

**STATEMENT OF HANK KASHDAN
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BUSINESS OPERATIONS
BEFORE THE
SUBCOMMITTEE ON
NATIONAL PARKS,
FORESTS AND PUBLIC LANDS
HOUSE NATURAL RESOURCES COMMITTEE
CONCERNING
THE PINEROS: REVIEWING THE WELFARE OF
WORKERS ON FEDERAL LANDS**

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Mr. Chairman and Members of the Subcommittee thank you for the opportunity to testify before you today on the Forest Service's role in ensuring the health and safety of Los Piñeros as they carry out service contract work on National Forest System lands. The Forest Service is committed to the safety and health of visitors and workers in national forests and grasslands. We have and will continue to act quickly to address problems that may arise in the area of worker or visitor safety and health.

Reforestation contractors employ both U.S. workers and workers approved to enter the U.S. under certain Temporary Worker Programs. Los Piñeros or “men of the pines” is a term used typically to refer to reforestation workers who are in the United States under the H-2B Temporary Work Visa. There is a limit of 66,000 individuals per year who may enter the United States to work under this visa. Estimates for H-2B forestry workers range between 15,000 and 20,000. In contrast, the H-2A Temporary Work Visa is a separate category of temporary work visa specifically for agricultural workers. Forest Service reforestation contractors do not employ H-2A guest workers.

The primary jurisdiction and oversight for the H-2B Temporary Guest Worker Program is with the Department of Homeland Security (DHS) through its Citizenship and Immigration Services (USCIS). The Department of Labor (DoL) Employment and Training Administration (ETA), Wage and Hour Division (WHD), and Occupational Health and Safety Administration (OSHA), as well state agencies, also have roles in providing workplace protections for these workers. The Forest Service is involved when workers are employed by contracting firms performing service contract work on lands within the jurisdiction of the Forest Service whether such workers are H-2B temporary workers or U.S. workers.

Contractors, including reforestation contractors, must obtain a certification from the DoL declaring that qualified U.S. workers are not available for this type of work. The contracting firms must stipulate that the employment of temporary workers under the H-2B visas will neither adversely affect the wages nor the working conditions of similarly employed U. S. workers. Once the DoL has granted the contractor certification, the contractor then can petition the DHS for approval to employ guest workers.

Similar to U. S citizens, foreign guest workers are covered by a number of worker protection laws. Employers are required to pay at least prevailing wages for the labor in the area of the intended employment and to provide a safety and healthy workplace for their employees. H-2B workers may file complaints with local DoL WHD and OSHA to seek redress for complaints that they may file under worker protection laws.

Forest Service Responsibilities and Actions Taken

Since the March 2006 hearing before the Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands and Forests, the Forest Service has played an increasing role in ensuring the health, safety and fair compensation for Los Piñeros. For foreign reforestation guest workers employed by service contractors to perform specified contractual work on National Forest System lands, the Forest Service is the agency with the most direct contact and contractual oversight. The day-to-day business practices of the Forest Service include mutual respect, fair compensation, and worker health and safety. These are our core values. We have taken, and continue to take, action to strengthen our agency role in ensuring work place compliance with Federal laws for this work activity. However, we are not replacing the role of the DoL, state agencies or DHS in the administration of laws within their respective jurisdictions.

The Forest Service and its employees who are involved with reforestation service contracts have received training to identify and report suspected violations and to take immediate action when imminent threats to health and safety exist. To this extent, the Forest Service has issued stop work orders and has reported suspected violations of applicable labor and safety laws to DoL or state agencies. Suspected violations of H-2B visa status are reported to DHS.

Since the March 2006 Senate hearing, the Forest Service Director of Acquisition Management (AQM) and the Director of Enforcement Policy, WHD, and the Deputy Director Enforcement Program, OSHA, have met repeatedly to coordinate the management and oversight of reforestation contracts for the National Forest System. These meetings have enhanced relationships and understanding of program oversight and awareness. Annually, DHS will receive a list of reforestation service contracts across the National Forest System and we have provided DoL with access to our contractor database. This access and list allows the DoL and DHS to prioritize and schedule site visits and inspections to ensure oversight of the reforestation contractors.

On January 31, 2007, the Department of Agriculture accepted an invitation from the Institute for a Sustainable Environment – Ecosystem Workforce Program at the

University of Oregon to participate in a “Forum on Working Conditions for Forest Workers.” U. S. Department of Agriculture Under Secretary for Natural Resources and the Environment Mark Rey and Ronald Hooper, Forest Service Director of Acquisition Management, presented the changes in the service contracts that the Forest Service had implemented and the reporting of suspected violations of worker protection laws or immigration laws to other appropriate agencies. The USDA and FS involvement at the forum sponsored by the University of Oregon demonstrates our commitment to improve the working conditions and regulation compliance for reforestation and other service contract employees working in National Forest System lands, through our improved service contract provisions.

Currently, the Forest Service has increased the rigor and scope of contract inspection and monitoring to include all Forest Service employees visiting a project site. Our reporting suspected violations to other agencies has involved alleged violations in wages and benefits, safety and health and H-2B Visa status. All suspected violations of contract provisions have been reported to DoL since 2006. In addition, through routine enforcement patrols, the DHS Immigration and Customs Enforcement (ICE) has apprehended undocumented workers in the employ of a reforestation contractor. Confirmed violations are documented in a Forest Service database for consideration in future contract awards to the violating firm. However, to date, there have been no Forest Service recommendations to DoL for contractor debarment. In all cases, the Forest Service monitors to verify that the contractor has taken corrective actions.

Accountability is paramount in our management of reforestation service contracts. Internal control plans and reviews have been developed and implemented for monitoring reforestation contracts to ensure that there is agency compliance with DoL and DHS laws and regulations, and that violations, investigations and dispositions of complaints are tracked and recorded. Forest Service contracting officers, contracting officer’s representatives and contract inspectors are now trained to recognize problems, potential violations, and are empowered to immediately address the situation by requiring corrective action or issuing stop work orders. Service contracts prepared and offered by the Forest Service now contain specific provisions that fully describe the requirements of the Fair Labor Standards Act (FLSA), Migrant and Seasonal Agricultural Worker Protection Act (MPSA), McNamara-O’Hara Service Contract Act (SCA), and Occupational Safety and Health Act (OSH Act) standards as well as visa status requirements. Forest Service contract administrators are encouraged to observe, document and report to DoL and DHS suspected violations of applicable contract provisions that address workers compensation, safety, and health, as well as visa status. The determination of a violation relative to any of the applicable Federal laws resides with DoL and DHS. The Forest Service has established a contractor database where violations of Federal law, as determined by DoL and DHS, are recorded. This establishes a contractor history based on specific contract provisions. If violations are sufficiently serious, or there is a robust history of violations, then this is a factor in determining future awards.

The Missoula Technology Development Center (MTDC) has developed a comprehensive on-line training module titled Safety & Health Training for Contracting Officer's Representatives and Inspectors. This module provides the latest health and safety requirements as prescribed by OSHA regulations at 29 CFR 1910 (General Industry) and 1926 (Construction) and is available for self-study for Forest Service employees involved in service contract oversight and monitoring. The program design is for either self-study or classroom type training and is available to the public, including contractors and advocates for workers rights. However, it is incumbent upon the service contracting firms to fulfill the requirement to understand and to train reforestation employees in the OSHA Regulations at 29 CFR 1910 and 1926.

The field and regional organizations of DoL and DHS provide training and compliance assistance, and current information, at yearly service contracting seminars for Forest Service employees who will prepare, award and administer the contracts. These seminars, while not contractor training sessions, do include private sector forestry service firms who are contemplating on bidding and securing a service contract, as well as for Forest Service employees.

The National Director of AQM requires the regional AQM directors for the Forest Service, to sample a percentage of reforestation contracts each year. The directors are ensuring that the direction of the Forest Service Chief is followed with respect to the reporting of suspected violations to DoL and DHS. This reporting is accomplished through established procedures and the points of contact in the respective agencies. The directors are responsible for ensuring that the remedy for confirmed violations is implemented. This is accomplished through a formal letter from the DoL and a formal acknowledgement of that letter of notification from the Forest Service.

Conclusion

Since the 2006 hearing, the Forest Service has reported to DoL suspected violations of provisions relative to the FLSA, MPSA, SCA, and OSHA standards, and reported to DHS suspected violations of H-2B Visa status. The Departments have investigated the Forest Service reports and provided findings of their investigations according to their procedure to the contractors and the Forest Service. Contractors, upon receiving the findings, have implemented corrective actions to ensure that violations are addressed and practices or behaviors modified. We can report that there have been no injuries to contract workers or deaths to contract workers on reforestation contracts, nor are we aware of any visa violations.

The Department of Agriculture and the Forest Service are committed to the health and safety for all visitors and workers in the National Forest System. That includes foreign guest workers. We will continue to closely coordinate with the oversight agencies in DoL and DHS who are responsible for administering this program to ensure foreign guest workers will have employment where their personal health and safety is ensured by both their employer and the Federal government.

This concludes my statement, I would be happy to answer any questions that you may have.