

Combatting Wildfires

A Talk with Stephen Miller

- Wildfire crisis in the U.S.
 - The American West is experiencing increasingly devastating wildfires.
 - California, for example, experienced 8 of its 10 largest wildfires and 7 of its 10 most expensive in the last decade.
 - Western U.S. is now experiencing 4 times more wildfires than before.
 - Wildfires affect air quality across the U.S. Wildfires are resulting in increases in PM2.5 particles which are harmful to human health.¹
 - Factors proliferating wildfires and complicating wildfire management
 - Climate change is exacerbating wildfires, making them more frequent and devastating.
 - Population growth in the West means more development in higher risk areas. More people are settling in Wildland Urban Interface (WUI) zones, areas in transition between unoccupied land and human development. In the west, in particular, WUI zones include areas that have traditionally burned, consisting of undeveloped land and vegetative fuels. Majority of federal firefighting costs today are attributable to protecting private property. Firefighting costs are correlated with homes threatened.
 - Federal fire suppression strategy in the 20th century with less prescribed burns. Largely successful wildfire suppression strategy over the last century has resulted in accumulated fuels that now lead to larger and more severe wildfires.
 - Federalism and local land use tension
 - Development is local issue, but the federal government owns the forest lands and (ultimately, the taxpayers) bears the brunt of firefighting costs.
 - Cost to fed & state governments and taxpayers is greater than to local communities and WUI areas where more of these large wildfires are occurring.
- Federal management of wildland fire
 - Five federal agencies responsible for wildland fire management on more than 676 million acres in the U.S.
 - Department of Agriculture's Forest Service²
 - Manages public lands (the National Forest System) which accounts for 8.5% of total land area in the U.S.

¹ Allison Hirschlag, *The Long Distance Harm Done by Wildfires*, BBC (Aug. 23, 2020), <https://www.bbc.com/future/article/20200821-how-wildfire-pollution-may-be-harming-your-health>.

² See USDA Forest Service, Managing the Land, <https://www.fs.usda.gov/managing-land/fire>.

- In 2015, suppression costs accounted for more than 50% of the Forest Service’s budget, whereas just a decade before, it accounted for less than a fifth.³
 - Department of Interior’s:
 - Bureau of Indian Affairs⁴
 - Bureau of Land Management⁵
 - Fish and Wildlife Service⁶
 - National Park Service⁷
- Federal Regulatory framework
 - Weeks Act (1911)⁸
 - Among other things, appropriated funds to purchase private lands for national forests and to protect rivers and watersheds. Appropriated funds to suppress fires.
 - After a fire in Idaho and Montana in 1910, dubbed the “Big Burn,” suppression became the main goal in wildland firefighting policy, leading to its inclusion in the Weeks Act.
 - Healthy Forests Restoration Act (HFRA) of 2003⁹
 - Purpose was to reduce threat of wildland fires and inviting community participation and input in the wildland fire management process.
 - Among other things, created the Community Wildfire Protection Plan (CWPP)
 - CWPP process can be convened by a community. The definition of community is very flexible; may be an HOA, neighborhood, county, etc. CWPP is scale-able, with one nested inside another.
 - CWPP provides a flexible framework for collaboration between different levels of government and communities to establish priorities for wildfire planning.¹⁰

³ The Rising Cost of Wildfire Operations: Effects on the Forest Service’s Non-Firework, U.S. Forest Service (2015), <http://www.fs.fed.us/sites/default/files/2015-Fire-Budget-Report.pdf>.

⁴ See U.S. DOI Bureau of Indian Affairs Wildland Fire, <https://www.bia.gov/services/wildland-fire>.

⁵ See U.S. DOI Bureau of Land Management Fire and Aviation Program, <https://www.blm.gov/programs/fire-and-aviation>.

⁶ See US DOI Fish and Wildlife Service Fire Management, <https://www.fws.gov/fire/>.

⁷ See US DOI National Park Service Wildland Fire Program, <https://www.nps.gov/orgs/1965/index.htm>.

⁸ 36 Stat. 961, <https://www.fs.fed.us/land/staff/Documents/Weeks%20Law.pdf>.

⁹ Pub. L. No. 108-148 (2003), <https://www.congress.gov/108/plaws/publ148/PLAW-108publ148.pdf>

¹⁰ See *How to Create a Community Wildfire Protection Plan*, U.S. Fire Administration (Jun. 24, 2020), https://www.usfa.fema.gov/training/coffee_break/062420.html.

- Federal Land Assistance, Management and Enhancement (FLAME) Act of 2009
 - An attempt to address the patchwork nature of wildland fire management and federalism.
 - Brought about the 2014 Cohesive Strategy in which partners from all levels of government and nongovernmental partners work together to create a national strategy for wildland fire management.
- 2014 National Cohesive Wildland Fire Management Strategy¹¹
 - 3 primary goals
 - Restore and maintain landscape. Includes:
 - Landscape level restoration
 - Enabling agencies to put more prescribed fire
 - Create fire-adapted communities. Includes:
 - Encouraging support of fire adapted community planning efforts
 - Promoting greater involvement of local fire departments
 - Safe and effective risk-based wildfire response. Includes:
 - Expanding initiatives to protect wildland fire responders and the public from unnecessary risk
 - Ensuring agency efforts for recruitment and retention
 - Coordinated by the Wildland Fire Leadership Council, intergovernmental committee established to support implementation and coordination of Federal Fire Management Policy
- Federal firefighting policy
 - General strategy: 1) suppress wildfires, 2) allow them to burn for natural resource benefits, and 3) reduce vegetation that can fuel fires.
 - Forest treatment involves mechanical treatments, prescribed burns, and treatment with herbicides or chemicals.
 - A 2019 GAO report¹² noted that in 2018, the Forest Service estimated about 63 million acres of forest lands needing treatment and the Interior estimated about 54 million acres of lands they manage needing treatment. In 2018, the agencies treated about 1.7 million and 1.3 million acres, respectively.
 - General suppression priority: 1) life, 2) property, 3) resources

¹¹ *The National Strategy: The Final Phase in the development of the National Cohesive Wildland Fire Management Strategy*, USDA Dep't of the Interior (2014), <https://www.forestsandangelands.gov/strategy/thestrategy.shtml>.

¹²U.S. Government Accountability Office (GAO), *Wildland Fire: Federal Agencies' Efforts to Reduce Wildland Fuels and Lower Risk to Communities and Ecosystems*, GAO-20-52, p.32, <https://www.gao.gov/assets/710/703470.pdf>.

- Increasing cost of suppression partly attributable to increased WUI areas (e.g. saving homes prioritized over hundreds of acres of timberland)
- National Interagency Fire Center (NIFC)
 - Logistical support center centered in Boise, Idaho
 - Support wildland firefighting, coordinates national mobilization of resources for wildland fire, and houses supplies, equipment, and personnel.
 - The federal agencies involved in wildland firefighting work out of NIFC to coordinate responses, establish policy, train personnel, etc.
- Recovery
 - The Stafford Act requires state and local governmental to adopt FEMA-approved hazard mitigation plans in order to receive certain types of non-emergency disaster relief. Purpose of mitigation planning is to help state and local governments identify natural hazards and to establish plans to reduce losses from hazards.¹³

Additional Resource

- Stephen Miller, *Planning for Wildfire at the Wildland-Urban Interface: A Guide for Western Cities*, 49 URBAN LAWYER 207 (2017).

¹³ 44 CFR § 201.1(b), https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=44:1.0.1.4.53#se44.1.201_11.