

Testimony of Jessica Crowder
Policy Advisory to the Honorable Matthew H. Mead
Governor of Wyoming

Before the U.S. Senate Committee on Environment and Public Works

September 27, 2017

Mr. Chairman and Members of the Committee,

I appreciate the opportunity to testify before the committee today. I have worked in the field of natural resource management and planning for approximately 12 years. Currently, I am a Natural Resources Policy Advisor to Wyoming Governor Matt Mead. I appreciate the opportunity to share Wyoming's perspective on forest management.

We must find a path that applies active management to Wyoming's forests and our nation's forests. The impacts of unmanaged forests crosses land ownership boundaries and impacts air, water, recreational opportunities, wildlife habitat, livestock grazing, forest products and jobs. The current situation on forested lands in Wyoming and across the country demands immediate action. Governor Mead recognizes the need to improve management of our forests. Because of potential threats to Wyoming's economy, culture and ecology, Governor Mead created the Task Force on Forests¹ (Task Force) in 2013 to analyze and consider response strategies and recommendations for forest management. Through the recommendations of the Task Force and subsequent work in Wyoming, we believe there are several opportunities to address challenges to reaching our goal of forests that contribute to multiple uses and resource values. This path forward must include expediting National Environmental Policy Act (NEPA) analyses and improving partnership opportunities.

Challenges

Wyoming's state and national forests offer an illustration of the need for active forest management. Logging, mechanical treatments, managed livestock grazing, prescribed fires and managed wildfires all serve to improve forest health and the multiple benefits derived from healthy forests. Despite this knowledge, we have not been able to fully implement active management at a landscape scale and the result is concerning. Over the past 20 years, aerial detection surveys have mapped over 4.6 million cumulative acres of trees killed by insects and disease in Wyoming alone. Catastrophic wildfires, and the cost to fight wildfires, have increased across the west. Our forests are not managed for health and sustainability.

As an example, the Medicine Bow National Forest in south central Wyoming has experienced significant levels of beetle infestations since the 1990s. The U.S. Forest Service has determined

¹ See *Final Report, Governor's Task Force on Forests*. Last accessed September 22, 2017 at <http://www.uwyo.edu/haub/files/docs/ruckelshaus/collaboration/2013-forests/2015-forest-task-force-final-report.pdf>

that approximately 86 percent of forested acres (559,782 of 652,860 acres) in the Snowy Range and Sierra Madre portions of the Medicine Bow National Forest have been impacted by beetle infestations. This drastic change on these two mountain ranges has had negative consequences that are similar to other forested areas of Wyoming (Attachment 1 – Sierra Madre Range). The Medicine Bow National Forest has increased vegetative treatments and timber sales in an attempt to address the poor conditions but these efforts have not kept pace with the need for management.

Federal impediments to management have negatively affected Wyoming's economy, natural resources, private property and human health. Wyoming contains more than 11 million acres of forested land, 53% of which is administered by the U.S. Department of Agriculture-U.S. Forest Service (USFS) and 11% is administered by the U.S. Department of Interior- Bureau of Land Management (BLM). Not all of this acreage is considered "nonreserved timberland" – some is permanently reserved through statute or administrative designation such as Wilderness or National Parks.

Wyoming's timber production has improved in recent years, but production is below levels seen in the late 1900s and early 2000s. Mills in Wyoming have experienced increases in their capacity. However, the total number of mills has decreased. The loss of mills has an impact on Wyoming's economy and on Wyoming's ability to utilize forest products and complete vegetative treatments. This is compounded by dead and dying forests that contain trees that, as time passes, lose their usefulness as a forest product.

Unmanaged forests also have impacts on the ecology of an area and the people and animals that use those forests. Our forests lack the diversity of age class and structure that is necessary for ecosystems to provide essential benefits. Dead trees in Wyoming pose a hazard for wildlife, livestock and humans. Down trees make it difficult for people and animals to use an area. Forage and habitat quality and quantity for wildlife and livestock are reduced. It is difficult for managers to access areas for treatments, livestock management or recreation pursuits such as mountain biking, hunting and hiking.

Forests impacted by insects and disease also make firefighting difficult and often unsafe. 2017 has been an average year in terms of wildfires for Wyoming. Unfortunately, this is not true for several western states. The fire season of 2012 was an intense and record setting year for Wyoming. Over 700,000 acres burned and over 75 residences were destroyed. Total suppression costs were approximately \$110 million with the State of Wyoming's share of that cost approximately \$43 million. The intensity of fires caused concerns over the potential for widespread establishment of invasive species, including cheatgrass.

The practice of using funds intended for specific projects and programs to pay for wildfires, also known as "fire borrowing," further erodes forest management, hazardous fuel reduction projects, habitat improvement projects and other projects within the federal agencies. We support congressional efforts to end this practice.

Wyomingites are concerned that increased occurrences of catastrophic wildfires will harm their municipal watersheds. High intensity fires have the potential to remove large amounts of

vegetation, increasing erosion and sedimentation in reservoirs that provide water for municipalities throughout the state. Governor Mead's Task Force on Forests addressed this concern by recommending the development of cross-jurisdictional watershed protection plans for municipal water supply drainages. Two studies have been completed. These studies focus on proactive management to preserve and enhance water quality and to avoid catastrophic effects of large-scale fires on municipal watersheds.

Wyoming's air quality has been affected by smoke from wildfires within the state and from wildfires in other states such as Montana, Idaho and Oregon throughout the summer of 2017. This smoke has periodically caused elevated values of pollutants such as PM_{2.5}, PM₁₀, nitrogen oxides, and ozone throughout the summer. The first two weeks of September were particularly smoky, which had a severe impact on air quality throughout Wyoming. The Wyoming Department of Environmental Quality, Air Quality Division has recorded nearly 40 values over the level of the air quality standards for particulate matter and ozone since July. The cities of Sheridan, Casper, and Cheyenne and the Powder River Basin area were the most impacted.

Regulatory challenges also exist. NEPA analyses are costly and time consuming processes that slow proposals for active management. As forested landscapes change due to insects, disease and catastrophic wildfires, so must the ability of federal agencies to complete appropriate NEPA analyses, address challenges and create healthy forests in a timely manner.

Solutions

Governor Mead's Task Force on Forests contains several recommendations that the State of Wyoming continues to work towards. I will address three possible solutions that generally fall within the recommendations made by that Task Force.

Good Neighbor Authority

Wyoming has worked to increase partnership opportunities with both the USFS and the BLM. The permanent authorization and expansion of Good Neighbor Authority in the 2014 Farm Bill has been an important tool for getting more work done on-the-ground. This work contributes to proactive management and decreased potential for large, intense forest fires. However, as you are aware, the 2014 Farm Bill does not allow permanent roads to be reconstructed under Good Neighbor Authority, as described below:

- *16 U.S.C. 2113a(a)(3)(B)(i), Section 8206 (a)(3)(B)(i), provides that permanent roads are excluded from Good Neighbor Authority*

This exclusion is cumbersome – it requires a separate contract to maintain and/or reconstruct permanent roads that are often necessary to complete projects allowed under Good Neighbor Authority. We recommend removing this provision.

Insect and Disease Areas

Congress gave the USFS the ability to use categorical exclusions under Section 8204 of the Agricultural Act of 2014 (2014 Farm Bill) in designated insect and disease areas. Federal agencies are, in some instances, hesitant to utilize existing authorities and capitalize on

opportunities to complete NEPA analyses in an expedited manner. Under the 2014 Farm Bill authority Governor Mead requested over 1.5 million acres be designated as Insect and Disease Areas. Since that time, the Medicine Bow National Forest has requested an additional 751,000 acres be designated. To date, this tool has not been utilized in our state. Congress should urge the USFS to use categorical exclusions already allowed in designated Insect and Disease Areas.

Additionally, increasing the acreage allowed to be considered under a categorical exclusion in Insect and Disease Areas would be beneficial. Large areas of Wyoming and the west have been impacted by insects and disease and increased acreage would assist in addressing large landscape-scale treatments quickly and efficiently. It will take management on a larger scale than has occurred in recent years to effectively decrease wildfire risks.

Expedite NEPA

As you are aware, the National Environmental Policy Act of 1969 was enacted to fulfill a specific purpose, as described below:

- *Sec. 2 [42 USC § 4321]. The purposes of the Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.*

NEPA is a procedural statute designed to disclose impacts and assist federal agencies in making decisions. Yet NEPA has evolved into a cumbersome and costly process often developed with the thought of defending against litigation in mind. NEPA analyses often contain unnecessary information in an effort to guard against or answer possible litigation. I believe this moves NEPA beyond the simple intent originally adopted. Slow and unwieldy NEPA analyses do not provide for progress in reacting to ever-changing conditions on-the-ground.

The NEPA was originally intended to be a useful planning tool. We recommend relatively simple changes to restore the original intent. I believe a look at the original intent of the law is required to change how we apply the law. This is a significant shift from how the law is currently being executed and will require strong leadership. I submit that this committee is exceedingly qualified to undertake and accomplish the goal of streamlining NEPA.

A change in the NEPA process, through either legislative action or informal agency actions such as manual updates, is necessary. NEPA itself requires a specific sequence of actions occur in order to reach a final decision. This process is initiated by a Notice of Intent and Scoping, followed by a Draft Environmental Impact Statement (EIS) for public comment. Public comments are considered, the EIS is edited and a Final EIS is released. Finally, the Record of Decision is signed. My personal experience has been that outreach to entities outside the federal agencies is limited in the early stages of development. Often, other entities, such as states, have specific expertise, data and insight into the project under consideration that would significantly contribute to the NEPA analysis early in the process. Requiring early outreach in the analysis process would reduce the time and resources required to reach a decision.

There are other steps that could occur to expedite NEPA. Federal agencies can commit to meeting early and often with state and local governments - building a common understanding of legal and regulatory jurisdiction. They should discuss plans, programs, policies and processes of the state and local governments and how those authorities are to be addressed in the NEPA process (e.g., development of the preferred alternative). This has potential to reduce or eliminate the submission of adversarial comments (see 40 CFR § 1501.1(b)) at later stages in the process and allow for issue resolution prior to the release of a Final EIS.

States and federal agencies should share, update and utilize information in a cooperative manner to enhance planning and implementation. This action could improve the establishment of current management situations and needs for change (see 43 CFR § 1610.4-4). States and local governments should also be able to participate on interdisciplinary teams where they have expertise or jurisdiction by law and have access to information that will inform the process and planning (see 40 CFR § 1501.6(b)(4)).

Conclusion

Enhancing forest management to proactively address forest health and decrease wildfires is necessary. Governor Mead appreciates this committee's continued leadership and interest in finding solutions to the crisis we are seeing on our western landscapes.

Thank you again for this opportunity to share Wyoming's perspective on ways to strengthen forest management. I welcome any questions you may have.



Western Governors' Association Policy Resolution 2017-10

National Forest and Rangeland Management

A. BACKGROUND

1. The American West encompasses a huge landmass representing 2.4 million square miles or over two-thirds of the entire country. Over 112 million people live in these states and they reside in large, densely populated cities, smaller cities and towns and in rural areas.
2. Perhaps more than any other region, terrain, forces of nature, and land ownership patterns in the West underscore the purpose and vital need for a more active federal role in forest management. Western states include more than 75 percent of our national forest and grassland system. These public lands serve as critical economic drivers, and they provide numerous conservation benefits, water supply, and recreational opportunities for Western communities and the nation.
3. States have a particular interest in improving the active management of federal forest lands. State governments have trust authority over water, wildlife and forest resources, along with primary authority and expertise to protect community health and safety. Poorly managed forests can have significant and broad impacts on the landscapes and communities of the West, including negative impacts to air quality and public health, degradation of rivers and streams and associated water quality (including drinking water), reduced forage for domestic livestock, impaired habitats for wildlife and fish, and the loss of forest products and associated jobs.
4. Relative to decades past and other forest landowners, forest managers today operate under a constrained decision space as they work to address contemporary issues such as climate change, invasive pests and diseases, habitat diversity, fuel build-ups and fire risk, and legacy impacts. Adding to this challenge are concerns about the economic and social vitality of rural communities that experience impacts from reduced timber supply and compromised forest health. Displaced workers, declines in school enrollment, aging demographics, property loss, business closures and revenue impacts due to wildfire, and high unemployment are not uncommon to these communities.
5. States are managers as well, and many Western states own extensive public land holdings that require forest products infrastructure to achieve community vitality and land management goals, including ecological restoration objectives and healthy and resilient forests.

6. The U.S. Forest Service business model has historically been based on a combination of federal appropriations that were supplemented with revenue from resource sales and fees. Until the early 1990s, the Forest Service was a net contributor to the Federal Treasury. Over the past 20 years, timber sales have dramatically declined.
7. In addition, the last decade has seen several large, very expensive wildfires, which have increased the U.S. Forest Service wildfire suppression costs from 13 percent of the agency's FY 1991 budget to nearly 50 percent over the last several fiscal years. Consequently, under the current agency budgeting framework, forest management, hazardous fuels reduction, habitat improvement, and outdoor recreation programs have been negatively impacted across national forests and Department of Interior lands.
8. An April 2015 study by the U.S. Forest Service, the *Collaborative Forest Landscape Restoration Program 5-Year Report, FY 2010 – 2014*, found that the past century of wildfire suppression and legacy management practices have contributed to forests being overstocked and primed for larger and more intense blazes, and that changes in land use and increasing social pressures make it difficult for the agency to let fire play its natural role of clearing the forest understory in certain forest types. Active forest management has historically played a pivotal role in the growth and mortality cycle of forests to manage fuel loading, which in turn can reduce fire-fighting costs and improve habitat resilience. Today, the U.S. Forest Service estimates that roughly 90,625 square miles – an area larger than Utah – is at high or very high risk of severe wildfire and in need of treatment.
9. Insect infestation and disease have damaged many of the forests throughout the West. Severe drought conditions that are impacting western states, particularly California, have only exacerbated insect infestations and tree mortality. The impacts go well beyond fire risk, and timber and fiber production are negatively impacted, threatening the viability of the surviving forest product infrastructure. The significant decline in forest health has also created serious threats and challenges to watershed integrity, wildlife and fisheries habitats, recreational uses, businesses and tourism. All of these impacts present substantial challenges for forest-dependent communities across the West.
10. The dire forest conditions, unmet management needs, and the failure to provide lasting protections for some landscapes have brought diverse stakeholders together to find solutions. Community collaboration on forest health projects is robust in numerous places across the West forging broad agreements among diverse stakeholders on projects that encompass fuels reduction, fiber production, habitat restoration, long-term protection for critical areas, and other community objectives. It is not uncommon to find mill owners, hunters and anglers, loggers, small business owners, conservationists, and local elected leaders working together around the table.

11. Collaborative planning and project implementation across National Forests and state and private forest lands on a larger scale allows for more diverse interests to address their particular needs for a landscape or a watershed. Taking a broad look at a landscape for planning purposes minimizes the challenges associated with managing lands for the benefit of a particular species or to address a specific need. Well-planned projects that are strategically placed across a landscape can result in a higher level of benefits than those that are more randomly or opportunistically placed. Processes associated with planning and implementing a project have become so time consuming and expensive for National Forests in particular that a disincentive often exists for their managers to proceed with management actions that are needed to attain desired ecological, social, and economic objectives.
12. Collaborative efforts have shown initial successes in reaching consensus, but there is a shortage of formal mechanisms that encourage their creation in areas with conflict or reward their success within the context of public process. Further, there is little to no formal incentive for the management agencies and collaboratives to ensure collaborative work happens in a timely and efficient manner that achieves a pace and scale of management that matches the ecological, social, or economic needs of public and private forestlands and surrounding communities.
13. Despite this good work the full benefits of these collaborative efforts have not been realized on the land. Working constructively with collaborators requires resources to be productive and the federal agencies often lack the necessary staff and funding. In addition, the federal agencies have sometimes been reluctant to embrace collaboration, because they either have unclear legal authority to favor collaborative efforts or don't welcome the input.
14. Further, and even when collaborative forest health projects enjoy broad support from diverse stakeholders and the agencies, administrative objections and litigation remain a too frequent outcome. One result is that community collaborative efforts become fatigued, and future opportunities are lost. Another outcome is that Forest Service restoration projects often go through exhaustive, time-consuming analysis, driving up costs and preventing the agency from scaling up management to meet the scope of the problem.
15. Today the costs associated with planning and implementing a management project on National Forest lands are significantly more than those of the private sector. This cost, along with the time associated with drafting, analyzing, incorporating public involvement, and responding to appeals and/or litigation at the project level, lead many federal managers to focus their limited staff, funds and time on projects with the least likelihood to be challenged. This approach does not adequately address the larger socio-economic and ecological needs of our National Forests and dependent communities.

16. The 2014 Farm Bill provided the Forest Service with several new tools to accelerate forest restoration. A Governor could nominate landscapes substantially affected or threatened by insects and disease to the Secretary of Agriculture for designation as Priority Areas for expedited NEPA and administrative process and judicial review. 16 Western Governors nominated areas for this designation, the vast majority of which were approved by the Secretary of Agriculture.
17. In addition, the new Farm Bill authorities provided for a categorical exclusion (CE) for insect and disease projects on areas as large as 3,000 acres that are the product of a collaborative effort. The new CE has the potential to greatly magnify the role of collaboration and strengthen the results of those efforts, and to reduce the time and cost for forest health projects, resulting in on-the-ground restoration work that is accomplished more quickly and across a larger landscape. Not yet in wide use, the Farm Bill also added expanded "Good Neighbor" authority that enhances the ability of states to partner with the Forest Service and implement projects on federal land.
18. The shortcomings of federal forest management have also impacted local governments directly. In 1908, when Congress created the National Forest System, it also passed the National Forest Revenue Act in 1908 directing the Forest Service to share 25 percent of gross revenues with local governments. Then in 1976, Congress passed "Payments in Lieu of Taxes" (PILT) legislation providing federal payments to local governments regardless of gross revenues that result from timber harvest and other forest management activities. After revenues from the sale of timber dropped substantially, Congress passed the Secure Rural Schools and Self Determination Act (SRS) in 2000, allowing counties to choose between a payment based on historical average and the 25 percent revenue share. SRS has expired several times, and PILT has been subject to funding uncertainty as well. Western Governors support efforts to ensure counties and states continue to receive payments under the Secure Rural Schools program, and that these payments should be based upon historic federal land management receipts. These payments are vital to providing state and county public goods and services, such as roads, emergency response, and wildlife and natural resources protection in communities adjacent to federal lands.
19. There have been several efforts in Congress to reform federal forest management, and recent legislation reflects the continued frustration of Congress as it attempts to find a path forward to address this issue in a productive, bipartisan manner.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors support sound forest management policies that maintain and promote ecologic, economic and social balance and sustainability.

2. Today, the Forest Service's forest management program is primarily a byproduct of restoration projects intended to reduce wildfire risk and/or improve forest resilience, water quality, watershed health, key wildlife habitat, and/or intrinsic value. Western Governors recognize and support these forest values, but also believe it is reasonable to expect that some portion of the federal landscape will be focused on long-term, ecologically-sound forest management — where jobs, forest products, and revenues are priorities and generated through sound stewardship.
3. Western Governors encourage the Forest Service to develop and help fund new technologies and wood based markets for some non-traditional products. USDA's Forest Products Laboratory is a hub for research and innovation. We should continue to encourage the application of their knowledge and experience in a practical way in the western United States so that some of the federally funded infrastructure that develops from such efforts could first be demonstrated on private lands. Also, since federal forests are now more focused on large landscape forest health projects, there is a good opportunity to ensure we have a broader suite of outlets, in addition to traditional sawmills and existing biomass facilities.
4. We can achieve sustainable forest management across every acre of our federal and nonfederal forestlands while including an equitable mix of uses to meet many ecological, social, and economic needs.
5. Western Governors believe that our citizens are capable of rolling up their sleeves and working together with the federal agencies to address difficult issues such as forest management, and that not enough is done to incent and reward the current collaborative work that is occurring across the West.
6. It is important to retain citizens' rights to question governmental decisions through administrative and legal means. However, there are situations where the threat of litigation is a key factor resulting in either delay of agency activity and progress or the stifling of productive collaborative work. The lack of funding and resources for federal agencies is also a significant factor. Western Governors believe an effort needs to be made to better understand the scope and scale of this problem. There may be an opportunity to further streamline appeals and litigation associated with National Forest decision making in association with other changes designed to incent collaboration and provide more certainty as to outcomes.
7. The 2014 Farm Bill authorities are significant expansions of Forest Service authority and are powerful new tools to boost forest management, promote collaboration, and limit the impacts of administrative objections and litigation. Western Governors encourage federal agencies to fully implement the tools provided in the 2014 Farm Bill.

8. Western Governors are on record as strong supporters of ending the practice of fire borrowing, and Congress should pass legislation to fund federal wildfires off-budget as many states already do, and ensure the Forest Service budget for forest restoration, recreation, road maintenance, hazardous fuels reduction, and wildlife/watershed protection is fully restored.
9. Western Governors believe clear, coordinated and consistent application of federal vegetation management practices is integral to maintaining the health of western forests, preventing dangerous and damaging fires, and maintaining grid reliability. The Governors support effective and efficient cross-jurisdictional coordination that enables utilities to undertake necessary vegetation management actions on federal transmission rights-of-way – and to do so without fear of strict liability imposition for necessary vegetation management actions taken adjacent to transmission rights-of-way.
10. Western Governors are well-suited to engage in a productive and bipartisan dialogue on the broader topic of federal forest management reform, engaging westerners and examining on the ground realities across western landscapes. Western states are land owners and managers and well understand the challenges associated with forest management under changing social, economic and environmental conditions.
11. A meaningful and successful discussion of forestry reform in the West will require a transparent and inclusive process that engages those diverse interests who have a direct stake in forest management outcomes. The impacts of forest management are felt most directly by those who live, work and recreate in and adjacent to those forests, so the discussion needs to begin there. This is perhaps where Western Governors can provide the most productive bipartisan contribution to this national discussion. Our nation's forests belong to all Americans, and in the end and through their elected representation all Americans will determine the scope and success of any efforts to reform forest management.
12. There is significant dissatisfaction in the West among many stakeholders with the current level of National Forest management. There is a general sense that the current level of forest management is not meeting anyone's needs, whether it's putting logs on trucks, protecting water quality, addressing fire risk, protecting key habitats and landscapes, providing for recreation, or other important community needs. Successful forest management reform will achieve a balance among all of these important objectives, and provide the opportunity for certainty such that diverse interests will be encouraged to work together to achieve shared outcomes.
13. It is time to reconsider the business model of the U.S. Forest Service. Western Governors believe it may be possible to reform the Forest Service business model in a manner that reduces project planning costs, sources funds from non-federal partners and recognizes that the agency no longer generates large revenues from commodity programs.

14. Any discussion of forest management reform must include consideration of the financial relationship between the Federal and local governments, the existence of PILT, and the limited tax base for counties with significant federal ownership.
15. Western Governors support the recommendations identified over the course of the WGA National Forest and Rangeland Management Initiative, and [incorporate the recommendations into this resolution by reference.](#)

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.