AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 109–427

FOREST SERVICE WORKERS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

TO

REVIEW THE ROLE OF THE FOREST SERVICE AND OTHER FEDERAL AGENCIES IN PROTECTING THE HEALTH AND WELFARE OF FOREIGN GUEST WORKERS CARRYING OUT TREE PLANTING AND OTHER SERVICE CONTRACTS ON NATIONAL FOREST SYSTEM LANDS, AND TO CONSIDER RELATED FOREST SERVICE GUIDANCE AND CONTRACT MODIFICATIONS ISSUED IN RECENT WEEKS

MARCH 1, 2006

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

28–144 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, New Mexico, *Chairman*

LARRY E. CRAIG, Idaho
CRAIG THOMAS, Wyoming
LAMAR ALEXANDER, Tennessee
LISA MURKOWSKI, Alaska
RICHARD M. BURR, North Carolina,
MEL MARTINEZ, Florida
JAMES M. TALENT, Missouri
CONRAD BURNS, Montana
GEORGE ALLEN, Virginia
GORDON SMITH, Oregon
JIM BUNNING, Kentucky

JEFF BINGAMAN, New Mexico
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
DIANNE FEINSTEIN, California
MARIA CANTWELL, Washington
KEN SALAZAR, Colorado
ROBERT MENENDEZ, New Jersey

BRUCE M. EVANS, *Staff Director*
JUDITH K. PENSABENE, *Chief Counsel*
ROBERT M. SIMON, *Democratic Staff Director*
SAM E. FOWLER, *Democratic Chief Counsel*

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

LARRY E. CRAIG, Idaho, *Chairman*
CONRAD R. BURNS, Montana, *Vice Chairman*

CRAIG THOMAS, Wyoming
JAMES M. TALENT, Missouri
GORDON SMITH, Oregon
LAMAR ALEXANDER, Tennessee
LISA MURKOWSKI, Alaska
GEORGE ALLEN, Virginia

RON WYDEN, Oregon
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
DIANNE FEINSTEIN, California
MARIA CANTWELL, Washington

PETE V. DOMENICI and JEFF BINGAMAN are Ex Officio Members of the Subcommittee

FRANK GLADICS, *Professional Staff Member*
SCOTT MILLER, *Democratic Counsel*

CONTENTS

STATEMENTS

	Page
Bingaman, Hon. Jeff, U.S. Senator from New Mexico	2
Craig, Hon. Larry E., U.S. Senator from Idaho	1
Dale, D. Michael, Executive Director, Northwest Workers' Justice Project, Portland, OR	24
Ellis, David M., President, Renewable Resources, Barnesville, GA	48
Jungwirth, Lynn, Executive Director, The Watershed Research and Training Center, Hayfork, CA	35
Lipnic, Victoria A., Assistant Secretary of Labor Employment Standards Administration, Department of Labor	6
Moseley, Cassandra, Ph.D., Ecosystem Workforce Program, Institute for Sustainable Environment, University of Oregon	28
Rey, Mark, Under Secretary for Natural Resources and the Environment, Department of Agriculture	2
Wood, Cindy, Chief Executive Officer, Wood's Fire & Emergency Services, Inc., Portola, CA	39

APPENDIX

Responses to additional questions	51

FOREST SERVICE WORKERS

WEDNESDAY, MARCH 1, 2006

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 2:32 p.m., in room SD–366, Dirksen Senate Office Building, Hon. Larry Craig presiding.

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

Senator CRAIG. Good afternoon, everyone. I would like to welcome you to the Public Lands and Forests Subcommittee's hearing on issues related to enforcement of labor, health and safety laws that are a part of all Forest Service planting and thinning contracts. Today, testimony will be provided by the Department of Agriculture's Under Secretary of Natural Resources and the Environment, Mark Rey. Mark, welcome to the committee again. You were here yesterday, weren't you? That's what I thought, deja vu all over again. Okay. And the Department of Labor's Assistant Secretary for Employment Standards Administration, The Honorable Victoria Lipnic.

Ms. LIPNIC. That's correct.

Senator CRAIG. Nice to have you here, Victoria.

Ms. LIPNIC. Thank you.

Senator CRAIG. I see that each of you have a number of people who are accompanying you to help answer questions that the members might be asking, so please feel free to have them come up to the table if necessary. Or based on space, you can rotate according to the questions. Anyway, I want to welcome Senator Bingaman, who is not yet here, but will be. He is the Energy and Natural Resources ranking member, and has an expressed interest in this. I know Senator Bingaman is keenly aware of the problems and concerns and sees this as a unique problem.

Congress has been forced to address this or similar issues about once a decade. And while we have made some progress, it is not sufficient or occurring quickly enough by most everyone's opinion. I'm not going to belabor the issue that revolves around the use of migrant workers who do much of this type of work, other than to say that evidence suggests we continue to have great difficulty enforcing the health and safety, immigration and labor laws of this country when it comes to these contracts. I know that some progress has been made on the issue of undocumented workers

over the last decade, but all evidence suggests that much more progress needs to be made on the enforcement of the health and safety laws and other labor laws and rules. I would hope the Federal agencies will find ways to do a much better job than they have managed over the last decade.

At the same time, I think we all have to understand that these are not the only jobs that these migrant workers participate in, and our Federal agencies are stretched fairly thin when it comes to this type of employment work. Their job is further complicated by the isolated nature of the work. It is my hope that we can all work together to improve the situation rather than participating in finger pointing and the blame game. I would note that these problems have occurred during both Democrat and Republican administrations, and I would hope we can find ways to make improvements on a bipartisan basis.

I will maintain the 5-minute clock on testimony and questions of the committee, and we'll make both your written and oral testimonies a part of the hearing record. I urge each of you to resist the urge to read your testimony during today's oral presentations because your full testimony will be a part of the record. When Senator Bingaman gets here, he'll have the opportunity to make his opening remarks and offer any questions.

So, let us move to our first panel. Again, Mark—and that's Mark Rey, Under Secretary of Natural Resources and the Environment—welcome before the committee. We'll start with you.

STATEMENT OF MARK REY, UNDER SECRETARY FOR NATURAL RESOURCES AND THE ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY SALLY COLLINS

Mr. REY. Thank you, Mr. Chairman, and thank you for the opportunity to testify today on the role of the Forest Service in protecting the health and welfare of foreign guest workers carrying out service contract work on National Forest land. If you want, I can suspend.

Senator CRAIG. Why don't you, if you would. Thank you very much. Senator Bingaman has just arrived. Jeff, I've made my opening comments. We'll turn to you for that purpose, and then we'll allow Mark to proceed with his testimony.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Mr. Chairman, thanks for having the hearing. I don't really have anything earthshaking to add here. I do think it's an important set of issues and one that I continue to hear about, and I know you do, and I appreciate the witnesses coming and talking to us about it. Thanks.

Senator CRAIG. Thank you much. Mark, please proceed.

STATEMENT OF MARK REY, UNDER SECRETARY FOR NATURAL RESOURCES AND THE ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY SALLY COLLINS—Continuing

Mr. REY. The Department of Agriculture and the Forest Service are committed to the safety and health of visitors and workers on

national forests and will continue to act quickly to address any problems that may arise in these areas.

Federal law allows foreign citizens to temporarily come to the United States to perform jobs where U.S. workers may be in short supply. The law establishes categories for temporary work visas, H-2A for agricultural workers and H-2B for nonagricultural, nonprofessional workers. About 15,000 to 20,000 of the H-2B workers are forestry workers.

Several Federal and State agencies have responsibilities for the many aspects of the temporary guest worker program. In order for employers, including potential Forest Service contractors, to hire foreign guest workers, they must get a certification from the Department of Labor stating that qualified workers are not available in the United States and that the foreign worker's employment will not adversely affect wages and working conditions of similarly employed U.S. workers.

The Forest Service has an important role in implementing the laws that apply to H-2B workers because forestry service contractors often hire foreign guest workers to do the thinning, tree planting, brush clearing and other types of work on not only national forests, but on privately owned forests as well.

On November 18, 2005, the Chief of the Forest Service issued a letter to Agency leadership stating his expectations on what Forest Service contracting officers and inspectors must do when they recognize health and safety violations which present an imminent threat to workers, such as not using appropriate safety apparel and equipment. When these situations occur, agency personnel must take action just as they would with Forest Service employees. If contractor employees do not have appropriate safety apparel or equipment, the inspectors are not to let them work. The Chief also instructed them to document and report observed violations in the areas of safety, housing, transportation and wages to the appropriate oversight agencies. He shared his expectation that documentation of violations should be a factor—and will be a factor—in evaluating future bids and awarding future contracts. Violators can be banned from future awards by the oversight agencies in cases of repeat violations.

Provisions and requirements developed by the oversight agencies within the Department of Labor and the Department of Homeland Security to implement the guest worker protection laws were previously incorporated by general reference into the service contracts awarded by the Forest Service.

On January 4, 2006, the Director of Acquisition Management at the Forest Service issued mandatory clauses for Forest Service contracts, expressly stating these provisions and requirements. These clauses include specific language regarding camp facilities and personal protective equipment requirements and specific oversight agency requirements that employers of foreign guest workers must fulfill, such as certification of adequate housing, proper documentation of legal status and properly registered and inspected vehicles for transportation. Adding the language directly to the service contracts will produce two major results: First, increase follow-up action by Forest Service contract inspectors when health and safety violations are observed will occur; and second, will have greater

ability to hold contractors accountable by enforcing express language in our contracts.

The Director of Acquisition Management also required regional foresters and station directors to assure every active tree planting and thinning contract was visited by the contracting officers onsite within 3 weeks of the commencement of work. If unacceptable conditions are observed, the work will be suspended and a report will be made to the appropriate regulatory agency.

Additional coordination with the oversight agencies has also been very productive. The Forest Service has provided the Wage and Hour Division and OSHA with a list of this year's projects that could involve foreign guest workers. Additionally, we will shortly sign, with the Department of Labor regulatory agencies, a memorandum of intent to outline our joint work in the coming season. And shortly, my counterpart from the Department of Labor will review the activities underway at the department.

In addition to workers that are performing services under contract to the Forest Service, some of the incidents that have been publicized in the recent past have been people who are operating under special-use permits. We're reviewing the Special-Use Permit Policy to see how and the best way to install additional protections there, although not all of the requirements, such as the Service Contract Act wage requirements, will apply to individuals working under special-use permits on the National Forest System.

With that, I'd be happy to defer to the Department of Labor.

[The prepared statement of Mr. Rey follows:]

PREPARED STATEMENT OF MARK REY, UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee: thank you for the opportunity to testify before you today on the role of the Forest Service in protecting the health and welfare of foreign guest workers carrying out service contract work on national forest land. The Department of Agriculture and the Forest Service are committed to the safety and health of visitors and workers on National Forests. We have and will continue to act quickly to address any problem that may arise in these areas.

BACKGROUND

Federal law allows foreign citizens to temporarily come to the United States to perform jobs where U.S. workers may be in short supply. The law establishes categories for temporary work visas: H-2A for agricultural workers and H-2B for non-agricultural, nonprofessional jobs such as travel agents, restaurant workers, janitors and forestry workers. The focus of my testimony today is on the requirements applicable to the employment of H-2B workers. There is a 66,000 person per year limit on the number of foreign workers who may receive H-2B status and this limit is regularly reached early in the year. H-2B workers already working in this country do not count against the current year cap so the actual number of H-2B foreign guest workers in this country could be much higher. About 15,000 to 20,000 are forestry workers.

Several federal and state agencies have responsibilities for the many aspects of the temporary guest worker program. The Department of Homeland Security (DHS) and the Department of Labor (DOL) have primary oversight for the program. Other agencies, including the Forest Service, are involved where H-2B guest workers are employed by contractors.

In order for employers—including potential Forest Service contractors—to hire foreign guest workers they must get a certification from DOL stating that qualified workers are not available in the U.S. and that the foreign worker's employment will not adversely affect wages and working conditions of similarly employed U.S. workers. The employer then petitions DHS to hire guest workers.

Additionally, the employer seeking to hire foreign guest workers must offer at least the prevailing wage for the occupation in the area of intended employment.

Worker protection provisions that apply to U.S. workers also cover foreign guest workers. Workers may file complaints under these worker protection laws with local DOL Wage and Hour Division offices.

The Federal worker protection laws that apply to H-2B forestry workers are: 1) the Migrant and Seasonal Agricultural Worker Protection Act provides requirements for housing, transportation and working conditions for migrant and seasonal workers; 2) the Service Contract Act provides for minimum wages and other benefits for those workers under federal service contracts; 3) the Occupational Safety and Health Act contains specific workplace safety requirements; and 4) the Fair Labor Standards Act provides minimum wage, overtime, and child labor requirements. DOL is responsible for enforcing these laws and has agreements with some states such as California to administer and enforce a state occupational safety and health program for the Department. In addition, states will enforce their own labor requirements if these offer greater protection to foreign guest workers than the federal requirements.

FOREST SERVICE RESPONSIBILITIES AND ACTIONS TAKEN.

The Forest Service has an important role in implementing these laws because forestry services contractors often hire foreign guest workers to do thinning, tree planting, brush clearing and other types of work on national forests. Safety and respectful treatment are core values in the way the Forest Service conducts day to day business, and the Forest Service is often the agency with the most direct contact with foreign guest workers. I commend the *Sacramento Bee* for bringing attention to the issues that some foreign guest workers face as they perform work in this country. It is important that these issues do not escape the attention of the various agencies responsible and we have already taken action to strengthen our respective agency roles.

On November 18, 2005, the Chief of the Forest Service, Dale Bosworth, issued a letter* Agency leadership stating his expectations on what Forest Service Contracting Officers and inspectors must do when they recognize health and safety violations which present an imminent threat to workers such as not using appropriate safety apparel and equipment. When these situations occur, agency personnel must take action, just as they would with Forest Service employees. If contractor employees do not have appropriate safety apparel or equipment, the inspectors are not to let them work. The Chief also instructed them to document and report observed violations in the areas of safety, housing, transportation and wages to the appropriate oversight agency. He shared his expectation that documentation of violations should be a factor in evaluating future bids and awarding future contracts. Violators can be banned from future awards by the oversight agencies.

Chief Bosworth designated the Director of Acquisition Management in the Washington Office as the Forest Service contact with the appropriate staff of oversight agencies, DOL, OSHA and United States Citizenship and Immigration Service (USCIS). The Director has already met with OSHA and with the DOL Wage and Hour Division's Director of Enforcement Policy to discuss coordination and specific actions each agency can take to address the issues of health, safety, and wage payments concerning foreign guest workers.

Provisions and requirements developed by the oversight agencies within DOL and DHS to implement guest worker protection laws (the Migrant and Seasonal Agricultural Worker Protection Act, the Service Contract Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act) were previously incorporated by general reference into the service contracts awarded by the Forest Service. On January 4, 2006, the Director of Acquisition Management issued mandatory clauses for Forest Service contracts, expressly stating these provisions and requirements. These clauses include specific language regarding camp facilities and personal protective equipment requirements and specific oversight agency requirements that employers of foreign guest workers must fulfill such as certification of adequate housing, proper documentation of the legal status of foreign workers, and properly registered and inspected vehicles for transportation. Adding the language directly into the service contracts is expected to produce two major results: 1) increase follow-up actions by Forest Service contract inspectors when health and safety violations are observed; and 2) provide greater ability to hold contractors accountable by enforcing language in the contracts.

The Director of Acquisition Management also required Regional Foresters and Station Directors to ensure every active tree planting and tree thinning contract was visited by the Contracting Officers on site within 3 weeks of the commencement

*The letter has been retained in subcommittee files

of work. Based on these visits, the regions and stations will submit a report to the Washington Office regarding the status of housing, transportation and working conditions for employees of forestry contractors. If unacceptable conditions are observed the work will be suspended and a report will be made to the appropriate agency.

Coordination with the oversight agencies has been very productive. The Forest Service has provided the Wage and Hour Division and OSHA with a list of this year's projects that could involve foreign guest workers. The agencies have also exchanged point of contact information for our respective field organizations. As a result, for example, a Forest Service contract inspector in Oregon has the point of contact information for the OSHA and Wage and Hour Division in their area to report potential violations of the law.

The Wage and Hour Division and CAL-OSHA have conducted training in California for Forest Service Contract Administrators and private sector contractors concerning legal requirements regarding the employment of H-2B workers. OSHA and Wage and Hour are developing training material to raise awareness of "red flags" that may indicate problems with the employment of H-2B workers. The Forest Service is also providing this training material to employees involved with foreign guest workers.

SUMMARY

The Department-and the Forest Service are committed to the health and safety for all visitors and workers on the National Forests and Grasslands, and that includes foreign guest workers. We will continue to closely coordinate with the oversight agencies responsible for administering this program to ensure foreign guest workers will have safe and healthy working and living conditions.

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

Senator CRAIG. Again, Victoria, let me welcome you, Assistant Secretary, Employment Standards Administration, Department of Labor.

Ms. LIPNIC. Thank you, Mr. Chairman.

Senator CRAIG. Please proceed.

STATEMENT OF VICTORIA A. LIPNIC, ASSISTANT SECRETARY OF EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR, ACCOMPANIED BY MICHEAL GINLEY

Ms. LIPNIC. Thank you for the opportunity to appear before the committee today as a member of this panel. You have invited us to testify on the role of the Department of Labor in protecting foreign guest workers employed on tree planting and other service contracts, often called reforestation contracts, on National Forest lands. And as you suggested, Senator, my written statement is submitted for the record, and I will do my best to summarize.

Senator CRAIG. And I read it. I don't always get to all written statements. Yours is a very thorough explanation of procedure and process. Thank you.

Ms. LIPNIC. Thank you very much, and I want to credit my staff in the Wage and Hour Division for putting a lot of work into that.

A complete picture of the Department of Labor's role with these foreign guest workers involves mentioning two other agencies within the Department—the Occupational Safety and Health Administration and the Employment and Training Administration. And there are representatives from those agencies here today. I am also accompanied by Michael Ginley, who is the Director of our Office of Enforcement Policy in the Wage and Hour Division, which is a part of the Employment Standards Administration.

Although reforestation work is found in many national forests, the challenges of enforcement in the forestry industry as to labor standards are not confined to one area, but our testimony today

will focus largely on our experiences in California. I would add that Mr. Ginley has first-hand field experience on this issue, having served as the District Director of our Wage and Hour Office in Sacramento during the 1990's.

The challenges of ensuring that the employment of workers on reforestation contracts complies with the applicable legal protections are many, but, as you certainly know, they are not new to the Department of Labor, and we share a strong commitment with the Forest Service to find a lasting solution to meeting the historical challenges of protecting these workers.

Certainly, as was well documented in the *Sacramento Bee* series, reforestation work is often hard, dangerous and involves a significant amount of travel, and I think that series by and large reflects the experience of the Wage and Hour Division in the field.

As you know, reforestation guest workers are admitted as temporary non-immigrants under the H-2B provisions of the Immigration and Nationality Act. As you alluded to, Senator, there are many issues related to immigrant workers. Certainly, among those that we find as to the forestation work and in other areas, particularly in low wage areas, there is a high dependence on the employers, and that often instills a strong reluctance on the part of the workers to complain to the Department of Labor, or to any other agency for that matter, about mistreatment, or in our case in particular, about the underpayment of wages.

Federal reforestation contracts are primarily subject to the employee protections that are offered by a number of statutes within the jurisdiction of the Department of Labor. They include, first and foremost, the Fair Labor Standards Act, which is the fundamental protection that provides wage protection to most U.S. workers; the Migrant and Seasonal Agricultural Worker Protection Act, which requires, among other things, that workers are paid their wages when they are due, that there is compliance with Federal and State safety and health housing standards, and in compliance with vehicle safety standards. Under MSPA, the contractor must obtain a certificate of registration from the Department of Labor to operate as a farm labor contractor.

The Service Contract Act applies to contracts for reforestation in excess of $2,500 with the Forest Service, and it requires the reforestation contractors to pay the reforestation workers the Service Contract Act prevailing wages and fringe benefits that are determined by the Department of Labor.

The Occupational Safety and Health Act, which is administered by OSHA at the Department of Labor, regulates safety and health conditions in private industry or in the States through an OSHA-approved State plan, and certainly under Homeland Security regulations under the Immigration and Nationality Act. The INA requires employers filing petitions for H-2B non-immigrant workers with the United States Citizenship and Immigration Services to include a labor certification from the Secretary of Labor that qualified U.S. workers could not be found to fill the job.

One thing I'll mention in particular about OSHA, it's important to involve the States in developing any of the safety and health plans to ensure enforcement and training assistance is coordinated among the Federal agencies and the States since a significant num-

ber of the identified national forests are in State Plan States, and OSHA works vigorously with the State Plan States to make sure that that happens.

Wage and Hour is the enforcement agency responsible for ensuring compliance with the FLSA, with MSPA, with the field sanitation requirements under OSHA and with the prevailing wage and fringe benefit requirements of the Service Contract Act.

I'll just mention quickly that Wage and Hour generally conducts its investigations in two ways: One is if we receive complaints from workers, then we are required to do investigations; the other way that we achieve compliance and do everything we can to achieve compliance is through directed investigations. Wage and Hour has a very sophisticated operational plan every year that directs our enforcement resources, and we have a number of initiatives that have been in the planning stages over the last couple of years in the forestry area, and I can talk about those further in the questions and answers. Thank you.

[The prepared statement of Ms. Lipnic follows:]

PREPARED STATEMENT OF VICTORIA A. LIPNIC, ASSISTANT SECRETARY OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

Mr. Chairman and Distinguished Members of the Subcommittee: thank you for the opportunity to appear before you today as a member of this panel. You have invited us to testify on the role of the Department of Labor (DOL) in protecting foreign guest workers employed on tree planting and other service contracts (often called "reforestation contracts") on national forest lands. A complete picture of the Department of Labor's role with these foreign guest workers involves mentioning two other agencies within the Department—the Occupational Safety and Health Administration and the Employment and Training Administration—and there are representatives from those agencies here today. I am also joined on the panel by Michael Ginley, the Director of the Office of Enforcement Policy of the Wage and Hour Division (WHD), which is part of the Employment Standards Administration within the Department of Labor. Although reforestation work is found in many national forests and the challenges of enforcement in the forestry industry are not confined to one area, our testimony today will focus on our experiences in the national forests of California.

The challenges of ensuring that the employment of workers on reforestation contracts complies with applicable legal protections are many, but they are not new to the Department of Labor. We share a strong commitment with the USDA Forest Service (FS) to find a lasting solution to meeting the historical challenges of protecting these workers.

Before explaining these challenges and detailing our responses I will first describe the:

- Nature of reforestation work in national forests;
- Typical characteristics of reforestation guest workers;
- Federal laws applicable to reforestation in national forests; and
- The different agencies responsible for enforcing these laws.

NATURE OF REFORESTATION WORK IN NATIONAL FORESTS

Reforestation work is hard, often dangerous work and involves a significant amount of travel. The duties are physically demanding, the pressure to work quickly is intense, the environment is often cold and wet, and the housing and eating arrangements are sometimes poor.

The average reforestation contract on a unit of the National Forest System (NFS) involves small crews of approximately 15 workers who clear brush and undergrowth and/or plant seedlings on remote tracts of NFS land. The contracts usually last several weeks and require constant movement to new tracts of NFS land. Travel to the contract sites is time consuming and frequently occurs on unimproved roads early or late in the day.

Reforestation contractors are typically small, and could very well be underfinanced businesses. They often struggle to make timely payment of payrolls, as they must wait for FS payment before paying their workers. Many of these contrac-

tors are former reforestation workers. The contractors often pay their workers on piece rate, and do not keep the required accurate record of employee hours actually worked.

CHARACTERISTICS OF THE REFORESTATION GUEST WORKERS

Reforestation guest workers are admitted as temporary nonimmigrants under the H-2B provisions of the Immigration and Nationality Act (INA).

The H-2B workers' continued presence in this country is entirely dependent on the willingness of the sponsoring employer to continue their employment. If this employment is lost, the workers must leave the country. The reforestation workers are typically dependent on their employer for all transportation and are left to their own devices to secure housing and food. This dependence instills a strong reluctance to complain to DOL—or any other agency—about mistreatment or underpayment of wages by their employer.

The H-2B reforestation workers typically do not speak English, and are often illiterate in their native language. They are largely ignorant of the application of U.S. wage and hour and safety laws. The workers typically reside in remote locations with little if any access to community or government resources to assist them with work-related problems.

FEDERAL LAWS APPLICABLE TO REFORESTATION WORK IN THE NATIONAL FORESTS

Federal reforestation contracts are primarily subject to the employee protections offered by a number of statutes within the jurisdiction of DOL. They are:

Fair Labor Standards Act (FLSA)

The FLSA requires the reforestation contractor to:

- Pay no less than the federal minimum wage ($5.15 per hour), free and clear, for all hours actually worked;
- Pay time and one half the workers' regular rate of pay for all hours actually worked over 40 in a seven day work week;
- Limit the occupations and hours of employment for children under 18 years of age in accordance with federal child labor regulations;
- Maintain an accurate record of hours worked and wages paid.

The FLSA does not typically treat time spent traveling to the first work site of the day, or back at the end of the day, as compensable hours of work.

The FLSA requires that wages be paid free and clear. Employees may not be required to pay for the employer's business expenses—such as providing tools, equipment or fuel—to the extent that such payment will reduce the employees' wages below the minimum wage.

Migrant & Seasonal Agricultural Worker Protection Act (MSPA)

The MSPA requires the labor contractor to:

- Pay workers their wages when due, and give workers itemized, written statements of earnings for each pay period, including any amount deducted and the reasons for the deduction.
- Comply with federal and State safety and health housing standards when the contractor owns or controls a facility or real property used for housing the reforestation workers. A written statement of the terms and conditions of occupancy must be posted at the housing site where it can be seen or be given to the workers.
- Assure that vehicles they use or cause to be used to transport the reforestation workers are properly insured, operated by licensed drivers, and meet applicable federal and State safety standards.
- Inform the workers in writing about the terms and conditions of employment, including the work to be performed, wages to be paid, the period of employment, and whether State workers' compensation or State unemployment insurance will be provided.
- Obtain a certificate of registration from DOL to operate as a Farm Labor Contractor (FLC). In addition, specific authorization must be obtained for all housing provided (if owned or controlled) and each vehicle used to transport the reforestation workers. The contractors must carry proof of this registration and show it to workers and any other person with whom they deal as contractors.
- Display a poster where it can be seen at the job site which sets forth the rights and protections of the workers.
- Keep complete and accurate payroll records for all workers.

An FLC's registration status with DOL can be verified by calling the WHD's toll free number 1-866-4USWAGE (1-866-487-9243).

MSPA posters are available by either calling the toll free number or by visiting the WHD home page *http://www.dol.gov/esa/whd/* and scrolling to the Quick Finder for Printed Publications.

The Service Contract Act (SCA)

The SCA applies to contracts for reforestation services in excess of $2,500 with the FS. It requires the reforestation contractors to:

- Pay the reforestation workers the SCA prevailing wages and fringe benefits determined by DOL to be prevailing in the locality for the class of service worker being employed;
- Notify the reforestation workers of the prevailing wage and fringe benefit requirements applicable to their work.

The reforestation workers must be paid the SCA required prevailing wages and fringe benefits free and clear. The contractors may not require the workers to pay for the employers' business expenses—such as providing tools, equipment or fuel—to the extent that such payment will reduce the employees' wages below the applicable SCA prevailing wage.

Occupational Safety & Health Act (OSH Act)

The OSH Act is administered by the Department's Occupational Safety and Health Administration (OSHA). Safety and health conditions in most private industries are regulated by OSHA or the States through an OSHA-approved State plan. Nearly every employee in the nation comes under OSHA's authority with some exceptions such as miners, some transportation workers, certain public employees (except in some State Plan States), and the self-employed. In addition to the requirements to comply with the regulations and safety and health standards prescribed under the OSH Act, employers subject to the Act have a general duty requirement to provide work and a workplace free from recognized, serious hazards.

OSHA's mission is to help promote and assure workplace safety and health and reduce workplace fatalities, injuries and illnesses. OSHA, along with its State partners, achieves its mission through workplace enforcement of applicable laws, standards, and regulations, inspections, consultation services, compliance assistance, outreach, education, cooperative programs, and issuance of standards and guidance.

The Occupational Safety and Health Act encourages States to administer their own occupational safety and health programs under State plans approved by the Secretary. States with approved plans (referred to as "State plan States") operate under the authority of State law and are responsible for occupational safety and health protection in that State. State plan States adopt standards at least as effective as Federal OSHA's, enforce these standards in a manner similar to Federal OSHA, provide on-site consultation services and conduct outreach and compliance assistance.

Twenty-two States have received Secretarial approval to administer their own occupational safety and health program which covers most private sector employment in their States as well as State and local government employees. (Four additional States cover only public sector employees through their State plans.) California administers an approved State plan and the California Department of Industrial Relations is the agency responsible for addressing the work place safety and health issues of the guest workers employed on tree planting and other service contracts on the national forest lands in California.

Field Sanitation

The OSH Act field sanitation standards establish minimum standards for field sanitation in covered agricultural settings. Covered employers are required to provide:

- toilets;
- potable drinking water;
- and hand-washing facilities.

Further, employers must provide each employee reasonable use of the above.

Authority for enforcing these field sanitation standards has been delegated to WHD in all States where Federal OSHA generally has authority, and in certain State plan States.

Immigration and Nationality Act (INA) Relevant Visa Category: H-2B

Department of Homeland Security regulations implementing the INA require employers filing petitions for H-2B non-immigrant workers with the United States Citi-

zenship and Immigration Services (USCIS) to include a labor certification from the Secretary of Labor that qualified United States workers could not be found to fill the job. In the case of reforestation activities, employers must file an application for labor certification with the State Workforce Agency serving the geographic area. A contractor planting or thinning trees in a California forest, for example, would file with the local office of the California Employment Development Department between 60 and 120 days before the work is scheduled to begin.

In each case, the State agency follows guidance from DOL to determine the appropriate wage rate for the occupation listed, supervise and guide the employer's recruitment of U.S. workers, and ensure completion of other requirements of the H-2B program. The State forwards completed applications to the DOL Employment and Training Administration (ETA), which reviews the record in its entirety, including documentation from the State and the employer, to determine whether and when to issue a certification. The employer then uses ETA's certification in support of its petition with USCIS for guest workers.

The INA provides no authority to the DOL to enforce the wage rate identified for the H-2B workers. The INA was amended by the Save Our Small and Seasonal Businesses Act of 2005, which, among other things, provided the Secretary of the Department of Homeland Security with authority to impose certain sanctions when sponsoring employers have committed a substantial failure to meet any of the conditions of the H-2B petition or made a willful misrepresentation of a material fact in such petition. 8 U.S.C. 1184(c)(14)(A).

DEPARTMENT OF LABOR AGENCIES AND THEIR ENFORCEMENT ROLES

Occupational Safety and Health Administration (OSHA)

Federal OSHA and its State plan partners are responsible for enforcing OSHA standards and providing compliance assistance and training to reforestation employers. Enforcement programs of both Federal OSHA and State agencies include planned inspections as well as unplanned inspections that are conducted in response to employee complaints, accidents, fatalities, and catastrophes. Planned inspections target serious workplace hazards or dangerous industries. Unplanned inspections are typically in response to an employee complaint, a referral from another government agency, or a fatality or catastrophe in the workplace. The nature of reforestation work and those typically performing it makes conducting either type of inspection difficult. Employees engaged in this work rarely complain to OSHA for a variety of reasons. Additionally, work is not performed at fixed workplaces and the length of a job is relatively short. Therefore, locating these employers is often difficult.

The safety and health issues facing these workers depend on the task they are performing. For example, employees performing brush clearing operations are exposed to cuts and contusions from both the material they are removing, such as branch whip-back, and the equipment they are using. This necessitates the use of appropriate personal protective equipment, such as eye and face protection, hand protection, and appropriate footwear. Employees performing tree thinning are exposed to cut hazards created by chain saw use, overhead hazards from falling objects, such as felled trees and branches, and slips and falls from working on uneven terrain. These conditions also require adequate personal protective equipment, such as leg protection, head and face protection, and appropriate footwear. When performing these tasks it is critical that employees follow safe work practices. Employees who work in remote reforestation sites must have first aid available in the event of injury.

Federal OSHA works closely with its State Plan partners to develop effective strategies to address the safety and health issues of guest workers. It is important to involve the States in developing those plans to ensure that enforcement, training and assistance is coordinated among the various federal agencies and the States since a significant number of the identified national forests are in State Plan States. OSHA's State plan partners are well-positioned to address the conditions faced by reforestation workers. For example, California OSHA has recently participated with Federal and State Wage and Hour officials and the FS to present a series of three training sessions for FS contracting officers and forest service contractors. Oregon has promulgated a standard which specifically applies to forestry activities in addition to logging. Finally, many States have developed effective outreach materials designed for non-English speaking workers.

In summary, this is a complex problem for OSHA and the affected State Plan States. The solutions require effective coordination and cooperation between the OSHA partners and with the WHD and the FS.

Employment and Training Administration (ETA)

Under the H-2B visa program, ETA is responsible for review of H-2B labor certification requests. DOL oversight of worksite enforcement is provided by WHD and OSHA.

Employment Standards Administration, Wage and Hour Division (WHD)

The WHD is the enforcement agency responsible for ensuring compliance with the minimum wage and overtime requirements of the FLSA; the wage, registration disclosure, housing and transportation requirements of MSPA; the OSHA field sanitation standards in non-State plan States; and the prevailing wage and fringe benefit requirements of the SCA. The WHD seeks compliance with these requirements through a combination of enforcement and compliance assistance. There are some unique problems associated with enforcement regarding reforestation contractors. But first, let me explain the enforcement process generally, and some of the statute-specific differences.

WHD Enforcement Process

The WHD conducts investigations of employers on two bases:

- Receipt of a complaint alleging violations;
- Directed investigations where there is no complaint but the potential for violations is high due to the nature of the work, the vulnerability of the workers, or the industry.

WHD investigators will identify themselves and present official credentials at the opening of an investigation. They will explain the investigation process and the types of records required during the review.

A typical investigation consists of the following steps:

- Examination of records to determine which laws or exemptions apply. These records include, for example, those showing the employer's annual dollar volume of business transactions, involvement in interstate commerce, MSPA registration status and work on government contracts. Information from an employer's records will not be revealed to unauthorized persons.
- Examination of payroll and time records, examination of employer-provided housing and transportation (MSPA) and taking notes or making transcriptions or photocopies essential to the investigation.
- Interviews with certain employees in private. The purpose of these interviews is to verify the employer's payroll and time records, to substantiate housing and/or transportation violations, to identify workers' particular duties in sufficient detail to decide which exemptions apply, if any, and to confirm that minors are legally employed. Confidential interviews are normally conducted on the employer's premises. In some instances, present and former employees may be interviewed away from the worksite to protect confidentiality and WHD takes aggressive action to correct any employer retribution under the anti-discrimination protections of FLSA Section 15(a)(3).
- When all the fact-finding steps have been completed, the investigator will ask to meet with the employer and/or a representative of the firm who has authority to reach decisions and commit the employer to corrective actions if violations have occurred. If back wages are owed to employees because of minimum/prevailing wage or overtime violations, the investigator will request payment of back wages due; if housing and/or transportation violations have occurred, the investigator will note the violations and, depending on the severity of the violations, will seek appropriate corrective action.

FLSA Enforcement

Although the WHD makes every effort to resolve the issue of compliance and payment of back wages at an administrative level, the FLSA also provides for the following enforcement actions:

- An employee may file suit to recover back wages, and an equal amount in liquidated damages, plus attorney's fees and court costs.
- The Secretary of Labor may file suit on behalf of employees for back wages and an equal amount in liquidated damages.
- The Secretary may obtain a court injunction to restrain any person from violating the law, including unlawfully withholding proper minimum wage and overtime pay.
- Civil money penalties may be assessed for child labor violations and for repeat and/or willful violations of FLSA minimum wage or overtime requirements; employers who have willfully violated the law may face criminal penalties, including fines and imprisonment.

- Employees who have filed complaints or provided information during an investigation are protected under the law. They may not be discriminated against or discharged for having done so. If they are, they may file suit or the Secretary of Labor may file suit on their behalf for relief, including reinstatement to their jobs and payment of wages lost plus monetary damages.

MSPA Enforcement

MSPA provides for the assessment of civil money penalties, revocation of the contractor's certificate (including authorization to house, transport or drive), criminal sanctions, fines and imprisonment.

MSPA Transportation Enforcement

Enforcement of MSPA transportation requirements is a critical element of WHD reforestation investigations, helping to prevent recurrence of recent horrific accidents involving the transportation of migrant workers. The enforcement of MSPA transportation requirements begins with the application for a Farm Labor Contractor (FLC) or Farm Labor Contractor Employee (FLCE) Certificate of Registration. On the application form, the applicant must indicate whether transportation will be provided to the workers and provide a Vehicle Identification and Mechanical Inspection Report for each vehicle to be used. The forms used for the vehicle inspection require identifying information on the person and establishment/garage making the inspection and the form must be "properly completed and signed, certifying that the vehicle meets" the applicable MSPA vehicle safety requirements.

In addition, evidence of compliance with the insurance requirements and financial responsibility requirements of MSPA must be submitted. MPSA requires not less than $100,000 per seat in insurance coverage (maximum $5,000,000 per vehicle) or worker's compensation coverage along with a $50,000 property damage policy or a vehicle liability certificate of coverage showing that passenger hazard is included.

Further, any FLC or FLCE who drives a vehicle transporting workers must be listed on the application and provide driver license information and a copy of his or her driver's license. The application package must include a Doctor's Certificate form completed by a licensed doctor that indicates the applicant meets minimum physical requirements to drive a motor vehicle.

An approved FLC or FLCE Certificate of Registration indicates if the contractor is authorized to drive. It will list each authorized vehicle by make, model and partial VIN (vehicle identification number); the number of authorized seats (as provided on the application); and the date the certificate expires.

During an investigation of an FLC, the WHD investigator will determine if the FLC is involved with transporting the workers—the regulatory language looks to one who uses or causes a vehicle to be used. If the FLC is found to be using or causing a vehicle to be used, the investigator will check if the contractor is properly registered, is authorized to use the specific vehicle, and has the proper insurance in place.

In addition, the WHD investigator will document by observation and interviews the number of workers being transported, the identity of the vehicle (make, model, and VIN) and the driver (and whether the driver is properly licensed and carrying the Doctor's Certificate), current license tag, and whether the vehicle possesses a current State vehicle inspection sticker (if required in the State in which the vehicle is registered). The investigator will also perform a visual inspection of the vehicle—looking for whether headlights are broken or missing; whether seating is broken, missing, or inadequate; whether windows are broken, missing or boarded up; whether tires are badly worn or defective; or whether windshields are cracked, broken or missing.

Any serious violations posing imminent danger to the occupant are brought to the attention of the FLC and immediate correction is sought. WHD investigators do not have authority to stop vehicles and do not have authority to require a labor contractor to cease using a vehicle. In such circumstances, the WHD investigator would need to enlist the cooperation of the appropriate State or local authority, such as the highway patrol. WHD investigators are trained to contact the appropriate authorities to ensure the safety of the workers.

In addition to seeking correction of the safety violations, WHD can assess civil monetary penalties and, if warranted, seek to revoke the labor contractor's certificate of registration.

SCA Enforcement

When the WHD identifies monetary violations of the SCA, Federal contract funds may be withheld by the contracting agency to insure payment of SCA back wages. Employers who violate the SCA may also lose their Federal contracts and be de-

clared ineligible for future contracts for a specified period (debarment). The WHD has debarred 13 reforestation contractors in the last decade.

REPRESENTATIVE WAGE AND HOUR ACTIVITIES IN THE PACIFIC NORTHWEST

As I mentioned at the outset, the issues associated with enforcement of the worker protections for the temporary guest workers doing reforestation work are not new to the DOL, although some of the issues associated with enforcement are unique. For example, securing timely correction of significant reforestation safety, transportation and housing violations is only possible if DOL investigators are present when and where the workers are employed, housed and transported; further, special language skills are critical to securing evidence of the violations from the workers. Transportation enforcement raises particularly unique issues, given the limited authority vested in WHD investigators to intervene when unsafe transportation is found. Cooperation with State and local law enforcement officials, as is effectively done in California with the California Highway Patrol, is one means of resolving this issue.

WHD offices in California and the Northwest have consistently worked with their counterparts in the FS in an effort to protect reforestation workers. For example, in February 2005, the WHD Sacramento District Office provided labor law training to 40 FS contracting officers representing the 17 national forests in California. The Seattle District Office regularly works with the FS offices in Idaho, Montana and Washington to ensure compliance with labor laws, and has effectively secured debarment of serious violators under the SCA. The Portland District Office has participated for several years in quarterly interagency "Farmer Forest" meetings with the federal and State Forest Service, the Oregon Bureau of Labor and Industry, and Oregon OSHA to facilitate joint efforts in achieving compliance.

Compliance Assistance

The DOL educates employers on compliance responsibilities in addition to taking independent enforcement actions. This approach is based on the long-held agency belief that the vast majority of employers want to comply with worker protections laws, but many do not know all of the legal requirements. The best preventative approach for these employers is clear, pertinent, readily-available guidance in multiple media. DOL is constantly working to provide guidance to employers via the telephone (toll free numbers), internet, and hard copies. This guidance includes an interactive, Web-based tool, called elaws Advisors, which provides around-the-clock assistance on the application of many DOL laws. Active outreach programs also include numerous speeches, seminars and training sessions provided to employer groups and industry associations.

The DOL also seeks to educate employees of their rights under federal laws in the language they understand, to provide tools that will help them protect their rights and to give the information needed to involve the agency in correcting violations.

Finally, the DOL actively seeks partnerships with worker advocacy groups, industry associations, agencies at all levels of government, and other entities that will help us educate employers and employees on achieving compliance with wage and hour laws.

CHALLENGES

Although there is an ongoing relationship on a regional level between the Department of Labor and the Forest Service, DOL agencies and the FS continue to work to reinvigorate the process by which we identify and overcome challenges to ensuring protection of guest workers employed in our national forests. These challenges and our current and planned solutions are:

Challenge: Educating reforestation contractors, who are largely ignorant of their responsibilities for compliance when they are awarded reforestation contracts.

Solution: The FS, WHD, and the California occupational safety and health program (Cal-OSHA) have worked to develop a multi-prong approach to educating contractors before contract work begins. For example, WHD provided training for FS contractors in California in 2000. Planning began again in FY 2005 for a renewed effort as part of a WHD reforestation initiative for implementation prior to the beginning of the 2006 planting season. This training was offered to all contractors who were awarded 2006 contracts in central and northern California national forests. The training seminars were sponsored by the FS, the WHD, Cal-OSHA and the California Highway Patrol and held in January, 2006. The majority of contractors attended the seminars, in no small

part because they were advised of the enforcement agency plans to investigate approximately 50% of the contractors this season.

The WHD and Cal-OSHA trained FS contracting officers in California in January, 2006. This training, which is being considered as a template for future training sessions in national forests across the country, provided contracting officers with the knowledge needed to educate contractors on site.

Reforestation contractors are provided with a complete package of WHD guidance to facilitate their compliance with worker protection laws.

Challenge: Finding reforestation workers while they are working on the reforestation contracts is critical to identifying and correcting violations, given the short duration of the contracts; the remote, constantly changing work sites; the temporary residence of the workers in this country; the typically poor/nonexistent recordkeeping practices of the contractors; and the need to personally inspect/document safety, housing and transportation violations when they occur.

Solution: The FS is providing the WHD and Cal-OSHA with the identity of contractors who have been awarded reforestation contracts, the approximate start date and location of the contract, and contact information on the FS staff responsible for each contract.

Challenge: Educating employees on their rights and how to contact the appropriate agencies, despite significant trust, language and literacy barriers, to correct violations.

Solution: The WHD is developing "worker rights cards" specific to reforestation employment in English and Spanish; working with various entities to distribute these cards and facilitate the filing of timely complaints; has initiated plans with the Department of State to provide these cards to workers upon approval of their non-immigrant visa; and is pursuing a Spanish language Public Service Announcement and other methods to reach reforestation workers.

The WHD, Cal-OSHA and the Forest Service will share the multilingual capabilities of each agency to better communicate with reforestation workers.

Challenge: Lack of complaints from reforestation workers requires an effective targeting program that will facilitate effective enforcement.

Solution: Establishing an effective investigation targeting program, such as is being done in California later this year when targeted investigations will be scheduled of approximately 50% of the reforestation contractors.

Using the list of future contracts provided to DOL by the FS, along with prior WHD and FS experience with the contractors, to target investigations for maximum effectiveness. Provide training to FS Contracting Officers (as was done earlier this year in California), in identifying minor safety/health and wage/hour issues which can be corrected on-the-spot, and those more serious issues that must be referred to the WHD or Cal-OSHA for resolution. On-the-spot correction of minor labor law violations by contracting officers, as established in recently expanded FS contract language and field instructions, will significantly increase compliance with these laws. This new initiative will be covered in more detail in the FS testimony.

Challenge: Improve timely communication between the FS, Cal-OSHA and the WHD to insure effective interventions.

Solution: The FS, Cal-OSHA and the WHD are sharing updated nation-wide contact lists of appropriate agency contacts, encouraging regular, local/regional meetings when appropriate, and have established a national level working group to periodically coordinate and implement joint efforts to protect reforestation workers.

The dedicated men and women in the field who are charged with enforcing U.S. worker protection laws understand the challenges and difficulties of their assignment. On a national level, we are committed to working together and in the field we will work with any entities willing to help meet the enforcement challenges we have discussed today.

Mr. Chairman, this concludes my prepared statement. We would be pleased to answer any questions that the Subcommittee may have.

Senator CRAIG. Victoria, thank you.

Mark, this is the fourth or fifth time that Congress has held a hearing related to enforcements of laws, regulations, contract provisions for agencies' planting and thinning contracts since 1980. While some progress has been made, and we've talked about that, I think there are still many questions to be looked at and to be concerned about. Both in 1993 and in the year 2005, the *Sacramento*

Bee wrote articles basically saying that Forest Service representatives had pointed out that other agencies have the responsibility to enforce health and safety and wage law and regulations. Understanding these charges to your service contracts, why should Congress think that your employees are going to take this issue seriously at this time if the fairly standard answer in the past has been it's somebody else's responsibility?

Mr. REY. I think this situation is analogous to the situation of certifying the safety of our large air tankers. We operated for a period of time under the assumption that the FAA certificate with those tankers assured their safety for aerial firefighting, and we learned that wasn't the case. So, we adapted to do the certification ourselves. Here again, I think some of our contract officers were under the misapprehension that they didn't have a specific responsibility. Now we know that, and they know that they have that specific responsibility. It's been made express in the contract, made express in the direction that they've been given by the chief, and it will be express in their performance reviews.

Senator CRAIG. Okay. Let's take that a step further then. If one of your law enforcement officers, contracting officials or supervisors or line officers happened upon a Forest Service forest account crew of temporary employees working without the proper safety equipment or working in an unsafe manner, what would you expect them to do?

Mr. REY. What they will do is terminate work on the contract until the safety problem is corrected. They'll also indicate to the Department of Labor regulatory agencies that there's been a safety violation so that that goes on the record of the contractor.

Senator CRAIG. How would you expect the line officer to deal with a direct supervisor or crew boss or a crew found to be working in violation? You've just answered that maybe. Suspend the work? Stop the crew?

Mr. REY. Our only regulatory instrument in terms of immediate effect is to stop work on the contract. Now that the contract has express terms of compliance with the various worker protection requirements, there should be no doubt in the contractor's mind why he's being told to stop work.

Senator CRAIG. Is there any reason that the Forest Service couldn't hire the H-2B-type workers to work on regional thinning, planting and brush or disposal crews to ensure the work is getting done in a safe and legal manner instead of the contract nature that we've had in the past?

Mr. REY. Well, the reason we use contractors for this portion of this work is that the work is temporary in nature and widely distributed throughout the National Forest System, so it's not the kind of work we would hire permanent employees to undertake.

Senator CRAIG. You still believe that that's, for the circumstances and the situation, the better approach?

Mr. REY. We still believe that, but we still believe that we have a responsibility to assure the safety of these workers. One thing that is changing, though, is—well, two things that are changing that are worthy of note—one is we are moving much more heavily into best-value contracting, and we will be looking at the question of repeated worker safety violations as part of the criteria in evalu-

ating what the best value will be from a particular contractor. There's been some view that doing low-bid contracts or competitive-bid contracts has fostered a situation where these kinds of worker safety problems are more common. By moving more heavily into best-value contracting, I think we're going to reduce the significance of that factor. The second thing that's changing is that we're doing this kind of work more and more commonly in long-term landscape scales, stewardship contracts. And I think with that, what we'll have is longer-duration contracts with multiple tasks, which will probably encourage much more worker stability from the contract work force.

Senator CRAIG. Well, I was about to ask a similar question to what you are suggesting, some are temporaries, moving around as the season changes, not unlike fire crews that we know have to be mobile because of where fire seasons start and end up. I mean, there are some analogous situations that would suggest that maybe summer temporaries might fit that definition.

Mr. REY. Except that this particular kind of work isn't usually done in the height of summer, and most of our summer temporaries are people who have obligations during the balance of the year, either as students or faculty or teachers or that sort of thing. This is mostly a spring task because that's the season we do most of our tree planting.

Senator CRAIG. Well, with tree planting, that is the case, yes. Thank you. I've got some other questions. Let me turn to Senator Bingaman.

Senator BINGAMAN. Thank you very much. Let me give you a perspective on this, and you can react, Secretary Rey, or any or the rest of you. See if I'm right about this. The way I see it, we wrote these laws, the Congress wrote these laws and passed them before we got to the circumstance we're now in. And the circumstance we're now in, there's a commitment by many of us in the Congress, and I think the administration and others, to do a multi year, maybe multi decade, effort at proper forest restoration or thinning work because that's going to be required in order to deal with the fire risk that we see.

I was in Ruidoso last week in my home state of New Mexico. And you go around there, and they've done a lot of thinning around that community, but there's an awful lot more to be done. And you can almost plan a career working at that if you decided that that was what you were going to do. That is a different circumstance than used to exist where it was much more, you know, here's a short-term project, we need somebody to come in here and do something. My perspective is that a lot of this forestry contracting work is very local. I mean, they say all politics is local. Most forestry contracting work is local. There are some communities where there are people that are ready and willing to take that kind of work and pursue it, and there are others where there just isn't anyone.

The thing that confuses me is, as I understand it, many of these forestry contractors go ahead and apply for their H-2B workers. They go ahead and indicate that they need foreign guest workers and put in their application before they even know where they're going to have contracts or if they're going to have contracts. Isn't that sort of crazy? I mean, shouldn't we first at least know where

we're going to have the work done before we determine whether or not we need to go outside the country to bring people in to do the work?

Mr. REY. Well, we're not the only ones doing the contracting, so, you know, they're doing this work on virtually all ownerships. And so, what our plans are as far as Federal land management are concern is only about 30 to 40 percent of their overall market. But with regard to our plans, I think you make a point that's very accurate. At least in the thinning and forest restoration area, we're moving to longer-term, larger-scale contracts, and that will result in, I think, more local hiring occurring because people can sort of build a program—a business plan that extends for several years on the basis of those longer-term contracts. I think that's going to change the nature of the contract work force, both the length of the contract and the fact that the stewardship contracts often have multi tasks, often tasks that are done in different parts of the year, which lend a greater degree of stability to the enterprise than, say, a typical small-scale tree-planting contract that either we or some forest products company may be looking for a contractor to do.

Senator BINGAMAN. And what are the requirements that we put on as—say we are going to let a contract out near Ruidoso or northern New Mexico or somewhere to do some work on the national forest, what do we require that contractor to show us by way of proof that he or she, whoever that contractor is, has genuinely tried to hire local people to do this work?

Ms. LIPNIC. Senator, that largely falls within the Employment and Training Administration's certification for the H-2B contractors, and there is a process by which the contractor applies to the Department of Labor. First, they submit an application through the State Workforce Agency. That application is put together, including the determination about the worker availability. Ultimately, that file is reviewed by the Employment and Training Administration at the Department of Labor. That is not my agency at the department, and I can certainly get more specifics, but we have someone here from ETA who could probably address it in greater detail.

Senator BINGAMAN. Well, I guess my concern—and I see my time's up, Mr. Chairman, but my concern is that if, in fact, these contracts are local—and so you've got one in Ruidoso, New Mexico, on the outskirts of the town there, they want to do some thinning or some planting of trees, or whatever they want to do—or up by Truchas, New Mexico, or whatever, is there any kind of determination made by the Department of Labor or by the Forest Service or by anyone else that the contractor who they're getting ready to hire to do that work has actually tried to hire local people to do that work?

Ms. LIPNIC. Well, part of the requirement under the Employment and Training Administration regulations is that they have to have looked at the availability of U.S. workers. That is something that goes into the determination.

Senator BINGAMAN. But for that contract, or is that just in a very general sense?

Ms. LIPNIC. They have to recruit for the U.S. workers, and then there has to be a local labor market test. So, they actually would have to——

Senator BINGAMAN. Local labor market test, what does that mean?

Ms. LIPNIC. As to the availability of the U.S. workers.

Senator BINGAMAN. So, they have to determine that there is a shortage of people willing in that local community to do that work?

Ms. LIPNIC. Yes, sir.

Mr. REY. And then, when it gets to us, one of the criteria that we use in determining best value is whether the contractor is going to produce some local employment, but it's only one criteria of several that are used in best-value evaluations for best-value contracting.

Senator BINGAMAN. Mr. Chairman, I've used more than my time. Thank you.

Senator CRAIG. Let me come right off from where the Senator is questioning as it relates to the test with the contractor. It's my general understanding, in looking at contractor's lists and where they work and all of that, that some are operated or home-officed in one State, but they're doing work in another State. How diligent is the Department in determining that they actually made the test for labor availability in the labor environment in which they are working instead of contracting from?

Ms. LIPNIC. My understanding, Senator, is that they actually have to look at that local labor market and look at the test there. Now ultimately, that's reviewed by the State Workforce Agency and then reviewed by the Employment Training Administration. So, my understanding is that that is a requirement and that they have to look at that. Again, this is not my agency specifically at the Labor Department, so I can certainly double check on that. The labor market test is conducted locally even though the crews can certainly move around.

Senator CRAIG. Yeah. Well, I have a bit of familiarity with H-2B workers, and there are a variety of categories in Idaho beyond just this. Categories where H-2Bs are employed. It is my sense, in looking at that employment over time, that there grows a general belief that the type of worker they're looking for doesn't exist, and they become dependent upon the H-2B employee. And I'm just curious as to how thorough and rigorous the test is or if it simply becomes a process now to gain access to the H-2B worker. That's not to suggest that they are available and untested at the local level because in most instances, it is my belief they are probably not. At the same time, observing several employers in my State who've become increasingly dependent on H-2B, it is that they are dependent upon them. It appears to me they are not seeking outside that particular category or market for an employee of the type that would fit that job description.

Ms. LIPNIC. Senator, I couldn't speak too specifically as to that. I can tell you that, again, the Employment and Training Administration would ultimately have to evaluate the work in the certification that was suggested by the State Workforce Agency.

Senator CRAIG. Okay. Well, I'll come back to you in a moment. Ms. Collins, I would like to ask you a couple of questions if I may. The Chief and Director of Acquisition Management, Ron Hooper, sent out memos to the field on the issue we're addressing here today. The Chief's November 18, 2005, memo said, amongst other

things, "I expect expertise and immediate action. Contract administrators must be able to recognize health and safety violations. When these situations occur, they must take action, and don't let them work."

Mr. Hooper's January 4, 2005, memo said, "Please ensure that these provisions are included in all service contracts. Finally, please ensure that all service contract files within a written statement to the effect of the contracting officer, the contracting officer's representative or the contract inspector, has reviewed these requirements on these provisions with the contractor and has conducted at least one inspection of existing and new service contracts to ensure compliance with these provisions when applicable." And my question to you is how many contracts have your inspector or contracting officers reviewed, shut down or found to have failed to live up to the new service contract provisions since the reference memos went out?

Ms. COLLINS. Well, we are in just the first part of March, and our contracting is just starting right now, so we don't have any active contracts going on right now.

Senator CRAIG. At this moment?

Ms. COLLINS. At this moment. Now, we will start including these in the new contracts that are coming out this year. We have about 240 contracts that will be part of our program this year. All of them will have those provisions in, and then at that point, we'll—when we have active contracts going on, all of that will start happening.

Senator CRAIG. Okay. You now have a significant amount of experience with best-value contracts or the stewardship contracting. Would we get better performance that better enforces health and safety and other labor laws if we shifted all service contracts to a best-value contract process?

Ms. COLLINS. We have some great experience with best value, and stewardship contracting is a good example of that, that we have been doing for the last couple of years. And most of our service contracts use best value now already. What we are assuring through this process is that the kinds of issues we're dealing with and the cases we're talking about here today will be incorporated in those best-value determinations. So, it's not just what's the least cost contract or the low-bid contract, but its things like do they come in within budget, did they perform well, did they get the work done that we wanted done in a quality way, and were they meeting the provisions of the contract that you just laid out at the beginning of this question.

Senator CRAIG. Okay. Victoria, I noted that like many large Federal departments, many times the right hand doesn't know what the left hand is doing. Has the Department taken any steps to ensure that departments within your agency have access to each other's data and that other agencies from other departments have access to the data to help them recognize the bad actors and to withhold contracts from those identified as continually violating to live up to the health and safety labor laws of our country?

Ms. LIPNIC. Senator, first, as to the relationship between the Labor Department and the Forest Service, which is certainly critical to this issue, I'll give you the example of our Sacramento, Cali-

fornia office, which has had a long-standing relationship with the Forest Service. On a regular basis, the Forest Service will contact our district office in Sacramento and ask for any history of violations that we may have, particularly as to MSPA violations, the Migrant and Seasonal Agricultural Worker Protection Act. We actually have a form that we will fax back to them with the violations, and that would include lists of ineligible farm labor contractors.

Within the Department, we maintain, on the Department's website for MSPA violations, all of the ineligible farm labor contractors and certainly any contractors that have been debarred, which is the ultimate sanction, particularly in the Service Contract Act. Those are maintained on the GSA website as to Service Contract Act debarments. That information is readily available from the Department. Also, we do have an exchange of information with the Forest Service.

Senator CRAIG. When you identify a company that has repeated violations of health, safety and wage requirements, do you contact the land management agencies to let them know what your investigators are finding out?

Ms. LIPNIC. To the best of my knowledge, as a general matter, I believe the answer to that is no. Now, that's why it is critically important that we have the kind of relationships that we have with the contracting agencies, whether it's the Forest Service or any other contracting agency for labor standards violations, that those relationships exist at a district-office level or at a regional-office level so that that kind of information can be shared. We do have that relationship in the Sacramento office with the Forest Service. And in other offices around the country, it's probably not as good as it should be, but the Under Secretary and I have talked about this and have a commitment to have that kind of relationship, driven from the top down, to make sure that the practices in our Sacramento office will be incorporated nationwide.

Senator CRAIG. Thank you.

Senator Bingaman.

Senator BINGAMAN. Let me just try to sort out two issues here—one is to what extent local contractors are hired to do this work. They're contracted with by the Forest Service to do this work. Is it possible, in my State of New Mexico, to get a listing, say, of last year, how many contracts were let and how much of that went to local contractors versus out-of-State contractors to do Forest Service work?

Mr. REY. Sure, we can get you that list.

Senator BINGAMAN. Okay. And the second issue is to—whether it's a local contractor or a contractor from another State, the question is whether that work is actually being done by foreign guest workers or whether that work is being done by residents in that community that have been hired. And again, is that something we could get an indication?

Mr. REY. Yes.

Senator BINGAMAN. Because you would know, I mean, as to each of the contracts that you let, not only who the contractor is, but whether or not they're doing the work with foreign guest workers.

Mr. REY. That's correct.

Senator BINGAMAN. If I could get that for New Mexico, that would be helpful in determining whether there's a serious problem or whether this is just sort of an anecdote that I hear about when I travel around and isn't really based in a whole lot of fact.

Mr. REY. We can get you those.

Senator BINGAMAN. I hear complaints about both. I hear complaints by people saying our local contractors can't get these jobs because people are coming in from Idaho or from wherever and taking these jobs, these contractors are. And then I also hear that local workers can't get hired even though they like the jobs, because there are foreign guest workers that are brought in. So, if you could help with that, that would be great. I'm also curious how these prevailing wages are determined. Maybe that's the Department of Labor's job. How do you determine the prevailing wages?

Ms. LIPNIC. Senator, there is an entire Wage Determination Office within the Wage and Hour Division that determines the prevailing wages through use of surveys, whether it's the Davis-Bacon Act or Service Contract Act, and I think I'll actually defer to Mr. Ginley, who is probably far more expert at this than I am.

Senator BINGAMAN. But when you use prevailing wages in this context, it's the same as you use in the Davis-Bacon context? Is that right?

Mr. GINLEY. Yes, Senator, it is.

Senator BINGAMAN. Okay.

Mr. GINLEY. We established the prevailing wage for the type of work in that vicinity for the classification of workers. Now, under the service contracts, it's basically one classification of workers, unlike Davis-Bacon, which of course have multiple classifications. Also, we'll set prevailing fringe benefit requirements that must be paid on this contract.

Senator BINGAMAN. And what are those? I mean typically, what kind of fringe benefit?

Mr. GINLEY. Typically, it will be something like $2.32 an hour toward health and welfare benefits. So, if a worker works 40 hours, that amount of money times $2.32 is contributed toward health and welfare benefits. Although all of this doesn't typically happen in these temporary contracts. If they work for a sufficient period of time, they typically get paid vacation, a week after a year or something of that nature. But typically, these contracts are very short.

Senator BINGAMAN. And you do monitoring to be sure that those wages are actually paid and that those benefits are actually provided?

Mr. GINLEY. Yes, Senator, we do. When we do an investigation of one of these contractors, we do the investigation under both MSPA, the Migrant and Seasonal Agriculture Worker Protection Act, which has protections for housing, transportation, notification, and under the Service Contracts Act, for the prevailing wage requirements and for the fringe benefit requirements.

Senator BINGAMAN. Okay. Am I right that there are protections that the law puts in place for H-2A workers, agricultural guest workers, that do not apply in the case of H-2B workers?

Mr. GINLEY. You're correct, Senator.

Senator BINGAMAN. And what are those distinctions?

Mr. GINLEY. Well, the H-2A provisions require, for agricultural workers, and we're not talking about agricultural workers here with the reforestation industry, H-2A agricultural workers must be paid a prevailing wage also. It has to be the higher of the two—actually, the prevailing or the adverse effect wage rate. There are certain transportation guarantees. Housing must be provided and certain other conditions of employment that do not come with H-2B status. There are no such requirements for H-2B workers.

Senator BINGAMAN. Well, I can certainly understand that it might make sense to not have the same requirements for H-2B workers in a lot of different fields. I've wondered, though, the kind of work we're talking about here is pretty close to agricultural work.

Mr. GINLEY. Yes, Senator, it obviously is. The definitions used follow the statutory definitions. H-2A work is all work considered agriculture, under either the IRS code definitions or the Fair Labor Standards Act definitions, which both exclude forestry work. Also, the application of MSPA, which is typically applied to agricultural workers, is required because of a national injunction placed on the Department by the 9th Circuit in the 1980's, requiring that we apply MSPA, enforce MSPA, for the predominantly manual reforestation work done in the forests.

Senator BINGAMAN. Okay, so am I understanding that your view is that the requirements for H-2A generally make sense in the case of H-2B forestry workers?

Mr. GINLEY. It's what the law requires, Senator. I'm not sure how to respond to what makes sense. We enforce the law as written. The H-2B provisions of the INA do not have those requirements, although the work, of course, has some similarity to the work done by traditional H-2A agricultural workers.

Senator BINGAMAN. Okay. Thank you very much, Mr. Chairman.

Senator CRAIG. Well, thank you all very much. We'll stay tuned and watch with the new regulations in place from the Forest Service side. As you know, the Judiciary Committee is starting markup on a major immigration bill tomorrow. And we will focus on that intently as it relates to the impact on H-2As, H-2Bs and certainly others and what other adjustments will need to be made specific to the Forest Service and the kind of work that is—none of us dispute the critical nature of it and the importance of it, but we also want to make sure that proper hiring practices are utilized and people are being treated appropriately. Thank you all very much.

Ms. COLLINS. Thank you very much.

Senator CRAIG. All right. We would like to introduce our second panel. Michael Dale, Northwest Workers' Justice Project from Portland, Oregon; Lynn Jungwirth, Watershed Research and Training Center of Hayfork, California; Cassandra Moseley, Institute for Sustainable Environment, University of Oregon, Eugene; and Cindy Wood, Wood's Fire and Emergency Services of Portola, California. I thank all of you for being here. I can see by definition you've all traveled a bit. And Lynn, it's good to see you again. Michael, we'll start with you. Please proceed.

STATEMENT OF D. MICHAEL DALE, EXECUTIVE DIRECTOR, NORTHWEST WORKERS' JUSTICE PROJECT, PORTLAND, OREGON

Mr. DALE. Thank you, Senator, and thank you to the subcommittee for the opportunity to testify. I am going to depart quite a bit from my written testimony and try to respond to some of the questions that were suggested by the earlier testimony today and then also summarize.

Senator CRAIG. Well, your written testimony will be a part of the record, so please proceed as you see fit.

Mr. DALE. I wanted to address a couple of the questions that came up earlier. From the perspective of a long time—first, migrant legal services, and then since, in a private nonprofit, I've been representing reforestation workers for nearly 30 years. On the question of the regulations of H-2B workers and H-2A workers and the relative requirements, actually, when it—at one point, there was only H-2. And in the Immigration Reform and Control Act of 1986, the two programs were split with some of the regulations for H-2A written into the statutes, others to be developed by the Secretary, as part of an immigration reform bill that basically wanted to put the H-2A regulations in statute. The understanding at that point was that similar regulations for H-2B would be developed by the Department of Labor that would reflect the differences between other kinds of employment potentially possible under H-2B and agricultural employment. That's quite appropriate. What the Department of Labor did, in fact, was they simply adopted about one page of regulations that says that they'll follow the statute, and in following the statute, they'll be guided by the H-2A regulations. And that's it. There are no detailed regulations governing H-2A and H-2B—I'm sorry, governing H-2B workers. And it would be appropriate—one of the suggestions I made in my testimony is to develop detailed recommendations with respect to regulations of H-2B workers now that the program has been in existence for nearly 20 years. And they ought to include a number of the kinds of things, at least for forestry workers, that are included for agricultural workers.

Second question, this question about where is recruitment done for H-2B workers. Actually, there is local recruitment, but the local recruitment where you have what's called an itinerary application—this is an application that proposes to move a crew from place to place to place. The recruitment that's required is fairly minimal, far less than is required of H-2A agricultural employers, and it is only in the local area where the itinerary begins. So, if you're talking about—I first got involved in this in the late 1990's because we were seeing H-2B workers brought to Oregon where the only recruitment was done in a small rural town in Mississippi because that's where the itinerary started. We did get an agreement from the Department of Labor that they would only permit itineraries within one DOL region, but nonetheless, it would not be the case that there is recruitment of local people in each place that contracts occur, and I'm fairly certain that's still the standard.

Moving to my recommendations, I would start by prefacing it with this: I was going to read, actually, a section of a multi-part exposé of the forestry industry. That was not the *Sacramento Bee*,

it was actually the *Idaho Statesman Journal* from 1980, but the lead could have been the lead to the *Bee* Series. Simply to say that these have been persistent, nagging problems, we have had occasional spasms of attention being given to them. And things improve for a period of time, and then the attention dies away. And there's something in the institutional culture of these agencies that says I'm a forester, I deal with trees, I don't deal with labor, and there's quite a bit of insularity. So, my suggestions are made at trying to figure out how to institutionalize the obviously good faith and genuine intent of the leadership of the agencies now so that we don't find ourselves back in the same position in another 5 years.

First of all, it seems to me there needs to be more cooperation between the agencies. It has to be ongoing. It has to be institutionalized. And we're suggesting that Congress ask the Department to create an interagency working group that periodically reports back to this committee or other appropriate committees so that you have some continuing focus and some reason for people to continue to pay attention to these questions. Many of the fatalities in forestry work come from vehicle crashes where we haven't had seatbelts. The Department of Labor has authority to require seatbelts under the Migrant and Seasonal Agricultural Protection Act.

I would suggest that they do that or be urged to do that by Congress. Finally, one of the reasons that H-2B workers are exploited is that they don't have access to very good remedies with respect to how to get to court. H-2B workers, even though they're working legally in the United States, even though they are paying taxes, are not permitted to be represented by programs and legal services that receive any Federal funding. There's really not any justification, and that change alone would have as much effect on this industry as anything that could be done. Thank you very much.

[The prepared statement of Mr. Dale follows:]

PREPARED STATEMENT OF D. MICHAEL DALE, EXECUTIVE DIRECTOR, NORTHWEST WORKERS' JUSTICE PROJECT, PORTLAND, OR

Mr. Chair, members of the Subcommittee, thank you for the opportunity to speak with you today concerning the protection of reforestation workers on public lands. I spent twenty-five years as a migrant legal services lawyer, and directed the Oregon migrant program for most of that time. A key aspect of our work concerned the exploitation and abuse of workers on our national forests and BLM lands. Since its inception in 2003, the Northwest Workers' Justice Project has been providing legal assistance to reforestation workers in Oregon, Idaho and elsewhere who have been struggling to enforce their right to decent conditions and fair pay.

Although some progress has been made, I must say that, overall, the treatment of workers who replant, thin and maintain national forests has been shameful. I have represented workers who were not paid the required Service Contract Act rate, did not get paid overtime, were unlawfully charged exorbitant fees for recruitment, transportation, housing, food, and even for the chain saws needed for their work and the gasoline for the saws, or were not paid at all. My clients have slept in the cold of winter in the mountains in equipment trailers, or under a plastic tarp. Some were abandoned in the mountains without food or transportation by their employer. Saddest of all, I have represented the families of workers who died in vehicle accidents on icy mountain roads in unsafe vehicles.

The latest attention focused on this work by articles in the *Sacramento Bee* has only begun to scratch the surface of the misery that some of those who contract with the United States inflict. I welcome the changes being made by the Forest Service in its contracting procedures. But with all due respect for obviously sincere good intentions, it is important to note that we have been here before. Every few years there have been similar exposes—a few years ago, it was a segment on Prime Time Live. These episodes have inevitably been followed by a flurry of activity, with re-

newed statements of intent to do better. However, as the focus of public attention faded, so, sadly did the focus of enforcement activity. To make a truly significant difference in the industry will require sustained, purposeful effort. In this light, I propose the following:

PROPOSED REFORMS TO IMPROVE H-2B FORESTRY WORKER SAFETY AND WORKING CONDITIONS

The Secretary of Labor should issue a regulation requiring seat belts and identification for vehicles transporting forestry workers and other migrant and seasonal agricultural workers

On September 10, 2002,14 H-2B forestry workers were killed when the van in which their employer was transporting them to work toppled off a bridge in Maine. In two separate accidents in Washington state over the past two years, seven Guatemalan workers from the same tiny village were killed as they were driven over icy roads to pick brush on forest service lands. Motor vehicle accidents are the number one cause of fatal injuries among agricultural workers. These accidents have a common theme—they frequently involve exhausted drivers in overloaded, unsafe vans driving over long distances on foggy, icy, or windy mountain roads. In eight of the fourteen accidents reported in the *Sacramento Bee* series, "The Pineros," five or more workers lost their lives in a single accident.

Under the Migrant and Seasonal Agricultural Worker Protection Act, the Secretary of Labor is authorized to issue regulations to improve the safe transportation of migrant and seasonal agricultural workers. 29 U.S.C. § 1841. (The Migrant and Seasonal Agricultural Worker Protection Act protects reforestation workers.) The act authorizes the Secretary to make reasonable regulations, considering the numbers of workers transported, the distance over which they are transported, the type of vehicle involved and the type of roads over which they are transported. In order to protect the health, safety and lives of these workers, the secretary should amend these regulations.

Currently, federal law requires that vehicles meet a number of specific safety measures, including that there be a seat for each passenger. Nonetheless, these regulations do not require seat belts. Many forestry workers are killed in transportation accidents because they are ejected from the vehicle due to the lack of seat belts. In the most recent accident in Washington state, a worker was killed after being ejected from the van and run over by an oncoming truck. A particularly tragic accident involving 13 workers in California led the legislature in that state to pass a law in 1999 requiring seat belts. The Florida legislature is currently considering similar legislation. Under the California program, all vehicles used to transport farm workers are required to be labeled that they are "Farm Labor" vehicles so that the State Highway Patrol can specifically inspect them for compliance with the seat belt and other safety provisions.

The Secretary's regulations also leave a simple escape route for employers seeking to abdicate responsibility for the vans in which their workers are transported, by providing that transportation which is not "specifically directed or requested" by an agricultural employer is exempt. The California state "raitero" (driver) law is more specific in that it covers any vehicle used to transport workers "to render personal services in connection with the production of any farm products to, for, or under the direction of a third person."

We urge the Congress to recommend that the Secretary of Labor utilize her authority to issue a regulation under the Migrant and Seasonal Agricultural Worker Protection Act, requiring that: 1) vehicles used to transport forestry and other migrant and seasonal agricultural workers be equipped with a seat belt for each passenger; and 2) be identified on the outside of the vehicle as a "Agricultural Labor" vehicle.

Creation of a joint task force between DOL and U.S. forest management agencies that reports to Congress

One problem is that the DOL lacks the capacity really to monitor forestry contracts. Crews are in remote areas, hard to find, and hard to reach. BLM and USFS have contract compliance people that are regularly checking on the contracts and often encounter labor violations; however, they don't have much training on wage and hour laws, and more importantly, they do not usually see enforcement of the labor standards aspects of Service Contract Act contracts as being a significant part of their jobs. What makes sense is to instill a sense of obligation for the workers in the forest management agencies, and to institutionalize collaboration with the Wage and Hour Division. To do that on an ongoing basis, Congress could call for creation of a joint task force with periodic reports back to Congress on progress

made. As noted above, similar concerns have been raised in the past; however the higher standards were lost with the decline in public scrutiny. Accordingly, ongoing reporting on a periodic basis is important in order to maintain scrutiny. Further, the effort needs to be sufficiently sustained in order to break down an institutional culture that sees efficiency in getting the trees planted and thinned as being paramount over labor considerations.

DOL should adopt regulations imposing H-2A-like standards in the H-2B program

DOL could take some additional steps to strengthen enforcement. When the H-2B program was created, DOL was supposed to develop regulations modeled after the H-2A regulations. This was never really done, and the result is a lack of standards for H-2B workers. DOL should be encouraged to fulfill this obligation now. For the most part, the H-2A regulations should be the model, with consideration for the special aspects of forestry. However, forestry workers should not be encompassed within the H-2A program, as this would destroy the protections that they have under the Migrant and Seasonal Workers Protection Act.

DOL and the forestry agencies should hold repeat offenders responsible for their actions

Both DOL and the forestry agencies need to be willing to take strong action against repeat offenders of labor standards. At one time, the Forest Service agreed to subject contract bids that were significantly below the agency's estimate to special scrutiny to assure that the lowest bidder is a responsible one. It is unclear if they still do this, but blatant abusers of workers are awarded contracts year after year. They should be debarred by the DOL, and should not be viewed as being capable of performing the contract by the contracting agencies. One of the contractors in the Pineros series who had been sued for holding workers in peonage was still defended by a Forest Service official as being a great contractor because he produced quality results for the Forest Service.

Further, the Forest Service and BLM need to take steps to change the culture of those agencies so that contract officers know that enforcing the service contract's labor protections is just as important as getting the work done. Training, evaluation and promotion should take this factor into equal consideration, and the agencies' expectations in this regard must be clearly and consistently communicated. The steps taken by the Forest Service are a good beginning, but the obligation of agency line staff to follow through must be reinforced over time.

The DOL should ensure that the H-2B program is used as intended—only when there is a shortage of U.S. workers

The H-2B program is abused in forestry in a number of ways that should be addressed by DOL. The program is supposed to be used to provide a way to obtain needed workers for existing jobs where an employer can't find U.S. workers available at a time and place needed for a specific job. Many forestry contractors, though, apply for H-2B workers before they know what contracts they will have. The workers are recruited and brought here on speculation that contracts will be awarded. Then, it may turn out that expected work is not available. This leads to underemployment of the workers, and commonly, to use of the workers in other jobs which pay less than the forestry wage and which are not authorized work. Since forestry jobs are covered by the Migrant and Seasonal Agricultural Protection Act, forestry contractors are required to give recruited workers a disclosure statement describing the particular work and pay arrangements they are offering. H-2B procedures require contractors to attempt to recruit U.S. workers for the work for which foreign workers are sought prior to admission of the visa workers. DOL could require that forestry contractors supply a copy of their recruitment disclosure statement detailing promised work with their H-2B application to help ensure that the contractor actually has a specific need for workers.

Forestry Workers should be given access to legal services provided by the Legal Services Corporation

Ultimately, agency enforcement of labor standards can only go so far. Workers need to have the ability to take steps to protect themselves, and often will need specialized legal assistance to do so. H-2B workers are working in the United States legally as "guest" workers at the invitation of the United States, under guarantees of labor protections designed to protect them, and importantly, to protect the wages and working conditions of U.S. workers. Yet, they are excluded from eligibility for representation by legal services programs that receive any funding from the Legal Services Corporation. Often, they find that there is no other legal representation available to them. There is no rational basis for this exclusion, and its elimination

would do more to improve the conditions of H-2B forestry workers than any other step that Congress could take.

A final recommendation concerns what DOL and the forestry agencies should not do. Some of the contractors on national forests use workers who are not properly authorized to work in the United States. In past efforts to clean up the reforestation industry much of the emphasis has been on turning such workers in to the immigration authorities. This practice has been highly counter productive. Ultimately, given the isolation of the work, enforcement of labor standards in the woods depends upon the cooperation of exploited workers. A policy that leads workers to conclude that the only response to complaints will be that they will be turned over to ICE will not foster the needed cooperation and openness; rather, it will only drive abuse farther underground and leave Pineros even more dependent on those who would exploit them.

Thank you for your consideration of these comments.

Senator CRAIG. Michael, thank you. I would hope that we don't register this hearing as an occasional spasm.

Mr. DALE. No, this is the beginning of the real solution.

Senator CRAIG. All right, thank you. That makes my day feel a bit better.

Cassandra, please proceed.

STATEMENT OF CASSANDRA MOSELEY, Ph.D., ECOSYSTEM WORKFORCE PROGRAM, INSTITUTE FOR SUSTAINABLE ENVIRONMENT, UNIVERSITY OF OREGON

Ms. MOSELEY. Thank you, Mr. Chairman, and thank you for the opportunity to let me come today and share some of my thoughts on the working conditions of forest workers.

I want to begin by commending Tom Knudson and the *Sacramento Bee* for what I think is outstanding reporting on the plight of forest workers, and I also want to applaud the Forest Service for its rapid response to the issues raised in the "Pineros" series. I would argue, however, that although the Forest Service is on the right track, the agency seems to be interpreting the problem too narrowly and therefore is at risk of failing to address some of the systemic problems that face forest workers and contractors.

Over the past several years, I've been studying the working conditions of forest workers. And today, I want to share some of those results and offer some ideas about how things might be improved. The *Sacramento Bee* series focuses primarily on H-2B workers, and that's been a lot of the discussion today, but forest workers can also be U.S. citizens, non-citizens with green cards, and they also are frequently people without permission to work in the United States. And all of these workers can suffer from labor law violations and poor job quality, and I want to suggest some of the problems that we found in our recent studies.

According to data from the Oregon Employment Department, half of forestry services workers in Oregon earn less than $4,400 a year, and more than 85 percent earned less than the Federal poverty level for a family of four in 2003. The wages that workers actually receive may well be less, particularly for undocumented workers. Undocumented workers are sometimes recruited by people who take part of their wages, something between $1 and $4 an hour in exchange for continued employment. Another practice is to pay workers for 8-hour workdays even if they work more. And although some workers are employed nearly all of the year, most work part time erratically and seasonally. And if you squish all

their work into a period of time, they work about—the average forest worker in Oregon works the equivalent of about 3 full-time months. It's tempting, then, to think that these might be the summer jobs of college students, but that's not the case. Most are Hispanic workers, and half of the forestry services workers in Oregon also work in jobs outside of forestry.

Our studies also suggest that many workers felt that they could not report on-the-job injuries for fear of being fired, and we also heard frequent reports of crew bosses who required forest workers to work all day without breaks for lunch or water. There are undoubtedly a number of causes of these working conditions in the various policies and practices of Federal procurement and labor law, but I want to highlight three major institutional causes of these working conditions that I think will have to be tackled if real progress is going to be made. Those are accomplishment targets and budget allocation processes in the Forest Service, de facto use of low-bid contracting, and the lack of labor law enforcement. Some of these themes have already come up today.

The Forest Service's budget and staff advancement has long been tied to accomplishment targets. Meeting targets in one's area increases budgeting and staffing. It leads to promotions. Units that don't meet targets or fail to do so or do so at too high of a cost suffered from budget cuts. This focus on maximizing natural resource accomplishments creates few institutional incentives for attending to job quality of contracted work forests or ensuring that contractors follow labor laws.

The pressure of meeting targets is compounded by a history of low-bid contracting. Until the 1990's, the Forest Service and the Bureau of Land Management, as most Federal agencies, were required to award contracts to the lowest bidder. In the 1990's, the Federal procurement laws changed, and the agencies, the Forest Service and the BLM, began to be able to negotiate a contract. This is what we've been referring to as best-value contracting. But our interview with contractors and workers found that many—and the Forest Service does use best-value contracts most of the time, but interviews with contractors and workers felt that—most felt that the most important criteria was still price. They felt that price was the most important factor and that in this environment, they had to compete against contractors who were willing to cut corners on quality and break the law in order to offer the lowest bid.

The Forest Service has typically viewed enforcement as the responsibility of the Department of Labor, but this enforcement with the Department of Labor as the primary—maybe the only—actor is very difficult because of the remoteness of work sites. Of the roughly 85 forest workers we interviewed in Oregon, virtually no one had ever seen someone from the Department of Labor or the Oregon Bureau of Labor Industries when they were working in the woods, and contractors complain that they face unfair competition from businesses that are breaking the law.

So, my written testimony presents several recommendations, but I'm just going to focus on one here, and that is that the system of enforcement and accountability needs to be overhauled. And I think today we've heard some of the beginning steps of that from the Forest Service's perspective, but we need a system where the

Forest Service and the Bureau of Land Management participate actively in enforcing labor law. Yes, they cannot issue citations, but they can play other vital roles because they are the ones who are regularly in contact with contractors and workers in the field. We need a system where Forest Service staff report and correct problems with working conditions as quickly as they address the land management components of contract compliance. The agency needs staff who understand that it's their job to collect and report information about how the workers are being treated. The agency needs to provide staff with direction and training to ensure that they can identify labor law violations and know that they are responsible for reporting suspected problems to the Department of Labor. The agency needs bilingual inspectors and contracting officer representatives who can talk directly to workers. And to echo your recommendation, they need to have a mandated relationship with the Department of Labor.

So, let me stop by saying 13 years ago, the*Sacramento Bee* ran a series about the working conditions of forest workers. Then, the emphasis was on undocumented workers. Today, it's on H-2B workers, but the working conditions were no different. My hope is that in 13 years, the *Bee* won't have to run another series about forest workers because by then, high-quality jobs in our Nation's forests will become commonplace. Thank you.

[The prepared statement of Ms. Moseley follows:]

PREPARED STATEMENT OF CASSANDRA MOSELEY, PH.D., ECOSYSTEM WORKFORCE PROGRAM, INSTITUTE FOR A SUSTAINABLE ENVIRONMENT, UNIVERSITY OF OREGON

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you today. I am pleased to be able to contribute to this timely issue. Tom Knudson's "Pineros" series in the *Sacramento Bee* has brought to light troubling and all-too-common problems with the way the work of federal forest management is accomplished.[1] Today's hearing is particularly important because the working conditions in our nation's forests affect not only the lives of workers and their families, but also the viability of small rural businesses and the integrity of forest ecosystems. It presents an important opportunity to discuss our current understanding and explore solutions to the challenges of creating quality jobs for forest workers and economic opportunities for public land communities.

I am on the faculty of the University of Oregon, where I direct the Ecosystem Workforce Program in the Institute for a Sustainable Environment. Founded in 1994, the Ecosystem Workforce Program seeks to help build a high-skill, high-wage forest and watershed restoration industry in the Pacific Northwest. The Ecosystem Workforce Program does this by providing technical assistance to rural communities and their agency partners, and by undertaking applied research and policy education related to community-based forestry and federal forest management.

Over the past five years, I have undertaken a series of studies on how Forest Service and Bureau of Land Management (BLM) restoration contracting creates rural community benefit, and on the working conditions of federal contract forest workers. As part of these studies, my collaborators and I have interviewed forest workers and contractors and analyzed federal contracting and state employment data. We have examined these issues in general terms as well as under specific programs including the National Fire Plan, the Northwest Forest Plan, and stewardship contracting.

Much of my work has been focused on the Pacific Northwest, but the work of other scholars such as Josh McDaniel and Vanessa Casanova make clear the challenges are not limited to a single part of the country.[2]

---

[1] Tom Knudson, "The Pineros: Men of the Pines," *Sacramento Bee* , November 13, 2005. *http://www.sacbee.com/content/news/projects/pineros/*.

[2] Josh McDaniel and Vanessa Casanova, "Forest Management and the H2b Guest Worker Program in the Southeastern United States: An Assessment of Contractors and Their Crews," Jour-

A FOREST RESTORATION WORKFORCE

Our nation's forests and watersheds have significant restoration and maintenance needs, including decaying forest roads, degraded stream and forest habitat, and overstocked stands in need of thinning to reduce wildfire risk and restore fire-adapted ecosystems. These needs present an opportunity to create high-skill, high quality jobs to benefit rural communities, small businesses, and forest workers. For over a decade, community forestry advocates and their federal agency partners have sought to combine the ecological need for high quality restoration with the economic need for high quality jobs to contribute to the well-being of public land communities. The hope has been that communities could replace lost logging and milling jobs with jobs restoring national forests and other public lands.

The notion of creating community benefit through federal forest management dates back to the founding of the Forest Service. It can be found in Gifford Pinchot's writings as well as in 20th century legislation including the New Deal, the Sustained Yield Management Act of 1944, and the National Forest Management Act of 1976. Several times since 2000, Congress has encouraged the Forest Service to create community benefit through forest restoration as part of the National Fire Plan, Secure Rural Schools and Communities Self Determination Act, and through stewardship contracting authorities. In addition, Congress has enacted numerous labor laws, including the Service Contact Act, Contract Work Hours and Safety Standards Act, and the Migrant and Seasonal Agricultural Workers Protection Act, which were designed to create quality jobs for federal contract workers.

CONTRACT FOREST WORK AND WORKERS

Forest restoration work involves a wide variety of tasks, from maintaining forest roads, restoring streams to create fish habitat, and collecting native grass seed, to planting trees after logging or wildfires, and thinning overstocked stands to improve habitat and reduce fire hazard. The primary way that restoration work is performed on national forest and other federal forest lands is through service contracts and, increasingly, stewardship contracts. The federal government awards restoration contracts to businesses that, in turn, hire workers to undertake restoration and maintenance activities.

Labor-intensive forest workers those who plant trees, thin overstocked stands, pile brush, and fight fires—come from a variety of ethnic backgrounds. Typically, they are Hispanic and white and, to a lesser extent, Native American and African American. Although the *Sacramento Bee* "Pineros" series focused primarily on H2-B workers, forest workers can be U.S. citizens, non-citizens with resident alien papers, H2-B guest workers, and those without permission to work. In the Southeastern U.S., contractors seem to make more use of H2-B workers, whereas contractors in the Pacific Northwest appear to rely more heavily on undocumented workers.

CHALLENGES OF CREATING RURAL COMMUNITY BENEFIT

Despite the direction to create rural community benefit and to protect workers from exploitation, the Forest Service and other federal land management agencies have had difficulty systematically creating rural community benefit with their procurement contracting program. The main way that the agencies create community benefit in public lands communities is when they award contracts to local firms (as opposed to distant firms hiring local workers).[3] In the Pacific Northwest, the Forest Service and BLM frequently award equipment intensive contracts such as forest road maintenance and stream restoration to local businesses. But contracts that involve labor-intensive activities such as thinning, tree planting, and brush piling tend to be awarded to urban-based businesses that have access to large pools of low-cost labor and are able to travel long distances inexpensively.[4] The authority to consider local benefit as part of best value (such as with the National Fire Plan) can

nal of Forestry 103, no. 3 (2005); Josh McDaniel and Vanessa Casanova, "Pines in Lines: Tree Planting, H2b Guest Workers, and Rural Poverty in Alabama," Southern Rural Sociology 19, no. 1 (2003).

[3] Steverson Moffett et al., "Assessing Community Benefits from Land Management Activities on National Forests," (Washington, D.C.: Pinchot Institute for Conservation, forthcoming).

[4] Cassandra Moseley and Stacey Shankle, "Who Gets the Work? National Forest Contracting in the Pacific Northwest," *Journal of Forestry* 99, no. 9 (2001). Cassandra Moseley, "Procurement Contracting in the Affected Counties of the Northwest Forest Plan: Twelve Years of Change," (Portland, OR: USDA Forest Pacific Northwest Research Station, 2005).

have some positive impact, but it is unclear how frequently it is used.[5] In addition, partnerships between local non-profit organizations and the BLM and Forest Service can be used to create local benefit from restoration work using grants and agreements authorities.[6]

POOR WORKING CONDITIONS FOR FOREST WORKERS

As recent news articles and academic research make clear, many forest workers, especially those that perform labor-intensive activities such as firefighting, tree planting, and thinning, face dangerous working conditions, irregular employment, low wages, exploitation, and inadequate training. Guest workers and undocumented workers are most vulnerable to exploitation, but studies also suggest that citizens and resident aliens can also suffer from labor law violations and poor job quality.

For example, in 2003, the median wage among forestry services workers in Oregon was $11.97 per hour, but half of workers earned less than $4,355 all year.[7] More than 85% of workers earned less than the federal poverty level for a family of four (see figure 1).[8] Wages that workers actually receive may well be less, particularly for undocumented workers, because workers are sometimes hired through "subcontractors" who recruit workers on behalf of contractors. These "subcontractors" may take part of workers wages ($1.00-$4.00 per hour) in exchange for continued employment. Our studies suggest that these workers are also paid for 8 hours of work per day even if they work more. Travel time is rarely paid except when firefighting.

Labor-intensive forest work is also quite seasonal and erratic (figure 2).* The average worker was employed the equivalent of three months a year, compared to six months for loggers. But, this is not simply the work of college students with summer jobs. Most are Hispanic immigrants and half of forestry service workers in Oregon also work outside of forestry. They are commonly employed by temporary agencies, restaurants, and in agriculture, and typically earn even less than they do when working in the woods.

Although official accident rates are lower for forest workers than for loggers, our studies also revealed that many workers felt that they could not report on-the-job injuries for fear of being fired. In addition, we heard frequent reports of crew bosses who push their employees to work very quickly and require that they work without stopping for breaks or lunch. Performing physically demanding, dangerous work under these circumstances only increases the likelihood of accidents. Crew van accidents are all too common and have resulted in fatalities because drivers were tired, under the influence of drugs or alcohol, or driving unsafe vehicles.

Although many excellent contractors work for the federal government, others forge fire fighter qualification documents (red cards) and fail to pay workers legally-mandated wages or overtime, supply safe vehicles, and provide medical care for on-the-job injuries.[9] These working conditions harm workers, contractors, rural communities, and national forest ecosystems.

INSTITUTIONAL CHALLENGES

Although there are numerous labor laws in place to protect forest workers, they are not as effective as they could be because of the ways in which the Forest Service and the BLM structure and award contracts and oversee project implementation. Land management agencies face budget constraints, output-based accomplishment targets, and a culture of efficiency that encourages staff to minimize administrative costs and contract prices, sometimes to the detriment of other objectives, including job quality and community benefit.

---

[5] Cassandra Moseley and Nancy Toth, "Fire Hazard Reduction and Economic Opportunity: How Are the Benefits of the National Fire Plan Distributed?," *Society and Natural Resources* 17, no. 8 (2004).

[6] Mark Baker, "Socioeconomic Characteristics of the Natural Resources Restoration System in Humboldt County: A Partial View," (Taylersville, CA: Forest Community Research, 2004).

[7] By contrast, the median wage for loggers was $17,810 in 2003.

[8] In 2003, the federal poverty rate for a family of four that included two children was $18,660. Ecosystem Workforce Program, Working Paper #10, *Job Quality in Logging and Forestry Services in Oregon,* forthcoming.

* Figures 1 and 2 have been retained in subcommittee files.

[9] In addition to the "Pineros" series see, Alex Pulaski, "Fire Crew Crackdown Proposed," Oregonian, January 29, 2003; Alex Pulaski, "State Tightens Fire Crew Enforcement," Oregonian, September 22 2002.

Accomplishment Targets and Budget Allocations

The Forest Service's budget and staff performance evaluations and advancement have long been tied to accomplishments targets. Meeting targets in one's area of contracting means increased budget and staffing as well as promotion. Programs and management units that fail to meet their targets or do so at too high a cost have their budgets cut. The focus on maximizing natural resource accomplishments—e.g. volume, acres, miles—creates few institutional incentives for attending to the job quality of its contracted workforce or ensuring that its contractors strictly follow labor and immigration laws. When targets measure only the quantity of outputs, without consideration of the quality of those activities, community benefit, or treatment of workers, the incentives to accept the lowest-price bid are strong. With declining budgets for federal forests and national direction to do more with less, incentives to ignore impacts on communities, contractors, and workers become even stronger.

Low-Bid Contracting

The pressure of meeting targets is compounded by a history of a low-bid contracting system in the federal land management agencies. Until the mid-1990s, the Forest Service and BLM, as with most federal agencies, were required to award contracts to the lowest bidder almost regardless of the quality of they work that they performed. In the mid-1990s, federal procurement laws changed and the Forest Service and BLM became able to use negotiated contracts, which allows the agencies to consider best value to the government when awarding contracts. Now, they could consider factors such as past performance, technical capability, key personnel, and, under some circumstances, benefit to the local community. Best-value contracting has created an opportunity to ensure that restoration work would be high quality, workers would be treated well, and rural communities would benefit.

Although best-value contracting has created an opportunity for federal agencies to consider factors other than price when awarding contracts, our interviews found that many contractors still felt that they were primarily operating in a low-bid contracting environment. That is, price was still the most important criterion in awarding contracts.

Lack of Labor Law Enforcement

Numerous laws including the Service Contract Act, Davis-Bacon Act, Migrant and Seasonal Agricultural Workers Protection Act, and the Contract Work Hours and Safety Standards Act are in place to protect forest workers from exploitation; however little enforcement of these laws occurs. The Forest Service typically views enforcement as the responsibility of the Department of Labor or state labor agencies. But enforcement led by the U.S. Department of Labor or state labor departments can be difficult because of remote worksites. In our interviews with roughly 85 forest workers in Oregon, no one had seen staff from the U.S. Department of Labor or the Oregon Bureau of Labor and Industries while working in the woods.

Consequences

These pressures have created a system that rewards contractors who cut corners to offer the lowest prices. When contracts involve significant physical labor, contractors' options for cutting costs lie primarily in increasing the speed at which people work and reducing wages. Strategies for cutting costs include not paying over time, paying below the required minimum wage, and paying some people under the table to reduce worker compensation and tax costs. At first blush, low-price contracting appears to save the government money. In reality, however, it costs the American taxpayer when poor quality work has to be redone, when taxes are underpaid, and when poorly paid workers have to apply for food stamps and other public assistance or seek medical care in emergency rooms without insurance.

FOREST SERVICE RESPONSE TO "PINEROS" SERIES

The Forest Service offered a rapid response to the "Pineros" series by directing its contracting officers to insert new clauses in their labor-intensive service contracts to clarify contractors' obligations. This is helpful because it can make contractors more aware of relevant laws and shows that the Forest Service does want contractors to follow the law. However, it presumes that the major problem facing contract workers is ignorance of the law on the part of contractors. Although contractors may be ignorant of some issues, it is not the central cause of the problems facing forest workers.

The Forest Service's response does little to address larger systemic problems. In the words of one contractor, "the agencies, by their action and inaction have played a major role in the creation of an 'underclass industry' among service contract work-

ers."[10] These new contract clauses do little to address the lack of contractor and agency accountability because they do little to improve the lack of viable enforcement mechanisms. Nor, do they address the larger institutional issues such as accountability targets, direction to do more with less, and culture of efficiency that encourages the agency to practice low-bid contracting.

RECOMMENDATIONS

The following recommendations for improving the working conditions of forest workers were developed in collaboration with community-based forestry and forest worker organizations, based on their experiences working in the woods, and my research of federal restoration contracting and the working conditions of federal contract forest workers.

Systemic Change

1. The Forest Service and BLM should participate actively in enforcing labor laws by involving inspectors, contracting officer representatives, and contracting officers in labor law compliance. Forest Service contracting officer's representatives and inspectors already visit these sites, and are responsible for overseeing other components of project implementation. The agencies should provide staff with direction and training to ensure that they understand their roles and responsibilities. Inspectors and contracting officer representatives should be directed to report suspected problems to the Department of Labor for enforcement action. They should also report problems to agency contracting staff to ensure that these problems are taken into account when awarding future contracts.

2. The Forest Service and BLM should make full use of best-value contracting authorities to reward contractors who perform high quality work, treat their workers well, train their workers, and provide rural community benefit.

3. To reduce the pressure to accept below-cost bids and increase incentives for the agency to investigate potential labor law violations, the Forest Service and BLM should establish outcome-oriented accomplishments targets and performance measures that incorporate ecological and socioeconomic goals, including tracking progress towards creating durable, high-quality jobs.

Short term steps—Congress

1. Congress should strengthen the payroll reporting requirements under the Service Contract Act to be similar the reporting requirements of the Davis-Bacon Act. The Davis-Bacon Act requires that contractors regularly file certified payroll with state labor departments. This effective and efficient process has provided clear, consistent information to settle wage complaints or undertake enforcement actions.

2. Congress should direct the Forest Service and the BLM to end the practice of awarding contracts at prices that are lower than 20% below the government estimate.

Short term steps—Forest Service and BLM

1. The Forest Service's National Partnership Office should convene a series of meetings between workers, contractors, rural community organizations, contracting officers, National Forest System managers, and other relevant federal staff to develop and implement concrete improvements in the Forest Service's procurement system.

2. The Forest Service should commission a study on how the agency uses best-value contracting. Although the Forest Service typically uses negotiated contracts that allow for consideration of best value, many of the contractors we interviewed felt that they were still operating in a low-bid contracting system. Further knowledge of how best value is actually being used could help the agency provide better direction and training.

3. The Forest Service and BLM should create ombudsmen who can hear the concerns of workers, contractors, citizens, and agency staff about labor law and other contracting issues and act as an advocate to facilitate action when problems arise. Currently, it is difficult for many types of people to report suspected labor law violations.

Thank you for the opportunity to comment on the difficult challenges facing the federal land management agencies, forest workers, and rural communities in creating quality jobs restoring our nations' forests.

---

[10] Statement of Celia Headley, Subcommittee on Forests and Public Land Management, Committee on Energy and Natural Resources, *To Conduct Oversight on the Administration's National Fire Plan,* 107th Congress, 1st Session, March 29, 2001.

Senator CRAIG. Cassandra, thank you very much. Lynn, please proceed. But in opening your statement, how deep is the snow in Hayfork?

Ms. JUNGWIRTH. Actually, we have a lot of rain, but the snow is gone.

Senator CRAIG. The snow is gone, okay.

STATEMENT OF LYNN JUNGWIRTH, EXECUTIVE DIRECTOR, THE WATERSHED RESEARCH AND TRAINING CENTER, HAYFORK, CA

Ms. JUNGWIRTH. The snow is gone, so we're good. Thank you for letting me come today and speak to these issues that are important to the forest communities and the forest workers. I think that my written testimony has a lot in it, and it's going to be in the record, so I would really like to build upon the testimony and the discussion that I've heard here today.

Senator CRAIG. Sure.

Ms. JUNGWIRTH. We can talk about enforcement, and the Forest Service is sincere in wanting to enforce these labor laws. And I'm sure the Department of Labor is sincere, but this problem's been going on for 30 years, so I'm ready for a new model. So, I don't want this to be one more spasm, I want this to be the start of a new solution. And I think we're at a perfect juncture in history to look at a new model for contracting the work of stewarding the public's lands. The old model was sort of built on that industrial forestry model, and you had specialized mobile crews that moved up and down the landscape. And they did a lot of regeneration harvest, and they needed a lot of reforestation. Well, that's squeezed down now. A lot of that work is gone. And all of a sudden, you need a work force that is multi-skilled. You need a work force that can do reforestation and thinnings and can go out and do data surveys and can work with wildlife and can work as a partner to the Forest Service because the Forest Service on-the-ground troops are diminishing, and they are going to need those semiprofessional skills replaced and some of their professional skills.

We have an opportunity now to engage in a discussion about if we can create quality jobs that have a career path, that have longevity, that can keep families healthy, and those communities healthy, and the Forest Service healthy. I think we can. I think some of those models were established during the early years of the Northwest Plan. On the Willamette National Forest, they packaged their service contract differently. They put multi-skills into a contract instead of single-skill, short-duration over a big landscape. They know how to do that. When they put the training programs and the training curricula together, those were project-based. They put those together so that people could work and be trained with these new skills 6 months at a time, a 6-month job for somebody who does this kind of work. Six months of not having to be laid off is a tremendous—it's just a tremendous benefit, and it's a gift. So, they knew how to do that. They figured out how to do that for those training programs.

I think Senator Bingaman's right. I think we can do this. I think we can make the change. You need different skills. You need different kinds of partners with your Forest Service. Their budgets

are going down. And my recommendation is you work with the enforcement for the short-term. Don't let them take bids—don't let them accept bids that are more than 20 percent below their estimate. They know that the worker is paying for that work if it's going that low. But then package these bids differently, package this work differently. Create a professional work force, and we'll have good stewards for the public land forever. Thank you.

[The prepared statement of Ms. Jungwirth follows:]

PREPARED STATEMENT OF LYNN JUNGWIRTH, EXECUTIVE DIRECTOR, THE WATERSHED RESEARCH AND TRAINING CENTER, HAYFORK, CA

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to provide information to your hearing on these public land workforce issues. I believe these issues are of the utmost importance to the future of public land management, the future of public land communities, and the future of the United States Forest Service and Bureau of Land Management.

I've been asked to comment on two parts of the workforce issues before you today:

- Will the Forest Service response to the Pineros issues, as presented in the letter from the Chief, be sufficient to address the problem of exploitation of the workforce?
- Will enforcement of the Service Contract Act wage provisions and the worker safety laws help local workers and contractors access service contract work on the public lands?

In addition to these two questions, I will also address how the business relationship between the land management agencies and local communities could be improved to protect workers from exploitation and increase local job opportunities.

My organization, the Watershed Research and Training Center, sits in the small town of Hayfork, California in the middle of the Trinity National Forest. In 1994 our Center began building local capacity to help make the shift from a timber driven economy to an economy accommodating "ecosystem management" and the Northwest Plan for the Recovery of the Northern Spotted Owl. In partnership with the Trinity National Forest and Shasta Community College, we developed and implemented a forest-worker training program to ensure that local workers could compete for jobs related to ecosystem management. Each graduate of the program earned certification as an Ecosystem Management Technician. Our training program also focused on providing technical assistance to workers and contractors interested in starting businesses focused on providing restoration-service work on public lands. This required providing training in business planning, financial management, and learning to navigate the federal bureaucracy related to competing for service contract work.

The local businesses and workers we have trained and partnered with over the last decade have performed more than $8 million dollars worth of work doing forest restoration, fuels reduction, and small diameter thinning projects on the Trinity National Forest. Of that $8 million dollars approximately $2.4 million was raised from private philanthropic sources by my organization. Our efforts over the last decade to build community and business capacity made it possible for local enterprises to offer a workforce that is skilled and capable of providing the needed work to restore healthy forests and maintain biodiversity, clean water, clean air and fire risk reduction.

The Watershed Center is a non-profit organization and does not contract with the federal agencies. We perform work through grants and agreements that usually have cost-share requirements ranging from 20 to 100 percent. Non-profits are not allowed to compete for Forest Service or Bureau of Land Management service contracts. We are, however, a worker-based organization, started by forest and sawmill workers who lost their livelihood when national policy shifted from commodity production to ecosystem management.

SUFFICIENCY OF THE FOREST SERVICE RESPONSE TO THE PROBLEM

I applaud the agency's quick response to the public outcry regarding the treatment of workers. As someone who collaborates and works closely with the Forest Service, I know there is a sincere desire to protect workers. However, the remedy proposed by the agency is not adequate. To simply attach copies of existing laws to contract documents and a promise that contracts will be broken if contractors are found to be breaking the law will not change the system that created this problem

in the first place. The response is lacking in two ways: first, it fails to create a reliable system of accountability; and second, it does not address the main contributing factors to worker exploitation, which are low-bid contracting and contract packaging.

In 2001, Celia Headley testified before this Subcommittee on a related topic. In her testimony she provided an example that so clearly illustrates the problem with the contracting system, that it bears repeating:

> "The Forest Service puts out a contract for thinning and 18 companies put in bids. Fourteen of the bids are at least 40% under the government estimate for the work. The Forest Service awards the contract to the lowest bidder. At this point, one of several things usually happens. In order to accomplish the work at such a low price, the contractor can:
>
> 1. Demand unreasonable production and unpaid overtime from the workers;
> 2. Pay less than the stated contract minimum wage; or
> 3. Declare only a percentage of the workers on the books, thereby avoiding worker's compensation, unemployment, and state and federal tax payments."

Now, five years after that testimony, we are still in a situation where no one really knows what happens because the only entities in a position to monitor these issues are the agencies issuing the contracts, and they have no visible system in place to monitor wages or worker's compensation compliance. I have been told several times that "it is the agency's job to get the biggest bang for the buck for the American taxpayer," and "it is not our problem if the contractor chooses to underbid; we have to cut costs per acre," and "we can't protect these contractors from themselves."

Congress must address the connections between output-based targets, demands for financial efficiency, and the creation of a contracting system that overlooks worker safety and wage issues.

Creating systems for prevention and accountability

The Forest Service should consider responses to the problem that are proactive and create clear systems of accountability. To prevent worker exploitation before it occurs, the agency might put into place the following safeguards:

- Disqualify bids that come in appreciably lower than the government estimate;
- Notify contractors that a system of random inspections of wage and safety conditions will be put in place and make the system visible;
- Package contracts in ways that diminish the need for a mobile workforce; and,
- Provide internal incentives and rewards for structuring contracts that will help establish forest work as a high-skill profession and a workforce with a career path.

To create an effective accountability system, the Forest Service should consider the following steps:

- Set a goal of monitoring some percentage of the contracts awarded, such as no less than 10 percent;
- Develop a system for Service Contract Act (SCA) wages that is similar to Davis-Bacon requirements with certified payroll; and,
- Increase the number of Contracting Officer Representatives in the field and require them to match daily diary entries to actual wages paid.

CHANGING THE BUSINESS RELATIONSHIP BETWEEN THE FOREST SERVICE AND LOCAL COMMUNITIES

As to whether or not enforcement of wage and safety considerations will help the local workforce access work I have this response: yes, and no. Let me explain through an example.

When we started our worker training program for forest and sawmill workers who lost their jobs, we looked at the kind of work the agency would need to do on the forest as its direction shifted to ecosystem management, and then we trained these workers to do it. They learned to do field work, fuels reduction, forest thinnings, habitat restoration, road surveys, fish surveys, habitat surveys, GPS, GIS, riparian protection, road upgrading and decommissioning, culvert replacement, etc. These skills should have positioned these workers to be competitive for forest management projects aimed at restoring and maintaining biodiversity, clean water, clean air and natural processes across the landscape. We also offered assistance in starting small contracting businesses.

The first business we helped decided to compete for a reforestation contract. He had run crews before and had local people who wanted to work for him. We helped him get his workers compensation insurance and provided him technical assistance in preparing his offer to the federal government. He bid $311/per acre. The job went to an out of area contractor who bid $197/acre. The government estimate was $300. The contracting officer said he had to take the lowest bid. The next time this local contractor tried to bid on a local reforestation job he was told that the work was going to be given to an IDIQ (Indefinite Delivery, Indefinite Quantity) contract. This occurred even though the work was being offered under the requirements of a best-value contract where price is supposed to be only one of several evaluative criteria.

Based on this experience, the business decided that trying to compete for reforestation contracts was not economically viable and decided to focus on competing for contracts related to fuels reduction and thinning. The good news was that the National Fire Plan required that best-value contracts consider benefits to local communities and the business was successful in capturing an initial fuels reduction contract. The bad news was that pressure on the agency to treat as many acres as possible at the lowest cost led to the agency packaging a similar contract into a large IDIQ format. This contract format gave a structural bias to a large, out-of-town company that was somehow able to bid $300 less per acre then the local contractor. It just so happened that these two projects were right next to each other. The local contractor kept a daily diary of both his crew and their crew. If the IDIQ contractor was paying the SCA wage and the required workers compensation and unemployment rate, he must have gone broke on that job. When we inquired about this with the Forest Service, they explained that maybe the IDIQ contractor lost a little on that job but made it up with another one and, anyway, it was not their job to police the contractors.

So it was suggested we train our people for more technical work. We did. Our crews became very proficient at surveying for the snails, lichens, and plants required in the survey and manage requirements of the Northwest Plan. They worked alongside Forest Service biologists on actual projects. They received the highest accolades for the professional quality of their work. When they formed a business to bid on agency contracts for survey and manage work, they were told that the work had been packaged into an IDIQ contract and gone to a company based in Canada with an office in the State of Washington who would be working up and down the West Coast. We called the Canadian-owned company's office in Washington State and told them we had a trained crew that knew the local forest and wanted to subcontract with them. They said no.

There would be a local workforce to do this work and the need for H2B workers would diminish if the agency could change its business relationships with public land communities.

I asked a contractor about the H2B program and how effective it was at solving the labor shortage. The reply was, "we don't have a labor shortage, we have too many workers and too many contractors, and that's why people work for nothing."

If the playing field gets leveled in terms of wages and compliance but the Forest Service continues to package contracts that spread the work out in a three or four state region, you are going to prevent a local workforce and forest industry from developing. The practice of creating multi-state contracts for large quantities of work will undermine the development of a place-based workforce that can perform the needed restoration and long-term maintenance necessary, especially in the frequent fire forests of the West. Losing a place-based, local workforce has further ramifications on the availability of skilled workers in fire emergencies and actually drives up the cost of wildfire suppression.

We know low-bid contracting and IDIQ contracting were built for efficiency, and we endorse efficiency. We also have seen that concentrating on efficiency in individual programs can create an overall inefficiency in the system.

RECOMMENDATIONS AND CONCLUSIONS

I would like to provide several recommendations for the Forest Service as they explore alternatives responses to these issues. These recommendations are based both on my own experience and on discussions with community-based forestry partners and the Rural Voices for Conservation Coalition.

The Forest Service should establish both short-term and long-term processes for protecting forest workers and creating a system of offering work on public lands that is effective and efficient at meeting ecological, social, and economic goals. Evaluating economic efficiency without consideration of the effectiveness of meeting ecological and social goals may well drive up overall costs and reduce the agency's ability to properly care for the resources.

1. We would like the agency to convene, through the National Partnership Office, a series of meetings with workers, contractors, rural community organizations, contracting officers, and other relevant federal staff to develop concrete ways to implement changes in the procurement system to help avoid creating an underclass of forest workers and create a legitimate industry.
2. When a bid comes in 20% lower than the government estimate, it should be disqualified.
3. Move to a system of "best-value" contracting that includes rewarding contractors who do high quality work, treat their workers properly, and provide worker training.
4. Contracting officer's representatives and inspectors, who visit these sites already, should be required to record worker-days and other information.
5. Explore using a system like the Davis-Bacon certified payroll to increase compliance.
6. Procurement contracts should be packaged for long duration employment—multiple months or seasons-and multi-skill sets. Contracts should provide business and employment for fewer workers over longer periods of time.
7. Build on existing models from the Pacific Northwest for worker training and contract packaging.

In closing, I would like to reflect for a moment on quality jobs. Quality jobs for forest workers are critical to sustaining both healthy forests and healthy communities. One of the goals of my organization is to create quality jobs for forest workers who work on public lands. We believe a quality job in the forest has six characteristics. It should:

1. Pay family-supporting wages and health benefits.
2. Last multiple seasons and years.
3. Have opportunities for advancement.
4. Include a safe and healthy workplace.
5. Provide skill training and reward trained workers.
6. Allow people to work near where they live.

In considering forest workers and quality jobs, wage and safety issues are only the tip of the iceberg. An overarching issue is that federal procurement has made these jobs miserable in terms of wages, working conditions, and continuity of work. Meanwhile, the shrinking federal budgets for service work on the federal forests have put greater pressure on the agencies to increase acres treated per dollar. It is the forest worker who has been squeezed in this process. Undocumented workers have been exploited and local workers have been eliminated, unable to compete on this uneven playing field. Service contracting has become a game and the race is to the bottom.

Thank you for the opportunity to share my perspective and experience with this important issue.

Senator CRAIG. Well, thank you. Based on what I know about what's going on out there on the landscape right now and the new requirements in the Healthy Forest Act and a lot of things that we're looking at, your statement fits. Maybe we do need to look at a new approach or a new paradigm as to how this work gets done, and it's certainly the character of the U.S. Forest Service's professional staffs that have changed significantly over the years in their ability and their understanding. Thank you.

Cindy Wood, welcome.

STATEMENT OF CINDY WOOD, CHIEF EXECUTIVE OFFICER, WOOD'S FIRE & EMERGENCY SERVICES, INC., PORTOLA, CALIFORNIA

Ms. WOOD. Good afternoon. Thank you for the opportunity to be here. We've got eight inches of snow up in Portola as of last night,

Senator CRAIG. What's your altitude?

Ms. WOOD. Pardon?

Senator CRAIG. What's your altitude?

Ms. WOOD. We're at 5,500 feet, so you know it's stepping up higher.

Senator CRAIG. Probably getting rain today then, aren't you?

Ms. WOOD. I agree with Lynn's suggestions as far as contracting changes. I'm going to take bits and pieces of everything that I've heard here and add on to what I've developed here. I speak on behalf of NWSA, the National Wildfire Suppression Association, formed in 1991, representing 200 professional contractors with six chapters throughout the United States along with affiliate member associations throughout the United States providing the full complement of firefighting services, catering and showering units, support services, heavy equipment and management services for wildfires and national emergencies such as shuttle recovery, hurricane cleanup and disaster relief. These are the cross-trained people that are now starting to integrate into thinning services, fuels reduction services.

In recent years, the contract fire industry has become an efficient and increasingly vital resource for providing best-value services and wildfire suppression and fuels reduction services in order to stabilize the roller-coaster income of our industry and to offset the huge costs of training, employee safety, equipment, uniforms, attrition, insurance, equipment purchases, maintenance and upgrades, all striving to meet or exceed specifications set by the agencies they contract with.

Several members of the California Chapter of NWSA have had the most recent experience with the issues of health and welfare of foreign guest workers, and in the bigger picture of things, how the exploitation of these workers has devalued best-value contracts to ridiculously low levels where we cannot compete. It affects the local economy of communities that were to benefit from the fuels reduction work to be done in their local areas, employment levels and money spent in the form of rents and groceries. Support is leaving with the foreign guest workers and the companies that are usually from out of the area.

The area of service I service is located in the Herger-Feinstein Quincy Library Group Forest Recovery Act, a project area in Plumas County. I shared with you in the written testimony our personal experience. While bidding on projects in the HFQLG area, the California association members noticed a major increase of awards to that same forest guest worker contractor that I had severed relationships with. We started analyzing costs and then came up with the conclusion something was just not right. Firestorm, a provider of a 20-person fire crew in the community of Quincy, opened their books to us over a 5-year period to do cost comparisons for thinning work. Bottom line, one man would have to thin three acres a day. That's an impossibility.

Senator CRAIG. Yes.

Ms. WOOD. More and more work was lost. Firestorm had to close their Quincy operations this year where they had employed approximately 240 employees over a sample 5-year period. This meant a loss of local employment opportunities, loss of local income, increased local income and money spent within Quincy for rents, utilities, groceries, et cetera, with a payroll in excess of $2 million. Over $50,000 in company-paid rent for office, utilities and miscellaneous expenses will be gone for this small mountain community. Wood's Fire closed and sold its Truckee station and re-

duced overhead expenses in order to prepare itself to ride through what looks to be a rough road ahead for us.

Firestorm and Wood's Fire made a power-point presentation to the Quincy Library Group regarding the trends we were seeing for a race to the bottom for healthy forest work in late January this year. The group was aghast, concerned and apologetic. They had been pressuring the local Plumas National Forest to get more acres for each dollar. They had no idea of the repercussions.

Firestorm, Wood's Fire and NorthTree Fire International met with the Plumas National Forest supervisor. We gleaned a lot of information from that meeting of the pressures this local forest supervisor faced with both the local and national overhead level to get more acres for the dollar at any cost, even at local small business survival. How is that the best value? I learned that there is no value to having a local fire contractor doing work on the forest and available for a quicker fire response to the forest. It is worth absolutely nothing. It is not contractually a consideration. I learned that exploitation of forest guest workers and forest work objectives is tolerated because of the bottom line: Dollars.

Assumptions are made in the contracting process that once a company has addressed all the narratives of providing local communities with jobs and increased moneys spent in the work areas, that it will happen. This process falls far short in the actual implementing of such opportunities. There are no failsafes to assure that any of this is done. Final decisions on the awards of service contracts are made solely on price. Since our foreign guest worker company comparison does not meet muster when everything is laid out, we can only assume that corners are being cut. The signs are all there when looking at the track record of this company for labor wage, OSHA, and workers' compensation violations since the mid-1990's.

If it is happening in our little area, you know it is happening elsewhere, confirmed by our national membership of NWSA. Forest agencies are charged with the implementation of forest work, so naturally, I would assume that violations are being seen by agency managers, our front line of defense. The NWSA has outlined solutions and recommendations for your review. We also have shared this with the Director of Acquisition Management in a face-to-face meeting recently in Reno, Nevada, at our national conference. It is still our concern, from the Forest Service Chief's memo, that a system for checks and balances still needs to be addressed, both in the field and in the contracting devices. This is not a new problem, nor does the solution require changes in laws and regulation, just implementation, steadfastness to the task and consistency.

It is also the fear of our organization and the professional contracting sector that local accessible businesses will be harassed, put under the microscope and driven out of business with overregulation instead of pursuing the nomadic foreign guest worker companies that are our problem. The foreign guest workers are just trying to attain the American dream just as my great-great-greatgrandparents did. It needs to stop in a swift and fair manner so that the history of indentured servitude never repeats itself in our global community. The professional contracting community wants to be able to compete on a level playing field for work they

are interested in doing. There is room for all of us. Thank you for listening to my testimony.

[The prepared statement of Ms. Wood follows:]

PREPARED STATEMENT OF CINDY WOOD, CHIEF EXECUTIVE OFFICER, WOOD'S FIRE & EMERGENCY SERVICES, INC.; DIRECTOR, CALIFORNIA CHAPTER & REPRESENTATIVE OF NATIONAL WILDFIRE SUPPRESSION ASSOCIATION

Mr. Chairman, members of the committee, thank you for the opportunity to present the following testimony. My name is Cindy Wood and I am the Chief Executive Officer of Wood's Fire and Emergency Services, Inc. (Wood's Fire) specializing in wildland firefighting equipment, personnel, project and prescribed burning services and fuels reductions services locally and nationally since 1986. My business is located in the central Sierras of California and Nevada with stations in Portola and Truckee, CA, Reno, NV, and Prescott, AZ. Wood's Fire is a California Small Business Administration-certified, woman-owned, minority, small business.

My testimony is on behalf of the National Wildfire Suppression Association (NWSA) and the California Chapter of NWSA that have extensive experience in these issues. The NWSA has been in existence since 1991 and represents more than 200 contractors with six chapters throughout the United States. In addition, it has affiliate members including the Northwest Contract Firefighters Association, the Oregon Firefighting Contractors Association, the Northern Rockies Wildfire Contractors Association, and the Western Forest Fire Services Association.

NWSA's members provide fire crews, engines, water tenders, showering units, catering units, tree fallers, dozers, and other resources to help battle wildfires across the United States. NWSA members have also been used by the Federal Emergency Management Agency (FEMA) for other national emergencies such as the Shuttle Recovery, hurricane clean up and other disaster relief.

In recent years, the contract fire industry has become an efficient, increasingly vital resource to federal, state and local wildfire suppression officers and public land managers. This is evidenced in the expansion of national "Best Value" engine and crew contracts, which represent a more formalized relationship between the government and the fire suppression contractor. A feature of these contracts is clearly defined standards and inspections.

NWSA's primary goal is to support and assist its members to be successful in their areas of contracting expertise and provide services that meet or exceed national standards. Another goal is to achieve national recognition as a professional organization, or cooperator.

PURPOSE OF THE HEARING

The purpose of today's hearing is to review the role of the Forest Service and other Federal agencies in protecting the health and welfare of foreign guest workers carrying out tree planting and other service contracts on National Forest System lands, and to consider related Forest Service guidance and contract modifications issued in recent weeks.

As a regional and national contractor pre-qualified to bid on fuels reduction projects, I am bidding against, working with and completing work after companies utilizing foreign guest workers have completed their assigned tasks. The traces left behind of their nomadic lives are evident in the forest.

My company and several other local companies and community businesses within the Herger-Feinstein Quincy Library Group Forest Recovery Act (HFQLG Act) project area in Plumas County are dealing with the short and long term effects of the exploitation of foreign guest worker companies. Money that should have been spent housing and feeding these guest workers is taken out of the local community. Contract awards are at ridiculously low prices and we cannot compete with these nomadic contractors as we comply with all training, insurances, and federal and state regulations. We have opened dialogue on a local and national level with the U.S. Forest Service and the Quincy Library Group to bring the situation of the "Pineros"—men of the pines—to light and discuss possible solutions.

HISTORICAL BACKGROUND

Starting in the 1970's there was a big push by industry and agencies for education and compliance in the reforestation industry. It was not until the agencies and industry worked together towards a solution that there was some success. However, due to the nomadic nature of many of the non-compliant companies, a large number evaded the regulatory agencies giving them an incredible competitive advantage

with their pricing schedules. Compliant companies were then subjected to over-regulation and driven out of business or no longer able to be competitive.

The effect of the spotted owl has been dramatic on the reforestation industry resulting in a huge downsizing. Many of the companies that once did only reforestation are now moving into the fuels management and fire industries. Along with this transition have come some of the practices that are now plaguing the industry. Many established and new compliant companies have hired local workers who have been displaced by the spotted owl and slowing logging industry. Many wildland fire services companies began bidding on fuels reduction and forest services contracts to reduce the attrition and costs of keeping employees available for fire emergencies. The training and regulatory costs for this industry is staggering.

In any industry there are companies that abide by the rules, those who sometimes adhere, and others who evade the rules every chance they get. The forestry, fuels and fire industry is no exception.

WHY IS THIS HAPPENING?

Agency personnel are not fully trained, equipped or empowered to recognize, report and respond to the signs of foreign guest worker exploitation. Direction for checks and balances has not been implemented.

Language barriers make it impossible to communicate to workers directly about their conditions.

Lack of enforcement for existing State and Federal labor regulations and laws is minimal due to mobility and the nomadic nature of the companies exploiting the foreign work force.

Payroll deductions for the use of tools and even personal safety equipment to complete the forest work in addition to recruitment or management fees, mileage and lodging is common. This borders on indentured servitude.

Contractual verbiage needs to address and initiate compliance tools within the contract vehicle.

Agencies are pressured to produce results quickly and at the lowest cost possible, at the sacrifice of American workers and small business.

MY EXPERIENCE

I run a well trained, flexible and small local work force that strives to provide a quality product at a good value to my customers on federal and non-federal lands. Mediocrity or minimal work performance is unacceptable by me or my husband who is Chief of Operations. We employ up to 22 local young men and women with a cadre of very seasoned managers. We are a niche company that adapts itself to the needs of the working fire environment in the most modem sense. We are striving to make a difference in our community by making it Fire Safe with fuels reduction services and we protect it when fires are a danger.

I can speak of the Pineros/foreign guest worker issues based on first hand experience. My company, Wood's Fire, once subcontracted to another company that utilized foreign guest workers to perform project burn work on the Plumas National Forest. Wood's Fire was subcontracted to provide the expertise and management for the burn operation.

During the course of the project, my managers witnessed many instances of practices by the prime contractor that were questionable at best if not non-compliant with applicable regulations. These included: unhealthy sleeping conditions for foreign guest workers in the field when it was freezing or snowing; unacceptable foot attire; and transport vehicles lacking proper license and other certification information. Only after my managers brought the sleeping conditions to the attention of the prime contractor was lodging provided for the foreign guest workers.

From day to day we had a revolving door such that we did not know from one day to the next what foreign guest workers would be working. The project managers and supervisors from the prime contractor's company stayed the same but the foreign guest workers would change. Without proper documentation, particularly fire qualifications for who was working on any given day, it became difficult to ensure safety and performance. Also, at one point, the prime contractor dismissed the Burn Boss, one of my managers, from the burn operations. This decision to reduce the prime contractor's costs put my company in a very difficult situation because I was ultimately liable for any escape of the burn operations. This concern was compounded by the fact that the prime contractor refused to provide proof of workers compensation and liability insurance after I had already provided my insurance documents. So my assumption was the prime contractor did not have proper insurance.

These problems combined with communication and chain-of-command problems led my company to terminate its work with the prime contractor. At that time we also notified the appropriate agency contracting officer representative.

To demonstrate how these practices stifle competition, I've included the following table:

Task	Acres	Compliant Contractor		Non-Compliant Contractor	
		Unit Price	Total	Unit Price	Total
Thin, lop, scatter	474	$98.50	$46,689.00	$57.78	$27,387.72
Thin	102	354.12	36,120.24	46.00	4,692.00
Thin & pile	77	442.65	34,084.05	198.00	15,246.00
	653		116,893.29		47, 325.72
Total Difference					$69,567.57
Total Difference/Acre					$106.54

This table shows the difference between actual bids on the Pull Plug Pre-Commercial Thinning project on the Modoc National Forest. The "Compliant Contractor" bids are courtesy of Firestorm Wildland Fire Suppression, Inc., a local contractor in Quincy and Chico, California. Firestorm was agreeable to opening its books to demonstrate how hard it is to compete with non-compliant contractors.

SOLUTIONS

The National Wildfire Suppression Association believes the issues surrounding the Pineros do not require any new laws or regulations. What is required is better utilization of existing contracting authorities and greater enforcement by the agencies to both address the needs of foreign guest workers as well as protect local jobs.

More specifically, the vast majority of these types of service contracts are an Invitation for Bid (IFB) or a Request for Quote (RFQ). Both of these are awarded based solely on the lowest cost bid.

NWSA would like to see the agencies instead use the Best Value Request for Proposals (RFP) or Best Value Indefinite Delivery Indefinite Quantity (IDIQ) contracts for this type of work. The RFP and IDIQ are both existing contract vehicles and would lend themselves to the new Stewardship Contracting authority.

NWSA believes that using RFPs and IDIQs will provide the agency better means to assess the bidder's actual business. Such assessments may include but not be limited to financial ability, experience, past performance, technical qualifications, and the ability to provide local jobs.

One of the purposes of this hearing is to comment on Forest Service guidance and contract modifications issued in recent weeks. I would like to offer some very specific comments in this regard.

On November 18, 2005, Forest Service Chief Dale Bosworth sent a memo to the field regarding "foreign workers on H2B seasonal work visas" and how "Concerns have arisen about some contractors exploiting these workers and about the health and safety conditions they work under." The Chief is only hitting a part of the problem. That is, these concerns are not exclusive to H2B seasonal workers. In fact, I would submit that this is not where the problem lies. Instead, the greatest exploitation comes from those contractors that do not abide by the rules including the H2B rules.

Also in the Chief's memo, he makes three key points: (1) on matters beyond the responsibility of the Forest Service, e.g. immigration law or OSHA regulations, that the agency personnel are to "promptly report the situation to the appropriate oversight agency and to document the notification". (2) on matters within the Forest Service's scope, e.g. safety equipment, the Chief says "don't let them work". and (3) documented violations must be a factor in evaluating future bids and awarding future contracts.

I will comment on these three points. First, point (1) above is simply passing the buck. If the Forest Service representative knows enough to promptly report the situation, they should also be stopping all work. Prompt reporting to the appropriate

oversight agency does not ensure prompt investigation by the oversight agency and thus the contractor is allowed to continue working.

The second point should be a given. If the Forest Service representative sees a safety violation or something similar, they can and should immediately stop all work. As the Chief said in his memo, this is nothing more than just as "we would [do] with our own employees."

We agree entirely with the Chief's third point that documented violations, whether arising from (1) or (2) above should be a prominent factor in evaluating future bids and awarding future contracts. We also feel the only way the Forest Service can do this is to move away from the IFB and RFQ to the RFP and IDIQ Best Value contract vehicles.

There is one last comment on recent contract modifications I'd like to make. On January 4, the Director of Acquisition Management sent a memo to the field with new provisions for service contracts. We have reviewed these provisions and support adding them to the contracts. It is our interpretation that these provisions articulate worker safety, lodging and other existing requirements. By including these in all service contracts, all parties will be working from the same set of information. We also believe by including these provisions, the agency representatives will be better empowered to enforce existing regulations.

RECOMMENDATIONS

"Inspect What You Expect"

Contractually set up a system for checks and balances for Contract Officer Representative (COR) and contracting office to utilize in their "tool box".

1. Notification of Lodging & Food facilities for foreign guest worker (FGW) companies.
2. Notification of Work Schedule and the Work Area to COR daily to be able to track and catch non-compliant companies
3. Defined work hours to be negotiated (i.e.: daily start time, weekend/holiday exemptions)
4. Employee verification to address matters of Homeland Security, for example:
    a. Photo Id
    b. Social Security
    c. Work Visas
        i. *To be carried in the field by FGW company representative at all times with their copy of contract specifications. This is mandated in the fire fighting community, why not in this environment.
5. Changes in project staffing would use same protocol
6. Development of checks and balances in the initial contract award work place
    a. Verification of employee id's, work visas with existing data bases being implemented now by the Forest Service with the fire community
    b. Employee Disclosures as stated by U.S. Department of Labor
    c. Contractor verification of all insurances, review of class codes for Workers Comp Insurance
    d. Disclosure of I.N.S., D.O.L. suspensions, fines, resolutions of findings by contractor with cross check
    e. Company Ownership disclosure on all contractors and subcontractors to assure violators are not forming new companies
7. Agency Law Enforcement Officers (LEO) be cross trained by I.N.S. or other specific agency to perform spot checks.
8. COR or LEO need to communicate in the language of the FGW at the project site to conduct interviews or have a bilingual individual on contract to help with this need. Possible bilingual ratio to crew workers development
9. Assure all required postings are on the job site
10. Assure all company vehicles are marked with the proper ID/Company designation as outlined by D.O.L./I.N.S.

IN CLOSING

Recently I discussed this situation with my parents and asked them about my family's experience with migrant labor. Coming from a Mexican and French heritage with my ancestors legally migrating across the Mexican Border into Arizona and California in the 1900's as workers in the agriculture, ranching and mining industries or to escape being killed during revolutions, they found the information deeply disturbing and unacceptable. As children, when school was out they went on family

working vacations and picked nuts and apricots and were never subjected to the conditions that the Pineros and other foreign guest workers endure now trying to attain the "American Dream".

I concur with my parents. These people are being exploited and it needs to stop in a fair and swift manner. It is my fear and the fear of private industry that history will repeat itself with the over-regulation of professional, capable and compliant companies. That the nomadic contractor practices of the past will slip thru the regulatory cracks and local small businesses and communities will suffer. We only want a fair chance to compete. Long term stability for the industry is the result of better written contracts and enforcement of existing rules. It will provide a better product to the agencies that are stewards of our natural resources and better protection to the worker.

Senator CRAIG. Cindy, thank you.

Michael, you work in areas other than forestry, do you see similar problems in those areas, and do you see the same problems with getting the Department of Labor and Homeland Security to engage in the enforcement that they are expected to provide?

Mr. DALE. Because most other areas that I work in aren't way up in the woods, the problems are less complex. Having said that, the enforcement personnel available to Wage and Hour Division has fallen pretty consistently through Republican and Democratic administrations ever since I've been a lawyer to the point where the capacity to really engage in effective enforcement is really quite limited.

I'm glad you brought up the question about the Department of Homeland Security. One of the things that I didn't mention is something that we should not do in response to this re-airing of the issues, and that is that the Department of Homeland Security has its work to do with respect to folks who are not in the country in a proper status or working here without worker authorization. Past response in some of the earlier spasms—I described maybe inaptly.

Senator CRAIG. We'll let that stand. That's probably appropriate.

Mr. DALE. Past response has been to enhance collaboration and reporting of workers found to be in unlawful status or suspected of being in unlawful status in forestry crews, and that's counterproductive because what it means is—I mean, it—think of the situation. If you are here working illegally, you're still protected by U.S. wage and hour laws and need to be, or no one's protected because it enhances the race to the bottom. There you are in the mountains, pretty much subject to the contractor's whim with respect to not only your job but your very food and transportation to get home. I've represented workers that were abandoned in the mountains because of complaints that they had made about working conditions. Who are you going to turn to if the word is out that if you go to the Forest Service guys, if you talk to anybody from the Bureau of Land Management, the net result is you're going to be deported? Who are you going to go to? And if we want to drive these practices farther underground, make people evermore dependent upon people that are not very nice and would exploit workers, then the way to do that is make the price of speaking to the Forest Service be a trip home.

Senator CRAIG. Well, I think that's appropriately said. My time is getting limited here, so let me ask just one question of each of you, if I can. Cassandra, if we converted this program to one in which the agency had to hire workers, and that meant not as many of these H-2B workers were utilized, would that be helpful?

Ms. MOSELEY. Can I just ask for clarification? Do you mean hire other workers directly, as in Federal employees?

Senator CRAIG. That could be an alternative, yes.

Ms. MOSELEY. Workers who work for the Federal Government are protected very well. Many of them have union representation. They have systems of appeal, ombudsmen. They have benefits. Their laws are not broken very often. And so, job quality for Federal workers is in a whole different world from contract forest workers. And so, yes, if we employed people directly, their job quality would probably improve. Not everybody wants to work for the Federal Government, so maybe people would make different choices. To work for the Federal Government, you have to be a U.S. citizen, so it would not provide as many opportunities for non-citizens as the contract work does.

Senator CRAIG. Lynn, both you and Cassandra have made it a point to suggest that a conversion to best-value contracting for this work would be helpful. Why do you think this change will result in better enforcement of health, safety and wage laws and regulations?

Ms. JUNGWIRTH. Well, we think that best value can help, but currently, in the system, best value can have several criteria. It usually has price, experience, track record, what your technical proposal looks like, and then that sort of local benefit criteria.

Typically, in the Forest Service, the weighting is 50 percent or 51 percent or 70 percent price and then minor percentages for those other things. So, if they use best value, but the lowest price is always the best value, it won't work. Best-value contracting that actually has honest criteria and is weighted properly can help, but if you don't repackage these into multi-task, multi-skills, across the season, you're going to run into the same kind of problem. So, it's a systemic problem. It's the system's problem. It's not just an enforcement problem. We'd like to encourage you to encourage the Forest Service to work with all of us at this table to come up with a way to solve this.

Senator CRAIG. Thank you, Lynn.

Cindy, what steps have the associations that represent the companies that participate in these planting and thinning contracts taken to weed out some of the bad actors that have been described at this hearing?

Ms. WOOD. Well, we do our own order of self policing and generating enough pressure on a noncompliant company to come to compliance on a one on one. If they don't do that, then we will report them. It's a fact of life we can't compete with these current conditions at all. And we've made suggestions—I mean, the private sector is an extremely creative entity. And if you want to catch a noncompliant officer, what better area to ask than the industry that tries to find all the different loopholes and creative ways to make money? So, we developed this toolbox for out in the field that we put into the narrative, and that's an area to get started with.

There is also a new program that the Forest Service is implementing in the fire sector that is called ETIS. It is the Equipment and Training Inventory System. And within that automated system is a way to have the contracting office input information about noncompliant or exemplary reviews about the work that a contractor

does. I would suggest something like that be implemented within these new contracting vehicles.

Senator CRAIG. Well, thank you all very much. We are certainly going to stay tuned to this. And as I say, we may, in the course of the year, see a whole new set of standards or principles out there embodied in this new immigration law that will impact these kinds of programs from the title on down, if you will. And so, I think that's going to behoove us from the implementation of a new law itself, if we get there, to the breakdown as to category and specifics, monitor these approaches very closely, and you out there on the ground with the eyes and ears, you have will be very helpful to us in doing that. So, we thank you very much, and we're glad you came, and the committee will stand adjourned.

[Whereupon, at 3:53 p.m., the hearing was adjourned.]

[The following statement was received for the record:]

RENEWABLE RESOURCES,
A DIVISION OF RENEWABLE FORESTRY SERVICES, INC.,
Barnesville, GA, March 6, 2006.

Hon. JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR: My company was the first to get H2B visas back in 1996. This was only after I spent over one hundred thousand dollars in three years pushing the U.S. Department of Labor to grant the labor certification (form ETA-750) and then INS to approve the petition (form I-129) from which the visas are issued.

On Tuesday, March 2nd your committee held a hearing regarding abuses within the H2B visa system. have vast experience in this industry and would like to clarify some points as well as make some critical recommendations *for the new immigration bill currently being debated.* I started planting trees in the Rocky's when was 18; the year was 1977, before the invasion of undocumented labor from Latin America. Tree planting and related environmental rims have been my soul source of income for my entire adult life.

Yes, the forest industry, because it is a subculture within America and is generally isolated due to the remote rural location of the worksites continues to be an avenue of abuse. Much of the present day abuse is by Mexican crew leaders and Mexican contractors against their own people. In some segments there is almost a rite of passage. Therefore your strongest solution to end this abuse is to simply mandate that industrial tree farmers as well as the *U.S. Forest Service* are simply joint employers of this workforce. It took 20 years—20 years, Senator—to get the U.S. Forest Service to require and verify proof of Workers Compensation Insurance among its contractors. I don't know of any other population with in our society that has suffered this blatant discrimination and abuse in modern times. It is this historical abuse that demands such an aggressive definition of employment, Without it abuses will continue as the Department of Labor and Homeland Security's Immigration Services lacks the in-house workforce to police the industry.

1. Forest Service districts that are found to violate the law should pay penalties and remediation *out of their district budgets.* If Congress enacted such a bold step where the district's money was at risk if abuses occur the abuses could stop immediately.

2. If you multiple to million undocumented workers × $8.00 an hour × 40 hours per week × FICA tax 15.6% × 52 weeks a year you generate $25.9 billion. You can see that we as a Nation are losing tax revenue that could completely fund the retiring Baby Boomers Social Security Trust Fund; *resolving this critical issue of fulfilling the retirement needs of our aging Americans.* As a Nation We do not know what the actual FICA loss is but assume that this figure is 50% accurate it's a lot of money and Mexico is no longer the impoverished third world country it was twenty-five years ago when this situation first got started.

3. The question of amnesty should be answered with an affirmative, it worked back in 1984 in the Food Security Act and legalized a work force that kept America competitive and gave both small and big business the productive legal labor it needed. A reasonable fee should be charged, such as $500.00 for filing the paper work and another $500.00 upon approval, but rather than granting

a Resident Mien status, issue a new H2B visa. Make this visa a special visa to note that the individual was in the U.S. when the visa was issued, for example H2B-US1, and make the visa good for two years, Then put a very simple stipulation on it, that if a holder of this visa class is arrested and convicted of a felony they are then deported and banned from entering the U.S. for a decade. *the same punishment should apply for habitual DUI and drug offenders.*

4. Another point that needs to be clarified is what an H2B visa entitles a person to. An area of current misunderstanding centers on disability insurance. Regardless of what the law says, the social Security administration will not grant SSI to an H2B worker who becomes disabled while residing legally in the U.S. If the disability is thru no fault of the employer, no workers comp coverage is available and some situations are difficult to determine. When this occurs the fundamentals of our Nation should afford this worker's disability coverage, have enclosed a video tape profiling the story of Benjamin Mendez who was one of the first Mexicans to ever receive an H2B visa. A very honorable hard working family man who was struck down by a flu germ his body could not defend itself against. He now resides in Mexico, blind with two dysfunctional kidneys and is dependant upon family charity and support from my wife and I. Benjamin's only *daughter Maria* was later *smuggled* into *the U.S. to work illegally in a factory* to help support her mother and father by family members working in a meat processing plant. While in the U.S. she married and had two children who are legally U.S. citizens yet Maria remains an illegal alien to this date.

This situation and many similar to it are the results of our dysfunctional immigration policies, and an everyday reality creating unhealthy social situations that will only hurt our great Nation as time moves forward. Please make sane reform a top issue!

In closing, I am submitting this letter and ask that it be submitted into the Congressional Record as additional testimony on the hearing that was held on March 1st, 2006, which was organized by Senator Jeff Bingaman. This information was requested by Senator Staff Member Scott Miller.

Towards a more perfect Union,

I am Sincerely Yours,

DAVID M. ELLIS,
President.

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF CINDY WOOD TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. As I understand it, the Department of Labor certifies that there is a shortage of available labor in a given area before H2B visas are issued to an employer wishing to work in that area. However, the H2B contractors reportedly compete with local contractors for Forest Service reforestation projects, which seems to call into question the Department's determination that there was a shortage of labor. Do you have any insight into how the Department of Labor's process for certifying a shortage of available labor falls short? Do you have any suggestions on how it can be improved?

Answer. The issue is not so much local contractors competing with the H2B contractors for Forest Service reforestation contracts. Instead, it is the local contractors competing with those contractors that use undocumented workers. The latter group of contractors is not using the H2B program. Illegal alien issue along with abuses in the H2B program makes it difficult to compete in the market place.

Having said that, some H2B companies set up business in small rural towns where there is not a labor force. Idaho has their share of H2B companies who use small Idaho towns as fronts. Once the H2B contractors obtain visa's for their work force they are not monitored and then move workers into larger towns jobs following awarded contracts all across the country and are no longer confined to the labor shortage area that the visa's were issued for.

Many of us in the west are in Hub Zones, areas that SBA has designated with higher unemployment rates, therefore are not lacking in a labor force. We could employ more full time employees rather than lay them off after the Wildfire season has passed, if we could augment with forestry work. There are many good contractors that have a lack of work for their good employees.

The H2B workers use this program as a means to enter the country and then stay after they have finished their job or their visa expires. These workers begin working illegally for other contractors that then abuse them by working and paying them "under the table" as a "favor" or under the fear of being turned in to immigration.

Suggestions:

The Department of Labor needs to follow up on the intent of the companies that use the small rural communities as a front.

Tracking system: Are work visa's bar coded to facilitate tracking much the same as FedEx or Rental Car Industries use, to track how a worker is being utilized? Long range benefits could track inconsistencies with visas, reduce paperwork, reduce abuse of one visa being utilized by many workers etc.

EATIS: List authorized H2B workers attached per contract award with special number attached to each documented or H2B worker. This would help track for example: training, annual refreshers, proper insurances, company information, company officers or owners and contract performance.

**Tracking systems are only as good as the agencies that put them in place, oversee them and maintain oversight. All should be accessible to the agencies that need to check that accurate information is being inputted i.e.: proper social security & visas numbers. These should also be integrated with the ORCA/CCR databases already in place. Centralized or linked databases will make oversight less time consuming for contracting and enforcement offices.

Receipt of jobs announcement: copy of advertisement, date and by what means—via internet, newspaper, magazine, trade show, bulletin board; where it was flown, for how long and for what type of job.

Continued efforts toward compliance of Job Clearance Order/Worker Contracts disclosures.

In addition, the U.S. Forest Service should be required to put hiring locals in their best value contacts. Put a high value for awarding contracts to local entities. Public Law 106-291 has a requirement for hiring locals.

Question 2. Similarly, the Department of Labor makes a determination of the prevailing wage in a given area. However, in many instances, that wage reportedly falls short of what is fair or adequate. Do you have any insight into how the Department of Labor's process for determining a prevailing wage falls short? Do you have any suggestions on how it can be improved?

Answer. The Department of Labor sends out wage surveys to companies in the industry. The Department should solicit a broader group to get accurate wage information and they should do it more frequently. For example, I have been informed by NWSA members, one contractor, has been solicited by the Department only twice in 27 years.

One current requirement that helps address this problem is the certified payroll and daily work schedules. Though this is time consuming to the contractor, it is a necessary step to help address this issue. This does not stop the abuse of paying workers cash, paying workers 6 hours on the time card and certified payroll but work them 9 in order to avoid paying the prevailing wage. DOL and the agencies need to work hand in hand to enforce the laws and rules that are currently in place.

Raising wage determinations for the specific work will not solve the problem. It will just give further advantage to companies who pay under the table; skew hours, or otherwise circumvents the system. The companies who are above board will put those rates in their costs and the companies that pay under the table will have a further competitive advantage. In addition, high wage determinations cause moral problems for long-term employees who see beginners starting at high wages. Unless there is strict enforcement and monitoring with field personnel and paper trails, raising wages will have the opposite effect of the desired result.

The Department of Labor will have trouble controlling wage abuse unless they hire undercover agents to go into the companies. History has shown the Department will just audit companies who have legitimate business sites.

Many companies in this industry do not know all the items they must comply with. The education process can be painful and costly but well worth the effort. Pressure from educated companies to comply with regulations with non-compliant companies is sometimes all that is needed, however knowledgeable COR's that can recognize warning signs of non-compliant companies will be extremely important. COR's will need a support system to be able to report issues to the regulating agency ie: e-mail or phone number in a timely basis and be empowered to stop work if the situation requires it. Head counts & unannounced visits should be implemented at odd hours. Implement the help of federal agency L.E.O.'s to back up the COR.

Question 3. The Forest Service contract clauses issued on January 4, 2006, require contractors to train their employees in the safe operation and use of equipment, but it doesn't appear that there are any standards or certifications to ensure that all the workers are appropriately trained. Should the agencies develop a uniform training and certification program so the Forest Service can verify that appropriate training has been provided and so the contractors know what is expected of them? I note that the Forest Service already does this in the context of wildland fire fighting and that British Columbia reportedly has instituted training and certification of its reforestation crews.

Answer. We already do more wildfire training than Canada. You can have all the rules you want but without enforcement the ones who cheat get the competitive advantage. That is how these companies have proliferated over the years. Creating new regulations simply exacerbates this problem.

Workers Compensation and OSHA already requires us to do training on all types of work we do. Certainly OSHA could be part of the compliance monitoring. However, like the other regulatory agencies OSHA also goes the path of least resistance and audits or inspects those companies with legitimate business locations. Adding more regulation to combat abuses is not necessarily the answer and could actual increase the problem. Rather, *enforcement of existing laws, along with a collaboration effort with overseeing agencies*. Combined with an aggressive education program to the industry we feel that industry would respond in a positive way. Failure to respond immediately to the situation will result in many legitimate businesses going out of business, which hurts the taxpayer, all the workers and the agencies trying to manage our forests.

RESPONSES OF CASSANDRA MOSELEY TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. As I understand it, the Department of Labor certifies that there is a shortage of available labor in a given area before H2B visas are issued to an employer wishing to work in that area. However, the H2B contractors reportedly compete with local contractors for Forest Service reforestation projects, which seems to call into question the Department's determination that there was a shortage of labor. Do you have any insight into how the Department of Labor's process for certifying a shortage of available labor falls short? Do you have any suggestions on how it can be improved?

Answer. As I understand it, when a contractor would like to hire H2-B workers, they must place an advertisement in the newspaper where the work will start. They do not have to advertise in the communities near national forests or private lands where they will work subsequently. Thus, contractors can acquire visas for H2-B workers based on a lack of availability workers in the location where their work season starts. Subsequently, they can move H2-B visa holders to work on contracts far from those initial locations, even if there would be an abundance of workers in those locations. Unless the workers in those subsequent locations happen to read the newspaper in initial location, they have no way of knowing about the availability of those jobs. Contractors should be required to advertise more broadly, including in the locations where they expect to work throughout the work season, not just where they begin working.

The pre-certification job advertising requirements are inadequate in another way as well. Contractors are only required to advertise for short periods of time and in a limited manner. Consequently, even in starting locations where there would be adequate workers, these workers may not hear about the jobs or have time to apply. The advertising requirements should be expanded to ensure that available workers learn about the job opportunities and have time to apply.

In addition, contractors can request H2-B workers before they actually have contracts in place. This means that they may be bringing workers to the United States for jobs that may not materialize. When these jobs do not appear or when there are gaps in employment, H2-B workers may end up needing to take jobs outside of the provisions of their visa.

Question 2. Similarly, the Department of Labor makes a determination of the prevailing wage in a given area. However, in many instances, that wage reportedly falls short of what is fair or adequate. Do you have any insight into how the Department of Labor's process for determining a prevailing wage falls short? Do you have any suggestions on how it can be improved?

Answer. In the case of forestry services and fire suppression, the federal government is seeking to replace government jobs with contract jobs. Consequently, prevailing wage should be no less than the wage that workers would have been paid had they been working for the government directly.

Despite the fact that contractors move across the country to work, wage determinations can vary considerably from place to place. For example, the wage set for thinning in the Southwest is about $3/hour less than in the Pacific Northwest. Wage determinations should be revised upward in places where wages are out of line with the higher-wage parts of the country. The wage that a federal worker would have been paid should be a minimum standard for the prevailing wage across the country.

In addition, the prevailing wage should rise at least as fast as the rate of inflation. This has not been the case over the past decade or more.

The Department of Labor (DOL) periodically falls behind in it wage determinations. DOL did not change wage determinations in the Pacific Northwest in forestry services for several years. Nationwide, fire-related wage determinations had been out of line with what state and federal wildland fire fighters were being paid.

Finally, the "health and welfare" determination should be examined to determine if it is sufficient to cover the costs of purchasing health care for a worker and his or her family, given the rapid rise of health insurance costs. This number needs better pegged to rising health insurance costs so that workers would have sufficient funds to purchase health insurance for their families.

Question 3. The Forest Service contract clauses issued on January 4, 2006, require contractors to train their employees in the safe operation and use of equipment, but it doesn't appear that there are any standards or certifications to ensure that all the workers are appropriately trained. Should the agencies develop a uniform training and certification program so the Forest Service can verify that appropriate training has been provided and so the contractors know what is expected of them? I note that the Forest Service already does this in the context of wildland fire fighting and

that British Columbia reportedly has instituted training and certification of its reforestation crews.

Answer. It would be a good idea to create certification and standards for safety training. Whenever forest workers are using chainsaws, they face significant risks from chainsaw injuries and falling limbs and trees. Safety training should also include training to reduce long-term injuries such as hearing loss associated with chainsaw use without hearing protection and repetitive motion back injuries associated with tree planting.

Although I agree that safety standards and certifications for training are a good idea, safety training is not the only type of training is needed if we are to have with high quality restoration performed and high quality jobs for forest workers. When community-based forestry groups advocate for training, they envision training that is holistic and comprehensive. Workers not only need to know how to work safely in the woods, but they also need to understand basic ecological principles, how to make decisions that result in ecological improvements, and be able to perform a wide variety of activities and tasks. Required training on safe work practices and protection would be a good start towards this larger term goal.

RESPONSES OF LYNN JUNGWIRTH TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. As I understand it, the Department of Labor certifies that there is a shortage of available labor in a given area before H2B visas are issued to an employer wishing to work in that area. However, the H2B contractors reportedly compete with local contractors for Forest Service reforestation projects, which seems to call into question the Department's determination that there was a shortage of labor. Do you have any insight into how the Department of Labor's process for certifying a shortage of available labor falls short? Do you have any suggestions on how it can be improved?

Answer. They appear to be asking to verify a shortage instead of affirming existing supply. The Forest Service could verify existing supply by looking at the number of responses to their bid solicitations, then they could trigger an H2B request if their needs are not met. The local ngos we work with usually do a labor and workforce survey for their local National Forests, this helps contracting officers know how to package their solicitations for local businesses if they choose to.

Question 2. Similarly, the Department of Labor makes a determination of the prevailing wage in a given area. However, in many instances, that wage reportedly falls short of what is fair or adequate. Do you have any insight into how the Department of Labor's process for determining a prevailing wage falls short? Do you have any suggestions on how it can be improved?

Answer. They need to look across the state borders because the people who do the work in Oregon, for instance, are also doing the work in California, the Department should compare state rates from time to time because the market area is clearly the same.

Question 3. The Forest Service contract clauses issued on January 4, 2006, require contractors to train their employees in the safe operation and use of equipment, but it doesn't appear that there are any standards or certifications to ensure that all the workers are appropriately trained. Should the agencies develop a uniform training and certification program so the Forest Service can verify that appropriate training has been provided and so the contractors know what is expected of them? I note that the Forest Service already does this in the context of wildland fire fighting and that British Columbia reportedly has instituted training and certification of its reforestation crews.

Answer. We developed an Ecosystem Workforce Training Program, certificated through the local community college in conjunction with the Forest Service and contractors and jointly funded with DOL job training dollars. This program created multi-skilled workers. It was our attempt to create a high skilled, high wage work force that could live and work locally. We found this did not work because of the way the agency packaged the work for large, mobile, single skilled crews. This curricula is developed and has been used

In several counties in California and Oregon. Be very careful how you structure this certified training, it has to be bi-lingual and accessible and preferably would be for multiple skill sets. Otherwise you just further institutionalize keeping workers in dead-end jobs with no options for growth. However, certified training is dangerous (look at the red card forgery issues in fire suppression) so we need to find a way to keep this honest. March 8, 2006

RESPONSES OF ELAINE CHAO TO QUESTIONS FROM SENATOR CRAIG

Question 1. The Chief and Director of Acquisition Management, Ron Hooper, sent out memos to the field on the issues we are addressed at the March 1st hearing. The Chief's November 18th, 2005 memo said, amongst other things, "I expect expertise and immediate action. Contract Administrators must be able to recognize health and safety violations . . . When these situations occur they must take action [and not] let them work. "Mr. Hooper's January 4th, 2005 memo said: "Please ensure that these provisions are included in all service contracts," . . . "Finally, please ensure that all service contract files include a written statement to the effect that the Contracting Officer, the Contracting Officer's Representative, or the contract Inspector has reviewed the requirements of these provisions with the contractor and has conducted at least one inspection of existing and new service contracts to ensure compliance with these provisions when applicable."

Please provide a work plan for each region that will ensure the inspections called for in Mr. Hooper's letter are accomplished.

Answer. In the preface to your questions, you reference the November 18, 2005 letter from the Forest Service (FS) Chief Dale Bosworth and a related January 4, 2006 memorandum from the FS Director of Acquisition Management, Ronald E. Hooper. The Chief's letter directed the FS Contract Administrators to recognize health and safety violations and to take action when such situations occur. Mr. Hooper's memorandum directs FS Contracting Officers to include health and safety provisions in service contracts, to include a written statement in the file that the requirements of these provisions have been reviewed with the contractor, and to conduct at least one inspection of the existing and new service contracts to ensure compliance of these provisions. The November 18, 2005 and January 4, 2006 communications were internal FS directives and do not involve Department of Labor personnel. Therefore, the Department of Labor has referred this questions to the FS, which will respond under a separate cover.

Question 2. What steps will you take to check that the Contracting Officers and Inspectors have complied with the direction in Mr. Hooper's January 4th, 2005 memo? Please provide for the Committee documentation of the accomplishments as of the end of June and the end of the fiscal year.

Answer. As discussed in our response to the first question, this question concerns internal FS policies and practices. Accordingly, the Department of Labor has referred this question to the FS for response under a separate cover.

Question 3. In the event an inspector, Contracting Officer's Representative, or Contracting Officer fails to enforce the worker health and safety provisions of a contract, what personnel actions will be taken against them? What steps will you take against your Line officers in the District, Forests, or Regional Offices in which the violations occur?

Answer. As discussed in our response to the first question, this question concerns internal FS personnel policies and operating procedures. Accordingly, the Department of Labor has referred this question to the FS for response under a separate cover.

Question 4. The Forest Service has a significant amount of experience with best value contracts through the Stewardship Contracting; would we get better performance and better enforcement of health and safety and other labor laws if we shifted all Service Contracts to a "best value" contract process?

Answer. As discussed in our response to the first question, this question concerns internal FS operating procedures and expertise. Accordingly, the Department of Labor has referred this question to the FS for response under a separate cover.

Question 5. What specific steps has the Forest Service taken with the Department of Labor and Homeland Security to ensure you have authority to utilize and access their databases prior to awarding contracts?

Answer. The Department of Labor has provided the FS with the links to information posted on-line regarding Occupational Safety and Health Administration inspection history and the Migrant & Seasonal Agricultural Worker Protection Act (MSPA) ineligible farm labor contractor list maintained by the Wage and Hour Division (WHD) of the Employment Standards Administration. In addition, the WHD and the FS have established procedures for communication between local offices, which allows the WHD the ability to provide the FS with the registration status of farm labor contractors and information on closed investigations.

RESPONSES OF ELAINE CHAO TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. The Forest Service contracts require contractors to comply with the Department of Labor's vehicle safety standards, but, as I understand it, those stand-

ards do not require seatbelts and they do not address transportation of equipment, for example. Is the Department planning to improve those regulations?

Answer. The applicable vehicle safety standards referenced are part of MSPA that is enforced by the WHD. MSPA applies to migrant or seasonal agricultural workers employed in predominantly manual forestry activities, including but not limited to, tree planting, brush clearing, precommercial tree thinning and forest firefighting per the 9th Circuit Court of Appeals (*Bresgal* v. *Brock*, 833 F.2d 763). The MSPA regulations at 29 CFR § 500.104(1) and at 29 CFR § 500.105(b)(3)(vi)(D) require that seating be securely fastened to the floor. The MSPA regulations contain no specific standard requiring the provision of seat belts for the transportation of workers as mandatory seat belt usage is addressed by state law.

MSPA general vehicle safety obligations at 29 CFR § 500.100(a) require the farm labor contractor (or agricultural employer or agricultural association) which uses or causes a vehicle to be used to transport MSPA-covered workers ensure that such a vehicle conforms not only to safety standards prescribed by the Secretary but also "with other applicable Federal and State safety standards."

Our research regarding seat belt usage required by states shows that forty-nine states and the District of Columbia have mandatory safety belt laws and in most states, these laws cover front-seat occupants only. Seat belt laws in eighteen jurisdictions cover all rear seat occupants.

A Wage Hour Advisory Memorandum (enclosed)* providing guidance on MSPA vehicle safety reiterated the statutory and regulatory language that vehicles must conform with other applicable Federal and State safety standards, such as State seatbelt law. Therefore, we believe that existing regulations provide authority to enforce current state laws regarding seat belt usage.

In regard to the second part of the question, the above guidance also addressed MSPA-covered vehicles when towing trailers, a common means for such contractors to move equipment. Further, the existing regulations at 29 CFR § 500.105(b)(2)(vii) require any load to be adequately secured, which includes equipment being carried inside the vehicle. In addition, as noted above, we believe our existing regulations provide authority to enforce any current applicable Federal or state laws that provide safety requirements for the transportation of equipment.

Question 2. The Forest Service typically has multiple bidders on reforestation projects. Can you explain how it can happen that the Department of Labor certifies that there is a shortage of available labor for purposes of the H2B program in a given area when the H2B contractor later competes with numerous local businesses for contracts in that same area?

Answer. As with other employers seeking to hire foreign workers under the H-2B temporary visa program, employers performing reforestation activities who request a labor certification from the Department of Labor must first test whether there are U.S. workers qualified and available to fill those positions. At the initial stage of the H-2B labor certification process, the state workforce agency in the area of intended employment supervises employer recruitment of U.S. workers. The Department of Labor's Employment and Training Administration (ETA) reviews each labor certification application forwarded by the state to ensure that the record supports an employer's decision not to hire U.S. workers applying for positions covered by the application. If the record supports the employer's decision then ETA certifies that there is a shortage of available labor in the relevant geographic area to fill the vacancies at the time the employer is hiring.

Labor availability is determined based on the number of qualified individuals who apply for the specific positions advertised by an employer.[1] For example, an employer may advertise for ten (10) positions for tree thinners or planters. Two qualified U.S. workers may apply for those positions, leaving eight (8) positions unfilled. Once it is determined that qualified U.S. workers are unavailable, ETA certifies that there is a legitimate need to fill these eight job openings with foreign workers.

Reasons for unavailable qualified U.S. workers include, but are not limited to: 1) there are no qualified U.S. workers available in the occupation in the area of intended employment; 2) all qualified U.S. workers in the occupation in the area of intended employment already are employed by the other companies; and 3) the sponsoring employer (the one completing the application for labor certification) al-

---

* Retained in subcommittee files.

[1] 20 CFR § 655.3(a)-(b) (general H-2B recruitment requirement), and Employment and Training Administration, General Administration Letter No. 01-95 (outlining procedures for state processing and, in Section V, Federal determination of availability). While the WHD does investigate reforestation contractors, it does so under other applicable statutes, such as MSPA, the Fair Labor Standards Act, and/or the Service Contract Act.

ready employs U.S. workers in the occupation in the area of intended employment, but needs additional workers to fill vacancies.

Question 3 Many observers have suggested that the Department issue regulations providing H2A-like protections for H2B forestry workers. Why hasn't the Department issued such regulations, and is it considering doing so at this point?

Answer. The Department of Labor has no direct enforcement authority of the H-2B provisions. However, the Immigration and Nationality Act, as amended by the Save Our Small and Seasonal Businesses Act of 2005, provides the Department of Homeland Security with authority to impose sanctions on employers, including civil money penalties and debarment from the program, for certain types of violations of the H-2B petition attestations. In addition, the Department of Labor's ETA issued a proposed rule last year to change the procedures for issuance of H-2B visas and to provide for post-adjudication audits of attestions.

While the WHD does investigate reforestation contractors, it does so under other applicable statutes, such as MSPA, the Fair Labor Standards Act, and/or the Service Contract Act.

RESPONSES OF MIKE JOHANNS TO QUESTIONS FROM SENATOR CRAIG

Question 1. Please provide the Committee with a detailed plan for enforcing the direction from the Chief and Ron Hooper on this issue.

Answer. The requirements to include the specific contract clauses will be monitored through our established internal control audits of the field units which are conducted in accordance with each Region's Internal Control Plan. The results are documented and reviewed during Washington Office audits of the Regions. This area will receive special emphasis during these audits. We will update the committee on these results as these audits proceed.

Question 2. Please develop an analysis of the cost of hiring H2B workers during the planting and thinning seasons to perform the planting and thinning work currently accomplished through your service contract program. Assume the crews will work in a manner similar to how the fire crews work and assume that we would like to accomplish similar amounts of work as are currently being accomplished through your service contracts.

Answer. This is a very complex issue. We presently don't have the data necessary to perform the requested analysis. However, we will be studying reforestation activities under the OMB Circular A-76 process in the Fiscal Year 2008. This process establishes Federal policy regarding the performance of commercial activities. The purpose of this process is to set forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

Question 3. Given the extraordinary unemployment costs the Forest Service is now paying for fire fighters (after the fire season is over), is there any reason that the agency couldn't use the fire crews to accomplish some of this planting and thinning work?

Answer. Fire crews are typically seasonal or contract crews and the Agency trend is to increase the use of contract crews. For example, this year we have in place national fire engine and crew contracts. These crews are not available except for fire crew contract duties.

Fire season and reforestation work occur at the same time of year, therefore the seasonal fire crews would likely not be available for reforestation work. Also, it would be inefficient and costly to move fire crews around the country to conduct reforestation activities.

RESPONSES OF MIKE JOHANNS TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. On August 12, 1993, Chief Robertson issued a memorandum with an attached action plan addressing "Labor and Immigration Policy on Labor Intensive Contracts. "Much of the Forest Service's recent response to this issue is a reiteration of the 1993 memo and action plan.

Is Chief Robertson's memo and attached action plan still in effect, and, fnot, when and why was it withdrawn or superseded?

Answer. Chief Robertson's 1993 memo primarily addressed the legal status of these workers. Once this issue appeared to be addressed, and was not a reoccurring problem, the agency addressed other priorities and events.

Question 2. Can you explain what plan the Forest Service has to ensure that Chief Bosworth's directives are not ignored a few years from now?

Answer. The Forest Service has established an ongoing working relationship with the Department of Labor, mandatory contract clauses, mandatory training for con-

tract officers, and a process to monitor compliance. The Chief and Director of Acquisition Management, Ron Hooper, sent letters to the field outlining their expectations regarding the health and safety of contract workers and contract administration.

Question 3. The contract clauses issued on January 4, 2006, require contractors to train their employees in the safe operation and use of equipment, but it doesn't appear that there are any standards or certifications to ensure that all the workers are appropriately trained.

Should the agencies develop a uniform training and certification program so the Forest Service can verb that appropriate training has been provided and so the contractors know what is expected of them? I note that the Forest Service already does this in the context of wildland fire fighting and that British Columbia reportedly has instituted training and certification of its reforestation crews.

Answer. We do not believe training and certification is necessary for this type of contracted work. As with other contract work, the solution lies in monitoring, enforcing, and reporting potential violations to the appropriate agencies. These are the areas we are now emphasizing.

Question 4. In his testimony, Mr. Rey referred to the development of new performance measures to help evaluate employees' performance in addressing the issues discussed at this hearing. Please explain what measures have been implemented or are being considered and how they will be used to encourage performance.

Answer. Contracting Officers' and Contract Administrators' performance evaluations will include compliance with the Chief's November letter and Mr. Hooper's January letter. This includes not only their activities directly related to contract administration but also their relationship and communications with the Department of Labor representatives.

Question 5. What percentage of Forest Service hazardous fuel reduction and reforestation projects in recent years are contracted to local businesses and NGOs?

Answer. The Forest Service has contracted the analysis because the data is not centralized. We will provide the information in late summer.

Question 6. What percentage of Forest Service hazardous fuel reduction and reforestation projects in recent years have been carried out under IDIQ contracts?

Answer. Approximately 75 percent of fuel reduction and reforestation work in recent years has been carried out under IDIQ type contracts.

Question 7. In recent years, what percentage of Forest Service hazardous fuel reduction and reforestation projects utilizing best-value contracting authority were awarded to the lowest qualified bid?

Answer. Forest Service policy is that all hazardous fuel reduction and reforestation contracts be awarded on a best-value basis. Based on annual reviews of field units it is reasonably accurate to say that 100 percent of these contracts are awarded on a best-value basis. On occasion even a best-value decision results in award to the lowest priced offer.

Question 8. Does the Forest Service need any additional authority to expand the current role that best value contacting plays in ensuring that contractors perform high quality restoration, that contractors that treat workers poorly or have a history of labor and safety violations are disfavored, and that contractors that provide structured training for their employees and create local benefit for public lands communities are rewarded?

Answer. No additional authority is required to accomplish these goals.

Question 9. The Forest Service developed a database in the 1990s to track contractors with repeat violations of labor and safety laws. Why was that database discontinued?

Answer. The database referenced was not a FS database but rather one that Health and Human Services developed and operated. The FS has created a database which will track potential violations of Department of Labor regulations. We will use that information as part of the responsibility determination during the award process for future contracts.

Question 10. Does the Forest Service have a process in place to make sure that a contractor is not using H2B workers in places not listed on the relevant itinerary that the Department of Labor approves?

Answer. As part of the award process, the contractor must provide written verification that he is authorized by the Department of Labor to hire H2B workers. This authorization would indicate the specific location in which the H2B workers could be employed and this would have to be consistent with the location of the project.

Question 11. The Forest Service contracts require contractors to comply with the Department of Labor's vehicle safety standards, but those standards do not require seatbelts and they do not address transportation of the equipment, for example. Absent improvements in the Department of Labor's regulations, shouldn't the Forest

Service require contractors to meet specific vehicle safety and transportation standards that address the unique risks involved in transporting crews for reforestation and restoration projects?

Answer. The Forest Service has the authority to include these vehicle safety requirements in the technical specifications of the contract. Our new contract provisions do precisely what the Committee suggested by this question.

Question 12a. The witnesses included in their testimony a number of recommendations to address the problems addressed in the hearings, which are paraphrased below. Please respond to each recommendation, including whether you support the recommendation or have specific concerns with it.

The agency should convene, through the National Partnership Office, a series of meetings with workers, contractors, rural community organizations, contracting officers, and other relevant federal staff to develop concrete ways to implement changes in the procurement system to help avoid creating an underclass of forest workers and create a legitimate industry.

Answer. The FS convened an oversight group for this purpose on March 22, 2006 and is in the process of developing membership of working groups, procedures, and goals and objectives. We will continue to implement this suggestion.

Question 12b. The Forest Service should automatically disqualify bids that are 20% or lower than its estimate.

Answer. The GAO has clearly established that the FS cannot arbitrarily establish some percent below which award will not be made. We will however ensure that all minimum Service Contract Act (SCA), Occupational Safety and Health Act (OSHA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requirements can be complied with at the price offered as a minimum.

Question 12c. Contracting officer's representatives and inspectors should be required to record worker-days and hours.

Answer. It would not be feasible or appropriate for contracting officer's representatives or inspectors to record worker-days and hours at each worksite given the dispersion and remoteness of the sites. Establishing this requirement would unnecessarily duplicate a current SCA requirement applicable to the contractor. Moreover, MSPA requires contractors to provide payroll records to the Forest Service.

Question 12d. The agency should explore using a system like the Davis-Bacon certified payroll to increase compliance.

Answer. The SCA requires contractors to keep the same payroll records as Davis-Bacon. Moreover, MSPA requires contractors to provide payroll records to the Forest Service.

Question 12e. Procurement contracts should be packaged for long duration employment—multiple months or seasons and multi-skill sets. Contracts should provide business and employment for fewer workers over longer periods of time.

Answer. The oversight group established in March will be looking at ways to implement this recommendation.

Question 12f. There should be Notification of Lodging & Food facilities for foreign guest worker companies.

Answer. This is accomplished during the pre-work meeting.

Question 12g. There should be Notification of Work Schedule and the Work Area to COR daily to be able to track and catch non-compliant companies.

Answser. This is accomplished during the pre-work meeting.

Question 12h. Defined work hours should be negotiated with the Forest Service CO or COR (i.e.: daily start time, weekend/holiday exemptions).

Answer. This is accomplished during the pre-work meeting.

Question 12i. The agency should verb employee identification and work visas with existing databases that are being implemented by the Forest Service for its wildfire suppression program.

Answer. The Department of Homeland Security and, to a lesser extent, the Department of Labor each has responsibilities related to employers verifying that employees are eligible to work in the US. The FS database tracks violations. The Agency works with the other agencies to ensure contractors are certified to utilize H2B workers. The FS fire databases do not track work visa status of contracted employees.

Question 12j. The agency should verify that contractors have appropriate insurance coverage.

Answer. This is accomplished during the pre-work meeting.

Question 12k. Agency Law Enforcement Officers should be cross-trained by DHS and DOL to perform spot checks.

Answer. DOL is working with FS to make informational materials and training on OSHA and WHD requirements available to FS contracting officers.

Question 12l. The Department of Labor, Forest Service, and BLMshould create a joint task force to report to Congress on the agencies' efforts to address the problems discussed at the hearing.

Answer. The Forest Service and DOL are working together closely in areas of training, monitoring and inspection, and referrals for enforcement.

Question 12m. The agency should create an ombudsman who can investigate concerns of workers, contractors, citizens, and agency staff about labor and safety violations.

Answer. Rather than create another role and process we feel we now adequately have addressed violations of labor laws and safety requirements.

○