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### WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS ACT OF 2007

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FEBRUARY 15, 2007.—Ordered to be printed

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Mr. BINGAMAN, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 232]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 232) to make permanent the authorization for watershed restoration and enhancement agreements, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE MEASURE

The purpose of S. 232 is to make permanent the authorization for watershed restoration and enhancement agreements contained in section 323 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 1011 note).

#### BACKGROUND AND NEED

In 1998, Congress included language in the Department of the Interior and Related Agencies Appropriations Act, 1999 to authorize the Forest Service to use watershed restoration and enhancement agreements to spend appropriated funds on projects on private or public lands that benefit the resources of National Forest System lands. As a result, the Forest Service developed a very successful cooperative conservation watershed restoration program. Congress originally authorized the program only through fiscal year 2001. It reauthorized it in 2001 through fiscal year 2005, and again in 2005 through fiscal year 2011. S. 232 would permanently authorize the agreements.

The projects authorized by the agreements have improved watershed health and fish habitats through the control of invasive spe-

cies, culvert replacement, and other riparian zone improvement projects. In addition to ecological restoration, use of the authority has improved cooperative relationships between the Forest Service, private land owners, State agencies, and other Federal agencies.

#### LEGISLATIVE HISTORY

S. 232 was introduced by Senator Wyden on January 9, 2007. Similar legislation, S. 2003, also sponsored by Senator Wyden, was considered by the Committee during the 109th Congress.

Section 323 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (P.L. 105–277) authorized the cooperative watershed restoration and enhancement program through fiscal year 2001. Section 331 of the Department of the Interior and Related Agencies Appropriations Act, 2002 (P.L. 107–63) reauthorized the program through fiscal year 2005. And section 343 of the Department of the Interior and Related Agencies Appropriations Act, 2006 (P.L. 109–54) reauthorized the program through fiscal year 2011.

The Subcommittee on Public Lands and Forests held a hearing on S. 2003 on May 10, 2006 (S. Hrg. 109–518). S. 2003 was ordered favorably reported by the Committee with an amendment in the nature of a substitute on May 24, 2006 (S. Rept. 109–302), and passed the Senate, by unanimous consent, on December 7, 2006. No further action occurred prior to the sine die adjournment of the 109th Congress.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on January 31, 2007, by voice vote of a quorum present, recommends that the Senate pass S. 232.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title.

*Section 2(1)* amends section 323 of the Department of the Interior and Related Agencies Appropriations Act, 1999, as previously amended, by striking “each of fiscal years 2006 through 2011” and inserting “fiscal year 2006 and each fiscal year thereafter.”

*Section 2(2)* makes a conforming change.

*Section 2(3)* adds a new subsection (d) to section 323 that clarifies that Chapter 63 of Title 31, United States Code (originally enacted as the 1977 Federal Grant and Cooperative Agreement Act of 1977) shall not apply to the watershed restoration and enhancement agreements carried out under section 323 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 1011 note; Public Law 105–277), or the cooperative agreement authority granted by the first section of Public Law 94–148 (16 U.S.C. 565a–1).

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

*S. 232—Watershed Restoration and Enhancement Agreements Act of 2007*

S. 232 would make the authority of the Forest Service to use appropriated funds to execute certain cooperative agreements with nonfederal partners permanent. Those agreements are used to facilitate watershed restoration projects on public or private land. Under existing law, the authority to use appropriations for this purpose will expire after fiscal year 2011. CBO estimates that enacting S. 232, by itself, would have no impact on the federal budget. The bill would not authorize additional appropriations for watershed restoration projects and would not affect revenues or direct spending.

S. 232 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit state, local, or tribal governments that enter into cooperative agreements with the Forest Service to carry out activities for pollution abatement and watershed protection. Any costs they might incur would be incurred voluntarily.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director, Budget Analysis Division.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 232.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 232.

EXECUTIVE COMMUNICATIONS

Because S. 232 is identical to legislation passed by the Senate in the 109th Congress, the Committee did not request Executive Agency views on S. 232. The views of the Administration were included in testimony received by the Committee at a hearing on S. 2003 on May 10, 2006, as follows:

STATEMENT OF JOEL HOLTROP, U.S. FOREST SERVICE, DEPUTY CHIEF FOR NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to appear before you today to provide the Department's views on S. 906—Wildland Firefighter Safety Act of 2005, S. 2003—Watershed Restoration and Enhancement Agreements Act of 2005, H.R. 585—Gateway Communities Cooperation Act, and H.R. 3981—involving Tahoe National Forest land exchanges. I

am Joel Holtrop, Deputy Chief for the National Forest System, USDA Forest Service.

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S. 2003 “WATERSHED RESTORATION AND ENHANCEMENT ACT OF 2005”

This bill would amend Section 323 of the Department of the Interior and Related Agencies Appropriations Act of 1999 (commonly referred to as the “Wyden amendment”), to permanently authorize the Secretary of Agriculture to use Forest Service appropriations to enter into cooperative watershed restoration and enhancement agreements with governments or private nonprofit entities and landowners to carry out activities on NFS lands or on non-Federal lands within the same watersheds. Agreements are authorized for the protection, restoration, and enhancement of fish and wildlife habitat and other resources and/or the reduction of risk from natural disaster on public or private land to benefit resources in the watershed. The current authorization includes provisions on terms and conditions regarding technical assistance, sharing of costs, ensuring that expenditures are in the public interest, and that the public investment on non-Federal lands is protected.

The Department supports enactment of S. 2003, and would like to work with the Subcommittee on a short amendment to provide additional authority to more fully implement its provisions.

The Forest Service has successfully used the Wyden amendment since its original enactment and subsequent reauthorizations. Benefits include improved, maintained and protected ecosystem conditions through collaborative administration and implementation of projects as well as increased operational effectiveness and efficiency through coordination of efforts, services, and products to accomplish the highest priority work.

Of the many possible examples, work on the Siuslaw National Forest in Oregon illustrates the benefits of working across landscapes using this authority. Since 1998, the forest has implemented 26 projects, leveraging \$321,000 in Federal investments with \$387,000 in partner contributions to restore floodplains, riparian areas, and estuaries; install in-stream structures; monitor activities; and share information. Strategic use of this tool has brought a tremendous benefit to watersheds affecting National Forest System lands.

Two bills have been introduced in the 109th Congress that contain similar language to this provision. Last September, the Department testified in strong support of H.R. 3818, which includes authority for watershed restoration and enhancement agreements as part of a comprehensive Forest Service partnership bill. H.R. 3818, entitled the “Forest Service Partnership Enhancement Act”, was based on the Administration’s draft legislation transmitted to Congress under the same title. A similar bill, also with the

same title, S. 2676, has recently been introduced by Senators Crapo and Lincoln.

These bills contain authority—not included in S. 2003—that would be important to the Forest Service’s future success to cooperatively carry out watershed restoration and enhancement agreements. That authority clarifies that watershed restoration and enhancement agreements are mutual benefit agreements. While the Department supports enactment of S. 2003, we would like the Subcommittee to consider the benefits of providing express authority for mutual benefit agreements as proposed by the Administration.

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#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 232, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### **DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999**

(16 U.S.C. 1011; Public Law 105–277, Div. A, 101(e))

SEC. 323. (a) WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS.—For [each of fiscal years 2006 through 2011] *fiscal year 2006 and each fiscal year thereafter*, to the extent funds are otherwise available, appropriations for the Forest Service may be used by the Secretary of Agriculture for the purpose of entering into cooperative agreements with willing Federal, tribal, State and local governments, private and nonprofit entities and landowners for the protection, restoration and enhancement of fish and wildlife habitat, and other resources on public or private land, the reduction of risk from natural disaster where public safety is threatened, or a combination thereof or both that benefit these resources within the watershed.

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(c) TERMS AND CONDITIONS.—In order for the Secretary, to enter into a watershed restoration and enhancement agreement—

(1) the agreement shall—

(A) include such terms and conditions mutually agreed to by the Secretary and the landowner, state and local government, or private or nonprofit entity;

(B) improve the viability of and otherwise benefit the fish, wildlife, and other resources on national forests lands within the watershed;

(C) authorize the provision of technical assistance by the Secretary in the planning of management activities what will further the purposes of the agreement;

(D) provide for the sharing of costs of implementing the agreement among the Federal Government, the land-

owner(s), and other entities, as mutually agreed on by the affected interests; and

(E) ensure that any expenditure by the Secretary pursuant to the agreement is determined by the Secretary to be in the public interest; and

(2), the Secretary may require such other terms and conditions as are necessary to protect the public investment on non-Federal lands, provided such terms and conditions are mutually agreed to by the Secretary and other landowners State and local governments or both.

*(d) APPLICABLE LAW.—Chapter 63 of title 31, United States Code shall not apply to—*

*(1) a watershed restoration and enhancement agreement entered into under this section; or*

*(2) an agreement entered into under the first section of Public Law 94–148 (16 U.S.C. 565a–1).*

**[d]** *(e)*. REPORTING REQUIREMENTS.—Not later than December 31 1999, the Secretary shall submit a report to the Committees on Appropriations of the House and Senate, which contains—

(1) A concise description of each project, including the project purpose, location on federal and non-federal land key activities, and all parties to the agreement.

(2) the funding and/or other contributions provided by each party for each project agreement.