



# FEDERAL FOREST RESOURCE COALITION

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Testimony of  
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Before the Public Lands, Forests and Mining Subcommittee  
Committee on Energy & Natural Resources  
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On the National Forest Ecosystem Improvement Act of 2015

My name is Jim Neiman, and I am the Vice President and CEO of Neiman Enterprises, Inc. headquartered in Hulett, Wyoming. Our family has been in the ranching business for 5 generations and in the forest products business for 3 generations. We currently own and operate three sawmills and one pellet mill in the Black Hills of South Dakota and Wyoming, and one sawmill on the West Slope of Colorado. Our company directly supports about 750 families through our 475 employees and 275 local independent contractors, in the four states where we operate.

I currently serve on the Board of Directors of the Federal Forest Resource Coalition, the Intermountain Forest Association, the Black Hills Forest Resource Association, the Business Advisory Board for the Kansas City Federal Reserve Bank, Wyoming Gov. Matt Mead's Task Force on Forests, and the Hulett Airport. I have also served in the past on the Board of Trustees for the University of Wyoming, the Wyoming Occupational Health and Safety Commission, the Board of the Hulett National Bank, and the Wyoming Economic Development and Stabilization Board.

I am here testifying today on behalf of the Federal Forest Resource Coalition, a national non-profit organization representing purchasers of Federal timber, conservation groups, and county governments in 32 States. Collectively, our members employ over 390,000 people, and provide over \$19 billion in payroll. Our members purchase, harvest, transport, and process National Forest and BLM timber into renewable wood, paper, and biomass energy products. Moreover, we live and work in close proximity to our National Forests. It is a privilege to live and work in these beautiful settings.

On behalf of our members, we submit the following comments on S. 1691, the National Forests Ecosystem Improvement Act of 2015. We strongly support the bill, which provides

the Forest Service with new tools to manage the National Forests, which are showing the effects of inactive management, drought, overstocking, large wildfires and insect epidemics, and climate change. The tools provided by the bill would be immediately available for implementation, and address several key areas where the Forest Service struggles for timely project development and implementation. We urge the Committee to quickly pass it through the Senate and proceed to conference with the House, which recently adopted a similar reform package.

**The Situation in the Black Hills and Colorado:**

The Forest Service owns 70-80 percent of the timberland in the States where we operate. As for Neiman Enterprises, our mills rely very heavily on National Forest timber. We purchase timber from 8 national forests in the four states where we operate. Due to significant reductions in timber harvests from our National Forests, we have struggled to maintain timber supplies necessary to keep our mills viable.

We have experienced significant forest health problems in the three-state region where we operate. The National Forests in the Rocky Mountains and Black Hills have been suffering from extensive mortality due to bark beetles, which have killed trees on over 50 million acres of pine and spruce forests. These outbreaks, and the Forest Service's slow response to them, threaten the future of our forests and the viability of the wood products industry in the Mountain West.

The single most significant reason for the mountain pine beetle epidemic is the density or "stocking levels" of the forest. Reducing the risk of mountain pine beetle outbreaks in ponderosa pine forests isn't rocket science. Dr. John Schmid, arguably the world's foremost expert on mountain pine beetles, has maintained a series of research plots in the Black Hills for years. From his research, we know that the duration and intensity of mountain pine beetle infestations are primarily a function of the number and size of trees. The higher the density of trees, the higher the risk of mountain pine beetles. Conversely, thinned stands have a significantly lower risk of mountain pine beetles. While mountain pine beetle mortality won't be eliminated, mortality can be limited to a relatively low level through proactive thinning.

National Forests in other States have experienced similar catastrophic insect epidemics. These catastrophes have caused great harm to forests, communities, private landowners, residents, and family-owned businesses. The expansion of bark beetles to lodgepole pine forests and higher elevation spruce forests demonstrates that we must aggressively manage our forest to ensure that healthy, vigorous forests can withstand the impacts of drought, fires, and native insects.

The Forest Reserves were created in the late 1800s in response to public outcry about the destruction of forests, and the reduction of timberlands to barren wastes subject to flood and fire. Today, there's also a public outcry about the destruction of our forests and the risk of fires and floods, only now the problem is the failure of federal forest policies.

The Black Hills National Forest has been a leader in national forest policy since 1899, when Case No. 1, the very first timber sale from the national forests, was sold to Homestake Mining Company. The Black Hills National Forest was the first national forest to develop a forest plan in the mid-1980s, and the first national forest to revise a forest plan in the mid-1990s.

For most of the 20<sup>th</sup> century, the management of the Black Hills NF was generally very successful. However, the last 15 to 20 years have been extraordinarily challenging. All told, the Black Hills NF spent nearly 16 years completing a 10 to 15-year forest plan. Worst of all, after all that planning, the Forest Service has fallen short of achieving the Black Hills NF forest plan timber sale outputs, with detrimental effects to both the Forest and local forest products companies.

Historically, the Forest Service has demonstrated the ability to respond aggressively to mountain pine beetle outbreaks. In the early 1990s, the Forest Service moved quickly and aggressively in response to an outbreak near Bear Mountain, and quickly sold two timber sales to salvage bug-infested trees, before the infestation had a chance to grow. In contrast, a recent project on the Black Hills NF was the Vestal project, which was a high priority project due to its proximity to Custer and the high occurrence of mountain pine beetles. The Forest Service started the analysis in May, 2011 using HFRA authorities, but didn't finish the analysis and make a decision until June 2012. They finally began selling timber sales in the late summer of 2012. That meant two flights of beetles while the Forest Service was doing their analysis and making a decision.

In some parts of the country, the Forest Service routinely moves more quickly to recover downed timber and begin restoring the forests. For instance, the Forest Service did much better following Hurricane Katrina, which hit Mississippi on August 29, 2005. By December 5, 2005, the Forest Service had completed their analysis and signed a Decision Notice. On December 6, 2005, they sold the first salvage sale, ultimately selling 58 timber sales and salvaging nearly 300 million board feet of downed timber. We see forests in other regions that usually address urgent salvage operations more quickly than we are able to do in the Western U.S. We've even seen forests that have model NEPA documents ready for the types of disturbances they typically encounter.

The Obama administration and the Forest Service, from the Chief to the crews on-the-ground, deserve praise for their efforts to expand management on our National Forests. They have worked hard to move needed projects forward, but the current processes are an impediment to increasing the pace and scale of needed management.

There is no question that resources can and do constrain the Forest Service. We have consistently advocated for increases in management funding. In this fiscal climate, however, there are two major things Congress can do to stabilize and improve the fiscal condition of the Forest Service; first, Congress should enact a fire funding solution that will prevent disruptive "fire borrowing." Second, Congress can help restore order to the Appropriations process. Running the Forest Service on a series of short-term CR's prevents program planning and delays timber sales and other needed forest management.

These budgetary measures are simple, good government measures that anyone who cares about the Forest Service should support. I applaud all of the various measures intended to prevent fire borrowing, and the efforts of the appropriations committee to advance a Forest Service budget this year. Doing these things will help the Forest Service proactively management the National Forest. Proactive management works in the Black Hills. Proactive management reduces the potential for mountain pine beetles and fires, puts people to work, saves money for the federal government, and forest products companies can produce American wood products for American consumers.

**The Need for Reform:**

Over 82 million acres of Forest Service lands are at elevated risk of catastrophic wildfires, insect, or disease outbreaks. These problems are often the most severe in the States which have lost most of their wood using industries, such as Arizona and New Mexico. Large scale wildfires cost billions annually to suppress, and cities such as Denver have been forced to spend tens of millions of dollars restoring damaged watersheds.

In other National Forests, such as those in the Lake States and New England, passive management has allowed forests to develop into closed canopy stands where little sunlight reaches the forest floor. These forests have limited value as wildlife habitat and are susceptible to fire and insects, while sensitive species which require early successional habitat, such as the ruffed grouse and Kirtland's Warbler, continue to disappear.

The extent of the problem is not in doubt. The Government Accountability Office recognized the urgency of the need to reduce hazardous fuels in 1991. The Forest Service acknowledges that over 73 million acres of their lands are a high priority for management and that "one time treatment of all high fire risk areas would not fully address the fuels problem, as landscapes continue to change over time and fuels would build up on many lands currently in historic condition, without periodic maintenance treatments." The Western Governors Association has adopted numerous resolutions acknowledging the extent and severity of the problem.

Current authorities do not allow the Forest Service to plan and implement needed management projects in a timely fashion. Badly needed projects to thin hazardous fuels can take years to plan, at which point groups opposed to management file lawsuits that cause further delays. Forests are woefully behind on meeting forest plan objectives, particularly those associated with young forests. At best, it takes the Forest Service at least a year to plan and begin implementing salvage projects in some regions.

FFRC supports fundamental reform of the National Forest System, including identification of a land base for timber production, with streamlined analytic and judicial review processes. Further, we believe that providing needed clarity to the Forest Service is needed if the Forest Service is to successfully tackle its management challenges. As FFRC has previously testified in front of this committee, a "trust" mandate with clear beneficiaries and fiduciary responsibilities – if implemented on the small portion of the National Forests suited for timber production – is the kind of mission clarity the Forest Service needs.

However, with due consideration of the difficulties of moving such a comprehensive bill in the current political climate, we believe S. 1691 represents a credible, implementable set of authorities that will enable implementation of needed management projects much more quickly than is currently possible.

I applaud S. 1691 for taking a hard look at the process requirements enacted by the Congress and interpreted by the Courts, which have allowed what should – at most – be disputes between different resource managers, to turn into points of law where judges invite themselves to second-guess agency expertise. S. 1691 provides new tools to streamline management, and to hold the Forest Service accountable for on-the-ground implementation.

Forest Service attempts to comply with the Gordian knot of laws draws frequent, intentionally dilatory litigation. Even projects carefully designed by collaborative groups are delayed. While these projects wend their way through the legal system, insects and fire continue to take their toll and render the projects moot before they can be implemented.

**Specific Observations on S. 1691:**

FFRC applauds the approach taken in the bill; by providing a new set of immediately usable management tools, discouraging dilatory litigation, and experimenting with alternative dispute resolution, the bill addresses several key areas where the Forest Service struggles to design and implement needed management projects in a timely fashion.

In particular; we support the bill's provisions which:

- Provide further categorical exclusions for a variety of projects, and to reduce the required analysis of projects designed to meet treatment targets;
- The experimental use of binding arbitration as a means to encourage dispute resolution for needed forest management projects.
- Provide expedited authority for salvage, reforestation, and recovery projects on NFS lands impacted by wildfires;
- Require the posting of a bond by litigants filing suit against ecosystem restoration projects;
- Setting concrete targets for mechanical treatments, and providing expedited NEPA timelines to help achieve them;
- Allowing use of alternative consultation processes under the Endangered Species Act, and setting deadlines to complete consultation.

The provisions identify and address the major “choke points” that create delays in needed forest management projects. The Forest Service struggles to get ahead of fast-moving insect infestations, and then has a hard time planning forest recovery projects in the wake of large catastrophic events. Because of the ever present threat of litigation, the Forest Service tends to try to bullet proof even modest forest management projects. Instead of opting for Environmental Assessments, for instance, the Forest Service tends to do more Environmental Impact Statements. .

This rarely achieves the desired results. Groups are not discouraged from litigating, either by efforts to reduce project size or by efforts to “armor” projects behind extensive analysis. The very few groups who litigate frequently seem to focus only on achieving delays, filing “cookie cutter” suits which simply attempt to compel further analysis.

It is worth noting that in many cases, litigation against forest management projects creates the appearance of legal deficiency, rather than “catching the Forest Service breaking the law,” as some would style it. In the case of the Colt Summit Project in Montana, for instance, the litigant threw over 14 allegations against the proposed project; a modest thinning project strongly supported by the local community, sportsmen, and conservation groups. The judge enjoined the project in order to require further analysis. Ultimately, the project went forward, very nearly in the exact same form as it was initially proposed. The actions on the ground were perfectly legal; the Forest Service was tripped up on purely analytic and procedural grounds.

To the extent that the bill diminishes the likelihood of success of these purely analytic and procedural suits, or discourages their filing in the first place, that would represent a key success for the Forest Service and their neighbors.

The streamlined NEPA processes, both for general ecosystem restoration projects and for specific categorical exclusions, are badly needed to allow shorter planning horizons and more rapid implementation of needed management projects.

There are a few issues the bill does not address. Many of these are included in HR 2647, which passed the House of Representatives with bi-partisan support last week. We particularly recommend adding provisions which:

- Adjust the uses of Secure Rural Schools Title II funds to create self-sustaining local advisory committees by focusing 50% of that funding to timber management projects, and to use proceeds from RAC projects to fund additional forest management;
- Require Stewardship contracts provide 25% revenue sharing with counties, create additional opportunities for restoration work, and address fiscal management issues which have disrupted the use of Stewardship contracting in the past;
- Create a revolving fund which can be used to develop forest management projects, the cost of which can be repaid from timber sale receipts back to the fund for additional project work.
- Expand the 2014 Farm Bill Forest Insect & Disease Treatment Area Categorical Exclusion to include Fire Regime IV lands, where large scale insect infestations and mortality are occurring.
- Clarifying that existing NEPA may be used in the wake of a catastrophic event to implement needed management measures. Too often, the Forest Service insists on re-initiating the NEPA process in the wake of fires or insect outbreaks, even if existing NEPA documentation adequately addresses the changed condition.

These provisions mesh neatly with the structure created in this bill, and help address some of the other major problems the Forest Service faces; we routinely hear that the cost of completing NEPA is a limiting factor as the agency attempts to expand the pace and scale of management. By allowing the use of retained receipts from Stewardship contracts, and creating a revolving fund to accept partnership funds, the legislation would greatly expand the resources available to expand needed management.

**Conclusions:**

Over the last several years, the Committee has heard from multiple stakeholders concerned about the safety of their communities, their ability to access forest lands to hunt and fish, the sustainability of their economies, and the protection of their drinking water supplies.

The Forest Service is attempting to address many of these concerns by accelerating the pace and scale of forest restoration of our National Forests. However, additional authorities are needed. We believe the authorities provided in the National Forest Ecosystem Improvement Act are a very positive step in this direction.

As many others have noted, one of the other significant challenges facing the Forest Service is the practice of underfunding fire suppression costs, leaving the Forest Service with no mechanism to cover the inevitable shortfalls except to transfer management funds to the fire accounts. Along with many others, we have supported the Wildfire Disaster Funding Act, which provides a bi-partisan basis for a solution to this widely acknowledged problem. The WDFFA received a zero-score from CBO. You have championed a separate fire funding measure in the FLAME Act Amendments legislation. Recently, both the Senate Appropriations Committee and the House of Representatives have formulated alternative means of providing emergency fire funds which would stop the practice of fire borrowing. We urge Congress to work with the Administration to address this pressing problem, whether in the context of this legislation or elsewhere.

Thank you for the opportunity to share these thoughts on this important bill.

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*The Federal Forest Resource Coalition is a 501(c)(6) non-profit representing purchasers of Federal timber and biomass in 32 States. Our members harvest, transport, and process timber into wood products, pulp and paper, and biomass, and represent local governments, sportsmen's groups, and others who support better management of our national forests. Collectively, our members represent over 390,000 employees, and over \$19 billion in payroll.*