

## Fact Sheet

### Private Wildland Firefighters and the MSPA

- The Department of Labor in the Pacific Northwest recently instructed the US Forest Service to insert language into Virtual Incident Procurement (VIPR) agreements that VIPR contractors are subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).
- Their argument stems from a 1987 9<sup>th</sup> Circuit Court of Appeals decision, *Bresgal V. Brock*, where it was decided that the MSPA applied to migrant agricultural workers working in forestry. In this decision, Judge Farris misquoted the stated examples of forestry work from the declaratory judgement in the appealed District Court (Oregon) decision. The District Court declaratory judgement included the phrase “tree planters, thinners, and other forest laborers”. Judge Farris erroneously referenced this declaratory judgement to instead read “manual forestry work, including but not limited to tree planting, brush clearing, precommercial tree thinning and **forest fire fighting**”.
- It is plainly clear that the MSPA was never intended to apply to private wildland fire companies or their employees, regardless of whether it was intended to apply to manual forestry work or not. Now, 36 years later, the Department of Labor is asserting that all private wildland firefighters are considered forestry workers, simply because forestry workers may sometimes fight fire. This has far-reaching impacts on our ability to safely and efficiently fulfill the duties of our agreements, and even our ability to provide work for our firefighters. The MSPA provides no real protections for workers that are not already provided by other legislation or our VIPR agreements. The net effect is negative for the businesses and the employees, all while threatening the ability for private wildland firefighters to respond to wildfire emergencies.
- Saying that the MSPA applies to all private wildland firefighters because forestry workers sometimes fight fire is like saying regulations applicable to cattle producers should apply to fence builders because ranchers sometimes build their own fences, or that regulations applicable to farmers should apply to herbicide applicators because farmers sometimes apply herbicide to their own crops.
- The application of the MSPA to private wildland companies and their firefighters would significantly increase the administrative burden on these companies and employees, due to unreasonably long (5-weeks plus) DOL registration processes for the company, all drivers, and all vehicles, every single year.
- Should registration of a new employee or vehicle become necessary mid-fire season, it would create an instance where a company would be in violation of the MSPA, should it accept a resource order for a fire assignment without all DOL registrations being in place, resulting in the necessity to turn down the fire assignment, and further resulting in an immediate threat to life and safety.
- Additionally, when a busy fire season only results in 4-5 fire assignments on average, turning down a fire assignment will eliminate 20% - 25% of an employee’s annual income. In a slow season, it could represent 50% or more of an employee’s annual income. This is not worker protection, but rather a worker obstruction.
- Creating a situation that increases the likelihood that businesses will fail and that employees will miss opportunities to work will decimate the private wildland fire workforce at a time when Federal wildland firefighter hiring and retention is also struggling. This could have catastrophic consequences to our nation’s ability to respond to wildland fire emergencies.
- The MSPA language will be inserted into water handling (fire engines and water tenders) agreements in the next 2-3 months, so there is not much time to avert what could amount to a disaster this fire season.
- I am requesting language be inserted into the next appropriate bill “exempting all wildland firefighting activities from the Migrant and Seasonal Agricultural Worker Protection Act” in order to avoid any negative consequences of the MSPA language being inserted into our VIPR agreements.

A video with additional detailed information may be found at <https://westernfire.us/mspa>.