

**Statement of
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Before the House Subcommittee on Federal Lands
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Chairman McClintock and distinguished members of this Subcommittee. Thank you for the opportunity to share some perspectives on the challenges facing active management of America's National Forests and Grasslands.

Today our forests are in crisis. Wildfires are burning with unprecedented ferocity due to prolonged drought; insect and disease infestations in over stressed stands; too many trees for the carrying capacity of the land, and I believe the lack of active management to name just a few. There are many other reasons. My friend and colleague Jim Petersen, publisher of Evergreen Magazine shared there is no cause, "more damaging than a suite of well-intended but conflicting environmental laws administered by federal agencies whose missions and regulations make it impossible for the Forest Service to attack the forest health crisis on meaningful ecological scales".

The National Forest System offers unsurpassed opportunities to fulfill the goal of Making America Great Again and restoring vibrancy to rural America. Actively managing these forests and grasslands will enhance our Nation's watersheds, forest health and resilience, benefit wildlife, protect and produce tens of thousands of direct and indirect jobs that will benefit communities, gateway communities dependent on healthy forests. Sustainable management of these lands will create investment and employment opportunities within natural resource based communities and return wealth and health to rural America.

The forest health crisis is evident across the country, but I share the situation on the National Forests in California and Colorado as examples. Today, there are more than one billion dead trees just on the National Forests in these two states. I recently shared with the Colorado Joint Agriculture/Natural Resources Committee highlights of the condition of Colorado's National Forests. It is not a favorable picture. Due to the widespread bark beetle epidemic, we have over 5 million acres of dead trees. In 2015 annual tree mortality exceeded annual growth. The following information is based on the Forest Service Timber sale information and Forest Inventory and Analysis data.

Colorado's National Forest Crisis

2015 Gross Annual Growth	119,857,000 cubic feet
2015 Mortality	266,113,000 cubic feet
2015 Annual Net Growth	146,256,000 cubic feet
Standing Dead Volume	6,700,000,000 cubic feet
Timber offered for sale	29,122,000 cubic feet

California's National Forest Crisis

2015 Gross Annual Growth	976,690,487 cubic feet
2015 Mortality	663,917,476 cubic feet
2015 Net Annual Growth	312,773,011 cubic feet
Standing Dead Volume	7,672,698,704 cubic feet
Timber offered for sale	64,881,700 cubic feet
Timber cut	61, 566,800 cubic feet

Putting these large figures in perspective, the stand dead volume in California and Colorado would supply building material to construct nearly 6 million 2400 square foot homes. The Idaho Forest Product Commission estimates roughly 35 jobs are created for each one million board feet of raw logs. The 2015 mortality volume in just California and Colorado would support approximately 11,500 jobs.

We are bankrupting the future. Lack of active management on America's National Forests threatens our watersheds and communities. It also increases future environmental impacts such as lost economic opportunity resulting from blackened landscapes and subsequent flooding. America's green infrastructure is on life support, perhaps even on the brink of ecological collapse.

I believe there are three general areas of impediments constraining the necessary pace and scale of management to sustain healthy resilient forest ecosystems. (1) wildfire funding must be permanently resolved immediately. (2) the Equal Access to Justice Act and other conflicting laws must be amended to unencumber active management of America's National Forests without the chilling effect of litigation. (3) regulations and agency policies which restrict active managements of our National Forests must be reviewed, identified and eliminated.

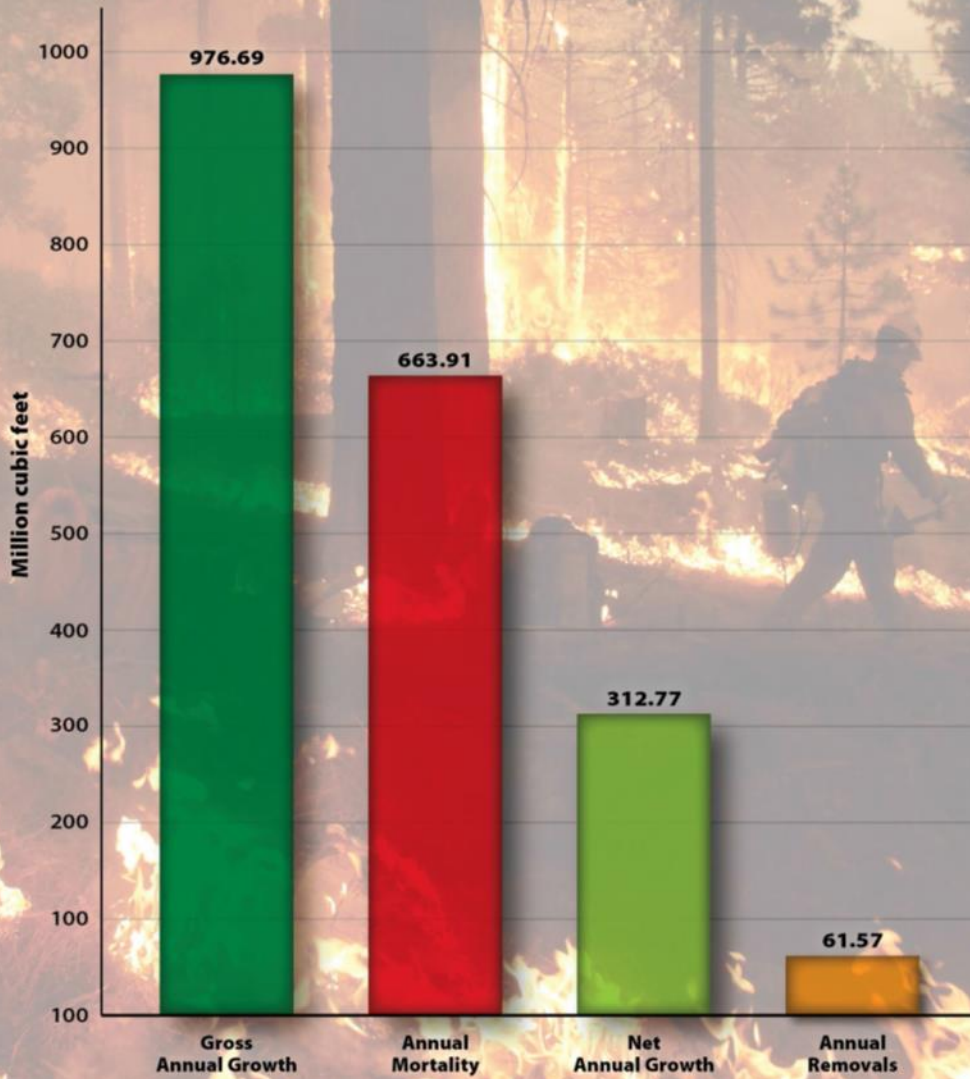
Funding Wildfire Suppression

Continued underfunding of wildfire suppression has forced the agency to engage in "borrowing" or transferring funds from non-fire accounts to pay for wildfire suppression costs. The impacts of this broken fire funding system are severe. Over the past three or four years, funding for non-fire programs of the Forest Service has been slashed by hundreds of millions of dollars. Redirecting these funds, intended for programs that improve forest resiliency – such as mitigation and active forest management activities – exacerbates poor forest health conditions and actually increases future fire risks and suppression costs.

Programs for watershed, wildlife, timber, recreation, range, road and trail maintenance, research and cooperative programs have been decimated as a result of the current leveraging of funds to pay for wildfire suppression activities. Consider trying to manage a large proactive resource organization like the Forest Service when you have to hold in reserve, funds appropriated for resource management activities, to make sure adequate fire fighting funds are available for the last 3 months of the fiscal year – July, August, and September. These are the critical months for major, expensive fires in the west. Catastrophic wildfires, just like hurricane season for FEMA, put the Forest Service in an almost unmanageable situation.

The consequence of the agency's inability to actively manage forest landscapes is amplified in the Forest

Not So Golden CALIFORNIA



Service's inventory data for the national forests in California showing an average of 266 trees per acre on a landscape that generally can only support 40 to 100 trees per acre. The increasing tree density creates tinderbox of fuel creating huge, intense wildfires on California's National Forests.

Extreme deteriorating conditions of our forests have led to unprecedented cost of wildfire suppression and control across our country. Each year we see unacceptable impacts to watersheds and communities from wildfire in regions of our great Nation. Wildfire is not just a western issue, but rather an issue to which all forests are vulnerable, as evidenced by last year's devastating Gatlinburg wildfire. We must recognize that wildfire suppression funding is as critical to our national infrastructure as funding for hurricanes, floods and earthquakes. Under the current budgeting process, funding for wildfire preparedness and suppression is consuming an ever increasing amount of the Forest Service budget line items not intended for suppression. Each year the result is a decrease in available funds for work that could be done to reduce the risk, size and cost of wildfires. Secretary Perdue testified just two weeks ago, that the 2018 Budget for the Forest Service, 53 percent is for Wildland Fire Management, up from just 16 percent in 1995. The most important action Congress can do to advance the pace and scale of active management on America's National Forests is to aggressively fix the wildfire funding problem.

Equal Access to Justice Act

The Equal Access to Justice Act (EAJA) as adopted by Congress in 1980 focused on removing a barrier to justice by helping individuals, small businesses and nonprofit organizations recover money and other resources they spent suing the federal government. Unfortunately, this well intentioned law has been hijacked by groups intent on stopping active forest management activities and projects, using taxpayer's money to fund their litigation and further their own narrow political agenda. Wyoming rancher/lawyer Karen Budd-Falen found in 2009 that non-profit environmental groups filed more than 1500 lawsuits and the federal government paid out more than \$4.7 billion of taxpayers' dollars in settlement and legal fees in cases against the United States, specifically from the Judgement Fund.

The Government Accountability Office (GAO) recently indicated we do not know the totality of EAJA costs as most agencies do not compile this information. In addition to these settlement costs, the Forest Service incurs the added burden and cost in planning management projects, attempting to defend them from nuisance appeals and litigation. This new legal industry is a large burden on the federal decision making process, America's taxpayers and America's communities and must be reformed.

Recently passed House Resolution 1033 begins to capture information relating to the amount of fees and expenses awarded by federal courts when the United States loses or settles a case. The inclusion of a standing requirement for a "direct and personal interest" will greatly reduce the extent to which 501(c) (3) organizations can intervene and assert their right to compensation along with individual citizens. Others have suggested excluding forest management activities from the EAJA suggesting that differences of opinions should be settled through binding arbitration. The National Association of Forest Service Retirees suggests courts give deference to resource professionals on the ground, making it harder for courts to halt forest restoration projects with injunctions.

Endangered Species Act Reform

One of the most important reforms to increase the pace and scale of active management of America's National Forests would be efforts to reduce the regulatory burdens of ESA on restoration and active management activities. For over 40 years, the ESA has been one of our nation's strongest and

respected environmental laws. While the original intent of the ESA was to conserve and protect American species of plants and wildlife threatened with extinction, the law has been increasingly used to block projects and deter the legal use of privately owned land. Healthy and productive private and public forests support essential habitat for listed species and species at risk. The challenge today is to develop effective and balanced legislative and administrative improvements to the ESA that support the protection of fish, wildlife and plant populations as well as responsible land, water and resource management.

Steve Mealy, Vice President of Conservation for the Boone and Crockett Club in 2013 provided testimony before the Subcommittee on National Park, Forests and Public Lands. His remark echoes the growing concern regarding healthy function ecosystems. *“Recent assessments of uncharacteristic wildfire risks indicate the absence of active management to mitigate fire risks in such areas may be the greater risk to vulnerable species. Ironically, continuation of highly restrictive precautionary principle driven, short term risk averse protection measures will likely lead to the continued deterioration of the very resources the environmental laws were intended to protect.”*

Twenty two years after the listing of the Northern spotted owl in 1990, the Fish and Wildlife Service issued a Revised Recovery Plan. The plan recognized that “many populations of spotted owls continue to decline ... even with extensive maintenance and restoration of spotted owl habitat... it is becoming more evident that securing habitat alone will not recover the spotted owl... competition from the barred owl poses a significant and complex threat...” Mr. Mealy continues *“Overall Northern Spotted Owl numbers have been declining nearly 3 percent per year, leading to an estimated 40 percent decline over the last 25 years.”*

There are significant and burdensome costs associated with listing decisions. Mr. Mealy’s testimony articulates the listing impact. “Since 1989, the year before the northern spotted owl listing to 2012, timber harvest on federal forestland in western Oregon has dropped from about 3.5 billion board feet per year to under .5 billion board feet per year an 86 percent decline owing to the effects of environmental litigation and an emphasis on mature and old forest retention. Final harvest acres declined from nearly 100,000 per year to less than 10,000 per year”.

Management action and inaction or things we do and don’t do, have the potential to cause serious environmental harm as well as good. On fire prone forests of the West, the focus of regulatory environmental laws has been mostly prevention of harm from action. The potential for harm from inaction has largely been ignored. This has contributed to the decline of the very resources the laws are intended to protect. Unnatural fuel accumulations lead to the uncharacteristic wildfires that can and will ultimately harm listed species and water quality.

The scope of the Endangered Species Act should be updated and expanded to include consideration of the short-term effects of management inaction, and then compare and balance them with short and long-term effects of action. These comparative assessments would allow managers to consider the full ecological contexts over space and time in decision making and offer improved prospects for restoring and sustaining resources.

To accelerate active National Forest management, streamlining the interagency consultation process is essential. Forest Service biologists are trained and capable of determining whether a project or activity complies with ESA and should only be required to consult with US Fish and Wildlife Service should there be questions of ESA compliance.

National Environmental Policy Reform

The Council of Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) have slowed the federal land management agency decision making process to a crawl, adding little value to the process but swelling the cost of projects. The Act requires an environmental analysis on “**major** Federal actions **significantly** affecting the quality of the human environment”. The Act simply requires agencies to fully consider environmental values along with social and economic values in making major decisions affecting the human environment. Over the decades, agencies have transformed the environmental *assessment* process into a political decision making process. By adopting the current application of the NEPA process as its decision making process, agencies have placed an environmental bias into federal decisions by forcing agencies to justify why they are willing to disturb the environment in order to provide some economic and social benefits or even longer term environmental values.

Logic would support using an economic or social decision model to drive decisions but consider the environmental effects as required by NEPA. For an agency such as the Forest Service, it makes a significant difference in the management, implementation and impact on affected communities. Starting with economic or social objectives to create jobs, create recreational opportunities, provide timber to a local mill, thin the forest to reduce fire hazards, improve fish and wildlife habitats, or improve the health of our Nation’s watersheds, then identify the environmental effects of the project and determine if they need to be mitigated. Within this decision framework, environmental values are considered in the decision process as required by NEPA, however the outcome would most likely be different with a focus on economic or social goals and objectives, rather than environmental side effects.

GAO has found that the Forest Service conducts more NEPA analysis, produces more Environmental Impact Statements (EIS), and takes longer to do so than most other agencies whose projects have more lasting impact on the landscape.

NEPA requires an environmental analysis for significant projects with potential adverse impacts on the environment. Perhaps the major trigger for passing NEPA was Tellico Dam in Tennessee which became controversial when significant environmental effects were overlooked in the decision making process. Through regulations and agency policies issued over the years, significant projects have been liberally expanded to include individual timber sales, construction of roads, trails and other minor projects. The Forest Service routinely repeats the same type of projects, projects that have well recognized but minimal environmental impacts and should not have to repeat the environmental analysis each time that type of project is conducted.

Congress should streamline and clarify NEPA, that for the Forest Service:

- Application of NEPA should be restricted to truly “major” actions, not routine land management activities such as thinning of forests in general forests or lands “suited for timber production” under existing National Forest Management Plans. Taking active steps to address forest and watershed health conditions following wildfire and insect infestations should not be considered “major”.
- Clarify that (1) environmental impact statements only require an agency to analyze the proposed action and a no-action alternative, and that consideration of additional alternatives is

solely at the discretion of the Forest Service line officer; and (2) environmental assessments do not require analysis of a no action alternative.

- Amend the Act to explicitly define “major” and “significant”, thereby eliminating pages of regulations implying that NEPA applies to every ground disturbing activity.
- Provide greater authority for the use of categorical exclusions for emergency actions to protect watersheds and communities from impending wildfire.
- Provide clarity of what constitutes “extraordinary circumstances”, facilitating greater use of categorical exclusions.

Conclusion

The condition of America’s National Forests and Grasslands is in immediate and grave jeopardy. Actively managing these lands by engaging collaboratively with citizens, states, and counties with credible science will return significant benefits. Active management of these lands will:

- Produce sustained employment opportunities,
- Enhance forest health and resilience,
- Improve wildlife habitat,
- Sequester carbon,
- Protect and restore our nation’s watersheds, by reforesting millions of recently burned areas, and
- Bring health and wealth to America’s rural communities.

Today conflicting laws, regulations and policies as well as endless litigation and political gridlock threaten the resources that made America great! This gridlock results in catastrophic wildfires, destruction of critical habitat, and the loss of millions of dollars to local gateway economies. Former Forest Service Chief Jack Ward Thomas once said “It’s over time now to assemble a group of folks to look at the whole body of federal law and determine their function and dysfunction and make recommendation about how they should operate”. It is time for Congress and Federal agencies to take action and chart a renewed course for conservation leadership in America.

Thank you for the opportunity to share these perspectives with you today. I am happy to take your questions.