

103^D CONGRESS
1ST SESSION

S. 459

To arrest the decline in, and promote the restoration of, the health of forest ecosystems on Federal lands, to reduce the escalating risk to human safety posed by potentially catastrophic wildfires on Federal lands, to require the Secretary of the Interior to establish a special fund for Bureau of Land Management activities in furtherance of forest health, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25 (legislative day, JANUARY 5), 1993

Mr. PACKWOOD (for himself, Mr. GORTON, Mr. CRAIG, Mr. STEVENS, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To arrest the decline in, and promote the restoration of, the health of forest ecosystems on Federal lands, to reduce the escalating risk to human safety posed by potentially catastrophic wildfires on Federal lands, to require the Secretary of the Interior to establish a special fund for Bureau of Land Management activities in furtherance of forest health, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Forests Health
3 Recovery Act of 1993”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the forests on substantial areas of Federal
7 lands are dead or are dying at an unprecedented
8 rate from drought, insect infestation, disease, fire,
9 and other causes;

10 (2) this alarming decline in forest health—

11 (A) threatens entire ecosystems with col-
12 lapse or destruction and endangers human life,
13 property, and communities with catastrophic
14 wildfires; and

15 (B) will inflict substantial economic losses
16 on Federal, State, and local governments and
17 individuals because of the reduction in shared
18 receipts obtained from, and the revenue, in-
19 come, and employment generated by, Federal
20 timber sales;

21 (3) careful management of these dead and
22 dying forests through thinning, salvage, timber
23 stand improvement, reforestation, fuels manage-
24 ment, insect and disease control, and other forest
25 health recovery activities can—

1 (A) forestall or minimize the economic
2 losses;

3 (B) reduce the threat to human life, prop-
4 erty, and communities; and

5 (C) hasten the recovery of forest
6 ecosystems; and

7 (4) to effect the management described in para-
8 graph (3)—

9 (A) the Bureau of Land Management and
10 Forest Service must be authorized to respond
11 more expeditiously and fully, than is permitted
12 by law in effect on the date of enactment of this
13 Act, on Federal lands where forest health prob-
14 lems exist; and

15 (B) the Bureau of Land Management must
16 be accorded authority comparable to that pro-
17 vided by Federal law to the Forest Service to
18 expend receipts from the sales of salvaged tim-
19 ber and other forest products for the purpose of
20 restoring and maintaining forest health.

21 (b) PURPOSES.—The purposes of this Act are to en-
22 courage, and provide authority for, management initiatives
23 on Federal lands to—

24 (1) arrest the escalating deterioration in the
25 health of forests and forest ecosystems, and the at-

1 tendant injury to and destruction of wildlife, water-
2 shed, soil, recreational, economic, and other re-
3 sources and values, that result from natural resource
4 disasters, including catastrophic wildfires, drought,
5 insect infestation, disease, and other natural and
6 human-caused events;

7 (2) minimize the threat to human life, property,
8 and communities from catastrophic wildfires that
9 may originate in the dead and dying forests;

10 (3) reduce the economic losses that are and will
11 be inflicted on all levels of government, communities,
12 and individuals by the loss of forest health; and

13 (4) achieve the long-term restoration and main-
14 tenance of the health of the forests and forest
15 ecosystems.

16 **SEC. 3. DEFINITIONS.**

17 Except as otherwise expressly provided, as used in
18 this Act:

19 (1) FEDERAL LANDS.—The term “Federal
20 lands” means—

21 (A) public lands (as defined in section
22 103(e) of the Federal Land Policy and Manage-
23 ment Act of 1976 (43 U.S.C. 1702(e))); and

24 (B) lands included in the National Forest
25 System (as defined in section 11(a) of the For-

1 est and Rangeland Renewable Resources Plan-
2 ning Act of 1974 (16 U.S.C. 1609(a)).

3 (2) FOREST HEALTH ACTIVITY.—The term
4 “forest health activity” means any thinning, salvage,
5 timber stand improvement, reforestation, controlled
6 burning or other fuels management, insect or disease
7 control, riparian or other habitat improvement, soil
8 stabilization or other water quality improvement, or
9 other activity, the purpose of which is to meet one
10 or more of the objectives described in section 4(a).

11 (3) LAND MANAGEMENT PLAN.—The term
12 “land management plan” means—

13 (A) a land use plan prepared by the Bu-
14 reau of Land Management pursuant to section
15 202 of the Federal Land Policy and Manage-
16 ment Act of 1976 (43 U.S.C. 1712), or other
17 plan currently in effect, for a unit of the Fed-
18 eral lands described in paragraph (1)(A); or

19 (B) a land and resource management plan
20 (or if no final plan is currently in effect, a draft
21 land and resource management plan) prepared
22 by the Forest Service pursuant to section 6 of
23 the Forest and Rangeland Renewable Resources
24 Planning Act of 1974 (16 U.S.C. 1604) for a

1 unit of the Federal lands described in para-
2 graph (1)(B).

3 (4) SECRETARY.—The term “Secretary”
4 means—

5 (A) with respect to Federal lands described
6 in paragraph (1)(A), the Secretary of the Inte-
7 rior, or a designee; and

8 (B) with respect to Federal lands described
9 in paragraph (1)(B), the Secretary of Agri-
10 culture, or a designee.

11 **SEC. 4. FOREST HEALTH ACTIVITIES.**

12 (a) IN GENERAL.—Subject to section 8, the Sec-
13 retary shall prepare for and undertake or authorize forest
14 health activities, individually or in combination, as the
15 Secretary considers necessary to—

16 (1) arrest the deterioration in the health of for-
17 ests and forest ecosystems on Federal lands;

18 (2) restore and maintain the health of the for-
19 ests and forest ecosystems that have suffered or are
20 suffering deteriorated health conditions; or

21 (3) ensure the public safety that is threatened
22 by the deteriorating health of the forests and forest
23 ecosystems.

24 (b) CONSIDERATIONS.—In determining and prepar-
25 ing for the necessary forest health activity, or combination

1 of the activities, for any Federal lands, the Secretary shall
2 consider the significance and conditions of all relevant for-
3 est resources and values, including timber, recreation,
4 wildlife, watershed, and soil, on the lands, and the eco-
5 nomic well-being of individuals and communities economi-
6 cally dependent on the lands.

7 (c) ROLE OF SALES.—

8 (1) IN GENERAL.—The Secretary may offer and
9 award a timber sale as a forest health activity pur-
10 suant to this Act if the sale meets one or more of
11 the objectives described in subsection (a).

12 (2) EFFECT OF COSTS.—No sale shall be pre-
13 cluded because the anticipated total costs of the sale
14 are greater than the anticipated revenues from the
15 sale.

16 (3) HARVEST OF LIVE TREES.—Whenever the
17 harvest of live trees is likely to occur in carrying out
18 a forest health activity, the Secretary shall provide
19 to the public a detailed statement of the determina-
20 tion of the Secretary that the activity meets one or
21 more of the objectives described in subsection (a).

22 **SEC. 5. FUNDING OF FOREST HEALTH ACTIVITIES.**

23 (a) FUNDING OF BUREAU OF LAND MANAGEMENT
24 ACTIVITIES.—

1 (1) ESTABLISHMENT OF FUND.—There is es-
2 tablished in the Treasury of the United States a spe-
3 cial fund (referred to in this subsection as the
4 “fund”) to be used in accordance with paragraph
5 (3), consisting of—

6 (A) such amounts as are appropriated to
7 the fund under paragraph (2); and

8 (B) any interest earned on investment of
9 amounts in the fund under paragraph (4).

10 (2) TRANSFERS TO FUND.—There are appro-
11 priated to the fund amounts equivalent to the Fed-
12 eral shares of moneys received from the disposal of
13 salvage forest products and timber from Federal
14 lands described in section 3(1)(A) pursuant to—

15 (A) the Act entitled “An Act relating to
16 the revested Oregon and California Railroad
17 and reconveyed Coos Bay Wagon Road grant
18 lands situated in the State of Oregon”, ap-
19 proved August 28, 1937 (43 U.S.C. 1181a et
20 seq.);

21 (B) the Act entitled “An Act relating to
22 the disposition of funds derived from the Coos
23 Bay Wagon Road grant lands”, approved May
24 24, 1939 (43 U.S.C. 1181f–l et seq.);

1 (C) the Act entitled “An Act to provide for
2 the disposal of materials on the public lands of
3 the United States”, approved July 31, 1947 (30
4 U.S.C. 601) (commonly known as the “Mate-
5 rials Act of 1947”); and

6 (D) this Act.

7 (3) EXPENDITURES FROM FUND.—Upon re-
8 quest by the Secretary of the Interior, the Secretary
9 of the Treasury shall transfer from the fund to the
10 Secretary of the Interior such sums as the Secretary
11 of the Interior determines are necessary to carry
12 out, on the Federal lands described in section
13 3(1)(A)—

14 (A) the forest health activities—

15 (i) authorized pursuant to section 4;

16 or

17 (ii) described in section 3(2) and au-
18 thorized under any other provision of law;

19 (B) activities to maintain healthy forests
20 and forest ecosystems, including—

21 (i) controlled burning;

22 (ii) site preparation;

23 (iii) tree planting;

24 (iv) protection of seedlings from ani-
25 mal and other environmental elements;

1 (v) release from competing vegetation;

2 and

3 (vi) precommercial thinning;

4 (C) activities to maintain or enhance the
5 health of other ecosystems, including range and
6 nonforested watershed improvement activities;

7 (D) the planning and preparation of sal-
8 vage timber for disposal;

9 (E) the administration of timber sales pur-
10 suant to this Act or other applicable law; and

11 (F) subsequent site preparation, reforest-
12 ation, and forest development activities required
13 on rehabilitated sites.

14 (4) INVESTMENT OF FUNDS.—

15 (A) IN GENERAL.—The Secretary of the
16 Treasury shall invest such portion of the fund
17 as is not, in the judgment of the Secretary, re-
18 quired to meet current withdrawals. Invest-
19 ments may be made only in interest-bearing ob-
20 ligations of the United States.

21 (B) ACQUISITION OF OBLIGATIONS.—For
22 the purpose of investments, obligations may be
23 acquired—

24 (i) on original issue at the issue price;

25 or

1 (ii) by purchase of outstanding obliga-
2 tions at the market price.

3 (C) SALE OF OBLIGATIONS.—Any obliga-
4 tion acquired by the fund may be sold by the
5 Secretary of the Treasury at the market price.

6 (D) CREDITS TO FUND.—The interest on,
7 and the proceeds from the sale or redemption
8 of, any obligations held in the fund shall be
9 credited to and form a part of the fund.

10 (5) TRANSFERS OF AMOUNTS.—

11 (A) IN GENERAL.—The amounts required
12 to be transferred to the fund under this sub-
13 section shall be transferred at least monthly
14 from the general fund of the Treasury to the
15 fund on the basis of estimates made by the Sec-
16 retary of the Treasury.

17 (B) ADJUSTMENTS.—Proper adjustment
18 shall be made in amounts subsequently trans-
19 ferred to the extent prior estimates were in ex-
20 cess of or less than the amounts required to be
21 transferred.

22 (b) FUNDING OF FOREST SERVICE ACTIVITIES.—
23 From the salvage sale fund authorized by section 14(h)
24 of the National Forest Management Act of 1976 (16
25 U.S.C. 472a(h)) and the fund established under section

1 3 of the Act entitled “An Act authorizing the Secretary
2 of Agriculture to enlarge tree-planting operations on na-
3 tional forests, and for other purposes”, approved June 9,
4 1930 (16 U.S.C. 576b) (commonly known as the
5 “Knutson-Vandenberg Act”), the Secretary of Agriculture
6 may use, without further appropriation, such sums as are
7 necessary to carry out on the Federal lands described in
8 section 3(1)(B)—

9 (1) the forest health activities—

10 (A) authorized pursuant to section 4; or

11 (B) described in section 3(2) and author-
12 ized under any other provision of law; and

13 (2) activities to maintain or enhance the health
14 of other ecosystems, including range and nonforested
15 watershed improvement activities.

16 **SEC. 6. ANALYSIS OF FOREST HEALTH ACTIVITIES.**

17 (a) IN GENERAL.—A forest health activity that is not
18 inconsistent with the long-term management goals and ob-
19 jectives of a land management plan for the unit of Federal
20 lands on which the activity is to occur shall be deemed
21 not to be a major Federal action significantly affecting
22 the quality of the human environment for the purpose of
23 section 102(2)(C) of the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4332(2)(C)).

1 (b) EXCLUSIONS FOR CERTAIN ACTIVITIES.—The
2 Secretary shall establish, by regulation, categorical exclu-
3 sions from the requirements established pursuant to such
4 section 102 for certain types of salvage and other forest
5 health activities, based on the extent to which the activity
6 includes selective thinning, no building of new roads, mini-
7 mum loss of healthy standing timber, and other justifying
8 factors.

9 **SEC. 7. REVIEW OF FOREST HEALTH ACTIVITIES.**

10 (a) IN GENERAL.—Unless the Secretary specifically
11 provides for administrative review, a citizen of the United
12 States may seek immediate judicial review of any decision
13 of the Secretary to carry out a forest health activity pursu-
14 ant to section 4.

15 (b) STANDING FOR ADMINISTRATIVE REVIEW.—If
16 the Secretary provides an opportunity for administrative
17 review of a forest health activity and an opportunity for
18 public comment during the preparation or consideration
19 of an activity described in subsection (a), standing to
20 bring an administrative appeal of such an activity shall
21 be available only to persons who have submitted timely
22 comment on the activity.

23 (c) DISTRICT COURT REVIEW.—

24 (1) VENUE.—Judicial review of a forest health
25 activity authorized pursuant to section 4 shall take

1 place only in the district court of the United States
2 for the district in which the Federal lands subject to
3 the forest health activity are located.

4 (2) DEADLINE FOR FILING.—An action brought
5 pursuant to this subsection shall be filed not later
6 than 30 days after the date of publication of the
7 final decision of the Secretary to carry out the forest
8 health activity.

9 (3) DEADLINE FOR DECISION.—In an action
10 brought pursuant to this subsection, a district court
11 shall render a final decision and dissolve any re-
12 straining order or preliminary injunction not later
13 than 60 days after the date of the filing of the
14 action.

15 (d) APPEALS.—

16 (1) DEADLINE FOR FILING.—Any appeal from
17 the final decision of a district court in an action
18 brought pursuant to subsection (c) shall be filed not
19 later than 30 days after the date of the decision.

20 (2) DEADLINE FOR DECISION.—The court of
21 appeals shall render a final decision on the appeal
22 and dissolve any injunction pending appeal not later
23 than 90 days after the date of the filing of the
24 appeal.

1 **SEC. 8. EXCLUDED LANDS.**

2 The Secretary may not prepare, undertake, or au-
3 thorize any forest health activity pursuant to section 4 on
4 any Federal lands located within—

5 (1)(A) any unit of the National Wilderness
6 Preservation System;

7 (B) any other area formally withdrawn from
8 timber harvesting by law;

9 (C) any roadless area designated by Congress
10 for wilderness study; or

11 (D) any roadless area recommended by the Bu-
12 reau of Land Management or Forest Service for wil-
13 derness designation; or

14 (2) any other area in which timber harvesting
15 is expressly prohibited by an applicable land man-
16 agement plan, unless the plan is amended to permit
17 the activity to occur in accordance with section 202
18 of the Federal Land Policy and Management Act of
19 1976 (43 U.S.C. 1712) or section 6 of the Forest
20 and Rangeland Renewable Resources Planning Act
21 of 1974 (16 U.S.C. 1604).

22 **SEC. 9. BUDGET DISCLOSURES.**

23 Beginning with the fiscal budget for the first full fis-
24 cal year following the date of enactment of this Act, re-
25 quests presented by the President to Congress governing
26 activities of the Bureau of Land Management or the For-

1 est Service shall express in qualitative and quantitative
2 terms the extent to which the projected activities under
3 the budget fully achieve the policies and purposes, and im-
4 plement the provisions, of this Act.

5 **SEC. 10. ADVISORY BOARDS.**

6 (a) APPOINTMENT.—

7 (1) IN GENERAL.—The relevant Secretary shall
8 appoint an advisory board (referred to in this section
9 as an “advisory board”) for each Bureau of Land
10 Management district and national forest in Oregon
11 and Washington located in whole or in part east of
12 the Cascade Range on which forest health activities
13 are likely to be undertaken. The relevant Secretary
14 is hereby authorized at his discretion to appoint an
15 advisory board pursuant to this section for other
16 Bureau of Land Management districts and national
17 forests on which forest health activities are likely to
18 be undertaken.

19 (2) COMPOSITION.—An advisory board shall be
20 comprised of not more than seven individuals who,
21 in the judgment of the Secretary, represent a diver-
22 sity of views.

23 (3) COMPENSATION.—A member of an advisory
24 board shall serve without compensation or reim-
25 bursement for expenses.

1 (b) DUTIES.—An advisory board shall advise relevant
2 Federal land managers on general forest health matters
3 in the context of the respective planning efforts of the Bu-
4 reau of Land Management and the Forest Service. In ad-
5 dition, an advisory board may—

6 (1) review proposed forest health activities of
7 the affected unit of Federal land individually or in
8 combination; and

9 (2) present recommendations to the Bureau of
10 Land Management or Forest Service—

11 (A) in the case of any forest health activity
12 determined by the Secretary to constitute an
13 emergency, within fifteen days after receipt of
14 documents pertinent to the review; and

15 (B) in the case of any other forest health
16 activity, within forty-five days after receipt of
17 documents pertinent to the review.

18 (c) The advisory boards shall be named not later than
19 sixty days after enactment of this Act. The advisory
20 boards established under this section shall not be subject
21 to the Federal Advisory Committee Act (86 Stat. 770).

22 **SEC. 11. MONITORING AND ANNUAL FOREST HEALTH RE-**
23 **PORTS.**

24 The Secretary shall annually—

- 1 (1) monitor each forest health activity author-
2 ized pursuant to section 4 on the Federal lands
3 under the jurisdiction of the Secretary; and
4 (2) report to Congress on—
5 (A) the timeliness, effectiveness, and cost
6 of each such activity; and
7 (B) the condition of and trend in health of
8 the forest and forest ecosystem in each unit of
9 the Federal lands under the jurisdiction of the
10 Secretary.

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