



# FEDERAL FOREST

## RESOURCE COALITION

### **Federal Forest Resource Coalition**

#### **Testimony: Building on the Success of the 2014 Farm Bill for Federal Forests**

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Thank you, Chairman Lucas and Ranking Member Fudge. My name is Jim Neiman, and I am President and CEO of Neiman Enterprises. We have four sawmills, one each in Hill City and Spearfish, SD, one in Hulett, WY, and one in Montrose, Colorado. These mills create 475 direct jobs, and help support 250 contractors.

I am also President of the Federal Forest Resource Coalition, representing purchasers of Forest Service timber from 32 States. Collectively, our members employ over 390,000 people, and provide over \$19 billion in payroll. Our members purchase, harvest, transport, and process National Forest and BLM timber into renewable wood, paper, and biomass energy products.

The 2014 Farm Bill was the most significant Forest Service reform legislation at least since the passage of the Healthy Forest Restoration Act in 2003. Among other provisions, the 2014 Bill included:

- Permanent reauthorization for Stewardship Contracting, including reforms that protected contractors from unlimited fire liability;
- Expanded Good Neighbor Authority from a two-state pilot to a nation-wide program;
- Authority to use Designation by Prescription and Designation by Description, streamlining timber sale preparation and reducing costs; and
- Creation of new Categorical Exclusions and streamlined Environmental Analyses to implement forest insect and disease treatments on certain national forest acres.

These provisions, while much appreciated, have yet to yield significant progress in reversing alarming trends in forest health on our National Forests. The relatively low level of use suggests that greater flexibility is required in order to move the National Forests closer to forest plan objectives, including healthier forests, reduced fire danger, and increased timber outputs.

As you well know, millions of acres of National Forests have been affected by insect epidemics and catastrophic fires, and the Forest Service estimates that over 82 million acres of National Forests are at elevated risk of catastrophic wildfires, insect, or disease outbreaks. Last month, the Colorado State Forest Service estimated there are 834 million dead trees in the State, mostly from devastating insect epidemics. California is dealing with a large and rapidly growing mortality event, with as much as 10 billion board feet dead on just two of their overcrowded National Forests. Large scale wildfires cost billions annually to suppress, and cities such as Denver have been forced to spend tens of millions of dollars restoring damaged watersheds.

In other National Forests, such as those in the Lake States and New England, passive management has allowed forests to develop into closed canopy stands where little sunlight reaches the forest floor. These forests have limited value as wildlife habitat and are susceptible to fire and insects, while populations of species that require early successional habitat, such as the ruffed grouse and Kirtland's Warbler, continue to decline.

The extent of the problem is not in doubt. The Government Accountability Office recognized the urgency of the need to reduce hazardous fuels in 1991. The Forest Service acknowledges that over 73 million acres of their lands are a high priority for management and that "one time treatment of all high fire risk areas would not fully address the fuels problem, as landscapes continue to change over time and fuels would build up on many lands currently in historic condition, without periodic maintenance treatments." The Western Governors' Association has adopted numerous resolutions acknowledging the extent and severity of the problem, and urging rapid action to address it.

These problems are often the most severe in States which have lost most of their wood using industries due to constrained supplies from Forest Service lands. We've learned through painful experience that efforts to rebuild the industry infrastructure in such places is a slow, laborious process. Efforts to increase the pace and scale of management are often stymied by this problem – a classic chicken-or-egg problem. The Forest Service must demonstrate it will reliably offer viable projects to attract investment, and it's difficult for the Forest Service to offer these projects under current authorities.

Current Forest Plans allow for roughly twice the current level of harvest from our National Forests. Increasing the pace and scale of management to meet the roughly 6 Billion Board Feet called for in current plans will not only create American jobs in frequently hard pressed rural areas; it will reduce fire hazards and improve wildlife habitat coast to coast.

Current authorities do not allow the Forest Service to plan and implement needed management projects in a timely fashion. Badly needed projects to thin hazardous fuels can take years to plan, at which point groups opposed to management file lawsuits that cause further delays. Many National Forests are woefully behind on meeting forest plan objectives, particularly those associated with young forests. At best, it takes the Forest Service at least a year to plan and begin implementing salvage projects. Worse yet, the

Forest Service has, in our view, been slow to implement streamlined authorities provided in the 2014 Farm Bill.

The Insect & Disease Treatment Areas authority created by the 2014 Bill is a case in point. The authority allowed States to petition the Secretary of Agriculture to designate certain NFS lands as “Insect & Disease Treatment Areas,” where the Forest Service would then be allowed to use expedited NEPA tools – including Categorical Exclusions of up to 3,000 acres – to reduce fuel loads and increase stand health. 37 States petitioned for the inclusion of over 56 Million acres of National Forest lands. Since the petition process ended in May of 2014;

- 41 Categorical Exclusions have been decided in 12 States, covering a grand total of about 78,000 acres of treatments, including 26,000 acres of timber harvest.
- An additional 28 projects – using Categorical Exclusions and focused Environmental Assessments & Environmental Impact Statements – covering an additional 127,000 acres – are in the works.

This May, it will be 3 years since the close of the designation period. At this rate, the Forest Service is treating just over 26,000 acres per year. If we assume that the additional 127,000 acres will be decided entirely in this fiscal year, that would represent a significant ramp up. However, even at that higher rate, **it will take over 440 years to treat all 56 million acres designated in 2014.**

We are flummoxed at the low rate of use of these new authorities in regions that have had significant forest mortality events. Region 2, where my businesses are, has only used the new authorities on 1,600 acres for mechanical treatments, despite the fact that we’ve had millions of acres of damage from Mountain Pine beetles and Spruce Beetle epidemics. Oregon, for another example, had over 6.5 million acres designated as treatment areas, yet has completed only had two projects covering a few thousand acres, with only 5,100 acre in progress.

Likewise, we are concerned that Good Neighbor Authority Master Agreements are only in place in 18 States (Alabama, Alaska, Arizona, California, Colorado, Florida, Idaho, Indiana, Louisiana, Michigan, Minnesota, Montana, New Hampshire, Ohio, Oregon, South Dakota, Tennessee, Texas, Vermont, Wisconsin and Wyoming). The Forest Service should have Master Agreements with every State that includes NFS lands.

Moreover, we are concerned that implementation of the current Good Neighbor Authorities has exposed limitations which are hampering program effectiveness. Overlapping and conflicting authorities present this committee with the opportunity to fix problems we didn’t foresee in 2014.

**Recommendations for the Next Farm Bill:**

We learned from experience that the Farm Bill is a viable vehicle for meaningful reforms of our National Forest System. We urge this subcommittee to continue this commitment to

ensuring better management of the 191 million acres of National Forests, working closely with your counterparts on the Natural Resources Committee and, of course, your colleagues in the other chamber.

In order to address the continuing forest health crises these Federal lands are experiencing, we urge you to take the following steps in the next Farm Bill:

**Create Additional Categorical Exclusions:** Additional CE authority through new categories or expansion of existing categories would mean fewer projects would require detailed NEPA analysis. In adopting new CE's, Congress should specify that the Forest Service has the discretion to determine when and how to apply "extraordinary circumstances" reviews to the projects, and clarify that projects conducted pursuant to new and existing CE's do not require documentation of cumulative impacts. We recommend the following new or expanded CE's:

- Early Seral Habitat Creation on up to 10,000 acres'
- Expansion of Insect & Disease Treatment Area CE's to 10,000
- Improve wildlife habitat on up to 10,000 acres.

**Allow the FS to conduct projects consistent with the Insect & Disease CE:** The existing Insect & Disease CE's could be improved by (1) allowing the Forest Service to move forward with projects on lands that it determines meet the criteria for designation; (2) expand its application to all acres outside of designated wilderness, roadless, or on which removal of vegetation is prohibited by law; and (3) making the authorities permanent; and (4) authorizing projects in lands in Fire Regime IV.

**Clarify NEPA Responsibilities at the Forest Service:** GAO has found that the Forest Service does more NEPA compliance, produces more EIS's, and takes longer to do so than most other Federal agencies whose projects have inherently more lasting impacts on the landscape, for instance through creation of permanent infrastructure. Congress should clarify that at the Forest Service:

- Application of NEPA should be restricted to truly "major" actions, not routine land management: Thinning of forests in general forest or "suited for timber production" acres under existing forest plans should presumptively not be considered a major action. Taking steps to rapidly address hazard trees after wildfires, ice storms, or wind throw events should not presumptively be considered "major."
- Clarify that (1) environmental impact statements only require an agency to analyze the proposed action and a no action alternative, and that consideration of additional alternatives is solely at the discretion of the Forest Service; and (2) environmental assessments done by the Forest Service do not require analysis of a no action alternative.

**Clarify Problems Restricting Use of Good Neighbor Authority:** Due to a rapidly unfolding series of events, Congress enacted two different Good Neighbor Authorities during 2014. Unfortunately, both of these authorities contain language that, as explained in Forest Service guidance, limits the ability of the Forest Service to use these authorities. In our

view, an effective, single National Good Neighbor Authority is needed to strengthen the Forest Service relationships with the States, create program efficiencies, and maximize program effectiveness. A single new Good Neighbor Authority should:

- Allow the Forest Service to use GNA for projects anywhere on the National Forest System, not just those that meet abstract and poorly defined adjacency requirements; and
- Remove restrictions on road repair and rehabilitation. Current practice defines road reconstruction so broadly that even limited road work triggers concern when the Forest Service uses GNA. This leads to poorly designed timber sales and precludes some projects altogether.

**Clarify Congressional Intent on Stewardship Contracting:** Stewardship Contracting is one tool for achieving land management goals; in many cases, the same land management results can be – and are currently being – achieved with traditional timber sale contracts. Congress recognized this when they made the authority permanent in the 2014 Farm Bill, saying that Stewardship Contracting authorities is not intended to replace or supplant other contracting tools. The Forest Service and BLM can achieve greater program efficiency and transparency in the use of Stewardship Contracts, while ensuring local support for the projects performed using this important tool. These reforms will also help attract a broader variety of potential partners who want to support and participate in Stewardship Contracting projects. The next Farm Bill should:

- Make retention of existing wood products infrastructure a co-equal objective with other goals of Stewardship contracts and agreements.
- Provide clearer criteria to help the Forest Service determine when to use Stewardship Contracts, Stewardship Agreements, or other contracting mechanisms. In general, if a project is located in the suitable timber base and can be a viable, commercial timber sale, it should be offered as such.
- Clarify the Forest Service and BLM ability to use “best value” or “lowest cost, technically acceptable” criteria when making contract awards.
- Where Stewardship contracts or agreements result in payments to the Forest Service, 25% of those gross payments should be directed to the County where the project is being performed.
- Congress must remind the Forest Service that funds collected under the Knutson-Vandenberg Act may be used beyond the sale area boundary, and direct the Forest Service to reduce overhead costs charged against K-V collections.

**Provide Greater Certainty for Project Level Decisions:** The House Agriculture Committee played a key role in providing some of the judicial review relief for certain Forest Service decisions in the Healthy Forest Restoration Act of 2003. In addition to creating a streamlined “objection” process (expanded to all Forest Service projects in 2011), HFRA encouraged courts to provide deference to the Forest Service for a narrowly defined set of projects, required participation in the administrative objection process in order to be eligible to file suit, required courts to consider the “balance of harms” from a proposed project versus the harms that could be caused if a project wasn’t done, and provided that injunctions be limited to 60 days. In the next Farm Bill, the Congress should:

- Expand HFRA judicial review provisions to all Forest Service vegetation management projects, except on acres where timber management is prohibited by law or the Forest Plan;
- Provide for alternative dispute resolution mechanisms, including “baseball” style arbitration, for some projects on a pilot basis.
- Restrict EAJA payments to reasonable limits for hourly reimbursement, and provide stricter controls to ensure that payments do not go to losing plaintiffs or organizations which have substantial financial resources.

**Conclusion:** The Federal Forest Resource Coalition is extremely grateful for the work this committee did in the 2014 Farm Bill. We continue to encourage the Forest Service to more fully utilize the authorities provided in that landmark bill. However, we’ve also become aware of some key missing elements and unforeseen challenges as the Forest Service has worked to implement these authorities. The above recommendations would allow the Forest Service to more rapidly propose, analyze, and implement needed forest management projects across the landscape. Doing more work, better, and faster will result in lower costs, more community support, and potentially higher returns to the Treasury.

If we fail to act, however, the alarming trends in declining forest health, loss of forest industry jobs, continued catastrophic fires, destroyed watersheds and degraded wildlife habitat are a virtual certainty. While the Congress has consistently provided streamlined authorities since 2003, we’ve seen that they have yet to succeed in moving the Forest Service far enough, fast enough to address its many and serious problems.

We urge you to take the opportunity offered by the next Farm Bill to help move the trend towards more, better, and faster management.