

112TH CONGRESS
1ST SESSION

H. R. 922

To ensure that private property, public safety, and human life are protected from flood hazards that directly result from post-fire watershed conditions that are created by wildfires on Federal land.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2011

Mr. GOSAR introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Financial Services, Natural Resources, and Agriculture, 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 ensure that private property, public safety, and human life are protected from flood hazards that directly result from post-fire watershed conditions that are created by wildfires on Federal land.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Burn Area Flood Pre-
5 vention Act of 2011”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to ensure that private
3 property, public safety, and human life are protected from
4 flood hazards that directly result from post-fire watershed
5 conditions that are created by wildfires on Federal land.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Federal
10 Emergency Management Agency.

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

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

16 (B) is depicted on the Arizona Division of
17 Emergency Management map entitled “Schultz
18 Flood #1 Operations Map” and dated August
19 3, 2010.

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

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

25 (B) units of the National Park System;

1 (C) refuges of the National Wildlife Refuge
2 System;

3 (D) land held in trust by the United States
4 for the benefit of Indian tribes or members of
5 an Indian tribe; and

6 (E) the National Forest System (as de-
7 fined in section 11(a) of the Forest and Range-
8 land Renewable Resources Planning Act of
9 1974 (16 U.S.C. 1609(a))).

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

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

16 **SEC. 4. CLARIFICATION OF FLAME WILDFIRE SUPPRES-**
17 **SION RESERVE FUND AUTHORITY.**

18 Section 502(c) of the Federal Land Assistance, Man-
19 agement, and Enhancement Act of 2009 (43 U.S.C.
20 1748a(c)) is amended by inserting “and burn area re-
21 sponses, including flood prevention,” after “events”.

1 **SEC. 5. INSURANCE COVERAGE FOR PRIVATE PROPERTIES**
2 **AFFECTED BY FLOODING FROM FEDERAL**
3 **LANDS.**

4 Section 1306(e)(2) of the National Flood Insurance
5 Act of 1968 (42 U.S.C. 4013(e)(2)) is amended—

6 (1) in subparagraph (A), by striking “or” at
7 the end;

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

10 (3) by adding at the end the following:

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

16 **SEC. 6. SCHULTZ FIRE FLOODING AREA ASSISTANCE.**

17 (a) FINDINGS.—Congress finds that—

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

22 (2) the Schultz Fire burned for 10 days, de-
23 stroyed more than 15,000 acres of Forest Service
24 land, and prompted the evacuation of approximately
25 400 homes before being 100 percent contained on
26 June 30, 2010;

1 (3) the Schultz Fire severely burned a large
2 portion of the forest along the steep terrain on the
3 east side of the San Francisco Peaks, leaving little
4 ground vegetation to absorb and retain rainwater;

5 (4) on July 6, 2010, the Forest Service Burn
6 Area Emergency Response Team issued a hydrology
7 specialist report that assessed post-fire watershed
8 conditions and determined that there was a constant
9 daily flooding threat to nearby communities from
10 summer monsoon storms;

11 (5) on July 7, 2010, community meetings were
12 held urging residents to purchase flood insurance for
13 the affected area, which had not previously been des-
14 ignated as a flood plain;

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

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

24 (8) affected homeowners who purchased flood
25 insurance were not eligible for coverage under the

1 National Flood Insurance Program at the time of
2 the loss because of the statutorily mandated 30-day
3 waiting period before flood insurance coverage takes
4 effect; and

5 (9) because the Schultz Fire occurred on Forest
6 Service land and has affected private property, pub-
7 lic safety, and human life, the Federal Government
8 is obligated to provide an appropriate level of dis-
9 aster assistance, including Federal flood insurance
10 to homeowners.

11 (b) SCHULTZ FIRE FLOODING AREA TASK FORCE.—

12 (1) ESTABLISHMENT.—There is established the
13 Schultz Fire Flooding Area Task Force.

14 (2) MEMBERSHIP.—The Task Force shall con-
15 sist of members who have expertise in Federal dis-
16 aster management and assistance, flood prevention
17 and mitigation, forestry, wildfire management and
18 recovery, civil engineering, soil conservation, or wa-
19 tershed protection, including representatives from—

20 (A) the Federal Emergency Management

21 Agency;

22 (B) the Corps of Engineers;

23 (C) the Forest Service;

24 (D) the Natural Resources Conservation
25 Service;

1 (E) the United States Geological Survey;

2 (F) State and local governments;

3 (G) community-based organizations and
4 other interested parties; and

5 (H) any other entity the Administrator de-
6 termines to be appropriate.

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

9 (4) DUTIES.—For the affected area, the Task
10 Force shall—

11 (A) coordinate the efforts of the entities
12 represented on the Task Force to immediately
13 implement interim flood protection systems, in-
14 cluding the retention of water retention basins;

15 (B) identify existing and potential—

16 (i) funding;

17 (ii) technical assistance;

18 (iii) general investigations; and

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

21 (C) carry out a detailed study of the af-
22 fected area to evaluate the potential of inte-
23 grating projects and programs of the Corps of
24 Engineers, the Federal Emergency Management
25 Agency, and the Department of Agriculture into

1 a comprehensive, long-term flood protection sys-
2 tem for the affected area including—

3 (i) an evaluation of existing hazardous
4 flood conditions in the affected area;

5 (ii) identification of additional risks
6 associated with flood events in the affected
7 area that would be equal to or greater than
8 the July 20, 2010, flood event; and

9 (iii) a sediment and geotechnical anal-
10 ysis that describes soil conditions and the
11 risk level for landslides.

12 (5) REPORT.—Not later than 60 days after the
13 date of enactment of this Act, the Administrator
14 shall submit to the appropriate committees of Con-
15 gress a report describing the findings and work of
16 the Task Force.

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

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

23 (1) IN GENERAL.—Not later than 30 days after
24 the date of enactment of this Act, the Attorney Gen-
25 eral shall submit to Congress a report on the

1 amount of fees and other expenses awarded pursu-
2 ant to section 2412 of title 28, United States Code,
3 and section 504 of title 5, United States Code, in
4 connection with the Jack Smith/Schultz Fuels Re-
5 duction Healthy Forest Restoration Project.

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

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

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

12 (C) the disposition of the application, in-
13 cluding any appeal of action taken on the appli-
14 cation; and

15 (D) the hourly rates of attorneys and ex-
16 pert witnesses awarded, as stated in the appli-
17 cation.

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

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