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**To the Subcommittee on National Parks, Forests and Public Lands,
House Committee on Natural Resources
The Piñeros: Review of the Welfare of Workers on Public Lands
September 16, 2008**

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. 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.

Today's hearing is particularly important because it offers an opportunity to examine the progress we are making towards improving the working conditions of forest workers. Through this hearing, we can hope to learn more about how conditions may be changing, identify remaining problems, and explore solutions to the challenges of creating high 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 build ecological health, economic vitality, and democratic governance in rural forest communities in the American West. The Ecosystem Workforce Program supports these interconnected issues with applied research and policy education related to community-based forestry and federal forest management.

Over the past seven years, I have undertaken a number of studies about whether Forest Service and Bureau of Land Management (BLM) restoration contracting creates rural community benefit and about 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.

Although I appreciate the opportunity to share my research, ideally, you would be hearing directly from forest workers about current conditions. But, for many workers, the stakes are just too high. Workers who might consider coming would certainly lose pay for their time away from their all-too-short work season. They would likely be fired if they spoke out against their employer and, perhaps, blackballed from the industry entirely. Only citizens or legal permanent resident could even consider coming; guest workers and undocumented workers would risk deportation. Even at the forum about working conditions held in Eugene in early 2007, which I will discuss later, one worker who had signed up to speak, crossed his name off of the list when he realized that his boss was in the audience.

I cannot begin to speak for either workers or contractors. Nevertheless, I can share some of the trends I have observed over the few years that might help shed some light on the challenging issue of creating quality jobs in the woods. In my testimony today, I will provide information related to the problem of working conditions for forest workers, offer my observations about how things may be changing, and finally suggest recommendations about how we might make further progress.

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 green jobs—high-skill, high-quality jobs that benefit rural communities, small businesses, forest workers, and the environment. While there are many ways to think about job quality, in this context, we should think about a high-quality job as one that includes, (1) wages high enough support family, (2) respectful treatment, (3) a safe and healthy workplace, (4) stable, durable employment, (5) the ability to work close to home, and (6) skill standards and structured on-the-job training.

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. Some of these contractors employ workers directly, while others use labor subcontractors or temporary agencies.¹

At issue today are forest workers who perform labor intensive activities such as planting trees, thinning overstocked stands, piling brush, and fighting fires. According to the Federal Procurement Data System, between January 1, 2006 and August 31, 2008, the Forest Service obligated \$133,517,404 to approximately 365 contractors for contract tree planting and thinning nationwide. The Bureau of Land Management obligated \$34,308,956 to about approximately 121 contractors. Workers performing these labor-intensive jobs come from a variety of ethnic backgrounds. Often, they are Hispanic and to a lesser extent, European American, Native American, and African American. Forest workers may be U.S. citizens, noncitizens 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.²

Working Conditions

In 2005, Tom Knudson of the *Sacramento Bee* wrote a series about poor working conditions of contract forest workers working on federal lands. His series mirrored two earlier series, one in the *Sacramento Bee* in 1993 and the other in the Salem (Oregon) *Statesman Journal* in 1980.³ As a result of the 2005 *Bee* series, the Forest Service and the Department of Labor developed new strategies and commitments to increase enforcement existing labor and contract laws designed to protect workers. In 2006, the U.S. Senate held a hearing on the

working conditions of forest workers. At the hearing, representatives of nongovernmental organizations reported poor working conditions, the challenges of creating rural community benefit from forest management contracting, and the difficulties that contractors who treat their workers well have in competing in the federal contracting market.

Those who testified, including myself, also identified a number of dynamics that lead to poor working conditions. They included:

- A lack of labor and contract law enforcement,
- Targets, performance measures, and budget allocation processes that reward national forests that accomplish work at the lowest cost,
- A culture of low bid contracting and below cost awards that create hypercompetitive contracting markets, and
- Unequal treatment for undocumented workers, which makes these workers vulnerable to exploitation and lowers jobs quality for all workers in the sector.

Over the past three decades, 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 have included not paying overtime, 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.

Efforts to Improve Conditions

Increasing Enforcement

Over the past several years, efforts to improve working conditions have been primarily focused around increasing enforcement of labor laws. The Forest Service and the Department of Labor have coordinated enforcement efforts including creating a shared databases that notifies the Department of Labor whenever the Forest Service awards a contract that involved migrant or seasonal labor. Let me offer a few comments about what I understand to be the effects of these efforts.

In January 2007, after the first field season with the new enforcement efforts in place, the Forest Service, Department of Labor, and a number of nongovernmental organizations held a forum at the University of Oregon. The Forest Service and the Department of Labor reported their progress in enforcement. Workers and contractors, however, described ongoing challenges rather than significant improvements.

Former Pacific Northwest Regional Forester Linda Goodman attended the forum, and sent an email in February to her staff, sharing what she heard and her reactions:

...I was deeply moved by the forest workers who gave personal testimony about the working conditions they often face while under employment of Forest Service contractors. From their heart, they told tales of being forced to sleep eight to a

room, not being paid for work completed, the lack of any treatment to injuries, drinking out of streams as no other water was provided to them, and the indignities of being called names and verbal humiliation. As I sat there listening to their emotional pleas to make things right, I realized this is all of our responsibility.

It is our duty to ensure a healthy and safe workplace for all—we wouldn't treat our employees so poorly, and we cannot afford to let our contracted workforce be treated cruelly and inhumanely. If you come across such behavior, report it to both a line officer and a contracting officer. I have no tolerance for anyone being treated disrespectfully.

In anticipation of today's hearing, I worked with a student at the University of Oregon to conduct a small series of telephone interviews with contractors from Oregon, Washington, and California. Ultimately, we asked ten Forest Service thinning contractors whether they knew about the new enforcement efforts and whether these efforts had impacted bid prices. Clearly, these interviews are too few to draw any firm conclusions. However, these conversations suggest some trends. First, nine of the ten contractors we interviewed were at least vaguely aware that the Forest Service and Department of Labor intended to step up enforcement. Although many of the contractors had received notification about increased Forest Service inspections or the possibility of DOL staff coming to talk to their workers, several expressed skepticism that anything had really changed. Only one thought that the Forest Service had increased inspections. Only one other believed that the DOL had substantial increased enforcement efforts. As a result, this contractor had taken steps to ensure that his company was compiling with all of the laws. Taken together, the interviewees seemed to suggest more change in DOL actions than in Forest Service actions.

We also asked contractors whether bid prices had increased as a byproduct of increased enforcement efforts. We hypothesized that if contractors believed that they were at risk from investigation, they might increase prices to ensure that they were covering all of their labor costs. This might lead to an overall increase in market prices. None of the contractors we spoke with believed that labor law enforcement was affecting bid prices. They either reported declining bid prices or increases in prices due to increasing fuel costs.

Taken in sum, then, it does appear that contractors have generally heard that the agencies planned to increase efforts and some of experienced this increase enforcement. But this enforcement has not created a systemic impact. The question is why. If we bring together the contractor interviews with the Department of Labor's May 2008 report to Congress, we can begin to piece together a likely explanation for the limited impact that the DOL and Forest Service seem to be having.

Before doing so, it is worth noting that I do not know of any Forest Service report documenting their efforts beyond what is identified in the May 2008 DOL report.

However, according to the May 2008 report, the Department of Labor found 80 percent of the contractors they investigated were in violation the Migrant and Seasonal Agricultural Worker Protection Act and 40 percent in violation of the Fair Labor Standards act. Similarly, OSHA found over 500 hundred of safety violations across 168 inspections. This suggests that

safety and labor law violations are, in fact, rampant. Among Forest Service contractors, two-thirds of those they investigated were found to be in violation of the Service Contract Act.

Given the frequency of labor law violations and the likely costs to contractors from fixing these violations, we might be surprised to find that market prices do not seem to be increasing. However, the Department of Labor investigated only 40 contractors nationwide. Over half of the contractors were working on private land, while only 15 were working on national forests and apparently none on Bureau of Land Management or other public lands. During this same period, the Forest Service contracted with more than 300 contractors to perform thinning and tree planting contracts nationwide. The DOL investigated fewer than 5 percent of Forest Service thinning and tree planting contractors since January 2006 and none of the over 100 BLM contractors.

Although the Department of Labor has likely conducted more investigations in this sector than it has historically, the agency has only investigated a small percentage of contractors. With a small number of investigations, the likelihood of being caught or even knowing another firm who has been caught is small. In this context, it makes sense that contractors are reporting no change in the contracting market prices.

Given the high percentage of violations, it appears that there is a lot more work to be done in the area of enforcement alone. We probably also need to see increased publicity of the fact that the DOL is actually catching violators, so contractors know that there are risks to continuing to violate labor and safety laws.

Increasing Community Benefit and Reducing Low Bid Contracting

In addition to lack of labor and contract law enforcement, other issues identified at the 2006 Senate hearing included below cost awards and lack of consideration of community benefit when considering the best value to the government. In late 2006, the Forest Service asked me to conduct a review of whether the Forest Service was considering community benefit in their awards of thinning contracts in New Mexico, and whether there was a pattern of contracts awarded well below the government estimate for the work. I found that, in New Mexico, the Forest Service was more likely to award contracts below the government estimate than above it. However, it was difficult to tell if the Forest Service was awarding contracts well below cost, because the agency frequently did not document the ways in which they were calculating the government estimate for how much the work should cost to complete.

I also found that the Forest Service had not been considering community benefit outside of stewardship contracting in New Mexico. After the study was complete, however, the Forest Service acquisition management director issued field guidance to consider community benefit when awarding fire hazard reduction and watershed restoration contracts. I do not know of any further evaluation of whether the agency is more frequently considering local benefit as a result of this field guidance.

Changing Performance Measures

A third challenge identified at the 2006 Senate hearing was pressure created by output-oriented targets that reward national forests that can lower unit costs. Since 2005, the Forest Service had adopted a series of new performance measures in an effort to move beyond a

singular focus on outputs such as volume harvested or acres treated. However, these performance measures have largely focused on biophysical outcomes rather than associated social and economic impacts. Moreover, the Forest Service budget situation has only deteriorated further, with fire suppression swallowing an ever-increasing proportion of a shrinking pie. This dynamic places further pressure on the agency to focus on low cost and consumed Forest Service staff time with constant reorganizations and downsizing, rather than focus on the task of land management, including the conditions of work.

Recommendations

The Department of Labor should be commended for their increased focus on this sector. Their efforts have revealed the huge problems and have begun to address them. Improving working conditions is difficult task, and we cannot hope to solve a three-decade old problem overnight. Despite progress towards improving labor law and safety enforcement, there is additional work to be done if we are to build high quality jobs in the woods. There are several opportunities to make additional progress.

1. The Department of Labor and the Forest Service should further increase their inspection and investigation efforts. These inspection efforts should include a significant focus on thinning in addition to reforestation. The Forest Service is spending a lot of their budget on thinning, and labor law and safety violations are common in this area.
2. The Department of Labor should expand its enforcement efforts across multiple landowner types. Accordingly, it should work with the BLM to create a contract notification system and other information sharing techniques and increase its review of BLM contractors.
3. Congress and the Office and Management and Budget should bring to a halt the Forest Service's downsizing and outsourcing, which are destroying the agency's capacity to undertake land management, appropriately oversee contracts, and focus on job quality.
4. The Forest Service, in particular, but also the BLM, and Department of Labor should increase the visibility of their efforts by regularly publishing information about how they enforce labor laws, and the impacts of those efforts.
5. The Forest Service and BLM need to create performance measures that measure progress towards improving the quality of business and employment opportunities for public lands communities and workers.
6. As Congress considers additional funding and legislation to support green job development, whether for climate change, alternative energy development, or landscape restoration, it is critical that it support high quality green jobs. Green job development should not only be targeted at urban dwellers but also rural workers and businesses. Rural public lands communities and landscapes need high quality green jobs that stimulate the local economy and restore forests and watersheds.

Conclusions

The challenge of creating quality jobs among labor-intensive forest workers has plagued the industry for decades. There are some dynamics that seem to be improving—particularly increasing labor law and safety enforcement—but the few contractors we spoke to over the past several weeks have not seen systemic change. There are others dynamics such as unequal treatment for undocumented workers, budget constraints, targets, and a culture of low cost

contracting which have received little attention. Making forest restoration jobs safe and profitable will require sustained attention of Congress, the federal land management agencies, the Department of Labor, and labor and community organizations.

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.

Endnotes

¹ Brinda Sarathy, "The Latization of Forest Management Work in Southern Oregon: A Case from the Rogue Valley," *Journal of Forestry* 104, no. 7 (2006).

² Brinda Sarathy and Vanessa Casanova, "Guest Workers or Unauthorized Immigrants? The Case of Forest Workers in the United States," *Policy Sciences* 41, no. 2 (2008).

³ Chris Bowman and Maria Campopescio, "Shame in the Forest: U.S. Hires Undocumented Workers," *Sacramento Bee*, June 8 1993, Phil Manzano and Michael Walden, "Labor Exploitation Grows with Reforestation Industry " *Statesman Journal*, October 12 1980.