

Subcommittee on Oversight and Investigations

Louie Gohmert, Chairman

Hearing Memorandum

July, 23 2015

To: All Natural Resources Committee Members

From: Oversight and Investigations Subcommittee Staff, (5-7107)

Hearing: Oversight hearing titled “*Accountability, Policies, and Tactics of Law Enforcement within the Department of the Interior and the U.S. Forest Service.*”

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled “*Accountability, Policies, and Tactics of Law Enforcement within the Department of the Interior and the U.S. Forest Service*” on Tuesday, **July 28, 2015 at 10:30 a.m.** in room 1324 Longworth.

Policy Overview

- Local Sheriffs and citizens are increasingly raising concerns about law enforcement on federal lands. Some of the issues include: 1) over-reach by federal land law enforcement officers (LEO) in enforcing laws beyond their jurisdiction; 2) lack of coordination with state and local law enforcement; 3) lack of accountability and oversight for federal land LEO’s; 4) instances of militarization; and 5) lack of integration with other agency staff functions; e.g., fire suppression, recreation, forestry, etc.¹
- While cooperation between county and federal law enforcement authorities can be a product of attitude as much as statute or policy, the current arrangement leaves local officials with limited recourse to address these issues.
- Many conflicts are rooted in altercations between federal agents and private landowners and other citizens, which are increasing in frequency. The behavior of federal law enforcement officials has been demonstrably aggressive, unwarranted, and excessive. In a myriad of examples, federal agents have needlessly harassed or intimidated private landowners, public land users, and other citizens or otherwise abused their power in the enforcement of federal environmental laws.²

¹ Testimony of Sheriff James D. Perkins Jr. before the House Subcommittee on Public Lands and Environmental Regulation: “Oversight Hearing on Threats, Intimidation, and Bullying by Federal Land Management Agencies, Part II.” July 24 2014. <http://naturalresources.house.gov/uploadedfiles/perkinstestimony7-24-14.pdf>

² Desert News: “Battle between Utah’s rural counties and BLM intensifies.” June 28, 2014. <http://www.deseretnews.com/article/865605994/Battle-between-Utahs-rural-counties-and-BLM-intensifies.html?pg=all>

Witnesses

Mr. Russ Ehnes

Executive Director
National Off-Highway Vehicle Conservation Council
Great Falls, MT

Sheriff Dave Brown

Skamania County (WA) Sheriff's Office
Stevenson, WA

Mr. Paul Larkin Jr.

Senior Legal Research Fellow
Edwin Meese III Center for Legal and Justice Studies
The Heritage Foundation
Washington, DC

Mr. Christopher Schoppmeyer

Vice President for Agency Affairs
Federal Law Enforcement Officers Association
Washington, DC

Background

Bureau of Land Management

Law enforcement activities on federal land are conducted by several agencies under a variety of authorities. The Bureau of Land Management (BLM) has a force of 200 Law Enforcement Rangers (uniformed officers) and 70 Special Agents (criminal investigators).³ BLM law enforcement authority is derived from the Federal Lands Policy and Management Act (FLPMA) of 1976.⁴

³ "Law Enforcement." Bureau of Land Management. Updated April 11, 2014. http://www.blm.gov/wo/st/en/prog/more/law_enforcement.html. Accessed July 23, 2015.

⁴ Federal Lands Policy and Management Act of 1976 (PL 94-579). <http://www.blm.gov/flpma/FLPMA.pdf>.

U.S. Fish and Wildlife Service

The Fish and Wildlife Service (FWS) employs 261 special agents and 140 wildlife inspectors⁵ to enforce the Endangered Species Act, Lacey Act, and the Migratory Bird Treaty Act.⁶

National Park Service

The National Park Service (NPS) has 580 Park Police officers and 3,861 Park Rangers⁷ and has authority within the system under the General Authorities Act.⁸

U.S. Forest Service

The U.S. Forest Service has 590 enforcement personnel including uniformed Law Enforcement Officers and investigative Special Agents.⁹ Like the BLM, the Forest Service derives its law enforcement authority from FLPMA.

Overreach by Federal Land Law Enforcement Officers

In some situations, local Sheriffs favor and provide cross-designation of authorities for speeding, underage drinking, etc., which are location and incident specific. A federal LEO's primary responsibility is the protection of federal lands.¹⁰ Sheriffs are increasingly concerned with federal LEOs enforcing state laws without authority or coordination with local Sheriffs. Local Sheriffs want to be assured that citizens and visitors to their communities are receiving a consistent enforcement message and tone irrespective of what uniform the officer is wearing.

In addition the U.S. Forest Service has recently contemplated a blanket policy expanding their authority instead of leaving those cross designation decisions to local Sheriffs.¹¹

⁵ "About Service Law Enforcement." Fish and Wildlife Service. Updated February 14, 2013. <http://www.fws.gov/le/about-le.html>. Access July 23 2015

⁶ "Laws and Regulations." Fish and Wildlife Service. Updated May 19, 2015. <http://www.fws.gov/le/laws-regulations.html>. Accessed July 23, 2015.

⁷ "Work with Us." National Park Service. <http://www.nps.gov/aboutus/workwithus.htm>. Accessed July 23, 2015.

⁸ "Law Enforcement Reference Manual." National Park Service. http://www.nps.gov/policy/Redacted_RM-9.pdf

⁹ "Organization." USDA Forest Service Law Enforcement and Investigations. <http://www.fs.fed.us/lei/organization.php>. Accessed July 23, 2014.

¹⁰ CBS Sacramento: "El Dorado County Sheriff Strips Forest Service Of State-Law Enforcement Power" June 21, 2013. <http://sacramento.cbslocal.com/2013/06/21/el-dorado-county-sheriff-strips-forest-service-of-state-law-enforcement-power/>

¹¹ Position Paper, Western States Sheriffs Association: "Proposed Changes by the U.S. Forest Service Law Enforcement." September 21, 2011. http://www.westernsheriffs.org/ByLaws_files/Western%20States%20Sheriffs%20Association%20doc%201.pdf

Lack of Coordination with State and Local Law Enforcement and Lack of Accountability

Across the nation, there is no formal mechanism to assure coordination between law enforcement agencies. Federal LEO training could benefit from including local law enforcement perspectives in federal officer training. Cooperative agreements, which provide a small amount of funds to local law enforcement could also benefit from increased oversight. There is no formal mechanism for local Sheriffs to elevate issues regarding federal law enforcement within their counties.

In recent examples, states¹² and communities¹³ have proactively cancelled the authority of the federal agents to enforce state law, despite federal claims that they have no ability to enforce state law and are merely enforcing federal law. The noticeable lack of accountability is further underscored when agents are perceived as bullies and economic detriments. Yet, even the highest levels of state government are unable to successfully petition for their removal.¹⁴

The friction between federal and local law enforcement can occur over issues as innocuous as traffic tickets on state roads, but escalate when there are no tools to remedy the differences. As the elected law enforcement representative of their community, Sheriffs are sometimes asked to protect their neighbors from the federal officer.

Federal law enforcement believes the authority to enforce laws pertaining to a state is derived from their ability to enforce “federal regulation and rules of the conduct that adopt the standards of state or local law.”¹⁵

Structurally, within their agencies, none of the federal agency administrators have oversight bodies to help them review law enforcement incidents, organization, policy, cooperation with other law enforcement, internal challenges or training.

Lack of Integration within the Federal Agencies

Prior to 1994, Forest Service Law Enforcement and Investigations (LEI) officers and agents answered to agency line managers including District Rangers, Forest Supervisors, and

¹² Press Release, Utah Attorney General Press Room: “Utah A.G. Will Defend Law To Stop Federal Police Force.” <https://utahagofficepress.wordpress.com/2013/05/13/utah-a-g-will-defend-law-to-stop-federal-police-force>

¹³ CBS Sacramento: “El Dorado County Sheriff Strips Forest Service Of State-Law Enforcement Power” June 21, 2013. <http://sacramento.cbslocal.com/2013/06/21/el-dorado-county-sheriff-strips-forest-service-of-state-law-enforcement-power/>

¹⁴ The Salt Lake Tribune: “Utah to BLM: Reign in your cops.” October 19, 2014. <http://www.sltrib.com/sltrib/news/58394443-78/blm-love-utah-law.html.csp>

¹⁵ Complaint for Declaratory and Injunctive Relief, United States District Court of Utah. *U.S. v. The State of Utah*. Filed by Attorneys for the United States, plaintiff, May 13, 2013. <http://www.scribd.com/doc/141270411/Complaint-from-U-S-Attorney-about-Utah-HB-155#scribd>

Regional Foresters.¹⁶ In 1993, USFS established a new structure whereby LEI was made its own independent division, with a director who reports directly to the Chief of the Forest Service.¹⁷ This practice of housing federal lands law enforcement duties under the larger bureau, rather than the regional or local field offices, is known as “stove-piping”. While this type of organizational structure has some limited benefits, it has resulted in a number of negative, unintended consequences.

The bureaucratic disconnect between LEI and local line officers has resulted in agency de-prioritization of law enforcement. Integration allows for line officers to direct LEO’s to patrol areas of concern, including fire suppression, recreation, and forestry functions, to ensure coordination with local government and to have a pulse on where criminal activity may be occurring on a unit in order to provide for safety of employees and the public. Integration would also help in recruitment from within agency ranks from employees who are tied to the conservation mission.

While stove-piping ensures officer training and safety, as well as the integrity of the investigations, these objectives can be accomplished through other means. Re-evaluating the current organizational model and considering the authorization of the agencies to integrate the program is needed in light of the aforementioned challenges.

¹⁶ GAO Report: “U.S. Forest Service: Independence Still Lacking in Law Enforcement Organization.”

¹⁷ Greenwire: “Forest Service: 'Rotten leadership,' few resources gut law enforcement, officers say.” (<http://www.eenews.net/stories/1059996780>).