

California 'burn bosses' set controlled forest fires. Should they be safe from lawsuits?

By Ryan Sabalow and Dale Kasler

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Across California, property owners and their "burn bosses" are setting fires. When the weather is cool, calm and wet enough, these planned forest fires are designed to clear overgrown vegetation that could accelerate a wildfire in dry months.

They do this knowing they risk financial ruin from a lawsuit if something goes wrong.

Now, Native American tribes, ranchers, timber companies and conservation groups are teaming up to reduce those liability risks in a battle that pits them against the state's powerful trial lawyers and insurance industries.

New legislation introduced by Sen. Bill Dodd, D-Napa, would buffer state-certified burn bosses — and private property owners on whose land the fires are set — against personal liability lawsuits if a fire escapes and hurts someone or damages property. They could still be sued, but only if the burn was "conducted in a grossly negligent manner."

There is near-universal agreement from scientists and fire officials that intentionally set "prescribed" fires are critical to restoring the health of California's forests and easing the misery of the state's increasingly long fire seasons.

For their part, Native American tribes have known this for centuries. And at least three California tribes support the new legislation, Senate Bill 332.

"There are a lot of barriers out there in the world to being able to scale up our cultural and prescribed fire use in California and throughout the West. And liability is one of the big ones," said Bill Tripp, the natural resources and environmental policy director for the Karuk Tribe.

In legal parlance, gross negligence means someone shows a reckless and conscious disregard for a clear risk of danger, beyond routine carelessness.

The insurance industry, which is opposing Dodd's bill, argues the proposed legislation would let someone off the hook even if their actions are careless.

Seren Taylor, senior legislative advocate at the Personal Insurance Federation of California, said his organization isn't opposed to prescribed fires but thinks Dodd's bill goes too far in absolving a burn boss if a prescribed fire gets loose.

He said burn bosses should "act reasonably" and should be held to that standard. California should try to "make sure we don't have prescribed burns that get out of control." Taylor's organizations lobbies for the major property-casualty insurers doing business in California.

Generally, burn bosses working for Cal Fire and the U.S. Forest Service are protected if something goes awry. But private bosses, working primarily on private land, face the prospect of litigation if a fire gets out of control, said Lenya Quinn-Davidson, who heads the Northern California Prescribed Fire Council.

Gov. Gavin Newsom's \$1 billion wildfire budget already includes \$65 million specifically for increasing the rate of controlled burns, and the state is currently ramping up its efforts to certify more burn bosses, many of whom can't get insurance to cover them under the current liability standards, Dodd told The Sacramento Bee in an interview Wednesday.

Dodd said the shouldn't be "any opposition to this, given what this state has gone through, and the magnitude of the work that we have to do, and the fact that burned bosses are not able to get insurance readily. (That) could set back the state's ability to burn the amount of acreage that it needs to burn."

TOO LITTLE FIRE FOR TOO LONG

Advocates for prescribed burns the state is paying the price for a century of trying to put out every fire as quickly as possible to protect timber stocks and development. As a result, much of the state's wild places

are unnaturally dense with small trees and brush ready to ignite during the state's dry summers and falls, a problem made all the more dangerous as the climate warms.

One solution, advocates say, is to bring fire back when conditions are safer and the fuels aren't tinder-dry, similar to how native Californians prior to European settlement burned large swaths of the state every year to protect villages and keep habitats healthy.

Researchers estimate that prior to the arrival of Europeans, fires burned around 4.5 million acres of land every year, much of them intentionally set. Last year, the state's worst wildfire season in modern history, burned 4.25 million acres.

"If you look at just the scale of the fires that happened in 2020, the scientists are saying that's a pretty close match to how much would have burned in California annually," said Tripp of the Karuk Tribe, one of the supporters of Dodd's bill. "It's just that most of that would have burned at a different time of year when it wouldn't have behaved in such a volatile manner."

California has been ramping up its prescribed fire regime, and currently intentionally burns about 125,000 acres each year, according to estimates by the California Air Resources Board.

Still, that's barely making a dent in the buildup of fire fuels. California has 33 million acres of forests, plus another 15 million acres of grassland and scrubby terrain called chaparral, the dense brush that surrounds many foothill communities up and down the state.

There are numerous barriers to starting more prescribed fires — from air quality concerns to environmental reviews that can take years to burn just a few thousand acres — on top of the fear of getting sued.

"There are a lot of burn bosses out there who are well experienced about burning, and they have the time and the resources to do it," said Kirk Wilbur of the California Cattlemen's Association. "But they're so afraid of being sued for those very rare circumstances in which a fire escapes ... This keeps them from entering into more contracts and blackening more acreage."

The Northern California Prescribed Fire Council's Quinn-Davidson said SB 332 would be critical to making prescribed burns more widely used in California.

States such as Florida, which use prescribed fire much more frequently, offer their burn bosses the type of liability protections SB 332 would provide, she said. Florida deliberately burns about 2 million acres a year — or about 16 times more than California, a state with far greater wildfire risk. Dodd said Colorado and Washington also have similar standards.

Quinn-Davidson said the problem isn't just liability, "it's also perceived liability — people are scared to get involved in prescribed fire. Escape rates are very limited but for the private practitioner who wants to get involved in this work, it's a barrier."

CHOOSING WHEN CALIFORNIA BURNS

Runaway prescribed burns are rare — advocates say less than 1 percent of them escape and are usually small in size — but they tend to generate considerable publicity and can turn public opinion against what is still a controversial concept.

A recent local example occurred in October 2019, when the Forest Service lost control of a prescribed burn deep in the Eldorado National Forest, not far from the Kirkwood ski resort. Several days after it started, the fire escaped its pre-set boundaries and became an official incident called the Caples Fire.

While it wasn't huge — the fire only burned an additional 325 acres and no one was hurt — the Caples Fire was unsettling because it took place during a PG&E Corp. "public safety power shutoff." Communication was spotty and residents weren't sure what was going on.

Other incidents have had more serious ramifications. In 2016, a prescribed fire that got loose near Reno destroyed 23 homes. A jury convicted the Nevada Division of Forestry of negligence and the state paid \$25 million in damages.

One of the nation's worst out-of-control prescribed burns came in 2000, when a fire in the Bandelier National Monument in New Mexico escaped containment. The fire burned 75 square miles, destroyed more than 200 homes and damaged the Los Alamos nuclear weapons laboratory.

Blasting the planning behind the fire as badly flawed, then-Interior Secretary Bruce Babbitt and Agriculture Secretary Dan Glickman ordered a 30-day suspension of all prescribed fires in the western half of the United States so a stricter approval process could be implemented.

Prescribed fire planning and implementation have improved since then, advocates say, but they acknowledge there's no way to completely reduce the risks.

Still, the devastating wildfires in recent years show that the risks of not using prescribed fire more widely are far worse, said Don Hankins, a Chico State University professor and "cultural fire practitioner," someone who uses the fire management methods of the people native to an area.

"You're either doing it when the conditions are favorable, or wildfires are going to happen," Hankins said. "I look at it as that's the real liability — that it's going to happen at some point anyways potentially."

Fresno Gets 'F' Grades in Air Quality Again, but Is Any Progress Being Made?

By Jim Jakobs

GV Wire, Wednesday, April 21, 2021

The American Lung Association's "State of the Air" 2021 report finds that despite some nationwide progress on cleaning up air pollution, more than 40% of Americans—more than 135 million people—are living in places with unhealthy levels of ozone or particle pollution.

As usual, Fresno County gets very low marks for air quality. But, there is a silver lining when looking deeper into the data.

Fresno County gets "F" grades for the following:

- Ozone
- Short term particle pollution
- Annual particle pollution

"What you're breathing on a daily basis in the San Joaquin Valley continues to improve," says Jaime Holt, chief communications officer for the San Joaquin Valley Air Pollution Control District. She says totally phasing out ag burning over the next 4 to 5 years will also play a significant role in improving air quality.

Dramatic Improvement Over Past 2 Decades

The trends in the report on Fresno County show a pretty dramatic improvement in all areas from the early 2000's until now.

"I think it's been a combination of all the programs that we've had which include 'check before you burn,'" says Fresno County Supervisor Buddy Mendes, who also serves on the air district board. He says the retrofitting that's been done in the ag industry to convert fuel burning engines to electric ones has also helped.

Los Angeles remains the city with the worst ozone pollution in the nation, as it has for all but one of the 22 years tracked by the "State of the Air" report.

This year, Fairbanks, Alaska, earned the distinction of being the metropolitan area with the worst short term particle pollution for the first time. And Bakersfield returned to the most polluted slot for year-round particle pollution for the second year in a row.

Geography and Weather are Factors

"We're a perfect example of how to create and trap pollution because of our topography and meteorology," explains Holt. "We just really struggle when it comes to air pollution because the little bit of pollution that we make tends to get trapped here and it doesn't really have any place to go."

Holt says what's really interesting about this year's report is that much of California received the same grades due to the tremendous impact wildfires had on the entire state.

Nevertheless, she points to incentive programs and a shift in mentality when it comes to cleaner-burning vehicles that continue to work in the Valley's favor.

Fresno County's Downward Trends

Looking back over the last 20 years, Fresno County has seen improvement in high ozone days, 24-hour periods of high pollution, and annual particle pollution.

"Looking back about 30 years ago when we had ozone measurements across the valley, we've seen over a 90 percent reduction in days when we've had those high ozone concentrations," points out Jon Klassen, SJVAPCD's director of air quality science and planning. "We're going to continue to make that progress with all the efforts that we're making."

Incentives Have Helped Improve Air

Klassen specifically points to incentives offered by the district to business to reduce their emissions.

Some of the grants currently offered on the air district's website include:

- Clean vehicle fueling infrastructure
- Clean green yard machines
- Farmer ag truck replacement program
- Hybrid voucher program
- Agriculture tractor trade up program

Holt says there's been an 85% reduction in what she calls 'stationary' sources of emissions. Those would include fireplaces, or some sort of industrial operation.

The big challenge now is the 'mobile' sources of emissions.

"Your heavy duty diesel trucks, and some of your older vehicles," explains Holt. She says the air district has a robust grant program that looks at either taking those off the road or repairing them to reduce their emissions.

Compared To Other Parts of the World

Even though air pollution in the San Joaquin Valley can be at times some of the highest in the United States, other parts of the world are much worse.

"China, India, and portions of the Middle East and Asia can be significantly higher," says Klassen. "Maybe you've seen some figures of annual average PM 2.5 in other parts of the world, and it can be like 10 times higher than what we see here."

Klassen says the stark contrast can be even higher on the other country's worst days.

Ozone Trends

In the years 2017, 2018 and 2019, more than 123.2 million people lived in the 163 counties that earned an F for ozone. That is fewer than in the 2020, 2019 and the 2018 reports, but more than in the 2017 report.

Cities in the Western and the Southwestern U.S. continue to dominate the most ozone-polluted list. California retains its historic distinction of having the most cities on the list, with 10 of the 25 most-polluted cities.

Bakersfield is behind Los Angeles as the second most polluted area in California for ozone. Visalia follows, and the Fresno/Madera/Hanford area comes in at number 4.

Short-term Particle Pollution Trends

The list of the 25 worst cities for short-term particle pollution is very similar to last year's report, with minor shifts in rank-order. The exceptions are Salt Lake City, which improved dramatically from 7th worst to 17th worst; Salinas, which improved enough to be removed from the list; and Lancaster, Pennsylvania, which returned to the list for the first time since the 2018 report.

Thirteen of the 25 most-polluted cities improved and had fewer unhealthy air days than in the 2020 report. However, as a general rule, improvements were modest, and all of these areas remained seriously polluted. For example, Bakersfield, though the only city among the worst 25 that improved to its best ever, nevertheless ranked third worst in the nation.

Year-Round Particle Pollution Trends

The number of people living in counties with unhealthy levels of year-round particle pollution is slightly smaller than in last year's report, but higher than in reports published in 2017, 2018 and 2019.

Four cities improved enough to leave the list: Birmingham, Alabama; Chico, California; Atlanta, Georgia; and Brownsville, Texas.