

# MOVING TOWARD SOUND FOREST MANAGEMENT

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Without question, the “leave-the-woods -alone” crowd led the way in the making of the United States’ forest management policy for the last forty years. For years, we have backed off and backed out. We have left brush to gather and disease to fester. We have learned much about how to care for forests, how to keep them healthy, and how to keep those who live near them safe; this is evidenced by the fact that more trees grow in America today than ever before.<sup>1</sup> And we have kept that knowledge, to a large extent, to ourselves.

And now we reap what we have sown. Our forests are unnaturally dense and prone to disease and insect infestation.<sup>2</sup> They are tinderboxes either already on fire or susceptible to going up in spectacular blazes at the careless drop of one match or, even farther beyond our control, one bolt of lightning.

That is why, in 2000, the United States suffered its worst wildfires in fifty years.<sup>3</sup> That is why, in last year alone, wildfires burned more than 7 million acres of public and private lands, causing the deaths of 23 firefighters, destroying thousands of structures, and forcing tens of thousands of

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1. Food and Agriculture Organization of the United Nations, *Forest Resource Assessment Programme*, at <http://www.fao.org/forestry/foris/webview/forestry2/index.jsp?siteId=101&sitetreeId=1191&langId=1 &geoId=0> (last visited Mar. 23, 2004); forestinformation.com, *Forest Facts: North America’s Forests at a Glance*, available at [http://www.forestinformation.com/beta/Forest\\_Statistics.asp](http://www.forestinformation.com/beta/Forest_Statistics.asp) (last visited Mar. 23, 2004).

2. White House, *Healthy Forest: An Initiative for Wildfire Prevention and Stronger Communities - The Need for Healthier Forests*, at <http://www.whitehouse.gov/infocus/healthyforests/sect2.html> (last visited Mar. 22, 2004); White House, *Healthy Forest: An Initiative for Wildfire Prevention and Stronger Communities—Executive Summary*, at <http://www.whitehouse.gov/infocus/healthyforests/executive.html> (last visited Mar. 22, 2004).

3. U.S. Dep’t Agric., *Fact Sheet: Implementation of the Healthy Forests Initiative*, at <http://www.usda.gov/news/releases/2003/12/fs0405.htm> (last visited Mar. 26, 2004).

people to evacuate their homes.<sup>4</sup> That does not even include the wildfires in California that charred three-quarters of a million acres.<sup>5</sup>

That is why the U.S. Forest Service now lists 70 million acres at “extreme risk” and 120 million acres as suffering “unnatural risk” of devastating fires.<sup>6</sup> And finally, that is why fire and forest experts predict more catastrophic fires unless we change our ways.<sup>7</sup> How did we get to this point?

### I. THE SEEDS OF FOREST ILLNESS

As the population expands and people move closer to forests, it becomes even more critical that they be actively and properly managed. But even if that were not the case, even if fewer people than figured moved near forests in the next twenty or thirty years, it is still time for us to recognize that the hands-off policy has been tried for an extended period. And it has failed.

It has created an unhealthy, unsafe, and unsustainable atmosphere. According to Dr. Thomas Bonnicksen, a forest ecologist and professor in the Department of Forest Science at Texas A&M University, forest density is ten times what it should be.<sup>8</sup> Often, 300 trees stand on an acre where 30 would be natural and sustainable.<sup>9</sup> Overcrowding does for trees what it sometimes does for people—sets off harmful battles for limited nutrients and water, making them more susceptible to disease and insect infestation.<sup>10</sup> Throw in a drought, and these areas become prime candidates for devastating wildfires.

But fires are not always harmful—they cleanse the forest and maintain its health. Catastrophic fires, on the other hand, thanks to excessive brush or load on the ground, burn unnaturally hot.<sup>11</sup> These fires do not help wild-

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4. *Id.*

5. Richard Simon, *Fires Spur Bush's Long-Stalled 'Healthy Forests' Legislation*, L.A. TIMES, Nov. 2, 2003, available at <http://www.latimes.com/news/local/la-me-timber2nov02.0.265645.story>.

6. Rep. Richard Pombo, *Using Wisdom in Managing Our Forests*, U.S. House of Representatives Committee on Resources, at <http://resourcescommittee.house.gov/Press/editorials/indnforests.htm> (last visited Mar. 22, 2004); U.S. Dep't of Agric., *supra* note 3.

7. U.S. Dep't of Agric., *supra* note 3.

8. Thomas M. Bonnicksen, *Written Statement for the Record—Hearing on Forest Health Crisis in the San Bernardino National Forest Before the Committee on Resources*, at <http://resourcescommittee.house.gov/108cong/forest/2003sep22/bonnicksen.htm> (last visited Mar. 22, 2004).

9. *Id.*

10. *Id.*

11. U.S. Forest Serv., *Frequently Asked Questions*, at <http://www.fs.fed.us/r5/snfpa/final-seis/faqs.html> (last visited Mar. 23, 2004).

life; they destroy it.<sup>12</sup> They do not clear habitats; they consume them.<sup>13</sup> They sterilize the soil, leaving it infertile.<sup>14</sup> They pollute the air and water.<sup>15</sup> And because they burn so hot, firefighters find it difficult to get a handle on them, which enables them to spread over vast areas; and this, in turn, makes them even harder to fight.

To exacerbate matters, bureaucratic rules made by people unfamiliar with the workings of forests and frivolous lawsuits by extreme activists have impeded commonsense thinning and fuel reduction projects in our forests. When the Forest Service attempted to clear underbrush, reduce the “fuel” for wildfires on the ground, and otherwise thin the forests, it faced a mountain of paperwork, multiple analyses and other unnecessary bottlenecks.<sup>16</sup>

Experts say that prior to Bush Administration reforms, the roadblocks and the tremendous amount of litigation that plague even the most modest efforts at forest management consume 40 percent of the agency’s total direct work at the national forest level.<sup>17</sup> In California, where wildfires dominated the front pages most of the summer and fall, over the last two years, two-thirds of the Forest Service’s thinning projects were held up by appeals by activist groups.<sup>18</sup>

Today, those groups must admit that their litigation, their delays, their prevention of sound forest management policy, cost people their lives, their homes, and their businesses and did not make America’s forests safer, cleaner, healthier, or stronger. Congressman Richard Pombo, a Republican from California and chairman of the House Resources Committee, calls this “paralysis by analysis.”<sup>19</sup> He also maintains that if nothing can be done about this climate of confrontation, we can expect that the problem will

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12. *Id.*

13. *Id.*

14. White House, *supra* note 2.

15. *Id.*

16. White House, *The Healthy Forests Initiative: An Initiative for Wildfire Prevention and Stronger Communities*, at <http://www.whitehouse.gov/infocus/healthyforests> (last visited Aug. 25, 2004); White House, *Bush Administration Actions to Promote Healthy Forests*, at <http://www.whitehouse.gov/infocus/healthyforests/restor-act-pg2.html> (last visited Aug. 25, 2004).

17. Nat’l Acad. of Pub. Admin., *Restoring Managerial Accountability to the United States Forest Service* (1999), ISBN 1-57744-033-1, available at [http://209.183.198.6/NAPA/NAPAPubs.nsf/0/53ce982b561a1bf985256887007401d4/\\$FILE/forestservice.pdf](http://209.183.198.6/NAPA/NAPAPubs.nsf/0/53ce982b561a1bf985256887007401d4/$FILE/forestservice.pdf) (last visited Mar. 22, 2004).

18. Press Release, Rep. Richard Pombo, GAO Study: 66% of California Forest Fuels Reduction Projects Stalled By Environmental Groups (Oct. 29, 2003), available at <http://resourcescommittee.house.gov/Press/releases/2003/1029gaopombo.htm>.

19. *Id.*

continue “to threaten our national forests and those who live in and around them.”<sup>20</sup>

## II. PROVIDING DECISIVE ACTION: THE HEALTHY FOREST INITIATIVE AND THE HEALTHY FOREST RESTORATION ACT

We tried the hands-off approach, and we have wildfires in the West and diseased forests in the East to show for it. We can watch from the outside as our forests die from within, or we can take a balanced, commonsense approach to forest management and return these precious natural resources to their former glory. President Bush’s Healthy Forests Initiative provides a road map back to sensible forest policy.

This balanced commonsense approach, embodied in the Healthy Forests Restoration Act (“HFRA”) of 2003,<sup>21</sup> makes it easier for forest managers to “thin” forests—remove diseased or dead trees—and to perform “prescribed burns,” in which small controllable fires are set to prevent unwieldy conflagrations and to otherwise treat forests against insect and disease infestation.<sup>22</sup>

HFRA took a fair amount of time before it was able to overcome legislative delays. The House responsibly passed the Healthy Forests Restoration Act of 2003 in May by a bipartisan vote of 256-170.<sup>23</sup> The Senate, where partisan grandstanding has become more prominent as the 2004 elections near, was set to talk the measure to death until the devastating wildfires erupted in California. On October 30, with the heat literally on, the Senate finally approved its version of the legislation by 80-14.<sup>24</sup> President Bush signed the bill into law on December 3, 2003.<sup>25</sup>

A key component of HFRA is to streamline the administrative appeals process and court challenges to fire-prevention strategies on up to 20 million acres of forest near residential communities, municipal water supplies,

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20. *Id.*

21. Pub. L. No. 108-148, 117 Stat. 1887 (Dec. 3, 2003).

22. White House, *Healthy Forest: An Initiative for Wildfire Prevention and Stronger Communities—Overview: Current Efforts to Control Wildfires and Restore Forest Health*, at <http://www.whitehouse.gov/infocus/healthyforests/sect4.html> (last visited Mar. 22, 2004).

23. Katherine Q. Seelye, *House Vote Supports Thinning of Trees on Federal Land*, N.Y. TIMES, May 21, 2003, at A28.

24. Sheryl Gay Stolberg, *Senate Votes For a Measure To Thin Trees*, N.Y. TIMES, Oct. 31, 2003, at A16.

25. White House, *supra* note 16.

areas with threatened or endangered species, and areas where trees are infected with certain insects.<sup>26</sup>

HFRA also allows forest managers to develop one plan for public comment rather than allowing the limitless universe of possibilities available. Moreover, on the 20 million acres most in need of treatment, this law will remove the option of doing nothing—a popular one among environmental zealots but a proven failure in practice.

### III. SAVING HOMES AND LIVES: HFRA INNOVATIONS IN ACTION

With HFRA now on the books, do-nothing extremists allege that this law is nothing more than a Trojan horse conspiracy under the guise of forest health. They contend that streamlining of the appeals process, setting of rules for forest management in advance, and reducing unnecessary legalistic quibbling, is all designed to silence their dissent and let loggers “run wild” in the forests to the benefit of nothing but their pocketbooks.

The facts, however, belie their doomsday predictions of sinister environmental destruction of these precious natural resources. In fact, despite its short tenure, HFRA is already succeeding in restoring and rejuvenating forest ecosystems. For example, in dealing with the infestation issues faced in the East, the Forest Service is working with Southern universities and local forest service agencies to research the Ozark-St. Frances National Forest.<sup>27</sup> This research will provide needed insight into how to battle the red oak borer and southern pine beetle, which have devastated 340,000 acres in the past two years alone.<sup>28</sup> In addition to research, federal agencies are teaming with environmental groups, local communities, and Native Americans to create a 60,000-acre stewardship project to improve forest health and reduce fire risks within the Ozark-St. Frances National Forest.<sup>29</sup>

Moreover, Healthy Forests is already paying off in helping save communities from devastating forest fires. While the dry conditions throughout the West have continued through the summer of 2004, communities are taking proactive steps to help prevent, control, and attack forest fires.<sup>30</sup> The

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26. White House, *Bush Administration Actions to Promote Healthy Forests*, *supra* note 16; Charlene Coon, *Seeing the Forests and Trees*, available at <http://www.yourpropertyrights.org/scandalsheet/030519.asp> (last visited Mar. 22, 2004).

27. Press Release, U.S. Forest Serv., CEQ, and U.S. Dep't of Interior, Administration Officials Announce Partnerships to Improve Forest Health, Wildlife Habitat at national Forests Health Conference (June 7, 2004).

28. *Id.*

29. *Id.*

30. Press Release, Fire Safe Council, Community Fire Safety Work Pays Off in Face of Five Fires (Aug. 13, 2004).

Bureau of Land Management has worked with state and local officials to develop educational programs to encourage private landowners to clear brush off their lands and worked with fire departments to develop fuel breaks to allow firefighters to best attack fires.<sup>31</sup> As a result of these programs, homes have been saved, fires have been better brought under control, and over \$89 million in damages have been averted.<sup>32</sup> While there is much that still needs to be done before our forests are truly “healthy,” it is unmistakable that HFRA is beginning to have positive effects on America’s forest ecosystems—improvements that would be impossible under the former “do-nothing” regime. Without HFRA, the nation would be left helpless to watch our forests die from within.

#### IV. CONCLUSION

The status quo of taking care of the nation’s forests—leaving them alone—has failed and done so at a great cost to forest lands, communities surrounding these lands, and the wildlife that live in these forests. The president’s health forest initiative gives local forest managers the long overdue tools they need to protect the nation’s forest ecosystem and the communities and lands that surround them from future catastrophic wild-fires. Thanks to his actions, we are no longer relegated to stand by and watch our forests literally go up in flames.

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31. *Id.*

32. *Id.*