AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 287

112TH CONGRESS, 2d Session | SENATE | REPORT 112–126

ARIZONA WALLOW FIRE RECOVERY AND MONITORING ACT

JANUARY 13, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of December 17, 2011

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1344]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1344) to direct the Secretary of Agriculture to take immediate action to recover ecologically and economically from a catastrophic wildfire in the State of Arizona, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arizona Wallow Fire Recovery and Monitoring Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMUNITY PROTECTION MANAGEMENT AREA.—The term "community protection management area" means—

(A) the wildland-urban interface in a community wildfire protection plan; and

(B) human development areas having special significance, including critical communication sites, high voltage transmission lines, developed recreation sites, and other structures that, if destroyed by fire, would result in hardship to communities.

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

(3) EVALUATION.—The term "evaluation" means the evaluation required by section 3(a).

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(5) WALLOW FIRE AREA.—The term "Wallow Fire Area" means the land within the perimeter of the Wallow Fire, as depicted on the map entitled "Wallow Fire AZ–ASF–110152 Progression Map" and dated June 28, 2011.

SEC. 3. HAZARD TREE AND COMMERCIAL TIMBER EVALUATION.

(a) IN GENERAL.—The Secretary shall conduct an evaluation of the Wallow Fire Area in accordance with this section.

(b) TIMELINE.—To ensure the timely completion of the evaluation, the Secretary shall—

(1) not later than 30 days after the date of enactment of this Act, commence the evaluation; and

(2) not later than 75 days after the date of enactment of this Act, complete the evaluation.

(c) CONTENTS.—The evaluation shall include—

(1) a map of the burn intensity within the Wallow Fire Area;

(2) a description of—

(A) the forest conditions in the burned areas of the Wallow Fire Area;

(B) the short- and long-term risks that the conditions in the Wallow Fire Area may pose to forest users, communities, private property, and natural resources; and

(C) the actions undertaken by the Forest Service to reduce the risks described in subparagraph (B);

(3) a map and description of areas for potential hazard tree removal and areas for potential fire-damaged commercial tree removal in the Wallow Fire Area, including a delineation of the community protection management area within the Wallow Fire Area;

(4) a preliminary estimate of—

(A) the costs and receipts to be derived from the hazard tree and fire-damaged commercial timber identified for potential removal in the Wallow Fire Area; and

(B) to the maximum extent practicable, the receipts likely to be lost if action is not taken in a timely manner; and

(5) a description of the desired outcomes of rehabilitation and tree removal in burned portions of the Wallow Fire Area.

(d) EXCLUDED AREAS.—In identifying areas for potential tree removal under subsection (c)(3), the Secretary shall exclude high fire-severity burned areas on steep slopes, slopes with an incline greater than 40 percent, riparian areas, and fragile erosive sites, unless tree removal in those areas is necessary to address concerns relating to public health or safety.

SEC. 4. TIMBER REMOVAL PROJECTS.

(a) IDENTIFICATION.—Not later than 90 days after the date of enactment of this Act, the Secretary shall identify 1 or more projects to reduce the risks described in section 3(c)(2)(B) by removing hazard trees and fire-damaged, dead, and dying timber resources in the Wallow Fire Area.

(b) CONGRESSIONAL INTENT.—It is the intent of Congress that all projects identified under subsection (a) be completed by September 30, 2013.

(c) CONSIDERATIONS.—

(1) EVALUATION.—In identifying projects under subsection (a), the Secretary shall consider the results of the evaluation.

(2) TREE REMOVAL TECHNIQUES.—In selecting tree removal techniques for a project identified under subsection (a), the Secretary shall take into account the degree of ground disturbances, soil types, soil saturation, worker safety, threatened or endangered species, aquatic systems, and other ecological values associated with the site of the project.

(d) MONITORING.—The Secretary shall use an effectiveness monitoring framework to assess the ecological and economic effects of each project that is identified and carried out under this section with respect to accomplishing the desired outcomes identified in the evaluation.

(e) LIMITATIONS.—In carrying out a project identified under subsection (a), the Secretary—

(1) shall focus the removal of trees under the project to hazard trees and trees that are already down, dead, or so severely root-sprung that mortality is highly probable; and

(2) shall not construct any permanent road.

(f) ADMINISTRATIVE REVIEW.—

(1) IN GENERAL.—In lieu of an administrative appeal under section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (16 U.S.C. 1612 note; Public Law 102–381), the Secretary may subject to administrative review under part 218 of title 36, Code of Federal Regulations (or suc-

cessor regulations), any collaboratively-developed project to remove hazard trees and fire-damaged, dead, and dying timber resources in the Wallow Fire Area—

(A) that is identified under subsection (a); and

(B) for which a decision notice or record of decision has been issued by September 30, 2012.

(2) AUTHORIZED PROJECTS.—A project identified under subsection (a) shall be considered an authorized hazardous fuel reduction project for purposes of part 218 of title 36, Code of Federal Regulations (or successor regulations).

PURPOSE

The purpose of S. 1344 is to direct the Secretary of Agriculture to evaluate the area that was burned by the Wallow Fire and to identify certain tree removal projects in that area.

BACKGROUND AND NEED

The 2011 wildfire season in the southwest was one of the most active on record. Extreme drought led to large and severe wildfires in Arizona, New Mexico, and Texas. The Wallow Fire started on May 29, 2011, in southeastern Arizona on the Apache-Sitgreaves National Forest. In the subsequent weeks, it burned a total of 534,639 acres, including 12,972 acres of the Fort Apache Indian Reservation, 9,200 acres of the San Carlos Indian Reservation, 15,407 acres in New Mexico, and 10,815 of State and private land, making it the largest fire in Arizona history. It burned 32 residences and cost about $95 million to suppress.

While the majority of fire was not severe, about 16% (86,115 acres) of the fire burned at high intensity and about 13.7% (73,634 acres) at moderate intensity, resulting in large areas in need of restoration. The fire burned so intensely in some areas, that it left water-repellent soil on an estimated 32,000 acres. There are an estimated 1,924 miles of perennial and intermittent streams that are now at risk of post-fire flooding, and it left burned trees along an estimated 304 miles of trails and 2,120 miles of roads.

S. 1344 would require the Secretary to conduct an evaluation of the burned area and the continuing risks it poses to people, property, and natural resources. It also would encourage the Secretary to promptly mitigate those risks.

LEGISLATIVE HISTORY

S. 1344 was introduced by Senators Kyl and McCain on July 15, 2011. The Subcommittee on Public Lands and Forests held a hearing on the bill on October 3, 2011. At its business meeting on November 10, 2011, the Committee on Energy and Natural Resources ordered S. 1344 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on November 10, 2011, by a voice vote of a quorum present, recommends that the Senate pass S. 1344, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1344, the Committee adopted an amendment in the nature of a substitute. A number of the provisions in the bill required the Secretary to act within timeframes

that already had expired, so the amendment adjusts the focus and timeframes of the bill from emergency to near-term response. The amendment also eliminates a number of provisions regarding environmental compliance, including provisions that the Forest Service testified would have hindered its flexibility in carrying out projects. The Committee amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2 defines certain terms used in the bill.

Section 3 requires the Secretary of Agriculture to conduct a rapid evaluation of the area burned by the Wallow Fire. The evaluation would include a map of the burn intensity in the area, and a description of the forest conditions, the short- and long-term risks they pose to people, property, and natural resources, and the actions taken by the Forest Service to address those risks. It also would include a description of where it would be appropriate to remove hazard and burned trees, and a preliminary estimate of the costs and receipts associated with such removal operations. Finally, it would include a description of the desired outcomes associated with potential rehabilitation and tree removal operations in the burned area.

Section 4(a) requires the Secretary to identify at least one project that could reduce the short- or long-term risks identified in the evaluation through tree removal operations.

Subsection (b) establishes congressional intent that any project that is identified under subsection (a) and carried out by the Forest Service be completed by the end of fiscal year 2013 in order to protect public safety and capture the economic value of any burned timber that is removed through the project.

Subsections (c), (d), and (e) describe certain considerations, monitoring requirements, and limitations that would apply to any project identified under subsection (a) that is carried out by the Forest Service.

Subsection (f) authorizes the Secretary to use the predecisional administrative review process established in 36 C.F.R. pt. 218 in lieu of a traditional administrative appeal if the project is collaboratively developed, the purpose of the project is to remove hazard and burned trees, the project is carried out in accordance with section 4, and the project planning is initiated soon enough that a decision notice or record of decision is issued by the end of fiscal year 2012 (thereby providing a reasonable opportunity for the project to be completed by the end of fiscal year 2013). Paragraph (2) simply clarifies that such a project would be eligible for the predecisional review process in accordance with section 4 even if it would not otherwise meet the definition of "authorized hazardous fuel reduction project" found in 36 C.F.R. 218.2 (2010).

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 1344—Arizona Wallow Fire Recovery and Monitoring Act

S. 1344 would require the Forest Service to evaluate portions of the National Forest System affected by the Wallow fire in eastern Arizona. The bill also would authorize the agency to solicit public objections to proposed timber removal projects before the agency decides whether to conduct such projects in areas affected by the fire. Based on information provided by the Forest Service, CBO estimates that implementing S. 1344 would have no significant impact on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Many activities that would be completed as part of the evaluation required under the bill are similar to activities performed by the Forest Service under current law. In addition, because the agency is using existing authorities to expeditiously restore forest lands affected by the fire, CBO does not expect that the new authorities provided by S. 1344 would significantly affect the timing of such work. Therefore, we estimate that implementing the bill would have no significant impact on the federal budget.

S. 1344 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1344.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1344, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1344, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at the October 3, 2011, hearing, which is provided below.

STATEMENT THOMAS TIDWELL, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Chairman Wyden, Ranking Member Barrasso, and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Ag-

riculture's views on S. 1344, the "Arizona Wallow Fire Recovery and Monitoring Act" and S. 1090, the "Tennessee Wilderness Act of 2011."

S. 1344, THE ARIZONA WALLOW FIRE RECOVERY AND MONITORING ACT

The Department supports the objectives and comprehensive response that underlie the legislation and agrees that the response to this fire should be addressed with a sense of urgency. With or without this legislation, the U.S Forest Service is committed to accomplish the restoration objectives in a timely manner. The Wallow Fire burned over a half million acres of National Forest System land, as well as tribal, state and private lands (including lands in New Mexico). In terms of acres of forest burned, the Wallow Fire was the largest fire in Arizona's history. The effects of this wildfire are significant for the communities of eastern Arizona. I want to assure you that the U.S. Forest Service understands and appreciates the magnitude and scope of the task ahead to restore the landscapes damaged by this fire and we have already started this work.

Background

Igniting on May 29, 2011 in the Apache-Sitgreaves National Forest southwest of Alpine, Arizona, the Wallow Fire was contained on July 8th. Its cause is under investigation. The fire's burned area includes 840 square miles (535,000 acres) and includes 24 square miles (15,000 acres) of western New Mexico. Nearly half of the Wallow Fire's burned area (48%) is classified as low burn severity, 14% moderate severity and 16% high severity. Burned Area Emergency Response (BAER) assessments have been completed with approved funding and prescriptions being implemented. USDA agencies and Arizona State agencies are assisting the Forest Service at public workshops to provided information on programs and assistance to home owners and small businesses affected by fires and/or floods. At the zenith of the Wallow Fire's run more than 4,700 firefighters from the Forest Service and cooperating agencies responded. Moreover, fuels treatments developed with private citizens and state and local governments as part of the White Mountain Stewardship Project and implemented between 2004 and 2011 successfully reduced fire behavior near the Arizona communities of Greer, Eagar, Nutrioso, and Alpine.

Current planning

The Forest Service is in the process of conducting an evaluation which includes an assessment of restoration needs and salvage as required by the bill. In order to assess the magnitude of the restoration needs resulting from the Wallow Fire, a Rapid Assessment Team was assembled. The Team is currently developing a comprehensive restoration plan for the Wallow Fire area. The plan will identify and organize all restoration needs for the Wallow

Fire area, including ongoing Burned Area Emergency Response (BAER) projects, and projects to reduce risks to health and safety in the short term and restore the area over the longer term. The Forest Service will adjust work priorities in order to focus the resources necessary to ensure the recovery of the Wallow Fire area.

Ongoing and proposed work

The Forest Service's BAER work is ongoing. We have just completed seeding some 36,000 acres of 80,000 acres projected for seeding, spreading straw on 18,000 acres of 25,000 projected, and are currently removing hazard trees along 245 miles of road from a projected 300 miles of road needing treatment. The roadside hazard tree removal could result in approximately 162,000 tons of material. Approximately 39 miles of power line corridors have been identified for emergency hazard tree removal (BAER work) in conjunction with various power companies. In addition, our post-emergency assessment shows that there is a substantial risk of falling hazard trees along an additional 350 miles of roads and power line corridors. These roads and power line corridors are critically important to the communities of Greer, Alpine, Nutrioso, and Eagar, among others. We estimate that treatments within these corridors could result in the removal of approximately 150,000 tons of material on approximately 10,400 acres. In order to minimize the safety risk and provide employment opportunities, we plan to proceed expeditiously so that some of the wood can be used for higher valued products.

Collaborative efforts

The White Mountain Stewardship collaborative, a diverse group of local, state, tribal, environmental and other partners, is assisting us in developing our rehabilitation plans. Our plan is to complete the environmental analyses and administrative review for the projects to carry out the plan, and prepare the contracts over the next several months. Roadside corridor work would conclude by the end of 2012. Other projects would conclude as expeditiously as possible. Our plan is to use our current authorities to utilize receipts for future salvage sales that carry out post-fire rehabilitation. We are planning to work with many of the same individuals and groups in monitoring our rehabilitation work.

Provisions of the bill

Section 4 of S. 1344 would direct the Secretary to prepare a hazard tree and commercial timber evaluation. The evaluation would describe the forest conditions in the Wallow Fire Area and the short- and long-term risks posed by the conditions. The evaluation also would include a map of the areas for potential hazard tree removal, a map of areas for potential fire-damaged commercial tree removal, and a map of areas where harvest should not be considered. In the evaluation, the Secretary would be required to describe

one or more proposals for timber removal projects and a description of the desired outcomes of rehabilitation and tree removal. The Secretary would involve the public in preparing the evaluation and would be required to complete the evaluation within 45 days after initiating it.

Section 5 of S. 1344 also would provide that a timber removal project carried out under the bill would limited to the removal of hazard trees and the removal of trees that are already down, dead, or severely root-sprung such that there is a high probability of mortality. The bill would require the Secretary to prepare an environmental assessment for a timber removal project carried out under the bill for portions of the Wallow Fire Area that are in a Community Protection Management Area. The Secretary would not be required to consider any alternative to the proposed agency action in the environmental assessment. Any timber removal project carried out in the Wallow Fire Area would be subject to the pre-decisional objection process under section 105 of the Healthy Forests Restoration Act (HFRA). S. 1344 also specifies that receipts from timber removal projects be available, without further appropriation for restoration purposes on the Apache-Sitgreaves National Forest in the State of Arizona.

Departmental perspective on specific bill provisions

While we support the objectives of S. 1344, we note that the Forest Service already has appropriated funds, stewardship contracting authority, and the salvage sale fund to address various forest management scenarios proposed in the bill. In complying with NEPA under current authorities, the Forest Service is utilizing categorical exclusions for tree removal projects in certain high risk areas. We would prefer that any legislation maintain this flexibility. Under current authorities, the Forest Service is required to use a post-decisional appeals process and does not have the option of using the pre-decisional objection process in HFRA except for hazardous fuel reduction projects covered by HFRA. The HFRA pre-decisional review procedures provide the public with an opportunity to raise concerns before a final decision is issued, making the process more collaborative and helpful.

Demonstrated benefits of White Mountain Stewardship and anticipated benefits from the Four Forests Restoration Initiative

As devastating as the Wallow fire was, it could have been significantly worse if it had not been for the thousands of acres that had been treated as part of the White Mountain Stewardship project. The accomplishments of the White Mountain Stewardship project have been significant—50,851 acres treated as of July 23, 2011. The Community Wildfire Protection Plans for the communities of Nutrioso, Eagar, Alpine and Greer provided much of the guidance for the accomplishment of that work. There is no doubt that a significant number of neighborhoods and por-

tions of the forest were spared thanks to this work. The forest fuels thinning and removals in the path of this fire clearly demonstrate what can be accomplished through collaboration and stewardship contracting at the landscape scale. Fire behavior can be modified, communities can be protected, local jobs can be created, and relationships between organizations and individuals can be built. The Four Forests Restoration Project (4FRI) is the next step in expanding this collaborative model. Through the 4FRI is a Collaborative Forest Landscape Restoration (CFLRP) project, the Forest Service aspires to restore approximately 2.4 million acres of ponderosa pine forests on portions of the Apache-Sitgreaves, Coconino, Kaibab, and Tonto National Forests in Northern Arizona over the next 20 years. In the past two years, more than eleven million dollars has been committed to this initiative.

In summary, the Department supports the objectives of this legislation. However, we are already engaged in focusing our workforce and resources to accomplish these objectives in an expeditious manner and we have the appropriate authorities to meet the intent of this legislation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1344 as ordered reported.

○