

STATEMENT OF

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**OVERSIGHT HEARING ON "LITIGATION AND INCREASED PLANNING'S
IMPACT ON OUR NATION'S OVERGROWN, FIRE-PRONE NATIONAL
FORESTS."**

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FEDERAL LANDS**

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WASHINGTON, D.C.**

Thank you, Chairman McClintock, Ranking Member Tsongas and members of the Subcommittee for the opportunity to testify today on how litigation and protracted studies are negatively impacting our nation's ability to actively manage our National Forests.

My name is David Schulz and I am an elected county commissioner from Madison County, Montana. As a public servant, I have served 15 years on the Madison County Board of Commissioners. Today I am testifying on behalf of the Montana Association of Counties, where I currently serve as the president of that organization.

As a rancher, I have spent most of my life grazing cattle on U.S. Forest Service (USFS) land in southwest Montana. I also chair the Southwest Montana Forest Resource Advisory Council, whose mission is to solicit, review and fund forest related projects with funds made available through Title II of the USFS Secure Rural Schools (SRS) program.

Through my many years working and recreating on our forests, I have developed a deep appreciation for forest lands and want to see them maintained in a manner that will keep them healthy and productive for generations to come. However, I fear our nation's current management practices are endangering the many invaluable resources that our national forests provide. I am even more afraid that our nation's ability to change its course and promote responsible forest management is being continuously blocked by the threat of litigation over any action our land managers may take.

About Madison County, Montana

Madison County, Montana encompasses 2.3 million acres, of which 1 million acres (46 percent) is federal land. Our population is near 8,000 people with agriculture, tourism and recreation providing most of our economic value. The county seat, Virginia City, was one of the first gold rush towns in the west and an early territorial capital of Montana. It is the most visited state owned tourist attraction in Montana today. Big Sky, one of the country's most popular winter recreation destinations, is also located in Madison County. When the financial crisis of the late 2000's occurred, we were one of the first counties to feel the downturn, as Big Sky development was being backed by several of the largest lending institutions impacted by the economic crash. Today, Madison County and Big Sky are beginning their recovery and again experiencing development similar to what we saw prior to the economic downturn.

About the Montana Association of Counties

The Montana Association of Counties was created in 1909 to represent Montana's counties and continues to fulfill that role by representing all 56 counties in Montana. The Association is

organized to provide professional training and support for good government and protection of county interests. The Association's goals include fostering cooperation among counties and other governmental entities, improving efficiency in government and being a representative of the mission of MACo as determined by its members.

Counties are highly diverse, not only in Montana but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic, public health and environmental responsibilities. Counties in Montana range from 500 to 160,000 in population, from young to older populations, from heavily forested to grassland, from 3,000 to 10,000 feet in elevation, and from having no live streams to major rivers that run the length of the county. Many other states, particularly in the west, share the same diversity.

Since counties are an extension of state government, many of their duties are mandated by the state. Although county responsibilities differ widely between states, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and other infrastructure, assessment of property taxes, record keeping, running elections, overseeing jails and court systems, public hospitals and senior care facilities. Counties may also be responsible for child welfare, consumer protection, economic development, employment/training, land use planning and zoning and water quality. Montana is no exception to this rule.

Today I will be discussing several key issues:

1. We all have a stake in promoting healthy forests
2. Collaborative planning can reduce the impacts of litigation
3. Agency staffing and resource challenges should be addressed to promote high-quality forest planning

1. We All have a Stake in Promoting Healthy Forests

First, we all have a stake in promoting healthy forests and, as county officials, we are always working to balance the economic growth and vitality of our communities with protecting our natural resources.

America's National Forests belong to all of us. As owners, we are responsible for the condition, management and use of that resource. When the condition of the forest becomes hazardous to the land itself and the people we serve, we have a responsibility to ask why. Because forests

comprise a significant part of our landscape, it is necessary that they are cared for in a way that does not harm the health, safety and welfare of our population, nor the resource itself.

Today, I am also here as a citizen of the United States who is concerned that litigation or the perceived threat of litigation is compromising the implementation of sound forest management practices. This threat is negatively impacting communities like mine by limiting our ability to create jobs on or around forest lands, as well as exposing our communities to increased risk of wildfires.

Every fire occurs within a county, borough or parish and citizens turn to local governments for guidance on preparation, response and recovery from these and other disasters. Further, counties like mine are also concerned that current forest management practices are not adequately addressing issues like invasive species infestation and forest disease. Because the USFS expends so much of its resources defending decisions or trying to appease potential litigants, few resources remain to plan and implement management practices that would benefit the health of the forests. As a result, sound forest management remains an unfulfilled promise.

The health and condition of our forests nationally is at a critical state. Particularly across the western United States, insect infestation and disease contribute to the mortality of thousands of acres of once healthy forest stands. On the Beaverhead-Deer Lodge Forest (B-DL) over the past 15 years, forest condition has degraded from 20 percent of the standing timber being dead or dying to over 50 percent. The health of the forest continues to decline, fire risk is increasing at an alarming rate and, without treatment and active management, usable timber quality is quickly declining to a non-merchantable state. In addition, fewer people recreate on public lands that have lost their green beauty, and our communities' economic viability is suffering as a direct result. **Counties across the country are working every day to both protect their natural resources and protect their citizens' health, safety and well-being. It is important we find constructive ways to work together with stakeholders to ensure that our forests are healthy and productive and that our local economies can continue to thrive.**

2. Collaboratives Can Work

Second, collaborative engagement throughout the forest planning process can reduce the impacts of litigation. Over my years in public service, I have seen firsthand how effective collaboratives can be.

In Madison County, I serve as chair of the Beaverhead-Deer Lodge Working Group (BDWG), a citizen-based committee of stakeholders who represent key interests of the Beaverhead-Deer Lodge National Forest. This working group was first established in 2011 at the encouragement of the USFS Forest Supervisor, to participate with the forest in the planning process, offer recommendations on project direction, and to be a conduit to the public on actions and decisions that are being considered. A hope of using a collaborative process was that bringing all stakeholders together to work out differences over a table, rather than in a courtroom, would lead to forest management practices and projects not being litigated.

Our members represent a broad cross section of interests including: the timber industry, county governments, agriculture and ranching, motorized and non-motorized recreation, conservation, outdoorsmen, outfitters and guides, and concerned citizens. Each of the working group members is responsible to communicate back to the group or organization we represent. Our group has spent years studying lodge pole pine beetle mortality, key fish watersheds, travel management, endangered species and the Endangered Species Act and National Environmental Policy Act processes, among other topics. We have reviewed proposed restoration projects, done field studies to evaluate forest management priorities and recommend project areas, and conducted oversight on forest management decisions.

Recently, the BDWG became involved in a project that had been in planning eight years ago. At that time, the Forest concluded the project was too complex and costly to move forward. The Collaborative requested it be reconsidered. Today, the project, although somewhat smaller than first intended, is about three months from going to the public comment step. It is our hope, with the hard work of the planning staff and the BDWG making valued recommendations, this project will have a clear path through public involvement and be signed by fall of this year. Without the BDWG involvement, this project would still be dead.

I further believe that if this project is litigated, the participation of the collaborative will have a positive impact on the judge's or hearing officer's decision.

3. Agency staffing and resource challenges should be addressed to promote high-quality forest planning

Third, in order to promote more effective management and planning processes, agency staffing and resource management challenges needs to be addressed. As with any business, having the right people in the right places is essential. It is imperative that staff knows the objectives and hurdles to being successful. At the same time, while staff is being asked to maximize

performance to address forest health through project and plan development in addition to managing all the other priorities of the agency, funding support for personnel and operations is being reduced. USFS budgets have experienced a significant reduction. With that, USFS employment has been reduced by 22 percent in the last 10 years. Information provided by the U.S. Office of Personnel Management indicates a decline from 31,500 employees in 2004 to around 24,750 in 2013. Further, the Partnership for Public Service Report ranks the Forest Service as number 237 of 315 in best places to work in the federal government. Employees in the USFS are overworked because the acreages, obligations and responsibilities are still there, but the appropriate staff is not!

The ability to actively manage and generate economic activity on the forests has also been impacted. In 2013, timber production volume on the B-DL was 8,148 million board feet (mbf) and 14,243 mbf in 2014. This level of management production is a small percentage of what it should be and will have no effect on addressing the significant forest health issues our collaborative has identified.

Nationally, the Forest Service estimates that between 65 and 82 million acres of forest lands are in need of restoration. Collaboration among groups and mindsets working with the Forest Service is essential to meeting this need.

However, there are numerous other challenges that must be considered, including:

Ensuring Continuity in Leadership

Continuity in leadership is another concern. Quality leadership in any organization is essential to its success. Having good leaders and keeping them is even more valuable. Forest Service Region 1 has experienced a continual transition of Regional Foresters in recent years. The B-DL Supervisor position has changed five times during my 15 years as Commissioner. Further, we have had three new District Rangers in the Ennis field office in the last five years. In addition, when there is an opening or retirement at the leadership level, a three to four month search and placement schedule leaves a void with an interim position assigned to the role. I point this out to highlight that leadership transitions are having an impact on personnel and productivity. Each lengthy transition comes with its own paralysis by analysis as a result of the lengthy hiring processes. This is in addition to the normal time it would take a person in a new position to become comfortable in a new job.

The Threat of Litigation

The NEPA process is ever-changing and becomes more complex each year. It is time intensive and requires staff to be focused on even the slightest detail. The smallest oversight can result in costly litigation and years of project delays. With decreasing personnel levels, the challenge is greater as staff is obligated to other duties that require equal or more time. Years ago, the B-DL had a planning staff in each of its districts. Today, there is one planning staff working out of the Supervisor's office with only limited support staff in the District offices. Given the high threat of litigation and the limited resources to make and review the necessary management planning decisions, the result is truly "Analysis Paralysis"!

Environmental litigation of USFS land management activities is a primary and high cost to the agency as well as a reason why many beneficial forest projects are scrapped. For years, Region 1 has experienced a high rate of litigation of its forest management projects. Simply put, the agency's ability to implement projects is impaired by litigation. The cost of litigation, as well as time and effort required of USFS staff to address litigation, is a significant burden. The costs and the fact that litigation pulls essential staff away from other critical forest management duties puts other projects at risk. The consequences are a domino effect that results in forest management coming to a standstill.

Between 2008 and 2013, Region 1 had over 70 projects litigated; more than any other Region on the National Forest System. The cost of litigation is shown to have a direct impact on that forest's overall work program as well as the timber volume produced.

Impacts and costs that are affected by litigation include:

- Legal Costs incurred by the Forest Service in defending itself in active litigation.
- Payments made to timber purchasers for timber that was sold but not harvested as result of the litigation.
- Loss of timber revenue.
- Deferred or delayed projects because staff have been pulled away from other projects to support the USFS's legal defense efforts.
- Staff despair over developing a quality project that is repealed through litigation.
- Community impacts such as lost revenue to logging contractors, lost revenue to the mill workers, and lost tax revenue to state and local governments.

In recent years, the B-DL has completed and sold a number of projects that have passed the litigation test. Roadside restoration, wildland urban interface management, stream reclamation and erosion control are examples. They do positively benefit an area and short

term jobs and some timber are a byproduct. However, these are very small projects that have little impact or benefit to the greater forest condition and need we have.

Conclusion:

Today, many threats to the health of our nation's forests exist. America's land managers and forest professionals have dedicated their lives to addressing these challenges. Although science has proven that we can manage to create healthy and vibrant forests in spite of such natural threats as wildfire, invasive species and climate change, it is the man-made threat of litigation that is truly imperiling our nation's forests.

As county officials, we have a responsibility to work to achieve a balance between promoting economic growth and protecting our natural resources. We stand ready to work with the members of this subcommittee in support of initiatives to improve the health of our nation's forests, promote active and vibrant local economies and ensure sustainable management of our forest resources for future generations.