



No. 46

October 29, 2003

## H.R. 1904 – Healthy Forests Restoration Act of 2003

Calendar No. 246

*Reported on July 31, 2003 by the Senate Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute, and an amendment to the title, by voice vote; S. Rept. 108-121. [Note: on August 11, 2003, a star print of the bill was ordered.]*

### NOTEWORTHY

- By unanimous consent, the Senate will proceed to the consideration of H.R. 1904 today. The U.C. provides no time agreement or limits on amendments, but it is the Majority Leader's intention to complete action on the bill this week.
- Some 190 million acres of Federal forest land are at unnaturally high risk of catastrophic wildfires and large-scale insect and disease outbreaks because of unhealthy forest conditions – namely, the buildup of forest fuels that has taken place over the last century. In the last five years, over 24 million acres have burned, an amount which is more than twice the 10-year average. Catastrophic wildfires damage air quality, water quality, and wildlife habitat.
- Efforts to restore forest health and prevent catastrophic wildfires have been frustrated by private-sector groups demanding detailed documentation, making administrative appeals of proposed forest treatment projects, and filing lawsuits and injunctions.
- A bipartisan compromise version of the bill as reported is expected to become the base text. That version of the bill substantially modifies Title I. It authorizes hazardous fuel reduction for specified instances: for projects to protect wildland-urban interface areas; to protect municipal watersheds or water supply systems; and to protect areas where specific environmental conditions, including “blowdown” or disease, pose a significant threat to ecosystems, forests, rangeland resources, or endangered species habitat. The bill also provides standards to manage projects in old growth stands.
- The bill's most important provisions to accelerate the restoration of forest health are those reforming the administrative and judicial review processes.

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## Background

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Federal land managers estimate that 190 million acres of Federal forest land are at unnaturally high risk of catastrophic wildfires and large-scale insect and disease outbreaks because of unhealthy forest conditions. In 2002, more than 7.2 million acres burned; these fires resulted in the deaths of 23 firefighters, drove tens of thousands of people from their homes, and destroyed 2,000 buildings. Oregon, Arizona, and Colorado experienced the largest wildfires in their histories, causing damage to air quality, water quality, and wildlife habitat in these states and beyond. Massive wildfires ongoing in California have burned more than 500,000 acres in the last few days, killing at least 16 people, destroying or badly damaging more than 1,600 homes, and causing tens of thousands to evacuate.

The immediate cause of these wildfires is the long-term drought conditions in the Western United States, but the underlying cause is the buildup of forest fuels that has taken place over the last century. Where there were 50 trees or fewer per acre in the past, many areas have become choked with dense stands of 1,000 trees and shrubs and underbrush, meaning the larger trees must compete for limited water and nutrients, and become susceptible to insects and disease. Such an environment is conducive to unnaturally intense wildfires.

In spite of the clear threat, federal agencies have been frustrated in their efforts to thin overcrowded stands and use controlled burning to reduce forest fuels. This is due to legally mandated administrative process requirements. In a 2002 report, "Process Predicament: How Statutory, Regulatory and Administrative Factors Affect National Forest Management," the Forest Service explained how requirements for detailed documentation, administrative appeals of proposed forest treatment projects, lawsuits, and injunctions have all delayed needed projects and made it difficult for federal land management agencies to carry out necessary forest restoration and fuels treatments.

In that report, the Forest Service estimated that it spends \$250 million per year on planning and assessment for all national forest projects. This consumes 40 percent of the total direct work at the national forest level and 20 percent of the total funding for managing the national forest system. "Although some planning is obviously necessary, Forest Service officials have estimated that improving administrative procedures could shift up to \$100 million a year from unnecessary planning to actual project work to restore ecosystems and deliver services on the ground," the Forest Service observes. Among the most important changes the bill makes to current federal law are provisions to expedite the National Environmental Policy Act (NEPA) process and the administrative review process.

Where forest thinning has been allowed to take place, the evidence that it is effective is dramatic. In an increasing number of cases, destructive and intense fires have been quickly stopped or rendered much less destructive and more easily controlled.

Forest health problems are more prominent in the Western United States, but are not limited to that region. Arkansas and Missouri, for example, have experienced an unprecedented pest outbreak, which has affected 300,000 acres of Federal and non-Federal lands.

After conducting hearings in June, the Senate Committee on Agriculture, Nutrition, and Forestry ordered the bill favorably reported on July 24, 2003, and it was printed and placed on the Senate Calendar on July 31. Since then, the bill has undergone further revisions based on recommendations from the June 26 public hearing. The latest revisions are all contained in Title I of the bill and include the establishment of standards for managing old growth stands; modifications in the environmental review process (these modifications limit – to three – the number of alternative actions the Secretaries of the Interior and Agriculture must consider in preparing an environmental assessment or environmental impact statement); modifications to the administrative review process (these define who is eligible to bring a civil action challenging a hazardous fuel reduction in a Federal district court); and modifications to the judicial review process (these prevent “venue shopping,” and direct the courts reviewing the projects to weigh the short- and long-term effects of undertaking the agency action against the short- and long-term effects of not undertaking the agency action in terms of the likely impact to the ecosystem). The title also authorizes \$760 million for each fiscal year to carry out forest health activities until the 20 million acres are treated (this monetary authorization was not included in the bill as reported.).

The House passed its version of H.R. 1904 on May 20, 2003, by a vote of 256-170.

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## Bill Provisions

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### **Title I - Hazardous Fuels Reduction on Federal Land**

*[Note: This is a description of the bipartisan compromise text, and not H.R. 1904, as reported. It is anticipated that this text will become the base text when the Senate considers the bill.]*

#### **Authorized Hazardous Fuel Reduction Projects:**

Under H.R. 1904, authorized hazardous fuels reduction projects on federal lands are limited to: wildland-urban interface areas; areas located in proximity to a municipal watershed or water supply system with significant risk that a wildfire would adversely affect water quality or the system; areas where “windthrow,” “blowdown,” ice storm damage, or the existence of insects or disease poses a significant threat to ecosystems, or forest or rangeland resources; and to areas that contain threatened or endangered species habitat.

The bill requires authorized projects to be consistent with land and resource management plans and other administrative policies applicable to federal land; limits the total acreage available for authorized hazardous fuel reduction projects to 20 million acres; and prohibits hazardous fuels reduction projects in the National Wilderness Preservation System, in federal lands where removal of vegetation is prohibited or restricted by Congress or a presidential proclamation, and in wilderness study areas.

H.R. 1904 provides direction for projects that may occur within “old growth” stands. It requires the Secretary to fully maintain or contribute toward the restoration of old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, while considering the stand’s contribution to landscape fire adaptation and watershed health, and retaining the large trees contributing to old growth structure.

In carrying out authorized hazardous fuel reduction projects in old growth stands, the Secretary is directed to use established resource management plans. Any amendment or revision to the standards for which final approval is granted shall be consistent with the requirement described in the previous paragraph. If the current resource management plan was established 10 years or more before the enactment of H.R. 1904, the Secretary shall meet the requirements by implementing the standards during the two-year period after enactment of the Act, or if the Secretary is in the process of revising a resource management plan as of the date of enactment, during a three-year period after enactment. These standards shall be reviewed and revised, if necessary, to reflect relevant information not considered in formulating the resource management plan. If such a review is not completed within the appropriate time period, no authorized hazardous fuel reduction project shall occur in an old growth stand, which has been identified as such during the public comment or collaborative process, based on substantial supporting evidence.

The bill directs that a person may bring civil action based on standards for an old growth stand under a resource management plan only by challenging a plan amendment, plan revision, or project implementing the plan’s standards, in accordance with applicable provision of law.

The bill directs covered projects outside of old growth stands to focus mostly on small- diameter trees, thinning, strategic fuel breaks, and prescribed fire to modify fire behavior, and maximizes the retention of large trees, as appropriate to forest type, to the extent that the trees promote fire-resistant stands.

The bill provides direction for monitoring and assessing forest and rangeland health. It directs Forest Service regions and Bureau of Land Management (BLM) offices to monitor the results of hazardous fuels reduction projects and to submit a report five years after enactment of the bill and every five years thereafter. The reports shall include evaluations of progress and recommendations for modifications to the projects.

**Prioritization:**

The bill directs the Secretary to give priority to projects that provide protection for at-risk communities or watersheds or that implement community wildfire protection plans. It directs that the Federal Advisory Committee Act shall not apply to the planning process and recommendations concerning the community wildfire protection plans, and that federal agency involvement in a community wildfire protection plan shall not be considered a federal agency action under the National Environmental Planning Act (NEPA). However, implementation of authorized hazardous fuel reduction projects shall comply with NEPA.

The bill directs that at the national level, at least 50 percent of the funds allocated for authorized hazardous fuel reduction projects shall be used in the wildland-interface. However, the Secretary may allocate the proportion of funds differently within individual management units as appropriate, in particular to conduct authorized hazardous fuel reduction projects on land with windthrow, blowdown, ice storm damage, or the existence of disease or insect infestation.

In providing financial assistance for authorized hazardous fuel reduction projects on non-federal land, the Secretary shall consider recommendations made by at-risk communities that have developed community wildfire protection plans.

**Environmental Analysis:**

The bill directs the Secretary to prepare an environmental assessment (EA) or an environmental impact statement (EIS) for any authorized hazardous fuel reduction project. The EA or EIA shall describe an action, a no-action alternative, and an additional action alternative, if the alternative is proposed during the public comment or collaborative process, and meets the purpose and need of the project. If more than one alternative is proposed, then the Secretary shall select the alternative to be considered with a written description of the reasons for the alternative. This is a significant change over current law, which does not limit the number of alternatives the agency must consider. A Forest Service report, entitled "Process Predicament," notes that "the range of alternatives required for environmental assessment and the appropriate way to incorporate adaptive management are still ambiguous. Line officers can never be sure when documentation is enough." The bill would limit the alternatives to those most relevant to restoring forest health.

Notice shall be given for each authorized hazardous fuel reduction project. The public shall be given advance notice of the meeting and shall be given the opportunity to comment during preparation of any EA or EIS for covered projects. A decision document will be signed for any project and implementation of the project will be monitored.

### **Special Administrative Review Process:**

The bill directs the Secretary of Agriculture to establish a pre-decisional administrative review process that will serve as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on National Forest Service land. A person may bring civil action challenging the project in a federal district court only if the person has challenged the project by exhausting the administrative review process established by the Secretary of Agriculture or the Department of the Interior. An issue may be raised in the judicial review only if it was raised in an administrative review process, subject to federal courts' finding that the futility or inadequacy exception to the requirement of exhausting administrative remedies is applicable.

### **Judicial Review in United States District Courts:**

An authorized hazardous fuel reduction project shall be subject to judicial review only in the U.S. district court for the district in which the federal land to be treated is located. The bill establishes that the length of any preliminary injunctive relief and stays pending appeal shall not exceed 60 days. Preliminary injunctive relief and stays pending appeal may be renewed, but in each case, the parties to the action shall present the court with updated information on the status of the authorized hazardous fuel reduction project. The bill directs the court reviewing the project to balance the short- and long-term effects on the ecosystem of undertaking the agency action against the short- and long-term effects of not undertaking the agency action. This is also an important change that will demonstrate the benefits of the project compared to a business-as-usual baseline.

### **Authorization of Appropriations:**

The bill directs the appropriation of \$760 million for each fiscal year to conduct activities authorized by Title I and other hazardous fuel reduction activities of the Secretary, including making grants to States for activities authorized by law.

## **Title II - Biomass**

The bill establishes a biomass commercial use grant program to extend assistance to any person who owns or operates a facility that uses biomass as a raw material to produce energy, and a value-added grant program to extend assistance to persons to offset the cost of projects to add value to biomass. The bill authorizes \$25 million for each of the fiscal years 2004 through 2008. It requires the Secretary of Agriculture, in consultation with the Secretary of the Interior, to report on the results of the grants program by October 1, 2010. It amends the Biomass Research and Development Act of 2000 to shift research to a more applied form, provides an additional \$5 million in each fiscal year to carry out this section, and amends the Food, Agriculture, Conservation, and Trade Act of 1990 to accelerate adoption of biomass technologies, create community-based enterprises, and establish small-scale business enterprises to make use of biomass. It authorizes \$5 million for each fiscal year to carry out this section.

### **Title III - Watershed Forestry Assistance**

The bill authorizes the Secretary, acting through the Forest Service, to provide technical, financial and related assistance to private forest landowners and Indian tribes. It focuses assistance to the purpose of expanding stewardship capacities and activities through best management practices to improve watershed health. It includes a technical assistance program to protect water quality and a watershed cost-share program.

The bill directs the Secretary to make awards under the cost-share program to communities, non-profit groups, and non-industrial private forest landowners for watershed forestry projects, and it authorizes \$15 million for each of the fiscal years 2004 through 2008. At least 75 percent of the funds must be spent on the cost-share component. The bill also authorizes \$2.5 million for each of the fiscal years 2004 through 2008 for tribal watershed forestry assistance, 75 percent of which must be dedicated to the cost-share component.

### **Title IV - Insect Infestations**

The bill directs the Department of Agriculture to conduct an accelerated program of study of certain insect pests that have caused large-scale damage to forest ecosystems. It directs the Secretary to assist land managers in the development of treatments and strategies to improve forest health and reduce susceptibility to future infestations, to disseminate the results, and to carry out the program in cooperation with scientists from universities, state agencies, and private and industrial landowners. It enables the Secretary concerned to conduct applied silvicultural assessments on federal lands that the Secretary determines are at risk, and it authorizes the appropriation of such sums as may be necessary to carry out this title in fiscal years 2004 through 2008.

### **Title V - Healthy Forests Reserve Program**

The bill establishes a Healthy Forests Reserve Program, administered by the Secretary of Agriculture, to restore degraded forest lands and to promote the recovery of endangered species. It directs the Secretary of Agriculture, in consultation with the Secretaries of the Interior and Commerce, to designate rare forest ecosystems to be eligible for the reserve program. It allows programs to be enrolled pursuant to a 10-year, cost-share agreement, a 30-year agreement, or a long-term easement – and sets forth a payment structure for the easements – with the landowner buyback option. It requires participating landowners to develop a restoration plan with the USDA describing the land use activities to be permitted on enrolled lands. It directs the Secretary of Agriculture to provide landowners with technical assistance and to make available safe harbor assurances under section 7 of the Endangered Species Act to participating landowners. The bill authorizes \$15 million for each of the fiscal years 2004 through 2008.

## **Title VI - Public Land Corps**

The bill establishes a Public Land Corps to carry out rehabilitation, enhancement, and beautification projects. It enables the Secretaries to enter into contracts or agreements with any service or conservation corps, or with State agencies, to perform rehabilitation, enhancement, or beautification projects, as well as to provide technical assistance. It authorizes \$15 million for each of the fiscal years 2004 through 2013.

## **Title VII - Rural Community Forestry Enterprise Program**

The bill establishes the Rural Community Forestry Enterprise Program through the office of the Secretary of Agriculture to enhance necessary skills and establish organizations to promote forest-related products and activities. It directs the Secretary to establish a Forest Enterprise Center at each research station of the Forest Service to assist this program and to provide technical assistance and a grant program. It authorizes \$15 million for the program for each of the fiscal years 2004 through 2008.

## **Title VIII - Miscellaneous Provisions**

The bill requires the Secretary of Agriculture to inventory, monitor, characterize, assess, and identify forest stands in units of the National Forest System and on private lands with the consent of the landowner, and to develop an early warning system to enable treatment before the threat of forest health gets out of control. It establishes a program through the Secretary to reduce nonnative invasive plants that pose a threat to wildfire through hazardous fuels reduction projects by issuing grants to qualifying participants, and authorizes such sums that are necessary. The bill authorizes \$2.5 million for each of the fiscal years 2004 through 2008 for an Upland Hardwood Research Center. It reaffirms the sense of Congress affirming the importance of the enhanced community fire protection program under the Cooperative Forestry Assistance Act of 1978.

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### **Cost**

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*[The following authorization estimates are from the bill as reported, and so do not take into account the \$760 million authorization or other changes provided in the Title I compromise.]*

H.R. 1904 would specifically authorize the appropriation of \$115 million in 2004 and \$460 million over the 2004-2008 period for the Forest Service and the Department of the Interior (DOI) to research and restore federal, state, and private forests. Based on information from the agencies and historical spending patterns for similar activities, the Congressional Budget Office estimates that these programs would cost \$21 million in 2004 and \$374 million over the next five years.

The act also authorizes the appropriation of amounts necessary for the Forest Service and DOI to purchase conservation easements from private landowners and to investigate and address infestations of forests by insects and nonnative invasive plants. Based on information from the agencies about the level of effort required to administer those programs, CBO estimates that H.R. 1904 would authorize the appropriations of \$25 million in 2004 and \$245 million over the 2004-2008 period. The committee estimates that such funding for these activities would result in outlays of \$8 million in 2004 and \$215 million over the next five years.

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### Other Views

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In the Committee report [pp. 26-30], Senator Leahy filed Minority Views, in which he noted that the voice vote by the committee did not reflect unanimous endorsement of the bill by committee members. However, Senator Leahy's specified concerns seem to have largely been addressed by the bipartisan compromise.

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### Possible Amendments

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No list of amendments was available at press time, but the committee expects there to be amendments on the administrative and judicial review process, NEPA analysis, appeals, acreage limits, Title IV insect research authorities, and roadless areas.

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