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The Good, the Bad, and the Unnecessary : Forest Fire Suppression Funding and Forest Management Provisions of the Consolidated Appropriations Act of 2018

Peter B. Taylor

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**The Good, the Bad, and the Unnecessary:
Forest Fire Suppression Funding and Forest Management
Provisions of the Consolidated Appropriations Act of 2018**

Peter B. Taylor*

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I. INTRODUCTION

President George W. Bush signed the Healthy Forests Restoration Act into law on December 3, 2003 as the cornerstone of his Healthy Forest Initiative and on the heels of a severe fire season in 2002.¹ The Act was promulgated in noted response to the upward trend in the number of fires, fire severity, and acreage involved in each fire, and its defined purpose was to “reduce wildfire risk to communities” and watersheds.² By implementing a suite of programs and initiatives aimed at expediting and funding forest projects, the Act’s primary intentions were to reduce hazardous fuels and address threats to overall forest health.³ Since the Act’s passage almost 16 years ago, the United States continues to see a steady increase in the number of acres burned each year, the average size of each fire, and the annual cost of wildland firefighting.⁴

Fire suppression cost exceeded 2 billion dollars for the U.S. Forest Service in 2017, making it the most expensive year on record. Between January 1, 2017 and November 24, 2017, there were 54,858 wildfires recorded in the United States, burning over 9,152,458 acres.⁵ The economic and health ramifications of the 2017 fire season prompted Congress to pass provisions in the Consolidated Appropriations Act 2018 addressing forest fire management.⁶ This note will examine the applicable provisions passed in the 2018 spending Act, with the intention of identifying the likeliness that its enactment will significantly affect the proliferation of wildfires. It will also identify the strengths and weaknesses of the provisions in the Act. Ultimately, it will conclude that while the spending provisions within the Act, which assure adequate funding for the foreseeable future, are positive for fire suppression and forest management practices, the substantive riders contained within the

1. *Healthy Forests Restoration Act of 2003: Summary of Implementation Actions*, FOREST AND RANGELANDS, <https://www.forestsandrangelands.gov/resources/overview/hfra-implementation12-2004.shtml> (last visited April 30, 2019).

2. 16 U.S.C. § 6501 (2018).

3. *Id.*

4. Paige Blankenbuehler & Brooke Warren, *Why Western wildfires are getting more expensive*, HIGH COUNTRY NEWS (Dec. 11, 2017), <https://www.hcn.org/issues/49.21/infographic-why-western-wildfires-are-getting-more-expensive>.

5. *Id.*

6. Consolidated Appropriations Act of 2018, H.R. 1625, 115th Cong. (2018).

Act are largely shortsighted and will be unsuccessful in decreasing fire suppression cost and mitigating fire severity and size.

This examination will begin in Section II by briefly outlining the 110-year history of forest fire suppression in the United States. Additionally, Section II will highlight the evolving understanding of fire's role in forest ecology over the same period. Section III will define the current ecological state of forests in the western United States and quantify the scope of the problem facing forest managers throughout the West. Section IV will evaluate the controlling Acts most relevant to this examination: the National Forest Management Act ("NFMA"), the National Environmental Policy Act ("NEPA"), the Healthy Forest Restoration Act ("HFRA"), the Federal Land Assistance, Management, and Enhancement Act ("FLAME"), and the applicable fire provisions in the 2014 Farm Bill. Discussion and examination of the recently passed provisions in the 2018 Consolidated Appropriations Act will follow. Finally, Section V will analyze where the culmination of these controlling Acts leaves wildfire policy in 2019 and the likelihood that these Acts will be able to affect change in the modern wildfire regime.

II. HISTORICAL BACKGROUND

The pertinent history of the Forest Service's storied relationship with wildfire suppression began in 1910.⁷ In the fire season of 1910, nearly five million acres of Forest Service lands were scorched in a single event that caused the death of 78 firefighters.⁸ This fire season marked the beginning of the Forest Service's policy of extinguishing all fires as soon as possible, a job at which they became quite proficient.⁹ By 1935, the United States Forest Service established a policy of controlling all fires by 10:00 a.m., and the Forest Service largely sought to prevent all forest fires

7. Jamison Colburn, *The Fire Next Time: Land Use Planning in the Wildland/Urban Interface*, 28 J. LAND RESOURCES & ENVTL. L. 223, 225 n.8 (2008) (citing *see generally* STEPHEN J. PYNE, *YEAR OF FIRES: THE STORY OF THE GREAT FIRES OF 1910* (2001); STEPHEN J. PYNE, *FIRE IN AMERICA: A CULTURAL HISTORY OF WILDLAND AND RURAL FIRE* (1982)).

8. *Id.*

9. *Id.* (citing Geoffrey H. Donovan & Thomas C. Brown, *Be Careful What You Wish For: The Legacy of Smokey Bear*, 5 FRONTIERS IN ECOLOGY 73, 74 (2007)).

until the late 1970s.¹⁰ The result of these efforts was impressive, and the proficiency at which the Forest Service extinguished forest fires was unparalleled. In 1900, the annual acreage burned in the western United States was 30 million acres—between 1935 and 1979 that average was 5 million acres.¹¹ Even though the ecological benefits of sporadic low intensity fire were well known nearly three decades prior, the Forest Service didn't adapt its fire suppression policy until 1995, when it began taking a more comprehensive approach to fire management, which employed mechanical thinning, prescribed fire, and selective fire suppression to remove excessive forest fuels.¹²

III. CURRENT ECOLOGICAL STATUS OF WESTERN FORESTS

Though 57 percent of the forest in the United States are privately owned, of the 19.6 percent owned by the federal government, a sizable portion are in the Western United States.¹³ In addition to these federal forest reserves, state and tribal forests make up 23 percent of the United States forests and are managed under a paradigm similar to that of the federal forests.¹⁴ The overall health of these forests is best summarized by the 2013 Western Governors Association's Report to then Secretary of Agriculture Vilsack: "Federal forest lands throughout the West are experiencing serious environmental stress that affects the health and vitality of these ecosystems. They are overgrown; they exhibit all the symptoms of an unhealthy ecosystem; and they demand urgent attention."¹⁵

10. Jesse B. Davis, *Comment: The Healthy Forests Initiative: Unhealthy Policy Choices in Forest and Fire Management*, 34 ENVTL. L. 1209, 1211 (2004).

11. *Id.*

12. *Id.*

13. Michael Goergen, James Harding, Carlton Owen, Mark Rey, & Lynn Scarlett, *The State and Future of U.S. Forestry and Forest Industry- Workshop Report and Recommendations*, 15 (May 2013), http://usendowment.org/images/Forest_Sector_Report_--_FINAL_9.5.13.pdf (last visited April 27, 2018) (reporting for the U.S. Endowment for Forestry and Communities, with funding provided by USDA Forest Service, State, and Private Forestry).

14. *Id.* (citing data originally obtained from the US Forest Service contained in the report's graph).

15. *Id.* (citing Western Governors' Association, "Western Governors request private sector be utilized to improve federal forest management," Letter to Secretary Vilsack, April 15, 2013, <https://healthyforests.org/2013/04/western->

This report identifies three factors that are influencing the overall health of federal forests. Anecdotally, these three factors are likely also affecting state and tribal forests in a comparable manner. The factors identified by the report are: (1) climate change; (2) forest loss due to fragmentation on non-federal lands; and (3) a “constrained federal financial capacity and societal support.”¹⁶ The report notes that warming temperatures and shifting weather patterns are contributing to increased frequency and intensity of fires, proliferation of insect infestations, loss of water quality and availability, and changes in composition of vegetation.¹⁷ Fragmentation occurs as an increasing human population continues to expand into the wildland urban interface (“WUI”), which places strain on the forest and makes addressing potential forest fires more complicated.¹⁸ Finally, the report discusses the recent diversion of funds from forest management practices to fire suppression efforts, which is a critical factor and detrimental to the future of forest health.¹⁹ Beyond these three overarching factors, the challenges posed by invasive species is also discussed.²⁰ The report concludes that federal forests will continue to experience severe fire outbreaks.

IV. CONTROLLING ACTS

A. *National Environmental Protection Act*

Many of the statutory acts that shape wildfire policy in the United States are informed by or in response NEPA; therefore, a brief understanding of its purpose and substantive provisions is prudent. NEPA was passed on January 1, 1970 with a sweeping statement of purpose

governors-private-sector-should-be-utilized-to-improve-federal-forest-management/).

16. *Id.*

17. *Id.* (citing to USDA, Resource Planning Act Assessment, 2010; USDA, National Report on Sustainable Forests, 2012; *see also* Donald McKenzie, David L. Peterson, & Jeremy J. Littell, *Global warming and stress complexes in forests of western North America*, in ANDRZEJ BYTNEROWICZ, ET AL., *WILDLAND FIRES AND AIR POLLUTION, DEVELOPMENTS IN ENVIRONMENTAL SCIENCE* 8, 638 Ch. 15 (2009).

18. *Id.*

19. *Id.*

20. *Id.* at 17.

recognizing “man’s activity on the interrelations of all components of the natural environment” and setting out a policy of using “all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”²¹ A list of objectives to which the government hopes to preserve follows the statement of purpose. These lofty goals aim to preserve, among other elements, biological diversity, natural esthetics, and a healthful human environment.²²

NEPA mandates agencies prepare a report or recommendation on “proposals for legislation and other major federal action significantly affecting the human environment.”²³ The report required under NEPA does not “impose a substantive duty on agencies to mitigate adverse environmental effects or to include in each environmental impact statement a fully developed mitigation plan,” but it does ensure that agencies “will take a ‘hard look’ at environmental consequences” and guarantee “broad public dissemination of relevant information.”²⁴ In general, NEPA promulgates a set of rules that require an agency to prepare an environmental assessment (“EA”), and, if necessary, an environmental impact statement (“EIS”), that considers the reasonably foreseeable environmental effects of a proposed major federal action and assesses multiple alternative actions, including the alternative of no action.²⁵ Numerous lawsuits challenging the scope of an EIS or an EA have judicially defined the parameters of NEPA evaluations, and the size and relative scope of an EIS or an EA has greatly expanded over time. This expansion is a direct result of NEPA litigation and agency wariness to having its eventual decision overturned or stayed because of a finding of inadequacy in the NEPA process.²⁶ Recent forest fire and hazardous fuels

21. 42 U.S.C.A. § 4331(a) (2018).

22. 42 U.S.C.A. § 4331(b) (2018).

23. 42 U.S.C.A. § 4332(c) (2018).

24. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 (1989).

25. 42 U.S.C. § 4332.

26. SANDRA B. ZELLMER & JAN G. LAITOS, *PRINCIPLES OF NATURAL RESOURCE LAW*, 59 (2014) (noting that significant percentage of environmental litigation is brought under NEPA and that “the sheer volume of each EIS has increased

reduction policy has been largely aimed at finding ways in which the NEPA timeframe can be shortened or eliminated.

B. National Forest Management Act

Congress passed NFMA in the early 1970s as an attempt to exert control over the Forest Service's discretion.²⁷ Composed of two primary parts, the Act sought to implement large scale planning over distinct forest units. First, the Act requires the Forest Service to develop Land and Resource Management Plans (“LRMPs”) to guide and govern all activities on a distinct forest unit.²⁸ These plans are to be developed with extensive public input and revised every 15 years, unless conditions in the unit significantly change requiring review on a more frequent basis.²⁹ In addition to the requirement that the Forest Service develop LRMPs, the NFMA also set out specific substantive criteria to assure each forest unit is managed in a manner that protects forest resources while allowing timber harvest.³⁰ LRMPs also must be promulgated in accordance with NEPA.³¹

C. Healthy Forest Restoration Act

Enacted on December 3, 2003, the stated purpose of the HFRA was to:

[I]mprove the capacity of the Secretary of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds and wildfire, to enhance efforts to protect watersheds and address threats to forest and

dramatically, as agencies attempt to ‘bulletproof’ their analyses by making them longer and more detailed.”).

27. 16 U.S.C. § 1600-1604 (2018).

28. 16 U.S.C. § 1604(f).

29. 16 U.S.C. § 1604(f).

30. 16 U.S.C. § 1604(g)(3).

31. 16 U.S.C. § 1604(g)(1).

range land health, including catastrophic wildfire, across the landscape and for other purposes.³²

While HFRA sets out provisions under five sections, the most pertinent section to this commentary is Title I. The meat of Title I is effectively a codification of the Western Governors' Association's ten-year forestry strategy plan.³³ In 2000, the Association drafted the original forestry management strategy, which was developed in conjunction with public interest groups and federal agencies.³⁴ Much like the eventual goals of the HFRA, the original aim of the ten-year plan was to improve "fire prevention and suppression programs, reduce hazardous fuels, restore fire adaptive ecosystems, and promote community assistance."³⁵ As the subsequent Consolidated Appropriations Act of 2018 only amended Title I of the HFRA and most wildfire suppression efforts are completed under Title I's provisions, Title II – Title VI will not be discussed in this examination. However, continued support, both politically and financially, for the entirety of the HFRA is critically important to gaining an advantage on western wildfires, as the Act comprehensively aids in the furtherance of a robust forest industry and healthy forest ecosystems. Notably, Title II of the Act provided direct support to overcome economic and information barriers hindering the use and production of the woody biomass created from fuels reduction projects, which ultimately addresses a fundamental problem of all initiatives designed to aid in forest management—the lack of viable timber markets in the Western United States.³⁶

The main objective of Title I of the Act is prioritization of hazardous fuel reduction projects and a streamlined NEPA analysis. By simultaneously identifying projects with the highest likelihood of successful intervention and then expediting NEPA analysis by shortcutting

32. Healthy Forest Restoration Act of 2003, Pub. L. No. 108-48, 117 Stat. 1887, 1887 (2003).

33. Reda M. Dennis-Parks, *Healthy Forests Restoration Act – Will It Really Protect Homes and Communities*, 31 *ECOLOGY L. Q.* 639, 646 (2004).

34. *Id.*

35. *Id.* (citing to Western Governors Association, *A Collaborative Approach to Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation* (May 2002), <https://www.forestsandrangelands.gov/documents/resources/plan/11-23-en.pdf>).

36. 16 U.S.C.A. § 6531 (repealed in late 2018 subsequent to the drafting of this examination. Pub. L. No. 115-334 (Dec. 20, 2018)).

certain NEPA requirements, the HFRA aimed to produce action by moving projects from proposal to actual work on the ground in a matter of months not years. The HFRA—in five parts—outlines the prioritization of federal lands involved in hazardous fuel reduction projects:

- (1) Federal lands in the wildland-urban interface (WUI) in at risk communities;
- (2) condition class 3 Federal land, in such proximity to a municipal water supply system or a stream feeding such a system within a municipal watershed that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply or the maintenance of the system, including a risk to water quality posed by erosion following such a fire disturbance event;
- (3) condition class 2 Federal land located within fire regime I, fire regime II, or fire regime III, in such proximity to a municipal water supply system or a stream feeding such a system within a municipal watershed that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply or the maintenance of the system, including a risk to water quality posed by erosion following such a fire disturbance event;
- (4) Federal land on which windthrow or blowdown, ice storm damage, the existence of an epidemic of disease or insects, or the presence of such an epidemic on immediately adjacent land and the imminent risk it will spread, poses a significant threat to an ecosystem component, or forest or rangeland resource, on the Federal land or adjacent non- Federal land; and
- (5) Federal land not covered by paragraphs (1) through (4) that contains threatened and endangered species habitat, if—
 - (A) natural fire regimes on that land are identified as being important for, or wildfire is identified as a threat to, an endangered species, a threatened species, or habitat of an endangered species or threatened species in a species recovery plan

prepared under section 1533 of this title, or a notice published in the Federal Register determining a species to be an endangered species or a threatened species or designating critical habitat;

(B) the authorized hazardous fuel reduction project will provide enhanced protection from catastrophic wildfire for the endangered species, threatened species, or habitat of the endangered species or threatened species; and

(C) the Secretary complies with any applicable guidelines specified in any management or recovery plan described in subparagraph (A).³⁷

Any projects that fall within these parameters are then to be subjected to a modified NEPA analysis.

One of the primary objectives of the HFRA was to streamline NEPA evaluations; therefore, enabling projects to complete the necessary EAs and begin implementation in a shorter timeframe—months instead of years. Except for the NEPA alterations noted below, projects implemented under the HFRA are still subject to review in accordance with NEPA and other applicable laws, which means that an EA or an EIS must be issued before a project can begin.³⁸ The HFRA truncates the NEPA timeline through four primary tools: 1) the NEPA analysis under the HFRA framework requires fewer proposed alternatives be analyzed for projects at large; 2) the requirements for proposed alternatives are even further reduced for projects in the WUI; 3) the HFRA places limits on the public comment period; and 4) the HFRA is a limited waiver of the Appeals Reform Act, meaning it reduces the accessibility to appeals and judicial actions.³⁹

First, the reviewing agency is not required to consider multiple alternatives to the action presented.⁴⁰ Whereas, under a regular NEPA evaluation a judicially implied three to five alternatives are required in

37. 16 U.S.C. § 6512(a) (2018).

38. 16 U.S.C. § 6514(a) (2018).

39. 16 U.S.C. §§ 6514-15; 36 C.F.R. § 218 (2004).

40. 16 U.S.C. § 6514(c).

addition to the proposed action and “no action” alternative,⁴¹ the HFRA only requires the analysis of the “proposed agency action,” a “no action” alternative, and one additional action alternative.⁴² The review of the one supplemental alternative is only required if it is proposed during the collaborative scoping process and “meets the purpose and need of the project, in accordance with regulations promulgated by the Council of Environmental Quality.”⁴³ Second, the requirements to review alternatives are further reduced if the proposed fuels reduction project is conducted within the WUI (only the proposed action and one alternative are to be analyzed in the EA or EIS) and even less restrictive if within one and a half miles of an at-risk community (no alternative is required, the EA or EIS must only assess the proposed action).⁴⁴

The HFRA shortened the time frame for the public to evaluate and comment on proposed HFRA projects and severely restricted public comments and objections to approved projects; therefore, reducing the possibility of delays in project implementation due to lengthy comment periods and extended appeals. Unlike a standard NEPA public comment period, which is open to all who wish to comment, both verbally and in writing, comments under the HFRA are only accepted in writing during a limited time period.⁴⁵ As soon as comments have been taken and the Forest Service has considered their validity, draft decision documents are released and only those parties that submitted specific comments during the comment period can object during the pre-decisional administrative review process.⁴⁶ Additionally, objections can only be made during this pre-decisional process on issues raised during the comment period. After the agency issues its final decision, appeals will only be heard from those parties involved in the original development of the plan and who submitted written comments and objections.⁴⁷ Much like the access to agency

41. Dennis-Parks, *supra* note 33, at 648.

42. *Id.*

43. 16 U.S.C. § 6514(c)(1)(C).

44. 16 U.S.C. § 6514(d).

45. 16 U.S.C. § 6514; 36 C.F.R. § 218 (2013).

46. Katie Hoover et al., *Forest Management Provisions Enacted in the 115th Congress*, H.R. REP. NO. R45696 at 7, 115th Cong. (2019) [hereinafter *Summary of 115th Congressional Action*] (citing to 36 C.F.R. § 218 (2018)).

47. *Id.* (citing Department of Interior and Related Agencies Appropriations Act (“Appeals Reform Act”), Pub. L. No. 102-381, § 322, 106 Stat.

appeals, judicial review of an agency's administrative decisions is also limited in time and scope under the HFRA.⁴⁸ In passing the HFRA, Congress hoped to implement a process in which fuels reduction projects were conceived, reviewed, and implemented in the shortest amount of time possible.

Critics of the HFRA pointed to several perceived inadequacies in the Act, which they asserted would keep it from fulfilling its stated purpose. First, detractors claimed the HFRA applied a one-size-fits-all approach to forest management by assuming that manual thinning was the best management practice for all forest types and in all situations, which does not correlate with modern understanding of the healthy role fire can play in forest health.⁴⁹ This criticism was largely unfounded because the Act sought to implement projects in the WUI and other areas where controlled natural burns and prescribed burns had limited applicability, and the term "appropriate tools" in the Act's definition of "Authorized Hazardous Fuels Reductions Projects" was interpreted to include prescribed burns and use of naturally occurring wildland fire.⁵⁰ Second, critics found it unlikely that the Forest Service could take advantage of the truncated NEPA review to green light time-dependent forest projects, such as beetle kills and blowdowns that have a limited window for economically productive harvesting, which could leave only large fire-resistant old growth trees as the primary marketable timber within a project area.⁵¹ While the provisions of the Act as originally passed appeared to substantially define and limit the scope of qualifying projects to those that fit the purpose of the Act, opponents of the HFRA claimed its potential pitfall was that it could be used as a "logging loop hole" (i.e. allowing logging of mature marketable trees under the auspices of thinning in places otherwise not able to be logged).⁵²

Critically, the Act as originally passed failed to adequately provide for the abundance of land in the growing WUI that is not under federal control, land that is largely responsible for the increasing cost of

1374, 1419 (1992); *see also* 36 C.F.R. § 218.1–218.16 for updated objection procedure).

48. 16 U.S.C.A. 6516.

49. Dennis-Parks, *supra* note 33, at 650–651.

50. *Summary of 115th Congressional Action*, *supra* note 46 at 5 n. 26.

51. Dennis-Parks, *supra* note 33, at 654–657.

52. *Id.* at 643.

fighting wildfires and economic loss resulting from those fires.⁵³ The Act did not provide for collaborative efforts with state and local municipalities or transfer of funds to address those areas of the WUI outside of federal control. Finally, the Act's success is reliant on adequate funding provided to carry out the projects it promotes; therefore, during bad fire seasons, the fuels management funds are usually the first taken to support suppression efforts.

D. Federal Land Assistance, Management and Enhancement Act

FLAME was enacted on October 30, 2009 and statutorily required the development of a cohesive wildfire management strategy.⁵⁴ As a collaborative effort between the Department of Interior and the Department of Agriculture, the strategy was to be completed within one year of the enactment.⁵⁵ The Act's vision for a cohesive strategy was "to safely and effectively extinguish fire, when needed; use fire where allowable; manage our natural resources; and as a Nation, live with wildland fire."⁵⁶ Seven criteria were to be assessed and addressed in the final management strategy. Those criteria are:

- (1) the identification of the most cost-effective means for allocating fire management budget resources;
- (2) the reinvestment in non-fire programs by the Secretary of the Interior and the Secretary of Agriculture;

53. Tania Schoennagel et al., *Adapt to more wildfire in western North American forests as climate changes*, 114(18) PNAS 4582, 4583 (May 2017), <https://www.pnas.org/content/pnas/114/18/4582.full.pdf> ("Between 1990 and 2010, almost 2 million homes were added in the 11 states of the Western United States increasing the WUI by 24%. . . . Since 1990, the average annual number of structures lost to wildfire has increased by 300%, with a significant step up since 2008. . . . Because of the people and property values at risk, WUI fires fundamentally change the tactics and cost of fire suppression as compared with fighting remote fires and account for as much as 95% of suppression costs." (internal citations omitted)).

54. 43 U.S.C. 1748(b) (2018).

55. *Id.*

56. U.S. Dep't of Interior & U.S. Dep't of Agric., *Building a Cohesive Strategy*, FORESTS AND RANGELANDS, www.forestsandrangelands.gov/strategy/building.shtml (last visited March 22, 2019) [hereinafter *Building a Cohesive Strategy*].

- (3) employing the appropriate management response to wildfires;
- (4) assessing the level of risk to communities;
- (5) the allocation of hazardous fuels reduction funds based on the priority of hazardous fuels reduction projects;
- (6) assessing the impacts of climate change on the frequency and severity of wildfire; and
- (7) studying the effects of invasive species on wildfire risk.⁵⁷

Since the Act's passage it has had significant support from the Western Governors' Association, which was the group responsible for the formulating the documents behind the HFRA. In 2016, the Governors' Policy Statement called for full implementation of FLAME's provisions and funding to provide for the Act's full implementation.⁵⁸

The main thrust of the Act was to create a National Cohesive Wildland Fire Management Strategy.⁵⁹ The strategy dictated three phases of implementation. Phase I was the blueprinting process, which aimed at establishing the primary goals and structure of the strategy.⁶⁰ Implementation of Phase I involved cohesive strategy planning such that "the wildland fire strategy would not be limited to federal lands, but would consider the needs of all lands and balance regional needs and perspectives with national planning."⁶¹ Aside from creating a strategic framework for FLAME's implementation, Phase I identified three primary goals: "creating resilient landscapes, fire adapted communities, and more effective response to wildfire."⁶² Phase II required the completion of regional assessments, which evaluated "landscape elements, ecological processes, and human values of local resources."⁶³ Phase III saw the

57. 43 U.S.C. § 1748b(b)(2012).

58. *Policy Resolution 2016-06: Wildland Fire Management and Resilient Landscapes*, WESTERN GOVERNORS' ASS'N, http://westgov.org/images/editor/2016-06_Wildland_Fire_Management.pdf (last visited March 22, 2019) [hereinafter *Policy Resolution 2016-06*].

59. *Id.*

60. *Building a Cohesive Strategy*, *supra* note 56.

61. *Id.*

62. *Policy Resolution 2016-06*, *supra* note 58.

63. *Building a Cohesive Strategy*, *supra* note 56.

creation of science-based risk analysis reports and action plans, and this phase culminated in the creation of the National Cohesive Wildland Fire Management Strategy.⁶⁴ The final plan is credited as a collaborative effort by “[f]ederal, state, local, and tribal governments, non-governmental partners, and public stakeholders.”⁶⁵ The final National Strategy:

establishes broad, strategic national-level direction as a foundation for implementing programs and activities across the nation. Based on a landscape-level collaborative approach, describing how the Nation can focus future efforts in making strategic investments to reduce the severe effects of wildfire on areas of high risk.⁶⁶

E. Agricultural Act of 2014

The Agricultural Act of 2014 (“2014 Farm Bill”) contained several provisions to increase the pace and scope at which agencies could implement forest, watershed, and rangeland restorations.⁶⁷ These provisions amended the HFRA in two primary ways. Most notably, the 2014 Farm Bill created a 3000-acre categorical exclusion (“Farm Bill CE”) for treatment of insect or disease infestations, which excluded the proposed project from NEPA analysis and instead imposed a collaborative review process.⁶⁸ Additionally, these provisions gave states 60 days to request that the Forest Service designate landscape-scale areas experiencing, or at risk of experiencing an insect or disease epidemic.⁶⁹ 45.6 million acres of National Forest system lands across 35 states were designated as eligible for CE projects under the 2014 Farm Bill.⁷⁰

64. *Id.*

65. *Id.*

66. *Id.*

67. Agricultural Act of 2014, 7 U.S.C. § 9001 (2014).

68. *U.S. Forest Service, Farm Bill Insect and Disease Designations, Key Messages*, U.S. FOREST SERV. (May 19, 2014), https://www.sierraforestlegacy.org/Resources/Conservation/ProjectsPlans/FarmBillCE/FS_Key_Messages_FarmBillCE.pdf.

69. *Id.*; see also *Summary of 115th Congressional Action*, *supra* note 46, at 8.

70. *Id.*

However, designation under these provisions was not a guarantee that work would be carried out on the affected areas, only that the areas were available for further evaluation and potential implementation of the Farm Bill CE. Additionally, the 2014 Farm Bill did not appropriate any funds for these projects.⁷¹ Projects implemented in the designated areas, which aimed to use the categorical exclusion, were to meet the following requirements: (1) maximize the retention of old growth and large trees, (2) consider the best available science, (3) be limited to areas within the designated disease or infestation area or the WUI, (4) exclude areas in Wilderness, wilderness study areas, or areas where the removal of vegetation is restricted or prohibited, (5) prohibit the establishment of permanent roads, and (6) decommission any temporary roads constructed for the project within three years of project completion.⁷²

The Farm Bill CE was recently challenged in *Center for Biological Diversity, et. al. v. Eli Ilano, et. al.*⁷³ This case involves the application of the Farm Bill CE in the Tahoe National Forest for a logging project aimed at combating disease and beetle infestation.⁷⁴ Opponents of the project claimed that the Forest Service did not properly evaluate the projects potential effect on the California spotted owl and that the project should have been subject to NEPA evaluation.⁷⁵ The court found that “because no NEPA review was required for the area designation, and because the extraordinary circumstances analysis of the effects of the . . . [p]roject on the California spotted owl was adequate, summary judgment is granted to the defendants.”⁷⁶ The case is currently on appeal to the United States Court of Appeals for the Ninth Circuit and the court’s decision will have far reaching ramifications on the legality of future CE’s.

F. Consolidated Appropriations Act of 2018

In response to the unprecedented fire season of 2017, Congress amended the Consolidated Appropriations Act of 2018 (“2018 Appropriations Act”) to include several provisions aimed at addressing the

71. *Id.*

72. *Id.*

73. 261 F. Supp. 3d 1063, 1065 (E.D. Cal. 2017).

74. *Id.*

75. *Id.*

76. *Id.* at 1071.

wildland fire situation in the United States.⁷⁷ Congress passed the Act and it was signed into law by President Donald Trump in March of 2018.⁷⁸ The Act contains provisions aimed at addressing the funding shortage that occurs when the Forest Service and other agencies are faced with extensive fire suppression costs that exceed their budget line item.⁷⁹ Additionally, the Act also contains substantive provisions that amend the HFRA and institute an additional CE for hazardous fuels reduction projects under 3000 acres.⁸⁰ This section will address the spending provisions contained in the Act first, and then turn to the more complicated substantive provisions.

1. Spending Provisions in the Consolidated Appropriations Act of 2018

As wildfires have become larger, more intense, and increasingly in contact with the expanding WUI, the cost of battling these blazes has correspondingly increased. The spending provisions contained in the 2018 Appropriations Act are aimed at stemming the chronic underfunding of wildfire suppression efforts in the United States. As an example of agency underfunding: “the 2015 budget provided funding for 70 % of the 10-year average of wildfire suppression costs,” at a time when projected costs were far exceeding that average.⁸¹ When wildfire suppression costs are underestimated and underfunded, the agencies charged with controlling these blazes engage in the practice of “fire borrowing.”⁸² “Fire borrowing” and its resulting problems are summarized as follows:

The practice of diverting money earmarked for wildfire prevention activities to wildfire suppression activities, and it has created a vicious cycle in wildfire management.

77. Consolidated Appropriations Act of 2018: Wildfire Suppression Funding and Forest Management Activities Act, H.R. 1625, 115th Cong. §§ 101–212 (2018) [hereinafter H.R. 1625].

78. Consolidated Appropriations Act of 2018, Pub. L. 115-141, 132 Stat. 348 (2018).

79. H.R. 1625 § 102–103.

80. H.R. 1625 § 605.

81. Brian Bona, *The Wildfire Crisis: How the Federal Government Has Tried To Stop The Burn*, 6 ARIZ. J. ENV'T. L. & POL'Y 1081, 1084 (2016).

82. *Id.*

The agencies cannot adequately minimize the wildfires using reduction techniques because all their funds go to emergency firefighting. Since the agencies are unable to fully engage in preventative measures, the wildfires become increasingly worse in subsequent years, which drives up the cost of fighting the fires and forces the agencies to rely further on ‘fire-borrowing.’⁸³

This chronic underfunding of forest fire suppression has continually threatened the efficacy of agency actions aimed at solving or mitigating the increasing wildfire problem. No matter how effective forest management plans and practices might be, if their funding is diverted and they are not implemented to their fullest extent, they will never be able to mitigate the increasing fire danger.

The 2018 Appropriations Act makes a significant commitment to long-term funding of forest fire suppression and wildfire disaster funding. Under the division of the Act titled Wildfire Suppression Funding and Forest Management Activities Act, Title I, Wildfire and Disaster Funding Adjustment, a wildfire suppression funding scheme is laid out through 2027.⁸⁴ The provisions provide that the Wildland Fire Management accounts of the Department of Interior and the Department of Agriculture shall be funded to an amount of 2.25 billion dollars in the year 2020 and shall increase to not more than 2.95 billion dollars in the year 2027.⁸⁵ Attached to these funds are several provisions outlining reporting requirements; the most important of which will aid in the evaluation of “fuel treatments” on fire behavior and suppression expenditures.⁸⁶ Additionally, the Act earmarks 2,880,338,000 dollars for varied forest fire suppression and forest management activities through September 30, 2021.⁸⁷ By dedicating funds expressly for firefighting cost over the next nine years, Congress has assured that the Department of Interior and the Department of Agriculture can allocate proper funding to the fire

83. *Id.* (citing Senator John McCain’s website, *Senators McCain, Barrasso and Flake Reintroduce Legislation to Fully Fund Wildfire Suppression and Boost Proactive Forest Management* (Feb. 13, 2015) (website no longer available).

84. H.R. 1625. § 102(a)(3)(F)(i).

85. *Id.*

86. H.R. 1625. § 104.

87. H.R. 1625. § 102.

prevention strategies outlined in the HFRA and that those provisions can be executed to fullest extent.

2. *Substantive Provisions in the Consolidated Appropriations Act of 2018*

The 2018 Appropriations Act makes a multitude of substantive changes and additions to federal wildfire policy, which are purportedly aimed at increasing overall forest health by additional streamlining for approval of fuels reduction projects and wildfire resilience projects as well as addressing ongoing agency concerns.⁸⁸ The most notable provision is the creation of an additional categorical exclusion, which excludes NEPA analysis for Wildfire Resilience Projects.⁸⁹ These projects are limited in size to 3000 acres.⁹⁰ Each project must provide for the “retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease, and reduce the risk or extent of, or increase the resilience to wildfires,” with priority given to projects in the WUI.⁹¹ Several safeguard provisions act as the stand-in for a NEPA EA or EIS and these include:

- (B) consider the best available scientific information to maintain or restore the ecological integrity, including maintaining and restoring structure, function, composition, and connectivity; and
- (C) is developed and implemented through a collaborative process that – (i) includes multiple interested persons representing diverse interests; and (ii)(I) is transparent and nonexclusive; or (II) meets the requirements for a resource advisory committee. . . .⁹²

In addition to the CE for Wildfire Resilience Projects, the 2018 Appropriations Act also contains six other management reforms: (1)

88. H.R. 1625. §§ 201–212.

89. H.R. 1625. § 202 (inserting § 605 at the end of Healthy Forests Restoration Act and creating an additional CE beyond that established in the 2014 Farm Bill).

90. H.R. 1625. § 202(c)(1).

91. H.R. 1625. §§ 202(b)(1)(A), (c)(2)(A).

92. H.R. 1625. § 202(b)(1)(B–C).

HFRA inclusion for projects building fire and fuel breaks; (2) 20-year stewardship contracts; (3) *Cottonwood* reform; (4) fire hazard mapping initiative (5) fuels management for protection of electrical transmission lines; and (6) additions to the good neighbor authority amendment originally contained in the 2014 Farm Bill.⁹³

The *Cottonwood* reform provision⁹⁴ is a targeted response to the Ninth Circuit Court of Appeals' decision in *Cottonwood Environmental Law Center v. United States Forest Service*,⁹⁵ which found that the Forest Service is obligated to consult the United States Fish and Wildlife Service when a critical habitat for an endangered species is defined under the Endangered Species Act ("ESA") to determine if the current forest management plans will harm the species.⁹⁶ Under section 208, which amends the Consultation Under Forest and Rangeland Renewable Resources Planning Act of 1974, consultation is no longer required upon the listing of a new species or designation of critical habitat.⁹⁷ The practical result of this change is that agencies—the Forest Service in particular—will not have to review the implications of species listing on their forest-wide management plans for up to 15 years.⁹⁸

While the funding fix seems to be universally applauded, the substantive provisions are being eyed with some skepticism by environmental and animal rights groups. The primary points of concern for these interest groups are the 3000-acre CE and the *Cottonwood* reform. It is likely that the CE provisions and the *Cottonwood* reform will be judicially challenged. Prior to the enactment of the HFRA in 2003, the Healthy Forest Initiative created five new types of categorical exclusions. These categorical exclusions ranged in size from 4500 acres for controlled burns, to 1000 acres for mechanical treatments, down to 70 acres for live

93. H.R. 1625. §§ 203–212; *see also* USDA Office of Commc'ns, *Secretary Perdue Applauds Fire Funding Fix in Omnibus*, USDA (March 23, 2018), <https://content.govdelivery.com/accounts/USDAOOC/bulletins/1e46559>.

94. H.R. 1625. § 208.

95. 789 F.3d 1075 (9th Cir. 2015).

96. Jessica Kutz, *Fire Funding Fixes Comes With Environmental Rollbacks*, HIGH COUNTRY NEWS (March 29, 2018), <https://www.hcn.org/articles/wildfire-fire-funding-fix-includes-environmental-rollbacks>.

97. H.R. 1625. § 208(a).

98. Kutz, *supra* note 96.

tree harvest with incidental live tree removal.⁹⁹ The largest of these exclusions for fuel reduction was challenged in *Sierra Club v. Bosworth*,¹⁰⁰ and it was invalidated on the grounds that the:

Forest Service failed to engage in the required scoping process prior to the CE's establishment, failed to conduct a reasoned cumulative impacts analysis, failed to consider the extent to which impact of fuels reduction projects was highly controversial and uncertain, and failed to define the CE with requisite specificity.¹⁰¹

It is likely that the CE in the 2018 Act would be challengeable on similar grounds. Judicial review of the *Cottonwood* reform would be a case of first impression. It seems unlikely that if critical habitat were designated within a forest, that a 3000-acre hazardous fuels treatment could occur without a NEPA analysis and full consultation under Section 7 of the ESA. In juxtaposition to both of these assertions is the previously mentioned *Ilano* case which found no fault in a CE under the 2014 Farm Bill.

V. ANALYSIS

Congress should be applauded for the recent passage of the fire spending provisions in the Consolidated Appropriations Act of 2018, which were aimed at ending “fire borrowing.” State, local, and federal fire agencies have been calling for an end to “fire borrowing” for many years, and the spending allocations will likely be the most successful of the wildfire suppression and hazardous fuels management provisions in the 2018 Appropriations Act. However, Congress must also assure continued significant allocation of funds for hazardous fuels reduction projects and other fire fuels management techniques under the general funding of the agencies or the fire suppression allocations in the 2018 Appropriations Act will be of little significance in the long run.

The passage of the additional 3000-acre CE in the 2018 Appropriations Act was seemingly unnecessary and largely politically driven. It is redundant because it is essentially a duplication of the CE

99. SANDRA B. ZELLMER & JAN G. LAITOS, *PRINCIPLES OF NATURAL RESOURCE LAW*, 252 (2014).

100. 510 F.3d 1016 (9th Cir. 2007).

101. ZELLMER & LAITOS, *supra* note 99 at 252.

previously passed in the 2014 Farm Bill and included in the HFRA, with the exception that some parameters enumerated in the 2014 provisions have been removed in the 2018 iteration. The primary difference is the 2018 CE is not focused exclusively on disease infestations and will open areas of the forest that are simply at high fire risk. Additionally, while projects are to be prioritized in the WUI, that provision is non-binding and Wildfire Resilience projects under the new CE can be carried out anywhere in the approximately 58 million acres of National Forest Service lands that have been identified as at very high fire risk or in an insect infestations area.¹⁰² There is no doubt that huge expanses of western forest are in extremely poor health and in need of immediate attention, but the 2018 CE is step backward in forest policy and away from the original controlling acts that recognized the importance of forest-wide planning. By expanding the use CE's to arguably all areas of the forest, the purpose of NEPA has been largely negated and the "basic legal framework for federal forest management" has been changed.¹⁰³ Allowing forest management decisions to be made 3000 acres at a time forgets the history of the United States forest reserves, which propelled forest management plans to look forest-wide.

Ultimately, the looming question is: has the use of CEs become too widespread in forest management and exceeded the scope and purpose for which CEs were created in the first place? This is not a novel question and has been covered at length in legal literature.¹⁰⁴ In 2010, the Executive Office of the President and the Council on Environmental Quality issued guidance to aid federal agencies in determining when CEs are appropriate.¹⁰⁵ This press release noted, "categorical exclusions are

102. *Summary of 115th Congressional Action*, *supra* note 46 at 38.

103. *Id.* (citing S. HRG. 115-112 (e.g., letter submitted by Center for Biological Diversity); H. REPT. 115-370, Dissenting Views; Martin Nie & Peter Metcalf, *National Forest Management: The Contested Use of Collaboration and Litigation*, 46 ENVTL L. RPT. 10208, 10281-10298 (2016).

104. Kevin H. Moriarty, *Circumventing the National Environmental Policy Act: Agency Abuse of the Categorical Exclusion*, 79 N.Y.U. L. REV. 2312 (2004); Helen Leanne Serassio, *Legislative and Executive Efforts to Modernize NEPA and Create Efficiencies in Environmental Review*, 45 TEX. ENVTL. L.J. 317 (2015).

105. Exec. Office of the President, Council on Env'tl. Quality, *White House Council on Environmental Quality Issues Guidance to Help Federal Agencies Ensure the Integrity of Environmental Reviews*, THE WHITE HOUSE, PRESIDENT BARACK OBAMA (Nov 23, 2010), https://obamawhitehouse.archives.gov/administration/eop/ceq/Press_Releases/November_23_2010.

appropriate in many circumstances but should not be relied on if they thwart the purposes of NEPA, compromising the quality and transparency of agency decision making or the opportunity for meaningful public participation.”¹⁰⁶ While the need to move forest management projects through the permitting process expeditiously is readily apparent, the 2018 CE seems to be largely intended to allow the Forest Service to circumnavigate NEPA’s requirements and should likely be found invalid. Creation of CEs are an understandable expression of frustration to the delays NEPA causes, but a more appropriate approach is to amend NEPA to legislatively resolve its problems. By eliminating excessively large EAs and EISs and indefinitely long evaluation time frames, returning to development of simplified EAs and EISs, and potentially restricting litigation through a process similar to that outlined in the HFRA, the original intention of NEPA can be preserved.¹⁰⁷

CE projects initiated under the 2018 Appropriations Act will likely be susceptible to judicial challenge, as they were in *Sierra Club v. Bosworth*¹⁰⁸ and *Center for Biological Diversity, et. al. v. Eli Ilano, et. al.*¹⁰⁹ This will only serve to shift attention and resources away from the reduction of fire fuels hazards and fire suppression efforts. The success of these suits will hinge, in part, on the Ninth Circuit’s decision in the pending appeal of *Ilano*. Furthermore, the need for the additional CE was questionable as HFRA projects, 2014 Farm Bill CE projects, and regular NEPA evaluated projects were being adequately implemented prior to the 2018 Appropriations Act.¹¹⁰ Finally, the creation of the 2018 CE may incentivize logging and thinning projects on federal and Forest Service lands not in the critical WUI area, which is not where these projects will reap the most benefit.

106. *Id.*

107. Nancy H. Sutley, *Memorandum for Heads of Federal Departments and Agencies, Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act* (March 6, 2012), THE WHITE HOUSE, PRESIDENT BARACK OBAMA, https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Improving_NEPA_Efficiencies_06Mar2012.pdf.

108. 510 F.3d 1016 (9th Cir. 2007).

109. 261 F. Supp. 3d 1063, 1065 (E.D. Cal. 2017).

110. See Forest Serv., *Projects*, U.S. FOREST SERV., <http://www.fs.usda.gov/projects/kootenai/landmanagement/projects> (last visited May 14, 2019) (Listing 67 projects currently under development in Montana using various programs already in place.).

This last fact raises the question: will critical funding get to the WUI and the agencies most in need of help reducing hazardous fuels and wildfire risk in urban areas? Unfortunately, federal lands do not typically fall within the WUI; therefore, spending capital and human resources conducting fuel reduction projects on federal lands may not be the best approach to reduce the increasing cost of wildfire suppression.¹¹¹ While the applicable statutes and acts statutorily provide for resource sharing between the Forest Service, other agencies, and states, funding allocations do not show significant funds moving beyond the Forest Service or the Department of Interior. An addendum to a 2013 study on the rising cost of fires notes:

Of the \$3.33 billion in average annual federal wildfire funding since 2002, 91 percent has been used for protecting federal lands; more than 70 percent of the funding for federal land protection has been appropriated to the FS, with just less than 30 percent appropriated to DOI. Nearly 7 percent has been used for wildfire protection assistance to state and local governments; 65 percent of assistance funding has been through the FS, and 32 percent has been through FEMA, with DOI providing 3 percent.¹¹²

Until funds move to the entities most likely to affect change in the WUI, it is unlikely that substantive changes in policy will be effective at decreasing fire severity, size, cost, and threat to communities.

Because FLAME laid the groundwork and completed the extensive planning required to implement a cohesive wildland fire strategy, Congress may have missed an opportunity in the 2018 Appropriations Act to fund and implement projects that would have

111. See generally Ross W. Gorte, *Federal Funding for Wildfire Control and Management*, CONG. RESEARCH SERV., April 22, 2010, at 11, <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL33990.pdf> (This article discusses funding allocations and the difficulty in deciding where federal funds are best allocated. The author does not make the assertion that, perhaps, funding would be best diverted from federal lands.)

112. Ross Gorte, Ph.D., *The Rising Cost of Wildfire Protection*, Addendum: *How Wildfire Protection is Funded*, HEADWATERS ECONOMICS, 13 (June 2013), <https://headwaterseconomics.org/wp-content/uploads/fire-costs-background-report.pdf>.

utilized the information and planning synthesized in the creation of FLAME's comprehensive strategy. Had Congress assured that resources were allocated to areas in WUI, where they would have the greatest effect on mitigating the increased cost of battling modern wildfires, the long-term effects of their actions would have perhaps been more effective than implementing an additional CE. The cost of rebuilding the 12,000 homes lost in the 2017 fire season has been estimated at 25 billion dollars, FLAME could have provided the information and planning to assure that resources would be allocated to those areas with the highest likelihood of controlling these cost.¹¹³ By turning its back on FLAME in favor of the NEPA shortcuts that CEs create, Congress has perpetuated the ill-conceived mindset that wildfire management is better served by short-term gains than by long-term strategic planning.

The *Cottonwood* reform contained in the 2018 Appropriations Act is difficult to reconcile with the overarching purpose of the ESA. While proponents of the fix assert that Section 7 consultation must still occur before a project under a forest plan can move forward, this approach seems to look past the need to reconcile the activities outlined in a forest plan with the needs of a listed species or its critical habitat.¹¹⁴ The *Cottonwood* provision takes a cart before the horse approach to the ESA. Instead of defining a forest wide plan appropriate to the species or habitat listing and then recommending projects that fall within that plan's parameters, the *Cottonwood* provision would allow for projects to be brought forth for Section 7 consultation that are in accordance with the outdated plan but not in line with the ESA or the species needs. The *Cottonwood* Court's determination is a more logical approach to reconciling forest-wide plans with ESA determinations.

Finally, none of the approaches addressed in 2018 Appropriations Act presented the solution of incentivizing increased land use planning. While this approach tasks local communities with facilitating the required changes, it could be subsidized by federal funds. Until living and building in the WUI is disincentivized, the cost of suppressing wildfires will likely continue to climb. These land use policies could take on several different forms, including: requirements to accomplish fuel mitigation prior to building; prohibitions on certain building materials; additional insurance

113. Kyle Dickman, *What If Our Forest Don't Come Back*, OUTSIDE MAGAZINE (May 9, 2018), <https://www.outsideonline.com/2297996/fires-changing-forests>.

114. *Summary of 115th Congressional Action*, *supra* note 46 at 18.

requirements for structures in the WUI; and finally, a waiver of public firefighting services for structures built within the WUI. This approach would likely be the most successful at stemming future increases in suppression costs, but it may also be the hardest to accomplish politically.

While the “fire borrowing” fix in the 2018 Appropriations Act was commendable, by passing the substantive appropriation’s riders in the 2018 Appropriations Act, Congress has turned its back on cohesive forest management in favor of a piecemeal approach. The *Cottonwood* reform the CEs, and the lack of commitment to the comprehensive strategy outlined in FLAME will only serve to cause disjointed forest and fire suppression policy moving forward. Instead of promoting forward-looking, collaboration-building, and cohesive approaches, Congress has written an open discretionary check to the Forest Service and other federal agencies to do as they please without sufficient planning. This approach will likely result in increased litigation and little real change in fire suppression cost and efficacy.

VI. CONCLUSION

As one Forest Service Report notes: “a solution will not happen overnight.”¹¹⁵ The unintended consequences of a century of fire suppression success can likely not be unwound in as little as ten years. Cohesive planning and perseverance are likely all that will solve this critical problem. By focusing efforts and funding on the WUI and allocating resources to those agencies most likely to affect change in the WUI, reduction of fire suppression cost can likely occur. However, climate change and decreased forest health may require agencies to adopt new strategies for forest management outside the WUI. These management plans should be promulgated under the original policy intentions of NFMA and NEPA, which required a sensible whole forest, multiple use approach to management with consideration of multiple alternatives. Finally, Congress should attempt to consolidate fire suppression policy under one comprehensive plan, which would utilize the years of research and planning already implemented.

115. Bona, *supra* note 77 at 1083.