

PREPARED STATEMENT FOR THE RECORD  
OF  
CHARLES H. BURLEY  
PRESIDENT  
BURLEY & ASSOCIATES, LLC  
FOR THE  
AMERICAN FOREST RESOURCE COUNCIL  
BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

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**Executive Summary**

- The forest health crisis facing our federal forests can no longer be ignored. There are 72 million acres of National Forest System land at high risk to catastrophic wildfire. Another 26 million acres are at high risk to insect infestation and disease. That is enough to burn a path from New York City to Los Angeles 62 miles wide. The total federal land area at risk to catastrophic wildfire is 190 million acres.
- Effective fire suppression and a passive forest management philosophy have created this monumental crisis. It is going to take scientifically based, active forest management to restore our forest's health.
- Local land managers must be empowered to make decisions on forest health treatments based on site-specific conditions. In some cases they may recommend thinning and harvest, in some cases prescribed burning, and in other cases no treatment may be appropriate. The key to success is the local land managers who possess the site-specific knowledge and expertise must have all the tools at their disposal to make these decisions.
- It took a long time—maybe one hundred years—to get into this forest health crisis and it is going to take us a long time and a great deal of funding to get out of it. Healthy forests don't just happen and every day we delay makes the problem exponentially worse. Every day we delay management projects we increase the risk a new wildfire will be sparked or an insect infestation will occur, or a disease epidemic will spread.
- The federal land management agencies are drowning in paperwork and red tape. The President has asked Congress and the Council on Environmental Quality to throw them a lifeline; restore common sense to the management of our federal lands. The application of NEPA and appeals must be brought back in

line with the original intent—to prepare a detailed statement for major federal actions significantly affecting the quality of the human environment—instead of the unending planning and analysis process it's become.

- Treating the unhealthy forests around homes and communities is important work and needs to be done to protect human life and property; however, most wildfires don't start in these areas. They start in overgrown, unhealthy forests typically far from communities and rural residences. These fires destroy wildlife habitat, threaten our drinking water, degrade air quality for hundreds of miles, and pose great risk to property and human life.
- Fire is a natural part of a healthy ecosystem and can be quite beneficial. The problem is our public forests are not healthy. Fires in these forests tend to burn hotter, faster, and larger than anything that occurs in nature. Healthy forests don't just happen. We need to actively manage our forests, return them to healthy conditions, and then allow fire to be naturally reintroduced where and when it's appropriate.

### **Testimony**

Good morning, Mr. Chairman. My name is Charles Burley and I am the president of Burley & Associates, LLC. My testimony today is on behalf of the American Forest Resource Council (AFRC). The AFRC represents about 80 forest product manufacturers and forest landowners—from small, family-owned companies to large multi-national corporations—in twelve states west of the Great Lakes. AFRC's mission is to create a favorable operating environment for the forest products industry, ensure a reliable timber supply from public and private lands, and promote sustainable management of forests by improving federal laws, regulations, policies and decisions that determine or influence the management of all lands. Nationally, the industry has sales of over \$195 billion annually and employs 1.6 million people.

Over the past several years we have experienced record-breaking fire seasons. The 2000 fire season, which until this year was the worst on record, generated significant interest in addressing the risks of wildfire. This led to the collaborative efforts of western governors, federal, state, local and Tribal governments and interested stakeholders, including the forest products industry, to develop the "Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Comprehensive Strategy Implementation Plan". The Secretaries of the Interior and Agriculture adopted this plan on May 23.

This year we are again experiencing a record setting fire season. As of August 31, over 6.3 million acres have burned which is more than twice the 10-year average of 3.1 million acres. We've also, tragically, lost the lives of 20 firefighters and over a thousand structures, including homes.

Communities throughout the West are impacted either directly or indirectly. Direct impacts include evacuations and structures lost. Indirect impacts include decreased air quality and reduced tourism as we saw with Denver and Florence, Oregon this year.

There are numerous contemporary reports from the Government Accounting Office, National Fire Protection Association, National Research Council, and other equally qualified bodies pointing out the increased risk of wildfires and their impacts to our nation's forests and communities. I won't belabor this by listing and citing all the reports and statistics.

Suffice it to say that it's become readily apparent that we have a major problem with the risk of

wildfires across our country. These problems won't go away and the sooner we address them the sooner forest health can be restored. Something must be done and done quickly.

Actions taken must treat the problems and not the symptoms. The fundamental problem causing the increased risk of wildfire is the poor forest health and excessive fuel loads on our public lands. I cannot overemphasize the need for urgent, decisive, and direct action to treat these problems.

The President's *Forest Health Initiative*, which was released on August 22, outlines the tools necessary to accomplish this. Some argue the President's proposal is simply another excuse to log the public lands or to turn the key over to the industry. But there is evidence that proper management can help reduce the risk of wildfires.

In a recent study of the fire hazards in Montana, it was reported that comprehensive, ecologically based prescriptions "achieves far greater hazard reduction immediately post-treatment, and is far less expensive to employ. It is also superior in terms of longevity and extent of effectiveness compared to the treatments with a singular focus on small-tree removal."<sup>[1]</sup>

Another report that looked at actual on-the-ground management pre- and post-fire concluded that the "results unanimously indicate that treated stands experience lower fire severity than untreated stands that burn under similar weather and topographic conditions."<sup>[2]</sup>

So why aren't we doing more? There's this 800-pound gorilla on our back that Forest Service Chief Dale Bosworth calls the "analysis paralysis." This analysis paralysis is the result of a patchwork of laws and regulations that has accumulated over the past few decades. The two that most directly affect the agency's ability to get work done are NEPA and the administrative appeals process.

### *NEPA*

A recent Forest Service internal study of NEPA<sup>[3]</sup> had some very interesting results. This analysis of NEPA used business and process workflow models to show the activities necessary to conduct project planning and comply with NEPA and other laws within the context of a timber sale. These results include:

- "Undue impacts in terms of time and costs during the planning phase of a project."
- "Considerable complexity caused by the exponential interactions among the laws that govern environmental analysis within project planning."
- "Potential for interruption in the project analysis/decision making process by other State and Federal agencies with environmental regulatory authority."
- "An intense level of detail (time & effort) has been introduced into the process, due to risk mitigation and burden of proof (as it relates to public comment)."
- "Case law is often over interpreted and inconsistently applies, which can result in additional time and effort being expended."

There are many detailed and technical comments on NEPA which I'd be happy to provide you if requested. I also wish to note the CEQ is looking at this problem with its NEPA Task Force. We applaud this effort and are submitting detailed comments on NEPA through that process. The bottom line is that the application of NEPA must be brought back in line with the original intent—to prepare a detailed statement

for major federal actions significantly affecting the quality of the human environment—instead of the unending planning and analysis process it's become.

## *APPEALS*

The U.S. Forest Service is rather unique in that it is one of only a few, if not the only, federal agency that has an administrative appeals process. Prior to the enactment of the Appeals Reform Act (Section 322 of Public Law 102-381, the Department of the Interior and Related Agencies Appropriations Act 1993), the appeals process had been the result of agency rulemaking. The passage of the Appeals Reform Act marked the first time Congress legislated the appeals process.

Like so many things in life, the appeals process was well intentioned when first instituted. Unfortunately, over time, it has become a process all too often abused by individuals and organizations that wish to delay or stop Forest Service activities from being implemented—this is particularly acute if the project involves harvesting trees.

For example, a recent Forest Service internal report [\[4\]](#) documents the fact that 48 percent of mechanical treatment decisions for hazardous fuels were appealed in fiscal year 2001 and 2002 (through June 27).

The appeals process has become a formality or simply part of the agency doing business. Whenever the agency estimates the time to plan a project, it always allows for at least a 90-day appeal period.

Appeals are problematic in that the timeline set aside for them is excessive given all other factors. In fact, most NEPA scoping and public comment periods are less than the time allowed to file an appeal. This is counter intuitive given the fact that most appellants have already participated in the process, are familiar with the details and thus should require little time at the end to decide whether to appeal or not.

But perhaps more importantly, the appeal period is increasingly being used to simply block or delay projects. Appellants also use the informal disposition provision to effect changes in the project at the exclusion of others that had participated in the process prior to the final decision.

## **Solutions Needed**

The American Forest Resource Council supports the recently completed plan entitled “A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Comprehensive Strategy Implementation Plan.”

This plan was the result of months of collaborative work by representatives of federal, state, local and tribal governments and interested stakeholders. It clearly lays out the goals, specific action items, and performance measures to ensure our nation's wildfire risks are being addressed appropriately. Being a collaborative plan, no party got everything they wanted. Nevertheless, with the broad base of support, we are confident the plan will be successful.

One essential element for success in restoring forest health and reducing the risk of wildfire is adequate funding. It's imperative that Congress familiarizes itself with this plan and funds it for success. The performance measures provide for monitoring both for outcomes and wise use of taxpayers' dollars.

It's also important to point out that the plan, given it's collaborative development, is a balance of differing points of views. Participants maintained the flexibility to ensure when decisions are made at the

local level, the necessary tools are available to get the work done both effectively and efficiently. This includes active forest management when and where it's appropriate.

There must be recognition that scientific forest management cannot be arbitrarily limited. To be truly effective, management must be free to utilize all the information and technology that's available. One specific example here is the arbitrary 21-inch diameter limit in eastern Oregon and eastern Washington. Such one-size-fits-all, top-down prescriptive direction does more harm than good in the long run.

Stewardship contracting authority is another means to help accomplish forest health restoration goals. This presents opportunities to treat areas otherwise not available under ordinary contracting methods. Stewardship contracting has the added benefit of supporting local communities and keeping receipts local where they can do the most good.

More importantly, however, all the above changes won't do any good if we don't realize substantive, structural changes to the project planning process. Long-term structural changes must occur if we want to have a reasonable, cost-effective process to meet the intent of NEPA yet get work done in a timely manner.

Short-term we must realize immediate relief in the form of exemptions and "alternative arrangements" as already allowed in the CEQ NEPA regulations. Exemptions may not be politically attractive but they are not without precedent. In a 1998 Report for Congress by the Congressional Research Service <sup>[5]</sup>, it was shown that "Congress has often enacted provisions that modify the application of [NEPA] or specify the extent of the documents that need be prepared in particular instances or contexts." This includes instances of exempting certain federal activities from NEPA compliance (vis-à-vis Senator Daschle's recent language regarding the Black Hills National Forest), pronouncing certain analyses to be sufficient or adequate consideration under NEPA, and limiting the scope of NEPA analysis.

We face an emergency crisis with the wildfires and immediate action is necessary. Without short-term relief from the process gridlock, we will in all likelihood be here again next year having this same conversation.

Our national forests and other public lands are a treasure that must be carefully managed for the benefit of future generations as well as for today's. I urge you to take the necessary action in support of the President's Forest Health Initiative, provide short-term relief from the gridlock, and institute structural changes to make the process more effective in the future.

This concludes my testimony and I'd be glad to answer any questions you may have regarding this important issue.

## **EXAMPLES OF GRIDLOCK**

### **McCache Vegetation Project**

Santiam Pass is a major highway corridor over the Cascades in Central Oregon. Much of the area in Santiam Pass is within the Northwest Forest Plan. About a decade ago the forest suffered an epidemic of spruce budworm resulting in extremely high mortality of the dense stands of fir and spruce. Due to the early spotted owl lawsuits, the agency was enjoined from doing anything in the area despite the common knowledge that the area was at high risk of wildfire. This risk was particularly acute given the proximity of the communities of Sisters, Black Butte Ranch, and Camp Sherman. After the injunctions were lifted and the Northwest Forest Plan was in place, the agency began planning restoration activities in the Santiam Pass

area.

One of these activities focused on the Cache Mountain area. The McCache Vegetation Management Project decision notice was signed in October 2001. It said,

“This decision will guide the stewardship efforts in restoring the forests in this unique Late Successional Reserve. The project area was hit hard in the 1990s by the spruce budworm, and over 1/3 of the forest stands have moderate to very high mortality. The decision addresses what type of actions the Forest Service will take to reduce the risk of losing important habitat for plants and animals and to restore forest health. Other important goals are to reduce fuels in order to lower the risk to people (local residents, visitors, and fire-fighters) from severe wildfire. The types of management actions addressed in this decision include removing dead and dying trees and dense shrubs, thinning dense forest stands, and re-introducing low-intensity fires. These restoration activities would occur on about 5,000 acres of the 15,000 acre project area.” (McCache Decision Notice, October 19, 2001) (emphasis added)

This project had gone through NEPA with all the obligatory public review and comment periods. Nevertheless, there were some environmental groups that did not like the final decision, despite their involvement throughout the process. Consequently they appealed the final decision in December 2001.

One appeal, from the Oregon Natural Resource Council (ONRC), felt the objectives of reducing the risk of wildfire were inappropriate. In its appeal, ONRC stated:

“The goal(s) of reducing risk for firefighters and the public are inappropriate.” ,and

“The McCache area is not very populated and you can’t realistically change fire behavior enough to make a difference for the firefighters.”

This ONRC appeal, and those of others, was denied in the early part of this year. Unfortunately, by that time, it was too late to implement the project this past field season. As a result there was no vegetative management done on or in the vicinity of Cache Mountain as planned.

On July 23 this year around 5:30 p.m. lightning struck Cache Mountain and started a fire in the immediate vicinity of where treatments that had been appealed were planned. Forest Service briefing materials on the fire had the following to say:

Threatened resources: “Potential threat to Suttle Lake recreation complex 1-2 miles north, Black Butte Resort (about 1300 homes) four miles east, Weyerhaeuser land and timber directly east, bald eagle and spotted owl habitat near Suttle Lake, and Santiam Wagon Road.”  
Remarks: “Fire is actively burning in extreme dry heavy dead and downed fuels on the north side of Cache Mountain. Fuels on the east side of Cache Mountain are brush and bug-killed whitebark pine and fir.”

By July 29, the fire had grown to 4,200 acres. During the course of the fire, a church summer camp and Black Butte Ranch, a resort and residential development, had to be evacuated. By the time the fire was contained, it had burned two homes in Black Butte Ranch approximately 4-5 miles from where the fire started. In addition, valuable resources on public land such as spotted owl habitat was lost, and an adjacent private forest landowner lost a large investment in its plantation.

Now no one can say with certainty that had the McCache project been implemented there would

have been no fire or it would not have grown to the size and cause the damage it did. But chances are pretty good that had the project been implemented, the fire could have been controlled sooner and the damage less severe.

The other lesson that can be learned from this is that time is of the essence. Fires won't wait for us. We have to get out in front and the NEPA and appeals processes are not conducive to effective and timely action.

### Little Canyon Mountain

The Little Canyon Mountain is located in eastern Oregon and is typical of the problems associated with wildland-urban interfaces (WUIs). The mountain is owned and managed by the Bureau of Land Management (BLM). Because of its size and the lack of BLM resources in the immediate vicinity, the agency has an agreement with the Oregon Department of Forestry (ODF) to provide fire protection for the area.

Nearly three years ago, a BLM employee who is familiar with the Little Canyon Mountain and a homeowner in the WUI, recognized the need for restoration and fuels reduction on the mountain. He prepared an EA that sat on his supervisor's desk for two years despite cries from the communities to do something before disaster strikes.

During this year's fire season, there was renewed interest in implementing the EA that still has not been signed. When the BLM was asked why not, the response was they don't want to be sued by the environmentalists. Instead, the BLM Prineville Office expressed its desire to collaborate with the environmentalists and others to develop a level of trust before anything is done on the mountain.

In fairness to the BLM, they are doing some treatments strictly in the interface area but it's questionable whether this will be effective in the event of a large fire on the mountain. The ODF recently visited the site and wrote BLM urging action. In its memo, the ODF states, "Many 'green' trees show visible indicators of ongoing attack or severe stress that makes attack in the near future nearly certain. The standing dead fuels with retained needles will promote sustained crown fire runs with extreme rates of spread in the near term. Absent treatment, these fuels will convert to heavy down fuels that create different, but equally difficult, control problems. Either condition is likely to lead to stand-replacement fires. The close proximity to populated areas also introduces high risk that such events will be community-replacement fires."

Little Canyon Mountain highlights the problems federal agencies face with the constant threat of appeals and litigation from opponents of active forest management. As a consequence, public and private resources and properties are put at risk. In cases such as this delaying activities is inviting disaster.

### "Beschta Report"

The "Beschta Report" typifies problems associated with the NEPA process. This report is a compilation of views by several scientists regarding resource issues to consider when planning for the salvage of fire-killed timber. There's some question of the scientific robustness of the report and the degree to which it was peer reviewed. But few would argue that the recommendations, which outline the factors to consider when planning salvage sales, are not without merit.

However, the report exemplifies the issue of new information and how best to treat it. Some argue it's not new information in that the recommendations are factors normally considered anyway. Others argue

that the report represents the best available science and the science supports the position of no salvage logging.

The first question is how does the agency evaluate the quality and validity of the information in the report? Is it truly science just because a scientist wrote it or is it just his opinion shared by others?

The second question is how does the agency utilize the information in the report? In this case, when the report was first released, the Regional Forester issued a directive to the field saying they had to incorporate the report in all salvage sale environmental documents. Subsequent to this direction, when environmental documents were released and the “Beschta Report” was not found in the “four corners of the document”, i.e., the actual words “Beschta Report” and its recommendations weren’t physically found in the EA, then the EA was found by the courts to be inadequate.

Early this year, after losing a court case, the Regional Forester issued another directive again stating the report must be mentioned in the environmental document. This only made the situation worse. The Regional Forester should have looked at the report and realized it’s not the source of information but the information itself that was relevant. That is a directive to ensure when salvage logging is planned, the environmental document should address certain factors such as sedimentation and soil compaction—factors in the Beschta Report and also factors that should be included nevertheless.

This response gets the agency out of the box of having to find the words “Beschta Report” in the environmental document. It also gets away from having to respond in similar fashion when the next piece of new information is forthcoming.

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[1] Fiedler, Carl E., Charles E. Keegan III, et al, “A Strategic Assessment of Fire Hazard in Montana”, Report submitted to the Joint Fire Sciences Program, September 29, 2001.

[2] Omi, Philip, Erik Martinson, “Effects of Fuels Treatment on Wildfire Severity”, Western Forest Fire Research Center, Colorado State University, March 25, 2002.

[3] Internal Forest Service report, “Complexity of Laws Introduced in Project Planning”, USDA FS Inventory & Monitoring Institute, October 8, 2001.

[4] “Factors Affecting Timely Mechanical Fuel Treatment Decisions” (July 2002) USDA Forest Service Internal Report

[5] “Statutory Modifications of the Application of NEPA”, CRS Report for Congress, 98-417A, May 1, 1998.