



# Congressional Record

PROCEEDINGS AND DEBATES OF THE 108<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, MONDAY, October 27, 2003

No. 152

## Senate

### Statement of Senator Dianne Feinstein

*"On the Southern California Forest Fires and Healthy Forests Legislation"*

Mrs. FEINSTEIN. Mr. President, I join with my colleague, Senator Boxer, with some remarks about the fire. This fire is actually far more serious than any fire I have seen, and I have spent some time now becoming familiar with forestry practices and fires.

Before a fire is under control, it has to be contained, and virtually no aspect of these 10 fires are contained tonight. As my colleague said, they have taken 13 lives; they have destroyed 1,100 homes; they have burned over 400,000 acres, and that is two-thirds the size of Rhode Island. Virtually no fire is contained and firefighters must conduct an evacuation to move people out.

Senator Boxer gave you the latest figures on some of these fires. But there is one fire I wish to point out and that is the fire heading toward San Diego. Mayor Murphy of San Diego said to me last night that the fire is pointed like a

spear into the heart of San Diego. It is running through housing projects, crossing freeways, and it is extremely dangerous. These fires are virtually all over--from Los Angeles down to the Mexican border. I will soon print in the *Record* the specific statistics about each one.

Like my colleague, I spoke four times with Mike Brown. He was in Albuquerque. I am pleased that he is headed to southern California. He has cut redtape, brought in 22 additional engines, 3 strike teams, firefighters from northern California are headed to the south, and teams coming in from surrounding States. We are very grateful for that.

I am also grateful to the President for declaring a Federal state of emergency for San Bernardino, San Diego, Ventura, and Los Angeles Counties.

The State declaration has also been called by Governor

Davis, and Federal disaster assistance will now include aid to individuals and households, aid to public agencies for emergency services, and repair or replacement of disaster-damaged public facilities, and funding for measures designed to reduce losses to property. The Federal Government has already provided fire management assistance grants for at least eight wildfires in southern California. These grants reimburse the State for 75 percent of the cost of fighting the fire.

My sadness and concern about these wildfires are not confined to those who lost their lives and their properties, but it is also the reality that they were entirely predictable, and new ones will also burn across my State.

I believe we must take steps now to reduce the harm of forest fires. These conditions are all familiar to us--drought, densely packed forests,

unhealthily crowded with little trees. For decades, we have put out the ground fires that would otherwise clear out the brush. The result is huge fuel loads of small trees and brush, which is perfect kindling for a catastrophic fire. In areas such as San Diego County, where there is more brush than forests, fire suppression has likewise created such a tangle of brush that fires often cannot be stopped.

The Santa Ana Winds are another factor. These hot, dry winds blow often in the fall, and they don't just occur in southern California. The 1991 fire in Oakland and Berkeley was fanned by similar devastating winds. They come every year. We know they are coming, yet we have not adjusted our forest practices to deal with them.

Hundreds of thousands of dead and dying trees from infestation, such as the bark beetle, remain untreated, trees unremoved, with as many as 90,000 people living in bark beetle-infested forests in San Bernardino County, with only one-leg roads to get them out in case of catastrophe.

With all these conditions for disaster in place, I have feared for some time now that California could face a devastating season of wildfires, and that seems to be just what is happening right now. So I believe we need to take action now, not just to

correct our mismanagement of the forests and the brush but for a more basic reason.

We need to act in advance because of the terrible fact that most of the deaths that occurred in these fires did so because people had too little time to escape. At least seven people, so far, have died as they tried to escape the cedar fire in the narrow Wildcat Canyon area near the Barona Ranch Indian Reservation in San Diego County. People died on foot, people died in their cars, people died still trapped in their homes. At least two children died while trying to escape with their parents.

The fires travel just too quickly, and hillside roads are too narrow and too winding to count on people being able to get out.

Let me give you one story. Violet Ingrum lived in San Diego's Scripps Ranch neighborhood. She went to bed Saturday night worried mainly about her daughter, who lives in Hollywood, and the danger of potential wildfires to her daughter's home. Only a few hours later, she woke up to a howling wind and the horrifying sight of flames beyond her back fence and debris falling into her swimming pool. She only had time to grab her two cats and two photo albums, and one of her cats jumped out of the car before she could get

away. But she was a lucky one. So I believe very deeply that we need to act now to reduce the threat from these wildfires and to give our firefighters a better chance to defend our communities.

We were able to get Congress to approve \$30 million last month in fiscal 2003 funds to help battle the bark beetle, and I am urging the Forest Service to put those funds to work immediately. That is an important step forward, but we need broader measures to reduce the threat from our forests.

I am delighted that the chairman of the Agriculture Committee is on the floor tonight, Senator Thad Cochran, because we have worked with him to produce a compromise bill that I hope will be on the floor of the Senate soon. I hope it will be passed because this bill, which can get 60 votes, is the only chance that this Congress has an opportunity to pass a hazard fuels mitigation program this year.

The fact is, there are 57 million acres of Federal land at the highest risk of catastrophic fire, including 8.5 million acres in California alone. In the past 5 years, wildfires like the ones going on today have raged through 26.9 million acres, including over 2 million acres in California.

In response to these threats, an agreement has been reached by a bipartisan group of 10 Senators to protect our forests from catastrophic fire by expediting the thinning of hazardous fuels and, at the same time, provide the first legal protection for old-growth trees in our Nation's history. Those who have participated, along with myself, in the lengthy negotiations--2 years now--leading up to this agreement include Senators Thad Cochran, Ron Wyden, Larry Craig, Mike Crapo, Pete Domenici, Jon Kyl, Blanche Lincoln, John McCain, and Max Baucus.

Legislation implementing the agreement as a proposed substitute amendment to Title I of H.R. 1904, the House-passed Healthy Forest bill, was filed by Senator Cochran, chairman of the Agriculture Committee, on October 2. Yet there have been objections raised to proceeding with this bipartisan substitute amendment.

I urge my colleagues in the strongest possible terms to support this legislation so we can defend our communities and protect our forests.

I wish to take a few moments because if ever there is a time to look at this kind of legislation it is now. I wish to spend a few moments and describe exactly what the legislation would do.

It would establish an expedited process so the Forest Service and the Department of Interior can get to work on brush-clearing projects to minimize the risk of catastrophic wildfire. Up to 20 million acres of lands near communities, municipal watersheds, and other high-risk areas are included in our project. This includes lands that have suffered from serious wind damage or insect infestations, such as the bark beetle.

A total of \$760 million is authorized. That is a \$340 million increase over current funding. At least 50 percent of the funds would be used for fuels reduction near communities. That is what we do not have in this catastrophic wildfire that is taking place right now.

The legislation also requires that large fire-resilient old-growth trees be protected from logging immediately. It mandates that forest plans that are more than 10 years old and most in need of updating be updated with old-growth protection consistent with the national standard within 2 to 3 years. Without this provision in the amendment, we would have to wait a decade or more to see improved old-growth protection. Even then, there would be no guarantee that this protection against the threat of both logging and catastrophic fire would be

very strong.

In California, the amendment to the Sierra Nevada Framework that is currently in progress will have to comply with the new national standard for old-growth protection. We have also tried to expedite, shorten, and improve the administrative review process to make it more collaborative and less confrontational.

It is critical that the Forest Service spend its scarce dollars by doing work on the ground rather than being mired in endless paperwork. The legislation we submitted preserves multiple opportunities for meaningful public involvement. People can attend a public meeting on every project. They can submit comments during both the preparation of the environmental impact statement and during the administrative review process. I guarantee that the public will have a meaningful say in these projects.

It does change the environmental review process so that the Forest Service still considers the effects of a project in detail but can focus its analysis on the proposal, one reasonable alternative that meets the project goals and the alternative of not doing the project, instead of the five or nine alternatives that are now often required.

This is not the siting of a freeway where one may want five or nine alternative projects. We know where the project is going to take place. The question is, Should it be mechanical? Should it be by burning? What are the problems with the area? Is there a better way of doing it?

So this legislation replaces the current Forest Service administrative appeals with a review process that will occur after the Forest Service finishes its environmental review of a project but before it reaches its decision. This new approach is similar to a process adopted by the Clinton administration in 2000 for a review of forest plans and amendments to those plans. The process will be speedier and less confrontational than the current administrative appeal process.

There is a great deal of misconception both about the appeals process and the judicial review process. I will quickly take a minute and tell my colleagues what we have recommended with respect to judicial review. First, parties can sue in Federal court only on issues raised in the administrative review process. This is common sense that allows agencies the opportunity to correct their own mistakes before everything gets litigated. Lawsuits must be filed in the same jurisdiction as the proposed project. This also

makes common sense. Courts are encouraged to resolve the case as soon as possible, and preliminary injunctions are limited to 60 days. They can be extended, but the individuals making the claim have to go back to court and justify why they need another preliminary injunction.

The court must weigh the environmental benefit of performing a given project against its environmental risk as it reviews the case. This is the balance-of-harms language.

I deeply believe this amendment is much preferable to the House bill which has passed. There are many ways in which we improve on the House-passed bill. First, we focus on the highest priority lands, where we need to undertake brush-clearing projects to restore forest health and prevent forest fire. These include the wildland urban interface as defined by the communities needing protection. It includes lands where fires would threaten municipal water supplies and lands significantly harmed by insects.

Secondly, we have protected both old-growth stands and large trees across the landscape. The projects expedited by this act will restore forest health.

Finally, the Senate agreement

removed a provision of the House-passed bill that could have threatened the fair and impartial judicial review of Forest Service actions. This provision would have tilted the playing field in forestry litigation by requiring a court to defer to the Federal Agency's views in deciding whether to issue an injunction. So we have seriously improved the House bill.

In closing, I say to my colleagues that if ever there is a case in point as to why we have to spend more time on the ground with forest actions rather than debating them here, it is the 10 fires that are now taking place in California. They are catastrophic. In fact, they are wreaking human devastation and degradation on a level seldom seen. It is time for this body and this Congress to act.

Both Senator Wyden and I, and Senator Cochran as well, have asked the administration for a statement of administrative policy that they will, in effect, support this legislation in conference. This is critical to our agreement. I have written to the White House. We have called the White House. We have not had a response.

So the action and the ball is really in the White House's court at this time. We need to hear from them. We need to

know whether, in fact, this bill, which we believe can garner 60 votes in the Senate, will, in fact, have strong White House and administration support when it goes to conference, because if it does not, and if the vehicle is not this bill, there will not be a bill. I think that is the truth as many find it.

So to all of those in California who have suffered such grievous loss, I join my colleague in sending our

deepest condolences. I have asked all my staff to go to southern California to be available to receive calls from people to try to hook them up with whatever help or aid they need. FEMA will shortly be making announcements as to what numbers to call, where to go to fill out the applications, and we will do everything we can to help facilitate that process.

This is truly one of the great

tragedies of human life. Can my colleagues imagine children and parents being burned fleeing from this kind of a fire and over 1,000 families losing everything they have worked a lifetime to build?

I yield the floor.