

Calendar No. 287

112TH CONGRESS
2^D SESSION

S. 1344

[Report No. 112-126]

To direct the Secretary of Agriculture to take immediate action to recover ecologically and economically from a catastrophic wildfire in the State of Arizona, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11, 2011

Mr. KYL (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JANUARY 13, 2012

Reported under authority of the order of the Senate of December 17, 2011,
by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To direct the Secretary of Agriculture to take immediate action to recover ecologically and economically from a catastrophic wildfire in the State of Arizona, 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 “Arizona Wallow Fire
3 Recovery and Monitoring Act”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to direct the Secretary of
6 Agriculture to take certain actions—

7 (1) to rehabilitate and restore the Wallow Fire
8 Area;

9 (2) to recover material that is fire-damaged, but
10 still merchantable, from the Wallow Fire Area before
11 the material loses economic value;

12 (3) to create defensible space around commu-
13 nities to effectively and safely fight future fires in
14 the vicinity of the Wallow Fire Area;

15 (4) to monitor the environmental and economic
16 effects of the removal of fire-damaged trees from the
17 Wallow Fire Area; and

18 (5) to provide a mechanism to offset the costs
19 of forest restoration in the Wallow Fire Area.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) **BURNED AREA EMERGENCY RESPONSE.**—

23 The term “burned area emergency response” means
24 the process used by the Secretary to plan and imple-
25 ment emergency stabilization actions on Federal

1 land in response to an immediate post-fire condi-
 2 tion—

3 (A) to minimize threats to life or property;

4 or

5 (B) to stabilize and prevent unacceptable
 6 degradation to natural and cultural resources
 7 resulting from the effects of the catastrophic
 8 event.

9 (2) COMMUNITY PROTECTION MANAGEMENT
 10 AREA.—The term “Community Protection Manage-
 11 ment Area” means—

12 (A) the wildland-urban interface in a com-
 13 munity wildfire protection plan;

14 (B) human development areas having spe-
 15 cial significance, including critical communica-
 16 tion sites, high voltage transmission lines, devel-
 17 oped recreation sites, and other structures that,
 18 if destroyed by fire, would result in hardship to
 19 communities; and

20 (C) the fuels adjacent to areas described in
 21 subparagraph (B).

22 (3) COMMUNITY WILDFIRE PROTECTION
 23 PLAN.—The term “community wildfire protection
 24 plan” has the meaning given the term in section 101

1 of the Healthy Forest Restoration Act of 2003 (16
2 U.S.C. 6511).

3 (4) HAZARD TREE AND COMMERCIAL TIMBER
4 EVALUATION.—The term “hazard tree and commer-
5 cial timber evaluation” means an evaluation of the
6 hazard trees and fire-damaged, dead, and dying tim-
7 ber resources on the National Forest System land in
8 the Wallow Fire Area conducted in accordance with
9 section 4.

10 (5) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given the term in section 4 of the
12 Indian Self-Determination and Education Assistance
13 Act (25 U.S.C. 450b).

14 (6) NATIONAL FOREST SYSTEM.—The term
15 “National Forest System” has the meaning given
16 the term in section 11(a) of the Forest and Range-
17 land Renewable Resources Planning Act of 1974 (16
18 U.S.C. 1609(a)).

19 (7) SECRETARY.—The term “Secretary” means
20 the Secretary of Agriculture.

21 (8) TIMBER REMOVAL PROJECT.—The term
22 “timber removal project” means a timber removal
23 project for the Wallow Fire Area identified under a
24 hazard tree and commercial timber evaluation.

1 (9) **WALLOW FIRE.**—The term “Wallow Fire”
2 means the fire that originated in the Bear Wallow
3 Wilderness on May 29, 2011.

4 (10) **WALLOW FIRE AREA.**—The term “Wallow
5 Fire Area” means the approximately 538,000-acre
6 fire perimeter in the State of Arizona, as depicted on
7 the map entitled “Wallow Fire Az-ASF-110152 Pro-
8 gression Map” and dated June 28, 2011.

9 **SEC. 4. HAZARD TREE AND COMMERCIAL TIMBER EVALUA-**
10 **TION.**

11 (a) **IN GENERAL.**—The Secretary shall conduct a
12 hazard tree and commercial timber evaluation that identi-
13 fies timber resources appropriate for removal within the
14 Wallow Fire Area not later than the date that is the ear-
15 lier of—

16 (1) the date that is 30 days after the comple-
17 tion of the burned area emergency response for the
18 Wallow Fire Area; or

19 (2) the date that is 45 days after the date of
20 containment of the Wallow Fire.

21 (b) **REPORT REQUIRED.**—In conducting a hazard
22 tree and commercial timber evaluation under subsection
23 (a), the Secretary shall prepare a report that includes—

24 (1) a description of—

1 (A) the forest conditions in the burned
2 areas of the Wallow Fire Area; and

3 (B) the short- and long-term risks the con-
4 ditions pose to forest users, communities, pri-
5 vate property, and remaining resources;

6 (2) a map of areas for potential hazard tree re-
7 moval; areas for potential fire-damaged commercial
8 tree removal; and areas for potential elimination
9 from harvest consideration; including a delineation
10 of the Community Protection Management Area for
11 the Wallow Fire Area;

12 (3) a map of the burn intensity within the Wal-
13 low Fire Area;

14 (4) a preliminary determination of—

15 (A) the anticipated receipts to be derived
16 from the hazard and fire-damaged commercial
17 timber identified for removal in the Wallow Fire
18 Area;

19 (B) the estimated costs to the Secretary
20 associated with the removal of the timber; and

21 (C) to the maximum extent practicable, re-
22 cepts likely to be lost if action is not taken in
23 a timely manner;

24 (5) a description of 1 or more proposals for
25 timber removal projects providing for the removal of

1 hazard trees and fire-damaged, dead, and dying tim-
2 ber resources in the Wallow Fire Area; and

3 (6) a description of the desired outcomes of re-
4 habilitation and tree removal in burned portions of
5 the Wallow Fire Area.

6 (c) EXCLUDED AREAS.—In identifying areas for tree
7 removal under subsection (a), the Secretary shall exclude
8 high fire-severity burned areas on steep slopes, slopes with
9 an incline greater than 40 percent, riparian areas, and
10 fragile erosive sites, unless tree removal in those areas is
11 necessary to address public health and safety concerns.

12 (d) PUBLIC INVOLVEMENT.—The Secretary shall fa-
13 cilitate the meaningful involvement of State and local offi-
14 cials, Indian tribes, institutions of higher education, and
15 other interested persons during the preparation of the haz-
16 ard tree and commercial timber evaluation conducted
17 under this section.

18 (e) DEADLINE FOR COMPLETION.—Not later than 45
19 days after the date on which the Secretary commences the
20 hazard tree and commercial timber evaluation, the Sec-
21 retary shall complete the hazard tree and commercial tim-
22 ber evaluation.

23 **SEC. 5. TIMBER REMOVAL PROJECTS.**

24 (a) TIMBER REMOVAL PROJECT REQUIREMENTS.—

1 (1) IN GENERAL.—The Secretary shall limit the
2 removal of trees under a timber removal project
3 under this Act to hazard trees and trees that are al-
4 ready down, dead, or severely root-sprung, such that
5 mortality is highly probable.

6 (2) CONSIDERATIONS.—In selecting tree re-
7 moval techniques for a timber removal project under
8 this Act, the Secretary shall take into account the
9 degree of ground disturbances, soil types, soil satu-
10 ration, worker safety, threatened and endangered
11 species, aquatic systems, and other ecological values
12 associated with the site of the timber removal
13 project.

14 (3) MONITORING REQUIREMENTS.—The See-
15 retary shall use an effectiveness monitoring frame-
16 work to assess the ecological and economic effects of
17 tree removal projects carried out under this Act with
18 respect to accomplishing desired outcomes identified
19 in the hazard tree and commercial timber evaluation.

20 (4) LIMITATION.—Nothing in this Act author-
21 izes new permanent road construction for timber re-
22 moval.

23 (5) CONGRESSIONAL INTENT.—It is the intent
24 of Congress that all timber removal projects carried
25 out under this Act be completed by the date that is

1 not later than 18 months after the date of enact-
2 ment of this Act.

3 (b) ENVIRONMENTAL COMPLIANCE.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this Act, the Secretary shall comply with
6 the National Environmental Policy Act of 1969 (42
7 U.S.C. 4321 et seq.) and other applicable laws in
8 planning and conducting timber removal projects.

9 (2) NEPA REQUIREMENTS.—

10 (A) IN GENERAL.—In the case of a timber
11 removal project to be conducted in a Commu-
12 nity Protection Management Area under this
13 Act, the Secretary shall prepare an environ-
14 mental assessment for the proposed agency ac-
15 tion under section 102(2) of the National Envi-
16 ronmental Policy Act of 1969 (42 U.S.C.
17 4332(2)).

18 (B) ALTERNATIVES.—Nothing in this sub-
19 section requires the Secretary to study, develop,
20 or describe any alternative to the proposed
21 agency action in the environmental assessment
22 conducted under subparagraph (A).

23 (C) PUBLIC PARTICIPATION.—The Sec-
24 retary shall provide an opportunity for public
25 participation during the preparation of the envi-

1 ronmental assessment under subparagraph (A),
2 in accordance with existing protocols.

3 ~~(3) ADMINISTRATIVE AND JUDICIAL REVIEW.—~~

4 Timber removal projects carried out under this Act
5 are subject to the special administrative process and
6 judicial review process under sections ~~105~~ and ~~106~~
7 of the Healthy Forests Restoration Act of 2003 (~~16~~
8 U.S.C. ~~6515~~, ~~6516~~).

9 ~~(4) USE OF RECEIPTS.—~~Amounts collected by
10 the Secretary from a timber removal project carried
11 out under this Act shall be available for expenditure
12 by the Secretary without further appropriation for
13 forest restoration treatments on the Apache-
14 Sitgreaves National Forest in the State of Arizona.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Arizona Wallow Fire*
17 *Recovery and Monitoring Act”.*

18 **SEC. 2. DEFINITIONS.**

19 *In this Act:*

20 (1) *COMMUNITY PROTECTION MANAGEMENT*
21 *AREA.—The term “community protection manage-*
22 *ment area” means—*

23 (A) *the wildland-urban interface in a com-*
24 *munity wildfire protection plan; and*

1 (B) human development areas having spe-
 2 cial significance, including critical communica-
 3 tion sites, high voltage transmission lines, devel-
 4 oped recreation sites, and other structures that,
 5 if destroyed by fire, would result in hardship to
 6 communities.

7 (2) *COMMUNITY WILDFIRE PROTECTION PLAN.*—
 8 The term “community wildfire protection plan” has
 9 the meaning given the term in section 101 of the
 10 Healthy Forest Restoration Act of 2003 (16 U.S.C.
 11 6511).

12 (3) *EVALUATION.*—The term “evaluation” means
 13 the evaluation required by section 3(a).

14 (4) *SECRETARY.*—The term “Secretary” means
 15 the Secretary of Agriculture.

16 (5) *WALLOW FIRE AREA.*—The term “Wallow
 17 Fire Area” means the land within the perimeter of
 18 the Wallow Fire, as depicted on the map entitled
 19 “Wallow Fire AZ-ASF-110152 Progression Map” and
 20 dated June 28, 2011.

21 **SEC. 3. HAZARD TREE AND COMMERCIAL TIMBER EVALUA-**
 22 **TION.**

23 (a) *IN GENERAL.*—The Secretary shall conduct an
 24 evaluation of the Wallow Fire Area in accordance with this
 25 section.

1 (b) *TIMELINE.*—To ensure the timely completion of the
2 *evaluation, the Secretary shall—*

3 (1) *not later than 30 days after the date of en-*
4 *actment of this Act, commence the evaluation; and*

5 (2) *not later than 75 days after the date of en-*
6 *actment of this Act, complete the evaluation.*

7 (c) *CONTENTS.*—*The evaluation shall include—*

8 (1) *a map of the burn intensity within the Wal-*
9 *low Fire Area;*

10 (2) *a description of—*

11 (A) *the forest conditions in the burned areas*
12 *of the Wallow Fire Area;*

13 (B) *the short- and long-term risks that the*
14 *conditions in the Wallow Fire Area may pose to*
15 *forest users, communities, private property, and*
16 *natural resources; and*

17 (C) *the actions undertaken by the Forest*
18 *Service to reduce the risks described in subpara-*
19 *graph (B);*

20 (3) *a map and description of areas for potential*
21 *hazard tree removal and areas for potential fire-dam-*
22 *aged commercial tree removal in the Wallow Fire*
23 *Area, including a delineation of the community pro-*
24 *tection management area within the Wallow Fire*
25 *Area;*

1 (4) a preliminary estimate of—

2 (A) the costs and receipts to be derived from
3 the hazard tree and fire-damaged commercial
4 timber identified for potential removal in the
5 Wallow Fire Area; and

6 (B) to the maximum extent practicable, the
7 receipts likely to be lost if action is not taken in
8 a timely manner; and

9 (5) a description of the desired outcomes of reha-
10 bilitation and tree removal in burned portions of the
11 Wallow Fire Area.

12 (d) *EXCLUDED AREAS.*—In identifying areas for po-
13 tential tree removal under subsection (c)(3), the Secretary
14 shall exclude high fire-severity burned areas on steep slopes,
15 slopes with an incline greater than 40 percent, riparian
16 areas, and fragile erosive sites, unless tree removal in those
17 areas is necessary to address concerns relating to public
18 health or safety.

19 **SEC. 4. TIMBER REMOVAL PROJECTS.**

20 (a) *IDENTIFICATION.*—Not later than 90 days after the
21 date of enactment of this Act, the Secretary shall identify
22 1 or more projects to reduce the risks described in section
23 3(c)(2)(B) by removing hazard trees and fire-damaged,
24 dead, and dying timber resources in the Wallow Fire Area.

1 **(b) CONGRESSIONAL INTENT.**—*It is the intent of Con-*
2 *gress that all projects identified under subsection (a) be*
3 *completed by September 30, 2013.*

4 **(c) CONSIDERATIONS.**—

5 **(1) EVALUATION.**—*In identifying projects under*
6 *subsection (a), the Secretary shall consider the results*
7 *of the evaluation.*

8 **(2) TREE REMOVAL TECHNIQUES.**—*In selecting*
9 *tree removal techniques for a project identified under*
10 *subsection (a), the Secretary shall take into account*
11 *the degree of ground disturbances, soil types, soil*
12 *saturation, worker safety, threatened or endangered*
13 *species, aquatic systems, and other ecological values*
14 *associated with the site of the project.*

15 **(d) MONITORING.**—*The Secretary shall use an effec-*
16 *tiveness monitoring framework to assess the ecological and*
17 *economic effects of each project that is identified and car-*
18 *ried out under this section with respect to accomplishing*
19 *the desired outcomes identified in the evaluation.*

20 **(e) LIMITATIONS.**—*In carrying out a project identified*
21 *under subsection (a), the Secretary—*

22 **(1)** *shall focus the removal of trees under the*
23 *project to hazard trees and trees that are already*
24 *down, dead, or so severely root-sprung that mortality*
25 *is highly probable; and*

1 (2) *shall not construct any permanent road*

2 (f) *ADMINISTRATIVE REVIEW.—*

3 (1) *IN GENERAL.—In lieu of an administrative*
 4 *appeal under section 322 of the Department of the In-*
 5 *terior and Related Agencies Appropriations Act, 1993*
 6 *(16 U.S.C. 1612 note; Public Law 102–381), the Sec-*
 7 *retary may subject to administrative review under*
 8 *part 218 of title 36, Code of Federal Regulations (or*
 9 *successor regulations), any collaboratively-developed*
 10 *project to remove hazard trees and fire-damaged,*
 11 *dead, and dying timber resources in the Wallow Fire*
 12 *Area—*

13 (A) *that is identified under subsection (a);*

14 *and*

15 (B) *for which a decision notice or record of*
 16 *decision has been issued by September 30, 2012.*

17 (2) *AUTHORIZED PROJECTS.—A project identi-*
 18 *fied under subsection (a) shall be considered an au-*
 19 *thorized hazardous fuel reduction project for purposes*
 20 *of part 218 of title 36, Code of Federal Regulations*
 21 *(or successor regulations).*

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112TH CONGRESS
2^D SESSION

S. 1344

[Report No. 112-1261]

A BILL

To direct the Secretary of Agriculture to take immediate action to recover ecologically and economically from a catastrophic wildfire in the State of Arizona, and for other purposes.

JANUARY 13, 2012

Reported with an amendment