

**Forest Health Advisory Council (FHAC)  
December 6, 2018, 9:30 am – 3:00 pm  
Glenwood Springs Community Center, Glenwood Springs, CO  
Meeting Summary - FINAL**

*Attendance:* Carolyn Aspelin, Norm Birtcher, J. Paul Brown, Craig Grother, Aaron Kimple, Lyle Laverty, Jason Lawhon, Mike Lester, Paige Lewis, Mike McHugh, Mark Morgan, Chuck Rhoades, Travis Smith, and Tom Spezze

*Facilitation:* Heather Bergman and Dan Myers

**ACTION ITEMS**

Carolyn Aspelin	<ul style="list-style-type: none"> <li>Send a draft of the FHAC section in the CSFS Action Plan to Peak Facilitation for distribution to the group when ready.</li> <li>Include the pinyon-juniper mortality problem in Western Colorado in the outline of the CSFS Action Plan.</li> </ul>
Carolyn Aspelin, Lyle Laverty, Mike Lester, Mike McHugh, Mark Morgan, and Tom Spezze	Meet in the short term to discuss strategy and talking points for the governmental immunity bill, as well as a letter to the Governor-elect.
J. Paul Brown	Contact members of the state legislature’s agriculture committees about the governmental immunity efforts (using talking points developed by the task group).
CSFS and USFS	Provide an update on shared stewardship efforts at the next FHAC meeting.
Peak Facilitation	<ul style="list-style-type: none"> <li>Send a Doodle to schedule the FHAC meeting in February or March.</li> <li>Coordinate with Mark Norman, Norm Birtcher, and potentially Tim Reader of the Colorado State Forest Service (CSFS) and Steve Lohr of the US Forest Service (USFS) on the timber industry discussion at the next FHAC meeting.</li> </ul>
FHAC Members	Contact USFS or CSFS about potential organizational partnerships.
Jason Lawhon	<ul style="list-style-type: none"> <li>Send a link to the 2013 USFS risk assessment to Peak Facilitation for distribution to the group.</li> <li>Ask Brian Ferebee if he would support the FHAC’s governmental immunity efforts (using talking points developed by the task group).</li> </ul>
Mike Lester	<ul style="list-style-type: none"> <li>Contact John Swartout about the FHAC’s letter to the Governor-elect (using talking points developed by the task group)</li> <li>Contact Mike Morgan of the Colorado Division of Fire Prevention and Control (DFPC), John Ring of the Bureau of Land Management (BLM), and Doug Vilsack of Colorado Parks and Wildlife about the governmental immunity efforts (using talking points developed by the task group).</li> </ul>
Paige Lewis	Contact Carolyn Aspelin about The Nature Conservancy’s (TNC) contacts in the state legislature.

Chuck Rhoades	Send Alan Ager's planning scenarios to Peak Facilitation for distribution to the FHAC.
Travis Smith	Ask the Colorado Forest Watershed Health Alliance at its December 17 meeting for support on the FHAC's governmental immunity efforts.

### **FHAC PRESENTATIONS TO LEGISLATIVE COMMITTEES**

FHAC members discussed this fall's presentations to the state legislature's Water Resources Review Committee (WRRC) and Wildfire Matters Review Committee (WMRC) in support of a bill to provide government personnel with limited civil immunity in conducting prescribed burns. FHAC members' comments are summarized below.

- Carol Ekarius and Lyle Laverty presented to the WRRC, followed by a presentation from Carol Ekarius and Mark Morgan to the WMRC.
- There were not many questions from legislators during the WRRC presentation. It seemed that legislators listened attentively. When the committee discussed the proposed bills as a whole, however, questions arose, including:
  - Why can agencies not conduct prescribed fires without governmental immunity?
  - How many burns are not happening on the ground for lack of governmental immunity? (*Note: The Colorado State Forest Service (CSFS) has 2500 piles on private land that it cannot burn because of burn windows and a lack of governmental immunity.*)
  - What immunity does the CSFS currently have?
- The message seemed to be that although it understood the issue, the WRRC did not want to provide full governmental immunity for prescribed fires so that the government could be held accountable if a mistake was made. There was a discussion of providing governmental immunity that was capped to a certain dollar amount.
- There also seemed to be some confusion as to why the bill was taken to the WRRC rather than just the WMRC. This was because FHAC members were working with one of the WRRC members on the bill, who advised FHAC members to run the bill through the WRRC. CSFS staff drafted legislative declarations detailing the connections between forest health and water issues and explained to both committees that the bill's sponsors indicated that presenting to both committees was the advisable route. The bill failed 8-2 in the WRRC.
- Group members who attended the WMRC presentation said that the FHAC member presentation was strong, but that the timing of the presentation coincided poorly with this year's election season. It did not seem as if all legislators on the committee were engaged during the presentation, nor were they ready to act on this issue. The new administration and incoming legislative committee members may return to this issue.
- One of the FHAC's roles could be to provide information about the history of the governmental immunity bill to new committee members and legislators. There still does not seem to be a complete understanding in the legislature of the nexus between forest health, watersheds, and populations. Forest health is an issue that affects everyone in Colorado.
- There was some discussion about the legislature looking for a way to reverse course on this issue and about what the new Governor will think of the issue.
- It was noted that in the past, Colorado Governors have suspended governmental immunity clauses when the State has been negligent. There should be a role for a reasonably limited governmental immunity clause for prescribed fire. Colorado needs this tool.
- There were suggestions that the FHAC needs to work to better understand the objections that legislators (including those who signed on as sponsors) had to the bill and to provide

technical content on why the FHAC is asking for these changes. Questions about capping the possible dollar amount of immunity and whether the immunity should be confined to pile burning also remain.

- There was discussion about the fact that several FHAC members believed that the bill was likely to pass rather easily based on discussions with some legislators. Some FHAC members said that they should have reached out to a broader group of legislators to secure more wide-ranging support for the bill.
- This may still be an appropriate time to continue to work on the governmental immunity bill given the recency of the fires in California and the sense of urgency they have prompted. However, there may be concerns among legislators about past abuse of governmental immunity clauses.
- At this point in the legislative calendar, the opportunity for trying to run the bill through another committee has passed. The FHAC could focus on asking a friend to sponsor a revised version of the bill in the legislature. The FHAC has already missed the initial deadline for returning legislators to file their first three bills, so they will need to work with potential sponsors and meet with the Governor-Elect or his staff as soon as possible.
- It was suggested that the FHAC work to find ten bipartisan cosponsors in the Senate and 20 in the House to show strong support for this bill.
- The FHAC could run the bill through one of the legislature's agricultural committees. The FHAC could ask for immunity for all prescribed fire activities with no dollar cap and put the onus on the legislature to amend the bill if need be.
- The FHAC decided to create a subgroup to work with legislators on a revised governmental immunity bill. Each FHAC member will meet with or call several legislators to brief them on the bill and the need for it in Colorado using talking points developed for the whole FHAC (including members absent today). The talking points should be high-level and focused on the role of using prescribed fire to avoid the costs associated with major wildfires.
- FHAC members listed legislators they knew personally and agreed to strategize on how to contact legislators whom FHAC members do not know.
- FHAC members will reach out to other agencies and organizations with relevant legislative contacts about how the governmental immunity tool could benefit their groups as well. Members could ask those organizations (such as Colorado Parks and Wildlife, the Rocky Mountain Bighorn Society, the Colorado Division of Fire Prevention and Control, the US Forest Service (USFS), the Colorado Cattlemen's Association, the Colorado Farm Bureau, the Bureau of Land Management (BLM), etc.) for support on this bill.
- FHAC subgroup members can draw on their Preliminary Agreements and Call to Action documents to inform their outreach to legislators and the Governor-Elect. The CSFS has also prepared a white paper on governmental immunity for FHAC members to incorporate. The FHAC will attach those documents to any materials they send out. Several FHAC members stated that it was imperative that the outreach materials on governmental immunity be condensed to one page to keep people's attention.
- The subgroup will also work to write a letter to Governor-Elect Polis about the imperative need for the use of prescribed fire in Colorado. There were some concerns that the Governor-Elect would be overwhelmed with such requests after he takes office. Those who voiced these concerns suggested that the group instead focus on engaging with whoever the Governor-Elect appoints to lead the Department of Natural Resources or Department of Agriculture, or a member of the outgoing administration working on the transition team.
- The subgroup will share drafts of both documents for review to the full FHAC before sending them out. Peak Facilitation can help to integrate any edits.

## **UPDATE: COLORADO FOREST AND WATERSHED HEALTH ALLIANCE**

Travis Smith, irrigation representative to the FHAC, provided a review and update of the activities of the Colorado Forest and Watershed Health Alliance (“the Alliance”). His comments are summarized below.

- The Alliance was born out of the urgent need to create a group that spoke with a single voice about key forest and watershed issues facing the State Forester, the state legislature, etc. The Alliance is modeled on a collaborative in California with a similar purpose that has had considerable success and aims to support agencies when they cannot support themselves by finding funding and supporting legislation.
- Like its counterpart in California, Colorado’s Alliance features five partners (The Colorado Timber Industry Association (CTIA), Club 20, The Nature Conservancy (TNC), the Colorado Ag Water Alliance (CAWA), and the Colorado Water Congress (CWC)) working towards common goals.
- The Alliance produced a draft guidance document for its initial core members. The FHAC reviewed this document at the September meeting and recommended that the group include a representative from the Front Range. The Alliance is defined by what it is not as much as it is by what it is, and there are still questions about who will represent individual groups in the Alliance, the governance structure, funding, etc. Realistically, those who bring funding will expect their needs to be met.
- The Alliance is seeking input from the FHAC on what the top issues in its work plan should be. The FHAC’s diverse representation could allow it to discuss and recommend positions for the Alliance to advance.

### **Group Discussion**

FHAC members discussed Smith’s update. Their comments are summarized below.

- There are some people in Colorado who would like to invest in the environment but who do not want to donate to a radical group.
- The Alliance was designed to remain autonomous by featuring partners with specific strengths, like the CWC’s special projects and TNC’s fundraising. The Alliance will not have a whole governing body and will not incorporate so that it can stay nimble and make decisions quickly.
- There was discussion about whether Alliance should amend its ground rules to avoid making decisions via unanimous consensus, which can often lead to a decision of “the lowest common denominator.” Some FHAC members said that dissenting views can be valuable in these types of organizations. The original idea of using unanimous was to appeal to good faith and the group’s common goal by asking participants to find consensus even when they disagree. Other FHAC members supported the focus on consensus because consensus provides the strength by the kind of advocacy work that the Alliance aims to conduct and because the need to obtain consensus can make those who disagree rethink their positions to work towards the common goal.
- There were lengthy discussions about adding other partners to the Alliance, but eventually, the five entities agreed that they needed to start somewhere and that others who wish to participate once the work has begun can approach the Alliance then.
- The FHAC discussed other ways that it could support the CSFS beyond the governmental immunity issue. The CSFS needs more resources to make a larger difference in using active management as a tool in areas of opportunity with values important to Colorado. The FHAC

could help the CSFS by aiding it in identifying the most important values in Colorado for the CSFS to address with limited resources.

- The CSFS needs a more certain source of annual funding given how volatile state severance tax revenues have been recently.
- Several FHAC members suggested using the timber industry, grazing, and private enterprise to do some of the work that the State is unable to do for want of resources.
- The FHAC asked Travis Smith to convey a request for help on the governmental immunity issue (and the FHAC's talking points on the subject) to the Alliance.

### **CSFS ACTION PLAN**

Mike Lester, Colorado State Forester, provided an update on the CSFS Action Plan. His comments are summarized below.

- Each state's forest service creates periodic action plans under the 2008 Farm Bill to demonstrate that the agency is spending state and federal funding in the most important areas of operation. The CSFS produced an Action Plan in 2010 focused on fire suppression, which was the agency's responsibility at the time. The document was very long and was coupled with a separate strategy document.
- Several years ago, the CSFS started a new action plan that involved working with Colorado State University, the USFS, and TNC to work on planning and risk management tools. The report needs to be finished by June of 2020, which is not far away for this type of document. The CSFS has made significant changes to the 2010 plan, including shortening and combining the two documents into one as well as focusing on local land managers' assessment of priorities at the local level.
- At some point, the CSFS will ask stakeholders around the state for their thoughts on the plan. The CSFS will ask the FHAC to review a draft of the document, but probably not until next summer or fall.

### **Group Discussion**

FHAC members discussed Lester's update on the CSFS Action Plan. Their comments are summarized below.

- In the Annual Forest Health Report that the CSFS provided at the last FHAC meeting, pinyon-juniper was not really mentioned. This is concerning because there is a lot of pinyon-juniper mortality happening in Western Colorado, but no one seems to be discussing this fact because that wood has no commercial value. The CSFS will include this in the initial outline of the CSFS Action Plan.
- The CSFS is working to revise a section of the Annual Forest Health Report highlighting the work of the FHAC and will share that section with the group as soon as possible.

### **CSFS AND USFS COORDINATED RISK ASSESSMENT**

Jason Lawhon, Director of State & Private Forestry and Tribal Relations for the USFS Rocky Mountain Region, and Mike Lester, Colorado State Forester, provided an update on efforts between the CSFS and USFS to coordinate risk assessment. Their comments are summarized below.

- The USFS Washington Office has recently produced a document entitled "Shared Stewardship" that calls for more cooperation between the USFS and the states. In Colorado, stewardship includes more agencies than just the USFS and the CSFS. The BLM and CPW play a large role in forest management in this state.

- The USFS wants more timber to be cut, but given limited resources, there has been a discussion of how and where to cut timber in the way that makes the biggest difference to the state.
- In a recent meeting between the Governor's office, DFPC, the USFS, and the CSFS, attendees identified the wildland-urban interface (WUI), the water supply, and the forest products industry as critical values to protect.
- The forest products industry should be considered carefully because treating forested acres on the Front Range is extremely expensive due to the lack of markets for the wood products that result from such treatments. The Front Range is probably where the timber industry is currently weakest, and it is where most of the state's WUI is located.
- The USFS and CSFS have drafted versions of a memorandum of understanding (MOU) to send to the Washington Office agreeing to increase the pace and scale of treatments while focusing on areas that make the greatest difference, not just where it is easiest to cut. The draft MOUs details agreements between the two agencies on the common truths that can inform the selection of strategic locations for treatment. It is critical for the USFS and CSFS to make a public statement of unity on forest health problems.
- One challenge facing the two agencies lies in using assessment tools since both agencies use separate tools to identify priorities and values.

### **Clarifying Questions**

FHAC members asked clarifying questions concerning the USFS and CSFS coordination on risk assessment. Questions are indicated in italics with corresponding responses below in plain text.

*What are the agencies' thoughts on the urgency of acting before the runup to the 2020 election begins?*

This was considered. There are ways to continue to do meaningful work through a variety of avenues. The Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) has conducted robust planning and is working with the CSFS under the USFS Good Neighbor Authority (GNA) to boost its contracting and timber cruising capacity. The Upper South Platte Partnership (USPP) involves the CSFS, TNC, USFS, Natural Resource Conservation Service (NRCS), Jefferson Conservation District, American Forest Foundation, Denver Water, Coalition for the Upper South Platte, Aurora Water, and Denver Water working to protect critical water supplies. These are examples of using limited resources to find opportunities to work in communities at risk who are willing to participate in treatments.

*Is there a system in place to make sure projects are selected based on their merit under the Shared Stewardship program? The more rural the area, the cheaper work can be done. The USFS has a good system for timber sale appraisals. Critical watersheds could be protected under timber sales for less money than under direct stewardship contracts.*

Not yet. There are efforts underway to determine equivalent acreages for these contracts.

*How is future funding for the CSFS and USFS Regional Office (RO) impacted by the Shared Stewardship program? What might help generate more work at a lower cost?*

This is an opportunity for Colorado foresters to pursue treatments that make the biggest difference. More funding may not be forthcoming, so the agencies involved need to make this work long-term by using existing resources as effectively as possible. The agencies are currently focused on optimizing shared outcomes in places where opportunities currently exist.

*Will funding allocations be based on what the two agencies have proposed?*

For the USFS RO, some portion will be. The CSFS is not sure yet.

*Could the USFS and CSFS create stewardship partnerships with nongovernmental organizations (NGOs)? Could the USFS redirect money from NGOs and other outside sources using non-federal match?*

The CSFS recently partnered with the NRCS to add two foresters to critical areas of operation. Anyone interested in working with the USFS as a stewardship partner should reach out about that possibility.

*Will the CSFS and USFS develop a process to bring their map of initially-identified areas of opportunity to local communities? Will the two agencies add to that initial map?*

That is the intent, yes. The two agencies mapped communities at risk and need to work to talk to local residents, county commissioners, and fire protection districts in those areas. The two agencies will incorporate local knowledge from those stakeholders. The initial map will be added to over time because the agencies want to make the biggest possible difference. The coordinated risk assessment will focus on community protection, timber, water, etc. and find hot spots where those values are threatened. Many of the hot spots may not come as a surprise but could prove the concepts of some of the groups already working there. The coordinated risk assessment will not inform project-level decision making.

*Some communities do not want work done in their areas. Will the agencies ask locals if they want work done in their areas? What if they do not?*

That is being discussed. There are so many communities that need help that it will be necessary to invest time to convey the risks to people but then to move on to working with those who are willing at a certain point rather than waiting indefinitely.

*Is private money or partnership with fire protection districts part of the vision for Shared Stewardship?*

Private money will be needed because this is Colorado's problem, not that of any one agency. Utilities are ready to help, too.

*Given that there is a small window for action, why not use existing risk assessment tools rather than spend timing redoing them or looking for new ones?*

The goal is for the USFS and CSFS technical experts to meet and decide how to make the map without reinventing the wheel. Local knowledge will be critical to incorporate as well. The agencies are considering whether or not additional tools would add value and help to achieve better outcomes. The agencies will try to use what they have first, but some new tools may be needed because almost all of Colorado is WUI and it is difficult to identify priorities if the map says that everything is a priority.

### **Group Discussion: Coordinated Risk Assessment**

FHAC members discussed the USFS and CSFS coordination on risk assessment. Their comments are summarized below.

- The USFS RO is conducting the Shared Stewardship program state to state, but the RO is also conducting a regional risk assessment. In its 2013 High-Value Risk Assessment (HVRA) the RO identified water, communities, wildlife, and timber, respectively, as its top four values at risk. The USFS then mapped those weighted values against the probability of fire in and areas, the effect of fire in different cover types, the effects of different fire types, etc. This was used to create an index of areas with a high, moderate, or low need for funding. Many USFS budgets are allotted based on that index, which is why creating a new tool

would not be taken lightly. If the 2013 HVRA were to be updated, it could include updates to layers showing fires, insects, WUI, and the model for crown fire behavior. This updated HVRA could be overlaid with the zones of concern for Colorado utilities and the analyses of the CSFS.

- The HVRA does not currently include an "economic viability of treatment" layer, but there will be an opportunity to develop that as part of the two agencies' scenario modeling efforts.
- The USFS and CSFS are just beginning to meet to conduct scenario modeling, which would entail mapping, for example, a scenario in which timber in the state is maximized or wildfire risk minimized. The scenario planning exercise is being done to see what would happen if the agencies invested in a given place. These scenarios can be overlaid with factors related to the best opportunities for near-term action (slope, markets, travel times, etc.), but this has not been done yet.
- It is promising that the Shared Stewardship program seems to be expanding public-private partnerships and the use of Good Neighbor Authority. Designing projects with locally-utilizable commercial timber outputs will help agencies get the most out of their money.
- The USFS and CSFS will update the FHAC on their coordinated risk assessment efforts at each quarterly meeting as the process is evolving quickly. The USFS and CSFS will share initial agreements between the organizations as quickly as possible.

### **Group Discussion-The Timber Industry**

FHAC members discussed the role of the timber industry in Colorado. Their comments are summarized below.

- While there is a need a focus on places where industry currently exists in the short term to maximize shared outcomes, there are many places in Colorado with high community protection or watershed values that do not have industry. There is a need to grow capacity in those areas.
- Twenty-eight regional sawmills have closed in Colorado since 1975, mostly for want of a consistent supply of timber. The USFS is hurting itself by creating contracts with high costs for operators and needs to make projects more economically viable.
- Barriers to the timber industry in Colorado include transportation, the availability of other cheap forms of energy in the state, the dependence of the market on European demand, and the low value of timber in the state due to its short shelf life. Many states in the western US face similar challenges, partially due to a lack of mill capacity and transportation obstacles.
- Agencies need to know what the industry needs in order to build capacity over time and whether knowing agencies' target acreages for the long term would allow them to build up the necessary equipment, for example.
- It would be helpful for the USFS and CSFS if the FHAC helped to add to the USFS list "circles" of wood market opportunity based on mill location, lower transport costs, completed National Environmental Policy Act (NEPA) compliance, the presence of small diameter timber, etc. The FHAC could identify areas where those circles could exist but currently do not.

### **NEXT STEPS**

- Peak Facilitation will send out a Doodle to schedule the next FHAC meeting for late February or early March in Summit County.
- The FHAC will spend half of its next meeting discussing the timber industry's role in projects, capacity, needs, etc. Norm Birtcher and Mark Morgan will give a presentation, potentially informed by Tim Reader of the CSFS and Steve Lohr of the USFS.

- The FHAC will prioritize contacting legislators between now and the next meeting and spend time at the next meeting debriefing on those efforts.
- The FHAC subgroup will convene as soon as possible to work on the governmental immunity outreach efforts and letter to the Governor-Elect.
- The FHAC will revisit the question of producing a messaging video at the next meeting.