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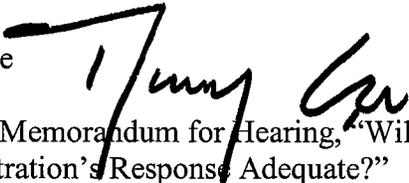
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April 28, 2004

MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose 

SUBJECT: Briefing Memorandum for Hearing, "Wildfires in the West – Is the Bush Administration's Response Adequate?"

On Wednesday, May 5, 2004, at 2 p.m., in Room 2154 of the Rayburn House Office Building, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a hearing on the Administration's efforts to prevent catastrophic wildland fires in the West. The hearing will also examine how Federal, State, and local entities can increase cooperation and coordination to prevent future fires, and what can be learned from the recent fire sieges in the West.

After 100 years of fire suppression, many of our national lands have become tinderboxes, brimming with unnaturally high fuel loads that serve as fodder for devastating wildland fires. In 2000 and 2002, the U.S. suffered its worst two wildland fire seasons in 50 years. Combined, the fires of 2000 and 2002 burned over 15 million acres of land, which cost the Federal government nearly \$3 billion to suppress. The 2002 fire season was particularly severe in the West, with Arizona, Colorado, New Mexico, and Oregon reporting their worst fires in modern history.

Similarly, in 2003, California experienced its worst fire season when 13 wildland fires began during the last week of October and the first week of November. These fires alone claimed 24 lives, destroyed 3,600 homes, charred 739,000 acres, and cost \$250 million to contain. Thirteen more people were killed on Christmas Day when erosion and heavy rains caused mudslides in San Bernardino County.

According to the National Interagency Fire Center's Wildland Fire Outlook, weather and vegetation patterns suggest that the West will experience above normal fire potential once again this year. Furthermore, conditions in the Southwest suggest that the region's 2004 fire season may be as severe as the 2002 fire season. These predictions may prove to be accurate since this

year's season began early with wildfires near Pine, Arizona and Fort Collins, Colorado in late March.

The Bush Administration's Response

During the devastating 2002 fires, on August 22, 2002, President Bush proposed the Healthy Forests Initiative (HFI), an effort to improve forest and rangeland health and decrease wildfire risks by expediting the removal of hazardous fuels from Federal lands. HFI also addressed the ineffective statutory, regulatory and administrative framework that governs land management policy, and specifically, wildfire prevention strategies.¹

As part of HFI, in December 2002, the Departments of Agriculture and Interior (USDA and DOI) proposed regulatory and administrative actions intended to decrease the number of costly and unnecessary barriers to wildfire prevention and rehabilitation projects. These actions included amending the appeals process for public land projects, creating and clarifying categories of exclusions to the National Environmental Policy Act (NEPA), improving the NEPA environmental assessment (EA) process, and streamlining consultations required under the Endangered Species Act (ESA). To date, USDA and DOI have promulgated four rules—three final and one interim final (see attached chart). Additional guidance on EA preparation is expected to be released this summer.

In addition to these regulatory actions, the Bush Administration also sought Congressional authorization for some aspects of HFI. Specifically, the Administration sought to expedite the approval process for fuels reduction and rehabilitation activities, authorize Federal land management agencies to enter into long-term stewardship contracts, and require the courts to weigh short-term impacts against long-term benefits when ruling on fire prevention projects. Although the resulting bill failed during the 107th Congress, similar legislation introduced during the 108th Congress (the Healthy Forests Restoration Act of 2003 (HFRA), H.R. 1904) passed the House in May 2003, and passed the Senate following the outbreak of the wildfires in California in November 2003. President Bush signed this legislation into law (P.L. 108-148) on December 3, 2003. USDA published the first implementing rule on January 9, 2004.

Federal, State and Local Cooperation and Coordination

Recognizing that wildfires do not respect jurisdictional lines, in 2001, Congress requested² the creation of a coordinated 10-year comprehensive strategy for reducing wildland fire risks. This strategy, developed by Federal, State, local, tribal, and private interests, centered on four goals: (1) improve prevention and suppression, (2) reduce hazardous fuels, (3) restore

¹According to a report published by USDA in June 2002, entitled "The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management," the inefficient legislative, regulatory, and administrative framework that USDA's Forest Service (FS) operates under produces excessive analysis, ineffective public involvement, and management inefficiencies. As a result, land management projects are subject to unnecessary delays and planning costs exceed \$1 million per project. Additionally, this framework results in FS employees spending 40 percent of their time on planning and assessment, rather than other more proactive work, such as restoring ecosystems or delivering services in the forests.

²As stated in the House Rept. 106-914 (p. 114) to the Fiscal Year 2001 Interior and Related Agencies Appropriations Act (P.L. 106-291).

fire-adapted ecosystems, and (4) promote community assistance. In May 2002, the same entities published the implementation plan, which fulfilled the principles of the 10-year comprehensive strategy, and established implementation outcomes and performance measures for the wildland fire program.

Consistent with the principles of this framework, USDA and DOI currently manage various programs and partnerships that facilitate cooperation among the many stakeholders. For example, USDA operates the State and Private Forestry organization, which provides a number of assistance programs to non-Federal entities that provide wildfire protection services to communities and the environment. Similarly, DOI provides support to local and rural fire districts in the form of cost-share grants.

The Wildland-Urban Interface

Reports published by the General Accounting Office (GAO)³ and the National Academy of Public Administration (NAPA) have stressed that improving cooperation and coordination among all levels of government and the private sector is vital for decreasing wildfire risks. According to NAPA's January 2004 report entitled "Containing Wildland Fire Costs: Enhancing Hazard Mitigation Capacity,"

Limitations associated with current skills, data, tools, and funding clearly show the need to improve state and local capacity to develop and implement large-scale, cost-effective, site-specific mitigation strategies. The nation urgently needs greater capacity in community-wide and statewide partnerships to address the burgeoning wildfire risks (p.12).

This cooperation will become even more significant as the Wildland-Urban Interface (WUI), loosely defined as the area "where combustible homes meet combustible vegetation,"⁴ expands. Over the last two decades, communities have edged closer and closer to forests and rangelands, thereby increasing the risks and costs of wildfires. The amount of WUI has grown most dramatically in the West because of staggering population increases and because most Federal land within the 48 contiguous States is located within the 11 Western States.

As the WUI continues to expand, policymakers at all levels will be faced with a new array of issues to address – ranging from zoning measures to construction materials to mitigation practices to firefighting capabilities. Due to the patchwork of jurisdictions, it is imperative that Federal, State, local and private entities continue to form partnerships to address these issues in their local and regional areas.

The invited witnesses include: Mark Rey, Under Secretary for Natural Resources and Environment, USDA; P. Lynn Scarlett, Assistant Secretary for Policy, Management and Budget,

³ "Wildland Fire Management: Reducing the Threat of Wildland Fires Requires Sustained and Coordinated Effort," GAO #02-843T (6/13/02).

⁴ "Wildfire Strikes Home! The Report of the National/Urban Fire Protection Conference," sponsored by USDA/FS, the National Fire Protection Association, and the Federal Emergency Management Agency's U.S. Fire Administration (1/87, p. 2).

DOI; Montana Governor Judy Martz on behalf of Western Governors' Association; William Campbell, Chairman, California Governor's Blue Ribbon Fire Commission; Bruce Turbeville, Chairman and CEO, The Fire Safe Council; and, William J. McCammon, President, California Fire Chiefs Association.

Attachment

Administrative Actions Taken Under HFI

Published	Agency(ies)	Type of Action	Action
6/4/03	USDA/FS	Final Rule	<ul style="list-style-type: none"> ▪ Revised the comment & appeals process for projects & activities on lands within the National Forest System ▪ Simplified & expedited the process while encouraging early & effective public comment
6/5/03	USDA/FS DOI	Notice	<ul style="list-style-type: none"> ▪ Added 2 new categorical exclusions to USDA/FS's and DOI's NEPA implementing procedures to expedite certain hazardous fuel reduction activities & rehabilitation projects ▪ Facilitated timely & efficient treatment of fuels & rehabilitation of lands damaged by fire or fire suppression to reduce the risks associated with severe fires
6/5/03	DOI	Final Rule	<ul style="list-style-type: none"> ▪ Revised the comment & appeals process for DOI projects ▪ Allowed wildfire management decisions affecting certain DOI lands to become effective immediately
12/8/03	USDA/FS DOI DOC/NMFS/ NOAA	Final Rule	<ul style="list-style-type: none"> ▪ Codified common ESA Section 7 regulations to streamline the consultation process for proposed projects that support the National Fire Plan (NFP) ▪ Provided an alternative consultation process that eliminated informal consultations & written concurrences for NFP actions that are "not likely to adversely affect" a listed species or designated critical habitat ▪ Eliminated duplicative processes & expedited fuels removal without jeopardizing plant or animal health
1/9/04	USDA	Interim Final Rule	<ul style="list-style-type: none"> ▪ Established the sole process by which the public may seek administrative review & file objections to proposed hazardous fuels reduction projects authorized under HFRA ▪ Asserted that judicial review is premature until all administrative reviews are exhausted