Research Brief for Resource Managers

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Smart Practices and Architecture for Prescribed Fire in California (SPARx-Cal) - https://sites.uci.edu/sparxcal/

Policy Reforms for Prescribed Fire Liability Relief and Catastrophe Funds

Varner, J.M., J.K. Hiers, S.B. Wheeler, J. McGuire, L. Quinn-Davidson, W.E. Palmer, and L. Fowler. 2021. Increasing Pace and Scale of Prescribed Fire via Catastrophe Funds for Liability Relief. Fire 77(4).
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Prescribed fire is an important tool for reducing high severity fire impacts in frequent fire forests. The majority of prescribed fires in the U.S. are applied in Southeastern states, accounting for 70% of the area burned annually. Expanding the amount of area burned in western US forests is important for mitigating wildfire risk and restoring ecosystem structure and function. However, the expansion of prescribed fire is limited by both the liability that falls on prescribed fire practitioners and the growing wildland urban interface that complicates prescribed fire application and management. Despite very low escape rates for prescribed fires, when escapes do occur, they have the potential to result in property damages or loss of lives. This paper argues that the expansion of prescribed fire will require new public policies that both protect burn practitioners from liability and compensate for losses from potential fire escapes.

The Federal Tort Claims Act governs federal liability for damages due to prescribed fire, but liability policies and processes vary greatly at the state level. The authors outline three categories of liability standards that are utilized by different states:

Management Implications

- Gross negligence standards protect practitioners and enable increased use of prescribed fire.
- Catastrophe funds for prescribed fire could cover third-party losses when prescribed fire damages occur.
- Pairing gross negligence standards with catastrophe funds would address a key barrier to prescribed fire application.

1. Strict liability (12 states): burn practitioners are liable for damages regardless of precautions or care taken.
2. Simple negligence (26 states): practitioners can be held liable for damages if they do not implement "reasonable care."
3. Gross negligence (7 states): practitioners can be held liable for damages if they acted with reckless disregard during burn preparation and implementation.

Gross negligence standards reduce the likelihood of prescribed fire-related lawsuits, and thereby increase practitioners' comfort with and use of the practice. Some states, like Georgia, have a gross negligence standard for all burners, while Colorado, Florida, and Washington only grant the

gross negligence standard to burners who have completed a certified burner program.

Catastrophe funds promote public good by covering private losses related to the implementation of the public good. They have been used in a variety of contexts, covering losses related to utilities, vaccinations, natural disasters, and nuisance wildlife. Catastrophe funds may provide compensation to harmed individuals and/or their insurance companies, and financial relief to the responsible entities. Applying catastrophe funds to prescribed fire damages could do two things: 1) help protect practitioners, especially in states with strict liability standards where practitioners are fully responsible for damages; and 2) cover third-party damages from prescribed fire, especially in simple or gross negligence states where third parties may not be able to seek coverage for losses if the practitioner wasn't being negligent.

There are four catastrophe fund models that could be used in the context of prescribed fire (Fig 1.):

1. Individual burner model: practitioners pay into a catastrophe fund for each burn or pay a periodic fee based on the number of burns or amount of area burned.
2. Tax-based or fee assessment model: funds are generated from pre-existing taxes and/or state activity fees.
3. Private investment model: funds are generated by pension investments, institutional investors, or other private fund options.
4. Hybrid model: this model could take many forms, combining the strengths of each of the above models and addressing the constraints.

A hybrid model could be especially beneficial in that it could adapt over time following the increase of the pace and scale of prescribed fire. As prescribed fire becomes more common, the risk associated with using prescribed fire is likely to decrease with more experienced practitioners and decreased fuels. Hybrid models could be an ideal option for adapting to the dynamic needs associated with compensation; for example, there could initially be a tax-based model to build up catastrophe funds, which could then be sustained with user or permitting fees as prescribed fire becomes more commonly utilized.

The authors suggest that this policy pairing of liability protection and catastrophe funds could ensure public support of prescribed fire usage and encourage prescribed fire implementation, therefore reducing wildfire hazard more broadly. The authors argue that given the inherent risk involved in prescribed fire application, burn practitioners must be provided with liability protection. This could come in the form of a standard of gross negligence, while a hybrid model catastrophe fund could quickly relieve the public from any potential property losses. This is especially important given the history of fire suppression, which has created hazardous fuel conditions and high-complexity landscapes. Under the current climate change projections, prescribed fire will be an increasingly necessary tool in managing fire-prone ecosystems, and states should take action to provide liability protections for practitioners and coverage for potential losses by the public.

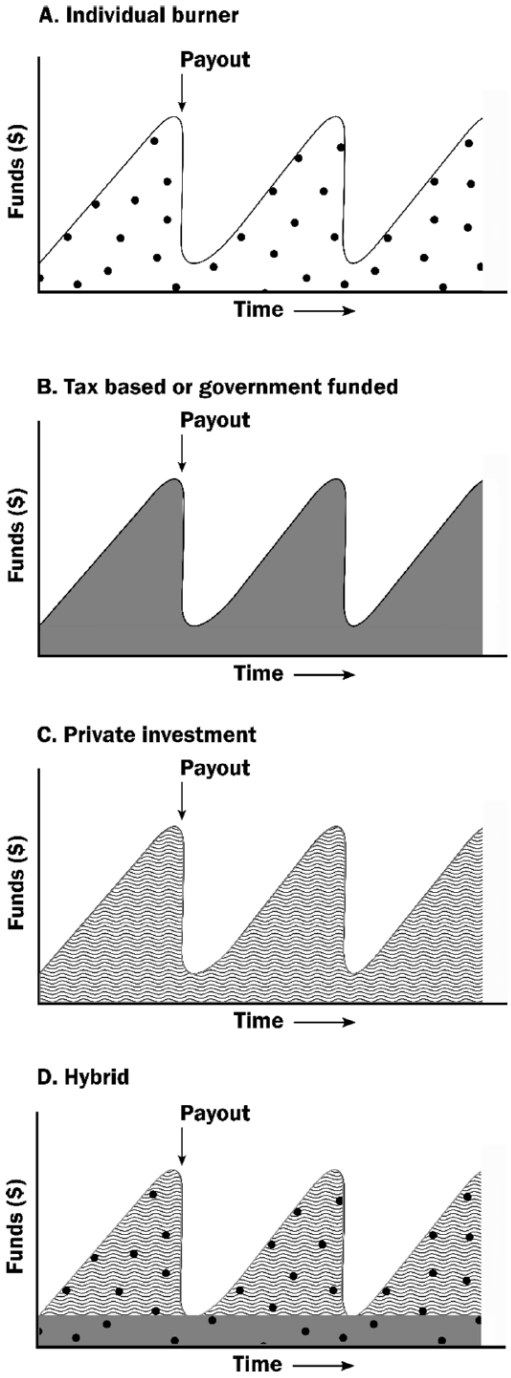

Figure 1. Potential prescribed fire catastrophe fund or bond models that depict an increased funds followed by incidental payouts for damages: (A) model sustained on permits or fees collected from burners; (B) model sustained by tax or fee base or general government funds; (C) model where private insurance or other private-sector funds sustain; and (D) example of a hybrid model established and sustained from diverse public, private, or user funds.