

**Statement of
Denise Smith, Executive Director
Alliance of Forest Workers and Harvesters**

Subcommittee on National Parks, Forests and Public Lands
House Committee on Natural Resources

**Oversight Hearing on
“*The Piñeros: Reviewing the Welfare of Workers on Federal Lands.*”
September 16, 2008**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you today. We at the Alliance of Forest Workers and Harvesters sincerely appreciate the ongoing attention the subcommittee is devoting to the health, safety, travel and working conditions to which workers are subject while working on public lands. We feel that addressing these conditions is crucial to the stewardship of public lands because, after all, it is workers’ hands that touch the land. Taking action on these conditions is also crucial to the role of the United States as a world leader in justice, fairness and human rights.

The Alliance of Forest Workers and Harvesters (Alliance) is a multicultural, grassroots organization promoting social, environmental, and economic justice in the Pacific West. Our membership includes contract workers who implement land management activities on the ground through reforestation, restoration, fuels reduction, timber stand improvement, fire fighting, and other forestry activities. Many of our members have been working on public lands for a number of years, in some cases decades, and bring a wealth of experience and insight.

We have provided testimony to congressional committees before. On March 29, 2001, Alliance member Celia Headley testified to the Senate Subcommittee on Forests and Public Land Management at an oversight hearing on the National Fire Plan. On March 1, 2006 I provided written testimony to the Subcommittee on Public Lands and Forests, Senate Energy and Natural Resources Committee Oversight Hearing on Guest Workers on Public Lands and Forest Service Guidance. While some improvements have been made, I regret to report that much of what we said in 2001 and 2006 remains problematic today.

Poor US Forest Service Records and Continued Workforce Abuse

After Tom Knudson published the *Piñeros* articles in the Sacramento Bee in November of 2005, then U.S. Forest Service Chief Dale Bosworth gave three specific directions to the agency’s contract administrators: 1) to report possible violations of immigration law, OSHA regulations, and wage and benefit laws administered by the Department of Labor to the appropriate oversight agency; 2) to forbid contracted employees to work if they do not have appropriate safety apparel or equipment; and 3) to consider documented violations in evaluations of future bids for work on national forests.

Since then, the U.S. Forest Service (USFS) has taken a few steps to improve its oversight of health and safety conditions under its contracts. It has added provisions for compliance with the Fair Labor Standards Act (FLSA), the Migrant Seasonal Agricultural Worker Protection Act (MSPA), the Service Contract Act (SCA), and the Occupational Safety and Health Act (OSHA) into service contracts. It has invited Department of Labor (DOL) Wage and Hour Division employees to participate in training sessions during USFS contractor trainings, and it has begun providing DOL Wage and Hour Division state-level offices with information on all contracts being performed on national forest lands. While we applaud these new practices, they are only first, small steps. Much more needs to be done.

In June, the Alliance began studying the oversight of service contracts the responsible federal agencies, particularly the USFS, practice on public lands. We searched the online databases of contract inspections of the DOL's Wage and Hour Division, OSHA, the USFS and the General Services administration. We contacted personnel at DOL WHD, Cal/OSHA, and the USFS to inquire about data that was not available online, and we conducted interviews with a few key agency employees. We also approached the Bureau of Land Management, but officials there did not respond to our many requests for information.

We found that the records of inspections the agencies keep differ wildly, and are not coordinated. Forest Service officials claim that 100% of all contracts are now inspected, but they can provide no records of these inspections. Alliance member Celia Headley experienced the lack of organization of records first hand when she accompanied US Forest Service and DOL inspectors on two site inspections in October of 2007. The Forest Service inspectors wrote reports and filed them in the contract files in the local ranger district office. There is no central database for compiling information on inspection results. This means that the data agency officials need to determine what is happening out in the woods is in thousands of files across hundreds of ranger districts.

In addition, Forest Service inspections seem to miss important details. For the period from 2006 to 2008, Forest Service records show only 8 workplace violations. None of these are violations of safety regulations. Rather, most of them involve catering, construction, and immigration infractions. Two were for wage violations. In contrast, OSHA's online database reveals 174 violations in 256 inspections during this same time period. The most common safety violations included missing required first aid kit equipment such as stretchers and blankets, no provision of written driving directions to the worksite for all employees, employees lacking current first aid training, missing hazardous chemical information, failure to provide safety and health programs, and lack of personal protective equipment.

The Department of Labor's report to Congress in May of 2008 shows even more violations of OSHA standards than the number reported online. The report states that 518 violations were issued for "serious hazards related to personal protective equipment, tree felling procedures, chemical hazard communication, fire extinguishers, powered

industrial trucks, machine guarding, and electrical hazards, just to name a few.” The report also furnishes results of the 44 Wage and Hour Division inspections conducted since the March 2006, Senate hearings. Thirty-two of the employers investigated had violated MSPA, 16 had violated FLSA and 10 (out of the 15 that held contracts for work on public lands) had violated SCA.

Our conversations with forest workers parallel the findings in official reports and online databases. Alliance members tell us that they have not seen any significant improvements in working conditions during the past two years. The “crummies” (vans for transporting workers) are not safer, the pressure to work faster has not lightened, water and lunch breaks are often denied and there are no new safety measures in place. In short, work conditions are still the same.

In summary available evidence clearly reveals that violations are rampant. Yet US Forest Service records show very few.

Policies and Practices that Lead to Abuse of Workers

The problems go deeper than inadequate inspections and enforcement of applicable laws, however. The root causes of the problem lie in standard US Forest Service practices, as well as in the H2-B Guest Worker Program.

Need For Best Value Contracting

The common Forest Service practices of awarding contracts to the lowest bidder and pressuring contractors to complete jobs within a certain timeframe also create conditions conducive to worker abuse. Contractors who underbid inevitably cut corners. This means deferring maintenance on vans used to transport workers, paying less than the contract minimum wage, declaring only a smaller number of workers on the books than are actually employed to avoid worker’s compensation, unemployment and other tax payments, withholding pay altogether, and other such cost-cutting measures. In addition, unrealistic expectations about the time needed to complete a job lead to driving workers to the point of exhaustion. These are the conditions under which accidents occur.

Low bid contracting is not only bad for workers; it is bad for the land. Work performed under these contracts is often of poor quality, and needs to be redone. Thus, in trying to save money in the short run, the government spends more money in the long run.

H2-B Guest Worker Program

H2-B and undocumented workers continue to be the most marginalized and exploited. Unlike H2-A visas, H2-B visas currently do not provide protections to workers. This, together with the conditions under which many H2-B visa holders arrive in the United States (with house and truck deeds held by recruiters, in debt for paying “coyotes” to get them to the US border, not being informed of their rights, working in remote areas with little access to, and information about, other opportunities), makes the workers vulnerable to abuse because they do not have recourse to legal protections, and live in fear of losing

their jobs. This means that US immigration policy contributes directly to the creation of a workforce that has no power for collective bargaining. This drives wages down, and creates working conditions which American workers will not tolerate.

We fear that the recent proposed changes to the H2-B guest worker program will only exacerbate the problem. These changes weaken the wage certification process, weaken accountability in the labor recruitment process, and are vague in their specifications of the process for auditing employers. In addition, they fail to address worker abuse and unsafe work conditions.

Recommendations

As remedies to the current situation we recommend the following:

A) Monitoring and Enforcement

- 1) Increase Forest Service and Bureau of Land Management monitoring of service contracts on public lands, and assure reporting of results to the Department of Labor Wage and Hour Division and OSHA.
- 2) Follow through with enforcement of the relevant laws when violations are found.

B) Record Keeping and Reporting

- 1) Improve accountability of the agencies by creating a central database for recording the results of inspections and make this database easily accessible to the public. This database should include the date of every inspection conducted, the name of the contractor inspected, where the inspection took place, what questions were asked, and what was found.
- 2) Create a reporting system for the agencies to report regularly to the Secretaries and to Congress.

C) Advance Best Value Criteria

- 1) Strengthen the use of best value contracting for work on public lands. Rather than using price (i.e. low bid) as the main criterion in awarding contracts, consider other qualities of the bid, such as the capacity of the workforce to do quality work and the safety record of the contractor.
- 2) Increase personnel and training for procurement so that agency officials are able to meet land stewardship and community well being objectives.

D) Reform H2-B Guest Worker Program

- 1) Reform the H2-B guest worker program so that it includes safety protections for workers.