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TITLE: CONFERENCE REPORT ON H.R. 4775, 2002 SUPPLEMENTAL APPROPRIATIONS ACT FOR FURTHER RECOVERY FROM AND RESPONSE TO TERRORIST ATTACKS ON THE UNITED STATES

TEXT: [*H4935]

Sec. 706. (a) Findings._Congress finds that_

(1) forest health conditions within the Beaver Park Area and the Norbeck Wildlife Preserve within the Black Hills National Forest are deteriorating and immediate action to treat these areas is in the public interest;

(2) the existing settlement agreement in Biodiversity Associates v. Laverty, Civil Action No. 99-N-2173, filed in the United States District Court for the District of Colorado on September 12, 2000, (referred to in this Act as the "Settlement") prevents timely action to reduce the risk of wildfire in the Beaver Park Roadless Area;

(3) pending litigation (Sierra Club v. U.S. Forest Service, Civ. No. 94-D-2273 (D. Colorado)) prevents timely action to reduce the risk of wildfire in the Norbeck Wildlife Preserve;

(4) existing administrative and legal processes cannot address the fire danger in time to enable the Secretary of Agriculture to take action to reduce the danger;

(5) immediate action to address the fire danger in an environmentally responsive manner is supported by the State, local counties, local industry users, and some environmental groups; [*H4947]

(6) the addition of 3,600 acres to the Black Elk **Wilderness** in the Black Hills National Forest is in the public interest;

(7) the State of South Dakota, Lawrence, Meade and Pennington County fire officials are encouraged to identify "fire emergency zone" areas in which public safety may require a moratorium on issuance of new building permits, and identify the changes in conditions (including the adoption of fire-safe building standards) that may be needed to end these moratoria; and

(8) the State of South Dakota is encouraged to take actions as necessary to create a defensible fuel zone within state lands south and southwest of Sturgis.

(b) Purposes._The purposes of this Section are_

(1) to authorize and direct the Secretary of Agriculture (in this Section referred to as the "Secretary") to undertake actions to address promptly the risk of fire and insect infestation; and

(2) to designate an addition to the existing Black Elk **Wilderness** Area in the Black Hills National Forest.

(c) Fire and Beetle Risk Reduction in Existing Timber Sale Analysis Areas._

(1) In general._Subject to paragraph (2), the Secretary is authorized to treat additional timber within or outside the existing cutting units for the Piedmont, Kirk, Redhill, Cavern, Deadman, Danno and Vanocker timber sales and within the analysis areas for these sales as is necessary to reduce beetle infestation and fire hazard;

(2) Criteria._In implementing additional treatments within the timber sale analysis areas referred to in paragraph (1), the Secretary shall use in order of priority the following criteria:

(A) Areas within 1/4 mile of private properties where private property owners have taken or are taking actions to treat their lands.

(B) Stands that are a fire hazard or insect infested, and are near private lands or in proximity to communities.

(C) Areas that have the highest intensity or concentration of insect infestation that will move to other areas.

(D) Stands that are a fire hazard or insect infested, and are near areas of high resource value where retaining green trees is important, such as goshawk nests, sensitive landscapes, recreation areas, and developments.

(E) Stands that are a high fire hazard or insect infested, and are within skidding distance of existing roads.

(F) Concentrations of insect infested trees.

(G) Stands with the highest density that are most susceptible to insect attack and are in close proximity to infested trees.

(3) Additional criteria._In carrying out this subsection, the Secretary shall ensure that_

(A) any additional treatment for the Cavern, Kirk, and Piedmont sales shall comply with provisions 6c, d and e of the Settlement;

(B) any additional treatment for the Deadman and Vanocker sales, shall be consistent with the Black Hills Forest Plan, including the "Phase I Amendment"; and

(C) any additional treatment for the Redhill and Danno sales shall comply with the provisions of 7b, c, and g of the Settlement.

(4) Skid trails._Notwithstanding the Settlement, the Secretary may authorize access by skid trails to the additional treatment areas referred to in this subsection to remove or treat infested stands, except that the skid trails otherwise restricted by the settlement shall be restored to pre-existing conditions upon completion of treatment activities.

(5) Completion of treatment activities._The Secretary shall request timber purchasers to

give priority to completing treatment within the Piedmont, Kirk, Redhill, Cavern, Deadman, Danno, and Vanocker timber sale areas to address fire issues and beetle outbreaks.

(d) Other Treatments._

(1) Buffer zones._The Secretary is authorized to reduce risk to private property adjoining the Black Hills National Forest by treating insect infested trees, dead trees, and downed woody materials on National Forest System lands in T5N, R5E, BHM, Section 35, and T4N, R5E, BHM, Sections 1, 2 and 12 within 200 feet of adjacent private property. The treatments shall comply with the goshawk nest protections and snail protections in provisions 6c and 7g of the Settlement.

(2) Additional treatments._The Secretary is authorized to treat for insects and fuel reduction National Forest System lands within 1/4 mile of private property and other non-National Forest System lands near the community of Sturgis, and shall include, where feasible, the following locations:

(A) in T5N, R5E, BHM within 1/4 mile of the exterior boundary of the Black Hills National Forest in_

(i) Section 35;

(ii) Section 27;

(iii) Section 21;

(iv) Section 20; and

(v) Section 18.

(B) in T5N, R4E, BHM_

(i) Section 13;

(ii) Section 11;

(iii) Section 2;

(iv) Section 3; and

(v) Section 4.

(3) Fuel breaks._The Secretary shall establish 400-foot fuel breaks as depicted on the map entitled "Beaver Park Fuel Breaks and Fuel Treatment Areas," dated June 11, 2002. In establishing the fuel breaks, the Secretary_

(A) shall not enter any 30-acre area around historic or active goshawk nest sites identified in Exhibit B1 of the Settlement; and

(B) shall use best efforts to retain the largest green trees and large snags.

(4) Limitation._Treatment actions outside of the Beaver Park Roadless Area authorized by subsection (c) and subsection (d)(1), (2), and (3) shall be limited to no more than 8,000 acres of National Forest System land, pending the issuance of a decision on the proposed Elk Bugs and Fuel project.

(5) Forbes gulch._To reduce concentrated heavy fuels, the Secretary is authorized to treat not more than 700 acres within the area identified as Forbes Gulch on the map referred to in paragraph (3). Such treatments shall not involve commercial timber sales or road construction, except that the Secretary may permit firewood cutters to remove the timber without construction of any roads. In carrying out the treatments authorized by this paragraph, the Secretary_

(A) may use the Forbes Gulch unclassified road for motorized equipment and vehicles to facilitate ingress and egress of equipment and personnel and may maintain this road to minimum standards necessary for safety and resource protection;

(B) may utilize helicopters to fly in heavy equipment (such as industrial chippers and small tractors) to assist with the project;

(C) shall use best efforts to retain the largest green trees and large snags;

(D) may construct two 10-acre safety zones; and

(E) shall reduce the stand structure to no less than 40 square feet basal area per acre of live trees, if available.

(e) Fire Suppression Access in the Beaver Park Roadless Area._

(1) Pre-suppression plan._The pre-suppression plan for the Beaver Park Roadless Area provided for in the Settlement may provide for actions authorized by this section, and shall be completed as soon as practicable.

(2) Improved access._The Secretary is authorized to provide for improved fire equipment access at the perimeter of the Beaver Park Roadless Area by improving classified Forest Roads 139.1, 169.1b, 169.1d, and 139.1b. Such improvements shall be the minimum necessary for crews, equipment and single axle wildfire trucks and may include removing selected trees along roads, constructing pull-outs and turn-arounds, smoothing road surfaces in rough spots, and straightening some corners.

(3) Forbes gulch unclassified road._To protect public safety and reduce fire risks, the Secretary shall prohibit public access year-long on the Forbes Gulch unclassified road. The Secretary shall conduct a roads analysis process as provided in Forest Service Manual 7710 and the necessary level of analysis and documentation pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) (in this Section referred to as "NEPA") before making a decision to open to public motor vehicle use the Forbes Gulch unclassified road identified on the map entitled "Beaver Park Fuel Breaks and Fuel Treatment Areas," dated June 11, 2002. Except as provided in subsection (d)(5) and until a decision is issued, the Secretary shall not maintain the Forbes Gulch unclassified road and shall prohibit public access on the road.

(4) Helispots._If sufficient openings for helispots are not available in the Beaver Park Roadless Area, the Secretary is authorized to construct two 5-acre helispots within the Area to transport firefighters and fire equipment into and out of the area.

(5) Easements._To facilitate firefighter access into, and escape routes from, Beaver Park Roadless Area, the Secretary shall attempt to acquire easements from the exterior Forest Service boundary to I-90 on the eastern side of Beaver Park Roadless Area, at a minimum, along Tilford Gulch, Forbes Gulch, Pleasant Valley and Bulldog Gulch.

(f) Needles Timber Sale Area._

(1) Needles timber sale._The Needles Timber Sale shall proceed after the Secretary makes modifications in implementation of the Decision Notice to further benefit game animals and birds, as reflected in the memorandum known as the "Burns/Carter memorandum" dated November 10, 1999, and maintained in the Black Hills National Forest Supervisor's office. The standards to which any road is constructed for the timber sale shall be the minimum necessary to access and remove timber.

(2) Research committee._By December 1, 2003, the Secretary shall select a committee composed of research scientists who are federal employees to recommend an old growth research area within the Needles area (outside the Needles Timber Sale cutting units). By December 1, 2004, the committee shall make its recommendation to the Secretary. The committee's recommendation shall be subject to public notice, review and comment.

(g) Grizzly Timber Sale._The Grizzly Timber Sale shall proceed after the Secretary makes modifications in implementation of the Decision Notice to further benefit game animals and birds, as reflected in the memorandum known as the "Burns/Carter memorandum" dated November 10, 1999, and maintained in the Black Hills National Forest Supervisor's office. The standards to which any road is constructed for the timber sale shall be the minimum necessary to access and remove timber.

(h) Norbeck._The Secretary is authorized to use the full spectrum of management tools including prescribed fire and silvicultural treatments to benefit game animal and bird habitat in meeting the purposes of the Norbeck Organic Act. The management actions required by subsections (f)(1) and (g) are deemed consistent with the Norbeck Organic Act (16 U.S.C. 675-678b).

(i) Norbeck Memorandum of Understanding._By December 1, 2003, the Secretary shall propose a Memorandum of Understanding with the South Dakota Department of Game, Fish and Parks to, at a minimum, adopt procedures to monitor the effects of management activities, consult on habitat management, concur on program areas of responsibility, and review [*H4948]
and recommend as needed any changes to Norbeck Wildlife Preserve direction contained in the 1997 Revised Forest Plan and future plan amendments and revisions. The basis of the MOU will be the guidelines set forth in the May 21, 2002 memo by SDF&P.

(j) Process._Due to the extraordinary circumstances present here, actions authorized by this section shall proceed immediately and to completion notwithstanding any other provision of law including, but not limited to, NEPA and the National Forest Management Act (16 U.S.C. 1601 et seq.). Such actions shall also not be subject to the notice, comment, and appeal requirements of the Appeals Reform Act, (16 U.S.C. 1612 (note), Pub. Law No. 102-381 sec. 322). Any action authorized by this Section shall not be subject to judicial review by any court of the United States. Except as provided by this Section the Settlement remains in full force and effect.

(k) Effect of Actions._Except for those actions required by subsections (f)(1) and (g), the Secretary shall disclose the effect of actions authorized by this Section in the proposed Elk Bugs and Fuels project cumulative effects analysis for past, present, and reasonably foreseeable future actions. The decision for the Elk Bugs and Fuels project shall be issued not later than July 1, 2003.

(l) Research Natural Area._Except as provided in this Section, the Secretary shall undertake no additional ground disturbing or vegetation removal activities within the Beaver Park Roadless Area until completion of the Phase II amendment to the Black Hills National Forest Plan. The Secretary shall analyze the Beaver Park Roadless Area for suitability as a Research Natural Area, as required by the Settlement. The Secretary shall

not consider any of the actions authorized or required by this section to affect the suitability of the Beaver Park Roadless Area for designation as a Research Natural Area.

(m) Roadless Character._The actions authorized by this section will not affect the determination of the Beaver Park Roadless Area's **wilderness** capability, **wilderness** suitability, and/or roadless character.

(n) **Wilderness** Designation._Section 103 of Public Law 96-560 is amended by_

(1) inserting "(1)" after "National **Wilderness** Preservation System:"; and

(2) adding before ": Provided, That" the following: "; and (2) certain lands in the Black Hills National Forest, South Dakota, which comprise approximately three thousand six hundred acres, as generally depicted on a map entitled Black Elk **Wilderness** Addition-Proposed,' dated June 13, 2002, and which shall constitute an addition to the existing Black Elk **Wilderness**".

(o) Reporting._The Secretary shall report to the Congress on the implementation of this section on or by November 30, 2002, June 30, 2003, and November 30, 2003.