

Forest Health Advisory Council
December 11, 2017
Golden, CO
Meeting Summary

Attendance

Carolyn Aspelin	Aaron Kimple	Chuck Rhoades
Norm Birtcher	Vaughn Jones	John Ring
J. Paul Brown	Lyle Laverty	Jenna Sloan
Joe Duda	Jason Lawhon	Travis Smith
Carol Ekarius	Doug Lempke	Tom Spezze
Cindy Farney	Mike Lester	John Swartout
Kristin Garrison	Melissa Lineberger	Ben Tisdell
Dan Gibbs	Roy Mask	Kirk Will
John Hall	Mark Morgan	
Garry Kaufman	Mike Preston	

Facilitation: Heather Bergman and Katie Waller

Action Items

<i>Kristin</i>	Send Heather the white paper about governmental immunity when it has been approved by the CSFS General Counsel.
<i>Carol Ekarius</i>	Work with CSFS to organize a meeting between multiple collaborative organizations that are working on prescribed fire.
<i>Carolyn</i>	<ul style="list-style-type: none"> • Find out the status of federal and Colorado legislation regarding fire borrowing. • Send out the fire borrowing proposal to the correct people.
<i>Mike L, Lyle, Jason, and Ben</i>	Write a letter to the legislature supporting the elimination of fire borrowing and send to Heather for distribution to the FHAC.
<i>Heather</i>	<ul style="list-style-type: none"> • Send out fire borrowing letter for edits • Send out a Doodle to schedule the next meeting. • Line up all hanging threads for conversation for 2018.
<i>Aaron and Jason</i>	Write a document about the need for landscape-scale planning to be reviewed at the next meeting.
<i>Norm Birtcher</i>	Revise the proposal about the timber industry in Colorado and send to Heather and Carolyn.
<i>Carolyn, Heather, and Mike L</i>	Organize a conversation with CWCB staff to identify best strategies for addressing funding for forest health in 2018.
<i>Mark Morgan</i>	Provide the FHAC with information about what other states and organizations do for governmental immunity for prescribed fire and send findings to Heather.
<i>John S. and Lyle</i>	Talk to Patrick Holmes to learn about possibilities for addressing governmental immunity in Colorado and send findings to Heather.
<i>Lyle and Norm</i>	Run the proposed legislation about governmental immunity past DNR and CDPS staff.
<i>Mark, J. Paul, Lyle</i>	Draft legislation to address governmental immunity for prescribed fire. The will direct all questions for CSFS to Kristin Garrison.
<i>Mark, J. Paul, Lyle, Ben, and Jason</i>	Talk with people within the Colorado Legislature to identify the best next steps for proposing the drafted legislation.

<i>John S.</i>	Keep the FHAC informed about the action of the Western Governors Association.
<i>Garry</i>	Send additional information to Heather about how APCD is working to create an index of health concerns in relation to number of burn permits.

Expediting Burn Permits

At the last Forest Health Advisory Council (FHAC) meeting in July, members discussed the need for expediting burn permits to increase the pace and scale of using prescribed fire as a management tool. Garry Kaufman, Director of Air Pollution Control Division (APCD) within Colorado Department of Public Health and the Environment (CDPHE), was invited to share information about the burn permit program. Below are the highlights of his presentation.

- Colorado’s smoke management plan began voluntarily in 1990 as a memorandum of understanding (MOU) for federal and State land managers in response to complaints about air quality. While there is legislation that dictates actions and desired outcomes, much of the work is left to interpretation.
- The purpose of this program is to reduce smoke impacts and maintain public health, welfare, and visibility. The program is not designed to impede the use of prescribed fire, but rather to balance public health needs with the benefits and impacts of fire.
- The goal of this program is for smoke to disperse into the atmosphere rather than linger and smoke out neighborhoods. Lingering smoke in neighborhoods greatly impacts public health.
- APCD issues between 300 and 400 permits for pile and broadcast prescribed fires each year, although not all those permits are used due to resource constraints and other limiting factors.
- Burn data in Colorado is comparable to that of other western states. There has been a steady increase in the acres burned since 2012.
- APCD has made significant changes to its smoke management program in recent years, such as the removal of PM-10 maintenance areas from “Smoke Sensitive” designations in permitting. (PM-10 is particulate matter that is 10 micrometers or less in diameter.)
- This rule was no longer appropriate, as it was based on outdated assumptions about what aspects of smoke impact public health. The removal of this designation frees up to 1.8 million acres for increase broadcast burning. Most of these acres are on the Front Range.
- Changes have been made to this program to remove unnecessary hurdles while maintaining regulations that are imperative to public health. Achieving this balance on the ground can be challenging.
- Relationships between APCD and the US Forest Service (USFS) have improved significantly in recent years, as well as have relationships between APCD and other agencies and organizations.
- APCD needs to hear from implementers about the challenges they face in terms of smoke management in order to be able to identify possible solutions.

Discussion

FHAC members discussed Mr. Kaufman’s presentation as it relates for prescribed fire and forest health. Below are the highlights of their discussion.

- Many organizations and burn bosses are not aware that there have been changes to the smoke management program; it would be worthwhile to identify ways to communicate these changes.
- Some homeowners’ associations (HOAs) are not aware of the changes of personnel within APCD and any associated regulatory changes. Organizations that do not burn regularly often do not know how to navigate the intricacies of this program, so they choose other biomass removal techniques that are costlier and less efficient.

- There is no data that shows the difference between smoke released during prescribed fires versus wildfires, although wildfires will release more smoke since they are larger and out of control. Scientists at Colorado State University (CSU) are working to learn more about this topic. Having this information may help in explaining the benefits of prescribed fire to the public, including how prescribed fire is a wildfire emissions reduction tool.
- Some people have stated that it takes so long to get a burn permit that they miss their burn window, while others have stated that the conditions for the burn permits are too onerous to actually implement a burn. It typically takes six months to plan a burn, while the permit can take anywhere from a few days to a couple of weeks to get.
- Another challenge with burning is finding a window in which the conditions overlap with the burn permit. The most significant challenge is getting the burn plans specific enough to direct action but broad enough to be more easily implemented.
- There is regular stakeholder group of organizations that burn in Colorado in order to create a more collaborative burn permitting process. The process is much easier than it used to be, but there is still room for improvement to increase the pace and scale of using prescribed fire.
- Some aspects of smoke management authority in Colorado are delegated authority from the federal government so there is little flexibility in these rules and regulations.
- While the process may be easier for organizations that burn regularly, it is not any easier for “regular” people. They are the ones who need help. The increasing prevalence of air curtain burners is also challenging, as they have unique permitting requirements.
- The Colorado Certified Burner program is meant to assist “regular” people in implementing burns and to provide them liability coverage.
- While the problem of air pollution is more prevalent on the Front Range, the impacts of fire and pollution accrue all across the state and the west. There is a difference in the amount of burning that can be done in different parts of the state without affecting communities.
- Increasing the use of prescribed fire means accepting a higher level of smoke risk.
- The Colorado State Forest Service (CSFS) can only burn piles on State lands. Some people think that this is not acceptable and CSFS needs to regain the ability to use prescribed fire, particularly to assist on private lands. Right now, the Colorado Division of Fire Prevention and Control (CDFPC) is the main organization for assisting landowners.
- There is a lack of scientific information available about change in health-related concerns based on the number of permits issued. This should be tracked.
- The USFS has a limited budget to burn all the piles that are needed, so partnerships are imperative.
- Another challenge for using prescribed fire is that many counties are quick to implement restrictions even when not based on hard science. There is no consistency between county sheriffs who establish fire restrictions and the criteria they apply to make this decision. However, this county land-use authority will likely not change since it is in the Colorado Constitution, and not all counties give sheriffs the same power.
- If changes are not made quickly, Colorado could easily become the next California in terms of wildfire quantity and severity.
- The FHAC should work with other organizations and collaboratives that are addressing similar issues.
- All tools must be used to improve Colorado’s forest health, including mechanical and hand treatment, grazing, and prescribed fire.

Possible Next Steps on This Topic

FHAC members discussed possible next steps for addressing the issue of prescribed fire and burn permits. Below are the highlights of their discussion.

- The FHAC needs to look beyond treatment and to see what local communities need to be resilient after fires.
- Any possible solutions need to be bold, long-term, large-scale, and sustainable.
- The FHAC should work with other collaboratives to identify common talking points around prescribed fire. Potential partner groups could include the Prescribed Fire Council and the Wildfire Advisory Council.
- Prescribed fire should be messaged as a wildfire emissions reduction tool.
- There needs to be an entire list of all existing collaboratives working on these issues so no one is recreating the wheel, and the public and elected officials are hearing the same messages.
- There is always more research to be done, but that should not stand in the way of pursuing and enacting changes.
- The public needs to be more involved in these conversations, particularly about smoke. They currently are only receptive to messages about fire after a large event and about six months after such an event. This is largely impacted by catastrophic news coverage.
- Current legislation for government immunity promotes the idea of accepting zero risk, which is not realistic.
- There are lots of solutions, but they are all still dwarfed by the problem; this conversation needs to extend beyond emergencies and into a sustainable change.
- The most impactful solutions will be those that legislators cannot ignore and that allow for bi-partisan support.

Water Resources Review Committee and Wildfire Matters Committee

Travis Smith and Mike Preston delivered a letter from the FHAC to the Water Resources Review Committee (WRRC) about the FHAC's priorities and nexus with water and also presented this information to the Committee twice. Mike Lester also spoke with the Wildfire Matters Committee (WMC). They reported back and below are the highlights of their comments and the FHAC's discussion.

- The WRRC letter was presented along with the CSFS report that discusses the state of Colorado's forests. The next legislative step would be to give this information to the entire Legislature.
- The letter addressed approaching forest health as it relates to Colorado's Water Plan, additional funding for forest health, governmental immunity, proactive land management, and consistent and efficient timber programs.
- WRRC members were impressed that the FHAC was able to come up with substantive agreements so quickly.
- While many comments were not on the record, WRRC members generally seem receptive to the idea of governmental immunity that would allow CSFS to use prescribed fire as a tool in some capacity.
- WRRC members were not sure of the timeline of changing governmental immunity, but seemed supportive of it being addressed in the near future.
- While the CSFS cannot advocate a change in the legislative position for governmental immunity, the FHAC can.
- Mike Lester spoke with the Wildfire Matters Committee and they are aware of the FHAC's work but have not defined their involvement in its initiatives.

- Some legislators were not happy that CSFS could not assist in drafting legislative language about governmental immunity, but that is the position CSFS has been told to take since the issue is highly sensitive and has many legal implications.
- Each legislator is allowed five pieces of legislation if they have submitted three of them by January 1. There is still a possibility that the FHAC can get someone to introduce legislation on this topic. While there may be strict deadlines of legislative efforts, the FHAC should still pursue all other recommendations that do not require legislative solutions.
- The issue of governmental immunity can be addressed by introducing legislation directly or working on legislation through the appropriate committees. It is likely that any legislative changes will be more successful than it has been in past, as there is increased institutional knowledge about prescribed fire and forest health.
- Legislators may be excited to receive a bill to champion that allows them to have a win before mid-term elections.
- One significant reason for exempting CSFS from governmental immunity for prescribed fire was that the Governor felt that there was not enough executive oversight after the Lower North Fork Fire.

Follow-up: Governmental Immunity

Kristin Garrison, Fire and Fuels Management Specialist for the CSFS, drafted a white paper to explain the history and changes in pile burning and prescribed fire before and after CSFS lost governmental immunity. This paper is not yet ready for public distribution, as it has not been reviewed by the lawyers at CSFS, but Kristin was able to share much of the information contained in the draft paper. Below are the highlights of her presentation and the ensuing FHAC discussion.

- Governmental immunity shields public entities from damages resulting from negligence of tort claims. While employees always face the risk of personal litigation, governmental immunity protected them if they were working within their job description.
- After the Lower North Fork Fire, wildfire management and fire responsibilities were removed from Colorado State University (CSU), of which CSFS is a part, and created the CDFPC to fulfill this role. Governmental immunity for these actions was also removed retroactively, the definition of “dangerous conditions” were changed, and the State Claims Board was created to address cases that exceed the existing claim cap.
- After these changes were made, CSU was not able to find insurance to cover the liability of using prescribed fire and the agency was no longer able to conduct with or assist pile or broadcast burns on private lands. CSFS tried to find separate insurance, but it was not a financially feasible option.
- In 2015, an MOU was created that allows the CSFS to fill the role of the Division of Forestry within the Department of Natural Resources (DNR). This MOU allows CSFS employees to work as DNR employees when they are conducting pile burns on State land and is in place through June 2021. All insurance is hosted through DNR.
- CSFS, Colorado Parks and Wildlife (CPW), and CDFPC work together each year to plan burns in a way that best leverages all of their respective resources, as there are limited financial, institutional, and capacity resources at all three agencies. Even if CSFS has full authority to burn on private lands, it still would not be enough to overcome the pile burning backlog at the current rate of work and with the current staff available.
- A significant challenge facing CSFS right now is retaining the technical capacity at the staff level to implement burns, as many of the qualified burn bosses who did not move to CDFPC in 2012 are retiring in the near future.
- Although CDFPC took over fire responsibilities from CSFS, they have limited capacity as well, with only seven engines and a five-person fire squad spread across the entire state.

- People have looked at moving CSFS under DNR rather than keeping it as CSU, but these efforts have not been successful.
- Perhaps the CSFS could sign an MOU with CDFPC to be able to help more on private lands. However, this may not work since CDFPC is under the Department of Public Safety, not the Department of Natural Resources.
- Organizations like California Department of Forestry and Fire Prevention are in charge of all forestry and wildfire issues in California and have significant resources. Creating a similar model in Colorado could be an option, but the California agency is a significantly larger organization than CSFS and CDFPC combined.
- In the past, burns have been especially successful when there was significant coordination between CSFS and CDFPC.

Potential Next Steps on This Topic

FHAC members discussed what needs to be done to move along the issue of governmental immunity. Below are the highlights of their conversation.

- Housing CSFS under DNR would allow them to change their focus to active management rather than the current extension-type mission. However, there are also many challenges associated with reorganizing these entities and it may be viewed as a political move.
- Community Wildfire Protection Plans (CWPPs) should be a baseline that allows communities to come together around forest health and fire. This would allow for the use of resources in a more streamlined and grassroots manner and include community values.
- Since the Lone Mesa burn went well, that process should be outlined and relationships defined to carry forward to other burns in the future.
- Resources need to be invested in high-priority areas, which are often remote.
- There are many partnerships outside of government agencies that can be effective in addressing the issue of lack of prescribed fire, such as The Nature Conservancy.
- Communities can easily send people to complete the certified burner program through CDFPC.
- Grazing must be part of a healthy strategy.
- House Bill 15-1017 addresses volunteer firefighters; this legislation could be revised to be more impactful around prescribed fire.
- There needs to be another governmental immunity bill with a cap.
- The MOU structure should be used more regularly to encourage cross-agency burning efforts.
- Even if organizations cannot meet an increased framework capacity immediately, they can grow into it.
- The USFS should be reducing its staff at its regional offices and the Washington Office, rather than at the district level.
- The solutions and priorities included in the FHAC letter to the WRRC outline the best next steps.
- If the FHAC were to support legislation in this session, it would need to be ready for when the legislature goes back into session in early January. Any potential legislation needs the support of CDFPC and DNR.
- A new bill could be introduced to address governmental immunity, or an amendment could be introduced to the previous bill. It would need support from the Chairman of the Senate, the House Agriculture Committee, and the Governor.
- For new legislation, the cap should be \$1 million. This would be an increase over the previous cap of \$600,000. It would be harder to get support without a cap. The State Claims Board process created no cap, and there is still a cap within the existing legislation for protected damages.
- It would be useful to know the legal intricacies necessary to make this change.
- Even if a bill does not pass this legislative session, it lays important groundwork for passing in the future.

After considering the above points, the FHAC agreed to the following:

- Mark Morgan will provide research about what other states and agencies do in terms of governmental immunity for prescribed fire and what cap they use. Mark will send findings to Heather Bergman to be distributed to the FHAC.
- John Swartout and Lyle Laverty will talk with Patrick Holmes to see what has been done in other places and send findings to Heather Bergman to be distributed to the FHAC.
- Mark Morgan, Lyle Laverty, and J. Paul Brown will draft something about governmental immunity, which may just be about including prescribed fire as a protected damage under existing authorities. This should include the list of what the impacts of this would be on forest health.
- The drafting team will direct all questions to about governmental immunity to Heather Bergman; Heather will solicit responses from CSFS and share them with the FHAC.
- Jason Lawhon, Ben Tisdell, Mark Morgan, Lyle Laverty, and J. Paul Brown will start talking to legislators to identify the best next steps in moving this legislation forward.
- Lyle Laverty and Norm Birtcher will reach out to people at DNR and the Department of Public Safety to ensure they are on board with the proposed legislation.
- Carol Ekarius will work with CSFS staff to schedule a meeting with the Wildfire Council and the Prescribed Fire Council for 2018.
- The FHAC will discuss further utilizing the MOU structure in 2018.

Follow-Up: Fire Borrowing

FHAC members discussed what needs to be done to address fire borrowing after the previous meeting. Below are the highlights of their conversation.

- The WMC discussed fire borrowing, but it is unknown what they decided.
- The Colorado congressional delegation has stated that they are working on a bill about fire borrowing with the USFS, but it has gone from a sure thing to a 50-50 chance of passage. The issue is the wording of the bill.
- The FHAC could write a letter about this to the Colorado delegation to encourage action.

The FHAC agreed to the following:

- Carolyn Aspelin will follow up on the status of the State and federal legislation regarding fire borrowing and report back at the next meeting.
- Mike Lester, Lyle Laverty, Jason Lawhon, and Ben Tisdell will write a letter to the Colorado delegation in support of ending the practice of fire borrowing. They will send it to Heather Bergman, who will send it to the rest of the FHAC for edits. This should be done in a timely manner.

Follow-Up: Landscape-Scale Planning

The FHAC agreed that Jason Lawhon and Aaron Kimple will draft a recommendation that encourages the continued and furthered use of landscape-scale planning to be reviewed at the next FHAC meeting.

Follow-Up: Wildfire Matters Committee Renewal

Continuation of this legislative committee has already been requested for the next session. The FHAC will discuss whether they need to take action to support this renewal if/when appropriate in 2018.

Follow-Up: Timber Industry

Norm Birtcher drafted a recommendation for a consistent timber program in Colorado. FHAC members reviewed it; below are the highlights of their discussion.

- The USFS needs to know what exactly defines a consistent timber program and how current program is not doing enough.

- The USFS does not have enough money to take all the timber off of the forest; they would run out of money before running out of timber.
- Forest Stewardship Contracts are a problem, because there are no funds leftover for timber companies outside of the stewardship contract.
- The industry is not going to invest in infrastructure like timber processing mills in Colorado unless they know there will be a continuous supply.
- The proposal that Norm drafted is something the Colorado legislature could pass to send a message to the federal government to support proactive management and to the USFS to increase the number of acres for treatment.
- It is challenging to approve a certain number of acres or board feet, as that may not always be in line with forest health objectives in the future. It would be more appropriate to state that the USFS should have a timber supply consistent with forest health and resiliency goals.
- Adding a reference to drought or climate would help this pass in the Colorado legislature.
- Numbers representing the impacts of carbon sequestration should be added; the Grand Mesa Uncompahgre and Gunnison National Forests (GMUG) have these specific numbers in their Forest Plans that analyze carbon storage capacity.

The FHAC agreed to the following:

- Norm Birtcher will make edits to this based on the FHAC's feedback today, including referencing drought, carbon sequestration numbers, continuous supply in relation to forest health and resiliency goals, and sustainable funding. Norm will send this letter to Heather, who will send it to the FHAC for final review.
- Carolyn Aspelin will get this delivered to the correct legislators for action.

Follow-Up: Funding

The FHAC expressed interest previously in understanding how other states fund proactive forest management rather than solely fire suppression. A FHAC member created a proposal for funding solutions to address forest health in the future. The FHAC reviewed this proposal; below are the highlights of their discussion.

- Significant treatment needs to occur to improve the health of Colorado's forests, and it should be paid through voluntary taxes.
- Raising the money for the necessary actions could include initiating a form of water tax on other states that use Colorado water or a recreational tax similar to the lottery, perhaps on marijuana.
- The passage of any such taxes would require a public reprioritization of funds and investment.
- The Colorado Water Conservation Board (CWCB) has been open to seeing how forest health can be tied into the funding opportunities associated with the implementation of Colorado's Water Plan.
- Everyone and every interest is asking for money right now, so making funding this a priority may be challenging.
- There has been talk in the past of allowing people to round up to the nearest dollar on their water bill to fund forest health action.
- Other states may have similar challenges; it would be beneficial to see their approaches.
- Great Outdoors Colorado (GOCO) has money that many people are looking to reallocate; perhaps it could be statutorily reallocated to address forest health. However, making any funding changes is challenging due to the Taxpayer Bill of Rights (TABOR).
- Water utilities should be included in this conversation, as they are still paying increased bills from the last fire in Colorado.

After considering the above points, the FHAC agreed that Carolyn Aspelin, Mike Lester, and Heather Bergman will talk with CWCB staff about coordinating a conversation with CWCB staff and the FHAC about future funding options in 2018.

2018 Work Plan

The FHAC has completed its first year of work and needs to set work priorities for 2018. FHAC members suggested the following items be added to the 2018 work plan.

- Joint meeting with other entities working on prescribed fire
- Joint meeting with CWCB staff
- MOU structure to improve cooperation as it relates to prescribed fire
- Special designations that restrict access to certain areas
- Hands-on education for high-school students and the college work force to encourage careers in forestry
- Rebuilding timber infrastructure from scratch
- Increased collaboration between and consolidation of fire departments, particularly volunteer-based departments
- Educating sheriffs about forest health issues
- Opportunities to speak to others outside of this group about forest health issues
- Increased understanding of science in a way that improves collaborative approaches
- Work of the Western Governors' Association (*John Swartout will keep the FHAC updated on their work in any case.*)
- Supply chain management to assess where it is appropriate for the system to get up to scale
- Messaging for prescribed fire smoke as reducing wildfire emissions
- Capacity outside of existing agencies for prescribed fire
- Lodgepole regeneration
- Information about biomass utilization and electricity
- Grazing as a fuels management tool
- Pre-commercial thinning contributing to the backlog of reforestation

Next Steps

The FHAC agreed to the following next steps:

- Heather Bergman will send out a Doodle to find the best date for the next FHAC meeting in February.
- Heather Bergman will identify all remaining, undiscussed topics from previous conversations and ask for FHAC members to prioritize them for 2018.
- Mike Lester will talk to Rick Seymour about rejoining or filling his seat.