

ANALYSIS OF ONLY TWO ALTERNATIVES (ACTION VERSUS NO ACTION) IN PROPOSED COLLABORATIVE FOREST MANAGEMENT ACTIVITIES.

(a) Application to Certain Environmental Assessments and Environmental Impact Statements- This section shall apply whenever the Secretary concerned prepares an environmental assessment or an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) for a forest management activity that--

- (1) is developed through a collaborative process;
- (2) is proposed by a resource advisory committee;
- (3) will occur on lands identified by the Secretary concerned as suitable for timber production;
- (4) will occur on lands designated by the Secretary (or designee thereof) pursuant to section 602(b) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591a(b)), notwithstanding whether such forest management activity is initiated prior to September 30, 2018; or
- (5) is covered by a community wildfire protection plan.

(b) Consideration of Alternatives- In an environmental assessment or environmental impact statement described in subsection (a), the Secretary concerned shall study, develop, and describe only the following two alternatives:

- (1) The forest management activity.
- (2) The alternative of no action.

(c) Elements of No Action Alternative- In the case of the alternative of no action, the Secretary concerned shall consider whether to evaluate--

- (1) the effect of no action on--
 - (A) forest health;
 - (B) habitat diversity;
 - (C) wildfire potential;
 - (D) insect and disease potential; and
 - (E) timber production; and
- (2) the implications of a resulting decline in forest health, loss of habitat diversity, wildfire, or insect or disease infestation, given fire and insect and disease historic cycles, on--
 - (A) domestic water supply in the project area;
 - (B) wildlife habitat loss; and
 - (C) other economic and social factors.

CATEGORICAL EXCLUSION TO EXPEDITE SALVAGE OPERATIONS IN RESPONSE TO CATASTROPHIC EVENTS.

(a) Categorical Exclusion Established- Salvage operations carried out by the Secretary concerned on National Forest System lands or public lands are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) Availability of Categorical Exclusion- On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(c) Acreage Limitation- A salvage operation covered by the categorical exclusion established under subsection (a) may not contain treatment units exceeding a total of 10,000 acres.

(d) Additional Requirements-

(1) STREAM BUFFERS- A salvage operation covered by the categorical exclusion established under subsection (a) shall comply with the standards and guidelines for stream buffers contained in the applicable forest plan unless waived by the Regional Forester, in the case of National Forest System lands, or the State Director of the Bureau of Land Management, in the case of public lands.

(2) REFORESTATION PLAN- A reforestation plan shall be developed under section 3 of the Act of June 9, 1930 (commonly known as the Knutson-Vandenberg Act; 16 U.S.C. 576b), as part of a salvage operation covered by the categorical exclusion established under subsection (a).

CATEGORICAL EXCLUSION TO MEET FOREST PLAN GOALS FOR EARLY SUCCESSIONAL FORESTS.

(a) Categorical Exclusion Established- Forest management activities described in subsection (b) are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) Forest Management Activities Designated for Categorical Exclusion- The forest management activities designated under this section for a categorical exclusion are forest management activities carried out by the Secretary concerned on National Forest System lands or public lands where the primary purpose of such activity is to modify, improve, enhance, or create early successional forests for wildlife habitat improvement and other purposes, consistent with the applicable forest plan.

(c) Availability of Categorical Exclusion- On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(d) Project Goals- To the maximum extent practicable, the Secretary concerned shall design a forest management activity under this section to meet early

successional forest goals in such a manner so as to maximize production and regeneration of priority species, as identified in the forest plan and consistent with the capability of the activity site.

(e) Acreage Limitations- A forest management activity covered by the categorical exclusion established under subsection (a) may not contain treatment units exceeding a total of 10,000 acres.

CATEGORICAL EXCLUSION FOR ROAD SIDE PROJECTS.

(a) Categorical Exclusion Established- Projects carried out by the Secretary concerned to remove hazard trees or to salvage timber for purposes of the protection of public health or safety, water supply, or public infrastructure are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) Availability of Categorical Exclusion- On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(c) Healthy Forests Restoration Act Requirements-

(1) ADMINISTRATIVE REVIEW- A project that is categorically excluded under this section shall be subject to the requirements of subsections (d), (e), and (f) of section 603 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591).

(2) HAZARDOUS FUEL REDUCTION ON FEDERAL LAND- A project that is categorically excluded under this section shall be subject to the requirements of sections 102, 104, 105, and 106 of title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511 et seq.).

CATEGORICAL EXCLUSION TO IMPROVE OR RESTORE NATIONAL FOREST SYSTEM LANDS OR PUBLIC LAND OR REDUCE THE RISK OF WILDFIRE.

(a) Categorical Exclusion Established- Forest management activities described in subsection (b) are a category of actions hereby designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(b) Forest Management Activities Designated for Categorical Exclusion-

(1) DESIGNATION- The forest management activities designated under this section for a categorical exclusion are forest management activities described in paragraph (2) that are carried out by the Secretary

concerned on National Forest System Lands or public lands where the primary purpose of such activity is to improve or restore such lands or reduce the risk of wildfire on those lands.

(2) **ACTIVITIES AUTHORIZED**- The follow activities may be carried out pursuant to the categorical exclusion established under subsection (a):

(A) Removal of juniper trees, medusahead rye, conifer trees, pin. AE6on pine trees, cheatgrass, and other noxious or invasive weeds specified on Federal or State noxious weeds lists through late-season livestock grazing, targeted livestock grazing, prescribed burns, and mechanical treatments.

(B) Performance of hazardous fuels management.

(C) Creation of fuel and fire breaks.

(D) Modification of existing fences in order to distribute livestock and help improve wildlife habitat.

(E) Installation of erosion control devices.

(F) Construction of new and maintenance of permanent infrastructure, including stock ponds, water catchments, and water spring boxes used to benefit livestock and improve wildlife habitat.

(G) Performance of soil treatments, native and non-native seeding, and planting of and transplanting sagebrush, grass, forb, shrub, and other species.

(H) Use of herbicides, so long as the Secretary concerned determines that the activity is otherwise conducted consistently with agency procedures, including any forest plan applicable to the area covered by the activity.

(c) **Availability of Categorical Exclusion**- On and after the date of the enactment of this Act, the Secretary concerned may use the categorical exclusion established under subsection (a) in accordance with this section.

(d) **Acreage Limitations**- A forest management activity covered by the categorical exclusion established under subsection (a) may not exceed 10,000 acres.

(e) **Definitions**- In this section:

(1) **HAZARDOUS FUELS MANAGEMENT**- The term `hazardous fuels management' means any vegetation management activities that reduce the risk of wildfire.

(2) **LATE-SEASON GRAZING**- The term `late-season grazing' means grazing activities that occur after both the invasive species and native perennial species have completed their current-year annual growth cycle until new plant growth begins to appear in the following year.

(3) TARGETED LIVESTOCK GRAZING- The term 'targeted livestock grazing' means grazing used for purposes of hazardous fuel reduction.

INJUNCTIVE RELIEF.

(a) Balancing Short- and Long-Term Effects of Forest Management Activities in Considering Injunctive Relief- As part of its weighing the equities while considering any request for an injunction that applies to any agency action as part of a forest management activity under titles I through IX, the court reviewing the agency action shall balance the impact to the ecosystem likely affected by the forest management activity of--

(1) the short- and long-term effects of undertaking the agency action; against

(2) the short- and long-term effects of not undertaking the action.

(b) Time Limitations for Injunctive Relief-

(1) IN GENERAL- Subject to paragraph (2) the length of any preliminary injunctive relief and stays pending appeal that applies to any agency action as part of a forest management activity under titles I through IX, shall not exceed 60 days.

(2) RENEWAL-

(A) IN GENERAL- A court of competent jurisdiction may issue one or more renewals of any preliminary injunction, or stay pending appeal, granted under paragraph (1).

(B) UPDATES- In each renewal of an injunction in an action, the parties to the action shall present the court with updated information on the status of the authorized forest management activity.

USE OF ARBITRATION INSTEAD OF LITIGATION TO ADDRESS CHALLENGES TO FOREST MANAGEMENT ACTIVITIES.

(a) Discretionary Arbitration Process Pilot Program-

(1) IN GENERAL- The Secretary of Agriculture, with respect to National Forest System lands, and the Secretary of the Interior, with respect to public lands, shall each establish a discretionary arbitration pilot program as an alternative dispute resolution process in lieu of judicial review for the activities described in paragraph (2).

(2) ACTIVITIES DESCRIBED- The Secretary concerned, at the sole discretion of the Secretary, may designate objections or protests to forest

management activities for arbitration under the arbitration pilot program established under paragraph (1).

(3) **MAXIMUM AMOUNT OF ARBITRATIONS-** Under the arbitration pilot program, the Secretary concerned may not arbitrate more than 10 objections or protests to forest management activities in a fiscal year in--

(A) each Forest Service Region; and

(B) each State Region of the Bureau of Land Management.

(4) **DETERMINING AMOUNT OF ARBITRATIONS-** An objection or protest to a forest management activity shall not be counted towards the limitation on number of arbitrations under paragraph (3) unless--

(A) on the date such objection or protest is designated for arbitration, the forest management activity for which such objection or protest is filed has not been the subject of arbitration proceedings under the pilot program; and

(B) the arbitration proceeding has commenced with respect to such objection or protest.

(5) **TERMINATION-** The pilot programs established pursuant to paragraph (1) shall terminate on the date that is 7 years after the date of the enactment of this Act.

(b) **Intervening Parties-**

(1) **REQUIREMENTS-** Any person that submitted a public comment on the forest management activity that is subject to arbitration may intervene in the arbitration--

(A) by endorsing--

(i) the forest management activity; or

(ii) the modification proposal submitted under subparagraph (B); or

(B) by submitting a proposal to further modify the forest management activity.

(2) **DEADLINE FOR SUBMISSION-** With respect to an objection or protest that is designated for arbitration under this subsection (a), a request to intervene in an arbitration must be submitted not later than the date that is 30 days after the date on which such objection or protest was designated for arbitration.

(3) **MULTIPLE PARTIES-** Multiple intervening parties may submit a joint proposal so long as each intervening party meets the eligibility requirements of paragraph (1).

(c) **Appointment of Arbitrator-**

(1) **APPOINTMENT-** The Secretary of Agriculture and the Secretary of the Interior shall jointly develop and publish a list of not fewer than 20

individuals eligible to serve as arbitrators for the pilot programs under this section.

(2) QUALIFICATIONS- In order to be eligible to serve as an arbitrator under this subsection, an individual shall be, on the date of the appointment of such arbitrator--

(A) certified by the American Arbitration Association; and

(B) not a registered lobbyist.

(3) SELECTION OF ARBITRATOR-

(A) IN GENERAL- For each arbitration commenced under this section, the Secretary concerned and each applicable objector or protestor shall agree, not later than 14 days after the agreement process is initiated, on a mutually acceptable arbitrator from the list published under subsection.

(B) APPOINTMENT AFTER 14-DAYS- In the case of an agreement with respect to a mutually acceptable arbitrator not being reached within the 14-day limit described in subparagraph (A), the Secretary concerned shall appoint an arbitrator from the list published under this subsection.

(d) Selection of Proposals-

(1) IN GENERAL- The arbitrator appointed under subsection (c)--

(A) may not modify any of the proposals submitted with the objection, protest, or request to intervene; and

(B) shall select to be conducted--

(i) the forest management activity, as approved by the Secretary; or

(ii) a proposal submitted by an objector or an intervening party.

(2) SELECTION CRITERIA- An arbitrator shall, when selecting a proposal, consider--

(A) whether the proposal is consistent with the applicable forest plan, laws, and regulations;

(B) whether the proposal can be carried out by the Secretary concerned; and

(C) the effect of each proposal on--

(i) forest health;

(ii) habitat diversity;

(iii) wildfire potential;

(iv) insect and disease potential;

(v) timber production; and

(vi) the implications of a resulting decline in forest health, loss of habitat diversity, wildfire, or insect or disease

infestation, given fire and insect and disease historic cycles, on--

(I) domestic water costs;

(II) wildlife habitat loss; and

(III) other economic and social factors.

(e) Effect of Decision- The decision of an arbitrator with respect to the forest management activity--

(1) shall not be considered a major Federal action;

(2) shall be binding; and

(3) shall not be subject to judicial review, except as provided in section 10(a) of title 9, United States Code.

(f) Deadline for Completion- Not later than 90 days after the date on which the arbitration is filed with respect to the forest management activity, the arbitration process shall be completed.

IMPROVEMENTS TO SECTION 202 OF DIVISION O OF H.R. 1625 (needs specific language drafted which we are working on but here are the concepts.)

- Increase allowable project size to at least to 6,000 acres
- Include Fire Regime Groups IV and V in the list of allowable project locations.
- Include lands outside of those designated under section 602(b) Insect and Disease lands within the list of allowable project locations.
- Ensure Sec 106 of the Healthy Forest Restoration Act (Balance of Harms) applies to this categorical exclusion, consistent with current CE authorities provided to the Forest Service by Congress.
- Provide additional agency flexibility by clarifying an applicable Wildfire Resilience Project may be developed and implemented through a collaborative process.
- Revise extraordinary circumstances requirements for the CE to ensure consistency with previously authorized Categorical Exclusions, such as those provided for Insect and Disease.
- Remove best available scientific information language. Possible litigation hook on what is “best”.

IMPROVEMENTS TO SECTION 207 OF DIVISION O OF H.R. 1625

- Include Fire Regime Groups IV and V in the list of allowable project locations.

Additional Report language: Nearly eighty-one million acres of USFS lands are at risk of severe wildfire. The committee is concerned that the current pace and scale of active forest management activities are not sufficient to meet the significant land

management challenges faced by our nation's forests. The committee directs the U.S. Forest Service to develop and immediately implement a comprehensive forest management strategy utilizing all available authorities to maximize treated acreage within the national forest system, including a goal of increasing national forest system cut volumes to at least 6 million board feet annually.