

ARIZONA STATE LEGISLATURE
Fiftieth Legislature – First Regular Session

**HOUSE AD HOC COMMITTEE ON ARIZONA FORESTS
RESTORATION MANAGEMENT**

Minutes of Interim Meeting
Tuesday, July 5, 2011
House Hearing Room 4 -- 2:00 p.m.

CoChairman Barton called the meeting to order at 2:03 p.m. and attendance was noted by the secretary.

Members Present

Representative Brenda Barton, CoChairman
Representative Chester Crandell, CoChairman
Representative Albert Hale
Representative David Stevens
Representative Bruce Wheeler

Members Absent

None

Gina Kash, Majority Research Analyst, Agriculture and Water Committee, related that the charge of the Committee is as follows:

- Collaborate with the federal government regarding federal forest management within Arizona borders for the long-term health of Arizona's forests.
- Examine policies and activities for forest landscape restoration, including post-fire harvest restoration.
- Support communities affected by federal forest restoration management inaction.
- Ensure local communities have adequate input and opportunity to mitigate fire damage, as well as participate in ongoing positive economic activities that create jobs and restore Arizona lands.

She stated that the Wallow Fire burned 538,049 acres, which included:

- 4,531 acres of State Trust Land
- 6,284 acres of private land
- 9,200 acres of the San Carlos Apache Indian Reservation
- 12,972 acres of the White Mountain Apache Reservation
- 489,655 acres of the Apache-Sitgreaves National Forest

Mr. Stevens asked for statistics on other fires that occurred during the last two months, which Ms. Kash indicated she will make available to all of the Members.

Opening Remarks

CoChairman Barton thanked everyone for attending the meeting. She said that the purpose is to prepare the foundation for change in the environmental policy relating to Arizona's forests and lands held in trust by the federal government, through collaboration of state, federal, academic and the private sector developing a long-term forest management strategy that will return forest lands to their former health. The Committee will examine policies and activities for forest restoration, including post/prior harvest restoration, commercial thinning, forest floor cleaning and clearing and remedial grazing by domestic livestock. The Committee will support communities impacted by the forest conditions and seek positive economic activities that create jobs and restore Arizona's lands.

Roundtable Discussion with U.S. Congressman Paul Gosar, Congressional District 1

U.S. Congressman Paul Gosar, Congressional District 1, extended his thoughts and prayers to the people who have suffered from the recent wildfires and expressed appreciation to the men and women who have been working around the clock to protect lives and property. He said that Congressional District 1 represents one of the largest Congressional districts in the country and encompasses eight of Arizona's thirteen rural counties. It contains over 37 million acres of land administered by the federal government, including over nine million acres of U.S. Forest Service-administered lands (much of the Coconino, Apache-Sitgreaves, Tonto and Kaibab National Forests).

He stated that he is a member of the U.S. House of Representatives Natural Resources Committee, and one of the many areas that fall under the Committee's jurisdiction is the health of the forest reserves and public parks. Proper management of public lands has been one of his top priorities since taking office over six months ago. This year, Arizona communities have been victims of the largest forest fires in recorded history, and in total, over one million acres of forest service lands have burned in the American southwest, as well as another 600,000 acres of federal, state and private land. The fires are costing millions of dollars in immediate fire responses and will cost many millions more in restoration and rehabilitation in the months and years ahead. The frequency of fires and the magnitude of the acreage burned have exponentially increased since 1990. The ecosystems are suffocating under too many trees. Where there were once 10 to 15 trees per acre, there are now hundreds. He opined that the forests have been mismanaged for a long time, and a change in strategy is past due; it will take strong public-private collaboration in the short- and long-term to restore the forests in Arizona.

Congressman Gosar related that the current federal system gives funding priority to fire suppression, but the millions of dollars spent year after year on fire suppression are only immediate costs that are the most easily quantified and reported to the public. In the case of the Wallow Fire, suppression cost nearly \$105 million; the affected communities and ecosystem will experience long-term impacts that will cost significantly more. The Western Forestry Leadership Coalition, a state and federal government partnership, estimates these costs generally amount to two to thirty times the reported suppression costs. For example, the 2002 Rodeo-Chediski Fire's true cost was closer to \$308 million, fifteen times the suppression costs. In order

to save what is left of the forests, priorities must be changed and forests need to be treated at the pace and scale that the fires are occurring. Concurrently, it is vital that Congress maintain adequate fire suppression funding in the short-term as it will take many years to thin all of the state and country's mismanaged forests.

Congressman Gosar advised that he toured the affected fire sites throughout the state. The areas that were treated as part of the White Mountain Stewardship Project (Project), a stewardship contract designed to thin the Apache-Sitgreaves National Forest and White Mountain Apache Tribal lands, as well as areas managed locally by the Apache Tribes in Arizona, were properly cleaned and cleared, and therefore, still had healthy trees with burned underbrush. The majority of U.S. Forest Service-administered land in the state that was untouched by the thinning practices left behind only scorched earth.

He submitted that it is necessary to resurrect the timber industry to thin millions of acres of badly overgrown Arizona forests. Bureaucratic red tape preventing the private sector from participating in the stewardship of public lands, combined with excessive litigation initiated by extreme environmental groups, has resulted in the loss of Arizona's timber industry and jobs provided by the responsible management of natural resources. Logging makes the forests healthier, helps protect communities and jump starts the local economy. The management of national forest lands is a federal responsibility, and while some people would like to see that responsibility shifted locally, that is unlikely to change in the near future. It is critical for the federal government to meet its public land management obligations to citizens of Arizona and across the country.

Congressman Gosar stated that when the federal government partners with local government, stakeholder groups and private industry, much needed jobs and a safer environment can be created for citizens. The White Mountain Stewardship Project is the first large-scale forest service stewardship contract in the nation. It is an experiment in collaboration with multiple stakeholders, including the U.S. Forest Service, Future Forest, LLC (a local business awarded the contract in 2004), community members and environmental groups. The goal is to treat 150,000 acres of the Apache-Sitgreaves Forest over 10 years. Over the last seven years, nearly 49,000 acres have been treated.

He related that in analyzing the Wallow Fire aftermath, it is clear that the areas treated under the Project burned with less intensity. The Project has successfully developed new markets for wood biomass creating a demand for 15,000 acres per year during one of the most severe economic downturns the wood product industry has ever experienced. As a result, over 300 Arizonans have returned to work and the Project has generated over \$700,000 in revenue. He said there is still much work to be done in the White Mountain area. Since implementation of the stewardship contracting authority, the cost of forest restoration treatment has declined significantly; however, the Project expires in 2013. Congress must address that expiration in a timely manner, as well as other hurdles legislatively to continue the progress that has been made. He indicated that he plans to work to ensure that the necessary legislative fixes are made and this critical work moves forward. Although the cost of the treatments is still relatively high, it is a very small price to pay compared to the cost of fire suppression and the indirect cost of catastrophic wildfire.

Congressman Gosar continued that while this Project is a step in the right direction, landscape scale forest restoration treatments are critical for the state to make real progress towards proper forest health. The Four Forest Restoration Initiative (4FRI) is the type of proposal needed for the long-term health of the forests and has the potential to be the largest and most ambitious restoration effort in the country. It proposes to restore 2.5 million acres of Ponderosa pine forest on the Apache-Sitgreaves, Coconino, Kaibab and Tonto National Forests. 4FRI is unique because it calls for the U.S. Forest Service to partner with private industry to restore the forests; the U.S. Forest Service paid for previous restoration thinning, which it cannot afford in these fiscal times. Large-scale treatment in fire-prone areas will reduce damaging wildfire impacts, as well as provide forest jobs, markets for wood products and ecological restoration. Because of that, it is supported by many of the Arizona Congressional Delegation, Governor Brewer, leaders in the State Legislature, affected counties and cities in the state, an unprecedented number of environmental groups and the industry partners.

He said he is committed to working with all relevant parties to ensure that 4FRI continues to move forward. Last month, the U.S. Department of Agriculture announced new funding for the initiative and released Requests for Proposal for contractors interested in bidding on the project. Continued public-private collaboration is needed in the short- and long-term to ensure that this project is successful.

Congressman Gosar added that he and colleagues in Congress are looking at a wide variety of legislative initiatives to improve federal law affecting natural resource management. He is reviewing the National Environmental Policy Act (NEPA) regulations and other laws in need of legislative change to make the process more streamlined, efficient and fair.

He said he is also reviewing legislative proposals to cap legal fees paid to environmental groups who sue federal agencies, tying up the process for years, and then submit a bill that taxpayers end up paying under the somewhat misnamed Equal Access to Justice Act (EAJA). He is a co-sponsor of HR1996, the Government Litigation Savings Act, sponsored by U.S. Congresswoman Cynthia Lummis from Wyoming. This legislation will reduce the taxpayers' burden to pay attorneys fees, stop abuses by environmental groups by reinstating tracking and reporting requirements and return EAJA to the original intent of Congress, i.e., to help individuals and small businesses during once-in-a-lifetime needs to battle the federal government in court. Veterans and Social Security claimants will still be able to access federal funds through the EAJA.

In conclusion, Congressman Gosar stated that stewardship should include private sector solutions that use the natural resources of the forests in a way that maintains their beauty and vitality. By working collaboratively, the desperate forest maintenance crisis and other natural resource-related issues facing the state can be addressed.

In response to questions, Congressman Gosar conveyed the following information:

- The 4FRI was developed by county boards of supervisors across the state, Northern Arizona University's Forestry Department and private industry. It is a grander scale of

the White Mountain Stewardship Project to thin the forests in a progressive manner, not just on 15,000 acres at a time, but on a huge acreage.

- HR1996 currently does not include loser pays, but the Congressional Judicial Committee is working on that issue. Currently, the Department of Justice (DOJ) chooses winners and losers, so it will be very difficult to get that passed at this point in time; however, that does not mean it cannot be attempted.
- Funding for fire suppression is provided to the U.S. Forest Service to allocate accordingly through the normal appropriations process in Congress. The previous year's budget is used as a baseline for all agencies, which submit a budgetary request to Congress.

Mr. Crandell stated that he was a logger for many years when fires were fought by those who held a contract for removal of timber from the forest, so there was some incentive to put fires out as soon as possible. After observing the Rodeo-Chediski Fire, the Wallow Fire and others, he said it appears there is a tremendous amount of bureaucracy involved in fire suppression today, which allows much time for a fire to progress and get to the point that it cannot be dealt with. He asked if the Natural Resources Committee will look at that, which leads to a tremendous amount of cost and waste in fire suppression. Congressman Gosar responded that relevant agencies were asked that question and a hearing will be held in northern Arizona with Congressman Rob Bishop, Chairman of the Subcommittee on National Parks, Forests and Public Lands, who will talk directly to the affected communities. He added that he has seen the enlargement of federal government not only in forest health, but also in mining and other areas.

Mr. Crandell stated that he heard in Committee testimony in Show Low that the current technique of fighting fire is to "fight fire with fire" and do a lot of back burning. Experts indicate that over half of the acreage lost in the Wallow Fire was due to back fire. He asked the reason for the change in the firefighting technique. Congressman Gosar responded that it is necessary to begin looking at how to fight fires, and the way to teach that at the federal government level is to use examples close to home, such as the Schultz Pass Fire and the Wallow Fire where the habitat will forever be changed because basite crystallized and grass will not grow for 100 years. Also, it could be pointed out that the problem could have been corrected if the area had been thinned and the fire was fought appropriately.

Mr. Crandell stated that after the meeting in Show Low, there was discussion among contractors about the fact that for the 4FRI contract, for example, there is no guarantee that the federal government will not pull the contract at any time due to a lawsuit or other reasons. Congressman Gosar replied that the government was set up as a triangle with an executive, legislative and judicial system. A plethora of lawsuits have been going to the DOJ, which chooses what laws it wants to uphold, and the federal government does not always uphold contracts or treaties with Native Americans. The DOJ and the federal government should be held accountable to the same principles as private industry.

In response to a question, Congressman Gosar discussed the crystallization of basite due to the intense heat during the wildfires.

Mr. Crandell noted that grazing is also beneficial in deterring wildfires, which Congressman Gosar agreed is also an option to consider.

Mr. Wheeler remarked that this is not an ideological or partisan issue, but one that needs to be addressed. He said he hopes the Committee will honestly and objectively look at the policies it is going to be addressing, and hopefully, changing.

Mr. Hale said he appreciates the mention of Indian Nation treaties in the same context as breaching of contracts. As a former President of the Navajo Nation for a number of years, he realizes that implementing policies is a matter of money, and contracts with the federal government usually contain a provision stating that the contract is subject to the availability of money. If Congress does not appropriate money, the contract stops. He opined that in Washington, D.C. there is too much posturing and being tied to ideological positions from both parties rather than moving toward solutions for the benefit of all people.

A brief discussion followed between Congressman Gosar and Mr. Hale about funding, the logging industry and working together to develop solutions.

Mr. Crandell stated that if someone has a trust and the trust manager does not fulfill the obligation to improve the trust, that person has the ability to get rid of the trust manager. He asked if, based on the Enabling Act, the state has the ability to manage trust lands on a smaller scale instead of the U.S. Forest Service, which has grown and utilized fire suppression to become one of the largest entities in the U.S. in fighting fire. Congressman Gosar replied that the problem with the federal government is very complex, and it will be necessary to distinguish between states' rights issues and federal issues. Secondly, states should be compensated for unfunded mandates, as well as the Tribes. In lieu of finances, land, buildings and other items that may not be available, responsibility should be returned to the state.

CoChairman Barton remarked that for many years, the federal government did not make appropriate Payments in Lieu of Taxes (PILT). Considering the amount of revenue that could be gained from proper use of natural resources, a comment was made by someone in Gila County that perhaps PILT should be changed to Land in Lieu of Taxes (LILT) for land management and restoration. The Wolf Reintroduction Program, a federal program managed by the state, is a model that may be used to privatize management and restoration of land in the future. Legislation may not be necessary, but it is something to consider, and perhaps restoration can begin more quickly than going through a complete Congressional makeover of the way lands are handled.

Congressman Gosar cautioned that the process has not only been encumbered by a federal issue, but also local and state issues. The entire process needs to be reformed and people need to be held accountable at every level of government. Mr. Crandell pointed out that the State Legislature has the ability to control issues at the state and local levels, but the federal government oversees and supersedes anything the state may put in place as a management practice.

Mr. Stevens noted that when federal personnel arrived at the Monument Fire, the local fire fighters were sent home. Congressman Gosar acknowledged that is a policy the Natural Resources Committee will be reviewing.

In response to questions, Congressman Gosar indicated that the 4FRI was developed by a group of people who were tired of what was going on, the mitigation that was occurring and foresaw that this catastrophe was going to repeatedly occur, so they wanted to develop some commonsense ideas that everyone could buy into. Participation from the southern part of the state would be welcome. Northern Arizona University also has the expertise to help with changes, which should be utilized.

Public Testimony

Dan Dagget, representing self, related his background (Attachment 1). He gave a slide presentation showing projects in various areas in which privately-managed livestock (sheep, cattle and goats) were used to help remediate land from fire, as well as prevent fires. One project showed that leaving the land alone also turns out to be a fairly good fire preventative. He said using the tools at hand like private livestock management, grazing, and ranching can help break down and slow fires so they do not spread as quickly, and when the fires burn through, the same tools can be used to restore the area.

CoChairman Barton stated that Mr. Dagget provided the Committee with a good baseline and alternatives to consider.

Andy Groseta, third-generation cattleman, Verde Valley, gave a slide presentation (Attachment 2). He submitted that too many fuels have been allowed to build up in Arizona's forests over the last 25 to 30 years to the point where fires do not burn, but explode. Without this massive buildup of fuels, the Wallow Fire would still have occurred, but it would have stayed mostly on the ground where it could be fought, rather than in the crown of trees where it could not be fought. Reviewing the map of the Wallow Fire, he noted that it started on the southern border in the Willow Wilderness, but when it moved to the west to the reservation boundary, the fire slowed down and moved to the ground because the White Mountain and San Carlos Tribes know the value of livestock grazing and timber harvesting for forest management.

He stated that the problem of too much fuel is complicated by lawsuits and threats of lawsuits that eliminated timber harvesting on federal lands and the U.S. Forest Service's inability to provide assured long-term contracts for forest products. Environmental groups have used the NEPA, the Endangered Species Act (ESA) and Forest Planning Rules to litigate, appeal and object to U.S. Forest Service action to the point that the agency can no longer manage its lands unless it is for fish, frog or the owl. He said he has nothing against those creatures, but questioned how many young fish, frogs and owls in their nests will survive from the fire or severe flooding that will happen after the monsoon rains. Citizens who live in the White Mountains are not included in NEPA analyses or ESA habitat plans, but the Wallow Fire polluted their environment like no other incident in the history of the state.

Mr. Groseta discussed the amount of wood fiber produced in Arizona forests from 1986 to 2000, much of which was not harvested, leaving nearly 10 million board-feet of fuel in the forest when the Wallow Fire began. Last week, the Forest Service in Springerville advised that the Wallow Fire burned 400 million board-feet of Ponderosa pine and 2.1 billion board-feet of

mixed conifer, for a total of 2.5 billion board-feet of timber destroyed, which is over \$40 billion that went up in smoke in the last 45 days. He recommended that the ESA exclude its use in areas where fuels need to be reduced.

Mr. Groseta stated that because of prior lawsuits filed by environmental groups, all viable production proposals where ranchers and loggers produce new wealth off the land have been stopped because a NEPA analysis is required for every significant federal action as to its impact. In 2001 and 2002, the U.S. Forest Service was subjected to 482 lawsuits and appeals of proposed actions. Those highlighted by the red arrows are environmental organizations that filed lawsuits in Region 3 in Arizona and New Mexico (Attachment 1). Allowing these radical groups to litigate has reduced livestock grazing in the forests in Arizona 30 to 75 percent over the past 20 years and increased costs for ranching families due to NEPA analyses, lawsuits, appeals and abductions.

He stated that after the Rodeo-Chediski Fire, radical environmental groups agreed to small diameter and small industry thinning, along with thinning to protect communities, but opposed any proposals requiring a full-scale review and proper cutting of all size trees, and harvest of all kinds of plant fuel across the forests. There are many sizes of trees in the forests, all of which need to be harvested selectively. There is also a need for intensive livestock management to reduce fuels and recover burned areas.

Mr. Groseta stated that the Arizona Cattle Growers' Association will release its Save Arizona's Forest Environment (SAFE) plan at its 107th Convention in Prescott on July 28-30 and invited the Members to participate. He provided a snapshot of the plan:

- NEPA and ESA waivers or exemptions, and reforms:
 - A NEPA waiver or exemption and emergency NEPA exemption is needed for at least the next five years. A NEPA analysis has not been done for the 4FRI, which is not a minor hang-up. As a grazing permittee on the Prescott National Forest, he has been waiting six years for a NEPA analysis to be conducted to drill two wells on his ranch to provide water for cattle and wildlife.
 - Categorical exclusion by NEPA of grazing permits if a grazing permit has historically been ongoing for decades and there are no threatened or endangered species on that allotment.
 - Streamlining the NEPA process because the list of analyses to be completed is lengthy, in order to move forward to restore the forests.
 - Lawsuit reform needs to include risk disclosure by litigants and appellants.

In conclusion, he related that the Arizona Cattle Growers' Association is being proactive in providing solutions to the total mismanagement of the national forests. He stated that the time to start fixing this problem is now. Cows and chainsaws need to be put back on the land by timber people and cattlemen who know the land and watershed, and who need to be involved. This will provide jobs for people and a revenue stream to communities, the state and the federal government.

Mr. Crandell thanked Congressman Gosar for taking the time to meet with the Committee. He said he hopes the concerns expressed will be relayed to the Natural Resources Committee.

Congressman Gosar responded that he will keep the Members posted, noting that he would like them to attend the hearing when it is held in Arizona.

CoChairman Barton thanked Congressman Gosar for taking the time to share his thoughts. She noted that she has the number of acres destroyed by fires that was requested earlier. The amount of land destroyed is heartbreaking and unacceptable:

- Monument Fire: 30,526 acres
- Horseshoe 2 Fire: 222,954 acres
- Stanley Fire: 8,782 acres
- Murphy Fire: 68,078 acres

Mr. Hale requested that the Members hear the other side of the story from environmentalists. He said corporations were too focused on making money and not paying attention to some of the adverse consequences, so in order to protect the resources of the people, the federal government had to step in and develop NEPA regulations. From the testimony today, it appears that the pendulum has swung too far and there is now overregulation.

Mr. Wheeler suggested that a representative of the Sierra Club and Congressman Raul Grijalva, who serves on one of the Congressional Committees responsible for this issue, be asked to address the Committee.

Without objection, the meeting adjourned at 4:05 p.m.

Linda Taylor, Committee Secretary
July 25, 2011

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)