Cost of Forest Service Litigation: a Montana Case Study

Western Forest Economists
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BUREAU OF BUSINESS AND ECONOMIC RESEARCH

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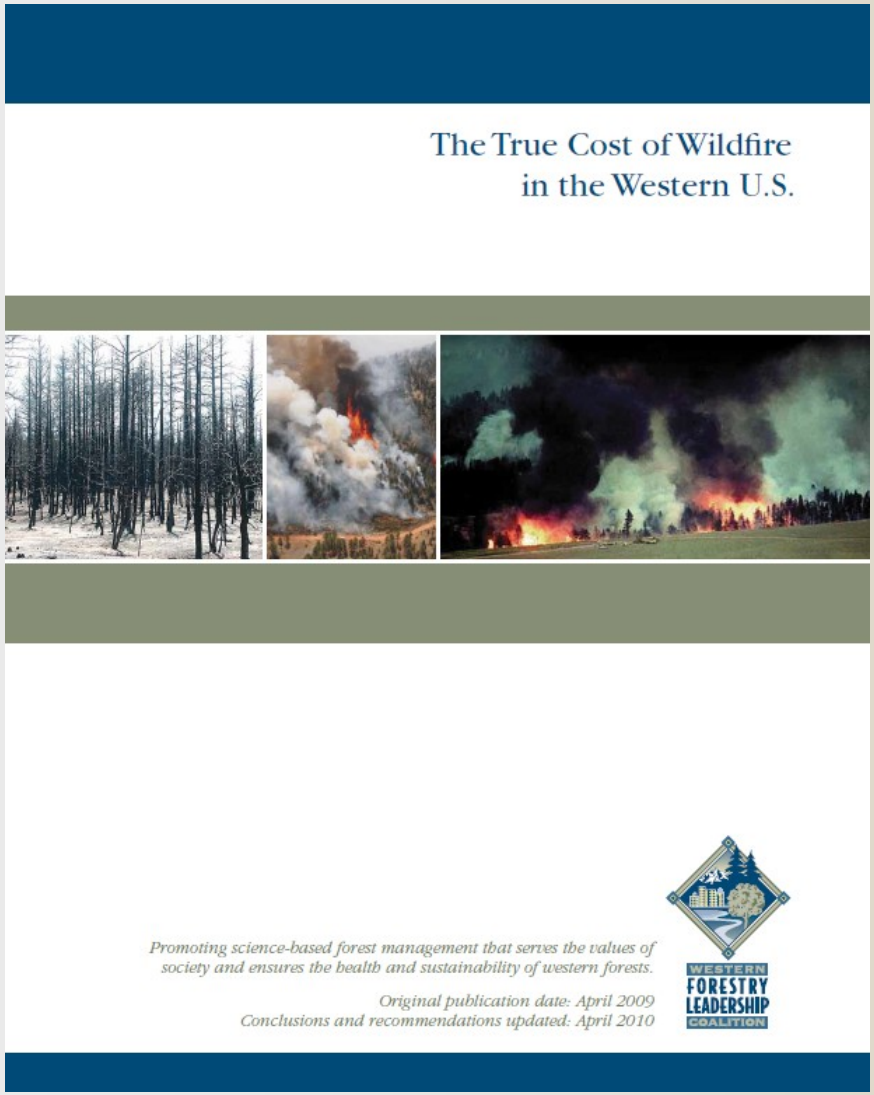

True Cost of Wildfire

- compilation of case studies
- true cost is more than suppression cost alone

Litigation Costs

Image from Simon Black, University of Kent

2012 & 2014 GAO reports

United States Government Accountability Office

Testimony before the Subcommittee on Conservation, Energy, and Forestry, Committee on Agriculture, House of Representatives

For Release on Delivery
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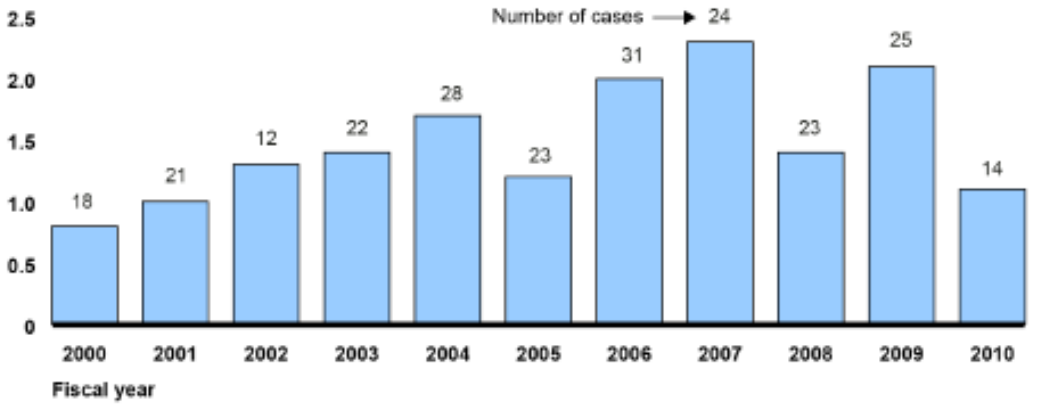
USDA LITIGATION

Limited Data Available on USDA Attorney Fee Claims and Payments

Statement of Eileen R. Larence, Di
Security and Justice

directed GAO to publicly available information sources. GAO found that the Forest Service was the only program agency within USDA that was able to provide certain attorney fee data across the 11-year period. GAO reported in April 2012 that about $16.3 million in attorney fees and costs in 241 environmental cases from fiscal years 2000 through 2010 was awarded against or settled by the Forest Service (see fig. below).

Attorney Fees and Costs Awarded against the Forest Service in Environmental Cases and Number of Cases, Fiscal Years 2000 through 2010



Source: GAO analysis of Forest Service data.

Note: Forest Service data may include attorney fees authorized by underlying statutes, EAJA subsection (b), and EAJA subsection (d); as such, some funds may have been paid by the Judgment Fund, as opposed to agency appropriations.

GAO studies

- **EAJA payments part of FS legal costs**
- **Nationally: $16.3 million paid, 241 cases, 2000-2010**

Fiscal Year	# EAJA cases	EAJA payment
2011	15	$ 1.5 million
2012	11	$ 565 thousand
2013	18	$ 1.6 million

Region One Background

- June 2012 thru June 2013
- 127 timber sale projects awarded
- 31 categorically excluded from appeal
- 52 administratively appealed
  - 92% of non-CE volume
  - 93% of non-CE cruised acres
- 26 litigated (none of CE)
  - 226.5 MMBF (54%) of volume
  - 42,500 acres (68%) of cruised area

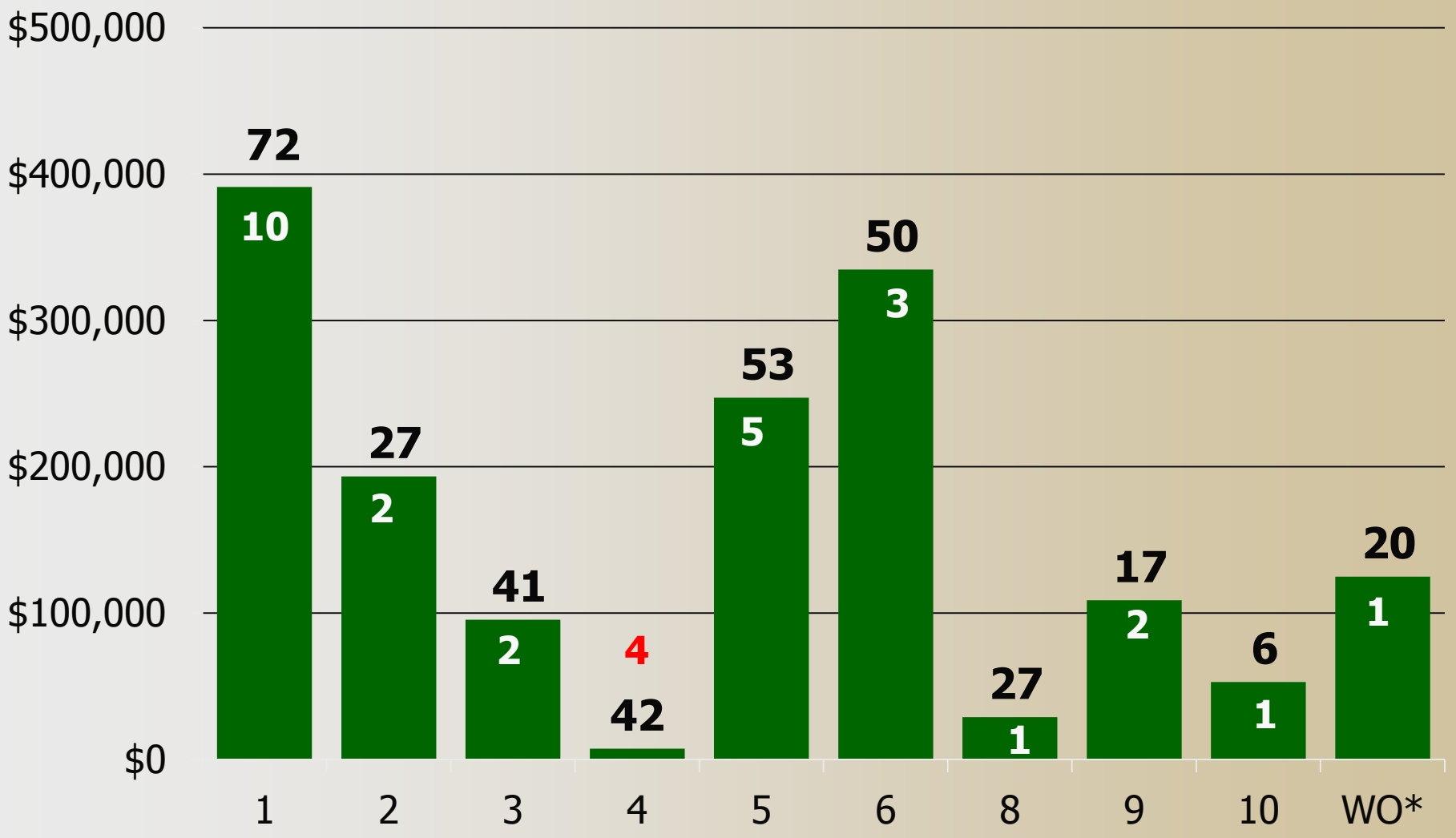
Forest Service "PALS" data

- Regional & national info
- Project-specific
- Schedule of Proposed Activities
- Courts involved (district & circuit)
- Decision dates
- Resource categories
- Plaintiff categories
- Attorney/EAJA fees paid

Table 1: Number of cases, attorney & EAJA fees by NFS Region, 2003-2013

Region	Number of cases	Cases with fees	Sum of Atty/EAJA Fees
1	133	25	$1,086,668
2	59	7	$379,592
3	80	11	$204,422
4	83	18	$658,986
5	105	25	$1,847,782
6	128	27	$1,743,300
8	51	5	$368,779
9	36	5	$372,291
10	22	5	$228,000
WO	41	7	$846,066
Grand Total	738	135	$7,735,886

Figure 1: Number of cases and attorney fees by NFS Region, 2008-2013



*** WO = Washington Office & multi-region cases**

Litigation Costs

Image from Simon Black, University of Kent

Case Study Approach

- Litigated R1 projects/cases
- not random or a "representative sample"
- memorable or "high profile" cases
  - Spotted Bear River (SBR)
  - Colt Summit
  - Bozeman Municipal Watershed
  - Bussel 484
  - Little Slate

Litigation Cost Categories

- FS legal costs – attorney fees & payments
- FS analytical & administrative costs
- Loss of timber sale revenue
- Forgone/delayed FS work – "opportunity costs"
- FS "ripple effects" – changed procedures
- Other agency costs: FWS, OGC, DOJ
- Community costs – economic impacts

Survey Methods

– met with key FS staff to determine information needs;

– drafted questions to get required information;

– FS staff reviewed the drafts & provided feedback;

– revised the questions based on input;

– administered to personnel involved with litigation.

Spotted Bear River (SBR) Case Study #1

- About 50,000 acres in Flathead NF
- Purpose: forest health & restoration, timber productivity, recreation
- Two associated timber sales
- Thinning, Rx burning, trailhead parking & road improvements

SBR Timeline

- Scoping & NEPA began Nov. 2009
- Decision Notice Aug. 2011
- Notice of Intent Oct. 2011
- Initial Complaint Feb. 2012
- Magistrate's findings June 3, 2013
- Tin Mule sale awarded June 19, 2013
- TRO/PI filed June 20, 2013
- Rejection of PI July 2013
- Appeal to 9th Circuit Sep. 2013
- 9th Circuit to hear case April 2014
- Begin Tin Mule harvest June 2014

SBR Litigation Costs

- FS legal costs/EAJA fees – none to date
- FS analytical & administrative costs – Over $95,000 to date
- Lost timber sale revenue – None to date
- Forgone or delayed FS work – Explain
- FS "ripple effects" – None identified
- FWS costs – exceed $4,500 to date
- Community costs – Could exceed $10 million

Litigation Impacts

Image from: Dale Wilson/Getty Images

- **Costs exceed EAJA fees**
- **In addition to NEPA costs**
- **Attorney costs missing**
- **Community economic impacts are largest $ value**
- **Extend beyond specific projects being litigated**
- **Very difficult to quantify**