

112TH CONGRESS
1ST SESSION

S. 1344

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

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arizona Wallow Fire
5 Recovery and Monitoring Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to direct the Secretary of
8 Agriculture to take certain actions—

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

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

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

9 (4) to monitor the environmental and economic
10 effects of the removal of fire-damaged trees from the
11 Wallow Fire Area; and

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

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) BURNED AREA EMERGENCY RESPONSE.—

17 The term “burned area emergency response” means
18 the process used by the Secretary to plan and imple-
19 ment emergency stabilization actions on Federal
20 land in response to an immediate post-fire condi-
21 tion—

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

23 or

24 (B) to stabilize and prevent unacceptable
25 degradation to natural and cultural resources

1 resulting from the effects of the catastrophic
2 event.

3 (2) COMMUNITY PROTECTION MANAGEMENT
4 AREA.—The term “Community Protection Manage-
5 ment Area” means—

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

8 (B) human development areas having spe-
9 cial significance, including critical communica-
10 tion sites, high voltage transmission lines, devel-
11 oped recreation sites, and other structures that,
12 if destroyed by fire, would result in hardship to
13 communities; and

14 (C) the fuels adjacent to areas described in
15 subparagraph (B).

16 (3) COMMUNITY WILDFIRE PROTECTION
17 PLAN.—The term “community wildfire protection
18 plan” has the meaning given the term in section 101
19 of the Healthy Forest Restoration Act of 2003 (16
20 U.S.C. 6511).

21 (4) HAZARD TREE AND COMMERCIAL TIMBER
22 EVALUATION.—The term “hazard tree and commer-
23 cial timber evaluation” means an evaluation of the
24 hazard trees and fire-damaged, dead, and dying tim-
25 ber resources on the National Forest System land in

1 the Wallow Fire Area conducted in accordance with
2 section 4.

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

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

12 (7) SECRETARY.—The term “Secretary” means
13 the Secretary of Agriculture.

14 (8) TIMBER REMOVAL PROJECT.—The term
15 “timber removal project” means a timber removal
16 project for the Wallow Fire Area identified under a
17 hazard tree and commercial timber evaluation.

18 (9) WALLOW FIRE.—The term “Wallow Fire”
19 means the fire that originated in the Bear Wallow
20 Wilderness on May 29, 2011.

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

1 **SEC. 4. HAZARD TREE AND COMMERCIAL TIMBER EVALUA-**
2 **TION.**

3 (a) IN GENERAL.—The Secretary shall conduct a
4 hazard tree and commercial timber evaluation that identi-
5 fies timber resources appropriate for removal within the
6 Wallow Fire Area not later than the date that is the ear-
7 lier of—

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

11 (2) the date that is 45 days after the date of
12 containment of the Wallow Fire.

13 (b) REPORT REQUIRED.—In conducting a hazard
14 tree and commercial timber evaluation under subsection
15 (a), the Secretary shall prepare a report that includes—

16 (1) a description of—

17 (A) the forest conditions in the burned
18 areas of the Wallow Fire Area; and

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

22 (2) a map of areas for potential hazard tree re-
23 moval, areas for potential fire-damaged commercial
24 tree removal, and areas for potential elimination
25 from harvest consideration, including a delineation

1 of the Community Protection Management Area for
2 the Wallow Fire Area;

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

5 (4) a preliminary determination of—

6 (A) the anticipated receipts to be derived
7 from the hazard and fire-damaged commercial
8 timber identified for removal in the Wallow Fire
9 Area;

10 (B) the estimated costs to the Secretary
11 associated with the removal of the timber; and

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

15 (5) a description of 1 or more proposals for
16 timber removal projects providing for the removal of
17 hazard trees and fire-damaged, dead, and dying tim-
18 ber resources in the Wallow Fire Area; and

19 (6) a description of the desired outcomes of re-
20 habilitation and tree removal in burned portions of
21 the Wallow Fire Area.

22 (c) EXCLUDED AREAS.—In identifying areas for tree
23 removal under subsection (a), the Secretary shall exclude
24 high fire-severity burned areas on steep slopes, slopes with
25 an incline greater than 40 percent, riparian areas, and

1 fragile erosive sites, unless tree removal in those areas is
2 necessary to address public health and safety concerns.

3 (d) PUBLIC INVOLVEMENT.—The Secretary shall fa-
4 cilitate the meaningful involvement of State and local offi-
5 cials, Indian tribes, institutions of higher education, and
6 other interested persons during the preparation of the haz-
7 ard tree and commercial timber evaluation conducted
8 under this section.

9 (e) DEADLINE FOR COMPLETION.—Not later than 45
10 days after the date on which the Secretary commences the
11 hazard tree and commercial timber evaluation, the Sec-
12 retary shall complete the hazard tree and commercial tim-
13 ber evaluation.

14 **SEC. 5. TIMBER REMOVAL PROJECTS.**

15 (a) TIMBER REMOVAL PROJECT REQUIREMENTS.—

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

21 (2) CONSIDERATIONS.—In selecting tree re-
22 moval techniques for a timber removal project under
23 this Act, the Secretary shall take into account the
24 degree of ground disturbances, soil types, soil satu-
25 ration, worker safety, threatened and endangered

1 species, aquatic systems, and other ecological values
2 associated with the site of the timber removal
3 project.

4 (3) MONITORING REQUIREMENTS.—The Sec-
5 retary shall use an effectiveness monitoring frame-
6 work to assess the ecological and economic effects of
7 tree removal projects carried out under this Act with
8 respect to accomplishing desired outcomes identified
9 in the hazard tree and commercial timber evaluation.

10 (4) LIMITATION.—Nothing in this Act author-
11 izes new permanent road construction for timber re-
12 moval.

13 (5) CONGRESSIONAL INTENT.—It is the intent
14 of Congress that all timber removal projects carried
15 out under this Act be completed by the date that is
16 not later than 18 months after the date of enact-
17 ment of this Act.

18 (b) ENVIRONMENTAL COMPLIANCE.—

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

24 (2) NEPA REQUIREMENTS.—

1 (A) IN GENERAL.—In the case of a timber
2 removal project to be conducted in a Commu-
3 nity Protection Management Area under this
4 Act, the Secretary shall prepare an environ-
5 mental assessment for the proposed agency ac-
6 tion under section 102(2) of the National Envi-
7 ronmental Policy Act of 1969 (42 U.S.C.
8 4332(2)).

9 (B) ALTERNATIVES.—Nothing in this sub-
10 section requires the Secretary to study, develop,
11 or describe any alternative to the proposed
12 agency action in the environmental assessment
13 conducted under subparagraph (A).

14 (C) PUBLIC PARTICIPATION.—The Sec-
15 retary shall provide an opportunity for public
16 participation during the preparation of the envi-
17 ronmental assessment under subparagraph (A),
18 in accordance with existing protocols.

19 (3) ADMINISTRATIVE AND JUDICIAL REVIEW.—
20 Timber removal projects carried out under this Act
21 are subject to the special administrative process and
22 judicial review process under sections 105 and 106
23 of the Healthy Forests Restoration Act of 2003 (16
24 U.S.C. 6515, 6516).

1 (4) USE OF RECEIPTS.—Amounts collected by
2 the Secretary from a timber removal project carried
3 out under this Act shall be available for expenditure
4 by the Secretary without further appropriation for
5 forest restoration treatments on the Apache-
6 Sitgreaves National Forest in the State of Arizona.

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