

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG  
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Before the  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED  
AGENCIES  
COMMITTEE ON APPROPRIATIONS  
U.S. HOUSE of REPRESENTATIVES

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Good morning, Chairman Dicks, Ranking Member Simpson, and Members of the Subcommittee. Thank you for inviting me to testify about our work at the U.S. Department of Agriculture (USDA) Office of Inspector General (OIG) regarding the U.S. Forest Service (FS). Conducting oversight of FS' vast operations and programs is an important responsibility for OIG. Our audits and investigations of FS' vital activities and programs are frequently among the highest profile work we do each year with respect to congressional and public interest. Before beginning my testimony, I would also like to express the high regard that OIG has for the valuable natural resource stewardship work of FS officials and employees across the country. I particularly appreciate the cooperation provided by FS officials and staff to our auditors and investigators as we carry out our oversight responsibilities.

I will begin my testimony with an overview of the plan my senior managers and I have developed to conduct oversight of FS' activities that will be funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act).<sup>1</sup> I can advise the Subcommittee of several specific audits we will conduct pursuant to FS' Recovery Act programs. As requested by the Subcommittee, I will then present an update on recent OIG work involving FS' wildfire management issues, discuss some of the more noteworthy audits we now have underway or planned, and provide information on our major investigative activity in the past year.

## **I. OIG Oversight for FS Activities Funded by the Recovery Act**

### **A. Recovery Act Oversight: OIG Planning**

As you know, the Recovery Act provided FS with \$650 million for Capital Improvements and Maintenance and an additional \$500 million for Wildland Fire Management. The Recovery Act provided supplemental funding to OIG for oversight of USDA's stimulus activities, including guidance that a portion of the funds be used for oversight and audits of FS stimulus programs, grants, and projects. We appreciate the efforts of the Chairman, Ranking Member, and Subcommittee Members to ensure that our office would receive supplemental funding to meet our FS oversight responsibilities under the Recovery Act.

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<sup>1</sup> H.R. 1, Public Law 111-5, February 17, 2009.

The Recovery Act creates a vital oversight role for the IG community, and I can assure the Subcommittee that our office is actively engaged in planning to meet our responsibilities with respect to FS' stimulus-funded activities. Our emphasis for FS (and all USDA agencies in our jurisdiction) will be taking proactive measures to make sure the vast public funds involved are properly expended and utilized. We have developed a number of actions to enable OIG to provide timely and effective oversight of FS' Recovery Act expenditures. Our oversight plan is, of course preliminary, since we will regularly make adjustments as FS develops its own plan for using its Recovery Act funding and begins to spend the monies.

In anticipation of the Act's passage, we began reviewing FS' implementation of agreed-to OIG audit recommendations for programs that will receive Recovery Act funding. In recent years, we have made recommendations affecting many of the FS programs receiving such funding. We are conducting analyses of our recommendations to determine if FS officials have fully implemented the corrective actions required and whether the agency's actions are proving effective in correcting past operational and programmatic weaknesses we identified.

We are conducting outreach to FS—including meetings with senior officials—to advise them of OIG's plans and to solicit their input on where our efforts would be most effective. OIG Audit officials are working with FS officials to review the agency's plan for its Recovery Act funds. As their plan is finalized, we will proactively monitor and evaluate FS' stimulus-related spending to reduce fraud, waste, and abuse. We will provide FS officials with information on oversight "best practices" as they are developed. For example, we have provided FS with a recently issued guide to grant oversight and best practices for combating grant fraud.

The second phase of our Recovery Act oversight plan for FS will involve developing new audits to review various aspects of the agency's programs receiving stimulus funding. (Several such Recovery Act-related audits are described in subsequent sections of this testimony.) OIG's review of FS' Recovery Program Plan may lead to further targeted oversight initiatives. We anticipate that a final phase of audit work will evaluate the determinations FS makes about the effectiveness of its stimulus activities by analyzing FS performance measures with respect to outcomes.

On the Investigations side of OIG, our agents will increase the fraud awareness briefings we conduct for FS (and other USDA agency) personnel and distribute information to program stakeholders on our investigative capabilities and the avenues available for citizens to report stimulus-related fraud.<sup>2</sup> OIG fraud alert memoranda to USDA agency personnel will highlight fraud schemes attempted in other Federal entities to raise awareness levels. We will investigate any allegations of program, grant, and contract fraud that may arise in FS' stimulus-funded activities. OIG's Hotline can be a source of information on potential criminal activity affecting FS' stimulus activities. Each month, our Hotline staff receives approximately 275 contacts and performs an initial assessment of the complaints and allegations to determine the level of OIG investigative inquiry that is warranted. Upon assessing our investigative results for USDA's stimulus activities, we will work to ensure that entities involved in criminal or serious misconduct are held accountable via criminal and/or civil prosecution, asset forfeiture, agency fines, and administrative sanctions (suspension/debarments, etc.).

## **B. Recovery Act Oversight: Specific OIG Reviews of FS Programs**

We will begin our active monitoring of FS' Recovery Act activities by following up on two audits that we have previously presented to the Subcommittee. These are Large Fire Suppression Costs and the Healthy Forest Initiative.<sup>3</sup> I would like to advise the Members of our observations regarding the responsive actions FS has taken regarding these audits—and what further steps should be taken—since we testified before the Subcommittee last year. First, with respect to our Large Fire Suppression Cost audit, we recommended that FS should:

- Modify current policies to allow concurrent management of wildland fires for both Wildland Fire Use<sup>4</sup> (WFU) and suppression; transitioning between WFU and suppression; and managing wildfire suppressions to accomplish fuel reduction;

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<sup>2</sup> OIG fraud awareness briefings are provided to entities such as agencies, contractors, grantees, and research facilities.

<sup>3</sup> Forest Service Large Fire Suppression Costs. OIG report 08601-44-SF, November 2006.

Implementation of the Healthy Forests Initiative. OIG report 08601-6-AT, September 2006.

<sup>4</sup> Wildland fire use – The management of naturally ignited (usually by lightning) wildland fires to accomplish specific pre-stated resource management objectives in predefined areas outlined in a Fire Management Plan.

- Develop better reporting and assessment mechanisms for accurate evaluations of agency fire suppression activity and further develop procedures and training for FS staff who perform the reviews.

We have reviewed FS policy changes and discussed these issues with agency managers. We believe FS is making progress towards more effective fire suppression practices. Since a small number of large fires consume most of the suppression budget, FS has advised OIG that it is working on a fundamental shift in its management approach and practices for WFU and suppression. Specifically, Incident Command (IC) leaders now have flexibility to change their management actions under a program of Appropriate Management Response.<sup>5</sup> Additionally, FS has increased its training not only for IC staff but also for land managers who interact with the IC staff.

FS is in the process of implementing new practices to re-evaluate the amount of resources committed to large fires, assess the probability of success, and re-allocate resources to areas and incidents where the resources may have a greater impact. FS has also been developing software, management processes, and scientific tools to better measure its success in effectively and efficiently suppressing wildfires. FS has changed how it reviews large fire suppression costs. Specifically, OIG worked with FS to develop a guide for personnel conducting large fire suppression reviews. This guide—*Interagency Large Fire Cost Review Guide (July 2008)*—has been adopted as the national inter-agency guide for conducting large fire suppression reviews by the Wildland Fire Coordinating Group.

The second update I would like to provide for the Subcommittee pertains to our audit of the Healthy Forest Initiative (HFI), in which we determined that FS lacked a consistent analytical process for assessing the level of risk that communities face from wildland fire and determining if a hazardous fuels project is cost beneficial. We also found that FS had not developed specific national guidance to weigh risks and benefits of fuels treatment and restoration

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<sup>5</sup> Any specific action suitable to meet Fire Management Unit (FMU) objectives. Typically, the AMR ranges across a spectrum of tactical options (from monitoring to intensive management actions). The AMR is developed by using FMU strategies and objectives identified in the Fire Management Plan.

projects. Since the release of our HFI audit, OIG Audit personnel have communicated regularly with FS management regarding their actions on our recommendations and those contained in a subsequent Government Accountability Office (GAO) report.<sup>6</sup>

In response to the recommendations of OIG, FS has started refocusing its approach to hazardous fuels. Currently, FS is in its third year of hazardous fuels prioritization. For the second time, FS' Headquarters office is mandating the use of its prioritization model or an equivalent. FS is beginning to use the Fire Program Analysis (FPA) program to identify and prioritize hazardous fuels projects. FPA is also being used for formulation and allocation of FS' budget.

In recognition of the policy and programmatic changes FS has conveyed to OIG and the Recovery Act's increased funding for hazardous fuels reduction, we plan to revisit the FS hazardous fuels program. At the current time, we plan to begin a new hazardous fuels audit in the spring. Our objective will be to assess the agency's progress on prior recommendations and the effectiveness of any relevant new FS initiatives. This audit will also include our monitoring and oversight of hazardous fuels funds allocated to FS by the Recovery Act.

To provide responsive oversight of the \$650 million provided by the Recovery Act for FS for capital improvement and maintenance, we have added a review of this subject area to our fiscal year 2009 audit plan. In two previous OIG audits of FS capital improvement and maintenance operations, we identified areas needing improvement. These included (1) better methods of compiling maintenance backlog information; (2) inventorying all infrastructure on National Forest System (NFS) lands, and (3) implementing controls to ensure that operations and maintenance plans are prepared. This audit will follow up on our previous recommendations and evaluate FS internal management controls for the Recovery Act funds used for capital maintenance and improvement activities.

### ***FS Administration of Grants***

As part of the \$500 million available to FS for Wildland Fire Management, the Recovery Act

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<sup>6</sup> Wildland Fire Management, GAO-07-1168, September 2007.

provided FS \$250 million for grants to fund projects located on State and private lands; up to \$50 million of this amount may be used to fund wood-to-energy grants to promote increased utilization of biomass. A previous OIG audit of FS' Renewable Energy Program<sup>7</sup> found FS controls over the woody biomass grant program were inadequate to ensure that the grant funds were spent for their intended purpose.

We will conduct audits of biomass utilization grants in two phases. For the first phase, we will determine whether FS has established proper internal controls, selection and eligibility guidelines, oversight procedures, and reporting requirements in accordance with Recovery Act and Office of Management and Budget (OMB) guidelines. For the next phase, we will audit FS' controls over its administration, funding, and monitoring of approved biomass grants to non-Federal entities.

### **C. Recovery Act Oversight: Reporting OIG's Activities and Results**

The closing comment I would like to offer regarding our preliminary oversight plan at USDA OIG pertains to our recognition of the importance of timely reporting about stimulus-related activities. Fulfilling our reporting obligations under the Recovery Act will assist FS officials and congressional oversight committees in carrying out their responsibilities. We will alert FS officials to program integrity and efficiency problems as quickly as possible to expedite corrective actions. We will incorporate the Recovery Act's new requirements regarding whistleblower complaints into our semi-annual reports to Congress. As provided by OMB guidance, OIG will separately report our use of Recovery Act monies and other funds for stimulus-related activities in our reports and "Recovery.gov" submissions.

## **II. Reviewing FS' Aerial Resources Programs, and FS Financial Statements**

### ***Assessing FS' Air Safety***

I would like to provide followup information to the Subcommittee regarding an issue we discussed in last year's hearing—our audit of FS' Air Safety Program.<sup>8</sup> We reported that FS

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<sup>7</sup> Forest Service's Renewable Energy Program. OIG report 08601-52-SF, August 2008.

<sup>8</sup> Forest Service Air Safety Program. OIG report 08-010048-SF, February 2008.

has assumed the maintenance responsibilities and airworthiness evaluations for its aircraft, but faced technical and resource challenges in performing them. FS has made strides toward improving its air safety program, but the agency still needs to develop and implement an airworthiness assessment, inspection, and maintenance program geared towards the particular demands of the firefighting flight environment.

Since our audit was issued, FS has implemented an improved air safety program. FS' air safety program incorporates the recommendations from the National Transportation Safety Board reports and the Blue Ribbon Panel report on FS aviation.<sup>9</sup> Since implementation of its enhanced program, FS has suffered no losses of fixed-wing airtankers due to in-flight structural failure. FS is continuing to work on improving its safety program to include rotor wing aircraft and aircraft loaned to States under the Federal Excess Personal Property program.

However, under the current circumstances, FS' air safety program may expect to have success for only a limited amount of time. The airtankers currently being used by FS are 40 to 60 years old. These airtankers are accumulating flight hours at a rate four to five times greater than the annual rate airtankers experienced 30 years ago. Under these circumstances, even the best air safety program cannot reasonably be expected to be able to continue to protect the public and FS employees from accidents. We will soon issue a new report that will discuss the agency's program to address some of these concerns. (Discussed below).

### ***FS Replacement Plan for Firefighting Aerial Resources***

We are currently nearing completion of an audit that examined FS' plan for replacing its firefighting aerial resources. Our audit evaluated FS' overall plan for procuring new airplanes and helicopters for its aerial firefighting program. Over the next decade, FS plans to modernize its firefighting aircraft, particularly its airtanker fleet. Airtankers are key resources because they can fly to remote areas and quickly contain small fires before they become larger, costlier, and more dangerous. In 2002, FS had 44 airtankers, but lost more than half in 2004 after they

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<sup>9</sup> NTSB's "Safety Recommendation" (April 23, 2004). The Blue Ribbon Panel was jointly commissioned by FS and the Department of Interior's Bureau of Land Management. The panel's analysis covered the aviation safety programs of both agencies.



were grounded due to safety concerns. FS estimates that by 2012, the remaining 19 airtankers will begin to be either too expensive to maintain or no longer airworthy. Unlike other aircraft that FS can obtain via leases, FS will likely have to purchase airtankers due to the lack of manufacturers willing to lease them. According to FS, replacing airtankers alone will cost up to \$2.5 billion.

### ***Forest Service Sustains Unqualified Opinion on its Financial Statements***

Pursuant to the Chief Financial Officers Act of 1990 and OMB guidance, OIG is responsible for an annual audit of FS' financial statements to obtain reasonable assurance that they are free of material misstatements. In FY 2008, FS sustained its unqualified opinion on its financial statements. FS continued to make progress in its financial management and financial reporting. The agency made sufficient progress in addressing its material weakness in the area of information technology (IT) that the auditors downgraded it to a significant deficiency. FS made progress in the areas of vulnerability assessments, change control, security certification and accreditation, and segregation of duties. These improvements allowed the material weakness to be downgraded. However, to sustain this progress, FS needs to continue improving its information security program.

### **III. OIG Audits of FS in 2009: In Process Reviews**

OIG currently has 14 audits underway of various FS programs and activities. In addition to the aforementioned Firefighting Aerial Resources audit, I would like to describe several of the most significant reviews we are working on. We will provide each audit report directly to the Subcommittee upon completion.

### ***Evaluating FS Processes to Obtain and Grant Rights of Way and Easements***

FS manages thousands of easements, which can provide access to private land through a National Forest and access to a National Forest, by going through State, local, or private land. Concerns arose in one State in 2008 regarding an FS proposal to clarify an easement agreement between the agency and a major private landowner. The FS proposed easement clarification gave rise to legal, policy, and procedural issues such as access rights of owners,

road uses and development within NFS lands, public input, and the potential impact on county infrastructure and fire protection. OIG has recently initiated an audit to determine if FS is both properly obtaining rights-of-way and easements (ROW&E) necessary to manage Federal lands and properly granting and modifying ROW&E in accordance with laws, regulations, and the best interests of FS.

### ***FS Firefighting Succession Plans***

FS and other firefighting agencies are facing a severe shortage of qualified firefighters as the workforce gets older and firefighters face mandatory retirement. With this in mind, we initiated an audit to determine what actions FS was taking to address this situation. Specifically, the audit will determine whether FS has adequately planned for the timely replacement of its critical wildfire suppression personnel as retirements increase and fewer of its personnel volunteer for fire suppression duties due to concerns over safety, liability, and other factors.

### ***Followup on Prior OIG Firefighter Safety Audits***

We are currently following up on our two previous audits that addressed the safety of firefighting personnel: FS' Firefighting Safety Program<sup>10</sup> and FS' Firefighting Contract Crews.<sup>11</sup> In both reports, we found deficiencies in documentation supporting firefighters' training and qualifications. Instances of missing documentation included the "Task Books" that firefighters usually receive after completing prerequisite training courses. The task books provide verification that firefighters have satisfied rigorous on-the-job training requirements. Also, we found that FS was not monitoring implementation of recommendations from wildfire accident reports. The audit will determine whether FS has adequately implemented the corrective actions to which it agreed in response to OIG's audits. We have just begun work on this review.

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<sup>10</sup> Forest Service Firefighting Safety Program. OIG report 08601-38-SF, September 2004

<sup>11</sup> Forest Service Firefighting Contract Crews. OIG report 08601-42-SF, March 2006.

#### **IV. OIG Investigations**

Investigations into potential criminal violations and incidents of serious misconduct are also an important element of OIG's oversight of FS activities and operations. During the past year, we have been engaged in an array of investigative work related to FS, with extensive involvement in wildland fire and personnel misconduct investigations. In FY 2008, OIG's Office of Investigations (Investigations) initiated 20 investigations related to FS. Our investigative results for the fiscal year included obtaining 8 indictments, 7 convictions, and \$8.6 million in monetary results. Of course, other investigations we initiated related to FS operations and programs in FY 2008 or prior years are still being actively worked by OIG special agents.

##### **Wildland Fire Investigations**

An important responsibility for Investigations is our statutory duty to conduct independent investigations of any FS firefighter deaths that "are caused by wildfire entrapment or burnover."<sup>12</sup> To fulfill our investigatory responsibilities, we have developed a Wildland Fire Investigation Team (WFIT) comprised of eight investigators who undergo extensive training. Each member of our WFIT has attended the Basic Fire Academy (operated in coordination with Boise State University in Idaho) and several members have attended the Serious Accident Investigations Course sponsored by the Bureau of Land Management. Our WFIT members have visited active forests fires independent of any OIG investigation to obtain additional experience. Since our last appearance before the Subcommittee, Investigations has been working to conclude two wildland fire investigations involving FS firefighter fatalities: the long-standing Thirtymile Fire investigation and the Esperanza Fire investigation.

As the Chairman will recall, the Thirtymile Fire occurred in July 2001 in the North Central area of Washington State. Four FS firefighters were killed after their fire shelter deployment site was burned over in the Chewuch River Canyon, 30 miles north of Winthrop, Washington. The statutory requirement for an independent OIG investigation had not been established at that time. Our investigation into the events surrounding the loss of life was initiated in July 2003 at

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<sup>12</sup> Public Law 107-203, July 24, 2002. 7 U.S.C. 2270(b)-2270(c).

the request of the United States Attorney for the Eastern District of Washington. OIG's investigation found that the Incident Commander (IC) made false statements about his lack of proper instructions to the firefighters about their positioning as the fire approached and whether a fire engine assigned to fight the fire had checked in with him, as required. (The captain of the engine properly did so.) The IC pled guilty in 2008 to two counts of making and delivering a false statement in an official writing. In August 2008, the IC was sentenced to serve 90 days in a work release facility and to refrain from participating in firefighting activities with any agency.

Our second active wildland fire investigation in 2008 was the Esperanza Fire that began on October 26, 2006, near the town of Cabazon in Southern California. The fire burned in excess of 41,000 acres and destroyed a total of 54 residences and outbuildings. Shortly after the fire began, five FS firefighters were entrapped while deploying to protect a private residence on a hilltop. Three of the FS firefighters lost their lives at the site when a burnover occurred. Two other firefighters were critically injured and later died at the hospital as a result of their injuries. This investigation presented a unique challenge for our WFIT. It was the first instance since enactment of the public law in which FS personnel were not in charge of the incident command when the fatalities occurred. The fire occurred on non-Federal land, and FS was assisting in the suppression effort as part of a cooperative agreement with the California Department of Forestry and Fire Protection, an entity for which OIG has no oversight jurisdiction.

The cause of this fire was determined to be arson by local and Federal law enforcement officials and FS. The individual alleged to have deliberately set the fire was charged by the Riverside County District Attorney's Office with 5 counts of murder (capital offenses), 11 counts of arson, and 10 counts of using incendiary devices to start fires. The trial was held in Riverside County Superior Court in California; closing arguments occurred on February 26, 2009. We expect to issue our investigative report to Congress by the end of this month, and will, of course, provide it directly to the Subcommittee.

## **Other OIG Investigations Involving FS**

Within the last year, OIG has completed several investigations involving FS personnel. I will briefly mention two such investigations that demonstrate the different types of fraud cases that arise involving FS programs and employees.

In December 2008, a former FS employee in Washington, D.C., was sentenced for embezzling nearly \$300,000 from FS. While employed by FS as a management analyst, the employee claimed overtime and holiday pay for hours she did not work. The investigation disclosed that the employee began defrauding the Government in 2005 by approving her own time and attendance reports without the knowledge of her supervisors. The former employee pled guilty to conversion of public money and was sentenced to 18 months of imprisonment, 36 months of supervised release, and ordered to pay \$282,000 in restitution.

Another OIG investigation disclosed that a former FS firefighter in Los Angeles, California illegally used his Government-assigned purchase card for personal use by charging over \$31,000 worth of personal items. The former firefighter was on a medical leave of absence from his duty station at the time these charges were made. The former employee pled guilty to theft of Government funds and was sentenced in February 2009 to 60 months of probation, 25 hours of community service, and ordered to pay \$5,000 in restitution to USDA.

This concludes my statement. I again want to thank Chairman Dicks and Members of the Subcommittee for the opportunity to present testimony on behalf of OIG. I would be pleased to address your questions.