



Northern Rockies Fire Science Network

A JFSP FIRE SCIENCE EXCHANGE NETWORK

Perspectives: Barriers to Fire on the Ground

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LIABILITY FOR LANDOWNERS

Jim Hagenbarth's family has been ranching in the Centennial range along the southwest Montana-Idaho border since the late 1800s. Currently, Jim operates roughly 25,000 deeded acres and 50,000 acres of leased state land from the Bureau of Land Management and U.S. Forest Service. Like his father did before him, Jim started using prescribed fire in the 1970s to manage sagebrush. He worked with the state agencies, both the BLM and USFS, burning every two years in 1989, 1991, and 1993 on the leased state land and in 1987 on the deeded land. But Jim hasn't used prescribed fire on his operation since then.

"Looking at it, it's a landscape," he said. "But when you put it on paper, you have all of these jurisdictional polygons dictating what you can do. You can't manage them differently. You can't just burn the deeded land and make sure it doesn't burn the public land." For a private landowner like Jim, liability is the biggest barrier to getting fire on the ground. "It's huge, it's to the point we don't use prescribed fire anymore because we can't stand the liability," he said. "If you try to do it yourself and [the fire] got away from you, you could lose your ranch, possibly."

Following roughly a hundred years of policy supporting fire suppression and a lack of burning, land managers, private landowners, and the country at large are now grappling with a widespread fire deficit. Despite efforts to get more fire on the ground through prescribed burning, significant challenges remain to achieve this goal. NRFSN spoke to individuals representing three different perspectives on this issue: private landowner Jim Hagenbarth, Executive Director of the Colville Tribe Cody Desautel, and policy advisor for the Alliance for Wildfire Resilience Leslie Neu-Lamping.



The Northern Rockies Fire Science Network (NRFSN) serves as a go-to resource for managers and scientists involved in fire and fuels management in the Northern Rockies. Funded by the Joint Fire Science Program, NRFSN is one of 15 Fire Science Exchange Networks across the country. The network facilitates knowledge exchange by bringing people together to strengthen collaborations, synthesize science, and enhance science application around critical management issues.



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BARRIERS FOR TRIBES

Cody Desautel is the Executive Director of the Colville Tribe in Washington, President of the Intertribal Timber Council, board member for the WA Nature Conservancy, and a member of the State Wildfire Advisory Committee. Prior to his current roles, Cody spent the majority of his career working in natural resource and fire management, experience he says is critical to the work he does now.

When it comes to prescribed burns, Cody said the metrics used by federal agencies such as the Bureau of Indian Affairs (BIA) sometimes differ from how the Tribes use fire and define success. From a federal perspective, the goals are all fuel-based - volume treated, etc. But Tribes use fire for a variety of things, ranging from management of fuels to enhancement of big game habitat and food sources, and also for cultural purposes. However, regardless of what purpose the Tribe has for burning, they are still required to have approved burn plans for every prescribed fire. According to Cody, this is the biggest barrier to getting fire on the landscape: the regulatory requirements and the restrictions that accompany them.

"I think the vast majority of [historical] ignitions that happened were probably started by Indigenous people," Cody said. "So unfortunately, that was a significant part of what fire regimes and fire return intervals were here; we don't get to use those as a tool in our toolbox now under the current framework."

For example, in order to have a burn plan approved by the BIA, the Tribe must meet qualifications for staffing that are consistent with the rest of the federal government, including having contingency resources. This means each burn takes a considerable number of people to participate, limiting the number of different areas a Tribe can burn during favorable weather conditions. Additionally, adhering to the wildfire position qualification standards limits who can be present and participate in burn events. "We don't just get to go and burn things, and we've lost some of that historic knowledge about when and where we should be burning," Cody said.

For the Tribes, liability for prescribed fire comes through the BIA under the Federal Tort Claims Act. Cody emphasized that in order to get the BIA to sign off on burn plans, the burn needs to occur in favorable conditions, which can mean a fairly tight window of opportunity. "In the spring for us, it's



typically a month to a month and a half at best," Cody said. "But with the contingency requirements, we essentially have to throw every single person we've got at every burn we can. That's not conducive to achieving a bunch of acres."

To mitigate these barriers in the future, Cody is looking for a change in the policy associated with what fires the Tribe has the ability to manage and more flexibility in the acres available for burning, outside of what has historically been covered in burn plans. The Colville Tribe is working to implement "programmatic burn plans," providing more flexibility to go where conditions are most appropriate and conduct fires in those locations. Additionally, he hopes to see regulatory adjustments to allow for more prescribed fire. As part of his many roles, he frequently travels to Washington, D.C. to advocate for these policy changes.

POLICY BARRIERS

Leslie Neu-Lamping is a Policy Analyst for the Alliance for Wildfire Resilience and has a background in forestry and fire. From her perspective, there are a number of capacity issues that act as a barrier to prescribed fire, including staffing, funding, and partnerships. "In many ways, the will to implement prescribed fire is a barrier right now across multiple different sectors," Leslie said. "It takes more than the person writing the burn plan and the person dragging the torch. It takes a lot of collaboration from all levels."

In Leslie's view, liability is not the biggest barrier because most of the time, you don't even get to that point. Often, the process stalls out at planning or with other logistical hurdles. However, the conversation usually starts with liability because of the perceived sense of risk around it. Leslie says there is a general lack of clarity around liability, which creates confusion and aversion. At its simplest, liability for prescribed fire is determined by negligent standards - who is responsible for what. When determining negligence, a judge will decide whether someone (a burn boss, for example) acted reasonably or with reckless disregard. When it comes to implementing prescribed fire, risk and liability are sometimes conflated in a way that Leslie says they shouldn't be. Risk is a situation involving exposure to danger, and liability is a situation of being responsible for something. "How do you shift that conversation? Here's everything we're doing to mitigate risk so that we're also mitigating liability," she said. "You mitigate risk by actions on the ground, you mitigate liability by policy and laws."

Some of the policies and laws that Leslie is advocating for in her role with the Alliance for Wildfire Resilience revolve around building a favorable environment for prescribed fire. One of the most significant changes would be the creation of a national or regional prescribed fire liability fund. Outside of the policy realm, Leslie emphasized the importance of helping the general public feel educated and comfortable with prescribed fire. As she pointed out, "the South is miles ahead of us in the supportive environment they've built for prescribed fire. Taking lessons from them is going to be really important moving forward."



ADDITIONAL RESOURCES

What is prescribed fire liability? Northwest Fire Science Consortium. Berger, Carrie. 2020. Available: https://www.nwfirescience.org/sites/default/files/publications/Prescribed%20fire%20liability_0.pdf.

Risk Informed Wildfire Management - Hot Topic Page. Northern Rockies Fire Science Network. Available: <https://nrfirescience.org/hot-topics/risk-informed-wildfire-management>

Policy Barriers to Prescribed Fire: Identifying Opportunities and Mechanisms for Change. Schultz, A. Courtney. 2021. Northern Rockies Fire Science Network. Available: https://nrfirescience.org/sites/default/files/2024-12/16-1-02-8_final_report.pdf

Policy Barriers & Opportunities for Prescribed Fire Application in the Western U.S. Northwest Fire Science Consortium. Available: https://www.nwfirescience.org/sites/default/files/publications/NWFSC_RB22_RxFirePolicy_002.pdf

Alliance for Wildfire Resilience: <https://alliancecwr.org/>



This publication was written by Ella Hall with review by Darcy Hammond.
Photos 1, 2 & 4: prescribed burn operations with the Colville Tribe, courtesy of Cody Desautel
Photo 3: Leslie Neu-Lamping at the Selkirk TREC, courtesy of Kara Karboski