

**Statement of Tracy Perry
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Before the
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining
Oversight Hearing on
Federal Law Enforcement policy and implementation**

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Chairman Lee, Ranking Member Wyden, members of the Subcommittee, I am Tracy Perry, Director of Law Enforcement and Investigations (LEI), U.S. Department of Agriculture (USDA) Forest Service. Thank you for the opportunity to speak with you today about our law enforcement program and law enforcement operations on National Forest System Lands.

The Forest Service manages national forests and national grasslands in 42 states and Puerto Rico with the mission *“to sustain the health, diversity and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.”* Lands in the National Forest System are among the crown jewels of the United States and North America. They produce abundant clean water, and provide high quality wildlife habitat and diverse wildlife and fish populations, forest products, forage and unsurpassed recreation opportunities. A critical component of the agency’s management of the National Forest System is the law enforcement program.

FOREST SERVICE LAW ENFORCEMENT AND INVESTIGATIONS

The Forest Service Law Enforcement and Investigations (LEI) program is charged with providing a safe environment for the public, our employees, and protecting the Nation’s natural resources on approximately 193 million acres of National Forest System (NFS) lands. Increasing population growth in the Wildland Urban Interface, increasing popularity of NFS lands for motorized recreational use, and illegal occupancy of NFS lands all cause significant impacts and increases risks to public and employee health and safety.

Our program provides a highly visible uniformed patrol presence and conducts rapid emergency responses to incidents affecting the public and employees visiting or working on NFS lands. We conduct regular and recurring patrols to educate and enforce (when needed) Federal laws and regulations governing the successful management of the national forests. The LEI staff respond to a range of crimes and conduct complex criminal and civil investigations. These can include minor infractions such as environmental protests, destruction of government property, theft of archaeological resources, large group event violations and gang activity. Our activities also include the investigation of serious felonies such as homicide, rape, assault, and threats against the public and employees, domestic disputes, robbery, drug production and trafficking, domestic terrorism and fire emergencies.

The LEI program maintains critical partnerships with Federal, State, and local law enforcement agencies and other programs by building strong relationships with sheriff's offices, State police agencies, and Federal agencies such as the Drug Enforcement Agency; Federal Bureau of Investigation; Alcohol, Tobacco, Firearms and Explosives; the Office of the United States Attorney, the Federal Court System; and other Federal land management agencies. In addition, we use Cooperative Law Enforcement Agreements, which utilize local county sheriffs and other local law enforcement to assist and augment patrols on NFS lands to enhance law enforcement coverage and to ensure public safety. However, in many remote areas or areas with diminished local law enforcement, we are often the only law enforcement personnel available.

Our staff also frequently responds to catastrophic natural or other manmade disasters at the local, regional, and national level, and most commonly provide immediate emergency response in support of catastrophic wildland fire incidents on public lands. We are often the first law enforcement responder in these incidents and take responsibility for the safety of firefighting personnel and equipment, the evacuation of visitors and residents, and the protection of property. The LEI program is also a rapidly deployable national law enforcement asset under the FEMA Emergency Support Function (ESF) #13- Public Safety and Security.

The attributes that make the lands of the National Forest System excellent producers of wildlife habitat and clean water are also prized by illegal marijuana growers. The lands are remote with few people, the forest vegetation is dense, there is an extensive system of roads and trails (both open and closed), soils are fertile, and water for irrigation is readily available. Approximately 90 percent of marijuana grown on Federal public lands is grown on NFS lands. Forest Service LEI is the lead agency combating this threat to public lands and a key component of the White House's Office of National Drug Control Policy strategy to address illegal cannabis production, the associated severe environmental damage, and the significant safety risk Drug Trafficking Organizations pose to the public.

All of the work I've just described is managed and implemented by a current staff of 429 uniformed Law Enforcement Officers (LEO's), 98 Criminal Investigator or Special Agents (SA) and 86 support personnel.

FOREST SERVICE LAW ENFORCEMENT AUTHORITY

The Forest Service's law enforcement authority stems from the Property Clause of the United States Constitution. The Property Clause, in broad terms, empowers Congress to determine which "needful" rules "respecting" federal lands are necessary. U.S. const., art. IV, sec. 3, cl. 2.

The authority for the Forest Service's Organic Administration Act, Title 16, United States Code (U.S.C.), section 551; 16 U.S.C. 551, derives from the Property Clause. The Act authorizes the Secretary of Agriculture to promulgate rules and regulations governing occupancy and use of National Forest System lands. This is the authority for issuing the regulations at Title 36, Code of Federal Regulations (CFR), Part 261 (36 CFR Part 261). The Act of March 3, 1905 (16 U.S.C. 559) authorizes all persons employed by the Forest Service to make arrests for the violation of laws and regulations relating to the National Forests. Normally, exercise of this authority is limited to law enforcement personnel by policy. The Act of May 23, 1908 (16 U.S.C. 553)

permits employees designated by the Secretary of Agriculture to aid: a. State and local agencies in the enforcement of laws with regard to livestock, the prevention and extinguishments of fires, and the protection of fish and game, and b. Federal agencies in the performance of duties that relate to the National Forest System. The Weeks Act of March 1, 1911 (16 U.S.C. 480) provides that both State and local civil and criminal jurisdiction over persons within the National Forest System shall not be affected or changed by reason of their existence, except for the punishment of offenses against the United States. The Act of August 10, 1971 (16 U.S.C. 551a) authorizes the Secretary of Agriculture to cooperate with and provide reimbursement to any State or political subdivision for the enforcement of their laws on the NFS.

The National Forest System Drug Control Act of 1986, as amended (16 U.S.C. 559b-g), authorizes: a. Special agents and law enforcement officers of the Forest Service to carry firearms, make arrests, serve warrants and other process, conduct searches, seize evidence, conduct investigations of violations, and enforce 21 U.S.C. 841 (Controlled Substance Act) and other criminal violations relating to controlled substances that are manufactured, distributed, or dispensed on NFS lands. b. Enforcement and investigation actions both within the exterior boundaries of the NFS as well as areas outside exterior boundaries if the violation affects the administration of the NFS. c. The acceptance of law enforcement designations from any other Federal, State, or political subdivisions for the purpose of cooperating in the investigation and enforcement of any Federal or State law or regulation of any such agency when such investigation or enforcement mutually benefits the NFS and the cooperating agency or jurisdiction. The Federal Law Enforcement Officers Good Samaritan Act of 1998 (Public Law 105-277) authorizes protection of Federal law enforcement officers who intervene in certain situations. This Act authorizes that notwithstanding the United States Code, or any other provision of law relating to tort liability, a law or any other provision of law, for the purposes of 28 U.S.C. 171, an enforcement officer shall be construed to be acting within the scope of his or her office or employment, if the officer takes any action, including the use of force, that is determined by the officer to be necessary to: protect an individual in the presence of the officer from a crime of violence (18 U.S.C. 16); provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or prevent the escape of any individual who the officer reasonably believes to have committed in the presence of the officer a crime of violence. Title 18 U.S.C. 3559 establishes categories of offenses based on the maximum amount of imprisonment for each offense. Offenses with a maximum term of 6 months of imprisonment (such as those described in 36 CFR Part 261) are punishable as Class B Misdemeanors. Title 18 U.S.C. 3571 prescribes a wide range of fines for Class B Misdemeanors, depending on specific circumstances associated with the violation. Title 7 U.S.C., sections 2217 and 2218 provide authority for employees designated by the Secretary of Agriculture to administer oaths and take affidavits on matters where the Secretary has an interest.

These laws play a critical role in the overall administration of the National Forest System and the safety of our visitors and employees.

COOPERATIVE LAW ENFORCEMENT AND COMMUNITY RELATIONS

The Forest Service Law Enforcement and Investigations program has long recognized the critical importance of maintaining strong and mutually beneficial relationships and partnerships with our

federal, state, county, and local law enforcement partners. We also recognize the need to establish and maintain positive, proactive relationships with the communities where we work and live, as well as with those who utilize NFS lands for work, recreation, sustenance, or economic benefit. Successful management of NFS lands is simply not possible without effective relationships with our cooperators, communities, and the public. Unfortunately, there have been occasions where these relationships were not as strong as they needed to be and that led to questions concerning law enforcement actions, mission priorities, and jurisdiction of Forest Service law enforcement personnel. We recognize and accept responsibility for our role in failing to build and maintain these critical relationships and we have taken significant steps to improve them.

At this time, I am happy to say that many, if not nearly all of the issues brought to our attention by our cooperators have been, or are in the process of, being addressed. When left unchecked, these issues complicated extremely valuable relationships. We have worked hard to reestablish, repair, and significantly strengthen our relationships with those affected. Much of this work began in 2013 with the help of the National Sheriff's Association (NSA) and the Western States Sheriff's Association (WSSA). The NSA helped to facilitate high level discussions between key members of WSSA and LEI leadership. These discussions eventually led to a Memorandum of Agreement (MOU) with WSSA that helped to address many of the concerns and issues. However, I believe the most important result of these discussions was the relationships established with key WSSA members. Those relationships led to additional discussions and dialog with many other Sheriff's that resulted in a vastly improved level of communication and trust.

For the past several years, LEI leadership has routinely attended annual NSA and WSSA meetings and state level Sheriff Association meetings. The level of communication, cooperation, and trust continues to improve at all levels. Yes, there are still some problems, questions, and concerns, however, these issues are now being routinely discussed and addressed in a positive environment with a high level of mutual respect to the benefit of all involved. The MOU and our commitment to meet with the WSSA have been instrumental to help us in our ability to listen and better communicate, they have also become our tools used to facilitate efforts to resolve issues when they do come up. Relatedly, we recognize that many law enforcement issues such as traffic enforcement and general public crimes are often best addressed by local law enforcement and local judicial processes.

We currently maintains nearly 500 Cooperative Law Enforcement (CLE) Agreements with state, county, and local law enforcement partners. Over \$5 million in funding is provided through these agreements to cooperators for services such as dispatch and patrol operations. Many of these same agreements also confer state law enforcement authority to our officers and agents. This authority greatly enhances our ability to assist state, county, and local partners. We recognize that local, State, and Federal law enforcement agencies often have limited resources to cover vast, undeveloped territories. Public safety and protection of public and private property often hinge on the ability to respond quickly with available resources, which means taking full advantage of any and all trained, professional law enforcement personnel who are in the best position to respond promptly to an incident.

STRATEGIC PLANNING

We are also taking several other positive steps to help strengthen our mission capabilities, define our mission, and improve our workforce. We have recently developed a Strategic Plan that will help to increase efficiencies, prioritize work, and more closely align LEI activities with the mission and priorities of the Forest Service and the Department of Agriculture. A key theme of the strategic plan is the emphasis on prioritizing the traditional natural resource law enforcement mission tasks and skills unique to LEI staff. These niche skills and tasks such as fire investigation, timber investigations, resource damage, public land marijuana eradication, and cultural/historical site protection are essential to the management of NFS lands. Prioritizing work activities to conform to these essential mission areas will also help to focus our limited resources. Our Strategic Plan will also serve to help us to continue to share information with our workforce, other Forest Service employees, and the public on what we do and why we are an essential component of the management of the National Forests.

Finally, LEI has also established a new Office of Professional Responsibility (OPR) to help ensure that we continue to maintain the high levels of professionalism and integrity expected of a law enforcement agency. We are also improving our internal and public complaint system by leveraging technology and refining internal controls. These new processes will serve to increase transparency, accountability, and responsiveness to the agency, elected officials, cooperators, and the public.

By drawing on the authorities given by Congress, investing in relationships with our cooperators and local communities, and focusing our efforts on education as well as enforcement, we have grown into a highly trained law enforcement organization that continues to listen, learn and protect our national forests and the public we serve.

CONCLUSION

Mr. Chairman and Mr. Co-Chairman, this concludes my testimony. I am happy to answer any questions that you may have.