

111TH CONGRESS
1ST SESSION

H. R. 4398

To address public safety risks in western States by facilitating insect and disease infestation treatment of National Forest System land and certain adjacent land, to make permanent the good-neighbor authority for Colorado and stewardship contracting authorities available to the Forest Service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. SALAZAR (for himself, Ms. DEGETTE, Ms. MARKEY of Colorado, Mr. POLIS of Colorado, Mr. PERLMUTTER, Mr. LAMBORN, Mr. COFFMAN of Colorado, Mr. MINNICK, Mr. LUJÁN, Mrs. KIRKPATRICK of Arizona, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To address public safety risks in western States by facilitating insect and disease infestation treatment of National Forest System land and certain adjacent land, to make permanent the good-neighbor authority for Colorado and stewardship contracting authorities available to the Forest Service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Forest Insect and Disease Emergency Act of
4 2009”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Designation of insect and disease emergency areas.
- Sec. 5. Response to emergency designation.
- Sec. 6. Good neighbor relationship with the State of Colorado.
- Sec. 7. Stewardship contracting.
- Sec. 8. Protection of private property rights.

7 **SEC. 2. PURPOSES.**

8 (a) PURPOSES.—The purposes of this Act are—

9 (1) to ensure that adequate emphasis is placed
10 on the mitigation of hazards posed by large-scale in-
11 festations of bark beetles and other insects through
12 the establishment of insect and disease emergency
13 areas;

14 (2) to ensure that increased resources are avail-
15 able within each designated insect and disease emer-
16 gency area—

17 (A) to mitigate hazards associated with
18 falling trees and increased fire hazards; and

19 (B) to restore National Forest System land
20 within the designated insect and disease emer-
21 gency area; and

1 (3) to make permanent good-neighbor authority
2 for the State of Colorado and stewardship con-
3 tracting authorities available to the Secretary of Ag-
4 riculture.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) **AFFECTED STATE.**—The term “affected
8 State” means the States of Arizona, California, Col-
9 orado, Idaho, Montana, Nevada, New Mexico, Or-
10 egon, South Dakota, Utah, Washington, and Wyo-
11 ming.

12 (2) **INSECT AND DISEASE EMERGENCY AREA.**—
13 The term “insect and disease emergency area”
14 means an area of National Forest System land
15 (other than land excluded by section 4(d)) that—

16 (A) is identified as an insect and disease
17 emergency area on the map entitled “Insect
18 Emergency Areas” and dated **[_____]**; or

19 (B) is designated as an insect and disease
20 emergency area by the Secretary in the manner
21 provided in section 4(b).

22 (3) **INSECT AND DISEASE INFESTATION EMER-**
23 **GENCY.**—The term “insect and disease infestation
24 emergency” means an insect or disease infestation
25 that the Secretary determines has resulted in—

1 (A) a current or future increased risk of
 2 catastrophic wildland fire; or

3 (B) an increased threat posed by haz-
 4 ardous trees to utility corridors, communication
 5 sites, or other infrastructure.

6 (4) NATIONAL FOREST SYSTEM.—The term
 7 “National Forest System” has the meaning given
 8 the term in section 11(a) of the Forest and Range-
 9 land Renewable Resources Planning Act of 1974 (16
 10 U.S.C. 1609(a)).

11 (5) SECRETARY.—The term “Secretary” means
 12 the Secretary of Agriculture.

13 **SEC. 4. DESIGNATION OF INSECT AND DISEASE EMER-**
 14 **GENCY AREAS.**

15 (a) DESIGNATION BY MAP.—

16 (1) DESIGNATION.—There is designated as an
 17 insect and disease emergency area each area of Na-
 18 tional Forest System land identified as such an area
 19 on the map entitled “Insect Emergency Areas” and
 20 dated _____.

21 (2) MAP; LEGAL DESCRIPTIONS.—As soon as
 22 practicable after the date of enactment of this Act,
 23 the Secretary shall file the map referred to in para-
 24 graph (1) and a legal description for each insect and

1 disease emergency area designated by such para-
2 graph with—

3 (A) the Committee on Energy and Natural
4 Resources and the Committee on Agriculture,
5 Nutrition, and Forestry of the Senate; and

6 (B) the Committee on Natural Resources
7 and the Committee on Agriculture of the House
8 of Representatives.

9 (3) FORCE OF LAW.—The map and legal de-
10 scriptions filed under paragraph (2) shall have the
11 same force and effect as if included in this Act, ex-
12 cept that the Secretary may correct typographical
13 errors in the map and the legal descriptions.

14 (4) PUBLIC AVAILABILITY.—The map and legal
15 descriptions filed under paragraph (2) shall be on
16 file and available for public inspection in the appro-
17 priate offices of the Forest Service.

18 (b) DESIGNATION BY SECRETARY.—

19 (1) DESIGNATION.—The Secretary may des-
20 ignate an area of National Forest System land as an
21 additional insect and disease emergency area if the
22 National Forest System land—

23 (A) is located in an affected State;

1 (B) is subject to an insect and disease in-
2 festation emergency, as determined by the Sec-
3 retary.

4 (2) INITIATION.—The designation of an insect
5 and disease emergency area under this subsection
6 may be made by the Secretary—

7 (A) on the initiative of the Secretary; or

8 (B) in response to a request by the Gov-
9 ernor of an affected State.

10 (3) DEADLINE.—If the Governor of an affected
11 State requests the Secretary to designate National
12 Forest System land in the State as an additional in-
13 sect and disease emergency area, the Secretary shall
14 accept or deny the request before the end of the 90-
15 day period beginning on the date on which the Sec-
16 retary receives the request. If the Secretary does not
17 accept or deny the request before the end of such pe-
18 riod, the request shall be deemed to be denied. If the
19 request is denied, the Secretary shall submit to the
20 Governor who submitted the request and the con-
21 gressional committees specified in subsection (a)(2)
22 an explanation of the reasons for the denial.

23 (4) LIMITATION ON DELEGATION.—The Sec-
24 retary may delegate the authority to make a des-
25 ignation under this subsection only to the Regional

1 Forester responsible for the National Forest System
2 land that would be covered by the designation.

3 (5) PROCEDURE.—If the Secretary designates
4 an additional insect and disease emergency area
5 under this subsection, the Secretary shall—

6 (A) publish a notice of the designation of
7 the insect and disease emergency area (includ-
8 ing a map of the insect and disease emergency
9 area) in the Federal Register; and

10 (B) notify the Governor of the affected
11 State in which the land is located and the con-
12 gressional committees specified in subsection
13 (a)(2).

14 (c) RELATION TO OTHER LAWS.—

15 (1) NEPA.—The designation of an insect and
16 disease emergency area under this section does not
17 constitute a major Federal action under the Na-
18 tional Environmental Policy Act of 1969 (42 U.S.C.
19 4321 et seq.). Subsequent major Federal actions
20 taken as a result of the designation are subject to
21 such Act.

22 (2) FOREST SERVICE DECISIONMAKING.—The
23 designation of an insect and disease emergency area
24 under this section shall not be subject to—

1 (A) section 322 of the Department of the
2 Interior and Related Agencies Appropriation
3 Act, 1993 (Public Law 102–381; 16 U.S.C.
4 1612 note); or

5 (B) any related law or regulation.

6 (d) CERTAIN LANDS EXCLUDED.—An insect and dis-
7 ease emergency area may not include—

8 (1) land designated as wilderness;

9 (2) land recommended for wilderness designa-
10 tion in a forest land and resource management plan;
11 and

12 (3) land on which the removal of vegetation is
13 prohibited or restricted by Act of Congress or Presi-
14 dential proclamation (including the applicable imple-
15 mentation plan).

16 (e) DURATION OF DESIGNATION.—

17 (1) DESIGNATION BY MAP.—An insect and dis-
18 ease emergency area designated on the map referred
19 to in subsection (a)(1) shall continue as an insect
20 and disease emergency area until—

21 (A) the end of the 10-year period begin-
22 ning on the date of the enactment of this Act;
23 or

24 (B) such earlier date as may be designated
25 by the Secretary if the Secretary determines

1 that the area of National Forest System land is
2 no longer subject to an insect and disease infes-
3 tation emergency.

4 (2) DESIGNATION BY SECRETARY.—An insect
5 and disease emergency area designated by the Sec-
6 retary under subsection (b) shall continue as an in-
7 sect and disease emergency area until—

8 (A) the end of the 10-year period begin-
9 ning on the date of the designation; or

10 (B) such earlier date as may be designated
11 by the Secretary if the Secretary determines
12 that the area of National Forest System land is
13 no longer subject to an insect and disease infes-
14 tation emergency.

15 (3) REDESIGNATION.—The expiration of the
16 10-year period specified in paragraph (1)(A) or
17 (2)(A) does not prohibit the Secretary from redesign-
18 ating an area of National Forest System land as an
19 insect and disease emergency area under subsection
20 (b) if the Secretary determines that the area of Na-
21 tional Forest System land continues to be subject to
22 an insect and disease infestation emergency.

1 **SEC. 5. RESPONSE TO EMERGENCY DESIGNATION.**

2 (a) PRIORITY TREATMENTS.—In carrying out the
3 management of an insect and disease emergency area, the
4 Secretary shall give priority consideration—

5 (1) to the removal of hazardous fuels and haz-
6 ardous trees posing a risk to—

7 (A) human communities;

8 (B) utility corridors;

9 (C) communication sites;

10 (D) roads;

11 (E) recreation sites;

12 (F) water structures; and

13 (G) other infrastructure;

14 (2) to the restoration of the health of land sur-
15 rounding any of the areas or sites specified in para-
16 graph (1); and

17 (3) to the provision of assistance to State and
18 local governments, Indian tribes, and private land-
19 owners for the removal of hazardous fuels and haz-
20 ardous trees on, and the restoration of the health of,
21 each parcel of land located in the insect and disease
22 emergency area—

23 (A) that is under the jurisdiction of the
24 State or local government or Indian tribe; or

25 (B) the title of which is held by a private
26 landowner.

1 (b) BIOMASS USE.—In giving priority to initiatives
2 described in subsection (a), the Secretary shall give pri-
3 ority consideration to the making of payments under sec-
4 tion 9011(d) of the Farm Security and Rural Investment
5 Act of 2002 (7 U.S.C. 8111(d)), as amended by section
6 9001(a) of the Food, Conservation, and Energy Act of
7 2008 (Public Law 110–246; 122 Stat. 2064), to an indi-
8 vidual or entity described in paragraph (1)(B) of such sec-
9 tion that collects or harvests renewable biomass from a
10 parcel of National Forest System land located in an insect
11 and disease emergency area.

12 (c) EMERGENCY FOREST RESTORATION.—In imple-
13 menting the emergency forest restoration program under
14 section 407 of the Agricultural Credit Act of 1978 (16
15 U.S.C. 2206), the Secretary may make payments to an
16 owner of a parcel of nonindustrial private forest land that
17 is located in an insect and disease emergency area to carry
18 out emergency measures in response to an insect and dis-
19 ease infestation emergency under this Act.

20 (d) TREATMENT AS RENEWABLE BIOMASS.—Any
21 biomass removed from a parcel of land located in an insect
22 and disease emergency area shall be considered to be re-
23 newable biomass for purposes of the renewable fuel stand-
24 ard under section 211(o) of the Clean Air Act (42 U.S.C.
25 7545(o)).

1 (e) HEALTHY FOREST RESTORATION.—

2 (1) AUTHORITY OF SECRETARY.—The Sec-
3 retary may apply each requirement described in sec-
4 tions 104 and 105 of the Healthy Forests Restora-
5 tion Act of 2003 (16 U.S.C. 6514, 6515) to projects
6 that are carried out to remove hazardous fuels and
7 hazardous trees on, and to restore the health of, Na-
8 tional Forest System land that is located in an in-
9 sect and disease emergency area.

10 (2) JUDICIAL REVIEW.—Section 106 of the
11 Healthy Forests Restoration Act of 2003 (16 U.S.C.
12 6516) shall apply to each project described in para-
13 graph (1).

14 **SEC. 6. GOOD NEIGHBOR RELATIONSHIP WITH THE STATE**
15 **OF COLORADO.**

16 (a) STATE FOREST SERVICES.—

17 (1) AUTHORITY OF SECRETARY.—The Sec-
18 retary may offer to enter into any contract (includ-
19 ing a sole source contract) or other agreement (in-
20 cluding an agreement for the mutual benefit of the
21 Secretary and each other party to the contract or
22 agreement), as appropriate, with the State of Colo-
23 rado (in this section referred to as the “State”) to
24 perform watershed restoration and protection serv-
25 ices on National Forest System land located in the

1 State if the State is carrying out similar and com-
2 plementary watershed restoration and protection
3 services on a parcel of State or private land that is
4 located adjacent to the National Forest System land.

5 (2) AUTHORIZED SERVICES.—Watershed res-
6 toration and protection services described in para-
7 graph (1) include—

8 (A) the treatment of insect-infested trees;

9 (B) the reduction of hazardous fuels; and

10 (C) any other activity that is carried out to
11 restore or improve watersheds or fish and wild-
12 life habitat across ownership boundaries.

13 (b) ADMINISTRATIVE PROVISIONS.—

14 (1) NATIONAL FOREST MANAGEMENT ACT OF
15 1976.—Subsections (d) and (g) of section 14 of the
16 National Forest Management Act of 1976 (16
17 U.S.C. 472a) shall not apply to services performed
18 under a contract or other agreement under sub-
19 section (a)(1).

20 (2) ASSUMPTION OF LIABILITY.—In accordance
21 with each applicable law (including regulations), in
22 preparing and carrying out a contract entered into
23 under subsection (a)(1), the State that is a party to
24 the contract shall be liable for each action and omis-
25 sion of the employees of the State.

1 (3) SUBCONTRACTS.—A State, in accordance
2 with the applicable contract procedures of the State,
3 may enter into subcontracts to provide restoration
4 services authorized under a contract or other agree-
5 ment entered into under subsection (a)(1).

6 (4) DISPUTE RESOLUTION.—Any dispute under
7 a contract or other agreement under subsection
8 (a)(1) shall be resolved in accordance with, as appli-
9 cable—

10 (A) the dispute clause of the contract or
11 other agreement;

12 (B) the Contract Disputes Act of 1978 (41
13 U.S.C. 601 et seq.); or

14 (C) section 1491 of title 28, United States
15 Code.

16 (c) RETENTION OF RESPONSIBILITIES UNDER NA-
17 TIONAL ENVIRONMENTAL POLICY ACT OF 1969.—With
18 respect to any watershed restoration and protection serv-
19 ice on National Forest System land that is proposed to
20 be carried out by the State under subsection (a), any deci-
21 sion required to be made under the National Environ-
22 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may
23 not be delegated to any officer or employee of the State.

24 (d) APPLICABILITY.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the authority provided by this section applies only to
3 National Forest System land located in Colorado.

4 (2) SECRETARY OF THE INTERIOR.—With re-
5 spect to public land located in Colorado that is ad-
6 ministered by the Secretary of the Interior (acting
7 through the Bureau of Land Management), the Sec-
8 retary of the Interior may carry out activities under
9 this section on the public land.

10 **SEC. 7. STEWARDSHIP CONTRACTING.**

11 (a) PERMANENT AUTHORITY.—Section 347(a) of the
12 Department of the Interior and Related Agencies Appro-
13 priations Act, 1999 (16 U.S.C. 2104 note; as contained
14 in section 101(e) of division A of Public Law 105–277)
15 is amended by striking “Until September 30, 2013, the”
16 and inserting “The”.

17 (b) TREATMENT OF CANCELLATION COSTS.—Section
18 347 of the Department of the Interior and Related Agen-
19 cies Appropriations Act, 1999 (16 U.S.C. 2104 note; as
20 contained in section 101(e) of division A of Public Law
21 105–277) is amended by adding at the end the following
22 new subsection:

23 “(h) TREATMENT OF CANCELLATION COSTS.—

24 “(1) LIMITATION ON OBLIGATION.—Notwith-
25 standing any other provision of law, including sec-

tion 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c), the Forest Service may not obligate funds to cover the cost of canceling a Forest Service multiyear stewardship contract under subsection (a) until the date on which the multiyear stewardship contract is cancelled.

“(2) COSTS OF CANCELLATION OR TERMINATION.—The costs of any cancellation or termination of a multiyear stewardship contract described in paragraph (1) may be paid from any appropriations available to the Forest Service. In the event such appropriations are exhausted—

“(A) the exhaustion of such appropriations shall not be considered to be a violation of section 1341 of title 31, United States Code; and

“(B) the Secretary of Agriculture shall seek a supplemental appropriation.”.

SEC. 8. PROTECTION OF PRIVATE PROPERTY RIGHTS.

Nothing in this Act diminishes the rights of any owner of private property.

○