

**Forest Health Advisory Council (FHAC)
February 22, 2018
Frisco, Colorado
Meeting Summary – FINAL**

Attendance

| | | | |
|-----------------|----------------|--------------|---------------|
| Carolyn Aspelin | Carol Ekarius | Jason Lawhon | Chuck Rhoades |
| Norm Birtcher | Cindy Farney | Doug Lempke | John Ring |
| J Paul Brown | Neilie Goodwin | Mike Lester | Travis Smith |
| Jacque Buchanan | Aaron Kimple | Mark Morgan | Tom Spezze |
| Joe Duda | Lyle Laverty | Mike Preston | |

Facilitation Team: Heather Bergman and Katie Waller

Action Items

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| <i>Carolyn</i> | <ul style="list-style-type: none"> • Add information to the Preliminary Agreements document to reflect agreements on fire borrowing and management reform. • Organize a meeting with Scott, Tom, Lyle, Jason, and Jacque to draft a letter about fire budgeting and send to Heather for distribution to all FHAC members. • Research legislation regarding SHPO and send findings to Heather. |
| <i>Mark, Lyle, and Jason</i> | Schedule meetings with the Legislative Council and other groups to solicit feedback about governmental immunity and report to the FHAC at the May meeting. |
| <i>Aaron, Carol, Chuck, and Jason</i> | Redraft the science letter taking into consideration FHAC feedback and send to Heather for distribution to the FHAC for review. |
| <i>Tom and Scott</i> | Send Heather the comments that their organizations submitted for the NEPA reform process. |
| <i>Neilie</i> | Organize a meeting with Carol, Joe, and Scott to review research findings about SHPO to create recommendations and report back to the FHAC. |
| <i>Tom</i> | Send Heather information about proposed reforms to the Equal Access to Justice Act. |
| <i>Mike L.</i> | Coordinate with Travis, Aaron, and Carol to reach to Bob Randall (DNR) and Becky Mitchell (CWCB) regarding ways to coordinate work between the FHAC and CWCB. |
| <i>Heather</i> | <ul style="list-style-type: none"> • Send out science letter to FHAC for review when it is available. • Send out fire budgeting letter to FHAC for review when it is available. • Send out Tom and Scott’s comments on the NEPA reform process to the FHAC. • Send Carolyn’s research findings regarding SHPO to Carol, Neilie, Joe, and Scott. • Work with Kristin Garrison and others to draft an agenda for a joint meeting in May and discuss how best to engage sheriffs. • Send out a Doodle for May dates for the joint meeting. |

Governmental Immunity

Mark Morgan reported on his research regarding what other states have done to address governmental immunity for prescribed fire. He provided a handout, which is attached to this summary for reference. Wyoming has pile burning authority, but not broadcast burning; the liability rests with the agency doing the burning. Montana has governmental immunity under the Montana Revised Statutes. In Arizona, burning requires a burn plan, which lays the foundation for immunity (assuming the burn adheres to all the associated rules). Arizona also has a revolving defense fund for burners; they are covered as long as they adhere to the rules and commitments in their burn plans. A sample burn permit from Arizona is included in the attached handout.

Mark also provided data on the magnitude of the need for prescribed fire, as well as draft language for a bill to restore governmental immunity to the Colorado State Forest Service. Both of these documents are attached to this summary. The FHAC discussed the draft legislation language and the issue of governmental immunity and prescribed fire more broadly. The key themes of that discussion are outlined below.

- In many places, burning is the only tool that is available due to topography. Prescribed fire is critical if we are going to treat our forests at the right scale. To do that, we need governmental immunity and pile burning authority. Forests are a public good that support clean air, clean water, carbon sequestration, recreation opportunities and economies, etc. We need to invest in our forests, and that requires some level of risk.
- After the North Fork fire, it may be difficult to get the legislature to restore governmental immunity to the Colorado State Forest Service (CSFS). It may be wise to start with a smaller-scale, more focused approach to governmental immunity and then build on it.
- Offline conversations with state legislators about this issue suggest that there are a lot of votes to support governmental immunity; but there are also some votes against it. Offline discussions with the Chief of the Forest Service suggest he is supportive as well. One thing the FHAC could consider is pursuing an educational campaign to ensure that legislators and others understand the issue and why this is an important tool to put back in the toolbox.
- Legislation passed last year that provided limited immunity for nonprofit organizations doing stewardship on public lands. This might suggest that there is an opportunity to get immunity for prescribed fire for nonprofits as well.
- It is easier for private individuals to get insurance for prescribed fire. This is because the individual is generally doing work that benefits the individual land owner. In the context of a governmental agency, the individual employee doing the burning is still susceptible to being sued. Getting governmental immunity provides a safety net for government employees as long as they follow all the rules and procedures for prescribed burns.
- We need to have all the tools in the toolbox—private burning, nonprofit burning, and State burning. We should continue to move this forward. If we do not address this, one day Colorado will see another a huge wildfire and people everywhere will be asking, “Why didn’t someone do something?”

- We need to think about how maintenance of previous treatments fits in with the vision for prescribed fire and immunity as well. We need to build capacity for burning of all kinds—first-entry and maintenance.
- The CSFS does not have a lot of capacity for prescribed fire. If immunity was restored, CSFS would not do broadcast burns but it would do pile burns.

Next Steps on Governmental Immunity

- We have missed the window for getting legislation passed this year, but we should not wait until next year. The problem is growing exponentially, and we should not let this problem increase so that we cannot solve it. We need action soon, and we should not wait for a perfect time. We should keep pushing hard this legislative session, so legislators can start thinking about it. We are going to have fires this summer. We need to take a strong position on this.
- We can get late bill status and try to move something this legislative cycle. The President of the Senate or the House might be supportive and help.
- Pushing draft legislation knowing that it may not get passed could be a gateway to education. We could learn where the resistance is and do some outreach and education around that. Then we could reassess and try again next cycle.
- If we push legislation, even if it fails, we send a message to the rest of the state about how important that is. This is a very important message, particularly given the fire year that may be ahead of us.
- Mark's draft legislation is a good start but would benefit from a reference to maintenance of treated areas. However, we do not necessarily need to go to a legislator with a draft bill already written. We can work with the Legislative Council to get a draft bill.
- **Mark, Lyle, and Jason will schedule a meeting with the Legislative Council to begin the discussion about a bill; they will consult with other groups to get additional input as needed. They will report back at the May FHAC meeting.**

Federal Fire Funding Legislation

Tom Spezze introduced Patrick Donovan and Noah Koerper from Senator Michael Bennet's office. Patrick and Noah provided an update on federal legislation to address funding for fire suppression for the US Forest Service. Tom has also reached out to staff from Senator Gardner's office and from Representative Tipton's office to see if they would have additional information or perspectives to share with the FHAC.

Senator Bennet is working on fire borrowing legislation in Washington, DC. This effort has been characterized by fits and starts, but the staff remains optimistic that there are sensible solutions to be found. This is Senator Bennet's #1 priority. A lot of people in Washington, DC, are also actively pursuing this issue.

Over the past 10 years, the average fire suppression budget has gone up every year, because each year's fire suppression costs go up. However, the budget cap for fire response (which is based on a 10-year average) is fixed. This is causing the USFS to hold back money they have available for other management purposes to ensure they have adequate reserves

available for fire suppression. This is what is known as “fire borrowing”—it is the Forest Service borrowing from other budget items to cover anticipated fire suppression costs. They sometimes get the money back at the end of the fiscal year, but it does not always get deployed in the most beneficial way. In fiscal year 2017, Congress appropriated \$600 million to the USFS to backfill their coffers, but it is not reasonable to expect that this will continue to happen indefinitely, and allocating emergency funds is not a sustainable solution. The budget cap solution would increase and freeze the 10-year average, which would eliminate the need to continually raise the budget cap and end the need for fire borrowing.

As budget negotiations have proceeded, the Democrats have struggled to develop a comprehensive “fix” to propose, and Republicans feel strongly about included management reforms as part of a “comprehensive” fix. Options to date have included a 2-, 4-, or 10-year fix on the budget cap along with some management reforms. The challenge is balancing the duration of the budget fix with a package of management reforms that both sides can accept. There is also talk of pushing this into either the Omnibus Bill or the Farm Bill, but those are not ideal venues for the discussion. However, the Senator’s office remains hopeful that they can get an agreement by the end of March.

Questions

How can the Forest Health Advisory Council be helpful on this issue?

Having the Colorado delegation behind a common sense, middle-ground solution is important and would help us look at options on the management side of this equation. We need the congressional leadership from the Four Corners area to help us find ways to address management reforms. We are having conversations with stakeholders in water and timber, as well as with the National Governors Association, and we think there is a common set of principles that we can build on. However, while there is bipartisan support for a fire funding fix, there is not as much support for management reforms. Within the Democratic caucus, it is hard to get people to talk about management reforms. Lots of East Coast senators may not understand the nuances of this issue. Senator Bennet’s staff is trying to pull them together to have that conversation, but there is also no clear path toward consensus with Republicans yet either.

Is there anyone in the Colorado delegation who does not support or understand the need for a fix for fire borrowing?

There are Representatives in the House who could be weighing in on fixing fire funding without addressing the management reforms, but we are not seeing that. We would like them to be advocating for that with the House leadership.

Is there any opposition to creating a separate budget item for fire suppression?

In the Senate, there are some fiscal conservatives who would argue that providing off-budget authority is providing a blank check. Our perspective is that we are already restoring those accounts at the end of the year, so the money is being spent anyway. We think we should provide the money at the beginning of the year to improve management.

Can you share the proposals that are being considered?

Proposals have included a mix of 16 management reforms, 5 or 6 different expansions of categorical exclusions (CE's) from the National Environmental Policy Act (NEPA), and stewardship contracting agreements—all as part of a comprehensive budget fix with a change to the budget cap. At one point, we were near agreement on a proposal for 16 management reforms and 2- to 4-year fix on the budget. The proposed reforms were difficult for the Democratic caucus, and the short timeframe on the budget fix would have required us to come to this conversation in 2 or 4 years. That was disappointing.

What could be done in the Farm Bill?

We are looking at the Farm Bill as the right context to have a management reform discussion, because that is typically a bipartisan venue. It would also be a good place to discuss funding for the Collaborative Forest Landscape Restoration Program (CFLRP) and other collaborative efforts. We think the Farm Bill should incentivize collaboration. Water, timber, forest health, insects, and other related topics are relevant and could be explored under the Farm Bill.

How likely is a fire funding fix this year?

We think it is 55-60 percent likely.

Regarding management reforms, is there bipartisan support for increased logging, prescribed fire, and grazing on national forests?

Broadly, there is bipartisan support; it is not clear that there enough support to get it passed. Senator Bennet supports those things.

FHAC Perspectives on Fire Borrowing

- If there is bipartisan support for fixing fire borrowing, that seems like low-hanging fruit and should be addressed on its own.
- Poor management by the US Forest Service has increased management and program costs. Reforms should be linked to a fix on fire borrowing.
- Fixing fire borrowing seems like a way to increase funds that are available for forest treatments. If the USFS has to lay off NEPA staff, trails crews, foresters, and other staff, that will further slow active forest management and make the problem worse.
- In 2000, Congress asked what could be done to decrease the cost of suppression. A group of experts spent 9 months talking about it and concluded that the only way to decrease suppression costs is to reduce fuel loading. The consequence of kicking the can down the road is that we just keep getting further and further into the hole.
- The best approach may be to push for a “clean bill” on fire borrowing and then pursue management reforms later.
- We should revise our preliminary agreements document to address fire borrowing and management reforms.
- We need more information about what management reforms are being proposed and what the concerns are about them. The speakers did not provide a lot of detail about that. We could make that a specific question for Senator Gardner's staff if they come to a future meeting.

- We should write a letter now about fire borrowing and encourage everyone to get that addressed, then we should circle back and address management reforms.
- Going forward, we should refer to this issue as a “budget fix.” The term “borrowing” implies that someone is going to get that money back, which is not the case.
- Any letter from the FHAC on this issue that addresses the Secretary of Agriculture and the Chief of the Forest Service should also include the Secretary of Interior. Otherwise, the Bureau of Land Management, which manages a small but important amount of forest land, will not get the same direction from above.

Next Steps on Fire Borrowing

The FHAC explored three primary options for addressing the issues and concerns outlined above: 1) a letter recommending a “clean” resolution on fire budgeting, 2) a letter focused on fire budgeting with a hint about a need for management reforms, and 3) a comprehensive letter that addresses both issues. Different members expressed support for different approaches. Ultimately, the group agreed that **Carolyn should initiate a discussion with Scott, Tom, Lyle, Jason, and Jacque to draft a letter recommending a budget fix that references the need for management reforms. They will also reference and attach the FHAC preliminary agreements. Carolyn will also add a reference to fire budgeting and management reforms to the preliminary agreements document.**

Support Letter for CFRI

Prior to the meeting, Aaron Kimple reached out to suggest that the FHAC write a letter in support of the Colorado Forest Restoration Institute (CFRI). Aaron stated that because the FHAC has discussed science and includes a reference to it the preliminary agreements, it might be good to support continued funding for CFRI, which is funded by Congress.

Members of the FHAC expressed a shared interest in supporting CFRI, but also in supporting other science and research organizations, such as the Rocky Mountain Research Station (RMRS) and the Joint Fire Science Program (JFSP). Some members of the group also wanted to ensure that there is no duplication in scientific efforts and that funds are being used efficiently to inform management. There is also interest among some FHAC members in having a more detailed discussion about science, the role it plays in management, and how it can be most impactful. Topics to address in a future discussion could include what the FHAC means by “science” (fire science, social science, economics, etc.), the impact of science on forest health, and what key questions remain to be answered.

Next Steps on Support Letter for Science Entities

The FHAC agreed that **Aaron, Carol, Chuck, and Jason should draft a letter that supports CFRI, RMRS, and JFSP and send it to the full FHAC to review. This letter will go out about a month after the letter on fire budgeting.**

Other Federal Legislation Topics

Tom Spezze shared his thoughts on several federal legislative efforts that may be relevant to the work of the Forest Health Advisory Council.

- *Pittman-Robertson Federal Aid in Wildlife Restoration Fund*: Dollars in this fund support wildlife organizations. There is a proposal to increase flexibility in how these dollars are used, which would expand the number of organizations that can benefit from this fund.
- *Recovering America's Wildlife Act*: This is a proposal that would redirect \$1.3 billion of existing revenue to state-led wildlife conservation efforts, which would provide more funding to states for State Wildlife Action Plans. This has strong bipartisan support.
- *National Environmental Policy Act Reform*: There are proposals for ways to streamline NEPA to facilitate forest health treatments. The National Wild Turkey Federation and the Colorado Off-Highway Vehicle Coalition, both represented on the FHAC, have submitted comment letters on this topic; comments closed on February 2, 2018. There is now an effort to review all the feedback received and write a proposed rule for public comment in mid-summer 2018. Several FHAC members expressed interest in further discussing this topic. The US Forest Service is hosting a roundtable discussion on NEPA reforms on March 19th; FHAC members might find this to be a helpful opportunity to share their perspectives. The USFS also has a website on this topic.
- *Equal Access to Justice Act*: There is proposed legislation to amend the Equal Access to Justice Act to create a searchable database of past awards. It is unclear how this change would impact forest health and related issues. Some members of the FHAC indicated that it might be related to the NEPA reforms outlined above. **Tom Spezze agreed to do additional research on this question and report back to the FHAC.**

Next Steps on Federal Legislation

The FHAC agreed that **Tom Spezze and Scott Jones should share the NEPA reform comments their respective agencies submitted.** The group would also like to revisit this topic in the spring of 2018 and potentially submit comments to inform a proposed rule. **Jacque Buchanan will send information about the USFS NEPA discussion to Heather to share with the full FHAC.**

State Historical Preservation Office, Cultural Clearances, and Project Delays

Several members of the FHAC reported forest treatment projects being delayed by the need for multiple clearances by the State Historical Preservation Office (SHPO). The group acknowledged the importance of cultural clearances but expressed concern about requirements for multiple, duplicative clearances in the same project area. Some perceived that there is a change in policy or direction to SHPO to increase the number of clearances required; others wondered whether it is more a question of capacity or interpretation of existing requirements. This issue has come to the forefront in Wyoming as well, where there is proposed legislation to address concerns about SHPO clearance requirements on private lands. Several members of the FHAC noted that it is not clear who oversees SHPO or in what agency it is housed. Some also expressed confusion about what the problem is, what causes it, whether it is being addressed, and what the FHAC could do to improve the situation. **The FHAC requested that Carolyn research what the law says about SHPO clearances and confer with Carol, Neilie, Joe, and Scott about how they would**

recommend the FHAC proceed on this issue. Neilie will organize the conversation about how the FHAC should proceed on this issue.

Prescribed Fire

Heather Bergman noted that at the February meeting, the FHAC discussed smoke permitting and how it relates to prescribed fire. The group agreed at that time that they would like to have a joint meeting with the Prescribed Fire Council to better understand all the issues at play on prescribed fire and see where there is common ground. Carol Ekarius reached out to the Prescribed Fire Council, and they are interested in working with the FHAC. It is not clear what the format or desired outcome of a discussion with the Prescribed Fire Council would be. Additionally, there are several prescribed fire issues that the FHAC has raised in the past but that have not yet been resolved. The FHAC could work on these issues with the Prescribed Fire Council or on its own. The group discussed their perspectives on how best to continue the discussion on prescribed fire.

- The FHAC should work not only with the Prescribed Fire Council, but also the Watershed Wildfire Protection Group and the Wildfire Advisory Committee. These groups have a lot of overlap with the FHAC.
- A joint meeting could be an all-day event or a half-day event, but it would be important to be clear about what the goals and desired outcomes would be. We need to be careful about how we expend FHAC facilitation resources and meeting time to ensure that we all get the most we can out of these meetings.
- We could include a happy hour or breakfast as part of the event to make it somewhat social and allow for networking, while also ensuring that we have a focused discussion.
- We should consider having some members of the FHAC work with people on those other groups to coordinate topics and needs. The FHAC has identified several topics that are of interest to them; but these may not be of interest to the other groups. These topics include developing a memorandum of understanding (MOU) on prescribed fire, increasing capacity for prescribed fire in non-governmental entities, and messaging about prescribed fire.

The group agreed that **Heather Bergman should reach out to a few people on the Prescribed Fire Council, the Wildlife Advisory Committee, and the Watershed Wildfire Protection Group to determine what would be most useful and develop a proposed approach to a half-day discussion with the FHAC.**

FHAC Work Plan for 2018

In the past year, FHAC members have raised several topics for potential discussion. Prior to the meeting, FHAC members prioritized these “hanging threads” in an online survey. The group discussed these remaining topics, what they would do to address them, and in what priority they should be addressed. Key themes from that discussion are outlined below.

- *Work of the Western Governors Association (WGA):* WGA is focusing on forest management, forest health, and management reforms. The FHAC could explore ways to support WGA initiatives. It may be useful to ask John Swartout to brief the FHAC

on the current WGA initiatives and help the group think through ways to add value to those efforts.

- *Educating Sheriffs about Forest Health Issues:* Sheriffs are fire marshals in each county; there is not a lot of consistency in what they know about fire and prescribed fire. An educational campaign targeting sheriffs and prescribed fire would be useful. They also have a lot of skills and capacity, and they could be great partners in forest health. The Colorado Division of Fire Prevention and Control (CDFPC) has a good connection with sheriffs. This could be a topic in the joint meeting with the Prescribed Fire Council and others (outlined above). **Heather Bergman will raise this issue when she talks with representatives from the other fire groups to determine the best approach for moving forward with the joint meeting.**
- *Joint Meeting with the Colorado Water Conservation Board (CWCB):* At the previous meeting, Travis Smith had suggested that the FHAC have a joint meeting with the Colorado Water Conservation Board. CWCB has an interest in water quality, water supply, and watershed health, and these issues are included in Colorado's Water Plan. Additionally, Colorado Water Congress has also decided to make watershed and forest health a priority topic at their summer conference. It may make sense for Travis and Mike Lester to meet with CWCB Director Becky Mitchell and Department of Natural Resources Director Bob Randall to determine how best to connect CWCB and the FHAC. Potential topics include funding, stewardship agreements for forest treatments, ways to leverage funds for multiple impacts, and other issues. The FHAC agreed that **Mike Lester should work with Travis, Aaron, and Carol to organization a discussion with Becky Mitchell and Bob Randall about how best to proceed.**
- *Pre-commercial Thinning and Rebuilding Timber Industry Infrastructure:* Addressing pre-commercial thinning is not an emergency, but it does need to be addressed. Thinning is more effective and cheaper the sooner it is done; if there is a good pre-commercial thinning program, it can improve forest health at a lower cost. However, some scientific and policy barriers have made pre-commercial thinning more difficult. This is compounded by questions about what constitutes "commercial" wood product, and what will be commercially viable in the future. It also intersects with questions about the future of biomass in Colorado and the region. An FHAC conversation on this in the fall would be beneficial. The discussion could include an assessment of the science, a review of policies that may pose obstacles to forest treatments, an assessment of where we have timber industry capacity overlaid with where we have timber resources, and how to ensure the continuity of forest stewardship contracts to ensure there is a consistent and lasting incentive for communities and companies to invest in the timber industry.
- *Increased Understanding of Science to Improve Collaboration:* There is a lot of scientific information available related to forest health and associated issues, as well as a significant number of scientific questions that remain unanswered. The FHAC might benefit from learning more about the available science and the outstanding questions, but there are other avenues and groups having scientific discussions (including the Front Range Roundtable). It is also unclear what role the FHAC would like to have in science and how the group would like to use or apply current or

future research. If the FHAC decides to pursue this issue, a first step could be to determine what the group would like to know and then reach out to partners to help provide that information. Monitoring is also a scientific topic, and it is required both as part of the 2012 Forest Planning Rule and the CFLRP.

- *Other Topics:* A member of the group suggested that the FHAC could address wilderness designation and the limits it creates for forest treatments. Some members of the group expressed an interest in this, noting that wilderness areas can be a haven for insect infestations and that forest plan revisions across the West are requiring the USFS to review lands for potential wilderness character. Other members of the group stated that wilderness designation and regulation might be a topic that is too far out of the direct purview and influence of the FHAC to be an efficient use of the FHAC's limited meeting time.

The facilitator polled the group about what their highest-priority topic is for the next meeting. The first half of the next meeting will address prescribed fire; a majority of FHAC members indicated that their next-highest priority topic is water (to be further defined pending the small group's discussion with CWCB staff). Discussing ways to support WGA's forest health initiative was the next priority.