

The Emergency Wildfire and Public Safety Act of 2020
Section-by-Section
August 2020

Section 101 – Three new landscape-level, collaborative wildfire risk reduction projects:

- Requires the Forest Service to conduct three landscape-level, collaborative wildfire risk reduction projects in the West proposed by a Governor. Projects would be subject to a streamlined environmental review process and certain litigation protections.
- Applies Section 106 of the *Healthy Forests Restoration Act*, which establishes injunction timelines and requires courts when considering a motion for an injunction to examine the “balance of harms” comparing the impacts of the project with the impacts of not doing the project.
 - Authorizes the Forest Service to only analyze the proposed action, no action, and one alternative action when conducting the environmental review.
 - Requires plaintiffs to show they are “likely to succeed on the merits” in order for courts to enjoin projects.
- *Background:* Montana and California experience the largest number of lawsuits against forest management projects, many of which are the product of a collaborative process. In both states, dozens of projects are encumbered by litigation or the mere threat of litigation. This section would establish three pilot projects that would be allowed to proceed through expedited environmental and judicial processes when they are developed collaboratively, have a clear objective of reducing wildfire risk, and are limited to specified acres and activities. Courts have sometimes used a lower threshold “serious question” test, which would be replaced under this provision for these three pilot projects with a “likely to succeed on the merits” standard. Other litigation provisions are based on current judicial review standards or the litigation provisions included in the *Healthy Forests Restoration Act*.

Section 102 – Encourages the Forest Service and the Department of the Interior to increase the use of wildfire detection equipment.

- Directs the Department of the Interior and the Department of Agriculture to expedite the placement of wildfire detection equipment such as sensors and cameras and expand the use of satellite data to assist wildfire response.
- *Background:* Early detection of a wildfire can allow land managers to respond more quickly to wildfires and prevent fires from growing out of control, destroying life and property. Leveraging early detection equipment is especially valuable in rural areas.

Section 103 – Wildfire risk reduction activities near existing roads, trails, and transmission lines

- Establishes a new 3,000-acre categorical exclusion to accelerate management near existing roads, trails, and transmission lines.
- Background: According to the Pacific Biodiversity Institute, nearly 90% of wildfires begin within a half-mile of a Forest Service road. This new tool would make it easier for the Forest Service to prioritize management of these areas as part of the effort to mitigate wildfire risks. The 2018 Camp Fire, which killed eighty-six people in Paradise, CA, was caused by electrical transmission lines, according to Cal Fire.

Section 104 - Accelerating Post-Fire restoration and reforestation

- Establishes a new statutory tool to accelerate post-fire restoration and reforestation work on Forest Service land. Based largely on the Forest Service's existing Emergency Situation Determination authority, this provision specifies that the agency must do environmental analysis only on the proposed post-fire project and the scenario of not doing any project, so long as the treatment area is not larger than 10,000 acres.
- Further, while retaining scoping requirements, the provision establishes that the Forest Service is not required to go through the objections process for the Emergency Situation Determination projects. Lastly, the provision establishes that the Forest Service's decision to make an Emergency Situation Determination is not subject to the administrative process.
- Background: Under 36 CFR § 218.21 the Chief and Associate Chief of Forest Service are authorized to make the determination that an emergency situation exists, which is defined as a "situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: Relief from hazards threatening human health and safety; mitigation of threats to natural resources on NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration." Under the existing regulatory authority, the decision to make an Emergency Situation Determination is not subject to administrative review, and the proposed action (project) is not subject to the pre-decisional objection process.

Section 105 - Codifying "New Information"

- Specifies that the Forest Service is not required to reinitiate plan-level consultation with the U.S. Fish and Wildlife Service following the finding of "new information" related to a listed species unless the "new information" is publicly available, peer-reviewed, and consistent with longstanding federal guidelines for scientific information. Allows for the agency to conduct informal, formal, or no consultation as appropriate and allows projects to continue during plan-level consultation.
- Background: In 2015, the Ninth Circuit ruled in *Cottonwood Environmental Law Center v. United States Forest Service* that the Forest Service needed to reinitiate consultation with U.S. Fish and Wildlife Service at the programmatic (plan) level following the 2009 designation of critical habitat for the Canada lynx. The Obama Administration believed

the *Cottonwood* decision had the “potential to cripple” federal land management decision and would impose a “substantial burden” on federal agencies—all without conservation benefit. After the Supreme Court denied the Department of Justice’s writ of certiorari petition, Congress enacted legislation in 2018 establishing that plan-level re-consultation is not required following the listing of a species or designation of critical habitat so long as the relevant Forest Plan is not older than fifteen years. The provision allowed for the plan-level re-consultation to be completed within five years of enactment or the listing of a species, whichever occurred later, in instances where the relevant Forest Plan is older than fifteen years. The 2018 legislation left unaddressed a third trigger for consultation under the *Endangered Species Act*: the finding of “new information,” which this bill would address. According to the Forest Service, new information continues to be a significant litigation issue for Forest Service activities. Since January 2016, there have been eighteen lawsuits involving *Endangered Species Act* “new information” claims in six states. In the same time period, the Forest Service received at least thirty-two notices of intent to sue raising *Endangered Species Act* “new information” as an issue on land management decisions.

Section 106 – Hazard Mitigation Using Disaster Assistance

- Allows FEMA hazard mitigation grant funding to be used to install fire-resistant wires and infrastructure as well as for the undergrounding of wires.
- *Background:* Investing in mitigation can reduce long-term costs, allowing more work to be done on the front end will ultimately reduce risk. Wildfire is a major source of natural disasters in the West, and wildfire mitigation activities should be eligible for the existing FEMA program to address hazard mitigation.

Section 201 – Biomass Energy Infrastructure Program

- Establishes a new Department of Energy grant program to facilitate the removal of biomass from National Forest areas that are at high risk of wildfire and to transport that biomass to conversion facilities.
- Biomass conversion facilities located within areas of economic need and seek to remove dead or dying trees are prioritized. Grants are limited to \$750,000.
- *Background:* The use of biomass can reduce wildfire risk by removing hazardous trees that have little commercial value, provide more distributed energy, and also provide support for rural communities through jobs in biomass energy.

Section 301 – California Exemption to Prohibition on Export of Unprocessed Timber

- Allows the export of unprocessed in timber of dead and dying trees in California. The exemption only applies after domestic mills have refused the unprocessed timber.
- *Background:* Much of the timber in California and other Western states have little commercial value in the United States yet poses significant wildfire risk. This section would increase the possible commercial markets for this timber in order to incentivize removal of this hazardous timber.

Section 401 – Innovative Forest Workforce Development Program

- Creates a competitive grant program to provide funds to non-profits, educational institutions, and state agencies to assist in the development of activities relating to workforce development in the forestry sector. Funds can be used for education, training, skills development, and education.
- *Background:* Forest management is facing a generational attrition issue. Jobs in the forestry sector can provide benefits to rural communities while simultaneously helping to reduce wildfire risk.

Section 403 – Western Prescribed Fire Center

- Establishes a Prescribed Fire Center in the West to train individuals in prescribed fire methods and other methods relevant to the mitigation of wildfire risk.
- *Background:* Restoring fire to the landscape is one of the tools that has been known to successfully reduce wildfire risk. Increasing the use of this practice has demonstrated success in various regions in the United States as well as in other countries. Training personnel in this practice could have an enormous impact on reducing wildfire risk in the Western United States.

Section 403 – Retrofits for Fire-Resilient Communities

- Amends the Weatherization Assistance program to make materials that are resistant to high heat and fire and dwellings that utilize fire-resistant materials and incorporate wildfire prevention and mitigation planning eligible for funds.
- Increases the level of available funding to \$13,000 and allows for increases with inflation.
- *Background:* Retrofits of homes to make them more fire resistant can reduce the risk to homeowners and residential structures. Given the threat of wildfire, fire-resistance activities should be eligible for the existing Weatherization Assistance program.

Section 404 – Critical Infrastructure and Microgrid Program

- Establishes a new Department of Energy grant program to improve the energy resilience, energy efficiency, and power needs of critical facilities.
- Prioritizes rural communities with access to on-site back-up power and installation of electrical switching gear.
- *Background:* Utility infrastructure has proven to be a significant wildfire risk, and the impact of large scale power shutoffs to prevent wildfires during high risk periods is substantial for communities. This section would authorize new funding to help assist communities and businesses mitigate these disruptions and create a more distributed energy system in high-risk areas to allow for more targeted prevention efforts.