

**Statement of
Jay Jensen
Deputy Undersecretary
Natural Resources and Environment
U.S. Department of Agriculture
Before the
Subcommittee on National Parks, Forests and Public Lands
And Subcommittee on Water and Power
Natural Resources Committee
United States House of Representatives**

June 24, 2010

Concerning

H.R. 5192 – The Forest Ecosystem Recovery and Protection Act

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on H.R. 5192, the Forest Ecosystem Recovery and Protection Act.

I would like to express my appreciation to Congresswoman Lummis for her attention to and leadership in offering a multi-faceted approach to address the insect and disease issues on millions of acres affecting thousands of communities across the western United States. Title I of this legislation would require the Secretary of Agriculture to designate 25 demonstration project forests on which to identify demonstration project sites and to develop pine beetle prevention, mitigation, or forest restoration projects for each site. The legislation would provide an expedited environmental documentation process for the projects, with specific timelines for designation of demonstration project forests, identification of initial demonstration sites, and beginning to enter into stewardship contracts. The bill also would apply the Healthy Forest Restoration Act pre-decisional administrative review provisions to these projects. Title II of the bill would authorize the Secretaries of Agriculture and Interior to designate an insect or disease emergency area on National Forest System land and on public land managed by the Bureau of Land Management (BLM), in which to conduct the emergency removal of dead and dying trees to address public safety risks. The bill also proposes revisions to a number of existing authorities such as good neighbor authority and stewardship contracting. We have a number of concerns with H.R. 5192.

Current Challenges

Outbreaks of bark beetles, which are occurring in numerous forest ecosystems across western North America, are the largest in recorded history.¹ Although western forests have experienced regular infestations throughout their history, the current outbreaks are notable for their intensity, extensive range, and simultaneous occurrence in multiple ecosystems. During the last 10 years there have been 21.7 million acres affected by bark beetles in the west (CA, OR, WA, NV, CO, MT, ID, WY, UT, SD)²

¹ [Bentz](#), et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

² USDA, Forest Service – Forest Health Protection Aerial Survey Data. 2009

The primary difference between previous beetle outbreaks and the current epidemic is that more people now live, work and recreate throughout the forested ecosystems. Removing dead trees and other fuels can effectively reduce the risk of fire damage at a local scale, e.g., in the immediate vicinity of a home or community, although the effectiveness of removing dead trees to reduce fire risk in varying forest types is less clear.³ Communities surrounded by dead trees are at increased risk of wildfire and damage from falling trees. In addition, the forest products industry that is vital to the efficient removal of hazardous fuels and hazard trees has been hard hit by the economic downturn in the market. These important differences along with the scale of infestations require new and innovative approaches to reduce the safety threats to people and property, while ensuring the restored forests are diverse and resilient to change across the landscape so they continue the delivery of goods and services expected by the public.

Public Hazards

Dead trees pose significant hazards to public safety including increased risk of catastrophic fire, threats to water supplies as a result of catastrophic fire, and hazard trees along utility corridors, roads, trails, and other infrastructure used routinely by the public.

Wildfire Implications

The relationship between bark beetle outbreaks and subsequent fire in varying forest types is not yet fully understood⁴. Outbreaks in recent years have provided scientists with excellent opportunities to conduct studies and gather new information about the role of bark beetles in western forests, but more research remains to be done.

At the stand level, both crown and surface fire hazards⁵ change over time after a bark beetle outbreak⁶. The fire hazard in the crown is high in the period one to two years after pine trees die because the dead needles are retained in the tree's crown, stocking the canopy with dry, fine fuels that can ignite quickly during weather conditions conducive to fire.⁷ Importantly, in the grey phase characterized by dead standing trees with no needles, the risk of ignition and the risk

³ see Dominik Kulakowski, Thomas T. Veblen (2007) *EFFECT OF PRIOR DISTURBANCES ON THE EXTENT AND SEVERITY OF WILDFIRE IN COLORADO SUBALPINE FORESTS*. Ecology: Vol. 88, No. 3.

⁴ Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

⁵ The term Fire hazard as used here refers specifically to the state of fuels in a given stand – independent of variables such as temperature, wind, and precipitation that influence fuel moisture content and fire occurrence.

⁶ Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

⁷ Page, W.; Jenkins, M. 2007. Mountain pine beetle-induced changes to selected lodgepole pine fuel complexes within the intermountain region. *Forest Science* 53(4):507-518.

Page, W.; Jenkins, M. 2007. **Predicted Fire Behavior in Selected Mountain Pine Beetle–Infested Lodgepole Pine**. *Forest Science* 53(6):662-674

Hawkes, B. 2008. Effects of the mountain pine beetle on fuels and fire behavior. *In* Mountain Pine Beetle: From Lessons Learned to Community-based Solutions Conference Proceedings, June 10–11, 2008. *BC Journal of Ecosystems and Management* 9(3):77–83.

http://www.forrex.org/publications/jem/ISS49/vol9_no3_MPBconference.pdf

Jenkins, M., Hebertson E., Page, W. and Jorgensen C. 2008 Bark beetles, fuels, fires and implications for forest management in the Intermountain West. *Forest Ecology and Management* 254 (2008) 16–34

of crown fires actually go down, which can last for 10 to 20 years after the trees are attacked.⁸ From 15-20 years onward, the fire hazard at the surface increases as dead trees begin to fall and create a heavy fuel bed with young trees growing up through the tangle of down logs⁹. In dry, hot, windy weather conditions, fires burning in heavy surface fuels can move fast, burn extremely hot, and be very resistant to control¹⁰. Large areas of fallen trees limit escape routes for crews, severely limiting our ability to deploy firefighters in these areas¹¹.

A wildfire burning in the heavy fuels close to the soil can literally bake the soil, sterilizing it and sometimes leaving a water-repellent surface that sheds rain, and leads to severe gully erosion, debris flows into reservoirs and streams, and flood damage. After the Buffalo Creek Fire in 1996, Strontia Springs Reservoir filled with sediment that washed off burned areas after heavy rains, and the South Platte River was running brown with mud. We experienced these effects after the Hayman Fire in central Colorado in 2002 when Cheesman Reservoir filled with sediment and Denver Water, the local water municipality provider, has spent millions of dollars dredging the reservoir.

Hazard Trees

In areas where people live and recreate, dead trees are an immediate hazard because of the increased risk that they may fall and damage property or cause personal injury. For example, in the beetle-infested area of southern Wyoming and northern Colorado (the Medicine Bow-Routt, Arapaho-Roosevelt, and White River National Forests), over 900 miles of trails and 3500 miles of roads are lined with dead trees that are at high risk of falling. There are hazard trees on more than 21,000 acres of developed recreation sites—such as campgrounds and picnic areas. Power lines and communication sites are also threatened by hazard trees. There are more than six thousand acres of right-of-way corridors for authorized transmission and distribution lines in the area affected by bark beetle infestation in southern Wyoming and northern Colorado.¹² Forest Service resource specialists have estimated this represents over 1000 miles of transmission lines. When dead trees in and around transmission corridors fall on lines they can start wildfires and disrupt power supplies to cities and towns.

Current Efforts

No effective treatment for suppression of large-scale pine beetle outbreaks currently exists, but the agencies within the Department are approaching this problem in a variety of ways based upon their individual missions, policies, laws, and the management mandates under which they operate. Across the west on National Forests that have been affected by bark beetle, we are actively engaged in numerous on-the-ground efforts to address the insect and disease outbreak.

⁸ see Dominik Kulakowski, Thomas T. Veblen (2007) *EFFECT OF PRIOR DISTURBANCES ON THE EXTENT AND SEVERITY OF WILDFIRE IN COLORADO SUBALPINE FORESTS*. Ecology: Vol. 88, No. 3, pp. 759-769.

⁹ Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

¹⁰ Barrows, J. 1951. Fire Behavior in the Northern Rocky Mountains. Station Paper No. 29. USDA Forest Service, Northern Rocky Mountain Forest and Range Experiment Station, Missoula MT. 133 pages

¹¹ Alexander, M and Stam, J. 2003. Safety Alert for Wildland Firefighters: Fuel Conditions in Spruce Beetle Killed Forest of Alaska. Fire Management Today 63 (2) 25.

¹² Figure derived from data in the Forest Service Special-Use Database System, Region 2.

In the areas hardest hit by bark beetles in Idaho, Montana, Wyoming and Colorado, we modified our 2010 budget allocations to focus resources to mitigate the outbreak. These challenges are shared by all land management agencies in the affected areas including National Parks, state forests and public lands.

When Secretary Vilsack articulated his vision for America's forests, he underscored the overriding importance of forest restoration by calling for a commitment to restoration across landscapes—an all-lands approach to forest restoration—by working closely with other landowners and federal agencies to encourage collaborative solutions. Restoring our forests includes mitigating the effects of severe infestations of insects and disease by removing dead trees where appropriate and working across boundaries, cooperating with the states, other governments, and private landowners. Much of the woody material to be removed can be used as a sustainable energy source for our country and for products such as pellets for wood stoves, lumber, house logs, furniture, and decorative items.

As Forest Service Chief, Tom Tidwell recently stated in testimony on the President's fiscal year 2011 budget the agency will integrate traditional timber activities predominately within the context of larger restoration objectives, focusing on priority watersheds in most need of stewardship and restoration work, pursuing forest products when they support watershed, wildlife, and restoration goals. We will also greatly expand the use of stewardship contracting authority to meet restoration objectives and build in longer-term contracting certainty for communities and the private sector to invest in the kind of forest restoration infrastructure we will need to achieve these objectives.

The Forest Service is also very cognizant of the impact a depressed market is having on the forest products industry in much of the West. The forest products industry is a primary partner in accomplishing work integral to sustaining and restoring the health, diversity, and productivity of the National Forest System, and is needed to help us in our work to mitigate the risks of insect and disease. To accomplish the work of effectively and efficiently restoring National Forest System lands to a healthy condition, we need skilled forestry operators, vibrant rural communities, and a healthy forest products industry.

Concerns

Though we fully support the need to address the impact of the bark beetle infestations, we have several concerns with this bill. I look forward to further dialogue with Congresswoman Lummis and the committee to consider the following concerns and technical input into sections of the legislation.

Prevention of Bark Beetle Infestations

The bill would require the development of projects to prevent or mitigate the effects of bark beetle infestations on identified demonstration sites within designated demonstration project forests. There are no known management options to prevent the spread of a large-scale bark beetle outbreak, however, land use activities and silvicultural practices that enhance forest

heterogeneity at the regional scale can reduce susceptibility to bark beetle outbreaks.¹³ Although research suggests that thinning stands can be used as a preventative measure to reduce susceptibility to bark beetle population outbreaks, treatments must be in place prior to an outbreak.¹⁴ In section 101(c) of the bill, the selection criteria that requires demonstration project forests to be selected based on the presence of significant beetle infestations, may not be congruent with the use of preventative treatments as an option. Moreover, if demonstration project forests are designated based on proximity to units of the National Park System, State park units, wilderness areas, or wilderness study areas with the potential for future beetle infestation, the susceptibility of these areas to beetle infestations will only be reduced if there is cooperation and coordinated management between adjacent landowners. At the same time, we must ensure we are respectful of and provide adequate protections for other resource values such as old growth and roadless areas.

Biomass

We appreciate the emphasis on biomass utilization to promote a sustainable and renewable energy source for our country. Section 104 and Section 202 of the bill would deem the biomass removed to be renewable biomass for the purposes of the renewable fuels program under section 211(o) of the Clear Air Act (42 U.S.C. 7545(o)). Byproducts of restoration treatments (including hazardous fuels treatments and epidemic insect and disease mitigation treatments) are best used for the purpose of diversifying current forest products infrastructure and markets by taking advantage of material that would otherwise be wasted. We believe these two sections are unnecessary at this time.

Stewardship Contracting

We appreciate and value the recognition of the need for stewardship contracting authority as a tool to achieve forest restoration goals on the national forests and on public lands managed by BLM. We have concerns with the methods used to address the challenges of awarding long-term stewardship contracts, and do not believe the provisions in Section 105 are necessary. We believe the administration has the flexibility to address relevant requirements and has convened a multi-agency group to identify and assess options for issues related to stewardship contracting. We look forward to apprising the Committee on the progress of the group.

National Environmental Policy Act Provisions

The bill would set direction in section 106 for how the agency must meet the requirements of the National Environmental Policy Act (NEPA) on demonstration projects. Section 106 raises new

¹³ [Bentz](#), et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

¹⁴ Fettig CJ, Klepzig KD, Billings RF, Munson AS, Nebeker TE, Negrón JF, Nowak JT. 2007. The effectiveness of vegetation management practices for prevention and control of bark beetle infestations in coniferous forests of the western and southern United States. *Forest Ecology and Management* 238:24-53.

challenges for effective planning, analysis and implementation of prevention, mitigation and restoration projects for an entire demonstration project site. By prescribing how NEPA and other pertinent laws are to be accomplished, the bill would complicate the agency's NEPA implementation which could result in greater controversy as the agency determines how to harmonize the requirements of the bill, the requirements of NEPA, CEQ regulations implementing NEPA, and the Forest Service's own regulations.

While the bill recognizes NEPA's applicability to prevention, mitigation and restoration treatment decisions, Section 201 includes a new categorical exclusion for removing dead or dying trees within an insect and disease emergency area. We believe that the use of current authorities (including both Healthy Forest Restoration Act authorities and existing categorical exclusions) in concert with enhanced collaboration has been and will continue to be, the best way to address treatment of hazardous fuels, epidemic insect and disease areas and remove hazardous trees.

Predecisional Administrative Review Process and Judicial Review

Section 107 applies sections of the Healthy Forest Restoration Act of 2003 (Section 105 and 106 of HFRA) for predecisional administrative review and judicial review. Our experience indicates that the use of the pre-decisional objections process authorized under Section 105 of the Healthy Forest Restoration Act tends to increase direct dialogue between the agency and stakeholders. Often this results in resolution of concerns before a decision is made, and thus a better, more informed decision results. We support the pre-decisional administrative review provision. However, we do not support the application of HFRA's provision regarding judicial review.

Reforestation Fund

Section 108 removes the cap for amounts transferred to the Reforestation Trust Fund and provides for the use of funds in excess of \$30,000,000 for this title. This section could impact other program areas or be subject to the Statutory PAYGO Act.

Good Neighbor Authority

We believe our Nation's forests and public lands face forest health challenges that must be addressed across diverse land ownerships. In these times of limited resources, it is important to leverage workforce and technical capacities and develop partnerships for forest restoration across all lands, while ensuring compliance with existing applicable laws and regulations. We believe further study and analysis is needed to better understand the interplay of needs, state and federal contracting and labor law, and regulation before expansion of the authority is authorized. For example, where federal or applicable state contracts are awarded, we would seek to use competition, consistent with current statutory requirements and the President's March 4, 2009 Memorandum on Government Contracting. We look forward to working with the committee, States, and federal agencies to make suggestions to improve the bill in a manner that meets the needs of key stakeholders.

Waivers of Liability

Section 204 of the bill concerns the removal of dead or dying trees from rights-of-way on National Forest System land. We believe that existing right-of-way agreements provide for responsibilities related to the removal of dead and dying trees from rights-of-way. We do not support this section and recommend that this section be removed from this bill.

The language of Section 204 (b) would exempt a private utility company from liability for damages resulting from fallen dead or dying trees on any right-of-way held by the company within a beetle infested area on National Forest System land until the Secretary enters into a cooperative agreement, memorandum of understanding, or contract with the company for the removal of the trees. These utility companies have a license to conduct business, including maintaining the land areas they occupy, on national Forest System lands. Ongoing vegetation management for removal of hazard trees (either standing or fallen), or objectionable new growth is the responsibility of those using the public's lands.

This provision could impose upon the American public a significant financial burden caused by the inaction of rights-of-way holders and the possible increased liability for the Secretary as the landowner. With over 14,000 miles of transmission and distribution rights-of-way on NFS lands, the Forest Service can identify few, if any, situations where the holder was not able to take the appropriate management action to reduce the potential liabilities to which this legislation refers. Further, the legislation may cause a disincentive for existing public or private utility operators to manage their rights-of-ways appropriately by potentially decreasing the hazard associated with dead or dying trees. This legislation would shift the responsibility to the government itself to remove the trees and remove the liability from the public or private utility should their actions – or inactions – result in fire or other damages.

I want to again thank Congresswoman Lummis for her leadership and commitment to our national forests, their surrounding communities and the forest products infrastructure. I look forward to working with the committee, and all interested stakeholders on this bill and to help ensure sustainable communities and provide the best land stewardship for our national forests.

This concludes my prepared statement and I would be pleased to answer any questions you may have.

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June 24, 2010

Concerning:

HR. 5388 – Cibola National Forest Boundary Expansion

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to appear before you today in order to provide the Department's view on HR. 5388, legislation to expand the boundaries of the Cibola National Forest in the State of New Mexico. The Department supports the transfer of the "Manzano Strip" and the transfer of the "Crest of the Montezuma." The Department however has concerns with provisions related to management of acequias and several other technical concerns and would like to offer to work with the Committee on this legislation.

HR. 5388 directs the Secretary of the Interior to convey, without reimbursement, two parcels of land currently under the administrative jurisdiction of the Bureau of Land Management (BLM) to be incorporated into and managed as part of the Cibola National Forest. One of those parcels abuts the northwest corner of the Manzano Mountain Wilderness on the Mountainair Ranger District. This 896 acre parcel is known as the "Manzano Strip." The other parcel abuts the north end of the Sandia Ranger District and is known as the "Crest of Montezuma" parcel and is 917 acres.

The “Manzano Strip” is a remnant of several sections of land that BLM conveyed into private ownership. BLM purposefully reserved this isolated strip from any land sale because of the proximity to the Manzano Mountain Wilderness and the access it allows from a Forest Service trailhead. The Department supports the transfer of the “Manzano Strip” parcel to the Forest Service and it being added to and designated as part of the Manzano Mountain Wilderness.

The “Crest of Montezuma” parcel is a “finger” of a mountain adjoining and jutting north from the main body of the Sandia Ranger District. Management of trails and off-highway vehicle use are of particular interest to local residents. This parcel could be successfully managed by the Cibola National Forest in conformance with the adjoining land and the existing land management plan.

Section 1(h) could be interpreted to provide for two acequia associations to access and operate community irrigation ditches without regulations or permit. We require a permit to ensure that riparian environments, particularly at points of diversion, are being protected. In addition, the Sandia District has always had a good cooperative relationship with the San Antonio de Las Huertas Acequia Association and we would expect National Forests throughout New Mexico to continue to work cooperatively with the local acequia associations. We request that this provision be dropped from the bill and the Forest Service be allowed to oversee management of these acequias in the same manner that all other acequias within the boundaries of National Forests in New Mexico are managed.

The following are some additional insights, concerns and suggested modifications:

Section 1(c) provides for the acquisition of three parcels of private land that are included in the boundary adjustment for the “Crest of Montezuma” Parcel. It should be noted that BLM was unsuccessful in previous attempts to acquire those properties for appraised

market value. It is anticipated that the same valuation issue would exist if the Forest Service attempted to purchase these properties, so the outcome could be the same for an attempted Forest Service acquisition.

Section 1(f)(1) and (2) describes the first right of refusal by specified Land Grant communities in the event the land would ever be sold. While we appreciate the long history of the Land Grant community in northern New Mexico, we need to look at the implications of this section of the bill in a broader context and therefore have concerns with this section. Also, the Forest Service has no authorization to sell either parcel should they be transferred to the Cibola National Forest. We recommend this section be removed from the bill. In addition, providing for first right of refusal to an Indian Tribe with potential historical interest in the parcels, should also be removed. Again, we appreciate the history of the Indian tribes throughout New Mexico, but have concerns with this section. We are concerned with the precedent this provision would set for federal land management agencies.

Thank you for the opportunity to appear before the Subcommittee. Again, we look forward to working with the Committee to clarify certain provisions and recommend technical changes to the bill. This concludes my statement and I would be happy to answer any questions you may have.