

Public Lands and Forests Subcommittee Hearing
Wednesday, March 1, 2006

Ms. Lynn Jungwirth
Watershed Research and Training Center

Statement of
Lynn Jungwirth, Executive Director
The Watershed Research and Training Center

Subcommittee on Public Lands and Forests,
Senate Energy and Natural Resources Committee

Oversight Hearing on
Guest Workers on Public Lands and Forest Service Guidance

March 1, 2006

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide information to your hearing on these public land workforce issues. I believe these issues are of the utmost importance to the future of public land management, the future of public land communities, and the future of the United States Forest Service and Bureau of Land Management.

I've been asked to comment on two parts of the workforce issues before you today:

- Will the Forest Service response to the Pineros issues, as presented in the letter from the Chief, be sufficient to address the problem of exploitation of the workforce?
- Will enforcement of the Service Contract Act wage provisions and the worker safety laws help local workers and contractors access service contract work on the public lands?

In addition to these two questions, I will also address how the business relationship between the land management agencies and local communities could be improved to protect workers from exploitation and increase local job opportunities.

My organization, the Watershed Research and Training Center, sits in the small town of Hayfork, California in the middle of the Trinity National Forest. In 1994 our Center began building local capacity to help make the shift from a timber driven economy to an economy accommodating "ecosystem management" and the Northwest Plan for the Recovery of the Northern Spotted Owl. In partnership with the Trinity National Forest and Shasta Community College, we developed and implemented a forest-worker training program to ensure that local workers could compete for jobs related to ecosystem management. Each graduate of the program earned certification as an Ecosystem Management Technician. Our training program also focused on providing technical assistance to workers and contractors interested in starting businesses focused on providing restoration-service work on public lands. This required providing training in business planning, financial management, and learning to navigate the federal bureaucracy related to competing for service contract work.

The local businesses and workers we have trained and partnered with over the last decade have performed more than \$8 million dollars worth of work doing forest restoration, fuels reduction, and small diameter thinning projects on the Trinity National Forest. Of that \$8 million dollars approximately \$2.4 million was raised from private philanthropic sources by my organization. Our efforts over the last decade to build community and business capacity made it possible for local enterprises to offer a workforce that is skilled and capable of providing the needed work to restore healthy forests and maintain biodiversity, clean water, clean air and fire risk reduction.

The Watershed Center is a non-profit organization and does not contract with the federal agencies. We perform work through grants and agreements that usually have cost-share requirements ranging from 20 to 100 percent. Non-profits are not allowed to compete for Forest Service or Bureau of Land Management service contracts. We are, however, a worker-based organization, started by forest and sawmill workers who lost their livelihood when national policy shifted from commodity production to ecosystem management.

Sufficiency of the Forest Service Response to the Problem

I applaud the agency's quick response to the public outcry regarding the treatment of workers. As someone who collaborates and works closely with the Forest Service, I know there is a sincere desire to protect workers. However, the remedy proposed by the agency is not adequate. To simply attach copies of existing laws to contract documents and a promise that contracts will be broken if contractors are found to be breaking the law will not change the system that created this problem in the first place. The response is lacking in two ways: first, it fails to create a reliable system of accountability; and second, it does not address the main contributing factors to worker exploitation, which are low-bid contracting and contract packaging.

In 2001, Celia Headley testified before this Subcommittee on a related topic. In her testimony she provided an example that so clearly illustrates the problem with the contracting system, that it bears repeating:

“The Forest Service puts out a contract for thinning and 18 companies put in bids. Fourteen of the bids are at least 40% under the government estimate for the work. The Forest Service awards the contract to the lowest bidder. At this point, one of several things usually happens. In order to accomplish the work at such a low price, the contractor can:

1. Demand unreasonable production and unpaid overtime from the workers;
2. Pay less than the stated contract minimum wage; or
3. Declare only a percentage of the workers on the books, thereby avoiding worker's compensation, unemployment, and state and federal tax payments.”

Now, five years after that testimony, we are still in a situation where no one really knows what happens because the only entities in a position to monitor these issues are the agencies issuing the contracts, and they have no visible system in place to monitor wages or worker's compensation compliance. I have been told several times that “it is the agency's job to get the biggest bang for the buck for the American taxpayer,” and “it is not our problem if the contractor chooses to underbid; we have to cut costs per acre,” and “we can't protect these contractors from themselves.”

Congress must address the connections between output-based targets, demands for financial efficiency, and the creation of a contracting system that overlooks worker safety and wage issues.

Creating systems for prevention and accountability

The Forest Service should consider responses to the problem that are proactive and create clear systems of accountability. To prevent worker exploitation before it occurs, the agency might put into place the following safeguards:

- Disqualify bids that come in appreciably lower than the government estimate;
- Notify contractors that a system of random inspections of wage and safety conditions will be put in place and make the system visible;
- Package contracts in ways that diminish the need for a mobile workforce; and,
- Provide internal incentives and rewards for structuring contracts that will help establish forest work as a high-skill profession and a workforce with a career path.

To create an effective accountability system, the Forest Service should consider the following steps:

- Set a goal of monitoring some percentage of the contracts awarded, such as no less than 10

percent;

- Develop a system for Service Contract Act (SCA) wages that is similar to Davis-Bacon requirements with certified payroll; and,
- Increase the number of Contracting Officer Representatives in the field and require them to match daily diary entries to actual wages paid.

Changing the Business Relationship Between the Forest Service and Local Communities

As to whether or not enforcement of wage and safety considerations will help the local workforce access work I have this response: yes, and no. Let me explain through an example.

When we started our worker training program for forest and sawmill workers who lost their jobs, we looked at the kind of work the agency would need to do on the forest as its direction shifted to ecosystem management, and then we trained these workers to do it. They learned to do field work, fuels reduction, forest thinnings, habitat restoration, road surveys, fish surveys, habitat surveys, GPS, GIS, riparian protection, road upgrading and decommissioning, culvert replacement, etc. These skills should have positioned these workers to be competitive for forest management projects aimed at restoring and maintaining biodiversity, clean water, clean air and natural processes across the landscape. We also offered assistance in starting small contracting businesses.

The first business we helped decided to compete for a reforestation contract. He had run crews before and had local people who wanted to work for him. We helped him get his workers compensation insurance and provided him technical assistance in preparing his offer to the federal government. He bid \$311/per acre. The job went to an out of area contractor who bid \$197/acre. The government estimate was \$300. The contracting officer said he had to take the lowest bid. The next time this local contractor tried to bid on a local reforestation job he was told that the work was going to be given to an IDIQ (Indefinite Delivery, Indefinite Quantity) contract. This occurred even though the work was being offered under the requirements of a best-value contract where price is supposed to be only one of several evaluative criteria.

Based on this experience, the business decided that trying to compete for reforestation contracts was not economically viable and decided to focus on competing for contracts related to fuels reduction and thinning. The good news was that the National Fire Plan required that best-value contracts consider benefits to local communities and the business was successful in capturing an initial fuels reduction contract. The bad news was that pressure on the agency to treat as many acres as possible at the lowest cost led to the agency packaging a similar contract into a large IDIQ format. This contract format gave a structural bias to a large, out-of-town company that was somehow able to bid \$300 less per acre than the local contractor. It just so happened that these two projects were right next to each other. The local contractor kept a daily diary of both his crew and their crew. If the IDIQ contractor was paying the SCA wage and the required workers compensation and unemployment rate, he must have gone broke on that job. When we inquired about this with the Forest Service, they explained that maybe the IDIQ contractor lost a little on that job but made it up with another one and, anyway, it was not their job to police the contractors.

So it was suggested we train our people for more technical work. We did. Our crews became very proficient at surveying for the snails, lichens, and plants required in the survey and manage requirements of the Northwest Plan. They worked alongside Forest Service biologists on actual projects. They received the highest accolades for the professional quality of their work. When they formed a business to bid on agency contracts for survey and manage work, they were told that the work had been packaged into an IDIQ contract and gone to a company based in Canada with an office in the State of Washington who would be working up and down the West Coast. We called the Canadian-owned company's office in Washington State and told them we had a trained crew that knew the local forest and wanted to sub-contract with them. They said no.

There would be a local workforce to do this work and the need for H2B workers would diminish if the agency could change its business relationships with public land communities.

I asked a contractor about the H2B program and how effective it was at solving the labor shortage. The

reply was, “we don’t have a labor shortage, we have too many workers and too many contractors, and that’s why people work for nothing.”

If the playing field gets leveled in terms of wages and compliance but the Forest Service continues to package contracts that spread the work out in a three or four state region, you are going to prevent a local workforce and forest industry from developing. The practice of creating multi-state contracts for large quantities of work will undermine the development of a place-based workforce that can perform the needed restoration and long-term maintenance necessary, especially in the frequent fire forests of the West. Losing a place-based, local workforce has further ramifications on the availability of skilled workers in fire emergencies and actually drives up the cost of wildfire suppression.

We know low-bid contracting and IDIQ contracting were built for efficiency, and we endorse efficiency. We also have seen that concentrating on efficiency in individual programs can create an overall inefficiency in the system.

Recommendations and Conclusions

I would like to provide several recommendations for the Forest Service as they explore alternative responses to these issues. These recommendations are based both on my own experience and on discussions with community-based forestry partners and the Rural Voices for Conservation Coalition.

The Forest Service should establish both short-term and long-term processes for protecting forest workers and creating a system of offering work on public lands that is effective and efficient at meeting ecological, social, and economic goals. Evaluating economic efficiency without consideration of the effectiveness of meeting ecological and social goals may well drive up overall costs and reduce the agency’s ability to properly care for the resources.

1. We would like the agency to convene, through the National Partnership Office, a series of meetings with workers, contractors, rural community organizations, contracting officers, and other relevant federal staff to develop concrete ways to implement changes in the procurement system to help avoid creating an underclass of forest workers and create a legitimate industry.
2. When a bid comes in 20% lower than the government estimate, it should be disqualified.
3. Move to a system of “best-value” contracting that includes rewarding contractors who do high quality work, treat their workers properly, and provide worker training.
4. Contracting officer’s representatives and inspectors, who visit these sites already, should be required to record worker-days and other information.
5. Explore using a system like the Davis-Bacon certified payroll to increase compliance.
6. Procurement contracts should be packaged for long duration employment—multiple months or seasons—and multi-skill sets. Contracts should provide business and employment for fewer workers over longer periods of time.
7. Build on existing models from the Pacific Northwest for worker training and contract packaging.

In closing, I would like to reflect for a moment on quality jobs. Quality jobs for forest workers are critical to sustaining both healthy forests and healthy communities. One of the goals of my organization is to create quality jobs for forest workers who work on public lands. We believe a quality job in the forest has six characteristics. It should:

1. Pay family-supporting wages and health benefits.
2. Last multiple seasons and years.
3. Have opportunities for advancement.
4. Include a safe and healthy workplace.
5. Provide skill training and reward trained workers.
6. Allow people to work near where they live.

In considering forest workers and quality jobs, wage and safety issues are only the tip of the iceberg. An

overarching issue is that federal procurement has made these jobs miserable in terms of wages, working conditions, and continuity of work. Meanwhile, the shrinking federal budgets for service work on the federal forests have put greater pressure on the agencies to increase acres treated per dollar. It is the forest worker who has been squeezed in this process. Undocumented workers have been exploited and local workers have been eliminated, unable to compete on this uneven playing field. Service contracting has become a game and the race is to the bottom.

Thank you for the opportunity to share my perspective and experience with this important issue.