



AN ACT REVISING LAWS RELATED TO WATERSHEDS AND CATASTROPHIC FIRES; FINDING THAT WATERSHEDS AND THE DRINKING WATER SUPPLIES OF MANY MONTANA COMMUNITIES ARE AT RISK FROM CATASTROPHIC FIRES IN FEDERALLY MANAGED WATERSHEDS; DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ANALYZE FOREST LAND FOR POTENTIAL ZONES OF INFESTATION AND ADVOCATE FOR AUTHORITY TO CONDUCT WATERSHED RESTORATION AND PROTECTION SERVICES ON FEDERAL LAND; AUTHORIZING THE ATTORNEY GENERAL TO INTERVENE IN LITIGATION OF FEDERAL FOREST MANAGEMENT PROJECTS; AND AMENDING SECTIONS 76-13-301, 76-13-303, 76-13-701, AND 76-13-702, MCA.

WHEREAS, properly functioning watersheds are critical to Montana's economic prosperity, the health of its citizens, and the culture of the state but the management of many of these watersheds has left them impaired or at risk for not functioning properly; and

WHEREAS, the Montana Constitution provides that the waters of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and

WHEREAS, all persons have a constitutional right to a clean and healthful environment, which includes the protection and restoration of watersheds; and

WHEREAS, the state has inherent power to enact reasonable legislation for the health, safety, and welfare of the public, which includes the protection of drinking water supplies that originate in watersheds; and

WHEREAS, wildfires in critical watersheds and across Montana degrade the quality of our water by overloading streams with sediment and nutrients and clogging our air with pollutants from smoke, resulting last year in 88 days on which the air quality was poor because of smoke; and

WHEREAS, the 2012 fire season was severe, with suppression costs to the state topping \$50 million, and comprehensive watershed restoration and protection could significantly reduce fire season costs by preventing fires.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-13-301, MCA, is amended to read:

"76-13-301. Policy. (1) It is the public policy of the state to:

(a) protect and preserve forest resources from destruction by forest insect pests and tree diseases;

(b) to protect the forests and watersheds of Montana, and restore those watersheds that are most affected by insect pests and tree diseases and are critical to water supplies;

(c) ~~to~~ enhance the production of forests;

(d) ~~to~~ promote the stability of forest industry; and

(e) ~~to~~ protect the recreational values of the forest, ~~and to~~.

(2) It is further the public policy of the state to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases."

Section 2. Section 76-13-303, MCA, is amended to read:

"76-13-303. Creation of zone of infestation. (1) ~~Whenever the department determines that~~ The department shall annually produce a list of areas where:

(a) there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and that the infestation is of such a character as to be a menace to the timber or forest growth of this state; and

(b) an infestation of forest insect pests or forest tree diseases in a watershed makes the watershed at risk for wildfire, places the functionality of the watershed at risk, or creates other conditions that threaten the watershed, ~~the~~

(2) ~~The department shall, with the approval of~~ present the list annually to the board of land commissioners, ~~declare the existence of~~ to determine if a zone of infestation exists and, if so, and shall fix the boundaries ~~so as to~~ definitely describe and identify the each zone."

Section 3. Section 76-13-701, MCA, is amended to read:

"76-13-701. Findings and policy. (1) The legislature finds that the sustainable management of public forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential

for the benefit of all Montanans.

(2) The legislature finds that public forests in Montana should be sustainably managed to maintain biodiversity, productivity, regeneration capacity, vitality, and potential to fulfill relevant ecological, economic, and social functions.

(3) The legislature finds that sustainable forest stewardship and management of Montana's public forests requires a balanced approach that ensures a stable timber supply, active restoration, healthy watersheds and fish and wildlife habitat, areas for natural processes, and allowances for multiple uses.

(4) The legislature finds that:

(a) there is overwhelming evidence that the management, protection, and conservation of watersheds in Montana is critical to the well-being of the state;

(b) the water supplies of some of the state's most populous cities and surrounding areas originate in federally managed watersheds that are at risk for catastrophic wildfire, the severity of which could be reduced by proper management;

(c) a catastrophic wildfire in any one of those municipal watersheds would result in ash and sediment inundating and degrading the water supply, leaving tens of thousands of residents without drinking water, creating a severe public safety situation, and decimating millions of dollars worth of water infrastructure;

(d) a burned-out watershed also affects the timing of snow melt and stream flow, which detrimentally affects irrigation and fisheries; and

(e) federal land managers are not giving due consideration to the constitutionally protected water rights of the state and its citizens, the exercise of which would be impaired by a catastrophic wildfire.

~~(4)~~(5) The legislature declares that it is the policy of this state to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities."

Section 4. Section 76-13-702, MCA, is amended to read:

"76-13-702. Duties -- authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest

landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status and coordination with federal agencies;

(6) shall advocate that Montana be included in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperative agreement or contract that would authorize the state forester to provide watershed restoration and protection services on federal land. Watershed restoration and protection services included in the good neighbor policy must include the authority to:

(a) treat insect-infested trees;

(b) reduce hazardous fuels; and

(c) conduct any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.

~~(6)~~(7) may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

~~(7)~~(8) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

~~(8)~~(9) has the authority to intervene in litigation or appeals on federal forest management projects that:

(a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; or

(b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety or to hamper watershed restoration and protection;

~~(9)~~(10) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

~~(10)~~(11) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

Section 5. Federal forest management projects -- attorney general authority to intervene. To fulfill the purposes of Title 76, chapter 13, the attorney general has the authority to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 5].

- END -

I hereby certify that the within bill,
SB 0217, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 217

INTRODUCED BY HAMLETT, CONNELL

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