

Subcommittee on Federal Lands  
Tom McClintock, Chairman  
Hearing Memo

June 3, 2015

**To:** Natural Resources Committee Members

**From:** Erica Rhoad, Gary Schiff & Brent Blevins, x 6-7736

**Hearing:** Legislative hearing on H.R. \_\_\_\_, a Discussion Draft entitled "*Returning Resilience to our Overgrown, Fire-prone National Forests Act of 2015*"

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The Subcommittee will hold a hearing on H.R. \_\_\_\_ "*Returning Resilience to our Overgrown, Fire-prone National Forest Act of 2015*," on **Wednesday, June 3, 2015 at 2:00 p.m.** in room 1324 Longworth.

**Discussion Draft Summary**

The discussion draft is a compilation of many of the best legislative concepts introduced over the past few Congresses to proactively address the disastrous consequences of increasing catastrophic wildfires and other threats to our nation's federal forests and the Forest Service's inability to address those threats.

Specifically, to improve our national forests, the legislation:

- Empowers the Forest Service to implement tools immediately to reduce the threat of catastrophic wildfire, insect and disease infestation and damage to municipal watersheds.
- Expedites the Forest Service's ability to quickly remove dead trees after wildfires (in limited areas) to pay for reforestation and rehabilitation after fires.
- Incentivizes collaboration and speeds the implementation of collaborative projects.
- Protects collaborative projects from unnecessary delay by requiring bonding for legal challenges. This would discourage arbitrary and frivolous litigation against the Forest Service.
- Ensures robust protection of the environment through environmental reviews, while making environmental process requirements more efficient, reducing project planning times and costs of implementing forest management projects.
- Encourages and speeds Forest Service backlogs for wildlife habitat improvement for wild turkey, ruffed grouse, elk and deer and other "early seral" species.

- Creates no new federal red-tape or requirements—no new mapping, planning, rule-making or reports.
- Updates and modernizes the Secure Rural Schools law and reauthorizes the Resource Advisory Committees (RACs) that have brought diverse viewpoints together to solve national forest management problems.
- Provides new methods of funding Forest Service projects such as ‘revolving funds’ for projects on national forests funded by states (e.g., Montana, New Mexico and Oregon have made efforts to fund national forest projects to prevent catastrophic wildfire).

### **Invited Witnesses**

*Mr. Jack Troyer*

former Intermountain Regional Forester/Deputy Regional Forester  
US Forest Service, (1997-2007)  
Board of Directors, National Association of Forest Service Retirees  
North Ogden, Utah

*Ms. Becky Humphries* Chief Executive Officer of Conservation  
National Wild Turkey Federation  
Edgefield, South Carolina

*Mr. Ron Walter*, Commissioner  
Board of County Commissioners  
Chelan County  
Wenatchee, Washington

*Mr. Tom Tidwell*, Chief  
US Forest Service  
Washington, D.C.

*Mr. Eric Biber*, Professor of Law  
University of California, Berkeley  
Berkeley, California

### **Background**

The Federal Lands Subcommittee has held several hearings on national forest management problems this year and over the past few Congresses. Hearings highlighted the dire situation for our national forests and the impacts and risks to states and residents of local communities. Unfortunately this year promises to be another challenging wildfire season that will undoubtedly illustrate the result and impact of no action.

The Committee has received testimony from recent hearings that America’s national forests are increasingly becoming overgrown, fire-prone thickets due, in part, to a lack of active

management such as thinning forests to reduce fire danger. As a result, catastrophic wildfires are growing in number, size, and intensity with devastating impacts to the environment.

The Forest Service is entrusted with managing mostly forested areas in 43 states and Puerto Rico, an area equivalent to ten percent of the continental U.S. land base. Agency staff recently identified as high risk for catastrophic wildfire, between one fourth and one third of the 193 million acre National Forest System.<sup>1</sup> The identified wildfire at-risk area is equal to an area almost the size of the states of Pennsylvania and New York combined. **This year the agency plans thinning and prescribed burning on less than three percent of that acreage.**

Significant concerns have been raised about the Forest Service's anemic forest management efforts, both in terms of administrative obstacles (e.g., cumbersome planning processes, high costs and over-analysis); and legal obstacles in approving projects.

### **Significant Impacts of Wildfire**

1. *Water* -- One of the most significant post-wildfire challenges is the impact of ash and debris on domestic water delivery and water quality. Water agencies have spent hundreds of millions of dollars to dredge reservoirs, clean intake facilities and replace burned-up infrastructure.<sup>2</sup>
2. *Wildlife Habitat* -- Agency staff rate catastrophic wildfire as one the biggest threats to endangered species habitat.
3. *Rehabilitation Costs*--The direct post-fire forest rehabilitation costs to the Forest Service have topped \$142 million over the past four years.<sup>3</sup> The impact to communities has been significantly larger.
4. *Reforestation Needs*-- At the end of FY 2014, the Forest Service identified a minimum practical level of 850,624 wildfire-caused acres (1,329 square miles) as needing reforestation treatment.<sup>4</sup>
5. *Property*-- The impact to homes has been devastating. Between 2006 and 2014, the Forest Service reports that 3,716 structures were destroyed. Many more received significant damage.<sup>5</sup>
6. *Human Life*- Most tragic has been the 348 wildfire-related fatalities which have occurred over the past twenty years.<sup>6</sup>

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<sup>1</sup> Agency firelab.org website, "fifty-eight million acres of national forests are at high or very high risk of severe wildfire."

<sup>2</sup> Information derived from expenditures described by Andy Fecko, Director of Resource Development, Placer County Water Agency, in testimony before Federal Lands Subcommittee on April 23, 2015, information provided by Jim Lochhead, Director, Denver Water Board and others.

<sup>3</sup> Information provided by the Forest Service in response to Committee staff request.

<sup>4</sup> Information provided by the Forest Service in response to Committee staff request.

<sup>5</sup> Forest Service Burned Area Emergency Rehabilitation Expenditures Report and data provided by the Forest Service Fire Management staff.

## **Catastrophic Wildfire Impacts Grow as Forest Management Shrinks**

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.<sup>7</sup> During the same period, the average annual amount of acres burned due to catastrophic wildfire, was 3.6 million acres per year.<sup>8</sup>

By contrast, as a result of a proliferation of litigation and in the Forest Service's anticipation of and efforts 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.<sup>9</sup> Also since 1996, the average annual amount of acres burned due to catastrophic wildfire was over six million acres per year.<sup>10</sup>

## **Paralyzing Impact of Litigation and Resulting Analysis Paralysis**

Litigation has paralyzed 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 during 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.

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 process and reaction to litigation consumed 40 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.

Timelines for analyses 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 three to six 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.

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.

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<sup>6</sup> Forest Service Burned Area Emergency Rehabilitation Expenditures Report and data provided by agency Fire Management staff.

<sup>7</sup> FY 1905-2014 National Summary Cut and Sold Data and Graphs, USDA Forest Service.

<sup>8</sup> National Interagency Fire Center, Historical Wildland Fire Information <https://www.nifc.gov/>.

<sup>9</sup> FY 1905-2014 National Summary Cut and Sold Data and Graphs, USDA Forest Service

<sup>10</sup> National Interagency Fire Center, Historical Wildland Fire Information (website)

More recent collaborative efforts have brought together diverse interests such as industry, environmental and local government agreeing on forest management projects. Nevertheless, litigation continues unabated despite these efforts. In Montana and Northern Idaho, where great efforts have been made in collaboration, between 2008 and 2013, 70 projects have been litigated. This litigation has encumbered half of the Forest Service's forest management projects and has largely been filed by groups who have not been willing to participate in the collaborative process.

### **Impacts to the Forest Service and the Forest Service Response**

Employee morale of Forest Service employees has fallen significantly. 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, former Forest Service 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,"* accurately describes the same challenges the agency faces today, only they have worsened.

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.

### **Section-by-Section Analysis**

#### **Title 1 – Expedited Environmental Analysis and Availability of Categorical Exclusions to Expedite Forest Management Activities**

##### **Sec. 101-- Definitions**

**Sec. 102--** For proposed collaborative forest management activities, requires the Forest Service to analyze only two alternatives ("Action" versus "No Action").

- a. An "action alternative", which is the project proposed by a collaborative process, Resource Advisory Committee (RAC) or Community Wildfire Protection Plan (CWPP); and,
- b. A "no-action" alternative. The "no action alternative" must include an analysis of potential future impacts (such as insect and disease threats, catastrophic wildfire and its impacts on municipal watersheds, wildlife habitat, and other socio-economic factors).

Sec. 103-- Categorical Exclusion to Expedite Certain Critical Response Actions

- Authorizes a categorical exclusion for insect and disease, to reduce hazardous fuels loads, protect municipal watersheds, improve or enhance critical habitat, to increase water yield, or any combination of the purposes listed above.
  - Limits acreage of the categorical exclusion to 5,000 acres
  - If the project is developed through a collaborative process, RAC, or CWPP then the categorical exclusion is limited to 15,000 acres

Sec. 104-- Categorical Exclusion to Expedite Certain Salvage Operations in Response to Wildfire

- Authorizes a categorical exclusion for areas burned by wildfire to salvage dead trees and reforest to prevent re-burn, provide for the utilization of burned trees, or to provide a funding source for reforestation.
  - Limits acreage of the categorical exclusion to 5,000 acres
  - If the project is developed through a collaborative process, RAC, or CWPP then the categorical exclusion is limited to 15,000 acres
  - Limits road building to temporary roads only and requires the decommissioning of the road upon completion of the project
  - Requires projects to protect streams and stream buffers as provided in the forest plan
  - Requires the development of a reforestation plan (per existing law)

Sec. 105-- Categorical Exclusion to Meet Forest Plan Goals for Early Successional Forests

- Authorizes a categorical exclusion to improve, enhance, or create early successional forests for wildlife habitat improvement.
- Limits acreage of the categorical exclusion to 5,000 acres

Sec. 106-- Clarifies Existing Categorical Exclusion Authority Related to Insect & Disease Infestation

- Amends the Farm Bill amendments to the Healthy Forest Restoration Act to include Fire Regime IV (Lodgepole pine) in the Insect & Disease Categorical Exclusion included in the Farm Bill. This provision was inadvertently left out of the original legislation even though Fire Regime I, II and III were included.

## Title II – Large-Scale Fire Restoration

### Sec. 201-- Definitions

### Sec. 202-- Expedites Reforestation of National Forest System Land Following Large-Scale Wildfire

- Requires a three month environmental assessment for reforestation activities
- Requires at least 50% of the burned area be reforested
- Prohibits the use of the authority in Wilderness, Roadless, (unless the action is consistent with the forest plan) and any other areas where timber harvest is prohibited by statute.
- Requires all projects to comply with forest plans
- Prohibits preliminary injunctions on temporary restraining orders

## Title III – Collaborative Project Litigation Requirement

### Sec. 301-- Definitions

### Sec. 302-- Bond Requirement for Legal Challenge of Certain Forest Management Activities

- Requires a bond for litigants seeking to challenge projects developed through a collaborative process, RAC, or CWPP.
- Allows the Forest Service to recover the costs, expenses and attorneys' fees if the Forest Service prevails in the court case.
- Allows the return of the bond to the plaintiff if it prevails on all the actions brought before the court.
- In the case of a settlement, the Forest Service and the plaintiff will share the costs incurred.
- Restricts payment of Equal Access to Justice Act payments to plaintiffs

## Title IV – Secure Rural Schools & Community Self-Determination Act Amendments

### Sec. 401-- Use of Reserved Funds for Title II Projects on Federal and Certain Non-Federal Land

- Eliminates the ‘sorting yard’ requirement.
- Requires 50% of Title II funds be spent on projects which include sale of forest products and meet land management objectives.

### Sec. 402—Strengthen Local Participation in Resource Advisory Committees

- Extends Title II Resource Advisory Committee (RAC) functions, membership, and charters and allows RAC’s to function with reduced membership.
- Requires new members to be appointed from within RAC geographic area or neighboring counties (RAC’s are required to have balanced representation from environmental, industry and government interests).

### Sec. 403-- Program for Title II Self-Sustaining Resource Advisory Committee Projects

- Authorizes the Chief of the Forest Service to choose ten RAC’s that may retain revenue from projects to fund future projects that accomplish forest management objectives.

### Sec. 404-- Use of Reserved Funds for Title III County Projects

- Allows search and rescue funding to also be spent on patrols, training and equipment purchases.

## Title V – Stewardship End Result Contracting

### Sec. 501-502 -- Cancellation Ceiling for Stewardship End Result Contracting Projects

- Amends the Stewardship Contracting Authority so the Forest Service is no longer required to set aside money in the event a stewardship contract is cancelled<sup>11</sup>.

### Sec. 503-- Payment of Portion of Stewardship Project Revenues to County in which Stewardship Project Occurs

- Requires 25% of revenue from a stewardship contract to be deposited in the county in which the project occurred. Prior to this, stewardship contracting was exempt from revenue sharing laws (unlike timber sales).

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<sup>11</sup> The Forest Service is currently required to cover potential losses in capital expenditures by a contractor in rare cases (such as if there is a significantly extended government shutdown and the contractor cannot operate as a result). This would allow the Forest Service to utilize funds which were deposited in these accounts for additional project work.

Sec. 504- Submission of Existing Annual Report

- Amends a report required under stewardship contracting authorities

Title VI – Additional Funding Sources for Forest Management Activities

Sec. 601-- Definitions

Sec. 602-- Availability of Stewardship Project Revenues and Collaborative Forest Landscape Restoration Fund to Cover Forest Management Activity Planning

- Allows the Forest Service to use up to 25% of Stewardship Contracting funds for planning projects. Currently, the Forest Service prohibits the use of funds for planning. This has created a backlog of projects in need of planning funds.

Sec. 603-- State-Supported Planning of Forest Management Activities

- Allows state or other entities to contribute funds for forest management. States can then be repaid through revenues from the projects they funded and establish a ‘revolving fund’ for future forest management projects. Montana, New Mexico and Oregon are all states that have dedicated funds to forest management on national forests.

Title VII – Miscellaneous Forest Management Provisions

Sec. 701-- Balancing Short and Long Term Effects of Forest Management Activities in Considering Injunctive Relief

- Any court hearing a case regarding Forest Service action must weigh the benefits of taking short-term action versus the potential long-term harm of inaction (fire, etc.).

Sec. 702-- Conditions on Road Decommissioning

- If the Forest Service is considering decommissioning a road in a fire-prone area, the Forest Service must consult with the local government and consider alternatives before taking action. Additionally, the regional forester must sign off on any road closure in a high fire prone area. The Forest Service has been closing and decommissioning roads at a high rate even though these roads are needed to thin forests and fight fires.

Sec. 703-- Prohibition on Application of Eastside Screens Requirements on National Forest Lands

- The Northwest Forest plan interim management direction required “eastside screens” meaning no trees over 21” could be cut east of the Cascades in Oregon and Washington states. Grand Fir, a tree species with no ecological value, often grows in excess of 21” in diameter and serves as a ladder fuels for catastrophic wildfire. This provision removes this restriction on Forest Service management and will help to reduce catastrophic wildfire.

Sec. 704-- Use of Site-Specific Land and Resource Management Plan Amendments for Certain Projects and Activities on National Forest Lands

- In many parts of the country, national forests are operating under outdated forest plans (some were last updated in the 80’s and 90’s). As a result, plans may not allow the forest management necessary to successfully thin a forest to prevent catastrophic fire. This provision would allow the Forest Service to amend forest plans in these cases. Public involvement and input is still required.

Sec. 705- Exclusion of Certain National Forest System Land

- Prohibits the use of the authority in Wilderness, Roadless (unless the action is consistent with the forest plan) and any other areas where timber harvest is prohibited by statute.