

There's a Renaissance happening in prescribed burn law

By **SIERRA DAWN MCCLAIN**
Capital Press

In 2009, Lenya Quinn-Davidson, then a grad student, helped found the Northern California Prescribed Fire Council, the first of its kind in the West, of which she is now director.

Her vision didn't fit California's culture. She hoped to expand the use of prescribed fire — also called “controlled,” “good” or “Rx” fire — to limit hazardous fuels on the landscape, like brush under trees that can serve as a tinderbox for wildfires.

Prescribed fire is popular in the Southeast. In contrast, apart from indigenous tribes conducting burns, the West has long had an aversion to, and misunderstanding of, controlled burns.

“A person might imagine their neighbor running around with a blowtorch, lighting things up,” said Jenna Knobloch, administrative coordinator at the Oregon Prescribed Fire Council.

Westerners are also likely to assume prescribes fires often escape human control, although nationwide data across decades show escapes happen 1% of the time, human injuries are rare and property damages are typically minor.

It was in this context and culture that Quinn-Davidson started her fire council. For nearly a decade, she envied other states' liability laws, private land burning opportunities and certified burner programs, but she never thought such policies could exist in her state.

“It's California. It's just too different,” she recalls thinking.

Then the 2017 fires hit. Suddenly, people listened. Californians started prescribed fire councils and local burn associations, and lawmakers sought to learn more about controlled burning.

Lately, Quinn-Davidson has been developing curriculum for the state's new burn manager certification program, which she calls a “huge milestone.”

The cultural shift startled many. One California cattle industry leader described it as an awakening or rebirth — a kind of “Renaissance” in fire law.

California isn't alone. Across the West, many states are reevaluating prescribed burning.

But just saying “let's burn more” and doing it are different. Experts say most Western states have legal frameworks that make prescribed burns difficult to conduct and actually deter burn bosses from doing their work.

That could change. Across California, Oregon, Washington and Idaho, new bills and discussions are shaking things up. States are exploring new fire laws relating to liability, training programs for prescribed burning, insurance and air quality requirements.



Courtesy of Lenya Quinn-Davidson

A prescribed, or controlled, fire in California. Prescribed fire is one of many tools used to limit hazardous fuels on landscapes to mitigate wildfire risk.

Liability

John Weir, prescribed fire researcher at Oklahoma State University, said landowners nationwide cite liability concerns as one of the main reasons they're reluctant to use prescribed fire. They fear being sued if fire escapes.

Liability means the legal responsibility a person holds for their acts or omissions.

The U.S. has three main liability standards for prescribed burning: strict liability, which holds a person responsible for harm even if they weren't negligent, simple negligence, which holds a person responsible if they didn't take reasonable care, and gross negligence, which holds someone responsible only if they showed reckless disregard for safety.

Most states have simple negligence standards. Eight use a gross negligence standard.

In states with lower liability standards, people are inclined to do more prescribed burns. Oregon, for example, a simple negligence state, burned only 200,629 acres in 2019, while Florida, a gross negligence state, burned more than 1 million acres the same year.

To incentivize more prescribed burning on private lands, some Western states are exploring making the shift from simple to gross negligence.

Naturally, this strikes fear in critics.

“People are like: ‘Why would you want people burning less safely?’ It's not about that. It's about people having confidence they won't get sued over minor details,” said Quinn-Davidson of the Northern California Prescribed Fire Council.

CA: California is a simple negligence state. Senate Bill 332, in the Legislature, would change state law so a certified burn boss, unless grossly negligent, would not be liable for fire suppression costs in case of an escape.

OR: Oregon is also a sim-



Courtesy of Lenya Quinn-Davidson

A prescribed fire in California.

ple negligence state. House Bill 2571, moving through the Legislature with bipartisan support, would prompt a study of prescribed fire liability options. Kyle Williams, director of forest protection at the Oregon Forest and Industries Council, said OFIC supports the bill.

WA: In 2018, Washington passed House Bill 2733, which increased liability protection from simple to gross negligence for anyone certified by the state as a burn manager. The new certification program is rolling out this spring.

ID: Idaho is a simple negligence state. Heather Heward, chair of the Idaho Prescribed Fire Council, said Idaho is in early conversations about changing liability standards, with no legislation introduced yet — “in the rafters and watching this stuff unfold in other states first.”

Some states apply the gross negligence standard to the public. Others, like Washington under its new law, only offer that protection to certified burn managers.

Certified burn manager programs

A certified burn manager program trains and certifies private individuals, like landowners, to conduct prescribed burns. This is different from an ag burn permit, which has a narrower farm application.

and burn bosses don't receive improved liability protection. If passed, Senate Bill 332 would improve liability protection for certified burners.

OR: In 1999, Oregon's Legislature passed a bill authorizing the State Board of Forestry to create a prescribed burn certification program, but the program was never created. House Bill 2572, moving through the Legislature now, would require the Board to consult with the Oregon Prescribed Fire Council about how to create a certification program. Williams of OFIC said he supports the bill but hopes any certification program created will be voluntary.

WA: Washington is on a roughly parallel track with California. In 2018, Washington passed House Bill 2733, which created the certification program the state is rolling out now. Unlike California's model, it will offer burn bosses the gross negligence standard.

ID: Idaho does not have a certified burn manager program yet. Experts say Idaho is again watching to see what other states do first. Any program Idaho creates will probably be voluntary.

Insurance

Weir of Oklahoma State University said it's rare for insurance companies anywhere in the U.S., but especially in the West, to insure prescribed fires.

Some insurance companies say they'd be more inclined to back prescribed burners if those burners had gross rather than simple negligence liability. This is on lawmakers' minds.

CA: California fire experts and lawmakers are in conversations about a possible state-sponsored insurance program for prescribed burns. This could be controversial, as the primary funding source would probably be taxpayers.

OR: Oregon's House Bill 2571 would prompt a study of various insurance options. Insiders say Oregon will try to move the private insurance market first, but Oregon is also having conversations about state-backed insurance.

WA: Like California, Washington is in early conversations about a possible state insurance plan for prescribed burns, but no legislation has been introduced.

ID: Idaho is watching what other states do before making a move, but tends to favor incentivizing private insurance companies to insure burns.

Smoke

In most of the U.S., liability is the primary force deterring people from burning. But in

the West, studies show stringent air quality standards are equally likely to limit people's willingness and ability to conduct prescribed burns.

First, across the West — especially in Oregon and Washington — it's hard to get a smoke permit. And secondly, burners can be held to a simple negligence standard for smoke impacts, such as when smoke blows across a road, limiting visibility.

But experts say “rumblings” of potential change can be heard if you listen closely.

CA: In California, local air districts are in control, meaning what a burn boss can do varies by region. For a 300-acre burn in Humboldt County, a burner must pay \$1,310 in fees. The exact same burn in Siskiyou County requires no fees. California officials are currently in conversations about how to modify district-by-district guidelines to encourage more prescribed fire.

OR: Experts say Oregon's requirements for getting a prescribed burn smoke permit are “very strict.” At the local level, counties are crafting community response plans to help alleviate the burden. At the federal level, Sen. Ron Wyden, D-Ore., has introduced the National Prescribed Fire Act of 2020, a bill that would push for flexibility under the Clean Air Act to allow for more controlled burns.

WA: Chris Martin, chair of the Washington Prescribed Fire Council, said Washington has “some of the most restrictive smoke management plans in the country.” State agencies are currently reviewing smoke guidelines and considering potential changes, but Martin said it will be hard for officials to alter rules because no one wants to be perceived as lowering air quality standards.

ID: Idaho's Department of Environmental Quality is also in conversations this spring about developing new air quality rules to promote prescribed burns.

National picture

On the federal level, too, lawmakers are considering how to expand prescribed fire. Both Wyden and Sen. Dianne Feinstein, D-Calif., introduced bills after 2020's devastating fires — proposals that would create more prescribed fire councils, coordinate federal and state land laws and provide funding for controlled burning.

“I never thought I'd see this day,” said Quinn-Davidson, who created the West's first prescribed fire council. “There's so much interest in prescribed fire. I'm just blown away.”

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