooding Area Task Force.—

(1) Establishment.—There is established the Schultz Fire Flooding Area Task Force.

(2) Membership.—The Task Force shall consist of members who have expertise in Federal disaster management and assistance, flood prevention and mitigation, forestry, wildfire management and recovery, civil engineering, soil conservation, or watershed protection, including representatives from—

(A) the Federal Emergency Management Agency;

(B) the Corps of Engineers;

(C) the Forest Service;

(D) the Natural Resources Conservation Service;

(E) the United States Geological Survey;

(F) State and local governments;

(G) community-based organizations and other interested parties; and
(H) any other entity the Administrator determines to be appropriate.

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

(4) Duties.—For the affected area, the Task Force shall—

(A) coordinate the efforts of the entities represented on the Task Force to immediately implement interim flood protection systems, including the retention of water retention basins;

(B) identify existing and potential—

(i) funding;

(ii) technical assistance;

(iii) general investigations; and

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

(C) carry out a detailed study of the affected area to evaluate the potential of integrating projects and programs of the Corps of Engineers, the Federal Emergency Management Agency, and the Department of Agriculture into a comprehensive, long-term flood protection system for the affected area including—

(i) an evaluation of existing hazardous flood conditions in the affected area;
(ii) identification of additional risks associated with flood events in the affected area that would be equal to or greater than the July 20, 2010, flood event; and

(iii) a sediment and geotechnical analysis that describes soil conditions and the risk level for landslides.

(5) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of Congress a report describing the findings and work of the Task Force.

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

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

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the amount of fees and other expenses awarded pursuant to section 2412 of title 28, United States Code, and section 504 of title 5, United States Code, in
connection with the Jack Smith/Schultz Fuels Reduction Healthy Forest Restoration Project.

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

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

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

(C) the disposition of the application, including any appeal of action taken on the application; and

(D) the hourly rates of attorneys and expert witnesses awarded, as stated in the application.

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