

The Forest Service BAER Team assigned to the Little Bear Fire on the Lincoln National Forest was charged with assessing threats to life, safety, property, natural and cultural resources arising from the fire and post-fire conditions. The team worked up a full accounting of Values at Risk to evaluate these threats and recommended treatments to lessen threats and damage associated with post-fire conditions. The values-at-risk analysis includes threats to life property and resources both on and off National Forest System lands, however by regulation treatments can only be proposed on NFS lands. Land treatments – aerial seeding and mulching – are designed to lessen the effects of post-fire storm runoff which can cause serious damage and threat to safety downstream and off forest.

Aerial seeding and mulching has been shown to be the single most effective treatment in the Southwest to reduce storm runoff and debris flows after wildfires. These treatments will have a significant role in lessening the threat to life, safety and property on all jurisdictions. The BAER team's findings and data have been shared with local, county, state, and other federal agencies so that those entities can respond within their own authority to address the post-fire threats. The BIA BAER team has proposed mulching on tribal lands. The NRCS has also proposed a set of treatments. Local agencies have already acted under their authority to address emergency mitigation as well.

Congress only allows for Federal BAER monies to be spent on National Forest System lands, except under certain circumstances. The one exception provided for under the BAER program is the Wyden Watershed Restoration and Enhancement Agreement. Under this agreement Federal dollars can be spent in watershed restoration and enhancement when there is a *clear benefit* to NFS lands. In essence, if non-NFS lands burned above (upslope/upstream) from NFS lands treatment of that area in order to reduce impacts to NFS lands could be considered. This is not the case on the Little Bear fire, and the Wyden Agreement does not apply. Other Federal programs, particularly the Emergency Watershed Protection Program administered by the Natural Resource Conservation Service, exist to address post-fire effects on non-federal lands.

Pertinent regulations are shown at the bottom of this document (emphasis added):

2523 - EMERGENCY STABILIZATION - BURNED-AREA EMERGENCY RESPONSE (BAER)

2523.01 - Authority

Funding authority for the Forest Service to conduct emergency stabilization through Burned-Area Emergency Response (BAER) is contained in the annual Appropriation Act for Interior and Related Agencies, which provides for the use of Wildland Fire Management funds for necessary expenses for “emergency rehabilitation of burned-over National Forest System lands and water.”

Public Law 105-277, Section 323(a) as amended by Public Law 109-54, Section 434 provides authority to enter into watershed restoration and enhancement agreements and expend appropriated funds on non-federal lands, when there is a clear benefit to the National Forest System lands in the watershed.

Public Law 106-558, Section 2 provides authority to pay Burned-Area Emergency Response assessment team personnel true overtime.

2523.53 - Non-Federal Lands

Include the consideration of non-Federal intermingled or adjacent, burned lands in burned-area surveys and reports, as appropriate, to determine watershed response. Ensure Forest Service coordination with other government agencies to identify shared risk management responsibilities.

Inform the non-federal landowner or manager of the existence of the Emergency Watershed Protection Program administered by the Natural Resource Conservation Service. Such funds may be used to help finance watershed protection treatment work on state, tribal and private lands.

Under the Wyden Watershed Restoration and Enhancement Agreement authority (Pub. L. 105-277), Forest Service funding may be used to accomplish work on other ownerships if the work is essential to protect National Forest System lands, roads, or safety of Forest visitors. Use of BAER funding to implement emergency stabilization on non-Federal burned lands is appropriate when there is a clear benefit to safety or critical resources on National Forest System lands, when treatments conducted on National Forest System lands would otherwise not be effective, and when appropriate cost-sharing, protection, and liability agreements with the landowners are initiated.