

Public Lands and Forests Subcommittee Hearing

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To the Senate Committee on Energy and Natural Resources,

Subcommittee on Public Lands and Forests

On Issues Related to Forest Workers on Public Lands

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Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you today. I am pleased to be able to contribute to this timely issue. Tom Knudson's "Pineros" series in the Sacramento Bee has brought to light troubling and all-too-common problems with the way the work of federal forest management is accomplished. Today's hearing is particularly important because the working conditions in our nation's forests affect not only the lives of workers and their families, but also the viability of small rural businesses and the integrity of forest ecosystems. It presents an important opportunity to discuss our current understanding and explore solutions to the challenges of creating quality jobs for forest workers and economic opportunities for public land communities.

I am on the faculty of the University of Oregon, where I direct the Ecosystem Workforce Program in the Institute for a Sustainable Environment. Founded in 1994, the Ecosystem Workforce Program seeks to help build a high-skill, high-wage forest and watershed restoration industry in the Pacific Northwest. The Ecosystem Workforce Program does this by providing technical assistance to rural communities and their agency partners, and by undertaking applied research and policy education related to community-based forestry and federal forest management.

Over the past five years, I have undertaken a series of studies on how Forest Service and Bureau of Land Management (BLM) restoration contracting creates rural community benefit, and on the working conditions of federal contract forest workers. As part of these studies, my collaborators and I have interviewed forest workers and contractors and analyzed federal contracting and state employment data. We have examined these issues in general terms as well as under specific programs including the National Fire Plan, the Northwest Forest Plan, and stewardship contracting.

Much of my work has been focused on the Pacific Northwest, but the work of other scholars such as Josh McDaniel and Vanessa Casanova make clear the challenges are not limited to a single part of the country.

A Forest Restoration Workforce

Our nation's forests and watersheds have significant restoration and maintenance needs, including decaying forest roads, degraded stream and forest habitat, and overstocked stands in need of thinning to reduce wildfire risk and restore fire-adapted ecosystems. These needs present an opportunity to create high-skill, high quality jobs to benefit rural communities, small businesses, and forest workers. For over a decade, community forestry advocates and their federal agency partners have sought to combine the ecological need for high quality restoration with the economic need for high quality jobs to contribute to the well-being of public land

communities. The hope has been that communities could replace lost logging and milling jobs with jobs restoring national forests and other public lands.

The notion of creating community benefit through federal forest management dates back to the founding of the Forest Service. It can be found in Gifford Pinchot's writings as well as in 20th century legislation including the New Deal, the Sustained Yield Management Act of 1944, and the National Forest Management Act of 1976. Several times since 2000, Congress has encouraged the Forest Service to create community benefit through forest restoration as part of the National Fire Plan, Secure Rural Schools and Communities Self-Determination Act, and through stewardship contracting authorities. In addition, Congress has enacted numerous labor laws, including the Service Contract Act, Contract Work Hours and Safety Standards Act, and the Migrant and Seasonal Agricultural Workers Protection Act, which were designed to create quality jobs for federal contract workers.

Contract Forest Work and Workers

Forest restoration work involves a wide variety of tasks, from maintaining forest roads, restoring streams to create fish habitat, and collecting native grass seed, to planting trees after logging or wildfires, and thinning overstocked stands to improve habitat and reduce fire hazard. The primary way that restoration work is performed on national forest and other federal forest lands is through service contracts and, increasingly, stewardship contracts. The federal government awards restoration contracts to businesses that, in turn, hire workers to undertake restoration and maintenance activities.

Labor-intensive forest workers—those who plant trees, thin overstocked stands, pile brush, and fight fires—come from a variety of ethnic backgrounds. Typically, they are Hispanic and white and, to a lesser extent, Native American and African American. Although the Sacramento Bee "Pineros" series focused primarily on H2-B workers, forest workers can be U.S. citizens, non-citizens with resident alien papers, H2-B guest workers, and those without permission to work. In the Southeastern U.S., contractors seem to make more use of H2-B workers, whereas contractors in the Pacific Northwest appear to rely more heavily on undocumented workers.

Challenges of Creating Rural Community Benefit

Despite the direction to create rural community benefit and to protect workers from exploitation, the Forest Service and other federal land management agencies have had difficulty systematically creating rural community benefit with their procurement contracting program. The main way that the agencies create community benefit in public lands communities is when they award contracts to local firms (as opposed to distant firms hiring local workers). In the Pacific Northwest, the Forest Service and BLM frequently award equipment intensive contracts such as forest road maintenance and stream restoration to local businesses. But contracts that involve labor-intensive activities such as thinning, tree planting, and brush piling tend to be awarded to urban-based businesses that have access to large pools of low-cost labor and are able to travel long distances inexpensively. The authority to consider local benefit as part of best value (such as with the National Fire Plan) can have some positive impact, but it is unclear how frequently it is used.⁵ In addition, partnerships between local non-profit organizations and the BLM and Forest Service can be used to create local benefit from restoration work using grants and agreements authorities.

Poor Working Conditions for Forest Workers

As recent news articles and academic research make clear, many forest workers, especially those that perform labor-intensive activities such as firefighting, tree planting, and thinning, face dangerous working conditions, irregular employment, low wages, exploitation, and inadequate training. Guest workers and undocumented workers are most vulnerable to

exploitation, but studies also suggest that citizens and resident aliens can also suffer from labor law violations and poor job quality

For example, in 2003, the median wage among forestry services workers in Oregon was \$11.97 per hour, but half of workers earned less than \$4,355 all year. More than 85% of workers earned less than the federal poverty level for a family of four (see figure 1). Wages that workers actually receive may well be less, particularly for undocumented workers, because workers are sometimes hired through “subcontractors” who recruit workers on behalf of contractors. These “subcontractors” may take part of workers wages (\$1.00-\$4.00 per hour) in exchange for continued employment. Our studies suggest that these workers are also paid for hours of work per day even if they work more. Travel time is rarely paid except when firefighting. Labor-intensive forest work is also quite seasonal and erratic (figure 2). The average worker was employed the equivalent of three months a year, compared to six months for loggers. But, this is not simply the work of college students with summer jobs. Most are Hispanic immigrants and half of forestry service workers in Oregon also work outside of forestry. They are commonly employed by temporary agencies, restaurants, and in agriculture, and typically earn even less than they do when working in the woods.

Although official accident rates are lower for forest workers than for loggers, our studies also revealed that many workers felt that they could not report on-the-job injuries for fear of being fired. In addition, we heard frequent reports of crew bosses who push their employees to work very quickly and require that they work without stopping for breaks or lunch. Performing physically demanding, dangerous work under these circumstances only increases the likelihood of accidents. Crew van accidents are all too common and have resulted in fatalities because drivers were tired, under the influence of drugs or alcohol, or driving unsafe vehicles. Although many excellent contractors work for the federal government, others forge fire fighter qualification documents (red cards) and fail to pay workers legally-mandated wages or overtime, supply safe vehicles, and provide medical care for on-the-job injuries. These working conditions harm workers, contractors, rural communities, and national forest ecosystems.

Institutional Challenges

Although there are numerous labor laws in place to protect forest workers, they are not as effective as they could be because of the ways in which the Forest Service and the BLM structure and award contracts and oversee project implementation. Land management agencies face budget constraints, output-based accomplishment targets, and a culture of efficiency that encourages staff to minimize administrative costs and contract prices, sometimes to the detriment of other objectives, including job quality and community benefit.

Accomplishment Targets and Budget Allocations

The Forest Service’s budget and staff performance evaluations and advancement have long been tied to accomplishments targets. Meeting targets in one’s area of contracting means increased budget and staffing as well as promotion. Programs and management units that fail to meet their targets or do so at too high a cost have their budgets cut. The focus on maximizing natural resource accomplishments—e.g. volume, acres, miles—creates few institutional incentives for attending to the job quality of its contracted workforce or ensuring that its contractors strictly follow labor and immigration laws. When targets measure only the quantity of outputs, without consideration of the quality of those activities, community benefit, or treatment of workers, the incentives to accept the lowest-price bid are strong. With declining budgets for federal forests and national direction to do more with less, incentives to ignore impacts on communities, contractors, and workers become even stronger.

Low-Bid Contracting

The pressure of meeting targets is compounded by a history of a low-bid contracting

system in the federal land management agencies. Until the mid-1990s, the Forest Service and BLM, as with most federal agencies, were required to award contracts to the lowest bidder almost regardless of the quality of the work that they performed. In the mid-1990s, federal procurement laws changed and the Forest Service and BLM became able to use negotiated contracts, which allows the agencies to consider best value to the government when awarding contracts. Now, they could consider factors such as past performance, technical capability, key personnel, and, under some circumstances, benefit to the local community. Best-value contracting has created an opportunity to ensure that restoration work would be high quality, workers would be treated well, and rural communities would benefit.

Lack of Labor Law Enforcement

Numerous laws including the Service Contract Act, Davis-Bacon Act, Migrant and Seasonal Agricultural Workers Protection Act, and the Contract Work Hours and Safety Standards Act are in place to protect forest workers from exploitation; however little enforcement of these laws occurs. The Forest Service typically views enforcement as the responsibility of the Department of Labor or state labor agencies. But enforcement led by the U.S. Department of Labor or state labor departments can be difficult because of remote worksites. In our interviews with roughly 85 forest workers in Oregon, no one had seen staff from the U.S. Department of Labor or the Oregon Bureau of Labor and Industries while working in the woods.

Consequences

These pressures have created a system that rewards contractors who cut corners to offer the lowest prices. When contracts involve significant physical labor, contractors' options for cutting costs lie primarily in increasing the speed at which people work and reducing wages. Strategies for cutting costs include not paying over time, paying below the required minimum wage, and paying some people under the table to reduce worker compensation and tax costs. At first blush, low-price contracting appears to save the government money. In reality, however, it costs the American taxpayer when poor quality work has to be redone, when taxes are underpaid, and when poorly paid workers have to apply for food stamps and other public assistance or seek medical care in emergency rooms without insurance.

Forest Service Response to "Pineros" Series

The Forest Service offered a rapid response to the "Pineros" series by directing its contracting officers to insert new clauses in their labor-intensive service contracts to clarify contractors' obligations. This is helpful because it can make contractors more aware of relevant laws and shows that the Forest Service does want contractors to follow the law. However, it presumes that the major problem facing contract workers is ignorance of the law on the part of contractors. Although contractors may be ignorant of some issues, it is not the central cause of the problems facing forest workers.

The Forest Service's response does little to address larger systemic problems. In the words of one contractor, "the agencies, by their action and inaction have played a major role in the creation of an 'underclass industry' among service contract workers."¹⁰ These new contract clauses do little to address the lack of contractor and agency accountability because they do little to improve the lack of viable enforcement mechanisms. Nor, do they address the larger institutional issues such as accountability targets, direction to do more with less, and culture of efficiency that encourages the agency to practice low-bid contracting.

Recommendations

The following recommendations for improving the working conditions of forest workers were developed in collaboration with community-based forestry and forest worker organizations,

based on their experiences working in the woods, and my research of federal restoration contracting and the working conditions of federal contract forest workers.

Systemic Change

1. The Forest Service and BLM should participate actively in enforcing labor laws by involving inspectors, contracting officer representatives, and contracting officers in labor law compliance. Forest Service contracting officer's representatives and inspectors already visit these sites, and are responsible for overseeing other components of project implementation. The agencies should provide staff with direction and training to ensure that they understand their roles and responsibilities. Inspectors and contracting officer representatives should be directed to report suspected problems to the Department of Labor for enforcement action. They should also report problems to agency contracting staff to ensure that these problems are taken into account when awarding future contracts.
2. The Forest Service and BLM should make full use of best-value contracting authorities to reward contractors who perform high quality work, treat their workers well, train their workers, and provide rural community benefit.
3. To reduce the pressure to accept below-cost bids and increase incentives for the agency to investigate potential labor law violations, the Forest Service and BLM should establish outcome-oriented accomplishments targets and performance measures that incorporate ecological and socioeconomic goals, including tracking progress towards creating durable, high-quality jobs.

Short term steps--Congress

1. Congress should strengthen the payroll reporting requirements under the Service Contract Act to be similar the reporting requirements of the Davis-Bacon Act. The Davis-Bacon Act requires that contractors regularly file certified payroll with state labor departments. This effective and efficient process has provided clear, consistent information to settle wage complaints or undertake enforcement actions.
2. Congress should direct the Forest Service and the BLM to end the practice of awarding contracts at prices that are lower than 20% below the government estimate.

Short term steps—Forest Service and BLM

1. The Forest Service's National Partnership Office should convene a series of meetings between workers, contractors, rural community organizations, contracting officers, National Forest System managers, and other relevant federal staff to develop and implement concrete improvements in the Forest Service's procurement system.
 2. The Forest Service should commission a study on how the agency uses best-value contracting. Although the Forest Service typically uses negotiated contracts that allow for consideration of best value, many of the contractors we interviewed felt that they were still operating in a low-bid contracting system. Further knowledge of how best value is actually being used could help the agency provide better direction and training.
 3. The Forest Service and BLM should create ombudsmen who can hear the concerns of workers, contractors, citizens, and agency staff about labor law and other contracting issues and act as an advocate to facilitate action when problems arise. Currently, it is difficult for many types of people to report suspected labor law violations.
- Thank you for the opportunity to comment on the difficult challenges facing the federal land management agencies, forest workers, and rural communities in creating quality jobs restoring our nations' forests.