



# Colorado State Fire Chiefs' Association

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## Wildland Urban Interface Issues Working Group

July 17, 2008  
Keystone, Colorado

The purpose of this meeting was to prepare for the upcoming hearings of the Colorado Legislature's Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas. The specific objectives were to further define the issues the CSFCA presented to the Interim Committee for potential discussion, determine who is best suited to speak on each, identify any other topics that should be heard by the Interim Committee, and to ensure the CSFCA has consensus on the issues.

### Working Group Participants

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### Background

The Colorado Legislature created an Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas (SJR 08-025). The Interim Committee, which was appointed in early July, is:

Chair: Sen. Dan Gibbs, D – SD 16 (Boulder, Clear Creek, Gilpin, Grand, Jefferson, Summit)  
Vice-Chair: Rep. Christine Scanlan, D – HD 56 (Eagle, Lake, Summit)  
Sen. Gail Schwartz, D – SD 5 (Alamosa, Chaffee, Conejos, Costilla, Delta, Gunnison, Hinsdale, Mineral, Pitkin, Rio Grande, Saguache)  
Sen. Mike Kopp, R – SD 22 (Jefferson)  
Sen. Josh Penry, R – SD 7 (Garfield, Mesa)  
Rep. Steve King, R – HD 54 (Delta, Mesa)  
Rep. Kevin Lundberg, R – HD 49 (Larimer, Weld)  
Rep. Claire Levy, D – HD 13 (Boulder, Clear Creek, Gilpin)

**“Serving the Chief Fire Officers of Colorado Since 1968”**

The CSFCA was asked by Legislative Council Staff and the Committee Chair for a list of potential topics to be taken up by the Committee. After soliciting input, the following list is what the CSFCA provided LCS staff and Sen. Gibbs:

- 1906 Wildfire Statutes – Who is in Charge?
- Resources (Resource Availability, Statusing Resources, Mobilizing Resources)
- Reimbursement Process
- Authority/Liability of Local Incident Management Teams
- Communications (800 MHz vs. VHF)
- Training and Equipping Local Fire Departments
- Wildland Fire Mitigation (private, local, state and federal efforts and incentives)
- Wildland Urban Interface Code Adoptions

Please note that this list is not intended to be all-inclusive or exclusive.

This meeting was scheduled in an effort to prepare for the meetings/hearings of the Interim Committee. All CSFCA Board Members and select other CSFCA members that have been actively involved with WUI issues were invited to participate in this meeting. The intent was to assemble a diverse group with representatives from each CSFCA region.

In advance of this meeting, copies of SJR 08-025 as well as the statutes that pertain to fire protection districts, county sheriffs, the Colorado State Forest Service (CSFS) and the Department of Natural Resources/Division of Forestry were distributed to invitees.

## **Issues & Recommendations**

### **Who is in Charge of Wildland Fires?**

This issue has been the subject of discussion for many years and has been the source of both confusion and conflict. Both sheriffs and the fire chief of fire protection districts have statutory responsibilities to fight fires.

Colorado statutes give county sheriffs the responsibility for managing forest or prairie fires [§ 30-10-513, C.R.S.]. The same statute provides that the state forester may assume the duty with concurrence of the sheriff.

§ 32-1-1002, C.R.S. states that the chief of the fire department in each fire protection district . . . shall have authority over the supervision of all fires within the district.

This apparent conflict in the statute was the subject of a formal Attorney General's Opinion [AGO 01-2, July 23, 2001], which concluded that "the legislature intended to give the fire chiefs authority over fires occurring on private property within their districts." And, "in the absence of a fire protection district with a duty to fight fires on private property, this function becomes the responsibility of the sheriff.

Notwithstanding this AGO, the CSFS has consistently opined that state statute gives county sheriffs the responsibility for managing wildland fire on non-federal land. Further, the sheriff may transfer this duty to the State Forester if he or she feels an incident has exceeded local capacity. At least some sheriffs agree with this interpretation.

It is important to note that some sheriffs prefer not to have anything to do with wildland fires and look to the fire protection districts to deal with them.

The 2001 Report of the Wildland Urban Interface Working Group contained the recommendation to: "Provide statutory clarification regarding the fire protection responsibilities delegated to county sheriffs versus those held by local fire protection districts."

**Recommendation:** The CSFCA WUI Working Group recommends statutory clarification of this issue. At minimum, the statute should clarify that the sheriff's responsibility is limited to fires occurring outside of a fire protection district. The clarifying statute should also grant authority to fire protection districts to delegate authority to the state forester for managing fires that occur within the district.

This said, it was the consensus of the working group that this clarifying statute would not go far enough to address all of the issues surrounding the provision of wildland fire protection and that it was time to consider more wholesale structural changes.

The working group recognizes that the foundational statute was enacted at the turn of the 20<sup>th</sup> Century. At that time, the only fire protection that existed was municipal fire departments. The only public safety organization that existed outside of municipalities was the county sheriff. Much has changed since the turn of the 20<sup>th</sup> Century. Now there are some 250 or so fire protection districts (or metropolitan districts and county improvement districts) in the state that provide fire protection where there was once none. Even with the existence of these fire protection districts, there are vast land areas that have no fire protection and in many cases, development is occurring in these areas

### **Areas Without Fire Protection**

The existence of areas without fire protection, and particularly developed areas without fire protection, creates impacts on adjacent fire protection districts and/or the county sheriff. For this reason, the CSFCA WUI Working Group recommends that organized fire protection should exist state-wide, or at minimum, that no development be allowed unless organized fire protection is provided to the property. This can be addressed in a variety of ways:

1. Grant counties the clear authority to provide fire protection and operate fire departments in unincorporated areas outside of fire protection districts. Currently, the board of county commissioners, is authorized by statute to:
  - a. Erect firehouses, and provide fire equipment for the extinguishment of fires and to provide for the use and management of the same;
  - b. levy a special tax for the purpose of creating a fund to prevent, control, or extinguish such [wildland] fires anywhere in the county and to fix the rate of levy; and
  - c. create a county improvement district to provide fire protection in unincorporated areas outside of fire protection districts.

However, the authority of a county to otherwise provide fire protection and operate a fire department is unclear.

2. Require that no development may take place in unincorporated areas of counties outside of fire protection districts, unless organized fire protection is provided to the property. This can be done by including into an existing fire protection district (or metropolitan district or county improvement district providing fire protection); by contracting with a fire protection district or municipality; by creating a fire protection district; or by creating an organized fire department [Note: a definition of what constitutes a fire department should be provided for in statute].

3. Statutorily require counties to provide fire protection in unincorporated areas outside of fire protection districts and grant the authority to levy a tax for this purpose. This duty of counties would supersede the authority of county sheriffs for fires occurring outside of a fire protection district. However, this duty could be addressed by the board of county commissioners contracting with fire protection districts, municipalities, the county sheriff, or in the case of wildland fire, the state forester.

It is important to note that the CSFCA WUI Working Group believes that Option #3 presents the best opportunity to address both the issue of who is in charge of wildland fires as well as the issue of areas without fire protection.

In any case, whoever is assigned the responsibility for the management of wildland fires should have a minimum training requirement (which includes the appropriate level of NIMS training).

### **State-Level Fire Safety Responsibilities**

Efficient and effective delivery of fire prevention and suppression services in Colorado necessitates an active role for the State. Unfortunately, a coordinated and effective approach at the State level does not exist in Colorado.

While many fire safety-related functions are performed by state government, they are performed by many different agencies in less than coordinated, effective and efficient manners. In some instances there are duplications of effort within the State; at other times there are duplications between the State and local agencies; in yet other instances there are no efforts at all.

It is apparent that one state agency, with statutory authority and adequate resources, should be assigned the leadership role in fire protection and prevention related services in the State. In most states these responsibilities are met by a State Fire Marshal.

In Colorado, several of the duties and responsibilities typically found within a State Fire Marshal's Office are vested in the Colorado Division of Fire Safety (Department of Public Safety). However, the lack of funding, commitment and authority by the Legislative and Executive branches of Colorado State government have left the Division incapable of performing the duties it has been assigned.

**Recommendation:** The CSFCA WUI Working Group recommends creation of a "State Fire Marshal's Office" by consolidating all (or many) of the fire safety activities presently administered by Colorado's fire-safety bureaucracy. The recommendation does not suggest the creation of another bureaucracy; it merely suggests reorganizing the one that presently exists.

Consistent with the findings of the State Fire Marshals Forum of September, 2007, the CSFCA WUI Working Group recommends the Division of Fire Safety be recreated as the State Fire Marshal's Office. The duties and responsibilities of the State Fire Marshal's Office should include firefighter training and certification, fire incident reporting, resource management and mobilization, administration of a minimum state fire code that applies to state-regulated facilities and other high risk occupancies, regulation of the fire suppression, fire alarm, and fireworks industries, and providing technical assistance to local fire departments.

Additionally, consideration should be given to granting the State Fire Marshal the authority to adopt and enforce a wildland urban interface code.

## **WUI Mitigation**

Definitive measures can be taken to mitigate the impact of catastrophic wildfire by reducing the fire behavior potential in areas at highest risk. All agencies, federal, state, and local must work together as they try to cope with the ever-present risk of catastrophic wildfire.

Currently, the federal land management system is unable to accomplish critical management tasks on their own in a timely fashion, and bureaucratic obstacles confront private land owners in their wildfire mitigation efforts.

For example, private land owners that own land adjacent to USFS lands can not conduct defensible space treatments on the National Forest lands without USFS permission and the National Environmental Policy Act (NEPA) process being completed. The NEPA process can take up to a year to complete once a project location has been identified.

**Recommendation:** The CSFCA WUI Working Group makes the following recommendations with respect to WUI mitigation measures:

1. Grant the Colorado Division of Fire Safety (Office of the State Fire Marshal) the authority to adopt a Wildland Urban Interface Code as a minimum standard. The authority to enforce the code should be delegated to local jurisdictions; or
2. Require that counties adopt a Wildland Urban Interface Code as a pre-condition to participating in the Emergency Fire Fund (EFF) or receiving reimbursement from the Wildfire Emergency Response Fund (WERF); or
3. Provide some sort of incentives for counties to adopt a Wildland Urban Interface Code.
4. Encourage the development of one Community Wildfire Protection Plan (CWPP)n per county.
5. Work with federal land management agencies to allow property owners to go onto adjacent federal land for mitigation activities that are consistent with an approved mitigation plan prepared by a qualified forester.
6. Require all state agencies that manage public lands to implement mitigation efforts on land under their control.
7. Provide funding and other incentives for local and private mitigation efforts.

## **Excessive Indirect Cost Assessment by CSFS**

The Colorado State University, parent organization for the Colorado State Forest Service, places an indirect cost assessment of 23% on top of all invoices submitted by local agencies for reimbursement. While the CSFCA recognizes that all state agencies have an indirect rate plan, the rate assessed by CSU is excessive, particularly in light of the fact that it only compounds the cost of fire suppression and adds nothing to fire suppression capability.

**Recommendation:** The CSFCA WUI Working Group recommends the reimbursement process for wildland fire assignments be transferred from the Colorado State Forest Service to the Division of Emergency Management [the Division of Emergency Management handles all other reimbursements for disaster response].

## **Specify what Constitutes a “Fire Department”**

Colorado law does not currently define what a fire department is, nor does it establish any requirements for the creation of a fire department. One problem created by this is there is no prohibition on creating a “fire department” within the boundaries of a fire protection district.

**Recommendation:** The CSFCA WUI Working Group recommends that what constitutes a fire department be defined in statute. Following is a sample definition of a fire department:

1. An organization that provides fire protection-related services;
2. Is authorized and recognized by the government authority having jurisdiction; and
3. Is registered with the Colorado Division of Fire Safety (State Fire Marshal) and as been assigned a Fire Department Identification Number (FDID).

## **Liability for Incident Management Teams**

A successful outcome of the creation of the All-Hazards Regions is the formation of three, All-Hazard Type 3 Incident Management Teams (IMT’s) in Colorado. The training and certification standards for these IMT’s were established by the Colorado Emergency Resource Mobilization Program Working Group (which operates under the auspices of the Colorado Division of Fire Safety).

Since there is no legislative authority for the existence of the State’s All-Hazards Regions and no specific legislative authority for the creation of the IMT’s, some participating individuals and sponsoring local governments are concerned about their liability.

**Recommendation:** The CSFCA WUI Working Group recommends the Legislature enact statutes that legitimize and provide official authority to the state’s all-hazards regions and their activities, including the establishment of All-Hazard Type 3 IMT’s. In the interim, the CSFCA WUI Working Group recommends that the Colorado Division of Emergency Management enter into agreements with the participating All-Hazards Regions, recognizing, sanctioning and providing liability protection to the IMT’s and their participants.

## **Liability for Equipment Transfer**

Every year quality surplus fire equipment, including hoses, fire trucks, protective clothing and breathing apparatus is destroyed or discarded by industry and larger fire departments instead of being donated to small fire departments in order to avoid civil liability lawsuits. The fear of litigation has forced companies and wealthier fire departments to waste surplus equipment, which in many cases has years of potential use remaining.

**Recommendation:** The CSFCA WUI Working Group recommends the Legislature enact statutes providing liability protection to a company or fire department that donates fire control or fire rescue equipment to a volunteer fire company for personal injuries or property damage caused by a defect in the equipment.

## **Declining Volunteers**

Sixty-two percent of the fire departments in Colorado are all-volunteer. Volunteer fire departments across the state are facing great difficulty in maintaining their ranks of volunteer fire fighters. Some of the factors contributing to reductions in the number of men and women joining and remaining in the volunteer fire service include increasing time demands, increasing training requirements, increasing call volume, changes in the ‘nature of the business’ of

firefighting, changes in sociological conditions (two-income families), federal regulations, and aging communities.

Some of the most influential recruitment and retention incentives identified by volunteer fire service leaders include college education tuition, income tax credits, health insurance and the provision of better personal protective clothing, firefighting apparatus and equipment.

**Recommendation:** While the Colorado State Fire Chiefs' Association (CSFCA) recognizes and appreciates the support provided by the State for firefighter pensions and accidental death and disability, additional funding assistance for volunteer recruitment and retention incentives could have a significant positive affect on this problem.

## **Other Recommendations**

### **Wildland Fire Business Rules Committee**

The CSFCA WUI Working Group recommends establishing a committee to develop a standard template for estimating the full cost of providing equipment and personnel for resource assignment, examine and make recommendations concerning standard resource rates and other business practices surrounding AOP's (such as minimum equipment, staffing, standardized delegation of authority, etc.). This committee should be a subcommittee of the Colorado State Emergency Resource Mobilization Program (CSERMP) Working Group.

### **Emergency Disaster Fund**

The CSFCA WUI Working Group recommends the creation of a state Emergency Disaster Fund, loosely modeled upon the Emergency Fire Fund, but for all-risks and with participation from municipalities as well as counties.

### **Funding for Engine Task Forces**

The CSFCA WUI Working Group recommends the State provide funding for training and equipping a minimum of five engine task forces [staffed and operated by local fire departments].

### **Funding for Training**

The CSFCA WUI Working Group recommends the State provide funding for training of local fire departments in wildland firefighting and structural firefighting in WUI areas.

### **CSFS Contracting with Local Fire Departments**

The CSFCA WUI Working Group recommends the CSFS contract with local fire departments for the provision of fire protection on state owned lands instead of maintaining own engines and firefighters.

### **NFIRS Participation**

A crucial component to impacting Colorado's fire problem is timely and accurate data collected through the National Fire Incident Reporting System – a program administered in the state by the Division of Fire Safety. However, there is no requirement that local fire departments participate in NFIRS (other than federal grant requirements).

The CSFCA WUI Working Group recommends the state provide incentives for the participation in NFIRS by local fire departments by providing funding for the purchase of hardware and software, funding to the Division of Fire Safety for training and administration of the program and requiring participation in NFIRS as a requirement for receiving any state grants.

### **Meeting Adjourned**

The meeting was adjourned with the recommendation that the CSFCA pursue creation of the Wildland Fire Section (or an All-Hazards Section) of the Association to continue to work on these issues.

No additional meeting dates were set, but Paul Cooke will advise the members of the working group with the schedule of the legislative Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas.