

CALIFORNIA

Can landowners set 'good fires' without getting burned?

Kylie Mohr, E&E News reporter • Published: Friday, June 4, 2021



A prescribed burn last summer in California began in the evening because of high temperatures during the day. Workers burned into the night to lower the threat of wildfires, reduce invasive star thistle and Scotch broom, and improve willow basket material for Karuk weavers. Will Harling

Part two of a two-part series. [Click here](#) for part one.

There's a tug of war in California over who is legally, and culturally, qualified to put fire on the landscape — and who is responsible if that fire gets out of control.

"The tension lies between good fire and unwanted fire," said Charna Gilmore, director of the Scott River Watershed Council.

"Good fire" is an increasingly popular tool for managing wildfire risk. In Northern California, landowners, fire experts and other residents have banded together to form prescribed burn associations, which conduct their own burns on private lands.

But first they must overcome red tape and tricky permitting. Liability insurance is hard to come by, leaving burn bosses potentially on the hook for tens of thousands of dollars if something goes wrong. Meanwhile, fire officials are sometimes wary of the burn associations.

Critics of the California Department of Forestry and Fire Protection, or Cal Fire, say the agency hasn't always known what it can and can't enforce on private land.

"When Cal Fire would tell us we couldn't do something, we'd find the code and say, 'Here's the code, we can legally do this and you're legally obligated to support,'" said Jeffery Stackhouse, one of the co-founders of the Humboldt County Prescribed Burn Association.

Hurdles like these are nothing new for Indigenous people in the area, like the Karuk and Yurok tribes. Fire is used in certain ceremonies and is a traditional method of managing the landscape. Some use burns to encourage the growth of hazel for basket weaving.

Elizabeth Azzuz, a Yurok tribal member of Karuk descent, burns for ceremonial and ecological reasons. She said it's "difficult to pull off a burn when not everybody's on board."

"The hardest piece is getting through the governmental legislation," Azzuz said. "Please make policies that are human friendly and nature friendly. Not everything is about the God-almighty dollar, believe it or not."

Tribes can occasionally get a tribal permit for a prescribed burn, Azzuz said, but generally are subject to the same regulations as everyone else.

A [report](#) prepared for the Karuk Tribe lays out a variety of challenges to cultural burning and prescribed fire. A primary obstacle, it found, is "California's extensive regulation of intentional fire."

Cal Fire says it supports prescribed burns and prescribed burn associations.

"We have greater recognition that this is the future, this is what we need to be doing," said Christine McMorro, resource management communications officer for the agency. "We have foresters and environmental scientists who understand the need for that. So we're working with our firefighters and others to make that transition to doing more prescribed fire."

Liability headaches



Elizabeth Azzuz, a cultural fire practitioner and Yurok tribal member of Karuk descent, discussing a burn for prairie restoration with Blaine McKinnon of the Yurok Tribe's fire department. Elizabeth Azzuz

A major challenge for prescribed burners is securing a kind of insurance known as a loggers broad form policy, also referred to as general commercial liability coverage. Policy options are sparse or nonexistent; many were discontinued due to wildfire losses in California in 2018.

Sometimes private burn bosses carry insurance as the leaders of a fire. Burns on big ranches can often be covered by ranch insurance policies. Some tribal fire practitioners, like Azzuz of the Yurok Tribe, are able to get insurance through their tribal council.

The Karuk fire report notes that "the collapse of the insurance market for intentional fire activities ... has become an impediment to private burning in recent years."

Stackhouse, a burn boss on many prescribed burn association fires, doesn't have liability insurance and could be on the hook if a fire got out of control. The thought keeps him up at night.

"My wife is asking me, 'Why do you do these prescribed fires, and what are you going to do when you lose one?'" he said. "I tell her, 'We're going to be homeless, sorry.' What are we going to do with a \$300,000 bill other than sell our house?"

Prescribed burn advocates would like to see laws change to protect burn bosses from liability. They were initially excited about [S.B. 332](#), which would have changed the state's liability standard so that only practitioners deemed grossly negligent could be billed or held responsible.

But that didn't happen. The passed version narrowed its focus on Cal Fire and limited the circumstances under which the agency can charge for responding to an escaped prescribed fire.

It could help burners working next to lands where the state has financial responsibility for wildland fire protection, but not those conducting burns near federal lands.

Discussions are also underway about a state-backed insurance pool. [A.B. 642](#) hints at the possibility of the state providing an insurance pool for burning or at least trying to find "innovative solutions" so burners have more access to insurance.

Gilmore said the biggest hurdle is often closer to home than the Legislature in Sacramento and that's bringing wary communities along.

"You can't just go start striking up matches," she said. "People would freak out and rightfully so. When you see a fire truck, you get this anxiety and fear. There's just really no understanding about prescribed fire and how you actually bring fire to the ground in a way that is controllable and that you can manipulate and use to your advantage."

'Why do you think you're qualified?'



A prescribed fire in Bridgeville, Calif., in June 2017. Lenya Quinn-Davidson

A maze of paperwork — air quality permits, burn permits and smoke management plans — can also impede prescribed burners.

Air quality districts across the state are inconsistent in their requirements. Some require smoke management plans, and some charge upfront costs. Some permits are good for two years, while others have to be renewed yearly.

In addition, burn permits are decided by regional units of Cal Fire. There are 20 units in the state and local unit chiefs decide whether they want to approve a burn permit, according to McMorrow.

Cal Fire said it's unveiling an improved permit system next month. Permit denials will require specific reasons.

"We are actively working on a new, more transparent burn permit system that will be online, traceable and trackable, and that will be less discretionary," McMorrow said. "Hopefully, we'll be able to ease the burden of the permit system."

PBAs in Northern California need permits to burn from Cal Fire during California's fire season, which runs from May 1 to Nov. 1. But PBA members say there's resistance even in the winter when they're burning on private property and don't need to get approval.

"Permitting has been a challenge," said Lenya Quinn-Davidson, director of the Northern California Prescribed Fire Council, who helped found the Humboldt County PBA with Stackhouse. "At the highest levels of Cal Fire, we are seeing support, and we can't do this on our own. But at the ground level, a lot of these fire professionals are like, 'Wait a minute, this is our job, why do you think you're qualified to do this?'"

McMorrow acknowledged the sentiment and said there was "some concern" with prescribed burn associations for that reason.

"If we don't know the training of folks or what their capabilities are, that's a little scarier as a proposition to say, 'Yeah, go ahead,'" she said.

If a fire goes over its predetermined boundaries, Cal Fire or sometimes local fire units will step in. That's controversial too among some prescribed burners, who say the response can be disproportionate.

"Cal Fire and the Forest Service have responded, sirens blaring, through our communities, to smoke or minor slops on our burns, causing unnecessary fear and panic," said Will Harling, the executive director of the Mid Klamath Watershed Council.

The agency has the authority to recover costs from the people responsible for a prescribed burn if the fire gets out of control and turns into what's considered a wildland fire. Cal Fire's law enforcement arm can issue an administrative warning as well as civil or criminal penalties with fines.

Costs could cover anything from a single fire engine for a couple of hours to a multiday aircraft operation with helicopters and air tankers.

"It all starts adding up," said Norm Brown, a member of the Mendocino County Prescribed Burn Association and former Cal Fire deputy chief. "It can get in the tens of thousands of dollars, conservatively."

The threat of a bill deters folks who are otherwise interested in burning, he added.

"There needs to be some way to come up with when to charge a cost recovery and when not to," Brown said. "There needs to be common sense to it, basically. It does scare 'em away."

Meanwhile, with wildfires "knocking on our door," Harling said, time is running out for fire management agencies, tribes and prescribed burn associations to get in sync.

"It really comes down to acting like we're on the same team," Harling said. "I know Cal Fire leadership are trying to create that dynamic within their rank and file, but we're a ways from that."



Lenya Quinn-Davidson, Thomas Stratton



Will Harling, Will Harling

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