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Testimony for the Subcommittee on Federal Lands

“Litigation and Increased Planning’s Impact on Our Nation’s Overgrown, Fire-Prone National Forests”

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Mr. Chairman and members of the subcommittee:

Good Morning! And thank you for the invitation to speak on this very important topic.

The process for managing Federal Lands is broken. I repeat: it is broken. It is and has been a complete and total failure for the last 25 years. To illustrate that simple point, let me point out the recent “success” or lack thereof in Region 5 which is largely the 18 National Forests within California and the Pacific Islands. I think everyone will agree that the California forests are all overgrown and have been for some years. The problem of overgrowth is increasingly showing itself in the size and frequency of Catastrophic Wildfire in the Western States. Looking at region 5 and again recognizing that the forests are already overgrown, let’s look at the record. Region 5 is growing in excess of 4500 million board feet (mmbf) of wood fiber or timber; natural mortality exceeds 840 mmbf, while actual timber harvest in 2012 is slightly less than 300 mmbf. Net Growth exceeds 4200 mmbf. Think about that for just a minute: an overgrown forest containing more than 178000 mmbf continues to increase its inventory at an annual rate greater than 2.3%. Natural mortality is slightly less than 0.5% but is almost 3 times the timber harvest. The picture I just painted may not be that good. Bureau of equalization timber tax records indicate that public land harvest is closer to 150 mmbf or half of what we just saw. I cannot explain the difference but it matters little. The bottom line is the same: an overgrown forest continues to crowd itself to its own detriment / demise or maybe oblivion along with all of the species we are trying to protect. This is FAILURE; worse, this is **Dereliction of Duty**.

Speculatively, we can all qualitatively predict the results. Competition for water and sun light and nutrients means we have trees - a forest in distress. Prone to disease! Increased beetle kill and other forms of mortality! You also get a decrease in viable habitat for virtually all forest dwelling species. Dry, weak and dead trees mean increased potential for wild land fires which are harder to control due to the fuel loadings. We had one of those in our County in the summer of 2103 that lasted for roughly 70 days. Fire Suppression costs exceeded \$127 million. It was

called Rim Fire: the largest timber fire in California history totally 402 square miles of burned forest, much of it at high intensity. We need to put that in perspective. Picture yourself driving down a very straight interstate at 65 miles per hour. On both the right and left, everything is black for one mile. You travel like this for about 3 hours and five minutes. That is the Rim Fire result. Not a very pretty picture, is it? Under current conditions and processes, that forest will never recover naturally. We will never see an age diverse, species diverse forest on that footprint again. The man made legislative laws, rules and regulations, restrictions and processes are in conflict, inconsistent and simply will not allow it to happen. So I tell you that the current situation is a loser: the forest loses; all species, thriving or threatened lose, water loses, air quality loses, recreation loses, public safety loses, economically we all lose.

Unless we change soon, we can only expect more of the same. Wild land fire will dominate the fire season, exacerbated by drought. The forest management planning in California is now and will be dominated with “black salvage” for the foreseeable future. It will drive the timber sales on the national forest going forward, not necessarily in the places of choice but in the areas of the most recent big fires. The clock starts on every dead tree the moment it dies. It is a hazard tree. Current policy is burning the forests of the State of California and I think the Western States. In 2014, we had the King Fire, the Happy Camp Complex Fire and many more which totaled more acreage than 2013.

So the bottom line is we need to pick up the Pace and Scale of green harvest, not just talk about it. To do that we must also rebuild the supporting infrastructure for harvest and find ways to utilize the bio-mass.

In the interest of time, let's hit the high points:

Financing / Resources:

Constant complaint or excuse from the USFS is a lack of resources to get the job done. There may some truth here. Fire suppression and litigation have effectively decreased the budgets of the National Forest system. Previously, revenues from timber salvage paid for rural roads and schools and were used to continue the timber harvest plans. So do they really need more resources? I think the answer is YES, but some of the modification should be in how they are funded and what happens to the revenues. Right now the revenues flow back to the General Fund. But we have to ask ourselves why the Federal Lands managers do not have enough resources to manage their forests but they have allocations in their budgets to add new lands to their holdings. This is apparently true with both the Department of Agriculture and the Department of the Interior. It just does not make sense to me at all. Buying more land when we cannot manage what we already have. What kind of judgment is that? Where is the leadership? Where is the accountability? Who is in charge? Did I say dereliction of duty? I did!

ESA / EPA:

The very concept of environmental protection and protecting endangered or threatened species literally at the expense of anything else has created an over reach and in my opinion, inappropriate / inconsistent actions not necessarily in the best interest of the designated species. There is a conflict between which species we protect and the others which may occupy the same habitat.

The science is not always there. In California they set aside an enormous amount of forest land to protect a species. That did not seem to work, so they want to expand the area immensely. Why does anyone think that is the right strategy? It did not work before so we will do more of the failed strategy.

Setting aside “critical habitat” is usually an over reach. Greater Sage Grouse is an example as are the Mountain Yellow-Legged Frog, the Northern Yellow Legged Frog and the Yosemite Toad. While they tell me that this designation of critical habitat does not mean that it cannot be managed, practice shows that is exactly what happens. Additionally, the mechanism that is threatening the species may not be the loss of habitat. In the case of the frogs and toads, it is a fungus, a biological attack that is the issue. So critical habitat designation and protection of same, or even preferentially killing a predator species to protect the prey, will not necessarily deal with the root cause of the problem. We have to focus on determining the root cause of the threat and solving the real problem specifically.

NEPA:

NEPA is a good idea but has some practicality issues. The concept of examining the consequences before implementing the proposal is the right thing to do. Process is lengthy, fraught with error, often redundant and tedious. There is not enough true science as opposed to supposition in making these decisions. In the case of disasters like wildfire, *Categorical Exemptions* need to be expanded. Unless removed, every dead tree becomes a hazard tree and it produces greenhouse gases as it decays in place. Define some limited density of dead snags for habitat and take the rest out if the infrastructure can handle it. NEPA processes need to be streamlined. Work on private lands on Rim Fire started immediately and are virtually done with salvage and replanting. We will be finished with salvage on the National Forest by the end of the year. But we are just now in public hearings on the restoration plan. Do you file NEPA when a hurricane wipes out a coastal site? We need to have a more responsive plan for catastrophic wildfire and restoring our forests.

There are two gross omissions in the NEPA analyses. First, the socio economic impacts on the local area are largely ignored or given only cursory lip service. As a result, our logging infrastructure has been decimated. Our population growth is zero or negative. Our population is aging for lack of opportunity for our young people. Second, the impacts of reduced or virtually ineffective efforts to manage the forest are not considered. There is a wealth of data in the last 25 years about the impacts of negligent management of the forest. The wildfires are the most dramatic. We are focusing on single species impacts and not the general welfare of all of the stakeholders and we are using “bad” science. The result is wildfires, reduction in water production, unhealthy forests, loss of economic value. What happened to the balance we thought we would get when we demanded NEPA. Even in balance, tough decisions and choices have to be made. WE clearly have not made the correct choices since NEPA was enacted. It has become a weapon of special interest groups to the detriment of our collective well-being. YOU need to fix it.

Consortia or consensus groups:

These groups are notoriously inefficient and indecisive! You cannot get to a rational conclusion if you must listen to every potential concern whether science supports it or not and satisfy everybody. Not everybody is qualified to give solid scientific input. The process is slow and opportunities are lost. Yes, we should take input from all viable sources but someone needs to be the decision maker. I have seen presentations in a USFS hearing that appear to be scientific on the surface and in fact were presented as such but there was absolutely no basis for the model being presented. One must query the data base behind every predictive model. The data never lies to you. The data never lies to you so the hypothesis must conform to the data not the other way around. There needs to be a strict process which has real scientific data to support the plan. If a problem is proposed where there is no science, we need to design the experiment to either confirm or deny the hypothesis. The latter siphons off excessive resources so there needs to be risk reward analysis to decide the value of the effort.

Litigation:

Litigation over the sufficiency of the environmental analysis of the impacts of USFS timber sales and restoration projects have led to long delays, increased costs and reduction of the scope and scale in the implementation of forest management projects. Similar lawsuits take place on private land projects as well again add increased costs, resulting in delays and loss of competitiveness.

Because the USFS sale program has been significantly reduced the infrastructure in California including the mills, the truckers, the loggers and other supporting functions. Consequently the industry has been on life support searching for saw logs from any

private source for their very survival. Litigation that slows, reduces or stops a harvest project or timber sale has broad reaching impacts all over our state.

When the USFS attempts to implement scope and scale increases to landscape size projects, litigation has the potential to be more disruptive to fuels reduction programs designed to improve forest health and actually increase public safety risks for catastrophic wildfire. USFS forest thinning and timber sales projects tend to go out up to a couple of years now but they are small. As they go to larger scale projects, they will go out multiple years. If these are disrupted by litigation, the result will be increased threat to the existing infrastructure and further limit our ability to restore our forests.

Lawsuits usually involve multiple claims and it need only prevail on one of these claims to stop a project. The most successful claims are procedural claims under the National Environmental Policy Act. A court will invalidate a sale for an inadequate cumulative effects analysis or overlooking a reasonable alternative while finding nothing environmentally wrong with the sale. The USFS may prevail on 90% or more of the claims but that is not sufficient. The project can be stopped or at least delayed indefinitely while additional analyses are completed. It appears to be an “all or nothing prospect.

As we have seen in the Rim Fire lawsuit, a fire salvage sale attracts many litigants. Because there is urgency relative to the commercial viability of the salvage timber, a one year delay coming on the heels of the lengthy analysis could defeat the entire salvage project. Even if the litigant loses but gets the injunction, the litigant wins because the salvage loses value and virtually does not happen. This is where expansion of the categorical exemptions to include burn salvage timber and fire recovery makes sense. This likely takes legislative action and the force of law to be effective. In the case of Rim Fire, less than 20% of the foot print will be salvaged in the best scenario without the lawsuit.

Equal access to justice:

Great concept but it does not work very well in practice. Single issue activists have high jacked this concept to both make money and to be obstructionists in the process. All they have to do is convince a judge on one small even unsubstantive technical point and win or lose the whole suit, they get their trumped up legal fees. This is incentive for inappropriate disruptive actions and it is working. This is usually paid by the USFS but ultimately the taxpayer. The plaintiff needs to have skin in the game. There has to be a penalty for a frivolous suit or for any case without merit. The criteria must be strengthened and those of us who oppose these suits without substantial merit should get standing as well.

Contrived stories to win a point: their model said 116 nesting pairs of a non-special status species would show up if we did nothing. Truth is more than 80% of the footprint has not been touched and 7 nesting pairs have shown up. When asked if they had benchmarked the model against a real fire, they had not. You can see the error band is greater than 90% less than their model predictions so far. So the model was “dry lab-bed” without any real supporting data and benchmarks. No credibility! So they switch to the California spotted owl which is not a special status species but is one which is watched in an attempt to get interest and credibility. But note that in either case it is single issue / single species management that is being requested. ENOUGH! How about some balance? Aviary species flew away from Rim Fire. The terrestrials / land animals got fried. Their numbers were decimated.

Air Pollution and Bio-Mass:

There is a conflict here that I find difficult to understand. Prescribed burn is recognized as an effective treatment technique in managing the forests. Air pollution control boards restrict the ability of the National Forests to utilize these control burns at optimal times. It is apparent that they do not coordinate on these plans and work together for the optimal benefit of the forest. The catastrophic fires do not ask permission.

Similarly, any harvest or thinning project as well as fire cleanup projects produce enormous amounts of bio-mass. There are a few choices: pile and burn, chip in place, do nothing, or chip and send to a bio-mass generation plant. Problems with the first three are greenhouse gases and air pollution. In the do nothing case, the result is we add more fuel loading for the next fire plus the greenhouse gases. Even though it is a renewable resource and utilizing the bio-mass to a generation plant will reduce the criteria pollutants by up to 98%, it is not cost effective. Bio-mass needs transportation subsidy to be competitive.

Climate Change:

We all believe in Climate Change as it has been around forever. Why else did we have ice ages? However using this as an excuse or justification about where we are going, what we are doing, or how things will happen can be little more than speculation. There is not enough scientific observation to accurately predict the future. And extrapolating short term trends to infinity usually is not productive and the predictions are always wrong. Other compensating factors make short term trends adjust as you go out. Similarly, along with historical climate change we likely had some species go extinct. So while we complain about climate change, sooner or later we have to accept that we cannot satisfy all things with our plans. Some species will adapt or they will perish.

USFS Operations:

Now, here is a case of mixed priorities and lack of direction. It is my opinion that the USFS has lost direction. One of their primary objectives is to avoid litigation. They therefore attempt to compromise their basic principles to satisfy the known potential litigants. Many times their forest management programs have been diluted to the point where they have been ineffective in reducing fire risk. A high level USFS person was proud as he said we give a lot of autonomy down to the district ranger level. The problem is there is also a huge inconsistency at the district ranger level. The conclusion is the autonomy to deal with the specific conditions or constraints in the district is good, but they also need to be clear on the overarching goals and objectives as well as the accountability for getting it done.

On my local Stanislaus National Forest before Rim Fire, they tried to explain to me why they could not increase the minimal harvest plan. They presented a series of overlay maps. First showing the entire national forest followed by the lands which were physically suitable for harvest, then the mature physically suitable for management. At this point they proceeded to take out the following:

- Designated Wilderness and Wild and Scenic Rivers,
- Recommended or proposed Wilderness and Wild and Scenic Rivers,
- Near natural areas,
- RNA's, special areas, and developed recreational areas,
- Owl and Goshawk Protected Activity Centers,
- Old Forest Emphasis Areas, and finally
- Wildland-Urban Intermix Areas ("WUI").

So areas that were recommended or proposed but never approved as either Wilderness or Wild and Scenic Rivers are managed as though Congress approved them. I have never figured out what "near natural areas" are. I thought everything out on the forest was natural or pretty close to it. Now to add to this, the three early adopter forests in Region 5 who are tasked with developing new forest plans consistent with 2012 planning rule are providing new maps of areas suitable for designation as "wilderness" or "wild and scenic" rivers. In effect, these become more area which are now recommended or proposed for this special designation. These areas therefore become more area which will not be managed and further exacerbate the fire susceptibility of our forests. We are doing this to ourselves.

About 25 years ago, roughly 1990, we dramatically reduced our timber harvest. The data is clear. Thirteen of the 20 largest Fires in California happened in the last 15 years. The

catastrophic King Fire near Lake Tahoe last year did not make the list. It was still only about 100,000 acres. Just for the record, 100,000 acres is more than 156 square miles.

There is a rule that we do not harvest any “old growth trees. The last I heard conifers at 30 inch diameter at breast height (“dbh”) were considered old growth but I keep hearing a ratcheting down on that number in specific cases to 20 inch dbh. As you can expect the inventory of old growth and the density of old growth is increasing. In a limit case if you set criteria and say we will not touch anything at say 30 inch dbh and you still try to thin and maintain the forest, then the end game says that is all you have left. Large trees, probably over populated and unhealthy when I keep hearing that we want an age diverse species diverse forest to have a healthy forest.

WE have made a lot of mistakes historically in managing our forests, but the biggest mistake is doing nothing or almost nothing. When we plant, we overplant with the idea of coming back and thinning later. We do not come back later and thin because it is too costly. Yet when we restore an area we plant at very high densities where the survival has been so high that we in effectively doom these trees to struggle and stress rather than thriving. Healthy densities are considered to be in the 40 to 100 stems per acre range. I can show you places on the Rim Fire footprint where we had on the order 500 trees per acre and you cannot walk through them. The deer cannot either.

With every single issue activist group, who has their special species of interest, the USFS attempts to deal with that issue to avoid a protracted lawsuit but that is always at the detriment of every other species in the area and the forest as a whole. I do not believe there is any definitive science that says you can operate in a vacuum and deal with a single issue / species without impact others. Nature just does not allow for that. But our forests are being managed for single species issues regularly. Look at the current law suit on Rim Fire recovery; it is all based on a single species. It makes no sense. We need a balanced management approach that maximizes the needs of the most interests possible.

The USFS on my forest seems to be working to protect the Wilderness areas from human abuse. The problem is they are pushing back on historic activities in those areas such as packing which has been going on since before the Wilderness Act was even thought of. Additionally they are letting historic sites that date back a century or more decay such as Yellowhammer potentially destroying these sites. They are spending resources here while our forests burn.

Let's talk water! Roughly 65% of the precipitation that falls in the high country of the Sierra Nevada Range, never reaches the ground. Through evapo-transpiration, it goes back into the atmosphere as moisture and goes east. If we thinned the canopies a bit, picture what a few more percent of water would do in our streams, creeks, rivers, and

reservoirs of California. This is a partial solution to the drought. This is a negligent failure in the management of our forests.

I have not spent any time discussing recreation of all kinds or public access or the positive impact on the US economy and the balance of payments and that of California that proper forest management would have.

Bottom line for the USFS, someone has to set the standards of performance, give them the necessary resources and support, and hold them accountable to get the job done. Where I come from there are only two things that happen: Results and excuses. No one likes excuses, so we should not offer any and we should not take any. I suggest the Congress needs to set those standards and hold the Departments of Interior and Agriculture accountable. Too much is at risk: forest health, water, environment, public safety, recreation and economics. The process is broken.

The conclusion is simple. We have a: *Failure of Leadership*; a *Failure to Manage*: excuses not results; and negligence which equates to *Dereliction of Duty*.

We have a right to expect the BEST out of our government and the citizens of this Country are not getting it.

"The dogmas of the quiet past are inadequate to the stormy present.

The occasion is piled high with difficulty and we must rise with the occasion.

As our case is new, so we must think anew and act anew.

We must disenthral ourselves and then we will save our country."

Abraham Lincoln – December 1, 1862