



Comment on the U.S. Forest Service on How to Protect, Conserve, and Manage the National Forests and Grasslands for Climate Resilience, RIN 0596-AD59

Property and Environment Research Center

Bozeman, Montana

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Main Points

- The United States is in a wildfire crisis. Improving forest health and mitigating wildfire risk will require active forest restoration.
- The Forest Service should promote collaboration instead of conflict to accelerate the approval of forest restoration projects.
- The Forest Service should increase forest restoration capacity through partnerships with states, tribes, and private organizations.
- The Forest Service should allow ranchers and conservation groups to voluntarily negotiate where competing interests exist over grazing permits.

Introduction

The U.S. Forest Service manages many of the nation's most important forests and grasslands. The agency is responsible for 193 million acres of land—an area about the size of Texas—that provide wildlife habitat, clean air and water, carbon sequestration, outdoor recreation, and economic opportunities. The Property and Environment Research Center (PERC) respectfully submits this comment on how the Service can promote active restoration and conservation of these landscapes through improved regulations and partnerships.

PERC is the national leader in creating market solutions for conservation, with over 40 years of pioneering research and a network of respected scholars and practitioners. We explore how aligning incentives for environmental stewardship produces sustainable outcomes for land, water, and wildlife. We are independent, nonprofit, nonpartisan, and proudly based in Bozeman, Montana.

Fix America's Forests

Large and destructive wildfires are becoming more common across the West. Fires have burned an area larger than the state of Arizona over the past decade, and the impacts are felt across the country. Catastrophic fires cost human lives and destroy homes and infrastructure while also having detrimental effects on the environment.

Wildfires jeopardize wildlife habitat and watersheds, and have killed up to a fifth of the world's remaining giant sequoia trees in recent years.¹ Wildfire smoke is also the largest single source of PM2.5 emissions at 30 percent, yet the Environmental Protection Agency routinely treats wildfires as exceptional events and excludes them from air quality standards.²

Fires release massive quantities of greenhouse gasses, including 112 million tons of carbon dioxide in California in 2020—the equivalent of adding approximately 25 million cars to the state's roads.³ This record-breaking fire season emitted almost twice the tonnage of greenhouse gasses as the total amount of carbon dioxide reductions made in the state since 2003.⁴

As with any complex phenomenon, no single factor fully explains declining forest health or the wildfire crisis. A changing climate has increased the risk of drought and extended the west's "wildfire season."⁵ A massive jump in the number of people living near or recreating in forests has increased opportunities for human-caused ignitions.⁶ But the largest factor, according to a study by Forest Service scientists, is excessive forest density and the buildup of fuels due to decades of failed fire suppression policies.⁷

According to the Forest Service, forty percent of the acres in the national forest system are in need of restoration to address excess fuels, invasive species, disease and insect infestations, and other conservation challenges.⁸ When the Department of the Interior's 54 million acre restoration backlog is added in,⁹ the total area needing urgent help is larger than the state of California. The wildfire crisis is the most visible symptom of this problem but it is not the only one. Due to the backlog, many western forests are stocked full with overly dense, unhealthy, and dying stands that provide lower quality habitat, are more vulnerable to insects and disease, and are less resilient to climate change and drought.¹⁰

¹ See Vimal Patel, "[Wildfires in California Killed Thousands of Giant Sequoias](#)," *New York Times* (November 20, 2021).

² See [Comment to the Environment on the Proposed Lowering of National Ambient Air Quality Standards for Particulate Matter](#), PERC (February 2023).

³ See [Public Comment Draft: Greenhouse Gas Emissions of Contemporary Wildfire, Prescribed Fire, and Forest Management Activities](#), *California Air Resources Board* (December 2020).

⁴ See Hayley Smith, "[A single, devastating California fire season wiped out years of efforts to cut emissions](#)," *Los Angeles Times* (October 20, 2022).

⁵ See Jonathan Wood & Morgan Varner, [Burn Back Better: How Western States Can Encourage Prescribed Fire on Private Lands](#), PERC Policy Report (2023).

⁶ See *id.*

⁷ See Sean A. Parks et al., [High-Severity Fire: Evaluating Its Key Drivers and Mapping Its Probability Across Western US Forests](#), *Environmental Research Letters* (2018).

⁸ See Holly Fretwell & Jonathan Wood, [Fix America's Forests: Reforms to Restore National Forests and Tackle the Wildfire Crisis](#), PERC Public Lands Report (2021)

⁹ GAO, [Wildland Fire: Federal Agencies' Efforts to Reduce Wildland Fuels and Lower Risk to Communities and Ecosystems](#) (2019).

¹⁰ See *Fix America's Forests* n. 4 at 8–13.

To tackle the wildfire crisis fueled by this backlog, the Biden administration has developed an ambitious strategy to significantly increase its forest restoration work over the next decade, including treating an additional 20 million acres of national forest above the business-as-usual rate.¹¹ Meeting that lofty but critical target will require greater efficiency in the years-long process of developing, approving, and implementing forest restoration projects.¹²

It is encouraging to see the Forest Service prioritize enhanced forest restoration work. The challenge now, however, is overcoming barriers and leveraging partnerships to get that work completed on the ground.

Encourage Collaboration Rather Than Conflict

Before any chainsaws or drip torches can touch a federal forest, a restoration project must be approved. The approval process requires navigating costly red tape and litigation obstacles that stand in the way. These barriers must be reduced in order to increase the pace and scale of forest restoration. Below are a few ideas on how the Forest Service can work with Congress and other agencies to reduce the barriers that foster conflict, rather than collaboration, on forest projects:¹³

1. Apply categorical exclusions under the National Environmental Policy Act (NEPA) and work with Congress to expand categorical exclusion opportunities.
2. Work with the Fish and Wildlife Service to fix the *Cottonwood* decision by finalizing reforms that streamline consultation requirements under the Endangered Species Act for forest restoration projects.
3. Work with Congress to reduce the effects of litigation on the Forest Service's capacity to restore forests.
4. Work with the Environmental Protection Agency to make it easier to exclude prescribed burns from state emissions calculations under the Clean Air Act.

Increase Capacity Through Partnerships

Once a forest project makes it through the approval process, the Forest Service needs the physical resources and funds to complete the project on the ground. Below are a few suggestions on how the Forest Service can increase work with outside partners to address capacity challenges:¹⁴

1. Maximize cooperative agreements with private partners to perform more restoration and work with Congress to expand flexibility for longer-term contracts.

¹¹ See Forest Service, [Confronting the Wildfire Crisis: A Strategy for Protecting Communities and Improving Resilience in America's Forests](#) (2022).

¹² See Eric Edwards & Sara Sutherland, [Does Environmental Review Worsen the Wildfire Crisis?](#), PERC Policy Brief (2022). See also *Confronting the Wildfire Crisis*, *supra* n. 9 at 30 (predicting that existing "shovel ready" projects could be completed in years 1 and 2 of the plan); Forest Service, [National Prescribed Fire Program Review](#) App. A 21 (2022) (identifying the need to "streamline required environmental analysis and consultations").

¹³ See *Fix America's Forests* n. 4.

¹⁴ See *Fix America's Forests* n. 4.

2. Partner with states, counties, and tribes through Good Neighbor Authority and work with Congress to expand the authority.
3. Work with Congress to establish a forest restoration fund for long-term cost-share partnerships.

Conservation Leasing for Grazing Conflicts

One of the major uses of Forest Service grasslands is livestock grazing. Livestock grazing is permitted on over 74 million acres of the 193 million acres within the national forest system.¹⁵ In many cases, grazing can enhance conservation outcomes on grasslands. Yet in certain areas there is conflict between livestock and wildlife habitat protection, land preservation, or public recreation interests. As the Forest Service considers how to conserve these landscapes into the future, the agency should explore ways to reduce conflicts between ranching and conservation interests.

A better way forward would be to allow ranchers and conservation groups to voluntarily negotiate for non-use of grazing permits where competing interests exist. However, federal regulation erects substantial barriers to buyouts and more flexible conservation agreements to voluntarily modify or reduce grazing on public lands. PERC, for instance, recently partnered with the Greater Yellowstone Coalition and a Paradise Valley rancher on the Greater Yellowstone Ecosystem's first elk-occupancy agreement, which compensates the rancher for not grazing 500 acres of critical winter habitat for elk.¹⁶ Last year, PERC petitioned the Forest Service to revise its grazing regulations to allow similar collaborative solutions on federal land.¹⁷ The Service should grant that petition, rescind its "use it or lose it" policies that prohibit these solutions, and take other steps to facilitate markets for voluntary conservation on public land. Unlike the buyout and retirement strategy that the Forest Service has expressed unease with,¹⁸ the voluntary agreements these reforms would allow do not purport to permanently control land use but instead encourage particular conservation practices by the permittee.

Reforms to facilitate conservation options of federal grazing permits:

1. Rescind substantial grazing use regulations.
2. Incorporate non-use in an outcome-based grazing framework.
3. Rescind base-property and livestock-ownership requirements.

Option 1: Rescind Substantial Grazing Use Requirements

Forest Service policy requires permittees to graze essentially to the maximum extent allowed under the permit or risk transfer of the forage to someone else. The agency's handbook provides that permittees "must graze at least 90 percent" of the number of livestock authorized.¹⁹ Failure to meet this threshold can result in the permit being canceled in whole or in part.²⁰ The only exception to this requirement is where the Forest Service permits

¹⁵ See U.S. Department of Agriculture, [Grazing Statistical Summary Fiscal Year 2020](#) (June 2020).

¹⁶ See PERC, [Elk Occupancy Agreements](#).

¹⁷ See PERC, [Petition to the U.S. Department of Agriculture to Facilitate Markets for Voluntary Conservation on Federal Grazing Lands](#) (September 2022).

¹⁸ See Forest Service, [Proposed Amendment to the Grazing Permit Administration Handbook](#) 65–66 (2021).

¹⁹ Forest Service Handbook 2231.7.

²⁰ *Id.* 2209.13 (16.21).

nonuse, which generally lasts for only one year unless annually renewed.²¹ And even when non-use is permitted, the Forest Service may permit someone else to use available forage during that period.²²

This “use it or lose it” requirement means that ranchers and conservation groups cannot negotiate to reduce or stop grazing without risking having the permit canceled and the forage assigned to someone else. No law requires this approach, however. Congress has given the Forest Service wide latitude to set terms for grazing permits, providing that permits may be issued “upon such terms and conditions as [the Secretary of Agriculture] may deem proper.” If the requirement to graze 90 percent of permitted livestock were rescinded, ranchers and conservation groups would have considerably greater flexibility to pursue conservation by negotiating whether grazing occurs, where, when, and at what intensity.

Under this reform, conservation groups could create incentive payments for permittees that agree to reduce grazing or adopt desired conservation practices, perhaps by limiting grazing in sensitive areas during a critical wildlife nesting or migration period or by managing livestock herds to reduce the risks of disease transmission with wildlife or predator conflict, such as grizzly bears. Conservation groups looking to implement long-term conservation practices could also buy and hold the grazing permit. So long as the land remained available for grazing, the group retained the base property and some amount of livestock, and it complied with other permit requirements, it would retain “first priority” for renewing the permit under Forest Service regulations.²³

Additional considerations:

- This approach would give ranchers more flexibility, potentially reducing conflict.
- It would also provide ranchers with diversified income via a market-based, privately funded analog to the conservation reserve program by compensating them for adopting conservation practices.
- Where a certain amount of grazing would advance land management goals for an allotment, the Forest Service could impose specific minimum requirements in those permits.

Option 2: Incorporate non-use in an outcome-based grazing framework.

Another administrative pathway is to adopt an outcome-based grazing approach, under which permit requirements focus on achieving desirable ecological outcomes rather than micromanaging inputs.²⁴ The BLM has been experimenting with this approach since 2018.²⁵ An outcome-based grazing approach giving permittees flexibility to determine whether, when, and how much grazing occurs could facilitate markets for non-use of grazing permits.

With this reform, a conservation group could provide an incentive for permittees to achieve or exceed rangeland health goals in ways that also advance the group’s conservation goals. By dictating outcomes that must be met regardless of how much grazing occurs, such a model also offers a way to address potential concerns over the effect of non-use on rangeland health and overall public land management.

Additional considerations:

²¹ FSH 2209.13 (17.1).

²² See 36 C.F.R. § 222.3(c)(2)(i)(C).

²³ See 43 CFR § 4130.2(e).

²⁴ Gregg Simonds, “[Sailing the Sagebrush Sea](#),” 34 *PERC Reports* (2015).

²⁵ See [BLM Offers Livestock Operators Increased Flexibility Through Outcome-based Grazing Authorizations](#), BLM (Sept. 22, 2017).

- As the BLM has, the Forest Service could take this approach with a select number of grazing permits as an experiment to test broader reform.
- Allowing non-use through outcome-based grazing would encourage conservation groups to creatively help improve rangeland health and solve other challenges.

Option 3: Rescind livestock-ownership and base-property requirements.

Forest Service regulations limit grazing permits to those who own a set number of livestock and base property near the allotment.²⁶ While the Taylor Grazing Act imposes such requirements on BLM land, the Forest Service has wide discretion to determine permit eligibility. The Forest Service's livestock-ownership and base-property requirements make it more difficult and costly for conservation groups to acquire grazing permits for non-use and, for some groups, can even preclude the practice. It also makes such arrangements more complicated for ranchers by requiring them to sell the base property, which may contain a multi-generation family home, as a condition of transferring the permit.

Conclusion

The Forest Service is responsible for managing a wide range of public interests in federal forests and grasslands. By improving wildfire resilience and creating contracting mechanisms to alleviate conflicts over grazing the agency can better protect, conserve, and manage these landscapes.

²⁶ 35 C.F.R. § 222.3.