



Montana Legislative Services Division

Office of Research and Policy Analysis

TO: EQC members

FROM: Leanne Heisel

DATE: February 10, 2010

RE: HJR 30 study of fire suppression activity to date and options for progressing

At your January meeting, I indicated that I would provide you with a summary of your work so far on the HJR 30 study of fire suppression and solicit your comments and suggestions on where to go from here.

This document reviews the HJR 30 resolution; recaps the HJR 30 portion of your work plan and how you chose to conduct the study; reviews the agenda items and information you have heard and how that information relates to the Fire Suppression Committee's conclusions; reports 2010 climate predictions as released by the National Weather Service and what that may or may not mean for the 2010 fire season; and requests your guidance on how to proceed from this point.

HJR 30

To refresh your memory, HJR 30 requests that an interim committee:

(1) analyze whether and how each of the recommendations made by the Fire Suppression Committee established by Chapter 1, Special Laws of September 2007, in its 2008 report to the 61st Legislature has been implemented and which of those recommendations should be amended or reinforced;

(2) examine additional needs of local and state fire suppression entities;

(3) further investigate state and federal forest management policies, including how those policies may contribute to an increased number of wildfires, greater safety risk to firefighters and the public, and compromised effectiveness of fire suppression efforts, and avenues the Legislature may pursue to effect changes in those policies;

(4) examine the impact of climate change on forest lands; and

(5) examine any other aspect of wildland fire suppression and land management that the interim committee determines to be appropriate.

WORK PLAN AND STUDY APPROACH

In your adopted work plan, you chose to conduct the HJR 30 study by monitoring FSC's recommendations in light of the 2009 and 2010 fire seasons, receiving analyses of DNRC's wildland fire suppression budget, monitoring implementation of federal wildland fire suppression initiatives, and developing recommendations, if you determine any are appropriate. Council members were also asked to read the Fire Suppression Committee's final report and, with

that information and your work plan in mind, request any specific information or presentations as the interim progresses.

Considering your work plan decisions, the wide ranging issues you are exploring this interim, your consistently busy agendas, and the relatively mild 2008 and 2009 fire seasons which have, naturally, modified the legislature's priorities, staff has not inundated you with repeats of Fire Suppression Committee information and analyses; rather provided reports and updates on: fire season costs; federal policies; WUI developments and agency rulemaking; and specific Council member requests.

STUDY ACTIVITY THROUGH FEBRUARY 2010

The following table illustrates the presentations you have received and related Fire Suppression Committee comments or recommendations.

EQC Meeting	Information Presented	Council request for follow-up or additional information	Associated FSC comments, predictions, recommendations
05/28-29/09	HJR 30 study details, Summary of FSC's work, presentation of work plan options	Council members to read FSC report, "The Price of Flame" and request specific follow-up information or pose questions to staff; no specific questions were received	The legislature must decide if it wants a committee to follow up on all the recommendations made by the FSC. Many do not need bills or laws implemented but there should be some entity to determine whether or not the recommendations are being followed up by other agencies and people.
09/10-11/09	<ul style="list-style-type: none"> ▶ Update on SB 51 rulemaking (DNRC, DLI WUI development best practices and DLI fire mitigation construction techniques) ▶ Federal fire policy and state fire policy; similarities, differences ▶ DNRC Perspectives Regarding 2009 Federal Wildfire Policy Implementation ▶ 2009 Fire season update ▶ Review and discussion of "The Price of Flame" 	None received	<p><u>WUI Comments</u></p> <p>Development in the wildland-urban interface will continue to increase without adequate controls on land development.</p> <p>Declining dedication of funds for fuels reduction projects and lack of landowner incentives to treat fuels on private land will ensure continued risk of complex wildland-urban interface fires.</p> <p>Without a concerted and coordinated effort from insurers to educate policyholders about their wildfire risks and offer incentives for properly mitigating their risks, many homeowners will continue to ignore the advisability of survivable space, placing themselves and firefighters at risk.</p> <p>According to a report provided for DNRC and FSC by Headwaters Economics (Appendix C and p. 47), the amount of money needed for fire suppression will continue to grow as additional homes are built in the wildland-urban interface.</p> <p>A large number of homeowners do little to protect their homes.</p>

EQC Meeting	Information Presented	Council request for follow-up or additional information	Associated FSC comments, predictions, recommendations
	<ul style="list-style-type: none"> ▶ Discussion of methodology used in Headwaters Economics report, prepared for FSC, analyzing costs of fire suppression in the wildland-urban interface ▶ DNRC update on SB 131: Designation of parcels in the WUI 		<p>The state and local governments cannot conduct evacuations on a scale that would be necessary in the event of a fire year similar to 1910.</p> <p>A significant amount of money should not be dedicated to hazardous fuels reduction unless private property owners are compelled to manage their property to reduce wildfire risk either through enhanced incentives or required measures.</p> <p><u>WUI Recommendations (see attached)</u> FSC made a number of specific recommendations to dealing with their concerns related to development and wildland fire mitigation in the WUI . Those are attached.</p> <p><u>State and Federal Policies</u> While cooperation among local, state, and federal wildland fire agencies has by most accounts been excellent, greater divergence in fire management policies, strategies, and interpretation of values in need of protection may erode that cooperation and negatively impact suppression efforts in the state.</p> <p>Federal, state, and local officials must meet before and after every fire season to discuss fire suppression plans and policies and to review decisions that were made regarding policy, land management, cost sharing, and compensation to private entities and local fire and emergency response agencies.</p> <p>State and federal wildfire suppression agency officials must discuss their respective long-term wildfire policies and continue to identify any differences in policies so the state is prepared to deal with the differences during the wildfire season.</p>
01/07-08/2010	<ul style="list-style-type: none"> ▶ Update on 2009 fire season costs ▶ Use of unspent suppression 	Overview of trees and water -- evapotranspiration	<p><u>Costs</u> When the special session convened on September 5, 2007, costs for the 2007 season amounted to \$80 million and were climbing. Once cost negotiations among all involved agencies had concluded,</p>

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	<p>appropriation</p> <p>▶ National Fire Policy Conference report</p>	<p>and impact on wildfire susceptibility</p>	<p>the state faced a liability of over \$40 million, more than twice the average amount calculated over a 7-year period.</p> <p>HB 1 appropriated \$39 million from the state general fund to the Department of Natural Resources and Conservation (DNRC) "for wildfire suppression and for wildfire disaster response and recovery activities in Montana", and \$3 million from the general fund to the Department of Military Affairs for the same purpose.</p> <p>When all factors are combined, fire suppression and the business aftermath are becoming increasingly difficult to manage and increasingly difficult for the state to fund. The traditional funding mechanism to pay state costs through a supplemental appropriation to DNRC was not viable for the costs associated with the 2007 fire season, resulting in the need for a special legislative session to appropriate the money. This prompted the question of who should pay the state's share into the future. The options are:</p> <ul style="list-style-type: none"> a. landowners in a designated wildland-urban interface; b. landowners who benefit from direct protection services and county cooperative assistance; c. all taxpayers through the state general fund; d. insurance companies and other beneficiaries of fire suppression; or e. some combination of the above. <p>Wildland fires are a part of life in Montana. Given the identified pressures and financial considerations, and pending any changes in federal fire policy, the outcome of future fire seasons is uncertain. The state must examine proposals to make changes to the status quo to positively impact fire suppression activities in the years to come.</p> <p>Increasing spending on fire suppression at the federal, state, and local levels will continue to divert funds away from potential fuels reduction projects.</p>

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			<p>Declining federal assistance will contribute to the need for additional state funding to actively engage in fire suppression.</p> <p>Firefighters use all available resources to suppress fires and the only thing that keeps the state budget from going broke is the lack of resource availability.</p> <p>FSC anticipates a \$200 million fire year liability for the state budget sooner or later. Costs incurred by the state may be reduced if there are fast-moving, large fires that simply burn through thousands of acres before resources are available. Other than that limitation, costs will continue to grow.</p> <p>The legislature should consider short-term and long-term state and local funding of state and local fire agencies.</p> <p>The committee strongly believes that simply providing funding will not solve the long term problems of fire costs as well as what has been described above in the conclusions. If the legislature only provides funding and does not deal with the other issues, time, money, and effort will have been wasted on this project.</p> <p><u>Specific Funding Recommendations (see attached)</u> FSC made a number of specific funding recommendations, based on projected state revenue, DNRC's budget, and the committee's recognition of the challenges.</p>
03/04-05/2010	<ul style="list-style-type: none"> ▶ HJR 30 study activity to date ▶ Evapotranspiration 		<p><u>Outlook</u> There will be another fire year similar to 1910 and the state is not prepared for fires of that scale.</p> <p>The Fire Suppression Committee is convinced of the potential for catastrophic wildfires to occur in</p>

EQC Meeting	Information Presented	Council request for follow-up or additional information	Associated FSC comments, predictions, recommendations
	<ul style="list-style-type: none"> <li data-bbox="432 410 943 443">▶ Seasonal climate outlook <li data-bbox="432 475 943 508">▶ Discussion of study direction 		<p data-bbox="1274 410 1596 443">Montana in the near future.</p> <p data-bbox="1274 475 2440 573">The forests in Montana are growing more fuel, more trees are dying, and the state is headed toward larger fires. Either we do more logging, more prescribed burns, or other fuel reduction or we have more dangerous fires.</p> <p data-bbox="1274 605 2440 703">Stress associated with longer wildland fire seasons will continue to rise, affecting landowners, firefighters, business owners, and local, state, and federal agency staff, as well as other members of the public.</p> <p data-bbox="1274 735 2440 833">The Fire Suppression Committee recognizes that because of climactic conditions, rugged terrain, dense vegetation, concern for firefighter safety, and the nature of fire-dependent ecosystems, some fires cannot be extinguished, no matter what suppression strategy may be employed.</p>

WHERE TO GO FROM HERE

The average fire seasons of 2008 and 2009 make comparing many of FSC's recommendations to what may be happening on the ground somewhat difficult. FSC was organized in response to recent lengthy, severe, and costly fire seasons and it was that perspective--as well as a state budget surplus--that prompted many of the committee's comments.

However, keeping a legislative eye trained on the subject provides some continuing education on costs and policy considerations involved when large-scale project fires and dangerous fire conditions develop. The conditions that alarm many fire managers and that alarmed the committee members still exist, even as fewer resources are available to respond to them.

One of FSC's primary concerns was that average fire seasons would lull citizens and policy makers into complacency, while trends in duration and severity of fires--not to mention diminishing funding sources with which to mitigate wildland fire and engage in fire suppression--suggest a need for heightened vigilance and creative thinking.

It is of course too early to make predictions about the 2010 fire season. When asked the question this time of year, fire managers often say "Ask me in November." So many factors, in addition to precipitation and temperatures, play into what happens between May and October--wind, lightning frequency, and human activity among them. Organizations that track climate trends, however, may offer some clues.

- ▶ The National Weather Service's Climate Prediction Center has released precipitation and temperature outlooks for 2010. I have enclosed color maps of those forecasts for your information. The maps are small, but the CPC's website provides larger views and all maps on one page. The website is: http://www.cpc.noaa.gov/products/predictions//multi_season/13_seasonal_outlooks/color/churchill.php. This link will also be available on EQC's website.
- ▶ According to CPC's outlook, warmer-than-average temperatures across Montana are probable from February through August, and there are generally equal chances for above-average, average, and below-average precipitation for most of the year, with possible below-average precipitation expected during July, August, and September.
- ▶ The narrative that accompanies the National Wildland Significant Fire Potential Outlook for the Northern Rockies prepared by the National Interagency Fire Center, headquartered in Boise, ID, states:

Current snow pack amounts west of the divide range from 50-75% of normal and little improvement is expected this spring. Above normal temperatures and below normal precipitation is expected, especially for western Montana and Idaho during February. Spring months during El Niño conditions also tend to be warmer than normal for the area, while precipitation amounts tend to be near or

slightly below normal. These conditions could lead to an early snow melt and accelerate the drying of exposed fuels, leading to an early onset of fire season. After the snow melts, there will be a chance of pre-green up grass fires east of the divide in late April to mid-May.

At this point in the interim, Council members may consider what you have learned from reviewing FSC's work and the information presented during the last three meetings to determine how you wish to proceed. You have a number of options to discuss at your March meeting.

1. You may wish to continue to receiving follow-up information to be provided upon request, in a manner similar to previous meetings, keeping apprised of developments during the 2010 fire season, which may influence the kind of information in which you'll be interested.
2. Focus on the impacts of budget reductions and declining revenue on wildfire mitigation and fire suppression capabilities.
3. Revisit selected FSC comments or bill drafts in light of the 2010 fire season and consider revising them, offering new recommendations, or suggesting bill drafts or funding strategies.
5. Other?

In the meantime, please feel free to contact me with any questions or requests for information. My email is lheisel@mt.gov and my direct phone is 444-3593.

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A. Homeowners

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
1.	Amend the state fire policy statute (76-13-115) to make it clear that homeowners have responsibility for protecting their homes from wildland fires.	X	LC0479		

B. Wildland-Urban Interface: Land Use Planning, Insurance, Building Standards

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
1.	Local agencies and state agencies should study and consider moving toward the Australian concept of evacuations and protection of properties within regions of Montana.				
<u>Staff Comment:</u> In Australia, residents in fire safe homes who do not choose to evacuate early are encouraged to stay and shelter in place as the fire front moves over the home. See Appendix E.					
2.	Create and fund pilot project for fuels reduction on state land in the wildland-urban interface -- use private contractors who then can be shifted to fire suppression when needed.	X	LC0477	X	X
<u>Staff Comment:</u> An appropriation of \$3 million in HB 2 would be needed to implement the program.					
3.	Require insurance providers to offer discounts for insureds who maintain their homes and property to certain standards within a designated WUI.	X	LC0476		
<u>Staff Comment:</u> The standards under development in the rulemaking required to be completed by DNRC and DLI under 76-3-104(8) and 50-60-901, respectively, could be the standards for which incentives must be offered under this proposal.					
4.	Give the State Auditor the authority to review all property insurance policies to make sure that insurance companies have in place an ongoing education, training, or premium incentives aimed at protection of homeowners' properties from wildland fires. This may include educational material, home inspections, or discounts for proper hazard mitigation and fire protection activities.	X	LC0475		
5.	Require insurance companies to notify their insureds of the best practices developed during DNRC rulemaking pursuant to 76-13-104(8) and encourage their implementation.	X	LC0474		

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
<p><u>Staff Comment:</u> Use of best management practices for timber sales and logging are the inspiration for this proposal. Section 76-13-101(2) states: "To achieve the conservation of natural and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."</p>					
6.	<p>Send a letter to insurance providers authorized to operate in Montana that FSC encouraging them to educate homeowners who live in the WUI how to properly maintain their property to minimize wildland fire risks.</p>				
7.	<p>Create a Montana Fire Management Easement Program to create an incentive-based voluntary way for landowners who take a series of defined actions to reduce the risk of catastrophic fire and to be compensated for taking those actions.</p> <p>To comply, a landowner must live within a wildland-urban interface area described or identified through a Community Wildfire Protection Plan. To qualify for the program, the landowner must:</p> <p>(a) agree to limit further residential development on the property to a maximum of one additional residence;</p> <p>(b) agree to work with a land trust and a professional forester or designated local fire official to site any new residence based on conservation values and fire protection priorities;</p> <p>(c) participate in a Montana Extension Forestry Forest Stewardship Workshop or work with a professional forester to create a Forest Stewardship Plan for the property;</p> <p>(d) comply with defensible space standards spelled out in the DNRC "Fire Protection Guidelines for Wildland Residential Interface Development";</p> <p>(e) build any new structures using firewise construction materials as adopted by the Montana Department of Labor and Industry. Structures must comply with Uniform Building Codes and Uniform Fire Codes.</p> <p>The enforcement of these construction/residential measures would be initially addressed by DNRC, the Montana Department of Labor and Industry and local fire officials. Land trusts would be responsible for annual monitoring and enforcement duties.</p> <p>A qualifying landowner would be eligible to receive an income tax credit.</p>	X	LC0473	X	X
<p><u>Staff Comment:</u> There may be a need for FTE at DNRC and DLI to provide the enforcement and inspection. Local fire entities may also need funding to assist</p>					

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
	with these duties.				
8.	Require the Department of Labor and Industry to develop building standards for houses built within the WUI. DLI would have the inspection authority.	X	LC0472	X	
<p><u>Staff Comment:</u> (1) The rules being developed under 50-60-901 will provide a list of items for local governments to consider during subdivision review when determining whether wildfire hazards in a proposed subdivision can be overcome by construction techniques.</p> <p>(2) This proposal would also need to identify which entity would be responsible for delineating the WUI and require that delineation so everyone knows where this law is effective. The committee may want to consider the proposal applying to "high fire hazard areas" rather than the WUI, however, some entity will still need to be responsible for identifying those areas.</p> <p>(3) The committee may want to consider requiring modification and adoption of the International Urban Wildland Interface Code by DLI. This was among the original proposals considered by the WUI subcommittee.</p>					
9.	Require definition of the WUI on a statewide level so that it is clear to all communities what constitutes a threat.	X	LC0480		
10.	Change the state fire policy statute (76-13-115) to make it clear that homeowners have responsibility for their own home protection from wildland fires.	X	LC0479		
11.	Send a letter to the state fire units and local fire units that urges them to make clear to homeowners and landowners what their capabilities are to fight fires and the types of fires they will attempt to suppress.				
12.	Allow local regulation/enforcement of mitigation measures in the WUI. (a) Authorize a local government to regulate and enforce fire mitigation measures such as vegetation management, use of fire resistant building materials. (b) It would be discretionary for local governments. (c) If a local government chooses to implement this authority, it would be required to designate the area where these regulations would be in effect. (d) There would be no protest provision, but an appeals process and possible variance opportunity.	X	LC0478		

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
	(e) Incentives may encourage local governments to "opt in".				
<p>Staff Comment: Standards required could be those implemented in rule under 76-13-104(8) and under 50-60-901 and 50-60-902, pursuant to SB 51(2007).</p>					
13.	<p>Grant funding for local prevention and mitigation programs.</p> <p>Appropriate money to DNRC from the general fund to use for a grant program. Local governments could apply for funding programs to:</p> <ul style="list-style-type: none"> (a) help planning offices delineate the WUI; (b) target WUI homeowners with mitigation efforts; (c) establish and maintain prevention programs. 	X	LC0482	X	X
<p>Staff Comment: The Western Wildland Urban Interface Grant Program, administered by DNRC, uses State Fire Assistance funding provided by the federal government as part of the National Fire Plan to assist people and communities in mitigating wildfire risk in the WUI. This proposal would use state funds for similar purposes.</p>					
14.	<p>Authorize local governments to form a taxing jurisdiction to pay for fuel reduction projects and tax either through sales or property tax to protect their homes. Authorize local governments to use the revenue from an existing sales tax or any new local option tax for fuel reduction projects around communities.</p>	X	LC0481		
15.	<p>DNRC should provide regular updates of the list of communities at risk for wildfire (available on FSC's website at http://leg.mt.gov/fire) and identification of the top 10 highest-risk communities.</p>				
16.	<p>DNRC should institute a Montana Firewise month in June, during which special programs and educational events directed at property owners in the WUI would occur.</p>				

C. Funding for Fire Protection, Suppression, Fuel Treatment

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
1.	The Appropriations and Finance and Claims committees should review this report, public comments made to FSC about DNRC's fire suppression program, and how the agency has responded to those comments as it reviews DNRC's budget.				
2.	State agencies that own or manage land should develop management plans for properties at risk of wildland fire.			X	
3.	Increase the statutorily-appropriated funding for emergencies and provide that the increase be used only for wildland fire; provide for ongoing fund transfers to the fire suppression account; remove the termination date for the fire suppression account; allow a certain amount in the account to be used for: (a) additional county co-op equipment; (b) fuels mitigation grant programs; (c) rural fire assistance matching grants for counties.	X	LC0503	X	X
4.	Increase the statutorily-appropriated funding for emergencies and provide that the increase be used only for wildland fire; extend the termination date for the fire suppression account and the statutory appropriation of that account.	X	LC0504	X	X
5.	Collection of fire protection funds should be made simpler and the collection problems associated with condominiums should be fixed.	X	LC0483	X	
6.	Remove the requirement in 76-13-207 that the total amount of assessments received by DNRC from landowners not exceed one-third of the amount specified in the appropriation for fire protection costs.	X	LC0502	X	X
<u>Staff Comment:</u> Revenue generated from assessments would continue to rise with increased parceling of forest land.					
7.	Create separate line item in HB 2 for the county co-op program, which should equal one-third of DNRC's fire program.				X
<u>Staff Comment:</u> Based on FY 10-11, that would be about \$800,000.					
8.	Fund acquisition of 25 more engines each year for the next 2 years of the biennium.			X	X

	Recommendation	Bill Draft	Bill Draft #	Include in Legislative Budget Analysis	Include in House Bill 2
9.	Allow tribal fire departments to participate in county co-op program.	X	LC0484	X	X
10.	The Legislative Fiscal Analyst assigned to DNRC should provide the Finance Committee with regular updates on cost sharing agreements.				

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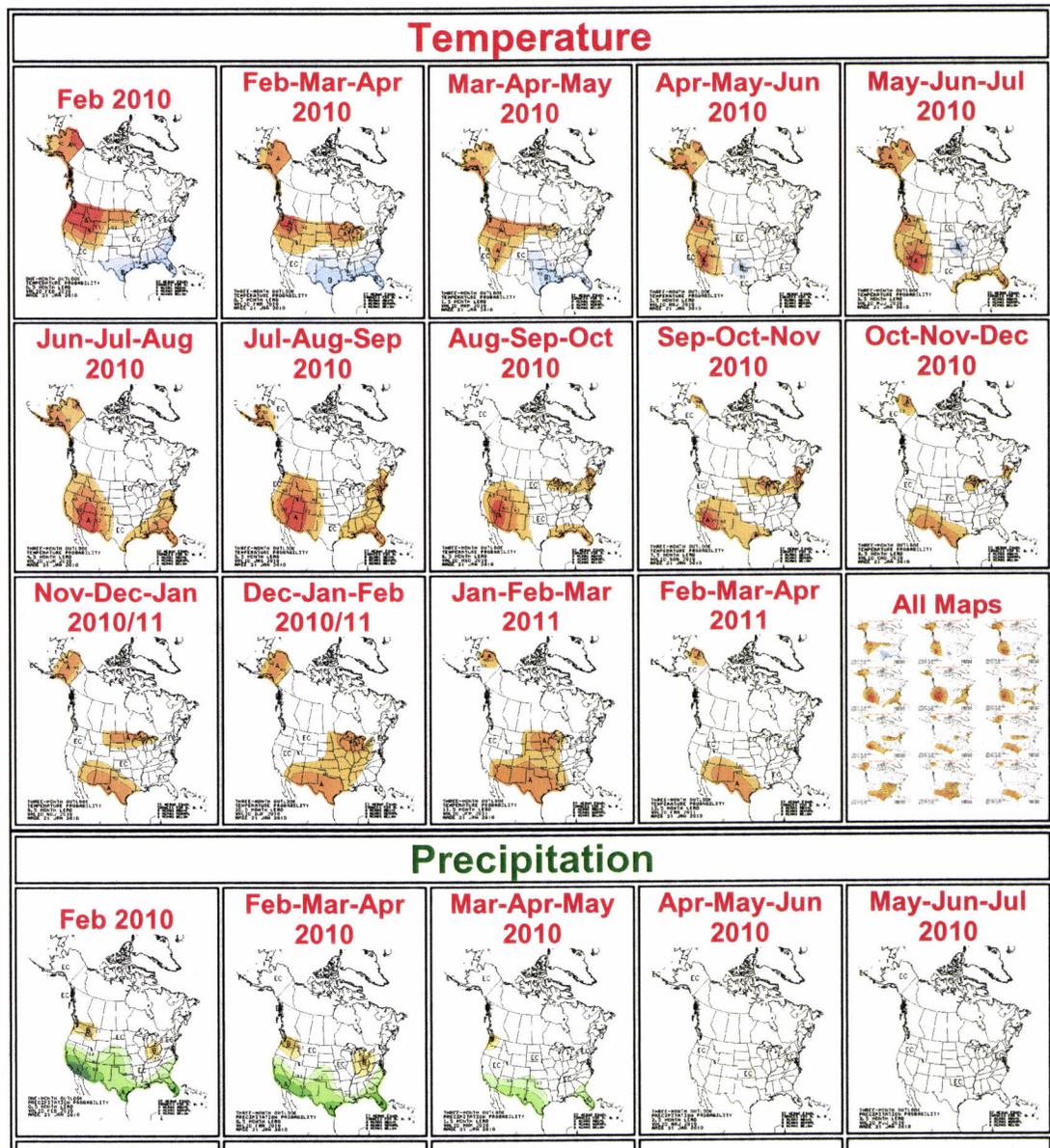
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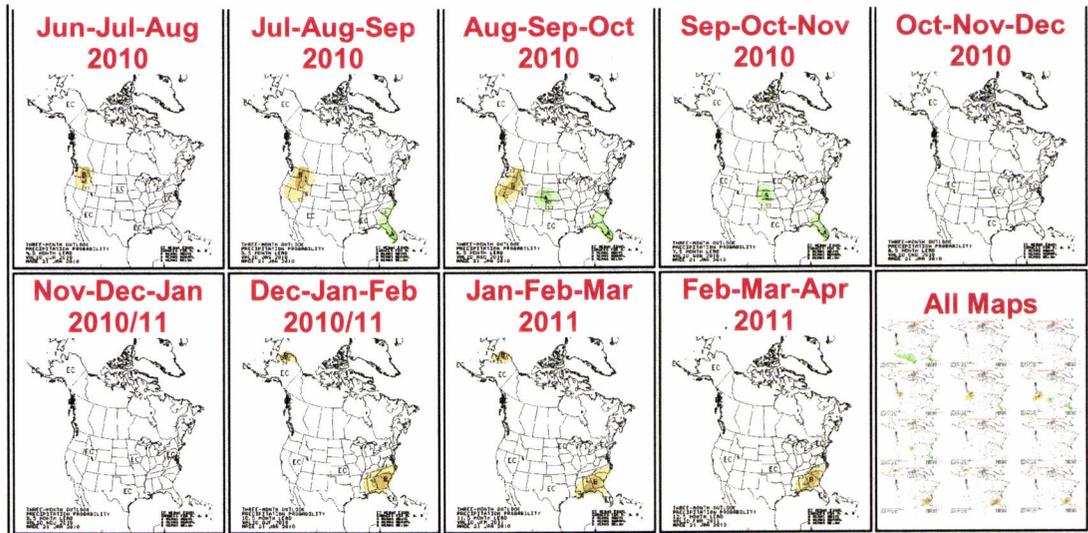
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