

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

June 9, 2015

To: Natural Resource Committee Staff

From: Erica Rhoad, Brent Blevins and Gary Schiff,
Federal Lands Subcommittee

Hearing: Full Committee Markup of H.R. 2647, “*Resilient Federal Forests Act of 2015.*”

Summary of the Bill

H.R. 2647 would expedite and improve forest management activities in units of the National Forest System derived from the public domain and on public lands under the jurisdiction of the Bureau of Land Management in order to return resilience to overgrown, fire-prone forested lands and for other purposes.

Bill Sponsors/Co-Sponsors

Sponsor : Rep. Bruce Westerman (R-AR-04)

Co-Sponsors: Rep. Ryan Zinke (R-MT), Rep. Ann Kirkpatrick (D-AZ-01), Rep. Glenn Thompson (R-PA-05)

Background

The Bill, titled “The Resilient National Forests Act of 2015,” is a compilation of many constructive legislative concepts introduced in this and previous Congresses to address the disastrous consequences of catastrophic wildfire and other threats to our nation’s federal forests and the federal land management agencies’ inability to address those threats.

The Bill does the following:

- Empowers the Forest Service to implement tools immediately to reduce the threat of catastrophic wildfire, insect and disease infestation, and damage to municipal watersheds.
- Expedites the Forest Service’s ability to quickly remove dead trees after wildfires (in limited areas) to pay for reforestation and rehabilitation after fires.
- Incentivizes collaboration and speeds the implementation of collaborative projects.

- Protects collaborative projects from unnecessary delay by requiring bonding for legal challenges. This would discourage arbitrary and frivolous litigation against the Forest Service.
- Ensures robust protection of the environment through environmental reviews, while making environmental process requirements more efficient, reducing project planning times and costs of implementing forest management projects.
- Encourages and speeds Forest Service backlogs for wildlife habitat improvement for wild turkey, ruffed grouse, elk, deer, and other “early seral” species.
- Creates no new federal red-tape or requirements—no new mapping, planning, rule-making or reports.
- Updates and modernizes the Secure Rural Schools law and reauthorizes the Resource Advisory Committees (RACs) that have brought diverse viewpoints together to solve national forest management problems.
- Provides new methods of funding Forest Service projects such as ‘revolving funds’ for projects on national forests funded by states (e.g., Montana, New Mexico, and Oregon have made efforts to fund national forest projects to prevent catastrophic wildfire).

Cost to the US Treasury

Due to the streamlined authorities in this bill, there should be an increase in acres treated, and thus, the Committee does not expect the bill to score.

Administration Position

In testimony before the House Natural Resources Committee prior to H.R. 2647 being introduced, Federal Lands Subcommittee, Chief of the US Forest Service, Tom Tidwell said the Obama Administration supports portions of a discussion draft very similar to the bill and the intent of the bill. The agency’s hearing summary states, “Chief Tidwell opened with his appreciation for the intent of the draft bill to build on success, encourage collaboration, reduce process, add capacity and avoid changes that would polarize forest interests.”

Section-by-Section Analysis

Title 1 – Expedited Environmental Analysis and Availability of Categorical Exclusions to Expedite Forest Management Activities

Sec. 101- Analysis of Only Two Alternatives (Action versus No Action) In Proposed Collaborative Forest Management Activities

- (a) In the case of a forest management project proposed by a collaborative group, resource advisory committee or within a community wildfire protection plan, the Forest Service must only analyze two alternatives:
 - a. An “action alternative”, which is the project proposed by a collaborative process, Resource Advisory Committee (RAC) or Community Wildfire Protection Plan (CWPP); and,
 - b. A “no-action” alternative. The “no action alternative” must consider potential future impacts (such as insect and disease threat, catastrophic wildfire and its impacts on municipal watersheds, wildlife habitat, and other socio-economic factors).

Sec. 102- Categorical Exclusion to Expedite Certain Critical Response Actions

- (a) Authorizes a categorical exclusion for insect and disease, to reduce hazardous fuels loads, protect municipal watersheds, maintain or enhance critical habitat, to increase water yield, or any combination of the purposes listed above.
 - a. Limits total acreage of harvest units covered in the CE to 5,000 acres
 - b. If the project is developed through a collaborative process, RAC, or CWPP then the CE is limited to harvest units totaling 15,000 acres

Sec. 103- Categorical Exclusion to Expedite Certain Salvage Operations in Response to Catastrophic Events

- (a) Authorizes a categorical exclusion for areas burned by wildfire to salvage dead trees and reforest to prevent re-burn, provide for the utilization of burned trees, or to provide a funding source for reforestation.
 - a. Limits total acreage of harvest units covered in the CE to 5,000 acres and one third of the area impacted by the catastrophic event.
 - b. If the project is developed through a collaborative process, RAC, or CWPP then the CE is limited to 15,000 acres
 - c. Limits road building to temporary roads only and requires the decommissioning of the road upon completion of the project
 - d. Requires projects to protect streams and stream buffers as provided in the forest plan
 - e. Requires the development of a reforestation plan (per existing law)

Sec. 104- Categorical Exclusion to Meet Forest Plan Goals for Early Successional Forests

- (a) Authorizes a categorical exclusion to improve, enhance, or create early successional forests for wildlife habitat improvement.
- (b) Limits total acreage of harvest units covered in the CE to 5,000 acres

Sec. 105- Clarification of Existing Categorical Exclusion Authority Related to Insect & Disease Infestation

- (a) Amends the Farm Bill amendments to the Healthy Forest Restoration Act to include Fire Regime IV (Lodgepole pine) in the Insect & Disease Categorical Exclusion included in the Farm Bill. This was inadvertently left out of the original legislation even though Fire Regime I, II and III were included.

Sec. 106 – Compliance with Forest Plan

Forest management activities covered by a categorical exclusion must be consistent with guidance in the Forest Plan.

Title II – Salvage and Reforestation in Response to Catastrophic Events

Sec. 201- Expedited Salvage Operations and Reforestation Activities Following of National Large-Scale Catastrophic Events

- (a) Requires a three month environmental assessment for reforestation activities
- (b) Requires at least 75% of the burned area be reforested within five years.
(Reforestation as defined in the Bill means assuring the forested areas are reforested, through planting trees, surveying for natural regeneration, clearing vegetation around seedlings, etc.)

Sec. 202 – Compliance with Forest Plan

- (a) Requires all projects to comply with forest plans.

Sec. 203 - Prohibition of Restraining Orders, Preliminary Injunctions, and Injunctions Pending Appeal.

- (a) Prohibits preliminary injunctions on temporary restraining orders.

Sec. 204 – Exclusion of Certain Lands

- (a) Prohibits the use of the authority in Wilderness, Roadless, (unless the action is consistent with the forest plan) and any other areas where timber harvest is prohibited by statute.

Title III – Collaborative Project Litigation Requirement

Sec. 301- Definitions

Sec. 302- Bond Requirement as Part of Legal Challenge of Certain Forest Management Activities

- (a) Requires a bond for would-be litigants if they are challenging projects developed through a collaborative process, RAC, or CWPP.
- (b) Allows the Forest Service to recover the costs, expenses and attorney's fees if the Forest Service prevails in the court case.
- (c) Allows the return of the bond to the plaintiff if it prevails on all the actions brought before the court.
- (d) In the case of a settlement, the Forest Service and the plaintiff will share the costs incurred.
- (e) Does not allow for Equal Access to Justice Act payments to plaintiffs

Title IV – Secure Rural Schools & Community Self-Determination Act Amendments

Sec. 401- Use of Reserved Funds for Title II Projects on Federal Land and Certain Non-Federal Land

- (a) Eliminated ‘sorting yard’ requirement
- (b) Requires 50% of Title II funds be spent on projects which include sale of forest products and meet land management objectives.

Sec. 402- Resource Advisory Committees

- (a) Extends Title II Resource Advisory Committee (RAC) functions, membership, and charters and allows RAC’s to function with reduced membership.
- (b) Requires new members to be appointed from within RAC geographic area or neighboring counties (RAC’s are required to have balanced representation from environmental, industry and government interests).

Sec. 403- Program for Title II Self-Sustaining Resource Advisory Committee Projects

- (a) Authorizes the Chief of the Forest Service to choose ten RAC’s that may retain revenue from projects to fund future projects that accomplish forest management objectives.

Sec. 404- Use of Reserved Funds for Title III County Projects

- (a) Allows search and rescue funding to also be spent on patrols, training and equipment purchases.

Title V – Stewardship End Result Contracting

Sec. 501-502 Cancellation Ceiling for Stewardship End Result Contracting Projects

- (a) Amends the Stewardship Contracting Authority so the Forest Service is no longer required to set aside money in the event a stewardship contract is cancelled¹.

Sec. 503- Payment of Portion of Stewardship Project Revenues to County in which Stewardship Project Occurs

- (a) Requires 25% of revenue from a stewardship contract to be deposited in the county in which the project occurred. Prior to this, stewardship contracting was exempt from revenue sharing laws (unlike timber sales).

Sec. 504- Submission of Existing Annual Report

- (a) Amends a report required under stewardship contracting authorities

Title VI – Additional Funding Sources for Forest Management Activities

¹ The Forest Service is currently required to cover potential losses in capital expenditures by a contractor in rare cases (such as if there is a significantly extended government shutdown and the contractor cannot operate as a result). This would allow the Forest Service to utilize funds which were deposited in these accounts for additional project work.

Sec. 601- Definitions

Sec. 602- Availability of Stewardship Project Revenues and Collaborative Forest Landscape Restoration Fund to Cover Forest Management Activity Planning Costs

- (a) Allows the Forest Service to use up to 25% of Stewardship Contracting funds for planning projects (currently the Forest Service prohibits the use of funds for planning. This has created a backlog of projects in need of planning funds).

Sec. 603- State-Supported Planning of Forest Management Activities

- (a) Allows state or other entities to contribute funds for forest management. States can then be repaid through revenues from the projects they funded and establish a 'revolving fund' for future forest management projects. Montana, New Mexico and Oregon are all states that have dedicated funds to forest management on national forests.

Title VII Tribal Forestry Participation and Protection

Sec. 701- Protection of Forest Assets Through Use of Stewardship End Result Contracting and Other Authorities

- (a) Federal land management agencies would have 120 days to respond to tribal request for forest management on agency lands and two years to complete the analysis.

Sec. 702 – Management of Indian Forest Land Authorized to Include Related National Forest System Lands

- (a) Indian tribes may request to conduct forest management activities on federal lands where they have a tribal interest. They would have the authority to conduct those activities with authorities available on Indian lands.

Title VIII – Miscellaneous Forest Management Provisions

Sec. 801- Balancing Short and Long Term Effects of Forest Management Activities in Considering Injunctive Relief

- (a) Any court hearing a case regarding Forest Service action must weigh the benefits of taking short-term action versus the potential long-term harm of inaction (fire, etc.).

Sec. 802- Conditions on Road Decommissioning

- (a) If the Forest Service is considering decommissioning a road in a fire-prone area, the Forest Service must consult with the local government and consider alternatives before taking action. Additionally, the regional forester must sign off on any road closure in a high fire prone area. The Forest Service has been closing and decommissioning roads at a high rate even though these roads are needed to thin forests and fight fires.

Sec. 803- Prohibition on Application of Eastside Screens Requirements on National Forest Lands

- (a) The Northwest Forest plan interim management direction required “eastside screens” meaning no trees over 21” could be cut east of the Cascades in Oregon and Washington states. Grand Fir, a tree species with no ecological value, often grows in excess of 21” in diameter and serves as a ladder fuels for catastrophic wildfire. This provision removes this restriction on Forest Service management and will help to reduce catastrophic wildfire.

Sec. 804- Use of Site-Specific Land and Resource Management Plan Amendments for Certain Projects and Activities

- (a) In many parts of the country, national forests are operating under outdated forest plans (some were last updated in the 80’s and 90’s). As a result, plans may not allow the forest management necessary to successfully thin a forest to prevent catastrophic fire. This provision would allow the Forest Service to amend forest plans in these cases. Public involvement and input is still required.

Sec. 805-Knutson-Vandenberg Act Modifications

- (a) Requires the Forest Service to use “KV” authorities (retained receipts) for certain forest management projects
- (b) Allows the use of KV dollars on any national forest within the Forest Service Region
- (c) Does not allow the Secretary to charge KV with overhead costs

Sec. 806- Exclusion of Certain National Forest System Land

- (a) Prohibits the use of the authority in Wilderness, Roadless (unless the action is consistent with the forest plan) and any other areas where timber harvest is prohibited by statute.

Ramseyer (Showing Existing Law as Amended by the Bill)

<http://naturalresources.house.gov/uploadedfiles/supportinfohr2647.pdf>