



Legislative Bulletin.....November 21, 2003

Contents:

H.R. 1904—Healthy Forests Restoration Act (Conference Report)

H.R. 1904—Healthy Forests Restoration Act (Conference Report) (McInnis)

Order of Business: The conference report is scheduled to be considered on Friday, November 21st, subject to a closed rule (H.Res. 457). The House passed H.R. 1904 on May 20, 2003, by a vote of 256-170:

<http://clerk.house.gov/cgi-bin/vote.exe?year=2003&rollnumber=200>

The Senate passed its version of the bill on October 30th by a vote of 80-14:

http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00428

Now, the conference report is coming to the floors of both bodies.

Summary by title: H.R. 1904 would authorize federal agencies to undertake a variety of land management activities designed to reduce the risk to U.S. forest and rangelands from catastrophic wildfire, disease, and insect infestation. Specifically, this legislation would apply to National Forest System lands and public lands administered by the Bureau of Land Management (BLM).

Major changes from the House-passed bill are indicated below in **red bold** or **strikethrough**, as appropriate.

Title I—Hazardous Fuels Reduction on Federal Lands

- Authorizes the appropriate Department (Agriculture for National Forest lands and Interior for BLM lands) to plan and conduct hazardous fuels reduction projects on no more than 20 million acres of certain higher-risk lands where the risk of wildfire particularly threatens wildlife and water quality, as detailed in the bill. Such projects would be designed to remove underbrush and other natural fuels for wildfires.
- Requires the Forest Service to notice a planned fuels reduction project in a manner sufficient to permit interested persons to participate.
- Provides for broad limits on tree removal—**with provisions for old and large tree retention, protection, and/or replacement.**

- Excludes components of the National Wilderness Preservation System, Wilderness Study Areas, and other federal lands where the removal of vegetation is restricted.
- ~~Limits the construction of permanent roads as part of any authorized project.~~
- Prioritizes projects that seek to protect human communities and watersheds. **At least 50% of funds would have to be used in high-priority areas where forests border urban areas.**
- Requires that hazardous fuels reduction projects comply with all applicable environmental laws; environmental impact studies would **not** have to include studies or descriptions of any alternatives to the proposed actions under any given project.
- Mandates that projects comply with all applicable endangered species and other such protections.
- Provides for public collaboration with the hazardous fuels reduction projects.
- Establishes procedures by which a person could seek administrative redress regarding an authorized project—prior to filing a civil action challenging a project.
- **An individual could bring a civil action in federal court challenging a project only after exhausting the administrative review process, which itself can be initiated after the completion of the environmental assessment and before the issuance of a final decision on a project.**
- Caps preliminary injunctions regarding authorized projects at ~~45~~ **60** days. Renewals of injunctions would be permissible (~~congressional notification required~~).
- ~~Encourages courts handling projects cases to make a final determination within 100 days from the date the complaint or appeal is filed.~~
- Requires a court considering a motion for an injunction to balance the short-term and long-term effects of allowing the project to go forward with the short-term and long-term effects of halting the project. ~~Further, courts would need to give “weight” to the appropriate Secretary’s input instead of giving deference to it.~~
- **Establishes a detailed monitoring process for the appropriate Departments.**
- **Requires reports every five years on the status of hazardous fuels reductions projects.**
- **Authorizes appropriations of \$760 million for each fiscal year for these fuels reductions projects and related activities (including grants).**

Title II—Biomass

- **Expands the existing Biomass Use Research Program and increases its annual authorization from \$49 million to \$54 million.**
- **Establishes a new \$5 million-a-year (FY2004-FY2008) grant program for increased use of biomass in rural areas.**
- ~~States that the by-products of preventative treatment (wood, brush, thinnings, chips, etc.) removed from forest and rangelands represent an abundant supply of biomass for energy facilities and other businesses (yet that there are few markets for such biomass currently).~~
- **Authorizes \$5 million annually (FY2004-FY2008) for** the Secretary of Agriculture to make grants to any person that owns or operates a facility that uses biomass as a raw material to produce electricity, useful heat, transportation fuels, or substitutes for petroleum-based products. These grants would be to “offset the costs incurred to purchase biomass.”

- ~~Caps grants at \$20 per green ton of biomass delivered.~~
- ~~Requires that grant recipients give the appropriate federal Department access to their respective records and facilities to monitor the use of grant funds.~~
- ~~Authorizes the appropriate Department to make grants of no more than \$100,000 each to people for offsetting the costs of projects to add value to biomass (with preference to people in small and rural communities).~~
- ~~Authorizes appropriations for both grant programs combined of \$25 million for each of fiscal years 2004 through 2008.~~
- ~~Requires a report to Congress in 2010 on the progress of using biomass and the economic impacts of such usage.~~

Title III—Watershed Forestry Assistance

- Establishes a Watershed Forestry Assistance Program in which the Forest Service could provide technical, financial, and other assistance to state forestry officials **or universities** for expanding forest stewardship activities to protect watersheds on non-federal forested and potentially forested lands. Includes a federal cost-sharing program (75% of project costs could come from this program; an additional 15% of project costs could come from other federal sources; the rest must come from non-federal sources).
- Allows state forestry officials to make awards to communities, nonprofits, and **(willing)** nonindustrial private forest landowners under this program.
- Authorizes appropriations for this program of \$15 million for each of fiscal years 2004 through 2008.
- **Establishes a new Tribal Watershed Forestry Assistance Program, similar to the program just described—except for the activities on tribal lands.**
- **Authorizes appropriations for the tribal program of \$2.5 million for each of fiscal years 2004 through 2008.**

Title IV—Insect Infestations and Related Diseases

- States that high levels of tree mortality due to insect infestation result in increased fire risk, loss of old growth, loss of endangered species, degraded watershed conditions, and other negative environmental impacts.
- Highlights the problems from certain insects, including the bark beetle, hemlock woolly adelgid, emerald ash borer, southern pine beetle, and red oak borer.
- Directs the Forest Service and U.S. Geological Survey to conduct an accelerated program to plan, conduct, and promote comprehensive information-gathering on the problem insects (including strategies for combating these insects and therefore improving forest health).
- Directs the Agriculture Secretary to conduct this insect program in cooperation with scientists from universities, forestry schools, state agencies, and private landowners.
- Requires the insect assessment projects be peer reviewed for scientific merit. The peer review team must include non-governmental experts (i.e. the peer review team cannot be completely comprised of USFS employees).
- Authorizes assessments of insect infestations on federal lands (with certain lands excepted), as long as each assessment covers no more than 1000 acres and the total of all assessments covers no more than 250,000 acres.

- Prohibits the use of insecticides in municipal watersheds.
- Provides for public notice and comment.
- Authorizes “such sums as may be necessary” for these assessments for fiscal years 2004 through 2008 (estimated by CBO at \$10 million a year).

Title V—Healthy Forests Reserve Program

- Establishes a new healthy forests program (under the Forest Service, in cooperation with the ~~U.S. Fish and Wildlife Service~~ **Departments of the Interior and Commerce**) for protecting, restoring, and enhancing degraded forest ecosystems to promote the recovery of threatened and endangered species, improve biodiversity, and enhance carbon sequestration.
- Focuses the program on rare forest ecosystems on private lands whose participation would increase the likelihood of protecting threatened or endangered animals and plants.
- Requires consent of the landowners for inclusion of such lands in this program, and establishes methods of enrollment.
- Caps the acres of enrolled lands at ~~one~~ **two** million.
- Requires conservation plans (developed by willing owners ~~and the U.S. Fish and Wildlife Service~~ **and the appropriate Departments**) for enrolled lands to **restore and enhance habitat for endangered species.**
- ~~➤ Requires that conservation plans maximize the environmental benefits per dollar expended.~~
- Authorizes appropriate state agencies and nonprofit conservation organizations to assist in this program.
- Provides for financial assistance to participants.
- Authorizes appropriations for this program of ~~\$15 million for each of fiscal years 2004 through 2008~~ **\$25 million in FY2004 and “such sums” for FY2005-FY2008.**

Title VI—Miscellaneous

- Directs the Secretary of Agriculture to carry out a comprehensive program to inventory, monitor, characterize, assess, and identify forests on public and private (with owner’s consent) lands, with the intention of developing an early warning system for potential catastrophic environmental threats to forests.
- Focuses on isolating and treating such treats before they get out of control.
- Authorizes appropriations for this program of \$5 million for each of fiscal years 2004 through 2008.

Additional Background: According to the House Agriculture Committee, in Report 108-96,

Forest and rangeland ecosystems in the United States are being decimated at an alarming rate by large-scale catastrophic wildfire and massive outbreaks of disease, insect infestation, and invasive species. Federal foresters estimate that an astounding 190 million acres of land managed by the Secretary of Agriculture and the Secretary of Interior are at an unnatural height of risk to catastrophic wildfire. Of that, over seventy million acres are at extreme risk to catastrophic wildfire in the immediate future. The summers of 2000 and 2002 were the two largest and most destructive fire seasons in the last fifty years. And, at this very moment, we are days away from the beginning of the 2003 fire season where communities in much of the interior West, south/central Alaska, portions of California, western Great Lake states and

northern Maine are bracing for an above normal fire season due to dangerously dense forest fuel conditions, persistent drought, limited winter snowfall, and early snow melts.

Committee Action: On May 1, 2003, the legislation was referred to the Committee on Agriculture, the Committee on Resources, and the Judiciary Committee. On May 8, 2003, the Agriculture Committee marked up and reported the bill favorably by voice vote. On May 14, 2003, the Judiciary Committee marked up and reported the bill favorably by a vote of 18-13.

Administration Position: Every indication is that the Bush Administration supports this legislation.

Cost to Taxpayers: The conference report would authorize \$832.5 million in FY2004 and \$4,162.5 million (i.e. **\$4.2 billion**) over the FY2004-FY2008 period. The original House bill authorized \$70 million in FY2004 and \$350 million over the FY2004-2008 period.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill would create eight new programs and expand one other.

Constitutional Authority: The Agriculture Committee, in House Report 108-96 Part I, cites constitutional authority in Article I, Section 8, Clause 18 (“necessary and proper”). The Judiciary Committee, in House Report 108-96 Part II, cites constitutional authority in Article I, Section 8 (without citing a specific clause) and Article III, Section 1 (establishment of federal courts).

RSC Staff Contact: Paul Teller, paul.teller@mail.house.gov, (202) 226-9718