

This is the third of a series of three posts on how to do more to reduce fire risks on federal lands. The first post is [here](#), the second post is [here](#).

In addressing the increasing risks of wildfire, we certainly need to scale up the resources we apply to the problem, doing more prescribed burns and other forms of active management. However, we also use our resources more efficiently. Environmental review and compliance do take resources, and they are many occasions where the environmental gains from the paperwork and review exceed the costs they impose in terms of delaying needed projects. Moreover, there are environmental groups committed to using litigation to stop any and all active management on national forests, even though some active management is essential to addressing fire risks and protecting ecosystems and species.

But as I pointed out in the prior post, the current proposals with respect to environmental review and litigation in the [most recent bill](#) out of the House are lacking. Some are unpredictable, others may not have much traction, and still others may be wildly overinclusive in what they achieve.

What is a possible path forward? A key issue is that we spend too much time and effort on review, compliance, and litigation over individual projects, rather than focusing on the big picture. The scale and the urgency of the problem requires us to think about accomplishing management across large areas – but even examining individual projects at the size of 10,000 acres (as proposed in the bill) will still require hundreds and hundreds of projects to be reviewed and completed. And note agencies still have to accomplish review and compliance for land-use plans that they are legally required to prepare and maintain. Those plans do not generally turn directly into on the ground projects – they are usually too vague in their constraints and environmental analysis to do so. Thus, the agencies are stuck doing two levels of review for all projects. And it only takes a mistake on one of those two levels to set back the whole program.

Most recent proposals (including in this legislation) would reduce our scrutiny for individual projects. That perhaps solves one-half of the problem, but it also puts far more weight in terms of ensuring environmental review and compliance on the larger-scale planning process. Planning has the potential to provide important guardrails to ensure good outcomes – the Forest Service is legally prohibited from taking actions that are prohibited by its planning documents. But in general forest plans have imposed only limited constraints on individual, on-the-ground projects. And more generally, the plans have not overall been designed to allow individual projects proceed directly without more environmental review or compliance work.

A better approach might be to do what the agencies already often do with managing off-road vehicle use on their lands. Those travel management decisions can occur in the planning document itself, and can then be immediately implemented when the plan is approved. This reduces the number of steps – including the number of opportunities for litigation.

Agencies could enact forest plans (or more likely amendments to forest plans) that create a pathway that specifically identifies when and how active management will occur within the relevant National Forest. Analysis could draw on what is sometimes called “conditions-based management”, in which specific conditions in terms of forest status would trigger a range of possible responses by the agency. The plan would impose clear limits on the kinds of projects that could be pursued, such as restrictions around endangered species habitat or riparian areas. The plan might also put caps on the total acreage that could be treated within certain timeframes. NEPA review could be undertaken as part of the planning process, along with public participation and engagement. By doing review at a larger geographic scale, there can be economies of scale for analysis and public participation. And by focusing the discussion on the larger-scale problem, it might help refocus debates around the need to act, rather than simply just focusing on individual projects that will always have tradeoffs and risks. Projects that are consistent with the plan and its analysis would be exempt from NEPA, since the review had already been done.

Congress could facilitate this kind of approach. It could explicitly endorse it, or even mandate it – which might make agencies more comfortable taking a new approach. It could limit the amount of NEPA analysis for fire management at the plan level, perhaps by restricting the number of alternatives. It could require the NEPA analysis to consider the risks of inaction with no fire management, which may shape the debate to emphasize the need for action. It could provide limits on litigation – shorter statutes of limitation for NEPA challenges to fire management projects developed through the planning process, and a limitation on any supplemental NEPA claims for a specified timeframe after the planning process is completed. It could also mandate greater community outreach for the planning process, and assistance in developing community fire protection plans that are included in the agency’s own planning process.

A model here is what California did in 2019 for accelerating treatment in forests and other ecosystems at the state level – an overarching environmental review process for its [Vegetation Treatment Program](#), which facilitated approvals for many projects on the ground. California has seen [substantial increases](#) in the levels of acres treated since the implementation of the VTP process.

An approach focused on planning decisions at the individual forest level, or at the regional

level, allows for agencies to consider the varied ecological and social conditions for different forests and communities. What works for reducing fire risk in dry Sierra conifer forests will not necessarily work in chaparral in Southern California. Finally, by allowing for more active management while still maintaining public participation and some accountability through judicial review, this approach may reduce the distrust that has swirled around forest management for the past few decades. Because at the heart of our challenges in addressing fire risk in our forests is a deep distrust. Without addressing that distrust, any solutions will be contested and less effective.