

Subcommittee on Federal Lands

Tom McClintock, Chairman

Hearing Memo

May 14, 2015

To: All Natural Resources Committee Members

From: Gary Schiff, Majority Staff, x6-7736
Federal Lands Subcommittee

Hearing: Oversight hearing titled, "*Litigation and Increased Planning's Impact on Our Nation's Overgrown, Fire-Prone National Forests.*"

The Subcommittee on Federal Lands will hold an oversight hearing to receive testimony on "*Litigation and Increased Planning's Impact to Our Nation's Overgrown, Fire-Prone National Forests,*" on **Thursday, May 14, 2015 at 9:30 a.m. in Room 1324 Longworth**. The hearing will focus on the impact of increased litigation, the Forest Service's response to this increased litigious environment, added requirements by other agencies and the impact on our nation's overgrown, fire-prone national forests.

Policy Overview

Many of America's 155 national forests are overgrown and fire-prone, in large measure due to "analysis paralysis." District Rangers, Forest Supervisors and their staffs attempt to advance forest thinning projects to reduce catastrophic wildfire risk. Nevertheless they are stymied by multi-fold increases in environmental analysis requirements over the past several decades which have resulted in much longer and costly planning timelines and significantly increased complexity.

These changes are the result of additional requirements from other agencies, such as the Fish and Wildlife Service, and the Forest Service's response to increased litigation; i.e., additional administrative direction in an attempt to make environmental analysis documents "bullet-proof" from potential litigation. The outcomes, even where collaborative efforts are in place, have been appealed administratively and ultimately litigated. The result is what Chief Dale Bosworth labeled in 2002 a "process predicament." The consequence of this process predicament includes: more fire prone forests, more costly projects, many fewer jobs in rural America, a demoralized federal work force and larger, more destructive catastrophic wildfires.

Litigation's Paralyzing Impacts on Federal Forest Management

Litigation is paralyzing one of the core missions of the Forest Service. Between 1989 and 2008, **1,125 lawsuits** were filed against the Forest Service. Hundreds more have been filed over the past six years of the Obama Administration. Most of these lawsuits have been based on the National Environmental Policy Act (NEPA) process to block proposals to cut trees needed to thin national forests.¹

¹ Twenty years of Forest Service Land Management Litigation, Miner, Malmsheimer and Keele, Journal of Forestry, January 2014

As a result of this onslaught of litigation, the agency has significantly increased time and taxpayer-funded resources devoted specifically for environmental analyses. A 1999 report by the National Academy of Public Administration estimated that planning consumed forty percent of the work load at the local level. Today, Forest Service personnel estimate that the amount has grown to sixty percent of field level employees' time spent solely on planning.²

National Environmental Policy Act Process and “Analysis Paralysis”

Timelines for analysis have increased from several months to several years for a typical forest management project. Correspondingly, the expense of preparation has also increased dramatically. Line officers who were involved in forest management projects in the 1980's recall 3 – 6 month timeframes to complete NEPA environmental analyses. Agency provided data indicates that over the past ten years, timeframes to complete environmental assessments for modest sized forest management projects have increased from 14.7 months to 20.1 months.³

The result: fewer acres have been treated and less wood removed, fewer mills and less jobs; more fire prone over-grown forests and more destructive catastrophic wildfires. Despite this anemic federal management, our forests continue to grow.

Collaborative efforts of late have resulted in diverse interests such as industry, environmental and local government agreeing on forest management projects. Nevertheless, litigation persists. In Montana and Northern Idaho, where great efforts have been made in collaboration, between 2008 and 2013, 70 projects have been litigated.⁴ This litigation has encumbered half of the agency's forest management projects and has largely been filed by groups who have not been willing to participate in the collaborative process.⁵

Collaborative groups in Montana are significantly reducing the scale of their recommended treatments because of fear of anticipated litigation. These groups include representatives of the environmental community. While these collaborative groups can agree on the number of acres to be thinned, in a number of cases, due to fear of litigation from litigious, non-participating groups, they have significantly reduced their recommended acreage due to fear of litigation from these outside non-participating groups.⁶ Forest Service line officers and staff working without the assistance of collaborative groups similarly are reducing the scale of projects for the same reason.⁷

² Based on data and discussions with Forest Service Staff and line officers

³ Based on data and discussions with Forest Service Staff and line officers

⁴ Understanding Costs and Other Impacts of Litigation of Forest Service Projects: A Region One Case Study, Morgan and Baldrige, study prepared for USDA Forest Service, Northern Region and Montana Forest Products Retention Roundtable and agency provided data (Region One Staff)

⁵ Based on data and discussions with Forest Service Staff and line officers

⁶ Information provided by Dave Schulz, Commissioner, Madison County, Montana and Chair of SW Montana Resource Advisory Committee and the Beaverhead Deer Lodge Collaborative Working Group

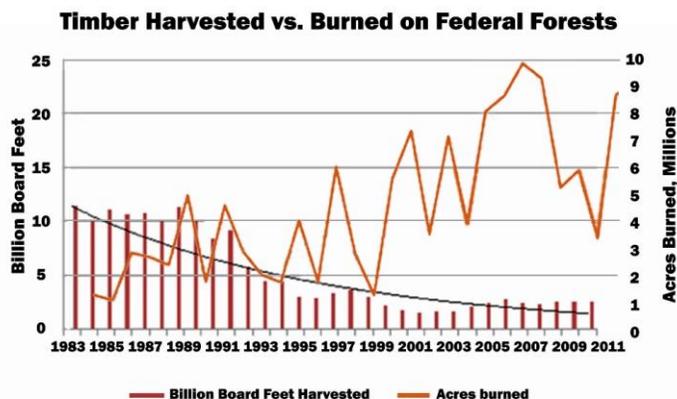
⁷ Based on data and discussions with Forest Service Staff and line officers

Employee morale surveys of Forest Service employees, which previously were among the highest of any government agency in the nation,⁸ have recently shown that while employees support the agency mission, morale has fallen significantly.⁹ Some within the agency believe this is in large measure due to “analysis paralysis,” i.e., the inability to accomplish on-the-ground, meaningful work in a timely manner.

In 2002, Chief Dale Bosworth, requested a study be conducted to assess the agency’s “analysis paralysis.” The report, “The Process Predicament, How Statutory, Regulatory, and Administrative Factors Affect National Forest Management,” describes the same challenges the agency faces today.¹⁰

In an attempt to make limited strides toward addressing the “analysis paralysis” challenge, the Forest Service has promoted stewardship contracting opportunities, and is experimenting with more collaborative decision making. They also have sought to utilize a new Categorical Exclusion category for insect and disease projects and have implemented an “objection process,” in lieu of the administrative appeal process for certain projects. Nevertheless, these efforts to address “analysis paralysis” in a meaningful way administratively have had only marginal impacts.

The amount of forest area thinned is often accomplished through commercial timber harvest. From the mid 1950’s through the mid 1990’s, the average amount of timber harvested from the national forests averaged ten to twelve billion board feet.¹¹ During the same period, the average annual amount of acres burned due to catastrophic wildfire, was 3.6 million acres per year.¹²



By contrast, due to litigation and in an effort to prevent further litigation, those numbers changed rather substantially. Since 1996, the average amount of timber harvested annually was between 1.5 and 3.3 billion board feet.¹³ Also since 1996, the average annual amount of acres burned due to catastrophic wildfire was over six million acres per year.¹⁴

Endangered Species Act and the National Forests

Additional Endangered Species Act (ESA) listings and potential listings of plant and animal species by the U.S. Fish and Wildlife Service (FWS) have increased and intensified survey requirements multi-fold for both occupied and “potential” habitat. For many species, including

⁸ Based on data and discussions with Forest Service Staff and line officers
⁹ Results of Federal Employee Viewpoint Survey shared with agency employees
¹⁰ USDA Forest Service Report, The Process Predicament, How Statutory, Regulatory, and Administrative Factors Affect National Forest Management, June 2002
¹¹ FY 1905-2014 National Summary Cut and Sold Data and Graphs, USDA Forest Service
¹² National Interagency Fire Center, Historical Wildland Fire Information (website)
¹³ FY 1905-2014 National Summary Cut and Sold Data and Graphs, USDA Forest Service
¹⁴ National Interagency Fire Center, Historical Wildland Fire Information (website)

those not on the endangered species list, the Forest Service is only allowed to survey during very narrow time frames and many times must conduct multi-year field surveys. As a result of ESA mega-settlements agreed to by the FWS in 2011, more than 200 new species have been listed and millions of acres of new habitat have been designated as “critical habitat,” including a significant amount on Forest Service and other federally-owned lands.

In northwestern Montana, the Kootenai National Forest Supervisor approved an Environmental Impact Statement to proceed with the Grizzly Vegetation Management project on 2,360 acres identified as being at significant risk of wildfire. The proposed activities included timber harvest, fuels reduction, prescribed burning, pre-commercial thinning, wildlife habitat improvement, and watershed rehabilitation. In late 2009, several environmental groups filed suit under the ESA, claiming these activities would harm grizzly bear habitat. A federal district court judge granted an injunction in 2010, which effectively blocked the management activities, and awarded the plaintiff’s attorneys’ fees in the amount of \$56,000.

The Devastating Impacts of Catastrophic Wildfires

The impacts of increasing catastrophic wildfires as a result of decreased on-the-ground forest management projects are significant. One of the biggest post-wildfire challenges is the impact of ash and debris on domestic water delivery. Water agencies have spent hundreds of millions of dollars to dredge reservoirs, clean intake facilities and replace burned-up infrastructure.¹⁵

In addition, the adverse impacts to wildlife habitat have been quite significant. Agency staff rate catastrophic wildfire as one the biggest threats to endangered species habitat. The direct post-fire forest rehabilitation costs to the Forest Service have topped 142 million dollars over the past four years.¹⁶

The impact to homes has been devastating as well. Between 2006 and 2014, the Forest Service reports that 3,716 structures were destroyed. (Many more received significant damage.)

Yet, most tragic has been the 348 wildfire-related fatalities which have occurred over the past twenty years.¹⁷

Witnesses Invited

Mr. Dale Bosworth, former Chief, (2001-2007)
U.S. Forest Service
Missoula, Montana

Mr. Robert W. Malmshemer, PhD
SUNY College of Environmental Science and Forestry
Syracuse, New York

¹⁵ Information provided in testimony by Andy Fecko, Administrator, Placer County Water Agency, by Jim Lochhead, CEO, Denver Water Board and Members of the National Water Resources Association

¹⁶ Information provided by agency in response to Committee staff request

¹⁷ FS BAER/Fire Rehab Expenditures Report and data provided by agency Fire Management staff

Mr. Dave Schulz, Commissioner, (Chair of SW Montana Resource Advisory Committee and the Beaverhead Deer Lodge Collaborative Working Group)
Madison County, Virginia City, Montana

Mr. Randy Hanvelt, Supervisor
District 2
Tuolumne County, CA

Mr. Christopher Topik, Director
North America Forest Restoration Priority Project
The Nature Conservancy
Arlington, VA