McInnis ‘‘Healthy Forests Restoration Act of 2003’’ Summary

The McInnis/Walden bill poses a major threat to environmental protection and public involvement in federal land management. Furthermore, the bill does virtually nothing to protect homes and communities from wildfire. Rather than provide any new funding authorization or mechanisms for fuels reduction on public or private lands, the bill relies on scaling back environmental safeguards to reduce fire risk. Among other things, the McInnis/Walden bill would: allow the Forest Service to conduct large-scale, environmentally damaging logging projects without considering any alternatives or their relative environmental impacts; eliminate the statutory right of citizens to appeal Forest Service logging projects; and impose unprecedented limitations on judicial review and give lawsuits challenging Forest Service projects priority over virtually all other civil and criminal litigation.

Scope and Definitions
The geographic scope of the McInnis/Walden bill is very broad, potentially applying to most National Forest and BLM lands. **Instead of specifying a distance limitation from communities, the bill generally allows expedited logging projects anywhere in the "proximity" of wildland-urban interface and intermix areas.** Sec. 102(a)(2). Consequently, the agencies could log many miles away from any community, as long as the Forest Service thought that there was "significant risk" that a fire could spread and threaten human life and property.

However, the agencies would not need to stretch the definition of "proximity" in order to justify logging in the remote backcountry. **The bill's geographic scope also extends to areas in which "windthrow or blowdown, or the existence or threat of disease or insect infestation pose a significant threat to forest or rangeland health or adjacent private lands." Sec. 102(a)(4). In addition, expedited projects can take place on lands located in proximity to a stream feeding a municipal water supply system (such as a reservoir) and in endangered species habitat. Sec. 102(a)(3) and (5).**

The definition of projects covered by the bill is also very broad, potentially covering most commercial timber sales. It does not preclude the use of aerial spraying of dangerous herbicides and pesticides as an appropriate tool for reducing fuels. Sec. 101(7). **Logging projects in roadless areas would also be subject to the expedited procedures. The bill only excludes designated wilderness areas, other areas protected by Congressional or Presidential action, and wilderness study areas.** Sec. 102(e**). It would still leave the vast majority of the Forest Service's inventoried roadless areas potentially vulnerable to the bill's expedited procedures as long as no "new permanent road" is built.** Sec. 102(f). This leaves the door open for construction of "temporary" roads in roadless areas for hazardous fuels projects, which is not allowed by the Roadless Area Conservation Rule. Also, **new permanent roads could be built outside inventoried roadless areas using the expedited process.**

Environmental Review and Public Participation
The McInnis/Walden bill would allow the agencies to ignore any alternatives to their proposed fuel reduction projects, regardless of the size, environmental impacts, and level of public controversy. Sec. 104(b). The agency would not even be required to consider a "no action" alternative to compare a project's impacts to the environmental status quo. According to the CEQ regulations, the evaluation of alternatives is "the heart of the environmental impact statement" and serves to provide "a clear basis for choice among options by the decision-maker and the public." 40 CFR §1502.14. Thus, the bill would effectively cut the heart out of the NEPA process.

The bill would also reduce opportunities for public comment on hazardous fuels projects. The bill entirely exempts such projects from all requirements of the Appeals Reform Act. Sec. 105(c). That Act requires the Forest Service to provide a 30-day public comment period on environmental assessments (EA's) and to respond to comments in its decision notices. Instead, **the McInnis/Walden bill simply requires the agencies to hold public meetings and to provide an undefined opportunity for public comment**. Sec. 104(c) and (e).

Administrative Appeals
The McInnis/Walden bill abolishes citizens' statutory right to appeal Forest Service hazardous fuels projects provided by the Appeals Reform Act. Sec. 105(c). Instead, it simply **directs the Forest Service to establish an undefined "administrative process that will serve as the sole means by which a person...can seek**

administrative redress" of such projects. Sec. 105(a). Because of the bill's extremely short deadlines for filing lawsuits (see Sec. 106, below), this "administrative process" could not possibly provide a meaningful opportunity to appeal project decisions. The bill gives the Forest Service unfettered discretion in designing the administrative process. Conceivably, the agency could give citizens only a few days to participate in the process, impose substantial filing fees or bonding requirements, allow projects to proceed before completion of the process, or deny other interested parties an opportunity to intervene or comment.

The McInnis/Walden bill would **disqualify participation by people who did not previously submit "specific and substantive written comments" on a project." Sec. 105(b). This would require the Forest Service to ignore concerns of citizens who spoke at a public hearing** but did not submit written comments.

The bill's attack on the appeals process is based on unsubstantiated claims that administrative appeals have prevented the Forest Service from conducting hazardous fuels projects. Those claims are largely based on a flawed and hastily assembled Forest Service analysis last summer that contradicted the findings of a prior GAO study. A new study by Northern Arizona University casts further doubt on the Forest Service's claims.

Judicial Review

The McInnis/Walden bill imposes severe limits on judicial review not seen since the Salvage Rider in 1995. **The bill imposes unreasonable deadlines, restrictions, and burdens on the judicial system for lawsuits challenging expedited fuel reduction projects. The rushed and biased judicial review process would be unfair to citizens and could wreak havoc on the federal courts in some regions.**

First, like the Salvage Rider, any **lawsuits would have to be filed within 15 days after the agency publishes notice of the project decision.** Sec. 106(a). This extremely short deadline would effectively preclude the option for citizens to administratively appeal agency decisions before having to go to court. Thus, more lawsuits would likely be filed, since litigation would be the only feasible way to contest an agency decision.

Second, **judges would be expected to "expedite, to the maximum extent practicable" lawsuits challenging hazardous fuels projects and to issue final decisions within 100 days after the lawsuits are filed. Sec. 106(c). Furthermore, the bill would impose a 45-day limit on the duration of any preliminary injunction. Sec. 106(b)(1). Any renewal of the preliminary injunction would require formal congressional notification.** Sec. 106(b)(2). Thus, fuel reduction projects would, by law, be assigned top priority in the federal court system, above virtually all other civil and criminal cases.

The bill's potential to overload and gridlock the court system is mind-boggling. The Forest Service and BLM are likely to approve hundreds of fuel reduction projects each year, and the number of lawsuits would almost certainly increase, due to the elimination of the administrative appeals system. Even if only a small fraction of those projects are controversial enough to provoke a challenge, some district courts - particularly in the western states - could quickly be overwhelmed by having to meet the bill's legal prioritization and deadlines.

Third, and perhaps most outrageous, **the bill would require judges to "give deference" to the agencies' determination that the short-term environmental harms of a project are "outweighed by the public interest in avoiding long-term harm to the ecosystem." Sec. 107(2). In other words, even if the evidence presented to a court clearly demonstrates that a project would cause immediate and substantial harm to water quality or endangered species, a judge would have to defer to the agencies' claims of long-term benefit**. This would be a terrible precedent undermining the impartiality of the judicial system. The bill's extreme effort to bias the judicial review process seems especially bizarre in light of the fact that, according to the GAO, none of the Forest Service's hazardous fuel reduction projects were litigated during the first 9 months of FY 2001. Tragically, the bill would almost certainly cause many such projects to be litigated, due to public distrust and opposition caused by the loss of normal environmental safeguards and public participation opportunities.

If Congress sincerely wants to build public support for more fuel reduction projects on federal lands, the last thing it should do is pass flawed and polarizing legislation like this bill.

Summary compiled by The Wilderness Society