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Liability and Prescribed Fire:  
Perception and Reality

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Abstract

Changing climate and fuel accumulation are increasing wildfire risks across the western United States. This has led to calls for fire management reform, including the systematic use of prescribed fire. Although use of prescribed fire by private landowners in the southern Great Plains has increased during the past 30 yr, studies have determined that liability concerns are a major reason why many landowners do not use or promote the use of prescribed fire. Generally, perceptions of prescribed fire – related liability are based on concerns over legal repercussions for escaped fire. This paper reviews the history and current legal liability standards used in the United States for prescribed fire, it examines how perceived and acceptable risk decisions about engagement in prescribed burning and other activities differ, and it presents unanticipated outcomes in two cases of prescribed fire insurance aimed at promoting the use of prescribed fire. We demonstrate that the empirical risk of liability from escaped fires is minimal (< 1%) and that other underlying factors may be leading to landowners' exaggerated concerns of risk of liability when applying prescribed fire. We conclude that providing liability insurance may not be the most effective approach for increasing the use of prescribed fire by private landowners. Clearly differentiating the risks of applying prescribed fire from those of catastrophic wildfire damages, changing state statutes to reduce legal liability for escaped fire, and expanding landowner membership in prescribed burn associations may be more effective



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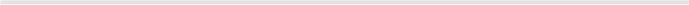
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alternatives for attaining this goal. Fear of liability is a major deterrent to the use of prescribed fire; however, an evaluation of the risks from escaped fire does not support perceptions that using prescribed fire as a land management tool is risky. Prescribed burning associations and agencies that support land management improvement have an important role to play in spreading this message.

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### Key Words

legal statutes; liability insurance; negligence; prescribed burn association; risk assessment



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