

May 14, 2003

Congressional Requesters

Subject: *Forest Service: Information on Decisions Involving Fuels Reduction Activities*

Human activities—especially the federal government’s decades-old policy of suppressing all wildland fires—have resulted in dangerous accumulations of brush, small trees, and other vegetation on federal lands. This vegetation has increasingly provided fuel for large, intense wildland fires, particularly in the dry, interior western United States.

The scale and intensity of the fires in the 2000 wildland fire season made it one of the worst in 50 years. That season capped a decade characterized by dramatic increases in the number of wildland fires and the costs of suppressing them. These fires have also posed special risks to communities in the wildland-urban interface—where human development meets or intermingles with undeveloped wildland—as well as to watersheds and other resources, such as threatened and endangered species, clean water, and clean air.

The centerpiece of the federal response to the growing threat of wildland fires has been the development of the National Fire Plan. This plan advocates a new approach to wildland fires by shifting emphasis from the reactive to the proactive—from attempting to suppress wildland fires to reducing the buildup of hazardous vegetation that fuels fires. The plan recognizes that unless these fuels are reduced, the number of severe wildland fires and the costs associated with suppressing them will continue to increase. Implementation of the National Fire Plan began in fiscal year 2001; full implementation of the plan is expected to be a long-term, multibillion-dollar effort.

Reducing the buildup of hazardous forest fuels is typically accomplished through a number of treatment methods. Most often, federal land managers use controlled fires (prescribed burns) or mechanical treatments such as chainsaws, chippers, mulchers and bulldozers. Other means include using livestock grazing and herbicides. On federal lands, these activities are managed by five agencies: the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Affairs, all within the Department of the Interior, and the Forest Service within the Department of Agriculture.

In fiscal year 2001, the first year the National Fire Plan was in effect, the Congress substantially increased funding for hazardous forest fuels reduction—from \$108 million in FY 2000 to \$401 million in FY 2001. The Congress continued this increased funding level for 2002 and 2003. Among the federal agencies, the Forest Service receives, by far, the largest portion of these funds.

Since the National Fire Plan began emphasizing the need to reduce forest fuels buildup and the Congress has supported this initiative with substantially increased funding, concerns have been raised about delays in implementing forest fuels reduction projects. Essentially, these concerns focus on whether Forest Service decisions to implement specific forest fuels reduction activities are being delayed by the appeals and litigation of these decisions.

In August 2001, we were asked to report on some limited aspects of this issue. We provided this information to the congressional requesters on August 31, 2001.¹ In 2002, the Forest Service also analyzed specific aspects of this issue and provided its findings to the Congress.² While the subject of these reports was the same, the specific objectives and scope of the analyses differed considerably. Not unexpectedly, these differences led to different analytical results. Accordingly, in the summer of 2002, you asked us to perform a more comprehensive analysis of the issue.³

Specifically, you asked us to determine

- the number of decisions involving fuels reduction activities and the number of acres affected in FY 2001 and FY 2002,
- the number of decisions that were appealed and/or litigated and the number of acres affected in FY 2001 and FY 2002,
- the outcomes of the appealed and/or litigated decisions and the names of the appellants and plaintiffs,
- whether the appeals were processed within prescribed time frames,
- the number of acres treated or planned to be treated by each of the fuels reduction methods,⁴ and
- the number of decisions involving fuels reduction activities in the wildland-urban interface and inventoried roadless areas.⁵

To respond to your request, we conducted a Web-based survey of all 155 national forests. The survey focused on all Forest Service decisions with a forest fuels

¹U.S. General Accounting Office, *Forest Service: Appeals and Litigation of Fuels Reduction Projects*, GAO-01-1114R (Washington, D.C.: Aug. 31, 2001).

²U.S. Forest Service, *Factors Affecting Timely Mechanical Fuel Treatments Decisions* (Washington, D.C.: July 2002).

³We received a request from Representative McInnis and Senators Craig and Smith in July 2002. We received a separate request from Senator Bingaman in August 2002.

⁴The same acreage can be the subject of more than one decision.

⁵Inventoried roadless areas are defined in 36 C.F.R. part 294 subpart B as “areas identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, volume 2, dated November 2000.”

reduction component that were issued in fiscal years 2001 and 2002.⁶ We obtained a 100 percent response rate from the national forests, and we have partially completed our verification of 10 percent of the reported decisions for accuracy.

In discussions with your staffs, we agreed to provide you with a briefing on the preliminary results of our work, with a final report to follow when we have completed our analysis and verification. This briefing occurred on May 9, 2003. As we pointed out at the briefing, there are some limitations to the information provided. First, we have not yet completed our verification work, so some of the preliminary information in the briefing and this report may change. However, on the basis of the partial verification work we have done, we do not anticipate significant changes to the reported information. Further, as with any survey, the information obtained from the national forests was self-reported, and we were not able to independently ensure that all decisions were reported. In addition, the Forest Service does not have a common definition of a fuels reduction activity. Accordingly, if the Forest Service decision documents explicitly stated that the purpose of an activity was fuels reduction, we accepted it. Likewise, if the decision documents did not include an explicit discussion of fuels reduction, we did not include the decision in our analysis. Finally, the Forest Service does not have a uniformly applied definition of the wildland-urban interface. Consequently, individual forests may have their own definition or no definition at all which could result in inconsistent data.

Enclosure II contains the information we provided during our May 9, 2003, briefing with your office. This report briefly summarizes our preliminary answers to your questions.

In brief, the national forests reported the following:

- 762 decisions involved fuels reduction activities in FY 2001 and FY 2002. The fuels reduction activities in these decisions covered 4.7 million acres. The national forests originally reported 851 decisions involving fuels reduction activities. Of these, we eliminated 67 because respondents did not identify fuels reduction as a stated purpose of the activities. We also eliminated 22 decisions because they may not have been issued in FY 2001 or FY 2002.
- 180 decisions were appealed affecting 900,000 acres. These decisions represented 24 percent of all decisions or 59 percent of appealable decisions. Generally, decisions that were categorically excluded from the requirement to prepare an environmental impact statement are not appealable; 457 decisions covering 3 million acres were not appealable. Conversely, decisions that were issued after preparation of an environmental assessment or an environmental impact statement are appealable; 305 decisions covering 1.7 million acres were appealable. All decisions can be litigated; 23, or 3 percent of decisions were litigated, affecting 100,000 acres.
- The outcomes of the 180 appealed decisions and 23 litigated decisions are as follows:

⁶ Our work focused only on national forests, national grasslands were not included.

- Of the 180 appealed decisions,⁷
 - 133 required no change before implementation (i.e., the Forest Service affirmed its original decision);
 - 16 were modified to some degree (i.e., the Forest Service allowed the decision to be implemented with changes);
 - 19 were reversed (i.e., the Forest Service did not allow the decision to be implemented); and
 - 12 were withdrawn by the Forest Service, but it was unclear if changes were required.
 - 84 interest groups and 39 private individuals appeared as appellants in FY 2001 and FY 2002.
- Of the 23 litigated decisions,
 - 10 were still in the courts at the time of our survey;
 - 5 were settled by agreement of the parties;
 - 3 were reversed, overturning the Forest Service's decision;
 - 1 was upheld by the court; and
 - the outcomes of 4 were unknown because the respondents did not report their status.
 - 27 interest groups and one private individual appeared as plaintiffs in the litigated decisions.
- The national forests processed 79 percent of appeals within the prescribed 90-day time frame. The national forests reported many reasons for exceeding the 90-day time limit 21 percent of the time, including the following: in general, staffing was inadequate; insufficient staff were available around the holiday season; appeals were backlogged; and settlement of some appeals was imminent.
- The national forests planned to use prescribed burning on 3.3 million acres and mechanical treatments on 800,000 acres. In addition, the national forests reported using other methods on 1.1 million acres (mostly because of an annual firewood removal program at one forest). Because the same acreage can be treated by more than one method, the sum is greater than the total acreage treated.
- The national forests issued 464 decisions involving fuels reduction activities in the wildland-urban interface covering 1.5 million acres of planned treatments. Of these, 163 were appealable, and 84 were appealed. 73 decisions involved fuels reduction activities in inventoried roadless areas covering 200,000 acres of planned treatments. Of these 73 decisions, 39 were appealable, and 24 were appealed.

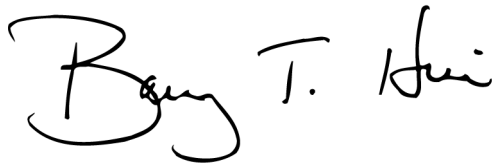
⁷ We have not yet analyzed to what extent activities planned under the reversed and withdrawn decisions still occurred after problems leading to the reversal or withdrawal were resolved.

We provided a draft of this report to the Forest Service for its review and comment. The Forest Service generally agreed with the information presented in the report. In commenting on the report, however, the Forest Service had one major concern. Specifically, the agency believes that we should not have included a 1 million acre personal use firewood program at one forest in the material presented because, in their opinion, it unnecessarily skews the data by increasing the amount of acreage with fuel reduction activities. However, we did not change the report to omit the information because, as the Forest Service agrees, it was reported and documented as a fuels reduction project by the agency. Nonetheless, in the interest of full disclosure, we highlighted the unique nature of the project in the information we are providing, as appropriate. In addition, the agency provided some editorial comments that we considered in finalizing the report.

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As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this report. At that time, we will send copies to the Secretary of Agriculture; the Chief of the Forest Service; the Director, Office of Management and Budget; and other interested parties. We will make copies available to others upon request. This report will also be available on GAO's home page at <http://www.gao.gov>.

If you have any questions or need additional information, please contact me at (202) 512-3841 or Cliff Fowler at (202) 512-8029. Major contributors to this report include Carolyn Boyce, Curtis Groves, Roy Judy, Nicole Shivers, Patrick Sigl, and Shana Wallace.

A handwritten signature in black ink that reads "Barry T. Hill". The signature is written in a cursive, flowing style.

Barry T. Hill
Director, Natural Resources
and Environment

Enclosure

List of Requesters

The Honorable Scott McInnis
Chairman, Subcommittee on Forests
and Forest Health
Committee on Resources
House of Representatives

The Honorable Larry E. Craig
Chairman, Subcommittee on Public Lands
and Forests
Committee on Energy and Natural Resources
United States Senate

The Honorable Jeff Bingaman
Ranking Member, Committee on Energy
and Natural Resources
United States Senate

The Honorable Gordon Smith
United States Senate



Briefing for Congressional Requesters

**Information on Forest Service Decisions Involving Fuels
Reduction Activities**



Sources: U.S. Forest Service and the Salmon-Grippo National Forest in Idaho.

Background

- Decades of well-intended fire management policies have resulted in dangerous accumulations of brush, small trees and other hazardous vegetation (i.e. forest fuels) on federal lands.
- These accumulations of forest materials have increasingly provided fuel for large, intense wildfires that all too often become catastrophic and result in the loss of life and property.
- As a result, addressing the threat of catastrophic wildfires has become an overarching theme in managing national forests.
- The policy and management principles guiding the nation's efforts in addressing this danger are provided in the National Fire Plan. Reducing the buildup of forest fuels is a central component of this initiative.



Background (cont.)

- To carry out forest fuels reduction activities, the Forest Service must comply with the requirements of the National Environmental Policy Act (NEPA), as well as other statutes.
- NEPA requires the Forest Service, and all other federal agencies, to assess the environmental impacts of their major actions that significantly affect environmental quality.
- As part of the NEPA process, the Forest Service generally publishes a document—referred to as a decision document—detailing the specific activities to be implemented. This document can include activities to reduce forest fuels.
- Under certain circumstances the public can appeal decision documents. An appeal is a written document filed with a designated forest service official objecting to a decision. The designated forest service official renders a decision on the appeal. In addition, the public can file a lawsuit with a federal district court objecting to a decision.



Background (cont.)

- Each decision can include many activities, such as those aimed at reducing forest fuels.
- In response to the National Fire Plan, the Congress appropriated hundreds of millions of dollars for the Forest Service to undertake fuels reduction activities.
- Controversy has arisen about whether the appeals and litigation of Forest Service decisions delays the implementation of fuels reduction activities.
- Recent legislative and administrative proposals would revise the appeals process or exempt certain fuels reduction activities from it.



Objectives

We were asked to provide information on:

- 1) The number of decisions involving fuels reduction activities and the number of acres affected in FY 2001 and FY 2002
 - 2) The number of decisions that were appealed and/or litigated and the number of acres affected in FY 2001 and FY 2002
 - 3) The outcomes of the appealed and/or litigated decisions and the names of the appellants and plaintiffs
 - 4) Whether appeals are processed within prescribed time frames
 - 5) The number of acres treated or planned to be treated by each of the fuels reduction methods
 - 6) Decisions involving fuels reduction activities in wildland-urban interface and inventoried roadless areas
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Scope and Methodology

- The Forest Service has no national database of fuels reduction decisions, appeals, or litigation.
- We consulted with Forest Service headquarters, regional, and national forest officials on where needed information resides.
- We conducted a web-based survey of all 155 national forests to collect data on decisions issued in fiscal years 2001 and 2002 – the first 2 years of activity under the National Fire Plan. We did not include national grasslands in our analysis.
- We had a 100% response rate.
- We sampled 10% of the reported decisions to verify the accuracy of reported data.
- We have not yet completed our verification work. On the basis of work done so far, we do not anticipate any major problems with data accuracy.



Scope and Methodology

- The national forests originally reported 851 decisions involving fuels reduction activities. Of these, we eliminated
 - 67 because respondents did not identify fuels reduction as a purpose of the project. We have not yet analyzed why respondents did not identify these decisions as having fuels reduction activities.
 - 22 because they may not have been issued within the time frame we were analyzing. We have not completed verification to ascertain when these decisions were signed.
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Limitations/Caveats

- Information obtained from the national forests was self-reported. Therefore, we have no independent assurance that all decisions were reported.
- The Forest Service does not have a common definition of a fuels reduction activity.
- If documentation described the activity as fuels reduction, we accepted it in our analysis.
- Although the Forest Service published a general definition of the the wildland-urban interface in the federal register, it is not uniformly applied to all national forests.
- Because verification is incomplete, some numbers presented in this briefing may change.



Results in Brief

- The national forests reported:
 - 762 decisions involving fuels reduction activities covering 4.7M acres. 457 decisions (60% of all decisions) covering 3M acres were not appealable, and 305 decisions covering 1.7M acres were appealable.
 - 180 decisions were appealed (0.9M acres) representing 59% of appealable decisions or 24% of all decisions; 23, or 3% of all decisions, were litigated (0.1M acres).
 - Of those appealed, 133 decisions required no change before implementation; 35 required changes; and 12 were withdrawn and it is unclear whether changes were required. Of those litigated, many were still in the courts at the time of our analysis; many appellants/litigants were interest groups.



Results in Brief (cont.)

- 79% of appeals were processed within the prescribed 90-day time frame. Reasons given for not processing the appeals within 90-days included inadequate staffing, availability of staff around the holiday season, appeal backlog, and settlement of the appeal was imminent.
- 3.3M acres were treated, or treatment was planned using prescribed burning; 0.8M acres using mechanical methods; 1.1M using other means (mostly due to firewood removal at one forest). Because the same acreage can be treated by more than one method, the sum is greater than the total acreage treated.
- 464 decisions (1.5M acres) involved fuels reduction activities in the wildland-urban interface; 73 decisions (0.2M acres) involved such activities in inventoried roadless areas.



Objective 1: Number of decisions and acres affected

In FY 2001 and FY 2002, there were 762 decisions involving fuels reduction activities.

- There are three kinds of decisions.
 - Those that were categorically excluded (CE) from the preparation of an environmental assessment (EA) or an environmental impact statement (EIS). CEs are generally not appealable.
 - Those for which an EA was prepared.
 - Those for which an EIS was prepared.

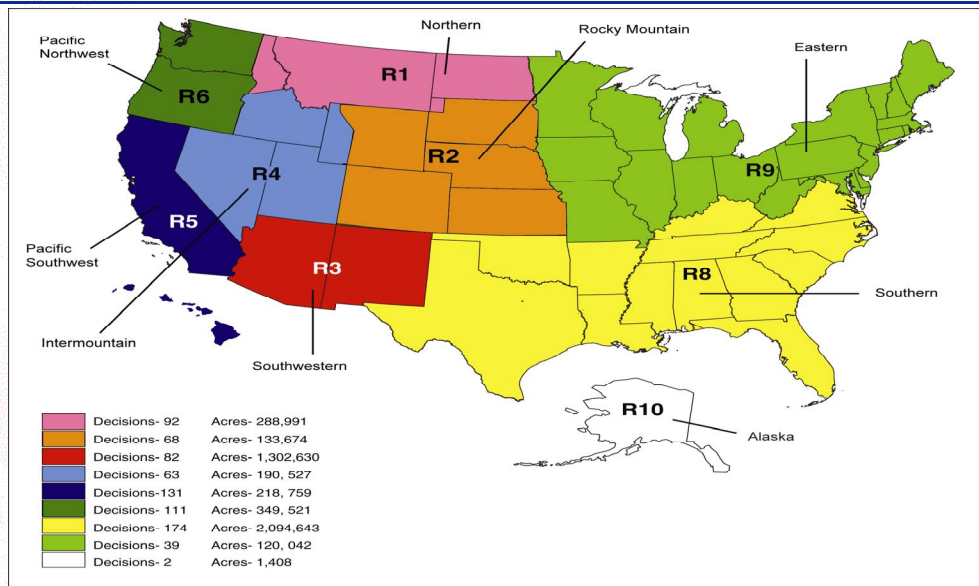
Objective 1 (cont.)

Decisions and acreage by decision type:

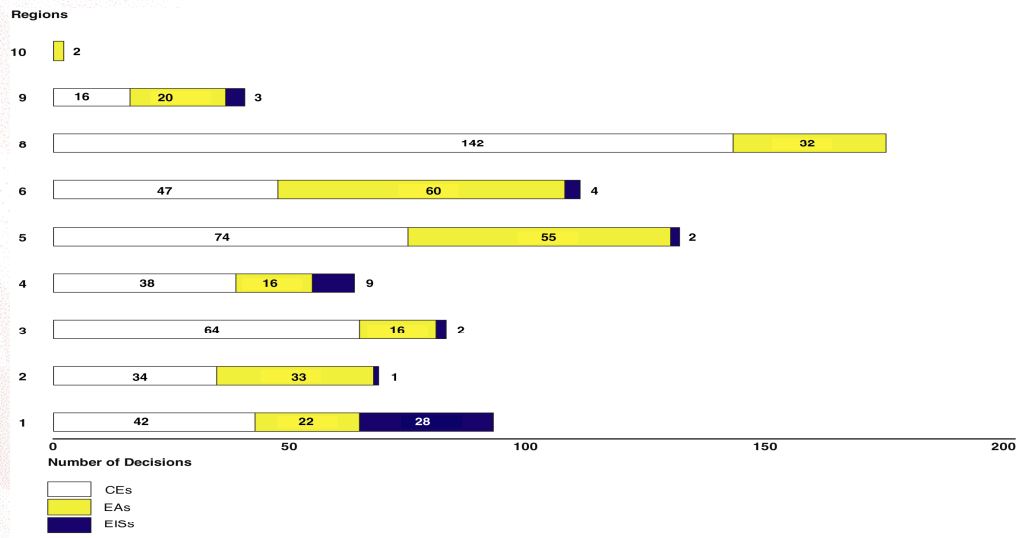
	CEs ^a	EAs	EISs	Total
No. of decisions	457	256	49	762
% of total decisions	60	34	6	100
No. of acres	3M	1.4M	0.3M	4.7M
% of total acres	64	30	6	100

^aOne activity covered by a CE treats approximately 1M acres under an annual program to allow private individuals to collect firewood.

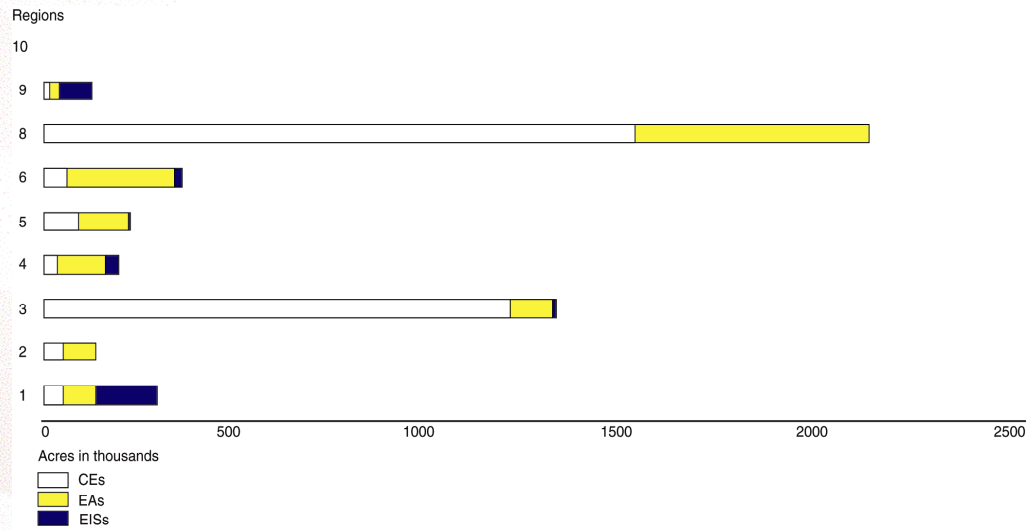
Objective 1 (cont.) Figure 1: Total decisions and acres, by Forest Service region



Objective 1 (cont.) Figure 2: Regional data on decisions



Objective 1(cont.) Figure 3: Regional data on acres



Source: GAO.

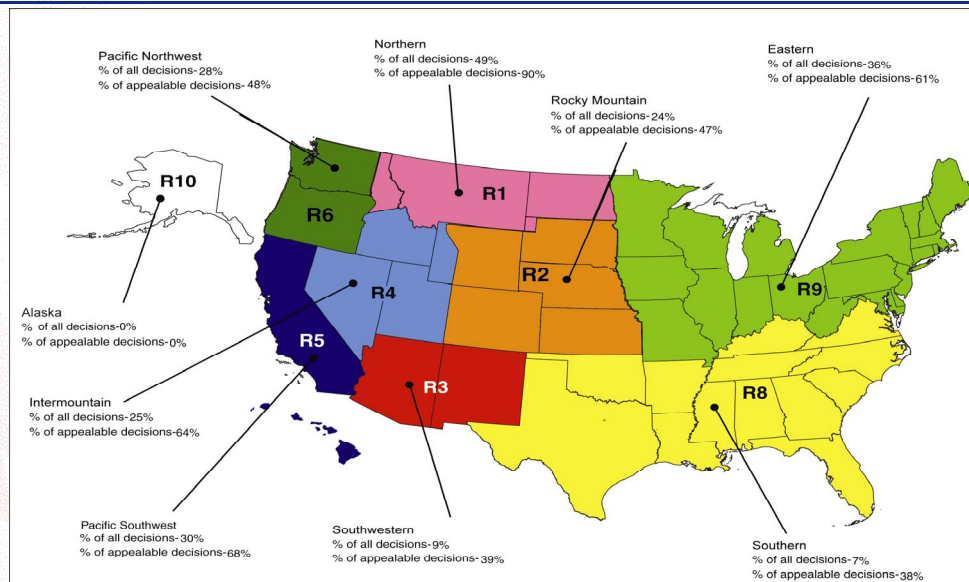


Objective 2: Number of decisions appealed and/or litigated and acreage affected

Appealed decisions and acreage:

- Of 762 decisions, 305 were appealable.
 - Generally, decisions covered by CEs are not appealable.
 - Decisions covered by EAs and EISs are appealable.
 - 180 decisions were appealed (59% of appealable decisions or 24% of all decisions).
 - 63 decisions were appealed more than once—at least 267 appeals on the 180 decisions.
 - The appealed decisions covered 0.9M acres.
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Objective 2 (cont.) Figure 4: Appeal rates of all decisions and appealable decisions by region



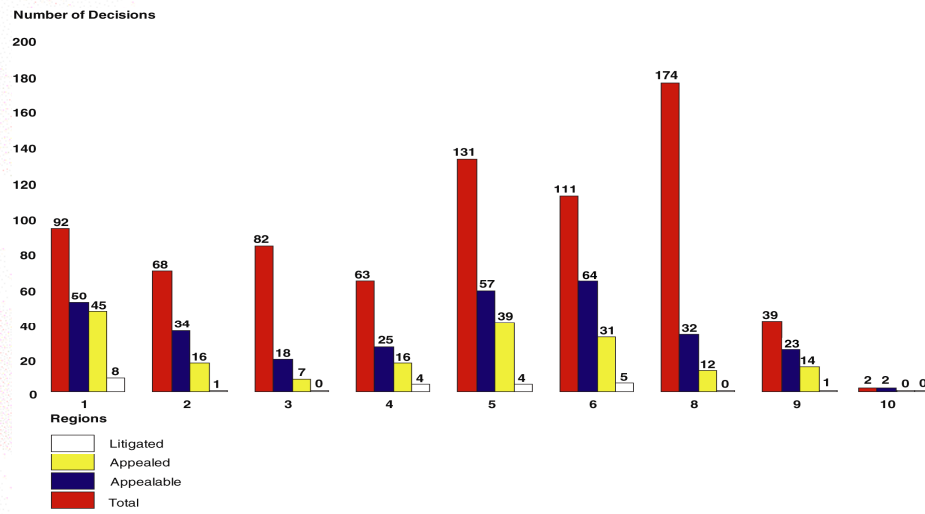


Objective 2 (cont.)

Litigated decisions and acreage:

- Of the 762 decisions:
 - 23 were litigated (3%) covering 0.1M acres.
 - All decisions can be litigated.
 - None of the 457 CEs were litigated.
 - 23 of the 305 decisions covered by EAs and EISs were litigated covering 0.1M acres.

Objective 2 (cont.) Figure 5: Decisions, appeals, and litigation by region



Source: GAO.



Objective 3: The outcomes of the appealed and/or litigated decisions and the names of the appellants and plaintiffs

Appeal Outcomes

- Of the 180 appealed decisions:
 - 133 required no change before implementation.
 - 16 were modified to some degree (i.e., the Forest Service allowed the decision to be implemented with changes).
 - 19 were reversed (i.e., the Forest Service did not allow the decision to be implemented).
 - 12 were withdrawn (the Forest Service withdrew the decision, but it was unclear if changes were required).
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Objective 3 (cont.)

Appellants

- A decision can be appealed multiple times. There were at least 267 appeals on the 180 appealed decisions. About 84 interest groups and 39 private individuals appeared as appellants in the 267 appeals.
- Multiple appellants can appear as parties to an appeal. The 84 interest groups appeared about 432 times as parties to the appeals. The 39 private individuals appeared about 48 times as parties to the appeals.
- Of the interest groups:
 - 7 groups each appeared as appellants 20 or more times: the Alliance for Wild Rockies, Ecology Center, Forest Conservation Council, Lands Council, National Forest Protection Alliance, Oregon Natural Resources Council, and Sierra Club.
 - Interest groups were most active in Forest Service's Northern, Pacific Southwest, and Pacific Northwest regions--regions 1, 5, and 6 respectively.



Objective 3 (cont)

Litigation outcomes

- Of the 23 litigated decisions:
 - 10 were still in litigation at the time of the survey.
 - 5 were settled by agreement of the parties.
 - 3 were reversed, overturning the Forest Service's decision; the Forest Service has appealed one of these to a higher court.
 - 1 was upheld by the court, allowing the Forest Service to proceed with the decision.
 - 4 are unknown because the respondents did not report outcomes.
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Objective 3 (cont.)

Litigants

- Of the 23 litigated decisions, 27 different interest groups appeared 77 times as plaintiffs and 1 private individual appeared once as a plaintiff.
 - Of the interest groups:
 - 5 groups appeared as plaintiffs in 4 or more decisions: the Ecology Center, Sierra Club, Oregon Natural Resources Council, Hell's Canyon Preservation Council, and Native Ecosystems Council.
 - Interest groups were most active in the Forest Service's Northern, Intermountain, Pacific Southwest, and Pacific Northwest regions—regions 1, 4, 5 and 6, respectively.
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Objective 4: Information on whether appeals are processed within prescribed time frames

- Appeals must be processed within 90 days of the date a decision was legally published
 - There were at least 267 appeals on 180 decisions:
 - At least 212 appeals (79%) affecting 141 decisions were processed within 90 days.
 - At least 55 appeals (21%) affecting 39 decisions were not processed within 90 days.



Objective 4 (cont.)

- The national forests reported various reasons for not processing the 55 appeals within 90 days, including:
 - Inadequate staffing
 - Availability of staff around the holiday season
 - Appeal backlog
 - Settlement of the appeal was imminent.
- If an appeal is filed, a decision may not be implemented until 15 days after the outcome of the appeal is determined. However, an “emergency mechanism” permits the Forest Service chief to implement a decision even if an appeal was filed. This mechanism was not used in FY 2001 or FY 2002.

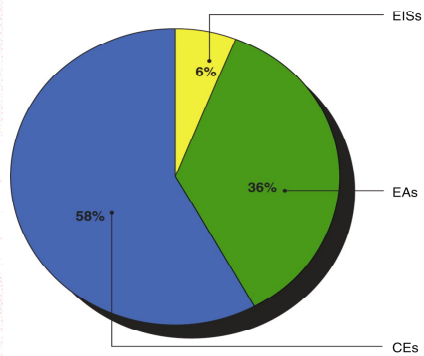


Objective 5: The number of acres treated or planned to be treated by each of the fuels reduction methods.

Treatment Methods

- 3.3M acres were treated, or treatment was planned by prescribed burning.
 - 0.8M acres were treated by mechanical treatment (e.g., bulldozers, chainsaws, chippers, mulchers).
 - 687 acres were treated by chemical/herbicide treatment.
 - 300 acres were treated by grazing.
 - 1.1M acres were reported as “other” treatment methods. Most of these acres were for a single firewood program.
 - Because multiple treatment methods can be used on the same acres, the numbers will not total to 4.7M acres treated in FY 2001 and FY 2002.
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Objective 5 (cont.) Figure 6: Acres treated or planned to be treated by prescribed burning under each decision type



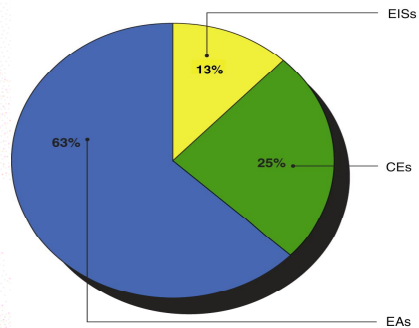
Source: GAO.



Source: U.S. Department of the Interior

- Of the 3.3M prescribed burning acres:
 - 1.9M acres were covered under CEs.
 - 1.2M acres were covered under EAs.
 - 0.2M acres were covered under EISs.

Objective 5 (cont.) Figure 7: Acres treated or planned to be treated by mechanical treatment under each decision type



Source: GAO.

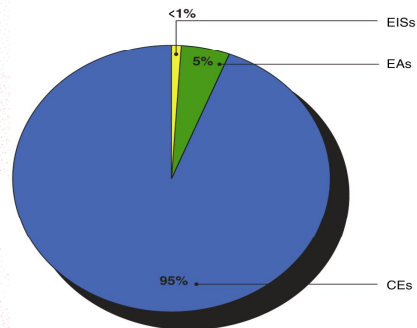
Note: Percentages do not add to 100 due to rounding.



Source: GAO.

- Of the 0.8M acres mechanically treated:
 - 0.2M acres were covered under CEs.
 - 0.5M acres were covered under EAs.
 - 0.1M acres were covered under EISs.

Objective 5 (cont.) Figure 8: Acres treated or planned to be treated by chemical treatment, grazing, and other methods under each decision type



Source: GAO.



Source: U.S. Forest Service.

- Of the 1,060,687 acres treated by chemical, grazing, and other methods:
 - 1,007,064 were covered under CEs
 - 53,573 were covered under EAs
 - 50 were covered under EISs

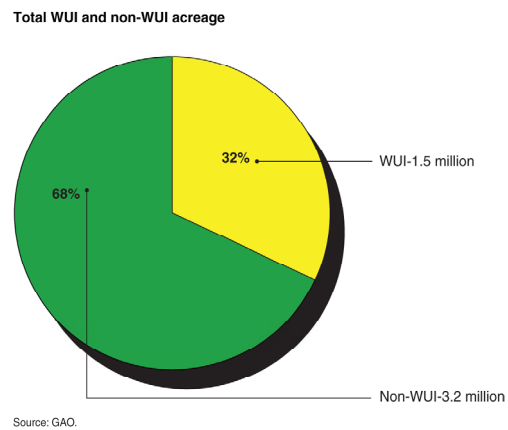


Objective 6: Information on decisions with fuels reduction activities in wildland-urban interface and inventoried roadless areas

Wildland-urban interface (WUI) decisions:

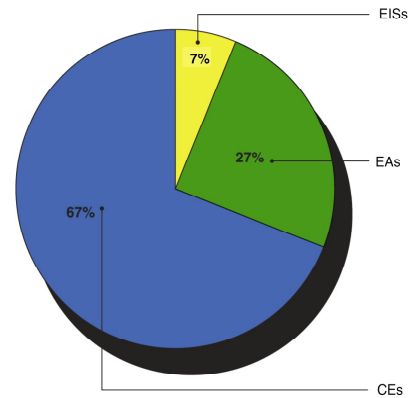
- Of the 762 decisions, the national forests reported 464 (61%) decisions with fuels reduction activities in the WUI.
- These 464 decisions covered 1.5M acres (32% of total acreage for all reported fuels reduction activities).

Objective 6 (cont.) Figure 9: Comparison of WUI and non-WUI acreage covered by fuels reduction activities



Objective 6 (cont.) Figure 10: WUI acreage by decision type

- Of the 1.5M acres in the WUI:
 - 1.0M were covered under CEs
 - 0.4M were covered under EAs
 - 0.1M were covered under EISs



Source: GAO.

Note: Percentages do not add to 100 due to rounding.



Objective 6 (cont.)

WUI appeals:

- Of the 464 decisions involving activities in the WUI (1.5M acres), 163 were appealable (0.5M acres).
 - 84 decisions were appealed (0.2M acres).
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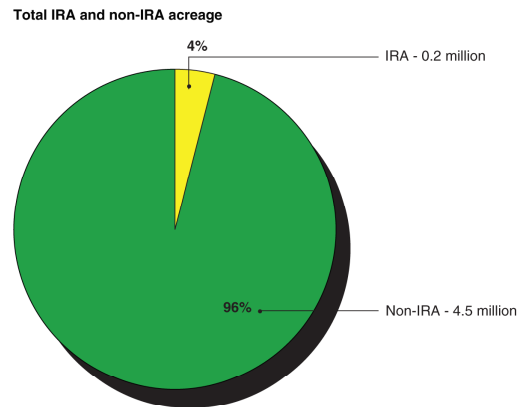


Objective 6 (cont.)

Inventoried Roadless Areas (IRA) decisions:

- Of the 762 decisions, the national forests reported 73 (10%) decisions with fuels reduction activities in an IRA.
- These 73 decisions covered 0.2M acres (4% of total acreage for all reported fuels reduction activities).

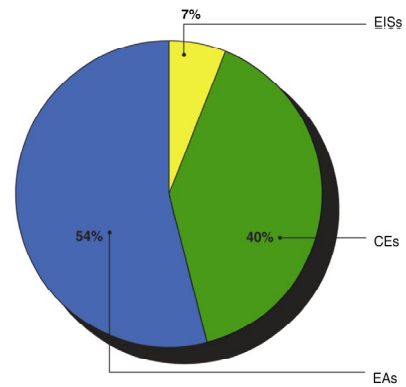
Objective 6 (cont.) Figure 11: Comparison of IRA and non-IRA acreage covered by fuels reduction activities



Source: GAO.

Objective 6 (cont.) Figure 12: IRA acreage by decision type

- Of the 240K acres in the IRA:
 - 95K were covered under CEs
 - 129K were covered under EAs
 - 16K were covered under EISs



Source: GAO.

Note: Percentages do not add to 100 due to rounding.



Objective 6 (cont.)

IRA appeals:

- Of the 73 decisions involving IRAs (0.2M acres), 39 were appealable (0.15M acres).
 - 24 decisions were appealed (0.08M acres).