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HEARING TO REVIEW H.R. 1904, THE HEALTHY FORESTS RESTORATION ACT OF 2003

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JUNE 26, 2003

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HEARING TO REVIEW H.R. 1904, THE HEALTHY FORESTS RESTORATION ACT OF 2003

THURSDAY, JUNE 26, 2003

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 9:03 a.m., in room SR–328A, Russell Senate Office Building, Hon. Thad Cochran, [Chairman of the Committee], presiding.

Present or submitting a statement: Senators Cochran, Coleman, Crapo, Talent, Lincoln, and Miller.

Also present or submitting a statement: Senator Craig and Representative Walden.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM MISSISSIPPI, CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

The CHAIRMAN. The committee is having a hearing to review the Healthy Forests Restoration Act of 2003, H.R. 1904, which has been passed by the other body.

We appreciate very much the attendance of witnesses and their assistants to help us better understand the implications of this legislation and any suggestions that the committee should consider as we proceed to respond to the challenge of writing a bill.

The President, as you know, has proposed a Healthy Forest Initiative, which is the basis for this legislation, and we are grateful for the support of the administration and the attendance of administration witnesses today, as well.

I have asked the distinguished Senator from Idaho, Mike Crapo, to chair the hearing. He is chairman of our Forestry Subcommittee. At this time, I am going to ask that my statement be printed in the record, as if read, and I will turn the gavel over to Senator Crapo.

Mike.

[The prepared statement of Chairman Cochran can be found in the appendix on page 70.]

STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM IDAHO

Senator CRAPO [presiding]. Well, thank you very much, Chairman Cochran. I truly do appreciate you working so closely with us and allowing the subcommittee to be as engaged and as involved

on this issue as you have. I would note that we have a number of our distinguished colleagues here from other committees who are very interested in this issue as well.

I believe that we are scheduled to have a vote or a series of votes at 9:15. What I am going to try to do is I will make my statement, we will try to get through the statements of the Senators who are here, and then I expect we will be interrupted, but we will keep everybody posted as the day proceeds.

H.R. 1904, the Healthy Forest Restoration Act, is a bipartisan bill that passed the House of Representatives with overwhelming support. The wildfire seasons of 2000 and 2002 were the largest and most destructive in 50 years. These fires destroyed property, degraded air and water quality and damaged fish and wildlife habitat. They cost billions of dollars to fight and, even worse, cost the lives of firefighters. The damage to the environment was severe, and the cost to communities was untold.

If any good can come out of the fires, it is that Congress now recognizes that the status quo will not suffice and that we will have to address the growing crisis. Yet, this bill is more than about forest fires. It is about the very health of our forest lands. Fire risk is an indicator of a stressed ecosystem, as are insect infestation, disease outbreaks, and the encroachment of invasive species. They are all indications of an ecosystem that must be restored.

I would like to raise an example that strikes close to home for us in Idaho. Elk City, Idaho, is "ground zero," in my opinion, with regard to the healthy forest bill. Unmanaged forests have resulted in a tremendous insect problem that has resulted in a potential wildfire problem. A couple of weeks ago I toured the Red River area and saw firsthand this threat. Eighty percent of the trees surrounding the community there are infested by mountain pine beetles, and millions of trees have died. With even-aged stands and rampant bug kill, the Red River drainage is posed for a catastrophic fire. With only one road into Elk City, the people there are understandably concerned.

The drainage is also significant for its important fish and wildlife habitat, including the habitat for threatened and endangered species. The ecosystem is being degraded because the lands are not being managed and the forest is dying. If there is a fire, it will not only kill species, but devastate their habitat even further. Areas where every human action has been governed by the Endangered Species Act and Clean Water Act will be wiped out by a fire that cannot be held accountable to those laws.

What is so frustrating to the community is that while millions of trees are rotting in the forests, while wildlife habitat is being degraded because of lack of management and their very safety is threatened, the economy of the city and the community is also being devastated.

I brought with me something from the forest on my visit that day. These are a couple of pieces of bark from a very large, dead, bug-infested tree. Mr. Chairman, I do not know how well the cameras can pick this up, but on the outside of the bark, you can, on different locations, see small bore holes where the beetles have bored through the bark. On the inside of the bark, you can see what look like stripes going up the tree. This is where the beetle,

when it gets in, it burrows up the tree. As it goes up the tree, it lays its eggs, and when the eggs hatch, the larva then go sideways and literally girdle the tree. You can see the multiple paths that have been essentially eaten out of this tree as the insects went through the tree and killed it.

If you take a picture of the forest, in fact, there's actually a dead beetle right here in this piece of bark. I will pass these around. I encourage people not to knock the beetle off because I want to show these again.

The point I make is these are serious problems, and I disagree that the protection of economies and the environment are mutually exclusive. Please get these around the table and let others see them.

Allowing the Forest Service to move forward with appropriate silvicultural techniques would address the threat and help to protect this rural economy. Unfortunately, this is not an isolated example in Idaho or in our Nation. Last year, Senator Lincoln held a hearing on the red oak borer epidemic facing much of the Southwest, and I was struck at the similarities with the beetle problems we face in the Pacific Northwest. That hearing reinforced what many already knew, that forest health is not just a Western issue.

The bill that came out of the House reflects that fact. It addresses conditions across the country that threaten forested lands. While modest, compared to the 190 million acres of land managed by the Forest Service and Bureau of Land Management that are at unnatural risk to catastrophic wildfire——

Did they get it down there?

Senator MCCAIN. I have seen those in my place.

Senator CRAPO. I suspect as much.

One criticism of the bill is that it addresses only a small fraction of our at-risk public lands. I was starting to say that while there is 190 million acres of at-risk acres, this bill literally deals with 20 million of those acres to try to get us down the road.

Despite its narrow focus, I strongly support this legislation. We need to move forward. I agree with Dale Bosworth, the chief of the Forest Service, when he says we need to move the focus from what we take to what we leave. As the chief has identified, too many are looking at this as a zero-sum game. They seek someone to blame for forest health problems or argue that logging is inherently bad. We need to get beyond that zero sum argument and realize that what is important is restoring healthy ecosystems, an ecosystem that allows for a natural fire regime to exist without threatening our watersheds, wildlife or communities.

Advocates for this bill, myself included, do not purport that it will fire-, insect- or disease-proof our forests. That is not the goal. Its purpose is to provide the Forest Service with the tools they need to do the work on the ground to restore healthy forests and reduce the threat of catastrophic wildlife to our communities and our forest ecosystems.

The bill includes key points that are necessary to effectively meet its goals. It addresses the "analysis paralysis" that is one of the greatest obstacles to getting real forest management done on the ground. It recognizes that the problem goes beyond fire, that there are other threats to our Nation's forestlands. It recognizes that

these problems affect both public and private lands throughout the country and that collaboration is vital.

The bill codifies the public input and participation processes outlined by the bipartisan Western Governors' Ten-Year Strategy. Robust public participation is key to the success in any effort of this kind. I hope that we can build a bipartisan support for this bill in the Senate and move it forward quickly.

As Oregon Governor Ted Kulongoski said last week at the Western Governors' Association Forest Health Summit, "There are no Republican forests or Democrat forests. There are only American forests that need our protection, stewardship and collective thinking." I appreciate the witnesses today for taking their time to be here with us, and I know the committee will find the information you present as helpful as I do as we move forward to consider this legislation.

I thank you very much for your attention.

[The prepared statement of Senator Crapo can be found in the appendix on page 76.]

Senator CRAPO. Next, I believe, Senator McCain is on the list.

STATEMENT OF HON. JOHN McCAIN, A U.S. SENATOR FROM ARIZONA

Senator MCCAIN. I thank you, Mr. Chairman.

Given the fact that, as you mentioned, there is a vote coming up and Senator Craig also is here, I would like to ask that my statement be submitted for the record, and I will make a very brief oral statement.

Senator CRAPO. Without objection.

Senator MCCAIN. Thank you.

Mr. Chairman, your remarks lay out the crisis that we are in. You showed the bark beetle there. In some places like the Prescott National Forest, half of the trees there are dying of this blight which is, as you mentioned, caused by a drought, which then does not have moisture to the trees. Therefore, they cannot fight the bark beetle. Therefore, they die. Therefore, it spreads. It is a veritable epidemic in the West.

When a fire does start, and we are still in a drought in the Southwest, as the chairman well knows, we are experiencing in Arizona the Aspen fire. It has consumed 25,000 acres, 345 homes, and other buildings. It has engaged 1,200 firefighters and is only 25-percent contained. There are fires all over the Southwest, and we are now still in the month of June.

The prospects are that this could be the worst summer in history. I would remind, for the record, the chairman well knows, last year the wildfires claimed the lives of 23 firefighters, burned 7.2 million acres, and cost $1.6 billion to fight. That toll will probably go higher this year.

I believe that the legislation before the committee is good. It is appropriate. It addresses the issues. I hope that the committee can act as quickly as possible. Chairman Cochran mentioned his commitment and concern, and I appreciate that. Could I just point out the priorities?

First, protection of human life and property are an urgent priority, that the Environmental Review and Appeals process may be

modified or waived to expedite these essential actions. We are held up by lawsuits. There is no doubt about that. Some of those lawsuits are legitimate. Some of those lawsuits should be brought. There are others that have, whether it is intended or not, the effect of delaying or eventually canceling very badly needed projects, as far as forest thinning is concerned;

There should be a collaborative process to allow those affected at the local level to determine project priorities and management outcomes;

Third, the current state of our public forests is the result of 90 years of fire suppression and changing land use, and it will take time and care to bring the appropriate scientific management and financial resources to bear to produce healthy forests on a large scale;

The Federal Government must make the significant financial commitment necessary to accomplish these objectives. It is our responsibility to acknowledge the actual cost of it. These are national forests, where most of these catastrophes are taking place.

Mr. Chairman, finally, it is hard for me, this weekend, when I go back to down south of Tucson, where 345 homes have been destroyed, to say, "Yeah, we are going to do something," and somebody is going to stand up and say, "Well, Senator McCain, after the Rodeo-Chediski forest fires last year, you told us that Congress was going to do something and that the Federal Government would come to your assistance."

Now, we have come to their assistance post-fire. We have done a lot. FEMA has been very helpful. There has been a lot of other Government agencies. I cannot look those citizens in the eye, Mr. Chairman, and say we have taken sufficient measures to prevent future occurrences of this nature, and that is why I hope that this committee will act with expedition so that we can get this to the floor and get it hammered out and to the President's desk.

I thank you, and I thank you Mr. Crapo, but I also thank Chairman Cochran for his commitment as well.

I thank the committee.

[The prepared statement of Senator McCain can be found in the appendix on page 79.]

Senator CRAPO. Thank you very much, Senator McCain. We appreciate your insight, and we recognize that Arizona has been the first hit this year. We will work our hardest to make sure that we do get something done this year.

Next, we want to turn to my colleague from Idaho, Senator Larry Craig, who has been integrally involved in this issue for years and has been instrumental in bringing this legislation to its current position and working to solve these kinds of issues, and literally could have chaired hearings on this himself, depending on how the jurisdiction of the bill came through.

Senator Craig, first, let me just commend you for your commitment and service to this issue, and I turn the time over to you now.

STATEMENT OF HON. LARRY CRAIG, A U.S. SENATOR FROM IDAHO

Senator CRAIG. Mr. Chairman and Chairman Cochran, thank you for the courtesy of allowing me to be here, and listen today, and participate, and I thank you for those recognitions.

Let me turn to Senator McCain. The state of play in Arizona today, and I monitor it closely as chairman of the other Forestry Committee in the Senate, is such that the perfect and tragic storm may well be mounting there. With the bug kill that is occurring there, the drought that is occurring there, these trees, as John said, have no moisture. They cannot defend themselves. They are dying.

We saw tragedy there last summer. That may only be prelude to what could occur there this year. As we all know we are a bit wetter in the upper end of the Great Basin this year than last, as it relates to late winter and early spring rains, and so we will burn later in the year. What is going on in Arizona and New Mexico, as we speak, could well be prelude to something much worse than what we saw last year, and I am quite confident Arizonans believe that what they saw last year was about as bad as it could get.

I can appreciate, John, your frustration and your concern going home on the weekend and going up to that area on Mount Lemon. I had the privilege of being there a few years ago. I understand it does not exist today, that community, or at least a large part of it does not.

Chairmen, again, let me thank you, and let me suggest this: If we ignore history, then we are going to be doomed to repeat it.

Chairman Cochran, where Chairman Crapo was a few weeks ago, in Elk City, in the Red River drainage of Northcentral Idaho, is the area where the greatest fire in the history of the North American Continent, at least in the Lower 48, started on August 20, 1910. In that very drainage a lightning strike and the prelude or the winds that followed consumed 3 million acres of land in Idaho and Northwestern Montana. Listen to these reports from a book written about that great blow-up.

It was reported that "fire whirls"—and of course those are pieces of wood that are afire that break and fly into the air—the size of a man's arm were carried along on a 50-mile-per-hour wind, swept through towns 50 miles to the east of these fires. The sun was completely obscured in Billings, Montana, a town 500 miles to the east, and the sky was darkened as far east as the State of New York. Some of those forests in Idaho and Montana are still recovering today from those fires that occurred in 1910.

Our forest health problems are not an isolated problem in the rural West, as you have both said.

In 1989, Hurricane Hugo slammed ashore in Charleston, South Carolina, and cut a path northwest through North Carolina and into Virginia.

On the Francis Marion Forest, 70 percent of the trees were killed. We immediately expedited a clean-up process, a salvage and a replanting, funneling millions of dollars into that effort. Why? It was a hurricane.

On January 1998, over 17 million acres of forests were heavily damaged in an ice storm that stretched from New York, across

New Hampshire, Vermont and into Maine. Our response was an appropriate $48 million to clean it up and restore the health of those forests.

Spring of 1998, a blow-down, followed by a southern bark beetle epidemic in the Texas National Forest. We provided the emergency efforts. We allowed managers to enter wilderness areas—that was in 1999—to deal with the spread of the insects, the kind that Chairman Crapo has shown us this morning.

January 4th, 1999, 600,000 acres, Northern Minnesota blow-down, literally a hurricane or a tornado came to the ground and swept across the forest on the 4th of July. I have seen it. Debris was stacked 30 feet high in some instances, of trees piled upon trees, piled upon trees.

At least on most of the private lands, we responded by waiving NEPA and allowing landowners to move to immediate recovery. Just this last year, supplemental defense appropriation bill, Senator Daschle, Senator Johnson, wanted to deal with the forest emergencies in their State, and they were allowed to do so, to exempt projects from NEPA appeals and litigation.

Each time a common-sense approach was supported by this body, this committee, the committee that I chair, and by the whole of the Senate and the Congress, and as a result, those forests could be restored more healthy.

Well, let me ask, Mr. Chairman, by unanimous consent, if you would please, that the balance of my statement be a part of the record.

Senator CRAPO. Without objection.

Senator CRAIG. Here is how I want to conclude. This is June 26th. The long hot summer of wild forest fires has already begun, and they are playing themselves out in the States of Arizona, New Mexico, and Alaska, as we speak. Hundreds of thousands of acres have already burned. In fact, since January 1 to date, 26,000 fires and 620,000 acres have burned. Compared to last year? Well, we were at 2.5 million and some 41,000 fires. Millions more will burn.

As John said, Senator McCain said, and as we know, it will not be just the acres, it will be potentially thousands of homes, already 300-plus, and tragically enough, it could be many, many lives. We are in a national crises. I hope we can respond quickly.

Let me also ask that the author of the bill who is with us, Congressman Greg Wyden, of Oregon, is here, and I would like to ask unanimous consent that his statement become a part of your record.

Senator CRAPO. Without objection, so ordered. He would not be called "Wyden," though—Greg Walden.

Senator CRAIG. Oh, I am sorry, of course. You see, I work with Senator Wyden, as the ranking on my committee. Greg, I know you better than to call you Ron Wyden.

[Laughter.]

Senator CRAPO. Just so we are over here on the Senate side.

Senator CRAIG. Congressman Walden of the Eastern part of the great State of Oregon.

Senator CRAPO. Maybe he would like Senator Walden.

Senator CRAIG. We will leave that alone now.

Chairmen, thank you for your courtesy.

[The prepared statement of Senator Craig can be found in the appendix on page 83.]

Senator CRAPO. Without objection, Representative Walden's statement will also be made a part of the record, and we do welcome you here, Representative Walden.

[The prepared statement of Mr. Walden can be found in the appendix on page 92.]

The CHAIRMAN. Mr. Chairman, could I just simply join you in thanking Senator Craig, as well as Senator McCain, for their presence here and the very compelling statements they have made about the importance of moving this legislation forward quickly. Their leadership is certainly important to the passage of this bill, and we are going to count on them for their continued help and assistance as we move forward through this process.

Senator CRAPO. Thank you, Mr. Chairman.

Before we move to the next panel, I just want to, once again, thank my colleague, Senator Craig, for his work on this issue, as I indicated and as he indicated. He chairs the other Forestry Committee in the Senate and the Energy Committee, and it is just an interesting coincidence that the two Senators from Idaho chair the two Forestry Subcommittees in the Senate.

Senator Craig has been a lion, in terms of the effort, of working on this bill and trying to address this issue throughout his tenure in the Senate and the House, frankly.

Senator CRAIG. Mr. Chairman, you are very courteous and kind to say that. We are pleased with your rapid action on this bill, Mr. Chairmen, and we are going to move very quickly to this bill. It needs to get to the floor of the U.S. Senate in the form that it will come out of the committees so that we can act.

Thank you.

Senator CRAPO. Thank you.

We will call up the next panel, and while they are coming up, I just wanted to make another brief comment. Let us call up the second panel, which is the Honorable Mark Rey, who is the under secretary for Natural Resources and Environment at the Department of Agriculture, and the Honorable Lynn Scarlett, assistant secretary for Policy, Management and Budget at the United States Department of Interior.

While they are coming up, I just wanted to make one more comment, Mr. Chairman, about Red River and the Elk City area that both Senator Craig and I have mentioned.

While I was there last week looking at the trees and getting a piece of bark or two to come back and show everybody here, one of those foresters who was with us, taking us through the forest, reminded me of the fires in the Yellowstone area of a few years back, and I think the whole Nation watched as those fires ravaged the West. He pointed out to me that in this particular forest in Red River, where I was, near Elk City, the fuel load in that forest is three to four times as high as was the Yellowstone Forest when it burned.

This community literally does have one road in. It is at the end of the road. These are legitimate and serious concerns. That is one of the reasons why I call it "ground zero" for this debate today.

I do not know if that buzzer means there is a vote on, but we will go ahead and start and work for a little while until we have to leave to go to a vote.

With that, let me remind all of the witnesses today that we do want to have a lot of interaction with you as the dialogue goes on, following your written testimony, and so we encourage you to pay attention to the time and keep your remarks to 5 minutes and summarize your testimony which we have read. Then, we will try to engage with some dialogue with you, and you can get the rest of what you wanted to say out in the questions and answers.

Now, we do have a vote on. Let me say I suspect that we can get through your testimony, then we will break, and then we will come back and begin the questioning.

Mr. Rey, would you like to begin?

Ms. Scarlett, do you want to be first? All right.

STATEMENT OF LYNN SCARLETT, ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, UNITED STATES DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Ms. SCARLETT. Thank you very much, and thanks to the committee to give us this opportunity to speak today.

As you may recall, on May 20th of this year, President Bush called on Congress to move as quickly as possible on H.R. 1904, the Healthy Forest Restoration Act. The Department of Interior and the Department of Agriculture, jointly working together, strongly support H.R. 1904. We believe it will help us achieve that vision of healthy lands and thriving communities.

We would like to work with the committee to make several technical amendments to clarify portions of the bill.

The Senators have noted here today the need for action to restore our Nation's public forests and rangelands. One hundred and ninety million acres, by our estimate, twice the size of my State of California, remain in poor condition. Last year, fires burned over 7.2 million acres.

Just last week, as we have heard noted, the Aspen fire in Arizona blew out of the Pusch Ridge Wilderness, in Southern Arizona. Our latest figures show that fire at 30,000 acres and with over 300 homes and businesses burned, still burning out of control. Arizona, California, Idaho, Oregon, Utah, Washington, parts of Colorado and Wyoming, we are predicting above-average fire activity this year.

We face, as the Senators have noted, unusually high threats from the spread of invasives and pathogens, such as we saw in the wood passed around. The result of this is the death of millions of trees, and these areas of course burn with uncharacteristic ferocity.

We have undertaken several actions administratively to address these challenges. We are hampered by procedural delays, excessive analysis and ineffective public involvement. Recognizing these challenges, the President launched, in August of last year, his Healthy Forests Initiative. The centerpiece of that effort is collaboration and management improvements. We have a composite of administrative tools and legislative tools to restore deteriorated lands to health.

Let me just briefly summarize what we have done to date, but we believe we need more in the form of this legislation.

We have issued Endangered Species Act guidance that allows us to group multiple projects into one consultation. We have also issued guidance for ESA that allows us to evaluate short- and long-term beneficial and adverse consequences of any action taken.

We have issued a new-model environmental assessment to allow us to bring that assessment to concise and focused documentation. We have 15 pilot projects underway to explore the use of that environmental assessment.

We have developed a categorical exclusion under the NEPA, the National Environmental Policy Act, for fuels reductions projects. Those exclusions were developed based on a review of 2,700 projects. We have also proposed some changes to our ESA Section 7 regulations to improve consultation procedures.

We would also like to thank Congress for their recent consolidated appropriations resolution which gave the Bureau of Land Management authority to engage in stewardship contracting, along with the Forest Service. This will allow us to work with private businesses, nonprofit groups, tribes, local Governments and others in trying to address our fuels reduction projects while gaining some value from that effort. We believe this tool will help our managers undertake the actions needed.

We still need additional tools, and it is with that in mind that I turn to Mark Rey to offer his observations that reflect our joint interest in H.R. 1904.

Senator CRAPO. Thank you very much.

Mr. Rey.

STATEMENT OF MARK REY, UNDER SECRETARY FOR NATURAL RESOURCES AND THE ENVIRONMENT, UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Mr. REY. Even with what we have been able to accomplish by way of administrative changes, there are real limitations to what we can do on the ground to address this problem with the rapidity that the situation demands, and that is why H.R. 1904 will provide us with some of those additional needed authorities.

Let me review, briefly, the provisions of the bill that we find particularly useful.

Title I of the bill would improve processes which now significantly contribute to costly delays, and it would allow timely implementation of critical fuels reduction projects. It would provide streamlined procedures for both of our departments to plan and conduct hazardous fuel projects on up to the 20 million acres of Federal land that are at most risk from wildfires, while preserving public input into the decision-making process.

The bill would allow the agencies to reduce the broad range of proposed alternatives that they are required to analyze for proposed hazardous fuel reduction projects and would maintain necessary public participation requirements.

The title would allow the Secretaries to establish an administrative appeals process for these projects as an alternative to the current inflexible, legislatively mandated appeals process.

Finally, the title would provide a standard for injunctive relief and timeframes for judicial review of these kinds of projects.

Title II would authorize a $25-million grant program for each of the fiscal years 2004 through 2008. The Secretaries would be authorized to make grants to persons who own or operate a facility that uses biomass or to offset the cost of projects to add value to biomass. It is a reality that much of the material that has to be taken out of the forests and rangelands that are at risk is not commercially valuable, except for biomass purposes, and Title II would allow us to increase the use of this material.

Title III would authorize a $15-million program within the Forest Service for each of the fiscal years 2004 through 2008 to provide State forestry agencies technical, financial and related assistance for the purpose of expanding State capacity to address watershed issues on non-Federal forest lands that are at risk.

Title IV would require the Secretaries of Agriculture and the Interior, with the assistance of universities and forestry schools, to develop an accelerated, basic and applied assessment program on certain Federal lands to combat infestations by bark beetles, including southern pine beetles, as well as other insects such as the hemlock woolly adelgids, emerald ash bores, red oak borers, and white oak borers. Insect infestations, both beetles and other insects, are becoming an increasing problem across the country, not just in the West.

Title V authorizes a $15-million Healthy Forest Reserve Program within the Forest Service, working in cooperation with the Secretary of the Interior, for each of the fiscal years 2004 through 2008, for the purposes of protecting, restoring and enhancing degraded forest ecosystems on private lands to promote the recovery of threatened or endangered species.

Finally, Title VI, would direct the Secretary of Agriculture to carry out a comprehensive program to inventory, monitor, characterize, assess and identify the condition of forest stands nationwide.

Taken in its totality, the bill provides a number of important and exceptionally useful tools to both evaluate and address, on an expedited manner, the forest health problems that affect forest and rangeland conditions throughout the United States, recognizing that they vary from region-to-region.

That concludes my brief summary of the bill, and when you come back from your vote, we will both be here waiting to answer your questions.

Thank you.

[The prepared statement of Mr. Rey can be found in the appendix on page 95.]

Senator CRAPO. Thank you very much, Ms. Scarlett and Mr. Rey. We appreciate not only your work and support on this, but your succinctness in your testimony.

Again, before we break, I want to thank Chairman Cochran for allowing me to chair this committee and for working with us so closely on these issues.

As indicated, we will now break. There are two votes. We will go over and vote on this first vote. Hopefully, it is getting close to its conclusion. We will then vote early on the second vote and return as quickly as we can.

At this point, the hearing is in recess.

[Recess.]

Senator CRAPO. The hearing will come to order.

We appreciate everybody's participation today and your patience for us while we voted. We will probably be interrupted, depending on the length of the hearing, by votes throughout the day as we try to work on the Medicare Prescription Drug issue on the floor.

Let me begin my questions, first, and I would like to throw this question out to either of you, and that is would the treatment of the Wildland Urban Interface have prevented the Aspen fire that we just recently saw?

Mr. REY. No. We actually treated the Wildland Urban Interface around the city of Summerhaven. The problem that Summerhaven is saddled with is that the municipal boundary is less than a mile from a wilderness boundary. The fire originated in a wilderness area. By the time it left the wilderness area, it was already burning with sufficient intensity and with a high wind behind it such that it burned through most of our treatments in the Wildland Urban Interface, in the area between the municipal boundary of Summerhaven and the wilderness area.

The topography in the particular situation is difficult because Summerhaven is built on a side hill at the top of a valley that opens, and that topography acted like a flue, with the wind behind it driving the fire out of the wilderness, through the Wildland Urban Interface and into the community. It was a pretty good example of why just treating the Wildland Urban Interface does not always get you the result that you would like in terms of protecting a community.

Senator CRAPO. We have to treat more broadly and maintain the right kind of ecosystem in the entire forest.

Mr. REY. Both for ecological reasons, we would submit, but in some cases to protect communities as well. Some communities are situated in areas where a treatment in the immediate vicinity of the community and the Wildland Urban Interface may not be adequate.

Senator CRAPO. Let me be sure I understand you correctly.

A few years back when we were having the big fires out in Idaho, I went out and was actually taken up in a helicopter to see what was happening at the fire line. What was happening there was each night they would try to build a break against the fire and clear an area to a line to stop the fire at. The fire would essentially leap over it, leap from ridge to ridge sometimes, as it was burning so hot.

The point that they were making was that if they cannot keep the fire contained, in terms of having the ability to keep it burning at a lower rate, then it gets so hot that you do not really have the ability to build a line that can hold against the fire.

Is that the same principle that you are talking about with the Urban Interface?

Mr. REY. Yes, essentially.

Senator CRAPO. Ms. Scarlett, did you want to add anything?

Ms. SCARLETT. Just to add to that a little bit. The example you gave, we have some of these catastrophic fires, where the plumes of smoke go up 30,000 or more feet into the air, and the ash can fly, if you will, miles. Being just a few hundred feet around an Urban Interface is not going to be adequate.

I do want to add, however, some additional complexities:

One is the matter of watersheds. Several of the fires that we have had last year that were catastrophic damaged watersheds that are quite a ways outside of an Urban Interface, but damaged the water supply. We have one of our environmental assessment pilot projects, which is actually along a right-of-way for transmission lines. Again, if you were to have a fire that would get one of those transmission lines, you could put out the power for entire regions, entire States. We think the challenge is much more complex than just thinking about the Urban Interface.

Senator CRAPO. Thank you. I do not know if you are familiar with it, but just within the last day or two, Senators Bingaman and Daschle introduced what they entitled, "The Collaborative Forest Health Act." Frankly, I have not read the act myself. If you have not either, I will not expect you to testify as to its content, but if you are familiar with its approach as in contrast with the approach of the legislation we are considering here today, could you comment on what the differences are and whether you think that the approach taken in that act is the correct approach.

Mr. REY. We have looked at the act, albeit relatively cursorily, since it only has recently been introduced, and we are pleased that other Senators, other members, are expressing an interest in this issue in putting forward proposals to address it.

Regrettably, the bill appears to create more process than it avoids, and as written, perhaps unintentionally, has the prospect of even setting back some of the administrative initiatives to accelerate treatments that we already have underway. As I said, I do not think that was the intent, but I think it would be the unintended result. There are some significant difficulties that we have with the bill.

Many people accuse us of fiddling, as this crisis unfolds, and I fear if you gave us that measure, it would become a Stradivarius.

Senator CRAPO. Thank you.

Ms. Scarlett, did you want to add anything?

Ms. SCARLETT. We have not had time to review the bill in detail, but I think our general, initial comments would be similar to those of Mark Rey; that is, we certainly appreciate the focus, we certainly appreciate the interest in the subject, but we do not think it provides us the tools that we need, nor the focus that we need, in order to get where we need to go.

Senator CRAPO. Thank you. As you may have noticed, we are using the clock up here, and for the witnesses who will testify in the future, the green means you can keep going, the yellow means you have about a minute left, and red means stop. It says to me to stop, so I will turn to the Chairman. Chairman Cochran.

The CHAIRMAN. Thank you. Mr. Chairman, thank you very much.

Senator CRAPO. I do not think we will use the clock on the Chairman.

[Laughter.]

The CHAIRMAN. Oh, no, that is fine. I am happy to abide by the time restrictions. We do want to get through the hearing, so we can get busy working on the bill, so we can get it out. We need to report it out as soon as possible. This is a matter of some urgency,

so that may be another reason to abide by the strict time limits here today.

Mr. Rey, let me ask you if you could comment on the program established in the bill which would enable us to have a remote sensing system in place to inventory forest lands and identify threats to forests. Is that something that we should work to keep in the bill?

Mr. REY. That is a helpful element in the bill. Much of the unhappiness with our current forest survey and forest inventory work is that the time line between inventories is too long to do a good job of tracking rapidly developing forest conditions. What this proposal does is give us the prospect of accelerating the inventory work we are doing by using some additional tools so that we are going to be better at catching some of these epidemics as they start and hopefully be able to treat them more quickly as well.

The CHAIRMAN. Current law provides a categorical exclusion of the National Environmental Policy Act under some circumstances. I wonder if both of you could comment as to your impressions of the legislation and the effect that it might have on the categorical exclusion of the National Environmental Policy Act.

Mr. REY. H.R. 1904, as drafted, would have no effect on either the authority under the National Environmental Policy Act to develop categorical exclusions, nor on the categorical exclusions that we currently operate under, some of which we have had longer, others of which have been part of the Healthy Forests Initiative.

By contrast, what H.R. 1904 does is that it looks at different types of projects, those that are not amenable to being treated through a categorical exclusion because they are larger or more complex or because they raise more environmental concerns and therefore require either an environmental assessment, which is the next level of analysis above a categorical exclusion or an Environmental Impact Statement, which is the highest level of analysis.

What H.R. 1904 would do would be, for the kinds of projects that are covered, an environmental assessment or an Environmental Impact Statement, accelerate the procedures we use to develop those documents in a way that will save us considerable time and money in getting the projects underway.

Ms. Scarlett.

Ms. SCARLETT. Yes. I do not have anything to add to that. We see these as complementary tools that work together rather than at odds. They are complementary tools.

The CHAIRMAN. Let me ask you if you believe the bill before us adequately addresses the need for research and treatment of forests damaged or threatened by disease and insects.

Mr. REY. Title IV provides us with an opportunity to accelerate some of the research that we already have underway, in conjunction with the coalition of universities that the Forest Service partners with for cooperative research. Title IV provides us the opportunity to accelerate some of the insect and disease research that we are already doing and hopefully utilize that research, in an applied sense, so that we are able to treat more of the areas that are currently at risk to broad-scale infestations.

The CHAIRMAN. Ms. Scarlett, do you think these provisions will be helpful in this regard as well?

Ms. SCARLETT. We are particularly interested in the provisions that would help us research more insect infestation and the related challenges. I would like to say that we would, as we currently understand it, the inventorying provisions are focused on the Forest Service, and we certainly would also like that to apply to our woodlands and rangelands. We have similar inventorying problems.

The CHAIRMAN. Thank you very much.

Thank you, Mr. Chairman.

Senator CRAPO. Thank you, Mr. Chairman.

Senator CRAIG. I will be very brief, and I thank you for the courtesy of allowing me. I know you have a full agenda.

If the forests that are in question today, and are at risk by conditions therein were private, how would they be treated?

Mr. REY. Generally speaking, private landowners react much more quickly to either fires or insect and disease infestations and move to treat them more quickly. The same could be said for most State-owned forest lands, as well as most tribal lands. Unfortunately, the Federal Government, among all forest and rangeland owners in the country, is the slowest at responding to these kinds of circumstances.

Ms. SCARLETT. Senator Craig, I might just add that that really is a very important issue. We just came from the Western Governors' Association Summit last week, and many of the State foresters, the tribes and private landowners express a concern that no matter what they do on their lands, if the adjacent public lands are not also treated, their efforts are undermined, and so it is important that we all work together and are all able to treat these lands in a more coherent, integrated way.

Senator CRAIG. Well, the reason I ask that question, not only the situation in Arizona today, we are not going to go into wilderness areas. This legislation does not allow that. The Congress would not allow that. We have 70/90-plus million acres out there, maybe over 100, outside of wilderness areas, a lot of it in roadless ares, and the question will be how do we access those, if we can access those? It is obvious that you have to get beyond the urban interface, if you are going to truly treat these situations. Summerhaven speaks to that issue.

As we are working to monitor, and understand, and develop devices, Mr. Chairman, the thing that frustrates me is that everybody else, other than the Federal Government, already knows the problem and is working at it. They have the tools. They have the devices. They know how to treat bugs. It is nothing new. It is not a phenomena unique to forests.

What is unique to the Federal forests are all of the criteria that we require, the screening process, the legal processes involved here. While I am not suggesting we move in that direction, totally, clearly, the flexibility to do some of the things that good foresters already know what to do, and how to do, ought to be allowed to save these forests. Does 1904 allow that?

Mr. REY. Yes, 1904 gives us some good tools, perhaps not all of the tools that we would like in a perfect world, but it gives us some useful tools for moving forward in combination with the administrative initiatives that we already have underway.

Senator CRAIG. Super. Thank you.

Thank you, Mr. Chairman.

Senator CRAPO. Thank you. I am going to have another round of questions here.

The first question that I would like to pursue is that one of the criticisms that we hear about H.R. 1904 is that it cuts the public out of the process and that fuels reduction projects just turn everything over to the agencies to do what the agencies want to have done.

Frankly, I would like your comments on the public involvement that is engaged in under the proposed legislation.

Mr. REY. Frankly, a number of the criticisms I have heard of H.R. 1904 make me wonder whether there is another version of that bill floating around someplace that I have not heard or have not seen, and that is one of them. Because what H.R. 1904 does is to retain virtually all of the public participation requirements that exist under present law, as well as put a premium on collaboration with the public in the selection of projects that are going to be subject to the expedited provisions under NEPA that Title I of the act allows.

I am having a little bit of difficulty finding out exactly where the restrictions or the diminution of public involvement fall in this bill because I do not see it.

Ms. SCARLETT. In fact, I would even strengthen that comment. H.R. 1904 fits well within the National Fire Plan and the Ten-Year Implementation Plan that we, along with States, tribes, State foresters and others, developed. The centerpiece of that, in fact, is collaboration. The entire way that we will do fuels project selection is through collaborative processes with communities. I would say that 1904, and in the context of the National Fire Plan, gives us greater than ever public participation and cooperation.

Senator CRAPO. Thank you.

I want to go over a list of items here, and I do not really expect more from you than just an acknowledgement, I if I am correct, that the bill does require the following participation and collaboration or compliance with various proposals.

It is my understanding that the bill requires that all fuels projects under the bill must comply with Agency land management plans; is that correct?

Mr. REY. That is correct.

Senator CRAPO. Those plans involve a lot of public involvement as they are developed, correct?

Ms. SCARLETT. Right, extensive.

Senator CRAPO. They also require compliance with State forestry plans; is that correct?

Mr. REY. To the extent that there are State forest practices that apply on Federal lands, they would, correct.

Senator CRAPO. They would comply. It also requires compliance with the Ten-Year Comprehensive Strategy developed by the Western Governors' Association.

Mr. REY. Correct.

Ms. SCARLETT. That is correct.

Senator CRAPO. Another criticism that we hear about the bill often is that it would eliminate or seriously reduce judicial review. Could both of you comment on that issue.

Mr. REY. The bill neither reduces the instances of judicial review, and of course if it does not reduce the instances of judicial review, it cannot eliminate judicial review, by definition. What the bill does do is to provide for some accelerated schedules for filing complaints against these kinds of projects, since, in many cases, time is of the essence. It exhorts Federal judges to give these cases priority on their dockets, which would be a good thing if they could do that.

Then, last, it directs judges, as they are reviewing requests for injunctions, to balance both the short- and long-term risks and benefits associated with pursuing the project. That last is an important component to it. Because what we have found is that the decision by a judge about whether to issue an injunction nor not has developed over 40 years of jurisprudence largely when judges have been addressing commercial timber sales. In balancing the harms of whether an injunction should issue or not, the judges have generally proceeded on the premise that you cannot uncut a tree. Therefore, an injunction should always issue.

Now, what we find is that when one of these fuels treatment projects are challenged, it is in the interest of plaintiffs to present the case to a judge as if the issue was indistinguishable from a commercial timber sale, which in most cases it is, and the judges are responding based upon the jurisprudence that has already been established.

What we think this provision will do will allow judges to balance the proposition that you cannot uncut a treat against the equally valid proposition that you cannot unburn a forest, and if they will balance it that way, we think probably justice will be done in a better way.

Senator CRAPO. Ms. Scarlett.

Ms. SCARLETT. Just one more addition to Mark's comments, and that is the criticality of expedited review. People often do not realize that there is a narrow window of opportunity to do these fuels treatment projects, and if that goes by, we are often in a position of having to wait an entire year for that opportunity to arise again. That timeliness is critical.

Senator CRAPO. Thank you.

Chairman Cochran.

The CHAIRMAN. Mr. Chairman, thank you. I do not have any other questions of the witnesses.

We appreciate so much your being here, though, and the assistance you are providing us in an understanding of the legislation.

Senator CRAPO. Thank you.

Senator Craig, did you want to ask more questions?

Senator CRAIG. I do not have any more. I do thank you.

Senator CRAPO. Thank you.

We have been joined by Senator Lincoln from Arkansas. Senator, if have any opening statement you would like to make, you are welcome to make that now and/or ask some questions of our panel.

STATEMENT OF HON. BLANCHE LINCOLN, A U.S. SENATOR FROM ARKANSAS

Senator LINCOLN. Thank you, Mr. Chairman. I will just be very brief, if I can, with a few comments and then just a couple of questions. I apologize for running late.

I do want to thank both Chairman Crapo and Chairman Cochran for their leadership in this issue and willingness to work with us on so many issues that affect us and the health of our forests.

The health of the Nation's public and private forests is in the foremost of all of our minds this morning. Throughout my home State of Arkansas, we have begun to see large, barren and brown patches in many places where rich green oak trees once thrived. It is a clear indication of an epidemic of oak decline and mortality.

This epidemic has affected both public and private forestlands and seriously threatened the health of our forests, not to mention what it has done to the concerns we have about our way of life in rural States like Arkansas, where we depend on our forests not only for much of our livelihood, but also for our heritage and the wonderful pastimes that many of us have come to know and understand about our home States.

We must find ways to address these epidemics soon or risk the loss of the majority of the oak component of Arkansas' forests. I am hopeful that any legislation produced by this committee will provide the means to at least attempt to mitigate our insect epidemics and begin preventive measures to ensure that it is never this bad again because it has been devastating in my State what has happened in our forests in Arkansas.

I am also proud to have an Arkansan testifying later on today—Dr. Fred Stephen, who is an entomologist and an interim department head of the Entomology Department at the University of Arkansas. He is an expert in the field of bugs eating their way through our forests, and I am very proud that he is here today to help us with the solutions that we are looking for.

I would like to ask the panel, given our problems in Arkansas and in the South with insect infestation, particularly the red oak borer in the Ozarks, in each of your estimations, will the insect infestation section of the bill or the other aspects of the bill help us address this problem adequately?

I guess my real question is will research alone solve our problem?

Mr. REY. Research is a necessary component to understanding how these infestations are moving and what the circumstances are today that are causing the rapid increase in spread that we are seeing. That part of Title IV of the bill will be exceptionally helpful.

The other part of Title IV, which is the applied research, in experimenting with different treatments, will also be helpful.

Those two provisions, combined with some of the administrative reforms that we have already implemented, in terms of using categorical exclusions for certain hazard fuel reduction projects in combination will get us a lot further down the road than we are right now.

Senator LINCOLN. Ms. Scarlett.

Ms. SCARLETT. Yes. I do not know that I have anything to add to that. The bill does cover both on the research side, an element that will allow us to better understand these infestations and how to address and deal with them, and then give us the tool on the treatment side, the tools on the treatment side, to begin to remove some of that material, and thereby help bring the forests back to a better, healthy condition.

Senator LINCOLN. I guess, given a virtual forest of unmet needs, and a finite level of resources that we can afford to apply to the bill where should we selectively apply those resources first—suppression of current problems or prevention of future ones? There is obviously a balance to be met in that. We would certainly like to have your perspective.

Ms. SCARLETT. Let me address that.

You said it exactly right. What we do need is a balance. Certainly, as we have challenges out there, fires, such as those that are burning right now in Arizona, do need suppression activities to prevent loss of life and related damage. By the same token, if we simply operate on a suppression mode, without attention to bringing our forests back to health, we will be in constant catch up.

What we are trying to do with this legislative tool, working with you and the administrative tools that we have put in place, is to begin to get ahead of that game. Certainly, with respect to our budgets, they reflect that balance, and with respect to these tools, we think they reflect that balance.

We have 190 million acres of public lands that we believe are in unhealthy condition, and we are right now treating not more than about 2 million of them. Additional effort and focus is needed on that preventive side.

Just looking at that from the Healthy Forest perspective, looking at management, tree density, tree age, does management play, what kind of a level of role does management play in really maintaining tree vigor and overall forest ecosystem health? Can you give us an idea of that and the authority that is there to do that.

Mr. REY. It is essential to apply what we know on the ground to address the situation that we are currently experiencing. Fire is a natural component of most North American ecosystems, but the fires that are burning today are not natural fires. They are more intense, they are burning with greater ferocity, and they are presenting catastrophic results in their wake.

The only way that we are going to break that cycle is by actively managing the most at-risk stands to reduce the number of trees per acre or the amount of cellulose per acre on rangelands and to bring these areas back to a situation where fire can play its natural role and where we can use fire more broadly to maintain what were the natural stand densities that we would have seen in these areas at the turn of the last century, before we started into 100 years of fire suppression and before, frankly, we entered into what is a multi-decadal wet cycle that started in the mid-1970's.

Senator LINCOLN. Well, could you visit or add to, the role of the forests being stressed from insect and disease leading up to a catastrophic fire. We talk about fuel. We talk about epidemic insect infestation, some of it exacerbated by monocultures in some of our forests. Can you talk about are managed forests likely to suffer more or less catastrophic insect and disease outbreaks from fires?

Mr. REY. Here is about how the cycle works. As you get more trees or more shrubs per acre, the trees that are there begin to compete for water, water being the limiting resource. If you have 2- or 3,000 trees per acre, instead of 2- or 300 trees per acre, almost, by definition, the 2- to 3,000 trees are going to be water stressed. As they get water stressed over particularly a drought pe-

riod, a 3- to 5-year drought cycle, then they become less able to withstand the effect of insects, particularly bark beetles.

A healthy tree that is not moisture stressed will repel a certainly amount of bark beetle infestation by generating pitch to flood the borer holes and keep the beetles at bay. A tree that is drought stressed does not have the ability to pitch out the beetles, and so the beetles flourish, and then the situation starts to expand on itself exponentially, to where the infestation begins to spread through the drought-stressed trees, setting up a very dense stand of dead and dying trees, which are dry and waiting for an ignition to occur.

When ignition occurs in that circumstance, it is not a low-intensity fire. It climbs the branches, the "ladder fuels," as our firefighters call them, to get into the crown of the tree, so that it then begins to move on its own power, in extreme situations, creating its own weather system as it consumes large acreages of trees, with a heavy wind behind it, in a fairly fast-moving fashion.

Ms. SCARLETT. Let me add one additional dimension or complexity to that picture that Mark painted, and that is the susceptibility in those diseased forests of invasive species. Once you get that diseased forest, they also become more susceptible to invasives, which themselves can increase the fuel load, increase the susceptibility to the kinds of intense catastrophic fires that we are discussing.

Mr. REY. By contrast, if you are looking at an area that has been thinned or managed to reduce the stand density or the amount of vegetation to what we consider more normal, in an historic context since, then those trees are going to be less moisture stressed, even in drought conditions because there will be less of them competing for whatever moisture is available.

When a fire ignites, it will, generally speaking, burn along the ground in a low-intensity fashion without the same degree of prospect that it will enter the crowns of the trees and start a catastrophic situation developing.

Senator LINCOLN. Thank you, Mr. Chairman.

I just wanted to make sure that there is no doubt that fire is an issue, and it is a very important issue for all of us in our forests, but for those of us in the South that have been ravaged by the epidemics of insects, I want to make sure that we elevate that issue because it has really devastated many of our forests in the South. I appreciate very much the panel and the witnesses here.

Thank you, Mr. Chairman.

Senator CRAPO. Thank you, Senator Lincoln. In fact, you, very thoroughly, went through one of my lines of questioning, too, because we have the same problems, I remember the hearing you held, when you were chairing the committee, with regard to the red oak borer. I was showing examples of our pine beetles. We have the same kinds of concerns, and there are some who say we should limit this bill to simply fire issues, and I think that your questions go into a very important additional aspect of the whole problem.

I have one more question, and then we will see if anybody else has a question before we go to the next panel. This one is for the Forest Service.

Mr. Rey, Section 105 requires the development of a new administrative review process for the Forest Service under the bill, in lieu of the current appeals process, and I just wanted your comment on why you believe this would be useful.

Mr. REY. The current appeals process is mandated by statutory language in the fiscal year 1993 Interior appropriations bill. It is, therefore, the product of an appropriations rider. It is also virtually the only administrative appellate process in the Federal Government that is mandated by statute, and as such, and as things have changed in the last 10 years, we found that it is difficult to administer. For example, it requires notice and comment procedures beyond those required under any other law, most particularly the National Environmental Policy Act.

What the provision in H.R. 1904 would provide us the opportunity to do is for these particular kinds of projects, where time is of the essence, is to start with a clean slate and construct an appeals process that is a little bit more flexible to work with and that we can move through the appeals process a little bit more expeditiously.

It would also allow us to work with the Department of Interior to construct a similar appeals process for both departments so that potential appellants, who want to exercise the right to challenge one of our projects, could do so knowing that they would not have to use or learn different procedures if they were challenging an Interior Department or an Agriculture Department project. It has the prospect for simplifying the process for the public as well.

Senator CRAPO. Thank you very much.

If there are no additional questions of this panel——

Senator LINCOLN. May I just ask one, Mr. Chairman?

Senator CRAPO. Senator Lincoln, please.

Senator LINCOLN. As I mentioned earlier the balance when we talk about suppression of current problems or the prevention of future ones, I would just like to get a brief answer from you all about the balance in terms of appropriations going to different areas.

I know that Chairman Cochran will be sending money your way from the Appropriations Committee, and I want to get an idea from you where you would spend those appropriations.

Ms. SCARLETT. We certainly look forward to working with the Congress on that issue. We think that the budgets that we currently have provide a good mix of the preventive measures, as well as the fire preparedness and suppression.

One of the things that we are looking forward to, as we get the tools, should this bill pass, is greater management efficiency so that we can, with our fuels treatment, get more dollars on the ground and less spent, actually, in administrative type of activities. I am pleased to say that we are getting better and better at our fuels treatments, and we have actually substantially increased our ability to take those dollars and have them go further. This tool will enable us to do that even better.

Mr. REY. Let me illustrate that in a unit cost way. Typically, today, when we do an Environmental Impact Statement, the cost of that runs us from $1.5 million to $2 million for a significant project. The average Environmental Impact Statement will have probably about nine alternatives. We will do the analysis on each

of the nine alternatives. That is what generates the cost of $1.5 million.

What Title I of this bill says is, if you are looking at a fuels treatment project, you are basically looking at the proposition of whether you are going to do it or not. Those the only two alternatives that you really should need to evaluate; the no-action alternative or the alternative to proceed.

Well, what that means is that we will be evaluating less than a third of the alternatives that we normally would in order to meet the current case law under NEPA for a broad range of alternatives. That suggests we will probably reduce the price of doing an Environmental Impact Statement for these kinds of projects by as much as two-thirds or maybe slightly more. That is money we can use to put back on the ground, to do more projects on the ground, and to accelerate the rate of the work that we need to do here.

In terms of geographic distribution of where we do it, one of the benefits of the Ten-Year Fire Plan is that, working with the National Governors' Association, we are looking across boundaries and jurisdictions to get a sense of priorities among regions as to where the work should be most heavily concentrated. Our work there has been informed by the Governors, by a considerable extent.

Senator LINCOLN. Our Southern forests are a lot different, both in demographics, as well as size, as also in needs, in terms of insect versus some of the fuel issues. I just want to make sure that that is taken into consideration and that we make sure we get our fair share.

[Laughter.]

Senator LINCOLN. Thank you very much.

Thank you, Mr. Chairman.

Senator CRAPO. We want to see the same thing. One of our objectives here is to be sure that this is truly a national bill, not only because it is important to be sure that everybody is protected on this important issue, but because we want to have a strong, bipartisan, broadly supported bill, and so we look forward to working with you to make sure that that is the way it works out.

If there are no further questions, then we will excuse this panel. Ms. Scarlett, Mr. Rey, we appreciate the time you have given to this effort and that you have given to the committee to present this information today.

We will now move to our third panel, and you may begin coming up. Our third panel consists of Mr. Mike Carroll, from the Division of Forestry in the Minnesota Department of Natural Resources; Dr. Fred Stephen, the interim department head at the Department of Entomology at the University of Arkansas; Mr. Tom Nelson, director of Timberlands, Sierra Pacific Industries from Redding, California; Ms. Jackie McAvoy, council member for Post Falls City in Post Falls, Idaho; and Mr. Michael Petersen of the Lands Council from Spokane, Washington.

Ladies and gentlemen, we welcome you all here with us today. I would like to ask you to remember to watch the clock because we do want to have a lot of opportunity; to get into questions and dialog with you.

We will proceed in the order that I called your names.

Mr. Carroll, you may begin.

STATEMENT OF MIKE CARROLL, DIVISION OF FORESTRY, MINNESOTA DEPARTMENT OF NATURAL RESOURCES, ST. PAUL, MINNESOTA

Mr. CARROLL. Good morning. Thank you, Mr. Chairman, committee members. My name is Mike Carroll, and I am pleased——

Senator CRAPO. Can you pull that microphone a little closer and be sure that it is on.

Mr. CARROLL. That would help.

Senator CRAPO. Yes. Thank you.

Mr. CARROLL. Again, I am pleased to be here today and testify on behalf of the National Association of State Foresters.

I am a member of their Forest Health, Fire and Resource Committees. In Minnesota, my home State, forest ownership is a patchwork quilt of public lands administered by the tribes, the U.S. Forest Service, the State, very aggressive county land management departments, and it is intermingled with wide, privately held wood lots.

We work together across the forest spectrum, from the urban yard tree, to the shelterbelt, to the working forests, to old growth and in wilderness stands. This bill that you are proposing would help us protect and improve the sustainability of multiple values in these varied ecosystems dominated by trees.

The National Association of State Foresters believes the Healthy Forests Restoration Act will clearly support the implementation of the National Fire Plan. This is not just a Western fires issue, as you have heard. This act helps to address the national need for active forest management across mixed ownerships at a landscape level. We have addressed those issues.

NASF supports forest biomass utilization. Making use of otherwise noncommercial wood products provides numerous environmental benefits, and selective thinning to reduce stand densities can also promote species and age class diversity, while resulting in a more vigorous and resilient stand.

In Minnesota, biomass energy is planned to help fuel our mining industry. In Minnesota, our lakes and streams are a part of our heritage and our sense of place and well-being. Clean water starts in the forest. The Watershed Assistance Program will build and strengthen the ability of States, communities and private landowners to mitigate water quality problems, restore watershed conditions, improve drinking water and address threats to forest health. I provide several examples from across the country in my written statement.

Currently, there is no program in USDA Forest Service authorities that directly supports watershed protection and restoration work on local community or private forest lands. This program will provide that authority and funding needed to begin coordinated work on the ground at a watershed scale.

My own academic and professional background is in forest health. Healthy, actively managed forests are more resistant to insect attacks. The current situation in Arizona shows how drought and bark beetle predispose forests to fire damage. Integrated pest management activities need to be applied in a timely manner across the landscape to avoid such buildups of stressed trees that becomes pests' hosts and ultimately fuel wildfires.

Quick response to eradicate new, invasive pests is even more critical. They often show up in our very heavily populated urban areas. Many times these pests have no natural enemies and can quickly build to outbreak levels making eradication impossible. NASF strongly supports accelerating the work on the emerald ash borer, sudden oak death, gypsy moth and other forest pests and diseases by authorizing and funding this legislation.

A working laboratory for the issues we are discussing today was created in July 1999, as has been mentioned by the Senator earlier, when blow-down struck over 478,000 acres of forest land in the Boundary Waters' canoe area and adjacent lands of Northeastern Minnesota. I have provided in my testimony photos and maps—I know everybody has seen a lot of catastrophic damage in the last several years, but I have provided you some additional information there—and a publication that can be passed out on "After the Storm," to give you an idea on how the mixed ownerships responded to that storm up in Minnesota.

The area—I want to stress—the area is an interface of designated wilderness, managed forests of mixed ownership and private recreational holdings. This is extremely challenging to manage those types of interface.

My written testimony details how the agencies produced an immediate triaged response to deal with health and safety issues in the area, but diverged on the time lines and extent of salvage and restoration efforts. In these efforts, non-Federal partners concurred that the Forest Service process has too many steps and is not efficient when confronting a disaster such as the 1999 blow-down in the Superior National Forest.

The blow-down in Minnesota and now the fires out west demonstrate several key points addressed by this legislation. Public input process needs to remain, but be streamlined so science-based actions can occur on the ground in a timely fashion. That is the theme of your discussion today.

Mother Nature can clearly act across the landscape, and we need to respond in a similar scale. We will never eliminate fire or pests. We can, however, act to reduce the amount and concentration of fuels left on a site and increase the vigor of remaining trees. We can do this in ways that promote biodiversity and leave a patchwork of trees of different ages and sizes on the landscape.

We need to develop—this is my last point, and I will end here—we need to develop and maintain outlets for the byproducts of these efforts. It is critical to the economy of rural America that these outlets remain present and viable. Base industrial processing, ecotourism, energy and specialty products all need to be considered as a part of this forestry industry complex. This is doable. We have the science and the staff to do it. We just need the vision and long-term commitment to manage our forest landscapes in a sustainable manner across the landscape.

Thank you very much, and I would be glad to stand for questions.

[The prepared statement of Mr. Carroll can be found in the appendix on page 99.]

Senator CRAPO. Thank you very much, Mr. Carroll.

Dr. Stephen.

STATEMENT OF FREDERICK M. STEPHEN, Ph.D., INTERIM DEPARTMENT HEAD, DEPARTMENT OF ENTOMOLOGY, UNIVERSITY OF ARKANSAS, FAYETTEVILLE, ARKANSAS

Mr. STEPHEN. Mr. Chairman and members of the committee, my name is Fred Stephen. I am University Professor and Interim Head of the Department of Entomology at the University of Arkansas. I am here today representing the Society of the American Foresters. I am honored by this opportunity to testify on the topic of forest insect infestations as they pertain to forest health.

Potentially, forest health involves considering the status of all ecosystem components. Insects and diseases are normal inhabitants of forest ecosystems, but at epidemic levels can have serious impacts on overall condition and resilience of such systems.

The SAF believes that appropriate science-informed silviculture treatments can be important in increasing forest biodiversity and health, and therefore also reduce the likelihood of occurrence and severity of impact of many forest insect outbreaks.

Currently, throughout our country, forests in all ownerships are affected by unprecedented insect outbreaks and resulting damages. Catastrophic population levels of conifer-infesting bark beetles, such as southern pine beetle, western pine beetle, mountain pine beetle, Douglas-fir beetle and spruce beetle are ravaging forests in Southern and Western U.S., Canada, and Alaska.

In addition, introduced species such as gypsy moth, hemlock woolly adelgid, and more recently, emerald ash borer are killing thousands of our native trees. Unhealthy forests favor their establishment and increase the probability of serious outbreaks. These outbreaks can have dramatic consequences, including economic and ecological loss, increased risk of wildfire in certain areas of the country, increased risk to human safety, and changes in forest structure and composition that may diminish aesthetic values.

Today, I will briefly mention two examples of serious forest insect outbreaks that exemplify the problems we face and the need for a coordinated response to increase support for research that ultimately will result in management to create more healthy, resilient forests.

As a group, bark beetles are the most significant forest insect pests in our country. This complex of small, ubiquitous insects is responsible for the death of millions of conifer trees annually across the forests of North America, more than are killed by fire and storms combined.

Although each of these forest landscapes across the country is unique, these bark beetle epidemics share some common features. Most of the devastating outbreaks occur in stands that are overstocked with mature to overmature trees, frequently of a single species, and whose normal mechanisms of resistance are challenged by drought conditions and other factors.

Recent damage by southern pine beetle exceeds all historical records. The geographic range of our current epidemic continues to grow and new host species are being infested.

Previous RD&A programs have greatly increased our knowledge of this insect, but it is still inadequate to fully explain the causes for the epidemic or to provide acceptable management solutions. The duration and extent of the current outbreak throughout the

South has generated unified concern and a call for an organized effort to protect the forests of our region.

The technical expertise required to plan and to conduct a substantial SPB research and development program is dispersed among the land grant universities and a variety of Federal, State and private organizations. It is therefore essential that a representative cross-section of the stakeholder community participate in defining the agenda and formulating an action plan for multi-State research.

Across the Ozark National Forest of Arkansas and Missouri, pest management specialists began to see dying trees in the late 1990's and identified the cause as an insect/disease complex called 'oak decline'. The insect culprit is the red oak borer, an almost unknown insect species that is native to eastern North America. It attacks living oak trees.

Red oak borer populations now are more than 100 times greater than ever before seen. The oak decline–red oak borer complex is the greatest threat in recent history to the oak component in this national forest. The dollar value at risk in timber value alone exceeds $1.1 billion. The direct impact on local economies, includes anticipated loss of 2,200 jobs in the logging and milling industries.

In summary, it has been demonstrated that prudent forest management and stewardship can lower the risk of unacceptable loss of property and resource assets from insect infestations through various silviculture prescriptions and biological controls. I believe that we are facing insect outbreaks that may result from unhealthy forest conditions and which are further incited by such climatic factors as serious drought.

It is essential that we realize the complexity and uniqueness of these insect epidemics as well as their commonality. To successfully manage such problems will require greater support of research by university and other scientists to effectively acquire knowledge on the basic causes and underlying reasons for these problems.

Continued support of both Congress and this administration will then be necessary to extend this knowledge into ecologically and economically effective integrated pest management and forest management systems.

Thank you.

[The prepared statement of Mr. Stephen can be found in the appendix on page 112.]

Senator CRAPO. Thank you very much, Dr. Stephen.

Mr. Nelson.

STATEMENT OF TOM NELSON, DIRECTOR, TIMBERLANDS, SIERRA PACIFIC INDUSTRIES, REDDING, CALIFORNIA

Mr. NELSON. Good morning, Mr. Chairman. My name is Tom Nelson. I am the director of Forest Policy for Sierra Pacific Industries in Redding, California.

My testimony today is on behalf of the American Forest and Paper Association, which represents forestland owners, manufacturers of solid wood products and producers of pulp and paper products.

Our members are committed to sustainable forestry for all forestlands, both public and private, Eastern and Western. Our industry supports important environmental values, such as clean air, clean water and wildlife habitat, and we also support viable communities and the social and economic benefits from wood fiber that can be removed as a result of treatments to improve forest health.

I am here today because our Federal lands are unhealthy. The fires, and insect and disease epidemics that we are seeing today are beyond the historical range, and our national forest policies have made the problems worse. Federal land managers are unable to actively manage our forests to address these problems.

The wildfire seasons of 2000 and 2002 were among the most destructive fire seasons in the last half-century. The impacts are far-reaching: loss of lives and homes, displacement of communities, loss of tourism dollars, destruction of wildlife habitat and water sheds, and damage to timber and nontimber resources.

As we sit here today, a wildlife is raging in Arizona just outside Tucson, as has been mentioned. It has all of the dangerous elements: close to communities, in difficult terrain and in a forest suffering from years of drought, the ravages of bark beetles and decades of no forest thinning or management. Yet there are hundreds of areas around the country with similar conditions and hundreds of communities and adjacent private landowners that consider themselves lucky that it is not them, not this time. We need to rely on more than luck to get us through this summer's fire season. We need action.

Our forest health crisis is not simply about wildfires, as also has been mentioned. Insect outbreaks are also devastating forests around the country, such as the Daniel Boone National Forest in Kentucky, which experienced southern pine beetle outbreaks over the last several years. In this case, efforts to control the spread of the beetle were delayed by excessive paperwork and appeals, allowing the devastation to spread quickly. More than 100,000 acres of pine forest, which were home to the federally endangered red cockaded woodpecker, were lost to beetle damage.

These fires, and insect and disease epidemics are merely symptoms of deeper, underlying problems. The fact is our national forests are overstocked with growth far exceeding current harvest levels and are at an increasingly higher risk of fires and insects, but there is ample evidence that well-designed forest management strategies can help. These strategies must recognize that mechanical treatments, with removal of trees and brush, will be an integral part of the solution.

Prescribed burning alone is not an option for most of us in the West. No sane person would think of dropping a match in these forests before first reducing the levels of stocking. The proposals developed under the administration's Healthy Forests Initiative offer promise for working through the "analysis paralysis" that plagues our Federal land management agencies.

Similarly, the National Fire Plan has made tremendous strides by establishing a framework for restoring ecosystem health in fire-adapted ecosystems. More needs to be done. The costs of inaction are staggering. I've attached a map showing the lands owned by our company and the neighboring Federal lands. You will note that

these two ownerships, as is common throughout the Western United States, are intertwined and intermingled. Our company, and others like ours, have aggressively tried to reduce the risks of catastrophic wildfires on our private holdings for many years, largely through the use of thinning. However, these efforts cannot be effective without the cooperation of our Federal neighbors, since wildfires, insects and disease do not recognize property boundaries.

Legislative action is needed now. The House of Representatives recently passed the Healthy Forests Restoration Act. As the Senate moves forward on developing legislation, we encourage you to consider the following:

We need procedures that allow Federal land managers to expeditiously implement hazardous fuels reduction projects on Federal forests and rangelands in critical areas, including areas that threaten communities and areas at high risk for catastrophic wildfire or insect and disease infestation.

Congress should allow agencies to make a more efficient approach to NEPA documentation and allow for expedited handling of administrative and judicial challenges. We need to reduce hazardous fuels, both within the Wildland Urban Interface in order to protect communities, as well as across landscapes beyond the interface to protect values such as wildlife habitat and water quality.

We need an accelerated Federal Treatment Program to halt the spread of insect and disease outbreaks, to allow critical research projects to proceed without needless delays.

It is critical to involve States and private landowners in our efforts to protect forest health. The creation of a watershed forestry assistance program would provide States and landowners with technical and financial support in their efforts to address threats to forest health.

AF&PA looks forward to working with this committee and others to help develop solutions to address the growing threats to our Nation's forests. Thank you for the opportunity to testify, Mr. Chairman, and I will be happy to stay for questions.

[The prepared statement of Mr. Nelson can be found in the appendix on page 119.]

Senator CRAPO. Thank you, Mr. Nelson.

As we move to our next witness, Ms. Jackie McAvoy, I want to take an opportunity here to personally welcome you. Jackie is from my home State of Idaho. We have worked together on timber issues for years. In fact, you were in Red River or in Elk City when we looked at some of these problems that the beetles were causing there, and we talked about the fire needs.

Jackie, welcome, and you may proceed.

STATEMENT OF JACKIE McAVOY, COUNCIL MEMBER FOR POST FALLS CITY, POST FALLS, IDAHO

Ms. MCAVOY. Good morning and thank you. I am Jackie McAvoy, council member for the city of Post Falls, Idaho, and board member of Idaho Women in Timber. I am also honored to have been appointed a member of the Resource Advisory Committee for the Panhandle National Forest, where I currently serve.

Thank you, Mr. Chairman and members of the committee, for inviting me here today to testify on an issue that is critically impor-

tant to me, to my fellow Idahoans, and to the people across this country who live in States with significant forest health and fire risk challenges. I am not a scientist or a forester, but I am an Idahoan who is concerned about the health of the forests within the boundaries of my State. In that capacity, I am honored to be here to express my full support for H.R. 1904, the Healthy Forests Restoration Act.

Idaho, the beautiful State you and I call home, Mr. Chairman, is covered by over 22 million acres of forestland. Seventy-three percent of Idaho's timberlands are in the national forest system. Timber harvest activities in my State have declined 80 percent since 1990, resulting in extremely poor forest health conditions on many of Idaho's national forests.

For example, national forests in Idaho are 35-percent more dense than other forest ownerships in the State. This increased density leads to increased competition for water, sunlight, and nutrients, making these forests more susceptible to insect and disease outbreaks and increased fire risk.

Almost twice the number of trees die on national forests in Idaho than on any other forest ownerships. That buildup of dead trees increases the fuel load in the forest and, with it, the potential for severe wildfires. Finally, lethal potential—or fires that kill whole forests—has tripled on Federal lands in Idaho and Montana.

Today, the focus is on Arizona. Tomorrow, we may read about Spokane, Washington, or Lake Tahoe, California, or Carson City, Nevada, or Idaho City, Idaho. The list is long. The challenge is huge. Lest we forget the 2002 fire season, almost 7 million acres burned, 1,800 homes lost, $1.97 billion to fight and 20 firefighters dead. Things must change, and they must change now.

Last month, I was here in Washington, DC, along with 25 members of Federated Women in Timber. We visited with legislators, Federal agencies and others about forest-related issues that concern the rural forested communities in the 11 States that have Women in Timber groups.

During our discussions, we raised the very serious insect infestation and fire-risk problems that impact the health of our Nation's forests. At every meeting, we stressed our concern over the very real possibility that catastrophic fires would blaze across the Nation before any legislation to speed the thinning work that must be done to reduce the threat of insect outbreaks and devastating wildfires could be adopted.

That fear has become a reality as we watch the Aspen fire torch more than 11,000 acres and 250 homes near Tucson, Arizona. I understand those figures have increased. The severe insect and disease problems in Arizona's dense national forests have provided the perfect condition for this year's first forest casualties and yet another sad example of a forest management system that is horribly broken.

I brought with me today some douglas fir bark beetles and western pine beetles gathered from national forests in my State. I have them here, and I understand there are some more interesting things in my douglas fir bark, and Dr. Stephen pointed those out to me. These critters are responsible for destroying hundreds of

thousands of acres of forestland in Idaho, as they have in other parts of the country, especially the Southeast and Southwest.

I also have with me the bark samples that I just mentioned that showed the galleries made by these beetles. Beetles chew these galleries all the way around the tree, cutting off the tree's ability to take in water and nutrients which ultimately kills the trees.

An ice storm severely damaged trees on the Idaho Panhandle National Forest in Northern Idaho in 1997, generating an explosion of these douglas fir beetles.

Mr. Chairman, I want to thank you for making the recent trip to the pine beetle-infested forest near Elk City, Idaho. I have friends who live in that small community. They have been concerned for years about the health of the Nez Perce National Forest and the fire risk the beetle outbreak brings.

Last year, members of Idaho Women in Timber spent one full day touring the forest, looking at the tremendous damage done by the western pine beetle. The forest was a sea of dead red trees. As you know, the folks who live in Elk City have only one way in and out of town. If a wildfire starts in their area, they know their lives are in danger, as well as their homes and businesses.

My time is out.

It is a fear they live with every day. They know action must be taken soon. I recently became acquainted with folks who live in the southeastern part of the United States. We have discussed H.R. 1904 at length. It is interesting to me that, though, our forests are very different, we still have the same concerns regarding the need for forest management. These folks agree that this legislation will allow the Forest Service to address insect problems in a timely manner. They care about this issue. They know that without responsible management on Federal lands, surrounding private lands in the south, a private landowner's efforts to maintain a healthy forest, one that provides habitat for wildlife may be meaningless.

I am going to talk real quick, but I have to tell you about an issue that struck me, personally. Catastrophic fires not only destroy wildlife habitat, watersheds, forest soils and homes and property, they also create health problems for the communities near the fires. Let me cite a personal example.

Last summer, on a weekend, my daughter, who lives in Wasilla, Alaska, was with my grandson at a soccer tournament in Fairbanks. She told me about the officials having to suspend the games because the smoke from a nearby forest fire was so thick the kids could not breathe. After the smoke cleared somewhat, they were able to continue the tournament, but my grandson and his teammates suffered breathing problems for some time after they returned home.

I have some other things that are in my written testimony. I will stop and thank you, Mr. Chairman, for the opportunity to testify today. I would be happy to answer questions.

[The prepared statement of Ms. McAvoy can be found in the appendix on page 127.]

Senator CRAPO. Thank you very much, Jackie.

Mr. Petersen.

STATEMENT OF MICHAEL PETERSEN, THE LANDS COUNCIL, SPOKANE, WASHINGTON

Mr. PETERSEN. Thank you for the opportunity to testify at this important hearing on the fate of our forested communities and our national forests. I am the director of the Lands Council, a conservation organization based in Spokane, Washington. I am also president of the National Forests Protection Alliance which, along with nearly 100 members of the House of Representatives, advocates of passage of the National Forest Protection and Restoration Act.

The past week we have all read about the unfortunate loss of homes and property on Mount Lemon near Tucson, Arizona. The fact that the Aspen fire started so close to the Summerhaven community and not miles in the back country emphasizes a need to conduct fuel-reduction projects where they are needed most, near homes and communities.

Last December, the Arizona Daily Star reported that Summerhaven wanted a quarter-mile buffer around their community, but the Forest Service said it did not have the million dollars necessary to do the work. The fact is most of the Forest Service budget goes to a timber sell program.

The Summerhaven fire is powerful warning that national fire policy must emphasize the importance of reducing the risk of fires immediately around communities. We cannot fireproof our forests, but we can work toward fireproofing our communities.

The Healthy Forest Initiative would log up to 20 million acres on Federal lands, often far away from communities at risk. The facts show that only 20 percent of the acres burned in the last 12 years were on national forests. Elk City, for example, is surrounded by private and State lands as a buffer and then here in the National Forests.

How do we protect it? In 2001, the Lands Council received a Forest Service grant, and we started up a wildfire education program. Since then, we have visited 1,500 homes, talked to people face-to-face, knocked on their doors, and have written 120 fire plans. Those plans have been implemented by our State Department of Resources.

This spring, we began working in the community of Chewelah, Washington, in a collaborative effort, on multiple jurisdictions to help them write a wildfire protection plan. At a time when we urgently need to focus on protecting communities, we can't afford a proposal that spends scarce resources on projects far from where people live; for example, the Iron Honey project in North Idaho, 20 or so miles from towns of Coeur D'Alene and Hayden Lake, 1,400 acres propose near clear-cutting, and that has being called fuel-reduction project.

Some will claim that these burdensome regulations prevent necessary work from being done, and the red tape drives up the cost of projects. In May 2003, a GAO report found that 95 percent of fuel-reduction projects were ready for implementation within the standard 90-day review period. Those numbers do not support a claim of paralysis analysis.

While the discussion of how to restore our national forests continues, and should be driven by science, we know how protect communities from fire. Fire physicist, Jack Cohen, he is a U.S. Forest

Service employee out of Missoula, Montana, has done considerable research and found that effective wildfire protection must focus on the homes and its immediate surroundings and not on wildlands. I will reemphasize that issue.

Eighty-five percent of the lands within this community protection zone, which was about a half-mile, are on non-Federal lands. I believe we should take the following steps:

Concentrate our fuel-reduction projects in those community areas, which is about 200 feet around structures and a little over a quarter-mile around the communities themselves. That would help protect the communities, as well as firefighters, and direct 85 percent of the National Fire Plan's hazardous fuel budget to those areas.

There are some good projects in our national forests that we support and many people support: The Dixie Fuel Break, for example, which is a town just south of Elk City. The Dixie Fuel Break project was a collaborative project. The local environmental group was totally behind it. It has been implemented, and it is now protecting that town in case a wildfire should come in from the surrounding forest.

In contract, H.R. 1904 takes us outside of the communities, and it also takes us outside of current legislation, such as the appeals legislation and the National Environmental Policy Act. It basically would allow categorical exclusion of many, many projects which have significant impacts, and it would not allow for proper scientific analysis or public participation. It would restrict the rights of Americans to take these issues into court and would authorize an unlimited number of projects, up to 1,000 acres, for all lands that are claimed at risk from insect infestations.

H.R. 1904 fails to provide any extra financial assistance to fire protection around communities. It diverts attention to the back country. Yes, we do have national forest problems. We have a system that has been damaged by past management, road building, logging and fire suppression, but the cure is not more of the same. The cure is to take the forest service out of the logging business and let science and common sense guide the way to restoring our national treasures. We know how to protect communities that are at risk from wildfire, and I think we should get moving on it before we have another Summerhaven.

Thank you very much.

[The prepared statement of Mr. Petersen can be found in the appendix on page 134.]

Senator CRAPO. Thank you very much, Mr. Petersen.

I am going to yield my time in the first round to Senator Coleman, from Minnesota. He is here and, Senator Coleman, you can feel welcome to make any statement you may want to make, as well as introduce any friend you may have here from Minnesota, and ask questions, if you would like.

Senator COLEMAN. Thank you, Senator Crapo. I am very appreciative.

I have a statement that, without objection, I would like to have entered into the record.

Senator CRAPO. Without objection.

[The prepared statement of Mr. Coleman can be found in the appendix on page 81.]

Senator COLEMAN. Just to make an observation. Mike Carroll is here, though representing a national organization, hailing from Minnesota. He talked about the July 14th, 1999, blow-down that we had, straight-line winds I believe in excess of 90 miles an hour, severe downing trees, causing severe flooding in more than 600 square miles of the Superior National Forest.

If you look in the document that he submitted, there is a note in there that says, "The 1999 blow-down has been compared to other large-scale events, such as the eruption of Mount St. Helens and the fires of Yellowstone."

Again, he noted that we are a working laboratory. The reality is that I think we were very fortunate that we did not have the kind of fires that we have seen around the rest of the country. We have the Boundary Waters, the BWCA area there. It is a pristine area. There is no motorized traffic. It is really preserving the forests the way they were, and that blow-down is there, and we are using techniques to deal with that.

Then the Superior Forest, we are using a series of techniques. We have removed most of the heavy fuel loads at this time.

It is important, as we look to the future, that we need to have, and again I quote Mr. Carroll, "A forest management system in which you maintain the public process, in which you streamline the process, particularly to be able to act expeditiously where risk occurs."

Then, finally, most importantly what I hear from every witness is that we have to have science-based decisions. That is absolutely critical.

We have a path. This legislation provides us with that opportunity. It is why I am supported.

If I can, Mr. Carroll, the question I would ask you is to us here, and to my colleagues, by the way, on both sides of the aisle, who I think will recognize the importance of science-based decisions bringing common sense to the table, the reality in our State, there are great battles over the way we work this, as I presume in many other States; that we are talking about doing things that would improve the process for clean water. Clean water begins with healthy forests, and improves the measure of public safety. It is not clear that the broader public gets that.

How do we do, particularly recognizing the importance of the public process, public participation in this process, how do we do a better job of educating the broader public, not just those who live around these areas, who depend upon these areas for their economic future, how do we reach out to that larger community that has a great interest in what happens here and is not always focused on the same sound science solutions that many of us here believe in?

Mr. CARROLL. That is an excellent question, Senator. As you know, in the State of Minnesota, we have a Minnesota Forest Resources Council group that is appointed, mandated by the legislature, appointed by the Governor. It is a broad-based group. It has environmental coalitions. It has industry representatives and then people interested in the forests from public trust agencies, hunting

and fishing groups, the agencies themselves are there, the tribes are there, interest groups are there at the table.

The focus is on where do we agree on the value of the forest? The focus is clearly on education. The focus is on the development of voluntary guidelines and outreach to groups so that they understand the value of forest management and the value of some of the preservations values that we treasure so much in Minnesota, also.

We develop processes where there is public input. The public does come together around the table. They identify the needs for old growth, for wilderness. They identify the needs also for industry retention in the State, and we work together to try to balance that.

We also have a very aggressive education process in the State, where we work with our teachers, we work with our constituent groups, and we outreach those people so that they do understand those very issues. We also tap the very strong land grant university we have, and I think that is an element we need. All States need to reinforce the value of the land grant universities for outreach and extension service related to management of the forest.

Senator COLEMAN. Thank you very much, Mr. Carroll.

If I may, Mr. Nelson, from an industry perspective, do you see an industry obligation in terms of more proactively getting out the message of the importance of sound science and the positive environmental impacts of good forest management?

Mr. NELSON. Yes, we do, and we have been behind the eight ball on this for a long time. I agree with you. We have taken a number of steps, through the American Forest and Paper Association, and other groups like that, to try to get the word out. Frankly, the situation we are in right now is a very good topic to begin to get people to have a rudimentary understanding of some of the forest management that we have been advocating for years. We are trying to do it, yes.

Senator COLEMAN. Thank you.

Thank you, Mr. Chairman, for extending me this courtesy.

Senator CRAPO. Chairman Cochran.

The CHAIRMAN. Mr. Chairman, I notice we have been joined by our good friend from Georgia. I would be happy to yield to him for any comments or questions that he might have.

Senator CRAPO. Thank you.

Senator Miller.

STATEMENT OF HON. ZELL MILLER, A U.S. SENATOR FROM GEORGIA

Senator MILLER. I do not think I have any questions, Mr. Chairman, but thank you. I just want to say that here we are in this situation, with the House having passed this bill, and currently, in Georgia——

Senator CRAPO. Senator, could you push the button on that mike.

Senator MILLER. I was saying that this is a very, very timely hearing, and I hope that it will help expedite doing something in the immediate future because currently in Georgia right now, the southern pine beetle has reached epidemic status in three-fourths of the Georgia counties, and I look forward to working with this committee, and with the Department of Interior, and with the De-

partment of Agriculture to get something done as soon as we possibly can. Time is critical.

It is like that guy that was up in that tree that Jerry Clower tells about. Somebody needs to have some relief, and that is what we need right now in Georgia, especially with the southern pine beetle.

Thank you.

Senator CRAPO. Thank you very much, Senator Mill.

Mr. Chairman.

The CHAIRMAN. Well, I have a couple of questions for this panel. Dr. Stephen, you mentioned the research title in this bill, and I was wondering about your reaction to it, as to whether or not it is sufficient to help us meet the needs for adequate research that will develop better ways, more effective ways of dealing with insect monitoring and control. What is your reaction to the bill's provisions on that issue?

Mr. STEPHEN. Well, it is a very good start, and it is an excellent way to begin that process. I guess I would like to emphasize that my colleagues in the university community that have to compete for grant funds to support their research find too often that money is there during outbreak conditions, but the ability to conduct intelligent research programs that gets at underlying causes needs to continue beyond those outbreak conditions.

We really need to be able to understand what happens, why the outbreaks develop. We need to look at fundamental causes that must be examined not only during outbreaks, but also during endemic periods. Too often funding is very focused, with short-term direction during a problem or as a problem is crashing, rather than providing the oppurtunity for long-term collaborative work.

The CHAIRMAN. Ms. McAvoy, I took a trip one time down the middle fork of the Salmon River in your State, and I recall passing through an area where a forest fire had burned out of control, and it looked to me like it had just occurred, but I was told that it had happened 8 years earlier. To me, in my experience in Mississippi growing up, we recovered down there a lot more quickly from the ravages of a forest fire than you do out West.

Is this something of special interest and concern for the people in your State? I guess it just emphasizes it is almost a permanent event. You do not recover very quickly from a forest fire out there in Idaho, do you?

Ms. MCAVOY. No, we do not. Our fires burn very hot, and then the soil can be damaged, as you might suspect, and it does take a while to regenerate after a fire. I want to tell you, too, that last week I attended an Association of Idaho City's conference, and we discussed a lot things, but one of the things that we did during that conference was vote unanimously to support H.R. 1904.

Some of our cities in Idaho have been tremendously impacted by forest fires in their areas. I heard one council member talk about a fire that burned in his area, and their city was filled with smoke for 51 days. It created tremendous health problems. Those forests will take a long time to regenerate.

Thank you.

The CHAIRMAN. Mr. Nelson, you mentioned in your statement that we have a forest health crisis. Do you think the bill the House

has passed is strong enough to help us recover from this crisis? If you could strengthen the bill in any way, how would you recommend our committee consider improving the bill?

Mr. NELSON. Well, we need to look at this in its real context; that the bill itself that is coming over to the Senate now is the first step in solving a rather large crisis. It has been years in the making to get where we are now, and we cannot expect to solve it in a single year and probably not in 5 years. The bill is a great first step, but the idea that, as some of our detractors say, that you can go out and if you get in the urban interface, and if you have the people pick up a few sticks between their house and their mailbox, it is all going to go away. That is nonsense.

It is a huge problem, and it covers a vast area. There are 72 million acres that are at high risk to fire and another 26 million to insect and disease. We cannot do that simply by 1 year with this bill, where we are going to treat maybe 20 million acres. It is going to take while, but this is a great first step.

The CHAIRMAN. Thank you. Thank you all, members of this panel, for your contribution to our hearing.

Thank you.

Senator CRAPO. Thank you.

Senator Lincoln.

Senator LINCOLN. Thank you, Mr. Chairman, and since Chairman Cochran's State is right across the river from me, he has asked many of the questions I wanted to ask, so I am very pleased that he has brought them up. I would like to expand on just couple of them.

I would also again like to thank Dr. Stephen for being here and for his expertise. It has been great to have the incredible expertise and the extensive studies that he has provided us in Arkansas to better understand many of these issues, and that is why I seem to harp on the same thing over and over, not only my own experience in our forests in Arkansas, and having seen the devastation of the insect epidemic and infestation that we have had, but certainly the knowledge that has been brought forth from the university in much of their studies.

I guess, it seems that in the reports of the disease and the insect damage we have seen, that there has been a significant increase really over the last 10 years. I guess if there is anything that maybe any of you all might attribute those increases, those most recent increases that we have seen or the causes of these insect infestations over the last 10 years, is there something specific we can look to?

Mr. STEPHEN. Well, I can at least give my opinions on some of those things. Interestingly enough, although not a southern problem, spruce beetle in Alaska, and through parts of the Western United States has become an epidemic crisis situation. Canada is experiencing the worst bark beetle outbreaks in their history. It is believed, and there is quite good scientific evidence I think to support this, that the much milder winters that we have had in recent years have changed the life cycle of these insects sufficiently, so that where they took 2 years to develop previously, a significant proportion of them are now developing within 1 year. You can real-

ize how much of a greater threat they would be when they can reproduce so much more quickly.

In terms of our own forest situation, I think in the Ozark Mountains, for example, the combined factors of increased age, high stand densities, (perhaps 10 times higher than we should have in some places), associated with drought conditions and other factors create a susceptible resource that this oak decline complex associated with red oak borer would definitely affect.

Mr. NELSON. If I might offer an answer as well, Senator. If you go back 10 years and look at the decline in actual management of the national forest system lands, you will be on a downward trend, perhaps 75- to 80-percent reduction in the area managed for this type of thing. That crisscrosses the upward trend that you are going to find with the insect and disease, as well as the fire epidemics.

It is basically as simple as when you are not allowed, when you are impeded from managing these national forests, you can expect to get the type of situation we have today.

Mr. PETERSEN. If I could add something, Senator. Our Forest Service has been extremely effective at fire suppression. At the turn of the century, it was very common to have fires 20 million acres or more burn for a year across the country, and now we see a very big year at 7 million acres.

Well, that fire suppression is having an impact. In some of the really dry forests there is a real ingrowth of small trees. That, combined with stress, possibly global warming, certainly the pollution in the Eastern half of the country, these things stress trees and create more insects.

We also have alien species, and not from outer space, but coming in from across the ocean. Those are, as we all know, destroyed the chestnuts, the elms. These kinds of things add to the stress, and for certain species really eliminate some of the problems or eliminate some of the species.

Where I am at, and in North Idaho and Eastern Washington, we have cyclical, we have the doug fir bark deal, which just raged for a couple of years and now it dies out. It is a natural part of the landscape. It could be that some of the "droughty" period we are going through exacerbates that.

Senator LINCOLN. Thank you. Focusing on H.R. 1904, some of the main focus is on dealing with wildfires, and I have expressed some concern about that, in terms of the needs that there might be to extend beyond wildfires to issues like insect infestation and endangered species beyond what is in the research title of Title IV. I want to compliment, again, the Chairman. Chairman Crapo and his staff have been fabulous in working with us and trying to look at ways that we can improve on that, so that we do look at the entire Nation.

I just wanted to ask you all once again what do you think, in terms of ways that we can improve on that title, in terms of dealing with insect infestation and what are some of the new tools that might be out there for forest managers that they may need that we are not focusing on, if there are any, that you could suggest here today or certainly if you have ideas, you could work with us later on?

Mr. NELSON. It is not really a new tool in the West, but the biomass provisions that are in 1904 are certainly welcome provisions. In California, for example, we have a very large infrastructure of biomass. The company I work for, we produce 100 megawatts of power. About half of that goes back to run our sawmills, the other half is sold onto the grid. As we all know, in California energy is a big deal these days.

That is one of the more innovative things that is built into the bill already. A lot of the material that needs to be removed to reduce this risk of fire or to insect infestation is not merchantable in the form of lumber or other traditional forest products, but it is marketable to be burned up and generated for power. Throughout the West, we have one leg up because we have that infrastructure in place in a lot of ways. That is a newer type of thing that is already established in a lot of areas.

Mr. CARROLL. Senator, I would like to add that, again, it is not really new technology, but it is application for field managers and decisionmakers, policymakers like city councils and those types of things, is the geographic information systems technology that we now have, with the ability to remotely sense, and then actually register on the ground, where certain conditions in the forest are, and then use ground-verified modeling information on fuels, and drought, and those types of things. We can actually put together a 3-D visual of what a landscape or a watershed will look like. You have probably seen simulations of those types of things.

We can use those tools and get the right people around the table, the environmental concern, the industry concern, and even the community planners and zoning people, and say, Look, given this situation, and under the Fire Wise program that is supported in the National Fire Plan, some of this modeling is being done. We can sit down and have city planners visualize everything from an ordnance on an aluminum gutter versus a wood gutter—that simple thing versus, OK, I am up hill from this fire situation, what is there? What is the age? What is the fuel loading?

People can sit down, it equates, seriously, I have seen some city councils really like it because it is almost like a video game. You can go ahead and sit down and say, OK, what if, and those type—and we need to do that in a way where people trust the information that is in there and then can turn around and visually see some of the impacts of their decisions on these landscapes and the interface with their community and the fire.

That is something, the research that is there, some of the indications to try to upgrade some of the stress monitoring in our inventory data. The forest inventory analysis data is critical. It now has annual updates that is being done nationwide now. We also need to add to that the remotely sense data that we can use for current stress indicators, and we can apply some of that technology. This title will help us do that.

Mr. NELSON. Senator, could I add to my answer I gave before, too? I just want to make sure that you understand that we have probably got all of the tools that we need. We have probably got everything we need, through 1904, to get started. A lot of these things will come as we proceed to tackle the big problem, but to start out, I just want to make sure that everyone understands

there is a sense of urgency here. We know what to do. We have the people to do it. We need some help with 1904 coming out of this house over here.

In essence, we do not need something else to do it. We just need to do it, and it needs to go forward rather quickly.

Senator LINCOLN. Dr. Stephen.

Mr. STEPHEN. Yes. Thank you.

That may be true in terms of fire. In terms of some of the insect problems that we face, I do not think we do understand the situation fully. A two-part approach of underlying fundamental research has to be conducted, so we understand the causes of some of these problems, and then that has to be taken into an implementation phase on the ground.

For example, with red oak borer, we have a native insect species that has never before been a problem anywhere in the United States. We have oak decline events that occur throughout the Eastern United States. They have occurred since the early 1900's or even earlier. Yet, in none of those events has red oak borer been a problem. This is virtually a new situation. It does not occur anywhere else. We do not know why.

We need that research base to be able to understand these causes and then take that research and extend it into on-the-ground management. I also would support what Mike said about the GIS-based technology.

We certainly are making use of that technology. We are doing our best to develop predictive models that incorporate new knowledge on red oak borer which would tell forest landowners, almost on a real-time basis, what kind of hazard they face and some kind of prediction as to what they might expect on their own lands. We anticipate that would be something that will be available on-line, for example.

Senator LINCOLN. Thank you, Mr. Chairman.

Senator CRAPO. Thank you very much, Senator Lincoln.

As you may have noticed, the bells have gone off, and we have another vote underway. What we are going to do is try to—I am going to go through my questioning, and then we will hope to get through Senator Talent's questions as quickly as we can before we have to go vote. If we do that, we will probably wrap up this panel and then proceed to the next panel immediately following this vote.

Ms. McAvoy, I wanted to ask my primary questions of you. I understand you brought some bark yourself and also a bottle of beetles.

How many beetles are in that bottle?

Ms. MCAVOY. I do a program in the classroom called Talk About Trees, and the student who comes closest to guessing how many beetles are in this bottle gets a prize. I want you to guess how many beetles you think are in this.

Senator CRAPO. Somebody told me a couple hours ago, but I forgot. It is over a thousand, I know that.

Ms. MCAVOY. Over a thousands. There are 2,170 douglas fir bark beetles in this baby food jar, and that is what caused the damage in this douglas fir tree.

Senator CRAPO. That is a very similar kind of thing to the example that I brought from the pine beetle that we are doing.

Ms. MCAVOY. I have a pine beetle here.

Senator CRAPO. You have a pine beetle there too as well.

Ms. MCAVOY. I knew you would have the bark.

Senator CRAPO. Well, the question I have for you is, as you have heard in the testimony here, there is a lot more at stake than simply fire here, and the insect damage and the other concerns are also of concern. I just want to ask you if you agree that we need to be more broadly focused in our legislation than simply on fire risk.

Ms. MCAVOY. Oh, absolutely. We have, in Kootenai County, where I live, we are doing, under the National Plan is called Fire Smart. We are doing a great job thinning the weeds and the trees and things around the homes, but if we get a hot fire in my county, that is going to be worthless. It truly is going to be worthless. We need to treat the whole forest, the entire landscape.

Senator CRAPO. Does the degradation to the water quality and the wildlife habitat have an impact in communities beyond just the timber industry?

Ms. MCAVOY. Oh, absolutely. Most of our cities in Idaho get their water locally and have a tremendous impact on the water systems in a lot of our small towns.

Senator CRAPO. Thank you very much.

Mr. Peterson, you indicated in your testimony, you said, if I understand it correctly, that you thought we ought to get the Forest Service out of the logging business and let science guide our decisions with regard to management. I wanted to inquire with you. It is my understanding that the Lands Council does not support any logging on our national forests. Am I correct in that?

Mr. PETERSON. No. What the Lands Council, as well as the National Forest Protection Alliance supports is an end to the Timber Sale Program because we believe it creates these perverse incentives to take the larger trees, the old growth, and it does not create an incentive to remove the small brush, the saplings, the things that really need to be removed in fuel reduction.

Senator CRAPO. You would support thinning but not logging in that context.

Mr. PETERSON. That is correct.

Senator CRAPO. I guess that answers the rest of my question because I am under the impression that proper management of our forests would include not just fires in appropriate circumstances, but also proper thinning and other management of the forest. I personally believe that we can have healthy, strong, vibrant forests for ourselves and our posterity in perpetuity, and still have a natural resource based economy that allows for logging and timber activity. Would you agree with that?

Mr. PETERSON. Right now we get about 2 or 3 percent of our wood products off the national forest, and so it is not really a significant supply of wood products into America society. Our national forest have a much higher purpose, to provide clean watersheds, clean air, wildlife, recreation, that sort of thing. The question I think you are getting at is do we need to go in and thin our forests? Is there another way?

A couple of years ago we got a research, a blind study in exchange for dropping a timber sale appeal in the Wenatchee Na-

tional Forest. This is a very dry forest, Ponderosa pine, and the scientists there said we could do this without any thinning, without any logging. We could do it with prescribed fire. Now, prescribed fire is much less expensive to treat forests. If we want to get back to natural processes, we could use prescribed fire at a much more economical way. Logging program, the timber sale program always loses money, and I do not think we can afford to do that if we are going to also protect our communities.

Senator CRAPO. I take your answer to mean that you would not support logging in terms of an economic activity in our national forests?

Mr. PETERSON. No. I believe there could be some basis for community forestry, firewood removal, that sort of thing, but as a commercial timber sale program, no, we cannot support that.

Senator CRAPO. I see my time is running out and we are running under a tight timeframe here, so I will restrict any furthers questions at this point and move to Senator Talent from Missouri.

Senator TALENT. I thank you, Mr. Chairman, and I want to thank the committee and Chairman Cochran for holding this hearing, and preparing to move this legislation, which I just think is so important on a lot of grounds. A lot of people think of the forest exclusively in terms of the great west. In Missouri we have forests in the Ozarks, the Mark Twain National Forest, about 14 million acres of national forest, and we have lost 600 firms in forestry and about 5,000 jobs in forestry in the last few years, and I just want to say, Mr. Chairman, that I agree totally with you, that not only is the preservation of the forest consistent with their use in a prudent and careful way for logging, but two are mutually supportive. We have to have a strong economy to have a strong environment. I just do not think we can have one without the other.

I know we are in a hurry. Let me just ask one question, and I guess I will direct it at Dr. Stephen. We have a huge red borer problem also in Missouri. The bill limits the acreage in which we are going to be doing these intensive pilot programs in silviculture to 250,000 acres, and we have about 300,000 acres in Missouri alone affected. I know Arkansas does as well. Is that cap too low? I know these are pilot programs that we are then going to apply more broadly, but I am thinking that that cap is just not broad enough to try this everywhere where we should.

Mr. STEPHEN. I guess I have a little bit of difficulty being able to discuss that part of the bill. From a biological perspective I could say that given the extent of the infestation, it is not a sufficiently large area. Until we understand more of what would be the most central and important management tools that we would use, I would think that a smaller area would work fine, however. Ultimately, in terms of being able to extend our completed research to mitigate this problem, we would need certainly a larger area. In the initial stages I think that the smaller cap would probably work.

Senator TALENT. Maybe the thing to do, Mr. Chairman, would be to not put so low a cap, but make clear that it was discretionary and our expectation would be initially maybe they would not go up to the extent of the cap that we allowed, but that they could later on. Because I am just concerned at some point we are going to bump into that cap and then we are going to have a statue saying

you cannot go any higher, even if you believe you need to as a matter of management.

Thank you, Mr. Chairman. I know we are under a tight timeframe.

Senator CRAPO. Thank you very much, Senator Talent, and I appreciate you paying attention to the clock. We are about 90 seconds away from the end of this vote, although we think they may hold it open for us until we get there.

There are a lot more questions that I had, and I know that other Senators would like to have asked of this panel. We always run into this problem as we are trying to get through hearings. Let me say to this panel, and frankly, to the previous panel and the following panel, that if we do not get through all of the question, and in this case we have not, in my particular case, we would like to have the opportunity to submit some written questions to you and have you respond further in writing.

We would like to thank you all for coming today. We are going to recess the hearing at this point. I understand we only have one vote, so it should not take too long before we get back, get started with the fourth and final panel, and I just thank everybody for your patience, and we will recess.

Senator TALENT. Mr. Chairman, I have an opening statement I would like to put in the record.

Senator CRAPO. Without objection.

[The prepared statement of Senator Talent can be found in the appendix on page 90.]

[Recess.]

Senator CRAPO. First of all, let me apologize. We thought it was one vote. It ended up being three, so we appreciate again your patience. Senator Kyl, who was to provide a statement this morning when we began the hearing, was interrupted then and has now been able to arrange his schedule to be with us. Before we begin the next panel, we are going to turn to Senator Kyl from Arizona and allow you to make the statement that you would have made this morning had you been able to get here.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you very much, Mr. Chairman. First let me apologize to everyone who has waited patiently to testify. We may seem very disorganized to you all with interrupting votes and Senators coming and out and talking, when the whole purpose is to hear from you all as to what you think, but being from the State that lost forests equal to the size of the State of Rhode Island last year and now beginning to have the same kind of a year this year, I wanted to make just a couple of comments. One will relate to what is happening in my State and why we have to get this legislation moved forward, follow the House's lead and adopt this legislation quickly. Then second, relates just to just a couple of provisions of the bill and how it would help.

The State of Arizona right now has several fires burning, one of which has been noted on television. It is in the Santa Catalina Mountains just north of Tucson. It is not 25 miles north, it is right on the border of the city of Tucson, but it takes you about an hour

to wind up to 9,000 feet which is where the fire is burning. There was a little community up there called Summerhaven, and virtually, not quite all, but virtually the entire community has been burned down. It is where my wife and I met when we were going to college. We used to drive up to the top of Mount Lemmon, and it is just one of the most beautiful places in the world. It is incredibly cool in the summer, despite the heat in Arizona. It is over 9,000 feet in elevation, beautiful big ponderosa pine trees. What is basically happening is that the fire is out of control because it started in a canyon in the lower elevations, and it just acted like a chimney, and it rushed right up over the top of Summerhaven and then spread out over the rest of the mountain.

We do not know the lessons yet from that fire, but it is probable that the small amount of thinning that had been done around some of the cabins was not nearly enough, well, it is evident it was not enough to prevent the fire from totally inundating the community. One of the lessons we should learn is that while everybody wants to protect our communities and summer homes with wildland urban interface treatments, we have to be careful that we do not fall into the trap of thinking we have done the job when we do that. Indeed, they can be a lot more expensive and sometimes they do not work. We learned that in the Rodeo Chediski fire last year. The fire can burn so intensely, and you get these huge columns of hot air carrying ash up into the air, and when they get up to 12,000, 13,000, 14,000 feet they cool off, collapse, that hot column of air collapses, and spreads out over miles of country, these embers, so that they go right through fire lines and right through bricks and around communities and so on.

Let me make one final point on that. I believe in protecting all of our forests, and that means the areas deep in the forest where the endangered species live and where a lot of the other values are that we want to protect, and I think some use the wildland interface thinning as an excuse. They then say: we have done what needs to be done and we do not want to go more deeply into the forest, and the reason is because you have to treat a lot more acres of forest by doing that. Of course, that takes commercial contractors who will do it, and somebody might just make a little bit of money going in and cutting down some trees, never mind that the whole purpose of it is to restore the forest to a healthy condition. We should not fall into the trap of limiting the legislation to wildland urban interface, although we all agree that should be done.

That is the first point, Mr. Chairman.

The second point, just with regard to what this can do as it relates to the situation in Arizona. There have been so many different projects held up by appeals, and one of the good things about this legislation is how it would relate to that. We did a little checking here and environmental assessment can take up to 6 months and 40 to $50,000 to complete, environmental impact statement up to 2 years, as much as $100,000, and of course, this legislation allows discretion to be given to proposed agency action which would lessen that time lag and get these projects implemented a little bit more quickly. The same thing, once the final agency action occurs, then challenges to these projects have to be filed more quickly. A

court can review injunctions that are sought, and you can reach a conclusion to that litigation process a lot quicker under the legislation than would otherwise be the case too.

For those who say that appeals are not the problem, I would just note that in the last 2 years the Forest Service reported issuing 305 decisions associated with environmental impact statements or assessments, and of the three different categories, 62 percent were appealed in one category, 36 in another, and 72 percent were appealed in the third category.

Mr. Chairman, these appeals are a problem, and anybody who says they are not, simply is not paying attention to the facts. This legislation would go a long way toward relieving that problem while not touching one comma of any of our environmental laws. We can protect the environment. We can restore our forest to a healthy condition. We can reduce the danger of fire. We can accomplish a lot of good for this country if we can quickly act to pass this legislation, and I thank you very much for holding the hearing and for your interest in the subject.

[The prepared statement of Senator Kyl can be found in the appendix on page 87.]

Senator CRAPO. Thank you very much, Senator Kyl, and I realize that you have had to reorganize your schedule to make it here, and we appreciate you doing that to provide us your insight and your support for the efforts we are undertaking here.

Senator KYL. Thank you.

Senator CRAPO. Before we begin with our fourth panel, I have been advised that Senator Harkin, who also has been trying to make it here, but it does not appear that he will, wishes to submit his testimony to the record, and without objection that will be done. In fact, without objection, any Senator who has not been able to make it here today will be given the opportunity to submit their testimony for the record.

[The prepared statement of Senator Harkin can be found in the appendix on page 74.]

Senator CRAPO. With that, let us proceed to our final panel. Gentlemen, thank you for your patience today. I appreciate you showing the patience you have throughout the day for us in terms of the interruptions that we face here.

Our first panelist is Dr. Norman Christensen of the Nicholas School of the Environment and Earth Sciences at Duke University. Dr. Christensen, welcome. Dr. Hal Salwasser, Dean of the College of Forestry at the Department of Forest Resources at Oregon State University. Third, Professor Donald Kochan, Visiting Assistant Professor of Law at George Mason University. Professor Patrick Parenteau, Director of Environmental Law Clinic at Vermont Law School.

Again, we welcome all of you, and we are still going to operate by the clock, and with that, we will start with you, Dr. Christensen.

STATEMENT OF NORMAN L. CHRISTENSEN, JR., FORMER DEAN OF THE NICHOLAS SCHOOL OF THE ENVIRONMENT AND EARTH SCIENCES, DUKE UNIVERSITY, DURHAM, NORTH CAROLINA

Mr. CHRISTENSEN. Thank you, Mr. Chairman. I am Norm Christensen, professor of ecology and former dean of the Nicholas School of the Environment and Earth Sciences at Duke University.

I would like to begin by saying that many, though not all, western forests are in an unhealthy state with respect to flammable fuels and the risk of catastrophic fires. The scientific community is in agreement that action is indeed warranted and necessary in particular regions and forest types. I therefore support the intent of H.R. 1904 to protect communities, watersheds and at-risk lands from catastrophic fires, but I do feel the bill can and should be improved in five specific ways.

First, much forested land is included in this bill for hazardous fuel reduction that is not in an unhealthy state relative to fire risk. To ensure that limited resources are directed to areas of greatest need, I think the legislation can and should be more specific about which forests have been altered by fire suppression and past land use. The greatest departure from historical conditions occurred in forests which have natural fire regimes that are typified by high and mixed frequencies, less than 35 to over 100 years. There is general agreement that fuel reduction by prescribed fire or mechanical thinning is needed in many of these forests. However, many western forests classified in this bill as condition class 2 or 3, including an array of hemlock and fir types, lodgepole pine and so forth in the West, naturally experience fire at very long intervals and are not in need of restoration or remedial action. Indeed, actions in these forests will likely have contrary consequences.

My second point: this bill provides virtually no guidelines for defining "hazardous fuel reduction." Although one-size-fits-all prescriptions are not desirable, the focus must be on reducing those fuels most important to ignition and spread of wildfire. They are in order of importance, ground fuels and woody debris, ladder fuels that carry fires into the canopy, and smaller trees where densities are judged to be abnormally high. Where possible, prescribed fire is preferred economically and ecologically to mechanical thinning. Large old trees should be retained because they are resistant to fire, because they maintain favorable moisture conditions on the forest floor, provide critical habitat and maintain key ecosystem functions.

Third: H.R. 1904 can and should be clearer regarding priorities for hazardous fuel reductions. Highest priority should be given to wildland urban interface areas where forest conditions present the greatest risk to human life and property, and the threats to ecological processes of restoration are lowest. That is not to say that we should not be doing things in other areas. However, restoration activities outside so-called community protection zones are a lower priority and should be undertaken in a deliberate fashion based on a landscape understanding of fire spread and its ecological consequences.

Fourth: H.R. 1904 can and should be much clearer about desired outcomes. Forest management is at its core change management.

Hazardous fuel reduction cannot be about producing fireproof forests. That is simply not possible. Rather, our goal should be to produce or to restore conditions that will produce acceptable patterns of future change, conditions under which we can prescribe and manage the fires we want and extinguish effectively those we do not. Reference conditions for fuel restoration should be based on our understanding of natural patterns of fire behavior and likely patterns of forest change following treatments.

Finally, the limited support for monitoring and research in H.R. 1904 and the proposed changes in NEPA rules, I believe undermine the opportunity to bring the best science to this important challenge. Wherever we act we must do so understanding that we have much to learn. We must take advantage of this opportunity to create a program of continuous learning and improvement, that is, adaptive management. Healthy forest legislation should require and adequately fund an integrated program of monitoring, research and adaptive management. Where human life and property are at risk, the streamlined NEPA procedures proposed in H.R. 1904 are appropriate. The need to act may take precedence over deliberative processes in this situation. Away from the most urgent circumstances, abbreviated NEPA procedures are neither necessary nor helpful.

I thank the Chairman. I thank the committee for this opportunity to address this important issue.

[The prepared statement of Mr. Christensen can be found in the appendix on page 140.]

Senator CRAPO. Thank you very much, Dr. Christensen.

Dr. Salwasser.

STATEMENT OF HAL SALWASSER, DEAN, COLLEGE OF FORESTRY, DIRECTOR, OREGON FOREST RESEARCH LABORATORY, OREGON STATE UNIVERSITY, CORVALLIS, OREGON

Mr. SALWASSER. Thank you, Mr. Chairman. I am Hal Salwasser. In addition to being Dean of the College of Forestry at Oregon State University, I am also the policy chair for the National Association of Professional Forestry Schools and Colleges, representing over 60 institutions nationwide. My colleagues, deans and directors of this Nation's forestry and natural resource academic programs are all interested in how the Senate will address forest and rangeland health because current conditions in many places create high risks to our environments, communities, economies and treasuries.

To us the science is clear. We have major and widespread problems affecting the sustainability of healthy forests and rangelands, some related to wildfires, others to insects and diseases. Many of these at-risk forests and rangelands are vulnerable to invasive weeds following major disturbances to soils and vegetation. Drought stress from a warming climate exacerbates these risks. We do not have these problems everywhere, and where we do have them they are not the same problem. Science tells us what the problems are, but science does not have all the solutions. Sustainable solutions will have to be tailored to each problem by local, collaborative, multiparty groups working strategically at watershed and landscape scales. These solutions will have to include basic

and applied research that is done as the problems are being addressed through adaptive management so that over time we can improve our understanding of the dynamic systems that are at stake and improve the effectiveness of our solutions. Monitoring by these multiparty groups will be key to long-term effectiveness of investments.

H.R. 1904 is generally on target. Are the Western Governors in their recent recommendations? It is vital that we act boldly and quickly to reduce these risks through landscape scale strategic treatments. Excessive precaution or avoidance of short-term risk created by site-scale restoration treatments will only increase both short- and long-term risks to all the landscape values at stake.

The restoration of forest and rangeland health must extend beyond the wildland urban interface and municipal watersheds, as H.R. 1904 proposes. It must begin with removals of wood and biomass to reduce drought stress and risks of intense fire, insects or diseases, and to allow for the safe reintroduction of fire. Where fire is reintroduced we have to balance its benefits with air quality concerns. We must develop uses for the wood and biomass that is removed as restoration byproducts to meet some of the Nation's wood and energy needs while creating living wage jobs in rural America. We must improve agency planning processes, or additional appropriations will just prolong the waste on process rather than progress. We must also sharpen the focus of investments to achieve desired long-term outcomes.

Making a national commitment to restore and sustain forest and rangeland health is more than achieving one-time fuel reductions. It is a grand experiment with interlocking social, environmental and economic dimensions. Therefore we need comprehensive, regionally coordinated landscape-scale strategic partnerships that engage multiple sectors, public and private, including colleges and universities in restoring and sustaining not only forest and rangeland health, but also the health of our communities, economies, and businesses associated with these lands, and the capacity of agencies to carry out their public trust. Such landscape-scale strategic partnerships are not in place yet in the National Fire Plan. They are not proposed in H.R. 1904 or any other proposed legislation. Long-term restoration and sustainability of forests and rangelands will be inefficient and perhaps ineffective without such partnerships.

Our Nation's land grant and public universities have the education, research and problem-solving extension capacity currently missing from the proposed strategies. From the impassioned debates that I see in Congress over this issue, I am left to assume one of two possibilities, either there is not sufficient scientific and social consensus to guide Congress's decisions, or Congress is not listening to what the science and solution-minded public opinion leaders are saying. In either case, land grant and public universities are poised to help you and the agencies find workable, effective solutions. I encourage the Congress to engage the public universities in assisting Federal and State agencies, tribes and private groups with all the actions needed to restore and sustain this Nation's forests and rangelands.

Thank you.

[The prepared statement of Mr. Salwasser can be found in the appendix on page 149.]

Senator CRAPO. Thank you very much, Dr. Salwasser.

Professor Kochan.

STATEMENT OF DONALD J. KOCHAN, VISITING ASSISTANT PROFESSOR OF LAW, GEORGE MASON UNIVERSITY SCHOOL OF LAW, ARLINGTON, VIRGINIA

Mr. KOCHAN. Thank you, Mr. Chairman. Thank you to the committee for inviting me here today to discuss H.R. 1904, and to provide my comments, which will focus primarily on the judicial review provisions in the act.

My name is Donald J. Kochan, and I am a Visiting Assistant Professor of Law at George Mason University School of Law, where this past academic term I have taught property law and environmental law and regulation. I am testifying today to bring forth the necessity of the judicial review provisions and the appropriateness in light of existing law.

The Health Forest Restoration Act is a necessary and sound legislative effort to protect and conserve our Nation's forests, public lands and the environmental and economic valued contained therein. Others today you have heard testify at length about the merits and necessity of H.R. 1904 to effectively manage the National Forest System lands and to control hazardous fuel reduction on such lands.

My comments will focus, as I said, on the advisability of enacting legislation that allows citizens to participate in the process at the same time that it creates a system of judicial review that does not hamper the Forest Service and BLM from effectively dealing with imminent wildfire hazards within the National Forest System and on the public lands. This focus will address primarily Sections 105 through 107 of H.R. 1904. It is necessary for the Forest Service and BLM to have the authority that is contained in these sections without waiting indefinitely for a judicial ruling during a time in which exists the risks of imminent fire hazards.

The judicial review provisions in H.R. 1904 are constitutionally valid and represent sound public policy, as they help to ensure that our Nation's forest resources will not burn as burning questions of Forest Service and BLM authority go unaddressed in the Federal Courts. Moreover, the judicial review requirements in H.R. 1904 will not divert or distract our Federal Courts from effectively managing their dockets and other case priorities.

As you know, H.R. 1904 includes several judicial review provisions, one of the most unique being that which limits the time period for preliminary injunctions. The bill would preliminary injunctions granted by a Federal Court against a project implemented under this legislation be re-evaluated every 45 days, and encourages and admonishes courts to resolve this judicial review within 100 days. A court could extend preliminary injunctions an unlimited number of times at the end of each 45-day interval should it feel that it is appropriate. After any decision to renew an injunction, the agency involved is required to notify Congress of its decision.

I agree with the House Judiciary Committee's findings that such a limitation on this review and limitation on preliminary injunctions is appropriate.

The Healthy Forest Restoration Act in particular is nothing unique or unprecedented in Congress's statutory authority. Congress has the power and jurisdiction under Article III of the U.S. Constitution to limit the jurisdiction of the courts, including the ability to limit their equitable jurisdiction. The 45-day limitation on preliminary injunctions is consistent with this power of Congress and provisions have been made in the past and have been upheld in the past, that indeed limit the scope of substance of a preliminary injunction. Here, this would not be any different or unprecedented. 1904 simply balances the equities and limits the duration of a preliminary injunction in consideration of the seriousness of the issue and the dilemmas faced by the Forest Service and BLM, rather than prohibiting injunctions all together. This is merely a durational limit where Congress indeed has the power to eliminate preliminary injunctions if it wanted to entirely.

Moreover, nothing in H.R. 1904 directs any particular outcome from Federal judges and leaves them independent to consider the merits of each case. Encouraging Federal judges to reach a speedy resolution in appeals under this act is a responsible exercise of Congress's stewardship over the Government's property while leaving intact the independence of Federal judges.

If I could turn next briefly to the issue of the standard for injunctive relief in H.R. 1904, particularly as set out in Section 107. This sets forth a standard which is consistent entirely with the current standard for preliminary injunctions. It should not in any way alter a properly reasoned balancing test which already requires that judicial review of preliminary injunctions include short- and long-term interests, short- and long-term harms.

Next I would like to briefly note the judicial review provisions in H.R. 1904 will not adversely affect the Court's docket or its ability to manage its caseload. The requirement that preliminary injunctions be revisited is particularly appropriate for hazardous fuel reduction issues, and in most civil cases this is not an issue. In most civil cases, after granting a preliminary injunction, circumstances do not change. However, rapid changes and conditions on forest lands can be expected making preliminary injunctions and limitations thereon perfectly appropriate. Unfortunately, disease, insects and fire do not obey preliminary injunctions. Furthermore, requiring that preliminary injunctions be renewed should require a minimal commitment of judicial resources. At any one time the Forest Service is facing only 100 to 120 cases at a time in a civil docket of the Federal District Courts that reaches 250,000 cases. This is merely a drop in the bucket and will not divert the court from other cases.

With that, I will only say add that this number should not harm the caseload docket and that we should trust judges to appropriately decide when and how to manage that docket.

One final comment on the 100-day admonishment. This provision does not require judges to make any particular decision. It just merely sets the priority for Federal judges, and underscores the im-

portance that Congress places on this legislation, and if judges feel that they should turn to other cases, then they certainly can.

Thank you very much for allowing me to provide my comments.

[The prepared statement of Mr. Kochan can be found in the appendix on page 156.]

Senator CRAPO. Thank you very much, Professor Kochan.

Professor Parenteau.

STATEMENT OF PATRICK PARENTEAU, DIRECTOR, ENVIRONMENTAL LAW CLINIC AND PROFESSOR OF LAW, VERMONT LAW SCHOOL

Mr. PARENTEAU. Thank you very much, Mr. Chairman, Senator Cochran. I appreciate the committee's invitation to testify here today. I too will focus on the judicial review provisions, but I think you will see I have a slightly different view of those provisions than my colleague, Professor Kochan.

My purpose here today is to urge the committee to take a harder look at these judicial review provisions, because there is more here than meets the eye. These are unprecedented, they are unwise, and they are unnecessary, and I would like to explain why.

First, these judicial review provisions can not be viewed in isolation. This is part of a comprehensive approach by the Bush administration to address what is obviously a very serious problem of dealing with catastrophic wildfires, disease infestations and pest infestations in our national forests, and I proclaim no expertise on the best way to address those very difficult complex technical issues. With regard to the role of the courts in this process, what I would like to stress is the administration has already adopted a categorical exclusion for these fuel reduction projects, which in my view runs right up against the limits of the National Environmental Policy Act, and likely crosses that line in a number of cases. This is a categorical exclusion that is potentially so broad and so inclusive that it will eliminate NEPA review in cases where the statute and the CEQ regulations, would, in my view, mandate review. I would say the administration is way out on the furthest edges of the law in pushing the categorical exclusion. That is point No. 1.

Point No. 2, the administration has also moved to severely limit administrative appeals on fuel reduction projects. The dispute over whether there ought to be some limitations on appeals is a legitimate issue. I am not sure the facts support those who argue that the appeals process is so badly broken that it needs to be precluded in the way that the administration is doing it, but the point is, the administration has moved to limit citizens' ability to appeal these projects through the codified appeal procedure of the Appeals Reform Act, and has also moved to exclude these projects from NEPA. There is only one final route for citizens to challenge these projects in terms of their compliance with law, and that is the Federal Courts. That is where the judicial review provisions come into play. That is where I want to focus the rest of my comments.

The first thing I would like to say is that obviously this bill is moving fast through the Congress. If the metaphor is appropriate, it is indeed a freight train barreling down the tracks. There is a stowaway on this freight train, and the stowaway is in Section 107.

The bill is characterized as a bill to address fuel reduction projects only. Section 107, goes to the heart of the judicial process, which is the balancing of the equities in deciding how to resolve violations of Federal law, and covers all Federal actions under the Administrative Procedure Act. Section 107(a) refers to "any agency action under Section 703 of Title V," which is the Administrative Procedure Act, "including but not limited to an authorized hazardous fuel reduction project that is necessary to restore a fire adapted forest or rangeland system." That phrase, "fire adapted forest or rangeland system" is not defined in this bill or in any other Federal statute. This is a new term of art. I am sure it means something to the Forest Service, it is an undefined term in corporating an unlimited scope of Federal actions. It is not simply about fuel reduction, it is about all of the activities of the Forest Service and the Department of Interior on public forest lands.

Second, Section 107, is not simply an indication to the courts of congressional priorities or policies. This is an attempt to manipulate the balancing of equities that goes on in Federal Courts day in and day out. Mr. Rey referred earlier to 40 years of jurisprudence dealing with injunctions and when they should issue and when they should not. I submit the equitable power of the courts goes back to 14th century England. That is where this power has come from, the power of the chancellor. This is a core function of the judiciary, Mr. Chairman. This is a core function. This is the essence of what judges do in cases where they have been presented with evidence of a violation of law. They are required to balance all the competing interests, not just those of one side. This bill talks about balancing harm to the defendants. That is one half of the equation in the balancing exercise. The other half is, what about harm to the plaintiffs, what about harm to the environment, what about the fact that the law has been violated and needs to be remedied? That is completely missing from this section of 107. This is definitely an attempt to put a thumb on the scale in favor of one side.

If I may be permitted to finish, because I see my time is up.

Section 107, also refers to giving weight to the findings of the Secretary with regard to harm from an injunction being issued. It is important to point out here that the Secretary in these actions is the defendant. What this bill is doing is saying the courts have to give weight to the defendant's view of whether or not the injunction will harm or unfairly impede the defendant. That, I submit, is unprecedented. I know of no Federal law that has reached into the judicial process and said, "You should give weight to one side in the case and not weigh the case equally, even-handedly, impartially."

In closing, Mr. Chairman, I understand this legislation is needed. There are undoubtedly parts of it that are very important and useful. This one provision should be carved out and looked at separately. I believe it should be deleted, but at a minimum I urge you to look very carefully at this step. This is one branch of Government moving into the core functions of another branch of Government. I do not think that is sound constitutional policy or national policy.

Thank you very much.

[The prepared statement of Mr. Parenteau can be found in the appendix on page 162.]

Senator CRAPO. Thank you very much, Professor Parenteau.

Chairman Cochran.

The CHAIRMAN. On the subject of Mr. Parenteau's comments, you indicate also in your statement that you disagree with the deadlines in Section 106. Is that correct?

Mr. PARENTEAU. Particularly, Senator Cochran, the deadlines for filing suit, yes. That one in particular.

The CHAIRMAN. What deadlines if any would be appropriate in your judgment?

Mr. PARENTEAU. 60-day deadlines would be fine because we have a history with that under several statutes where you have notices before suit. One of the things I am concerned about with that deadline, not only is a lot of people going to miss it simply because they didn't see the notice in the local paper and they will not know when they are supposed to file, but from the standpoint of a lawyer who has done a lot of litigation, I think a pause before a lawsuit is filed is useful. The parties ought to think about trying to resolve their differences before they pull the trigger. Some period of time I think it useful to give an opportunity for settlement or resolution of issues. This provision will force people to sue before they even try to do that.

The CHAIRMAN. You also suggest that the cap for Federal lands that may be included in a hazardous fuel reduction project is objectionable. What would you consider a realistic cap?

Mr. PARENTEAU. I do not have the expertise on that. My point is that the 20 million acre figures is a very aggressive interpretation of what the urban wildland interface zone is. We have heard testimony that maybe you have to go beyond that. I defer to experts about how far you have to go into the forest to deal with threats of catastrophic wildfire. My only point is, is that is a large scope of Federal lands that this bill applies to, and my concern is that that scope of Federal lands is not just limited to fuel reduction projects, as I have just indicated, it is an Federal action when it comes to being challenged in court and what the court should do about that. We are talking about any Federal actions on——

The CHAIRMAN. You are suggesting that no cap would be appropriate, or no amount of acreage would be appropriate for a fuel reduction project?

Mr. PARENTEAU. I am not saying that there is an appropriate cap of there is not, because I do not feel confident to say that.

The CHAIRMAN. OK, thank you.

Mr. KOCHAN. Mr. Chairman, might I respond to that question?

Senator CRAPO. Certainly.

Mr. KOCHAN. The 15-day deadline contained in Section 106 may seem short, but I just want to point out that the individuals involved that will be bringing these suits will have already been significantly and substantially involved in the decision-making process leading up to the Secretary's decision that will trigger this deadline. The fact that people may not know is a bit misleading. They will already have taken significant steps to understand this.

Plus, a pause is appropriate before a case is filed. However, in our system of notice pleading, I think that it should be perfectly capable of filing within 15 days.

Senator CRAPO. Thank you very much. Let me stick with the question between our two law professors here, on the appeals process. I am going to start out on basically an issue relating to the timing and the standing question. I want to just give an experience that I had.

About two or 3 years ago I went into, during one of the congressional breaks that we had, one of these places which we could call an urban interface area. It was just literally outside of a suburban housing area. In fact, we parked on the street across from some homes which were the outer edge of this suburban area, and walked into the forest to look at a proposed site where some thinning was proposed to be undertaken. The Forest Service and other officials took me in. The purpose of this was to show me an example of what they were trying to do in terms of forest management. There was a bug infestation problem. They wanted to try to get in and thin and clear away in terms of both fire protection and dealing with the infestation. They had worked to the point where they were ready to make the proposal for the project.

I listened and thought I understood well, and then went on with my other duties. About 2 years later, in fact this was just recently, I went back, and no activity had taken place in this particular area. I asked the Forest Service and others to take me back. We parked in the same place, walked on the same path into to forest, and they showed me a forest that was at that point basically mostly a dead forest. The infestation had taken over to the point where they were not sure what they could do at this point.

I asked them why nothing had happened, and they explained that the project had been appealed, and that they had been delayed in court through the litigation to the point where they had ultimately—and I do not remember this. I do not remember whether they won the appeal or whether the issue that was raised was one that they did not really have that much of a concern about so they conceded the point. Whatever happened, the litigation was resolved in a manner that was really not significant with regard to the proposal that they were trying to do. Through the appeals process, they had lost the timing.

I said, "Well, let us get on with it." They said, "There is no point in doing it now." At this point the window had closed and the opportunity to manage this part of the forest was lost, and the infestation was under way, and they really were not sure what the next step to do was.

I asked them, "Well, why did you not visit with these folks ahead of time and work it out as you were putting together your proposal," because clearly it was something that could have been worked out and did ultimately get worked out. they said, "A number of other groups came to us and raised concerns as the process was moving along, but this group did not. When we were all done we thought we had answered everybody's concerns and those we worked with did not appeal, but this group who did not come in and work us, just came out of blue when we were done and sued us, and then we were in court."

The question that came up to my mind is, should someone have standing, a person or an organization have standing to file an appeal if they do not participate in the public participation processes that are ongoing as we work through the NEPA law?

Mr. PARENTEAU. With regard to the Forest Service appeals the law is such that if they do not participate in the administrative process and file the appeal, they are precluded from going to Federal Court completely. There is an exhaustion of remedies requirement that is part of the U.S. code, so they are out of court automatically if it is a Forest Service case. Even in BLM cases or Department of Interior cases, courts apply an exhaustion of administrative remedies doctrine very strictly, and if somebody waited in the weeds—we call it waiting in the weeds—and sandbagging the agency by not coming forward with their concerns, not participating in the processes that are available, courts will throw them out. You are absolutely right about that.

Senator CRAPO. They should throw them out, you agree?

Mr. PARENTEAU. In many cases they should throw them out, that is right.

Mr. KOCHAN. I agree that they should, and as the Forest Service is promulgating new appeals regulations, that is certainly——

Senator CRAPO. That should be a part of this.

Mr. KOCHAN. Should be a part of it.

Mr. PARENTEAU. By the same token, those who do play by the rules and play honestly should not find their case prejudiced by a statute that puts the thumb on the scales of the other side of the case. That is my point.

Senator CRAPO. I want to get into that in just a minute because I agree with you in a sense, but I want to be sure that we get there.

Mr. KOCHAN. If I could just say one other thing on the exhaustion issue.

Senator CRAPO. Yes.

Mr. KOCHAN. That may be true for those cases which have to go through the administrative appeals process. However, not all environmental challenges will do that, and under some statutes citizens may have an opportunity to challenge and come out of the woodwork.

Senator CRAPO. That might explain why this happened in this case, because I have to go back now and find out why did have this delay and why that occurred.

Mr. PARENTEAU. Sometimes, unfortunately, it is bad lawyering. [Laughter.]

Senator CRAPO. I do not want to get into that.

The example I have also shows why it is important for us to have the streamlining we can in this process, because in Idaho we have a short season, and I think in many parts of the West we have a short season in which to engage in the kind of management actions that we would like to engage in. A lawsuit that may be totally unfounded but stops it for three or 4 months can essentially, in many cases, eliminate the need to address the issue. That is one of the reasons I believe we are trying to streamline, for example, having a 15-day time limit rather than a 60-day time limit for the filing of appeals. Could you comment on that, both professors?

Mr. KOCHAN. On the appropriateness of the 15-day timeline or——

Senator CRAPO. Yes, that, or just the need for streamlining in general.

Mr. KOCHAN. The streamlining is definitely necessary. These are situations which can change rather rapidly. Seasonal variations, forces of nature, the speed in which insect infestation can move through the forest, all of these things are reasons to not only revisit every 45 days a preliminary injunction that is holding up the ability to do a fuel reduction project, but also to remind the courts of the need to conclude judicial review in a speedy manner, because as you said, and from your example, there is nothing to do, you have lost any opportunity to address the situation after a significant period of time has passed.

Mr. PARENTEAU. I have two quick comments on streamlining. First, I guess it depends on whether or not you believe the General Accounting Office's study of the appeals process, which concluded that in about 95 percent of the cases the appeals were completed within the timeframe allocated for administrative appeals.

The other point I would make is that I think one of the biggest problems with the administrative appeals in these cases involving fuel reduction is that they are combined with commercial logging. They are combined with harvesting large trees, overstory trees, large diameter trees, that does nothing to deal with fire control. The scientists on that—I am not the expert; I would refer to Drs. Salwasser and Christensen on this—but as I read the scientific literature on this question, cutting these big old growth trees is not the answer to preventing catastrophic wildfires. When you combine a timber sale for thinning and fuel reduction with a commercial logging operation, you are inviting appeals. Those are separate questions, and I think that the application of the National Environmental Policy Act, the Endangered Species Act and some other Federal statutes to a commercial logging operation is a very different consideration when you are talking about streamlining and so forth. The fact that the Forest Service and the administration has insisted on linking these two things together, the fuel reduction with commercial logging is creating enormous problems for how to create a streamlined appeals process that does not either advantage one side or the other or disadvantage the environment in some way. If they could be separated, if you could really look at thinning around the urban interface, I do not think the appeals process should be a big problem, and if the Congress wanted to legislate no appeals in those kinds of cases, that would be a perfectly appropriate policy response, but to legislate no appeals, no NEPA, and a limited, truncated judicial review with projects that are going to include commercial logging in the back country, I think that is a problem.

Senator CRAPO. Are you stating that you believe this legislation prohibits appeals?

Mr. PARENTEAU. I am saying that one provision of the legislation, yes, it does. It repeals the Administrative Appeals Act, Section 105.

Mr. KOCHAN. My understanding of that piece of legislation—of course the drafters and the committee, Mr. Chairman, you would know better than I, but my reading of it from a legal standpoint

is that it simply calls for the Forest Service and BLM to promulgate and establish an appeals procedure, rather than eliminating the opportunity for appeal.

Senator CRAPO. Correct. The intent of the language—and I will read it to make sure it does—but the intent of the language is to repeal the statutorily mandated system and to direct the Forest System to establish an administrative system of appeals. Although it is taking one appeals system out, it is replacing it with another.

Mr. KOCHAN. There is an additional check on that because through the rulemaking process citizens will then have an opportunity to challenge those rules if indeed they are arbitrary and capricious or otherwise not in accordance with law.

Mr. PARENTEAU. Mr. Chairman, I would strongly urge that if the intent is to replace a known appeals process with an unknown appeals process, that the legislation ought to at least set out standards and parameters by which that appeals process is to be designed. Otherwise, it will mean whatever the Forest Service says it means, and that is a pretty broad grant of authority. If that is what the Congress decides to do in its wisdom, that is one thing, but we know what the appeals process is today. That is being taken off the table. We have no idea what the appeals process is going to be tomorrow, nor do we have any standards to judge whether it is an adequate one.

Senator CRAPO. I will go back into that also. I believe there are some standards in the legislation, and we will get into that, but I think it is a valid comment for you to bring up.

You have also raised another issue which I am going to divert into that issue, and then come back to the legal issues we were getting into. You raised the question of logging versus thinning, basically, commercial logging versus thinning for purposes of forest management. As I said earlier at some point in the hearing, I personally believe that we can have healthy, viable, strong forests in perpetuity that retain all the values of our ecosystem and still allow us to engage in commercial logging under appropriate procedures. Some people in the country do not believe that. There are groups in the country who believe that there should be no commercial logging period on the National Forest.

Professor Parenteau, I would just like to know whether you have a position on that.

Mr. PARENTEAU. I do not. That is too complicated to come down on some simplistic yes/no, frankly.

Senator CRAPO. Then what I would like to do is to go to Dr. Christensen and Dr. Salwasser to ask you the same question. Like I said, I believe that we can have commercial logging without destroying the forests, and in fact we can do so in a way that helps us to maintain healthy, dynamic, viable forests. Would you please both comment on that?

Mr. CHRISTENSEN. Yes, I agree with that. I also would say that we should separate the issue of logging from the issue of hazardous fuel management. They are really two different things, and they do not necessarily accomplish the same thing, and in fact they can have obverse consequences. That is to say, logging, meaning of course the removal of large trees—can have consequences in the landscape that are contrary to the intent of this bill. There is a real

danger here in not thinking carefully. I am agnostic about the logging on public forest issue because I think it is a very complicated issue that has economic social issues, as well as economic issues involved. My main concern regarding this bill and the confusion of those things is that the intent and our focus needs to be on fuel management, and that removing big trees really complicates that, it does not simplify it. It does create potential perverse incentives for managers on the ground having to pay for the costs of whatever they are doing, to be doing things that are really contrary to the long-term interest.

Moving big trees changes the moisture conditions under the forest immediately, which makes them drier and more fire prone. Remove big trees and the forest immediately wants to begin to regrow, and that regrowth 10 years downstream oftentimes is as flammable as what it is we wanted to control in the first place. That issue is one that needs to be addressed very, very carefully, and I really hate to see us confusing it. I really do believe that that issue has really clouded and confused this in a way that has brought people who could agree on what it is we need to do into some sharp disagreement.

Senator CRAPO. Dr. Salwasser.

Mr. SALWASSER. Thank you. This is indeed a complicated issue, complicated in part by our terminology. There are many people, myself included, who would call the cutting of any tree logging, of any size. The issue really is what is the purpose of the removal of the trees? If the purpose of removing trees of a forest is the sustainable production of wood fiber, that is a commercial timber sale and a reforestation follows. If the purpose is to reduce fuels, to reduce wildfire risk, to change the characteristic of an insect infestation, it is not really a commercial timber sale. It is a forest health treatment. If you happen to be able to derive some economic value from the materials that you have removed, that is great. That will help you pay for some of the treatment effects. The focus should not be on so much on how much you remove, but what do you have to leave behind to achieve the restoration objectives? Generally speaking, leaving the biggest is the wisest thing to do, but you cannot just leave the biggest and take everything else, because over time you are going to have to have some trees growing up to replace the big ones when they die and fall over.

You have to have an eye not on the fuel reduction treatment, or the insect risk reduction treatment, but what do you have to do at a landscape scale and at the sites or stands within that landscape to restore and sustain an ecosystem that has some resiliency over time to the inevitable fire and the inevitable insect outbreak.

The science, as we understand it right now, helps us know how to reduce the fuels to change the fire behavior of a stand, and it helps us know how to reduce the insect risk. The science is not there on how to restore a resilient forest or rangeland ecosystem for a long time so that it does not require us to go back in every 5 or 10 years and do another treatment. We do not have the science of the landscape scale. We do not have the science that tells us how do we do this in a climate that is warming and in an environment that has invasive species waiting to move in after any disturbance. That is why I called for the landscape scale strategic

partnerships between research and management to learn these things as we go that we simply do not know right now.

Senator CRAPO. Let me ask a further question I suppose to both of our doctors here. A lot of the discussion we have had here is with regard to whether large trees can be taken out in a context of anything other than a commercial activity, and I have to say that when I was out in Elk City in the Red River area a few weeks back, I saw an awful lot of large dead trees. This is a very heavily bug-infested forest. Is there a reason why those trees could not be harvested commercially? I am talking about an ecological reason or a management reason why those trees could not be harvested commercially.

Mr. CHRISTENSEN. If I may comment, I am not familiar with the particular area, so I am in danger of making a judgment about something that may be very unique from area to area. There are certainly circumstances in which we have large-scale kill of trees either from pests, blow-downs or whatever, in which some salvage is warranted, is meaningful and can be done, and can be done in a sustainable fashion.

On the other hand it is important to recognize that dead trees and decaying wood are an incredibly important part of what happens in natural forests. It is part of what maintains the long-term productivity of the forest. It has hydrologic effects that affect flows and water quality. There is an enormous amount about wood that is important. Removal of wood, just because it happens to be dead, is something that we need to be very judicious about.

My answer is it is something that really needs to be looked at in the context of the function of the forest on a landscape, in a watershed, where we might salvage in a judicious fashion, but recognize that dying trees are a normal part of the way forests work and that that dead wood has functions for habitat, water flow, soil fertility in the long term that is really critical to the productivity of those forests 10,100 years from now.

Mr. SALWASSER. Senator Crapo, in my previous life as a Forest Service executive, I was the Regional Forester in Missoula and I had responsibility for those lands around Elk City and the Red River.

Senator CRAPO. You know the area at least.

Mr. SALWASSER. I know the area. I know it fairly well. My answer is that it goes to the purpose of the land in question. If the land that you are talking about is adjoining communities, then the removal of dead trees is a pretty good idea to reduce the fire hazards. If the land in question is out in the wilderness area or a roadless area and is not slated for any kind of a natural resource production, then there is no reason to remove the dead trees. The answer to the question of is it OK to do commercial logging and salvage is first you need to understand and have some agreement on what is the purpose for the places that we are talking about? It is entirely appropriate to use commercial timber sales to remove trees from the forest if that is what the purpose of the place is.

Senator CRAPO. Let me ask, and I suppose this question is again for Dr. Salwasser and Dr. Christensen, but let me ask another question in this context because I really want to get into this ques-

tion of commercial logging versus management thinning or whatever we would call it. I have another story to tell.

On one of the occasions when I was out looking at the Idaho forests I was in—I cannot remember if it was an airplane or a helicopter—but we were flying over the forest after a fire. This had been about a year after a major fire had gone through. I was being shown by those with me the burned areas and what had happened and what was being done. As we were flying over, we crossed over a road in the forest and the forest on the other side of the road was what appeared to me to be a very healthy forest. It was green, lush, there were not the burned areas, and it appeared that the fire had burned right up to the road and stopped, which is actually had. I made a comment to those with me. I said, "That is interesting. I did not realize a road could just stop a fire." They said that was not the road that stopped this fire. The forest that burned was a Federal forest. The forest on the other side of the road was a State forest, and the State forest had been managed differently. They showed me the same thing with private land, which was forested, which did not burneither in this fire. The point they made to me was that these forests had been logged commercially, and the undergrowth and whatever else had been cleared out and the forest had been thinned, but there had been commercial logging activities.

The point that I am getting at here is that I have seen at least what I thought was a very distinctly healthy forest in either private ownership or State ownership, which had been commercially logged.

Back to my original question. Is there anything about the science that we know now that tells us that we cannot have commercial logging and healthy forests at the same time?

Mr. SALWASSER. I will go first this time. There is nothing that I am aware of in the body of scientific knowledge that says that we cannot have commercial logging and have healthy forests. It all comes down to what is the nature of the logging, what is the nature of the reforestation that occurs, and what are the purposes for the place that we have in mind? The purposes are going to be very different based on who owns the property and what kind of a forest type we are dealing with, and what kind of slopes we are dealing with. The science is available for the managers, and they have had the practical experience for a long time to know that they can carry out logging activities and maintain the protection of soil, the protection of water quality, wildlife habitats.

Senator CRAPO. Dr. Christensen.

Mr. CHRISTENSEN. The number of studies of the relationship between commercial activity—I am talking about now systematic evaluations of commercial logging activities and fire. The number is zero. There has really been very, very little study, and I am quite sure, and I actually agree with Hal, that we can manage and manage commercially forests, and that that is not inconsistent with healthy forests.

The history of commercial activities in the West though would tell us a bit of a mixed story about the relationship between commercial activities and the behavior of fire. If we look historically, the issues of what happens with slash, how the areas are managed,

the kinds of activities, and most importantly, what happens after we come in and begin to manage I think is very, very complex.

I am not willing to say categorically that you cannot do it, but rather that unfortunately, what we are depending on here are really anecdotal references to this situation versus that situation. I really believe we can do an awful lot better on that. I do believe that indiscriminate cutting of large trees, and I am by that meaning fairly large trees, can have adverse consequences relative to the goal we are talking about. Does that mean that you cannot do commercial cutting? I do not think that is necessarily true. The issue here is we do not want whatever incentives may come with the commercial side of it to be counterproductive relative to the central goal, and that is healthy forests. It is a complex issue and I think the science is still pretty messy on it.

Senator CRAPO. I agree with you. In fact, my constituents in Idaho, from whichever side of the issue they come, would all agree on one thing, and that is, one of the reasons I live in Idaho and one of the reasons most if not all of my constituents live in Idaho is because we love our forest and we want them to be strong and healthy and viable. The principle of making certain that commercial activities in the forests do not damage the ecology or destroy the forests, is one I think we will all agree to. Then it comes down to the battle over, some say that means you can have no commercial activity, and others say you can but you have to do it with proper management. What I am hearing from both of you is that one piece of this that we clearly need to get more of is more science, more understanding, more studies and more analysis so that we can conduct whatever activities we undertake in our forests with common sense and good science.

Mr. SALWASSER. Senator Crapo, I agree with that, and I agree with what Norm Christensen has been saying, but it is critically important that we do not view the forest and rangeland health restoration challenge that we have ahead of us as one where we need to wait and get the science together before we do something. This is clearly a situation where we have to do the science as we do the problem solving, and that is why the integration of research and management and education and extension is critically important here, that we learn how to do this as we go.

Senator CRAPO. That is a good point and thank you.

Mr. CHRISTENSEN. If I could just follow?

Senator CRAPO. Yes.

Mr. CHRISTENSEN. Just to say amen to that, and as one of the reasons in my testimony called for an integrated program of learning as we go, and that can be far more explicit on our legislation on this. We do have a lot to learn. We cannot wait, however, and we really agree on that.

Senator CRAPO. Thank you, and I might say that we, the Senators on this committee and other Senators who are concerned about this issue are working together to see if we need to come up with a separate approach to this or a supplemental approach to what we are dealing with right now. We are going to move expeditiously, but we may be writing our own legislation as well, and so these comments are very helpful. We may not be able to solve

every problem in this bill, but at least these are good healthy suggestions.

Mr. CHRISTENSEN. I just would call attention to the fact that in my written statement I did outline some potential wording in that direction.

Senator CRAPO. I noticed that, and we appreciate that when that is provided.

Now, I am going to come back to some legal issues. Did you have something to say?

Mr. PARENTEAU. Well, I wondered if you would entertain a non-scientific perspective on this question?

Senator CRAPO. Certainly.

Mr. PARENTEAU. One thing that science—with all due respect to colleagues that I admire greatly—cannot tell us is what is a good forest and what is not a good forest. We can talk about healthy. That is a very deceptive term because we think automatically of a health organism, a single organism like our own health. You cannot really talk about forests in that way and capture all the values, all the complexities, all the nuances that go with the way the public views these lands and these resources.

What I am suggesting is we do need to get the best science we can, but science cannot answer some of the fundamental questions about what do we want on this landscape? You can look at a forest. You can go to Europe and you can say, "Those look like very healthy forests." Those are tree farms. Those are not what an advocate, let's say, of biological diversity and natural systems would consider to be a forest with all of the complexity and diversity and disturbance regimes that go with that. What I am suggesting is once we try to cabin the science as best we can, we have a more difficult challenge, which is where are the public values here and what is going to be the process in administrative appeals, in judicial review, to allow some of those values, those non-scientific values, those normative standards to come into play? That needs to be remembered as well.

Senator CRAPO. Yours is a very valid point, and if I understand the position you are taking correctly, it gets into questions that we deal with here, such things as what should be designated as wilderness, where we have no economic activity of any kind allowed, period, or wild and scenic rivers designations or just other restrictions, where do we allow off-road vehicle use and where do we not, and the like? It is those—am I correct that you are getting into those kinds of policy decisions?

Mr. PARENTEAU. I am suggesting there are policy, legal, economic questions, and I think actually some economists might disagree with you that wilderness does not have any economic use, but anyway, I take your point.

Senator CRAPO. I understand your point there because there can be a recreational and a tourist value that comes with it, and I do not mean to disregard that because it is a very valuable and viable economic use. Your point is well taken.

Let us go back to the legal issues that I diverted from for just a moment, and both Professor Kochan and Professor Parenteau, I want you to respond to these questions. I will start with an issue that you raised, Professor Parenteau, with regard to the question

of whether the legislation that we are considering here today tells the court how it must engage in the balancing. First of all I want to get to a comment that you made, Mr. Parenteau. You said you were not aware of any Federal law that told the court how it must engage in balancing, or tip the balancing. Is that an account statement?

Mr. PARENTEAU. Yes. In terms of actually manipulating the equitable balancing. I grant Professor Kochan's point that you have the power to tell the courts to stay out of this all together. You have that power under the Constitution. I am not arguing that you do not have the power to tell the courts not to do it. I am simply saying I know of no statute that is going right into that equitable balancing in individual cases and saying, "You should give weight to this side of the argument, and these specific arguments." I do not know of any statute that says that.

Senator CRAPO. Let me get into that with you because I practiced law before I came to congress, and under the Administrative Procedures Act it was always extremely frustrating to me to litigate against an agency because under the APA they get to find the facts.

Mr. PARENTEAU. That is correct.

Senator CRAPO. By finding the facts they can decide the outcome of the case.

Mr. PARENTEAU. On the merits.

Senator CRAPO. On the merits, that is correct.

Mr. PARENTEAU. Different than injunction.

Senator CRAPO. Understood, except that the merits of the fact finding significantly impacts the injunctive analysis.

Mr. PARENTEAU. You do not even get to the injunction unless you have found that the agency has violated the law on the merits. That is true. The agency gets a lot of deference on the merits, that is absolutely right.

Senator CRAPO. In fact, the agency's decision basically must be given deference by the court unless it is found to be arbitrary and capricious.

Mr. PARENTEAU. That is correct, on the merits.

Senator CRAPO. On the merits. I guess what you are doing then is you are distinguishing between a factual finding, which the courts do too, and I have always disagreed with this because—I am smart enough to know as a lawyer that once the court finds the facts and the agency gets to be the one finding the facts, that the case is pretty much over.

Mr. PARENTEAU. Yes. The difference here, if I may, Mr. Chairman?

Senator CRAPO. Yes.

Mr. PARENTEAU. The difference here is that this provision, Section 107, comes in after there has been a finding on the merits that the agency is in violation. The court has already given the appropriate deference to the agency on the merits, and still found a violation. Now we move to the phase of the case which is what do we do about the violation? In that context, I am saying that is the essential core function of a judge, to weigh all the facts and circumstances of——

Senator CRAPO. For the equitable relief.

Mr. PARENTEAU. For the equitable relief. What this is doing is saying, no, we want you to focus on the defendant's side of the case to look at the harm to the defendant and to look at what the defendant has basically said about whether or not an injunction should issue. That is unprecedented. That is going too far in my view.

Senator CRAPO. I will give Professor Kochan a chance to respond, but let me first just ask, I assume you are referring to Section 107, where it says that the reviewing court shall balance the impact to the ecosystem of the short-term and long-term effects of undertaking the agency action against short-term and long-term effects of not undertaking the agency action. Is that the language you are talking about?

Mr. PARENTEAU. Yes, but it begins earlier, and that is the more important. The provision directs that, in determining whether there would be harm to the defendant from the injunction, the court should balance the impact to the ecosystem of short- and long-term and give weight to the finding of the Secretary, which is by the way the defendant in these cases. The problem is, the way this thing is linked together: Focus on the defendant's injury, then focus on the defendant's findings on injury and give weight to them. That goes too far. That is clearly invading a function that has historically—and this is one of the venerable aspects of our jurisprudence. This goes all the way back to our common law roots. Judges doing equity are supposed to be given the flexibility and the freedom to shape and tailor relief to achieve compliance with the law in the way that best comports with the interest of justice. At a minimum, this is confusing. This is telling judges to do it differently than they have been doing it, in ways that, I believe, are appropriate. Judges have all the power in the world to do the balancing that should be done. The Supreme Court has said in numerous cases injunctions do not automatically issue. With due respect to Mr. Rey, he is dead wrong when he says that courts automatically issue injunctions to stop cutting trees. They emphatically do not do that, and I have cited cases in my testimony where they have said, we are not going to enjoin tree cutting because it is needed to prevent the spread of insect infestations. The courts today are doing the balancing, refusing to issue injunctions when the interests of justice dictate that an action is urgently needed and must take place. This is at a minimum mischievous and confusing, to tell the judges that you need to now do it differently. You need to look at the defendant's arguments more carefully, give the defendant's arguments more weight.

I do not understand why this is at all necessary to achieve the objectives with respect to the legislation.

Senator CRAPO. Professor Kochan.

Mr. KOCHAN. Yes. I believe that Section 107 does very little to change the current status of the law at all.

If you look at the cases cited in Professor Parenteau's written testimony, those cases themselves set out the balancing test that is used in granting preliminary injunctions, that is, significant likelihood of success on the merits, followed by a showing of irreparable harm, followed by a showing of weighing harm and giving weight to the defendant's harm, balancing the harms between the

two, and then finally whether the injunction should issue in the public interest.

Now, Section 107 does nothing to, one, eliminate the court's current standard that is adopted almost universally within all the district and courts of appeals to apply the standard. There are slight different iterations of the standard in these courts, but there is nothing that would exclude courts from continuing to apply that same four-factor test, and it also does not say that these are the only things that the court can consider, and as far as my reading of statutory interpretation. It does accomplish, it seems to me, the important purpose of first showing the courts and reminding the courts of their duty to consider both long-term and short-term harms. As evidence has shown and as others have testified before, that long-term analysis, that long-term harm consideration has often been lost in the clouds when there are heated debates and concern about cutting a tree. At the same time you need to consider the long-term health of the forest, and that is perfectly appropriate and something that the courts have a responsibility to do under their own standard already today.

As far as the weight issue that you bring up, I believe that it really does little to change the status of law. As you said, agencies currently receive this type of deference and this type of weight, and it does not say that the defendant is to be given exclusive weight. It merely reminds the Court again of an obligation to consider these facts and to consider the agency's expertise on these facts.

The final point I will make will address whether it is an unprecedented issue. The standards for issuing a preliminary injunction have often been limited by Congress, and you can see this throughout many of our labor laws, throughout many of our banking laws, in which sometimes preliminary injunctions have been eliminated all together, and at other times the standards for issuing that have been prescribed. I would be more than willing to provide a list of those to the committee.

Senator CRAPO. Thank you. Let me just weigh in on this as I read it, and again invite your comment. I see your point, Professor Parenteau, about the language where it specifies the words "harm to the defendant." If also follows that with concern about what the public interest should be, well, what impact would prevail upon the public interest. I agree with you, that it could be written in several different ways and that this does raise at least a question as to what was intended by the language. I also agree with Professor Kochan that it certainly does not say that these are the only things that can be considered.

To me, the controlling thing here is that after it says, "in considering these things," it tells the reviewing court how it must do the balancing, and in that case the language goes immediately to considering the ecosystem, and it says that the court must balance the impact to the ecosystem of the short- and long-term effects of undertaking the agency action against the short- and long-term effects of not undertaking the agency action.

It seems to me that the language says: We are going to look at the ecosystem, and in issuing the preliminary injunction, you have to take into consideration not only the short-term impacts but the long-term impacts as well. At least my understanding of the intent

of this language was to make certain that the courts look at both the long-term and the short-term, and to use Mr. Rey's words, to focus not just on whether there is harm and—how did he put it—he said, you cannot uncut a tree, but also you cannot unburn the forest. You must look at both sides, both short- and long-term.

Mr. PARENTEAU. What I would say is the courts are already doing that, so the question is what is this language doing here? If Professor Kochan is right that this does not change the law, same question, if it does not change the law in any respect, what is it doing here? We have in the academy, as we say, something called restatements, restatements of the law of torts, restatement of the law of contracts. We always say, well, if it is just a restatement what is the point? If it is not a restatement, then it is a new law. My question here is, if the courts are already doing this, if this does not change anything, then what is it doing here?

Senator CRAPO. The premise would be—I do not think that many of us—let me say it differently. Many of us would disagree that the courts are already doing this. My understanding of the purpose of this language was to make certain that the courts are doing the second part, namely, looking at the long term. If your position is that they are already doing that, then I guess my response would be, then why would you worry about this language because all we are saying in this language is that we want the courts to do both.

Mr. PARENTEAU. The reason I worry about it is not because I worry that they are just asking them to do things that they are already doing. It is because of the way this is framed. If I am a Federal judge and I am trying to pay attention to what Congress is telling me are important policies, and my judicial mantra is I am supposed to give effect to every word in every statute, you are going to find Federal judges trying to figure out what is it that the Congress is telling them to do differently than they have already been doing. When you say that they shall give weight to the finding of the Secretary on this very complex—and I must say, probably beyond the ken of most scientists, let alone judges, to balance the short- and long-term effects to the ecosystem of individual projects. When you tell them that they are supposed to do that kind of balancing, and when they do that balancing, they are supposed to put a thumb on the scale. That is what that means. The Supreme Court has interpreted that language in Section 4(f) of the Department of Transportation Act to mean a thumb on the scale. They are supposed to put a thumb on the scale of the findings and the administrative record of the Secretary, which means the court is supposed to ask the defendant in the litigation, mind you, that the court has just found to be in violation of the law, "What do you think is the harm from me enjoining the action from going forward that is in violation of the law?" The Secretary says, "Oh, I think the harm in the long term would be very severe." Now the court is supposed to give weight to that finding. My point is, at that point you have biased the equitable balancing. You have removed the ability of the judge to impartially look at all the facts and circumstances of a case. You have singled out the finding of the Secretary on this one point, short- and long-term effects to the ecosystem, and said, that is controlling.

That is probably what some judges will do. Some will resist. Some will want to know whether the intent behind this was really to skew the balancing or not, but some of them will try to give effect to this language, and that is, in my judgment, an intrusion into their decision-making.

Senator CRAPO. Professor Kochan.

Mr. KOCHAN. Briefly. Congress has often given deference to agencies, but here I read this language as requiring simply that the courts consider this impact and give weight to it. It is no different really than anything else that Congress has exercised in a similar fashion.

One thing I would like to correct that I have heard Professor Parenteau say several times now, is that at this stage that the agency has already been found in violation of the law, which is simply not true. It is that there is a substantial likelihood of success on the merits, but there had been no final determination on the merits under judicial review at the time that you weigh these factors.

Mr. PARENTEAU. With due regard and respect, in Section 107 we are not talking about preliminary injunctions. What Professor Kochan is talking about is the standard for preliminary injunctions in 106. That is not what is talked about in 107. Here we are talking about motions for injunction. That can be a motion for a permanent injunction following a decision on the merits, so this goes to the final resolution of a case as well as the preliminary injunction, as I read it. Otherwise——

Senator CRAPO. It could go to both.

Mr. PARENTEAU. It applies to both, exactly, I agree.

Senator CRAPO. I am finding this very interesting, particularly as a lawyer myself, and it is bringing back all the feelings I had when I litigated under the Administrative Procedures Act.

[Laughter.]

Senator CRAPO. Which were not good feelings, by the way, when you are not on the Government's side.

Mr. PARENTEAU. I agree with you.

Senator CRAPO. Hold on just 1 second. I want to organize my notes here and see if there are some questions I have missed.

I do have a number of other questions, although I can feel my little alarm going off in my pocket here, telling me that we have far exceeded our timing on the hearing today at this point. What I am going to do is thank the witnesses for coming. We certainly have not gotten to the end of the questions or the end of the issues on this, and as I said earlier, there are going to be some issues that I wanted to pursue personally that I will communicate with you in writing about.

I want to thank all of you for coming here, as well as the other witnesses, because clearly we are facing important policy decisions at this level with regard to how we will approach the management of our public lands. We deal with it not only from the perspective of protecting our urban areas against fire, as Senator Lincoln and myself and others have pointed out, we also have much broader concerns with regard to the healthiness of our forests and the ecosystems that we are seeking to protect and maintain there. Into the questions that Professor Parenteau brought out, with regard to

the question of what is it that we want to manage the land for in particular instances and aspects all of this weights in to a very, very dynamic debate here in Congress.

As I also said previously, we are going to be looking at this legislation to see if we think it needs to be tweaked or if we need to introduce some supplemental language to address issues that we think need to be addressed differently or that were not addressed in this legislation and need to be addressed, and we appreciate your continued input into this.

With that, this hearing will be concluded, and I once again want to thank all of the witnesses for your time and effort in bringing these issues before us.

[Whereupon, at 1:55 p.m., the committee was adjourned.]

APPENDIX

JUNE 21, 2003

OPENING STATEMENT

CHAIRMAN THAD COCHRAN

SENATE AGRICULTURE COMMITTEE

HEARING TO REVIEW THE "HEALTHY FORESTS RESTORATION ACT"

JUNE 26, 2003

Today, the committee is having a hearing to review the "Healthy Forests Restoration Act of 2003," H.R. 1904, which has been passed by the other body. We appreciate the attendance and assistance of the witnesses who are here today. I have asked the distinguished Senator from Idaho, Mike Crapo, who is Chairman of the Forestry Subcommittee, to chair this hearing.

I ask that my statement be printed in the record and I now turn the gavel over to Senator Crapo.

There are nearly 747 million acres of forest land in the United States. In 1996, the value of forest production was $22.5 billion.

In my state of Mississippi, forestry is one of the state's leading industries, employing more than 60,000 people and contributing over $11 billion dollars a year to the state's economy. Sixty-nine percent of Mississippi's 18.6 million acres of timberland is owned by 310,000 private, nonindustrial landowners. Throughout the United States, forest lands face serious damage from a host of forest pests, including sudden oak death syndrome on the west coast, southern pine beetle in the southeast, and gypsy moth in the northeast and elsewhere, among others.

About 190 million acres of federal forest land are in declining health due to overgrowth, disease, insect infestation, and weather-related damage. As a result, forests and rangelands face a high risk of catastrophic wildfires. Very large fires are now burning in Arizona and New Mexico. More than 8 million acres of forests burned in 2000.

Last year's fire season was among the worst in the past four decades. Major blazes burned in 15 states, scorching over 7 million acres. Hundreds of homes were destroyed, 23 firefighters lost their lives, and rural economies were seriously impacted.

The Administration has worked to increase the resources available for fire fighting and fire preventive fuels treatment work. Last year, the federal government spent $1.6 million for fire suppression.

Recognizing the urgent need to protect our forests, President Bush proposed a Healthy Forests Initiative in August 2002 to improve wildfire protection and to provide real solutions to some of the problems facing our forests and the communities surrounding them. Since then, the Administration has implemented major reforms in the wildfire program. In September 2002, the Administration sent a legislative proposal to Congress that would implement

key elements of the President's Healthy Forests Initiative. The legislation provides new management tools to help overcome the crisis we face.

The House-passed bill empowers federal land managers to implement scientifically supported management practices on federal forests, while establishing new conservation programs focused on improving water quality and regenerating private forest lands.

In addition, the bill recognizes that forest health does not end with fire prevention. The nation's forests, both public and private, face serious problems from fire, pest, and disease that are degrading thousands of acres every year. The House bill provides incentives for clean water, habitat for fish and wildlife, as well as support for small communities dependent on local forests for recreation and tourism.

In the Senate, we should act expeditiously to help restore the forests of our nation to good health.

http://harkin.senate.gov
(202) 224-3254
Contact: Allison Dobson
Maureen Knightly

FOR IMMEDIATE RELEASE
June 26, 2003

Statement of U.S. Senator Tom Harkin (D-IA)
Hearing on Healthy Forests Restoration Act
Committee on Agriculture, Nutrition and Forestry

The Iowa Senator is the Ranking Democrat on the Agriculture, Nutrition and Forestry Committee

"Good morning. I want to thank Senator Cochran, our Chairman, for holding this important hearing on the "Healthy Forests Restoration Act" as well as Senators Crapo and Lincoln, the chair and ranking member, respectively, of our subcommittee on forestry, for their role in this hearing. Let me also thank all of our witnesses appearing before us today for their participation.

"This legislation seeks to address the very serious issue of protecting people, homes and communities from catastrophic wildfire, and improving the health of our national forests and public lands. We all agree this is a laudable and very critical goal. I hope we can also agree that we have to work together to meet this challenge.

"This problem is many years in the making due in part to past fire suppression activities, excessive timber harvests and drought, which continues to plague our forests. The truth of the matter is it will take very significant investments of time and money to improve this situation. HR 1904 is strongly supported by the Administration and while the hearing is on this bill, we must not let that preclude an even-handed review of the many issues involved - not only the bill itself.

"While it is clear we have to address these issues head-on, it is far from clear that this bill is the most appropriate way to do so. My primary concerns with the bill are three-fold.

"First, the bill lacks sufficient targeting of wildfire protection efforts in the "wildland urban interface," the areas most at risk and in need of immediate assistance. This targeting is essential given the limited financial and human resources that we have available.

"Second, the bill severely limits long-standing administrative protections against excessive agency actions. It makes discretionary the National Environmental Policy Act's

(NEPA) requirement that agencies "look before they leap" and consider alternatives before rushing to judgments and actions that could have negative long-term consequences. In effect, we are being asked to gut what courts have time and again called the very "heart of NEPA." The bill also exempts hazardous fuel reduction projects from the checks and balances in the agency under the Appeals Reform Act and sets up a new and as yet undefined review process for those seeking redress.

"Finally, it includes unreasonable deadlines and requirements that could shut the courthouse door to ordinary citizens seeking to stop unlawful actions by the federal government and block the courts from doing their job under our Constitution. The bill even seeks to bias courts in favor of agency officials' findings, potentially allowing projects to go forward even if there's a violation of environmental law. These are unprecedented steps that will likely weaken the courts' abilities to protect the public interest.

"While I have many concerns with HR 1904, there are aspects of it that appear deserving of support. These are the areas in which I believe there is much common ground and where we should focus our efforts. For example, the bill references a collaborative process involving many and diverse parties, similar to one adhered to by the Western Governors Association, and widely supported, for better achieving fuel reduction projects.

"Let me also comment very briefly on the war of words that has ensued over the past several years on the wildfire issue. To put it mildly, it is counter-productive, and I think it does a disservice to those whose lives, homes and communities have been severely affected. I am saddened by it, and hope that the Senate will take the high ground, and not let this kind of divisive rhetoric overtake our work to address these matters.

"I look forward to hearing from all of the panelists and again express my gratitude for your appearing before us today."

STATEMENT OF SENATOR MIKE CRAPO
Committee on Agriculture, Nutrition, and Forestry
Hearing on HR 1904, the Healthy Forests Restoration Act
June 26, 2003

Thank you Chairman Cochran for holding this hearing on what I view is crucial legislation.

HR 1904, the Healthy Forests Restoration Act, is a bi-partisan bill that passed the House of Representatives with overwhelming support.

The wildfire seasons of 2000 and 2002 were the largest and most destructive in fifty years. The fires destroyed property, degraded air and water quality, and damaged fish and wildlife habitat. They cost billions to fight, and even worse, cost the lives of firefighters. The damage to the environment was severe and the cost to communities untold.

If any good can come out of the fires it is that Congress now recognizes that the status quo will not suffice and we must act to address the growing crisis.

Yet, this bill is about more than forest fires. It is about the very health of our forestlands. Fire risk is an indicator of a stressed ecosystem, as are insect infestations, disease outbreaks, and the encroachment of invasive species. They are all indications of an ecosystem that must be restored.

I would like to raise an example that strikes close to home.

Elk City, Idaho is ground zero in regards to the healthy forest bill. Unmanaged forests have resulted in a tremendous insect problem that has resulted in a potential wildfire problem.

A couple of weeks ago, I toured the Red River Area and saw first-hand the threat. 80 percent of the trees surrounding the community are infested by Mountain Pine beetles—millions of trees have died. With even-aged stands and rampant bug kill, the Red River drainage is poised for a catastrophic fire.

With only one road into Elk City, the people there are understandably concerned.

The drainage is also significant for its important fish and wildlife habitat—including habitat for threatened and endangered species. The ecosystem is being degraded because the lands are not being managed and the forest is dying. If there is a fire it will not only kill the species, but devastate their habitat even further. Areas where every human action has been governed by the endangered species act and clean water act will be wiped out by a fire that cannot be held accountable to those laws.

What is so frustrating to the community is that while millions of trees are rotting in the forests, while wildlife habitat is being degraded because of lack of management, and their very safety is threatened, the economy is also being devastated.

I disagree that protection of economies and the environment are mutually exclusive. Allowing the Forest Service to move forward with appropriate silvicultural techniques would address the threat and could help this rural economy.

Unfortunately this is not an isolated example in Idaho or the nation.

Last year, Senator Lincoln held a hearing on the Red Oak Borer epidemic facing much of the Southeast. I was struck at the similarities with the beetle problems we face in the Pacific Northwest.

That hearing reinforced what many already knew, forest health is not just a Western issue.

The bill that came out of the house reflects that fact. It addresses conditions, across the country, that threaten forested lands.

While modest—compared to the 190 million acres of land managed by the U.S. Forest Service and Bureau of Land Management that are at unnatural risk to catastrophic wildfire — this bill will lead to real results that will protect communities, air quality, water quality, and wildlife habitat. One criticism of the bill is that it addresses only a small fraction of our at-risk public lands.

Despite its narrow focus, I strongly support this legislation.

We need to move forward.

I agree with Dale Bosworth, Chief of the Forest Service, when he says we need to move the focus from what we take, to what we leave. As the Chief has identified, too many are looking at this as a zero-sum game. They seek someone to blame for forest health problems or argue that logging is inherently bad.

We need to get beyond that zero-sum argument and realize that what is important is restoring a healthy ecosystem: an ecosystem that allows for a natural fire regime to exist without threatening our watersheds, wildlife or communities.

Advocates for this bill, me included, do not purport that it will fire-, insect-, or disease-proof our forests. That is not its goal. The purpose of the legislation is to provide the Forest Service with the tools they need to do the work on the ground necessary to restore our forests to health, and reduce the threat of catastrophic wildfire to our communities and forest ecosystems.

The bill includes key points that are necessary to effectively meet its goals.

It addresses the analysis paralysis that is one of the greatest obstacles to getting real forest management work done on the ground.

It recognizes that the problem goes beyond fire; that there are other threats to our nation's forest lands.

It recognizes that these problems affect both public and private lands—throughout the country.

And, that collaboration is vital. The bill codifies the public input and participation process outlined by the bi-partisan Western Governor's 10-year strategy. Robust public participation is key to the success of any effort.

I hope we can build bi-partisan support for this bill in the Senate and move forward quickly. As Oregon Governor Ted Kulongoski stated last week at the Western Governor's Association's Forest Health Summit, "there are no Republican forests or Democrat forests. There are only American Forests—that need our protection, stewardship, and collective thinking."

I appreciate the witnesses for taking the time to be here with us today. I know the committee will find the information you present helpful as we move forward to consider the legislation.

I look forward to your testimonies and an informative hearing.

Thank you.

STATEMENT OF SENATOR MCCAIN CONCERNING THE NEED TO TAKE ACTION TO RESPOND TO CATASTROPHIC WILDFIRE IN ARIZONA AND THE WESTERN U.S.

Mr.Chairman, thank you for holding this important hearing today and allowing me to make a statement regarding the need for an effective Congressional response to the problem of catastrophic wildfire throughout the Western United States. As we speak, Arizona forestland is burning. The largest wildfire, the Aspen fire, has now consumed 25,000 acres, 345 homes and other buildings, engaged 1,200 firefighters and is only 25% contained. Under current conditions, I fear the devastating toll on people's lives and on natural and economic resources will mount. What's more, the fire season has just begun and the potential for other fires is extremely high.

Last year's catastrophic wildfires claimed the lives of 23 firefighters, burned 7.2 million acres, and cost $1.6 billion to fight. Beyond this, the costs of contaminated municipal water supplies ecosystem destruction, wildlife losses including endangered species and critical habitat, economic losses for timber and tourism, and other widespread damages have not yet been quantified.

After last year's fire season, many members of Congress made a diligent effort to come up with solutions to this complex problem. Despite their commitment, the debate ended in an impasse and now wildfires are once again destroying lives and property, and other irreplaceable resources. We have not taken the measures necessary to protect communities and our public forestlands from fires that now rage out of control.

The Healthy Forests bill that is the focus of today's hearing will soon bring the debate to the Senate floor. Mr. Chairman, I am concerned is that there still remains substantial disagreement over some of the provisions of this bill and that we will not achieve a successful result.

Yet, Congress must pass legislation that will provide essential protection to communities and public forestlands from wildfires that we know will occur in the future. Therefore, Mr. Chairman, I want to work with you and other members to identify the areas of common agreement between the stakeholders involved to provide a framework for legislation that will provide effective protection for our communities, restore the health of our forestlands, and rebuild the trust between the federal management agencies and the public.

There are significant areas of agreement reflected in the bill before the Committee today, other legislative proposals, and efforts such as the Western Governors Association's 10-year Comprehensive Strategy.

Key among these are, first, that the protection of human life and property are an urgent priority and that the environmental review and appeals process may be modified or waived to expedite these essential actions.

Second, that there should be a collaborative process to allow those affected at the local level to determine project priorities and management outcomes.

Third, that the current state of our public forests is the result of 90 years of fire suppression and changing land use, and it will take time and care to bring the appropriate scientific management and financial resources to bear to produce healthy forests on a large scale.

Finally, and most important, that the federal government must make the significant financial commitment necessary to accomplish these objectives. We cannot rely entirely on the forest industry to undertake the enormous task of thinning and restoring our forests to achieve the desired public outcomes. On the other hand, economic opportunities should be encouraged and supported, where appropriate.

It is our responsibility to acknowledge the actual cost of community protection and forest health restoration, by providing funds to the responsible federal agencies so that they can fulfill their vital functions and secure the confidence and trust of the American public.

Thank you, Mr. Chairman, for providing me this opportunity to speak on this urgent matter.

Statement of the Hon. Norm Coleman
United States Senator for Minnesota

In Re: Hearing on the Healthy Forests Restoration Act of 2003

June 26, 2003

Mr. Chairman, I want to thank you for holding this important hearing on the Healthy Forests Restoration Act of 2003.

I want to join in thanking all the members of each panel for appearing today before the committee to discuss this important legislation.

I would also like to recognize and thank Mr. Mike Carroll, a constituent of mine, from the Minnesota Department of Natural Resources, who will be speaking on the second panel. Mr. Carroll will be speaking on behalf of the National Association of State Foresters.

The Healthy Forests Restoration Act of 2003 is a solid piece of legislation that takes common sense steps towards improving our national forests. It is not uncommon now to turn on the news during the summer and see massive wildfires destroying forests and forcing people from their homes.

This issue is of particular concern to me because in my home state of Minnesota we have two national forests – the Chippewa and the Superior. These forests span 2.8 million acres across northeastern Minnesota.

On July 4, 1999 heavy rain and straight-line winds in excess of 90 miles per hour blew down trees and caused severe flooding over more than 600 square miles of the Superior National Forest. The clean up from the "blow down" is still taking place today but authorities have been able to remove most of the heavy fuel loads

outside of the Boundary Waters Canoe Area Wilderness. This was possible because special exemptions were issued from the Council on Environmental Quality to work on high-risk areas. In Minnesota, we have definitely seen the need and the value of moving forward quickly to prevent catastrophe.

The Healthy Forests Restoration Act will help reduce procedural delays to projects that reduce fire danger and address forest health problems. The legislation accomplishes this and it does so in a way that involves the public throughout the process. The bill allows for appeals through our legal system. It attempts to have judges consider both the short and long-term consequences when considering a forest-health project. This makes sense when trees in our national forests grow over one-hundred years.

By cutting some of the red tape on maintaining the health of our forests, we can begin to remove the hazardous buildup of forest fuels that lead to the expansive wildfires. A 2003 USDA forest service report states, "Treatments to reduce fuels can significantly modify fire behavior and severity and reduce environmental damage caused by fire." We must utilize this opportunity to give the forest service the tools it needs to fix this problem.

The nation's forests are living systems and we have to restore, manage and protect them. These principles will not only help to reduce wildfires – they will ensure that we have clean air and water, quality fish and wildlife resources and strong communities for generations to come.

In closing, we have a chance to wrap our arms around this problem once and for all and take meaningful steps to protect our forests from disease and wildfires. I look forward to hearing from the panelists on their views and suggestions. Thank you.

Statement of Senator Larry Craig

Agriculture, Nutrition and Forestry Committee
June 26, 2003
Hearing on HR 1904

I want to thank Chairman Cochran for holding this hearing and for allowing me to enter this statement into the record. I also want to thank Senator Crapo for his efforts to address forest and rangeland health and the fires that occur in these unhealthy areas.

It is said that if you ignore history, you are doomed to repeat it. On August 20th and 21st of 1910, fires consumed over 3 million acres of land in Idaho and northwestern Montana. It was reported that fire whorls, the size of a man's arm, carried along on 50 mile-per-hour winds, swept through towns 50 miles to the east of these fires. The sun was completely obscured in Billings, Montana, a town 500 miles to the east, and the sky was darkened as far east as the State of New York. Some of those forests are still recovering today from those fires.

Our forest health problems are not an isolated problem of the rural west. In 1989, Hurricane Hugo slammed ashore near Charleston, South Carolina and cut a path northwest through North Carolina into Virginia. On the Francis Marion National Forest, 70% of the trees were killed. We immediately expedited the process of clean-up, salvage, and replanting, funneling millions of dollars into that effort.

In January of 1998, over 17 million acres of forests were heavily damaged by an ice storm that stretched from New York across New Hampshire, Vermont and into Maine. Our response was to appropriate $48 million dollars to help the clean-up.

In the spring of 1999, when a blowdown followed by Southern Bark beetles epidemic ravaged the Texas National Forests, we provided emergency exemptions that allowed managers to enter into Wilderness Areas to sanitize the stands to slow the spread of the insects.

On July 4th, 1999, over 600,000 acres of forests in Northern Minnesota were blown down in storms that swept the area. Our response was to provide both funding and waivers from NEPA to help the landowners in the area begin a recovery process.

Just last year, in the Supplemental Defense Appropriations Bill, we helped Senators Daschle and Johnson deal with forest health emergencies in their state by exempting projects from NEPA appeals and litigation.

Each time a common sense approach was supported by this body. Each time we reached out to our neighbors to help them deal with the forest health problems they'd suffered.

Today, in the west, we have massive insect killed areas. Some that have been ongoing for more than 10 years, like the Spruce Bark beetle

epidemic on the Dixie National Forest or on the Kenai *(keen-eye)* Peninsula in Alaska or the 150,000 acre forest health disaster near Lake Arrowhead, California. Arizona faces drought and insects that are combining to kill hundreds of thousands of trees.

I don't have to remind you of the devastation that the wildfires wrought last year or the damage they are doing to small communities like Summerhaven, Arizona, as we speak.

During the next several hours and weeks, you will be regaled with rhetoric about the need to have a public process and how public forests belong to everyone. You will hear how fires are natural. You'll hear about GAO reports on appeals and litigation. You'll hear that 70 % of the high risk areas are on private lands, and that we should only focus in those areas.

I am here today to ask you to cut through the fog that some groups are generating, and ask yourselves if our forefathers would have dealt with similar emergencies by saddling their employees with a NEPA process that takes two to three years to produce a result, before the problem could begin to be addressed on the ground.

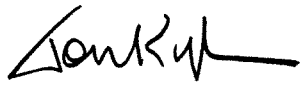
Ask yourself if our forefathers would have maintained or relaxed an Administrative Appeals process that is chiefly utilized by seven or eight self-avowed anti-action groups in times of past dire emergencies.

At times, I contemplate how we would have dealt with the events of 9-11, or the record tornado's of this spring, or the hurricanes we've suffered, if we had imposed the Forest Service NEPA and Appeals processes on the entire country. Then I thank God that we've had more sense than that.

Those of us who represent the rural forested areas of this country aren't asking too much. We need your help. I fear that the modest changes called for in HR 1904 will not be enough. But, I have learned that every great journey starts with a small step, and I trust each of you on this Committee will help us take that first small step by supporting the President's Healthy Forest Initiative.

The private forest landowners that stare down the barrel of a loaded gun -- filled with insects, disease, and fires – aimed at them from neighboring public land will thank you. And as your neighbors and colleagues, we who represent rural forested areas will also thank you.

It is June 26th, the long hot summer of forest wild fires has begun again. History will repeat itself again. Millions of acres destroyed. Hundreds, if not, thousands of forest properties destroyed and many l Lives lost.



Statement of Senator Jon Kyl
Senate Agriculture, Nutrition and Forestry Committee
June 26, 2003

H.R. 1904, the Healthy Forests Restoration Act of 2003

Chairman Cochran, thank you for holding this hearing focusing on the need to promote forest health. I applaud the administration and the various agencies that have been working within the current system to address the problems that face America's forest ecosystem.

Time is of the essence. As we speak, there are five major forest fires burning on 42,000 acres in the state of Arizona. Suppression costs to date are $9.3 million. The Aspen fire in the Coronado National Forest has already consumed 25,000 acres, has required 1,171 firefighters, and has cost roughly $4.7 million. From all indications – continuing drought, bark beetle infestation, and forests still clogged with dense underbrush and debris - the results of this year's fire season will be devastating. Mr. Chairman, Arizona is but a microcosm of what is occurring across our nation on our forest lands. We must take action now.

Federal land management must address dangerous fuel loads and declining forest health before we can ever hope to stem the wildfires in Arizona and the Southwest. For a long time, poor forest management has altered the ecology of our ponderosa pine forests to the point where fire can no longer play its natural role. Instead of allowing nature to take its course and burn through grasslands and forests, we suppressed those fires. The result? Forests are dense, overgrown, and filled with debris that acts as kindling. Too many trees compete for soil nutrients, moisture, and sunlight. Drought and bark beetle infestation make the situation worse. Mr. Chairman, the situation has now reached a critical point.

In the natural course of events, fire would burn through the grasslands and forests, and eliminate many ponderosa pine seedlings, roughly every five years. Because fire was suppressed, some of those seedlings that naturally would have burned have instead grown. Year after year of "no burns" have resulted in forests that in many instances are populated with as many as 2,000 trees per acre, when the land can naturally accommodate just 20 to 60 trees per acre. Now, 2,000 trees are competing for water sufficient for 60. The lack of water impedes the trees' sap production that is essential to combat the bark beetle. Our efforts to "help" mother nature have resulted in overcrowding, sick trees, and forests susceptible of bark beetle infestation. Factor in drought on top of all of this and disaster strikes.

The fires we have seen - crown fires - spread faster and burn with more intensity than the natural fires that formerly thinned our forests. Crown fires burn in the tops of trees and are spread rapidly by winds. They leave virtually nothing in their paths.

Extensive research on crown fires is currently underway at the Ecological Restoration Institute located at Northern Arizona University. Under the direction of Dr. Wallace Covington, the ERI is recognized as a national leader in forest restoration. The Institute and its partners in

the federal, state, private, and NGO sectors have the talent and expertise to advise on the implementation operational-scale forest health-restoration treatments. Working with partners, the Institute has built strong local, state, regional, and national support for restoration-based fuel treatments.

These treatments have proven to be effective. Last fire season, in treated areas, the fires were not as harmful as in those areas that had not been treated at all. The untreated areas were devastated. Some have argued that treatments in the wildland urban interface are sufficient to solve the problem. The area around Summerhaven, Arizona was treated, yet Summerhaven burned. I would argue that treatments must address the entire landscape, not just the wildland urban interface.

Today, the Agriculture Committee is considering H.R. 1904, the Healthy Forests Restoration Act of 2003, to streamline the process for implementing these needed treatments. The legislation streamlines the administrative process, ensures that sensitive environmental areas are protected, and allows work to begin more quickly.

H.R. 1904 gives the Forest Service and the Bureau of Land Management discretionary authority to limit the analysis ordinarily required under the National Environmental Policy Act (NEPA) to the proposed agency action, meaning the agencies would not be required to analyze and describe a number of different alternatives to the preferred course. It directs the Secretary concerned to sign a decision document for each authorized hazardous fuels-reduction project and provide notice of that document. And, it requires the Secretary concerned to monitor the implementation of authorized hazardous fuels-reduction projects. The bill also allows for authorized hazardous fuels-reduction projects on federal lands that:

1) are located in an interface or intermix community or proximity to such communities;

2) are condition class 3 or 2 and located in proximity to a municipal water supply;

3) are condition 3 or 2 and have been identified as an area where the threat of disease or insect infestation endangers forest or rangeland health; or

4) contain a threatened or endangered species.

It would also give the Secretary concerned sole discretion to plan and conduct an authorized treatment project, within certain parameters, including minimum tree-diameter size, tree density, and species composition.

The legislation would protect environmentally-sensitive areas by precluding fuels-reduction projects in wilderness areas; on federal lands where the removal of vegetation is prohibited or restricted by Congress or by a Presidential proclamation; or in a wilderness-study area. The bill would also prohibit the construction of any new permanent roads in any inventoried roadless area.

Appeals, litigation, and the review required under NEPA absorb both time and money. After last year's devastating Rodeo-Chedeski fire, litigation was filed challenging the ability of the White Mountain Apache tribe to clear dead, burned wood from a fire-devastated area. A final decision in that matter is still pending.

To further illustrate how NEPA analysis and related appeals and litigation can unnecessarily slow the process, consider this.

The Forest Service reported issuing 305 decisions associated with environmental impact statements or environmental assessments in FY 2001 and FY 2002. Of these 305 decisions:

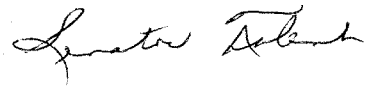
- 242 involved prescribed burning treatments. 151 (62 percent) of these were appealed.
- 59 included prescribed burning treatments treatments but no mechanical treatments. 21 of these (36 percent) were appealed.

Of the projects documented under environmental assessments or environmental impact statements that also included tree removal,

- 158 environmental assessments or environmental impact statements included "mechanical treatment, commercial timber harvest" as a method of fuels reduction.
- 113 of these decisions (72 percent) were appealed.

When time is a critical factor in the commencement of ground work, delays in beginning the work is very harmful.

Mr. Chairman, I look forward to bipartisan cooperation to move this important legislation forward. My hope is that we will be able to broaden the application of necessary treatments to include areas of the forest that require treatment – whether they are in the wildland urban interface or not. Thank you for holding this hearing to address the health of our nation's forests.



Healthy Forests Hearing
Opening Statement
June 25, 2003

Mr. Chairman, thank you for holding this hearing on this important issue. When people think of the nation's great forests, most people think of the west – but Missouri is home to some great forests, the Mark Twain National Forest and the forests in the Ozarks. We have **14 million acres of forestland** in Missouri.

I look forward to testimony from all our esteemed witnesses, but before they begin, I want to share some shocking statistics. According to the national forest service – in 1994, 2,600 firms employed 34,600 people in Missouri in the industry. In 2002, 2,000 firms employed 30,000 people. In less than ten years, nearly 5,000 forest and timber related jobs have left my state.

On April 23 of this year, the Daily Statesman – the daily paper in Dexter, Missouri ran a story regarding statewide job loss. The headline – "Missouri job loss rate number one in the nation." Last year, Missouri lost 77,000 jobs.

I want this legislation to give forest managers in Missouri the tools they need to improve forest health – and reinvigorate the industry in Missouri.

We have a real problem with the red oak borer in Missouri and Mrs. Lincoln will tell you the same is true for Arkansas. It is costing the timber industry millions of dollars. If something isn't done soon, we will lose additional jobs in Missouri.

Excessive red tape has tied up sensible forest management tactics. Current land management regulations prevent federal forest supervisors from clearing debris and fallen trees in an effort to reduce the threat of wildfires. Forest managers spend so much time dealing with procedural regulations that stand in the way of removing decaying trees and clearing out forests.

As they wait, the red oak borer grows and spreads.

I am pleased that we are working to find some relief for our forest managers. The Healthy Forests legislation would streamline excessive bureaucratic procedures so federal land managers can do their job.

I am optimistic that the Senate will continue to be productive by passing this responsible forest management plan for Missouri and the country. I look forward to today's testimony and a mark-up of this bill.

Written Statement
Congressman Greg Walden
Senate Committee on Agriculture, Nutrition and Forestry
Thursday, June 26, 2003

Thank you, Mr. Chairman, I appreciate having the opportunity to submit testimony on the McInnis-Walden Healthy Forests Restoration Act (HR 1904) and I commend you for holding this hearing an issue not only important to the residents of my congressional district, but an issue that's important to all Americans who are concerned about the health and well-being of our national forestlands.

Mr. Chairman, catastrophic wildfires have increasingly devastated our public lands in recent years. These fires decimate forests, ruin watersheds, destroy critical habitat for species and threaten whole communities with destruction. Last summer more than one million acres were burned by fire in Oregon alone. The Forest Service spent over $150 million battling the Biscuit Fire. And most tragically, many brave souls lost their lives battling out-of-control infernos.

This year's fire season has already begun. An extreme wildfire in Arizona last week destroyed more than 250 structures and precipitated the evacuation of 450 families near the community of Summer Haven. The possibility of a similar, and perhaps more dire, situation exists in California where officials have established evacuation plans for citizens residing near Los Angeles due to the threat of major wildfire outbreaks. But, as many of the members on this esteemed panel know, the threat of catastrophic wildfire and the crisis facing our forests is not unique to the West.

The dangerous build up of hazardous fuels on forest floors, outbreaks of disease and insect infestation combine to form a truly national problem afflicting every state and region in America. In the South over 57 million acres are at high risk of beetle infestation. During his statement in support of HR 1904, my colleague in the House from Georgia, Congressman Max Burns, noted

> *In the State of Georgia alone, we have a little over 800,000 acres of Federal forest. Last year, 13,000 acres of those trees were infested and destroyed by the southern pine beetle. H.R. 1904 combats these infestations and assists land managers in reducing the susceptibility of forest ecosystems to severe infestations.*

In other regions of the country the situation is equally severe. An insect called the hemlock woolly adelgid is destroying forests throughout the mid-Atlantic and Appalachian regions, while in Michigan the introduction of the emerald ash borer in 2002 has proven to be so devastating (already killing or damaging seven million trees) that in March Governor Granholm formally requested assistance from the Department of Agriculture (USDA) to help combat the spread of the borer to the state's remaining 692 million ash trees.

The national scope of America's forest health crisis demands a national response. That's what is provided by HR 1904, which I co-authored with my colleague in the House, Scott McInnis and

approved by the House by a vote of 256 to 170. As you know, Mr. Chairman, it's not often that a national environmental issue of this magnitude is approved with such strong, bipartisan support.

While America's forests are different, the problems that afflict them are the same. The biggest culprits are the lack of management by the federal government, illogical rules and laws, endless appeals and lawsuits. Combined they tie the hands of forest managers and prevent projects that would improve forest health, help prevent catastrophic fire and provide better safety for our communities. As the Chief of the Forest Service, Dale Bosworth, has said

> *"I've got 37 years with the U.S. Forest Service, and over the years I have seen us get to a situation where there are more and more regulatory requirements, and less and less opportunity for professional foresters and biologists to make decisions out in the field. We end up spending more time in windowless rooms behind computer screens doing analysis, and in a lot of cases it doesn't lead to a better decision. We've gotten ourselves to where we just can't get work done on the ground. People expect us to get work done on the ground, and that's what we're here for."*

Chief Bosworth aptly terms this "analysis paralysis."

Too often foresters are required to propose as many as six to eight alternatives to simple forest treatment projects under the National Environmental Policy Act (NEPA), knowing that most of them will never be utilized. As managers of the federal government's purse strings, we have a duty to ensure that we cease the current trend of shoveling taxpayer dollars at wasteful paperwork while we starve our forests of attention and stymie foresters from implementing their expertise.

While HR 1904 requires that hazardous fuel removal projects must go through the NEPA process, it does not force the Forest Service to draft alternative plans that they know will never be used. It also encourages greater public participation by codifying the bipartisan Western Governors Association 10-Year Strategy's robust public input and participation requirements, ensuring that interested persons will have numerous opportunities to engage decision makers during all phases of a project's development and implementation.

Without expediting forest treatment projects, the outbreak of disease and bug infestation and the build-up of hazardous fuels across our country will only grow worse. Last year taxpayers spent well over $1.5 billion dollars fighting raging fires, and this year Congress once again increased annual funding for hazardous fuel reduction programs under the National Fire Plan to over $400 million. As we continue to invest more in fire prevention and forest health programs, it is critical that we match this investment with the tools our foresters need to actively manage the crisis at hand.

After years of attempting various approaches, HR 1904 struck a chord of common sense. It is not only supported by such diverse groups as the National Association of Home Builders, the National Association of Counties and the National Volunteer Fire Council, but it is also

supported by groups representing professional foresters like the Society of American Foresters and the Western Forestry Leadership Council whose members routinely see the deplorable health of our federal forestlands. And, finally Mr. Chairman, I would like to emphasize the bipartisan support that this bill received in the House. Nearly 60% of the members the House from the Pacific Northwest and Midwest to the South and Mid-Atlantic regions supported this bill on final passage.

Thank you, Mr. Chairman for permitting me to submit these remarks today on an issue not only important to the residents of central, southern and eastern Oregon, but an issue that's important to all Americans who are concerned about the health and well-being of our national forestlands.

STATEMENT OF
MARK REY
UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE;
LYNN SCARLETT
ASSISTANT SECRETARY, POLICY, MANAGEMENT AND BUDGET
DEPARTMENT OF THE INTERIOR;
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
CONCERNING
H.R.1904, THE HEALTHY FORESTS RESTORATION ACT OF 2003

JUNE 26, 2003

Mr. Chairman:
On May 20, 2003, President Bush called on Congress to move as quickly as possible to pass H.R. 1904 and get it to his desk for signature, and we appreciate your willingness to schedule this hearing today. The Departments of Agriculture (USDA) and the Interior (DOI) strongly support H.R. 1904. We would also like to work with the Committee to make technical amendments to clarify and strengthen the bill.

Background

The need for action to restore our Nation's public forests and rangelands to long-term health has never been greater. Catastrophic fires are just one consequence of the deteriorating forest and rangeland health that now affects more than 190 million acres of public land, an area twice the size of California. Last year alone, wildfires burned over 7.2 million acres of public and private lands, leading to the destruction of thousands of structures and the evacuation of tens of thousands of people from hundreds of communities. Although nationally wildland fire activity so far this year had been less than the average of the last few years, on June 17, 2003, the Aspen Fire blew out of the Pusch Ridge Wilderness in southern Arizona and overwhelmed the community of Summerhaven, Arizona destroying an estimated 250 homes, businesses and other structures. This fire continues to burn out of control. We are seeing critical situations in the southwest and these conditions are spreading northward. Large portions of Arizona, California, Idaho, Oregon, Nevada, Utah, and Washington, as well as sections of Colorado and Wyoming, are predicted to have above average fire activity this fire season.

In addition to fire, Federal forests and rangelands across the country face unusually high threats from the spread of invasive species and insect attacks. Insects and pathogens have historically existed in our forests and rangelands. However, the frequency, extent and timing of recent outbreaks are out of the ordinary. Changes in tree stand density, species composition and structure caused by fire exclusion, the lack of active management and drought are factors that have significantly affected outbreak patterns. The result is the death of millions of trees across many thousands of acres in California, Utah, Arkansas, Michigan, Minnesota, the Mid-Atlantic States and the South. Often when these areas burn with uncharacteristic intensity, they become very susceptible to invasive species, further prolonging poor forest and rangeland health.

While Federal, State and local land managers have attempted to restore forest and rangeland health and prevent these catastrophic wildfires and infestations, their efforts have been severely hampered by unnecessary and costly procedural delays that can prevent them from acting in a timely manner to protect communities and avert ecological crises. Excessive analysis, ineffective public involvement, and management inefficiencies trap land managers in costly procedural delays, where, in some cases, a single project can take years to move forward. In the meantime, communities, wildlife habitat and forests and rangelands suffer. Fires and insect infestations that begin on public lands can spread to private lands as well, causing significant property damage and threats to public health and safety. The current Aspen fire in Arizona is a case in point.

Recognizing the impending crisis, President Bush proposed the Healthy Forests Initiative (HFI) in August 2002. The President directed Federal agencies to develop several administrative and legislative tools to restore deteriorated Federal lands to healthy, conditions and assist in executing core components of the National Fire Plan. Since the President's announcement last August, Federal agencies have taken several regulatory steps to implement components of the HFI.

The Secretaries have taken several administrative actions to accomplish these objectives, which include the following:

- Endangered Species Act Guidance – On December 11, 2002, the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) issued joint guidance documents to facilitate and improve the design, review, approval and implementation of HFI projects. The guidance allows multiple projects to be grouped into one consultation and provides direction on how to consider and balance potential short- and long-term beneficial and adverse impacts to endangered species when evaluating projects. The goal is to recognize that project-specific, short term adverse impacts need to be weighed against the longer-term watershed level benefits such projects will achieve.

- CEQ Memorandum & Model Environmental Assessment (EA) Projects -CEQ Chairman Connaughton issued guidance addressing the preparation of environmental assessments for fuels treatment projects. The guidance addresses the purpose and content of an EA, specifically, that EAs should be focused and concise. These guidelines are now being applied on both Forest Service and DOI agency projects and some resultant EAs are currently out for public comment.

- Appeals Process Reform – Both USDA and DOI made rule changes designed to encourage early and meaningful public participation in project planning, while continuing to provide the public an opportunity to seek review or appeal project decisions. This allows more expedited application of hazardous fuels reduction projects.

- Categorical Exclusions (CE) – Both USDA and DOI have established new categorical exclusions, as provided under the National Environmental Policy Act,

for certain hazardous fuels reduction projects and for post-fire rehabilitation projects. These new CEs shorten the time between identification of hazardous fuels treatment and restoration projects and their actual accomplishment on the ground. The agencies have compiled an extensive historical record demonstrating that similar projects did not result in significant environmental effects.

- Proposed Section 7 Counterpart Regulation - FWS and NOAA Fisheries have proposed Section 7 joint counterpart regulations under the ESA to improve Section 7 consultation procedures for projects that support the National Fire Plan. The proposed regulations would provide an alternative, in some situations, to the existing Section 7 consultation process by authorizing the agencies to make certain determinations without project-specific consultation and concurrence of the FWS and NOAA Fisheries.

The recently passed Consolidated Appropriations Resolution, 2003 (PL 108-7) contains stewardship contracting authority, which gives agency land managers a critical tool to implement projects necessary to achieve land management goals. This provision allows the BLM and the Forest Service to enter into long-term stewardship contracts with the private sector, non-profit organizations, local communities, and other entities. In FY 2003, the Bureau of Land Management will implement stewardship contracting on a limited basis, and the Forest Service will implement stewardship contracting much as it did during the pilot program, while joint guidance for long-term implementation is developed.

We believe these administrative actions will provide Federal land managers with important tools they need to restore these lands to a condition where they can resist disease, insects, and catastrophic fire. However, the additional tools and authorities that are provided in H.R.1904 are still needed.

H.R. 1904

Title I would improve processes which now significantly contribute to costly delays, and allow timely implementation of critical fuels reduction projects. The title would provide streamlined procedures for USDA and the DOI to plan and conduct hazardous fuels projects on up to 20 million acres of Federal land that are most at-risk from wildfires while preserving public input in the decision-making process. The bill would allow the agencies to limit the range of proposed alternatives they would have to analyze for proposed hazardous fuels reduction projects, and would maintain requirements for public notice and input. We believe this authority would provide the agencies with the latitude necessary to reduce the risk of damage to communities and municipal water supplies and at risk Federal lands from catastrophic wildfires. It would also require the Secretary of Agriculture to establish an administrative appeals process for these projects as an alternative to the current legislatively mandated appeals process. The title also would provide for a standard for injunctive relief and timeframes for judicial review.

Title II, which would parallel already exiting authority, would authorize a $25 million grant program for each of the fiscal years 2004 through 2008. The Secretaries would be authorized to make grants to persons who own or operate a facility that uses biomass or to offset the cost of projects to add value to biomass. This authority would help

encourage energy generation and other commercial utilization of low value or non-merchantable biomass, including wood, chips, brush, thinnings, and slash removed to reduce hazardous fuels, to reduce the risk of disease or insect infestation, or to contain disease or insect infestation.

Title III would authorize a $15 million program within the Forest Service for each of the fiscal years 2004 through 2008, to provide State forestry agencies technical, financial and related assistance for the purpose of expanding State capacity to address watershed issues on non-Federal forested lands. This authority which would parallel existing authority, would allow USDA and DOI to work collaboratively with other interests to manage and conserve non-Federally forested lands.

Title IV would require the Secretaries of Agriculture and the Interior, with the assistance of universities and forestry schools, to develop an accelerated basic and applied assessment program on certain Federal lands to combat infestations by bark beetles, including Southern pine beetles, hemlock woolly adelgids, emerald ash borers, red oak borers, and white oak borers. This title also would authorize the Secretaries to conduct applied silvicultural assessments on certain Federal lands. An assessment of a site of less than 1,000 acres would be deemed to be categorically excluded from further analysis under the National Environmental Policy Act. We believe this will allow us to quickly design and test methods of responding to insect outbreaks.

Title V authorizes a $15 million Healthy Forests Reserve Program within the Forest Service working in cooperation with the Secretary of the Interior, for each of the fiscal years 2004 through 2008 for the purposes of protecting, restoring and enhancing degraded forest ecosystems on private lands to promote the recovery of threatened and endangered species.

Title VI would direct the Secretary of Agriculture to carry out a comprehensive program to inventory, monitor, characterize, assess and identify forest stands nationwide. In carrying out such a program, the Secretary would also be directed to develop an "early warning system" for potential catastrophic threats to forests. Title VI authorizes $5 million for each of the fiscal years 2004 through 2008.

Conclusion

Mr. Chairman, USDA and DOI are committed to working with Congress, State, local and tribal officials and the public to advance common-sense solutions to protect communities and people, and to restore forest and rangeland health. H.R. 1904 provides the much needed authorities sought by the President's Healthy Forest Initiative to achieve these goals. We strongly support this bill and look forward to working with the Committee as it moves through the legislative process.

Thank you for the opportunity to comment on this bill. We will be glad to answer any questions you may have.

Testimony of Michael Carroll
Minnesota State Forester
On Behalf of the National Association of State Foresters

Before the U.S. Senate Committee on Agriculture, Nutrition and Forestry
June 26, 2003

On H.R. 1904, the HEALTHY FORESTS RESTORATION ACT of 2003

Good morning Mr. Chairman and members of the Committee. My name is Mike Carroll, and on behalf of the National Association of State Foresters, I am pleased to testify on H.R. 1904, the Healthy Forests Restoration Act.

I am representing NASF in my role as a member of their Forest Health, Fire and Research Committees. As Minnesota's State Forester, I am here to talk about some examples from my state where forest land ownership is a patchwork quilt of public lands administered by Tribes, the US Forest Service, the State and County Land Departments intermingled with privately held woodlots. In Minnesota, private and public foresters ply their trade across the forest spectrum: from urban yard tree, to shelterbelt, to working forest, to old growth and wilderness stands. We believe the titles in this bill are important, intertwined and will help us protect and improve the sustainability of multiple values in ecosystems dominated by trees.

NEED TO REDUCE HAZARDOUS FOREST FUELS

NASF is committed to the implementation of the 10-year Comprehensive Strategy for the National Fire Plan. The priorities of wildland-urban interface, municipal watersheds, pest outbreaks and weather-impacted areas are solid. We believe the Healthy Forest Restoration Act will support these efforts. The recognition of the need for ongoing maintenance of management actions is crucial.

This is not, however, just a western fuels issue. This Act helps to address the national need for active forest management across mixed ownerships. To protect the economic, social and ecological values coming from our forests, we need to improve in four areas: the upfront coordination of our planning and public outreach efforts; the timeliness of our response actions; improved restoration efforts; and commitment to the maintenance of mitigation efforts put in place. Our goal is to ensure the long term safety and health of communities and ecosystems in our care. Our need is to speed up our response process and hold it accountable.

The July 4, 1999 blowdown in Minnesota is a case study that demonstrates these needs, which I will cover after my general presentation.

BIOMASS

NASF supports forest biomass utilization. Making use of otherwise non-commercial wood products provides environmental benefits by locally producing renewable energy, lessening wildfire intensity and reducing the amount of carbon released to the atmosphere by wildfires. Research and development on the utilization of wood biomass is critical. In Minnesota, energy from wood could help bolster our mining industry and provide an outlet for the products produced by stand improvement techniques. Such selective thinning to reduce stand densities can also promote species and age class diversity while resulting in a more vigorous and resilient stand.

WATERSHED FORESTRY ASSISTANCE PROGRAM

The Watershed Forestry Assistance Program proposes technical and financial assistance for forestry activities across all ownerships – public as well as private land – resulting in a huge public benefit. In the Northeast United States, almost 90% of the forests are privately owned. Protecting these watersheds is critical to maintaining the water supply of millions of Americans. NASF recommends its inclusion in any Healthy Forest legislation.

Currently, there is no program within the USDA Forest Service's authorities that directly supports watershed protection and restoration work on local community or private forest lands. While some programs have provided latitude to address watershed issues as an ancillary benefit, the limited authorizations make it difficult to focus work on a watershed scale, and often desired activities must be foregone because they are not covered by the authority.

The program will build and strengthen the ability of states, communities, and private landowners to mitigate water quality problems, restore watershed conditions, improve municipal drinking water and address threats to forest health.

- For example, the Chesapeake Bay Restoration project is an ongoing effort to restore the Bay watershed that could significantly benefit from the WFAP. Ten years in the making, multiple states and federal agencies have managed to work within existing authorities to provide limited assistance to rural landowners, but much more needs to be done. Current authorities only allow funds to be spent for projects on segments of the landscape, depending on land ownership and the specific purpose (such as tree planting or habitat improvement) of the program being used. Under the Watershed Forestry Assistance Program, much more could be done to improve the Bay watershed by providing assistance to communities and non-profit organizations, as well as non-industrial private landowners, to accomplish critical watershed protection and restoration needs.

- In the Midwest, the Upper Mississippi River Forestry Partnership provides another example. The WFAP would offer incentives to improve the forested watershed of the Upper Mississippi across all ownerships, a critical step to

sustaining the Mississippi River for habitat, agriculture, recreation, transportation and economic endeavors. Clean water starts in the forest, be it our cherished Lake Superior or the headwaters of the mighty Mississippi in our Itasca State Park! Limited authorities are available to help us get this project started – we are currently in the planning stage – but the WFAP would provide the authority and funding needed to begin work on the ground.

- In the Lower Mississippi River Delta, another cooperative effort is underway with few resources to make it work. The states of Mississippi, Arkansas and Louisiana are working with the USDA Forest Service, Ducks Unlimited, and others to promote watershed restoration in the river delta. While programs are available through USDA to help with tree planting and wildlife habitat restoration, the partners cannot make a significant difference in the watershed of the delta using existing authorities. The goal is to restore the delta's natural hydrology. The WFAP could help make the idea become a reality.

- In the West, forest landowners in many states are attempting to improve habitat for threatened and endangered salmon listed under the federal Endangered Species Act. There are numerous examples of successful projects, however, inadequate technical and financial assistance severely limits the number of landowners that can be assisted and hampers efforts to address issues on a watershed-wide basis.

  As an example of the magnitude of need, in the State of Washington alone an estimated 8,000 forest road culverts need to be upgraded and replaced, at a cost of nearly $400 million, to ensure adequate passage for threatened and endangered fish. Replacement of a single culvert may cost a landowner tens of thousands of dollars. Family forest landowners typically do not have the engineering expertise or fiscal resources to undertake these practices without some form of technical and financial assistance.

"In Minnesota, It All Comes Down to Water": that is the title of our Governor's Vision for Minnesota's Water Resources. This bipartisan effort, when supported nationally by the Healthy Forests Restoration Act, will protect and restore water resources in the state and region while preserving citizens' abilities to use and enjoy them in a sustainable manner.

IMPACTS OF FOREST PESTS ON HEALTHY FORESTS

My own academic and professional background is in Forest Health. Simply put, healthy forests are more resistant to insect and disease impacts. This title establishes an accelerated basic and applied research program, including the dissemination of results, to address key forest pest concerns in cooperation with scientists from universities, state agencies, and the private sector.

of private landholdings interspersed with public lands. A clear example is Minnesota's Superior National Forest of 3.2 million acres with 1 million acres of intermixed state, county and private land. Forest management practices that allow fuel build-ups or insect and disease outbreaks on federal lands are more likely to impact adjacent state, county or private landholdings. St. Louis County alone manages 1 million acres of forest land.

- Management of pest outbreaks is time sensitive – many pests have short life cycles so populations can rapidly build to outbreak levels. Lengthy analysis procedures can delay treatment resulting in tree mortality that could have been prevented.
    - Minnesota has lost over one third of its balsam forest to spruce budworm.
    - Accelerated basic and applied research programs are critical to mitigating the devastating effects of forest pests such as the red oak borer. Drought and a combination of insects and disease have decimated over 400,000 acres of forests within the Ozark region of Arkansas and Missouri affecting tourism as well as local economies.

- Accelerating efforts to address invasive pests and providing additional assistance to manage pests across all ownerships is critical.

- Quick response to eradicate new, invasive pests is even more critical. Many times these pests have no natural enemies and can build quickly to outbreak levels making eradication impossible.
    - In Michigan and Ohio, emerald ash borer, an invasive insect, has killed over 12 million ash trees. This forest pest is of grave concern as it has already caused significant economic impacts to the nursery industry as well as municipal forestry programs.
    - Sudden oak death is affecting western states.
    - In Minnesota we are monitoring and treating gypsy moth in urban areas as needed. We have western bark beetles infesting our native tamarack. Our Twin Cities area is one of the largest handlers of crate and pallet material coming from the Pacific Rim; so we are greatly concerned about Asian Long Horned Beetle and the Emerald Ash Borer.

NASF strongly supports accelerating the work on these and other forest pests by the authorization and funding of this legislation.

CONCLUSION

The need to restore our forests and range lands to long term health has never been greater and needs to be addressed as a long term ongoing commitment by multiple partners. Minnesota has a unique delivery mechanism, our Minnesota Forest Resources Council, to carry out this challenge. This legislation promotes that view and enhances a process by which public and private land managers can respond in timely and coordinated efforts to improve forest health and benefit the public and the environment.

On behalf of the National Association of State Foresters, I urge the Committee to include all of the above programs in legislation to carry out the President's Healthy Forests Initiative. These measures are designed to address and improve forest health on public and private lands, consistent with the National Fire Plan 10-Year Strategy and Implementation Plan and targeted to meet critical forest health needs across the country.

Our abundant and magnificent forests helped to build our nation. Wise and sustainable forest policy will help to assure its continued strength. I thank the Committee for the opportunity to testify today, and I would be happy to answer any questions.

Attachment: Minnesota Case Study

MINNESOTA CASE STUDY

On the afternoon of July 4, 1999, a rare "derecho" (straight line wind) event left significant blowdown damage in the Boundary Waters Canoe Area Wilderness (BWCA) and adjacent lands in Northeast Minnesota. This windstorm resulted in widespread blowdown and heavy fuel loading across 478,000 acres of the forest. Most was in the BWCA, but over 40,000 acres of managed state, county and NIPF forest were also impacted. It is important to stress that the affected area was the interface of designated wilderness, managed forests of mixed ownership and private recreational holdings.

Interagency cooperation produced an immediate "triage" response to the needs for search and rescue, opening roads, trails and portages and establishing defensible space and escape routes. Firewise, now a nationally accepted and honored program had real and immediate meaning to the emergency response professionals and cabin and resort owners in the affected area. To this day, the relationships built through the blowdown response remain strong and functional.

The blowdown situation created the potential for extreme fire danger conditions throughout the affected area with the potential to threaten lives and property inside and outside the BWCA. Adjacent urban interface areas along the Gunflint Trail corridor and other areas of development and high visitor use were impacted.

Blowdown events are not unusual in this area. The regional downburst storm of July 15, 1988, caused vast blowdown in the Boundary Waters. The down timber from such storms is often suspended above the ground for several years, where it significantly adds to existing local fuels. Windstorms of this type do not generally flatten whole forests. Instead they tend to blow down erratic swaths a few hundred feet wide of the oldest, tallest, or most exposed trees (Heinselman 1996). The Independence Day storm of 1999, however, did flatten whole forests over significant acreage. (See map.)

While this event predated the National Fire Plan, it is a continuing case study and working laboratory for the actions presented by the Fire Plan and it supports efforts mandated by the Healthy Forest Restoration Act.

Once the initial health and safety concerns were dealt with, an assessment of the extent of damage was produced and response plans developed. Key recommendations from the February 4, 2000 Fuels Risk Assessment document include:

- Opportunities for fuels treatment inside and outside the BWCAW, including harvest and Wildland Fire Use, should be pursued to help break up the continuity of the blowdown fuels.
- Opportunities for fuels treatment **inside** the BWCAW, including Wildland Fire Use and management ignited prescribed fire, should be pursued to help break up the continuity of the blowdown fuels.
- Opportunities for fuels treatment **outside** the BWCAW, should include the same options, and also include harvest.

- Each landowner needs to take whatever actions they are capable of to remove the hazardous fuels conditions around their structures to offer some protection from fast moving, high intensity fires.
- The U.S. Forest Service needs to continue to develop and implement fuel removal activities on their lands, with special attention to the areas west and south of the Gunflint Trail road. This should include management ignited prescribed fire and mechanical removal.

So how did the different agencies respond?

The Minnesota DNR, Division of Forestry, responded immediately with aerial and ground surveys that resulted in salvage timber sale auctions from July 13th to October 28th of 1999. Within the first year, 4,461 acres of blowdown were sold at a value of $620,000. Sale operation began immediately and was completed within one year. The Division moved staff into the area to also assist non-industrial private forest landowners affected by the storm so that as much of the timber as possible was salvaged, the land reforested and fire hazards reduced. A tour for state legislators was held September 21-22, 1999.

The Cook, Lake and St. Louis county land management agencies also responded. As an example, Assistant Land Commissioner Mark Reed wrote:

> "In all, St. Louis County Land Department addressed about 3,000 acres of blowdown in 1999 into 2000. To address the influx of damaged timber, the department added two additional timber auctions in 1999, with salvage operations occurring as quickly as possible.
>
> "We looked for cooperative opportunities with Federal State, other County Departments and private entities to address this storm event. Salvage sales generated approximately $400,000.
>
> "The salvage operations addressed three equally important points. They not only returned those lands back into production sooner, but also reduced the threat of fuels build-up, insect infestation and the threat of catastrophic fires on the lands we manage."

The Superior National Forest staff used every method available in law to address their issues. They remained dedicated to the intent of the National Environmental Protection Act: public involvement and addressing the environmental impacts of their actions. The detail on their response is documented in the publication, *AFTER THE STORM; A Progress Report from the Superior National Forest, July 2002.*

There were obvious differences, however, in the process they had to follow and the timeliness of their response. Comments from Lake County Land Commissioner Tom Martinson are important to our support of the Healthy Forest Restoration Act:

"County and State land management agencies are able to act almost immediately to natural catastrophes because these agencies are allowed to acknowledge the fact that the condition of the forest that they manage has been completely changed. Guidelines normally utilized to mitigate any possible negative impacts of land management activities are often not realistic when the resource that you are committed to protect has already been drastically altered. The Forest Service has been kept from doing its job by restrictions that should not apply in the aftermath of a natural catastrophic event.

"Following a large blowdown event, foresters work tenaciously to set up reduced price stumpage, loggers salvage timber at much reduced harvest rates under dangerous conditions, and mills accept damaged timber for as long after the blowdown as possible. Why don't foresters, loggers and industry just let the blowdown lay and harvest areas that are easier to access and easier to log? The foresters wouldn't have to work as hard, the logger would make more money and work in a safer environment and the mills would receive wood that is of higher quality. These people all make sacrifices after these events because they know what the alternatives might be. The downed wood can act as a breeding ground for insect infestations and disease. After a few years, the blowdown will greatly increase the fuel load which will be a fire hazard. Left as is, the blowdown vegetation will hinder regeneration for many years. Access through these areas is impossible without clearing. Clearing the land after the wood is non-merchantable is very costly.

"In non-federal areas of the forest, blowdown is salvaged as soon as possible. Agencies are paid a reduced rate for their stumpage, loggers are paid for the timber they salvage and area mills have fiber or timber to produce needed products. The local economy benefits from the forest's resources. In a federal area of the forest, when the salvage is delayed, the Forest Service must pay a contractor to push the downed trees into a pile, at a high cost to the taxpayer, where they can be burned. Area mills receive no fiber or timber. The local economy benefits little.

"Biodiversity, Sensitive, Rare and Endangered species, and archaeological sites should not be overlooked or ignored when salvaging blowdown or insect affected or diseased forests. On most public lands and on federal lands especially, most of this resource information of special areas is already available. Outside of these designated areas, immediate salvage should be the top priority.

"Federal foresters can get the job done if they are allowed to realistically assess the condition of the forest after a natural catastrophic event, protect known special resources and salvage affected merchantable timber as soon as possible. The ability to expedite Forest Service response time would benefit local communities and economies, improve access for recreational users and most importantly, greatly improve forest health which benefits everyone."

Problems also arose with small, scattered ownerships, not contiguous with allowed Federal cleanup, as documented by Cook County:

> "Cook County had 300 acres of forest land that was directly hit by the blowdown in 1999. This land was not accessible without going through Federal land. I spent almost two years trying to get access through this land to harvest the county lands. Unfortunately, the system does not allow immediate response to such issues and there was timber that was lost. Any lands that the county had that had access and were affected by the blowdown (72 acres) were immediately addressed. The Forest Service process has too many steps and is not efficient when confronting a disaster such as the 1999 blowdown in the Superior National Forest. Thank you for carrying this information to Washington. Respectfully, Ted Mershon, Cook County Land Commissioner."

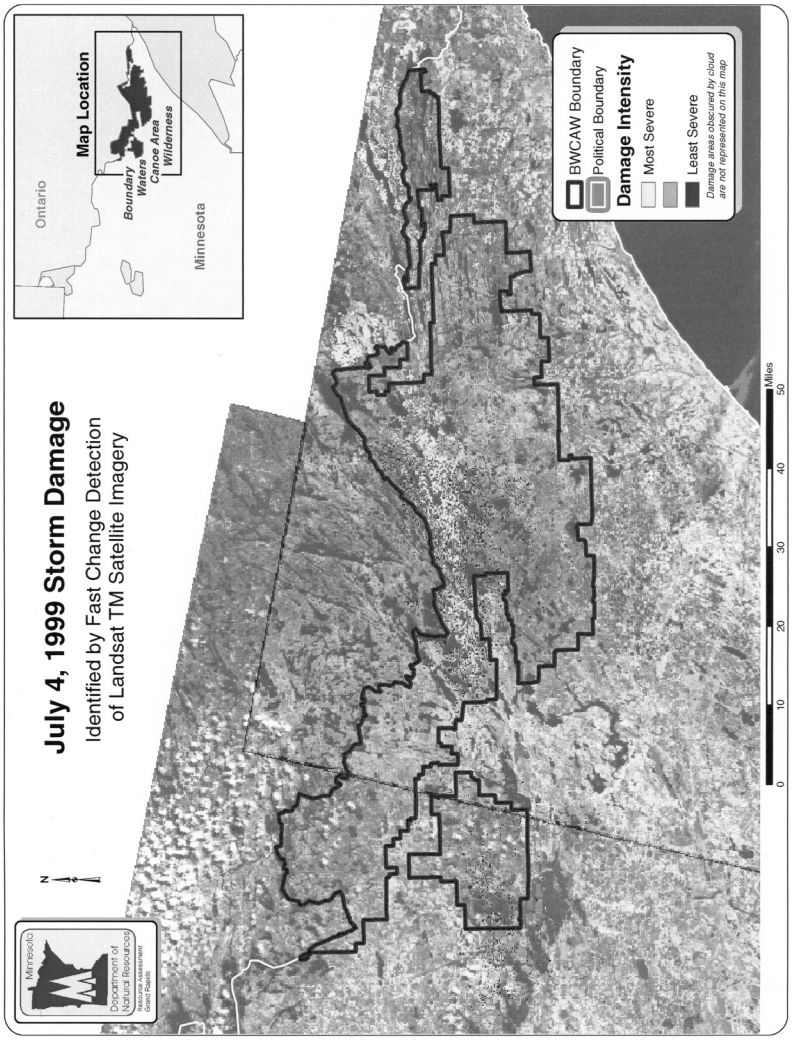
Once again, getting access through the Federal process was allowed for human health and safety response in a small portion of the blowdown, but access delays prevented timely forest restoration of county lands in other parts of the blowdown.

The Federal staff of the Superior National Forest are not to be criticized. They involved the public up front with meetings and tours. Their membership on the Minnesota Forest Resources Council gave them credibility with a wide variety of constituent groups across the spectrum of environmental to industrial concerns. They utilized Minnesota's Voluntary Best Management Practices Guidelines in providing timber salvage sales where operable. They invoked every emergency clause and Council of Environmental Quality decision they could. They produced an EIS for a portion of the blowdown in record time. They were able to treat 3,500 acres in a timely fashion, but it was only a part of the acres they wanted to treat in the same timeframe as the state and county.

In the end, however, mandated timelines and process steps did not modify the required analyses, valuable fiber resources were lost and the cost of fuels reduction and forest restoration went up. The very organizational capacity of the U.S. Forest Service to properly manage the blowdown and cooperate with its neighbors was greatly reduced by its own paperwork and process requirements.

So what are the lessons learned from the Minnesota BWCA blowdown that support the passage of the Healthy Forest Restoration Act?

- Interagency relationships and functional cooperation are critical to responding to catastrophic events, protecting human health and safety, and restoring healthy forest ecosystems.
- Federal process needs to be streamlined to improve the U.S. Forest Service's ability to respond in concert with its neighbors, in a timely and cost effective manner.
- The restoration of healthy forests must include a continuing commitment to actively manage our forest ecosystems. Mother Nature bats first and last!!


Minnesota
Department of Natural Resources
Resource Assessment
Geospatial Services
N
July 4, 1999 Storm Damage
Identified by Fast Change Detection
of Landsat TM Satellite Imagery
Map Location
Ontario
Boundary Waters Canoe Area Wilderness
Minnesota
BWCAW Boundary
Political Boundary
Damage Intensity
Most Severe
Least Severe
Damage areas obscured by cloud are not represented on this map
0
10
20
30
40
50
Miles

Statement of Frederick M. Stephen
University Professor and Interim Head of the Department of Entomology
University of Arkansas, Fayetteville
on behalf of the Society of American Foresters
before the Senate Agriculture Committee
June 26, 2003

Mr. Chairman and members of the Committee, my name is Frederick Stephen and I am University Professor and Interim Head of the Department of Entomology at the University of Arkansas, Fayetteville. I am here today representing the Society of American Foresters. The Society has nearly 17,000 members dedicated to advancing the science, technology, education, and practice of forestry in the United States for the benefit of society at large. One of our core values is sustaining forest resources by simultaneously meeting environmental, economic, and societal goals and constraints. I would like to thank the Committee for inviting me. I am pleased to have this opportunity to testify on the topic of forest insect infestations as they pertain to forest health.

The Society of American Foresters holds the view that forest health is a perceived condition involving consideration of such factors as age, structure, composition, function, vigor, and unusual levels of insect and disease activity. These attributes will vary depending on the values and uses determined for each forest ecosystem. Potentially, forest health involves considering the status of all ecosystem components. Insects and diseases are normal inhabitants of forest ecosystems, but at epidemic levels can have serious impact on the overall condition and resilience of such systems. The SAF believes that appropriate, science-informed, silvicultural treatments can be important in increasing forest biodiversity and health and thereby also reduce the likelihood of occurrence or severity of impact of many forest insect outbreaks and associated events such as devastating wildfire or blowdown, that often follows infestations.

Currently throughout our country, forests in all ownerships are affected by unprecedented and catastrophic insect outbreaks. These outbreaks can have certain dramatic consequences including economic loss, increased risk of wildfire in certain areas of the country, increased risk to human safety, and change in forest structure and composition that may diminish aesthetic and ecological values. I would like to provide a few brief highlights of forest insect outbreaks we currently are experiencing and suggest that additional support of research as well as the transfer of research into on the ground activity would help to mitigate their impact.

Indigenous Forest Insect Pests

BARK BEETLES

When considered as a group, bark beetles are the most significant forest insect pests in our country. Bark beetles include primary tree-killing species such as southern pine beetle, western pine beetle, mountain pine beetle and spruce beetle, plus other secondary species that can be devastating when trees are sufficiently stressed by drought or other factors. This complex of

small, ubiquitous insects is responsible for the death of millions of conifer trees annually across forests of North America, more than are killed by fire, disease and storms combined. Although research and control efforts have been a paramount concern of foresters and entomologists for over a century, simple solutions to their management remain elusive.

In the southern US more than 46,000 bark beetle infestations in pine forests were reported in 2002. Conifer forests of the Rocky Mountain West are currently experiencing outbreaks of bark beetles at levels unprecedented in historical times. These massive outbreaks range from Alaska's Kenai Peninsula where over 90% of the spruce have been killed, through Canada which currently is experiencing the largest epidemic in its history, to the Southwest where the entire distribution of pinion pine has suffered severe mortality. The warm temperatures these regions have experienced over the past several decades have contributed to the increasing devastation of these infestations. If warming continues, the environmental rules that govern forest outbreak insects could also change.

Although each of these forest landscapes across the country is unique, the bark beetle epidemics perhaps share some common features. Most of the devastating outbreaks occur in stands that are overstocked, with mature to over-mature trees, frequently of a single species, and whose normal mechanisms of resistance are challenged by drought conditions and in some cases sequential years of excessively mild winters.

Because of my own research experience I will highlight southern pine beetle (SPB) as an example. The economic, social, and ecological impact of this native beetle is catastrophic across the southern United States. Recent damage caused by this insect exceeds all historical records. The geographic range of the current epidemic continues to expand and new host tree species are being infested. Although previous research and application programs have greatly increased our knowledge base for the insect, is it still inadequate to fully explain the causes for the epidemic or provide acceptable solutions as to how it can be managed. Although SPB-caused tree mortality is always present within the South, it is often isolated and primarily of local concern. In 2002, however, more than 142 million acres of both public and private lands in the southern US were infested with high populations of southern pine beetle. Mild winter conditions, plus drought, continued to provide optimum conditions that favored outbreak of this native forest pest. The epidemic currently occurs across forests in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia on federal, state and private lands. The southern Appalachian Mountains in eastern Tennessee, western North Carolina, South Carolina, north Georgia, and northwestern Alabama continue to be seriously affected. Significant bark beetle activity also occurred in central and southwestern Mississippi on national forest lands.

The duration and extent of the current outbreak throughout the South has generated unified concern and a call for an organized effort to protect the forests of the region. The technical expertise required to plan and to conduct a substantial SPB research and development program is dispersed among the land grant universities and a variety of federal, state, and private agencies and organizations. It is therefore essential that a representative cross-section of the stakeholder community participate in defining the agenda and formulating an action plan for multi-state research. A grant proposal to USDA CSREES, prepared by university scientists, in cooperation with Forest Service scientists, has recently been funded to enable a facilitated Needs Assessment

Workshop on southern pine beetle research and implementation. This workshop, planned for August 2003, will address these issues.

Catastrophic population outbreaks of other conifer-infesting bark beetles, the western pine beetle, mountain pine beetle and spruce beetle are ravaging forest in the western US, Canada and Alaska. The overall damage from these insect outbreaks is greater than at any time in history.

It has been demonstrated that prudent forest management and stewardship can lower the risk of unacceptable loss of property and resource assets due to insect infestations through various silvicultural prescriptions. As mentioned above many of the conditions that favor bark beetle outbreaks are those, which are associated with long periods of little or no management of forests. When stands are single-species, single-aged, overstocked and over mature, the bark beetle hazard becomes increasingly high. It has been cynically said of this condition in some of our southern forests "we don't have an outbreak of southern pine beetle, but rather an outbreak of pine... and the southern pine beetle is just doing its best to bring that under control." A healthy forest is a sustainable forest and one that generally is less subject to drastic outbreaks of insects or disease.

Forest entomologists have served as leaders in exploring ecological approaches to management of insect pests. University led teams of bark beetle researchers have made significant and pioneering discoveries on the role of behavioral chemicals in bark beetle biology. These studies have been accomplished with all of the major bark beetles throughout the United States. Research with bark beetle pheromone systems has yielded promising new tools for monitoring and managing these pests. More collaborative work of this sort, in partnership with federal and state agencies is needed. Other university and Forest Service scientists (including my research team at the University of Arkansas) have developed sophisticated computer-based population dynamics models to predict the course and impact of bark beetle infestations. Subsequent collaborative research among other universities and the Forest Service has extended this approach into GIS-based applications that use sophisticated equipment for information gathering and processing to enable data-rich decision-making in forest management situations. Another example of research that may lead to a novel pest management tactic for the southern pine beetle is research that we have conducted in partnership with private industry and Forest Health Protection. We have developed an artificial food supplement for bark beetle parasitoids, intended to augment natural food sources for these beneficial insects, to increase the natural control of bark beetle populations and minimize outbreaks.

OAK DECLINE AND THE RED OAK BORER IN THE OZARK MOUNTAINS

A variety of hypotheses exist for the cause of the current oak decline and mortality in the forests of the Ozark Mountains. Oak decline is a widespread disease complex in the southeastern United States that may affect well over 3 million acres of oak forest in 12 states. Predisposing factors apparently important in the Ozark Mountains are tree age, prolonged drought, poor soils and low site quality. Inciting factors are thought to be acute, short-term drought stress. Contributing factors have been postulated to include defoliation and boring from secondary insects, root diseases and cankers The relative importance of oak decline in the current red oak borer outbreak is at present unclear, although most 'opinion' seems to favor the idea that high densities of over-mature oaks in combination with recent drought conditions are most important. It seems evident,

however, that conditions in the Ozarks are somewhat unique, as no other oak decline event has ever had red oak borer as such a primary cause of tree mortality.

The red oak borer is an insect species that is native to eastern North America. It attacks living oak trees and preferred hosts are those in the red oak group (i.e. northern red oak, black oak, scarlet oak, shumard oak, post oak, and pin oak). Until recently little attention was paid to this insect because red oak borer attacks normally occur at sufficiently low densities that tree mortality seldom results. However the current outbreak of this insect and the tree mortality of unprecedented magnitude now occurring throughout the oak forests of Arkansas, Missouri and Oklahoma have quickly changed that.

Surveys on the Ozark National Forests of Arkansas and Missouri show that red oaks make up approximately 46% of the hardwood component. Extensive oak mortality was first detected in 1999, and preliminary estimates of the extent of damage are indeed sobering. Roughly 33 percent of the area in the Interior Highlands, where oaks that are 70+ years old dominate stands, is potentially at risk. We conservatively estimate that 33 percent of these trees are severely affected. The dollar value at risk, in timber value alone, exceeds $1.1 billion and certainly the impact on wildlife, tourism and other values would dramatically inflate that figure. The direct impact on the local economies would include losses of jobs in logging, mills and companies making hardwood products. There would also be losses to companies that provide equipment and supplies to these industries. A loss of 2,200 jobs in the logging and milling industries is anticipated. The oak decline - red oak borer complex is the greatest threat to the oak component in the Interior Highlands in recent history. And this is from a native insect never before considered anything other than a minor concern in forests!

Previous research conducted in the 1970's and 1980's that examined more than 1000 trees found that most trees experienced less than 5 attacks with only about 1 beetle emerging per tree. We currently are conducting research at the University of Arkansas, in cooperation with scientists at the University of Missouri, Arkansas Forest Resources Center and USDA Forest Service, on red oak borer infestations in the Ozark National Forests of Arkansas and Missouri. Our preliminary studies reveal an average of more than 2000 attacks per tree and from 200 to 300 emerging adults from each of those trees. The densities of attacks, and emerging adults we find are so dramatically higher than any published records that they suggest the most serious and visible problems from this insect outbreak are yet to be experienced.

In Arkansas our current red oak borer research is designed to produce a GIS-based on-line system housed at the University's Center for Advanced Spatial Technology that will enable real-time mapping of forest stands with highest probability of red oak borer damage. We also are developing sampling methods to permit evaluation of the current cause of the red oak borer population explosion and prediction of the course of the epidemic. We are working in partnership with the Forest Service to determine and map the extent of the infestations. Other studies we have initiated will examine the molecular genetics of this insect to see if the populations we have in Arkansas differ from those in other parts of the US where red oak borer outbreaks are not occurring. Further research will examine site, stand and ecological factors that influence the distribution and abundance of red oak borer in the forest, and the impact of those factors of oak resistance to attacking borer larvae.

The SAF believes that more information is needed to quantify the extent of damage and the effects upon the multiple and diverse forest resources that we value as a society. We need to discover what can be done to retain a red oak component in the current and future forest of the Interior Highlands. From a research perspective, we must determine what factors are most responsible for this unprecedented outbreak, and target activities related to utilization, restoration, salvage, effects on wildlife, watershed impact and fire hazard. Research by university and federal scientists that address these and related concerns might forestall the degradation and loss of a dominant species group in the Interior Highlands forest over the next century. Currently resources are not adequate to address this crisis.

Exotic forest insect pests

Many forest insect pests that become significant disturbance factors in our forest ecosystems are exotics; species from other parts of the world that become established in our forests without the normally controlling factors that minimize their impact in their native habitats. Important examples of such introduced pests are smaller European elm bark beetle (the vector of Dutch Elm disease fungus) gypsy moth; hemlock woolly adelgid, and more recently pine shoot beetle, Asian long-horned beetle, and emerald ash borer. The catastrophic impact to our forests (ecologically and economically) that results from accidental introduction of such pest species cannot be minimized. Biological control of these exotic species may be possible but will require a significant research commitment, highlighted by careful search for effective natural enemies that can reduce pest populations without harm to our native flora or fauna. Control and mitigation of some of these species is often possible through various silvicultural practices aimed at improving forest stand conditions that will reduce the risk of insect infestations. Research partnerships among scientists from land grant universities and federal and state agencies have, and continue to contribute to successful biological control and silvicultural treatment projects that address these issues.

GYPSY MOTH

The gypsy moth is originally from Europe, and was introduced into the northeastern US well over 100 years ago. The range of gypsy moth has continued to spread, and every year isolated populations are discovered beyond the contiguous range of the gypsy moth. It is inevitable that gypsy moth will continue to expand its range in the future. Its host range is extensive and it will feed on the foliage of hundreds of species of plants in North America but its most common hosts are oaks and aspen. Gypsy moth hosts are located through most of the US but the highest concentrations of host trees are in the southern Appalachian Mountains, the Ozark Mountains, and in the northern Lake States.

Gypsy moth populations are typically eruptive in North American forests. When densities reach very high levels, trees may become completely defoliated. Several successive years of defoliation may ultimately result in tree death. In most northeastern forests, mortality is often less than 20%, but occasionally much greater tree mortality may occur, especially in areas where the oak component is much higher (e.g. the Appalachian region). A major concern is the potential loss of economically critical and ecologically dominant oak species. Most studies that relate changes in forest composition to gypsy moth defoliation indicate that less susceptible

species such as maple will eventually dominate those forests. The long-term consequences of such change may be very undesirable.

In the past 25 years more than 65 million acres have been defoliated by gypsy moth, with suppression costs of at least $650 million dollars. This does not include costs for detection or eradication, which probably exceed $5 million per year.

HEMLOCK WOOLLY ADELGID

Hemlock woolly adelgid (HWA) is an exotic pest first found in the eastern U.S. in Richmond, VA in the early 1950's. It was an innocuous pest until the 1980's when populations exploded and started killing hemlock trees. The pest continues to spread (north, west, and south) and now inhabits 35 - 45% of the range of eastern hemlock. HWA infestations most often result in tree death within 4 - 8 years. Some trees live longer, and some geographic areas have been less impacted, but overall tree mortality has been devastating. Hemlocks are a keystone climax species in many forest habitats, and an important association tree in 19 forest types when not the dominant tree. Hemlock was heavily logged until the 20th century and is now found in riparian areas, ravines, and north facing slopes, often in pure or mixed stands. It is also one of the few tree species in the East to have any trees older than 400 years, many of which have already died. Perhaps the most critical aspect of this tree's demise is that there is no tree species in the eastern forest that can fill the ecological niche that hemlocks provide. In forest ecosystems, the only hope for managing HWA is through biological control. Research pioneered by teams of scientists at universities and federal agencies are continuing to explore the intricacies of this system. A complex of predators is being imported from the native range of HWA in Asia and in western North America with hope of lowering HWA populations.

EMERALD ASH BORER

Another introduced species, the emerald ash borer (EAB), was detected in Michigan and Ontario in 2002 and in Ohio in 2003. This species, originating in Asia, has since killed over 6 million ash trees in Michigan and another 700 million are at risk. Michigan, Ohio, and Canada have now enacted quarantines aimed at stopping the human-assisted spread of EAB. Federal and university scientists, in both the U.S. and Canada, are cooperating to investigate EAB life history, biology, and management strategies. Additional research on survival in logs and chips, survival in firewood, and molecular comparison between North American and Asian EAB populations is underway. Given that EAB has successfully attacked all species of native ash growing within the infested areas of the U.S. and Canada, it would appear that the entire North American ash resource is at risk from EAB attack.

Conclusion

Obviously not all insect infestations are a result of introduction of exotic pest species. Forests are not static, and as stands change in tree species composition, density, age structure, and tree vigor the success and dynamics of insect and disease can be remarkable. These biotic changes may be coupled with the impacts of drought and temperature and serve to enable dramatic increases in insect abundance, often with serious consequences for forest health.

Research is also needed to determine the implications of certain management techniques on insect infestations. Some studies have shown that various silvicultural methods may be effective

deterrents or mitigating agents but additional research is needed to determine how these tools can be used in the context of the differing insects that are infesting our forests. Prudent forest management leading to healthy, sustainable forests requires greater investments in research and monitoring. Increased research effort is critically needed to obtain new knowledge on how to develop and maintain healthy forests. Investments must be made to monitor suitable indicators of forest health to enable effective adaptive management.

A frequent concern of my colleagues in universities who seek and compete for research funds to develop effective management strategies for the forest pests discussed above is that all too often resources only become available when pest outbreaks reach catastrophic levels. This funding frequently is highly directed in scope and short-term in nature, instead, funding must be allocated for coordinated projects of multi-year duration. Research that is effective in addressing the complex problems facing forest managers must be collaborative in nature and address basic underlying causes. This research will be inadequate if it is only conducted during insect population epidemics. We must be able to develop more long-term studies that permit a team approach to investigations that continues through cycles of high and low population, conditions. Too often, as soon as epidemics collapse, no money is available for research until the next outbreak. This is a primary reason research into forest pest problems is fragmented and scattered, despite the many fine scientists who devote their careers to such investigations.

In summary, I believe that we are facing insect outbreaks that may result from unhealthy forest conditions and which are further incited by such climatic factors as serious drought. It is essential that we realize the complexity and uniqueness of these insect epidemics as well as their commonality. To successfully manage such problems will require greater support of research by university and other scientists to effectively acquire knowledge of the basic causes and underlying reasons for these problems. Continued support will then be necessary to extend this knowledge into ecologically and economically effective integrated pest and forest management systems.

In addition to addressing research needs, there are certain actions Congress and the Administration can take to give forest managers the tools to improve conditions on the national forests and private lands and address these insect infestations and other forest health issues, while maintaining both environmental protections and public participation. Forest managers need to be able to apply the information and knowledge developed through research to manage and protect the nation's forests from such catastrophic, uncharacteristic outbreaks as we are currently experiencing. The Society of American Foresters is encouraged by the efforts taken to this date made through the 2002 Farm Bill and the Healthy Forests Initiative. However, a long-term solution that would change both regulations and laws is needed for both public and private lands. We will continue to offer our support to address questions and concerns.

Thank you again for the opportunity to speak here today. I'd be happy to answer any questions.

Prepared Statement for the Record

of Tom Nelson
Director of Forest Policy for Sierra Pacific Industries
on behalf of the American Forest and Paper Association

Before the
Agriculture, Nutrition, and Forestry Committee
United States Senate

June 26, 2003

INTRODUCTION

Good morning Mr. Chairman. My name is Tom Nelson. I am the Director of Forest Policy for Sierra Pacific Industries in Redding, California. My testimony today is on behalf of the American Forest and Paper Association (AF&PA). AF&PA is the national association representing forestland owners, manufacturers of solid wood products, and producers of pulp and paper products. The U.S. forest products industry had sales of over $213.2 billion in 2002 and employed 1.7 million people, more than one percent of the U.S. work force.

AF&PA members are committed to sustainable forestry for all forestlands, public and private, softwood and hardwood, eastern and western. Forest products companies and their employees have a direct interest in the management of American forestlands, both public and private. Our members recognize that actions on federal lands, or the lack of action, can and do affect neighboring private lands, and many of them have had first-hand experiences with the devastating effects and helplessness of watching catastrophic fire, disease or insects spread from poorly managed public lands onto their bordering private lands. The forest products industry supports the important environmental values – clean air, clean water, and wildlife and fish habitat – that are associated with our nation's forests. Our interests go beyond these values in that we also support viable communities and the social and economic benefits from wood fiber that can be removed as a result of treatments to improve forest health. The first priority for federal lands must be restoration of healthy forests.

OUR FOREST HEALTH CRISIS

Our nation faces a severe forest health crisis. Fire and small levels of insects and disease are a natural part of a healthy ecosystem, but our federal forests are not healthy and therefore the fires and insect and disease epidemics that we are seeing today are unnatural and widespread. Whether it is raging fires, ravaging insects, or mysterious pathogens that threaten to wipe out entire species, not a single region of the country, nor any person in it, is being spared the devastating economic and environmental consequences of this forest health crisis. National forest policies have served to exacerbate, rather than solve, the problems. The practice of fighting every wildfire, coupled with a passive forest management philosophy, has created and exacerbated this monumental crisis. Federal land managers are unable to actively manage our forests to address the problems. My

testimony today is intended to highlight the current crisis, the urgent need for legislation, and the key elements that should be included in that legislation.

There are currently 190 million acres of federal land at high risk of catastrophic wildfire and insect and disease due to unhealthy forest conditions. Of that, the National Forest System is home to more than 72 million acres at high risk of catastrophic wildfire, and more than 26 million acres at high risk to insect infestation and disease. Unfortunately, these risks do not stop at property lines. They affect millions of acres of private lands that are adjacent to high-risk public lands.

The effects of wildfires are disastrous and far-reaching. The wildfire seasons of 2000 and 2002 were among the most destructive fire seasons in the last half-century. In 2002, forest fires burned nearly 7 million acres at a cost to federal land management agencies of over $1.6 billion. Since 2000, South Dakota, Oregon, Arizona and Colorado have each experienced the largest wildfires in their respective history. The impacts are far-reaching: loss of lives and homes, displacement of communities, loss of tourism dollars, destruction of wildlife habitat and watersheds, and damage to timber and non-timber resources. The events of the past few summers have provided us with numerous examples of just how devastating wildfires and other natural events can be:

- Between June 18 and July 7, 2002, the Rodeo and Chediski fires burned over 462,000 acres combined, making it the largest wildfire in Arizona history. Fire suppression costs exceeded $40 million, more than 30,000 people were evacuated, and 470 structures were destroyed. The fire burned habitat for federally listed species, and erosion and sedimentation threaten to impact three important fisheries. An estimated 300 million board feet of timber were damaged or destroyed.

- The Hayman fire in 2002 was the largest wildfire in Colorado history. The fire burned more than 137,000 acres of public and private lands within 20 miles of the Denver and Colorado Springs metropolitan areas. High winds and dense fuels caused the fire to spread rapidly, burning 19 miles in one day and spotting distances of over one mile. More than 38,000 people were evacuated from their homes. The Cheesman Reservoir watershed, an integral part of the Denver municipal water supply system, suffered the highest burn severity from the Hayman fire, and created the potential for dangerous flooding and erosion. Subsequent storms have already caused flooding which has dumped massive amounts of silt into the South Platte River, killing trout in one of the West's premier trout streams and severely impacting summer tourism revenue.

- The Biscuit fire of 2002 burned almost half a million acres in Oregon and California. Based on an assessment by the Forest Service, some of the greatest impacts of the fire were to federally-listed species and to the timber on the national forests. The fire burned through several Late Successional Reserves set aside for northern spotted owl habitat, destroying 49 activity centers and 11 nests inside the fire area.

- The blowdown that occurred both within and outside of the Boundary Waters Canoe Area Wilderness (BWCAW) in Minnesota in July of 1999 is a classic example of inaction that has created a crisis. Outside of the wilderness area, private landowners were clearing their lands of downed trees by the next day. County and state land managers were cleaning up within the next

few weeks. The Forest Service was able to get a "special arrangements" exemption from CEQ to treat a small federal land area outside the BWCAW, but even with that arrangement, the Forest Service cleanup did not begin until winter 1999. Inside the BWCAW, an EIS was required to treat the situation and took 18 months to complete. Even now, four years later, little of the cleanup on the federal lands has been accomplished, and Minnesota is faced with thousands of acres at significant risk of catastrophic wildfire and insect and disease.

And, as we sit here today, a wildfire is raging in Arizona, just outside Tucson. The Aspen fire has already burned over 19,000 acres and destroyed hundreds of homes and other structures. It struck in one of the worst possible places: close to communities, in difficult terrain, and in a forest suffering from years of drought, the ravages of bark beetles, and decades of no forest thinning or management. Yet there are hundreds of areas around the country with similar conditions where this fire could be taking place, and hundreds of communities that consider themselves lucky that it's not them. We need to rely on more than luck to get us through this summer's fire season – we need action.

Many parts of the country that are not normally prone to catastrophic wildfire concerns – including most of our Eastern forests – are becoming increasingly concerned that the combination of years of mismanagement on our federal forests and increasing fuels from insect- and disease-driven mortality may eventually come together with unusual drought conditions to create the kind of forest infernos in the East that are increasingly ravaging the West each year. With much higher population densities in most of the East, the economic and social consequences of such a scenario could be much greater than even those already witnessed in the West.

As already eluded to, our forest health crisis is not simply one of wildfires. Insect and disease outbreaks are devastating forests around the country, as the following examples illustrate:

- In California, forest lands within the Angeles, Cleveland, and San Bernardino National Forests are suffering from the largest bark beetle infestation in the last 50 years. The beetle epidemic, the result of overstocked stands and drought, has killed trees on 400,000 acres. The resulting fire danger has prompted fire safety officials from the California Department of Forest to suggest that parents not send their children to area summer camps this year.

- The Daniel Boone National Forest in Kentucky experienced Southern Pine Beetle (SPB) outbreaks starting in 1999 and continuing through 2001. Efforts to control the spread of the SPB were delayed by excessive paperwork and appeals, allowing the devastation to quickly spread. More than 100,000 acres – 80% – of pine forest were lost to SPB damage on the Daniel Boone. These pine forests had provided habitat to the federally endangered red cockaded woodpecker; as a result of the SPB outbreak, fifteen of these rare birds had to be captured and relocated to other states where pine habitat was unaffected by SPB. The forest is now faced with thousands of dead pine trees across the landscape, creating hazards and providing little or no habitat for an endangered species.

- In Arkansas, a recent unprecedented outbreak of Red Oak Borer has infected 800,000 acres of federal and non-federal forestlands. The Forest Service estimates that 50% of the red oak population in the Ozark Mountains is infested by the red oak borer. Many scientists believe that

this pest has spread due largely to over-mature and stressed trees coupled with poor management and inaction on public lands, a situation that will be seen over and over again throughout many eastern communities in the near future if preventive action in not taken now.

- As just one example of the many forest disease problems throughout the country, Oak Wilt is one of the most aggressive and serious tree diseases in the eastern United States, killing thousands of oaks each year in forests, woodlots, and home landscapes. These are trees that are known for their significant wildlife, commercial, and aesthetic value.

The fires and insect and disease epidemics are merely symptoms of deeper, underlying problems. The fact is our national forests are overstocked, with growth far exceeding current harvest levels. As a result, with each passing year the national forests become more overstocked and are at increasingly higher risk of fires and insects. We must look beyond the immediate fire and insect and disease crises to develop strategies that will reduce our forests' long-term risks.

There is ample evidence that well-designed forest management strategies can help. A recent report compiled by Forest Service Research Scientists[1] concluded that "treatments to reduce fuels can significantly modify fire behavior and severity and reduce environmental damage caused by fire." Further, the scientists found that treatments to reduce surface fuels will tend to reduce damage to soil, water, and air quality, and that thinning designed to reduce tree crown density will reduce the probability that trees are killed or severely burned.

The strategies must also recognize that mechanical treatments, with removal of trees and brush, will be an integral part of the solution. A recent study by the Forest Service indicates that in New Mexico, comprehensive treatments to reduce fuels hazard can reduce the risk of crown fires and on the average pay for all treatment and haul costs with the value of the timber removed.[2] On a national scale, the costs of preventative work through treating forests with high risks of wildfire and insects and disease will likely be much less than the enormous cumulative costs of suppression of catastrophic events. It makes little sense to remove wood fiber from the forests and not obtain the direct and indirect economic benefits that the fiber provides to communities, businesses, and individuals. We are encouraged by the Administration's call for an increase in public/private partnerships, whereby the private sector and the federal agencies can work better together to efficiently and effectively treat the vast problems in our forests.

However, the Forest Service must be able to develop and implement these strategies efficiently. According to The Process Predicament, published by the Forest Service in June 2002, an estimated 40% of the total direct work at the national forest level is consumed by planning and assessment. A single project can take years to move forward and planning costs alone can exceed $1 million. Even non-controversial projects often proceed at a snail's pace. The Forest Service estimated that improving administrative procedures could shift up to $100 million per year from

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[1] Influence of Forest Structure on Wildfire Behavior and the Severity of Its Effects. May 29, 2003. U.S. Forest Service. Edited by Dr. Russell T. Graham and Dr. Sarah McCaffrey, USDA Forest Service.

[2] Fiedler, Carl E., Charles E. Keegan III, et. al. "A Strategic Assessment of First Hazard in New Mexico." February 11, 2002. A report submitted to the Joint Fires Sciences Program in cooperation with the USFS Pacific NW Research Station.

unnecessary planning to actual project work to restore ecosystems and deliver services on-the-ground.

The risks and effects of catastrophic wildfire are not confined to public lands. On the contrary, they spill over onto private in-holdings and onto adjacent homes and structures that are outside of the wildland- urban interface. For example, I have attached a map showing ownership patterns in California – specifically, the private lands owned by our company (Sierra Pacific Industries) and the neighboring federal lands. You will note that these two ownerships, as is common throughout the Western United States, are intertwined and intermingled. Private forest products companies, like ours, as well as non-industrial forest landowners have aggressively tried to reduce the risks of catastrophic wildfires on their own holdings for many years, largely through the use of thinning. However, these efforts cannot be effective without the cooperation of our federal neighbors, since wildfires do not recognize property boundaries. The practice of thinning to reduce the potential for stand-replacing crown fires works. Everyday, our foresters see more and more examples of the effectiveness of thinning to reduce the effects of catastrophic wildfires and substantially aid in the success of firefighting operations. In California near our lands, the Goat Fire, Stream Fire, and many others are recent examples of the role that forest thinning plays in fire control successes. Harvesting of trees played a major role in containing and reducing the effects of each of these wildfires.

DEVELOPING SOLUTIONS

Two initiatives that offer promise are the National Fire Plan and the Healthy Forests Initiative. The National Fire Plan advocates a new approach to wildland fires by shifting emphasis from the reactive to the proactive – from attempting to suppress wildland fires to reducing the buildup of hazardous vegetation that fuels fires and treating areas infested with insects and disease in a timely manner. Unless the fuels buildups are reduced, the number of severe wildland fires and the costs associated with suppressing them will continue to increase. The National Fire Plan establishes a framework to restore and maintain ecosystem health in fire-adapted ecosystems, focusing on 1) improving the resiliency and sustainability of forests, 2) conserving priority watersheds, species and biodiversity, 3) reducing wildland fire costs, losses, and damages, and 4) better ensuring public and firefighter safety. In 2002, Hazardous Fuels Reduction projects were implemented on 1,258,000 acres of national forest lands.

As part of the Healthy Forests Initiative, the Forest Service is reevaluating their tools and processes, and working to reduce the effects of "analysis paralysis." The Forest Service is streamlining their own internal administrative procedures, reducing the number of overlapping federal environmental reviews, simplifying their administrative appeals process, and providing new rules for categorical exclusions for small vegetation management projects.

But more needs to be done. As part of their decisionmaking, the Forest Service must accept public input. The maximum benefit to all parties will come from comments that are submitted during the analysis process, when the Forest Service can consider them prior to making a decision. Too often, groups use the appeals process after a decision has been made, to delay on-the-ground implementation. This is not a constructive use of the process. According to the General Accounting Office's recent review, appeals held up treatment on nearly 1 million acres in FYs 2001

and 2002, including 52% of the thinning projects proposed near communities. While resolving an appeal in three months may sound reasonable, in many parts of the country a three-month delay automatically delays a forest health project by 12 months because the operating season is short and the Forest Service has to wait for the next season to enter the woods and accomplish those projects.

THE NEED FOR LEGISLATION

Our forest health crisis cannot be ignored. The costs of inaction are staggering. Active forest management, including prescribed fire and timber harvesting, is needed to restore our national forests to health. President Bush has taken several actions to address the problem, including establishing categorical exclusions for fuels reduction and restoration projects. While these administrative actions are positive steps in the right direction, legislative action is also needed. And while the National Fire Plan has provided a framework for coordination across federal agencies and non-federal entities, legislation can provide a mechanism for implementing the goals of the Plan and addressing forest health issues across the nation.

The House of Representatives recently passed the Healthy Forests Restoration Act of 2003 (HR 1904), which provided a strategy for ensuring that critical on-the-ground projects are undertaken in a timely fashion to restore forest health. As the Senate moves forward on developing legislation, we encourage you to consider the following key elements:

- We need procedures that allow Federal land managers to expeditiously implement hazardous fuels reduction projects on federal forests and rangelands in critical areas, including areas that threaten communities and areas at high risk for catastrophic wildfire or insect and disease infestation. Federal land managers cannot take several years to get critical hazardous fuels reduction projects accomplished. Congress should allow agencies to take a more efficient approach to NEPA documentation, and allow for expedited handling of administrative and judicial challenges. It is critical that public participation be encouraged, but that this participation is provided early and in a meaningful way.

- While protecting communities and homes is a critical need, efforts to restore the health of our forests cannot be restricted simply to the forests within an area arbitrarily defined as a Wildland-Urban Interface (WUI). As last summer's wildfires so pointedly demonstrate, major forest values, such as wildlife habitat and water quality, are at risk from uncharacteristic fire outside of the WUI. Protection of watersheds and wildlife throughout the forests are important. Moreover, homes and businesses within the WUI may be severely threatened by conditions some distance outside the area where a catastrophic wildfire may originate. As such, healthy forests legislation has to address planning and implementation at the landscape level. The focus of our forest health efforts should not only be on protecting houses, but on protecting ecosystems as well.

- We are seeing unprecedented outbreaks of insects and disease across the country, causing damage to millions of acres of our forestlands each year. The damage caused by these outbreaks leads to a decrease in biological diversity, dangerous accumulations of hazardous fuels, and significant economic loss. In the not so distant past, we saw widespread environmental and economic damage from epidemics like Dutch elm disease and American

chestnut blight in the early 20th century that wiped out entire species. These kinds of threats still persist today and cannot go unaddressed. We need ongoing research and an accelerated federal treatment program to halt the spread of these outbreaks. We need legislation that would allow critical research projects to proceed without needless delays, and enable active forest management to slow the rapid spread of existing pests and pathogens, while also improving our ability to identify, isolate and eradicate new threats before they reach epidemic proportions.

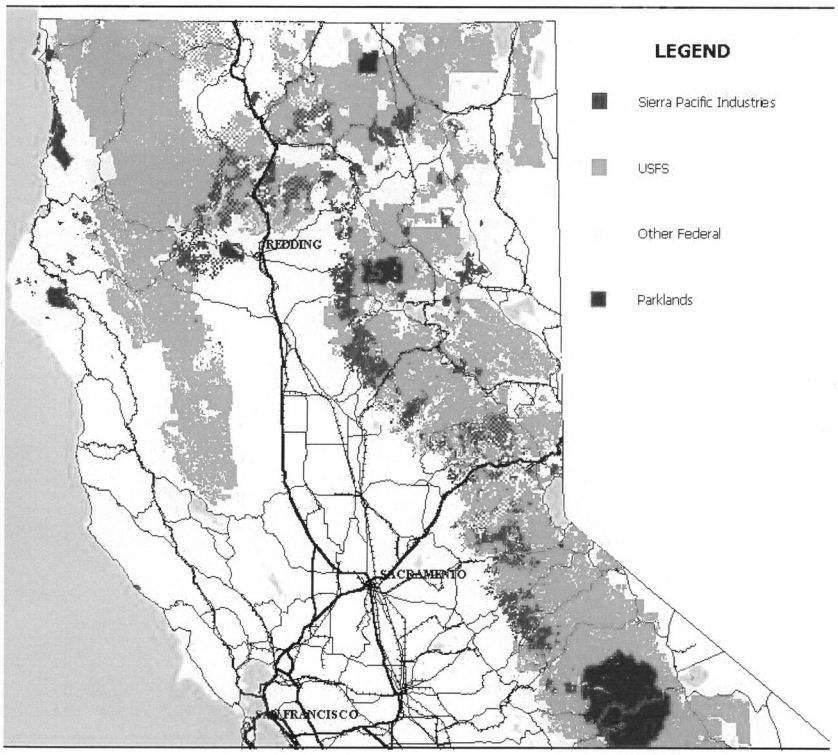
- It is critical to involve states and private landowners in our efforts to protect forest health. The creation of a Watershed Forestry Assistance Program would provide states and landowners with technical and financial support in their efforts to protect water quality, restore watershed conditions, improve municipal drinking water supplies, address threats to forest health, and monitor best-management practices. As we expect all landowners to provide these values for our society, we should at least be willing to help them do so by providing basic assistance in these areas.

- Our efforts to restore the health of our forests will come with a price tag. The government will spend millions of dollars to reduce excess fuel loads from federal forests. However, the government can use this opportunity to help develop markets for the raw materials and help offset this cost. Market incentives or grants would encourage the utilization of otherwise low valued materials that result from thinning projects. To make this viable, the federal agencies must also demonstrate a predictable, sustainable supply of materials, and provide feasible strategies, such as long-term contacts or grants programs, to encourage non-government entities to get involved in forest restoration efforts. Technologies currently exist, and others are under development, to generate power in rural areas from low-grade wood and agricultural waste that could be available from forest thinning projects. Small investments through federal grants could make these and other users of this low-grade material viable business propositions now and into the future.

CONCLUSION

Years of fire suppression and passive management have created a crisis on our federal forests. Millions of acres of federal forests are unhealthy and out of balance with their historic fire regimes. These forests have an over accumulation of fuels and are at increased risk from fire and outbreaks of insects and disease. There is no easy solution that will quickly restore our federal forests, but there are steps that can be implemented now to begin to address the problem. Aggressive action must be taken to reduce hazardous fuels both within the wildland urban interface, in order to protect communities, as well as across landscapes beyond the interface, to protect values such as wildlife habitat and water quality. It is critical that Congress pass legislation this summer that allows our federal land managers to expeditiously move forward with on-the-ground projects that restore balance and health to our federal forests, recognizing that "one size does not fit all" for types of treatments and locations . We cannot afford to wait for more insect and disease outbreaks or another expensive and disastrous fire season to occur.

AF&PA looks forward to working with this Committee and others to help develop solutions to address the growing threats to our nation's forests. Thank you for the opportunity to testify, Mr. Chairman. I would be happy to answer questions from the Committee.


LEGEND
Sierra Pacific Industries
USFS
Other Federal
Parklands
REDDING
SACRAMENTO
SAN FRANCISCO

Statement of Jacquellin (Jackie) L. McAvoy
Councilmember, City of Post Falls, Idaho
Board Member, Idaho Women in Timber

Before the U.S. Senate Committee on Agriculture

June 26, 2003

On the Healthy Forests Restoration Act of 2003

Good morning. I am Jackie McAvoy, Councilmember of the City of Post Falls, Idaho and Board Member of the Idaho Women in Timber. Thank you Mr. Chairman and members of the Committee for inviting me here today to testify on an issue that is critically important to me, to my fellow Idahoans, and to the people across this country who live in states with significant forest health and fire risk challenges. I am not a scientist or a forester, but I am an Idahoan who is concerned about the health of the forests within the boundaries of my state. In that capacity, I am honored to be here to express my full support for HR 1904, the Healthy Forests Restoration Act.

Idaho, the beautiful state that I call home, is covered by over 22 million acres of forestland. Seventy-three percent of Idaho's timberlands are in the national forest system. Timber harvest activities in my state have declined eighty percent since 1990, resulting in extremely poor forest health conditions on many of Idaho's national forests. For example, national forests in Idaho are thirty-five percent more dense than other forest ownerships in the state. This increased density leads to increased competition for water, sunlight and nutrients making these forests more susceptible to insect and disease outbreaks and increased fire risk. Almost twice the number of trees die on national forests in Idaho than on other forest ownerships, and that buildup of dead trees increases the fuel load in the forest, and with it the potential for severe wildfire. And

finally, lethal fire potential – or fires that kill whole forests – has tripled on federal lands in Idaho and Montana.

Today, the focus is on Arizona. Tomorrow we'll read about Spokane, WA, or Lake Tahoe, CA or Carson City, NV, or Idaho City, ID. The list is long. The challenge is huge. Lest we forget the 2002 fire season - **almost seven million acres burned; 1,800 homes lost; $1.97 billion to fight and 20 firefighters dead.** Things must change, and they must change now.

Last month I was here in Washington, D.C., along with twenty-five members of Federated Women in Timber. We visited with legislators, federal agencies and others about forest-related issues that concern the rural forested communities in the eleven states that have Women in Timber groups. During our discussions, we raised the very serious insect infestation and fire risk problems that impact the health of our nation's forests. At every meeting we stressed our concern over the very real possibility that catastrophic fires would blaze across the nation before any legislation to speed the forest thinning work that must be done to reduce the threat of insect outbreaks and devastating wildfires could be adopted. That fear has become a reality as we watched the Aspen fire torch more than 11,000 acres and 250 homes near Tucson, Arizona. The severe insect and disease problems in Arizona's dense national forests have provided the perfect conditions for this year's first forest casualties – and yet another sad example of a forest management system that is horribly broken.

I brought with me today some Douglas-fir bark beetles and western pine beetles gathered from national forestland in my state. These critters are responsible for destroying hundreds of thousands of acres of forestland in Idaho, as they have in other parts of the country – especially the southeast and southwest. I also have with me some bark samples that show the galleries made by these beetles. Beetles chew these galleries all the way around a tree cutting off the tree's ability to take in water and nutrients, which ultimately kills the tree.

An ice storm severely damaged trees on the Idaho Panhandle National Forest in northern Idaho in 1997 generating an explosion of the population of Douglas-fir bark beetles. Scientists say that the beetles are always in the woods but when trees become stressed, the beetles sense it and the population increases, killing thousands of the trees. I have a friend who is a log-scaler at a mill not far from my home. Last week I was talking to her about trees that had been brought to the mill last year -- beetle-killed trees that died in 2001. She told me the logs were so damaged by the beetles that only 50% of the logs were merchantable. She said that if the trees had been harvested sooner after the trees died, they would have been more valuable.

Mr. Chairman, I want to thank you for making a recent trip to visit the pine-beetle infested forests near Elk City, Idaho. I have friends who live in that small community. They have been concerned for years about the health of the Nez Perce National Forest and the fire risk the beetle outbreak brings. Last year Idaho Women in Timber spent one full day touring the forest looking at the tremendous damage done by the western pine beetle. The forest was a sea of dead red trees. The folks who live in Elk City have only one way in and one way out of town. If a wildfire starts in their area, they know their lives are in danger as well as their homes and businesses. It's a fear they live with every day. They know action must be taken soon.

I recently became acquainted with folks who live in the southeastern part of the U.S. We have discussed HR 1904 at length. It is interesting to me that, though our forests are very different, we still have the same concerns regarding the need for forest management. These folks agree that this legislation will allow the Forest Service to address insect problems in a timely manner. They care about this issue. They know that without responsible management on federal lands surrounding private forestlands in the south, a private landowner's effort to maintain a healthy forest that provides habitat for wildlife may be for naught.

Catastrophic fires not only destroy wildlife habitat, watersheds, forest soils, and homes and property, they also create health problems for the communities near the fires. On a weekend last summer my daughter who lives in Wasilla, Alaska was with my grandson at a soccer tournament in Fairbanks. She told me about the officials having to suspend the games because the smoke from a nearby forest fire was so thick the kids couldn't breathe. After the smoke cleared somewhat they were able to continue the tournament but my grandson and his teammates suffered breathing problems for some time after they returned home. She also talked about what should have been a five-hour drive home from Fairbanks. Traffic was slowed and delayed so much because of the smoke from the fires covering the highway that it took several hours longer than usual.

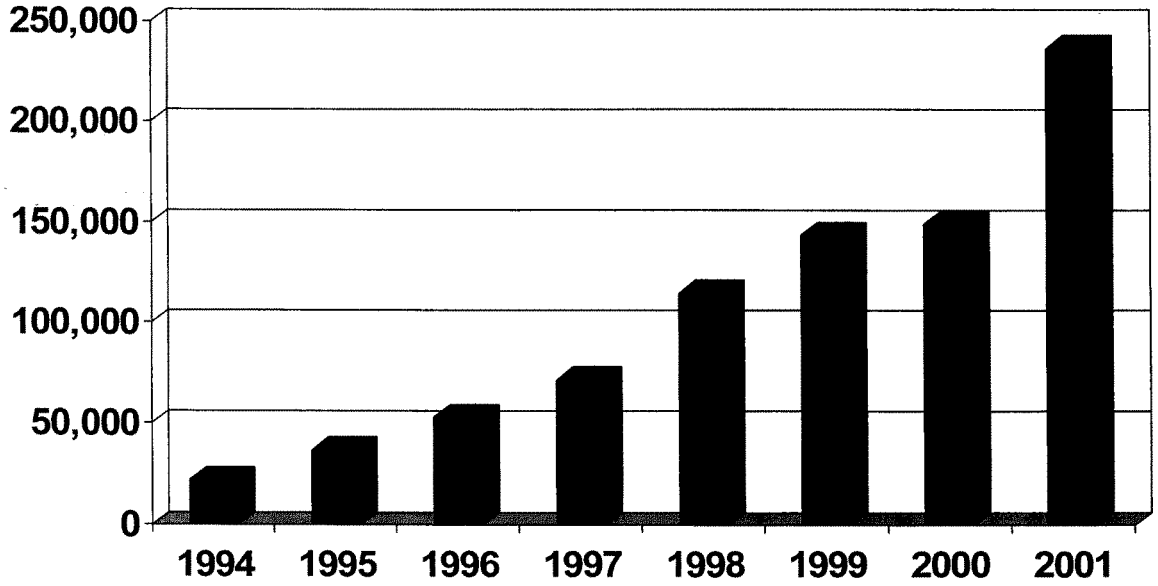
Last week I attended the annual meeting of the Association of Idaho Cities (AIC). During breaks there was talk about the fires burning in Arizona and the hope that their cities wouldn't have to suffer through another devastating fire season. I heard mayors and councilmembers tell stories about the fear of fires reaching their towns. I heard how smoke filled the air of one city for 51 days causing breathing problems including asthma and pneumonia. Later, during the business meeting we discussed issues of concern to our state and adopted proposals regarding those issues. One of the issues was a motion that the AIC support HR 1904, the Healthy Forests Restoration Act. The motion passed by acclamation.

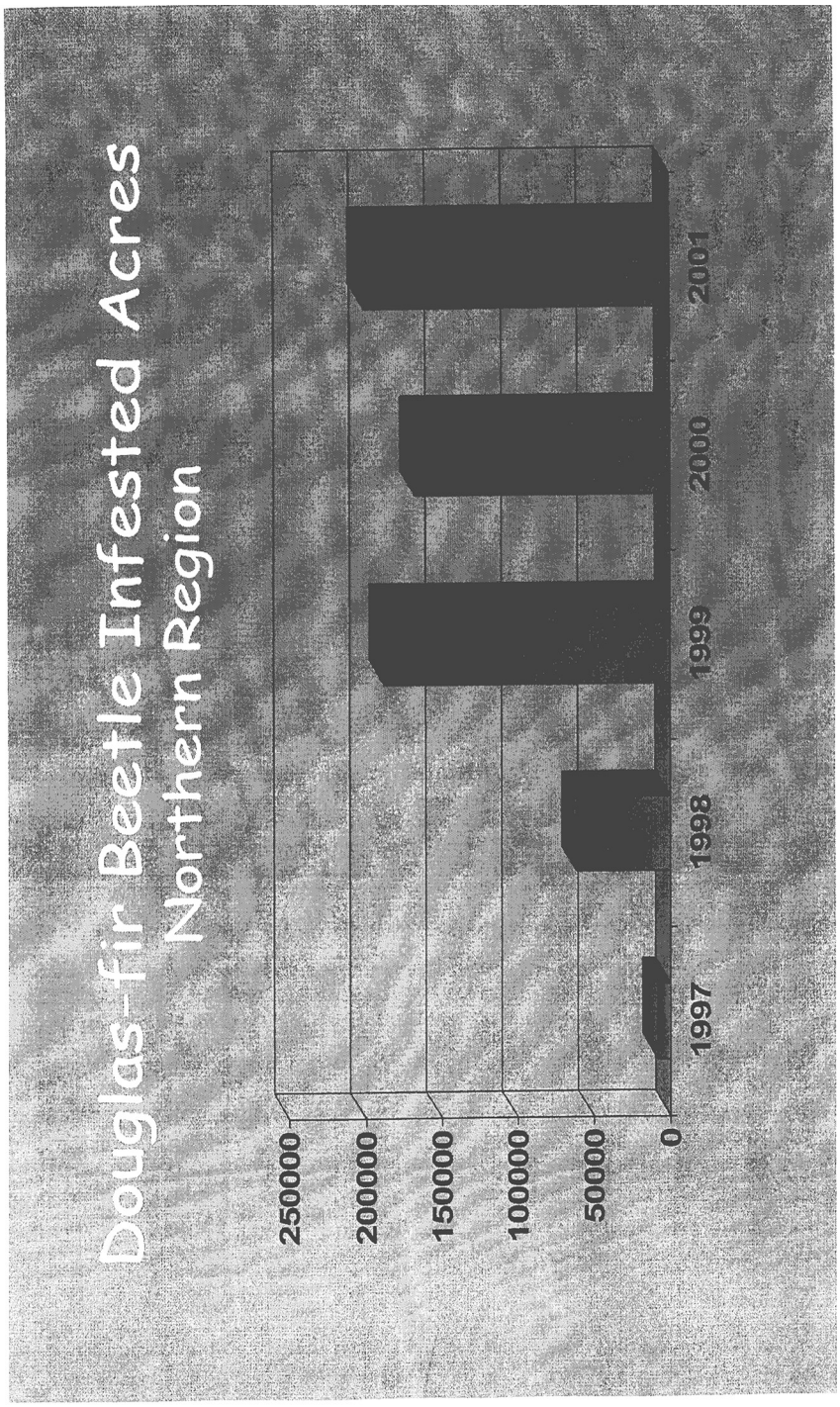
Communities all across the state of Idaho have done a tremendous job preparing themselves to deal with a wildfire. Kootenai County where I live has an emergency fire plan in place. Hundreds of acres have been treated around homes and structures across the county through the FireSmart program, funded with National Fire Plan money. Local people have organized and acted to make sure that they can defend their homes and communities. Now it is the Forest Service's turn. No amount of thinning around a community will protect it if a fire gets

rolling in the adjacent dense, dry, stressed forests of the backcountry. Forest density must be addressed wherever it is found – front country and back country. Forests must be treated on a landscape scale. It is simply not enough to cut away shrubs and brush from backyards and replace cedar shakes. If that were enough, all of the homes in Summerhaven, AZ would still be standing. HR 1904 will help give the Forest Service the tools it needs to deal with the problem today, before more wildlife habitat is lost, before more watersheds are torched, and before one more family is homeless. No more partisan politics. Wildfire doesn't care which side of the aisle you are on. Fix the problem. Pass the Healthy Forests Restoration Act.

Thank you Mr. Chairman for the opportunity to testify today. I would be happy to answer questions.

Acres Infested by Mountain Pine Beetle
Northern Region




Douglas-fir Beetle Infested Acres
Northern Region
250000
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Mr. Michael Petersen

TESTIMONY TO THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY, JUNE 26, 2003

Thank you for the opportunity to testify at this important hearing on the fate of our forested communities and our National Forests. It is an honor to appear before you, and I hope that my comments will move us forward in our effort to understand the relationship between forests, wildfire and communities.

I am the Director of The Lands Council, a conservation organization based in Spokane, Washington. I am also President the National Forest Protection Alliance – that, together with over 130 conservation organizations, and nearly a hundred members of the U.S. House of Representatives advocates for the restoration of our National Forests by passage of the National Forest Protection and Restoration Act.

I'm here because I think we can move quickly and protect America's communities from wildfire.

I'm here to ask that at-risk communities in the forest be a priority in legislation.

In the past week we have all read about the unfortunate loss of homes and property on Mt. Lemon, near Tucson, Arizona. The fact that the Aspen Fire started so close to the Summerhaven community, and not miles away in the backcountry, emphasizes the need to conduct fuel reduction projects where they are needed most - near homes and communities.

On December 31, 2002 the Arizona Daily Star reported that Summerhaven wanted a 1/4-mile buffer around the community, but the Forest Service said it did not have the $1 million necessary to do the work. The Fire Department was asking for donations to buy a wood chipper and burner for $60,000 so the village can more easily dispose of dead and downed wood.

Bill Hart, fuels management specialist for the Santa Catalina Ranger District of the Coronado National Forest, agreed the money is not enough. "We had an allocation of $120,000 last year," Hart said. " We had to beg, borrow and steal to get $50,000 more." Hart said $1 million worth of "treatment" projects are planned but at current spending, it will take a decade to do them.

The FS has proposed some good prescribed burning and a couple of thinning projects recently on the mountain. They have not been controversial and there has been no resistance from conservation organizations. One of the projects which was closest to the fire area was proposed in October 2001 and has been stalled since (the "Red/Bear/Soldier Fuel Reduction" project.") This was a WUI (Wildland Urban Interface) project with upper diameter limits of 9 inches, followed by prescribed burning. According to the latest Forest Service calendar, "project implementation is on hold because of lack of funding."

The Summerhaven fire is a powerful warning that national fire policy must emphasize the importance of reducing the risk of fires immediately around communities, and not spend precious dollars deep in the backcountry far from where people live. When the house is burning you don't water the garden.

We know that forest fires will always be with us they are an integral part of the West, just like rain and sunshine. Historical data from the National Interagency Fire Command (NIFC) shows that an average of 20 million acres burned each year in the early part of the century – before the advent of modern fire suppression. Last year about a third of that historical average burned.

There is a mythology put forward by some that our forests consisted of widely spaced trees that had gentle ground fires come through every few years. But historical documents and photos prove them wrong. Documents from explorer John Fremont in the Blue Mountains of Oregon and US Geological Survey reports from Idaho describe thick forests with thousands of small trees per acre, thick deadfall and dense stands of fir and pine. New research from southern Idaho indicates even Ponderosa pine forests experienced hot, stand replacing fires.

The implication of this historical data is that our forests evolved with fire, the dozens of fire dependent species, from black backed woodpecker to western larch lend evidence that Western forests depend on fire. But now we have several million people living in the path of these fires, and the effect of recent droughts and wildfires can no longer be ignored. The implications for communities in these fire adapted forests are that we either take key steps to protect them or we face the risk of more Summerhaven's. We can't and shouldn't fireproof our forests, but we can work toward fireproofing our communities.

The Healthy Forest Initiative is the right name but the wrong solution. The facts show that only 20% of the acres burned in the past 12 years were on National Forests – but this legislation puts all of the projects on federal lands, often far away from communities at risk. The question is how do we best protect people, homes and communities? There is universal agreement that making homes FireWise and creating a defensible space around communities will dramatically improve homeowner and firefighter safety. We need to put first things first and move forward together to protect communities.

THE LANDS COUNCIL WILDFIRE EDUCATION PROGRAM

In 2001, The Lands Council received a grant from the U.S. Forest Service to work in northeast Washington, assisting rural communities with reducing wildfire risks, both through education and technical planning assistance. Since then we have provided workshops in rural communitites on 'defensible space', we have advertised free defensible space planning through newspapers, radio stations, county mailings and door-to-door rural outreach and we have written 'Home Survivability Plans' for homes in these areas. In addition, we have developed educational handouts on what defensible space is and why it works, what types of roofing, decking and window construction materials are fire-resistive and how to landscape with fire-resistive plant species in our region.

Our program is based on the belief that by working with rural residents we can create communities that have the ability to survive wildfire. Communities that are better prepared for fires also offer a safer and more effective working environment for firefighters. With the protection of private property and communities, public land managers can then make better decisions about wild- and prescribed fire on public lands, providing the opportunity to save money in firefighting costs and do a better job in restoring the health of public lands.

Our outreach is based on fuels reduction planning and education in rural communitites as described in the National Fire Plan (NFP) and follows the protocol of the National FireWise program. Our program utilizes federal and state science & information including research done by Jack Cohen and the Pacific Wildfire Coordinating Group.

We partner with the Forest Service, Washington Dept. of Natural Resources (WADNR) and local agencies and organzations in efforts to promote defensible space and the work associated with it. To date we have provided door to door education to over 1500 residents in northeastern Washington, and written over 120 individual home fire plans, which the WADNR has implemented.

This spring The Lands Council began a community fire planning effort for the Chewelah, Washington watershed, in partnership with the Colville Community Forest Coalition. We are working with agencies and community leaders to write a community wildfire protection plan that will encompass federal, state, and private lands within the watershed. The Lands Council is taking a lead role in this effort, but we know the success of this effort is to engage all members of the community.

Some claim that the wildland urban interface isn't where the forest health issues start or that we shouldn't help private property owners. They claim that the real wildfire danger is in the backcountry - "that's where the fires start" - and that's where forest-thinning funds should go.

I believe this is a failed approach. At a time when we urgently need to focus on protecting homes, we cannot afford proposals that squander scarce resources on questionable projects far from where people live in an effort to log the backcountry to bring down the biggest, oldest, and most fire-resistant trees. Especially when budgets are so tight, we need to focus work and spending where they will do the most good – near homes and communities.

I want to give two specific examples where scarce federal dollars are being wasted in the backcountry. First, the Iron Honey project in North Idaho – where 1400 acres of clearcuts are planned, is deep within the Idaho Panhandle National Forest (IPNF), far from any homes or communities. This is purportedly to reduce fuels and restore the forest but the agencies own experts know that further canopy removal intensifies spring flooding and late season water shortages in this heavily logged watershed. At the same time, the IPNF is doing little to protect the city of Coeur D'Alene and Hayden Lake, even though Forest Service boundaries are within a few hundred feet of homes in those communities.

Second, the just released Cove Project, on the Vale BLM district in eastern Oregon. The Vale District is focused on community protection and has supposedly done a risk assessment to prioritize communities where fuels reduction is needed. The result: the project would log large units several miles from the community of Cove, while leaving areas adjacent to the community untreated. It's a timber sale masquerading as community wildfire protection.

Are there any good projects by these agencies? Yes, the Colville National Forest in northeastern Washington last year completed the Storm King Fuels Reduction Project, which treated areas

along private land boundaries. Also on that Forest the Quartzite project is worth mentioning because it started out as a typical timber sale that would have logged and roaded a 5200 acre roadless area. After extensive participation by The Lands Council and Kettle Range Conservation Group, a nearby ski area owner, and dozens of nearby residents, the project was modified to focus on the Wildland Urban Interface. While still not perfect, Forest Supervisor Nora Rasure, made a Decision that protected the roadless area and treats the wildland urban interface. This project was not appealed.

What do the Western Governors think?

Just last week the Western Governors met in Missoula, Montana. Western Governors understand that wildfires are a fact of life across the West. That's why they met last May to work on a ten-year wildfire plan that reinforces the fundamental principle that resources for wildfire protection should focus on where they make the most difference: in the Community Protection Zone.

The Governors know that public participation and government accountability are keys to success. Nowhere in the Governors' plan is there any mention of changing environmental safeguards or restricting the public appeals process. I believe most of the Governors understand that attempts to reduce public participation and accountability distract from the crucial work of protecting homes and lives.

Science, common sense, and consensus should guide wildfire policy. Last year, the Western Governors brought together a broad range of experts – professional foresters, federal fire-fighting agencies, and conservationists – and they agreed on the importance of focusing wildfire prevention work near homes.

Expert scientists are clear on this point: We can dramatically improve homeowners' safety by making homes FireWise and clearing flammable brush and trees from nearby communities. We have the know-how and tools to help protect homes. Rather than squander precious dollars on questionable tactics, let's help local governments, fire departments and communities stay safe. Let's invest the money where it's needed and where it will protect the most homes and lives.

Some will claim that burdensome regulations prevent necessary work from being done and that red tape drives up the cost of projects. A May 2003 General Accounting Office report found that of 762 Forest Service fuel reduction projects, 95% were ready for implementation within the standard 90 day review period and 97% proceeded without litigation. These numbers hardly support claims of "analysis paralysis. Eliminating public process and environmental laws may help the timber industry cut trees in the backcountry, but it will do nothing to help the communities at risk

We have all the tools needed to protect homes and communities from wildfire, and no regulations are stopping homeowners or communities from protecting themselves. What we do need to do is roll up our sleeves and work together to help homeowners protect their homes and clear space immediately around their communities. Congress can help by directing needed resources to those communities.

As we have just seen with Summerhaven, putting off work near communities so that the timber industry can log in the backcountry will only delay the time that communities must wait before they receive needed assistance. All experts, including the Forest Service, agree that Forest Service timber projects lose taxpayer dollars year after year. The Healthy Forest Initiative is a diversionary tactic that fails twice over. First, it won't provide any extra financial assistance to communities. Second, it diverts attention to the backcountry instead of where the major focus must be concerning wildfire issues – first protecting homes and lives.

While the discussion of how to restore historical processes in our National Forests continues, and should be driven by science and not hysteria, the methodology for protecting structures and communities is well advanced. Jack D. Cohen, US Forest Service Fire Researcher, Missoula, Montana. has done considerable home defensible space research. Two of his key findings are:

> Research indicates that effective residential fire loss mitigation must focus on the home and its immediate surroundings. This research indicates that home losses can be effectively reduced by focusing mitigation efforts on the structure and its immediate surroundings.
>
> Extensive wildland vegetation management does not effectively change home ignitability. The evidence suggests that wildland fuel reduction for reducing home losses may be inefficient and ineffective. Inefficient because wildland fuel reduction for several hundred meters or more around homes is greater than necessary for reducing ignitions from flames. Ineffective because it does not sufficiently reduce firebrand ignitions.

Based on Cohen's research and the National FireWise Program, I believe that the following steps should be taken to protect rural communities from wildfire:

1. Support community protection by requiring that fuels reduction projects be concentrated to the Community Protection Zone - defined as 60 meters from an individual inhabited structure to protect the home ignition zone and up to 500 meters from a community's inhabited structures - - to provide community and firefighter protection. Government research has found this is the only proven method to protect homes and communities.

2. Direct at least 85% of the National Fire Plan hazardous fuels budget to grants for states and funding to local communities to provide funds to ensure community and homeowner protection in the Community Protection Zone. Research has shown that 85% of the lands within the Community Protection Zone are State, tribal, county and non-industrial private lands.

3. Acknowledge that logging, and the residue left behind as slash piles increases the risk of severe fire. Our extensive road system (over 400,000 miles at last count, on National Forest alone) adds to the problem since most fires are human caused and start near roads.

Will the Healthy Forest Initiative Help Communities and our National Forests?

In contrast to sensible community protection and critical public participation, the "Healthy Forests Restoration Act of 2003 (HR 1904) will:

1. Not Ensure Any Increased Protection for Communities: HR 1904 does not include any specific measures to protect homes or communities. It is also inconsistent with the Western Governors' Association 10-Year Comprehensive Strategy, which does not call for any changes in existing laws. The only proven method to protect homes and communities is to reduce flammable materials in the immediate vicinity of structures, yet the definitions in H.R. 1904 would not require any activities to be near homes. Instead, the bill seeks to further subsidize the timber industry and eliminate obstacles to logging large, fire-resistant trees miles away from the nearest home. The country's top forest scientists, including the Forest Service's own scientists, have found that this kind of logging can actually increase fire risk and make fires larger and more intense.

2. Cut the Heart out of NEPA (National Environmental Policy Act). HR 1904 allows the Forest Service to conduct large-scale, environmentally damaging logging projects without considering any alternatives or allowing for meaningful public input during project development. HR 1904 eliminates the statutory right of citizens to appeal Forest Service logging projects.

3. Interfere with the Independent Judiciary. HR 1904 seeks to restrict a core principle of our democracy - the right of Americans to seek redress in the court for grievances involving the federal government. The bill limits preliminary injunctive relief to 45 days, and forces any U.S court to render a final decision on the merits of a case within 100 days. Finally, the bill seeks an astounding change in American legal standards by requiring courts to give deference to agency findings regarding the balance of harms in deciding whether to enter a temporary restraining order, preliminary injunction, or a permanent injunction in ANY court challenge where the agency claims the action is necessary to "restore fire-adapted forest or rangelands ecosystems."

4. Create New Insect Categorical Exclusion. HR 1904 creates a new Categorical Exclusion from the National Environmental Policy Act on all Department of Interior and Forest Service lands by authorizing an unlimited number of projects (up to 1,000 acres each) for all lands that the agencies claim are at risk of infestation by certain insects. This is simply a giveaway to the logging industry to clearcut large swaths of federal forests.

5. Provide New Logging Subsidies. HR 1904 would authorize $125 million in subsidies to the biomass industry to log our National Forests. A large scale biomass industry is a certain boondoggle, since transporting wood chips out of the forest is costly and energy intensive.

The Healthy Forest Initiative ignores communities and pretends to help National Forests. But lets be honest, it is simply happy words for more commercial logging of our federal forests. Yes, parts of the National Forest system have been damaged by past management – roadbuilding, logging, fire suppression. But the cure isn't more of the same. The cure is to take the Forest Service out of the logging business, and let science and common sense guide the way to restoring our national treasures. At the same time, we know how to protect communities who are at risk from wildfire, and we had best get moving with this before we lose another Summerhaven.

Thank you very much for the opportunity to provide input to this critical issue.

Statement of
Norman L. Christensen, Jr., Ph.D.
Before the Senate Committee on Agriculture, Nutrition and Forestry
Regarding H.R. 1904—the Healthy Forests Restoration Act of 2003
26 June 2003

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify today on fire science and ecology and HR 1904, the "Healthy Forests Restoration Act of 2003".
I am Norman L. Christensen, Jr., Professor of Ecology and Founding Dean of the Nicholas School of the Environment and Earth Sciences at Duke University. For over thirty years, I have studied, written widely on and served on numerous advisory panels on the ecology and management implications of disturbance, especially fire, and the dynamics of forests across the United States.

Many, though by no means all, western forests are in an unhealthy state with respect to flammable fuels and risk of catastrophic fires. The scientific community is in agreement that action is indeed warranted and necessary in particular regions and forest types. I support the *intent* of HR 1904 to protect "communities, watersheds and … at risk lands from catastrophic wildfire," but the bill can and should be improved in five specific ways.

1. *Much forested land is included in HR 1904 for possible hazardous fuel reduction (i.e., condition class 2 or 3, General Technical Report RMRS-87) that is not in an unhealthy state relative to fire risk. To ensure limited resources are directed to areas of greatest need, legislation can and should be more specific about which forests have been altered by fire suppression and past land use.* The greatest departure from historical conditions has occurred in forests with natural fire regimes typified by high (<35 years) and mixed frequency (35-100 years) fires (RMRS-87 Fire Regime Types I, II, and III). Important among these forests are semi-arid ponderosa pine types of the Southwest, Intermountain Region and eastern Cascades, as well as some dryer-phase mixed conifer forests in parts of the Sierra Nevada and Oregon. There is general agreement that fuel reduction—by prescribed fire or mechanical thinning—is needed in many of these forests. As is pointed out in RMRS-87, many western forests (Fire Regime Types IV and V) classified as Condition Class 2 or 3, including the array of hemlock- and fir-dominated forests of the western Cascades and lodgepole pine forests throughout the region, naturally experience fire at very long intervals (>200 years) and are not in need of restoration or remedial action. Indeed, actions in these forests will likely have contrary consequences.
2. *HR 1904 provides virtually no guidelines for "hazardous fuel reduction." Although "one-size-fits-all" prescriptions are not desirable, the focus must be on reducing those fuels most important to ignition and spread of wildfire.* They are, in order of importance, ground fuels and fine woody debris, "ladder" fuels that carry fires into the canopy, and smaller trees where densities are judged to be abnormally high. Where possible, prescribed fire is preferred economically and ecologically to mechanical thinning. "Big, old" trees should be retained because they are resistant to fire, maintain favorable moisture conditions on the forest floor, provide critical habitat and maintain key ecosystem functions. "Big, old" can and should be defined relative to the stature of particular forests.

3. *HR 1904 can and should be clearer regarding priorities for hazardous fuel reductions. Highest priority should be given to the wildland-urban interface ("interface communities") where forest conditions present the greatest risk to human life and property, and the threats to ecological processes of restoration activities are lowest.* Restoration activities outside so-called "community protection zones" are a lower priority and should be undertaken in a deliberate fashion based on a landscape-scale understanding of fire spread and its ecological consequences.
4. *HR 1904 can and should be much clearer about desired outcomes. Forest management is at its core "change management."* Hazardous fuel reduction cannot be about producing fire-proof forests—that is not possible; rather, our goal should be to restore conditions that will produce acceptable patterns of future change—i.e., conditions under which we can prescribe and manage the fires we want and extinguish effectively those we do not. Reference conditions for fuel restoration should be based on our understanding of natural patterns of fire behavior and likely patterns of forest change following treatments.
5. *The limited support for monitoring and research in HR 1904 and the proposed changes in NEPA (National Environmental Policy Act) rules (e.g., omission of consideration of alternatives) will undermine the opportunity to bring the best science to this important challenge.* Wherever we act we must do so understanding that we have much to learn. We must take advantage of this opportunity to create a program of continuous learning and improvement, i.e., adaptive management. Healthy forest legislation should require and adequately fund an integrated program of monitoring, research and adaptive management. In high priority areas (i.e., where human life and property are at risk) the streamlined NEPA procedures proposed in HR 1904 may be appropriate; the need to act may take precedence over deliberative processes in these situations. However, not considering alternatives from among management options is the scientific equivalent of running an experiment with only one treatment and no controls; such streamlining is likely to limit the input of new information and diminish public confidence in management actions. Away from the most urgent circumstances, abbreviated NEPA procedures are neither necessary nor helpful.

I thank the Chairman and the Committee for this opportunity to address these important issues.

Here follows more detailed explanation and support for these points. I have also appended an essay that provides an historical perspective on forest health and fire written by me for the January 2003 issue of the Pacific Forest Trust magazine (Appendix 1).

1. Much forested land is included in HR 1904 for potential restoration that is not in an unhealthy state relative to fire risk. To ensure limited resources are directed to areas of greatest need, legislation can and should be more specific about which forests have been altered by fire suppression and past land use.

HR 1904 (Title I) focuses attention on forests in fuel Condition Classes 2 or 3 as defined in USDA Forest Service General Technical Report RMRS-87. However, that report makes clear that catastrophic fire risk is largely confined to that sub-set of such forests that naturally experience low frequency (<35 years)/low severity, low frequency/high severity, and mid-frequency (35-100 years)/mixed severity fire regimes (Fire Regime Types I, II and III, respectively). Semi-arid ponderosa pine types of the Southwest, Intermountain Region and eastern Cascades, as well as some dryer-phase mixed-conifer forests in parts of the Sierra

Nevada and Oregon are among these forest types. There is consensus among fire scientists that hazardous fuel reduction is indicated for many of these forests, although prescribed fire may be sufficient to achieve such reduction in many cases.

There is little evidence that management practices over the past century have altered fire risk in forests with mid-frequency/stand replacement (Type IV) or low frequency/stand replacement (Type V) fire regimes (RMRS-87). Such forests include the array of hemlock- and fir-dominated forests of the western Cascades and lodgepole pine forests throughout the region. Fuel conditions in these forest types are not outside the range of natural variability. Furthermore, fuel manipulations here will likely have adverse ecological consequences and could even increase the likelihood of fire in these forests by altering moisture conditions and stand structure.

2. HR 1904 provides virtually no guidelines for "hazardous fuel reduction." Although "one-size-fits-all" prescriptions are not desirable, the focus must be on reducing those fuels most important to ignition and spread of wildfire.

Although HR 1904 focuses primarily on "hazardous fuel reduction" to reduce the risk of catastrophic wildfire, this phrase is poorly defined with no guidelines for implementation. There is no question that one-size-fits-all approaches are not advisable and that fuel restoration projects must be tailored to the conditions that are characteristic of particular forest types and historical situations. Nevertheless, more specific guidelines can and should be included in the legislation that will ensure that "hazardous fuel reduction" is actually achieved. Such guidelines are particularly important where competing pressures or incentives (e.g., biomass for fuel or commercial harvest of thinned material) could produce contrary outcomes.

Hazardous fuels are, in order of importance, ground fuels and fine woody debris, "ladder" fuels that carry fires into the canopy and smaller trees where densities are judged to be abnormally high. Where possible, prescribed fire is preferred to mechanical thinning for both economic and ecological reasons. However, risks presented by human habitation and abnormal fuel conditions limit the use of prescribed fire in many areas. As Wallace Covington (Northern Arizona University) and others have argued, where mechanical treatment is employed, it should focus on priorities described above to restore forests to explicitly described "reference conditions" based on management objectives.[1] In areas outside the wildland urban interface pre-settlement fuel loads are an appropriate point of reference. Within interface areas, other reference conditions might be appropriate.

There is agreement among fire scientists that "big, old" trees should be retained in addition to sufficient larger, younger trees to produce appropriate reference conditions. I use the word "old" here to refer to trees established before the period of management-caused fire exclusion. Tree size, i.e., "big", should be determined based on the scale of the forest. For example, in smaller stature ponderosa pine forests of the Four Corners or Colorado Front Range a ten-inch diameter tree might be well over 100-years old and considered big. However, in the more productive

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[1]"Without solid scientific knowledge of reference conditions and clear objectives for desired resource uses and ecosystem conditions, ecological restoration degenerates into ill informed speculation, subjective judgment, bias, ideology, and personal policy preferences." *Historical and anticipated changes in forest ecosystems of the Inland West of the United States*." Covington et al. 1994. *See also* Covington, W. W., Niering W., E. Starkley, and J. Walker. 1999. *Ecosystem restoration and management: scientific principles and concepts*. Book chapter in the Ecological Stewardship: A Common Reference for Ecosystem Management Reference. Elsevier Science Ltd.:599-617

mixed conifer forests of the central Cascades and Sierra Nevada, trees can grow to diameters of 24 inches in 50 years; in these large-stature forests the invasion of such trees (such as shade tolerant firs and incense cedar) has created "ladder" fuels that may require thinning to restore reference conditions.

Why isn't it true that "the more wood removed, the better"? Why should "big, old" trees be retained? First, larger-diameter woody materials do not pose a significant threat for wildfire ignition or spread. It is largely the finer fuels (a few inches and less in diameter) that carry fire. More important, large, old trees actually provide protection from fire spread because they are resistant to fire and their shade maintains favorable moisture conditions in the understory fuels. Too much thinning of the forest canopy can produce more rapid drying of such fuels and, thereby, more frequent and severe wildfire risk. Furthermore, big, old trees provide critical habitat and maintain key ecosystem functions.

3. HR 1904 can and should be clearer regarding priorities for hazardous fuel reductions. Highest priority should be given to the wildland-urban interface ("Interface communities") where forest conditions present the greatest risk to human life and property, and the threat to ecological processes of restoration activities are lowest. The unhealthy forest conditions of concern in HR 1904 are the product of nearly a century of fire suppression, often coupled to other human-caused disturbances such as over-grazing and logging. Restoration of forest health must be seen as a long-term process and commitment, and priorities for treatment should be assigned to those areas where human life and property are at greatest risk. Although we have much to learn regarding the effects of short- and long-term impacts of fuel reduction projects on ecosystem processes and species habitats, such concerns are generally less important in the wildland-urban interface.

Does this mean that hazardous fuel reduction should not be undertaken outside interface zones? No, but restoration programs in such areas should be undertaken with the understanding that we have much to learn about their impacts on the systems we wish to protect. We need to explore alternatives for deploying restoration treatments across landscapes in ways that effectively manage costs as well as possible adverse ecological impacts and minimize fire spread. We need to understand better the longer-term impacts of fuel reduction on hydrologic processes, biodiversity and fire risk.

4. HR 1904 can and should be much clearer about desired outcomes. Forest management is at its core "change management." It was most certainly not the intent of past forest managers to create unhealthy forest conditions; by protecting forests from fire, they were convinced they were preserving forest health. What they did not of course understand was that many forests, when so protected, undergo changes that make them *more* flammable and that natural fires in such forests are actually critical to their long-term sustainability. Hazardous fuel reduction cannot be about producing fireproof forests, that is not possible; rather, our goal should be to restore conditions that will produce acceptable patterns of future change—i.e., conditions under which we can prescribe and manage the fires we want and extinguish effectively those we do not. Reference conditions for fuel restoration should be based on our understanding of natural patterns of fire behavior and likely patterns of forest change following treatments.

In most forests, thinning of fuels will, in the short term, produce less flammable conditions. Improper or tardy disposal of thinning slash will, however, will have opposite short-term consequences. The fire risks that exist in the medium and long term will depend on subsequent

management and patterns of forest change. Over-thinning of some forest canopies can open them to rapid invasion by shrubs and smaller trees, erasing the restoration benefits in a few short years. Without light surface fires or other interventions to keep fuels at bay, treated areas will soon pose a wildfire threat. Thus, HR 1904 should mandate that hazardous fuel reduction programs be accompanied by a long-term management plan.

It is important to note that the last century's forest managers who were bent on preventing all fires were acting based on the values and scientific information available at the time. Rather than being hyper-critical with the benefit of our informed hindsight, we must understand that our own knowledge of fire regimes and their effects, as well as the implications of the fuel restoration interventions we propose here, is far from complete; managers a decade or two from now may very likely understand these processes differently and recommend different approaches. Whatever management we propose, it should at the very least inform this process of learning.

5. The limited support for monitoring and research in HR 1904 and the proposed changes in NEPA (National Environmental Policy Act) rules (e.g., omission of consideration of alternatives) will undermine the opportunity to bring the best science to this important challenge. It is rarely, if ever, the case that our understanding of the natural resources we manage is even remotely complete; thus, virtually all management must be a learning or adaptive process. Although we are beginning to understand the dynamic character and role of fire in forests at the stand and landscape level—and we understand the need to intervene to correct unhealthy situations—we have much to learn about those dynamics and the variety of possible consequences of our interventions. There is, however, no acknowledgement of this need in HR 1904 aside from modest research funding under Title IV. This need far exceeds the support allocated here. Furthermore, it is advisable to outline a program of research, monitoring and adaptive management such as that proposed by scientists and managers at The Nature Conservancy and appended to this document (Appendix 2).

In high priority areas (i.e., where human life and property are at risk) the streamlined NEPA procedures prescribed in HR 1904, Title I, may be appropriate; the need to act may take precedence over deliberative processes in these situations. Furthermore, because of their proximity to communities and generally more heavily managed environments, they are more likely to be monitored and less likely to suffer adverse ecological impacts. This said, systematic consideration of management alternatives (as prescribed in NEPA) is advisable wherever possible. Not systematically considering management alternatives from among management options is the scientific equivalent of running an experiment with only one treatment and no controls; such streamlining is likely to limit the input of new information and diminish public confidence in management actions. Away from the most urgent circumstances, abbreviated NEPA procedures are neither necessary nor helpful.

Getting Western Forests "Into Whack"

By NORMAN L. CHRISTENSEN, JR.
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The President's Healthy Forests Initiative stimulated a lively exchange of e-mails during the fall months among the fairly tight-knit community of fire scientists and ecologists. At least three of my colleagues used the same phrase to characterize the situation: "The forests in the West are out of whack!"

All of my correspondents agree that fire management is a serious challenge in many western forests. There is far less agreement about which forests are out of whack, exactly how they got out of whack, and what we should do to bring them back into whack. You may correctly suspect that we are not even in complete agreement about how to define "whack." I would like to share my own perhaps "whacky" perspectives on the extent, causes, and remedies for this challenge. Although much of this debate focuses on past, present, and future actions on public lands, ownership boundaries are not fireproof—it has significant implications for private, non-industrial landowners as well.

The Origins of Fire Suppression

Most of our views about fire in forests and about modes of management were shaped by events that occurred and ideas that emerged early in the last century. As Stephen Pyne argues in his recent book, *Year of the Fires*, the immense wildfires of 1910 in Idaho and elsewhere—fires that resulted in scores of deaths and millions of acres of scorched forests—created a context for implementation of management protocols and practices aimed at eliminating fire from the forest. Whether scientific views on this matter helped shape or were shaped by this context is unclear, but they were certainly consistent with the notions that fire was an undesirable force, that its occurrences were mostly due to the thoughtless actions of humans, and that it could and should be eliminated from the landscape.

In the decade following the "Great Fires," ecologists promulgated what remains in many textbooks as *the* model for forest succession: Disturbance—natural or human-caused—initiates a linear and directional process of ecological change that culminates in the most stable ecosystems—climax communities—that can exist in a given region. That succession might produce changes in a forest that would increase the likelihood of disturbance was not imagined and, for many, not imaginable; the world's forests primeval existed as vast assemblages of such climaxes, continental in extent, that just now and then endured disturbance such as fire, disease, or wind, but as surely as the sunrise, succeeded back to the stable climax. By protecting our forests from fire, they would become more climax-like and, by implication, more fire proof.

Why Do Forests Burn?

Until the 1960s, management policies and practices, as well as the science used to justify them, evolved without much thought about why forests burn and why fires behave differently in different forest types. It was then that researchers such as Harold Biswell at the University of California, Berkeley and Bruce Kilgore of the U.S. Park Service began to understand that frequent surface fires (every five to eight years) had been normal in the pre-settlement, mixed-conifer forests of the Sierra Nevada, that fire exclusion from many of these forests had permitted the ingrowth of shade-tolerant trees like incense cedar and white fir, and that these conditions were inhibiting the reproduction of species of high conservation value, such as giant sequoia, and were increasing the likelihood of crown-killing fires.

It was also about this time that other researchers, including Richard Rothermel, Charles Philpot, and Robert Mutch, all with the US Forest Service, began to apply basic principles of physics to fire behavior in order to determine what makes one forest type more or less flammable than another and what regulates the spread of fires across complex landscapes. They demonstrated that three factors mattered most to fire behavior: ignition, moisture conditions coupled to weather and climate, and the amount and character of flammable stuff—i.e., fuels.

SIERA FOREST SERVICE

With active suppression of fires, ponderosa pine areas that were once open, savanna-like forest are now dense thickets of younger trees.

Since then, we have come to understand that there is enormous variation in the behavior and consequences of fire (and fire exclusion) among different forest types. In some forest types, such as the higher-elevation lodgepole pine forests, it is the old-growth (>200 year) stands that are most fire-prone. Fire suppression activities can limit fire spread on such landscapes in most years, but not in particularly dry periods, as was evidenced in the 1988 Yellowstone fires. Like the chaparral of southern California, fire is both an inevitable and necessary part of these landscapes.

In other regions, including large parts of the Sierra Nevada, Cascades, and Rockies, flammable shrubby ingrowth and dense stands of young trees typify the first several decades following disturbance. Here, fire exclusion has played little role in the creation of these fuel conditions. Rather, landscape flammability is very much influenced by the pattern and history of disturbance both human (logging) and natural (past fires). This pattern was certainly evident in the much-celebrated Tillamook Burns that occurred between 1933 and 1945 in northwest Oregon, and several of this past summer's large fires burned in such areas. At the level of the forest stand, it is a stretch to brand situations such as this "unhealthy"; they are progressing through a normal process of change and, protected from fire, they actually become less flammable (though by no means not combustible). However, at the landscape level our activities have produced large continuous expanses of fuel. That ain't healthy!

The Danger of Success

It is the increasing frequency and size of fires in the more arid ponderosa pine forests of the Four Corners and the Cascades as well as this year's Oregon Klamath fires, that have attracted much of our attention over the past several years. Until recently, fire suppression efforts have been very effective, and nowhere have the consequences of fire exclusion been better documented.

Fire exclusion in many ponderosa pine-dominated areas actually began before any suppression policies or active fire management with overgrazing of the flammable grass understory in the late nineteenth century. With active suppression of fires since then, areas that were once open, savanna-like forest are now dense thickets of younger trees with scattered emergent older trees. Forest landscapes that once supported frequent light surface fires that controlled the limited establishment of young trees are now poised for virtually uncontrollable high-intensity crown fires that burn over vast areas. The current forest conditions and the fires they produce on these landscapes are well outside the range of historic variation—at the stand and the landscape scales they are simply unhealthy.

More than a century of protection from fire has greatly diminished the aesthetic, ecological, and economic value of these areas.

The influx of human activity and habitation has magnified the problems and constrained the solutions in all of these forest areas. Increased human access has increased the frequency of both accidental and purposeful ignitions. The diffusion of our population onto fire-prone landscapes—whatever their origin—has dramatically increased risks of wildfire to human life and property.

No Easy Answers

Whether created by past disturbance or fire exclusion, if the problem is too much fuel, isn't the solution simply fuel removal? Perhaps. However, as with many health problems, simple remedies may be ineffective or, worse, violate the first admonition of the Hippocratic Oath, "Do no harm." If we remove all of the fuel, the health problem goes away completely—of course, so does the patient.

For the ponderosa pine forests, the real arguments are over how much "surgery" is appropriate. These arguments are further complicated by restoration costs that can exceed $1,500 per acre. Thus, some argue that we might cut some larger trees in addition to the low-value small stuff to offset some of those costs. Others argue that the ecological costs of the loss of large trees greatly exceed the economic offset, and that such cutting could actually facilitate fire spread in some cases.

EARL BROLY

Forest landscapes where frequent light surface fires once controlled ingrowth of trees are now poised for virtually uncontrollable high-intensity crown fires that burn over vast areas. The 620-acre Encampment Complex fire was one of thirteen wildfires that burned thousands of forested acres in Wyoming during the summer of 2000.

Although we may quibble about the details, we have a fairly good understanding of the forest structure to which our semiarid ponderosa pine landscapes should be restored. Once restored, a vigorous program of frequent, low-intensity fires will maintain these forests.

Not so for fire-prone successional landscapes. Here, fuel removal will, in essence, re-start the successional clock; without aggressive, continuous and expensive intervention, flammable conditions will return in short order.

In all of these situations, close attention must be paid to the future management of the treated forests. Because of the inevitability of fire in these systems, the goal of restoration has to be landscapes in which we can better control the fires we do not want and promote the ones we do. There is much that we do not understand about the consequences of proposed forest thinnings. Without thoughtful post-treatment management and monitoring programs, our forests will likely return to their current highly flammable state within a decade or two, losing—among other things—the public investment made in treating them.

Legislative Language

Option 1:

Section 102(e).

(1) Restoring Forest Health.— For projects authorized in subsections 102(a)(2)- (5), each hazardous fuel reduction project shall establish specific, measurable objectives for restoring forest health. For projects authorized is subjection 102(a)(1), these objectives should be considered where possible.

(A) These objectives shall be directed toward restoring ecological conditions within the historical range of natural variability.

(B) Categories of ecological restoration objectives should include, when appropriate:
- i) reduction of unnatural and hazardous fuel loads;
- ii) restoration of ecosystem distribution; structure, function and composition;
- iii) reintroduction of fire as a natural process;
- iv) protection and restoration of at-risk species, such as species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531 et. seq., and species designated as Forest Service sensitive species;
- v) maintenance and/or improvement of water quality;
- vi) detection and control of ecologically harmful non-native species;
- vii) prevention of unnaturally severe native insect or disease epidemics.

(C) Where possible, objectives should be determined in a landscape context.

(2) Adaptive Management. – The Secretary shall monitor the accomplishment of the objectives in paragraph (1), issuing a report at least every five years that includes the following information: the monitoring results; an evaluation of progress towards specific objectives; and recommendations for modifications to the strategies, projects and management treatments. Projects approved following the issuance of the monitoring reports shall be consistent with any recommendations in the reports.

Option 2:

Section 102(e)
(1) Restoring Forest Health.— Forty percent of hazardous fuel reduction projects shall establish specific, measurable objectives for restoring forest health.

[rest is the same]

Appendix 2

The Need for A Thoughtful, Restoration-Based Approach to Hazardous Fuels Reduction: a program of adaptive management.

As a result of decades of fire suppression and other practices, many federal lands have accumulated unnaturally high fuel loads that, under certain conditions, can sustain wildfires of unprecedented size and intensity. Such fires can damage homes and businesses, as well as municipal water supplies, the ecological health of forested areas, and the long term natural resource values of public lands.

Action is necessary to address these threats. But this time, let's be smart. Management decisions must recognize the differences among ecosystems and fire regimes, while incorporating ecosystem dynamics, uncertainty, historical management, current conditions, and desired future conditions. Notwithstanding the efforts of the past few years, we still have insufficient knowledge and experience. No one type of management will be appropriate everywhere, and not all areas should be treated until we know the most effective ways to treat them. For this reason, the public's investment in hazard reduction and forest restoration should be done adaptively so we can learn as we go. At a minimum, management must be coupled with monitoring designed to evaluate the results and provide guidance for future management actions.

Inside the Wildland-Urban Interface, treatments should be driven by the need for hazard reduction, with attention to forest health restoration goals wherever possible. Outside the Wildland Urban Interface, decisions and management should be driven by long-term forest health restoration goals, and should incorporate adaptive management practices.

Statement of Hal Salwasser
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Before the U.S. Senate Committee on Agriculture

June 26, 2003

On H.R. 1904 "Healthy Forest Restoration Act of 2003"

Good morning. Thank you for inviting me to testify on this vitally important matter, forest and rangeland health restoration. In addition to my responsibilities at Oregon State University, I am the Policy Chair for the National Association of Professional Forestry Schools and Colleges, representing more than 60 institutions nationwide.

My colleagues, Deans and Directors of forestry and natural resources academic programs throughout the nation, are very interested in how the U.S. Senate will address forest and rangeland health because current conditions in many places create high risks to our environments, communities, economies and treasuries. Wildfire, water, and invasive species dominate our concerns in the West. My colleagues in the South, Midwest and New England are interested because their forests are increasingly vulnerable to insect and disease epidemics -- as you have just heard from Dr. Stephen, fires, exotic species, and windstorms and many of their forests are municipal watersheds. For all of us across the country, our concerns for forest and rangeland health include the effects that uncharacteristically intense wildfires, insect and disease epidemics, or invasive species epidemics have on sustaining water quality, watershed functions, fish and wildlife habitats, threatened and endangered species, landscape values, forest-related jobs and economies, and roles of forests in biodiversity conservation and atmospheric processes such as carbon sequestration.

The restoration work needed must extend beyond the wildland-urban interface and municipal watersheds, as H.R. 1904 recognizes. It must begin with removal of wood and biomass to reduce drought stress and risks of unwanted wildfire, insects and diseases or to allow for safe reintroduction of managed fire. Where fire must be reintroduced, accommodation with air quality concerns must be addressed. Essential wood and biomass removals have great potential for generating restoration by-products that could be useful in producing wood products and bio-based energy to meet some of the nation's needs while creating living-wage jobs across rural America. The restoration work also needs marked improvements in agency planning processes or additional appropriations will just prolong the waste on process rather than progress.

I will present a case for more fully engaging the nation's colleges and universities in addressing all aspects of our nationwide challenge in restoring and sustaining forest and rangeland resources.

Forest and Rangeland Resources Are At Risk

According to U.S. Forest Service estimates, the nation currently has approximately 190,000,000 acres of federal lands at risk to wildfire and more than 70,000,000 acres of all forestland ownerships at risk to increased tree mortality from insects and diseases. These are forests and rangelands whose tree and shrub ages, species composition, and stocking rates make the vegetation vulnerable to drought stress, which further exacerbates the potential effects of fires, diseases and insects. Add stresses created by a warming climate, threats from invasive and exotic weeds, and impacts to water quality and public safety following fires and we have a recipe for significant and long-term damage to sustainability of the nations' forest, rangeland and water resources.

The science is clear: we have a major, nationwide problem affecting the sustainability of forest and rangeland ecosystem health. Large areas of forests and rangelands have excessive buildup of fuels. Others have conditions that leave forests highly vulnerable to disease and insect epidemics. Many forests and rangelands are vulnerable to invasive species following major disturbances to soils and vegetation. But we don't have these problems everywhere and where we do have them they are not the same problem.

Problems in the urban-wildland interface and municipal watersheds are not the same as problems in the backcountry but both areas have problems and both areas need attention. Science tells us what the problems are but science doesn't have all the solutions yet. Solutions need to be tailored to different problems and different places by local, collaborative multi-party groups. The "solutions" must include basic and applied research that is done as the problems are being addressed through adaptive management so that, over time, we can improve our understanding of the dynamic systems at stake and the effectiveness of our solutions. Monitoring by the multi-party groups will be key to long-term effectiveness of investments. Several of these points were affirmed by the recent Western Governor's recommendations.

Restoration and Sustainability Require Bold, Focused Action at Landscape Scale

The magnitude and scope of forests and rangelands in unhealthy conditions are such that restoration treatments must be taken on a landscape scale, reflecting careful prioritization of places and treatments most likely to yield the desired reduction in risk. Where we have problems, they are measured in thousands to millions of acres; they are not localized site-scale problems amenable to traditional solutions, a dab here and a dab there. But not all of the nation's forests and rangelands are at risk and those that are at risk vary greatly in the nature of the risk, degree of risk, likely impacts of an undesired event, and likely responses to treatments designed to reduce risk.

It is vital that we, as a society, act boldly and quickly to begin reducing the risks to our environments, natural resources, economies and communities posed by those forests and rangelands that are in unhealthy conditions, to have as the Western Governor's recommend a bias for action. Where ecosystems and properties are at risk, excessive

avoidance of short-term risk will only exacerbate long-term risk. But it is vital that we not dissipate our resources – people, dollars, or trust -- in places that are not at risk or where treatments will be ineffective in altering the impacts of undesired events. We must design and carry out restoration actions using scientific knowledge coupled with the best local knowledge and community-based expertise and make every problem solving action a learning opportunity.

Making a national commitment to restore and sustain healthy forests and rangelands creates a grand experiment with interlocking social, environmental and economic dimensions. Therefore, we need comprehensive, collaborative, regionally coordinated strategies that engage multiple sectors, public and private including colleges and universities, in restoring and sustaining not only forest and rangeland health but also the health of the communities, economies and businesses associated with those lands and the capacity of agencies to carry out their public trust. Such a model is not in place yet and it is not reflected in H.R. 1904 or other proposed legislation.

Potentials for Biomass Energy and New Wood Products

Title II of H.R. 1904 is significant in recognizing the need to invest in developing new uses for the materials that must be removed from at-risk ecosystems -- utilizations that maximize economic as well as environmental possibilities. But without a processing infrastructure to harvest, transport and processes restoration by-products, currently eroding due to lack of materials and work, there will not be the physical capacity to carry out restoration work on the scale needed. We also need more innovations than just in biomass uses. Pioneering innovations must also occur in how projects are planned – streamlining and cost reductions, management technologies – light-on-the-land and low cost, and monitoring – employing state-of-the-art technologies for efficient and effective data collection and management.

New Partnerships Between Academia, Agencies, and Citizens

This nation's historic investments in forest and rangeland research have yielded many benefits in knowledge and technology for resource management and conservation. They have helped us learn how to grow trees, conserve fish and wildlife habitats, reforest cutover lands, and put fires out, well most of them. But our base of scientific knowledge and technologies to support the strategic actions needed at a landscape scale to restore forest and rangeland health under climates that are far different than we have experienced to date is weak. In some cases it is nonexistent. That makes well-intended projects vulnerable to challenge on scientific grounds; they could easily be found to be arbitrary and capricious based on missing science.

However, we cannot forestall taking action on our pressing problems until the new landscape-scale science has matured. We must build the needed scientific knowledge as we take action to solve the problems we face. After all, it will take landscape-scale experiments to generate landscape-scale knowledge; precisely the kind of experiments that forest and rangeland health treatments can provide. The same can be said for cost-

effective land treatments and utilization of treatment by-products. Our challenge is not unlike other major challenges this nation has faced in the past where we had to build the science as we built the program.

The current federal investment in research and development to support the National Fire Plan and its Implementation Plan is simply not sufficient for the task at hand and it does not adequately engage the nation's colleges and universities. It is around $40 million per year, plus or minus $2-3 million from year-to-year. The total federal investment in forest and rangeland health management and wildland fire management is around $2.5 billion per year. That puts federal R&D funding at about 1.5% of total investment. I have heard from U.S. Forest Service field officials that they are able to get only 60-70% of their field project funds "on-the-ground" because they must spend so much time and resources on planning, analyses, surveys, appeals and litigation. That means that federal taxpayer dollars are not having the impact they could have. More importantly, it means that problems can increase in severity over time as a result of ineffectively spent resources. Numerous cases of this have been documented in the Forest Service's "Process Predicament" report.

Perhaps the process improvements proposed in H.R 1904 will increase the percentage of dollars that get to the ground, but will they improve the efficiency and effectiveness of those dollars in producing desired outcomes? Only if they are guided by local collaboration and expertise on strategically designed, landscape-scale strategies, which take long-term ecosystem dynamics into consideration. Will they contribute to development of new technologies and processes to perform cost-effective actions? Will they result in new products and processes for using treatment by-products? Not likely.

In the late 1990s, I was the Forest Service's Director for the Pacific Southwest Research Station in California. We had three examples of projects where scientists worked with field managers on teams to design and implement work to accelerate development of old forests and reduce fire risks while protecting water quality and fish and wildlife habitats. Most of the work required the removal of some trees and use of managed fire. The work went forward in a timely fashion, revenues from tree removals exceeded costs of project work, conservationists supported the science-based work, new knowledge and technologies resulted, and the treatments were effective. The project on the Lassen National Forest changed the behavior of a wildfire this past summer from crown to ground, exactly as intended.

We have experience in large-scale, long-term collaborative research, development and application to solve major problems such as we face today with forest and rangeland health. Historic programs for forest insects, wildfire management and reforestation showed us how to effectively tackle complex problems through integration of research and management in adaptive problem solving. Collaborative partnerships between university scientists, agency managers and local citizens and businesses do work! They can provide multiple benefits essential to success in restoring forests and rangelands to healthy conditions.

Like the new Stewardship Contracts being implemented across the nation, where parties work together locally to design and implement solutions, the positive effects have multiple dimensions. We achieve lasting solutions based on appropriate science, local innovation and ownership of projects, trusting relationships between agency personnel, local citizens and researchers, economic development in local communities, and effective exchange of goods for services. Fieldwork gets done with higher percentage of budget making it "to the ground," broader agency stakeholders give support, and learning occurs as an integral part of problem solving. We call this approach, active adaptive management. But, unlike the past, where there was broad social agreement on what the "problem" was, we now have a highly fragmented society that does not find agreement on the "problem." Thus, the new model we need for restoring and sustaining forest and rangeland health must add the dimension of local, multi-party collaboration to the science-management partnership. And the results of that collaboration must be given some degree of durability so they can be implemented, tested, and adapted over time.

So far, such collaborative partnerships are the exceptions rather than the rule. The results of many collaborative projects are still subject to final resolution in the conflict arena. That needs to be reversed if legislation to improve the conditions of unhealthy forests and rangelands is to be effective in all the good it strives to accomplish. I believe that an authorization to create academia-agency-private partnerships on the order of 2.5 to 5% of annual appropriations from forest and rangeland health management and wildland fire management could result in changing the percentage of appropriations that result in "on-the-ground" work closer to 80%. Forests, taxpayers, managers, local communities and economies, our base of scientific knowledge, and public trust in agencies would all come out ahead.

Engage the Nation's Colleges and Universities

Our nations colleges and universities are ready to pitch in. They have unmatched education, research and extension expertise and capacity. Extension Services at land Grant universities are best prepared to carry out much of the education called for in the Western Governor's recommendations. Federal agencies recently created a network of Cooperative Ecosystem Studies Units at many of these universities across the country. These CESUs provide a vehicle for federal agencies to tap Land Grant university research and education in support of management practices on the ground. Our academic institutional assets have not been fully mobilized in the drive to restore forest and rangeland health. The bulk of work underway and that proposed in H.R. 1904 focuses on federal and state agencies to accomplish the job.

The Western Governor's recommend strengthening multi-party collaboration. This is necessary but not sufficient. It will take the combined expertise and capacity of management agencies, local people, AND research/education institutions to accomplish the work necessary and learn how to use the biomaterials produced as treatment by-products. In Montana, just last week the Western Governors saw an example of Stewardship Contracting that included the state's universities in helping to design and monitor projects. I encourage the Congress to engage the nation's universities, especially

Land Grant and 1890 colleges and universities, in formal problem-solving, learn-as-we-go partnerships with the agencies to restore and sustain healthy forests and rangelands and to generate new uses for restoration treatment by-products. The model is there; it can be done.

Title IV of H.R. 1904 currently calls for significant roles for Land Grant and 1890 colleges and universities in addressing insect problems in forests. These roles could and should be called for across the entire Act, academia-agency partnerships in all Titles. If there were only one thing I could change to make H.R. 1904 more likely to achieve its intended outcomes for healthy forests and rangelands and use of biomass removed through treatments, it would be integrating specific roles for colleges and universities into each title. The academia-agency-private partnerships would result in increased capacity in education and technology outreach, the landscape-scale knowledge needed to improve treatment effectiveness, new biomass and bio-materials technologies and products, graduating students better prepared to continue the kind of work that will be needed for several decades, and increased public confidence in state and federal resource management agencies. Following are some specific areas where research and education are needed:

1. Key elements for success of community-based collaborative forest restoration projects.
2. The economics of restoration under different forest and rangeland conditions.
3. New technologies and processes for cost-effective restoration treatments.
4. The economics of restoration under different levels of community infrastructure.
5. Restoration treatments under different ecological and stand conditions.
6. Options for use of small diameter materials as biomass for local industries and biomaterials for new products.
7. Ecological and economic effects of taking action and not taking action.
8. Monitoring of the effectiveness of community-based forest restoration projects – ecological and economic impacts.
9. How much vegetation and of what sizes and species must be removed from specific places and across the landscape to restore resilience and resistance to drought stress and its companions, insects, fire and invasive species, i.e., how big must the removed trees be and how many to accomplish desired outcomes?
10. How effective is stewardship contracting and local collaboration in problem solving in improving both the efficiency and effectiveness in health restoration treatments?
11. Once initial treatments are done, what kinds of maintenance actions are needed to sustain healthy ecosystems and prevent landscapes from returning to pre-treatment conditions?
12. When an uncharacteristic disturbance occurs, such as we have seen recently with major wildfires and insect outbreaks, what are the implications to environments, communities, and economies of letting nature take its course versus actively intervening to reforest or revegetate the area with desired native species?
13. Efficient and effective monitoring systems to support adaptive management.

Some Things to Consider

There are many parts of H.R. 1904 that should be retained in eventual legislation, as they are essential for success:

1. NEPA provision in Title I, Sec. 104 for developing one proposed agency action and its environmental assessment.
2. Public collaboration on the proposed agency action in Title I, Sec. 104(d).
3. Provisions for expedient yet equitable administrative and judicial reviews.
4. Consideration of short and long-term consequences of agency action or no action in injunctive relief (Title I, Sec. 107(b)).
5. Incentives for watershed health and healthy forest reserves provided through Titles III and V.
6. Early warning system development in Title VI.

If I could fix more than one part of H.R. 1904, those would include:

1. Add definitions for "restoration" and "forest health" in Title I.
2. Add a clause prior to Sec. 102 (b) in Title I calling for all land and resource management plans to be consistent with the National Fire Plan and its Implementation Plan prior to requiring that all fuels treatment projects be consistent with land and resource management plans, many of which are not currently well aligned with the Fire Plan.
3. Remove arbitrary acreage caps for how much land could be treated during the applicability of the Act (limiting treatments to 20 million acres, only 10% of at risk lands, is not ecologically sound).
4. Acknowledge that prohibiting treatments in the National Wilderness System, Congressionally designated Wilderness Study Areas, and roadless areas will not in any way protect them from the damaging effects of uncharacteristic wildfire (as seen this past summer in the Biscuit Fire in Oregon) or from insect or invasive species epidemics.
5. Add the USDA Cooperative State Research, Education and Extension Service to assist in implementing Title III Sec. 6, and authorize and encourage the Forest Service State and Private Forestry to enter into technology transfer agreements with land grant universities and associated forestry research, education, and extension programs to assist in this implementation.

Closing

In closing, I commend the Senate for recognizing the risks to major portions of this nation's forests and rangelands posed by current unhealthy conditions regarding wildfire, insects, diseases, and invasive species. I encourage the Congress to engage the nation's colleges and universities in assisting federal and state agencies and tribal and private groups with all actions taken to restore and sustain healthy conditions in the nation's forests and rangelands.

Statement of Donald J. Kochan,
Visiting Assistant Professor of Law,
George Mason University School of Law

Testimony Before the Agriculture, Nutrition, and Forestry Committee
United States Senate
June 26, 2003

I would like to thank Chairman Cochran, Ranking Member Harkin, and the members of the Committee for inviting me here to comment on HR 1904, the Healthy Forests Restoration Act of 2003.

My name is Donald J. Kochan and I am an outgoing Visiting Assistant Professor of Law at George Mason University School of Law. During the past academic year, I taught Property Law and Environmental Law and Regulation. As my visit at George Mason comes to a close, I will be taking an appointment as a John M. Olin Fellow in Law at the University of Virginia School of Law during the 2003-2004 academic year. For the record, I am testifying today on my own behalf and not as a representative of any organization. I am pleased to provide the following comments on HR 1904 to the Committee, focusing primarily on the judicial review provisions included in the bill.

I. Introduction

The Healthy Forests Restoration Act, HR 1904, is a necessary and sound legislative effort to protect and conserve our nation's forests, public lands, and the environmental and economic values contained therein. As recent events demonstrate, too often our United States Department of Agriculture and its subordinate United States Forest Service – along with the Department of Interior and its subordinate the Bureau of Land Management ("BLM") – have been hindered from protecting the integrity and health of National Forest System lands and public lands by misunderstood concepts of conservation and environmental protection. It should be understood that human intervention is sometimes necessary to conserve forests and that it can, indeed, assist in protecting the environmental values that lie at the heart of our nation's preservationist efforts. As I have often told my students, conservation and preservation efforts require responsible management if they are to achieve their goals.

The Healthy Forests Restoration Act presents an important effort toward solving management problems faced by the Forest Service and BLM. But, it is important that the need for HR 1904 is not limited to federal natural resources management alone – catastrophic fire risks directly affect lives and adjacent private property and private forest lands. While addressing Forest Service and BLM management authorities, HR 1904 at the same time presents a responsible and effective balance with the concerns for citizen participation in the management and conservation of our nation's forest resources.

Others will undoubtedly testify as to the merits and necessity of providing the Forest Service and BLM with the authority to effectively manage the National Forest System and public lands, including the ability to achieve hazardous fuel reduction on such lands. My comments focus particularly on the advisability of enacting legislation that allows citizen oversight of Forest Service and BLM action in this regard while

creating a system of judicial review that does not hamper the Forest Service and BLM from dealing with what are often imminent wildfire hazards within the National Forest System and on the public lands. This focus addresses primarily sections 105 through 107 of HR 1904. It is necessary that the Forest Service and BLM have authority to apply their particular expertise toward the management of our forests without waiting indefinitely for a judicial ruling during a time in which exists the risks of imminent fire hazards.

The judicial review provisions in HR 1904 are constitutionally valid and represent sound public policy, as they help to ensure that our nation's forest resources will not burn as burning questions of Forest Service and BLM authority go unaddressed in the federal courts. Moreover, the judicial review requirements of HR 1904 will not divert or distract our federal courts from effectively managing their dockets and other case priorities.

II. Background of HR 1904's Judicial Review Provisions

HR 1904 provides that interested citizens shall have the opportunity to participate in, and challenge when they feel necessary, Forest Service and BLM decisions for forest health management. The unique characteristic of HR 1904 lies in the boundaries it sets for preliminary injunctions. The bill would require preliminary injunctions granted by a federal court against a project implemented under this legislation be reevaluated every 45 days, and encourages completion of judicial review within 100 days. A court could extend preliminary injunctions an unlimited number of times at the end of each 45-day interval. After any decision to renew an injunction, the agency involved is required to notify Congress of the decision.

I agree with the House Judiciary Committee's finding that such a limitation on, and review of, preliminary injunctions is necessary. As the House Judiciary Committee stated, it is critical to stress efficient decision making on preliminary injunctions that limit the Forest Service's and BLM's abilities to address forest health matters and important to ensure that a federal court remain engaged in such cases rather than allow judicial delay to create unnecessary risks to governmental conservation efforts:

> Currently, preliminary stays on fuels reduction projects can remain in effect for months before a court finally reaches a decision on the overarching merits of the legal challenge. These long delays can by themselves defeat the purposes of a forest treatment project, particularly if a project is aimed at stemming the spread of disease or insect infestation to uninfected forest lands. In these cases, judicial delay is just as lethal as judicial defeat for the government. Without curbing anyone's ability to pursue a full range of judicial procedures, this provision would ensure that the court remains engaged on the status of a project, including the extent to which management inaction is exacerbating wildfire and forest health risks. The bill admonishes, in non-binding terms, Federal courts considering a legal challenge to a hazardous fuels reduction project to take all necessary steps required in order to issue a decision on the merits of the legal challenge within 100 days.

House Rep. No. 108-96 Part 2, at 4-5.

III. Constitutionality of HR 1904

The Healthy Forests Restoration Act's limitation on preliminary injunctions is constitutionally sound. In addition to its other legislative authorities, Congress has a constitutional responsibility and prerogative to manage National Forest System and public lands under the Property Clause of the U.S. Constitution. "The Congress shall have Power to dispose of and make *all needful* Rules and Regulations respecting the Territory or other Property belonging to the United States . . ." U.S. Const. Art. IV, Sec. 3, cl. 2 (emphasis added).

Similarly, Congress has the power to define and limit the jurisdiction of the Article III federal courts, including the ability to limit their equitable jurisdiction. The 45-day limitation on preliminary injunctions is consistent with this power of Congress. Such limitations on judicial authority are hardly unprecedented. Comparable priority provisions have been made in the past, have consistently been upheld upon judicial review. Indeed, Congress has the constitutional authority to preclude litigants from an opportunity for a preliminary injunction altogether in certain situations, and has done so in the past. *See, e.g.*, Norris Laguardia Act of 1932, 29 U.S.C. §§ 101, 105. Here, HR 1904 simply balances the equities and limits the duration of a preliminary injunction (with unlimited renewal opportunities) in consideration of the serious of the issue and the dilemmas faced by the Forest Service and BLM, rather than prohibiting such injunctions altogether.

Moreover, nothing in HR 1904 directs any particular outcome from federal judges and leaves them independent to consider the merits of each case. Encouraging federal judges to reach a speedy resolution in appeals under this Act is a responsible exercise of Congress's stewardship over the government's property while leaving intact the independence of federal judges.

Finally, Congress has the power to limit the discretion of federal agencies. Precluding agencies from granting waivers to the time limits established in HR 1904 is consistent with Congress's authority and many similar limitations already placed on agency discretion.

IV. The Standard for Injunctive Relief in HR 1904 is Consistent With Current Applicable Law

Section 107 in HR 1904 sets forth a standard for granting injunctive relief that simply mirrors existing standards already adopted in the federal courts. The provisions concerning the balancing of interests and particularly the requirement that *long-term* harms be considered when evaluating the public interest do not substantively change existing law. This provision is important, however, because it provides security, and a reminder, that both short-term and long-term harms will be evaluated when deciding whether to issue an injunction. Without this reminder, the heat of public debate could deflect a court's attention from its already-recognized responsibility to remain cognizant of long-term harms that may be affected by injunctive relief.

V. The Judicial Review Provisions in HR 1904 Should Not Adversely Affect the Caseload of Federal Courts or the Priorities of Decision Making

HR 1904's judicial review provisions will not impede the efficient operation of the federal court system. The arguments that courts would likely have to delay and adversely impact other cases in order to comply with the requirements of HR 1904 are overstated.

First, requiring that preliminary injunctions be revisited and potentially renewed every 45 days is particularly appropriate to hazardous fuel reduction issues in our federal forested lands. The natural resources are often subject to seasonal variations and other forces of nature that uniquely present the potential for dramatic changes in the public interest factors that must be weighed in deciding whether to grant or sustain a preliminary injunction against Forest Service or BLM action. The speed with which insect infestations and disease can spread through forests and the extraordinary fire risk created in areas that have been ravaged by insects and disease warrants quick responses to natural threats – which cannot occur without quick review of Forest Service and BLM decisions to exercise their authorities to manage such risks.

In most civil cases, after granting a preliminary injunction, circumstances do not change. However, rapid changes in conditions on forest lands, can be expected, making it more likely that a court should reconsider and perhaps alter an initial decision to grant a preliminary injunction. Unfortunately, disease, insects, and fire do not obey preliminary injunctions.

Furthermore, requiring that preliminary injunctions be renewed should require a minimal commitment of judicial resources. The bulk of evidence and legal issues that must be considered in granting any preliminary injunction under HR 1904 will be presented and reviewed in the initial decision that determines whether or not to grant the initial preliminary injunction. It is true that the court will be required to revisit this decision after 45 days, but most of the administrative record necessary to make this next determination will have already been reviewed by the court. Much like status reports required by courts in many forms of litigation, the 45-day renewal requirement simply ensures that neither the parties nor the court is permitted to unduly ignore a case, delay its conclusion, or fail to acknowledge changed circumstances. Similarly, this requirement is unlikely to crowd out other cases because the issues involved on the merits in the cases that will be affected by HR 1904 do not require evidentiary trials but instead are almost always resolved on cross-motions for summary judgment (followed by a relatively short oral argument). The 45-day limitation simply puts pressure on the parties and judges to ensure timely briefing and resolution of cases, rather than pushing forward trials that would monopolize a court's calendar.

The provisions of HR 1904 should also not be otherwise expected to divert, delay, or adversely impact resources committed to other types of cases. For one thing, courts have long been faced with the need to balance their dockets according to priorities set out by Congress or identified by litigants. In fact, litigants themselves often have control to create expedited review – as soon as any case of any kind becomes subject to a preliminary injunction, current judicial caseload management already typically affords

these cases a priority irrespective of congressional directives like those contained in HR 1904.

The expected volume of cases challenging actions taken pursuant to authority granted in HR 1904 also can hardly be seen as a major disruption in the federal court docket. As I understand, the total number of cases pending during any given recent year with National Environmental Policy Act, Endangered Species Act, or National Forest Management Act challenges to Forest Service actions has been in the range of *only* 100-120. This number is a drop in the bucket when it comes to total civil filings in the federal district courts which have reached over 250,000 filings in each of the past few years. *See* Federal Judicial Caseload Statistics (2002), at App. C, http://www.uscourts.gov/caseload2002/tables/c00mar02.pdf. HR 1904 should not be expected to significantly increase this number of challenges to Forest Service or BLM activities. As evidence of that fact, there has not been a significant increase in the number of lawsuits challenging Forest Service activities even in the past few years when the budget for fire control initiatives has increased.

Even if there is a minimal diversion away from other cases as a result of HR 1904, particularly those cases in federal court for money damages, it is certainly not unwarranted. Those types of cases will result in an ultimate judgment that is largely unaffected by a small increase in the passage of time – which is also why the typical case does not qualify for a preliminary injunction. Conversely, the case of forest and public land management involves risks of time delays that mean the risk of the loss of valuable national environmental and economic resources due to wildfires, insect infestation, and disease.

Note also that it should be absolutely clear that nothing in HR 1904 changes the substance of environmental laws that the Forest Service and BLM must obey and under which litigants can sue. Moreover, limitations on preliminary injunctions included in HR 1904 do nothing to affect parties from receiving a final decision on the merits and appropriate relief. Cognizant of this fact, the Forest Service and BLM will have an incentive to act within their statutory authority and act responsibly in making any hazardous fuel reduction decisions. Nothing in any limitations on preliminary injunctions precludes ex post review under this Act, which will should lead to caution on the part of the Forest Service and BLM to take wise action and final review should provide a remedy if these agencies act improvidently.

The admonishment that judicial review under HR 1904 should be heard within 100 days is similarly sound. Again, judges are under no binding requirement by this provision. It does nonetheless send an important signal of Congress's priorities and preferences and underscore the unique nature of cases that hinder the efficient, timely management of fragile forest resources. Furthermore, this provision should not be expected to cause judges to divert their attention from more important cases – the Act admonishes completion within 100 days only "to the maximum extent practicable." Article III judges are well-attuned to the equities involved in controlling their dockets and should be expected to take into account Congress's admonishment without unduly prejudicing any other cases.

Finally, to the extent Congress is concerned about the burden on the federal judiciary from HR 1904, the solution is not to reject the sound policy contained therein. Instead of risking the health of our nation's forest resources, those with such concerns might consider expanding judicial resources and streamlining the appointments process to eliminate vacancies on many of the federal courts. There have often been decisions to grant the federal courts additional resources when new legislative priorities demand it. To the extent any such additional resources become required, the priorities for forest health and conservation identified in HR 1904 should be no exception.

VI. Conclusion

I encourage Congress to pass HR 1904, the Healthy Forests Restoration Act of 2003. I again thank the Committee for allowing me to provide these comments.

STATEMENT OF PATRICK PARENTEAU
PROFESSOR OF LAW, VERMONT LAW SCHOOL
BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
REGARDING H.R. 1904, THE HEALTHY FORESTS RESTORATION ACT OF 2003
JUNE 26, 2003

INTRODUCTION

I appreciate the opportunity to appear before the Committee to offer my comments on H.R. 1904, the so-called Healthy Forests Restoration Act. This is a deeply flawed piece of legislation that cuts the heart out the NEPA process,[1] eliminates citizen appeal rights,[2] and usurps the traditional role of the federal courts in exercising their equitable authority to fashion injunctive relief to assure compliance with federal laws (discussed below).

These are draconian measures that are unnecessary and unjustified. Under the guise of reducing risks of wildfires and insect infestations, this bill seeks to increase commercial logging on millions of acres of public lands, including remote backcountry. No one disputes that many of our publicly owned forests are "unhealthy"as a result of centuries of bad policies, like fire suppression; and bad management, like massive clear-cutting and road-building. And no one disputes the need to reduce the risk of wildfires in the "urban interface," or to take appropriate action to prevent the spread of insect infestations. But "more of the same," i.e. more logging and road-building, is not necessarily the cure for what ails our public forests. More to the point, it is

[1] Section 103 (b) provides that the Secretary "is not required to study, develop, or describe any alternative to the proposed agency action." As the CEQ Regulations state, alternatives analysis is the "heart of the environmental impact statement." 40 CFR 1502.14. Without alternatives, an environmental assessment under NEPA is an empty gesture.

[2] Section 105 (c) exempts fuel reduction projects from the Appeals Reform Act of 1992 (PL 102-381) which provides citizens the right to appeal unlawful Forest Service decisions. A wide variety of "citizens" regularly use this provision, including landowners, municipalities, local business, and conservationists. In fact, according to a recent study by the University of Northern Arizona, ranchers file more appeals each year than "environmentalists."

not necessary to ride roughshod over environmental laws, the public, and the courts in order to address these problems. It takes time to make rational, lawful, well-informed decisions, but history has shown that it is time well spent.

Despite the throaty rhetoric of "paralysis by analysis," the proponents of this legislation, including the Bush Administration, have produced no hard evidence to substantiate the charges that NEPA, citizens, or the courts are to blame for the conditions on public lands, or that they represent substantial obstacles to improving those conditions.[3] Indeed, we would not be in the fix we are today in if the federal agencies responsible for managing these lands had paid more attention to the precautionary principles of NEPA, if they had listened to those who questioned the dominance of timber harvest at the expense of wildlife, watershed and the ecological integrity of the whole forest, and if they had simply obeyed the law.

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[3] The General Accounting Office has issued two reports casting serious doubt on the Forest Service claim that citizen appeals and litigation have severely hampered the agency's ability to conduct fuel reduction projects. See *Forest Service: Information on Decisions Involving Fuel Reduction Activities* GAO 03-689R May 14, 2003; *Forest Service Appeals and Litigation of Fuels Reduiction Projects*, GAO 01-114R August 31, 2001.The 2003 GAO Report found that more than 95 percent of the 762 [724 out of 762] hazardous fuels reduction projects reviewed by the GAO -- covering some 4.7 million acres of federal forest lands -- were ready for implementation within the standard 90 day review period. Further, the GAO found that only 3% of the projects (23 out of 762) were challenged in court, and by a wide variety of interest groups.

Though there are a host of issues raised by H.R. 1904, I will focus on the judicial review provisions, sections 106 and 107. Together these provisions represent an unprecedented intrusion into the judicial branch that attempts to "micro-manage" the federal courts and tilt the scales of justice in favor of "hazardous fuel reduction projects." This new term is defined so broadly that it means essentially whatever the responsible federal agencies say it means.[4] The fact that the bill sets a "cap" of 20 million acres of federal lands that may be included in authorized hazardous fuels reduction projects, an area far larger than any reasonable concept of the "urban interface," is a clear indication of how broad the grant of authority is to the agencies. See 102 (c).

SECTION 106–MICRO-MANAGING THE COURTS

Section 106 imposes unreasonable deadlines on litigants and the courts, attempts to prioritize the federal dockets, limits judicial authority, and imposes additional procedural steps and workload on busy, understaffed federal courts struggling to reduce a growing backlog of cases. Specifically, section 106 would do the following:

- Require lawsuits challenging fuel reduction projects to file suit within 15 days of the date the final decision is published in a "local paper of record." Section 106 (a) (1). This is an unreasonably short period of time, triggered by an inadequate notice in obscure publications. It does not provide any opportunity to carefully evaluate the merits of filing suit, or explore settlement. Coupled with the repeal of the administrative appeal rights (section 105), this provision essentially forces citizens to "shoot first and ask questions

[4]For example, under section 102 (a) five categories of federal lands are made eligible for hazardous fuels reduction projects, including those where "windthrow or blowdown, or the existence or threat of disease or insect infestation pose a significant threat to forest or rangeland health or adjacent private lands." It is hard to imagine any forest lands anywhere in the country that would not fall under that kind of open-ended description.

later."

• Prohibit the courts from granting any waivers of the filing deadline, even where the parties might otherwise agree to it, or the interests of justice might require it. Section 106 (a) (2).

• Urge courts "to expedite, to the maximum extent practicable, the proceedings in such lawsuit with the goal of rendering a final determination on jurisdiction, and if jurisdiction exists, a final determination on the merits, within 100 days from the date the complaint is filed." Section 106 (c). Even though this is not a mandatory deadline, it puts undue pressure on judges to "fast-track" a special class of cases, whether or not they deserve it in relation to other cases, including criminal cases where a "speedy trial" is a constitutional imperative.

• Limit any preliminary injunction granted by the court to 45 days, a totally arbitrary time limit. Section 106 (b) (1). Courts are "permitted" to extend the period after "taking into consideration the goal expressed in subsection (c) for the expeditious resolution of [fuel reduction] cases." Before applying for an extension of the preliminary injunction, "the parties shall present the court with an update on any changes that may have occurred during the period of the injunction to the forest or rangeland conditions that the authorized hazardous fuels reduction project is intended to address." Section 106 (b) (2).

• Require the Secretary to report to Congress every time there is a request to renew a preliminary injunction. Section 106 (b)(3). It is not clear what Congress is supposed to do with this information; the notice seems calculated to put more pressure on the courts to refrain from extending injunctions regardless of the equities.

SECTION 107–INJECTING BIAS INTO A CORE FUNCTION OF THE JUDICIAL BRANCH

Even more troublesome than the interference with the court's management of its docket is the attempt in section 107 to bias the judgment of the judiciary in exercising its equitable authority. The exercise of equitable discretion is one of the core functions of the judiciary. Statutes determine what conduct is legal or illegal, but it is the courts that determine what remedy is required to enforce compliance with the law in the circumstances of each particular case. As the U.S. Supreme Court said in Hecht v Bowles, 321 U.S. 321, 331 (1944), the leading case regarding the relationship of equity and statutes:

> The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument of nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.

To do equity, courts must be independent. Indeed, the independence of the judiciary is one of the core values of American democracy. We rely upon the courts to administer justice fairly and impartially, adjudicating the facts of specific controversies and enforcing the rule of law "without fear or favor." One of the primary responsibilities of the courts is to ensure that the laws passed by Congress are not "lost in the halls of the bureaucracy." Injunctive relief is the only tool that courts have to ensure compliance with statutory requirements, while taking into account competing interests and shaping relief to avoid unnecessary harm to third parties or to the public interest. This is a uniquely judicial function that deserves respect from the coordinate branches of government.

Federal courts have always treated injunctions as an extraordinary form of relief, available only where there is the threat of irreparable harm and no other adequate remedy at law. Courts do not issue injunctions lightly. Plaintiffs must meet four tough tests: (1) that there has been a violation of law, or at least the likelihood of such a violation; (2) that plaintiff will suffer

irreparable harm if an injunction is not issued; (3) that any potential harm to the defendant or third parties does not outweigh the harm to plaintiff; and (4) that the public interest will be served by an injunction. Cf. Sierra Club v Penfold, 857 F.2d 1307, 1318 (9th Cir. 1988). In fact, courts often deny injunctive relief in environmental cases [cite Winner, Rodgers]

The Supreme Court has made it clear that injunctions do not automatically issue every time a statutory violation has been established. Weinberger v Romero-Barcelo, 456 U.S. 305, 313 (1982); Amoco Production Co. v Village of Gambel, 107 S.Ct. 1396, 1403 (1987). Courts are required to carefully weigh the equities and "balance the hardships" before issuing injunctions, except in those unusual circumstances where unless Congress has unmistakably decreed that certain values are to be given "paramount" importance, such as the preservation of endangered species. TVA v Hill, 437 U.S. 153, 193-95 (1978).

Courts are well suited to consider all of the circumstances and tailor injunctive relief to assure compliance without unduly harming affected interests. United States v City of Parma, 661 F.2d 562, 576 (6th Cir. 1981) ("Courts have a heavy responsibility to tailor the remedy to the particular facts of each case so as to best effectuate the remedial objective."). In the landmark *Reserve Mining* case, for example, the court ordered compliance with the statute but allowed the defendant a reasonable time to come into compliance so as to avoid a shut-down of the facility and the attendant economic dislocation that would have entailed. In cases against federal land management agencies, courts have declined to enjoin activities, such as logging, pending compliance with environmental statutes, such as NEPA and the Endangered Species Act, where there was no showing that there would be any irreparable harm to the environment and no "irreversible or irretrievable commitment of resources" pending compliance. Cf. Southwest Center for Biological Diversity v U.S Forest Service, 307 F.3d 964, 973 (9th Cir 2002). Courts

have also denied injunctive relief for NEPA violations where there was an urgent need for action, such as arresting the spread of insect infestations. Alpine Lakes Protection Soc v. Shlepfer, 518 F.2d 1089, 1090 (9th Cir. 1975). On the other hand, courts must have the discretion to issue injunctions where necessary to preserve the status quo pending compliance; otherwise the court is put in the untenable position of sanctioning violations of the law. Thomas v Peterson, 753 F.2d 754, 764 (9th Cir 1985)

Turning to the specifics of section 107, two points should be made. First, the provision expands the universe of federal actions subject to its requirements well beyond "hazardous fuel reduction projects." Second, the provision attempts to bias the exercise of the court's equitable discretion in ways both subtle and not so subtle. Specifically the provision does the following:

- It defines "covered projects" as "an action on Federal lands, including an authorized hazardous fuels reduction project, that is necessary to restore a fire-adapted forest or rangeland system." (Emphasis added) Courts interpret this kind of definition as "illustrative" rather than "exclusive." Thus, contrary to the bill's supposedly narrow focus on fuel reduction projects, this language opens the door to a broad category of federal actions beyond fuel reduction projects, and makes them eligible for the special treatment afforded by section 107. At a minimum this kind of loose language guarantees lots of litigation over its scope and intent.
- It emphasizes "harm to the defendant"as a dominant consideration in weighing equities. Section 107 (b). Under classic equitable balancing, of course, courts are required to balance the hardships to all parties, as well as irreparable harm to the environment and any irreversible commitments that would prevent ultimate compliance with the law. Section 107 does not even acknowledge that compliance with the law is a relevant

consideration.

• It mandates that courts "balance the impact to the ecosystem of the short term and long-term effects of undertaking the agency action against the short-term and long-term effects of not undertaking the agency action." As discussed above, courts already engage in this kind of balancing , except that it is done in a more even-handed manner without the preference for the defendant's point of view. At best, this requirement is redundant; at worse, it attempts to skew the court's analysis.

• It mandates that the courts "give weight to a finding by the Secretary concerned in the administrative record of the agency action concerning the short-term and long-term effects of undertaking the agency action and of not undertaking the agency action, unless the court finds that the finding is arbitrary and capricious." In effect this means that a court is bound by the Secretary's (i.e the defendant's) determination on whether an action should proceed in the face of a finding that the Secretary has violated the law unless the court finds that the Secretary's determination is arbitrary based on the record that the Secretary has compiled. This is a breathtaking delegation of a judicial function to an Executive Branch official who is also the defendant in the case. This simply defies logic and common sense, and betrays an unwarranted distrust of the federal courts.

RELATED ACTIONS LIMITING ENVIRONMENTAL PROTECTION AND PUBLIC PARTICIPATION IN DECISIONS AFFECTING PUBLIC LANDS

H.R. 1904 cannot be viewed in isolation. There are a number of other actions being taken by the Administration to rollback environmental safeguards and curtail citizen access in the name of "hazardous fuels reduction." For example:

•On June 5, 2003, the Administration promulgated new rules establishing a "categorical

exclusion" from NEPA for fuel reduction projects on national forests and BLM lands. 68 Fed. Reg. 33813. This CE applies to projects up to 1000 acres within the "wildland-urban interface. (For comparison, the previous CE limit for logging was 10 acres.) The new CE virtually eliminates NEPA review for approved projects subject to a very narrow "extraordinary circumstances" exception.

• The day before, on June 4, the Administration published new rules overhauling the Forest Service appeals process under the Appeals Reform Act of 1992. 68 Fed. Reg. 33581.The new rules exempt all "categorically excluded" projects from appeal. Thus, in one-two punch the Administration eliminated NEPA review for fuel reduction projects and then insulated them from administrative review on any basis. Further, the new rules give the Secretary and Assistant Secretary of Agriculture carte blanche authority to exempt any Forest Service project from appeal. See 36 CFR 215.20 (b).

CONCLUSION

H.R. is a bad law. It betrays a cynical distrust of the federal judiciary that is completely unwarranted and antithetical to the fundamental tenet of checks and balances that has guided our democracy form its earliest days. It also betrays a distrust in the value of careful environmental review and an open public debate about how public lands ought to be administered. This is legislation designed to empower an elite clique of federal officials to make all the decisions, and then constrain the courts from conducting the kind of searching, impartial, unflinching analysis of the law, the facts and the equities that has been the hallmark of judicial review of agency action in the past. The premise of this legislation is all wrong. It is not the courts, or the public, or NEPA that is to blame for the sorry condition of our public forests. It is bad policies and bad management. Albert Einstein once observed "We can't solve problems by using the same kind of Thinking we used when we created them." We would do well to apply that reasoning to restoring and improving the health of our natural resources.

Thank you.

DOCUMENTS SUBMITTED FOR THE RECORD

JUNE 21, 2003

Statement of Senator Baucus
Senate Committee on Agriculture, Nutrition and Forestry
Hearing on HR 1904, the Healthy Forests Restoration Act of 2003
June 26, 2003

Thank you Mr. Chairman for calling this hearing today. I'd like to thank all of the witnesses for taking the time to be here today. Legislation that will help restore balance to our forests and that will protect our communities from dangerous wildfires is critical to the nation and to my State of Montana.

That's why this hearing is so important, so that we can explore in depth the concerns and issues that surround proposed healthy forest legislation, particularly as this may be the only hearing in the Senate on this matter.

These issues are complex, and the concerns about the potential impacts of proposed legislation are real.

The purpose of this hearing is to consider H.R. 1904, the Healthy Forests Restoration Act of 2003. I understand that this bill is based largely on the President's Healthy Forests proposal from last year.

I applaud the President for his efforts to move the ball forward on this important issue, and I am pleased the House acted swiftly to approve a bill. I believe H.R. 1904 has some provisions that could help communities address forest fire threats expeditiously and that the bill makes some positive contributions to the debate over healthy forests.

However, I still have some questions and concerns about this bill and the real benefits that it will have for my state of Montana and the nation, both in terms of reducing fire risk and putting people in rural communities to work. I would like to address these questions in more detail with the witnesses today.

Mr. Chairman, the question of how best to reduce catastrophic fire risk and achieve a "healthy forest" is not simply answered. This was well demonstrated by the divisive split in this chamber last year over the very same issue. I, for one, do not want to go back down that same road. I believe this issue is too important to see legislation die again in the Senate this year.

But that means, Mr. Chairman, that the process of considering H.R. 1904 must move forward in a bi-partisan manner. We have to bring both sides to table. That is the only way, the only way, that we will see a bill this year on healthy forests. And I want to see a bill, Mr. Chairman. I want to see a bill badly.

The devastating fires of 2000 are still fresh in the minds of many of my constituents and we are still struggling with the after-effects of those fires. These include erosion, stream and watershed degradation, the spread of noxious weeds, among other problems.

We're also struggling with the financial impacts not just of fighting and cleaning up after the fires, but with the side impacts as well – timber contracts burned up, recreation and tourist revenue lost, important projects and contracts – including fire restoration projects -- delayed or canceled due to a lack of resources at the Forest Service because of the need to fight other fires, like those that burned in 2002. I know that Montana is not alone in having these problems.

The fires of 2000 and 2002 were devastating. The concern is that these are not natural wildfires, fires that have been part of the natural cycle of life in Western forests for thousands of years.

These are catastrophic fires that are not healthy, that are dangerous and that threaten communities, watersheds and wildlife habitat because they are so destructive. Unnatural fuel loadings contribute to these catastrophic fires.

As I understand it, the purpose of healthy forest legislation is to give federal agencies like the Forest Service the tools they need to efficiently and effectively treat these fuel loadings and reduce the threat of catastrophic fire. That's the bottom line, here.

It's hard to argue with that concept, Mr. Chairman. But, as with all issues this complex, the devil is in the details. We have to be certain that what we're doing won't hurt more than it helps.

Let me outline some broad principals that I think should be part of any Healthy Forests legislation, be it H.R. 1904, or any other bill. H.R. 1904 encompasses some of these principals, but I would like to keep working to make sure all of them are addressed.

I want a bill that allows federal agencies and communities to address dangerous fuel loadings on a local level, quickly and efficiently. I want a bill that supports small, independent mills and a bill that puts local people to work in the forests and the mills.

I want a bill that promotes and protects citizen involvement and one that is fair to the principals underlying the federal judicial system. We also must make sure special and sensitive places are protected.

And finally, and most importantly, the end result of our efforts in Congress must be to protect people and their communities from dangerous fires and leave our forests in better condition than when we started.

In short, we need to find the right balance, between reducing fire risks, putting people to work, and making sure the public's voice continues to be heard in decisions that impact the public's lands.

Mr. Chairman, it's no secret that small, independent mills across Montana, and the rural communities that depend on them, are hurting badly. And the situation in Montana grows more urgent every day. Ten years ago, dozens of small, independent mills operated in Montana. Today, only eight remain.

And just this month, another Montana mill announced plans to close. We're losing the local skills and industry necessary to help the federal government reduce hazardous fuels in our forests.

Last month, I took the initiative to bring small mill owners from across Montana to meet with myself, Sen. Conrad Burns, Representative Dennis Rehberg, and Governor Judy Martz' office for an historic discussion.

These Montanans presented us with a somber report about the status of their industry. They challenged us to dig deep, work together to respond to the plight small mills and small communities face everyday.

I asked our independent mill friends to keep the heat on the Montana Delegation and Governor's Office as we work to find common-sense ways to support them.

Mr. Chairman, my hope is today's hearing will move us forward in providing sensible remedies to reduce the threat of catastrophic wildfires, with the side benefit of putting rural people to work in our national forests.

Over the past several years I have offered legislation, listened to discussions in the Senate and watched as some good ideas got high-centered in debate, while homes, watersheds and wildlife habitat were destroyed by wildfire. Working together, we have a chance to address the problems we face in our forest communities and make some common sense decisions.

Thank you Mr. Chairman, and thanks again to all of the witnesses for participating in this hearing today. I'll be looking for your suggestions and comments on H.R. 1904, and on how Congress can craft a bill that will pass the Senate. I look forward to your thoughtful answers to the committee's questions. Thank you.

Statement of Senator Saxby Chambliss
Committee on Agriculture, Nutrition and Forestry
Full Committee hearing to review H.R. 1904, the Healthy Forests Restoration Act of 2003
Thursday June 26, 2003

Mr. Chairman, I am pleased to support the Healthy Forest Initiative. With well-thought out procedures this Initiative serves as a valuable tool for proper management of our national forests ensuring that they will be around for future generations to enjoy. This Initiative provides valuable support for reducing hazardous forest fuels to prevent wildfires; proper thinning of diseased trees infected by various forms of pests and proposes a Watershed Forestry Assistance Program.

Reducing hazardous forest fuels will save millions of acres of forests and communities from devastating wildfires. This will protect our forests from annihilation, and save millions of dollars in clean up and repair cost due to loss of homes and timber.

Allowing proper thinning, we will produce a more viable forest and properly manage them to ensure years of growth. I am not talking about clear cutting forests this is about common sense management practices.

I also feel that the Watershed Forestry Assistance Program is immensely important in protecting the water supply and water quality in various regions throughout the United States.

The Healthy Forests Restoration Act of 2003 is a positive move in the right direction for managing our National Forests. I urge all members of this committee to support this program. Thank you, Mr. Chairman.

U.S. SENATOR PATRICK LEAHY

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Statement Of Senator Patrick Leahy
Senate Agriculture Committee Markup Of H.R. 1904

Mr. Chairman, although I understand the Committee's desire to quickly move this bill, and although I recognize that we will have lengthy debate on almost all of its provisions on the floor, I still want to express my disappointment that the Committee did not have more time to fully debate it. As you know, I have very strong concerns about several provisions that undercut environmental analysis, citizen appeals and judicial review. In fact, I thought this bill should have been debated in the Judiciary Committee as well.

I had hoped that this Committee would take a step back and find real solutions to the risk communities face from wildfire. Instead, we are rushing ahead with this bill that will do nothing for this fire season. I do not understand why we are in such a hurry to move this bill out of committee now if it will not come to the floor before August recess, and even if it is passed, by the Administration's own admission, will still take at least eight to ten years to address the buildup of hazardous fuel loads.

Most people believe it will be much longer than that unless we do something to focus activities on those areas at greatest risk and dedicate more funding to get projects on the ground. Unless Forest Service researchers have found a way to make money grow on trees, this is the fatal flaw of H.R. 1904.

Even the Cato Institute agrees that this bill is doomed to fail because it does not set any priorities for action. The Institute has said that the "President's plan to thin 25 million acres in the next 10 years will cost as much as $4 billion yet leave nearly 90 percent of those acres untreated. That will leave forest homes almost defenseless as they are today."

So, why are we in such a hurry to gut environmental laws and judicial review to move a bill that does not solve the real problem? The Administration has done a great marketing job of selling environmental laws and the judicial process as the scapegoat for wildfires. But they have not been able to back up their claims with facts.

The statistics contradict their statements. A recent GAO study showed that only a quarter of the fuel reduction projects from the past two fiscal years were appealed, and most of those were quickly dealt with. Barely any had legal challenges filed against them.

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Yet, the Administration also seems determined to set a new precedent to cut back environmental analysis, cut out the public and cut into the court's independence. H.R. 1904 is just another step in what appears to be the Administration's wholesale assault on the public's role and right to participate in the management of their public lands.

When this bill came over from the House, it already had opposition from numerous civil rights organizations, environmental groups and judicial scholars. Unfortunately, in most areas, the bill has now gone from bad to worse in committee markup. We have expanded the scope considerably so the Forest Service could do projects on most of the Forest Service lands with little environmental or judicial review and we have increased the subsidies for the timber industry.

I hope that we can get this bill back on track and truly address the wildfire risk before it is taken up on the floor. That is why I have introduced my own legislation, the "Forest and Community Assistance Act." We can do this by prioritizing projects, increasing funding and without circumventing environmental analysis, public participation and judicial review.

Statement of Senator Patrick Leahy
Senate Agriculture Committee Hearing on H.R. 1904

First, in opening I would like to commend the Forest Service and Bureau of Land Management employees on their continued efforts in battling the increasing number of wildland fires throughout the United States. This year bodes no better with already 25,000 plus acres burning in Arizona. I hope that the fire crews in Arizona now and throughout the West this summer remain safe.

It appears that the country is heading into another difficult fire season. But, what we are addressing today are problems associated with our past understanding of land management and wildland fire suppression over the past century, as well as an ever increasing American public who build their homes adjacent to their Federal lands compounding an already difficult situation. I share my western colleagues desire to find a way to reduce the risk of wildfires, but I am concerned that there continues to be an effort by this Administration to cut the American public out of the decision-making process on the management of their Federal lands.

Although this Committee and the Senate have been through this debate before, we have never seen a proposal that goes this far to cut back environmental analysis, cut out the public and cut into the court's jurisdiction and independence. The provisions in H.R. 1904 would set such a precedent for Congressional interference in court matters that I requested, and I still believe the Judiciary Committee should take up the bill as well.

Unfortunately, H.R. 1904 is just another step in what appears to be the Administration's wholesale assault on the public's role and right to participate in the management of their public lands, including challenging decisions of their government. Many people look at the wildfire debate and the Administration's changes to the management of our public lands as a western issue. It's not. In Vermont, the Green Mountain National Forest is the backyard for many Vermonters. When I look out from my farm in Middlesex, I am looking at national forest. Vermonters have a right to stick their noses in the business of the Forest Service because it will affect us directly.

When you look at the tidal wave of regulatory changes the Administration has made in the last year to cut the public out of the process, you quickly understand that the Administration does not want the public or the courts looking over its shoulder. The Administration has been busy creating a broader number of projects that will be excluded from environmental analysis under the National Environmental Policy Act, limiting how, who and when citizens can appeal agency decisions and even cutting out other agencies, such as the Fish and Wildlife Service, from advising the Forest Service on the impact of the actions on endangered species habitat.

H.R. 1904 takes the regulatory steps dangerously further under the guise of trying to prevent wildfires in the future. H.R. 1904 cuts out one of the basic requirements of NEPA, considered the Magna Carta of our environmental laws, for agencies to consider a range of alternatives. Instead, H.R. 1904 requires the agency to only consider one

alternative, defeating the purpose of scoping and working collaboratively with the public. This change flies in the face of the Supreme Court's ruling in *Kleepe v. Sierra Club*, 427 U.S. 390, 410 (1976), which noted that NEPA requires federal agencies to take a "hard look" at the environmental consequences of their action and to consider a reasonable range of alternatives to the proposed action. Alternative actions have been essential for agencies to consider the risk and uncertainty associated with forest thinning.

When Chief Bosworth testified before the Energy and Natural Resources Committee in February, he stated that one of the Forest Service's legislative initiatives was to repeal Section 322 of the Department of the Interior and Related Agencies Appropriations Act of 1993 commonly known as the "Appeals Reform Act." I helped craft this bill with Senators Fowler and Craig. At the time, we all agreed that it was important for the American public to have an opportunity to participate in the management of their national forests and this includes challenging a decision. I still believe that this is an important right of the American public to challenge the government when they feel it is overstepping the laws that govern them. The Administration is making its first move towards the complete repeal of this Act here in H.R. 1904 by arguing it hampers the agency's ability to get fuel reduction projects on the ground. Instead, the bill directs the Forest Service to come up with its own appeals process.

Although I am sure the Administration feels the public's right to appeal their decisions has become a nuisance, they have not actually provided any evidence that it slows down the projects. A recent GAO study showed that only 24 percent of the fuel reduction projects from the past two fiscal years were appealed. Of those, 79 percent were dealt with in 90 days or less.

This same study also showed that only 3 percent, specifically 23 of 762 hazardous fuels reduction projects, had legal challenges filed against them. Yet, the Administration also seems determined to set a new precedent in undermining the independence of our courts by putting time limits on when cases can be filed, and how long courts have to consider them. By doing so, the bill will not only encourage more suits to be filed but will also push forestry cases to the front of the docket. I would like to include in the record two letters – one from over 70 law professors and another from public interest groups raising concerns with the impact this provision will have on other cases. As a former States Attorney, I also have this concern, particularly in rural district courts where the fuel reduction suits will likely arise. Many people believe, and I agree, that this provision will also lead plaintiffs to rush to file complaints, without trying to resolve them in other ways, to protect themselves under the 15-day filing requirement. This provision may just create more problems, more litigation and more of the gridlock the Administration wants to avoid.

The bill also attempts to give weight to the agency regarding the balance of harms -- short term fire threat vs. long term ecosystem health – in deciding whether to issue a preliminary or permanent injunction. Finally, the bill also requires the agency to notify Congress whenever a judge renews injunctions. These provisions erode the separation of powers between the three branches of government. Section 107 tilts the scales of justice

in favor of the agency during consideration of injunctive relief. Section 106 mandates that the Secretaries of Interior and USDA inform congressional committees when a judge extends injunctions beyond 45 days. I would like to know if there are any other laws that require this type of legislative oversight of court proceedings? If H.R. 1904 moves forward, is Congress saying that these complaints are more worthy of our attention than other civil or criminal cases?

I simply do not understand how an average of 13 legal challenges on hazardous fuels projects a year constitutes the kind of gridlock that would merit anything like the permanent changes proposed in H.R. 1904.

The Administration justifies all these proposals in the name of expediting fuel reduction projects, but at the same time admits that H.R. 1904 will do nothing for this fire season and even if passed it will still take at least 8 to 10 years to address the buildup of hazardous fuel loads on the ground. What they don't explain though is that even if we opened every loophole in the process to expedite projects, we would still need to find billions of dollars to treat even a small fraction of the 190 million acres the Administration identifies at risk. Unless Forest Service researchers have found a way to make money grow on trees, this is the fatal flaw of H.R. 1904. The Administration does not want to address this problem though. If getting fuel reduction projects started is such an imperative, why didn't the Administration ask for a budget increase this year? Or did they know that it would simply become another tax cut casualty in the Interior appropriations bill?

Even the Cato Institute agrees that this bill is doomed to fail because it does not set any priorities for action. In their May 20th news release, the Institute states that the "president's plan to thin 25 million acres in the next 10 years will cost as much as $4 billion yet leave nearly 90 percent of those acres untreated. That will leave forest homes almost defenseless as they are today." The release goes on to cite a Forest Service report that there are just 1.9 million acres at high-risk, lands with homes and structures near federal lands. Those acres could be treated at a fraction of the cost of the Administration's plan under H.R. 1904. In fact, the Forest Service is already treating this amount. In FY 2001, according the National Fire Plan web site, 2.25 million acres of federal land was treated. With the national debt rising and the appropriations available for the Forest Service decreasing, it is time we set some priorities. The Aspen fire in Arizona is not an example of why we need to cut the legs out from under environmental, administrative and judicial review, but an example of why we need to be spending taxpayers' dollars more wisely by focusing on the wildland – urban interface.

I want to take just a moment to address another part of this bill that does raise a real problem – the threat of pests and disease to our forestlands. The bill tries to address the need for increased research on pest outbreaks in our forests and development of a quick response mechanism. In the Northeast we are faced with many invasive pests and diseases that threaten our forests and the economies that depend on them. A couple of years ago we all became familiar with the Asian Longhorned Beetle that attacked trees in New York City. You would think that New York City to Vermont is a long way for a

beetle to travel but I can tell you it put quite a scare in our foresters. Not only did we not have a system to detect whether the beetle reached our borders, but we also did not have any way to control it if we did find them. I am afraid to say that we are not much better off now. Although I think H.R. 1904 does a good job in identifying the need for more research, I am disappointed it did not include any funding. My understanding is that the Administration believes they can carry out this section from existing funds. After this year's budget allocations, I do not know how much existing funds will be left. If we are going to address this problem, let's do it right and give it enough funding.

In closing, I want to express my hope that this Committee will take a step back before rushing ahead with this bill and work to find a real solution to helping communities at risk from wildfire.

Statement of Rep. DeFazio to the Senate Committee on Agriculture, Nutrition, and Forestry
June 26, 2003

Mr. Chairman,

As you know, last year was one of the worst wildfire seasons on record. More than 6.5 million acres burned, at a cost to taxpayers of well over $1 billion. The Biscuit fire, in my district, burned across 500,000 acres of forest and cost to taxpayers more than $150 million. Recent weather has improved the outlook for the upcoming fire season in southern Oregon, but as we are now seeing in Arizona and New Mexico, much of the western United States remains at high risk for wildfire. To reduce this risk, Congress needs to pass effective legislation that provides the money necessary to get projects done; focuses on protecting homes and communities first; protects natural, fire-resistant forest stands while aggressively targeting smaller diameter fuels; and maintains public participation and appeals.

America's public lands have been mismanaged for nearly a century. Some of the historic management of our forests was well-intentioned, but it was still mismanagement. All forest ecosystems in the West are fire dependent, whether the fire return interval is 30 years or 300. Natural fires that burn out underbrush and small trees, and create natural openings in the forest are essential for forest health. But for decades federal land management agencies had a policy of extinguishing all forest fires as quickly as possible. The purpose was not only to protect public safety, but to also protect commercially valuable trees. Unfortunately, altering these ecosystems through excessive fire suppression led to the unnatural build-up of the brush and trees that are now fueling our forest fires.

Timber harvest practices also contributed to the decline in forest health. Millions of formerly clearcut acres of forest are now overstocked, unmanaged tree plantations. Void of nearly all natural characteristics, these tree plantations are nothing more than tinder boxes for forest fires. A review of the Biscuit fire showed that it burned slowly and at low-intensity for nearly a week before going out of control when it reached a previously logged area.

It is time to change the mandate and the mentality at the Forest Service, and the Bureau of Land Management, from managing our public forests like a cash cow to investing in, and maintaining, healthy forests. Investing in forests would not only produce jobs for rural communities, but it could significantly reduce the wildfire threat to homes and property.

Unfortunately, H.R. 1904, the Healthy Forests Restoration Act fails to do this. The most disappointing aspect of the bill is its false promise. H.R. 1904 purports to thin 20 million acres, yet provides no money to do so. We cannot pretend that millions of acres of brush and small trees can be cleared and our nation's forests returned to a more natural fire-resistant condition for free.

Restoring our forests' ecosystems so fires can burn naturally will take a significant amount of time and financial investment. One study by the Pacific Northwest Research Station estimates that it would cost roughly $1,685 an acre. Under H.R. 1904, the only possible source of funding for fuel reduction projects is logging large, high value trees—the very trees that all forest scientists and fire ecologists agree resist fire and are essential to healthy forests.

As I said, I agree that legislation is needed to reduce the risk of wildfire. There are many ways we can expedite the approval of projects and shorten appeals. Last Fall, Reps. McInnis, Walden, Miller and I reached across the aisle and crafted an effective piece of legislation which would have done the following:

- Placed a priority on treating the land around homes and communities that pose the greatest threat to lives and property, but allow treatment around other areas that pose a risk, such as municipal water supplies.
- Simplified the environmental analysis required of the government in preparing projects to reduce hazardous fuels, and involve the public more in planning to develop less controversial projects.
- Shortened the administrative appeals process, and placed time limits on filing judicial appeals.
- Allowed the agencies to defray the cost of projects with the value of resulting wood products, in conjunction with fee-for-service contracts.
- Authorized more than $7 billion to conduct hazardous fuels reduction projects.

Unfortunately, H.R. 1904 abandons this compromise in favor of giving excessive discretion to the Assistant Secretary of Agriculture, a political appointee. The assistant secretary would have discretion over where and how projects are conducted, and is under no obligation to target high risk areas around communities and municipal water supplies, or maintain key fire-resistant forest ecosystems. With the approval of H.R. 1904, the House failed to craft a comprehensive forest policy. I urge the Senate to not make the same mistake.

As an alternative to the direction the House took this Spring, Rep. George Miller and I introduced H.R. 1621. I encourage the Committee to consider the approach in this legislation when crafting a fuel reduction bill. H.R. 1621 authorizes nearly $5 billion for thinning projects, categorically excludes projects around at-risk communities from NEPA documentation, authorizes federal agencies to spend dollars and conduct projects across ownership boundaries, and shortens the time lines for filing and deciding appeals. Perhaps most important, H.R. 1621 amends the Reforestation Trust Fund to funnel all Canadian softwood tariff revenues to fuel reduction projects and grant programs to local communities to reduce the risk to lives and property.

Hopefully, the Senate will build upon last Fall's bipartisan agreement reached in the House, or consider the thoughtful legislation crafted by George Miller and me this Spring. It is imperative that Senators craft legislation that provides adequate funding to immediately treat high risk areas; protects natural, fire-resistant forest stands; and maintains public participation and appeals. Instead of more controversy, we need legislation that starts the long process of undoing a hundred years of forest mismanagement.

Principles for Responsible Hazardous Fuels Reduction

- Provide the money necessary for hazardous fuels reduction. One can talk about the need to expedite projects to protect homes and communities from wildfire, but an expedited process is meaningless if Congress does not provide the necessary dollars to conduct projects. One study by the Pacific Northwest Research Station estimates hazardous fuels reduction projects cost $1685 per acre. Only a fraction of this cost would be defrayed by utilizing the resulting wood fiber. At the current funding level, it would take more than 170 years to treat the hazardous fuels build-up problem on federal land.

- Provide a substantial increase in grant money to States, Tribes, private non-industrial landowners, and homeowner associations. The State of Oregon is doing excellent work assisting homeowners in protecting private property from wildfire, but these programs are severely underfunded. In addition to more grant money, authorize the federal agencies to conduct projects and spend money across ownership boundaries. This is essential to treating the landscape as a whole, and especially important since it is estimated that 85% of the land base in the wildland-urban interface is non-federal.

- Prioritize federal treatment on lands around homes, communities, and municipal water supply systems. President Bush's FY04 budget requests $230 million for hazardous fuels reduction. The cost to fix the fuels problem on national forest lands is estimated in the tens of *billions*. With such limited resources, fuels treatment needs to be focused in areas where it will best protect lives and property.

- Provide adequate resources for firefighting. President Bush's FY04 budget requests just over $604 million for the Forest Service's firefighting budget. Last year the Forest Service spent $1.2 billion on firefighting. The funding shortfall comes from other Forest Service accounts, including hazardous fuels reduction.

- Protect old growth trees. Science and common sense says that logging large and old fire resistant trees is entirely inconsistent with responsible hazardous fuels reduction. In addition, federal agencies should be required to remove small diameter trees and brush before logging commercial timber as part of hazardous fuels reduction projects.

- Encourage and require federal agencies to work collaboratively with interested parties in developing fuel reduction projects. It is not the process that creates controversy, but the product. Much of the controversy, appeals, and litigation could be adverted by better collaborating with communities in identifying priority areas and developing projects.

- Citizens' must have the ability to meaningfully appeal projects administratively and judicially. Collaboration is essential, but even the best intentioned collaborative process can result in a controversial product. It is appropriate to place some venue and time line requirements on filing judicial appeals, but they can not be so restrictive as to effectively eliminate (or exacerbate) judicial filings. It may also be appropriate to direct the courts to decide cases within a certain amount of days, but the language must only be directive and the project must be administratively stayed until judicial proceedings are resolved. Since the General Accounting Office, the investigative arm of Congress, recently found that only 3 percent of all fuels reduction projects are challenged in court, virtually eliminating judicial review of hazardous fuels reduction projects in unnecessary and unwise.

Missouri • United States Senator
JIM TALENT
http://talent.senate.gov NEWS

For Immediate Release:
Thursday, June 26, 2003

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SEN. TALENT SUPPORTS BILL TO PROTECT MISSOURI FORESTS FROM WILDFIRES & INSECTS

(WASHINGTON, D.C.) U.S. Senator Jim Talent (R-Mo.), a member of the Senate Agriculture Committee, attended a Senate hearing today to discuss his support for a Healthy Forests bill designed to protect forest areas in Missouri and around the country from deadly wildfires and insect infestations like the red oak borer. The Senate Agriculture Committee held the hearing to consider the *Healthy Forests Restoration Act of 2003.*

"The 2002 fire season was one of the worst on record and this week we have watched the Arizona wildfires leave behind a path of destruction," Talent said. "Nothing can replace the lives and losses caused by these fires, but the fact remains that easing regulations on forest managers and more responsible forest policies could have helped prevent much of this devastation. We need to pass a Healthy Forests bill to ease the restrictive regulations and lengthy appeals process hindering Missouri forest managers' abilities to best address our local forest concerns and prevent wildfires and insect infestations."

The Healthy Forests legislation would streamline excessive bureaucratic procedures so federal land managers can begin treating up to 20 million acres in high-risk areas in the United States. Missouri is home to the Mark Twain National Forest in the Ozarks and a total of 14 million acres of forestland representing 32 percent of the state's total land area.

At the hearing, Sen. Talent said tens of thousands of Missouri jobs are dependent on the responsible management of forestlands. According to the National Forest Service, in 1994, there were 2,600 forest industry firms in Missouri that employed about 34,600 people. In less than ten years, Missouri has lost nearly 5,000 forest and timber related jobs.

"This is a pro-environment, pro-jobs bill that will safeguard our nation's forests and protect jobs in Missouri and around the country," Talent said. "I want this legislation to give forest managers in Missouri the tools they need to improve forest health – and reinvigorate the industry in Missouri. I am urging senators to pass a Healthy Forests bill for our environment, our workers and our economy."

For more information or to schedule an interview contact Rich Chrismer at (202) 224-4812 or (202) 309-8644.

September 9, 2002

President George W. Bush
The White House
1600 Pennsylvania Avenue
Washington DC, 20500

Dear President Bush:

As fire researchers and ecologists, we are writing to you concerning the scientific basis for efforts to reduce risks from the kinds of forest fires that have attracted so much media and political attention in the western United States this year. As we elaborate below, responding effectively to this fire situation requires thoughtfulness and care. The fires are traceable to differing factors in different regions and forest types. Some have burned in forests where fire exclusion and land use have created unnatural accumulations of fuels while others have burned in a relatively natural manner. The most debated response to alleviating destructive fires in the future – mechanically thinning trees – has had limited study, and that has been conducted primarily in dry forest types. Thinning of overstory trees, like building new roads, can often exacerbate the situation and damage forest health. Whatever restoration measures are undertaken, preventing the re-emergence of fire problems will require a commitment to manage with fire rather than simply trying to exclude it in the future.

No single cause can explain the variety and number of fires occurring this year in western forests. In some drier forest types, such as the semi-arid ponderosa pine ecosystems, fire exclusion aided by grazing and logging has produced accumulations of highly flammable fuel well outside historical norms. However, in many western forests, including parts of the Siskiyou (mountains of the Biscuit fire), Sierra Nevada, Cascades, and Central Rockies, much of the undergrowth is primarily the product of succession from past logging and other disturbance, rather than fire exclusion alone. In other settings, like southwestern chaparral and the lodgepole pine forests of the Rockies, succession naturally produces highly flammable communities, and periodic crown killing fires are inevitable and ecologically desirable. Drought conditions such as those seen across much of the West this year can produce extensive fires even in areas where fuel loads are "normal." In all of these areas, increased human activity and habitation on fire-prone landscapes have greatly increased the chances of ignitions and the threats to people and their property when wildfires do occur.

We have no simple, proven prescription for meeting this challenge throughout the West. In semi-arid ponderosa pine forests effective restoration may result from cutting small-diameter trees in overly dense stands. However the benefits can only be realized and maintained in the long term through an aggressive post-restoration prescribed fire program that removes surface fuels. The value of thinning to address fire risks in other forest ecosystems is still poorly understood. Although a few empirically based studies have shown a systematic reduction in fire intensity subsequent to some actual thinning, others have documented increases in fire intensity and severity. Models and theories have been advanced to explain these results, but reliable data remain scarce.

In some areas the use of prescribed fire without any "thinning" would be the best restoration method. Indeed, many forests in the West do not require any treatment. These are forests that

for thousands of years have burned at long intervals and only under drought conditions, and have been altered only minimally by 20th century fire suppression. These forests are still "healthy" and thinning would only disturb them, not "restore" them. In short, the variation among our forested landscapes is much too great for one treatment to be appropriate everywhere.

Where thinning is used for restoration purposes in dry forest types, removal of small diameter material is most likely to have a net remedial effect. Brush and small trees, along with fine dead fuels lying atop the forest floor, constitute the most rapidly ignited component of dry forests (young forest stands regenerating after timber harvest often burn with the greatest intensity in western wildfires). They most surely post-date management-induced alteration of dry forest fire regimes. And their removal is not so likely to increase future fire intensity, for example from increased insolation and/or the drying effects of wind.

In contrast, removal of more mature trees can increase fire intensity and severity, either immediately post-logging or after some years. These trees provide "insurance" because they often survive surface fires and can speed post-fire recovery. Even if they are diseased, dying or dead, large and old trees and snags are important to many wildlife species and ecosystem functions. Building or re-opening roads to facilitate thinning will also heighten fire risks, since roads correlate with increased numbers of human-started fires. Removing more than small trees and constructing roads will also make collateral damage to forest ecosystems more likely (e.g., through effects on water quality, fish populations, and the spread of invasive species). Therefore, where done, this kind of thinning needs particularly careful planning and implementation. The results require faithful monitoring and analysis before any effort to extrapolate the practice to other segments of the forest landscape.

Forests are dynamic biological systems and their management requires integration of approaches over time and space. Thus, whatever remediation or restoration is undertaken in dry forests, close attention must be paid to the future management of the treated forests. Because of the inevitability of fire in these systems, the goal of restoration has to be landscapes in which we can better control the fires we do not want and promote the ones we do. However, without a thoughtful post-treatment prescribed fire management program, the forest will likely return to its current highly flammable state within a decade or two, losing – among other things – the public investment made in treating it

The location of management treatments is similarly important. Strategic placement of management activities such as thinning and burning within landscapes is critical to accomplishing the most benefit with minimal ecological impact. As an important example, protecting buildings, powerlines, and water supplies will be most effectively accomplished by reducing fuels near them.

In summary, fire threats in western forests arise from many causes, and solutions will require a suite of treatments adjusted on a site-by-site basis. Enough experience exists to suggest areas such as the semi-arid ponderosa pine forests where we can, now, undertake corrective action. However, neither the magnitude of the problem nor our understanding of treatment impacts would justify proceeding in panic or without thorough environmental reviews. Moreover, whatever treatments we undertake must include provisions for long-term maintenance, integration of fire, and robust monitoring.

Very truly yours,

Norman L. Christensen, Jr.
Dean Emeritus and Professor of Ecology, Nicholas School of the Environment and Earth Sciences, Duke University

Thomas W. Swetnam
Professor of Dendrochronology & Watershed Management and Director of the Laboratory of Tree-Ring Research, University of Arizona, Tucson

Don C. Erman
Professor Emeritus, University of California-Davis

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Philip N. Omi
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Professor of Fire Ecology, Department of Fisheries and Wildlife, Oregon State University

Dr. William L. Baker
Professor of Fire Ecology and Landscape Ecology, University of Wyoming

BIOGRAPHICAL INFORMATION

Dr. Christensen has written widely on fire ecology and management. He chaired reviews of the fire management programs in the Sierra Nevada National Parks and the Interagency Review of the Ecological Consequences of the 1988 Yellowstone Fires. He directed the recently released National Academy of Sciences study of the ecological consequences of forest management in the Pacific Northwest and is currently the chair of the National Commission on Science for Sustainable Forestry.

Dr. Swetnam has published numerous papers and book chapters on fire, climate and human land-use history of the western United States, Mexico, and Siberia, Russia. He has served on a variety of editorial boards (including the International Journal of Wildland Fire, Canadian Journal of Forest Research, and Ecological Applications), and he is co-editor of a forthcoming book titled "Fire and Climatic Change in Temperate Ecosystems of the Western Americas" (Springer-Verlag publishers). He was appointed by the President in 2000 to the Board of Trustees of the Valles Caldera National Preserve, a congressionally-chartered experiment in federal land management.

Dr. Erman was the Science Team Leader for the Sierra Nevada Ecosystem Project and Director of the University of California Centers for Water and Wildland Resources. He currently serves on a CALFED Bay-Delta Science Committee and California Tahoe Conservancy restoration science advisory team.

Dr. Perry researches forest structure in ponderosa pine forests and its implications for fire risk. He has been a member of the National Academy of Sciences Committee on the Ecological Consequences of Forest Management in the Pacific Northwest, the Scientific Societies Panel on Interim Management of East Side Forests, the Scientific Advisory Panel for the Oregon Biodiversity Project, the Scientific Advisory Panel for Weyerhaeuser Canada 20 Year Forest Management Plan, and the Marbeled Murrelet Recovery Team.

Dr. Morgan has taught, published, and done research on fire ecology and management for more than 15 years. She testified on fire management issues before the Forests and Forest Health Subcommittee of the US House Resources Committee in July, 2002. She is also a member of the Technical Advisory Committee for the Collaborative Forest Restoration Program, a United States Forest Service program in New Mexico.

Dr. Stephens' expertise is in wildland fire sciences and management. He was a founder of the National Fire and Fire Surrogate Treatments for Ecological Restoration research project, currently the largest fire science project in the nation with 13 experimental sites in 11 states. He has given testimony on fire management to the Forests and Forest Health and the National Parks, Recreation, and Public Lands subcommittees of the Committee on Resources of the United States House of Representatives.

Dr. Romme has studied fire ecology and fire effects in a variety of western ecosystems over the past 25 years. He has published over 50 scientific articles and book chapters on fire ecology, and won an award from the Ecological Society of America for an outstanding paper in ecology. He is conducting on-going, long-term studies of the fire effects and ecological responses to the 1988

Yellowstone fires, and is the lead scientist in a successful ponderosa pine restoration project in southwestern Colorado. He also is heading a team of scientists evaluating the ecological effects of the Hayman fire that burned in 2002 near Denver, Colorado.

Dr. Omi. Is Director of the Western Forest Fire Research Center, an interdisciplinary research facility based at Colorado State University. He teaches Wildland Fire Measurements, Forest Fire Management, Forest Fire Behavior, Technical Fire Management, Forest Fire Meteorology and Behavior, and Fire Science. His professional interests include forest fire management, fire behavior prediction, and fuel modeling, and his recent research focuses on the systematic assessment of the effectiveness of fire mitigation treatments, such as mechanical removal and prescribed fire.

Dr. Graumlich is the Director of the Big Sky Institute for Science and Natural History at Montana State University. She is past Director of the University of Arizona's Institute for the Study of Planet Earth, former Secretary of the Ecological Society of America, and Deputy Director of Columbia University's Biosphere 2 Center. Her research analyzes the relationship between wildfire, drought and land use in the Northern Rockies, and she works to provide scientific assessments of current natural resource issues in the Greater Yellowstone Ecosystem and other large biodiversity reserves.

Dr. Zedler has researched and published for over 35 years on fire ecology, the ecology of shrublands, forests and temporary wetlands, and the restoration and creation of habitat for endangered plant species. He has published extensively on fire effects and the life history of trees and shrubs in relation to fire, and recently chaired a panel at the 2002 Ecological Society of America annual meeting that addressed the current wildfire situation in the West.

Dr. Kauffman has been researching fire ecology in western ecosystems for over 20 years. His area of specialization is the use of fire and fire effects on ecosystems, and much of his research has focused on response of forests to burning and fire suppression, and on the use of fire as a tool in forest restoration. He has over 100 professional publications.

Dr. Baker has published extensively on fire ecology in Rocky Mountain forests, including co-editing a new book "Fire and Climatic Change in Temperate Ecosystems of the Western Americas." He has conducted fire research in Rocky Mountain National Park and in several National Forests in the Rocky Mountains. His research has been funded by the National Science Foundation, the U.S. Department of Agriculture, the U.S. Department of Energy, the U.S. Geological Survey, the Bureau of Land Management, and the National Park Service.

cc: Secretary of Interior Norton; Secretary of Agriculture Veneman

MAINE FOREST PRODUCTS COUNCIL

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Abigail M. Holman, Executive Director

Attention:
Ver' Shawn Perkins, Hearing Clerk
Committee on Agriculture, Nutrition, and Forestry
SR-328A
Washington, DC 20510

June 25, 2003

Comments of Abigail M. Holman, Esq.
On Behalf of the Maine Forest Products Council
On the President's Healthy Forests Initiative

Introduction

On behalf of the Maine Forest Products Council, I am pleased to present formal comments in support of President George Bush's Healthy Forests Initiative. The Maine Forest Products Council is a non-profit trade association that represents Maine's largest industry, the forest products industry. We represent every sector of the industry, from landowners and loggers, to sawmills and paper mills. Not only are we the largest industry, but Maine also has the largest contiguous acreage of private forestland this side of the Mississippi. So needless to say, this legislation is of particular interest to our members.

With more than 70 million acres of forestland ownerships at risk to increased mortality from insects and diseases over the next 15 years, it is essential that steps are taken at a national level to improve the condition of our forest resources so that the United States forest products industry remains vibrant and can continue to compete in a global market. Not only will there be economic benefit, but such steps will also protect communities, watersheds, wildlife habitat, recreation opportunities, and the quality of our air and water, and will ultimately reduce the costs (environmental, social and economic) of catastrophic wildfire.

We support the following provisions of the Healthy Forest Initiative:

- **Creates Biomass Incentives**: Title II creates grant programs to encourage energy-related utilization of the otherwise valueless wood, chips, brush, thinnings, and slash removed in conjunction with projects on public and private forests and rangelands focused on reducing the threat of catastrophic wildfire, insect infestation, and disease. This provision will actually save the federal government money in the long run by creating market incentives to remove the otherwise valueless forest materials that contribute to the forest health problems.

- **Assist States and Landowners in Protecting Watersheds**: Proper stewardship of forestlands is critical to sustaining and restoring the health of our nation's watersheds. Title III establishes the Watershed Forestry Assistance Program to provide states and landowners with technical and financial support in their efforts to protect water quality, restore watershed conditions, improve municipal drinking water supplies, address threats to forest health, and monitor best-management practices.

- **Address Insect Infestations Through Research**: Tens of millions of acres of public and private forests throughout the country face catastrophic damage from a host of forest pests, leading to a decrease in biological diversity, dangerous accumulations of potential forest fire fuels, and significant economic loss. Title IV requires the federal government to conduct an accelerated program to plan, conduct, and promote systematic information gathering on certain insect types that have caused large-scale damage to forest ecosystems. This title also directs the government to work with universities to establish early detection programs for insect and disease infestation, in order to prevent massive breakouts.

- **Establish a Healthy Forests Reserve Program**: Title V authorizes the Healthy Forests Reserve Program, a private forestland conservation easement program on forest ecosystem types that are critical to the recovery of threatened, endangered, and other sensitive species. This program will facilitate the voluntary protection and restoration of otherwise imperiled forest ecosystems, while protecting the rights of private landowners.

- **Early Warning Program for Disease and Insect Infestations:** The Title would authorize and direct the establishment of an early detection program for insect and disease infestations, with an emphasis on hardwood forests, so that agencies and private forestland owners can identify, isolate and treat adverse forest health conditions before they reach epidemic levels.

Conclusion

Legislation that will enhance private land managers' efforts to improve forest health and provide for healthy watersheds will benefit the public and the environment.

On behalf of the Maine Forest Products Council, I urge the Committee to include all of the above programs in legislation to carry out the President's Healthy Forests Initiative.

cc: Senator Olympia Snowe
Senator Susan Collins

NEW HAMPSHIRE
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Statement of Jasen A. Stock
Executive Director
New Hampshire Timberland Owners Association
Submitted for the record to U.S. Senate Committee on Agriculture, Nutrition & Forestry
June 26, 2003
On HR 1904, The Healthy Forests Restoration Act

Senator Cochran and Members of the Committee:

Thank you for the opportunity to submit testimony as the Senate considers HR 1904, the Healthy Forests Restoration Act (HFRA). As the state's forest products and forest landowner organization the New Hampshire Timberland Owners Association (NHTOA) is very concerned about the regulatory problems currently plaguing the US Forest Service. Our 1300 members, from all sectors of the forestry community, are very interested in improving the environment in which the trained professionals charged with managing our National Forests for multiple uses must operate. The NHTOA believes that the HFRA is a step in the right direction.

Addressing Analysis Paralysis

The HFRA will reduce unnecessary red tape and needless delays that have too often stalled the efforts of forest managers and scientists to effectively manage the nation's forests and reduce the threat of devastating wildfires and insect infestations that damage both public and private lands. The HFRA (combined with new planning regulations released last winter) will ensure that needed environmental reviews and public review processes are conducted in the most efficient and effective way possible.

The need for timely response to insect infestations and the threat of wildfires is critical if we as a society wish to see our forest remain safe and productive. Although most of the Northeast forest is not ordinarily susceptible to wildfire, we do occasionally experience natural disasters that increase our susceptibility. One such example of this was the ice storm of 1998. The storm damaged 1,055,000 acres in New Hampshire, including parts of the White Mountain National Forest. Nine of New Hampshire's ten counties were declared disaster areas. A direct result of this natural disaster was an increased fuel load in the forest and increased vulnerability of the damaged trees to disease and insect infestation.

Two recent cases in New Hampshire provide local examples of this national "analysis paralysis" problem. In July the Forest Service abandoned the 140 acres "Iron Maple" timber sale in Bartlett, NH. Despite the fact that the regional forester had ruled against the Conservation Action

Project's (CAP) appeal of this proposed sale, the Forest Service capitulated when CAP threatened to litigate the sale in federal court.

Evidence of the role analysis paralysis played in the Iron Maple decision can be found in the letter announcing the withdrawal from Tom Wagner, forest supervisor. Wagner said the sale was being withdrawn "for the time being while [the district ranger] incorporates, analyzes and documents additional available information relative to the environmental effects from the project." This despite the fact the Forest Service estimates that it has already invested $80,000 (over 400 staff days) in the sale's preparation, appeal and litigation.

In a second case, the Forest Service's regional forester overruled the WMNF's "Tripoli East" timber sale following an "ambush appeal". In this case, CAP failed to provide input on the sale during the public comment period in the Environmental Assessment process instead waiting to raise its concerns once the final management decision had been made. Randy Moore, the regional forester who made the decision, noted that CAP did not comment on the project's Environmental Assessment during the 30-day public comment period. Moore told CAP that, "It is important that we have the benefit of your insight as early in the environmental review process as possible. This permits the analysis team and the decision maker an opportunity to understand and hopefully resolve your concerns prior to making a final decision."

Few would question the Forest Service's willingness to address public concerns prior to making a final decision. But groups like CAP, in order to derail projects, often wait until a decision has been made before "ambushing" the Forest Service with an appeal or lawsuit. These ambush appeals appear to be a part of a strategy to drag out the process of analysis and decision making to such a point that little, if anything is ever accomplished.

As the Forest Service stated in its recent report entitled "The Process Predicament," appeals, legal challenges and delays "place line officers in a costly procedural quagmire, where a single project can take years to move forward and where planning costs alone can exceed $1 million."

The abuse of the National Environmental Policy Act process to stall these projects frustrates the general public and negatively impacts local lives, businesses and communities. The Iron Maple sale had already been purchased by a southern New Hampshire sawmill which employees 50 and generated $12,000,000 worth of revenue in 2001. The mill was forced to buy logs from another sawmill to continue operations rather than shut down. It is unfortunate that one litigant can disrupt a well-planned timber sale like Iron Maple and put a business and the jobs it provides at risk.

US Forest Service Chief Dale Bosworth has told Congress that: "those who are determined to keep projects from going forward, the merits notwithstanding, are afforded a considerable advantage by the dysfunction of our decision making process. They will not cede that advantage without a struggle."

However, despite the detractors our forests and or future will benefit from the HFRA's common sense approach to federal land management.

Areas for Improvement

Although NHTOA supports the HFRA, we would ask that the Senate address some limited concerns we have with H.R. 1904. The concerns are listed below:

Title I section 102 (a) needs to include as an "authorized project," "federal lands not covered in (1) (2)
(3) (4) or (5) where biological diversity is at risk or imbalanced."

Title II section 202 (4) (A) (ii) needs to clearly define what the term "significant risk" means.

- The NHTOA believes that the secretary concerned should consider socio-economic risks *at the same level of importance* as biological diversity or forest health/fire/infestation risks.

Title V—The Healthy Forest Reserve Program should be dropped entirely from the legislation. There are already several federal appropriation programs designed to conserve forestland and protect habitat. Therefore, the Healthy Forest Reserve Program would be a duplicative bureaucracy and an unnecessary, additional expense and responsibility placed upon a Forest Service which struggles to meet its current mandates.

If Title V cannot be completely removed, then it needs to explicitly require that any funds awarded under the program be used to conserve forests as *actively managed, productive timberland and working forests*.

If not eliminated, Title V Sec. 502 (a) (1) and (2) should be amended as follows:
"private lands whose enrollment *as productive, working timberland*..."

Additionally if it is not eliminated, Title V Sec. 502 (a) should add to the list of eligible lands, (3) "private lands whose enrollment as productive, working timberland would protect, restore, enhance, or otherwise measurably improve the socio-economic well-being of a community and/or region."

Conclusion

In conclusion, the New Hampshire Timberland Owners Association supports the HFRA as an important step in the administration's admirable effort to improve the regulatory maze the Forest Service currently must navigate to manage the nations forests. Ideally, the final version of the HFRA will include the suggestions listed above. However, it would be a mistake to presume that these criticisms indicate a lack of enthusiasm from my membership about the HFRA.

I would be remiss if I did not impress upon the committee the need to not look at federal land management as strictly a western issue. Although far greater areas of the West are owned by the federal government and my western colleagues face more immediate threats from catastrophic wildfire, the White Mountain National Forest still has a profound impact on New Hampshire's economy and environment.

Therefore, I encourage senators from the Northeast to consider the HFRA carefully. Failure to support this important legislation is tantamount to ignoring the promise that the federal government made to the communities in which our National Forests lie—to manage them for the benefit of wood consuming industries as well as naturalists.

The NHTOA encourages the Senate to act promptly to pass the Healthy Forests Restoration Act.

Thank you for your consideration and do not hesitate to contact me with more questions.

Testimony of the National Wild Turkey Federation
Before The
Senate Committee on Agriculture, Nutrition, and Forestry
On HR 1904, The Healthy Forests Restoration Act
June 26, 2003

Thank you for the opportunity to present the views of the National Wild Turkey Federation on this historic legislation to promote active management of our nation's forests. This legislation in our view has been a long time in coming and we applaud the Administration, as well as the House and Senate Ag Committees in taking the leadership on this important issue. Too much of our public forest land is at high risk of catastrophic wildfire and large-scale insect and disease outbreaks due to unhealthy forest conditions. These unhealthy conditions are not only in the Western United states, but in all 50 states where our organization is active in protecting wildlife habitat.

The National Wild Turkey Federation is a 450,000-member grassroots, nonprofit organization with members in 50 states, Canada and 11 other foreign countries. It supports scientific wildlife management on public, private and corporate lands as well as wild turkey hunting as a traditional North American sport. In 1973, the National Wild Turkey Federation was founded in Fredericksburg, Va. At that time, there were an estimated 1.3 million wild turkeys and 1.5 million turkey hunters. Shortly after its founding, the NWTF moved to Edgefield, S.C., where it is headquartered today. Thanks to the work of state, federal, and provincial wildlife agencies and the NWTF's many volunteers and partners, there are now an estimated 5.6 million wild turkeys and approximately 2.6 million turkey hunters. Turkey hunting is the fastest growing type of hunting in the country and currently attracts the second highest number of participants.

Since 1985, more than $168 million NWTF and cooperator dollars have been spent on over 22,000 projects benefiting wild turkeys and other wildlife species throughout North America. Hunters have also benefited as the NWTF has worked tirelessly to support our hunting heritage and protect and promote laws that increase hunting opportunity and safety. We evaluate, promote, create, and improve wildlife habitat in all 50 states.

We support the Healthy Forests Restoration Act for the following reasons:

Title 1, Section 102 (a) (4) authorizes hazardous fuels reduction projects on Condition Class 3 or 2 Federal lands identified as an area where the existence or threat of disease or insect infestation pose a significant threat to forest or rangeland health or adjacent private lands. The NWTF believes that Title 1, Section 106 provides for sufficient judicial review to ensure adequate public comment of the authorized projects while ensuring that the decisions will be rendered in a timely manner. Title 4, Section 403 (a) authorizes the Secretary to conduct silvicultural assessments to remove at-risk timber or stands infected by insects. The NWTF would like to include timber damaged by other natural disturbances such as hurricanes, ice damage and tornadoes to this title.

In the south, insect infestation such as the Southern pine beetle is the primary concern for forest health, not wildfire. The US Forest Service needs to have the ability to act quickly and decisively when an infestation is identified. The result of inactivity or delay caused by a lengthy appeal or court challenge can be seen throughout the National Forests in Tennessee, Kentucky, South Carolina and Georgia. The Daniel Boone in Kentucky lost nearly 100,000 acres to the Southern pine beetle between 1999 and 2001 because they were prevented from acting quickly. The Cherokee in Tennessee lost over 60,000 acres. In the Ozark National Forest and surrounding lands of Arkansas over 675,000 acres of red oaks have been destroyed by the red oak borer.

Recommendations

We support the concept of this legislation and recommend strengthening it so that all disease and insect infestations, rather than only those specifically listed in the House passed legislation, be eligible for timely and active management. Three years ago, few would have predicted the impact the red oak borer would have had on Arkansas and new invasive threats like this will almost certainly surface.

The NWTF also would like to recommend an increase in the 250,000 acre limitation described in Title 4. The US Forest Service may not be able to treat all infestations and storm damage on the scale we have experienced these last three years if the acreage limitation stands at 250,000 acre.

The NWTF also encourages the USFS to maintain the aggressive fuels management program we have in the south. The prescribed burning program is critical to the reduction of fuels and the future health of the forest.

We thank you for the opportunity to present our views on this important legislation and stand ready to help the committee in any way.

Statement of the American Farm Bureau Federation

BEFORE THE
SENATE AGRICULTURE, NUTRITION & FORESTRY COMMITTEE
REGARDING
HEALTHY FORESTS RESTORATION ACT

June 26, 2003

As the national voice of agriculture, AFBF's mission is to work cooperatively with the member state Farm Bureaus to promote the image, political influence, quality of life and profitability of the nation's farm and ranch families.

FARM BUREAU represents more than 5,000,000 member families in 50 states and Puerto Rico with organizations in approximately 2,800 counties.

FARM BUREAU is an independent, non-governmental, voluntary organization of families united for the purpose of analyzing their problems and formulating action to achieve educational improvement, economic opportunity and social advancement and, thereby, to promote the national well-being.

FARM BUREAU is local, county, state, national and international in its scope and influence and works with both major political parties to achieve the policy objectives outlined by its members.

FARM BUREAU is people in action. Its activities are based on policies decided by voting delegates at the county, state and national levels. The American Farm Bureau Federation policies are decided each year by voting delegates at an annual meeting in January.

STATEMENT
OF THE
AMERICAN FARM BUREAU FEDERATION
BEFORE THE
SENATE AGRICULTURE, NUTRITION & FORESTRY COMMITTEE
REGARDING
HEALTHY FORESTS RESTORATION ACT

June 26, 2003

The American Farm Bureau Federation (AFBF) strongly supports H.R.1904, the Healthy Forests Restoration Act and is pleased to offer this statement for the hearing record.

American agriculture is more dependent on healthy federal and privately owned forest lands than anyone realizes. Healthy forestlands have a number of significant benefits to agricultural producers, even those producers hundreds of miles away from the nearest forest.

Healthy forestland ecosystems nationwide would significantly decrease the potential of catastrophic forest fires seen in recent years. A lower occurrence of devastating forest fires will lead to a decrease in damage to and loss of property to adjacent private landowners. Healthy forestlands, less susceptible to fires, will result in an improvement in the quality of water that runs off of forested acres. The quality of water originating from forested acres is of great importance to agriculture and all who depend upon it for drinking water and other beneficial uses. A healthy forest ecosystem would have significantly fewer trees per acre than currently exists. Thinned and healthier federal forests will yield significantly more water runoff thereby increasing the amount of water available for agricultural and other beneficial uses hundreds of miles away.

Healthier forest and rangeland ecosystems will also significantly decrease the potential for infestations of insects and invasive species and will improve overall range health and provide additional grazing opportunities. Insect and invasive species infestations are a major problem in many areas of the United States, including eastern forestland ecosystems. When an infestation is allowed on federal forest lands, adjacent landowners are often negatively and severely impacted.

Unfortunately, America's public lands have undergone radical changes during the last century due to the suppression of fires and a lack of active forest and rangeland management. Our forests and rangelands have become unnaturally dense, and these unhealthy conditions create vulnerability to severe wildfires. Currently, 190 million acres of public land, surrounding private land and communities are at increased risk of extreme fires.

The 2002 fire season was one of the worst in modern history. More than 7.1 million acres burned last year -- more than twice the annual 10-year average. These fires caused the deaths of 21 firefighters, drove tens of thousands of people from their homes and destroyed more than 2,000 homes and buildings. These fires also destroyed hundreds of millions of trees, devastated habitat and severely damaged forest soils and watersheds for decades to come.

The Healthy Forests Restoration Act's premise is simple: Streamline excessive bureaucratic procedures, without infringing on the imperatives of public participation, to give federal land managers the ability to more quickly respond to the threats of catastrophic wildfires or disease and insect infestations that result in the loss of threatened and endangered species habitat, and that will better enable them to protect water quality and the safety of thousands of communities. Under this legislation, forest management projects would still be subject to rigorous environmental analysis as well as public scrutiny. However, the bill would expedite the consideration of appeals and lawsuits, so that these multiple processes would be completed in a matter of months rather than years as is currently the case.

It is also important to note that the legislation would codify the public participation processes as outlined in the bipartisan Western Governors' Association's 10-Year Strategy for Reducing the Threat of Catastrophic Wildfire to Communities and the Environment. The Healthy Forests Restoration Act also gives priority to management projects near communities and watersheds as provided in the Governors' 10-year plan.

In addition to restoring ecological health to our forests, the Healthy Forest Restoration Act would also facilitate the utilization of the otherwise low to no-value wood and brush removed in conjunction with forest health projects in the production of biomass energy. The bill additionally authorizes federal programs to support community-based watershed forestry partnerships that address critical forest stewardship, watershed protection, and restoration needs at the state and local level. Further, the bill calls for additional research and effort in the area of early detection and containment of insect and disease infestations. It also establishes a private forestland easement program, focused on recovering forest ecosystems in decline.

With the recent out-break of a significant fire in Arizona, it is apparent to all that another fire season is upon us. The American Farm Bureau Federation urges this Committee to quickly act on H.R. 1904, the Healthy Forests Restoration Act, and we urge you to complete your mark-up and report the bill to the full Senate at your earliest convenience.

HEALTHY FORESTS RESERVE PROGRAM: A VOLUNTARY APPROACH TO PROTECTING, RESTORING AND ENHANCING FOREST ECOSYSTEMS ON PRIVATE LANDS
WRITTEN REMARKS PREPARED FOR THE
HEARING ON THE HEALTHY FORESTS RESTORATION ACT (H.R. 1904)
SENATE AGRICULTURE COMMITTEE
9:00 A.M.
THURSDAY, JUNE 26, 2003
By James L. Cummins, Executive Director
Mississippi Fish and Wildlife Foundation

My name is James Cummins. I am Executive Director of the Mississippi Fish and Wildlife Foundation.

Thank you for the opportunity to submit this testimony to be included in the record for the hearing on the Healthy Forests Restoration Act (HFRA). My comments will address the Healthy Forests Reserve Program (HFRP).

Background

Healthy forests are comprised of more than just forest management and fire prevention on public lands. According to the U.S.D.A. Forest Service (USFS), public forest lands comprise 317 million acres (42.38%) and private forest lands comprise 431 million acres (57.62%), predominantly in the eastern United States. In 1996, private forests provided 89% of the nation's timber harvest.

The forest and conservation community have a unique opportunity to advance forest management programs that will assist all forest landowners in all regions of the United States to address the various threats to forest health.

While private forest lands are generally in better condition than public lands, there are substantial opportunities to reach out to the Nation's private, forest landowners with incentives and research that will assist them in better protecting and managing these resources. More importantly, this bill (H.R. 1940) has truly become a national, comprehensive approach to ensure forest sustainability by doing so.

Private forests provide substantial habitat for threatened and endangered species in the United States. It is estimated that private, family-owned forests provide habitat for 90% of our endangered species. Landowners need the encouragement, financial support and backing of federal and state governments to undertake projects to restore rare forests and the declining, threatened and endangered species they support. Incentive-based programs provide the basic operating framework to accomplish this objective. The HFRP will encourage the formation of constructive and cooperative alliances with federal and state agencies to implement fish, wildlife and forest conservation on private

that widespread wildlife population declines are reversible by habitat restoration. They have also stimulated rural development through increased expenditures for wildlife-associated recreation, which will further stewardship and improve economies.

These types of habitat restoration approaches, and those that include cost-share for conservation practices like the Wildlife Habitat Incentives Program and Partners for Fish and Wildlife Program, present an opportunity to solve many problems associated with the extinction of endangered species in a manner that will maintain a strong economy and respect private property rights. The approach described herein will help make the Endangered Species Act (ESA) more effective.

Habitat for threatened and endangered species, improving biodiversity and sequestering carbon can all be accomplished by encouraging property owners, through financial assistance, to develop and maintain conservation programs that meet national and international standards. The current Farm Bill does not provide enough incentives to allow for significant population recovery. Problems exist with CRP due to its limited enrollment period (10-15 years), problems that could occur after the contract expires and eligible lands. This is a key to meeting the Nation's international commitments and better safeguarding the Nation's heritage in fish and wildlife.

While there are now programs under the ESA that address rare species before they are listed under the law, more needs to be done to keep species off the list by acting early and proactively. The HFRP should concentrate on improving forests, therefore a species' habitat, before the species reaches a threatened or endangered status (i.e., rare, peripheral and special concern).

Healthy Forests Reserve Program

The purpose of the HFRP is to assist landowners in restoring rare forest ecosystems through active management and stewardship. The program will have two components: (1) creation of incentives for forest restoration activities, and; (2) compensation for voluntary retirement of development rights from the property. Under both components, landowners will retain their ability to harvest timber as long as the rare forest ecosystem is sustained over the life of the agreement. In addition, landowners can choose either or both options at their discretion.

Under the first component of the program the U.S. Department of Agriculture, preferably the Natural Resources Conservation Service, will work with the U.S. Fish and Wildlife Service (USFWS) and appropriate state fish and wildlife agencies to designate forest types that are eligible for payments. Eligible forest ecosystems can include any forest that occurs significantly on private lands and that has been reduced in extent by more than 50% from its range prior to European

lands. It represents the best mechanism to increase forest landowner participation, reduce landowner conflicts and thereby optimize environmental benefits of the HFRA.

There are many rare forest ecosystems in the United States that exist largely on private lands, that require active forest management for their restoration and will require substantial financial incentives for their ultimate restoration and conservation. Examples include the once great longleaf pine forest of the southern coastal plain, fire-maintained, natural southern pine forests, southwestern riparian forest, Hawaiian dry forest, Southern Appalachian spruce-fir forest, mature Eastern deciduous forest, California riparian forest, old-growth forest of the pacific Northwest, mature red and white pine forests of the Great Lake states, fire-maintained ponderosa pine forests and southern forested wetlands.

The states with the greatest risk of forest ecosystem loss are Florida, California, Hawaii, Georgia, North Carolina, Texas, South Carolina, Virginia, Alabama and Tennessee.

For example, across the southern coastal plain, the longleaf pine ecosystem once covered some 74 - 92 million acres from southern Virginia to central Florida and west to eastern Texas. Longleaf pine currently covers less than 3 million acres, much of which is highly degraded. The longleaf pine ecosystem is characterized by open-canopied stands and is one of the most biologically diverse temperate forest ecosystems in North America. Over 20 federally-listed endangered species inhabit longleaf pine. Moreover, longleaf pine produces superior solid wood products, including saw timber, utility poles and other high value products.

Although a free-market economy is the preferred means of improving the environment, it does not always work in this situation and incentives should be provided. Incentives appear to be more expensive, but are less harmful to the economy than burdensome regulations.

The protection, restoration and enhancement of degraded forest ecosystems to conditions as close to natural is emphasized through the creation of the HFRP. The HFRP's philosophy is to work proactively with private landowners for the mutual benefit of declining Federal trust species and the interests of the landowners involved.

An Incentive/Pro-Private Property-Based Approach

The Conservation (CRP) and Wetland (WRP) Reserve Programs pay property owners for implementing conservation practices. Many conservation groups consider them the most broadly popular and successful conservation programs ever passed by Congress. Waterfowl populations and many other birds are on a rapid increase due to these programs. These programs are demonstrating settlement.

For each forest type, the U.S.D.A. will develop a series of stewardship activities that could qualify as eligible forest restoration activities. Each forest type would have a unique series of activities. For example, eligible activities for the longleaf ecosystem might include planting longleaf pine on former longleaf sites, use of prescribed fire, hardwood control, restoration of native vegetation, control of invasive exotic species, natural regeneration planning or other activities.

To participate in the program, landowners will enter into forest restoration agreements with the U.S.D.A. to carry out stewardship activities appropriate to their property and forest types. Agreement terms will be 10-years, 30-years or perpetual in duration and will provide landowners with maintenance payments for such activities as prescribed fire, natural regeneration planning, restoration, and other activities. Landowners will receive cost-share assistance for the activities.

Where landowners are undertaking stewardship activities that directly benefit endangered and/or threatened species and where the USFWS determines that such activities will result in a net conservation benefit for the species, the USFWS will provide safe harbor assurances through Section 10(a)(1)(A) or Section 7 of the Endangered Species Act (ESA) that ensure that landowners will not be subject to additional regulation as a result of their stewardship commitments.

Under the second component of the program, landowners can voluntarily sell development rights to their forest land. Eligible lands for this program include designated forest types that contain federally-listed endangered species or designated candidate species and that are being managed through a safe harbor agreement, candidate conservation agreement with assurances, or similar, voluntary incentive-based programs.

Contributions To Endangered Species

Congress passed the Endangered Species Preservation Act in 1966. This law allowed listing of only native animal species as endangered and provided a limited means for protecting such species. It was revised in 1969 to allow for protection of species in danger "worldwide." The ESA of 1973 combined and strengthened the provisions of its predecessors, while breaking new ground. Upon signing the ESA, President Richard Nixon said, "Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed. It is a many faceted treasure, of value to scholars, scientists and nature lovers alike, and it forms a vital part of the heritage we share as Americans."

The ESA has been very effective in preventing species from becoming extinct; however, it has been weak in increasing

populations. Only 28 species have been taken off the endangered or threatened lists. Some species were the result of errors in the original listing. Only ten species can be described as recovered. They include the Aleutian Canada goose, brown pelican, three Pallu Island birds, American alligator, Rydbird milk-vetch, bald eagle, gray whale and Arctic peregrine falcon. However, the ESA did not play a major role in the recovery of the brown pelican, Rydbird milk-vetch, bald eagle, gray whale and Arctic peregrine falcon.

It is obvious that we cannot set aside unlimited acres for fish and wildlife habitat. The ESA calls for the federal government to prohibit certain activities that would cause the take of a listed species unless such activities are not otherwise authorized by an incidental take permit. Many times, if the land use causes a take, the result is not only hostility on the part of the owner, but damage to the species needing protection. Ability of government to control how property is used can make an enemy out of even the most harmless of birds, fish or other listed species.

Through incentive-based programs like the Conservation (CRP) and Wetland (WRP) Reserve Programs, waterfowl populations and many other birds are on a rapid increase; these programs are demonstrating that widespread wildlife population declines are reversible by habitat restoration. These types of habitat restoration approaches present an opportunity to solve many problems associated with the extinction of endangered species in a manner that will maintain a strong economy and respect private property rights. As long as the status quo of not increasing habitat, therefore not increasing populations, is maintained, the full recovery of populations of many species will not happen.

The ESA can be improved by emphasizing recovery through habitat restoration in the HFRP. Also, the HFRP should aid a species before it reaches either a status of endangered or threatened. The HFRP will restore rare forests that are causing listing problems and help de-list threatened and endangered species by placing an emphasis on population recovery for many species. It will also aid a species before it reaches either a status of endangered or threatened, thus making it unnecessary to list a species. Working with private property owners and enabling them to restore habitat is the kind of proactive strategy that can head off regulatory crises, while improving the environment and providing opportunities for economic development.

Contributions To Biodiversity

With the strong concern by the public about forestry being conducted in a sterile, monoculture fashion, the HFRP should have a strong commitment to restoring and sustaining natural ecosystems that are in a state of crisis. Of course, there should be flexibility to customize projects to meet a geographic need.

The HFRP can include a component so that sustainable resource management is done in a manner that is profitable and at the same time encourages biodiversity. By doing so, the United States can achieve benefits in other national and international commitments. The United States and Central American Heads of Government signed the Central American-United States of America Joint Accord (CONCAUSA) on December 10, 1994. The original agreement covered cooperation under action plans in four major areas: conservation of biodiversity, sound use of energy, environmental legislation and sustainable economic development. On June 7, 2001, the United States and its Central American partners signed an expanded and renewed CONCAUSA, adding disaster relief and climate change as new areas for cooperation.

But not only is sustainable natural resource management and biodiversity linked through the Joint Accord, it makes sound and environmental sense to add multiple benefits to any new initiative implemented to address sustainable natural resource management.

By encouraging the planting of a variety of tree species rather than a monoculture, the Administration would be promoting the restoration of a naturally functioning forest ecosystem that will have benefits beyond carbon sequestration. Biodiversity will promote such public benefits as improved water quality, reduced soil erosion, fish and wildlife habitat, restoring habitat for declining, threatened and endangered species and outdoor recreation. These improved environmental assets will be quantifiable and may be marketable, thus providing an additional economic incentive to continue environmental enhancement and further improve rural economies.

Contributions To Carbon Sequestration

On February 15, 2002, the Administration announced the Climate Change Initiative, which includes carbon sequestration. Carbon sequestration is designed to meet the carbon-offset objectives of companies by reducing greenhouse gases. A carbon-offset program can positively impact clean air and can be used to restore natural ecosystems through biodiversity restoration and have other positive environmental impacts such as reducing water pollution. There should be an emphasis on reforestation and forest management efforts so that it is done in a manner that both sequesters carbon and at the same time encourages biodiversity. By doing so, the United States can achieve benefits in other national and international commitments. To date, the U.S. Department of Interior has been a leader in working with energy companies to reforest lands of the USFWS in a biodiverse manner. The Southeast and the Pacific Northwest are the two most effective areas in North America for the sequestration of carbon. An effort is underway to determine the contribution to global climate change by the forest fires that have existed since 1990.

An Agreement/Easement Approach

The problem with short-term easements and forest restoration is simply the long time it takes for forests to grow. No forests are fully restored at the 30-year point and almost no forests are fully restored at the 50-year mark. Significant restoration is accomplished at the 75 to 125-year mark.

A potential point of concern is over the use of perpetual conservation easements, which are much more desirable by the advocates of private property rights than land acquisition, the other alternative mechanism. Some private property rights advocates have opposed the use of perpetual easements, even though they are voluntary.

The "Landowner Choice w/Buyback Option Easement" will provide the greatest rights to landowners and initial research has shown no opposition by the private property rights community. Instead of limiting the percentage devoted to perpetual easement options, the percentage of perpetual and 30-year easements and the 10-year cost-share agreements is flexible and will based on the demand by landowners. For example, if 10%, 65% and 25% of the applicants apply for the 10-year, 30-year and perpetual options, respectively, then that is the percentage that is devoted to each option. The private landowner would choose, not the Congress nor the Administration.

Including the perpetual component (w/a buyback option), is important to the conservation/environmental community and will convey the greatest value to the landowner while ensuring success of the HFRP.

Practices

The practices of the HFRP include, but are not limited to: fencing for habitat protection; prescribed burning, restoration of wildlife habitat and corridors; forest stand improvement to include site preparation, tree planting, direct seeding, firebreaks, release and site preparation for natural regeneration, installation of water control structures in forested wetlands to provide beneficial habitat for wetland wildlife; installation/construction of nesting structures; restoration of hydrology; removal of barriers for aquatic species; establishment, management, maintenance, enhancement and restoration of grassed waterways and riparian areas; stream bank stabilization; installation of instream deflectors; placement of fish screens; control or eradication of invasive exotic or competing animal and plant species; restoration of rivers and streams; removal of fish barriers; placement of fish screens; installation of low water weirs and instream deflectors; fencing for habitat protection; augmentation of flows; best management practices and other activities approved by the Secretaries.

Safe Harbor Assurances

It is important to assure owners, and adjacent landowners, be protected from regulations of the ESA once the participating landowners HFRP agreement/easement has ended or has been terminated.

It is important to leave somewhat more flexibility to the USFWS in terms of how it provides the assurances to participating landowners. Because there will be federal payments to participating landowners, there are other (and simpler) mechanisms, besides safe harbor agreements, to give such assurances to landowners. A programmatic biological opinion under Section 7 of the ESA could, for example, provide future incidental take authority at the end of the easement term applicable to any enrolled property. To capture this in statutory language, the Secretaries shall, through Section 7 or other authorities under the Endangered Species Act, make available safe harbor or similar assurances, consistent with the Fish and Wildlife Service's regulations, to landowners who enter into forest restoration agreements where those agreements will result in a net conservation benefit for listed species.

Administration

The Natural Resources Conservation Service (NRCS) is the agency of preference that would administer the HFRP. The USFWS and the U.S. Forest Service could the NRCS in providing technical assistance and developing restoration plans. A State fish and wildlife agency, State forestry agency, State environmental quality agency or any other State or non-profit conservation agency/organization could assist in providing the technical assistance for the development and implementation of a restoration plan or financial assistance to aid in the cost-share. The restoration plan should maximize the environmental benefits per dollar expended.

Summary

This type of proactive approach will help remove the threatened and endangered species of our nation from their respective list. It will also aid a species before it reaches a status of endangered or threatened, making it unnecessary to list a species. Working with private property owners and enabling them to conserve habitat on their property is the kind of proactive strategy that can head off regulatory crises, while improving the environment and providing opportunities for economic development.

A diverse group of interests will support the HFRP. The outlook will improve from such a component into the ESA. Property owners who have threatened or endangered species on

their property will have incentive to be much more cooperative. Property owners will have an incentive to husband their resources and the government will be able to try innovative approaches and establish priorities.

There are 108.7 million people that participate in wildlife-associated recreation in the United States; expenditures associated with this total $59 billion. Most of these people have a conservative philosophy and are not interested in environmental destruction. These potential voters need to be captured with a balanced approach to enhancing, restoring and conserving the environment. The benefits would be great and would earn much credibility with the people of America.

Thank you for the opportunity to submit these comments.

THE LOUISIANA FORESTRY ASSOCIATION

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July 1, 2003

Ver' Shawn Perkins, Hearing Clerk
Committee on Agriculture, Nutrition, and Forestry
SR-328A
Washington, DC 20510

Re: Support for the President's Healthy Forest Initiative

The Louisiana Forestry Association (LFA) is a private, not-for-profit trade organization of forest landowners, loggers, mill workers, and forest industry. The mission of the LFA is to promote healthy and productive forests through the practice of sustainable forestry. The President's Healthy Forest Initiative is highly commendable and follows proven knowledge for managing forests for long-term benefits to society.

The Healthy Forest Initiative proposes to reduce dead and dying trees from the forest and thin forests from overcrowding situations. Forest management activities will be encouraged to reduce the risk of catastrophic wildfire and insect infestation. These practices will protect public forests but also have a positive effect on private lands adjacent to public lands. Private landowners will have confidence knowing the Forest Service and other public agencies are doing their part to protect the forests and landowner's investments from being destroyed.

The Healthy Forest Initiative should authorize and direct the establishment of an early detection program for insect and disease infestations in our softwood and hardwood forests. These research efforts should be coupled with appropriate and timely on-the-ground activities to identify, isolate and treat adverse forest health conditions before they reach epidemic levels.

Clean water is a vital component of healthy forests. It is beneficial for the U.S. Senate to direct action towards watershed management, training, and monitoring activities to restore watershed conditions, improve municipal drinking water supplies, address threats to forest health, and monitor best-management practices consistent with State developed Best Management Practices (BMPs). BMPs are being successfully implemented in forested States and support for these programs will enhance their effectiveness.

Markets for timber harvested through the Healthy Forest Initiative are needed to utilize the low-value, small diameter material generated from fuel load reductions throughout the forest. New markets for biomass production and other innovative energy uses must be explored to ensure a continuous flow of forest products from the affected areas.

Legislation that will enhance public and private land managers' efforts to improve forest health, reduce insect infestation, provide for healthy watersheds, and develop expanded markets for wood biomass will benefit the public and the environment, and is simply good management.

The Louisiana Forestry Association appreciates the opportunity to comment and your consideration of our requests.

Sincerely,

C.A. Vandersteen

C.A."Buck" Vandersteen
Executive Director

cc. Senator John Breaux
Senator Mary Landrieu

TESTIMONY OF THE OZARK WOODLAND OWNERS ASSOCIATION, INC.
TO THE U. S. SENATE
REGARDING THE HEALTHY FORESTS RESTORATION ACT

Introduction

Mr. Chairperson and members of the committee, the Ozark Woodland Owner's Association, Inc. appreciates the opportunity to submit testimony addressing the issues surrounding the proposed provision of the Healthy Forests Initiative. First let us introduce our Association. The Ozark Woodland Owner's Association, Inc. (OWOA) is an association of landowner and professional forestry volunteers formed by landowner requests for the purpose of providing small, private, non-industrial forest landowners the education and technical assistance needed to competently manage their forest lands, and to conduct the necessary research to motivate private landowners to act.

Our comments to your committee are predicated on two very important assumptions. The first is, that, as this initiative's name implies, this legislation is intended to address the needs of all of our nation's forests, both public and private, not just our federally owned national forests. The second is that the legislation is intended to establish policies, provide resources, and promote management practices that reduce the risk of catastrophic destruction of all of our nation's forests both public and private, not just those federally owned western forests at risk of catastrophic destruction from wild fire.

Unhealthy forestlands, whether public or private, western or eastern, almost always result from similar conditions; thick, badly managed stands of unhealthy trees, which are extremely susceptible to the effects of drought, disease, and insects. The catastrophic event that culminates in forest destruction, however, varies from region to region. In the west, it is usually a wild fire whose effects are immediately visible. In the eastern states, because of higher humidity levels, the event is not usually fire, but an outbreak of insects or disease of epidemic proportions that is longer in duration, equally devastating, but somewhat less obvious than a wild fire.

Approaches to restore our nations forests to a healthier state must differ between public and private forestlands. Changes, as proposed in Title One of the proposed legislation, are an appropriate approach to changing methods of public forestland management. Legislation that addresses the needs of our nation's privately owned forestlands must follow a different route. Here, programs that educate private forest landowners, motivate them to act, and provide an economic or other incentive for doing so are the receipt for producing a healthy landscape of privately owned forestlands.

With these thoughts, we offer the following comments on each of the titles of the proposed legislation.

Assessment of Title One: Forest Health on National Forests and Public Lands.

OWOA agrees the current administrative and legal environment has contributed to the decline in forest health in the Ouachita National Forest of central Arkansas, the Ozark National Forest of north Arkansas and the Mark Twain National Forest of southern Missouri. Our private landowner concerns are that these unhealthy forests are acting as long-term insect and disease incubators that permit populations of pests to rise periodically to epidemic proportions then strike out across the landscape of private forestlands surrounding the national forests. The proposed legislation will permit the US Forest Service to intervene in a more timely fashion to address forest health concerns on these forests.

Assessment of Title Two: Biomass.

OWOA supports the proposed provision of Title II. We do suggest that grants for biomass delivered permit up to $20 per green ton, or up to $30 per dry ton of biomass delivered. Green biomass provides low BTU output because of moisture content. If recipients can be induced to procure dry biomass, both generation and transportation costs can be reduced and a more energy efficient fuel will be utilized.

Assessment of Title Three: Watershed Forestry Assistance.

From the viewpoint of soil and water conservation, OWOA agrees that a watershed management approach to private forest landowner assistance is appropriate. It is suggested that Section 6, subsections (b) and (c) include upland forest rehabilitation and restoration as well as wetland restoration to the program purposes and project elements and objectives.

Assessment of Title IV: Insect Infestation.

OWOA supports a title addressing the issues of both disease and insect infestation but considers the provisions of the current title to be extremely inadequate to meet our nation's needs in this area. The current purpose of this title (section 401 (c) proposes an accelerated study of insect "eaches" but does not propose an effort to identify the possible root causes of relatively sudden (last 13 years), simultaneous outbreaks of insect infestation and diseases in both eastern and western forests affecting a wide range of species. What roles do the effects of climatic change, pollution, and bad management practices play in weakening our forests and creating this unusually favorable environment, by historical standards, for insect and disease outbreaks? How do we mitigate the effects of those factors or accelerate the adaptation of our forests in a positive direction if we cannot eliminate the external factor? Some component of genetic research should be included in this title. One of the greatest potential threats facing our eastern hardwood forests is the virus causing the sudden

oak death syndrome among oak stands in California. Today, we still don't know which of our eastern subspecies of oak are susceptible to that virus. We need to know immediately if they are, and if so, begin an accelerated genetic research program to develop strains of seedlings that are immune to the disease. What we don't need is a repeat of the chestnut blight that removed one of the dominant, most commercially valuable species in our forests 50 years ago.

The current title proposes to commit resources for information gathering and dissemination through the use of our forestry schools and universities but makes no provision nor provides resources to actually implement any recommendation in any meaningful way. (Under subsection (b) (11) the Secretaries are specifically instructed that initiatives to combat forest infestations should not come at the expense of support to other programs and initiatives...)

From the viewpoint of forest landowners, this process is all wrong! A title that provides unlimited funds to researchers and academicians to perform l-o-n-g-, l-e-i-s-u-r-e-l-y research projects while our forests are dying, but no resources to implement valid management practices identified in prior, paid for, and still valid research projects is a serious misapplication of our resources!

OWOA would propose instead the creation of an electronic information gathering and dissemination center that can rapidly assemble and provide all known data on a particular pest or disease along with all known recommended management techniques for combating it; then the funding of forest management "strike forces" that can rapidly converge on selected points of infestation or susceptibility to work cooperatively with public land managers or private landowners in rehabilitating a damaged or susceptible forest.

In short, we encourage the Senate to significantly revise Title IV to change it from an anemic, defensive, title that documents the progressive destruction of our forests to a muscular, offensive, title that sets and implements strategies for restoring forests to health and protecting them in the future.

Assessment of Title V: Healthy Forests Reserve Program.

While OWOA supports the concept of such a reserve program, we would suggest that the provision belongs in future farm bills under either the conservation and forestry titles. Therefore we recommend that the program be funded through year 2006 on some appropriate experimental basis to develop administrative procedures for execution in future years and assess levels of landowner interest. At that time the title should be transferred as a provision under the next farm bill.

Assessment of Title VI: Miscellaneous Provisions.

OWOA supports the creation of a comprehensive monitoring and assessment program as proposed in the title.

Conclusion.

Once again, we thank you for letting private, non-industrial landowners such as OWOA contribute to this national debate. We have learned, through harsh experience, that such debates cannot be dominated by researchers, academicians and industries and produce a result of significant benefit to our forests and our landowners who are stewards of this national treasure. As you consider the various provisions of this legislation we suggest you ask yourself this question. Will the average landowner or public land manager ever become aware of this provision and be motivated to act? If so resource it. If not, amend or strike it. Please feel free to seek the counsel of this group of wage earning, taxpaying, voting stewards of the forest in all future debate on this issue.

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STATEMENT OF JEFFREY HARDESTY
U.S. DIRECTOR, GLOBAL FIRE INITIATIVE
THE NATURE CONSERVANCY
BEFORE THE
COMMITTEE ON AGRICULTURE
UNITED STATES SENATE

Hearing on the Healthy Forest Restoration Act
June 26, 2003

Mr. Chairman and members of the Committee, thank you for the opportunity to provide written testimony for the Committee's hearing on the Healthy Forest Restoration Act. The Nature Conservancy has a long-standing interest in abating the threats to biodiversity stemming from altered fire regimes, and I am pleased to present the Conservancy's views on this important topic. I am the U.S. Director of the Conservancy's Global Fire Initiative. I have worked in a variety of capacities for the Conservancy for 11 years, focusing on collaborating with a wide diversity of partners to integrate biodiversity conservation with community values.

The Nature Conservancy is dedicated to protecting the biological diversity of life on Earth. The Conservancy has more than one million individual members and programs in all 50 states and in 30 nations. To date, we have been responsible for protecting more than 14 million acres in the United States, and millions of other acres internationally. Our conservation work is grounded in sound science, strong partnerships with other landowners, and tangible results at local places.

The Role of Fire

For thousands of years, fire has played a vital role in shaping North American ecosystems. Nearly all terrestrial and many wetland systems experience fire at some interval, and many include plants and animals adapted to or dependent on fire. When key attributes of a fire-adapted ecosystem are altered – for example, by fire suppression – fires may burn with unnatural intensity, sometimes resulting in long-term damage to key ecosystem components, and often threatening human communities.

In the U.S., altered fire regimes are the result of more than 100 years of fire suppression, often coupled with incompatible forestry and grazing. We will not fix that problem overnight nor is it possible or ecologically desirable to continue to attempt fire suppression everywhere. Notwithstanding the efforts of the last few years, we still have insufficient knowledge and experience. No one type of management will be appropriate everywhere and not all areas should be treated until we know the most effective ways to treat them. Years of restoration, adaptive management, research and citizen involvement will be required to protect human communities

while also restoring ecosystem health. It is imperative that we commit to learning from both our successes and our missteps so as not to repeat the mistakes of the past.

The Nature Conservancy has identified more than 107 million acres of critical lands where altered fire regimes are seriously threatening biodiversity. Some of the most seriously altered fire regimes occur in systems that naturally experience high frequency/low severity fire (e.g., ponderosa pine communities of the Southwest, Intermountain west and eastern Cascades), high frequency/high severity fire, or mid-frequency/mixed severity fire. The trend in such areas is toward fires of increasing intensity and severity that threaten ecosystem health as well as life and property in the wildland-urban interface. In these areas, hazardous fuels reduction treatments are appropriate. Other ecosystems are currently in relatively good condition, for example lodgepole pine and high-elevation spruce fir forests in the Intermountain west, which are subject to low frequency/high severity fires.

Over the past 40 years The Conservancy has been engaged in a wide variety of ecological management activities, including managing thousands of prescribed fires to restore ecosystem health at hundreds of sites across the United States. Our restoration work with partners relies on setting ecosystem restoration goals and using adaptive management, which includes: working from a landscape-scale perspective, setting measurable ecological objectives and desired future conditions, monitoring to ensure those objectives are being met, and then adapting practices where necessary. Our own experience and the history of natural resource management clearly show that well meaning managers will make mistakes. *Adaptive management will allow us to move forward with much needed restoration while also maximizing our learning. The result will be better investment of taxpayer funds, healthier ecosystems and safer communities.*

Policy Recommendations

Based on this on-the-ground experience, we have the following five recommendations:

1. The agencies should use the best available and updated information to set priorities. Agencies should prioritize hazardous fuel reduction projects within the wildland-urban interface (WUI) and water supply areas. Although projects will be selected based on public safety, they can provide important lessons for ecosystem restoration outside the wildland-urban interface.

2. The agencies should begin conducting a small number of ecosystem restoration projects outside the wildland-urban interface. These areas should be selected based on a clear and compelling need for ecological restoration as well as their value in demonstrating how agencies, communities and scientists can work cooperatively in planning and taking action on a landscape scale. Expedited approval processes are not necessary or appropriate in those areas.

3. In these non-WUI projects, and where possible in the WUI, agency actions must be guided by ecosystem restoration goals and must use adaptive management principles so that we can learn from our actions and our mistakes to inform and adapt future efforts. At a minimum, adaptive management must include setting clear ecological objectives and implementing a thoughtful, cost-efficient monitoring and evaluation process.

4. Congress needs to devote significantly more resources to appropriate treatment and restoration of altered fire regimes. The more public funds are diverted for suppression, the higher the long-term cost, ecologically and financially.
5. Congress should consider some form of subsidy to develop facilities to utilize small diameter biomass in appropriate places. In the long run, the absence of markets for millions of tons of small diameter trees that currently have little economic value will be a major barrier to restoration of larger landscapes. Where thinning is ecologically, scientifically and socially desirable, in concept we support offsetting the costs of services with the marketable by-products of restoration, especially where these activities support small businesses and local job creation

Thank you again for the opportunity provide testimony on this important issue.

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Healthy Forests Restoration Hearing Written Testimony

June 26, 2003

Submitted by the Ecological Society of America
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Considerable public and media attention has focused on the causes and consequences of recent forest fires on public lands in the western United States. These fires caused significant harm and upheaval in some communities and, in some of these areas, increased fire intensity was linked to unnatural fuel accumulations. Because past land use management and policies have contributed to these conditions, many have called for prescribed fires and mechanical thinning programs aimed at reducing forest fuels. Recently, the Administration and some Congressional leaders have offered plans to address this situation.

Action is indeed needed in some western forests, but it is critical that any plan enacted is consistent with current scientific understandings. Sustainable forest management can be achieved only when the best scientific information is incorporated into management strategies. The following principles are central to fire management on western landscapes. Attention to them will greatly enhance the likelihood that efforts to address wildfire in western forests will achieve their objectives.

- **Crown fires cannot and should not be eliminated from all forests.**

  Different ecosystems require different approaches to fire management. In some forest types, crown fires are a natural, indeed inevitable, part of the regime. For example, chaparral, lodgepole pine, boreal forest, pitch pine and sand pine have long experienced crown fires. Attempting to eliminate such fires in these ecosystems is not ecologically justified and is unlikely to succeed.

- **Restoration is warranted, but it is not a cure all.**

  Some forest ecosystems, such as the ponderosa pine forests of the Southwest, have experienced an increase in large scale crown fires in recent years. In these forests, management to achieve a regime of frequent, low-intensity burns may be scientifically justified. Some of these areas can be restored through prescribed burns, but mechanical thinning will be necessary in many areas. However, under severe weather conditions, even forests with normal accumulations of fuel may experience crown fires. Severe fires cannot be eliminated in areas subject to drought; there is no scientific basis for "fire proofing" a forest.

- **To succeed, restoration efforts must recognize natural variability.**

  Forests, especially those in the mountainous West, are highly variable in both species composition and structure. Even within a single forest type conditions vary significantly from place to place. Such variability precludes one-size-fits-all solutions to fuel management. Management goals and objectives must be adaptable to changing, site-specific conditions, as well as new scientific discovery.

- **Fire suppression is not the only cause of fire regime changes.**

  Many land use changes including grazing, logging, road building, invasive species (such as flammable grasses) and the intrusion of human habitations into the forest have also contributed to these changes. A management strategy that addresses only fire suppression will be incomplete and likely unsuccessful.

- **Preservation of large trees is necessary to meet management goals.**

  To restore frequent, low-intensity fire regimes, it is necessary to restore forest structures. In frequent, low-intensity fire systems it is the largest trees that are the least susceptible to fire. Therefore, restoration management must focus on removal of smaller, highly flammable fuels.

- **Fire management must be adaptive.**

  Monitoring and research must go hand-in-hand with management. We have much to learn about fuels management and fire behavior across the wide array of forest types in the western United States. Managers must be able to learn from previous projects and adjust future prescriptions accordingly. Adaptive management should be an integral part of the restoration plan.

- **A long-term commitment is imperative.**

  Forest structure changes slowly and restoration requires a long-term commitment. Once fuel reduction treatments have begun, attention must be given to the means by which appropriate fuel conditions are maintained, either through prescribed burns or naturally occurring fires. Without such attention, our forests will soon return to their present condition. Success will depend on the formulation of clear post-restoration management protocols and providing the funding to implement those protocols in the future.

Although this is an urgent challenge in some areas, the challenge will not be met by quick fixes or by strategies that are not based on the best science. Restoration efforts must be prioritized, and areas in which human life or property are at a great risk should be our highest priority. Much will be learned from these efforts that can then be applied to more remote areas. As the nation's largest professional organization of ecologists, we stand ready to assist in both science and practice.

Adopted by the Governing Board of the Ecological Society of America, April 2003

The Ecological Society of America is the country's primary professional organization of ecologists, representing over 8,000 scientists in the United States and around the world. Since its founding in 1915, ESA has diligently pursued the promotion of the responsible application of ecological principles to the solution of environmental problems through ESA reports, journals, research, and expert testimony to Congress. For more information about the Society and its activities, visit the ESA website at http://www.esa.org.

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Testimony

of

Dr. Steve Zack
North America Program
Wildlife Conservation Society

before the

Senate Forestry, Conservation & Rural Revitalization Subcommittee

Committee on Agriculture, Nutrition & Forestry

regarding the

Healthy Forests Restoration Act and related forest management concerns

June 26, 2003

Mr. Chairman, Members of the Subcommittee: Thank you very much for the opportunity to comment on the diverse issues facing our country in attempting to deal with forest and forest fire management. The comments included herein are viewpoints I have developed while working for the Wildlife Conservation Society, which was founded in 1895 as the New York Zoological Society, and is a 107-year old US-based membership organization. The Wildlife Conservation Society conserves wildlife and wild lands throughout the world, as well as managing animal collections at the Bronx Zoo and other "Living Institutions" in the New York area.

The present widespread problem of catastrophic fire risk to forests, communities, and to wildlife is more than a century in the making. In order to restore our dry interior Western forests to better ecological condition and to protect communities from danger by wildfire, an appreciation of the potential for management with moderate thinning and prescribed fire is urgently needed. Although no one strategy for forest management can cover all the diverse forests and forest ecologies in the West, an emphasis on "fighting fire with fire" would indeed provide for forests that have reduced catastrophic fire risk, protect adjacent communities, and restore much-needed ecological processes important to forests and wildlife on our landscape. While Congress considers the Healthy Forests Restoration Act and other proposals to address the forest fire issue, WCS recommends such legislation consider the following issues.

- **Many Western forests have changed dramatically over the past century and one consequence is increased risk of catastrophic fire**. Our interior western coniferous forests are denser today and more structurally uniform, with fewer large trees and more numerous small trees, than the same forests in pre-European settlement times. The major cause of this transformation has been fire suppression. The culture of "Smokey the Bear" has been very successful in preventing many wildfires, yet, paradoxically, it is that success that that underlies the widespread risk of catastrophic fires experienced over much of the West over the past several years. Logging, livestock grazing, and recent climate changes have also contributed to the problem. Western forests today have more "fuels" (small dense trees and shrubs) as a result of fire suppression and large-tree logging, and many are at risk of large, high-intensity fires. The high stocking and uniform structure of today's forests also predispose them to the risk of epidemic insect infestations. The large-scale reduction of large trees on the landscape has hurt wildlife populations dependent on them for foraging and as large snags for nesting in cavities.

- **Ponderosa and Jeffrey Pine forests are widespread, and are fire-dependent**. Ponderosa and Jeffrey Pine dominate the major forest type in the intermountain arid West. These forests range from Baja, California to British Columbia, and from the Cascades and Sequoias eastward to the Rockies. These pines are prevalent in the majority of recent large-scale fires in the West. Historically, these forests were open, park-like forests with frequent, low-intensity fires clearing out the understory. Fire "return" intervals were often typically less than a decade, and the low-intensity character resulted in light understory fires that

rarely affected the forest canopy. Today, as above, these forests are more densely stocked with small trees and shrubs because of fire suppression, which has allowed for an increase in tree density and intrusion by firs (White Fir, Grand Fir, and Douglas-fir, depending on location). Pines are fire-tolerant whereas firs are fire-intolerant. Fire suppression has allowed for a steady intrusion of firs into pine forests of the West, resulting in a changing ecology of these forests.

- **Forest structure and forest processes are essential to forest health.** The historical, open, park-like structure of Ponderosa and Jeffrey Pine forests evolved with fire. Periodic, low-intensity fires are key to understanding the integrity of these forests. Fire recycles nutrients and maintains the structural diversity of these forests. Structural diversity includes not only the open, park-like appearance, but also refers to the presence of large trees, medium sized-trees, and small trees laid out in the forest reflecting different spatial histories of growth and reproduction. Fire is also critical to wildlife in these forests. Low-intensity fires kill some trees, and the dying tree (a snag) attracts bark beetles and then woodpeckers that forage on the beetles in the snag. These interactions between fire, snags, bark beetles, and foraging woodpeckers (and fungi) can result, years later, in snags with cavities excavated by woodpeckers. Snags with cavities are the major wildlife resource of coniferous forests, housing numerous species of birds and small mammals.

- **Forest management with thinning and fire is effective in reducing catastrophic fire risk**. The "fuels" of forest fires include surface fuels, ladder fuels (material that can carry fire into the tree crowns), and crown fuels. Moderate thinning targets ladder fuels while prescribed fire, when well applied, consumes surface fuels. The catastrophic fires that have become prevalent in recent years in the West are fires that quickly go from surface to ladder to crown and result in large-scale, intense stand-replacing fires. How moderate thinning and prescribed fire can counter the risk of catastrophic fires was dramatically demonstrated in the Cone Fire of last fall in Northern California. The Cone Fire quickly became a crown-fire, consuming and killing all trees in its wake. When it came upon our experimental treatments at the Blacks Mountain Experimental Forest, where we had established plots of moderate thinning and prescribed fire, the Cone Fire literally died out. , When it encountered our plots with only a thinning treatment, the Cone Fire became a light, understory burn. The remaining Cone Fire was soon put out, much sooner and with far less forest consumed than if our treatments had not been in place. The difference is like night and day: untreated forests with all trees killed lie adjacent to an open, park-like forest of green trees owing to prior treatments.

- **Moderate thinning can accompany a prescribed fire treatment, and can generate timber revenue**. The accumulation of densely stocked stands in Western forests does require management and can result in revenue for timber companies. Our experimental forest efforts at the Blacks Mountain Experimental Forest and in the Goosenest Adaptive Management Area of Northern California,

where we are examining various forest structure alternatives with thinning and prescribed fire, did result in the largest timber sales in the West for the years of thinning treatments. There is an important distinction of ends and means to be made here, however. With fire hazard reduction as a priority, the most effect method requires surface and ladder fuel treatment through moderate thinning of small trees followed by prescribed fire. Large trees are important for forest structure and critical for wildlife. Large trees, however, are the desired commercial product of timber companies. Large trees of the interior West take hundreds of years to become so. If truly healthy forests are the goal, then timber revenue could be the result of responsible forest management, but cannot be the management goal itself.

- **The fire problem is too widespread to overcome completely, and so fire management should be focused near communities**. The consequence of widespread fire suppression is a widespread fire risk today that swamps any realistic expectation that management can contain it. Large-scale, stand-replacing fires will continue in the interior West. Many millions of dollars are spent annually fighting these large fires. The pressing need is for targeted forest management surrounding communities at risk. Often such forests are not federal, but rather state or private. This is not to imply that forests distant from communities should be left to intensively burn. Indeed, many forests at risk of catastrophic fire represent key habitat for wildlife species in decline, as is true of the current fires in Arizona important for Mexican Spotted Owls. Forest management for fire hazard reduction could represent money well spent, and help break us from the endless cycle of fighting the problem, yet not managing a solution.

- **Forest diversity and fire ecology: Details are important to manage them effectively**. Different forests in the interior West have different historic and present day fire dynamics. The Ponderosa and Jeffrey Pine forests emphasized here were historically characterized by frequent, low-intensity fires and today have been changed to fire-suppressed, high-density stands at risk of high-severity fire risk. By contrast, Lodgepole Pine forests typically do naturally burn at high-intensity every century or so, and the forest is replaced with a new generation of seedlings from cones opened by the fire. The Yellowstone fires of a few decades ago are dramatic examples of this. Likewise, spruce-fir forests of higher elevations exhibit this kind of fire ecology, one characterized by infrequent, yet high-intensity fires. The management of Lodgepole Pine and spruce-fir forests for fire hazard reduction is likely different than that outlined here for Ponderosa and Jeffrey Pine forests. The Miller Substitute Amendment does account for such variation in forest behavior with respect to fire, and offers a meaningful contrast to the "one-size-fits-all" simplicity of the existing Healthy Forests Restoration Act.

I thank you for the opportunity to share my views with the Subcommittee on this important policy initiative.

Dr. Steve Zack is a Conservation Scientist with the North America Program of the Wildlife Conservation Society. He directs Pacific West activities in forest wildlife issues, riparian habitat and wildlife restoration, arctic shorebirds, and pacific salmon ecosystems. He collaborates with USDA Forest Service scientists and others in long-term experimental forest treatments in Northern California. He is the Wildlife Discipline Leader and Executive Committee Member of the National Fire Fire-Surrogate Study, a study across the country of assessing alternative forest management treatments to reduce fire risk, funded by the Joint Fire Science Program. Dr. Zack earned his B.S. from Oregon State University (1978), his PhD from the University of New Mexico (1985) and taught for five years at Yale University. He joined WCS in 1998. Contact him at szack@wcs.org.

Contact Kelly Keenan Aylward, Federal Affairs, Wildlife Conservation Society, 1700 Connecticut Ave, Suite 403, Washington, DC 20009 Tel: (202) 588-1926 Fax: (202) 588-1069 kaylward@wcs.org

Dr. Arthur Partridge

Professor Emeritus,
College of Forestry, Wildlife and Range Sciences,
University of Idaho

Testimony

Forest Fires, the Correct Way to Protect Buildings From Fire Damage, and How Legislation In Congress Which Claims to Reduce Fires and Fire Damage Will Achieve the Opposite Effect

Submitted to the
Agriculture, Nutrition and Forestry Committee
United State Senate

Hearing to Review
Healthy Forests Restoration Act, HR 1904

June 26, 2003

With respect:

I am Dr. Arthur Dean Partridge, Professor Emeritus of Forest Disease and Insect Problems with 37 years of teaching, research extension and administrative experience in Forestry at the University and additional experience with the U.S. D. A. Forest Service, and as an independent logger during an additional 15 years. I live in a Ponderosa Pine/Douglas-fir forest with an average 17-inch annual rainfall and am intimately familiar with both the threat and effects of forest wildfire.

With this background and being directly affected by the proposed legislation to employ tree extraction to ostensibly protect us from wildfire I must offer my profound opposition based on the facts and on my experience.

First, the data do not demonstrate the "emergency" being expounded as a reason to direct massive interventions. During the last half century in the United States, approximately 7 million acres of forest land out of 747 million acres of forest land in this country, has been affected by wildfire each year, with some but few major variations per year, meaning that fire affects 0.94% of our forest lands per year on average. Data from U.S.D.A. Forest Service records for the years 1952-1992 show a timber loss of less than 2% from fire, diseases and insects combined for any year during that period. There is no science-based indication that an upward trend in forest damage has happened or is occurring and the data certainly do not indicate an emergency.

Second, thinning, the primary proposed procedure to "fireproof" our forests is unproven as a reliable method to prevent or reduce the severity of wildfires. In fact, the process of thinning causes the deposition of fine (0 & 1-hr.) fuels on the forest floor that are primary ignition sources. It is impractical to remove such fuel under forest conditions except directly around homes. The current focus on "fuels" is, in itself, misguided because almost anything in a forest will burn, given the right conditions. Any fire specialist will tell you that the principal factors affecting fire are temperature and moisture, not fuels. No legislation will prevent or even reduce fires in the vast areas of the national forests and to pretend so is fraudulent.

Third, the responsibility for protecting homes in woodlands rest primarily with the owners, not with the government, or with those who pay into that government but do not live in the woods and subject themselves to risk. Most Americans live in urban areas, and will soon become dissatisfied with footing the bill for billions of dollars spent on fraudulent fire fighting programs.

Rather, as I see it, legislation should focus on enabling those who live in or near woodlands to protect themselves, as my family and I have for more than half a century without federal intervention or pork-barreling. The U.S.D.A. Forest Service currently is not directed to work with individuals to enable protecting individual properties. This can be changed immediately with little or no additional costs and with considerable positive impact on those of us who live in the woods. Some of the things they can help with and that we have done are listed below:

Some important, and frequently overlooked, considerations to protect dwellings in fire zones:

The "fire protection zone" around dwellings is a mere 150-200 feet. This is the only place where removing flammable material, such as weeds, brush, shrubs, etc. will help in "fire-proofing" buildings in forest fire prone areas. Logging in forests beyond this narrow area will not reduce fires, it will only increase them.

1. Prune out the lower limbs of trees and shrubs especially small, dead material.

2. Brush easily carries fire and should not accumulate around dwellings. Coniferous foundation plantings are invitations to building loss.

3. Grass and weeds must be mowed often during dry periods, but care should be exercised to be sure the mower doesn't start a fire.

4. "Grey water" from a household, held in drums can be used to keep grass green and kept ready to dump on small fires if they start.

5. Rural residents should carry a container of water in their vehicle during dry periods to put out small fires if encountered. Many fires start at roadside.

6. Keep gasoline cans, vehicles, boats, tires, and even the lawn mower away from buildings. These are significant, easily ignited hazards. The fuel, grease and oil and tires are rapid-burning very high-heat fuels. Often old cars, etc., are stored near buildings in rural areas and are a common cause of the loss of homes in rural settings. (Propane tanks, now exploding in the big Arizona fire also need attention.)

7. Fire breaks and access trails are necessary around dwellings in the woods. We, who live in the woods, utilize rotary mowers to create trails and firebreaks through our woods. This process finely divides debris, and green grass grows in the trails to help retard any fire spread. Furthermore, the trails provide ready access to extinguish fires before they become conflagrations.

8. Metal roofing is essential in the woods but fire-retardant siding should be required on all new buildings.

9. Massive cutting near towns or rural dwellings must be restricted or stopped. Clearcutting, massive cutting or heavy thinning, that creates openings, encourages both dense tree reproduction and brush invasion. In turn, the resulting masses of small stems creates an explosively flammable fuel. Even green stems of this type ignite easily and masses of evergreen foliage, so produced, are essentially pitch torches. Foliage, particularly on conifers, is a violently irruptive green fuel.

10. Additionally, forest-land holders, who have tracts adjoining private dwellings must be compelled by law to create firebreaks adjacent to the dwellings and to keep them fuel–free by discing or plowing during fire seasons. This must include all private and public ownerships of any kind.

More needs to be said about tax incentives to those who protect their homes and tax disincentives for those who build in fire-prone zones. And more needs to be said about directing insurance companies to penalize or reward according to how property is managed in woodland settings.

Respectfully,

Dr. Arthur Dean Partridge

Professor Emeritus,
College of Forestry, Wildlife and Range Sciences,
University of Idaho

And

President, TREAZ, Trees From A to Z, Inc., Consultants
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July 1, 2003

H.R. 1904 Fails to Prioritize Limited Taxpayer Resources and Provides $125 Million in New Subsidies

Dear Senator:

Taxpayers for Common Sense Action (TCS Action), a non-partisan, budget watchdog group, opposes H.R. 1904, the so-called "Healthy Forest Restoration Act of 2003." This bill contains vague language that does little to prioritize limited taxpayer resources for fire prevention, and proposes $125 million in new subsidies for biomass energy.

TCS Action agrees that hazardous fuels reduction efforts should decrease the need for costly fire suppression. However, with a massive deficit looming, tight limitations on federal spending, and a history of substantial taxpayer subsidies to the timber and energy industries, it is imperative that fire prevention not become a cover for unchecked federal spending.

In order to ensure the protection of communities and the federal taxpayer, the foremost funding priority for fire prevention should be areas where fire damage is most costly to taxpayers – near homes and communities. Targeting funds in this way will help to ensure protection of the greatest number of homes, communities, property and human lives. Unfortunately, H.R. 1904 does little to prioritize hazardous fuels reduction expenditures in these areas, and contains ambiguous language that could allow for broad and potentially conflicting interpretations of a number of provisions in the bill. By failing to set clear and realistic spending priorities for fire prevention, this bill could leave taxpayers vulnerable to a considerable financial burden.

Given the tight budget scenario projected over the next decade, it is impetrative that fire prevention and community protection not be used for political gain, or industry profiteering. The goal of any fire legislation should be to minimize the loss of human life and protect communities at greatest risk of fire. **H.R. 1904 fails to effectively target limited taxpayer resources toward the protection of communities at the greatest risk of fire and potentially invites the abuse of taxpayer funds.** Please contact Shannon Collier at 546-8500 x127, or shannon@taxpayer.net for more information.

Sincerely,

Jill Lancelot

Jill Lancelot
President / Co-founder

A non-partisan budget watchdog
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FOREST
TRUST

June 30, 2003

Honorable Thad Cochran, Chair
Honorable Tom Harkin
Senate Committee on Agriculture, Nutrition and Forestry
Washington, D.C. 20510

Dear Senators Cochran and Harkin:

The Forest Trust is writing to provide the Committee with the perspective of a regional forestry organization on H.R. 1904, the "Healthy Forests Restoration Act of 2003." The Forest Trust works with people in forest-dependent communities throughout the southwest to develop business capacity, manage forests, and engage in federal land management issues. The Trust has a staff of professional foresters and operates a forestry research center as well as a consulting forestry business.

The Forest Trust believes that the Senate needs to address the shortcomings of H.R. 1904 in order to pass legislation that will restore the health of our nation's forests. The purposes of the Healthy Forests Restoration Act are worthy, but the bill must be improved if it is to benefit forest-dependent communities. We provide five specific suggestions for modifying the bill.

1. H.R. 1904 does not provide clear benefits to forest-dependent communities. People in forest-dependent communities are most concerned about protecting their homes and property, obtaining living-wage employment in the forest, and restoring community and forest health. H.R. 1904 would remove barriers for some types of forest industry by increasing their access to wood, but incentives for forest industry will not automatically restore forest-dependent communities. To address the needs of people in the rural West, H.R. 1904 needs to specify direct benefits to small economically, disadvantaged communities. These benefits should include: (a) an emphasis in the hazardous fuel reduction program on projects that benefit small businesses that add value to small diameter wood and woody debris; (b) consistent use of local preference and best value contracting; and (c) equal priority in the ranking process for poor communities that do not have the economic resilience (e.g. homeowner's insurance and investment assets) to survive a wildfire.

2. H.R. 1904 does not provide a solution to the insect-wildfire problem. The biggest problem with insect infestations and wildfire is that the interaction between them is so little studied. Unlike the study of fuel loads in forests that were altered by fire suppression, grazing and logging, scientists know very little about the ecological role of widespread insect infestations in fire-adapted ecosystems. H.R. 1904 proposes a radical program of preemptive salvage, a practice that will minimize economic losses but that has no documented benefits for forest health. A more reasonable solution is to make funds available for information gathering programs on native and non-native insects that impact large areas of forest, and to

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develop new technologies and markets for value-added products that use the byproducts of insect infestation and fuel reduction treatments.

3. H.R. 1904 blames the slow rate of hazardous fuel reduction treatment on the "process predicament" despite numerous studies to the contrary. Furthermore, recent reports in the media that appropriations through the National Fire Plan have not been sufficient to implement many of the NEPA ready projects indicate that the smoking gun may be funding, not process. The devastating Aspen Fire near Tucson, Arizona illustrates the need for increased funds to protect communities. The NEPA review of the Summerhaven community fuel reduction project proceeded without appeal, yet the Arizona Star reports that project implementation was delayed because full funding was not available. Some changes to NEPA are reasonable, such are requiring that appellants contribute substantive comments before they are eligible to appeal, but others, such as eliminating the development of alternatives in environmental assessments, will only weaken public trust and social acceptance of preventative action. The provisions for expedited process in H.R. 1904 should be scaled back to limited modifications of appeal procedures and the use of categorical exclusions in community protection zones and municipal watersheds.

4. A public investment in hazardous fuel reduction is more cost-effective than continuing to suppress fires that threaten life and property. A recent Northern Arizona University study compared the cost of restoring forest to the cost of suppressing fires in those same forests. The upfront investment in hazardous fuel reduction averages $505/acre. The cost of suppressing last year's Rodeo/Chediski fire was $638/acre, or $133 more per acre. Arizona Governor Janet Napolitano said two weeks ago at the Western Governors Association's Forest Health Summit, "based on this analysis, we can invest $6 billion today to restore these acres [at risk] or we can watch an equivalent amount of money – in addition to our forests – go up in smoke. The protection of our communities and forests seems very worthy of this investment." The Forest Trust urges Congress to increase the investment in forest health through appropriations and by eliminating the Forest Service's fire borrowing practice.

5. Keeping forests healthy will require an up-front investment in fuel reduction and restoration and a commitment to managing future fuel accumulations. H.R. 1904 does not address the fact that maintenance treatments will be necessary to prevent excess fuel accumulation after the initial treatment. The federal investment in hazardous fuel reduction will be lost if plans are not made at the outset for periodic maintenance of all treated forests. A section on long-term maintenance is essential to ensure that future generations do not find themselves saddled with the same fire problem we face today.

Thank you for considering the comments of the Forest Trust in your deliberations. The Senate's actions will have long-lasting implications for America's forests and we appreciate the opportunity to contribute our perspective.

Sincerely,

/s/ Henry H. Carey

Henry H. Carey
Director

June 30, 2003

Senate Agriculture, Nutrition and Forestry Committee
Honorable Senator Thad Cochran, Chair
Honorable Senator Tom Harkin, Ranking Member
Washington, D.C. 20510

Dear Senators Cochran and Harkin,

I am writing to contribute the voices of practicing foresters to your deliberations on the "Healthy Forests Restoration Act of 2003" (H.R. 1904). The Forest Stewards Guild, a national organization of over 450 foresters and natural resource professionals, promotes and supports ecologically and economically responsible resource management which sustains the entire forest across the landscape.

The Guild opposes H.R. 1904 because it fails to promote sound forestry on federal forests. Practicing foresters recognize that reducing the very real risk of catastrophic wildfire and enhancing forest health requires a credible combination of responsible forest management and public trust in agency decision making. As professional foresters, we would like to call your attention to the following problems with H.R. 1904 that we believe need to be addressed in order to bring about forest health restoration, and to make recommendations for improvements.

1. H.R. 1904 lacks comprehensive silvicultural planning provisions and funding for long-term fuels management. Comprehensive, long-term silvicultural planning for fuels management guides treatments such as prescribed burning, pre-commercial thinning, control of grazing and implementation of integrated pest management strategies. Effective silvicultural planning, treatment design and implementation requires that: a) national funding levels are sufficient; b) funding for all project phases be committed locally before the project begins; c) follow-up activities to keep treated areas within the historical range of variability be planned simultaneously with proposed projects, and d) a budget and implementation tracking system be established to account for long-term site maintenance. Forest management must be addressed as an array of actions that take place and have impacts over time across the landscape to avoid opening the door for re-creating overstocked forests and other problems the legislation seeks to resolve.

2. H.R. 1904 lacks an appropriate system for setting and implementing treatment priorities at the local level. The scale utilized in the condition class system in place to prioritize projects is too high for practical use in identifying specific areas that pose a fuels hazard. Hence some projects supported by the bill may do nothing with respect to reducing the threat of fire to communities. Treatments should be focussed in at-risk interface and intermix communities and in community protection zones and municipal watersheds. In addition, a significant acreage of non-federal lands is affected annually by wildfire and therefore in need of rehabilitation. Protecting communities requires that cost-sharing programs allowing in-kind matches are available for wildfire risk reduction and restoration on non-federal lands.

3. H.R. 1904 lacks rigorous fuels hazard reduction treatment experimentation. The rigorous program of silvicultural experimentation outlined in Sec. 4 to address forest pest concerns is a good start. It should be expanded to address the paucity of information available on the interactions between insect infestations and wildfire.

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It is striking, however, given the parallel lack of understanding in the realms of fuels treatments and forest restoration, that there is no parallel call for rigorous experimentation to generate the "most innovative and cost effective management applications" in fuels hazard reduction. Instead the bill would actually remove or omit the approaches and tools that are most critical to a successful, effective and publicly supported fuels management program.

4. H.R. 1904 lacks requirements for monitoring the success of treatments at reducing fire risk. The only monitoring requirements for projects under the bill relate to project implementation. In combination with the discretionary authority accorded to concerned Secretaries to dismiss the study of alternatives, the omission of monitoring requirements is irresponsible from a professional forestry standpoint. Effectiveness monitoring is essential to providing adequate understanding of reducing wildfire risk in order to manage fuels successfully over the long-term, and should be accomplished with a broad stakeholder group. Project implementation oversight should be accomplished through a multiparty monitoring, evaluation and accountability process. Such efforts are critical to building public trust and confidence in agency activities.

5. H.R. 1904 lacks safeguards to ensure that funding is restricted to legitimate fuels reduction treatments. A recent study by Forest Trust found no scientific basis for employing commercial timber harvests as a primary strategy for reducing fire risk. Yet, there is no language in this bill that provides security against its provisions being used to conduct traditional commercial timber extraction, free of environmental safeguards, in areas chosen for projects. First, the bill is riddled with language such as "the existence or threat of infestation posing a threat" (Sec. 102(4)), which could mean any forest stand. Second, the Tree Removal Limitation (Sec. 102(d)) provides little assurance of ecologically responsible silviculture, since the final caveat - "consistent with the purposes of the title" - overrides any safeguards in the subsection. This bill would permit emphasis on commercial timber extraction to the detriment of other silvicultural concerns - the situation that gave rise to federal process requirements in the first place. The inadequate treatment of critical forestry issues demonstrated throughout the bill only serves to increase our concerns in this regard. For example, the bill fails to observe the difference in scope between fuel hazard reduction and forest "restoration" (Sec 107; 201(3)).

The Guild sees the successful design of fuels management projects and comprehensive forest restoration approaches as a key opportunity to demonstrate the value and effectiveness of forestry and professional foresters to our society. We feel that the direction taken in H.R.1904 risks furthering the erosion of credibility suffered by the profession in the wake of the Salvage Rider fiasco of the 1990s. As professional foresters, we insist that the Congress optimize support for appropriate and effective fuels management that best serves the forest and the American public. The "environmental rollbacks" proposed in this bill constitute an inadequate and critically flawed strategy for accomplishing this goal.

While recognizing difficulties arising from the cumbersome nature of federal environmental requirements, the Guild sees such requirements as enhancing the opportunity to come up with the best answers for forest management. The Guild believes that effective projects will be those that are designed with a clear focus on fuels management in areas of risk, experimental design that preserves options, attention to extended follow-up activities including prescribed burning and monitoring, and substantive public input. Moreover, the Guild believes that such projects are achievable and pose the best hope of long-term security for forest resources and forest communities. We believe that the H.R. 1904 would dim rather than support that hope, and urge you to oppose this legislation.

Sincerely,

/s/ Mary Chapman

Mary Chapman
Program Director

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BAZELON CENTER FOR MENTAL HEALTH LAW
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF)
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)
NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES
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NOW LEGAL DEFENSE AND EDUCATION FUND
PEOPLE FOR THE AMERICAN WAY
PLANNED PARENTHOOD FEDERATION OF AMERICA
RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE

May 13, 2003

Dear Representative:

H.R.1904, the Healthy Forests Restoration Act, will soon be considered on the floor of the House. While forest management issues are not the particular focus of our organizations, we nonetheless are seriously troubled by, and opposed to, the judicial review provisions contained in this legislation. H.R. 1904 seeks to force federal district and appellate courts to prioritize cases regarding timber projects authorized by the legislation. Placing these projects ahead of other cases that are pending in our federal courts is inappropriate and could delay consideration of vital cases, including those involving civil rights and workers' rights. In addition, H.R. 1904 attempts to legislate an astounding change in American legal standards by seeking to require courts to defer to federal agencies when considering a request for a prohibitory or mandatory injunction.

Section 106 of the Healthy Forests Restoration Act limits preliminary injunctions regarding these projects to 45 days. For a longer injunction, a court must actively revisit the matter, thereby needlessly consuming its valuable and limited resources. Moreover, the requirement that several congressional committees be notified (by the Secretary) whenever a federal court chooses to renew a preliminary injunction is also troubling.

The legislation's expression of congressional intent that the federal courts, "to the maximum extent practicable," render final decisions on the merits of a challenge or appeal within 100 days is particularly objectionable. Briefing the merits and oral arguments of a federal district court case regularly require more than 100 days. Moreover, federal appellate courts rarely rule on the merits of an appeal in less than 100 days from the filing of an appeal. The hundreds of cases that would potentially be subject to these deadlines for decisions would be concentrated in federal court districts that contain National Forests and Bureau of Land Management areas. These relatively few rural district courts have few judges. To comply with the spirit of H.R. 1904, courts would likely have to delay cases involving civil rights, civil liberties, workers' rights, and virtually every other issue.

Section 107 of the bill attempts to fundamentally alter the relationship between individuals and federal agencies by tilting the scale of justice in favor of the agency during consideration of a request for prohibitory or mandatory injunctive relief. Specifically, the bill seeks to require courts to give undue weight to an agency on the question of relief when the agency action "is necessary to restore a fire-adapted forest or rangeland ecosystem." For injunctive relief, this provision seeks to force the courts to give undue weight to agencies and allow agency actions to proceed even after the court has found that the actions are illegal. This provision should be rejected, as it would constitute a particularly objectionable change in American jurisprudence that would set a dangerous precedent.

H.R. 1904 would impose these troubling limitations on judicial review without the benefit of a hearing before the Committee on Resources prior to markup. These serious changes in judicial review loom significantly larger than the forest projects envisioned by the supporters of H.R. 1904. We urge you to reject H.R. 1904 as it could severely impact the ability of our federal courts to issue timely decisions in civil rights, workers' rights and other pressing matters, and change the fundamental balance that has been struck in our legal system.

Respectfully,

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Nan Aron
President
Alliance for Justice

Darryl Fagin
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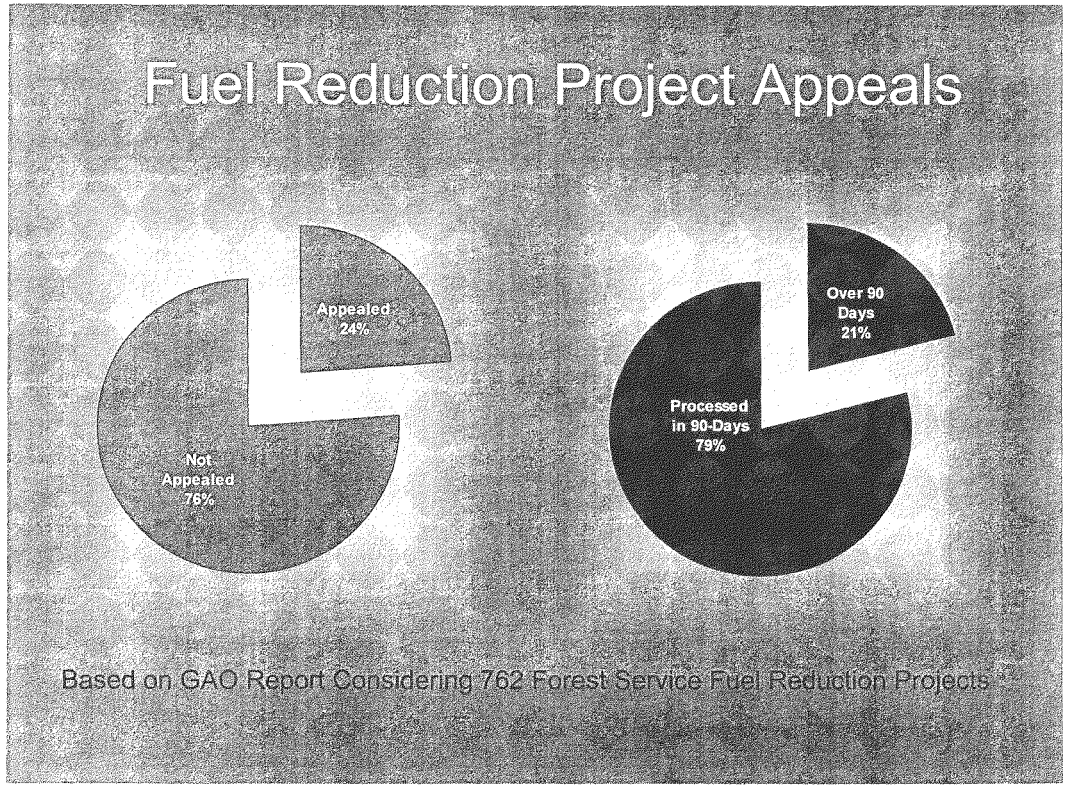
Fuel Reduction Project Appeals
Appealed 24%
Not Appealed 76%
Over 90 Days 21%
Processed in 90-Days 79%
Based on GAO Report Considering 762 Forest Service Fuel Reduction Projects

HFI Already Being Implemented?

According to the National Fire Plan Webpage over 1800 projects are currently being implemented, from small projects of 20 acres in the east to projects of more than hundreds of acres in size in the western states. The Forest Service and BLM already have the "tools" in place to address hazardous fuels.

, August 23, 2002 – "Streamlining NEPA" -- the Administration issued a final interim directive allows the use of a CE even when , extraordinary circumstances, including roadless areas or ESA species, are present. This will reduce adequate disclosure of the effects of a project to the American Public.

, January 8, 2003 – "Fast Track Logging" – the Administration issued a proposed rule for categorical exclusions, for certain timber projects, skipping individual environmental reviews, as required by under the *National Environmental Policy Act*, .

, June 4, 2003 – "Reducing Public Involvement" – by limiting who and how parties can challenge projects that are believed to violate law, regulation, or policy.

, June 5, 2003 – "Carte Blanc Authority" -- the Administration issued two new CE categories, which allow for the to planning and implementation of certain fuel reduction projects. No priority is given to projects close to homes or communities, but instead provides carte blanc authority for implementation of fuel reductions projects across the two agencies lands.

, June 5, 2003 – "Reducing Objective Oversight" -- the Administration issued a proposed rule, which would allow land management agency personnel to perform consultation duties over their own agency's projects. Thereby, removing the objective review provided by the Fish and Wildlife Service/ National Marine Fisheries Service in protecting threatened and endangered species.

All this works towards excluding the American Public from participating in the development of scientifically sound projects on ***their*** federal lands – so "what's left to take away from the American Public?" **Administrative and Judicial Review is all they are asking for now!**

May 19, 2003

Dear Members of Congress:

We are current or former law school faculty, with expertise in environmental law, administrative law, constitutional law, jurisprudence, and/or federal courts. We write to express strong concerns about environmental and judicial review provisions of Representative McInnis' "Healthy Forests Restoration Act," H.R. 1904. In brief, for a broad class of federal activities, the McInnis bill would eliminate meaningful environmental review and infringe on core functions of the judicial branch of government. It threatens to degrade federal agency decisionmaking – with potentially far-reaching on-the-ground consequences – to undermine the integrity of the National Environmental Policy Act (NEPA), and to raise concerns about separation of powers.

H.R. 1904 would, where it applies, repeal a central mechanism of NEPA: the requirement that agencies look beyond their initially preferred approach to examine alternatives with less environmental harm or greater environmental benefit. The statute requires that "every recommendation ... for ... major Federal action" must include "alternatives to the proposed action." 42 U.S.C. 4332(2)(C). It also separately admonishes Federal officials to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. 4332(2)(E). Reviewing courts have repeatedly underscored the centrality of alternatives to the statutory purpose. "[T]he heart of the EIS is the requirement that an agency rigorously explore and objectively evaluate the projected environmental impacts of all reasonable alternatives for completing the proposed action." Van Ee v. E.P.A. 202 F.3d 296, 309 (D.C. Cir. 2000). "Consideration of other realistic possibilities forces the agency to consider the environmental effects of a project and to evaluate them against the effects of alternatives." North Buckhead Civic Ass'n v. Skinner 903 F.2d 1533, 1541 (11th Cir. 1990) (footnotes omitted).

The bill would also eliminate environmental review entirely for loosely defined experimental projects of up to one thousand acres at a time. While NEPA regulations allow for "categorical exclusions" for some activities, that approach's consistency with the statute hinges on requirements that the excluded category be known not to cause significant environmental harm and that the presence in a specific case of "extraordinary circumstances" trigger fuller review. See 40 C.F.R. 1508.4. Lacking these safeguards, the McInnis provision amounts to a complete repeal of NEPA for the project category.

H.R. 1904 also interferes with judicial decisions about whether and how to enjoin agency violations of applicable laws. Even as amended by language that Rep. McInnis negotiated after introducing his bill, it directs federal judges to give weight to agency officials' determinations about whether an injunction would on balance be more beneficial or harmful. Though ambiguous about how much weight to accord these findings, by singling them out the language signals judges that Congress is trying to shift some of a core judicial function to agencies (despite the fact that the agencies must have likely violated the law for an injunction even to be at issue). Injunctions are intrinsic to federal courts' ability to remedy wrongs, to avoid the mooting of valid claims, and to retain constitutional power to hear cases at all. They thus go to the essence of the judicial branch's role in our system of government. Moreover, the equitable balancing of competing claims of harm has been part of the courts' province since the earliest days of the Anglo-American legal tradition.

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The McInnis bill would also interfere with and overload judges' schedules, by forcing them to reconsider preliminary injunctions every 45 days, whether or not changed circumstances warranted that. And it would have agency officials report to congressional committees whenever judges did renew injunctions, a requirement that can be read as an effort to intimidate judges.

In sum, without expressing an opinion on other features of H.R. 1904, its environmental and judicial review provisions would represent a serious breach with existing law, threatening far-reaching consequences and raising troubling issues about core judicial functions in our democratic system.

We thank you for considering our views on this important issue.

Sincerely,

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June 9, 2003

The Honorable Robert Bennett
United States Senate
431 Dirksen Senate Office Building
Washington DC, 20510

Dear Chairman Bennett:

As the organization representing the forestry profession, the Society of American Foresters (SAF) supports the advancement of education, research, and technology associated with the practice of forestry and the stewardship and sustainability of this country's forest resources. Foresters must take a long-term and comprehensive approach to the management of millions of this country's forests, across all ownerships. Through the programs of the Natural Resource Conservation Service (NRCS), the US Department of Agriculture research budget, and the Cooperative State Research, Education and Extension Service, partnerships are built with other government entities, universities, and private organizations to advance forest management objectives on both public and private forest land to improve the management of these valuable resources.

The Natural Resource Conservation Service (NRCS)

There are several important programs administered by this agency that have significant implications for private forestland management in the US. One such program, the Environmental Quality Incentives Program, newly expanded to include family forest owners, will enable these owners to address resources concerns while maintaining forests as working forests. In the 2002 Farm Bill, this program and numerous others were expanded, greatly increasing the responsibilities of the NRCS. The 2004 budget proposal does not reflect these increases, and instead decreases funding for Conservation Operations to $703.6 million. We recommend increasing this funding level at least to that of the fiscal year 2003 enacted level, $825 million, to better enable the Agency to meet the increasing demands for the technical expertise and address critical resource concerns on private lands.

The Administration's budget proposal creates a separate discretionary Farm Bill Technical Assistance Account with the intention of funding technical assistance for all the Conservation programs (Title II) in the Farm Bill through this account. While we understand the Administration's concerns with respect to the cap on the Commodity Credit Corporation funds, we strongly urge Congress and the Administration to develop a solution to this issue that will not compromise the implementation of the Conservation Programs and the delivery of technical assistance to the vast number of private landowners.

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Forestry Research

As populations grow, the demands we place on our forest resources, both tangible and intangible, continue to increase. Forestry Research is crucial to enable forest managers to make decisions and continue to sustainably meet the demands on our forest resources. This research provides new and innovative ways to manage forests and address the environmental, social, and economic concerns that face forest managers. The SAF believes forestry research should be funded through both public and private investments. Two programs within the Department of Agriculture budget provide public funding for forestry research: The Cooperative Forestry Research (McIntire Stennis) Program and the National Research Initiative.

The Cooperative Forestry (McIntire-Stennis) Research Program supports university-based research on critical forestry issues and is an important part of the collaborative forestry research effort among federal, state, and private sector scientists. The SAF supports increasing funding for this program to $30 million. The research accomplished with this funding is critical to the development of new information and technologies that increase not only the efficiency and productivity of forest management on all forest ownerships for the full range of forest benefits, but also provide information for developing natural resource management policy. McIntire-Stennis research funds are granted directly to public colleges and universities on a matching basis leveraging more than three state and university dollars for every federal dollar. This program has provided funding for research demands that have not been met through other private and public sector programs. We believe at least $30 million is justified to meet these needs.

The National Research Initiative (NRI), a competitive grant program, provides funding for research on various issues in the biological and environmental sciences arena. Through this program, grants are awarded on a matching basis to university researchers in biological, environmental, and engineering sciences to address critical problems in agriculture and forestry. The SAF strongly supports the increase in funding proposed in the FY 2004 budget, and recommends that funding be allocated with an increased focus on renewable natural resource areas.

We strongly believe this combination of formula-based and competitive-based research funding to be appropriate if we are to maintain the long-term stability and focus required in forestry research, and to foster new and innovative thinking characteristic of competitive grants.

Renewable Resources Extension Act Program (RREA)

The RREA program provides much needed outreach and extension at universities around the country. This outreach and extension is focused on the increasing number of private family forest owners who own over half of the nation's forestland. Family owned forest land continues to face challenges of urban sprawl and development pressures. University extension is critical to helping families find the mechanisms to maintain their forest land as such. This program facilitates communication of ecologically sound technical advice to landowners, foresters, and loggers that can help to improve the productivity, management, and long-term sustainability of family owned forests. The funding addresses needs of non-industrial private forest landowners that are not met in other programs.

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When Congress reauthorized the RREA program in the 2002 Farm Bill, legislation was included to create a new Sustainable Forestry Outreach Initiative (SFOI). SFOI would capitalize on and coordinate private sector initiatives aimed at achieving sustainable forestry. The program will assist landowners in understanding the broad array of choices before them, and facilitate their use of one or more of these programs designed to improve forest management.

SAF strongly supports increased funding for the Renewable Resources Extension Act program and the Sustainable Forestry Outreach Initiative for 2003. We would like to see the program funded at the recently authorized level of $30 million. Though we are asking for a modest increase, we believe there is great potential for success with the RREA and SFOI programs.

Thank you for your consideration.

Sincerely,

Jason N. Kutack

Jason N. Kutack
President

Fiscal Year 2004 Interior and Related Agencies Budget
Testimony by Jason N. Kutack, President
House Appropriations Subcommittee on Interior and Related Agencies

The Society of American Foresters (SAF) represents more than 17,000 forestry professionals. SAF's primary objective is to advance the science, technology, education, and practice of professional forestry for the benefit of society. We offer this testimony for the FY 2004 budget for the Department of Interior and Related Agencies. With the understandable restriction on the length of this testimony, it is difficult to provide the in-depth analysis we would normally provide The table below details those items for which we offer suggestions that differ significantly from the Administration's proposal.

Discretionary Appropriations [a]	FY 2003 Enacted	FY 2004 Proposed	SAF Request
Forest Inventory and Analysis [b]	55.1	43.3	67.7
State and Private Forestry Total	284.7	315.8	410.7
Forest Health Management-Federal	50.0	44.5	50.0
Forest Health Management-Cooperative	30.8	25.1	31.0
Emerging Pest and Pathogens Fund	0.0	12.0	20.0
State Fire Assistance	25.5	25.4	28.0
Volunteer Fire Assistance	5.0	5.0	6.0
Community and Private Land Fire Assistance	0.0	0.0	35.0
Forest Stewardship	32.0	65.6	50.0
Watershed Forestry Assistance	0.0	0.0	16.0
Forest Legacy Program	68.4	90.8	100.0
Urban and Community Forestry	36.0	37.9	40.0
Economic Action Programs	26.3	0.0	28.7
International Forestry	5.7	5.1	6.0
National Forest System Total	1353.4	1369.6	1374.0
Land Management Planning	71.7	70.9	72.2
Forest Products	263.6	268.0	271.1
Expedited Consultation	0.0	0.0	15.0
Wildland Fire Management Total	1371.0	1541.8	1695.6
Preparedness	612.0	609.7	640.0
Fire Operations	418.0	604.6	605.0
Hazardous Fuels	226.6	231.4	262.1
Rehabilitation and Restoration	7.1	0.0	63.0
Fire Research and Development	21.2	21.4	23.0
Joint Fire Sciences Program	7.9	8.0	10.0
Forest Health Management - Cooperative	9.9	5.0	5.0
Economic Action Programs	5.0	0.0	12.5

State Fire Assistance	46.2	46.5	58.0
Volunteer Fire Assistance	8.2	8.2	10.0
Capital Improvement and Maintenance Total	548.5	524.6	550.0
Facilities	202.3	200.9	202.3
Roads	231.3	245.4	245.4
Infrastructure Improvement	45.6	0.0	24.0
Land Acquisition/L&WCF Total	132.9	44.1	50.0
Other Appropriations	10.3	10.0	10.3

[a] dollars in thousands
[b] This includes funding normally allocated to S&PF, NFS, and Research. We propose creating a separate line item for FIA.

Forest and Rangeland Research - The forest health issues we are currently facing as a nation require an increased emphasis on research to achieve solutions. Increases in funding will help increase capacity. The Agency should also look to innovative partnerships with universities to further leverage research funding.

Forest Inventory and Analysis – The FIA program provides a clear understanding of forest resources, integrating data across all ownership boundaries. This information is crucial to ensuring forest management decisions are based in fact. We are concerned with the Administration's proposed cuts to the FIA program. To achieve the mandates of the 1998 Farm bill, producing an overall assessment of the nation's forest resources in a timely manner, FIA program funding must be set at a minimum of $67.7 million for fiscal year 2004. We also propose creating a separate line item for the FIA program. There is confusion in funding FIA through various line items. Consolidation will provide a complete understanding of all funds available for the FIA program.

Fire Research – Last year's wildfires burnt over 7.1 million acres, we must learn from these fires through research and transfer findings to those in the field. Improvements in fire management and proper implementation of the National Fire Plan can only be realized with scientific discovery, validation, and application supplied by critical research programs in partnership with all sectors of forestry research including colleges, universities, and private sector researchers.

State and Private Forestry – S&PF programs are a vital component of the sustainable management of the nation's forests. These programs focus on more than half of the nation's forest land, which supply clean water and air, recreational opportunities, and forest products. Development pressures are the primary threat to the sustainability of private forests. S&PF programs provide tools to help the 9.9 million landowners resist development pressures and sustain their forests for the nation's benefit.

Community and Private Land Fire Assistance – We support full funding for this program as authorized in the 2002 Farm Bill. The program enables communities to coordinate wildfire protection planning as well as undertake special restoration/hazardous fuel reduction projects, combat invasive species and build local markets for small-diameter materials. The one ingredient broadly lacking in the National Fire Plan is local county/community involvement. This program gives locals the needed incentive to engage in the National Fire Plan.

Forest Stewardship, Forest Legacy, Forest Land Enhancement Program – Private forest lands in the US are increasingly threatened by several factors, including development pressures, the increasing need for forest products and services, as well as forest health concerns. The Federal

government has an obligation to ensure these forests are managed sustainably, as they provide numerous public goods and services.

While we appreciate the proposal to allocate additional funding for the Forest Stewardship Program, as an alternative, we suggest that the proposed $16 million initiative to fund certain predefined stewardship projects on a competitive challenge cost share, should be eliminated and instead the funding should be allocated for a new program, the Watershed Forestry Assistance program. This program, originally proposed during debate on the 2002 Farm Bill, would address watershed and water quality issues on private lands in cooperation with State agencies. This program is similar to the Watershed Restoration and Enhancement Agreements legislative proposal contained in the 2004 budget.

Emerging Pests and Pathogens Fund –Invasive species, insects, and disease pose increasing threats to our public and private forests. There is a need for a cooperative approach to addressing this issue across ownership boundaries, as these invaders do not respect property lines. In 1998, over 54 million acres of forest land were affected by various insect and diseases. Invasive species are increasingly a threat, contributing to the decline of 46 percent of imperiled or endangered species in the U.S., second only to habitat degradation and loss. This program will help address these problems through rapid response to this overwhelming threat affecting the health and sustainability of forest resources across the country.

Economic Action Programs – We strongly oppose elimination of funding for Economic Action Programs. Local communities utilize these funds to build their capacity to and contribute to sustainable forest management. Through EAP, Communities are able to assist with fuels reduction and other forest health projects and utilize the byproducts of this work.

National Forest System –Because of rising stand densities and mortality rates, the NFS lands are increasingly at risk of fire, insect, and outbreaks, and invasive species. There is a need for active and continuous forest management as current management levels are not adequate to address forest health issues and provide the multiple uses for which these lands were established. There is a need for revision and clarification of the laws and regulations that govern national forest management in light of the changing public values, administrative agendas, court decisions, and federal environmental laws that have shifted the emphasis of land management. Without adjustments, we fear we will continue to see delays and increasing costs for the land management agencies. SAF will continue to work with Congress and the Administration to address these issues.

One such example of the increasing cost and delay in land management is the timber sale component of the Forest Products Program. The budget documents indicate timber sales can take up to 8 years to complete. This is unacceptable. Timber harvesting is a legitimate use of national forests and BLM public lands, as the multiple-use mandates make clear. Current harvesting levels are insufficient to maintain forest health, to meet the goals for hazardous fuel reduction to reduce wildfire and the risk of insect and disease outbreaks in the nation's forests and provide economic and community benefits.

Adequate funding for land management planning is also necessary to ensure the Agency continues with the revision schedule for forest plans. With 39 plans in progress, and another 52 plans that will need revision in the coming years, the Agency cannot afford backlogs in planning.

Expedited Consultation – Without additional funds for the Forest Service and the Bureau of Land Management to support consultation required under the Endangered Species Act with the

Fish and Wildlife Service, the land management agencies will be unable to do much needed work in a timely manner, such as fuels reduction and insect and disease mitigation activities.

Wildland Fire Management – Congress, the Administration, the Western Governors, the State Foresters, the SAF and numerous others have expressed strong support for the National Fire Plan, and its four goals: improve fire prevention and suppression, reduce hazardous fuels, restore fire-adapted ecosystems, and promote community assistance. However, the proposed budget does not reflect this support, particularly with the elimination of funds for Rehabilitation and Restoration as well as the minimal increase in funding for preparedness and hazardous fuel activities. Funding for the National Fire Plan needs to be a sustained effort that will enable the nation as a whole to develop a long-term solution.

Rehabilitation and Restoration – In the proposed budget, this account was eliminated. The funds allocated to rehabilitation and restorations were placed in suppression accounts, which can be utilized for Burned Area Emergency Rehabilitation activities. Other less immediate fire-related rehabilitation and restoration projects, normally funded by the Rehabilitation and Restoration account, will be prioritized within relevant programs along with other non-fire projects to ensure accomplishment of the highest priority projects given limited funding. While this rationale is consistent with the philosophy of local forest management, we do not believe this is consistent with the goals of the National Fire Plan. This funding allocation requires managers to make tradeoffs, when clearly; Congress, the Administration, and others who support the National Fire Plan believe fire-related rehabilitation and restoration activities should be a priority. If however, this is the direction that Congress chooses, the funds previously allocated for rehabilitation and restoration, should be re-allocated to the relevant program accounts (i.e. Vegetation Management, wildlife management, etc.) were the project funding would actually come from under this proposed strategy. The funds should not be allocated to suppression, which does not fund these non-emergency projects.

Capital Improvement and Maintenance –The proposal to fund the deferred maintenance projects through the facilities, roads, and trails line items, is somewhat unclear. The deferred maintenance backlog within the Forest Service is unacceptable, the Agency should work to address this problem, not ignore it. If funding for this deferred maintenance is to come from the other line items, there should be increases in those items to pay for those projects. We encourage the Agency to adopt a prioritization system for these projects and forward with implementation.

National Forest Foundation - The National Forest Foundation continues to provide outstanding leadership in natural resource management, providing valuable programs and services to the Agency and the public. We encourage you to increase funding for the NFF.

Bureau of Land Management – The BLM manages a total of 262 million acres of public lands, 55 million of which are forested lands. There is a significant disconnect between the number of acres of forest land the BLM manages and the number of forest management experts that are employed by the BLM. Congress should appropriate increases in funding to address this disconnect, especially in light of the additional authority granted under under the Stewardship Contracting provisions.

QUESTIONS AND ANSWERS

JUNE 21, 2003

Questions submitted by Senator Harkin

United States Department of Agriculture
Questions for Undersecretary Mark Rey, USDA
Senate Agriculture, Nutrition and Forestry Committee
Hearing on H.R.1904
June 26, 2003

1. A Forest Service report found that effective fuel modification of reducing potential wildland urban interface fire losses need only occur with a few tens of meters from a home, not hundreds of meters or more from a home." Given this research, please explain to me why the Agencies are expediting many, in fact most, fuel reduction projects far away from homes and communities at risk according to your own records, and why the Administration and HR 1904 have not adequately targeted our resources directly on the wildland urban interface and helping homeowners make their homes "firewise"?

Response: Projects should reflect optimal risk mitigation across landscapes particularly including communities. The research indicating treatments to protect individual structures does not address the issues of community protection. Fuel treatment projects beyond the wildland urban interface are planned to reduce risk of large fires to forest ecosystems including trees, soils, water, and wildlife habitat with subsequent benefit to community infrastructure, including homes. In several recent incidents in Arizona, Colorado and Montana, communities have been threatened by fires that began outside the wildland urban interface boundary. These fires moved close to, or through, communities. Resources in the path of the fires, including watersheds, local infrastructure and wildlife habitats, suffered damage that also affected these communities. Strategically placed landscape treatments will have the result of slowing or stopping fires approaching communities while protecting forest resources

At the community level, protection of homes themselves is not the only issue. Projects not immediately adjacent to homes reduce the potential damage to community resources and increase the safety of the public and of firefighters. Fires burning through a community can damage and destroy homes and other structures, but they can also damage other public and private property, such as vehicles, urban trees and shrubs, fences, utility poles and wires, street lights, and park play equipment. Additional damage is done to the urban infrastructure by secondary fire impacts, such as erosion moving soil into ditches, storm drainage systems, and on to roads

This area adjacent to communities that needs to be treated to reduce fire risk depends on the current structure of the vegetation, fuel loadings, topographic location, fire regime type and firefighting concerns, such as access. In order to effectively protect a community located in a high fire hazard environment, it can be desirable to perform fuel treatment projects at a range of distances from homes. Treatments at some distance from the developed portion of a community (a few to several miles) can reduce the direct risk to the community by being located in areas fire starts are likely or common and where the topography, wind conditions, and fuels between there and the community create the potential for spread to the community, or where a large or intense fire may cause indirect damage to the community (a water source or erosion hazard).

2. H.R. 1904 provides an array of proposals for treating federal lands for hazardous fuel reductions, but there appears to be little, if any language for treating private lands. Yet we know that treating private lands is an essential component of protecting communities and especially of protecting structures. It has been estimated that 85% of the lands within so-called community protection zones are in fact private lands.

Please explain whether you support adding private land funding and/or program initiatives in the bill to account for this shortcoming. Please also briefly explain what programs the administration is undertaking to protect private lands in the wildland urban interface with funding history, and comparison of such funding per acre or per dollar value protected of such expenditures with those for protecting federal lands.

Response: H.R. 1904 focuses on treating federal lands to reduce hazardous fuel accumulations. Treatment of fuels on federal land is a vital part of protecting our communities. Adding private land funding and/or initiatives in H.R. 1904 would not be necessary as full authority for such activities already exists under the Cooperative Forestry Assistance Act. That act establishes authority for the State Fire Assistance (SFA) program, a program delivered through the State Foresters in each state. Hazardous fuel treatments are an important element of this program. Funding is provided for virtually all aspects of fire management, including but not limited to pre-suppression, prevention, fuel treatment, planning, and equipment development.

The Firewise program that informs private landowners of actions that they can take to reduce risk of loss to wildland fire, both to their property and to their community as a whole is an example of the optimal risk mitigation referred to in Question 1. The 1995 wildland fire policy envisioned state governments and private landowners taking this type of active responsibility for their areas of jurisdiction and property. Workshops are used to train citizens, community leaders, local governments, and business owners how to work together to identify and address their common community issues. The Firewise program is funded in large part through the Forest Service SFA funds and Department of Interior funds.

For the period 1993-2000 SFA funds passed to states averaged about $14million per year. With implementation and funding of the National Fire Plan, SFA funding increased to an annual average of $63million. In FY 2003, $25million was allocated specifically to fund community education and hazardous fuel treatments covering 135,000 acres on non-federal lands. Similar allocations were made in FY2001 and 2002.

For this same period Volunteer Fire Assistance (VFA) monies, available to States to acquire rural fire protection equipment and train firefighters, increased from an average of $2million per year from 1993-2000 to an annual average of $12million from FY2001-2003. A considerable share of these funds provides assistance to fire departments protecting property in the wildland/urban interface. The VFA program is also authorized by the Cooperative Fire Assistance Act and delivered through state foresters.

In addition, the Forest Service targeted fuel treatments on non-federal lands in 2002 and 2003 using funds from the Hazardous Fuels budget line item. These projects are specifically intended to treat private lands adjacent to fuel treatment projects on National Forest lands. The objective is to assure private property and resources are treated and protected from potential risks posed by federal fuel treatment projects. In FY2002 $8 million were allocated specifically for private land treatments. In FY2003 the intent is to spend approximately $15million on similar projects.

Costs of treating fuels in the wildland urban interface are typically considerably higher than in the wildland. Costs per acre in the WUI can range from $600/acre to $2,000/acre while costs for similar activities on wildlands typically are from $200/acre to $500/acre.

Nonindustrial private forest (NIPF) landowners will benefit greatly from enactment of H.R. 1904. Indirectly, the provisions in Title I will help federal land managers reduce or stop the spread of fire, disease and invasive pests from federal lands to adjacent private and state land.

6. According to recent newspaper accounts, the Forest Service rejected requests from the Summerhaven community to conduct hazardous fuel reductions in a "ring" around the village due to lack of funding.

Response: The newspaper reports are not accurate. Each year the Coronado National Forest prepares a comprehensive Program of Work (POW) including fuels projects for the five ranger districts which manage the forest. There were two projects planned for FY 2003 which directly affected the Summerhaven community. Additional funding was requested and received for an addition to the Loma Sabino project which is now completed. This addition is the project that was requested specifically by the local community. The project location went up and around part of Summerhaven to the east and north. There are additional projects that were added to the action plan in the last couple of years with community involvement to further protect the community. The Santa Catalina Ranger District has a long term history for implementing a "ring of fuels projects" around the community.

6B. In addition, its NEPA calendar for one project in the wildland urban interface, and very close to the Aspen fire southeast of Summerhaven, states "project implementation is on hold because of lack of funding".

Response: The NEPA Calendar is a document used to notify the public about which projects are pending for action on the national forest. It is not the same list as the POW. The NEPA Calendar may show a project on hold due to lack of funds, particularly if it is being planned for future years. In fact, four projects on the POW for the District were being implemented.

6C. Is it correct that the community and this particular fuels reduction project were on-hold due to lack of funds? If not, in what specific details is this description not correct?

Response: Because a specific project is not noted, it is difficult to say whether it was on hold for lack of funds. The original POW for the Santa Catalina Ranger District included four fuels projects including the two near Summerhaven. In January, 2003 the District received an additional $37,351 for the Loma Sabino Addition and $15,000 for treatment of the 2002 Bullock fire slash. The Loma Sabino project buffers the Summerhaven community along the major access on the mountain.

Work stoppages on the project occurred due to the biological need to not produce fresh slash (stumps, limbs, twigs, needles on the ground) resulting from thinning operations. The slash attracts ips engraver and round headed beetles indigenous to the area. The beetles are in their most active breeding and feeding phase during the spring and their broods then attack the living trees around them. Work was stopped in April, May and June and had just resumed when the fire occurred. Thinning for this project was resumed in August and recently completed.

7. Please describe the review process foreseen under Sec. 105 of HR 1904. How will it differ from the current administrative appeals process? Delays resulting from appeals are arguably the rationale for an expedited process. In what proportion of cases involving appeals is the agency's review beyond the deadlines specified in the current regulations? How will the new process prevent or avoid such delays by the agency?

Response: While we do not have the number of projects that run beyond the appeal deadlines, the current process can takes up to 115 days to run its course. However, most of these projects have time-sensitive windows of operation on the ground. Some of the windows are driven by biological concerns such as endangered species requirements, some are seasonal and climatic related. The key is that if the process knocks a project out of an operational window it may have to wait until the next operating season. Currently the Forest Service is considering a pre-decisional administrative review process. A pre-decisional process would far better serve the public by encouraging efforts to resolve differences collaboratively, before a decision document is signed, rather than by addressing issues after a decision is made. Furthermore, better resource decisions with fewer legal challenges could result if interested citizens and organizations work with the agency to resolve concerns before a decision is made. A pre-decisional administrative review would complement, but not replace, numerous other opportunities to participate in and influence agency project planning.

8. The review process dictates that eligible persons must have submitted "specific and substantive written comments" during the preparatory process. The new administrative appeals regulations define such "substantive comments" as "comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action, and include supporting reasons for the responsible official to consider." (68Fed. Reg. 33597, June 4, 2003). How will this definition, including scope, specificity, and relationship requirements be implemented for the

agency's proposed actions that contain only one alternative? Will comments proposing significant changes or a different alternative be rejected as not substantive?

Response: Forest Service direction to the field for implementing the new appeals regulations will be developed through the Forest Service directives system. Comments suggesting specific changes or different alternatives to the proposed action are good examples of substantive comments that are within the scope and specific to the proposed action.

9. Why doesn't title IV expand current Forest service research authorities (e.g.PL 95-307, 16 USC 1641-47) to test treatments for their efficacy in controlling insect infestations rather than creating a new independent program unconnected to those authorities? What would be your view of expanding current research authorities to address this need as an alternative to the language as proposed in HR 1904?

Response: Although this section was not included in the Administration legislative package, Title IV could enhance existing authority by allowing some research treatments to be tested in a timely manner. The categorical exclusion from documentation for research treatments would allow the agency to better test their effectiveness. The extended time it might take to complete an EA or an EIS for the research project could mean that the treatment application would not coincide in time and space with the insect outbreak and thus the ability to evaluate the effect of the silvicultural actions to reduce the damage from the insect attack would be lost. Timing is critical in the application of these experiments and Title IV would give the agency the necessary flexibility to rapidly implement the treatments on the ground.

10. The insect infestation title authorizes up to 1,000- acre treatments with no NEPA analysis and documentation. Current standard control treatments for some insects, notably bark beetles, are to clearcut around affected areas to prevent the spread. Will 1000-acre clearcuts be permitted under this authorization contained in HR 1904 without any NEPA analysis or documentation?

Response: Again while the language was not part of the Administration proposal, the Forest Service has no intention to establish 1,000 acre clearcuts, and any otherwise applicable limitations on even-aged management would apply to the treatments authorized by Title IV. H.R. 1904 authorizes the Secretary to conduct vegetative or other treatments for informational and research purposes. Title IV would authorize the Secretary to categorically exclude such treatments from documentation in an EA or EIS. The categorical exclusion (CE) would apply to treatments of not more than 1000 acres on Federal lands at risk of infestation or infested by damaging insects.

Establishing a research study to provide answers to research and management questions requires that the study area have the following components: (a) the appropriate number of experimental treatments, (b) the appropriate number of replications of each treatment, and (c) conditions needed to carry out the experiment (e.g., stand density, stand structure etc.). Treatments must be completely randomized. Therefore, the selection of a study area will be dictated by such concerns as finding an area of sufficient size (approximately

1,000 acres), with conditions needed for studying effects on insects. In the case of some bark beetle species, this would probably mean finding an area of dense stands with evidence of recent/ongoing bark beetle activity.

Treatments do not necessarily have to be located all in one place. For example, in a bark beetle study, one might have 3 different treatments, each applied to a 100-acre unit. If treatments are then replicated within the project area three times, there is then a total of 9, 100-acre units (about 900 acres total – although it may be larger buffers between the units). Any number of different treatments might be proposed. Typically, there is a control treatment, where no active management is conducted – even though nothing is done here it is still considered a treatment. There might also then be a mechanical treatment where trees are thinned to some residual density thought to reduce the threat of insect attack on the residual trees. An additional treatment might then use a pheromone baiting treatment, where trees are baited with a chemical attractant to draw beetles to targeted trees with the intent of saving non-baited trees.

10B. How much timber, in a typical single clearcut and in the aggregate, might be removed under this categorical exclusion from NEPA?

Response: A regeneration harvest such as clear-cutting would not be a proposed treatment for this type of study because we are considering ways of treating the existing forest, not creating a new one. The reduction in total basal area of a particular project would depend on the scope and goals of that project and will fluctuate project by project. We hope to find out the effects of the treatments and the resulting stand conditions as part of the post-treatment analysis.

Questions submitted by Senator Harkin

United States Department of Interior
Responses to Senator Harkin's Questions to Lynn Scarlett and Mark Rey from the June 26, 2003 hearing on HR 1904, the "Healthy Forests Restoration Act"
Before the Senate Agriculture Committee

Question 1: A Forest Service report found that "effective fuel modification for reducing potential wildland urban interface fire losses need only occur within a few tens of meters from a home, not hundreds of meters or more from a home." Given this research, please explain to me why the Agencies are expediting many, in fact most, fuel reduction projects far away from homes and communities at risk according to your own records, and why the Administration and HR 1904 have not adequately targeted our resources directly on the wildland interface and helping homeowners make their homes "firewise"?

Answer: I am unaware of the source of the quote in the question and will defer to the Forest Service's views on it, which will be forwarded to the Committee under separate cover.

We agree that protection of the wildland urban interface (WUI) rates the highest priority for treating hazardous fuels. Projects should reflect optimal risk mitigation across landscapes, particularly including communities. Indeed, Federal agencies invest approximately 65 percent of their fuels treatment dollars in the WUI.

Limiting treatments to within "a few tens of meters" of homes, however, does not adequately reduce fire risk. Researchers studying fire behavior have reached widespread agreement on the need to often remove hazardous fuels at significant distances from homes and businesses if they are to be protected.

We are working with the National Association of State Foresters and local communities to develop criteria and processes for fuels treatment project selection that focus on risk reduction to communities, key infrastructure such as municipal watersheds, and protection of critical natural resources. Using new resource mapping capabilities, we are developing tools to enable us to apply available scientific knowledge on areas that pose high potential threats to communities. These tools will help us carefully target and prioritize our fuels treatment efforts.

Question 2: HR 1904 provides an array of proposals for treating federal lands for hazardous fuel reductions, but there appears to be little, if any language for treating private lands. Yet we know that treating private lands is an essential component of protecting communities and especially of protecting structures. It has been estimated that 85% of the lands within so-called community protection zones are in fact private lands.

Please explain whether you support adding private land funding and/or program initiatives in the bill to account for this shortcoming. Please also briefly explain what programs the Administration is undertaking to protect private lands in the wildland urban interface with funding history, and history of such expenditures with those for protecting federal lands.

Answer: The Departments of Agriculture and Interior have several programs aimed at lessening the risk of wildland fire on private land. The Firewise Program that informs private landowners of actions that they can take to reduce the risk of loss by wildland fire, both to their property and to their community as a whole, demonstrates the kind of optimal risk mitigation referred to in question 1. The 1995 Wildland Fire Policy envisioned state governments and private landowners taking this type of active role for their areas of jurisdiction and property. Workshops are used to train citizens, community leaders, local governments, and business how to work together to identify and address their common community issues. The Firewise program is funded in large part through the Forest SFA funds and Department of the Interior funds.

In FY 2002 SFA grants exceeded $51 million. They also provided over $10 million in grants to volunteer fire departments serving 5,900 small communities to help them organize, train, and equip firefighters. The Department of the Interior awarded about $10 million in grants for its Rural Fire Assistance program in FY 2002. These grants went to over 1,500 rural fire departments for training, equipment, and education. In addition, more than $70 million was awarded to state and local government, and to small local and non-profit entities through cooperative agreements and grants. Recipients used these monies for preparedness, fuels reduction, and training to enhance their response to wildland fire and reduce the risk of fire to Federal, state and private land. Taken together, these programs provide a substantial commitment to addressing wildland fire on private land.

Question 3: Recent studies and articles discuss the many problems federal agencies have had with respect to focused and effective community wildfire protection. For example, the recent GAO study listed staffing shortages as a significant cause for "process" delays. In addition, a 2002 report by the National Academy of Public Administration, and a letter to Congress from the Society of American Foresters that year, confirms that lack of adequate funding greatly hinders our efforts to reduce fire risk.

Yet we have seen important programs that are part of the National Fire Plan, including economic action programs, and community and private land fire assistance, sustain dramatic cuts, or be zeroed out, in the Administration's budgets. Many of these funds have been restored by Congress, but not all.

Do you agree that basic staffing and funding for the National Fire Plan are critical needs, needs that would go a long way toward protection of the communities most at-risk form fire threats?

Answer: Staffing and funding for the National Fire Plan are critical for protecting communities at risk of damage from catastrophic wildfire. The Congress and the President have increased funding for Wildland Fire Management in the Departments of Agriculture and the Interior from just over $900 million in 2000 to more than $2 billion in 2003, with $2.27 billion proposed for 2004. This major, sustained funding has enabled Interior to hire more than 1,800 new firefighters and resource professionals since the beginning of the National Fire Plan. We have hired fuels specialists, fire ecologists, contracting specialists, foresters and other resource managers to help us plan and implement fuel hazard reduction work, which will in turn help reduce the risk of damage from wildfires to communities.

Federal agencies are becoming ever more efficient in reducing hazardous fuels. As of September 15, they had treated over 2,322,400 acres. This compares favorably with the completed year totals of 2,257,482 acres in 2002 and 2,089,809 in 2001. We are making significant progress in streamlining processes; training staff; and working with our State, Tribal, and local partners to more effectively address the wildland fire risk on public lands and its impact on communities.

Question 4: A point of clarification. In your testimony you stated that 7.2 million acres burned in 2002. However, the National Interagency Fire Center in Boise, Idaho revised their estimate to a total of 6,937,584 acres. Isn't this revised number the one you should be citing? You also stated that the 2000 and 2002 fire years were the worst in the last 50 years. Using acres burned as the measure, this is incorrect. The 2000 fire season was the worst since 1960 (forty-three years), and the 2002 season was the fourth worst, following 1988 and 1963. Would you please clarify your testimony in light of these comments.

Answer: The numbers are different because one is based on a preliminary estimate and the other is extracted from final fire reports with accurately mapped acreage. When fires are burning, fire managers estimate their size based on overflights and reports from the fireline. Once the fire is contained, it is mapped using geographical positioning equipment and that acreage is recorded and totaled by agency. The NIFC web site listed 7.2 million acres as the total acres burned for several months based on the preliminary estimate, and reduced the number to 6,937,584 based on end of year reports.

As far as the 2000 and 2002 fire seasons being the worst in 50 years, we apologize for the inaccuracy of our statement and the misperceptions the statement might have generated. We meant to suggest that the 2000 and 2002 fire seasons were among the worst based on the number of people and communities impacted by wildfire and the number of acres burned. Two data sources provide estimates of the number of acres burned annually: agency end of year reports, and geographic area and situation reports. The figure you cite for 2002 comes from the former, the figure used in testimony comes from the latter. The National Interagency Fire Center web site reports both estimates, which differ by less than 4 percent for 2002. The estimate used in the testimony would rank 2002 as the third worst fire year since 1960, in terms of acres burned.

Question 5: Another point of clarification. HR 1904 and your testimony cite 190 million acres of federal land at risk from catastrophic wildfire. Please provide appropriate documentation for this estimate and the explanation of why and how this differs from the data in Forest Service General Technical Report RMRS-87, commonly known as the Coarse Scale Assessment.

Answer: The Forest Service published RMRS-87 in April 2002. The study used satellite data with a one kilometer resolution, hence the reference to "coarse scale assessment." Researchers quickly became aware that the coarseness of the data meant non-forested areas were poorly delineated with regard to their fire condition class. Subsequent fine scale analyses were completed, many by the authors of RMRS-87, that were then used to make revised estimates of the amount of land in one of the three fire condition classes. The revised estimate of the amount of federal land in fire condition class three is 190 million acres.

Question 6: According to recent newspaper accounts, the Forest Service rejected requests from the Summerhaven community to conduct hazardous fuel reductions in a "ring" around the village due to lack of funding. In addition, its NEPA calendar for one project in the wildland urban interface, and very close to the Aspen fire southeast of Summerhaven, states "projects implementation is on hold because of lack of funding." Is it correct that the community and this particular fuels reduction project were on-hold due to lack of funds? If not, in what specific details is this description not correct?

Answer: The Department of the Interior defers to the views of the Forest Service regarding the response to this question which will be forwarded to the Committee under separate cover.

Question 7: Please describe the review process foreseen under Sec. 105 of HR 1904. How will it differ from the current administrative appeals process? Delays resulting from appeals are arguable the rationale for an expedited process. In what proportion of cases involving appeals is the agency's review beyond the deadlines specified in the current regulations? How will the new process prevent or avoid such delays by the agency?

> Answer: The Department of the Interior defers to the views of the Forest Service regarding the response to this question which will be forwarded to the Committee under separate cover.

Question 8: The review process dictates that eligible persons must have submitted "specific and substantive written comments" during the preparatory process. The new administrative appeals regulations define such "substantive comments" as "comments that are within the scope of the proposed action, are specific to the proposed actions, have a direct relationship to the proposed action, and include supporting reasons for the responsible official to consider." (68 Fed. Reg. 33597, June 4, 2003) How will this definition, including scope, specificity, and relationship requirements be implemented for the agency's proposed actions that contain only one alternative? Will comments proposing significant changes or a different alternative be rejected as not substantive?

> Answer: The Department of the Interior defers to the views of the Forest Service regarding the response to this question which will be forwarded to the Committee under separate cover.

Question 9: Why doesn't title IV expand current Forest Service research authorities (e.g., PL 95-307, 16 USC 1641-47) to test treatments for their efficacy in controlling insect infestations rather than creating a new independent program unconnected to those authorities? What would be your view of expanding current research authorities to address this need as an alternative to the language as proposed in HR 1904?

> Answer: The Department of the Interior defers to the views of the Forest Service regarding the response to this question which will be forwarded to the Committee under separate cover.

Question 10: The insect infestation title authorizes up to 1000-acre treatments with no NEPA analysis and documentation. Current standard control treatments for some insects, notably bark beetles, is to clearcut around affected areas to prevent the spread. Will 1000-acre clearcuts be permitted under this authorization contained on HR 1904 without any NEPA analysis or documentation? How much timber, in a typical single clearcut and in the aggregated, might be removed under this categorical exclusion from NEPA?

> Answer: The Department of the Interior defers to the views of the Forest Service regarding the response to this question which will be forwarded to the Committee under separate cover.

Question 11: In your testimony, you state that the bill "would allow the agencies to limit the range of proposed alternatives they would have to analyze for proposed hazardous fuels reduction projects, and would maintain requirements for public notice and input." The bill says that the "Secretary concerned is not required to study, develop, or describe any alternative to the proposed agency action in the environmental assessment of environmental impact statement prepared for the proposed agency action pursuant to section 102(2) of the National Environmental Policy Act..." In other words, under the bill, there may not be any alternatives considered to the agency's proposed course of action even if an alternative or alternatives have been proposed. Yet, you say that the range would be "limited." Please explain this inconsistency. Is it the Administration's policy to cut off any obligation to consider alternatives in the whole category of fuels reduction projects?

Answer: We do not find there to be an inconsistency. The bill provides that an environmental assessment or environmental impact statement done pursuant to its provisions contain only two courses of action: maintain the status quo (that is, do not remove hazardous fuels) and remove hazardous fuels by the means proposed. The bill directs that, except as provided in the bill, authorized fuel treatments must be done in compliance with the National Environmental Policy Act. Specifically, the bill requires public notice in accordance with applicable regulations and administrative guidelines, and public meetings conducted in proximity of the location where the hazardous fuels treatment will be conducted. Furthermore, the bill requires meaningful public participation in identification and development of hazardous fuels reduction projects during their formulation, consistent with the 10-Year Implementation Plan. Additionally, the bill requires opportunities for public input during the preparation of any environmental assessment or environmental impact statement for projects authorized by the bill, that the agencies provide notice of decision documents for such projects, and that project implementation be monitored. Through public input and participation in the planning process, and through collaboration, the agencies will be able to focus on those issues and concerns that are most important to the interested public and provide a more thoughtful analysis of a limited number of management alternatives.

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Questions submitted by Senator Harkin

July 26, 2003

Ver'Shawn Perkins
Documents Clerk
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510-6000

Dear Ver'Shawn Perkins,

As requested, I am providing answers to questions posed by the Senate Agriculture Committee regarding the Review Healthy Forests Restoration Act, HR 1904.

Q1. Please elaborate on your testimony that referred to the mythology put forward by some with respect to forest density and fire.

Thinning and fuel reduction proposals on many National Forests are based on a theory that they are overstocked, infested in bugs, well above "historic" fuel loadings, and that by logging and road building the forests can return to a natural cycle.

However, historic documents on the subject do not agree that the existing condition is outside a historic range, and even if it were, the treatment proposed are untested, undocumented and likely wrong. Is the Forest Service talking about conditions 100 to 200 years ago, or a scientifically based range over the past ten thousand years or some other methodology? We should look at the history of a forest before we plunge into an irreversible path that might further the damage.

Three USGS surveys of the Forest Reserves in Northern Idaho, all authored by John Lieberg, took place in 1895-98. The Priest Lake survey describes the traverses the surveyor took across the area, states "large areas where the forest is untouched have an extremely dense growth" some stands containing 120,000 board feet per acre.

The Coeur d'Alene survey describes conditions at lake level and on the benches above the lake. It states some of the bench is in an open park like condition, but that **usually** the stands contain dense fir and lodgepole mixed in with the Ponderosa Pine.

The photos in Lieberg's reports all show dense stands of trees, particularly in the white pine zone, and few "open" stands. The photos also show burned areas with thousands of snags per acre, as

Earth Share of Washington

well as the descriptive statements of downed wood debris everywhere. This quote about the white pine zone, from Lieberg, is illuminating:

> There is usually a large amount of litter, consisting of fallen trees, that have accumulated for centuries, in various stages of decay. The undergrowth is mostly dense, consisting of young trees, the white fir and hemlock predominating.... This character of forest is usually very dense, the areas containing from 800 to 2,000 or more trees to the acre. The litter is generally abundant, consisting of fallen trees, and the humus attains a depth of 3 to 5 inches.

In the "General Report On A Botanical Survey of the Coeur d'Alene Mountains in Idaho During the Summer of 1895", Leiberg wrote this about the Yellow Pine Zone (see attached photo):

> ...Where the growth is pure the forest is park-like and has a clean and open appearance. Usually, however, the growth is mixed, and here and there among the yellow pines are more or less extensive groves of Douglas spruce (called fir today), white fir, and the lowland form of the black pine. In low or moist places will be found the tamarack (western larch). The Douglas spruce (Douglas fir) sometimes replaces the yellow pine to the extent of 75 to 80% and the black pine (lodgepole pine) occasionally crowds it out altogether.

It is clear that Douglas fir and grand fir were a major component of the forest, and were dense even in the yellow pine (ponderosa) zone. In the white pine zone he finds:

> ...While as a whole the predominating species in this section is the white pine, we seldom find it forming pure growths. Accompanying it are the majority of the conifers of the Coeur d'Alenes, ...cedar, Engelmann's spruce, Douglas spruce, white fir, and Mertsens's hemlock, Western Larch in the lower parts of the zone, and the mountain form of the black pine in its upper. The distinguishing feature of this zone in its vegetative aspect is the denseness of its growth and the great height of many of the trees. The stand of forest is very close; there is a vast amount of vegetable debris, decaying trees, fresh and old windfalls piled upon one another, broken-off tree tops, and young trees bent over by the snow and forming impenetrable thickets.... Densely tangle masses of underbrush abound... The number of trees per acre is always considerable, but varies widely. ... of saplings there are often tens of thousands on the same space in addition to the larger growth.

If this was the case 100 years ago, it seems clear that the Idaho Panhandle and other Northern Rockies and Cascades National Forests are not outside a historic range of tree density or fuel loading. This has serious implications for the effectiveness of fuel reduction projects.

It is also informative to consider the Blue Mountains of northeastern Oregon. A book authored by none other than Jack Ward Thomas, Interpreting Long-Term Trends in Blue Mountain Ecosystems from Repeat Photography PNW GTR-315 June 1995 (see photo attached) shows turn of the century and 1920's photos and it is clear the forest was not wide open – instead it had a more complex structure, more snags, multiple structure etc.

of the century and 1920's photos and it is clear the forest was not wide open – instead it had a more complex structure, more snags, multiple structure etc.

The implications of these historical facts are that our forests went through a complex successional process. Interrupting this process by thinning may not only disrupt the complex interrelationships between plants, wildlife and watershed function, it may send them into an alternate process that increases fire risk, while seriously impacting native species.

The other implication is for communities in this type of forest. During drought conditions even dense moist forests can ignite and carry a very hot fire. The solution is to protect the communities with a half mile radius of artificial, regular fuel reduction, and do structural improvements such as metal roofs, green space within 40 –100 feet of the home, and removal of flammables to the extent possible. The artificial half mile buffer will decrease fire intensity, allow safer and more effective fire fighting and structure protection.

Historic Levels of Wildfire Compared to Last Year

Until very recently the National Interagency Fire Agency website of Wildland Fire Statistics had historical data from 1919 forward on the number of fires and acres burned per year. For some reason this has been removed, possibly because the information is damaging to the myth that last year was the biggest fire year ever. Fortunately I printed out the information and this is presented below. It is clear that pre-suppression 20 to 40 million acres burned per year (1919-1949). This compares with 8.4 million acres in 2000 and 6.9 million acres in 2002.

Average Number of Fires and Acres Burned By Decade

Dates	Average Number of Fires	Average Acres Burned
1919-1929	97,599	26,004,567
1930-1939	167,277	39,143,195
1940-1949	162,050	22,919,898
1950-1959	125,948	9,415,796
1960-1969	119,772	4,571,255
1970-1979	155,112	3,194,421
1980-1989	163,329	4,236,229
1990-1999	106,306	3,647,597

The implications of the large acreage of historic fires across the United States need to be clearly acknowledged. If that many acres were burning each year, and the forests had not been altered to

a great extent by fire suppression, this must have been the historical range that forms a baseline of how our forests were influenced by fire.

But now we have communities and homes in many areas that need to be protected. If we want to restore our forests so that they function naturally, we may have to use prescribed and natural fire over very large acreages – logging simply doesn't mimic fire in countless ways. To do this, when communities are near the forest we must protect those communities with an ongoing program that continually reduces fuels in the half-mile or so surrounding them. Funding is key, and it must be recognized that 85% of the lands within a half mile of communities at risk is private land.

Q2. What are you hearing from communities that your work with in this area?

Our Wildfire Education Program has reached over 1500 households in northeast Washington, and we have written over 125 individual home fire plans – which have been implemented by crews on contract with the Washington Department of Natural Resources. We have had many compliments and our sense is that communities are thankful for the help from the National Fire Plan. In addition we are working with a diverse coalition of stakeholders to develop a community fire plan for the Chewelah watershed – which will incorporate private, state and federal lands.

In early June, The Lands Council was invited to present information about wildfire and communities to the National League of Cities. This organization represents 18,000 municipalities, and is in the process of developing policy for public lands. I spoke to the Energy, Environment and Natural Resources Committee. They were very receptive to my information and view that our focus on fuel reduction and fire risk must take place in and directly adjacent to communities. For example, I spoke with Susan M. Thornton, Mayor of Littleton, Colorado. Their city was downwind of last year's Hayman fire, and she agreed and understood that the priority of fuel reduction and spending must be for communities at risk.

Thank you for the opportunity to respond to questions from the Committee, as well as present testimony at the hearing you held in July. Please do not hesitate to contact me should you need further information or have any additional questions.

In closing we can't fireproof our forests, but we can fireproof communities.

Sincerely,

Mike Petersen

Figure 37—Lyman Meadows (west), Baker County, OR.
This photo point is 1 kilometer up the meadow looking east toward figure 36. This upper end of Lyman Meadows is a rather dry site compared to the preceding photo, which is a wet meadow at the head of open water in the middle fork of Burnt River. Fencing once separated use of these meadows from that of the upland forested range.

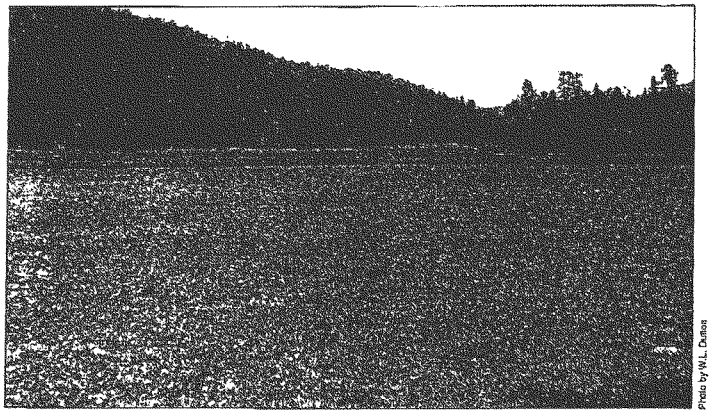


Photo by W.L. Dutton

Figure 37a—1924. The meadow vegetation in the foreground shows a weedy composition. The line across the meadow in front of the two cows (left center) is skunk cabbage. More lodgepole pine snags are visible from this end than from the east photo point (fig. 36).

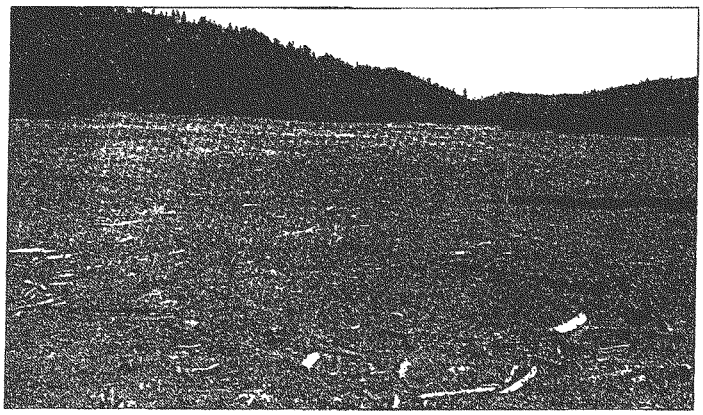


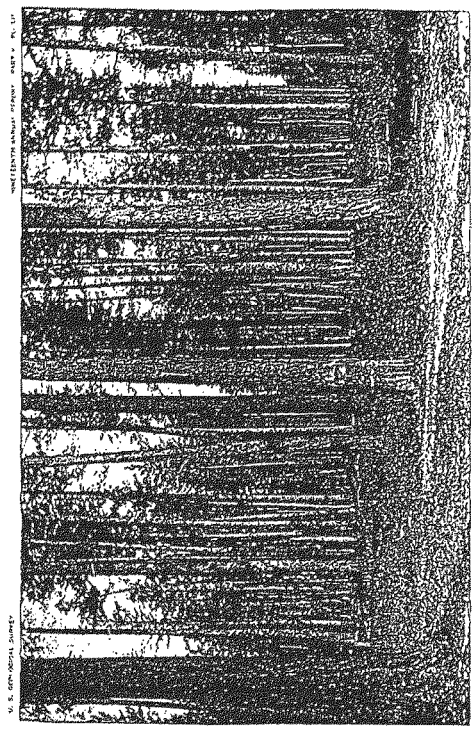
Figure 37b—1992. This end of the meadow has been degraded by logging slash left where it is slow to rot. It also has been abused by loafing cattle left unattended throughout the grazing season. The fences are down and no longer control grazing use by forage type or protect the riparian habitat. There is perhaps more perennial grass and fewer weeds now, but the cover is more patchy and broken. Current grazing use is heavier.

trees is usually too scanty to permit the growth of many herbaceous plants. Such tracts represent the young and rapidly growing subalpine forest in the last stage of the reforesting process subsequent to complete destruction by burning. At the present time this type of forest is most prevalent on the slopes and summits of the lateral spurs with northern exposure, and in the saddles, or sags, in the main divides.

The third aspect is that of densely brush-covered areas with a thin forest—10 to 100 trees to the acre—rising from the midst of a sea of brush composed of species of alders (*Alnus alnobetula*), mountain ash (*Sorbus sambucifolia*), and especially of Menziesia and Azalea shrubs (*Menziesia ferruginea* and *Azalea albiflora*, respectively). There is a great amount of litter, consisting of large fallen trees, dry or in a state of decay. Humus is almost lacking, and the young growth, to take the place of the dead old, is scanty. Forest stands which present this phase are either in a state of decay, owing to advanced age, or are produced by forest fires occurring either early or late in summer when the litter was not sufficiently dry to flame, but underwent slow incineration, cooking the bases and roots of the trees. Tracts of this sort occur everywhere in the zone, but are more abundant on the slopes leading into the saddles of the ridges.

The last aspect is confined almost wholly to ridges having an easterly and westerly trend, and, in consequence, presenting their sloping sides directly north and south. The southern face in such situations may contain expanses of 50 to 500 acres having but scattered trees and shrubs, but covered with a dense and heavy growth of many species of mountain grasses. Such tracts are areas that once were heavily timbered, but have had their forest burned off, and, owing to direction and angle of slope causing too rapid drainage and evaporation, have been rendered too arid to permit a renewal of forest growth. The only litter on these tracts are the charred stumps of trees consumed by fire centuries ago. The northern slopes of such ridges usually bear a forest with the aspect of number two, unless, as in some cases, covered with rock slides, while the comb of the ridge has a dense, low-growing belt of young subalpine firs bent and twisted in all directions by the weight of the snow that is blown up over the southern face of the ridge.

The white-pine zone displays fewer aspects. There is usually a large amount of litter, consisting of fallen trees, that have accumulated for centuries, in various stages of decay. The undergrowth is mostly dense, consisting of young trees, the white fir and Merten hemlock predominating. In the low and wet places along the streams various species of shrubs, as alders and dogwood, form dense thickets. There is always a considerable layer of humus, varying in depth from 8 to 14 inches, composed of decaying vegetable débris. The forest is generally cool, often swampy, the humus serving as a sponge and preventing evaporation from the soil beneath. By reason of the considerable size of the trees the aspect of the forest is that of excessive density, but it



YELLOW-PINE GROWTH ABOUT 100 YEARS OLD IN THE LOWER YELLOW PINE ZONE, PRIEST RIVER FOREST RESERVE.

THIS IS A DRY SITE PONDEROSA (Yellow) PINE FOREST 1897!

NICHOLAS SCHOOL OF THE ENVIRONMENT AND EARTH SCIENCES
DUKE UNIVERSITY

Questions submitted by Senator Harkin

31 July 2003

Ver'Shawn Perkins
Documents Clerk
United States Senate
Committee on Agriculture, Nutrition and Forestry
Washington, DC 20510-6000

Response to questions regarding my testimony on June 26, 2003 at the hearing regarding the Review Healthy Forests Restoration Act, HR 1904.

Do we need to thin trees to reduce fire intensity in most forest types? Thinning will be important primarily in those forests in which fire suppression over the past century has resulted in the invasion of large amounts of understory (ladder) fuels. These are the forests that historically had relatively short (<100 years) fire return intervals, and they are typified by the ponderosa pine forests of the Four Corners, southern Rockies and eastern slopes of the Cascades and Sierra Nevada. Thinning may also be appropriate for some of the mixed conifer forests of southern Oregon and California typified by so-called "mixed severity fire regimes." Highly flammable fuel conditions in many of these forests have been produced by regrowth from logging and other disturbances. Understory thinning in these forests may mitigate fire risks, although this assertion should be examined carefully in the context of an adaptive management program.

In what ways could logging of commercial sized timber increase fire intensity, in the short or long term? In general, commercial-sized trees are resistant to fire and therefore do not pose a "fuel problem." Indeed, their removal can actually increase fire threat in a several ways. Commercial logging operations typically produce large amounts of slash that can exacerbate fire risks if not removed from the site. In the short term, loss of canopy trees results in increased solar radiation and drying of surface fuels on the forest floor. This translates into higher fire risk over longer periods of time in such forests. In the longer term, removal of large trees promotes invasion of trees and shrubs into the understory, reversing the effects of thinning treatments.

Thank you for the opportunity to respond to these questions.

Sincerely,

Norman L. Christensen, Jr.
Professor of Ecology

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www.env.duke.edu

QUESTIONS FROM SENATOR HARKIN TO PATRICK PARENTEAU

Q. In an administrative or legal proceeding is it not the case that there are times when the administrative record presented by a federal agency at the time a decision was made is incomplete or otherwise lacking? Under those circumstances is it not fairly common practice to file a Freedom of Information Act request for additional information for additional documents or information? Isn't the deadline for an agency to respond to such a request 20 days? So under HR 1904's 15 day limit for filing an action, would a party be forced to go to court before the agency was even required to respond whether it will provide the records requested pertaining to the pending case?

A. Yes, even though the administrative record compiled by the agency is the "focal point" for judicial review (Camp v Pitts), parties are allowed to introduce evidence to show what "relevant factors" the agency has missed. This is especially true in NEPA cases, which are the most common form of legal challenges to Forest Service projects. (Suffolk County) FOIA is a frequently used tool to get information that may not have been included in the administrative record. However, FOIA only requires a response within 20 days, not necessarily the production of the requested documents. In fact, documents are rarely produced within 20 days of requests, especially where the documents are voluminous and located in different offices. So, the requirement that suit be filed within 15 days eliminates the use of FOIA as a pre-litigation tool to get information. Moreover, once litigation has been filed, the Department of Justice takes the position that FOIA no longer applies, and all requests for information must go through the formal discovery process under the Federal Rules of Evidence. In fact, DOJ has instructed agencies not to comply with FOIA requests submitted before litigation was filed.

Q2. Is it common for environmental statutes to require notification of committees of Congress upon the renewal of a preliminary injunction as in HR 1904? Such a requirement could be viewed as an attempt to prevent the judiciary form carrying out its independent duties could it not?

A. As I stated in response to a similar question from Senator Leahy above, I know of no federal statute that requires this kind of reporting, nor do I understand what conceivable purpose it could serve other than to nudge judges not to grant injunctions. At best, it is a nuisance; at worst it is an unjustified attempt to manipulate the judicial process.

Q3. In your experience, do judges ignore sound scientific evidence about the likely harm that could come from issuing an injunction, for example if an agency has affidavits from qualified experts showing that the contested logging would reduce fire risks?

A. Far from ignoring "sound scientific evidence," Federal judges are obligated to defer to an agency's expert opinion unless there is a "clear error"in judgment. By the same token, courts do not simply rubber stamp agency conclusions; rather they are obligated under the Administrative Procedure Act, NEPA and other laws, to take a "hard look" at all the evidence and decide whether the agency's decision is in fact supported by "sound science." There are many instances where courts have found that agencies have ignored sound science, including the advice and opinions of their own experts. Moreover, it is not a given that logging always reduces fire risks; in fact it may increase it. For example, in Land Council v Vaught, 16 Fed Appx 768 (9th Cir 2001), the Ninth Circuit, after reviewing all of the scientific evidence found that "The risk of fire during the first few years of timber harvest under the project will actually be greater than the risk of fire if no action is taken..." Time and again we see an agency's rationale for its action dissolve under rigorous judicial scrutiny.

Q4. Under the current state of the law, if a judge issues a preliminary injunction against an agency action, can Justice Department lawyers later ask the judge to reconsider in light of changed circumstances or new evidence?

A. Absolutely, and in fact DOJ lawyers do this all the time. Moreover, as I said in my testimony, courts are reluctant to issue injunctions in the first place, and have no interest in perpetuating them. (See the discussion of the Rodeo-Chediski case above.) The primary purpose of a preliminary injunction is to preserve the status quo long enough to allow the court to hear the case on the merits and make an informed decision. Courts routinely schedule expedited hearings on the merits following the issuance of a preliminary injunction, and specifically invite the parties to keep the court informed of any changes in circumstances that would warrant lifting the injunction in whole or in part. Flexibility is the essence of equity, but it is the facts that determine how it should be exercised in a given case. That is why HR 1904 is so unwise: it is premised on ideology, not facts. Congress cannot legislate facts; that's why we have the federal judiciary.

Thank you for this opportunity to answer your questions. Please let me know if I can be of further assistance.

Senator Patrick Leahy
Questions for the Record
HR 1904
Senate Agriculture Committee
June 26, 2003

To Mark Rey:

1). It is my understanding there are currently over 1800 projects being implemented, which are associated with the National Fire Plan. How many acres of work are associated with these 1800+ projects and how much has been implemented?

Response: In Fiscal Year 2003 the Forest Service planned to treat 1.45 million acres for hazardous fuel reduction projects under the National Fire Plan. The actual accomplishment was 1.43 million acres.

2). HR 1904 would allow the Agency to create its own appeals process. What type of process does the Forest Service envision under this section and how will it differ from the process established under the Appeals Reform Act?

Response: The Forest Service is considering a pre-decisional administrative review process. A pre-decisional process would far better serve the public by encouraging efforts to resolve differences collaboratively, before a decision document is signed, rather than by addressing issues after a decision is made. Furthermore, better resource decisions with fewer legal challenges could result if interested citizens and organizations work with the agency to resolve concerns before a decision is made. A pre-decisional administrative review would complement, but not replace, numerous other opportunities to participate in and influence agency project planning.

3). Currently, HR 1904 does not create new funding authorization for Title 4. How will the Forest Service fund these activities and will additional funding be needed?

Response: The bill authorizes such funds as necessary. Any funding appropriated in FY 2004 will be allocated on a priority basis, and, future budget submissions will address ongoing priorities.

4). Section 109 seems to give the Agency a choice between using the process established under HR 1904 or the process under the Forest Service's new regulations on appeals, categorical exclusions, etc. Please describe the types of projects that will be done under 1904 and those that will be done under the new regulations.

Response: Hazardous fuels reduction activities that are appropriate for categorical exclusion under the Forest Service's new National Environmental Policy Act (NEPA) procedures will likely use that authority. These hazardous fuels reduction activities using mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, will not exceed 1,000 acres in size. Such activities:

a. Shall be limited to areas;
   (1) In wildland-urban interface; and
   (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;
b. Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and Environment 10-Year Comprehensive Strategy Implementation Plan";
c. Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;
d. Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness;
e. Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

Actions cannot be categorically excluded if there extraordinary circumstances (i.e. circumstances where a normally excluded action may have a significant environmental effect. Such extraordinary circumstances include potential adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archeological, cultural, or historic sites.

Alternatively, HR 1904 provides a process for planning hazardous fuels reduction activities that do not qualify for use of the categorical exclusion. Generally, these activities will be larger in scope (i.e. exceeding 1,000 acres in size) than the categorical exclusions allow. They will be conducted primarily in areas where they are necessary to protect communities and watersheds, improve endangered species habitat, and restore areas damaged by insects and disease.

5). In Section 103, the bill includes a 20,000,000 acre cap on projects. Please give an estimate of how much funding would be needed at this level?

Response: The President's Budget proposal for Fiscal Year 2004 projects an average hazardous fuel reduction cost of $170/acre. Cost variables include the proportion of wildland-urban interface, domestic watershed, and other sensitive acres to be treated, as well as, the type of treatment method used. Depending on the final language of H.R. 1904, the Forest Service anticipates substantial cost efficiencies using the procedures contained in H.R. 1904 that may significantly reduce costs

6). Section 104 (e) the Secretary is required to provide an opportunity for public "input" during the preparation of environment assessments. In the Forest Service's view, is "input" the same as "comment"? If not, please describe what you would consider "input."

Response: The terms "input" and "comment" are used synonymously.

7). Section 104 also requires the Secretary to conduct project monitoring as provided for in the Implementation Plan. Does this include environmental monitoring? If not, will the Agency still conduct environmental monitoring on all projects?

Response: Project monitoring will require some environmental monitoring to evaluate the effectiveness of each activity, as called for in the Implementation Plan. Project level monitoring is decided by each responsible official on a project-by-project and as-needed basis to evaluate the effectiveness of a specific treatment or mitigation measure. The agencies intend to monitor a representative sample of projects across regions and units to ensure that monitoring includes a broad cross-section of activities and vegetative types.

Question to Dr. Fred Stephen from Senator Patrick Leahy's Office:

August 5, 2003.
Re-submitted October 31, 2003

In your testimony, you discuss the need to increase research on pest outbreaks in our forests and implement a quick response mechanism. In the Northeast we are also faced with many invasive pests and diseases that threaten our forests and the economies that depend on them. I am disappointed that HR 1904 did not include any funding. My understanding is that the Administration believes they can carry out this section from existing funds. How much funding do you think is needed to undertake this effort and do you believe the Forest Service can do it without new funding?

Response:

The Society of American Foresters has continuously supported funding for the Forest Service Research and Development programs to increase and improve forestry research and enable forest managers to use the latest science to address the forestry issues we face. For fiscal year 2004, we also supported the creation of a separate fund, the Emerging Pests and Pathogens Fund that would help address insect, disease, and invasive species problems through rapid response to this overwhelming threat affecting the health and sustainability of forest resources across the country.

As noted in our testimony, to adequately address insect and disease infestations we must:

1) Develop collaborative research efforts among agencies, universities, and corporate research entities.

2) Have adequate resources including personnel and funding for both research and on the ground implementation. These resources must be available over multiple years because of the multi-year duration of many research projects.

3) Have effective and timely means to complete the needed research.

4) Have mechanisms in place through which forest managers can apply the lessons learned through research in on-the-ground applications.

5) Develop adequate monitoring and evaluation of these treatments and apply the results through adaptive management.

Adequate resources are essential in the effort to address insect and disease. However, tools to complete the research and then apply the results on the ground are also crucial.

HR 1904 as currently drafted does not specify funding levels for insect and disease research. While we would not be opposed to the inclusion of funding in the legislation, we recognize that much of the NEPA analysis that currently is required for most research projects takes time and additional resources. The categorical exclusion provided in the legislation in Title IV could alleviate some of the costs by providing expedited processes and requiring less analysis and thus fewer man hours. We cannot clearly state the savings this will provide and would look to the agency to make that estimation. In addition, more collaborative efforts among the agencies, universities, and private entities might also serve to leverage additional funding and other resources. These collaborative efforts can be built through the Cooperative Forestry Research Program (McIntire-Stennis) and the National Research Initiative.

While we cannot make an adequate estimation of the total funding necessary to address the insect and disease research needed, we believe funding the Forest Service research programs, at least at the levels requested is an excellent first step, in addition, we've outlined in our testimony and letter attached, the levels we suggest for several forest health and research related accounts. Beyond this, there is a need for a continued effort to fund insect and disease research on a multi-year basis. Increases in the McIntire-Stennis grants program to authorized levels and a more focused effort on forestry research in the National Research Initiative competitive grants program are also necessary.

Because it is difficult to estimate the savings that could be gained with the expedited NEPA procedures, we cannot fully comment as to whether the Forest Service can fulfill the current needs at current funding levels. As our attached testimony and letter outline, we do believe certain programs need additional funding to address the enormity of the problems we are facing.

Attached for your reference is testimony on the FY 2004 Interior and Related Agencies budget as well as a letter sent to both House and Senate appropriators regarding the FY 2004 Agriculture budget.

TO: SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
FROM: PATRICK PARENTEAU, PROFESSOR OF LAW, VERMONT LAW SCHOOL
SUBJECT: RESPONSE TO QUESTIONS ON H.R.1904
DATE: JULY 18, 2003

I am pleased to provide answers to the following questions resulting from my testimony on June 26. For the sake of simplicity I have paraphrased some of the questions.

QUESTIONS FROM SENATOR LEAHY:

Q1. Professor Parenteau, if you were representing a client who came to you with a legal claim regarding a project authorized by H.R. 1904, would you recommend they file suit even though you normally might take more time to consider legal and nonlegal options for addressing their concerns?

A. The 15 day deadline for filing suit established in section 106 eliminates any meaningful opportunity to explore options for resolving controversies over proposed the projects covered by H.R 1904 (note that the scope of such projects in section 107 is considerably broader than fuel reduction projects). Indeed, 15 days is barely enough time for an attorney to investigate the facts and the law to determine whether the case has merit. Further, section 106 prohibits the parties or the court from extending the 15 day time limit even where that would make more sense than plunging ahead with litigation. Thus, H.R. 1904 actually promotes hasty and ill-considered litigation, which is exactly the opposite of what the legislation is supposed to do.

Q2. From your experience how do you think [the language encouraging courts to decide these cases within 100 days] will impact the ability of our federal courts to issue timely decisions on other cases, especially in rural district courts where the fuel reduction suits will likely arise?

A. As a matter of principle, and comity among the branches of government, it is not wise to attempt to dictate to the courts which cases on their docket are the most important at any particular time in any particular location. The judges are in the best position to do that. Congress cannot legislate facts, and facts are what determine priorities. As a practical matter, it is difficult to estimate the number of cases that will be subject to the "fast track" provision of H.R. 1904. However, I believe it is true that most of these cases will arise in rural areas of the country where there are substantial federal lands, ie the western states, where there are relatively few federal judges struggling to manage crowded dockets. H.R. 1904 imposes yet another procedural burden on these judges, and gives litigants another issue to fight about. This is neither necessary nor productive. Judges have a built-in incentive to move cases as quickly as possible, and the federal courts have instituted all kinds of docket management systems to make sure cases do not languish and that the highest priority cases receive attention. Turn it around: How would Congress react if the courts tried to tell it to enact "priority" legislation within 100 days?

Q3. Are you aware of other statutes that have the requirement that agencies notify Congress whenever a judge awards [or extends] a preliminary injunction? Would not some view this requirement as an attempt to intimidate the judiciary?

A. I am not aware of any other federal statute that contains such a requirement. Frankly, I cannot see any reason for it. What is Congress supposed to do with such information? Call the judge and ask why the injunction has been issued? If the agencies fail to notify Congress, does that become yet another issue for litigation? What if the information is incomplete or inaccurate; after all, it is being submitted by the losing party. Should the plaintiffs have an opportunity to respond? What is the point of any of this? It does seem that the only purpose is to put pressure the courts not to grant injunctive relief. This becomes even more clear when section 107 is considered. As I pointed out in my testimony, this provision attempts to put a thumb on the scales of justice in favor of one of the litigants, the agency. This is totally inappropriate and unnecessary. In a case just decided, involving salvage logging in the areas burned by the Rodeo-Chediski case, the court, after finding that the Forest service had violated NEPA by failing to prepare an environmental assessment nevertheless declined to enjoin logging within a half-mile swath of private property boundaries within the wildland/urban interface because it determined that the long term harm from delaying the logging outweighed the short-term harm of allowing the logging to go forward in the absence of the EA. See Forest Conservation Council v Norton, CV 03-0054 FJM July 9, 2003). The court noted:"We take judicial notice of the fact that a drought plagues Arizona and that forests (other than the ones at issue here) are burning as we write." Importantly, however, the court ordered the Forest Service to do the EA (and an EIS if necessary) even as the work was going forward. In this way the court did not let the Forest Service completely off the hook for violating the law, which would have been a very bad precedent. This is exactly the point I made in my testimony: federal judges already have the authority to weigh short and long term effects of injunctive relief, and judges should be left free to follow the facts of individual cases and shape the relief the makes the most sense case by case.

Q4. [Regarding legal challenges to fuel reduction projects]: In your experience does an average of 13 legal challenges a year strike you as the kind of gridlock that would merit anything like the permanent changes proposed in sections 106 and 107?

A. In a word, no. I would also point out that these cases involved more than just "thinning and fuel reduction" in red zones; most if not all of them involved logging of large, old growth trees in the backcountry This linkage of fuel reduction projects and commercial timber sales is what is causing the controversy. There is a broad consensus on the need to move more aggressively to reduce fire danger in the red zone. The opposition, by and large, is to logging old growth stands, which does nothing to reduce fire danger and may in fact increase it. Moreover, as previously stated, this legislation is likely to increase the number of legal challenges by forcing people to sue first and ask questions later. Also, the proposal in section 104 to do away with the existing appeal process under the Appeals Reform Act of 1993, and replace it with an unknown process to be developed by the Forest Service without any standards to guide it, will remove another avenue for resolving disputes and produce more court challenges. Further, the Forest Service's recent

rulemaking creating broad new categories of categorical exclusions for "fuel reduction projects," including logging up to 1000acres, is sure to generate a raft of new NEPA litigation. Indeed the Rodeo Chediski court summarily rejected the Forest Service's argument that the salvage logging project within the "WUI" qualified for a CE. The best way to expedite fuel reduction projects is to decouple them from commercial logging operations in sensitive environmental areas that are bound to draw opposition.

Senator Mitch McConnell
Question for the Record
HR 1904
Senate Agriculture Committee
June 26, 2003

1). Mr. Undersecretary, half of Kentucky is forested, and 93% of those forestlands are privately owned. Most of these landowners are families or small companies. In addition, the Daniel Boone National Forest covers nearly 700,000 acres, providing valuable forest products as well as recreational and wildlife benefits. I am concerned about the threat of wildfires on these valuable lands, but also the less visible threats of insect and disease infestations. These threats included oak decline, gypsy moths, and dogwood anthracnose. It is my understanding that H.R. 1904 puts in place an early warning system using remote sensing technologies which will allow a diagnosis of these problems before they devastate wide acreages of forests. Also, the bill focuses research on named insects and pests unique to Eastern forests. Do you believe these provisions are adequate to address these critical threats? How do you envision implementing this new legislation in such a way that we can be assured our Eastern forests are provided the maximum protection, as well as, the Western forests currently facing catastrophic wildfires?

Response: Both the early warning systems and stepped up assessments called for in the legislation, combined with our existing programs in Forest Health Protection and Research and Development units should address the problem of insects in Eastern forests. In addition to this measure, the FY 2004 Budget includes $12 million for the detection of and rapid response to emerging pests and pathogens.

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