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NATIONAL FOREST INSECT AND DISEASE EMERGENCY ACT

SEPTEMBER 27, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 2798]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2798) to reduce the risk of catastrophic wildfire through the facilitation of insect and disease infestation treatment of National Forest System and adjacent land, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Forest Insect and Disease Emergency Act of 2010”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to ensure that adequate emphasis is placed on the mitigation of hazards posed by landscape-scale epidemics of bark beetles and other insects and diseases through the identification of areas affected by the epidemics, including areas in which resulting hazard trees pose a high risk to public health and safety;

(2) to help focus resources within areas characterized by landscape-scale insect or disease epidemics to mitigate hazards associated with—

(A) falling trees; and

(B) wildfire; and

(3) to authorize good neighbor agreements between State and Federal agencies to provide more effective and efficient forest management across certain Federal land boundaries.

SEC. 3. DEFINITIONS.

In this Act:

89-010

(1) **AFFECTED STATE.**—The term “affected State” includes each of the States of—

- (A) Alaska;
- (B) Arizona;
- (C) California;
- (D) Colorado;
- (E) Idaho;
- (F) Montana;
- (G) Nevada;
- (H) New Mexico;
- (I) Oregon;
- (J) South Dakota;
- (K) Utah;
- (L) Washington; and
- (M) Wyoming.

(2) **HIGH-RISK AREA.**—The term “high-risk area” means a road, trail, or other area that poses a high risk to public health or safety due to hazard trees resulting from landscape-scale tree mortality caused by an insect or disease epidemic.

(3) **INSECT OR DISEASE EPIDEMIC AREA.**—The term “insect or disease epidemic area” means an area of National Forest System land in which landscape-scale tree mortality caused by an insect or disease epidemic exists.

(4) **NATIONAL FOREST SYSTEM.**—The term “National Forest System” has the meaning given the term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

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

SEC. 4. DESIGNATION OF AREAS.

(a) IDENTIFICATION OF HIGH-RISK AREAS.—

(1) **IN GENERAL.**—As soon as practicable after the date of enactment of this Act, the Secretary shall identify by map or other appropriate means high-risk areas within the National Forest System in the affected States.

(2) **PUBLIC EDUCATION.**—In conjunction with the information developed pursuant to this subsection, the Secretary shall develop educational materials that describe the risk posed by hazard trees in high-risk areas and measures that can be taken by the public to avoid or reduce that risk.

(3) **CONSULTATION.**—In developing the information and educational materials required by this subsection, the Secretary shall consult with interested State, local, and tribal governments, first responders, and other stakeholders.

(4) **UPDATES.**—The Secretary shall periodically review and revise the information and educational materials required by this subsection to reflect the best available information.

(5) **PUBLIC AVAILABILITY.**—The information and associated educational materials required by this subsection shall be on file and available for public inspection, including in the appropriate offices of the Forest Service.

(b) IDENTIFICATION OF INSECT AND DISEASE EPIDEMIC AREAS.—

(1) **IN GENERAL.**—As soon as practicable after the date of enactment of this Act, the Secretary shall identify by map or other appropriate means insect or disease epidemic areas within the National Forest System in the affected States.

(2) **REQUIRED INFORMATION.**—The information required by paragraph (1) shall include—

- (A) a geographic estimate of the annual mortality caused by the insect or disease epidemic; and
- (B) a projection, based on the best available science, of future tree mortality resulting from the insect or disease epidemic.

(3) **UPDATES.**—The Secretary shall periodically review and revise the information required by paragraph (1) to reflect the best available information.

(4) **AVAILABILITY.**—The information required by this subsection shall be made available to—

- (A) communities in or adjacent to an insect or disease epidemic area that have developed a community wildfire protection plan (as defined in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511));
- (B) fire departments and other wildfire-fighting organizations responding to, or likely to respond to, a wildfire in an insect or disease epidemic area; and
- (C) the public through the appropriate offices of the Forest Service.

(c) **CONTRACTS AND FINANCIAL ASSISTANCE.**—To help collect, develop, monitor, and distribute the information and materials required by this section, the Secretary may

enter into contracts or provide financial assistance through cooperative agreements in accordance with section 8 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2104) with—

- (1) the State Forester or equivalent State official of an affected State;
- (2) educational institutions; or
- (3) other organizations.

SEC. 5. SUPPORT FOR RESTORATION AND RESPONSE.

(a) **SUPPORT FOR BIOMASS UTILIZATION.**—To help reduce the risk to public health and safety from hazard trees and wildfires and to restore ecosystems affected by insect and disease epidemics, the Secretary may assist State and local governments, Indian tribes, private landowners, and other persons in affected States with the collection, harvest, storage, and transportation of eligible material from areas identified pursuant to section 4(b) in accordance with section 9011(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8111(d)).

(b) **RESTORATION ASSISTANCE FOR PRIVATE LANDOWNERS.**—The Secretary may make payments to an owner of nonindustrial private forest land in an affected State to carry out emergency measures to restore the land after an insect or disease infestation in accordance with the emergency forest restoration program established under section 407 of the Agricultural Credit Act of 1978 (16 U.S.C. 2206).

(c) **NATIONAL FOREST HAZARDOUS FUEL REDUCTION.**—The Secretary shall carry out authorized hazardous fuel reduction projects in affected States on National Forest System land on which an epidemic of disease or insects poses a significant threat to an ecosystem component, or forest or rangeland resource, in accordance with the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 et seq.).

SEC. 6. 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 on adjacent Federal land and non-Federal land by either the Secretary or a Governor pursuant to—

- (A) a good neighbor agreement; and
- (B) a cooperative agreement or contract entered into under subsection (c).

(2) **FEDERAL LAND.**—

(A) **IN GENERAL.**—The term “Federal land” means the following land in a State located in whole or in part west of the 100th meridian:

- (i) National Forest System land.
- (ii) Public lands (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, National Wild and Scenic Rivers System, National Trails System, or National Landscape Conservation System;
- (ii) a National Monument, National Preserve, National Scenic Area, or National Recreation Area; or
- (iii) a wilderness study area.

(3) **FOREST, RANGELAND, AND WATERSHED RESTORATION SERVICES.**—The term “forest, rangeland, and watershed restoration services” means—

- (A) activities to treat insect- and disease-infected trees;
- (B) activities to reduce hazardous fuels;
- (C) activities to maintain roads and trails that cross a boundary between Federal land and non-Federal land; and
- (D) any other activities to restore or improve forest, rangeland, or watershed health, including fish and wildlife habitat.

(4) **GOOD NEIGHBOR AGREEMENT.**—The term “good neighbor agreement” means—

- (A) a nonfunding master cooperative agreement entered into between the Secretary and a Governor under chapter 63 of title 31, United States Code; or
- (B) a memorandum of agreement or understanding entered into between the Secretary and a Governor.

(5) **GOVERNOR.**—The term “Governor” means the Governor or any other appropriate executive official of an affected State.

(6) **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) **IN GENERAL.**—The Secretary may enter into a good neighbor agreement with a Governor to coordinate the procurement and implementation of authorized restoration services in accordance with this section.
- (2) **PUBLIC NOTICE AND COMMENT.**—The Secretary shall make each good neighbor agreement available to the public.
- (c) **TASK ORDERS, CONTRACTS, AND COOPERATIVE AGREEMENTS.**—
- (1) **IN GENERAL.**—The Secretary may issue a task order for, or enter into a contract (including a sole source contract) or cooperative agreement with, a Governor to carry out authorized restoration services.
- (2) **REQUIREMENTS.**—Each task order, contract, or cooperative agreement entered into under paragraph (1) shall be executed in accordance with—
- (A) chapter 63 of title 31, United States Code; and
- (B) the applicable good neighbor agreement.
- (d) **CONTRACT AND SUBCONTRACT REQUIREMENTS.**—
- (1) **REQUIREMENTS FOR SERVICES ON FEDERAL LAND.**—
- (A) **IN GENERAL.**—For authorized restoration services carried out on Federal land under subsection (c), each contract and subcontract issued under the authority of a Governor shall include the provisions described in subparagraph (B) that would have been included in the contract had the Secretary been a party to the contract.
- (B) **APPLICABLE PROVISIONS.**—The provisions referred to in subparagraph (A) are provisions for—
- (i) wages and benefits for workers employed by contractors and subcontractors required by—
- (I) subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code; and
- (II) chapter 6 of title 41, United States Code;
- (ii) nondiscrimination; and
- (iii) worker safety and protection.
- (2) **REQUIREMENTS FOR SMALL BUSINESSES.**—Each contract and subcontract for authorized restoration services under subsection (c) shall comply with provisions for small business assistance and protection that would have been applicable to the contract had the Secretary been a party to the contract.
- (3) **LIABILITY.**—The Secretary shall include provisions in each good neighbor agreement, contract, or cooperative agreement, as appropriate, governing the potential liability of the State and the Secretary for actions carried out under this Act.
- (e) **TERMINATION OF EFFECTIVENESS.**—
- (1) **IN GENERAL.**—The authority of the Secretary to enter into cooperative agreements and contracts under this section terminates on September 30, 2019.
- (2) **CONTRACT DATE.**—The termination date of a cooperative agreement or contract entered into under this section shall not extend beyond September 30, 2020.
- (3) **CONSOLIDATED AUTHORITY.**—
- (A) **FEDERAL AND STATE COOPERATIVE WATERSHED RESTORATION AND PROTECTION IN COLORADO.**—Section 331 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 996) is repealed.
- (B) **FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH.**—Section 337 of the Department of the Interior and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3102) is repealed.
- (4) **EXISTING CONTRACTS.**—Nothing in the amendments made by this section affects contracts in effect on the day before the date of enactment of this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act such sums as are necessary.

PURPOSE

The purpose of S. 2798 is to help mitigate the hazards posed by landscape-scale epidemics of bark beetles and other insects and diseases in the West, and to authorize certain cooperative agreements and contracts with State agencies to facilitate hazardous fuel reduction and forest restoration projects on adjacent Federal and non-Federal land.

BACKGROUND AND NEED

Bark beetles are a large and diverse group of insects that typically feed on the tissue of woody plants and often directly kill the host tree. They are important disturbance agents in western coniferous forests, influencing forest ecosystem structure and function by regulating certain aspects of primary production, nutrient cycling, ecological succession, and the size, distribution, and abundance of trees. These mortality events are part of the ecology of western forests and positively influence many ecological processes, but the economic and social implications also can be significant. For example, bark beetle infestations influence timber and fiber production, water quality and quantity, fish and wildlife populations, recreation, grazing capacity, biodiversity, endangered species, real estate values, and cultural resources in a variety of ways.

Bark beetle epidemics have been recorded in the West intermittently in recent centuries, but some of the current activity exceeds recorded levels and has been observed in some ecosystems where such activity never or seldom has been recorded. In 2008, nearly 9.0 million acres of tree mortality caused by insects and disease were reported in the United States. Nearly 8.0 million of those acres were caused by various species of western bark beetles, 69 percent (6.2 million acres) of which were caused by the mountain pine beetle primarily in Montana, Colorado, Wyoming, Idaho, Oregon, Utah, Washington, California, South Dakota, Nevada, and Arizona. Meanwhile, a bark beetle epidemic that killed millions of acres of piñon-juniper woodlands and ponderosa pine forests in Arizona and New Mexico earlier this decade has subsided, as has a spruce beetle outbreak that affected millions of acres in Alaska.

There appears to be significant scientific uncertainty regarding what resource management responses to bark beetle infestations may be appropriate. Moreover, some responses may be appropriate in some circumstances or ecosystems, but not others. For example, anecdotal information indicates that while thinning overstocked stands in some forest types may increase resistance to some bark beetles, the process of cutting, chipping, or prescribed burning also can increase bark beetle activity. The affect of bark beetle infestations on fire behavior also remains subject to uncertainty and scientific debate. For example, there have been instances of increased fire activity at unusually high elevations following large insect outbreaks. In other cases, wildfires have burned at lower severity in areas with high mortality caused by bark beetles than in adjacent areas that were unaffected by bark beetles.

In any case, the Forest Service has been active both in conducting research and in developing management responses to insect and disease epidemics. For example, the Rocky Mountain Region of the Forest Service has developed a "Bark Beetle Incident Implementation Plan" that provides "a strategy which will be used to develop collaborative opportunities to combat the bark beetle effects across the different land ownerships affected by the mountain pine beetle epidemic." The Plan identifies a clear need to remove the dead and dying trees along roads and trails, and within developed recreational sites, work centers, and other areas frequented by the public. These trees can pose a high risk to public health and safety when they fall due to rot. The Forest Service allocated an

additional \$40 million to the Region in December of 2009 to address such public safety concerns and forest health needs, and the needs are expected to increase significantly in the coming years as large numbers of trees fall.

S. 2798 would help to mitigate the hazards posed by insect and disease epidemics by directing the Secretary of Agriculture to map “high-risk areas” in the West where hazard trees killed by landscape-scale bark beetle infestations pose a high risk to public health and safety, and to provide that information and related educational materials to the public. It also would direct the Secretary to map landscape-scale tree mortality and to provide that information to communities and other stakeholders, and provide a number of authorities to support the response to the epidemic, including “good neighbor” authority for the Forest Service and Bureau of Land Management (“BLM”) to conduct insect and disease treatments, hazardous fuel reduction, and other projects across Federal land boundaries using a single crew of Federal or State employees or a private contractor.

LEGISLATIVE HISTORY

S. 2798 was introduced by Senator Mark Udall on November 18, 2009. The Subcommittee on Public Lands and Forests held a hearing on the bill on April 21, 2010. At its business meeting on August 5, 2010, the Committee on Energy and Natural Resources ordered S. 2798 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on August 5 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 2798, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2798, the Committee adopted an amendment in the nature of a substitute. The amendment includes additional direction to the Secretary of Agriculture to map “high-risk areas” in the West where hazard trees killed by landscape-scale bark beetle infestations pose a high risk to public health and safety, and to provide that information and related educational materials to the public. The amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2 provides the purposes of the bill.

Section 3 provides the definitions for the bill.

Section 4(a) directs the Secretary of Agriculture to identify for the public those roads, trails, and other areas of the National Forest System in the West where landscape-scale tree mortality has resulted in a high risk to public health or safety due to falling trees. It also directs the Secretary to develop educational materials to inform the public of the risk and measures that can be taken to

reduce the risk from such trees, and to update that information in response to changing conditions in the forest.

Subsection (b) directs the Secretary to continue mapping those areas of the National Forest System where there is landscape-scale tree mortality caused by insect or disease epidemics, including the annual progression of the mortality and a projection of the progression of the infestation into the near future. It also directs the Secretary to periodically update the information to reflect the best available information, and to provide the information to stakeholders.

Section 5 authorizes the Secretary to implement programs to provide support for biomass utilization, restoration assistance for private landowners, and hazardous fuel reduction projects on National Forest System land in response to an insect or disease epidemic.

Section 6 authorizes the Secretary and the Secretary of the Interior to enter into “good neighbor agreements” with State agencies.

Subsection (a) provides the definitions for section 6.

Subsection (b) authorizes the Forest Service and BLM to enter into a master cooperative agreement or memorandum of agreement with a State Forester or other appropriate State official to coordinate the procurement and implementation of similar and complementary treatments on adjacent Federal and non-Federal land for insect- and disease-infected trees, hazardous fuels, and other restoration. This “good neighbor agreement” would provide overarching guidance to improve communication and cooperation between the Federal and State agencies to conduct unified cross-boundary projects.

Subsection (c) authorizes task orders, contracts, and cooperative agreements, as appropriate under existing law, to be used to implement a particular project consistent with the good neighbor agreement.

Subsection (d) provides for certain Federal contract requirements to apply in the case where a contract or subcontract is issued under State law to implement a project on Federal land, including wage and benefit requirements of the Davis-Bacon and Service Contract Acts and processes supporting small businesses. Also included are standard clauses included in Federal agency contracts regarding nondiscrimination and worker safety and protection. Finally, this subsection directs the Secretary to include appropriate provisions governing the potential liabilities of the Secretary and the State that may arise during the project contracting or implementation process.

Subsection (e) terminates the authority of the Secretaries to enter into cooperative agreements and contracts under this section on September 30, 2019; requires the agreements and contracts to not extend beyond that day the following year; repeals the existing “pilot” authorities for good neighbor projects; and clarifies that the repeals do not affect existing contracts.

Section 7 authorizes to be appropriated such sums as may be necessary to carry out the bill.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 2798—National Forest Insect and Disease Emergency Act of 2010

S. 2798 would authorize the Forest Service to carry out certain activities to mitigate fire hazards caused by insect and disease infestations in national forests. Based on information provided by the Forest Service, CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under the bill, the Forest Service could enter into contracts with state governments to perform certain restoration activities in national forests. Any amounts paid to states to carry out those activities would be offset by reduced spending for similar activities performed by the agency. In addition, based on information from the Forest Service, CBO estimates that other authorities provided under the bill would not affect the federal budget because those authorities exist under current law.

S. 2798 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2798.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2798, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2798, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at the April 21, 2010, subcommittee hearing on S. 2798, which is printed below:

STATEMENT OF HARRIS SHERMAN, UNDER SECRETARY,
NATURAL RESOURCES AND ENVIRONMENT

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2798, the National Forests Insect and Disease Emergency Act of 2009.

I would like to express my appreciation to Senators Udall and Risch for their leadership in addressing insect and disease issues on millions of acres affecting thousands of communities across the western United States. This legislation: authorizes the Secretary of Agriculture to designate emergency areas in order to mitigate hazards posed by large scale infestations of beetles and insects; directs that increased resources are available within each emergency area to mitigate hazards; and makes existing good neighbor and stewardship contracting authorities permanent. The legislation directs the Secretary to give priority consideration to the removal of hazardous fuels and hazard trees, the restoration of forest health, and the delivery of assistance to state and local governments, Indian tribes, and private landowners in the designated emergency areas. The legislation provides for the application of the Healthy Forest Restoration Act environmental documentation process and a pre-decisional administrative review process to provide for a more rapid response to address these issues. We believe the pathway forward to restore these areas is to work in close coordination with states and private landowners.

CURRENT CHALLENGES

Outbreaks of bark beetles, which are occurring in numerous forest ecosystems across western North America, are the largest in recorded history.¹ Although western forests have experienced regular infestations throughout their history, the current outbreaks are notable for their intensity, extensive range, and simultaneous occurrence in multiple ecosystems. During the last 10 years there have been 17 million acres affected by bark beetles in the interior west (CO, MT, ID, WY, UT, SD).²

The primary difference between previous beetle outbreaks and the current epidemic is that more people now live, work and recreate throughout the lodgepole pine ecosystem. Removing dead trees and other fuels can effectively reduce the risk of fire damage at a local scale, e.g., in the immediate vicinity of a home or community, although the effectiveness of removing dead trees to reduce fire risk at the forest landscape scale is less clear.³ Communities surrounded by dead trees are at increased risk of wildfire and damage from falling trees. In addition, the forest products industry that is vital to the efficient removal of hazardous fuels and hazard trees has been hard hit by the down turn in the market. These important differences along with the scale of infestations require new and innovative approaches that reduce safety threats to people and property while ensuring that the restored for-

¹Bentz, et al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

²USDA, Forest Service—Forest Health Protection Aerial Survey Data. 2009.

³See Dominik Kulakowski, Thomas T. Veblen (2007) *EFFECT OF PRIOR DISTURBANCES ON THE EXTENT AND SEVERITY OF WILDFIRE IN COLORADO SUBALPINE FORESTS*. Ecology: Vol. 88, No. 3.

ests are diverse and resilient to change across the landscape.

PUBLIC HAZARDS

Dead trees pose several significant hazards to public safety including increased risk of catastrophic fire, threats to water supplies as a result of catastrophic fire, and hazard trees along utility corridors, roads, trails, and other infrastructure.

Wildfire Implications

The relationship between bark beetle outbreaks and subsequent fire at the larger landscape scale is not yet fully understood.⁴ Outbreaks in recent years have provided scientists with excellent opportunities to conduct studies and gather new information about the role of bark beetles in western forests, but more research remains to be done.

At the stand level, both crown and surface fire hazards⁵ change over time after a bark beetle outbreak.⁶ The fire hazard in the crown is high in the period one to two years after pine trees die because the dead needles are retained in the tree's crown, stocking the canopy with dry, fine fuels that can ignite quickly during weather conditions conducive to fire.⁷ Importantly, in the grey phase, characterized by dead standing trees with no needles, the risk of ignition and the risk of crown fires actually go down, and that lasts for 10 to 20 years after the tree is attacked.⁸ As the trees lose their needles, the fire risk in the crowns decreases because there is less fuel. The fire hazard at the surface increases as dead trees begin to fall and create a heavy fuel bed with young trees growing up through the tangle of down logs.⁹ In dry, hot, windy weather conditions, fires burning in heavy surface fuels can move fast, burn extremely hot, and be very resistant to control.¹⁰ An additional significant concern is the safety of our firefighters. Large areas of fallen trees limit escape routes for crews,

⁴Bentz, et al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

⁵The term Fire hazard as used here refers specifically to the state of fuels in a given stand— independent of variables such as temperature, wind, and precipitation that influence fuel moisture content and fire occurrence.

⁶Bentz, et al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

⁷Page, W.; Jenkins, M. 2007. Mountain pine beetle-induced changes to selected lodgepole pine fuel complexes within the intermountain region. *Forest Science* 53(4):507–518.

Page, W.; Jenkins, M. 2007. Predicted Fire Behavior in Selected Mountain Pine Beetle-Infested Lodgepole Pine. *Forest Science* 53(6):662–674.

Hawkes, B. 2008. Effects of the mountain pine beetle on fuels and fire behaviour. In *Mountain Pine Beetle: From Lessons Learned to Community-based Solutions Conference Proceedings*, June 10–11, 2008. *BC Journal of Ecosystems and Management* 9(3):77–83. http://www.forrex.org/publications/jem/ISS49/vol9_no3_MPBconference.pdf.

Jenkins, M., Hebertson E., Page, W. and Jorgensen, C. 2008. Bark beetles, fuels, fires and implications for forest management in the Intermountain West. *Forest Ecology and Management* 254 (2008) 16–34.

⁸See Dominik Kulakowski, Thomas T. Veblen (2007) *EFFECT OF PRIOR DISTURBANCES ON THE EXTENT AND SEVERITY OF WILDFIRE IN COLORADO SUBALPINE FORESTS*. *Ecology*: Vol. 88, No. 3, pp. 759–769.

⁹Bentz, et al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

¹⁰Barrows, J. 1951. *Fire Behavior in the Northern Rocky Mountains*. Station Paper No. 29. USDA Forest Service, Northern Rocky Mountain Forest and Range Experiment Station, Missoula MT. 133 pages.

severely limiting our ability to deploy firefighters in these areas.¹¹

A wildfire burning in the heavy fuels close to the soil can literally bake the soil, sterilizing it and sometimes leaving a water-repellent surface that sheds rain, and leads to severe gully erosion, debris flows into reservoirs and streams, and flood damage. We experienced these effects after the Hayman Fire in central Colorado in 2002. After the Buffalo Creek Fire in 1996, Strontia Springs Reservoir filled with sediment that washed off burned areas after heavy rains, and the South Platte River was running brown with mud.

Hazard Trees

In certain areas, dead trees are an immediate hazard because of the increased risk they may fall and damage property or hurt people. For example, in the beetle-infested area of northern Colorado and southern Wyoming, over 900 miles of trails and 3500 miles of roads are lined with dead trees that are at high risk of falling. There are hazard trees on more than 21,000 acres of developed recreation sites—such as campgrounds and picnic areas. Power lines and communication sites are also threatened by hazard trees. There are more than six thousand acres of right-of-way corridors for authorized transmission and distribution lines in the area affected by bark beetle infestation in northern Colorado and southern Wyoming.¹² Forest Service resource specialists have estimated this represents over 1000 miles of transmission lines. When dead trees within and bordering on transmission corridors fall on lines they can start wildfires and disrupt power supplies to cities and towns.

CURRENT EFFORTS

No effective treatment for suppression of large-scale pine beetle outbreaks currently exists, but the agencies within the Department are approaching this problem in a variety of ways based upon their individual missions, policies, laws, and management mandates under which they operate. On National Forests that have been affected by bark beetle, we are actively engaged in numerous on-the-ground efforts to address the insect and disease outbreak that this legislation targets. In the areas hardest hit by bark beetles, we modified our 2010 budget allocations to focus resources to mitigate the outbreak.

When Secretary Vilsack articulated his vision for America's forests, he underscored the overriding importance of forest restoration by calling for a commitment to restoration across landscapes—an all-lands approach to forest restoration—by working closely with other landowners to encourage collaborative solutions. Restoring our forests includes mitigating the effects of severe infestations of in-

¹¹ Alexander, M. and Stam, J. 2003. Safety Alert for Wildland Firefighters: Fuel Conditions in Spruce Beetle Killed Forest of Alaska. *Fire Management Today* 63 (2) 25.

¹² Figure derived from data in the Forest Service Special-Use Database System, Region 2.

sects and disease by removing dead trees where appropriate and working across boundaries by cooperating with the states, other governments, and private landowners. Much of the woody material to be removed can be used as a sustainable energy source for our country and other uses such as pellets for wood stoves, house logs, furniture, and decorative items.

As Forest Service Chief, Tom Tidwell, recently stated in testimony on the President's budget, the agency will integrate traditional timber activities predominately within the context of larger restoration objectives, focusing on priority watersheds in most need of stewardship and restoration work, pursuing forest products when they support watershed, wildlife, and restoration goals. We will also greatly expand the use of stewardship contracting authority to meet restoration objectives and build in longer-term contracting certainty for communities and the private sector to invest in the kind of forest restoration infrastructure we will need to achieve these objectives. In this regard and to the extent that S. 2798 is implemented using a science-based and collaborative approach, engaging multiple and diverse stakeholders, this bill will be more consistent with the aspirations and goals of the Administration concerning ecological forest restoration and rural job development.

The Forest Service recognizes the impact a depressed market is having on the forest products industry in much of the West. The forest products industry is a primary partner in accomplishing work integral to sustaining and restoring the health, diversity, and productivity of the National Forest System, and can help us in our work to mitigate the risks of insects and disease. To accomplish the work of effectively and efficiently restoring National Forest System lands to a healthy condition, we need skilled forestry operators, vibrant rural communities, and a healthy forest products industry.

Our experience indicates that an expanded use of the objections process under the Healthy Forest Restoration Act tends to increase direct dialogue between the agency and stakeholders and often results in resolution of concerns before a decision is made, and thus a better, more informed decision results.

CONCERNS

I look forward to further dialogue with Senators Udall and Risch and the committee to consider the following suggestions, concerns and other minor technical input into sections of the legislation.

Biomass

We appreciate the emphasis on biomass production and use to promote a sustainable and renewable energy source for our country that may lead to greater diversification of the wood products markets and the development of new businesses and jobs. However, we would like to work with the committee to understand and address the relationship

between the bill and the Clean Air Act and existing programs and policies.

Stewardship Contracting

We appreciate and value the recognition of the need for stewardship contracting authority as a tool to achieve forest restoration goals on the national forests. We have serious concerns with the methods used to address the challenges of awarding long-term stewardship contracts, and do not believe the provisions in Section 7(a)(1) and (3) is necessary or desirable. The administration has the flexibility to address relevant requirements and is convening a multi-agency working group to identify and assess options for issues related to stewardship contracting, and we look forward to apprising the Committee on progress.

National Environmental Policy Act Provisions

We are concerned about the applicability provisions under Section 4 emergency designations. We are concerned that not subjecting emergency designations to applicable laws and regulations would give the impression that the bill circumvents important environmental protections and we would like to work with you to ensure environmental protections remain. We would also like to work with you to clarify the nature and effect of designating insect and disease emergency areas to better understand applicability to other laws and regulations. Similarly, the Administration has significant concerns about the overly broad waiver contained in Section 4(c)(6)(c).

While the bill recognizes NEPA's applicability to treatment decisions, it does so by expanding the use of the Healthy Forest Restoration Act (HFRA) provisions for NEPA analysis and documentation. The bill needs to provide for an effective NEPA process and include HFRA protections for old-growth forest stands, threatened and endangered species, and other resources. We would like to work with you to ensure that management actions will be consistent with land management plans and consistent with prohibitions and restrictions on removing vegetation from Federal land including roadless areas.

Good Neighbor Authority

As the Departments of Interior and Agriculture testified before this subcommittee in October of 2009, we believe our Nation's forests and public lands face forest health challenges that must be addressed across diverse land ownerships. In these times of limited resources, it is important to leverage workforce and technical capacities and develop partnerships for forest restoration across all lands, while ensuring compliance with existing applicable laws and regulations. However, we believe further study and analysis is needed to better understand the interplay of needs, state and federal contracting and labor law, and regulation before expansion of the authority is authorized. For example, where federal or applicable state contracts

are awarded, we would seek to use competition, consistent with current statutory requirements and the President's March 4, 2009 Memorandum on Government Contracting. We look forward to working with the committee, States, and federal agencies to make suggestions to improve the bill in a manner that meets the needs of key stakeholders.

I want to again thank Senators Udall and Risch for their leadership and commitment to our national forests, their surrounding communities and the forest products infrastructure. I look forward to working with the Senators the committee, and all interested stakeholders on this bill and to help ensure sustainable communities and provide the best land stewardship for our national forests.

This concludes my prepared statement and I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2798, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2001

(Public Law 106–291; 114 Stat. 996; Approved October 11, 2000)

AN ACT Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

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[SEC. 331. FEDERAL AND STATE COOPERATIVE WATERSHED RESTORATION AND PROTECTION IN COLORADO. (a) **USE OF COLORADO STATE FOREST SERVICE.**—The Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the Colorado State Forest Service to perform watershed restoration and protection services on National Forest System lands in the State of Colorado when similar and complementary watershed restoration and protection services are being performed by the State Forest Service on adjacent State or private lands. The types of services that may be extended to National Forest System lands include treatment of insect infected trees, reduction of hazardous fuels, and other activities to restore or improve watersheds or fish and wildlife habitat across ownership boundaries.

[(b) STATE AS AGENT.—Except as provided in subsection (c), a cooperative agreement or contract under subsection (a) may authorize the State Forester of Colorado to serve as the agent for the Forest Service in providing all services necessary to facilitate the performance of watershed restoration and protection services under subsection (a). The services to be performed by the Colorado State Forest Service may be conducted with subcontracts utilizing State contract procedures. Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a) shall not

apply to services performed under a cooperative agreement or contract under subsection (a).

[(c) RETENTION OF NEPA RESPONSIBILITIES.—With respect to any watershed restoration and protection services on National Forest System lands proposed for performance by the Colorado State Forest Service under subsection (a), any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may not be delegated to the State Forester of Colorado or any other officer or employee of the Colorado State Forest Service.

[(d) INCLUSION OF COLORADO BLM LANDS.—The authority provided by this section shall also be available to the Secretary of the Interior with respect to public lands in the State of Colorado administered by the Secretary through the Bureau of Land Management.

[(e) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements and contracts under this section expires September 30, 2013, and the term of any cooperative agreement or contract entered into under this section shall not extend beyond that date.]

CONSOLIDATED APPROPRIATIONS ACT, 2005

(Public Law 108–447; 118 Stat. 3102; Approved December 8, 2004)

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes.

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[SEC. 337. FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH. (a) AUTHORITY.—Until September 30, 2010, the Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the State Forester of the State of Utah to perform forest, rangeland, and watershed restoration services on National Forest System lands in the State of Utah. Restoration services provided are to be on a project to project basis as planned or made ready for implementation under existing authorities of the Forest Service. The types of restoration services that may be contracted under this authority include treatment of insect infected trees, reduction of hazardous fuels, and other activities to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat.

[(b) STATE AS AGENT.—Except as provided in subsection (c), a cooperative agreement or contract under subsection (a) may authorize the State Forester of the State of Utah to serve as agent for the Forest Service in providing services necessary to facilitate the performance and treatment of insect infested trees, reduction of hazardous fuels, and to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat under subsection (a). The services to be performed by the State Forester of Utah may be conducted with subcontracts utilizing State of Utah contract procedures. Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a) shall not

apply to services performed under a cooperative agreement or contract under subsection (a).

[(c) RETENTION OF NEPA RESPONSIBILITIES.—With respect to any treatment activity to restore and improve forest, rangeland, and watershed health including fish and wildlife habitat services on National Forest System lands programmed for treatment by the State Forester of the State of Utah under subsection (a), any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4821 et seq.) may not be delegated to any officer or employee of the State of Utah.]

