

RESILIENT FEDERAL FORESTS ACT OF 2017

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OCTOBER 25, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
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Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2936]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2936) to expedite under the National Environmental Policy Act of 1969 and improve forest management activities on National Forest System lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands to return resilience to overgrown, fire-prone forested lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Resilient Federal Forests Act of 2017”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Rule of application for National Forest System lands and public lands.

**TITLE I—EXPEDITED ENVIRONMENTAL ANALYSIS AND AVAILABILITY OF CATEGORICAL
EXCLUSIONS TO EXPEDITE FOREST MANAGEMENT ACTIVITIES**

Subtitle A—Analysis of Proposed Collaborative Forest Management Activities

Sec. 101. Analysis of only two alternatives (action versus no action) in proposed collaborative forest management activities.

Subtitle B—Categorical Exclusions

- Sec. 111. Categorical exclusion to expedite certain critical response actions.
- Sec. 112. Categorical exclusion to expedite salvage operations in response to catastrophic events.
- Sec. 113. Categorical exclusion to meet forest plan goals for early successional forests.
- Sec. 114. Categorical exclusion for road side projects.
- Sec. 115. Categorical exclusion to improve or restore National Forest System Lands or public land or reduce the risk of wildfire.

Subtitle C—General Provisions for Forest Management Activities

- Sec. 121. Compliance with forest plans.
- Sec. 122. Consultation under the National Historic Preservation Act.
- Sec. 123. Consultation under the Endangered Species Act.
- Sec. 124. Forest management activities considered non-discretionary actions.

TITLE II—SALVAGE AND REFORESTATION IN RESPONSE TO CATASTROPHIC EVENTS

- Sec. 201. Expedited salvage operations and reforestation activities following large-scale catastrophic events.
- Sec. 202. Compliance with forest plan.
- Sec. 203. Prohibition on restraining orders, preliminary injunctions, and injunctions pending appeal.

TITLE III—FOREST MANAGEMENT LITIGATION

Subtitle A—General Litigation Provisions

- Sec. 301. No attorney fees for forest management activity challenges.
- Sec. 302. Injunctive relief.

Subtitle B—Forest Management Activity Arbitration Pilot Program

- Sec. 311. Use of arbitration instead of litigation to address challenges to forest management activities.

TITLE IV—SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT AMENDMENTS

- Sec. 401. Use of reserved funds for title II projects on Federal land and certain non-Federal land.
- Sec. 402. Resource advisory committees.
- Sec. 403. Program for title II self-sustaining resource advisory committee projects.
- Sec. 404. Additional authorized use of reserved funds for title III county projects.
- Sec. 405. Treatment as supplemental funding.

TITLE V—STEWARDSHIP END RESULT CONTRACTING

- Sec. 501. Cancellation ceilings for stewardship end result contracting projects.
- Sec. 502. Excess offset value.
- Sec. 503. Payment of portion of stewardship project revenues to county in which stewardship project occurs.
- Sec. 504. Submission of existing annual report.
- Sec. 505. Fire liability provision.
- Sec. 506. Extension of stewardship contracting maximum term limits.

TITLE VI—ADDITIONAL FUNDING SOURCES FOR FOREST MANAGEMENT ACTIVITIES

- Sec. 601. Definitions.
- Sec. 602. Availability of stewardship project revenues and Collaborative Forest Landscape Restoration Fund to cover forest management activity planning costs.
- Sec. 603. State-supported planning of forest management activities.

TITLE VII—TRIBAL FORESTRY PARTICIPATION AND PROTECTION

- Sec. 701. Protection of Tribal forest assets through use of stewardship end result contracting and other authorities.
- Sec. 702. Management of Indian forest land authorized to include related National Forest System lands and public lands.
- Sec. 703. Tribal forest management demonstration project.
- Sec. 704. Rule of application.

TITLE VIII—EXPEDITING INTERAGENCY CONSULTATION

Subtitle A—Forest Plans Not Considered Major Federal Actions

- Sec. 801. Forest plans not considered major Federal actions.

Subtitle B—Agency Consultation

- Sec. 811. Consultation under Forest and Rangeland Renewable Resources Planning Act of 1974.
- Sec. 812. Consultation under Federal Land Policy and Management Act of 1976.

TITLE IX—MISCELLANEOUS

Subtitle A—Forest Management Provisions

- Sec. 901. Clarification of existing categorical exclusion authority related to insect and disease infestation.
- Sec. 902. Revision of alternate consultation agreement regulations.
- Sec. 903. Revision of extraordinary circumstances regulations.
- Sec. 904. Conditions on Forest Service road decommissioning.
- Sec. 905. Prohibition on application of Eastside Screens requirements on National Forest System lands.
- Sec. 906. Use of site-specific forest plan amendments for certain projects and activities.
- Sec. 907. Knutson-Vandenberg Act modifications.
- Sec. 908. Application of Northwest Forest Plan Survey and Manage Mitigation Measure Standard and Guidelines.
- Sec. 909. Reconstruction and repair included in good neighbor agreements.
- Sec. 910. Logging and mechanized operations.

Subtitle B—Oregon and California Railroad Grant Lands and Coos Bay Wagon Road Grant Lands

- Sec. 911. Amendments to the Act of August 28, 1937.

- Sec. 912. Oregon and California Railroad Grant Lands and Coos Bay Wagon Road Grant lands permanent rights of access.
 Sec. 913. Management of Bureau of Land Management lands in Western Oregon.

TITLE X—MAJOR DISASTER FOR WILDFIRE ON FEDERAL LAND

- Sec. 1001. Wildfire on Federal lands.
 Sec. 1002. Declaration of a major disaster for wildfire on Federal lands.
 Sec. 1003. Prohibition on transfers.

SEC. 2. DEFINITIONS.

In titles I through IX:

- (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) **COLLABORATIVE PROCESS.**—The term “collaborative process” refers to a process relating to the management of National Forest System lands or public lands by which a project or forest management activity is developed and implemented by the Secretary concerned 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)).
- (3) **COMMUNITY WILDFIRE PROTECTION PLAN.**—The term “community wildfire protection plan” has the meaning given that term in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511).
- (4) **COOS BAY WAGON ROAD GRANT LANDS.**—The term “Coos Bay Wagon Road Grant lands” means the lands reconveyed to the United States pursuant to the first section of the Act of February 26, 1919 (40 Stat. 1179).
- (5) **FOREST MANAGEMENT ACTIVITY.**—The term “forest management activity” means a project or activity carried out by the Secretary concerned on National Forest System lands or public lands consistent with the forest plan covering the lands.
- (6) **FOREST PLAN.**—The term “forest plan” means—
 (A) a land use plan prepared by the Bureau of Land Management for public lands pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712); or
 (B) 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).
- (7) **LARGE-SCALE CATASTROPHIC EVENT.**—The term “large-scale catastrophic event” means a catastrophic event that adversely impacts at least 5,000 acres of reasonably contiguous National Forest System lands or public lands, as determined by the Secretary concerned.
- (8) **NATIONAL FOREST SYSTEM.**—The term “National Forest System” has the meaning given that term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).
- (9) **OREGON AND CALIFORNIA RAILROAD GRANT LANDS.**—The term “Oregon and California Railroad Grant lands” means the following lands:
 (A) All lands in the State of Oregon vested in the United States under the Act of June 9, 1916 (39 Stat. 218), that are administered by the Secretary of the Interior, acting through the Bureau of Land Management, pursuant to the first section of the Act of August 28, 1937 (43 U.S.C. 1181a).
 (B) All lands in that State obtained by the Secretary of the Interior pursuant to the land exchanges authorized and directed by section 2 of the Act of June 24, 1954 (43 U.S.C. 1181h).
 (C) All lands in that State acquired by the United States at any time and made subject to the provisions of title II of the Act of August 28, 1937 (43 U.S.C. 1181f).
- (10) **PUBLIC LANDS.**—The term “public lands” has the meaning given that term in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702), except that the term includes Coos Bay Wagon Road Grant lands and Oregon and California Railroad Grant lands.
- (11) **REFORESTATION ACTIVITY.**—The term “reforestation activity” means a project or forest management activity carried out by the Secretary concerned whose primary purpose is the reforestation of impacted lands following a large-scale catastrophic event. The term includes planting, evaluating and enhancing natural regeneration, clearing competing vegetation, and other activities related to reestablishment of forest species on the impacted lands.

(12) **RESOURCE ADVISORY COMMITTEE.**—The term “resource advisory committee” has the meaning given that term in section 201 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7121).

(13) **SALVAGE OPERATION.**—The term “salvage operation” means a forest management activity and restoration activities carried out in response to a catastrophic event where the primary purpose is—

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

(B) to provide an opportunity for utilization 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 lands or public lands impacted by the catastrophic event.

(14) **SECRETARY CONCERNED.**—The term “Secretary concerned” means—

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

(B) the Secretary of the Interior, with respect to public lands.

SEC. 3. RULE OF APPLICATION FOR NATIONAL FOREST SYSTEM LANDS AND PUBLIC LANDS.

Unless specifically provided by a provision of titles I through IX, the authorities provided by such titles do not apply with respect to any National Forest System lands or public lands—

(1) that are included in the National Wilderness Preservation System;

(2) that are located within a national or State-specific inventoried roadless area established by the Secretary of Agriculture through regulation, unless—

(A) the forest management activity to be carried out under such authority is consistent with the forest plan applicable to the area; or

(B) the Secretary concerned determines the activity is allowed under the applicable roadless rule governing such lands; or

(3) on which timber harvesting for any purpose is prohibited by Federal statute.

TITLE I—EXPEDITED ENVIRONMENTAL ANALYSIS AND AVAILABILITY OF CATEGORICAL EXCLUSIONS TO EXPEDITE FOREST MANAGEMENT ACTIVITIES

Subtitle A—Analysis of Proposed Collaborative Forest Management Activities

SEC. 101. ANALYSIS OF ONLY TWO ALTERNATIVES (ACTION VERSUS NO ACTION) IN PROPOSED COLLABORATIVE FOREST MANAGEMENT ACTIVITIES.

(a) **APPLICATION TO CERTAIN ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS.**—This section shall apply whenever the Secretary concerned prepares an environmental assessment or an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) for a forest management activity that—

(1) is developed through a collaborative process;

(2) is proposed by a resource advisory committee;

(3) will occur on lands identified by the Secretary concerned as suitable for timber production;

(4) will occur on lands designated by the Secretary (or designee thereof) pursuant to section 602(b) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591a(b)), notwithstanding whether such forest management activity is initiated prior to September 30, 2018; or

(5) is covered by a community wildfire protection plan.

(b) **CONSIDERATION OF ALTERNATIVES.**—In an environmental assessment or environmental impact statement described in subsection (a), the Secretary concerned shall study, develop, and describe only the following two alternatives:

(1) The forest management activity.

(2) The alternative of no action.

(c) **ELEMENTS OF NO ACTION ALTERNATIVE.**—In the case of the alternative of no action, the Secretary concerned shall consider whether to evaluate—

(1) the effect of no action on—

(A) forest health;

- (B) habitat diversity;
 - (C) wildfire potential;
 - (D) insect and disease potential; and
 - (E) timber production; and
- (2) the implications of a resulting decline in forest health, loss of habitat diversity, wildfire, or insect or disease infestation, given fire and insect and disease historic cycles, on—
- (A) domestic water supply in the project area;
 - (B) wildlife habitat loss; and
 - (C) other economic and social factors.

Subtitle B—Categorical Exclusions

SEC. 111. CATEGORICAL EXCLUSION TO EXPEDITE CERTAIN CRITICAL RESPONSE ACTIONS.

(a) **CATEGORICAL EXCLUSION ESTABLISHED.**—Forest management activities described in subsection (b) are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) **FOREST MANAGEMENT ACTIVITIES DESIGNATED FOR CATEGORICAL EXCLUSION.**—The forest management activities designated under this section for a categorical exclusion are forest management activities carried out by the Secretary concerned on National Forest System lands or public lands where the primary purpose of such activity is—

- (1) to address an insect or disease infestation;
- (2) to reduce hazardous fuel loads;
- (3) to protect a municipal water source;
- (4) to maintain, enhance, or modify critical habitat to protect it from catastrophic disturbances;
- (5) to increase water yield;
- (6) produce timber; or
- (7) any combination of the purposes specified in paragraphs (1) through (6).

(c) **AVAILABILITY OF CATEGORICAL EXCLUSION.**—On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(d) **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 established under subsection (a) may not contain treatment units exceeding a total of 10,000 acres.

(2) **LARGER AREAS AUTHORIZED.**—A forest management activity covered by the categorical exclusion established under subsection (a) may contain treatment units exceeding a total of 10,000 acres but not more than a total of 30,000 acres if the forest management activity—

- (A) is developed through a collaborative process;
- (B) is proposed by a resource advisory committee; or
- (C) is covered by a community wildfire protection plan.

SEC. 112. CATEGORICAL EXCLUSION TO EXPEDITE SALVAGE OPERATIONS IN RESPONSE TO CATASTROPHIC EVENTS.

(a) **CATEGORICAL EXCLUSION ESTABLISHED.**—Salvage operations carried out by the Secretary concerned on National Forest System lands or public lands are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) **AVAILABILITY OF CATEGORICAL EXCLUSION.**—On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(c) **ACREAGE LIMITATION.**—A salvage operation covered by the categorical exclusion established under subsection (a) may not contain treatment units exceeding a total of 10,000 acres.

(d) **ADDITIONAL REQUIREMENTS.**—

(1) **STREAM BUFFERS.**—A salvage operation covered by the categorical exclusion established under subsection (a) shall comply with the standards and guidelines for stream buffers contained in the applicable forest plan unless waived by the Regional Forester, in the case of National Forest System lands, or the State Director of the Bureau of Land Management, in the case of public lands.

(2) 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 established under subsection (a).

SEC. 113. CATEGORICAL EXCLUSION TO MEET FOREST PLAN GOALS FOR EARLY SUCCESSIONAL FORESTS.

(a) CATEGORICAL EXCLUSION ESTABLISHED.—Forest management activities described in subsection (b) are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) FOREST MANAGEMENT ACTIVITIES DESIGNATED FOR CATEGORICAL EXCLUSION.—The forest management activities designated under this section for a categorical exclusion are forest management activities carried out by the Secretary concerned on National Forest System lands or public lands where the primary purpose of such activity is to modify, improve, enhance, or create early successional forests for wildlife habitat improvement and other purposes, consistent with the applicable forest plan.

(c) AVAILABILITY OF CATEGORICAL EXCLUSION.—On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(d) PROJECT GOALS.—To the maximum extent practicable, the Secretary concerned shall design a forest management activity under this section to meet early successional forest goals in such a manner so as to maximize production and regeneration of priority species, as identified in the forest plan and consistent with the capability of the activity site.

(e) ACREAGE LIMITATIONS.—A forest management activity covered by the categorical exclusion established under subsection (a) may not contain treatment units exceeding a total of 10,000 acres.

SEC. 114. CATEGORICAL EXCLUSION FOR ROAD SIDE PROJECTS.

(a) CATEGORICAL EXCLUSION ESTABLISHED.—Projects carried out by the Secretary concerned to remove hazard trees or to salvage timber for purposes of the protection of public health or safety, water supply, or public infrastructure are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) AVAILABILITY OF CATEGORICAL EXCLUSION.—On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(c) HEALTHY FORESTS RESTORATION ACT REQUIREMENTS.—

(1) ADMINISTRATIVE REVIEW.—A project that is categorically excluded under this section shall be subject to the requirements of subsections (d), (e), and (f) of section 603 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591).

(2) HAZARDOUS FUEL REDUCTION ON FEDERAL LAND.—A project that is categorically excluded under this section shall be subject to the requirements of sections 102, 104, 105, and 106 of title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511 et seq.).

SEC. 115. CATEGORICAL EXCLUSION TO IMPROVE OR RESTORE NATIONAL FOREST SYSTEM LANDS OR PUBLIC LAND OR REDUCE THE RISK OF WILDFIRE.

(a) CATEGORICAL EXCLUSION ESTABLISHED.—Forest management activities described in subsection (b) are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) FOREST MANAGEMENT ACTIVITIES DESIGNATED FOR CATEGORICAL EXCLUSION.—

(1) DESIGNATION.—The forest management activities designated under this section for a categorical exclusion are forest management activities described in paragraph (2) that are carried out by the Secretary concerned on National Forest System Lands or public lands where the primary purpose of such activity is to improve or restore such lands or reduce the risk of wildfire on those lands.

(2) ACTIVITIES AUTHORIZED.—The follow activities may be carried out pursuant to the categorical exclusion established under subsection (a):

(A) Removal of juniper trees, medusahead rye, conifer trees, piñon pine trees, cheatgrass, and other noxious or invasive weeds specified on Federal or State noxious weeds lists through late-season livestock grazing, targeted livestock grazing, prescribed burns, and mechanical treatments.

(B) Performance of hazardous fuels management.

- (C) Creation of fuel and fire breaks.
 - (D) Modification of existing fences in order to distribute livestock and help improve wildlife habitat.
 - (E) Installation of erosion control devices.
 - (F) Construction of new and maintenance of permanent infrastructure, including stock ponds, water catchments, and water spring boxes used to benefit livestock and improve wildlife habitat.
 - (G) Performance of soil treatments, native and non-native seeding, and planting of and transplanting sagebrush, grass, forb, shrub, and other species.
 - (H) Use of herbicides, so long as the Secretary concerned determines that the activity is otherwise conducted consistently with agency procedures, including any forest plan applicable to the area covered by the activity.
- (c) **AVAILABILITY OF CATEGORICAL EXCLUSION.**—On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.
- (d) **ACREAGE LIMITATIONS.**—A forest management activity covered by the categorical exclusion established under subsection (a) may not exceed 10,000 acres.
- (e) **DEFINITIONS.**—In this section:
- (1) **HAZARDOUS FUELS MANAGEMENT.**—The term “hazardous fuels management” means any vegetation management activities that reduce the risk of wild-fire.
 - (2) **LATE-SEASON GRAZING.**—The term “late-season grazing” means grazing activities that occur after both the invasive species and native perennial species have completed their current-year annual growth cycle until new plant growth begins to appear in the following year.
 - (3) **TARGETED LIVESTOCK GRAZING.**—The term “targeted livestock grazing” means grazing used for purposes of hazardous fuel reduction.

Subtitle C—General Provisions for Forest Management Activities

SEC. 121. COMPLIANCE WITH FOREST PLANS.

A forest management activity carried out pursuant to this Act shall be conducted in a manner consistent with the forest plan applicable to the National Forest System land or public lands covered by the forest management activity.

SEC. 122. CONSULTATION UNDER THE NATIONAL HISTORIC PRESERVATION ACT.

(a) **EFFECT OF UNDERTAKING ON HISTORIC PROPERTY.**—With respect to a forest management activity carried out pursuant to this Act, in taking into account the effect of a Federal undertaking on any historic property under section 306108 of title 54, United States Code, the Secretary concerned may, without consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or any other entity—

(1) conduct a phased identification and evaluation under section 800.4(b)(2) of title 36, Code of Federal Regulations, or successor regulation; and

(2) with respect to the phased identification and evaluation described in paragraph (1), apply the criteria of adverse effect consistent with phased identification and evaluation under section 800.5(a)(3) of title 36, Code of Federal Regulations, or successor regulation.

(b) **EXPEDITED CONSULTATION.**—

(1) **IN GENERAL.**—In the case of a forest management activity carried out pursuant to this Act that is not the subject of a phased identification and evaluation under subsection (a), consultation under section 106 of the National Historic Preservation Act (54 U.S.C. 306108) shall be concluded within the 90-day period beginning on the date on which such consultation was requested by the Secretary concerned.

(2) **NO CONCLUSION.**—In the case of a consultation described in paragraph (1) that is not concluded within the 90-day period, the forest management activity for which such consultation was initiated—

(A) shall be considered to have not violated section 106 of the National Historic Preservation Act (54 U.S.C. 306108); and

(B) may be carried out.

SEC. 123. CONSULTATION UNDER THE ENDANGERED SPECIES ACT.

(a) **NO CONSULTATION IF ACTION NOT LIKELY TO ADVERSELY AFFECT A LISTED SPECIES OR DESIGNATED CRITICAL HABITAT.**—With respect to a forest management activity carried out pursuant to this Act, consultation under section 7 of the Endan-

gered Species Act of 1973 (16 U.S.C. 1536) shall not be required if the Secretary concerned determines that the such forest management activity is not likely to adversely affect a listed species or designated critical habitat.

(b) EXPEDITED CONSULTATION.—

(1) IN GENERAL.—With respect to a forest management activity carried out pursuant to this Act, consultation required under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) shall be concluded within the 90-day period beginning on the date on which such consultation was requested by the Secretary concerned.

(2) NO CONCLUSION.—In the case of a consultation described in paragraph (1) that is not concluded within the 90-day period, the forest management activity for which such consultation was initiated—

(A) shall be considered to have not violated section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)); and

(B) may be carried out.

SEC. 124. FOREST MANAGEMENT ACTIVITIES CONSIDERED NON-DISCRETIONARY ACTIONS.

For purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), a forest management activity carried out by the Secretary concerned pursuant to this Act shall be considered a non-discretionary action.

TITLE II—SALVAGE AND REFORESTATION IN RESPONSE TO CATASTROPHIC EVENTS

SEC. 201. EXPEDITED SALVAGE OPERATIONS AND REFORESTATION ACTIVITIES FOLLOWING LARGE-SCALE CATASTROPHIC EVENTS.

(a) EXPEDITED ENVIRONMENTAL ASSESSMENT.—Notwithstanding any other provision of law, an environmental assessment prepared by the Secretary concerned pursuant to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) for a salvage operation or reforestation activity proposed to be conducted on National Forest System lands or public lands adversely impacted by a large-scale catastrophic event shall be completed within 60 days after the conclusion of the catastrophic event.

(b) EXPEDITED IMPLEMENTATION AND COMPLETION.—In the case of reforestation activities conducted on National Forest System lands or public lands adversely impacted by a large-scale catastrophic event, the Secretary concerned shall achieve reforestation of at least 75 percent of the impacted lands during the 5-year period following the conclusion of the catastrophic event.

(c) AVAILABILITY OF KNUTSON-VANDENBERG FUNDS.—Amounts in the special fund established pursuant to section 3 of the Act of June 9, 1930 (commonly known as the Knutson-Vandenberg Act; 16 U.S.C. 576b) shall be available to the Secretary of Agriculture for reforestation activities authorized by this title.

(d) TIMELINE FOR PUBLIC INPUT PROCESS.—Notwithstanding any other provision of law, in the case of a salvage operation or reforestation activity proposed to be conducted on National Forest System lands or public lands adversely impacted by a large-scale catastrophic event, the Secretary concerned shall allow 30 days for public scoping and comment, 15 days for filing an objection, and 15 days for the agency response to the filing of an objection. Upon completion of this process and expiration of the period specified in subsection (a), the Secretary concerned shall implement the project immediately.

SEC. 202. COMPLIANCE WITH FOREST PLAN.

A salvage operation or reforestation activity authorized by this title shall be conducted in a manner consistent with the forest plan applicable to the National Forest System lands or public lands covered by the salvage operation or reforestation activity.

SEC. 203. PROHIBITION ON RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, AND INJUNCTIONS PENDING APPEAL.

No restraining order, preliminary injunction, or injunction pending appeal shall be issued by any court of the United States with respect to any decision to prepare or conduct a salvage operation or reforestation activity in response to a large-scale catastrophic event. Section 705 of title 5, United States Code, shall not apply to any challenge to the salvage operation or reforestation activity.

TITLE III—FOREST MANAGEMENT LITIGATION

Subtitle A—General Litigation Provisions

SEC. 301. NO ATTORNEY FEES FOR FOREST MANAGEMENT ACTIVITY CHALLENGES.

Notwithstanding section 1304 of title 31, United States Code, no award may be made under section 2412 of title 28, United States Code, and no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay any fees or other expenses under such sections to any plaintiff related to an action challenging a forest management activity carried out pursuant to this Act.

SEC. 302. INJUNCTIVE RELIEF.

(a) **BALANCING SHORT- AND LONG-TERM EFFECTS OF FOREST MANAGEMENT ACTIVITIES IN CONSIDERING INJUNCTIVE RELIEF.**—As part of its weighing the equities while considering any request for an injunction that applies to any agency action as part of a forest management activity under titles I through IX, the court reviewing the agency action shall balance the impact to the ecosystem likely affected by the forest management activity of—

- (1) the short- and long-term effects of undertaking the agency action; against
- (2) the short- and long-term effects of not undertaking the action.

(b) **TIME LIMITATIONS FOR INJUNCTIVE RELIEF.**—

(1) **IN GENERAL.**—Subject to paragraph (2) the length of any preliminary injunctive relief and stays pending appeal that applies to any agency action as part of a forest management activity under titles I through IX, shall not exceed 60 days.

(2) **RENEWAL.**—

(A) **IN GENERAL.**—A court of competent jurisdiction may issue one or more renewals of any preliminary injunction, or stay pending appeal, granted under paragraph (1).

(B) **UPDATES.**—In each renewal of an injunction in an action, the parties to the action shall present the court with updated information on the status of the authorized forest management activity.

Subtitle B—Forest Management Activity Arbitration Pilot Program

SEC. 311. USE OF ARBITRATION INSTEAD OF LITIGATION TO ADDRESS CHALLENGES TO FOREST MANAGEMENT ACTIVITIES.

(a) **DISCRETIONARY ARBITRATION PROCESS PILOT PROGRAM.**—

(1) **IN GENERAL.**—The Secretary of Agriculture, with respect to National Forest System lands, and the Secretary of the Interior, with respect to public lands, shall each establish a discretionary arbitration pilot program as an alternative dispute resolution process in lieu of judicial review for the activities described in paragraph (2).

(2) **ACTIVITIES DESCRIBED.**—The Secretary concerned, at the sole discretion of the Secretary, may designate objections or protests to forest management activities for arbitration under the arbitration pilot program established under paragraph (1).

(3) **MAXIMUM AMOUNT OF ARBITRATIONS.**—Under the arbitration pilot program, the Secretary concerned may not arbitrate more than 10 objections or protests to forest management activities in a fiscal year in—

(A) each Forest Service Region; and

(B) each State Region of the Bureau of Land Management.

(4) **DETERMINING AMOUNT OF ARBITRATIONS.**—An objection or protest to a forest management activity shall not be counted towards the limitation on number of arbitrations under paragraph (3) unless—

(A) on the date such objection or protest is designated for arbitration, the forest management activity for which such objection or protest is filed has not been the subject of arbitration proceedings under the pilot program; and

(B) the arbitration proceeding has commenced with respect to such objection or protest.

(5) **TERMINATION.**—The pilot programs established pursuant to paragraph (1) shall terminate on the date that is 7 years after the date of the enactment of this Act.

(b) **INTERVENING PARTIES.**—

- (1) REQUIREMENTS.—Any person that submitted a public comment on the forest management activity that is subject to arbitration may intervene in the arbitration—
- (A) by endorsing—
 - (i) the forest management activity; or
 - (ii) the modification proposal submitted under subparagraph (B); or
 - (B) by submitting a proposal to further modify the forest management activity.
- (2) DEADLINE FOR SUBMISSION.—With respect to an objection or protest that is designated for arbitration under this subsection (a), a request to intervene in an arbitration must be submitted not later than the date that is 30 days after the date on which such objection or protest was designated for arbitration.
- (3) MULTIPLE PARTIES.—Multiple intervening parties may submit a joint proposal so long as each intervening party meets the eligibility requirements of paragraph (1).
- (c) APPOINTMENT OF ARBITRATOR.—
- (1) APPOINTMENT.—The Secretary of Agriculture and the Secretary of the Interior shall jointly develop and publish a list of not fewer than 20 individuals eligible to serve as arbitrators for the pilot programs under this section.
 - (2) QUALIFICATIONS.—In order to be eligible to serve as an arbitrator under this subsection, an individual shall be, on the date of the appointment of such arbitrator—
 - (A) certified by the American Arbitration Association; and
 - (B) not a registered lobbyist.
 - (3) SELECTION OF ARBITRATOR.—
 - (A) IN GENERAL.—For each arbitration commenced under this section, the Secretary concerned and each applicable objector or protestor shall agree, not later than 14 days after the agreement process is initiated, on a mutually acceptable arbitrator from the list published under subsection.
 - (B) APPOINTMENT AFTER 14-DAYS.—In the case of an agreement with respect to a mutually acceptable arbitrator not being reached within the 14-day limit described in subparagraph (A), the Secretary concerned shall appoint an arbitrator from the list published under this subsection.
- (d) SELECTION OF PROPOSALS.—
- (1) IN GENERAL.—The arbitrator appointed under subsection (c)—
 - (A) may not modify any of the proposals submitted with the objection, protest, or request to intervene; and
 - (B) shall select to be conducted—
 - (i) the forest management activity, as approved by the Secretary; or
 - (ii) a proposal submitted by an objector or an intervening party.
 - (2) SELECTION CRITERIA.—An arbitrator shall, when selecting a proposal, consider—
 - (A) whether the proposal is consistent with the applicable forest plan, laws, and regulations;
 - (B) whether the proposal can be carried out by the Secretary concerned; and
 - (C) the effect of each proposal on—
 - (i) forest health;
 - (ii) habitat diversity;
 - (iii) wildfire potential;
 - (iv) insect and disease potential;
 - (v) timber production; and
 - (vi) the implications of a resulting decline in forest health, loss of habitat diversity, wildfire, or insect or disease infestation, given fire and insect and disease historic cycles, on—
 - (I) domestic water costs;
 - (II) wildlife habitat loss; and
 - (III) other economic and social factors.
- (e) EFFECT OF DECISION.—The decision of an arbitrator with respect to the forest management activity—
- (1) shall not be considered 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.
- (f) DEADLINE FOR COMPLETION.—Not later than 90 days after the date on which the arbitration is filed with respect to the forest management activity, the arbitration process shall be completed.

TITLE IV—SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT AMENDMENTS

SEC. 401. USE OF RESERVED FUNDS FOR TITLE II PROJECTS ON FEDERAL LAND AND CERTAIN NON-FEDERAL LAND.

(a) REPEAL OF MERCHANTABLE TIMBER CONTRACTING PILOT PROGRAM.—Section 204(e) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7124(e)) is amended by striking paragraph (3).

(b) REQUIREMENTS FOR PROJECT FUNDS.—Section 204(f) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7124(f)) is amended to read as follows:

“(f) REQUIREMENTS FOR PROJECT FUNDS.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary concerned shall ensure that at least 50 percent of the project funds reserved by a participating county under section 102(d) shall be available only for projects that—

“(A) include the sale of timber or other forest products, reduce fire risks, or improve water supplies; and

“(B) implement stewardship objectives that enhance forest ecosystems or restore and improve land health and water quality.

“(2) APPLICABILITY.—The requirement in paragraph (1) shall apply only to project funds reserved by a participating county whose boundaries include Federal land that the Secretary concerned determines has been subject to a timber or other forest products program within 5 fiscal years before the fiscal year in which the funds are reserved.”.

SEC. 402. RESOURCE ADVISORY COMMITTEES.

(a) RECOGNITION OF RESOURCE ADVISORY COMMITTEES.—Section 205(a)(4) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125(a)(4)) is amended by striking “2012” each place it appears and inserting “2022”.

(b) REDUCTION IN COMPOSITION OF COMMITTEES.—Section 205(d) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125(d)) is amended—

(1) in paragraph (1), by striking “15 members” and inserting “9 members”; and

(2) by striking “5 persons” each place it appears and inserting “3 persons”.

(c) EXPANDING LOCAL PARTICIPATION ON COMMITTEES.—Section 205(d) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125(d)) is amended—

(1) in paragraph (3), by inserting before the period at the end the following: “, consistent with the requirements of paragraph (4)”;

(2) by striking paragraph (4) and inserting the following new paragraph:

“(4) GEOGRAPHIC DISTRIBUTION.—The members of a resource advisory committee shall reside within the county or counties in which the committee has jurisdiction or an adjacent county.”.

(d) APPOINTMENT OF RESOURCE ADVISORY COMMITTEES BY APPLICABLE DESIGNEE.—

(1) IN GENERAL.—Section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125) is further amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting “(or applicable designee)” after “The Secretary concerned”;

(ii) in paragraph (3), by inserting “(or applicable designee)” after “the Secretary concerned”; and

(iii) in paragraph (4), by inserting “(or applicable designee)” after “the Secretary concerned” both places it appears;

(B) in subsection (b)(6), by inserting “(or applicable designee)” after “the Secretary concerned”;

(C) in subsection (c)—

(i) in the subsection heading, by inserting “OR APPLICABLE DESIGNEE” after “BY THE SECRETARY”;

(ii) in paragraph (1), by inserting “(or applicable designee)” after “The Secretary concerned” both places it appears;

(iii) in paragraph (2), by inserting “(or applicable designee)” after “The Secretary concerned”;

(iv) in paragraph (4), by inserting “(or applicable designee)” after “The Secretary concerned”; and

(v) by adding at the end the following new paragraph:

“(6) APPLICABLE DESIGNEE.—In this section, the term ‘applicable designee’ means—

“(A) with respect to Federal land described in section 3(7)(A), the applicable Regional Forester; and

“(B) with respect to Federal land described in section 3(7)(B), the applicable Bureau of Land Management State Director.”;

(D) in subsection (d)(3), by inserting “(or applicable designee)” after “the Secretary concerned”; and

(E) in subsection (f)(1)—

(i) by inserting “(or applicable designee)” after “the Secretary concerned”; and

(ii) by inserting “(or applicable designee)” after “of the Secretary”.

(2) CONFORMING AMENDMENT.—Section 201(3) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7121(3)) is amended by inserting “(or applicable designee (as defined in section 205(c)(6)))” after “Secretary concerned” both places it appears.

SEC. 403. PROGRAM FOR TITLE II SELF-SUSTAINING RESOURCE ADVISORY COMMITTEE PROJECTS.

(a) SELF-SUSTAINING RESOURCE ADVISORY COMMITTEE PROJECTS.—Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7121 et seq.) is amended by adding at the end the following new section:

“SEC. 209. PROGRAM FOR SELF-SUSTAINING RESOURCE ADVISORY COMMITTEE PROJECTS.

“(a) RAC PROGRAM.—The Chief of the Forest Service shall conduct a program (to be known as the ‘self-sustaining resource advisory committee program’ or ‘RAC program’) under which 10 resource advisory committees will propose projects authorized by subsection (c) to be carried out using project funds reserved by a participating county under section 102(d).

“(b) SELECTION OF PARTICIPATING RESOURCE ADVISORY COMMITTEES.—The selection of resource advisory committees to participate in the RAC program is in the sole discretion of the Chief of the Forest Service.

“(c) AUTHORIZED PROJECTS.—Notwithstanding the project purposes specified in sections 202(b), 203(c), and 204(a)(5), projects under the RAC program are intended to—

“(1) accomplish forest management objectives or support community development; and

“(2) generate receipts.

“(d) DEPOSIT AND AVAILABILITY OF REVENUES.—Any revenue generated by a project conducted under the RAC program, including any interest accrued from the revenues, shall be—

“(1) deposited in the special account in the Treasury established under section 102(d)(2)(A); and

“(2) available, in such amounts as may be provided in advance in appropriation Acts, for additional projects under the RAC program.

“(e) TERMINATION OF AUTHORITY.—

“(1) IN GENERAL.—The authority to initiate a project under the RAC program shall terminate on September 30, 2022.

“(2) DEPOSITS IN TREASURY.—Any funds available for projects under the RAC program and not obligated by September 30, 2023, shall be deposited in the Treasury of the United States.”.

(b) EXCEPTION TO GENERAL RULE REGARDING TREATMENT OF RECEIPTS.—Section 403(b) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7153(b)) is amended by striking “All revenues” and inserting “Except as provided in section 209, all revenues”.

SEC. 404. ADDITIONAL AUTHORIZED USE OF RESERVED FUNDS FOR TITLE III COUNTY PROJECTS.

Section 302(a) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7142(a)) is amended—

(1) in paragraph (2)—

(A) by inserting “and law enforcement patrols” after “including fire-fighting”; and

(B) by striking “and” at the end;

(2) in paragraph (3), by inserting “and carry out” after “develop”;

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following new paragraph (3):

“(3) to cover training costs and equipment purchases directly related to the emergency services described in paragraph (2); and”.

SEC. 405. TREATMENT AS SUPPLEMENTAL FUNDING.

(a) **IN GENERAL.**—Section 102 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7112) is amended by adding at the end the following new subsection:

“(f) **TREATMENT AS SUPPLEMENTAL FUNDING.**—None of the funds made available to a beneficiary county or other political subdivision of a State under this Act shall be used in lieu of or to otherwise offset State funding sources for local schools, facilities, or educational purposes.”.

(b) **CONTINUATION OF DIRECT PAYMENTS.**—Payments to States made under the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7101 et seq.) and 25-percent payments made to States and Territories under the Acts of May 23, 1908, and March 1, 1911 (16 U.S.C. 500), shall continue to be made as direct payments.

TITLE V—STEWARDSHIP END RESULT CONTRACTING

SEC. 501. CANCELLATION CEILINGS FOR STEWARDSHIP END RESULT CONTRACTING PROJECTS.

(a) **CANCELLATION CEILINGS.**—Section 604 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c) is amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by inserting after subsection (g) the following new subsection (h):

“(h) **CANCELLATION CEILINGS.**—

“(1) **IN GENERAL.**—Notwithstanding section 3903(b)(1) of title 41, United States Code, the Chief and the Director may obligate funds in stages that are economically or programmatically viable to cover any potential cancellation or termination costs for an agreement or contract under subsection (b) in stages that are economically or programmatically viable.

“(2) **ADVANCE NOTICE TO CONGRESS OF CANCELLATION CEILING IN EXCESS OF \$25 MILLION.**—Not later than 30 days before entering into a multiyear agreement or contract under subsection (b) that includes a cancellation ceiling in excess of \$25 million, but does not include proposed funding for the costs of cancelling the agreement or contract up to such cancellation ceiling, the Chief or the Director, as the case may be, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Natural Resources and the Committee on Agriculture of the House of Representatives a written notice that includes—

“(A) the cancellation ceiling amounts proposed for each program year in the agreement or contract;

“(B) the reasons why such cancellation ceiling amounts were selected;

“(C) the extent to which the costs of contract cancellation are not included in the budget for the agreement or contract; and

“(D) an assessment of the financial risk of not including budgeting for the costs of agreement or contract cancellation.

“(3) **TRANSMITTAL OF NOTICE TO OMB.**—Not later than 14 days after the date on which written notice is provided under paragraph (2) with respect to an agreement or contract under subsection (b), the Chief or the Director, as the case may be, shall transmit a copy of the notice to the Director of the Office of Management and Budget.”.

(b) **RELATION TO OTHER LAWS.**—Section 604(d)(5) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c(d)(5)) is amended—

(1) by striking “, the Chief may” and inserting “and section 2(a)(1) of the Act of July 31, 1947 (commonly known as the Materials Act of 1947; 30 U.S.C. 602(a)(1)), the Chief and the Director may”; and

(2) by striking the last sentence.

SEC. 502. EXCESS OFFSET VALUE.

Section 604(g)(2) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c(g)(2)) is amended by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

“(A) use the excess to satisfy any outstanding liabilities for cancelled agreements or contracts; or

“(B) if there are no outstanding liabilities under subparagraph (A), apply the excess to other authorized stewardship projects.”

SEC. 503. PAYMENT OF PORTION OF STEWARDSHIP PROJECT REVENUES TO COUNTY IN WHICH STEWARDSHIP PROJECT OCCURS.

Section 604(e) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c(e)) is amended—

(1) in paragraph (2)(B), by inserting “subject to paragraph (3)(A),” before “shall”; and

(2) in paragraph (3)(A), by striking “services received by the Chief or the Director” and all that follows through the period at the end and inserting the following: “services and in-kind resources received by the Chief or the Director under a stewardship contract project conducted under this section shall not be considered monies received from the National Forest System or the public lands, but any payments made by the contractor to the Chief or Director under the project shall be considered monies received from the National Forest System or the public lands.”

SEC. 504. SUBMISSION OF EXISTING ANNUAL REPORT.

Subsection (j) of section 604 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c), as redesignated by section 501(a)(1), is amended by striking “report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives” and inserting “submit to the congressional committees specified in subsection (h)(2) a report”.

SEC. 505. FIRE LIABILITY PROVISION.

Section 604(d) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c(d)) is amended by adding at the end the following new paragraph:

“(8) MODIFICATION.—Upon the request of the contractor, a contract or agreement under this section awarded before February 7, 2014, shall be modified by the Chief or Director to include the fire liability provisions described in paragraph (7).”

SEC. 506. EXTENSION OF STEWARDSHIP CONTRACTING MAXIMUM TERM LIMITS.

(a) HEALTH FORESTS RESTORATION ACT.—Section 604(d)(3)(B) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c(d)(3)(B)) is amended by striking “10 years” and inserting “20 years”.

(b) NATIONAL FOREST MANAGEMENT ACT.—Section 14(c) of the National Forest Management Act of 1976 (16 U.S.C. 472a(c)) is amended by striking “ten years” and inserting “20 years”.

TITLE VI—ADDITIONAL FUNDING SOURCES FOR FOREST MANAGEMENT ACTIVITIES

SEC. 601. DEFINITIONS.

In this title:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) a State or political subdivision of a State containing National Forest System lands or public lands;

(B) a publicly chartered utility serving one or more States or a political subdivision thereof;

(C) a rural electric company; and

(D) any other entity determined by the Secretary concerned to be appropriate for participation in the Fund.

(2) FUND.—The term “Fund” means the State-Supported Forest Management Fund established by section 603.

SEC. 602. AVAILABILITY OF STEWARDSHIP PROJECT REVENUES AND COLLABORATIVE FOREST LANDSCAPE RESTORATION FUND TO COVER FOREST MANAGEMENT ACTIVITY PLANNING COSTS.

(a) AVAILABILITY OF STEWARDSHIP PROJECT REVENUES.—Section 604(e)(2)(B) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c(e)(2)(B)), as amended by section 503, is further amended by striking “appropriation at the project site from which the monies are collected or at another project site.” and inserting the following: “appropriation—

“(i) at the project site from which the monies are collected or at another project site; and

“(ii) to cover not more than 25 percent of the cost of planning additional stewardship contracting projects.”

(b) AVAILABILITY OF COLLABORATIVE FOREST LANDSCAPE RESTORATION FUND.—Section 4003(f)(1) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(f)(1)) is amended by striking “carrying out and” and inserting “planning, carrying out, and”.

SEC. 603. STATE-SUPPORTED PLANNING OF FOREST MANAGEMENT ACTIVITIES.

(a) STATE-SUPPORTED FOREST MANAGEMENT FUND.—There is established in the Treasury of the United States a fund, to be known as the “State-Supported Forest Management Fund”, to cover the cost of planning (especially related to compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)), carrying out, and monitoring certain forest management activities on National Forest System lands or public lands.

(b) CONTENTS.—The State-Supported Forest Management Fund shall consist of such amounts as may be—

- (1) contributed by an eligible entity for deposit in the Fund;
- (2) appropriated to the Fund; or
- (3) generated by forest management activities carried out using amounts in the Fund.

(c) GEOGRAPHICAL AND USE LIMITATIONS.—In making a contribution under subsection (b)(1), an eligible entity may—

- (1) specify the National Forest System lands or public lands for which the contribution may be expended; and
- (2) limit the types of forest management activities for which the contribution may be expended.

(d) AUTHORIZED FOREST MANAGEMENT ACTIVITIES.—In such amounts as may be provided in advance in appropriation Acts, the Secretary concerned may use the Fund to plan, carry out, and monitor a forest management activity that—

- (1) is developed through a collaborative process;
- (2) is proposed by a resource advisory committee;
- (3) is covered by a community wildfire protection plan.

(e) IMPLEMENTATION METHODS.—A forest management activity carried out using amounts in the Fund may be carried out using a contract or agreement under section 604 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c), the good neighbor authority provided by section 8206 of the Agricultural Act of 2014 (16 U.S.C. 2113a), a contract under section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a), or other authority available to the Secretary concerned, but revenues generated by the forest management activity shall be used to reimburse the Fund for planning costs covered using amounts in the Fund.

(f) RELATION TO OTHER LAWS.—

(1) REVENUE SHARING.—Subject to subsection (e), revenues generated by a forest management activity carried out using amounts from the Fund shall be considered monies received from the National Forest System.

(2) KNUTSON-VANDERBERG ACT.—The Act of June 9, 1930 (commonly known as the Knutson-Vanderberg Act; 16 U.S.C. 576 et seq.), shall apply to any forest management activity carried out using amounts in the Fund.

(g) TERMINATION OF FUND.—

(1) TERMINATION.—The Fund shall terminate 10 years after the date of the enactment of this Act.

(2) EFFECT OF TERMINATION.—Upon the termination of the Fund pursuant to paragraph (1) or pursuant to any other provision of law, unobligated contributions remaining in the Fund shall be returned to the eligible entity that made the contribution.

TITLE VII—TRIBAL FORESTRY PARTICIPATION AND PROTECTION

SEC. 701. PROTECTION OF TRIBAL FOREST ASSETS THROUGH USE OF STEWARDSHIP END RESULT CONTRACTING AND OTHER AUTHORITIES.

(a) PROMPT CONSIDERATION OF TRIBAL REQUESTS.—Section 2(b) of the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a(b)) is amended—

(1) in paragraph (1), by striking “Not later than 120 days after the date on which an Indian tribe submits to the Secretary” and inserting “In response to the submission by an Indian Tribe of”; and

(2) by adding at the end the following new paragraph:

“(A) TIME PERIODS FOR CONSIDERATION.—

“(A) INITIAL RESPONSE.—Not later than 120 days after the date on which the Secretary receives a Tribal request under paragraph (1), the Secretary shall provide an initial response to the Indian Tribe regarding—

“(i) whether the request may meet the selection criteria described in subsection (c); and

“(ii) the likelihood of the Secretary entering into an agreement or contract with the Indian Tribe under paragraph (2) for activities described in paragraph (3).

“(B) NOTICE OF DENIAL.—Notice under subsection (d) of the denial of a Tribal request under paragraph (1) shall be provided not later than 1 year after the date on which the Secretary received the request.

“(C) COMPLETION.—Not later than 2 years after the date on which the Secretary receives a Tribal request under paragraph (1), other than a Tribal request denied under subsection (d), the Secretary shall—

“(i) complete all environmental reviews necessary in connection with the agreement or contract and proposed activities under the agreement or contract; and

“(ii) enter into the agreement or contract with the Indian tribe under paragraph (2).”.

(b) CONFORMING AND TECHNICAL AMENDMENTS.—Section 2 of the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a) is amended—

(1) in subsections (b)(1) and (f)(1), by striking “section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275))” and inserting “section 604 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c)”; and

(2) in subsection (d), by striking “subsection (b)(1), the Secretary may” and inserting “paragraphs (1) and (4)(B) of subsection (b), the Secretary shall”.

SEC. 702. MANAGEMENT OF INDIAN FOREST LAND AUTHORIZED TO INCLUDE RELATED NATIONAL FOREST SYSTEM LANDS AND PUBLIC LANDS.

Section 305 of the National Indian Forest Resources Management Act (25 U.S.C. 3104) is amended by adding at the end the following new subsection:

“(c) INCLUSION OF CERTAIN NATIONAL FOREST SYSTEM LAND AND PUBLIC LAND.—

“(1) AUTHORITY.—At the request of an Indian Tribe, the Secretary concerned may agree to treat Federal forest land as Indian forest land for purposes of planning and conducting forest land management activities under this section if the Federal forest land is located within, or mostly within, a geographic area that presents a feature or involves circumstances principally relevant to that Indian Tribe, such as Federal forest land ceded to the United States by treaty, Federal forest land within the boundaries of a current or former reservation, or Federal forest land adjudicated to be Tribal homelands.

“(2) REQUIREMENTS.—As part of the agreement to treat Federal forest land as Indian forest land under paragraph (1), the Secretary concerned and the Indian Tribe making the request shall—

“(A) provide for continued public access applicable to the Federal forest land prior to the agreement, except that the Secretary concerned may limit or prohibit such access as needed;

“(B) continue sharing revenue generated by the Federal forest land with State and local governments either—

“(i) on the terms applicable to the Federal forest land prior to the agreement, including, where applicable, 25-percent payments or 50-percent payments; or

“(ii) at the option of the Indian Tribe, on terms agreed upon by the Indian Tribe, the Secretary concerned, and State and county governments participating in a revenue sharing agreement for the Federal forest land;

“(C) comply with applicable prohibitions on the export of unprocessed logs harvested from the Federal forest land;

“(D) recognize all right-of-way agreements in place on Federal forest land prior to commencement of Tribal management activities;

“(E) ensure that all commercial timber removed from the Federal forest land is sold on a competitive bid basis; and

“(F) cooperate with the appropriate State fish and wildlife agency to achieve mutual agreement on the management of fish and wildlife.

“(3) LIMITATION.—Treating Federal forest land as Indian forest land for purposes of planning and conducting management activities pursuant to paragraph (1) shall not be construed to designate the Federal forest land as Indian forest lands for any other purpose.

“(4) DEFINITIONS.—In this subsection:

“(A) FEDERAL FOREST LAND.—The term ‘Federal forest land’ means—

“(i) National Forest System lands; and

- “(ii) public lands (as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e))), including Coos Bay Wagon Road Grant lands reconveyed to the United States pursuant to the first section of the Act of February 26, 1919 (40 Stat. 1179), and Oregon and California Railroad Grant lands.
- “(B) SECRETARY CONCERNED.—The term ‘Secretary concerned’ means—
- “(i) the Secretary of Agriculture, with respect to the Federal forest land referred to in subparagraph (A)(i); and
- “(ii) the Secretary of the Interior, with respect to the Federal forest land referred to in subparagraph (A)(ii).”.

SEC. 703. TRIBAL FOREST MANAGEMENT DEMONSTRATION PROJECT.

The Secretary of the Interior and the Secretary of Agriculture may carry out demonstration projects by which federally recognized Indian Tribes or Tribal organizations may contract to perform administrative, management, and other functions of programs of the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a et seq.) through contracts entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.).

SEC. 704. RULE OF APPLICATION.

Nothing in this title, or the amendments made by this title, shall be construed as interfering with, diminishing, or conflicting with the authority, jurisdiction, or responsibility of any State to exercise primary management, control, or regulation of fish and wildlife on land or water within the State (including on public land) under State law.

TITLE VIII— EXPEDITING INTERAGENCY CONSULTATION

Subtitle A—Forest Plans Not Considered Major Federal Actions

SEC. 801. FOREST PLANS NOT CONSIDERED MAJOR FEDERAL ACTIONS.

The development, maintenance, amendment, and revision of a forest plan shall not be considered a major Federal action for purposes of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Subtitle B—Agency Consultation

SEC. 811. CONSULTATION UNDER FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING ACT OF 1974.

(a) IN GENERAL.—Section 6(d) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(d)) is amended—

(1) by striking “(d) The Secretary” and inserting the following:

“(d) PUBLIC PARTICIPATION AND CONSULTATION.—

“(1) IN GENERAL.—The Secretary”; and

(2) by adding at the end the following:

“(2) NO ADDITIONAL CONSULTATION REQUIRED AFTER APPROVAL OF LAND MANAGEMENT PLANS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall not be required to engage in consultation under this subsection or any other provision of law (including section 7 of the Endangered Species Act (16 U.S.C. 1536) and section 402.16 of title 50, Code of Federal Regulations (or a successor regulation)) with respect to—

“(i) if a land management plan approved by the Secretary—

“(I) the listing of a species as threatened or endangered, or a designation of critical habitat pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.);

“(II) whether the amount or extent of taking specified in the incidental take statement is exceeded;

“(III) whether new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; or

“(IV) whether the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

“(ii) any provision of a land management plan adopted as described in clause (i).

“(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph affects any applicable requirement of the Secretary to consult with the head of any other Federal department or agency—

“(i) regarding any project, including a project carried out, or proposed to be carried out, in an area designated as critical habitat pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.); or

“(ii) with respect to the development of an amendment to a land management plan that would result in a significant change in the land management plan.

“(3) LAND MANAGEMENT PLAN CONSIDERED A NON-DISCRETIONARY ACTION.—For purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), a forest management activity carried out by the Secretary concerned pursuant to this Act shall be considered a non-discretionary action.”.

(b) DEFINITION OF SECRETARY; CONFORMING AMENDMENTS.—

(1) DEFINITION OF SECRETARY.—Section 3(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(a)) is amended, in the first sentence of the matter preceding paragraph (1), by inserting “(referred to in this Act as the ‘Secretary’)” after “Secretary of Agriculture”.

(2) CONFORMING AMENDMENTS.—The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.) is amended, in sections 4 through 9, 12, 13, and 15, by striking “Secretary of Agriculture” each place it appears and inserting “Secretary”.

SEC. 812. CONSULTATION UNDER FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.

Section 202(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712(f)) is amended—

(1) by striking “(f) The Secretary” and inserting the following:

“(f) PUBLIC INVOLVEMENT.—

“(1) IN GENERAL.—The Secretary”; and

(2) by adding at the end the following:

“(2) NO ADDITIONAL CONSULTATION REQUIRED AFTER APPROVAL OF LAND USE PLANS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall not be required to engage in consultation under this subsection or any other provision of law (including section 7 of the Endangered Species Act (16 U.S.C. 1536) and section 402.16 of title 50, Code of Federal Regulations (or a successor regulation)), with respect to—

“(i) the listing of a species as threatened or endangered, or a designation of critical habitat, pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.), if a land use plan has been adopted by the Secretary as of the date of listing or designation; or

“(ii) any provision of a land use plan adopted as described in clause (i).

“(B) EFFECT OF PARAGRAPH.—

“(i) DEFINITION OF SIGNIFICANT CHANGE.—In this subparagraph, the term ‘significant change’ means a significant change within the meaning of section 219.13(b)(3) of title 36, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph), except that—

“(I) any reference contained in that section to a land management plan shall be deemed to be a reference to a land use plan;

“(II) any reference contained in that section to the Forest Service shall be deemed to be a reference to the Bureau of Land Management; and

“(III) any reference contained in that section to the National Forest Management Act of 1976 (Public Law 94–588; 90 Stat. 2949) shall be deemed to be a reference to this Act.

“(ii) EFFECT.—Nothing in this paragraph affects any applicable requirement of the Secretary to consult with the head of any other Federal department or agency—

“(I) regarding a project carried out, or proposed to be carried out, with respect to a species listed as threatened or endangered, or in an area designated as critical habitat, pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.); or

“(II) with respect to the development of a new land use plan or the revision of or other significant change to an existing land use plan.

“(3) LAND USE PLAN CONSIDERED NON-DISCRETIONARY ACTION.—For purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), a forest management activity carried out by the Secretary concerned pursuant to this Act shall be considered a non-discretionary action.”.

TITLE IX—MISCELLANEOUS

Subtitle A—Forest Management Provisions

SEC. 901. CLARIFICATION OF EXISTING CATEGORICAL EXCLUSION AUTHORITY RELATED TO INSECT AND DISEASE INFESTATION.

Section 603(c)(2)(B) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591b(c)(2)(B)) is amended by striking “Fire Regime Groups I, II, or III” and inserting “Fire Regime I, Fire Regime II, Fire Regime III, Fire Regime IV, or Fire Regime V”.

SEC. 902. REVISION OF ALTERNATE CONSULTATION AGREEMENT REGULATIONS.

Not later than 90 days after the date of the enactment of this section, the Secretary of the Interior and the Secretary of Commerce shall revise section 402.13 of title 50, Code of Federal Regulations, to—

(1) authorize Federal agencies to enter into alternative consultation agreements under which the Federal agency may determine if an action such agency authorizes is likely to adversely affect listed species or critical habitat; and

(2) if an agency determines such action will not likely adversely affect listed species or critical habitat pursuant to paragraph (1), not require such agency to complete a formal consultation, informal consultation, or written concurrence of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service with respect to such action.

SEC. 903. REVISION OF EXTRAORDINARY CIRCUMSTANCES REGULATIONS.

(a) DETERMINATIONS OF EXTRAORDINARY CIRCUMSTANCES.—In determining whether extraordinary circumstances related to a proposed action preclude use of a categorical exclusion, the Forest Service shall not be required to—

(1) consider whether a proposed action is within a potential wilderness area;

(2) consider whether a proposed action affects a Forest Service sensitive species;

(3) conduct an analysis under section 220.4(f) of title 36, Code of Federal Regulations, of the proposed action’s cumulative impact (as the term is defined in section 1508.7 of title 40, Code of Federal Regulations);

(4) consider a determination under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) that a proposed action may affect, but is not likely to adversely affect, threatened, endangered, or candidate species, or designated critical habitats; or

(5) consider a determination under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) that a proposed action may affect, and is likely to adversely affect threatened, endangered, candidate species, or designated critical habitat if the agency is in compliance with the applicable provisions of the biological opinion.

(b) PROPOSED RULEMAKING.—Not later than 60 days after the date of enactment of this Act, the Secretary of Agriculture shall publish a notice of proposed rulemaking to revise section 220.6(b) of title 36, Code of Federal Regulations to conform such section with subsection (a).

(c) ADDITIONAL REVISION.—As part of the proposed rulemaking described in subsection (b), the Secretary of Agriculture shall revise section 220.5(a)(2) of title 36, Code of Federal Regulations, to provide that the Forest Service shall not be required to consider proposals that would substantially alter a potential wilderness area as a class of actions normally requiring environmental impact statements.

(d) ADDITIONAL ACTIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary of Agriculture shall issue final regulations to carry out the revisions described in subsections (b) and (c).

SEC. 904. CONDITIONS ON FOREST SERVICE ROAD DECOMMISSIONING.

(a) CONSULTATION WITH AFFECTED COUNTY.—Whenever any Forest Service defined maintenance level one- or two-system road within a designated high-fire prone

area of a unit of the National Forest System is considered for decommissioning, the Forest Supervisor of that unit of the National Forest System shall—

- (1) consult with the government of the county containing the road regarding the merits and possible consequences of decommissioning the road; and
 - (2) solicit possible alternatives to decommissioning the road.
- (b) PERIOD PRIOR TO DECOMMISSION.—A Forest Service road described in subsection (a) may not be decommissioned without the advance approval of the Regional Forester.

SEC. 905. PROHIBITION ON APPLICATION OF EASTSIDE SCREENS REQUIREMENTS ON NATIONAL FOREST SYSTEM LANDS.

(a) REPEAL OF EASTSIDE SCREENS REQUIREMENTS.—Notwithstanding any other provision of law, the Secretary of Agriculture shall immediately withdraw the Interim Management Direction Establishing Riparian, Ecosystem, and Wildlife Standards for Timber Sales (commonly known as the Eastside Screens requirements), including all preceding or associated versions of these amendments.

(b) EFFECT OF REPEAL.—On and after the date of the enactment of this Act, the Secretary of Agriculture may not apply to National Forest System lands any of the amendments repealed under subsection (a).

SEC. 906. USE OF SITE-SPECIFIC FOREST PLAN AMENDMENTS FOR CERTAIN PROJECTS AND ACTIVITIES.

If the Secretary concerned determines that, in order to conduct a project or carry out an activity implementing a forest plan, an amendment to the forest plan is required, the Secretary concerned shall execute such amendment as a nonsignificant plan amendment through the record of decision or decision notice for the project or activity.

SEC. 907. KNUTSON-VANDENBERG ACT MODIFICATIONS.

(a) DEPOSITS OF FUNDS FROM NATIONAL FOREST TIMBER PURCHASERS REQUIRED.—Section 3(a) of the Act of June 9, 1930 (commonly known as the Knutson-Vandenberg Act; 16 U.S.C. 576b(a)), is amended by striking “The Secretary” and all that follows through “any purchaser” and inserting the following: “The Secretary of Agriculture shall require each purchaser”.

(b) CONDITIONS ON USE OF DEPOSITS.—Section 3 of the Act of June 9, 1930 (commonly known as the Knutson-Vandenberg Act; 16 U.S.C. 576b), is amended—

- (1) by striking “Such deposits” and inserting the following:
 - “(b) Amounts deposited under subsection (a)”;
 - (2) by redesignating subsection (c) as subsection (d); and
 - (3) by inserting before subsection (d), as so redesignated, the following new subsection (c):
- “(c)(1) Amounts in the special fund established pursuant to this section—
 - “(A) shall be used exclusively to implement activities authorized by subsection (a); and
 - “(B) may be used anywhere within the Forest Service Region from which the original deposits were collected.
- “(2) The Secretary of Agriculture may not deduct overhead costs from the funds collected under subsection (a), except as needed to fund personnel of the responsible Ranger District for the planning and implementation of the activities authorized by subsection (a).”.

SEC. 908. APPLICATION OF NORTHWEST FOREST PLAN SURVEY AND MANAGE MITIGATION MEASURE STANDARD AND GUIDELINES.

The Northwest Forest Plan Survey and Manage Mitigation Measure Standard and Guidelines shall not apply to any National Forest System lands or public lands.

SEC. 909. RECONSTRUCTION AND REPAIR INCLUDED IN GOOD NEIGHBOR AGREEMENTS.

Section 8206(a)(3) of the Agricultural Act of 2014 (16 U.S.C. 2113a(a)(3)) is amended—

- (1) in subparagraph (A)—
 - (A) in clause (ii), by striking “and”;
 - (B) by redesignating clause (iii) as clause (iv); and
 - (C) by inserting after clause (ii) the following new clause:
 - “(iii) construction, reconstruction, repair or restoration of roads as necessary to achieve project objectives; and”.
- (2) by amending subparagraph (B) to read as follows:
 - “(B) EXCLUSIONS.—The term ‘forest, rangeland, and watershed restoration services’ does not include construction, alteration, repair or replacement of public buildings or works.”.

SEC. 910. LOGGING AND MECHANIZED OPERATIONS.

The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(1) in section 3 (29 U.S.C. 203)—

(A) in subsection (l), by striking “well-being.” and inserting “well-being, and that employment of employees ages sixteen or seventeen years in a logging or mechanized operation in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of individuals of such ages shall not be deemed to constitute oppressive child labor if such employee is employed by his parent or by a person standing in the place of his parent in a logging or mechanized operation owned or operated by such parent or person.”; and

(B) by adding at the end the following:

“(z)(1) ‘Logging’—

“(A) means—

“(i) the felling, skidding, yarding, loading and processing of timber by equipment other than manually operated chainsaws and cable skidders;

“(ii) the felling of timber in mechanized operations;

“(iii) the bucking or converting of timber into logs, poles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products;

“(iv) the collecting, skidding, yarding, loading, transporting and unloading of such products in connection with logging;

“(v) the constructing, repairing and maintaining of roads or camps used in connection with logging; the constructing, repairing, and maintenance of machinery or equipment used in logging; and

“(vi) other work performed in connection with logging; and

“(B) does not include the manual use of chain saws to fell and process timber and the use of cable skidders to bring the timber to the landing.

“(2) ‘Mechanized operation’—

“(A) means the felling, skidding, yarding, loading and processing of timber by equipment other than manually operated chainsaws and cable skidders; and

“(B) includes whole tree processors, cut-to-length processors, stroke boom delimiters, wheeled and track feller-bunchers, pull thru delimiters, wheeled and track forwarders, chippers, grinders, mechanical debarkers, wheeled and track grapple skidders, yarders, bulldozers, excavators, and log loaders.”; and

(2) in section 13(c) (29 U.S.C. 211(c)), by adding at the end the following:

“(8) The provisions of section 12 relating to child labor shall apply to an employee who is 16 or 17 years old employed in a logging or mechanized operation in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children ages 16 or 17, except where such employee is employed by his parent or by a person standing in the place of his parent in a logging or mechanized operation owned or operated by such parent or person.”.

Subtitle B—Oregon and California Railroad Grant Lands and Coos Bay Wagon Road Grant Lands

SEC. 911. AMENDMENTS TO THE ACT OF AUGUST 28, 1937.

The first section of the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 2601 et seq.), is amended—

(1) by striking “principal of sustained yield” and inserting “principle of sustained yield”;

(2) by striking “facilities” and inserting “facilities”; and

(3) by striking “That timber from said lands in an amount” and inserting “That timber from said lands in the amount that is the greater of:”.

SEC. 912. OREGON AND CALIFORNIA RAILROAD GRANT LANDS AND COOS BAY WAGON ROAD GRANT LANDS PERMANENT RIGHTS OF ACCESS.

(a) **CREATION OF PERMANENT RIGHTS OF ACCESS REQUIRED.**—Notwithstanding any other provision of law, on the date of the enactment of this section, reciprocal road right-of-way permits, grants, and agreements issued to a private landowner by the Secretary of the Interior pursuant to subpart 2812 of part 2810 of title 43, Code of Federal Regulations, or its predecessor regulation shall become permanent rights of access that are recordable and that shall run with the land.

(b) **RECORDS UPDATED.**—Not later than 60 days after the date of the enactment of this Act, the reciprocal road right-of-way permits, grants, and agreements described in subsection (a) shall be amended to reflect the permanent rights of access required under subsection (a) and recorded by the Secretary of the Interior in each county where the lands are located. No other amendments shall be made to such right-of-way permits, grants, and agreements.

SEC. 913. MANAGEMENT OF BUREAU OF LAND MANAGEMENT LANDS IN WESTERN OREGON.

(a) **IN GENERAL.**—All of the public land managed by the Bureau of Land Management in the Northwest District, Roseburg District, Coos Bay District, Medford District, and the Klamath Resource Area of the Lakeview District in the State of Oregon shall hereafter be managed pursuant to title I of the Act of August 28, 1937 (43 U.S.C. 1181a through 1181e). Except as provided in subsection (b), all of the revenue produced from such land shall be deposited in the Treasury of the United States in the Oregon and California land-grant fund and be subject to the provisions of title II of the Act of August 28, 1937 (43 U.S.C. 1181f).

(b) **CERTAIN LANDS EXCLUDED.**—Subsection (a) does not apply to any revenue that is required to be deposited in the Coos Bay Wagon Road grant fund pursuant to sections 1 through 4 of the Act of May 24, 1939 (43 U.S.C. 1181f et seq.).

TITLE X—MAJOR DISASTER FOR WILDFIRE ON FEDERAL LAND

SEC. 1001. WILDFIRE ON FEDERAL LANDS.

Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended—

(1) by striking “(2)” and all that follows through “means” and inserting the following:

“(2) MAJOR DISASTER.—

“(A) MAJOR DISASTER.—The term ‘major disaster’ means”; and

(2) by adding at the end the following:

“(B) MAJOR DISASTER FOR WILDFIRE ON FEDERAL LANDS.—The term ‘major disaster for wildfire on Federal lands’ means any wildfire or wildfires, which in the determination of the President under section 802 warrants assistance under section 803 to supplement the efforts and resources of the Department of the Interior or the Department of Agriculture—

“(i) on Federal lands; or

“(ii) on non-Federal lands pursuant to a fire protection agreement or cooperative agreement.”.

SEC. 1002. DECLARATION OF A MAJOR DISASTER FOR WILDFIRE ON FEDERAL LANDS.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.) is amended by adding at the end the following:

“TITLE VIII—MAJOR DISASTER FOR WILDFIRE ON FEDERAL LAND

“SEC. 801. DEFINITIONS.

“As used in this title—

“(1) FEDERAL LAND.—The term ‘Federal land’ means—

“(A) any land under the jurisdiction of the Department of the Interior;

and

“(B) any land under the jurisdiction of the United States Forest Service.

“(2) FEDERAL LAND MANAGEMENT AGENCIES.—The term ‘Federal land management agencies’ means—

“(A) the Bureau of Land Management;

“(B) the National Park Service;

“(C) the Bureau of Indian Affairs;

“(D) the United States Fish and Wildlife Service; and

“(E) the United States Forest Service.

“(3) WILDFIRE SUPPRESSION OPERATIONS.—The term ‘wildfire suppression operations’ means the emergency and unpredictable aspects of wildland firefighting, including support, response, emergency stabilization activities, and other emergency management activities of wildland firefighting on Federal lands (or on non-Federal lands pursuant to a fire protection agreement or cooperative agreement) by the Federal land management agencies covered by the wildfire suppression subactivity of the Wildland Fire Management account or the FLAME Wildfire Suppression Reserve Fund account of the Federal land management agencies.

“SEC. 802. PROCEDURE FOR DECLARATION OF A MAJOR DISASTER FOR WILDFIRE ON FEDERAL LANDS.

“(a) **IN GENERAL.**—The Secretary of the Interior or the Secretary of Agriculture may submit a request to the President consistent with the requirements of this title for a declaration by the President that a major disaster for wildfire on Federal lands exists.

“(b) **REQUIREMENTS.**—A request for a declaration by the President that a major disaster for wildfire on Federal lands exists shall—

“(1) be made in writing by the respective Secretary;

“(2) certify that the amount appropriated in the current fiscal year for wildfire suppression operations of the Federal land management agencies under the jurisdiction of the respective Secretary, net of any concurrently enacted rescissions of wildfire suppression funds, increases the total unobligated balance of amounts available for wildfire suppression by an amount equal to or greater than the average total costs incurred by the Federal land management agencies per year for wildfire suppression operations, including the suppression costs in excess of appropriated amounts, over the previous ten fiscal years;

“(3) certify that the amount available for wildfire suppression operations of the Federal land management agencies under the jurisdiction of the respective Secretary will be obligated not later than 30 days after such Secretary notifies the President that wildfire suppression funds will be exhausted to fund ongoing and anticipated wildfire suppression operations related to the wildfire on which the request for the declaration of a major disaster for wildfire on Federal lands pursuant to this title is based; and

“(4) specify the amount required in the current fiscal year to fund wildfire suppression operations related to the wildfire on which the request for the declaration of a major disaster for wildfire on Federal lands pursuant to this title is based.

“(c) **DECLARATION.**—Based on the request of the respective Secretary under this title, the President may declare that a major disaster for wildfire on Federal lands exists.

“SEC. 803. WILDFIRE ON FEDERAL LANDS ASSISTANCE.

“(a) **IN GENERAL.**—In a major disaster for wildfire on Federal lands, the President may transfer funds, only from the account established pursuant to subsection (b), to the Secretary of the Interior or the Secretary of Agriculture to conduct wildfire suppression operations on Federal lands (and non-Federal lands pursuant to a fire protection agreement or cooperative agreement).

“(b) **WILDFIRE SUPPRESSION OPERATIONS ACCOUNT.**—The President shall establish a specific account for the assistance available pursuant to a declaration under section 802. Such account may only be used to fund assistance pursuant to this title.

“(c) **LIMITATION.**—

“(1) **LIMITATION OF TRANSFER.**—The assistance available pursuant to a declaration under section 802 is limited to the transfer of the amount requested pursuant to section 802(b)(4). The assistance available for transfer shall not exceed the amount contained in the wildfire suppression operations account established pursuant to subsection (b).

“(2) **TRANSFER OF FUNDS.**—Funds under this section shall be transferred from the wildfire suppression operations account to the wildfire suppression sub-activity of the Wildland Fire Management Account.

“(d) **PROHIBITION OF OTHER TRANSFERS.**—Except as provided in this section, no funds may be transferred to or from the account established pursuant to subsection (b) to or from any other fund or account.

“(e) **REIMBURSEMENT FOR WILDFIRE SUPPRESSION OPERATIONS ON NON-FEDERAL LAND.**—If amounts transferred under subsection (c) are used to conduct wildfire suppression operations on non-Federal land, the respective Secretary shall—

“(1) secure reimbursement for the cost of such wildfire suppression operations conducted on the non-Federal land; and

“(2) transfer the amounts received as reimbursement to the wildfire suppression operations account established pursuant to subsection (b).

“(f) **ANNUAL ACCOUNTING AND REPORTING REQUIREMENTS.**—Not later than 90 days after the end of each fiscal year for which assistance is received pursuant to this section, the respective Secretary shall submit to the Committees on Agriculture, Appropriations, the Budget, Natural Resources, and Transportation and Infrastructure of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry, Appropriations, the Budget, Energy and Natural Resources, Homeland Security and Governmental Affairs, and Indian Affairs of the Senate, and make available to the public, a report that includes the following:

“(1) The risk-based factors that influenced management decisions regarding wildfire suppression operations of the Federal land management agencies under the jurisdiction of the Secretary concerned.

“(2) Specific discussion of a statistically significant sample of large fires, in which each fire is analyzed for cost drivers, effectiveness of risk management techniques, resulting positive or negative impacts of fire on the landscape, impact of investments in preparedness, suggested corrective actions, and such other factors as the respective Secretary considers appropriate.

“(3) Total expenditures for wildfire suppression operations of the Federal land management agencies under the jurisdiction of the respective Secretary, broken out by fire sizes, cost, regional location, and such other factors as the such Secretary considers appropriate.

“(4) Lessons learned.

“(5) Such other matters as the respective Secretary considers appropriate.

“(g) SAVINGS PROVISION.—Nothing in this title shall limit the Secretary of the Interior, the Secretary of Agriculture, Indian Tribe, or a State from receiving assistance through a declaration made by the President under this Act when the criteria for such declaration have been met.”.

SEC. 1003. PROHIBITION ON TRANSFERS.

No funds may be transferred to or from the Federal land management agencies' wildfire suppression operations accounts referred to in section 801(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to or from any account or subactivity of the Federal land management agencies, as defined in section 801(2) of such Act, that is not used to cover the cost of wildfire suppression operations.

PURPOSE OF THE BILL

The purpose of H.R. 2936 is to expedite under the National Environmental Policy Act of 1969 and improve forest management activities on National Forest System lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands to return resilience to the overgrown, fire-prone forested lands.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2936, the Resilient Federal Forests Act of 2017, addresses the declining health of America's forest lands due to a lack of active management by the United States Forest Service (USFS) and the Bureau of Land Management (BLM).

The diminished health of our federal forests caused a significant increase in the size and severity of catastrophic wildfire over the past 15 years. Catastrophic wildfires negatively impact watershed health, wildlife habitat, air quality, public and private property and human life. USFS indicated that wildfires destroyed more than 36,000 man-made structures since 2006.¹ More disturbingly, agency data indicates that 349 lives have been lost to catastrophic wildfire over the past twenty years.²

The steep decline in timber harvests from federal forests contributes to the alarming increase in the size and intensity of catastrophic wildfires. From the mid-1950s to the mid-1990s, USFS typically harvested between 10 and 12 billion board feet of timber annually. Beginning in 1996, the average amount of timber harvested from federal forests fell to between 1.5 and 3.3 billion board feet.³ However, since 1996, the average annual number of acres

¹National Interagency Coordination Center (NICC) Wildland Fire Summary and Statistics Annual Reports, <https://www.predictiveservices.nifc.gov/intelligence/intelligence.htm>

²National Interagency Fire Center, Wildland Fire Accidents and Fatalities by Year, https://www.nifc.gov/safety/safety_documents/year.pdf

³USDA Forest Service, FY 1905–2015 National Summary Cut and Sold Data and Graphs, January 20, 2016.

burned due to catastrophic wildfire total over 6.2 million acres per year.⁴

Over 58 million acres of national forest are at high or very high risk of severe wildfire,⁵ an area almost the size of the States of Pennsylvania and New York combined. In fiscal year 2015, USFS harvested less than 2.9 billion board feet of timber across 204,763 acres,⁶ a small fraction of the acreage in need of treatment.

The reason for the declining health and productivity of our federal forests is twofold: longer planning and bureaucratic review periods that result in increased time and cost for planning and executing forest management activities, and the chilling effect of unnecessary litigation on forest planning decisions.

Prior to marking up H.R. 2936, the Natural Resources Subcommittee on Federal Lands held multiple hearings focusing on federal forest health and management challenges. The hearings highlighted the dire situation facing our federal forests including degraded forest health, increased risk of wildfire, insects, disease and mortality, and loss of economic vitality for forest communities. The hearings also explored opportunities for Congress to expand existing USFS and BLM tools to improve forest health.

H.R. 2936 simplifies environmental process requirements, reduces project planning times and lowers the cost of implementing forest management projects while still ensuring robust protection of the environment through thorough environmental review.

H.R. 2936 also addresses the challenges facing the managers of our federal forests by rewarding collaboration among interest groups, providing an alternative process to resolve litigation against forest projects, and streamlining bureaucratic processes. The legislation updates and modernizes the Secure Rural Schools and Community Self Determination Act (Public Law 106-393) and further empowers Resource Advisory Committees to bring diverse viewpoints together to solve national forest management problems. It also provides categorical exclusions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for land managers engaging in routine treatments on federal forest lands and empowers agency scientists to gather data, assess project impacts, and design appropriate mitigation.

Additional process efficiencies may be found by USFS and BLM by prioritizing continued cooperation with State fish and wildlife agencies to recognize and utilize State fish and wildlife data and analyses as a primary source to inform land use, planning, and related natural resource decisions. Federal agencies should avoid duplication of raw data whenever practicable and, when available and appropriate, instead evaluate and utilize existing analysis of data on fish and wildlife populations prepared by States. The agencies should also reciprocally share data with State fish and wildlife managers to ensure the most complete data set for decision support systems.

H.R. 2936 imposes no new requirements or burdens on USFS or BLM. It expands upon the successes of the Agriculture Act of 2014

⁴National Interagency Fire Center, Total Wildland Fires and Acres (1960–2015), https://www.nifc.gov/fireInfo/fireInfo_stats_totalFires.html

⁵Chief Tom Tidwell, Testimony before the Senate Committee on Energy and Natural Resources, May 5, 2015.

⁶USDA Forest Service, Fiscal Year 2017 Budget Justification, February 2017.

(Public Law 113–79) and the Healthy Forests Restoration Act of 2003 (Public Law 108–148) to create new and innovative tools federal land managers can implement immediately to quickly remove dead trees after wildfires, promote reforestation and post-fire rehabilitation, and reduce the threat of catastrophic wildfires, and insect and disease infestation to federal forests, watersheds and forest communities.

COMMITTEE ACTION

H.R. 2936 was introduced on June 20, 2017, by Congressman Bruce Westerman (R–AR). The bill was primarily referred to the Committee on Agriculture and in addition to the Committees on Natural Resources, Education and the Workforce, and Transportation and Infrastructure. On June 22, 2017, the Natural Resources Committee met to consider the bill. Congressman Darren Soto (D–FL) offered an amendment designated 021; it was adopted by voice vote. Congressman Darren Soto (D–FL) offered an amendment designated 024; it was not agreed to by voice vote. Congressman Scott R. Tipton (R–CO) offered an amendment designated #1, it was agreed to by voice vote. Congressman A. Donald McEachin (D–VA) offered an amendment designated 007; it was not agreed to by a roll call vote of 11 ayes and 22 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 06-27-17

Recorded Vote #: 1

Meeting on / Amendment on: FC Mark Up on 22 bills: McEachin_007 Amendment to H.R. 2936 (Rep. Bruce Westerman), "Resilient Federal Forests Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
Mr. Grijalva, AZ, Ranking Member	X			Mr. Soto, FL	X		
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR		X	
Mrs. Napolitano, CA				Mr. Panetta, CA	X		
Mr. Gohmert, TX, Vice Chairman		X		Mr. Graves, LA		X	
Ms. Bordallo, Guam				Mr. McEachin, VA	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
Mr. Costa, CA				Mr. Brown, MD	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS		X	
Mr. Sablan, CNMI				Mr. Clay, MO			
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
Ms. Tsongas, MA	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Rouzer, NC		X	
Mr. Huffman, CA	X			Mr. Bergman, MI		X	
Mr. Thompson, PA		X		Ms. Cheney, WY		X	
Mr. Lowenthal, CA				Mr. Johnson, LA		X	
Mr. Gosar, AZ		X		Ms. González-Colón, PR			
Mr. Beyer, VA	X						
Mr. Labrador, ID		X					
Mrs. Torres, CA	X						
Mr. Tipton, CO		X					
Mr. Gallego, AZ							
Mr. LaMalfa, CA		X					
Ms. Hanabusa, HI	X						
Mr. Denham, CA							
Ms. Barragán, CA	X			TOTAL:	11	22	

Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated 006; it was not agreed to by a roll call vote of 12 ayes and 23 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 06-27-17

Recorded Vote #: 2

Meeting on / Amendment on: FC Mark Up on 22 bills: **Grijalva_006** Amendment to H.R. 2936 (Rep. Bruce Westerman), "Resilient Federal Forests Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>				<i>Mr. Panetta, CA</i>	X		
Mr. Gohmert, TX, Vice Chairman		X		Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>				<i>Mr. McEachin, VA</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Brown, MD</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS		X	
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>			
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Rouzer, NC		X	
<i>Mr. Huffman, CA</i>	X			Mr. Bergman, MI		X	
Mr. Thompson, PA		X		Ms. Cheney, WY		X	
<i>Mr. Lowenthal, CA</i>	X			Mr. Johnson, LA		X	
Mr. Gosar, AZ		X		Ms. González-Colón, PR			
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID		X					
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>	X			TOTAL:	12	23	

Congresswoman Colleen Hanabusa (D-HI) offered an amendment designated 001; it was not agreed to by a roll call vote of 12 ayes and 23 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 06-27-17

Recorded Vote #: 3

Meeting on / Amendment on: FC Mark Up on 22 bills: **Hanabusa_001** Amendment to H.R. 2936 (Rep. Bruce Westerman), "Resilient Federal Forests Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>				<i>Mr. Panetta, CA</i>	X		
Mr. Gohmert, TX, Vice Chairman		X		Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>				<i>Mr. McEachin, VA</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Brown, MD</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS		X	
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>			
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Rouzer, NC		X	
<i>Mr. Huffman, CA</i>	X			Mr. Bergman, MI		X	
Mr. Thompson, PA		X		Ms. Cheney, WY		X	
<i>Mr. Lowenthal, CA</i>	X			Mr. Johnson, LA		X	
Mr. Gosar, AZ		X		Ms. González-Colón, PR			
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID		X					
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>	X			TOTAL:	12	23	

Congresswoman Colleen Hanabusa (D–HI) offered and withdrew an amendment designated 003. Congresswoman Nanette Diaz Barragán (D–CA) offered and withdrew an amendment designated 004. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 23 ayes and 12 nays on June 27, 2017, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 06-27-17

Recorded Vote #: 4

Meeting on / Amendment on: FC Mark Up on 22 bills: **On Favorably Reporting** H.R. 2936 (Rep. Bruce Westerman), "Resilient Federal Forests Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>				<i>Mr. Panetta, CA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>				<i>Mr. McEachin, VA</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Brown, MD</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>			
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Rouzer, NC	X		
<i>Mr. Huffman, CA</i>		X		Mr. Bergman, MI	X		
Mr. Thompson, PA	X			Ms. Cheney, WY	X		
<i>Mr. Lowenthal, CA</i>		X		Mr. Johnson, LA	X		
Mr. Gosar, AZ	X			Ms. González-Colón, PR			
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID	X						
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>		X		TOTAL:	23	12	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2936, the Resilient Federal Forests Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2936—Resilient Federal Forests Act of 2017

Summary: H.R. 2936 would increase the share of proceeds from timber sales that the Bureau of Land Management (BLM) pays to certain counties in Oregon. CBO estimates that enacting the bill would increase the amounts the federal government pays to certain counties in Oregon by \$6 million over the 2019–2027 period. Those payments are considered direct spending; therefore, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues.

The bill also would change the way the Forest Service conducts various activities related to forest management. Finally, the bill would exempt lawsuits challenging certain forest management activities from the Equal Access to Justice Act (EAJA). Based on information provided by the Forest Service, CBO estimates that implementing the bill would cost \$10 million over the 2017–2022 period, assuming appropriation of the necessary amounts.

CBO also estimates that enacting H.R. 2936 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2936 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA) on plaintiffs, including public and private entities, that seek judicial review of some forest management projects on federal lands. CBO estimates that the cost of the mandate would fall below

the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$78 million and \$156 million in 2017, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2936 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—													2017– 2022	2017– 2027
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027				
INCREASES IN DIRECT SPENDING															
Payments to Counties in Oregon:															
Estimated Budget Authority ...	0	0	1	1	1	1	1	1	1	1	1	1	3	6	
Estimated Outlays	0	0	1	1	1	1	1	1	1	1	1	1	3	6	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION															
Administrative Costs:															
Estimated Authorization Level	0	2	2	2	2	2	2	2	2	2	2	2	20	20	
Estimated Outlays	0	2	2	2	2	2	2	2	2	2	2	2	20	20	

Note: Amounts may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that H.R. 2936 will be enacted near the end of 2017 and that the necessary amounts will be appropriated for each fiscal year. Estimates of outlays are based on historical spending patterns for the affected programs.

Direct spending

H.R. 2936 contains several provisions that would affect direct spending. The bill would increase the amount of payments that BLM makes to certain counties in Oregon, which CBO estimates would increase direct spending by \$6 million over the 2019–2027 period. Various other provisions also would affect net direct spending, but CBO estimates those effects would not be significant over the 2017–2027 period.

Payments to Counties in Oregon. Under current law, BLM receives proceeds from timber sales that occur on lands administered by the agency. A portion of those proceeds is paid to the counties where those sales occurred. The remaining proceeds are deposited in the U.S. Treasury. Under H.R. 2936, the amount of proceeds that would be paid to counties from sales on about 385,000 acres of BLM lands would increase from four percent to 75 percent beginning in 2019 (Proceeds are disbursed the year after they are collected.) Based on information provided by BLM, CBO expects that the affected lands would generate proceeds totaling about \$900,000 a year over the next 10 years, and we estimate that enacting the bill would increase payments to Oregon by about \$640,000 a year (from \$36,000 to \$675,000) over the 2019–2027 period.

Expedited Environmental Reviews and Salvage Operations. H.R. 2936 would expedite certain activities related to managing forests, including environmental assessments and harvesting of salvage timber after natural disasters or certain other events. Based on information provided by the Forest Service, CBO expects that enacting those provisions could affect the timing of certain salvage timber sales; however, we estimate that expediting those sales would have no significant net effect on offsetting receipts in any year.

Stewardship Contracting. The bill would allow the Forest Service and BLM to determine the amount of appropriated funds they reserve to pay for the costs of canceling certain stewardship contracts. Under the Antideficiency Act, federal agencies cannot spend funds in excess of amounts specifically made available to the agency. Because, under the bill, the agencies might reserve insufficient funds to cover all the costs of canceled contracts, the legislation would effectively allow them to obligate sums greater than the appropriations they have available when they enter into the contracts—thus creating direct spending authority. However, the amount of funds set aside to cover cancellation costs for all multi-year stewardship contracts over the last 10 years averaged less than \$200,000 a year, and no contracts were cancelled over that period. We expect the agencies to continue to administer the stewardship contracting program in a similar way in the future; therefore, CBO estimates that enacting this provision would have a negligible effect on direct spending.

The legislation also would amend the Healthy Forests Restoration Act to allow proceeds from activities conducted under stewardship contracts to be spent for various purposes, including providing certain direct payments to counties. The Forest Service has the authority under current law to retain and spend those proceeds; therefore, CBO estimates that enacting those provisions would have no net effect on direct spending.

Elimination of Certain Restrictions on Timber Harvesting. The bill would prohibit the Forest Service from enforcing provisions in existing land use plans that limit timber harvesting in certain areas to trees less than 21 inches in diameter. Because CBO expects that under the bill the Forest Service would shift certain timber sales from areas with low-value timber to areas with higher-value timber, enacting this provision would probably increase offsetting receipts from timber sales relative to current law. However, based on information provided by the agency, CBO estimates that any increase in receipts would not be significant in any year.

Lawsuits Related to Certain Activities Related to Forest Management. H.R. 2936 would exempt lawsuits related to certain forest management activities from EAJA, which requires the federal government to pay attorneys' fees for certain plaintiffs that prevail in lawsuits against the United States. Based on information from the Forest Service regarding the number of plaintiffs likely to be affected, CBO estimates that enacting those provisions would reduce direct spending by a negligible amount each year.

Spending subject to appropriation

H.R. 2936 contains several provisions that could affect discretionary spending. The bill would prohibit the Forest Service from using amounts in the Knutson-Vandenberg Trust Fund (K-V Fund) to cover certain administrative costs and would make funds available, subject to appropriation, for forest management and fire-fighting activities. In total, CBO estimates that implementing the legislation would cost \$10 million over the 2017–2022 period, assuming appropriation of the necessary amounts.

Limit on the Use of Certain Funds for Administrative Costs. The K-V Fund consists of amounts generated by timber sales that can be retained and spent by the Forest Service to carry out activities

Intergovernmental and private-sector impact: H.R. 2936 would impose intergovernmental and private-sector mandates as defined in UMRA because it would prohibit or restrict plaintiffs, including public and private entities, from seeking a preliminary injunction to temporarily stop activities, such as salvage logging, on federal lands. Consequently, the bill would eliminate a right of action for some entities to challenge proposed forest management projects. The cost of a mandate that eliminates a right of action would be the forgone income and value of awards in such cases. Because such losses would generally not occur for the types of cases involved, CBO estimates the mandate costs, if any, would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$78 million and \$156 million in 2017, respectively, adjusted annually for inflation).

The bill would benefit public entities, such as state and local fire agencies, by authorizing federal grants and other forms of assistance to manage forests on federal and non-federal lands. Any costs incurred by public entities, including cost-sharing contributions, would result from participation in voluntary federal programs.

Estimate prepared by: Federal costs: Jeff LaFave, Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to expedite under the National Environmental Policy Act of 1969 and improve forest management activities on National Forest System lands, on public lands under the jurisdiction of the Bureau of Land Management, and on Tribal lands to return resilience to the overgrown, fire-prone forested lands.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of Rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill contains 3 directed rulemakings. Section 902 of this bill directs the Secretary of the Interior and the Secretary of Commerce to revise section 402.13 of title 50, Code of Federal Regulations. Section 903 of this bill directs the Secretary of Agriculture to revise sections 220.6(b) and 220.5(a)(2) of title 36, Code of Federal Regulations.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pur-

suant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs. The bill does amend and improve a Secure Rural Schools and Community Self-Determination Act (SRS, Public Law 106–393) program that was identified in a 2011 GAO report as a development program that had similar or overlapping objectives with other development programs. The bill’s changes to the program will result in a more self-sustained and effective program of forest management and community development under SRS.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**SECURE RURAL SCHOOLS AND COMMUNITY SELF-
DETERMINATION ACT OF 2000**

* * * * *

**TITLE I—SECURE PAYMENTS FOR
STATES AND COUNTIES CONTAINING
FEDERAL LAND**

* * * * *

SEC. 102. PAYMENTS TO STATES AND COUNTIES.

(a) **PAYMENT AMOUNTS.**—Except as provided in section 103, the Secretary of the Treasury shall pay to—

(1) a State or territory of the United States an amount equal to the sum of the amounts elected under subsection (b) by each county within the State or territory for—

(A) if the county is eligible for the 25-percent payment, the share of the 25-percent payment; or

(B) the share of the State payment of the eligible county; and

(2) a county an amount equal to the amount elected under subsection (b) by each county for—

(A) if the county is eligible for the 50-percent payment, the 50-percent payment; or

(B) the county payment for the eligible county.

(b) **ELECTION TO RECEIVE PAYMENT AMOUNT.**—

(1) **ELECTION; SUBMISSION OF RESULTS.**—

(A) **IN GENERAL.**—The election to receive a share of the State payment, the county payment, a share of the State payment and the county payment, a share of the 25-percent payment, the 50-percent payment, or a share of the 25-percent payment and the 50-percent payment, as appli-

cable, shall be made at the discretion of each affected county by August 1, 2013 (or as soon thereafter as the Secretary concerned determines is practicable), and August 1 of each second fiscal year thereafter, in accordance with paragraph (2), and transmitted to the Secretary concerned by the Governor of each eligible State.

(B) FAILURE TO TRANSMIT.—If an election for an affected county is not transmitted to the Secretary concerned by the date specified under subparagraph (A), the affected county shall be considered to have elected to receive a share of the State payment, the county payment, or a share of the State payment and the county payment, as applicable.

(C) EFFECT OF LATE PAYMENT FOR FISCAL YEARS 2014 AND 2015.—The election otherwise required by subparagraph (A) shall not apply for fiscal year 2014 or 2015.

(2) DURATION OF ELECTION.—

(A) IN GENERAL.—A county election to receive a share of the 25-percent payment or 50-percent payment, as applicable, shall be effective for 2 fiscal years. If such two-fiscal year period included fiscal year 2013, the county election to receive a share of the 25-percent payment or 50-percent payment, as applicable, also shall be effective for fiscal years 2014 and 2015.

(B) FULL FUNDING AMOUNT.—If a county elects to receive a share of the State payment or the county payment in 2013, the election shall be effective for all subsequent fiscal years through fiscal year 2015.

(3) SOURCE OF PAYMENT AMOUNTS.—The payment to an eligible State or eligible county under this section for a fiscal year shall be derived from—

(A) any amounts that are appropriated to carry out this Act;

(B) any revenues, fees, penalties, or miscellaneous receipts, exclusive of deposits to any relevant trust fund, special account, or permanent operating funds, received by the Federal Government from activities by the Bureau of Land Management or the Forest Service on the applicable Federal land; and

(C) to the extent of any shortfall, out of any amounts in the Treasury of the United States not otherwise appropriated.

(c) DISTRIBUTION AND EXPENDITURE OF PAYMENTS.—

(1) DISTRIBUTION METHOD.—A State that receives a payment under subsection (a) for Federal land described in section 3(7)(A) shall distribute the appropriate payment amount among the appropriate counties in the State in accordance with—

(A) the Act of May 23, 1908 (16 U.S.C. 500); and

(B) section 13 of the Act of March 1, 1911 (36 Stat. 963; 16 U.S.C. 500).

(2) EXPENDITURE PURPOSES.—Subject to subsection (d), payments received by a State under subsection (a) and distributed to counties in accordance with paragraph (1) shall be expended as required by the laws referred to in paragraph (1).

(d) EXPENDITURE RULES FOR ELIGIBLE COUNTIES.—

(1) ALLOCATIONS.—

(A) USE OF PORTION IN SAME MANNER AS 25-PERCENT PAYMENT OR 50-PERCENT PAYMENT, AS APPLICABLE.—Except as provided in subparagraph (D), if an eligible county elects to receive its share of the State payment or the county payment, not less than 80 percent, but not more than 85 percent, of the funds shall be expended in the same manner in which the 25-percent payments or 50-percent payment, as applicable, are required to be expended.

(B) ELECTION AS TO USE OF BALANCE.—Except as provided in subparagraph (C), an eligible county shall elect to do 1 or more of the following with the balance of any funds not expended pursuant to subparagraph (A):

(i) Reserve any portion of the balance for projects in accordance with title II.

(ii) Reserve not more than 7 percent of the total share for the eligible county of the State payment or the county payment for projects in accordance with title III.

(iii) Return the portion of the balance not reserved under clauses (i) and (ii) to the Treasury of the United States.

(C) COUNTIES WITH MODEST DISTRIBUTIONS.—In the case of each eligible county to which more than \$100,000, but less than \$350,000, is distributed for any fiscal year pursuant to either or both of paragraphs (1)(B) and (2)(B) of subsection (a), the eligible county, with respect to the balance of any funds not expended pursuant to subparagraph (A) for that fiscal year, shall—

(i) reserve any portion of the balance for—

(I) carrying out projects under title II;

(II) carrying out projects under title III; or

(III) a combination of the purposes described in subclauses (I) and (II); or

(ii) return the portion of the balance not reserved under clause (i) to the Treasury of the United States.

(D) COUNTIES WITH MINOR DISTRIBUTIONS.—In the case of each eligible county to which less than \$100,000 is distributed for any fiscal year pursuant to either or both of paragraphs (1)(B) and (2)(B) of subsection (a), the eligible county may elect to expend all the funds in the same manner in which the 25-percent payments or 50-percent payments, as applicable, are required to be expended.

(E) EFFECT OF LATE PAYMENT FOR FISCAL YEAR 2014.—The election made by an eligible county under subparagraph (B), (C), or (D) for fiscal year 2013, or deemed to be made by the county under paragraph (3)(B) for that fiscal year, shall be effective for fiscal years 2014 and 2015.

(2) DISTRIBUTION OF FUNDS.—

(A) IN GENERAL.—Funds reserved by an eligible county under subparagraph (B)(i) or (C)(i) of paragraph (1) for carrying out projects under title II shall be deposited in a special account in the Treasury of the United States.

- (B) AVAILABILITY.—Amounts deposited under subparagraph (A) shall—
 - (i) be available for expenditure by the Secretary concerned, without further appropriation; and
 - (ii) remain available until expended in accordance with title II.
- (3) ELECTION.—
 - (A) NOTIFICATION.—The Governor of each eligible State shall notify the Secretary concerned of an election by an eligible county under this subsection not later than September 30, 2012, and each September 30 thereafter for each succeeding fiscal year.
 - (B) FAILURE TO ELECT.—If the Governor of an eligible State fails to notify the Secretary concerned of the election for an eligible county by the date specified in subparagraph (A)—
 - (i) the eligible county shall be considered to have elected to expend 80 percent of the funds in accordance with paragraph (1)(A); and
 - (ii) the remainder shall be available to the Secretary concerned to carry out projects in the eligible county to further the purpose described in section 202(b).
 - (C) EFFECT OF LATE PAYMENT FOR FISCAL YEAR 2014.—This paragraph does not apply for fiscal years 2014 and 2015.
 - (e) TIME FOR PAYMENT.—The payments required under this section for a fiscal year shall be made as soon as practicable after the end of that fiscal year.
 - (f) *TREATMENT AS SUPPLEMENTAL FUNDING.*—None of the funds made available to a beneficiary county or other political subdivision of a State under this Act shall be used in lieu of or to otherwise offset State funding sources for local schools, facilities, or educational purposes.

* * * * *

TITLE II—SPECIAL PROJECTS ON FEDERAL LAND

SEC. 201. DEFINITIONS.

- In this title:
- (1) PARTICIPATING COUNTY.—The term “participating county” means an eligible county that elects under section 102(d) to expend a portion of the Federal funds received under section 102 in accordance with this title.
 - (2) PROJECT FUNDS.—The term “project funds” means all funds an eligible county elects under section 102(d) to reserve for expenditure in accordance with this title.
 - (3) RESOURCE ADVISORY COMMITTEE.—The term “resource advisory committee” means—
 - (A) an advisory committee established by the Secretary concerned (*or applicable designee (as defined in section 205(c)(6))*) under section 205; or

(B) an advisory committee determined by the Secretary concerned (*or applicable designee (as defined in section 205(c)(6))*) to meet the requirements of section 205.

(4) RESOURCE MANAGEMENT PLAN.—The term “resource management plan” means—

(A) a land use plan prepared by the Bureau of Land Management for units of the Federal land described in section 3(7)(B) pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712); or

(B) a land and resource management plan prepared by the Forest Service for units 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).

* * * * *

SEC. 204. EVALUATION AND APPROVAL OF PROJECTS BY SECRETARY CONCERNED.

(a) CONDITIONS FOR APPROVAL OF PROPOSED PROJECT.—The Secretary concerned may make a decision to approve a project submitted by a resource advisory committee under section 203 only if the proposed project satisfies each of the following conditions:

(1) The project complies with all applicable Federal laws (including regulations).

(2) The project is consistent with the applicable resource management plan and with any watershed or subsequent plan developed pursuant to the resource management plan and approved by the Secretary concerned.

(3) The project has been approved by the resource advisory committee in accordance with section 205, including the procedures issued under subsection (e) of that section.

(4) A project description has been submitted by the resource advisory committee to the Secretary concerned in accordance with section 203.

(5) The project will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality.

(b) ENVIRONMENTAL REVIEWS.—

(1) REQUEST FOR PAYMENT BY COUNTY.—The Secretary concerned may request the resource advisory committee submitting a proposed project to agree to the use of project funds to pay for any environmental review, consultation, or compliance with applicable environmental laws required in connection with the project.

(2) CONDUCT OF ENVIRONMENTAL REVIEW.—If a payment is requested under paragraph (1) and the resource advisory committee agrees to the expenditure of funds for this purpose, the Secretary concerned shall conduct environmental review, consultation, or other compliance responsibilities in accordance with Federal laws (including regulations).

(3) EFFECT OF REFUSAL TO PAY.—

(A) IN GENERAL.—If a resource advisory committee does not agree to the expenditure of funds under paragraph (1), the project shall be deemed withdrawn from further con-

sideration by the Secretary concerned pursuant to this title.

(B) EFFECT OF WITHDRAWAL.—A withdrawal under subparagraph (A) shall be deemed to be a rejection of the project for purposes of section 207(c).

(c) DECISIONS OF SECRETARY CONCERNED.—

(1) REJECTION OF PROJECTS.—

(A) IN GENERAL.—A decision by the Secretary concerned to reject a proposed project shall be at the sole discretion of the Secretary concerned.

(B) NO ADMINISTRATIVE APPEAL OR JUDICIAL REVIEW.—Notwithstanding any other provision of law, a decision by the Secretary concerned to reject a proposed project shall not be subject to administrative appeal or judicial review.

(C) NOTICE OF REJECTION.—Not later than 30 days after the date on which the Secretary concerned makes the rejection decision, the Secretary concerned shall notify in writing the resource advisory committee that submitted the proposed project of the rejection and the reasons for rejection.

(2) NOTICE OF PROJECT APPROVAL.—The Secretary concerned shall publish in the Federal Register notice of each project approved under subsection (a) if the notice would be required had the project originated with the Secretary.

(d) SOURCE AND CONDUCT OF PROJECT.—Once the Secretary concerned accepts a project for review under section 203, the acceptance shall be deemed a Federal action for all purposes.

(e) IMPLEMENTATION OF APPROVED PROJECTS.—

(1) COOPERATION.—Notwithstanding chapter 63 of title 31, United States Code, using project funds the Secretary concerned may enter into contracts, grants, and cooperative agreements with States and local governments, private and nonprofit entities, and landowners and other persons to assist the Secretary in carrying out an approved project.

(2) BEST VALUE CONTRACTING.—

(A) IN GENERAL.—For any project involving a contract authorized by paragraph (1) the Secretary concerned may elect a source for performance of the contract on a best value basis.

(B) FACTORS.—The Secretary concerned shall determine best value based on such factors as—

(i) the technical demands and complexity of the work to be done;

(ii)(I) the ecological objectives of the project; and

(II) the sensitivity of the resources being treated;

(iii) the past experience by the contractor with the type of work being done, using the type of equipment proposed for the project, and meeting or exceeding desired ecological conditions; and

(iv) the commitment of the contractor to hiring highly qualified workers and local residents.

[(3) MERCHANTABLE TIMBER CONTRACTING PILOT PROGRAM.—

[(A) ESTABLISHMENT.—The Secretary concerned shall establish a pilot program to implement a certain percentage

of approved projects involving the sale of merchantable timber using separate contracts for—

[(i) the harvesting or collection of merchantable timber; and

[(ii) the sale of the timber.

[(B) ANNUAL PERCENTAGES.—Under the pilot program, the Secretary concerned shall ensure that, on a nationwide basis, not less than the following percentage of all approved projects involving the sale of merchantable timber are implemented using separate contracts:

[(i) For fiscal year 2008, 35 percent.

[(ii) For fiscal year 2009, 45 percent.

[(iii) For fiscal year 2010 and fiscal years thereafter, 50 percent.

[(C) INCLUSION IN PILOT PROGRAM.—The decision whether to use separate contracts to implement a project involving the sale of merchantable timber shall be made by the Secretary concerned after the approval of the project under this title.

[(D) ASSISTANCE.—

[(i) IN GENERAL.—The Secretary concerned may use funds from any appropriated account available to the Secretary for the Federal land to assist in the administration of projects conducted under the pilot program.

[(ii) MAXIMUM AMOUNT OF ASSISTANCE.—The total amount obligated under this subparagraph may not exceed \$1,000,000 for any fiscal year during which the pilot program is in effect.

[(E) REVIEW AND REPORT.—

[(i) INITIAL REPORT.—Not later than September 30, 2010, the Comptroller General shall submit to the Committees on Agriculture, Nutrition, and Forestry and Energy and Natural Resources of the Senate and the Committees on Agriculture and Natural Resources of the House of Representatives a report assessing the pilot program.

[(ii) ANNUAL REPORT.—The Secretary concerned shall submit to the Committees on Agriculture, Nutrition, and Forestry and Energy and Natural Resources of the Senate and the Committees on Agriculture and Natural Resources of the House of Representatives an annual report describing the results of the pilot program.]

[(f) REQUIREMENTS FOR PROJECT FUNDS.—The Secretary shall ensure that at least 50 percent of all project funds be used for projects that are primarily dedicated—

[(1) to road maintenance, decommissioning, or obliteration;

or

[(2) to restoration of streams and watersheds.]

(f) REQUIREMENTS FOR PROJECT FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary concerned shall ensure that at least 50 percent of the project funds reserved by a participating county under section 102(d) shall be available only for projects that—

(A) include the sale of timber or other forest products, reduce fire risks, or improve water supplies; and

(B) implement stewardship objectives that enhance forest ecosystems or restore and improve land health and water quality.

(2) *APPLICABILITY.*—The requirement in paragraph (1) shall apply only to project funds reserved by a participating county whose boundaries include Federal land that the Secretary concerned determines has been subject to a timber or other forest products program within 5 fiscal years before the fiscal year in which the funds are reserved.

SEC. 205. RESOURCE ADVISORY COMMITTEES.

(a) **ESTABLISHMENT AND PURPOSE OF RESOURCE ADVISORY COMMITTEES.**—

(1) **ESTABLISHMENT.**—The Secretary concerned (*or applicable designee*) shall establish and maintain resource advisory committees to perform the duties in subsection (b), except as provided in paragraph (4).

(2) **PURPOSE.**—The purpose of a resource advisory committee shall be—

(A) to improve collaborative relationships; and

(B) to provide advice and recommendations to the land management agencies consistent with the purposes of this title.

(3) **ACCESS TO RESOURCE ADVISORY COMMITTEES.**—To ensure that each unit of Federal land has access to a resource advisory committee, and that there is sufficient interest in participation on a committee to ensure that membership can be balanced in terms of the points of view represented and the functions to be performed, the Secretary concerned (*or applicable designee*) may, establish resource advisory committees for part of, or 1 or more, units of Federal land.

(4) **EXISTING ADVISORY COMMITTEES.**—

(A) **IN GENERAL.**—An advisory committee that meets the requirements of this section, a resource advisory committee established before September 29, [2012] 2022, or an advisory committee determined by the Secretary concerned (*or applicable designee*) before September 29, [2012] 2022, to meet the requirements of this section may be deemed by the Secretary concerned (*or applicable designee*) to be a resource advisory committee for the purposes of this title.

(B) **CHARTER.**—A charter for a committee described in subparagraph (A) that was filed on or before September 29, [2012] 2022, shall be considered to be filed for purposes of this Act.

(C) **BUREAU OF LAND MANAGEMENT ADVISORY COMMITTEES.**—The Secretary of the Interior may deem a resource advisory committee meeting the requirements of subpart 1784 of part 1780 of title 43, Code of Federal Regulations, as a resource advisory committee for the purposes of this title.

(b) **DUTIES.**—A resource advisory committee shall—

(1) review projects proposed under this title by participating counties and other persons;

(2) propose projects and funding to the Secretary concerned under section 203;

(3) provide early and continuous coordination with appropriate land management agency officials in recommending projects consistent with purposes of this Act under this title;

(4) provide frequent opportunities for citizens, organizations, tribes, land management agencies, and other interested parties to participate openly and meaningfully, beginning at the early stages of the project development process under this title;

(5)(A) monitor projects that have been approved under section 204; and

(B) advise the designated Federal official on the progress of the monitoring efforts under subparagraph (A); and

(6) make recommendations to the Secretary concerned (*or applicable designee*) for any appropriate changes or adjustments to the projects being monitored by the resource advisory committee.

(c) APPOINTMENT BY THE SECRETARY OR APPLICABLE DESIGNEE.—

(1) APPOINTMENT AND TERM.—

(A) IN GENERAL.—The Secretary concerned (*or applicable designee*), shall appoint the members of resource advisory committees for a term of 4 years beginning on the date of appointment.

(B) REAPPOINTMENT.—The Secretary concerned (*or applicable designee*) may reappoint members to subsequent 4-year terms.

(2) BASIC REQUIREMENTS.—The Secretary concerned (*or applicable designee*) shall ensure that each resource advisory committee established meets the requirements of subsection (d).

(3) INITIAL APPOINTMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary concerned shall make initial appointments to the resource advisory committees.

(4) VACANCIES.—The Secretary concerned (*or applicable designee*) shall make appointments to fill vacancies on any resource advisory committee as soon as practicable after the vacancy has occurred.

(5) COMPENSATION.—Members of the resource advisory committees shall not receive any compensation.

(6) APPLICABLE DESIGNEE.—*In this section, the term “applicable designee” means—*

(A) *with respect to Federal land described in section 3(7)(A), the applicable Regional Forester; and*

(B) *with respect to Federal land described in section 3(7)(B), the applicable Bureau of Land Management State Director.*

(d) COMPOSITION OF ADVISORY COMMITTEE.—

(1) NUMBER.—Each resource advisory committee shall be comprised of **[15 members]** *9 members*.

(2) COMMUNITY INTERESTS REPRESENTED.—Committee members shall be representative of the interests of the following 3 categories:

(A) **[5 persons]** *3 persons* that—

- (i) represent organized labor or non-timber forest product harvester groups;
- (ii) represent developed outdoor recreation, off highway vehicle users, or commercial recreation activities;
- (iii) represent—
 - (I) energy and mineral development interests; or
 - (II) commercial or recreational fishing interests;
- (iv) represent the commercial timber industry; or
- (v) hold Federal grazing or other land use permits, or represent nonindustrial private forest land owners, within the area for which the committee is organized.

(B) **【5 persons】** *3 persons* that represent—

- (i) nationally recognized environmental organizations;
- (ii) regionally or locally recognized environmental organizations;
- (iii) dispersed recreational activities;
- (iv) archaeological and historical interests; or
- (v) nationally or regionally recognized wild horse and burro interest groups, wildlife or hunting organizations, or watershed associations.

(C) **【5 persons】** *3 persons* that—

- (i) hold State elected office (or a designee);
- (ii) hold county or local elected office;
- (iii) represent American Indian tribes within or adjacent to the area for which the committee is organized;
- (iv) are school officials or teachers; or
- (v) represent the affected public at large.

(3) **BALANCED REPRESENTATION.**—In appointing committee members from the 3 categories in paragraph (2), the Secretary concerned (*or applicable designee*) shall provide for balanced and broad representation from within each category, *consistent with the requirements of paragraph (4)*.

【(4) GEOGRAPHIC DISTRIBUTION.—The members of a resource advisory committee shall reside within the State in which the committee has jurisdiction and, to extent practicable, the Secretary concerned shall ensure local representation in each category in paragraph (2).**】**

(4) GEOGRAPHIC DISTRIBUTION.—The members of a resource advisory committee shall reside within the county or counties in which the committee has jurisdiction or an adjacent county.

(5) **CHAIRPERSON.**—A majority on each resource advisory committee shall select the chairperson of the committee.

(e) **APPROVAL PROCEDURES.**—

(1) **IN GENERAL.**—Subject to paragraph (3), each resource advisory committee shall establish procedures for proposing projects to the Secretary concerned under this title.

(2) **QUORUM.**—A quorum must be present to constitute an official meeting of the committee.

(3) **APPROVAL BY MAJORITY OF MEMBERS.**—A project may be proposed by a resource advisory committee to the Secretary concerned under section 203(a), if the project has been approved by a majority of members of the committee from each of the 3 categories in subsection (d)(2).

(f) OTHER COMMITTEE AUTHORITIES AND REQUIREMENTS.—

(1) STAFF ASSISTANCE.—A resource advisory committee may submit to the Secretary concerned (*or applicable designee*) a request for periodic staff assistance from Federal employees under the jurisdiction of the Secretary (*or applicable designee*).

(2) MEETINGS.—All meetings of a resource advisory committee shall be announced at least 1 week in advance in a local newspaper of record and shall be open to the public.

(3) RECORDS.—A resource advisory committee shall maintain records of the meetings of the committee and make the records available for public inspection.

* * * * *

SEC. 209. PROGRAM FOR SELF-SUSTAINING RESOURCE ADVISORY COMMITTEE PROJECTS.

(a) RAC PROGRAM.—*The Chief of the Forest Service shall conduct a program (to be known as the “self-sustaining resource advisory committee program” or “RAC program”) under which 10 resource advisory committees will propose projects authorized by subsection (c) to be carried out using project funds reserved by a participating county under section 102(d).*

(b) SELECTION OF PARTICIPATING RESOURCE ADVISORY COMMITTEES.—*The selection of resource advisory committees to participate in the RAC program is in the sole discretion of the Chief of the Forest Service.*

(c) AUTHORIZED PROJECTS.—*Notwithstanding the project purposes specified in sections 202(b), 203(c), and 204(a)(5), projects under the RAC program are intended to—*

- (1) *accomplish forest management objectives or support community development; and*
- (2) *generate receipts.*

(d) DEPOSIT AND AVAILABILITY OF REVENUES.—*Any revenue generated by a project conducted under the RAC program, including any interest accrued from the revenues, shall be—*

- (1) *deposited in the special account in the Treasury established under section 102(d)(2)(A); and*
- (2) *available, in such amounts as may be provided in advance in appropriation Acts, for additional projects under the RAC program.*

(e) TERMINATION OF AUTHORITY.—

- (1) *IN GENERAL.—The authority to initiate a project under the RAC program shall terminate on September 30, 2022.*
- (2) *DEPOSITS IN TREASURY.—Any funds available for projects under the RAC program and not obligated by September 30, 2023, shall be deposited in the Treasury of the United States.*

TITLE III—COUNTY FUNDS

* * * * *

SEC. 302. USE.

(a) AUTHORIZED USES.—A participating county, including any applicable agencies of the participating county, shall use county funds, in accordance with this title, only—

(1) to carry out activities under the Firewise Communities program to provide to homeowners in fire-sensitive ecosystems education on, and assistance with implementing, techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires;

(2) to reimburse the participating county for search and rescue and other emergency services, including firefighting *and law enforcement patrols*, that are—

(A) performed on Federal land after the date on which the use was approved under subsection (b); and

(B) paid for by the participating county; **[and]**

(3) to cover training costs and equipment purchases directly related to the emergency services described in paragraph (2); and

[(3)] (4) to develop *and carry out* community wildfire protection plans in coordination with the appropriate Secretary concerned.

(b) PROPOSALS.—A participating county shall use county funds for a use described in subsection (a) only after a 45-day public comment period, at the beginning of which the participating county shall—

(1) publish in any publications of local record a proposal that describes the proposed use of the county funds; and

(2) submit the proposal to any resource advisory committee established under section 205 for the participating county.

* * * * *

TITLE IV—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 403. TREATMENT OF FUNDS AND REVENUES.

(a) RELATION TO OTHER APPROPRIATIONS.—Funds made available under section 402 and funds made available to a Secretary concerned under section 206 shall be in addition to any other annual appropriations for the Forest Service and the Bureau of Land Management.

(b) DEPOSIT OF REVENUES AND OTHER FUNDS.—**[All revenues]** *Except as provided in section 209, all revenues* generated from projects pursuant to title II, including any interest accrued from the revenues, shall be deposited in the Treasury of the United States.

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HEALTHY FORESTS RESTORATION ACT OF 2003

* * * * *

TITLE VI—MISCELLANEOUS

* * * * *

SEC. 603. ADMINISTRATIVE REVIEW.

(a) **IN GENERAL.**—Except as provided in subsection (d), a project described in subsection (b) that is conducted in accordance with section 602(d) may be—

- (1) considered an action categorically excluded from the requirements of Public Law 91–190 (42 U.S.C. 4321 et seq.); and
- (2) exempt from the special administrative review process under section 105.

(b) **COLLABORATIVE RESTORATION PROJECT.**—

(1) **IN GENERAL.**—A project referred to in subsection (a) is a project to carry out forest restoration treatments that—

(A) 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;

(B) considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and

(C) is developed and implemented through a collaborative process that—

(i) includes multiple interested persons representing diverse interests; and

(ii)(I) is transparent and nonexclusive; or

(II) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125).

(2) **INCLUSION.**—A project under this subsection may carry out part of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(c) **LIMITATIONS.**—

(1) **PROJECT SIZE.**—A project under this section may not exceed 3000 acres.

(2) **LOCATION.**—A project under this section shall be limited to areas—

(A) in the wildland-urban interface; or

(B) Condition Classes 2 or 3 in **【Fire Regime Groups I, II, or III】** *Fire Regime I, Fire Regime II, Fire Regime III, Fire Regime IV, or Fire Regime V*, outside the wildland-urban interface.

(3) **ROADS.**—

(A) **PERMANENT ROADS.**—

(i) **PROHIBITION ON ESTABLISHMENT.**—A project under this section shall not include the establishment of permanent roads.

(ii) **EXISTING ROADS.**—The Secretary may carry out necessary maintenance and repairs on existing permanent roads for the purposes of this section.

(B) **TEMPORARY ROADS.**—The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed.

(d) EXCLUSIONS.—This section does not apply to—

- (1) a component of the National Wilderness Preservation System;
- (2) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
- (3) a congressionally designated wilderness study area; or
- (4) an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan.

(e) FOREST MANAGEMENT PLANS.—All projects and activities carried out under this section shall be consistent with the land and resource management plan established under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for the unit of the National Forest System containing the projects and activities.

(f) PUBLIC NOTICE AND SCOPING.—The Secretary shall conduct public notice and scoping for any project or action proposed in accordance with this section.

(g) ACCOUNTABILITY.—

(1) IN GENERAL.—The Secretary shall prepare an annual report on the use of categorical exclusions under this section that includes a description of all acres (or other appropriate unit) treated through projects carried out under this section.

(2) SUBMISSION.—Not later than 1 year after the date of enactment of this section, and each year thereafter, the Secretary shall submit the reports required under paragraph (1) to—

- (A) the Committee on Agriculture, Nutrition, and Forestry of the Senate;
- (B) the Committee on Environment and Public Works of the Senate;
- (C) the Committee on Agriculture of the House of Representatives;
- (D) the Committee on Natural Resources of the House of Representatives; and
- (E) the Government Accountability Office.

SEC. 604. 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 any of the following:

- (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.

(7) Control of noxious and exotic weeds and reestablishing native plant species.

(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] 20 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) may 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] and section 2(a)(1) of the Act of July 31, 1947 (commonly known as the Materials Act of 1947; 30 U.S.C. 602(a)(1)), the Chief and the Director may enter into an agreement or contract under subsection (b). [Notwithstanding the Materials Act of 1947 (30 U.S.C. 602(a)), the Director 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).

(7) FIRE LIABILITY PROVISIONS.—Not later than 90 days after the date of enactment of this section, the Chief shall issue for use in all contracts and agreements under this section fire liability provisions that are in substantially the same form as the fire liability provisions contained in—

(A) integrated resource timber contracts, as described in the Forest Service contract numbered 2400–13, part H, section H.4; and

(B) timber sale contracts conducted pursuant to section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a).

(8) MODIFICATION.—*Upon the request of the contractor, a contract or agreement under this section awarded before February 7, 2014, shall be modified by the Chief or Director to include the fire liability provisions described in paragraph (7).*

(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) *subject to paragraph (3)(A)*, shall be available for expenditure without further [appropriation at the project site from which the monies are collected or at another project site.] *appropriation—*

(i) *at the project site from which the monies are collected or at another project site; and*

(ii) *to cover not more than 25 percent of the cost of planning additional stewardship contracting projects.*

(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.] *services and in-kind resources received by the Chief or the Director under a stewardship contract project conducted under this section shall not be considered monies received from the National Forest System or the public lands, but any payments made by the contractor to the Chief or Director under the project shall 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
- (2) the Act of June 30, 1914 (16 U.S.C. 498).

(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.]

(A) use the excess to satisfy any outstanding liabilities for cancelled agreements or contracts; or

(B) if there are no outstanding liabilities under subparagraph (A), apply the excess to other authorized stewardship projects.

(h) CANCELLATION CEILINGS.—

(1) IN GENERAL.—Notwithstanding section 3903(b)(1) of title 41, United States Code, the Chief and the Director may obligate funds in stages that are economically or programmatically viable to cover any potential cancellation or termination costs for an agreement or contract under subsection (b) in stages that are economically or programmatically viable.

(2) ADVANCE NOTICE TO CONGRESS OF CANCELLATION CEILING IN EXCESS OF \$25 MILLION.—Not later than 30 days before entering into a multiyear agreement or contract under subsection (b) that includes a cancellation ceiling in excess of \$25 million, but does not include proposed funding for the costs of cancelling the agreement or contract up to such cancellation ceiling, the Chief or the Director, as the case may be, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Natural Resources and the Committee on Agriculture of the House of Representatives a written notice that includes—

(A) the cancellation ceiling amounts proposed for each program year in the agreement or contract;

(B) the reasons why such cancellation ceiling amounts were selected;

(C) the extent to which the costs of contract cancellation are not included in the budget for the agreement or contract; and

(D) an assessment of the financial risk of not including budgeting for the costs of agreement or contract cancellation.

(3) TRANSMITTAL OF NOTICE TO OMB.—Not later than 14 days after the date on which written notice is provided under para-

graph (2) with respect to an agreement or contract under subsection (b), the Chief or the Director, as the case may be, shall transmit a copy of the notice to the Director of the Office of Management and Budget.

[(h)] (i) MONITORING AND EVALUATION.—

(1) IN GENERAL.—The Chief and the Director shall establish a multiparty monitoring and evaluation 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)] (j) 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] *submit to the congressional committees specified in subsection (h)(2) a report 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.

NATIONAL FOREST MANAGEMENT ACT OF 1976

* * * * *

TIMBER SALES ON NATIONAL FOREST SYSTEM LANDS

SEC. 14. (a) For the purpose of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528–531) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476; 16 U.S.C. 1601–1610), the Secretary of Agriculture, under such rules and regulations as he may prescribe, may sell, at not less than appraised value, trees, portions of trees, or forest products located on National Forest System lands.

(b) All advertised timber sales shall be designated on maps, and a prospectus shall be available to the public and interested potential bidders.

(c) The length and other terms of the contract shall be designed to promote orderly harvesting consistent with the principles set out in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended. Unless there is a finding by the Secretary of Agriculture that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result, sales contracts shall be for a period not to exceed [ten years] *20 years: Provided, That such period may be adjusted at the discretion of the Secretary to provide additional time due to time delays caused by an act of an agent of the United States or by other circumstances beyond the control of the purchaser. The Secretary shall require the purchaser to file as*

soon as practicable after execution of a contract for any advertised sale with a term of two years or more, a plan of operation, which shall be subject to concurrence by the Secretary. The Secretary shall not extend any contract period with an original term of two years or more unless he finds (A) that the purchaser has diligently performed in accordance with an approved plan of operation or (B) that the substantial overriding public interest justifies the extension.

(d) The Secretary of Agriculture shall advertise all sales unless he determines that extraordinary conditions exist, as defined by regulation, or that the appraised value of the sale is less than \$10,000. If, upon proper offering, no satisfactory bid is received for a sale, or the bidder fails to complete the purchase, the sale may be offered and sold without further advertisement.

(e)(1) In the sale of trees, portions of trees, or forest products from National Forest System lands (hereinafter referred to in this subsection as "national forest materials"), the Secretary of Agriculture shall select the bidding method or methods which—

(A) insure open and fair competition;

(B) insure that the Federal Government receive not less than the appraised value as required by subsection (a) of this section;

(C) consider the economic stability of communities whose economies are dependent on such national forest materials, or achieve such other objectives as the Secretary deems necessary; and

(D) are consistent with the objectives of this Act and other Federal statutes.

The Secretary shall select or alter the bidding method or methods as he determines necessary to achieve the objectives stated in clauses (A), (B), (C), and (D) of this paragraph.

(2) In those instances when the Secretary selects oral auction as the bidding method for the sale of any national forest materials, he shall require that all prospective purchasers submit written sealed qualifying bids. Only prospective purchasers whose written sealed qualifying bids are equal to or in excess of the appraised value of such national forest materials may participate in the oral bidding process.

(3) The Secretary shall monitor bidding patterns involved in the sale of national forest materials. If the Secretary has a reasonable belief that collusive bidding practices may be occurring, then—

(A) he shall report any such instances of possible collusive bidding or suspected collusive bidding practices to the Attorney General of the United States with any and all supporting data;

(B) he may alter the bidding methods used within the affected area; and

(C) he shall take such other action as he deems necessary to eliminate such practices within the affected area.

(f) The Secretary of Agriculture, under such rules and regulations as he may prescribe, is authorized to dispose of, by sale or otherwise, trees, portions of trees, or other forest products related to research and demonstration projects.

(g) DESIGNATION AND SUPERVISION OF HARVESTING.—

(1) IN GENERAL.—Designation, including marking when necessary, designation by description, or designation by prescrip-

tion, and supervision of harvesting of trees, portions of trees, or forest products shall be conducted by persons employed by the Secretary of Agriculture.

(2) REQUIREMENT.—Persons employed by the Secretary of Agriculture under paragraph (1)—

(A) shall have no personal interest in the purchase or harvest of the products; and

(B) shall not be directly or indirectly in the employment of the purchaser of the products.

(3) METHODS FOR DESIGNATION.—Designation by prescription and designation by description shall be considered valid methods for designation, and may be supervised by use of post-harvest cruise, sample weight scaling, or other methods determined by the Secretary of Agriculture to be appropriate.

(h) The Secretary of Agriculture shall develop utilization standards methods of measurement, and harvesting practices for the removal of trees, portions of trees, or forest products to provide for the optimum practical use of the wood material. Such standards, methods, and practices shall reflect consideration of opportunities to promote more effective wood utilization, regional conditions, and species characteristics and shall be compatible with multiple use resource management objectives in the affected area. To accomplish the purpose of this subsection in situations involving salvage of insect-infested, dead, damaged, or down timber, and to remove associated trees for stand improvement, the Secretary is authorized to require the purchasers of such timber to make monetary deposits, as a part of the payment for the timber, to be deposited in a designated fund from which sums are to be used, to cover the cost to the United States for design, engineering, and supervision of the construction of needed roads and the cost for Forest Service sale preparation and supervision of the harvesting of such timber. Deposits of money pursuant to this subsection are to be available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That such deposits shall not be considered as moneys received from the national forests within the meaning of sections 500 and 501 of title 16, United States Code: *And provided further*, That sums found to be in excess of the cost of accomplishing the purposes for which deposited on any national forest shall be transferred to miscellaneous receipts in the Treasury of the United States.

(i)(1) For sales of timber which include a provision for purchaser credit for construction of permanent roads with an estimated cost in excess of \$20,000, the Secretary of Agriculture shall promulgate regulations requiring that the notice of sale afford timber purchasers qualifying as “small business concerns” under the Small Business Act, as amended, and the regulations issued thereunder, an estimate of the cost and the right, when submitting a bid, to elect that the Secretary build the proposed road.

(2) If the purchaser makes such an election, the price subsequently paid for the timber shall include all of the estimated cost of the road. In the notice of sale, the Secretary of Agriculture shall set a date when such road shall be completed which shall be applicable to either construction by the purchaser or the Secretary, depending on the election. To accomplish requested work, the Secretary is authorized to use from any receipts from the sale of tim-

ber a sum equal to the estimate for timber purchaser credits, and such additional sums as may be appropriated for the construction of roads, such funds to be available until expended, to construct a road that meets the standards specified in the notice of sale.

(3) The provisions of this subsection shall become effective on October 1, 1976.

* * * * *

**SECTION 4003 OF THE OMNIBUS PUBLIC LAND
MANAGEMENT ACT OF 2009**

SEC. 4003. COLLABORATIVE FOREST LANDSCAPE RESTORATION PROGRAM.

(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of the Interior, shall establish a Collaborative Forest Landscape Restoration Program to select and fund ecological restoration treatments for priority forest landscapes in accordance with—

(1) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(3) any other applicable law.

(b) **ELIGIBILITY CRITERIA.**—To be eligible for nomination under subsection (c), a collaborative forest landscape restoration proposal shall—

(1) be based on a landscape restoration strategy that—

(A) is complete or substantially complete;

(B) identifies and prioritizes ecological restoration treatments for a 10-year period within a landscape that is—

(i) at least 50,000 acres;

(ii) comprised primarily of forested National Forest System land, but may also include land under the jurisdiction of the Bureau of Land Management, land under the jurisdiction of the Bureau of Indian Affairs, or other Federal, State, tribal, or private land;

(iii) in need of active ecosystem restoration; and

(iv) accessible by existing or proposed wood-processing infrastructure at an appropriate scale to use woody biomass and small-diameter wood removed in ecological restoration treatments;

(C) incorporates the best available science and scientific application tools in ecological restoration strategies;

(D) fully maintains, or contributes toward the restoration of, the structure and composition of old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire adaptation and watershed health and retaining the large trees contributing to old growth structure;

(E) would carry out any forest restoration treatments that reduce hazardous fuels by—

(i) focusing on small diameter trees, thinning, strategic fuel breaks, and fire use to modify fire behavior, as measured by the projected reduction of

projects on National Forest System land and other land included in the proposal by the collaborators; and
 (7) benefit local economies by providing local employment or training opportunities through contracts, grants, or agreements for restoration planning, design, implementation, or monitoring with—

- (A) local private, nonprofit, or cooperative entities;
 - (B) Youth Conservation Corps crews or related partnerships, with State, local, and non-profit youth groups;
 - (C) existing or proposed small or micro-businesses, clusters, or incubators; or
 - (D) other entities that will hire or train local people to complete such contracts, grants, or agreements; and
- (8) be subject to any other requirements that the Secretary, in consultation with the Secretary of the Interior, determines to be necessary for the efficient and effective administration of the program.

(c) NOMINATION PROCESS.—

(1) SUBMISSION.—A proposal shall be submitted to—

- (A) the appropriate Regional Forester; and
- (B) if actions under the jurisdiction of the Secretary of the Interior are proposed, the appropriate—
 - (i) State Director of the Bureau of Land Management;
 - (ii) Regional Director of the Bureau of Indian Affairs; or
 - (iii) other official of the Department of the Interior.

(2) NOMINATION.—

(A) IN GENERAL.—A Regional Forester may nominate for selection by the Secretary any proposals that meet the eligibility criteria established by subsection (b).

(B) CONCURRENCE.—Any proposal nominated by the Regional Forester that proposes actions under the jurisdiction of the Secretary of the Interior shall include the concurrence of the appropriate—

- (i) State Director of the Bureau of Land Management;
- (ii) Regional Director of the Bureau of Indian Affairs; or
- (iii) other official of the Department of the Interior.

(3) DOCUMENTATION.—With respect to each proposal that is nominated under paragraph (2)—

(A) the appropriate Regional Forester shall—

- (i) include a plan to use Federal funds allocated to the region to fund those costs of planning and carrying out ecological restoration treatments on National Forest System land, consistent with the strategy, that would not be covered by amounts transferred to the Secretary from the Fund; and
- (ii) provide evidence that amounts proposed to be transferred to the Secretary from the Fund during the first 2 fiscal years following selection would be used to carry out ecological restoration treatments consistent with the strategy during the same fiscal year in which the funds are transferred to the Secretary;

(B) if actions under the jurisdiction of the Secretary of the Interior are proposed, the nomination shall include a plan to fund such actions, consistent with the strategy, by the appropriate—

- (i) State Director of the Bureau of Land Management;
 - (ii) Regional Director of the Bureau of Indian Affairs; or
 - (iii) other official of the Department of the Interior;
- and

(C) if actions on land not under the jurisdiction of the Secretary or the Secretary of the Interior are proposed, the appropriate Regional Forester shall provide evidence that the landowner intends to participate in, and provide appropriate funding to carry out, the actions.

(d) SELECTION PROCESS.—

(1) IN GENERAL.—After consulting with the advisory panel established under subsection (e), the Secretary, in consultation with the Secretary of the Interior, shall, subject to paragraph (2), select the best proposals that—

- (A) have been nominated under subsection (c)(2); and
- (B) meet the eligibility criteria established by subsection (b).

(2) CRITERIA.—In selecting proposals under paragraph (1), the Secretary shall give special consideration to—

- (A) the strength of the proposal and strategy;
- (B) the strength of the ecological case of the proposal and the proposed ecological restoration strategies;
- (C) the strength of the collaborative process and the likelihood of successful collaboration throughout implementation;
- (D) whether the proposal is likely to achieve reductions in long-term wildfire management costs;
- (E) whether the proposal would reduce the relative costs of carrying out ecological restoration treatments as a result of the use of woody biomass and small-diameter trees; and
- (F) whether an appropriate level of non-Federal investment would be leveraged in carrying out the proposal.

(3) LIMITATION.—The Secretary may select not more than—

- (A) 10 proposals to be funded during any fiscal year;
- (B) 2 proposals in any 1 region of the National Forest System to be funded during any fiscal year; and
- (C) the number of proposals that the Secretary determines are likely to receive adequate funding.

(e) ADVISORY PANEL.—

(1) IN GENERAL.—The Secretary shall establish and maintain an advisory panel comprised of not more than 15 members to evaluate, and provide recommendations on, each proposal that has been nominated under subsection (c)(2).

(2) REPRESENTATION.—The Secretary shall ensure that the membership of the advisory panel is fairly balanced in terms of the points of view represented and the functions to be performed by the advisory panel.

(3) INCLUSION.—The advisory panel shall include experts in ecological restoration, fire ecology, fire management, rural economic development, strategies for ecological adaptation to climate change, fish and wildlife ecology, and woody biomass and small-diameter tree utilization.

(f) COLLABORATIVE FOREST LANDSCAPE RESTORATION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the “Collaborative Forest Landscape Restoration Fund”, to be used to pay up to 50 percent of the cost of [carrying out and] *planning, carrying out, and* monitoring ecological restoration treatments on National Forest System land for each proposal selected to be carried out under subsection (d).

(2) INCLUSION.—The cost of carrying out ecological restoration treatments as provided in paragraph (1) may, as the Secretary determines to be appropriate, include cancellation and termination costs required to be obligated for contracts to carry out ecological restoration treatments on National Forest System land for each proposal selected to be carried out under subsection (d).

(3) CONTENTS.—The Fund shall consist of such amounts as are appropriated to the Fund under paragraph (6).

(4) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—On request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary such amounts as the Secretary determines are appropriate, in accordance with paragraph (1).

(B) LIMITATION.—The Secretary shall not expend money from the Fund on any 1 proposal—

- (i) during a period of more than 10 fiscal years; or
- (ii) in excess of \$4,000,000 in any 1 fiscal year.

(5) ACCOUNTING AND REPORTING SYSTEM.—The Secretary shall establish an accounting and reporting system for the Fund.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund \$40,000,000 for each of fiscal years 2009 through 2019, to remain available until expended.

(g) PROGRAM IMPLEMENTATION AND MONITORING.—

(1) WORK PLAN.—Not later than 180 days after the date on which a proposal is selected to be carried out, the Secretary shall create, in collaboration with the interested persons, an implementation work plan and budget to implement the proposal that includes—

(A) a description of the manner in which the proposal would be implemented to achieve ecological and community economic benefit, including capacity building to accomplish restoration;

(B) a business plan that addresses—

- (i) the anticipated unit treatment cost reductions over 10 years;
- (ii) the anticipated costs for infrastructure needed for the proposal;
- (iii) the projected sustainability of the supply of woody biomass and small-diameter trees removed in ecological restoration treatments; and

- (iv) the projected local economic benefits of the proposal;
 - (C) documentation of the non-Federal investment in the priority landscape, including the sources and uses of the investments; and
 - (D) a plan to decommission any temporary roads established to carry out the proposal.
- (2) PROJECT IMPLEMENTATION.—Amounts transferred to the Secretary from the Fund shall be used to carry out ecological restoration treatments that are—
- (A) consistent with the proposal and strategy; and
 - (B) identified through the collaborative process described in subsection (b)(2).
- (3) ANNUAL REPORT.—The Secretary, in collaboration with the Secretary of the Interior and interested persons, shall prepare an annual report on the accomplishments of each selected proposal that includes—
- (A) a description of all acres (or other appropriate unit) treated and restored through projects implementing the strategy;
 - (B) an evaluation of progress, including performance measures and how prior year evaluations have contributed to improved project performance;
 - (C) a description of community benefits achieved, including any local economic benefits;
 - (D) the results of the multiparty monitoring, evaluation, and accountability process under paragraph (4); and
 - (E) a summary of the costs of—
 - (i) treatments; and
 - (ii) relevant fire management activities.
- (4) MULTIPARTY MONITORING.—The Secretary shall, in collaboration with the Secretary of the Interior and interested persons, use a multiparty monitoring, evaluation, and accountability process to assess the positive or negative ecological, social, and economic effects of projects implementing a selected proposal for not less than 15 years after project implementation commences.
- (h) REPORT.—Not later than 5 years after the first fiscal year in which funding is made available to carry out ecological restoration projects under the program, and every 5 years thereafter, the Secretary, in consultation with the Secretary of the Interior, shall submit a report on the program, including an assessment of whether, and to what extent, the program is fulfilling the purposes of this title, to—
- (1) the Committee on Energy and Natural Resources of the Senate;
 - (2) the Committee on Appropriations of the Senate;
 - (3) the Committee on Natural Resources of the House of Representatives; and
 - (4) the Committee on Appropriations of the House of Representatives.

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TRIBAL FOREST PROTECTION ACT OF 2004

* * * * *

SEC. 2. TRIBAL FOREST ASSETS PROTECTION.

(a) **DEFINITIONS.**—In this section:

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

(A) land of 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))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) **INDIAN FOREST LAND OR RANGELAND.**—The term “Indian forest land or rangeland” means land that—

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or

(II) has a cover of grasses, brush, or any similar vegetation; or

(ii) formerly had a forest cover or vegetative cover that is capable of restoration.

(3) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) **SECRETARY.**—The term “Secretary” means—

(A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

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

(b) **AUTHORITY TO PROTECT INDIAN FOREST LAND OR RANGELAND.**—

(1) **IN GENERAL.**—**[Not later than 120 days after the date on which an Indian tribe submits to the Secretary]** *In response to the submission by an Indian Tribe of a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c), the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to [section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275))]* *section 604 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c), or such other*

authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).

(2) ENVIRONMENTAL ANALYSIS.—Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).

(3) ACTIVITIES.—Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is—

(A) under the jurisdiction of the Secretary; and

(B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.

(4) TIME PERIODS FOR CONSIDERATION.—

(A) INITIAL RESPONSE.—*Not later than 120 days after the date on which the Secretary receives a Tribal request under paragraph (1), the Secretary shall provide an initial response to the Indian Tribe regarding—*

(i) *whether the request may meet the selection criteria described in subsection (c); and*

(ii) *the likelihood of the Secretary entering into an agreement or contract with the Indian Tribe under paragraph (2) for activities described in paragraph (3).*

(B) NOTICE OF DENIAL.—*Notice under subsection (d) of the denial of a Tribal request under paragraph (1) shall be provided not later than 1 year after the date on which the Secretary received the request.*

(C) COMPLETION.—*Not later than 2 years after the date on which the Secretary receives a Tribal request under paragraph (1), other than a Tribal request denied under subsection (d), the Secretary shall—*

(i) *complete all environmental reviews necessary in connection with the agreement or contract and proposed activities under the agreement or contract; and*

(ii) *enter into the agreement or contract with the Indian tribe under paragraph (2).*

(c) SELECTION CRITERIA.—The criteria referred to in subsection (b), with respect to an Indian tribe, are whether—

(1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;

(2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—

(A) poses a fire, disease, or other threat to—

(i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or

(ii) a tribal community; or

(B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

(d) NOTICE OF DENIAL.—If the Secretary denies a tribal request under [subsection (b)(1), the Secretary may] *paragraphs (1) and (4)(B) of subsection (b), the Secretary shall* issue a notice of denial to the Indian tribe, which—

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;

(2) identifies potential courses of action for overcoming specific issues that led to the denial; and

(3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

(e) PROPOSAL EVALUATION AND DETERMINATION FACTORS.—In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Secretary may—

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or rangeland of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

(f) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this Act—

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of [section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275))] *section 604 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c)* or other authority invoked pursuant to this Act; or

(2) invalidates any agreement or contract under that authority.

(g) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that de-

scribes the Indian tribal requests received and agreements or contracts that have been entered into under this Act.

SECTION 305 OF THE NATIONAL INDIAN FOREST RESOURCES MANAGEMENT ACT

SEC. 305. MANAGEMENT OF INDIAN FOREST LAND.

(a) **MANAGEMENT ACTIVITIES.**—The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(b) **MANAGEMENT OBJECTIVES.**—Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives—

(1) the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to—

- (A) the harvesting of forest products,
- (B) forestation,
- (C) timber stand improvement, and
- (D) other forestry practices;

(2) the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives and forest marketing programs;

(3) the regulation of Indian forest lands in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) the development of Indian forest lands and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) the management and protection of forest resources to retain the beneficial effects to Indian forest lands of regulating water run-off and minimizing soil erosion; and

(7) the maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

(c) **INCLUSION OF CERTAIN NATIONAL FOREST SYSTEM LAND AND PUBLIC LAND.**—

(1) **AUTHORITY.**—*At the request of an Indian Tribe, the Secretary concerned may agree to treat Federal forest land as Indian forest land for purposes of planning and conducting forest land management activities under this section if the Federal*

forest land is located within, or mostly within, a geographic area that presents a feature or involves circumstances principally relevant to that Indian Tribe, such as Federal forest land ceded to the United States by treaty, Federal forest land within the boundaries of a current or former reservation, or Federal forest land adjudicated to be Tribal homelands.

(2) *REQUIREMENTS.*—As part of the agreement to treat Federal forest land as Indian forest land under paragraph (1), the Secretary concerned and the Indian Tribe making the request shall—

(A) provide for continued public access applicable to the Federal forest land prior to the agreement, except that the Secretary concerned may limit or prohibit such access as needed;

(B) continue sharing revenue generated by the Federal forest land with State and local governments either—

(i) on the terms applicable to the Federal forest land prior to the agreement, including, where applicable, 25-percent payments or 50-percent payments; or

(ii) at the option of the Indian Tribe, on terms agreed upon by the Indian Tribe, the Secretary concerned, and State and county governments participating in a revenue sharing agreement for the Federal forest land;

(C) comply with applicable prohibitions on the export of unprocessed logs harvested from the Federal forest land;

(D) recognize all right-of-way agreements in place on Federal forest land prior to commencement of Tribal management activities;

(E) ensure that all commercial timber removed from the Federal forest land is sold on a competitive bid basis; and

(F) cooperate with the appropriate State fish and wildlife agency to achieve mutual agreement on the management of fish and wildlife.

(3) *LIMITATION.*—Treating Federal forest land as Indian forest land for purposes of planning and conducting management activities pursuant to paragraph (1) shall not be construed to designate the Federal forest land as Indian forest lands for any other purpose.

(4) *DEFINITIONS.*—In this subsection:

(A) *FEDERAL FOREST LAND.*—The term “Federal forest land” means—

(i) National Forest System lands; and

(ii) public lands (as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e))), including Coos Bay Wagon Road Grant lands reconveyed to the United States pursuant to the first section of the Act of February 26, 1919 (40 Stat. 1179), and Oregon and California Railroad Grant lands.

(B) *SECRETARY CONCERNED.*—The term “Secretary concerned” means—

(i) the Secretary of Agriculture, with respect to the Federal forest land referred to in subparagraph (A)(i); and

(ii) the Secretary of the Interior, with respect to the Federal forest land referred to in subparagraph (A)(ii).

**FOREST AND RANGELAND RENEWABLE RESOURCES
PLANNING ACT OF 1974**

* * * * *

SEC. 3. RENEWABLE RESOURCE ASSESSMENT.—(a) In recognition of the vital importance of America's renewable resources of the forest, range, and other associated lands to the Nation's social and economic well-being, and of the necessity for a long term perspective in planning and undertaking related national renewable resource programs administered by the Forest Service, the Secretary of Agriculture (*referred to in this Act as the "Secretary"*) shall prepare a Renewable Resource Assessment (hereinafter called the "Assessment"). The Assessment shall be prepared not later than December 31, 1975, and shall be updated during 1979 and each tenth year thereafter, and shall include but not be limited to—

(1) an analysis of present and anticipated uses, demand for, and supply of the renewable resources, with consideration of the international resource situation, and an emphasis of pertinent supply and demand and price relationship trends;

(2) an inventory, based on information developed by the Forest Service and other "Federal agencies, of present and potential renewable resources, and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government;

(3) a description of Forest Service programs and responsibilities in research, cooperative programs and management of the National Forest System, their interrelationships, and the relationship of these programs and responsibilities to public and private activities;

(4) a discussion of important policy considerations, laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands; and

(5) an analysis of the potential effects of global climate change on the condition of renewable resources on the forests and rangelands of the United States; and

(6) an analysis of the rural and urban forestry opportunities to mitigate the buildup of atmospheric carbon dioxide and reduce the risk of global climate change,

(b) [Omitted-Amendment]

(c) The Secretary shall report in the 1979 and subsequent Assessments on:

(1) the additional fiber potential in the National Forest System including, but not restricted to, forest mortality, growth, salvage potential, potential increased forest products sales, economic constraints, alternate markets, contract considerations, and other multiple use considerations;

(2) the potential for increased utilization of forest and wood product wastes in the National Forest System and on other lands, and of urban wood wastes and wood product recycling, including recommendations to the Congress for actions which

would lead to increased utilization of materials now being wasted both in the forests and in manufactured products; and

(3) the milling and other wood fiber product fabrication facilities and their location in the United States, noting the public and private forested areas that supply such facilities, assessing the degree of utilization into product form of harvested trees by such facilities, and setting forth the technology appropriate to the facilities to improve utilization either individually or in aggregate units of harvested trees and to reduce wasted wood fibers. The Secretary shall set forth a program to encourage the adoption by these facilities of these technologies for improving wood fiber utilization.

(d) In developing the reports required under subsection (c) of this section, the Secretary shall provide opportunity for public involvement and shall consult with other interested governmental departments and agencies.

(d)(1) It is the policy of the Congress that all forested lands in the National Forest System shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans. Accordingly, the Secretary is directed to identify and report to the Congress annually at the time of submission of the President's budget together with the annual report provided for under section 8(c) of this Act, beginning with submission of the President's budget for fiscal year 1978, the amount and location by forests and States and by productivity class, where practicable, of all lands in the National Forest System where objectives of land management plans indicate the need to reforest areas that have been cut-over or otherwise denuded or deforested, and all lands with stands of trees that are not growing at their best potential rate of growth. All national forest lands treated from year to year shall be examined after the first and third growing seasons and certified by the Secretary in the report provided for under this subsection as to stocking rate, growth rate in relation to potential and other pertinent measures. Any lands not certified as satisfactory shall be returned to the backlog and scheduled for prompt treatment. The level and types of treatment shall be those which secure the most effective mix of multiple use benefits.

(2) Notwithstanding the provisions of section 9 of this Act, the Secretary shall annually for eight years following the enactment of this subsection, transmit to the Congress in the manner provided in this subsection an estimate of the sums necessary to be appropriated, in addition to the funds available from other sources, to replant and otherwise treat an acreage equal to the acreage to be cut over that year, plus a sufficient portion of the backlog of lands found to be in need of treatment to eliminate the backlog within the eight-year period. After such eight-year period, the Secretary shall transmit annually to the Congress an estimate of the sums necessary to replant and otherwise treat all lands being cut over and maintain planned timber production on all other forested lands in the National Forest System so as to prevent the development of a backlog of needed work larger than the needed work at the beginning of the fiscal year. The Secretary's estimate of sums necessary, in addition to the sums available under other authorities, for ac-

complishment of the reforestation and other treatment of National Forest System lands under this section shall be provided annually for inclusion in the President's budget and shall also be transmitted to the Speaker of the House and the President of the Senate together with the annual report provided for under section 8(c) of this Act at the time of submission of the President's budget to the Congress beginning with the budget for fiscal year 1978. The sums estimated as necessary for reforestation and other treatment shall include moneys needed to secure seed, grow seedlings, prepare sites, plant trees, thin, remove deleterious growth and underbrush, build fence to exclude livestock and adverse wildlife from regeneration areas and otherwise establish and improve forests to secure planned production of trees and other multiple use values.

(3) Effective for the fiscal year beginning October 1, 1977, and each fiscal year thereafter, there is hereby authorized to be appropriated for the purpose of reforesting and treating lands in the National Forest System \$200,000,000 annually to meet requirements of this subsection (d). All sums appropriated for the purposes of this subsection shall be available until expended.

(e) The Secretary shall submit an annual report to the Congress on the amounts, types, and uses of herbicides and pesticides used in the National Forest System, including the beneficial or adverse effects of such uses.

SEC. 4. RENEWABLE RESOURCE PROGRAM.—In order to provide for periodic review of programs for management and administration of the National Forest System, for research, for cooperative State and private Forest Service programs, and for conduct of other Forest Service activities in relation to the findings of the Assessment, the [Secretary of Agriculture] *Secretary*, utilizing information available to the Forest Service and other agencies within the Department of Agriculture, including data prepared pursuant to section 302 of the Rural Development Act of 1972, shall prepare and transmit to the President a recommended Renewable Resource Program (hereinafter called the "Program"). The Program transmitted to the President may include alternatives, and shall provide in appropriate detail for protection, management, and development of the National Forest System, including forest development roads and trails; for cooperative Forest Service programs; and for research. The Program shall be developed in accordance with principles set forth in the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528–531), and the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321–4347). The Program shall be prepared not later than December 31, 1975, to cover the four-year period beginning October 1, 1976, and at least each of the four fiscal decades next following such period, and shall be updated no later than during the first half of the fiscal year ending September 30, 1980, and the first half of each fifth fiscal year thereafter to cover at least each of the four fiscal decades beginning next after such updating. The Program shall include, but not be limited to—

(1) an inventory of specific needs and opportunities for both public and private program investments. The inventory shall differentiate between activities which are of a capital nature and those which are of an operational nature;

(2) specific identification of Program outputs, results anticipated, and benefits associated with investments in such a manner that the anticipated costs can be directly compared with the total related benefits and direct and indirect returns to the Federal Government;

(3) a discussion of priorities for accomplishment of inventoried Program opportunities, with specified costs, outputs, results, and benefits;

(4) a detailed study of personnel requirements as needed to implement and monitor existing and ongoing programs; and

(5) Program recommendations which—

(A) evaluate objectives for the major Forest Service programs in order that multiple-use and sustained-yield relationships among and within the renewable resources can be determined;

(B) explain the opportunities for owners of forests and rangeland to participate in programs to improve and enhance the condition of the land and the renewable resource products therefrom;

(C) recognize the fundamental need to protect and, where appropriate, improve the quality of soil, water, and air resources;

(D) state national goals that recognize the interrelationships between and interdependence within the renewable resources;

(E) evaluate the impact of the export and import of raw logs upon domestic timber supplies and prices; and

(F) account for the effects of global climate change on forest and rangeland conditions, including potential effects on the geographic ranges of species, and on forest and rangeland products.

SEC. 5. NATIONAL FOREST SYSTEM RESOURCE INVENTORIES.—As a part of the Assessment, the [Secretary of Agriculture] *Secretary* shall develop and maintain on a continuing basis a comprehensive and appropriately detailed inventory of all National Forest System lands and renewable resources. This inventory shall be kept current so as to reflect changes in conditions and identify new and emerging resources and values.

SEC. 6. NATIONAL FOREST SYSTEM RESOURCE PLANNING.—(a) As a part of the Program provided for by section 4 of this Act, the [Secretary of Agriculture] *Secretary* shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

(b) In the development and maintenance of land management plans for use on units of the National Forest System, the Secretary shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.

(c) The Secretary shall begin to incorporate the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after enactment of this subsection and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary

shall report to the Congress on the progress of such incorporation in the annual report required by section 8(c) of this Act. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this Act, the management of such unit may continue under existing land and resource management plans.

[(d) The Secretary] (d) *PUBLIC PARTICIPATION AND CONSULTATION.*—

(1) *IN GENERAL.*—*The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.*

(2) *NO ADDITIONAL CONSULTATION REQUIRED AFTER APPROVAL OF LAND MANAGEMENT PLANS.*—

(A) *IN GENERAL.*—*Notwithstanding any other provision of law, the Secretary shall not be required to engage in consultation under this subsection or any other provision of law (including section 7 of the Endangered Species Act (16 U.S.C. 1536) and section 402.16 of title 50, Code of Federal Regulations (or a successor regulation)) with respect to—*

(i) *if a land management plan approved by the Secretary—*

(I) *the listing of a species as threatened or endangered, or a designation of critical habitat pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.);*

(II) *whether the amount or extent of taking specified in the incidental take statement is exceeded;*

(III) *whether new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; or*

(IV) *whether the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or*

(ii) *any provision of a land management plan adopted as described in clause (i).*

(B) *EFFECT OF PARAGRAPH.*—*Nothing in this paragraph affects any applicable requirement of the Secretary to consult with the head of any other Federal department or agency—*

(i) *regarding any project, including a project carried out, or proposed to be carried out, in an area designated as critical habitat pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.); or*

(ii) *with respect to the development of an amendment to a land management plan that would result in a significant change in the land management plan.*

(3) *LAND MANAGEMENT PLAN CONSIDERED A NON-DISCRETIONARY ACTION.*—*For purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), a forest management activity carried out by the Secretary concerned pursuant to this Act shall be considered a non-discretionary action.*

(e) In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans—

(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and

(2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1), the definition of the terms “multiple use” and “sustained yield” as provided in the Multiple-Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resources management.

(f) Plans developed in accordance with this section shall—

(1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section;

(2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan;

(3) be prepared by an interdisciplinary team. Each team shall prepare its plan based on inventories of the applicable resources of the forest;

(4) be amended in any manner whatsoever after final adoption after public notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section; and

(5) be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and (B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

(g) As soon as practicable, but not later than two years after enactment of this subsection, the Secretary shall in accordance with the procedures set forth in section 553 of title 5, United States Code, promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans, and the guidelines and standards prescribed by this subsection. The regulations shall include, but not be limited to—

(1) specifying procedures to insure that land management plans are prepared in accordance with the National Environmental Policy Act of 1969, including, but not limited to, direction on when and for what plans an environmental impact

statement required under section 102(2)(C) of that Act shall be prepared;

(2) specifying guidelines which—

(A) require the identification of the suitability of lands for resource management;

(B) provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids; and

(C) provide for methods to identify special conditions or situations involving hazards to the various resources and their relationship to alternative activities;

(3) specifying guidelines for land management plans developed to achieve the goals of the Program which—

(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and and fish;

(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

(C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if (i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and (ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;

(E) insure that timber will be harvested from National Forest System lands only where—

(i) soil, slope, or other watershed conditions will not be irreversibly damaged;

(ii) there is assurance that such lands can be adequately restocked within five years after harvest;

(iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

(iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

(F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an evenaged stand of timber will be used as a cutting method on National Forest System lands only where—

(i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan;

(ii) the interdisciplinary review as determined by the Secretary has been completed and the potential environmental, biological, esthetic, engineering, and economic impacts on each advertised sale area have been assessed, as well as the consistency of the sale with the multiple use of the general area;

(iii) cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain;

(iv) there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation, including provision to exceed the established limits after appropriate public notice and review by the responsible Forest Service officer one level above the Forest Service officer who normally would approve the harvest proposal: *Provided*, That such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm; and

(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

(h)(1) In carrying out the purposes of subsection (g) of this section, the [Secretary of Agriculture] *Secretary* shall appoint a committee of scientists who are not officers or employees of the Forest Service. The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted. The committee shall terminate upon promulgation of the regulations, but the Secretary may, from time to time, appoint similar committees when considering revisions of the regulations. The views of the committees shall be included in the public information supplied when the regulations are proposed for adoption.

(2) Clerical and technical assistance, as may be necessary to discharge the duties of the committee, shall be provided from the personnel of the Department of Agriculture.

(3) While attending meetings of the committee, the members shall be entitled to receive compensation at a rate of \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section

5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(i) Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.

(j) Land management plans and revisions shall become effective thirty days after completion of public participation and publication of notification by the Secretary as required under section 6(d) of this Act.

(k) In developing land management plans pursuant to this Act, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that, except for salvage sales or sales necessitated to protect other multiple-use, values, no timber harvesting shall occur on such lands for a period of 10 years. Lands once identified as unsuitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values. The Secretary shall review his decision to classify these lands as not suited for timber production at least every 10 years and shall return these lands to timber production whenever he determines that conditions have changed so that they have become suitable for timber production.

(l) The Secretary shall—

(1) formulate and implement, as soon as practicable, a process for estimating long-term costs and benefits to support the program evaluation requirements of this Act. This process shall include requirements to provide information on a representative sample basis of estimated expenditures associated with the reforestation, timber stand improvement, and sale of timber from the National Forest System, and shall provide a comparison of these expenditures to the return to the Government resulting from the sale of timber; and

(2) include a summary of data and findings resulting from these estimates as a part of the annual report required pursuant to section 8(c) of this Act, including an identification on a representative sample basis of those advertised timber sales made below the estimated expenditures for such timber as determined by the above cost process; and

(m) The Secretary shall establish—

(1) standards to insure that, prior to harvest, stands of trees throughout the National Forest System shall generally have reached the culmination of mean annual increment of growth (calculated on the basis of cubic measurement or other methods of calculation at the discretion of the Secretary): *Provided:* That these standards shall not preclude the use of sound sil-

vicultural practices, such as thinning or other stand improvement measures: *Provided further*, That these standards shall not preclude the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; and

(2) exceptions to these standards for the harvest of particular species of trees in management units after consideration has been given to be multiple uses of the forest including, but not limited to, recreation, wildlife habitat, and range and after completion of public participation processes utilizing the procedures of subsection (d) of this section.

SEC. 7. COOPERATION IN RESOURCE PLANNING.—The [Secretary of Agriculture] *Secretary* may utilize the Assessment, resource surveys, and Program prepared pursuant to this Act to assist States and other organizations in proposing the planning for the protection, use, and management of renewable resources on non-Federal land.

SEC. 8. NATIONAL PARTICIPATION.—(a) On the date Congress first convenes in 1976 and thereafter following each updating of the Assessment and the Program, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, when Congress convenes, the Assessment as set forth in section 3 of this Act and the Program as set forth in section 4 of this Act, together with a detailed Statement of Policy intended to be used in framing budget requests by that Administration for Forest Service activities for the five- or ten-year program period beginning during the term of such Congress for such further action deemed appropriate by the Congress. Following the transmission of such Assessment, Program, and Statement of Policy, the President shall, subject to other actions of the Congress, carry out programs already established by law in accordance with such Statement of Policy or any subsequent amendment or modification thereof approved by the Congress, unless, before the end of the first period of ninety calendar days of continuous session of Congress after the date on which the President of the Senate and the Speaker of the House are recipients of the transmission of such Assessment, Program, and Statement of Policy, either House adopts a resolution reported by the appropriate committee of jurisdiction disapproving the Statement of Policy. For the purpose of this subsection, the continuity of a session shall be deemed to be broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety-day period. Notwithstanding any other provision of this Act, Congress may revise or modify the Statement of Policy transmitted by the President, and the revised or modified Statement of Policy shall be used in framing budget requests.

(b) Commencing with the fiscal budget for the year ending September 30, 1977, requests presented by the President to the Congress governing Forest Service activities shall express in qualitative and quantitative terms the extent to which the programs and policies projected under the budget meet the policies approved by the Congress in accordance with subsection (a) of this section. In any case in which such budget so presented recommends a

course which fails to meet the policies so established, the President shall specifically set forth the reason or reasons for requesting the Congress to approve the lesser programs or policies presented. Amounts appropriated to carry out the policies approved in accordance with subsection (a) of this section shall be expended in accordance with the Congressional Budget and Impoundment Control Act of 1974, Public Law 93-344.

(c) For the purpose of providing information that will aid Congress in its oversight responsibilities and improve the accountability of agency expenditures and activities, the [Secretary of Agriculture] *Secretary* shall prepare an annual report which evaluates the component elements of the Program required to be prepared by section 4 of this Act which shall be furnished to the Congress at the time of submission of the annual fiscal budget commencing with the third fiscal year after the enactment of their Act. With regard to the research component of the program, the report shall include, but not be limited to, a description of the status of major research programs, significant findings, and how these findings will be applied in National Forest System and in cooperative State and private Forest Service programs. With regard to the cooperative forestry assistance part of the Program, the report shall include, but not be limited to, a description of the status, accomplishments, needs, and work backlogs for the programs and activities conducted under the Cooperative Forestry Assistance Act of 1978.

(d) These annual evaluation reports shall set forth progress in implementing the Program required to be prepared by section 4 of this Act, together with accomplishments of the Program as they relate to the objectives of the Assessment. Objectives should be set forth in qualitative and quantitative terms and accomplishments should be reported accordingly. The report shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. Program benefits shall include, but not be limited to, environmental quality factors such as esthetics, public access, wildlife habitat, recreational and wilderness use, and economic factors such as the excess of cost savings over the value of foregone benefits and the rate of return on renewable resources.

(e) The reports shall indicate plans for implementing corrective action and recommendations for new legislation where warranted.

(f) The reports shall be structured for Congress in concise summary form with necessary detailed data in appendices.

SEC. 9. NATIONAL FOREST SYSTEM PROGRAM ELEMENTS.—The [Secretary of Agriculture] *Secretary* shall take such action as will assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple use and sustained yield of products and services as set forth in the Multiple-Uses Sustained-Yield Act of 1960. To further these concepts, the Congress hereby sets the year 2000 as the target year when the renewable resources of the National Forest System shall be in an operating posture whereby all backlogs of needed treatment for their restoration shall be reduced to a current basis and the major portion of planned intensive multiple-use sustained-yield management procedures shall be installed and operating on an environmentally-sound basis. The annual

budget shall contain requests for funds for an orderly program to eliminate such backlogs: *Provided*, That when the Secretary finds that (1) the backlog of areas that will benefit by such treatment has been eliminated; (2) the cost of treating the remainder of such area exceeds the economic and environmental benefits to be secured from their treatment; or (3) the total supplies of the renewable resources of the United States are adequate to meet the future needs of the American people, the budget request for these elements of restoration may be adjusted accordingly.

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SEC. 12. RENEWABLE RESOURCES.—In carrying out this Act, the **Secretary of Agriculture** *Secretary* shall utilize information and data available from other Federal, State, and private organizations and shall avoid duplication and overlap of resource assessment and program planning efforts of other Federal agencies. The term “renewable resources” shall be construed to involve those matters within the scope of responsibilities and authorities of the Forest Service on the date of this Act and on the date of enactment of any legislation amendatory or supplementary thereto.

SEC. 13. LIMITATIONS ON TIMBER REMOVAL.—(a) **Secretary of Agriculture** *Secretary* shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis: *Provided*, That, in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: *Provided further*, That any such planned departure must be consistent with the multiple-use management objectives of the land management plan. Plans for variations in the allowable sale quantity must be made with public participation as required by section 6(d) of this Act. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section in the case of any national forest so long as the average sale quantities of timber from such national forest over the decade covered by the plan do not exceed such quantity limitation. In those cases where a forest has less than two hundred thousand acres of commercial forest land, the Secretary may use two or more forests for purposes of determining the sustained yield.

(b) Nothing in subsection (a) of this section shall prohibit the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. The Secretary may either substitute such timber for timber that would otherwise be sold under the plan or, if not feasible, sell such timber over and above the plan volume.

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SEC. 15. REGULATIONS.—The **Secretary of Agriculture** *Secretary* shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this Act.

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**FEDERAL LAND POLICY AND MANAGEMENT ACT OF
1976**

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**TITLE II—LAND USE PLANNING; LAND ACQUISITION AND
DISPOSITION**

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LAND USE PLANNING

SEC. 202. (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by among other things, considering the policies of approved tribal land resource management programs.

(c) In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under chapter 2003 of title 54, United States Code, and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State,

local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Governmental plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported

such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et. seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 204 or other action pursuant to applicable law: *Provided*, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

[(f) The Secretary] (f) PUBLIC INVOLVEMENT.—

(1) *IN GENERAL.—*The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

(2) *NO ADDITIONAL CONSULTATION REQUIRED AFTER APPROVAL OF LAND USE PLANS.—*

(A) *IN GENERAL.—*Notwithstanding any other provision of law, the Secretary shall not be required to engage in consultation under this subsection or any other provision of law (including section 7 of the Endangered Species Act (16 U.S.C. 1536) and section 402.16 of title 50, Code of Federal Regulations (or a successor regulation)), with respect to—

(i) the listing of a species as threatened or endangered, or a designation of critical habitat, pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.), if a land use plan has been adopted by the Secretary as of the date of listing or designation; or

(ii) any provision of a land use plan adopted as described in clause (i).

(B) *EFFECT OF PARAGRAPH.—*

(i) *DEFINITION OF SIGNIFICANT CHANGE.—*In this subparagraph, the term “significant change” means a significant change within the meaning of section 219.13(b)(3) of title 36, Code of Federal Regulations (as

in effect on the date of enactment of this subparagraph), except that—

(I) any reference contained in that section to a land management plan shall be deemed to be a reference to a land use plan;

(II) any reference contained in that section to the Forest Service shall be deemed to be a reference to the Bureau of Land Management; and

(III) any reference contained in that section to the National Forest Management Act of 1976 (Public Law 94-588; 90 Stat. 2949) shall be deemed to be a reference to this Act.

(ii) *EFFECT.*—Nothing in this paragraph affects any applicable requirement of the Secretary to consult with the head of any other Federal department or agency—

(I) regarding a project carried out, or proposed to be carried out, with respect to a species listed as threatened or endangered, or in an area designated as critical habitat, pursuant to the Endangered Species Act (16 U.S.C. 1531 et seq.); or

(II) with respect to the development of a new land use plan or the revision of or other significant change to an existing land use plan.

(3) *LAND USE PLAN CONSIDERED NON-DISCRETIONARY ACTION.*—For purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), a forest management activity carried out by the Secretary concerned pursuant to this Act shall be considered a non-discretionary action.

* * * * *

ACT OF JUNE 9, 1930

* * * * *

SEC. 3. (a) [The Secretary of Agriculture may, when in his or her judgment such action will be in the public interest, require any purchaser] *The Secretary of Agriculture shall require each purchaser* of national-forest timber to make deposits of money, in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees), (2) sowing with tree seeds (including the collection or purchase of such seeds), (3) cutting, destroying, or otherwise removing undesirable trees or other growth, on the national-forest land cut over by the purchaser, in order to improve the future stand of timber, (4) protecting and improving the future productivity of the renewable resources of the forest land on such sale area, including sale area improvement operations maintenance and construction, reforestation and wildlife habitat management, or (5) watershed restoration, wildlife habitat improvement, control of insects, disease and noxious weeds, community protection activities, and the maintenance of forest roads, within the Forest Service region in which the timber sale occurred: *Provided*, That such activities may be performed through the use of contracts, forest product sales, and cooperative agreements. [Such deposits]

(b) *Amounts deposited under subsection (a)* shall be covered into the Treasury and shall constitute a special fund, which is hereby appropriated and made available until expended, to cover the cost to the United States of such tree planting, seed sowing, and forest improvement work, as the Secretary of Agriculture may direct: *Provided*, That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts forest reserve fund, as a national-forest receipt of the fiscal year in which such transfer is made: *Provide further*, That the Secretary of Agriculture is authorized, upon application of the Secretary of the Interior, to furnish seedlings and/or young trees for replanting of burned-over areas in any national park.

(c)(1) *Amounts in the special fund established pursuant to this section—*

(A) *shall be used exclusively to implement activities authorized by subsection (a); and*

(B) *may be used anywhere within the Forest Service Region from which the original deposits were collected.*

(2) *The Secretary of Agriculture may not deduct overhead costs from the funds collected under subsection (a), except as needed to fund personnel of the responsible Ranger District for the planning and implementation of the activities authorized by subsection (a).*

[(c)] (d) Any portion of the balance at the end of a fiscal year in the special fund established pursuant to this section that the Secretary of Agriculture determines to be in excess of the cost of doing work described in subsection (a) (as well as any portion of the balance in the special fund that the Secretary determined, before October 1, 2004, to be excess of the cost of doing work described in subsection (a), but which has not been transferred by that date) shall be transferred to miscellaneous receipts, National Forest Fund, as a National Forest receipt, but only if the Secretary also determines that—

(1) the excess amounts will not be needed for emergency wildfire suppression during the fiscal year in which the transfer would be made; and

(2) the amount to be transferred to miscellaneous receipts, National Forest Fund, exceeds the outstanding balance of unreimbursed funds transferred from the special fund in prior fiscal years for wildfire suppression.

AGRICULTURAL ACT OF 2014

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TITLE VIII—FORESTRY

* * * * *

Subtitle C—Reauthorization of Other Forestry-Related Laws

* * * * *

SEC. 8206. 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—

(A) on Federal land and non-Federal land; and

(B) by either the Secretary or a Governor pursuant to a good neighbor agreement.

(2) FEDERAL LAND.—

(A) IN GENERAL.—The term “Federal land” means land that is—

(i) National Forest System land; or

(ii) public land (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;

(ii) Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress or Presidential proclamation (including the applicable implementation plan); or

(iii) a wilderness study area.

(3) FOREST, RANGELAND, AND WATERSHED RESTORATION SERVICES.—

(A) IN GENERAL.—The term “forest, rangeland, and watershed restoration services” means—

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

(ii) activities to reduce hazardous fuels; **[and]**

(iii) *construction, reconstruction, repair or restoration of roads as necessary to achieve project objectives; and*

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

[(B) EXCLUSIONS.—The term “forest, rangeland, and watershed restoration services” does not include—

[(i) construction, reconstruction, repair, or restoration of paved or permanent roads or parking areas; or

[(ii) construction, alteration, repair or replacement of public buildings or works.]

(B) EXCLUSIONS.—The term “forest, rangeland, and watershed restoration services” does not include construction, alteration, repair or replacement of public buildings or works.

(4) GOOD NEIGHBOR AGREEMENT.—The term “good neighbor agreement” means a cooperative agreement or contract (including a sole source contract) entered into between the Secretary and a Governor to carry out authorized restoration services under this section.

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

(6) ROAD.—The term “road” has the meaning given the term in section 212.1 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(7) 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) GOOD NEIGHBOR AGREEMENTS.—

(A) IN GENERAL.—The Secretary may enter into a good neighbor agreement with a Governor to carry out authorized restoration services in accordance with this section.

(B) PUBLIC AVAILABILITY.—The Secretary shall make each good neighbor agreement available to the public.

(2) TIMBER SALES.—

(A) IN GENERAL.—Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a(d) and (g)) shall not apply to services performed under a cooperative agreement or contract entered into under subsection (a).

(B) APPROVAL OF SILVICULTURE PRESCRIPTIONS AND MARKING GUIDES.—The Secretary shall provide or approve all silviculture prescriptions and marking guides to be applied on Federal land in all timber sale projects conducted under this section.

(3) RETENTION OF NEPA RESPONSIBILITIES.—Any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any authorized restoration services to be provided under this section on Federal land shall not be delegated to a Governor.

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FAIR LABOR STANDARDS ACT OF 1938

* * * * *

DEFINITIONS

SEC. 3. As used in this Act—

(a) “Person” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) “Commerce” means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) “State” means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) “Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization

(other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term “employee” means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the Government Printing Office;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer’s immediate family.

(4)(A) The term “employee” does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may

volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Producer" means produced, manufactured, mined, handled, or in any manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive

child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and ~~well-being.~~ *well-being, and that employment of employees ages sixteen or seventeen years in a logging or mechanized operation in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of individuals of such ages shall not be deemed to constitute oppressive child labor if such employee is employed by his parent or by a person standing in the place of his parent in a logging or mechanized operation owned or operated by such parent or person.*

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on the date of the enactment of this paragraph; and

(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 6(a)(1).

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) HOURS WORKED.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) “American vessel” includes any vessel which is documented or numbered under the laws of the United States.

(q) “Secretary” means the Secretary of Labor.

(r)(1) “Enterprise” means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive rights to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency. shall be deemed to be activities performed for a business purpose.

(s)(1) “Enterprise engaged in commerce or in the production of goods for commerce” means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(z)(1) "Logging"—

(A) means—

(i) *the felling, skidding, yarding, loading and processing of timber by equipment other than manually operated chainsaws and cable skidders;*

(ii) *the felling of timber in mechanized operations;*

(iii) *the bucking or converting of timber into logs, poles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products;*

(iv) the collecting, skidding, yarding, loading, transporting and unloading of such products in connection with logging;

(v) the constructing, repairing and maintaining of roads or camps used in connection with logging; the constructing, repairing, and maintenance of machinery or equipment used in logging; and

(vi) other work performed in connection with logging; and

(B) does not include the manual use of chain saws to fell and process timber and the use of cable skidders to bring the timber to the landing.

(2) "Mechanized operation"—

(A) means the felling, skidding, yarding, loading and processing of timber by equipment other than manually operated chainsaws and cable skidders; and

(B) includes whole tree processors, cut-to-length processors, stroke boom delimiters, wheeled and track feller-bunchers, pull thru delimiters, wheeled and track forwarders, chippers, grinders, mechanical debarkers, wheeled and track grapple skidders, yarders, bulldozers, excavators, and log loaders.

* * * * *

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 $\frac{1}{3}$ per centum of its average receipts for the other six months of such year, except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national for-

est, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 14; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(12) any employee, employed as a seaman on a vessel other than an American vessel; or

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of title 5, United States Code;

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour; or

(18) any employee who is a border patrol agent, as defined in section 5550(a) of title 5, United States Code.

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

(2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of title 49, United States Code; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town or twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10) A any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or drivers' helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1); or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(24) any employee who is employed with his spouse by a non-profit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution.

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; or

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing, or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(30) a criminal investigator who is paid availability pay under section 5545a of title 5, United States Code.

(c)(1) Except as provided in paragraph (2) or (4), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(5)(A) In the administration and enforcement of the child labor provisions of this Act, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors—

(i) that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

(ii) that cannot be operated while being loaded.

(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if—

(i)(I) the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI

Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or

(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after the date of enactment of this paragraph and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that—

(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

(III) any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.

The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

(C)(i) Employers shall prepare and submit to the Secretary reports—

(I) on any injury to an employee under the age of 18 that requires medical treatment (other than first aid) resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

(II) on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

(ii) The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

(iii) The reports described in clause (i) shall provide—

(I) the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

(II) the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

(III) the date of the incident;

(IV) a description of the injury and a narrative describing how the incident occurred; and

(V) the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

(iv) The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

(v) The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 12 relating to oppressive child labor or a regulation or order issued pursuant to section 12. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 12(b).

(vi) The reporting requirements of this subparagraph shall expire 2 years after the date of enactment of this subparagraph.

(6) In the administration and enforcement of the child labor provisions of this Act, employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if—

(A) such driving is restricted to daylight hours;

(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

(C) the employee has successfully completed a State approved driver education course;

(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

(F) such driving does not involve—

(i) the towing of vehicles;

(ii) route deliveries or route sales;

(iii) the transportation for hire of property, goods, or passengers;

(iv) urgent, time-sensitive deliveries;

(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

(vii) transporting more than three passengers (including employees of the employer); or

(viii) driving beyond a 30 mile radius from the employee's place of employment; and

(G) such driving is only occasional and incidental to the employee's employment.

For purposes of subparagraph (G), the term "occasional and incidental" is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(7)(A)(i) Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this Act, it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

(ii) In this paragraph, the term “new entrant into the workforce” means an individual who—

(I) is under the age of 18 and at least the age of 14, and

(II) by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

(B) The employment of a new entrant into the workforce under subparagraph (A) shall be permitted—

(i) if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

(ii) if the entrant does not operate or assist in the operation of power-driven woodworking machines;

(iii) if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(8) *The provisions of section 12 relating to child labor shall apply to an employee who is 16 or 17 years old employed in a logging or mechanized operation in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children ages 16 or 17, except where such employee is employed by his parent or by a person standing in the place of his parent in a logging or mechanized operation owned or operated by such parent or person.*

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employees whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands de-

fined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) The exemption from section 6 provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employes.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.

(i) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such work-week—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(j) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such work-weeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

* * * * *

ACT OF AUGUST 28, 1937

AN ACT relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provisions in the Acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), as amended, such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed, except as provided in section 3 hereof, for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the [principal of sustained yield] *principle of sustained yield* for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational [facilities] *facilities*: *Provided*, That nothing herein shall be construed to interface with the use and development of power sites as may be authorized by law.*

The annual productive capacity for such lands shall be determined and declared as promptly as possible after the passage of this Act, but until such determination and declaration are made the average annual cut therefrom shall not exceed one-half billion feet board measure: *Provided*, [That timber from said lands in an amount] *That timber from said lands in the amount that is the*

greater of: not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.

If the Secretary of the Interior determines that such action will facilitate sustained-yield management, he may subdivide such re-vested lands into sustained-yield forest units, the boundary lines of which shall be so established that a forest unit will provide, insofar as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region; but until such subdivision is made the land shall be treated as a single unit in applying the principle of sustained yield, *Provided*, That before the boundary lines of such forest units are established, the Department, after published notice thereof, shall hold a hearing thereon in the vicinity of such lands open to the attendance of State and local officers, representatives of dependent industries, residents, and other persons interested in the use of such lands. Due consideration shall be given to established lumbering operations in subdividing such lands when necessary to protect the economic stability of dependent communities. Timber sales from a forest unit shall be limited to the productive capacity of such unit and the Secretary is authorized, in his discretion, to reject any bids which may interfere with the sustained-yield management plan of any unit.

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**ROBERT T. STAFFORD DISASTER RELIEF AND
EMERGENCY ASSISTANCE ACT**

TITLE I—FINDINGS, DECLARATIONS, AND DEFINITIONS

* * * * *

DEFINITIONS

SEC. 102. As used in this Act—

(1) **EMERGENCY.**—“Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) **MAJOR DISASTER.**—

(A) **MAJOR DISASTER.**—[“Major disaster”] *The term “major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alle-*

viating the damage, loss, hardship, or suffering caused thereby.

(B) *MAJOR DISASTER FOR WILDFIRE ON FEDERAL LANDS.*—The term “major disaster for wildfire on Federal lands” means any wildfire or wildfires, which in the determination of the President under section 802 warrants assistance under section 803 to supplement the efforts and resources of the Department of the Interior or the Department of Agriculture—

(i) on Federal lands; or

(ii) on non-Federal lands pursuant to a fire protection agreement or cooperative agreement.

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) “Governor” means the chief executive of any State.

(6) *INDIAN TRIBAL GOVERNMENT.*—The term “Indian tribal government” means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.).

(7) *INDIVIDUAL WITH A DISABILITY.*—The term “individual with a disability” means an individual with a disability as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)).

(8) *LOCAL GOVERNMENT.*—The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization, that is not an Indian tribal government as defined in paragraph (6); and

(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(9) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) *PUBLIC FACILITY.*—“Public facility” means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water sup-

ply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(11) PRIVATE NONPROFIT FACILITY.—

(A) IN GENERAL.—The term “private nonprofit facility” means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

(B) ADDITIONAL FACILITIES.—In addition to the facilities described in subparagraph (A), the term “private nonprofit facility” includes any private nonprofit facility that provides essential services of a governmental nature to the general public (including museums, zoos, performing arts facilities, community arts centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, broadcasting facilities, and facilities that provide health and safety services of a governmental nature), as defined by the President.

(12) CHIEF EXECUTIVE.—The term “Chief Executive” means the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government.

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TITLE VIII—MAJOR DISASTER FOR WILDFIRE ON FEDERAL LAND

SEC. 801. DEFINITIONS.

As used in this title—

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

(A) any land under the jurisdiction of the Department of the Interior; and

(B) any land under the jurisdiction of the United States Forest Service.

(2) *FEDERAL LAND MANAGEMENT AGENCIES.*—*The term “Federal land management agencies” means—*

(A) the Bureau of Land Management;

(B) the National Park Service;

(C) the Bureau of Indian Affairs;

(D) the United States Fish and Wildlife Service; and

(E) the United States Forest Service.

(3) *WILDFIRE SUPPRESSION OPERATIONS.*—*The term “wildfire suppression operations” means the emergency and unpredictable aspects of wildland firefighting, including support, response, emergency stabilization activities, and other emergency management activities of wildland firefighting on Federal lands (or on non-Federal lands pursuant to a fire protection agreement or cooperative agreement) by the Federal land manage-*

ment agencies covered by the wildfire suppression subactivity of the Wildland Fire Management account or the FLAME Wildfire Suppression Reserve Fund account of the Federal land management agencies.

SEC. 802. PROCEDURE FOR DECLARATION OF A MAJOR DISASTER FOR WILDFIRE ON FEDERAL LANDS.

(a) *IN GENERAL.*—The Secretary of the Interior or the Secretary of Agriculture may submit a request to the President consistent with the requirements of this title for a declaration by the President that a major disaster for wildfire on Federal lands exists.

(b) *REQUIREMENTS.*—A request for a declaration by the President that a major disaster for wildfire on Federal lands exists shall—

(1) be made in writing by the respective Secretary;

(2) certify that the amount appropriated in the current fiscal year for wildfire suppression operations of the Federal land management agencies under the jurisdiction of the respective Secretary, net of any concurrently enacted rescissions of wildfire suppression funds, increases the total unobligated balance of amounts available for wildfire suppression by an amount equal to or greater than the average total costs incurred by the Federal land management agencies per year for wildfire suppression operations, including the suppression costs in excess of appropriated amounts, over the previous ten fiscal years;

(3) certify that the amount available for wildfire suppression operations of the Federal land management agencies under the jurisdiction of the respective Secretary will be obligated not later than 30 days after such Secretary notifies the President that wildfire suppression funds will be exhausted to fund ongoing and anticipated wildfire suppression operations related to the wildfire on which the request for the declaration of a major disaster for wildfire on Federal lands pursuant to this title is based; and

(4) specify the amount required in the current fiscal year to fund wildfire suppression operations related to the wildfire on which the request for the declaration of a major disaster for wildfire on Federal lands pursuant to this title is based.

(c) *DECLARATION.*—Based on the request of the respective Secretary under this title, the President may declare that a major disaster for wildfire on Federal lands exists.

SEC. 803. WILDFIRE ON FEDERAL LANDS ASSISTANCE.

(a) *IN GENERAL.*—In a major disaster for wildfire on Federal lands, the President may transfer funds, only from the account established pursuant to subsection (b), to the Secretary of the Interior or the Secretary of Agriculture to conduct wildfire suppression operations on Federal lands (and non-Federal lands pursuant to a fire protection agreement or cooperative agreement).

(b) *WILDFIRE SUPPRESSION OPERATIONS ACCOUNT.*—The President shall establish a specific account for the assistance available pursuant to a declaration under section 802. Such account may only be used to fund assistance pursuant to this title.

(c) *LIMITATION.*—

(1) *LIMITATION OF TRANSFER.*—The assistance available pursuant to a declaration under section 802 is limited to the transfer of the amount requested pursuant to section 802(b)(4). The

assistance available for transfer shall not exceed the amount contained in the wildfire suppression operations account established pursuant to subsection (b).

(2) *TRANSFER OF FUNDS.*—Funds under this section shall be transferred from the wildfire suppression operations account to the wildfire suppression subactivity of the Wildland Fire Management Account.

(d) *PROHIBITION OF OTHER TRANSFERS.*—Except as provided in this section, no funds may be transferred to or from the account established pursuant to subsection (b) to or from any other fund or account.

(e) *REIMBURSEMENT FOR WILDFIRE SUPPRESSION OPERATIONS ON NON-FEDERAL LAND.*—If amounts transferred under subsection (c) are used to conduct wildfire suppression operations on non-Federal land, the respective Secretary shall—

(1) secure reimbursement for the cost of such wildfire suppression operations conducted on the non-Federal land; and

(2) transfer the amounts received as reimbursement to the wildfire suppression operations account established pursuant to subsection (b).

(f) *ANNUAL ACCOUNTING AND REPORTING REQUIREMENTS.*—Not later than 90 days after the end of each fiscal year for which assistance is received pursuant to this section, the respective Secretary shall submit to the Committees on Agriculture, Appropriations, the Budget, Natural Resources, and Transportation and Infrastructure of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry, Appropriations, the Budget, Energy and Natural Resources, Homeland Security and Governmental Affairs, and Indian Affairs of the Senate, and make available to the public, a report that includes the following:

(1) The risk-based factors that influenced management decisions regarding wildfire suppression operations of the Federal land management agencies under the jurisdiction of the Secretary concerned.

(2) Specific discussion of a statistically significant sample of large fires, in which each fire is analyzed for cost drivers, effectiveness of risk management techniques, resulting positive or negative impacts of fire on the landscape, impact of investments in preparedness, suggested corrective actions, and such other factors as the respective Secretary considers appropriate.

(3) Total expenditures for wildfire suppression operations of the Federal land management agencies under the jurisdiction of the respective Secretary, broken out by fire sizes, cost, regional location, and such other factors as the such Secretary considers appropriate.

(4) Lessons learned.

(5) Such other matters as the respective Secretary considers appropriate.

(g) *SAVINGS PROVISION.*—Nothing in this title shall limit the Secretary of the Interior, the Secretary of Agriculture, Indian Tribe, or a State from receiving assistance through a declaration made by the President under this Act when the criteria for such declaration have been met.

ROB BISHOP OF UTAH
CHAIRMAN

COMMITTEE CORRESPONDENCE
U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 20, 2017

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
2176 Rayburn HOB
Washington, DC 20515

Dear Madam Chairwoman:

We thank you for agreeing to discharge the Committee on Education and the Workforce from further consideration of H.R. 2936, the Resilient Federal Forests Act of 2017, that the Committee on Natural Resources ordered favorably reported, as amended, on June 27, 2017.

This concession in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Education and the Workforce represented on the conference committee. Finally, I would be pleased to include this letter and your response in the bill report and in the Congressional Record.

Thank you for your consideration of my request and for the extraordinary cooperation shown by you and your staff over matters of shared jurisdiction. I look forward to further opportunities to work with you this Congress.

Sincerely,



Rob Bishop
Chairman
Committee on Natural Resources

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Kevin McCarthy, Majority Leader
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Thomas J. Wickham, Jr., Parliamentarian



COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
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July 17, 2017

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I write to confirm our mutual understanding with respect to H.R. 2936, the *Resilient Federal Forests Act of 2017*. Thank you for consulting with the Committee on Education and the Workforce with regard to H.R. 2936 on those matters within my committee's jurisdiction and making improvements to the legislation to address concerns.

The Committee on Education and the Workforce will not delay further consideration of this bill. However, I do so only with the understanding this procedural route will not be construed to prejudice my committee's jurisdictional interest and prerogatives on this bill or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my committee in the future.

I respectfully request your support for the appointment of outside conferees from the Committee on Education and the Workforce should this bill or a similar bill be considered in a conference with the Senate. I also request you include our exchange of letters on this matter in the Committee Report on H.R. 2936 and in the Congressional Record during consideration of this bill on the House Floor. Thank you for your attention to these matters.

Sincerely,

Virginia Foxx

Virginia Foxx
Chairwoman

CC: The Honorable Paul Ryan
The Honorable Bobby Scott
The Honorable Raul Grijalva
Mr. Tom Wickham

DISSENTING VIEWS

H.R. 2936 claims to promote forest health and reduce wildfire risk on public lands by providing broad exemptions from environmental analyses required under the National Environmental Policy Act (NEPA), restricting judicial review of certain forest management activities, amending the Equal Access to Justice Act (Act) to limit payment of attorney's fees, and scaling back the wildlife conservation efforts of the Endangered Species Act. The bill even includes a provision that seeks to undermine the management of a national monument.

Sponsors of the bill claim these sweeping exemptions of bedrock environmental safeguards and disregard for the right of American citizens to confront their government are necessary to incentivize collaboration and increase the pace and scale of restoration projects meant to create resilient forest ecosystems and reduce the occurrence of catastrophic wildfire. In reality, this bill uses the specter of wildfire to facilitate commercial logging on national forests shielded from public scrutiny and environmental review.

The bill applies to forests managed by the Forest Service as well as those managed by the Bureau of Land Management. Neither of these agencies testified at the hearing on the discussion draft or any other hearing in the 115th Congress.

Congress should be concerned with the public safety risk associated with wildfire. Large wildfires have increased worldwide over the past 40 years, particularly in the western United States.¹ The effect of climate change on wildfire is primarily driven by increases in temperature. Longer summer periods dry fuel, which promotes easier ignition and faster spread. For these reasons, the Intergovernmental Panel on Climate Change (IPCC) concluded that climate change is projected to increase the impacts of fire on forests, with longer fire seasons and large increases of burned area. These changes are already apparent in the western United States, where the wildfire season has increased by 78 days, and burn durations of fires greater than 2,400 acres have increased from 7.5 to 37.1 days.² Forest Service scientists predict that fire seasons could return to levels not seen since the 1940s, reaching 12 to 15 million acres annually.³

Furthermore, the increasing number of people living adjacent to fire-prone forests, an area known as the Wildland Urban Interface (WUI), is driving up the cost of wildfire suppression. Fuels treatment and other forest management activity designed to mitigate

¹Pechony and Shindell, *Driving forces of global wildfires over the past millennium and the forthcoming century* (PNAS 107 (45): 19167–19170, 2010)

²Westerling, A.L., H.G. Hidalgo, D.R. Cayan, T.W. Swetnam, *Warming and earlier spring increase western US forest wildfire activity* (Science 313, 940–943, 2006)

³United States Forest Service, *FY2017 Budget Justification* (USFS, 2016)

wildfire risk has to be targeted to at-risk areas and coupled with efforts to encourage better planning in the WUI.

While thinning and other forest management tools can reduce property damage and decrease public safety risk, it does not necessarily correlate with reduced instances of wildfire. At a Federal Lands Subcommittee hearing on the subject of forest health, we heard from a leading expert on the root causes of increased wildfire and the effectiveness of forest treatments. Her research found that only 1% of USFS forest treatments, on average, are exposed to wildfire each year.⁴ In fact, most treatments are designed to reduce wildfire risk and do not encounter fire within the 10–20 years after they are determined to be effective. Even with the rise in annual burned acres due to climate change, wildfire only affects 1% of forests in the Western United States. Due to the sheer scale of forested lands, it is impossible to predict where wildfire will occur. That's why it is extremely important that projects designed to reduce risk associated with wildfire are directed to places where they could be most effective, including on private land inside the WUI.

Rather than acknowledge the role of climate change, or focus on a targeted approach that would actually improve community safety, the House Republican answer to forest management is to eliminate environment review and do away with public oversight in order to expedite commercial timber sales.

Below is a summary of our chief concerns.

ATTACKS ON NEPA

Title I of H.R. 2936 is a sweeping attack on NEPA. First, Section 101 limits environmental review to the consideration of only two alternatives—the proposed action and the no action alternative. This new standard for environmental review undermines congressional intent. Congress passed NEPA over 45 years ago to ensure the review of a range of reasonable alternatives during consideration of major federal decisions that could affect the environment. This principle guides informed decisions that minimize damage to the water we drink and the air we breathe. There will always be environmental impacts associated with certain types of projects, but thanks to NEPA, we look before we leap and do our best to minimize the damage.

Furthermore, NEPA is not the burden Republicans make it out to be. In fact, GAO found that across the federal government 95% of all NEPA decisions are carried as Categorical Exclusions, the lowest level of review allowed under NEPA.⁵ Federal Lands Subcommittee Ranking Member Hanabusa filed an amendment to strike this section from the bill. It was rejected by the majority on a party line vote.

Second, Subtitle B of Title I establishes five new sweeping categorical exclusions (CE) under NEPA. CEs are reserved for categories of actions which do not individually or cumulatively have a significant effect on the human environment and, for which, neither an environmental assessment (EA) nor an environmental im-

⁴Schoennagel, et al, Adapt to more wildfire in western North American forests as climate changes (Perspective, 2016)

⁵GAO. "National Environmental Policy Act: Little Information Exists on NEPA Analyses" Washington DC, April 2014. <http://www.gao.gov/assets/670/662543.pdf>

pact statement (EIS) is required unless there are certain extraordinary circumstances, as determined by the relevant federal agency.

The regime envisioned by this bill removes critical sideboards used to determine the appropriateness of limiting environmental review for individual projects. For example, Section 111 creates a 10,000-acre CE—the acreage limitation increases to 30,000 if certain conditions are met—to address insect or disease infestation, among other purposes, including timber production. The 2014 Farm Bill created a CE for collaboratively developed insect and disease treatment projects up to 3,000 acres in size that preserve old growth forests and focus on scientifically sound ecological restoration. This bill increases the project size ten-fold while dropping the emphasis on old growth protection and sound science and extending the application to projects with the primary purpose of timber production. If applied by the agency, this could result in nearly 50 square mile timber projects—an area roughly the size of San Francisco—with limited environmental review or public input.

Section 112 creates a 10,000-acre CE for post-fire timber sales, also known as salvage logging. This is 40 times larger than the current 250 acre authority for salvage operations on national forests. This type of logging occurs in ecologically sensitive post-fire landscapes and requires careful consideration and planning. Failure to adequately address stream protection, limit temporary road construction and other key ecological considerations could lead to significant environmental impacts.

Section 113 establishes a 10,000-acre CE to establish early successional forests, a goal which is typically achieved through stand removal, otherwise known as clear-cutting. Clear cuts are not currently authorized under Forest Service NEPA guidance and this bill could lead to nearly 16 square mile clear cuts with limited review of the impacts on wildlife, water quality, and other ecosystem services. Section 114 and 115 create two CEs designed to address roadside emergencies and reduce wildfire risks. Both of these broad CEs apply to a range of management activities, including the use of pesticides in forests. Current Forest Service practice excludes the use of herbicides or pesticides without the preparation of an EA or EIS.

Title II continues the assault on NEPA environmental assessment by placing a 60-day shot clock on environmental review associated with a salvage operation following a catastrophic event, something the bill defines as any wildfire, regardless of size or cause. Rushing the NEPA process could have unfortunate long-term results, such as creating highly flammable tree plantations, a counterproductive result for legislation billed as reducing fire risk. While they were not invited to provide testimony in the 115th Congress, the Forest Service testified in opposition to both of these unrealistic timelines and project goals in the 114th Congress.

Title VIII, while primarily focused on inter-agency consultation, includes language exempting the development, maintenance, amendment or revision of a forest plan from all requirements of NEPA. Forests plans, which are usually accompanied by an EIS, are broad frameworks that inform and guide all decisions related to an individual forest. Individual projects are tiered off the envi-

ronmental analysis done when the plan is developed or revised. It is unclear how individual projects will be affected if forests plans are no longer required to comply with NEPA. Rather than use the plan to guide decisions about the appropriate level of review for a given project, forest supervisors may decide to subject each project to a higher level of scrutiny, which could have the unintended consequence of causing more planning delays and potentially even more litigation. NEPA assists in federal agency decision making and is also used as the rubric to ensure compliance with a range of statutory requirements. The vacuum left when it is arbitrarily truncated could lead to confusion and extended planning times, not necessarily a red-tape-free planning environment that the sponsors of H.R. 2936 claim they are trying to create.

Buried at the back of the bill, in Title IX, is another pernicious attack on NEPA. Section 903 requires the Forest Service go through a rulemaking process to update its regulations for extraordinary circumstances used to determine whether it is appropriate to use a CE for an individual project. Under these updated regulations, the Forest Service would not be required to consider the cumulative impacts of a project or its impacts. Analysis of cumulative impacts is a fundamental component of NEPA. In the context of the massive projects envisioned by this bill, this policy change could be devastating to the long term health and viability of our national forests.

The broad NEPA exemptions scattered throughout H.R. 2936 fail to reduce wildfires, increase the risk of litigation, and do nothing to address the real issue: chronic underfunding.

ATTACKS ON THE ENDANGERED SPECIES ACT

In addition to NEPA, supporters of this bill blame delays in the approval of forest management projects on ESA consultation requirements. Section 123 would put the U.S. Fish and Wildlife Service (FWS) on a 90-day shot clock to complete consultations required under Section 7 of the ESA. This provision is both unnecessary and absurd. It is unnecessary because ESA consultations are rarely responsible for project delays. A peer-reviewed article published in the Proceedings of the National Academy of Sciences found that 93 percent of ESA consultations are informal and take an average of 13 days to complete. Even more thorough formal consultation which may be required when a Federal agency determines, through a biological assessment or other review, that an action is likely to adversely affect a listed species take only 62 days to complete, on average.⁶

It is absurd because we know that any delays in initiating or completing ESA consultations are directly attributable to funding cuts for ESA implementation backed by Republicans. If Congress wants to speed up the consultation process there is a simple way to do that: give FWS more resources to complete consultations.

Subtitle B of Title VIII is designed to prevent ESA re-consultation when FWS lists a new species or designates critical habitat for a listed species. In *Cottonwood Environmental Law Center vs.*

⁶Malcolm, Jacob W. and Ya-Wei Li, "Data contradict common perceptions about a controversial provision of the US Endangered Species Act" (PNAS, 2015).

United States Forest Service, the 9th Circuit Court of Appeals rightly held that the Forest Service erred in failing to consult with FWS after designation of critical habitat for the threatened Canada Lynx. Previous consideration of lynx conservation in forest plans had been based on a critical habitat designation that was improperly influenced by Julie MacDonald, a George W. Bush political appointee in the Interior Department. The politically-tarnished designation included no critical habitat on Forest Service land. A revised critical habitat designation based on the best available science designated significant lynx critical habitat in national forests was promulgated and the court held that the Forest Service was required to consult with the FWS under Section 7 of the ESA.

The argument that critical habitat will still be taken into account at the project level, so consultation at the forest plan level is redundant, misses the entire point of the ESA in general and of critical habitat, specifically. Habitat destruction is the reason why many fish and wildlife species are on the verge of extinction. We have cut down 95 percent of our old growth forests, plowed over 96 percent of our tallgrass prairie, and filled in more than half of our wetlands. Requiring consultation for critical habitat and species listings at the broader forest plan level can be the difference between survival and extinction, helping avoid death by a thousand cuts caused by a lack of cumulative impacts analysis.

The same peer-reviewed research mentioned above shows that this bill would actually make consultations take longer than they do now. That study found that the average length of a formal consultation without a plan-level consultation was 62 days, as opposed to 24 days for projects with a plan level review.⁷

At markup, Oversight and Investigations Subcommittee Ranking Member McEachin offered an amendment to strike these two sections out of the bill. It was rejected by the Republicans on a party line vote.

ATTACKS ON JUDICIAL REVIEW AND ACCESS TO JUSTICE

It is a fundamental principle of American law and our system of government that citizens can turn to the legal system to hold the government accountable. This bill turns that principle on its head in the name of maximizing timber production. Despite the rhetoric of the bill's sponsors, litigation and public participation is not a burden to completing forest management projects. Data regarding Forest Service and BLM fuel reduction projects from 2009–2011 show that 95% of projects moved forward without any appeal. In that three-year period, the two agencies implemented 8000 projects and less than 1% of projects were subject to litigation.

Section 311 limits attorney's fees for challenges to proposed forest management projects, effectively blocking litigants from eligibility under the Equal Access to Justice Act (EAJA). In 1980, EAJA was enacted to ensure the right of stakeholders to sue the United States if they have been wronged, regardless of their socio-economic status or their stance on an issue. EAJA provides the option of reimbursement for plaintiff attorneys' fees up to \$125 per hour to the prevailing party in a lawsuit. Fees cannot be awarded to in-

⁷ Ibid.

dividuals with a net worth of more than \$2 million or to organizations worth more than \$7 million or with more than 500 employees.⁸ Many diverse stakeholders have received EAJA awards, including industry and environmental groups.

There are safeguards built into the law and others that have evolved through case law that effectively prevent abuse. First, EAJA sets a very high threshold for recovering attorney's fees. Indeed, winning one's case is not enough. Instead, under EAJA, a party may recover fees from the government only if the plaintiff is the prevailing party and the plaintiff can prove that the government's position was not "substantially justified."⁹ Because this is not an easy standard for a plaintiff to satisfy, many plaintiffs do not recover attorney's fees even when they win their case.

Second, even if plaintiffs can recover attorney's fees, they may only collect up to \$125 per hour.¹⁰ While most courts have adjusted this cap slightly (i.e., between \$142 and \$180) to account for cost of living in expensive markets, the rate is still less than half of the amount most private attorneys charge.¹¹ Also, in very limited circumstances, plaintiffs may recover attorney's fees in excess of the fee cap. To do so, the plaintiff must show that the attorney possessed distinctive knowledge and skills developed through a practice specialty that were needed in the litigation and not available elsewhere at the statutory rate.¹² This is a very demanding standard, especially considering that courts have recognized only a few practice specialties.

Republicans additionally contend that groups receiving federal funds (grants) for conservation work are actually using these funds to support suits against the federal government and are reinvesting the awards they win in court to fuel more litigation. In reality, these groups are prohibited by law from transferring money between conservation and legal funds.

In the case of the Forest Service and litigation under public land law, payment for attorney's fees under EAJA comes directly out of agency appropriations. Critics of environmental litigants, who take advantage of this statute, argue that money paid out for attorney's fees is a drain on an already strained budget. This is an extreme exaggeration. Testifying before the House Agriculture Committee in 2014, the FS Deputy Chief Jim Pena noted that, "the FS measures some costs associated with litigation. For example, we can account for costs associated with the Equal Access to Justice Act which is about \$875,000 per year for all land management litigation in the agency."¹³ Forest Service's entire budget for the same period was \$4.75 billion, meaning that compensation of attorney's fees to successful litigants made up .018 percent of the agency's budget. This is less than one-fifth of one-tenth of one percent.

⁸ Henry Cohen, *Awards of Attorneys' Fees by Federal Courts and Federal Agencies*, CRS Report (2009).

⁹ 28 U.S.C. § 2412 (d)(1)(B).

¹⁰ 28 U.S.C. § 2412(d)(2)(A).

¹¹ See *Thangaraja v. Gonzales*, 428 F.3d 870, 876–77 (9th Cir. 2005).

¹² *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991).

¹³ Pena, Jim, Associate Chief of the US Forest Service "Written Testimony Regarding Implementation of the Endangered Species Act by USDA Forest Service". House Subcommittee on Conservation, Energy, and Forestry. March 26, 2014.

Representative Barragan offered and withdrew an amendment at markup to strike Section 311, which falls under the jurisdiction of the Judiciary Committee, from the bill.

Sec. 321 authorizes the establishment of an arbitration pilot project as an alternative to judicial review of proposed forest management projects. The pilot authorizes the use of arbitration on up to ten projects per year in each region of the Forest Service; this could mean up to 230 judicial review actions would be forced into arbitration. Under the program, the Secretary will identify qualified professionals to serve as arbitrators. At markup, the majority accepted an amendment from Representative Soto to disqualify anyone with a financial conflict of interest from serving as an arbitrator. Accepting this amendment, however, doesn't make the use of arbitration to adjudicate forest management decisions any less controversial. This type of arbitration is effective when negotiating the contract terms of professional athletes. It is less effective or fair when making decisions about the legality of federal actions. Under the terms of this authorization, an arbitrator is only allowed to examine the proposed project and the alternative put forward by the objector. No modifications to either proposal are allowed and the arbitrator must choose the project that best meets the purposes defined by the Forest Service. Finally, a decision must be reached within 90 days and there is no opportunity for judicial review. The Forest Service could use this authority to pick the most controversial projects for arbitration, essentially shielding them from review by the judicial branch.

Last, Section 203 prohibits any judicial relief pending appeal for any post-fire timber sale. Salvage operations should be considered on a case-by-case basis and subject to environmental review. Restricting a judge's ability to enjoin—or pause—a project of this nature during court deliberations, could allow harmful projects to move forward without having their day in court.

Immediately after a fire, life returns to the forest as plants regenerate and nutrients are released into the soil. Logging in this sensitive post-fire landscape, without review, could lead to soil damage, increased run off, and reduction of important nutrients from the ecosystem. Federal Lands Subcommittee Ranking Member Hanabusa offered an amendment to strike Section 203 from the bill. Republicans voted it down on a party line vote.

Title III treats judicial review of agency decisions as an annoyance to be minimized. The result of this bill would be to prevent any plaintiffs except large companies with deep pockets, from bringing suit. Sponsors of the bill claim they want to limit the federal government's power and empower individuals, but this does the exact opposite—it's all about making sure the Federal government can do exactly what it wants without having to worry about legal challenges filed by American taxpayers. Our civil justice system is not designed to work to benefit the mighty and ignore the small and blocking access to the courts does nothing to make our forests more resilient.

OREGON AND CALIFORNIA GRANT LANDS

Subtitle B of Title IX includes several concerning provisions related to the management of the Oregon & California Railroad

Lands (O&C Lands), a set of federal lands in Western Oregon managed by the Bureau of Land Management. Section 911 sets an annual timber mandate of 500 million board feet for the O&C Lands, despite the fact that the agency's most recent sustained yield determination, published in 2016, is 205 million board feet. H.R. 2936 mandates the production of 2.5 times the scientifically determined timber capacity for this area.

Section 913 requires all O&C Lands, including land associated with the recently-expanded Cascade-Siskiyou National Monument, to be managed pursuant to the O&C Act of 1937. Taken together, these provisions could be devastating for the science-based ecological objectives of the monument. Furthermore, requiring monument lands to be managed for timber production and setting an unsustainable timber production requirement would effectively overturn the monument designation and make it impossible to meet the conservation goals of the Northwest Forest Plan. We reject this sneak attack on the Antiquities Act disguised as forest policy.

Natural Resources Committee Ranking Member Grijalva offered an amendment to strike Section 913 from the bill. Republicans rejected this commonsense amendment to stand up for national monuments and the Antiquities Act.

WILDFIRE SPENDING

Title X amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to include wildfires on Federal lands in the definition of natural disasters. This title falls under the jurisdiction of the Committee on Transportation and Infrastructure so it could not be addressed at the Natural Resources Committee markup. While we appreciate the acknowledgment that we have to do something to address the funding mechanism for wildfire, the fix in this bill needs work. It fails to freeze the ten-year average, like the bipartisan Wildfire Disaster Funding Act sponsored by Representative Simpson of Idaho. Without this adjustment, spending on wildfire will never get under control. Second, money must be made available without a declaration from the President. After appropriated funding ran out in 2015, for example, there were over 80 wildfires. We can't rely on the President to make 80 or more declarations every year. This is as unsustainable as the current situation.

In recent years, firefighting costs have consumed over fifty percent of the Forest Service's budget, with the largest one percent of wildfires accounting for thirty percent of those costs. The costs of large, complex wildfires force the Forest Service to transfer funds away from programs that promote forest health and mitigate wildfire risk in order to fund wildfire suppression. This counterintuitive practice, commonly known as "fire borrowing," will continue to divert huge sums of money from forest management activities until Congress provides a solution. We agree the fixing the wildfire budget is a priority. H.R. 2936 falls short of solving this problem, which the Chief of the Forest Service has described as the agency's number one concern.

CONCLUSION

We're told this bill will restore forest health, promote climate resilience and even prevent catastrophic wildfires. Unfortunately, gutting bedrock environmental laws and overturning a national monument will not achieve these goals. For the reasons outlined above, we are opposed to this bill.

RAÚL M. GRIJALVA,
*Ranking Member, House
Natural Resources Com-
mittee.*

COLLEEN HANABUSA,
*Ranking Member, Sub-
committee on Federal
Lands.*

GRACE F. NAPOLITANO,
Member of Congress.

JARED HUFFMAN,
*Ranking Member, Sub-
committee on Water, Power
and Oceans.*

DONALD S. BEYER, JR.,
Member of Congress.

NANETTE DIAZ BARRAGÁN,
Member of Congress.

DARREN SOTO,
Member of Congress.

A. DONALD MCEACHIN,
*Ranking Member, Sub-
committee on Oversight
and Investigations.*

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