DRAFT REPORT FOR SJ15 WORK GROUP

6/25/14

The management of Forest Service and Bureau of Land Management lands in Montana has a significant and direct bearing on Montana's environment, education funding, economy, culture, wildlife, and the health, safety, and welfare of our citizens

Evaluating Federal Land Management in Montana

An identification of significant risks, concerns, and solutions

Environmental Quality Council 2013-14

Environmental Quality Council Members

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. EQC members can serve up to three 2-year terms if re-elected and reappointed. Members must be appointed before the 50th legislative day in accordance with 5-16-101, MCA.*

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* This information is included in order to comply with section 2-15-155, MCA.

This report is a summary of the work of the Environmental Quality Council, specific to the EQC's 2013-2014 study of federal land management as required by Senate Joint Resolution No. 15 and outlined in the 2013-14 work plan. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the EQC in reaching its conclusions. To review additional information, including written minutes, exhibits, and audio minutes, visit the ETIC website:
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Introduction

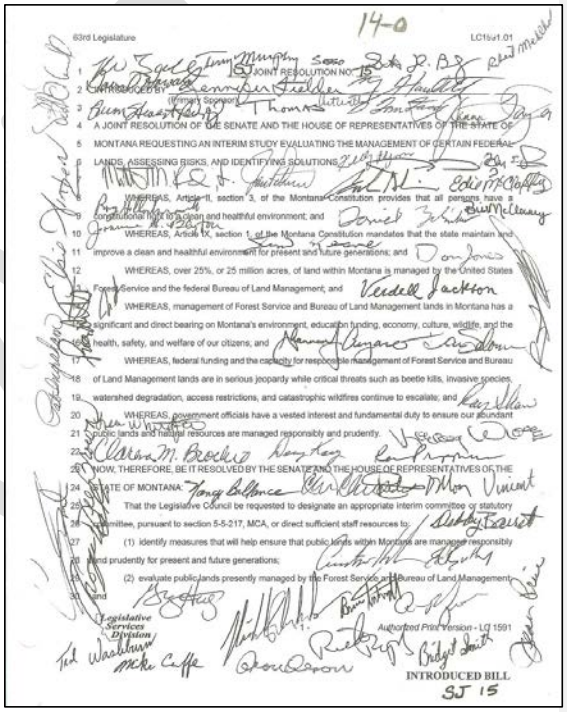
Over 29% of the land within Montana, about 27.4 million acres, is managed by federal agencies. Many of Montana's natural resources occur on these federally-managed lands, including timber, grazing, forage, minerals, coal, oil and gas, water, and wildlife. Management of these lands can greatly affect local economies, tax base, employment opportunities, public safety, the surrounding environment, and recreational opportunities.

This report is produced as a result of the 63rd legislature's passage of Senate Joint Resolution 15 (SJ-15) which authorized an interim study evaluating the management of certain federal lands, specifically U.S. Forest Service and Bureau of Land Management lands in Montana.

SJ-15 drew strong bi-partisan support as evidenced by the 60 co-sponsors and unanimous approval upon its introduction in the bi-partisan Senate Natural Resources Committee (14-0).

SJ-15 went on to win 83% overall approval from Montana's 63rd Legislature, and was ranked by the legislature as Montana's number two overall interim study priority.

SJ-15 was assigned to the Environmental Quality Council (EQC) 2013-14 Interim Committee, a bi-partisan committee comprised of an equal number of democrat and republican legislators along with four members of the public. The Governor's Natural Resource Policy Director served as an ex-officio member of EQC. The EQC Chairman appointed a bi-partisan working group of four legislators to conduct the SJ-15 study.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JOINT RESOLUTION NO. 15

INTRODUCED BY

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY EVALUATING THE MANAGEMENT OF CERTAIN FEDERAL LANDS, ASSESSING RISKS, AND IDENTIFYING SOLUTIONS.

WHEREAS, Article II, section 3, of the Montana Constitution provides that all persons have a constitutional right to a clean and healthful environment; and

WHEREAS, Article IX, section 1, of the Montana Constitution mandates that the state maintain and improve a clean and healthful environment for present and future generations; and

WHEREAS, over 25%, or 25 million acres, of land within Montana is managed by the United States Forest Service and the federal Bureau of Land Management; and

WHEREAS, management of Forest Service and Bureau of Land Management lands in Montana has a significant and direct bearing on Montana's environment, education funding, economy, culture, wildlife, and the health, safety, and welfare of our citizens; and

WHEREAS, federal funding and the capacity for responsible management of Forest Service and Bureau of Land Management lands are in serious jeopardy while critical threats such as beetle kills, invasive species, watershed degradation, access restrictions, and catastrophic wildfires continue to escalate; and

WHEREAS, government officials have a vested interest and fundamental duty to ensure our abundant public lands and natural resources are managed responsibly and prudently.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) identify measures that will help ensure that public lands within Montana are managed responsibly and prudently for present and future generations;

(2) evaluate public lands presently managed by the Forest Service and Bureau of Land Management; and

Legislative Services Division

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INTRODUCED BILL

SJ 15

SJ-15 drew strong bi-partisan support as evidenced by the 59 democrat and republican co-sponsors and 14-0 unanimous approval upon its introduction in the Senate Natural Resources Committee.

SJ-15 Working Group members met by tele-conference twice monthly and reported to EQC at regularly scheduled full council meetings. The work group developed and sent a survey to county commissioners in counties containing 15% or more federally managed public lands. Next they prepared a matrix to begin outlining concerns, desired corrections, barriers, and recommended actions. Extensive testimony and data were gathered and discussed throughout the process. All Work Group and EQC meetings were properly noticed and open to the public.

SENATE JOINT RESOLUTION 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY EVALUATING THE MANAGEMENT OF CERTAIN FEDERAL LANDS, ASSESSING RISKS, AND IDENTIFYING SOLUTIONS.

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(1) identify measures that will help ensure that public lands within Montana are managed responsibly and prudently for present and future generations;

(2) evaluate public lands presently managed by the Forest Service and Bureau of Land Management; and

(3) prepare a report and recommendations to the Legislature, including:

(a) an assessment to analyze available information pertaining to the Forest Service and Bureau of Land Management lands within Montana and identify significant concerns or risks associated with these lands relative to:

(i) environmental quality;
(ii) economic productivity and sustainability;

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(iii) public health, safety, and welfare;
(iv) consistency with state and local objectives;
(v) ownership and jurisdictional responsibilities; and
(vi) other aspects as considered appropriate by the assigned interim committee;

(b) a survey of county commissions whose counties contain 15% or more land area under the management of the Forest Service and/or Bureau of Land Management, incorporating their responses into the report;

(c) identification of solutions and goals to improve concerns or risks identified by subsection (3)(a);

(d) investigation of all lawful mechanisms, including actions implemented in other states, that may aid in achieving desired goals; and

(e) recommendations to agencies and the Legislature of necessary actions to achieve solutions and goals.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

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Step One: Survey of Montana Counties

During the summer of 2013, the SJ-15 Working Group developed and mailed a series of questions to ask of all the Boards of Commissioners representing Montana Counties that contain 15% or more area under the management of the U.S. Forest Service (USFS) and/or Bureau of Land Management (BLM).

28 of the 35 counties surveyed responded, although every county did not answer every question. The survey questions along with the number and percentage of county commission responses directly pertaining to each question are noted in the following summary.

The responses helped the EQC identify the greatest risks and concerns in each county and explore all possible solutions to correct significant problems.

SJ-15 SURVEY: SECTION 1 - PUBLIC HEALTH, SAFETY, AND WELFARE

1. Do current wildfire conditions on federal lands within your county pose a significant threat to:

22	Public Health and Safety (88%)
23	Public Property (92%)
24	Private Property (96%)
1	Unsure (4%)

2. Do you believe fire hazard on federally managed lands should be reduced to protect public health and safety within your county?

23	Yes (88%)
1	No (4%)
2	Unsure (8%)

3. Regarding the water supply your citizens use, does current federal land management of watersheds:

2	Optimize water yield (9%)
14	Diminish water yield (64%)
6	Have no impact (27%)

4. How important is it for people of your county to have motorized access to public lands for sustenance activities such as gathering wood, picking berries, harvesting wild game, etc.?

24	Very Important (96%)
0	Not Important (0%)
1	Unsure (4%)

5. Is there an adequate supply of motorized roads on federal lands in your county to accommodate emergency ingress/egress, facility maintenance, public access, and resource management?

6	Yes (23%)
13	No (50%)
7	Unsure (27%)

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6. Regarding multiple-use recreational access routes on federal lands, does your county desire:

17 Increased Multi-Use Access (68%)
0 Reduced Multi-Use Access (0%)
8 Keep Access As Is (32%)

SJ-15 SURVEY: SECTION 2 - ENVIRONMENTAL QUALITY

7. Do you believe current fuel loads on any of the federal lands within your county could result in severe, uncontrollable, or catastrophic wildfires?

24 Yes (96%)
1 No (4%)
0 Unsure (0%)

8. Is a high intensity wildfire on federal lands likely to cause a loss of important fish & wildlife habitat or harm Threatened or Endangered Species in your county (e.g. grizzly bears, lynx, sage grouse, black-footed ferret, bull trout)?

19 Yes (79%)
4 No (17%)
1 Unsure (4%)

9. Are environmental threats such as noxious weeds and bark beetle adequately controlled on federal lands within your county?

3 Yes (13%)
19 No (79%)
2 Unsure (8%)

10. Does the air quality in your county fall below acceptable health standards due to smoke originating from fires on federally managed lands?

16 Yes (62%)
5 No (19%)
5 Unsure (19%)

SJ-15 SURVEY: SECTION 3 - ECONOMIC PRODUCTIVITY AND SUSTAINABILITY

11. Is the Payment in Lieu of Taxes (PILT revenues) your county derives from federally managed lands equivalent to the amount that actual land taxation of these lands would bring?

2 Yes (9%)
21 No (91%)

12. Is the amount your county derives from the Secure Rural Schools (SRS) funds equivalent to the amount that your county could derive from responsible harvest or extraction of natural resources?

2 Yes (10%)
18 No (90%)

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13. Is the economic productivity and number of related private sector jobs commensurate with the resource production capacity of the federally managed lands within your county?

1 Yes (4%)
16 No (64%)
8 Unsure (32%)

14. Are federal policies for Threatened or Endangered Species adversely impacting private land owners, businesses, industries, or citizens within your county?

21 Yes (88%)
1 No (4%)
2 Unsure (8%)

15. Has federal land management resulted in adverse impacts to your county's economy?

17 Yes (71%)
2 No (8%)
5 Unsure (21%)

16. Do you believe changes in federal land management are necessary to increases your county's economy, employment opportunities, or tax base?

20 Yes (77%)
1 No (4%)
5 Unsure (19%)

SJ-15 SURVEY: SECTION 4 - CONSISTENCY WITH STATE AND LOCAL OBJECTIVES

17. Are federal land management actions consistent with your county's objectives?

1 Yes (4%)
18 No (75%)
5 Unsure (21%)

18. Would your county like state assistance incorporating local government objectives into federal land management actions?

12 Yes (48%)
8 No (32%
5 Unsure (20%)

SJ-15 SURVEY: SECTION 5 - OWNERSHIP & JURISDICTIONAL RESPONSIBILITIES

19. Has your county experienced conflicts with federal ownership or jurisdictional responsibilities?

12 Yes (52%)
11 No (48%)

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20. How much influence do you believe special interests have on the ability of federal agencies to develop and implement effective land and resource management plans on federal lands in your county?

1	None (4%)
2	Moderate (8%)
23	Significant (88%)

SJ-15 COUNTY SURVEY: SUPPLEMENTAL INFORMATION

Surveyed counties were also asked to describe their most significant concerns with federal land management, including current and past relations and communications with federal agencies and other relevant factors legislators should be aware of, and provide any ideas that may help reduce risks or resolve concerns. Many counties provided supplemental information which can be found in Appendix K or www. _____. Selected results are displayed on following pages along with some comments.

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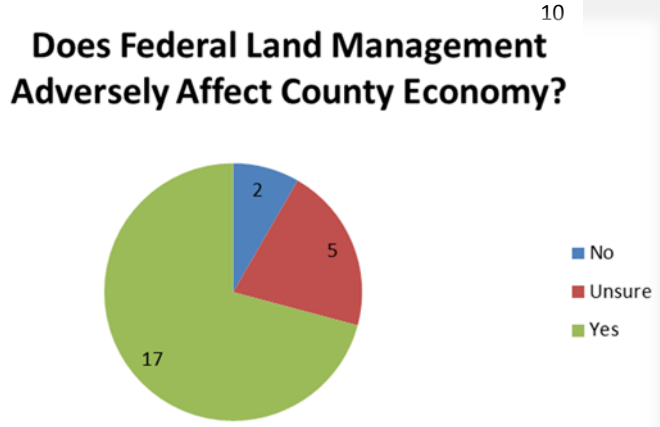
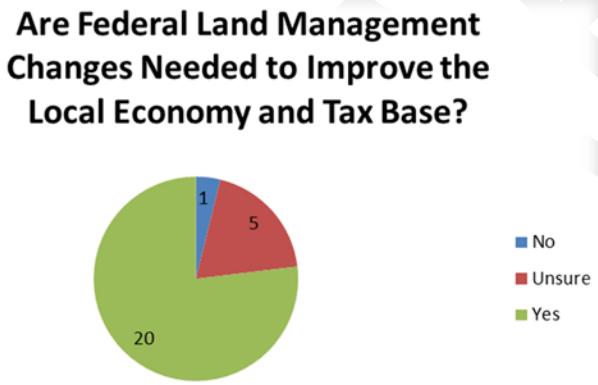
Non-extraction federal land management activities provide numerous local jobs including wildland fire fighters, contractors involved in implementing best management practices, and restoration professionals to name a few. Our economy benefits both directly and indirectly from the federal land within Missoula County's borders.
Missoula County



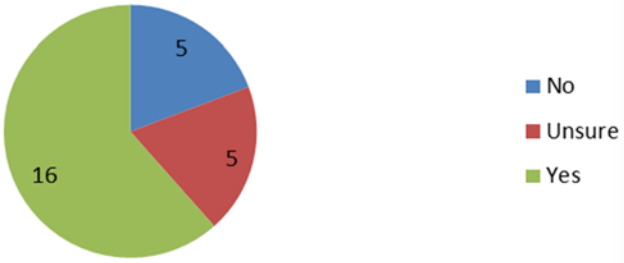


More and more access is being denied because of the policies for threatened and endangered species. Jobs are lost with lumber mills shutting down. Forests are not being harvested, creating unhealthy forests which become diseased and burn. Forest fires kill animals and fish, degrade air and water quality, and in some cases burn homes and infrastructure. Tourists come here to see healthy forests, not blackened trees and ground.
Flathead County

Air quality is affected by smoke originating from fires on all lands- federal, state, county and private.
Broadwater County

escape the fire.
Flathead County

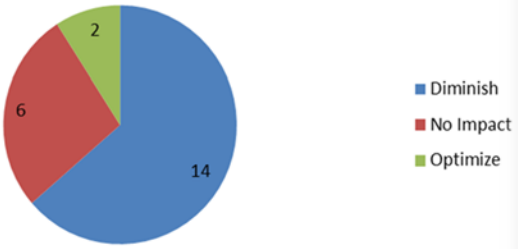
Does Smoke from Fires on Federal Land Reduce Air Quality Below Acceptable Health Standards?



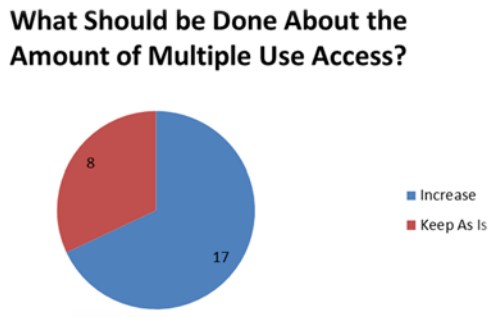
In past years, when wild land fries have occurred on federal lands, the air quality has consistently fallen below acceptable health level during both day and night for the duration of the fire. Those with allergies or chronic disease have been required to either stay indoors or wear masks if they need to leave home.
Flathead County

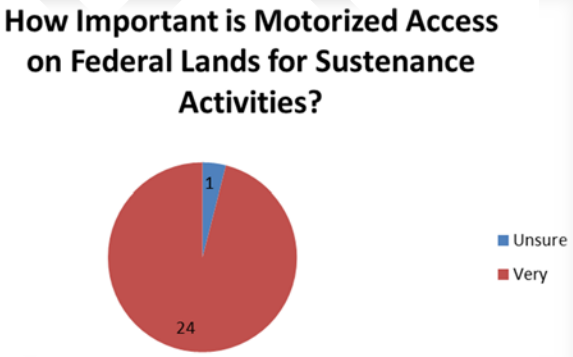
Poor land management results in unhealthy watersheds which result in higher downstream yields, which may result in a larger capture of water in reservoirs to the benefit of downstream users or recreationalists.
Lewis & Clark County

What is Effect of Federal Land Management on Water Yield?



Our concerns with Federal Land Agencies is the longevity of road closures. This makes it extremely difficult for the aging population of our County to enjoy the Public Lands within Fergus County. It also makes it difficult for our Emergency Services to access many areas. As an example we had a foreign tourist lost this summer who still has not been found. We believe more access may have helped find this gentleman or may have alleviated him getting lost in the first place. Again, the pressure of closing more roads is not coming from our constituents but from outside influence groups.
Fergus County



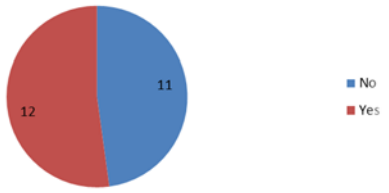


Most projects identified by the Lolo National Forest have road closures incorporated in them. Like most counties in the West we are forced to accept these projects due to the lack of projects.
Mineral County

Public lands in our county are used for a variety of purposes, including recreation and sustenance activities, some of which require roads and some of which do not. We recognize the value and importance of motorized access and roads on some public lands. These uses should be balanced with other values such as wildlife habitat, water quality, and non-motorized recreational uses.
Missoula County

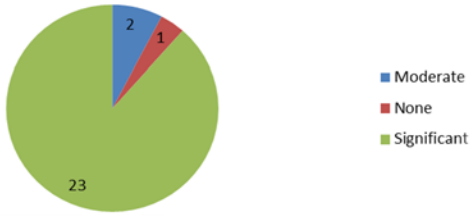
The most troublesome thing for our County is the lack of coordination between the federal property managers and our County government. Valley County needs livestock and agriculture production, and many federal policies are not favorable to those producers.
Valley County

Has County Experienced Conflict with Federal Ownership or Jurisdiction?



Counties work well with the Forest Service and their desired plans - special interest groups are hurting our communities - they are the problem. Extremist views are destructive. Our county works well with Federal agencies - the problem is the ability of a citizen, or group, to stop a vetted and studied project with only a stamp and no responsibility for the result.

What is Influence of Special Interests on Federal Land Management?



The U.S. Fish and Wildlife Service continues to miss statutory deadlines for biological opinions on projects. This includes timber sales and new mining activities that have been in the permitting process for numerous years. The main focuses in Lincoln County due to the Endangered Species Act are the grizzly bear and bull trout. The delay in these mandatory biological opinions continues to delay numerous projects that have been in the planning process for years. This situation also restricts the Forest Service on their proposed projects. In discussions with the USFWS, they state that they are underfunded, understaffed, and working in the most litigious region in the State requiring them to do more extensive work on the opinions they provide.
Lincoln County

Does the Endangered Species Act Adversely Affect Business, Landowners and Citizens?

Step Two: EQC Field Trip of 10 Mile Watershed

In September 2013 representatives of the USFS accompanied members of EQC and City of Helena personnel on a field trip of the 10 Mile watershed and Chessman Reservoir in Lewis and Clark National Forest. This site was selected because it provides a clear example of the critical linkage between conditions on the National Forest and nearby communities.

Members of EQC, USFS, and City of Helena toured the 10 Mile watershed near Helena, MT where 95% of the trees are dead.

According to the City of Helena, this watershed provides 70% of the City of Helena's water supply. The U.S.F.S. supervisor testified that 95% of the trees within the watershed are dead from a bark beetle infestation that proliferates in dense, even aged stands of timber like this.

The testimony and field trip revealed the watershed is at extreme risk of intense wildfire, erosion, and related siltation and toxins which are likely to result in severe interruption and contamination of Helena's primary water supply.

At the time of the field trip, the USFS was in the final stages of a long running collaborative process and hoping it would result in broad support for plans to treat the affected acres using a combination of logging and prescriptive burning.

EQC members view the canal and duct system which carries water from Chessman Reservoir to Helena, MT.

Concurrently, the City of Helena was working with adjacent landowners and actively reducing the woody fuels on property owned by the city and several pieces of private land in the immediate vicinity of the high mountain reservoir and canal system which supplies water to the city several miles below.

Shortly after the field trip, the Forest Service's proposed fuel reduction project was met with formal objections and, although the agency now considers the objections resolved, the project is subject to litigation under EAJA. The State of Montana Department of Natural Resources and Conservation (DNRC) has since entered into a Memorandum of Understanding (MOU) with the USFS to allow the state to take the lead in administering the timber sale in this project area.

Step Three: SJ-15 Study Matrix Content

The SJ-15 Working Group developed the SJ-15 study matrix to help outline:

A. risks and concerns,
B. desired corrections,
C. barriers preventing those corrections,
D. possible solutions, and
E. recommended action items.

A. RISKS & CONCERNS:

1. INFRASTRUCTURE: Excessive wildfire fuel loads due to insect, disease, and/or lack of active management place infrastructure on or near federally managed lands at risk - including electrical transmission lines, transportation facilities, communication towers, water systems, and other utilities. Costs associated with insurance, damage, and repair could be significant.

2. NEIGHBORING COMMUNITIES: Excessive wildfire fuel loads due to insect, disease, and/or lack of active management on federally managed lands in Wildland-Urban Interface (WUI) place neighboring public and private property, facilities, infrastructure and communities at risk. Costs associated with insurance, damage, and repair could be significant.

3. WATER: Excessive wildfire fuel loads and intense wildfires on federally managed lands threaten, poison, and/or physically impair municipal drinking water supplies as well as water supplies for residential, recreational, agricultural, natural, and other uses outside municipal watersheds. Watersheds are not being managed to maximize water yield. Costs associated with damage and repair could be significant.

4. FISH & WILDLIFE: Large, intense fires on federally managed lands kill fish & wildlife, destroy habitat, poison water, and cause displacement which adversely impacts surviving populations of fish & wildlife beyond the burned area.

5. AIR QUALITY: Significant health risks, premature death, and other adverse impacts to Montana citizens and visitors due to high volumes of smoke/toxic air pollution generated by large, intense fires on federally managed lands. In addition to health dangers, prolific and lingering smoke restricts activities, displaces people from their homes and communities, impedes scenic views, and disrupts tourism.

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6. REDUCED MUTLIPLE USE ACCESS: Decommissioning and closing roads and trails severely diminishes access for desirable multiple use activities including resource management, sustenance and recreational uses, emergency ingress/egress, inholdings, and commercial extraction of natural resources.

7. INVASIVE PESTS, DISEASE, AND NOXIOUS WEEDS: Proliferation of invasive pests, disease, and noxious weeds is prevalent on federally managed lands and waters.

8. PILT, SRS, ROYALTIES: The substitute funding sources counties rely upon are unreliable and unpredictable due to dependency on renewed congressional approval and the ability of the federal government to pay. PILT & SRS equate to a very low percentage of actual taxable value & resource production capabilities. Use of funds allocated to local governments is restricted by Congress.

9. INADEQUATE FUNDING: Inadequate federal funding and/or prioritization for proper resource management, wildfire fuel reduction, wildfire rehabilitation, maintenance and repair of infrastructure, multiple-use access, and fire suppression.

10. SCIENTIFIC INTEGRITY: Inaccurate, selective, biased, and/or outdated science and technology are being used in resource management plans, reports, administrative rules, federal policies, decisions, and enforcement.

11. MISSION CONFLICT: Several federal laws, executive orders, and rules are in conflict with the original purpose and authority related to federal land acquisitions, federal reservations, and the mission of managing agencies. This has resulted in contradictory policies and management constraints that are sometimes adversarial to the environment, economy, as well as public health, safety, and welfare.

12. HABITAT CAPACITY: USFWS does not consider range or carrying capacity of habitat on federal lands when determining target populations of predators and other wildlife.

13. YPN BISON– Bison populations are expanding beyond Yellowstone National Park boundary into Montana, creating jurisdictional questions, adverse range and environmental impacts, risk of disease transmission, property damage, and other management problems for the state of Montana.

14. USFSW is not placing a priority on acknowledging adverse impacts of predators, invasive plant species, and wildfire on Sage Grouse populations. Comprehensive management considerations associated with multiple species seems lacking.

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15. TIMBER INDUSTRY VIABILITY: Although an over-abundance of timber exists in many national forests, the viability of timber and wood products industries and related jobs and infrastructure are threatened by bureaucratic impediments, declining forest health, and unpredictable supply due to federal policies, litigation and administrative costs, and management constraints.

16. OWNERSHIP: Federally managed public lands might be sold or collateralized to private parties or foreign nations without state legislature's consent.

17. OWNERSHIP: Checkerboard pattern of federal lands makes management and public access difficult.

18. UNFAVORABLE TIMBER MANGEMENT: Unmanaged, overpopulated timber stands contribute to insect infestations, declining timber health, drought, intense wildfire, reduced watershed yields, and adverse effects on wildlife habitat. Policies favoring weak, less useful timber like pine instead of stronger more useful fir and larch are bad for commercial supply. Not cutting in accordance with sustained yield capabilities.

19. ADVERSE IMPACTS OF ESA: Adverse impact on state, counties, private property, industry, lives, use permits, and livelihoods associated with protected species policies and the magnitude of unknown costs and consequences. Arbitrary listings. Slow-cumbersome delisting process.

20. NON-ESSENTIAL CLASSIFICATION: Lands, resources, and personnel assigned to mage these resources that are so critical to Montana's economy and environment , and many Montanan's way of life and happiness, have been deemed non-essential and shut down by the federal government.

21. UNSUSTAINABLE ECONOMICS: Revenues generated by BLM go to DC Treasury. USFS no longer generates positive revenues. Mineral royalties vulnerable to national politics and Montana in the minority.

22. PUBLIC INVOLVEMENT: Notification and decisions, policies, meeting formats, length of documents, and technical procedures favor paid participation and disenfranchise average citizens leaving local residents, land owners, forest users, and small communities feeling overwhelmed and powerless.

23. OWNERSHIP: Unconstitutional acquisitions and contradictory retention policy versus enabling act/statehood compact. Are past, present and proposed acquisition and disposal of public lands

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consistent with constitution and enabling act? Is the state receiving our 5% share of disposal proceeds per the Enabling Act.

24. SHUTDOWN: Another federal budget crisis, i.e. “shutdown” like the one in October 2013 could once again close the public lands and treasured places controlled by the federal government.

25. JURISDICTION: Confusion or lack of clarity over jurisdiction of local, state, and federal governments.

26. PERMITS: Expense, uncertainty, and length of time to secure permits for cabin sites leases, grazing AUMs, outfitting, mineral extraction, oil & gas. Leases vulnerable to subjective approval, denial, classification, and/or revocation of permits. Complications – Grazing ESA, fencing requirements, water, etc.

27. LACK OF PRODUCTION: Available resources not being utilized at an acceptable rate -- saw timber, small wood, oil, gas, grazing, and mineral resources not being utilized enough. Canadian subsidized timber has negative effect on U.S. timber markets.

28. FACTS - PUBLIC PERCEPTION – Lack of education and awareness about the benefits of sustained yield active management, utilization of natural resources, and related impacts on economy, jobs, environment, communities.

29. HESITANCY: Some citizens, employees, permit holders, elected officials, etc. are hesitant to offer less than supportive or constructive criticism due to fear of offending federal decision makers, and/or suffering retribution via unfavorable funding and/or management outcomes.

30. CONGRESS: Ineffectiveness, complicated and contradictory policies, lack of: budget, financial security.

31. BRINGING NON LOCAL COTRACTORS INTO AREAS WHERE LOCAL WORKERS WHO NEED WORK ARE AVAILABLE. Local employment opportunities are not emphasized. Federal policies favor women and minority businesses that most often come from outside the area.

32. BORDER SECURITY: Jeopardized by lack of motorized access for patrols and denial of placement of communications equipment.

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Step Three: SJ-15 Study Matrix Content, continued

B. Desired Correction and/or Condition

1. Active, immediate vegetation management to protect transmission lines and other infrastructure from wildfire, post fire erosion and other risks that can be resolved via active vegetation management while maintaining a desirable ecologic composition and sustainable economic production where practical.

2. Active, immediate vegetation management to prevent intense wildfire and related damages to communities, public and private property, infrastructure, and facilities, especially in wild urban interface (WUI), while maintaining a desirable ecologic composition and sustainable economic production where practical.

3. Active, immediate vegetation management to prevent damages from intense wildfire and optimize water yield in municipal water sheds as well as other waters outside municipal watersheds, including residential, agricultural, recreational, industrial, and fisheries, while maintaining a desirable ecologic composition and sustainable economic production where practical.

4. Vegetation management to prevent premature death of fish and wildlife and destruction of habitat caused by intense wildfires and to optimize water yield to provide for all needs including human life, economy, and natural environment, while maintaining a desirable ecologic composition and sustainable economic production where practical.

5. Manage lands to ensure safe and healthy air quality levels. Actively manage vegetation to prevent catastrophic fire events and keep dangerous levels of pollutants from entering the air. Do not burn or let burn unless air quality standards can be met or it is necessary to prevent or contain destructive fires and no other means of doing so are available. Use fire to optimize environmental or economic productivity only when air quality standards are not exceeded.

6. Keep access roads intact and available for multiple uses, resource management, and future resource extraction. Prioritize funding for maintenance and repairs of access roads. Allow enough public use to prevent roads from brushing in. Encourage and accommodate volunteerism for maintenance and repairs on roads and trails. Encourage fire wooding to remove downed trees and maintain fire breaks along roads. Increase or preserve multiple use access for all ages, abilities, interests, and classes. Protect RS2477 locally owned roads.

7. Control aquatic pests, specifically mussels, at point source. Treat point source. Actively manage to control, contain, and prevent devastating pests from spreading.

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8. Increase economic production. Generate positive revenue flows like they used to. Increase predictability of funding. Let willing states or counties own/manage public lands and generate their own revenues.

9. Encourage prioritization toward situational prevention vs. post emergency repairs. Increase resource based economic productivity to generate positive revenue flows like they used to. Improve predictability of funding. Let willing states/counties own/manage public lands, implement local priorities and generate revenues locally. Encourage funding for work force commensurate with land management goals and legal obligations.

10. Ensure scientific integrity. Require reports upon which policy decisions are based to follow scientific and statistical confidence standards and blind peer review typical of scientific journal publication. Remove bias, concentrate on facts instead of philosophy. Require minority report.

11. Establish clarity of mission and purpose for being and consistency of laws and regulations in accordance with that mission.

12. Base decision on carrying capacity balanced with multiple use -not unscientific political decisions. Take a programmatic approach to landscape habitat capacity, range, and multiple uses to optimize health of environment, species success, and desirable human uses of land. Prioritize protection of local social and economic values, including public health and safety. Optimize production of lands by utilizing grazing. Keep in mind livestock is restricted from moving freely, while wildlife flows across landscape.

13. Clarify jurisdiction, ownership and liability. Prevent adverse impacts to citizens, property, and range in Montana.

14. Retain state management of all fish and wildlife species. Recognize grazing's benefits to healthy plant communities. Need to recognize adverse impacts of cheat grass and other invasive species, wildfire, hunting, and predation on sage grouse.

15. Resource management which stimulates a viable timber industry and results in a broad distribution of mills across the state.

16. Require state legislature's consent prior to sale, transfer, or acquisition of federally controlled public lands within Montana. Do not encumber public lands as collateral to lenders.

17. Develop a fair and equitable system for consolidation of ownership to reduce difficulties in management, use, and access associated with land locked or limited access pieces.

18. Optimize health, resiliency productivity, of timber stands and watersheds. Manage forest and harvest timber to sustain biological diversity at a regional scale. Consider /Emulate most favorable range of historic variation spatially and with regard of intensity of disturbance. Reduce over populated stands

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to prevent crown fires and increase wildlife forage vegetation and increase water yields. Cut sustained yield volumes.

19. Strive for viable populations of species while minimizing adverse impacts to local communities and counties. Reform ESA to reflect original intent of preventing species extinction versus expanding species abundance and distribution. Concentrate on protecting species as a whole instead of managing sub species and distinct populations.

20. Access, use, and management of public lands must be recognized as a top priority.

21. Sustainable economic management. Keep revenues generated locally on the unit or in the county.

22. Increase ability of local public to influence decisions while still meeting efficient project management.

23. Clarify ownership and under what jurisdiction it falls. Where does revenue go - how is it divided and how is it decided? Ownership map and verify record of title/deed.

24. No shutdown of public lands. Develop contingency plan to protect MT interests in event of shutdown in future. Assign higher priority to public lands and resources, i.e. essential status classification.

25. Clarify jurisdiction over resource management and health, safety, welfare of the people.

26. Size of cow should be considered in carrying capacity, AUM should be based on sustainability per range science not politics. Existing lease owners should have reasonable opportunity to retain their lease.

27. Increased resource production.

28. Increase public awareness. Inform public about opportunities and benefits associated with active resource use and responsible management. Document pre & post project conditions. Inform public about problems with obstructed management.

29. Transparency. Equal treatment. Raise standard of recording actions, decisions, public interaction & comments, i.e. public stream of assessment and decision processes.

30. State would make decision on land management.

31. Give more preference to local contractors.

32. Allow proper access and placement of surveillance equipment to stop illegal entry and drug running.

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Step Three: SJ-15 Study Matrix Content, continued

C. Barriers Currently Preventing Correction

1. Unfavorable federal laws, policies, rules
2. Obstructive litigation & exploitation of EAJA and Judgment Fund “sue and settle”
3. Unfavorable agency priorities
4. Prolific flaws in NEPA documents
5. Lack of funding/personnel
6. Problematic financial model, adverse performance incentives.
7. Federal agency rule making inconsistent with legislative intent
8. Need intensive state scrutiny and action to avert unfavorable federal actions
9. Lack of understanding root law and jurisdictional authorities
10. Lack of coordination to achieve consistency with local government objectives
11. Prohibitions on active management causing intense fuel load and limited access for initial attack
12. Burn & “let-burn” fire use causes unhealthy or undesirable levels of smoke.
13. Management classifications - compliance standards
14. Paid/Stacked Collaboratives
15. Underappreciated value of access
16. Lack of credibility, scientific integrity
17. Lack of accountability

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Step Three: SJ-15 Study Matrix Content, continued

D. Possible Solutions/Actions

1. Acknowledge emergency condition where risk to public health, safety, or welfare is imminent.

2. Expand ROW for maintenance of utilities, roads, and infrastructure.

3. Generate resource based revenues and reinvest them in resource management, access.

4. MOU between Counties, State, & USFS to facilitate active management.

5. Educate state and local government on laws favorable to fuel reduction, multiple use access, economic production, state and local jurisdiction. Educate the public and policy makers on costs of fighting fire and repairing damage after intense wildfire versus benefits of fuel reduction and resource use to prevent intense wildfires (roughly 500 to 1 cost-benefit ratio). Better educate, document and publicize post project benefits, i.e. schools, institutions, PBS, firewise.

6. Establish state priorities and implement better monitoring and controls to protect state interests in federal rule making and other processes. Advocate and enforce laws favorable to fuel reduction, access, and economic production.

7. Increase local authority. Enable more involvement in decisions by County Commissioners. Allow local public land and resource management plans and growth policies to be used to coordinate with federal agencies. Insert local objectives and reflect pertinent data in federal land plans and decisions. Ensure state and federal plans and actions are consistent with local government plans and priorities.

8. Clarify, strengthen, and support state and local jurisdiction to protect public health, safety, and welfare of citizens, avert dangers such as intense wildfire, erosion events, shutdowns or lock outs.

9. Consider enabling legislation that would include international WUI code. Apply and enforce on public lands also. Broaden opportunity and time frame for fuel treatments including burning.

10. Prioritize fuel reduction treatments in critical areas most susceptible to severe, adverse effects in order of priority - a. municipal/residential, b. agricultural, c. environmental, d. other economic (extractive and/or recreational). Coordinate and pre-plan to prevent intense wildfire in priority areas.

11. Assess habitat quality/wildlife carrying capacity in passive vs. active management and historic vs current use scenarios.

12. Enable volunteer maintenance contracts, offer workman's comp, other insurance, or exemptions to encourage and facilitate volunteerism on public trail and road projects.

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13. Identify and inventory RS 2477 roads. Affirm local jurisdiction.

14. Work with counties to develop a prioritization system of access roads necessary for initial attack, management of municipal watersheds, future generation timber sales, emergency ingress/egress, multiple use access component, etc.

15. Experiment with rotational uses of motorized and non-motorized use in areas where demand for both is high.

16. Verify/Modernize definition of multiple use.

17. Consider S327 – HR2401 Good Neighbor Forestry Act,

18. Map/inventory pest infestations. Prioritize funding for most necessary and effective pest management. Promote statewide pest management consistency on all lands. Prioritize treatment areas to control, contain, and prevent devastating pests from spreading. Allow motorized access so land managers and private property owners can control pests on their lands.

19. Assess PILT vs. actual taxable value

20. Assess State vs. Federal Management Economics

21. Develop comprehensive analysis of compatibility of target fish or wildlife population with other present species, range, carrying capacity of habitat, and multiple uses including grazing and timber management. Integrate valid, updated scientific information into land management and target population considerations.

22. Enable state & local government to engage in coordination with USFWS and other federal agencies to advocate priorities established by elected officials and their resource specialists in affected areas. Provide expertise.

23. Active publicity of pre- project scoping, planning, actions. Require better public notification of proposed federal actions in affected communities. Advance notification of elected officials representing affected area. Provide open public hearings where comments are recorded at local meetings and made part of record.

24. Facilitate DNRC being able to take lead on timber sales or otherwise manage resources on certain federally held public lands in need of assistance.

25. Determine who gets ownership when designated use is abandon (Brandt case)? Can state acquire those abandon railroad ROW's?

26. What worked in other states? Task forces, select committees, legislation.

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27. In case of another federal shutdown, allow state to take over task, i.e. logging contracts, until feds get back up and running. Prohibit "shutdown" of public access to areas that normally do not require daily federal supervision or maintenance, like USFS, USFWS, BLM lands and public highways.

28. Explore historic trends with AUM's associated with various political entities. Separate range science from political decisions. Limit lease fee increases to avert cost spike. Look at averages instead of spikes.

29. Place higher priority on production goals. Look at national economy year by year compare extraction to commodity prices.

30. Lease or acquire federal public land and manage under state law in accordance with state and local priorities to improve forest or range health, provide multiple use access, sustained yield, economic production.

31. Streamline permitting.

32. Review the success of the cohesive strategy to prioritize and achieve desired condition in at risk areas.

33. Protect whistle blowers, critics, seek recourse for mistreatment. Develop an evaluation of fairness.

34. Give consideration/preference to local small businesses for contract work. Allow chance for competitive bids vs 10 year contract on stewardship.

35. Tax federal lands and allocate revenues to the municipal jurisdiction in which the land is located.

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Step Four: Recommendations

Risks and concerns associated with federal land management are serious and numerous. Survey results from county commissioners, analysis of available information, and testimony received from citizens, agency staff, interest groups, elected officials and experts affirm the urgent need to correct the way federal public lands are managed.

It is imperative to achieve better and more active management of public lands to a) aid in reducing dangerous wildfire fuel loads, b) increase economic productivity, c) protect and provide multiple use public access, and d) increase wildlife diversity and carrying capacity where desirable.

These objectives should be implemented wherever compatible with one another and in balance with state and local priorities.

1. **REDUCE WILDFIRE FUELS:** The risk of catastrophic wildfire due to excessive fuel loads on federal lands poses foreseeable imminent risk to citizens, communities, watersheds, utilities, roads, wildlife, eco systems, air quality, other public infrastructure, and private property. Vegetation must be better managed to reduce the risk of intense wildfire, especially where people and our environment are most vulnerable. Grazing and logging are valuable and beneficial tools that should be used to reduce dangerous fuel loads wherever possible.

2. **INCREASE OR MAINTAIN MULTIPLE USE ACCESS:** Multiple use access to public lands is highly desirable and also necessary to serve a broad range of important purposes including resource management, reduction of wildfire fuel loads, initial attack for wildland firefighting, emergency ingress/egress including crime control and search and rescue, recreation, tourism, sustenance activities, economic productivity, and border security. 100% of the counties surveyed reported a desire to maintain or increase multiple use access on federally managed public lands. Only 23% reported an adequate supply of motorized roads on these public lands in their county. Federal agencies have been and continue to reduce multiple use access on public lands at unacceptable rates. Multiple use access needs to be maintained or increased in keeping with the desires of Montana citizens.

3. **INCREASE ECONOMIC PRODUCTION:** Economic production associated with natural resources on federally controlled public lands has fallen to a historic low. Production is not equivalent to the desirable level that could be achieved through a balanced approach to active management and use of natural resources, multiple use public access, or taxation of the land. 77% of the counties responding to the survey believe changes in federal land management are necessary to increases their county's economy, employment opportunities, or tax base. Economic

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productivity needs to be substantially increased where appropriate and desired by Montana citizens.

4. **STENGTHEN LOCAL INVOLVEMENT:** Rural citizens and communities affected most by federal public land management decisions should be provided with adequate resources, supporting statutes, and/or expertise to enable better representation of their interests in federal land and resource related processes.

5. **INCREASE ACCOUNTABILITY:** Ensure laws favorable to State and local priorities are being followed.

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Step Five: Suggested Legislative Actions

1. Establish a Federal Lands Committee that works to coordinate, collaborate, and assist Federal Land managers to resolve problems and expedite project planning and implementation. The intent is to work in partnership with federal land managers to help meet forest management goals and objectives including vegetation, wildlife and recreation and watershed by extending SJ-15 effort, expanding working group, and continuing to explore and implement solutions to address the risks, concerns, and recommendations identified in this report.
2. Provide for an attorney and paralegal in the DOJ to promote Montana's priorities and interests relevant to federally controlled public lands, natural resources, and wildlife.
3. Provide for a resource specialist at DNRC to expedite fuel reduction projects and economic production on federally controlled public lands.
4. Reallocate a portion of hunting license fees to provide multiple use public access on federally controlled public lands.
5. Reallocate a portion of hunting license fees to implement habitat enhancement work which increases big game carrying capacity and reduces wildfire fuels in restoration priority areas within federally controlled public lands.
6. Provide education and expertise necessary to assist counties in developing resource plans, implementing effective government to government relations, and incorporating local priorities in state and federal actions related to public land, natural resource, water, and wildlife issues.
7. Establish priorities in statute requiring state officials, whenever possible within the framework of their duties, to support efforts to implement the following priorities a) reduce dangerous wildfire fuel loads, b) increase economic productivity, c) protect and provide multiple use public access, and d) increase wildlife carrying capacity on federally managed public lands wherever compatible with local government objectives and the other priorities described herein.
8. Make it easier for volunteers to participate in work projects by creating an affordable group insurance policy that covers liability for injuries. This would require coordination with the Montana Auditor's office and insurance companies.

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SUPPLEMENTAL INFORMATION

Forestry Provisions in 2014 Farm Bill

The 2014 Farm Bill passed by Congress included a number of forestry provisions, including some discussed by the EQC its working group. Among the provisions in the bill were a permanent authorization of the stewardship authority under which Montana obtained an agreement in 2013.

The legislation also expanded the Good Neighbor Authority, which previously was limited to Colorado and Utah. Under the authority, states can take the lead for certain watershed restoration and protection projects.

The Forest Service also undertook the authority to designate insect and disease infestation treatment areas in each state at the request of the governor.

In April 2014, Montana Gov. Steve Bullock nominated more than 5 million acres as "priority landscapes" in need of forest management.[1] The areas are characterized by declining forest health, a risk of substantially increased tree mortality or an imminent risk to public infrastructure, health, or safety."[2]

While the nomination included areas in each of the state's national forests, specific projects were not included. The SJ15 working group sent a letter to 35 counties with the most federal land asking for details about areas in need of forest management.[3]

Governors Nomination of Restoration Projects

(Text of Press Release)

(Map)

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[1] Map of Priority Landscapes. http://dnrc.mt.gov/Forestry/priority-landscapes/pdf/statewide.pdf
[2] http://governor.mt.gov/Portals/16/docs/040714%20FarmBillLandscapeNominations%20Release%20Final.pdf
[3] http://leg.mt.gov/content/Committees/Interim/2013-2014/EQC/Committee-Topics/sj-15/forest-restoration/county-response-results.pdf

County Recommendations for Restoration Priority Projects

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Overview of Federally Held Public Lands

In Montana, the BLM manages almost 8 million acres of surface land and $37.8 million acres of subsurface minerals. **Appendix C**

The Montana-Dakotas unit of the BLM has a budget of about $78 million in fiscal year 2013, an 8% increase from the previous year. The largest category of spending last year was land resources, which is the general management of lands for renewable resources, commercial and recreation uses, forest health, and habitat. A decrease was planned for 2013.

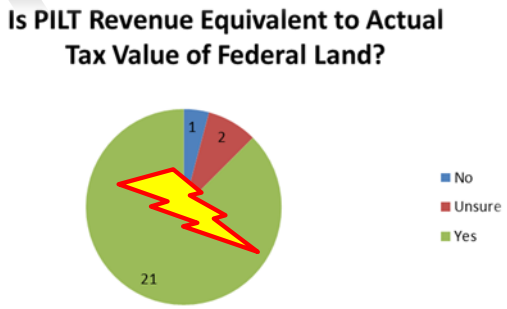
Almost $8 million was spent in 2012 on energy and mineral management, a category planned to increase by almost another million dollars in 2013. More than $12.5 million was spent for reduction of hazardous fuels and other fire-related costs. **Appendix D**

In fiscal year 2012, lands managed by the BLM in Montana produced about $104 million in revenue, with almost $99 million coming from mineral development. Coal was the largest money-maker at more than $59 million. Grazing, timber, sales, recreation fees, and rights-of-way rentals made up most of the rest. **Appendix E**

Compensation for Public Lands

Federal lands are not subject to local or state taxes. For more than a century, Congress has been devising ways to compensate state and local governments for tax revenue that the federal land would have generated in taxes.

Revenue sharing is the oldest mechanism. The allocation of the revenue depends on the use that generates the money and historic purpose of the land. At least in the case of the Forest Service, revenue sharing may be the simplest form of compensation. The agency returns 25% of gross revenues - be it generated from timber sales, grazing fees, or other uses - to be used for roads and schools within counties that have Forest Service land.[4]



In the mid-1970s, as the shift from disposal of federal lands to retention of was being articulated in law, a permanent source of funding for lost tax revenue was created. The Payment In Lieu of Taxes program

[4] Federal Land Management Agencies: Background on Land and Resource Management, February 27, 2001, Congressional Research Service. http://www.nplnews.com/toolbox/fedreports/crs-fedlands.pdf

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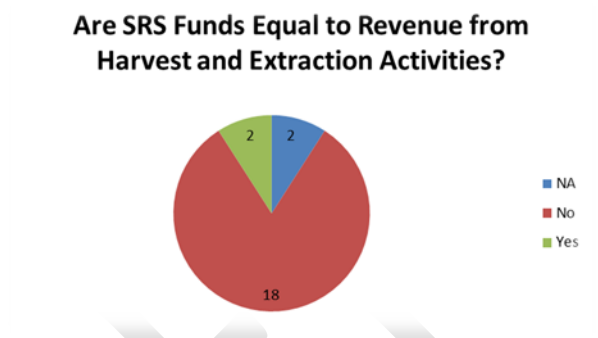
includes a maximum per-acre payment that is reduced by the sum of revenue sharing payments and subject to a population cap.

Declining timber sales and county payments in the 1990s led to the Secure Rural Schools Act of 2000, which provided counties with payments at the average of the three highest payments from 1986 to 1999. This act expired in 2012 but was renewed in 2013.



Revenue from BLM lands is allocated by individual laws.

Within a grazing district, about half of the grazing revenue benefits counties. Outside a district, the local share is generally 12%. About half of mineral royalties are sent to the states of origin. In Montana, 25% of the state's share goes to the county of origin.[5]

In 2012, Montana received $99.1 million related to activities on federal lands, the largest portion, $47.2 million, from mineral royalties. Almost half went to the state government, 40% to counties, 6% to schools and the rest to resource advisory councils and grazing districts.

Grazing allotment acreage reduction and increased fees has hurt the livestock producer.
Stillwater County

See **Appendix F** for information on state and local payments. Mineral royalty payments to counties are included in **Appendix G**.

Opposition to Federal Management

The report of the Public Land Law Review Commission and the subsequent passage of the Federal Land Policy Management Act were blows to Westerners who hoped the implied retention policy would be overturned. Instead, some disposal powers were repealed and the informal policy was put into black and white. The movement that ensued to turn federal lands over to the states is known as "The Sagebrush Rebellion" or "The Great Terrain Robbery."

[5] 17-3-240, MCA.

The reaction included local ordinances, court challenges, federal regulatory changes, and proposals for new federal laws. Most efforts focused on BLM lands, but national forests also were included. Arizona, Hawaii, Idaho New Mexico, Nevada, North Dakota, Utah, and Wyoming passed laws asserting state authority over federal land. Nevada's assertion that retaining the lands was unconstitutional was defeated in a court and none of the state laws were enforced.[6]

In general, the states asserted that federal lands were held in trust pending eventual disposal to the states.[7]

Montana legislators in 1981 offered two Sagebrush-related bills.

Senate Bill No. 123, sponsored by Sen. Mark Etchart, R-Glasgow, called for the title to federal lands transfer to the state.

It asserted that:

> the attempted imposition upon the State of Montana by the Congress of the United States of a requirement in the Statehood Act that the state of Montana and its people "disclaim all right and title to the unappropriated public lands lying within (its) boundaries", as a condition precedent to acceptance of Montana into the Union, was an act beyond the power of the Congress of the United States and is thus void;

The bill claimed ownership of land, water, and minerals for federal lands outside of national parks, Indian reservations, national monuments, wilderness areas, and wildlife refuges, unless the refuge was larger than 400,000 acres.

Bernard Harkness of Dell, identified as chairman of the Sagebrush Rebellion, provided testimony that said, "The vesting of ownership and management of the public lands in Montana means a rebirth of the prestige and power of State Government and a long overdue withdrawal of the massive dominance and power of the federal bureaucracies in Montana."

Other supporters included the Montana Wood Products Association, Wool Growers, Montana Cowbelles, Cattleman's Association, and the Joint Council of Teamsters.

Opponents included the Audubon Society, a former forester for the Northern Region, and the Montana Environmental Information Center.

Fred Burnell of Stevensville noted that federal lands in western Montana are the source of much water.

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[6] Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention. 2007. Congressional Research Service.
[7] Ibid.

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"To break these lands by state boundaries and/or manage them through practices dictated by local rather than national needs would result in conditions critical and adverse to our national well being," said Burnell, representing the Montana Forestry School Alumni Executive Association.

Both opponents and supporters cited management of the Charles M. Russell National Wildlife Refuge as one factor among several for the legislation. In 1976, management responsibilities for the area were taken away from the BLM and given solely to the U.S. Fish and Wildlife Service.[8]

The bill passed the Senate, but died in the House. The other measure, House Joint Resolution No. 13, also died. It would have voiced legislative support for actions by western states to gain control of certain public lands within their boundaries.

At the national level, President Ronald Regan established the Property Review Board to review federal land for disposal.[9]

Although the president's action was seen as a nod to the sentiments of the Sagebrush Rebellion, the 1983 Montana Legislature reacted by passing a bill requiring the director of the Department of Natural Resources and Conservation to evaluate the sale or transfer of federal land within the state to determine:

> whether there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit because of the sale or transfer.[10]

Concerns of westerners about federal land ownership and management continue to persist at the local, state, and national level.

In recent Montana legislative sessions, many bills addressed various aspects of federal land management, but three related specifically to disposal of federal land and another would have given land management power to counties.

House Joint Resolution No. 14 from 2007 said any sale of federal land proposed by Congress should include a right of first refusal at the appraised value for the state in which the federal land proposed for sale is located. It passed the Legislature.

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[8] History of the Refuge. http://www.fws.gov/refuge/Charles_M_Russell/about/history.html

[9] The program stalled. The administration would not identify lands until Congress gave disposal authority and Congress would not approve the authority unit lands were identified. Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention. 2007. Congressional Research Service.

[10] 77-2-401, MCA.

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In 2009, Senate Bill No. 34 broadened the existing definition of community decay to include the "natural accumulation of fuel, including noxious weeds, for fire that poses a threat to public health or safety." That would have allowed counties to regulate, control, and prohibit those particular aspects of community decay anywhere in the county. The bill passed the Senate but died in a House committee.

In 2011, House Bill No. 506 directed the Land Board to begin proceedings to have federally controlled lands that are not in accordance with the provisions of the United States Constitution transferred to Montana. It did not pass.

Senate Bill No. 254, also from 2011, gave the state eminent domain authority over federal lands except those possessed for the erection of certain buildings, including forts and dock yards. It passed the Legislature, but was vetoed.

In addition to Montana, other states are debating federal land management too.

In 2012, Utah passed legislation requiring the United States to extinguish title to public lands and transfer title to the state before 2015.[37] The 2013 Legislature directed the Public Lands Policy Coordinating Office to conduct a study and economic analysis of the transfer of certain federal lands to state ownership.[11]

Mineral County's economy is suffering due to this mismanagement of public lands within our county. We believe the solution is for the State of Montana or the local governments to reclaim the management of our states federally managed lands.
Mineral County

The 2013 Nevada Legislature created the Nevada Land Management Task Force to conduct a study addressing the transfer of public lands. Each of 17 counties has one representative on the task force, which is conducting the study in contemplation of Congress turning over federal land to the state by June 30, 2015.[12]

Wyoming in 2013 created a task force to study the transfer of public lands. The bill also requires the attorney general to report on possible legal options available to compel the federal government to relinquish ownership and management of specified federal lands in Wyoming.[13]

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[11] http://le.utah.gov/~2012/bills/hbillenr/HB0148.pdf
[12] http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB227_R1.pdf
[13] http://legisweb.state.wy.us/2013/Enroll/HB0228V2.pdf

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Idaho also created a committee to study of the process for the state to acquire title to and control of public lands controlled by the federal government.[14]

The Arizona Legislature in 2012 passed a law similar to Utah's, however it was vetoed by Gov. Jan Brewer, The veto message said the measure violated the state's Enabling Act as well as the Property Clause of the U.S. Constitution, which gives Congress the power to dispose of and set rules for federal property[15]

Comment [1]: Management conflicts

A bill proposed, but not passed, in Colorado would have required United States to cede or extinguish title to all agricultural public lands and transfer title to the state.[16]

State and Local Involvement

Federal Laws and Regulations

Management of federal lands in Montana and other states is the responsibility of federal agencies under powers granted by Congress. However, states and local entities may influence decisions in a number of ways.

Many land management decisions are subject to the National Environmental Policy Act, which requires federal agencies to integrate environmental considerations into the planning and decision-making process. Federal agencies required to comply with NEPA must do so in "cooperation with state and local governments" or other entities that have jurisdiction by law over the subject action or special expertise.[17]

A cooperating agency can expect to be asked to provide information to the lead agency as well as providing some staff support. A cooperating agency will normally use its own funds. In short, cooperating agency status allows a state or local government a seat at the table when it comes to identifying issues and developing information.[18]

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[14] http://legislature.idaho.gov/legislation/2013/HCR021.pdf
[15] http://www.azleg.gov/legtext/50leg/2r/summary/s.1332bsfss_asvetoed.pdf
[16] http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont/3BC575329E0E94BB87257A8E0073C714?Open&file=142_01.pdf
[17] 42 U.S. Code § 4331
[18] 40 CFR 1501.6

Cooperating agency status may provide a state and local government with better legal standing should court action ensue. What cooperating agency status does not do is affect the lead agency's authority under NEPA .[19]

Laws governing the Forest Service and the BLM also speak to state and local influence. The Forest Service, under the Multiple-Use Sustained Yield Act of 1960 and the BLM under the Federal Land Policy

NEPA efficacies are currently a topic of concern and the Forest Service is evaluating them at the local, regional and national level. By improving and possibly streamlining the NEPA review process that has become overly burdensome for both the federal government and those who wish to participate in the comment process, land management projects could move from planning to implementation more quickly. Missoula County

and Management Act of 1976 are required to coordinate their natural resource and land planning processes with those of state, local, and tribal jurisdictions.

Changes to land and resource management plans on forest service lands must be coordinated with state and local governments.[20]

The Forest Service is required to discuss the inconsistencies and document the extent to which the agency would reconcile its proposed action with the state or local plan or law.[21] When designating roads and trails on Forest Service lands, the agency shall coordinate with counties, local governments, and tribal governments.[22] However, federal regulations state that the Forest Service retains decision making authority and management may not be conformed to meet non-Forest Service objectives or policies.[23]

The BLM planning process should be consistent with state and local plans to the "maximum extent" allowed by federal law. However, it should be noted that BLM regulations provide that where "state and local government policies, plans, and programs differ, those of the higher authority will normally be followed.[24]

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[19] Todd Everts, director of the Legal Services Office, has written extensively about state and local involvement in federal land management decisions. See Sept. 8, 2008 memorandum to the Fire Suppression Interim Committee. http://leg.mt.gov/content/Committees/Interim/2007_2008/fire_suppression/Cooperating_Agency_%20Status_Memo.pdf

[20] 16 U.S. Code § 1604

[21] 40 C.F.R. 1506.2(d)

[22] 36 CFR 212.53

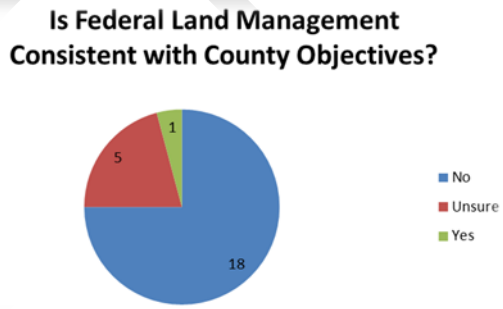
[23] 36 CFR 219.4

[24] 43 C.F.R. 1610.3-2

In addition to state, county, or city governments, other units of local government are eligible to coordinate. That includes school districts, irrigation districts, water quality districts, and fire districts. Coordination with federal land management agency planning processes can occur either through county growth policies or other local government authorized plans, policies, or laws.[25]

Because the Lolo National Forest is not adhering to our County Resource Use Plan the results are road closures, lost tax base, and loss of jobs.
Mineral County

State and local entities have operated under these laws and regulations. Madison and Beaverhead counties were cooperating agencies for the revision of the Beaverhead-Deerlodge National Forest Plan.



The counties of Jefferson, Madison, Beaverhead and the communities of Dillon and Whitehall were cooperating agencies on a proposal to build a transmission line.[26]

A pilot project created by Congress in 2000 went further by providing a state with some authority to manage federal land. The threat of wildfire posed by dense stands of beetle killed trees led to the Good Neighbor pilot project. The legislation allowed the Colorado State Forest Service to reduce hazardous fuels and conduct other activities on national forest lands when doing similar work on Colorado state and private land. In some cases, the state could act as an agent of the federal government, however the projects are still covered by the National Environmental Policy Act.[27]

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[25] Todd Everts memorandum to Rep. Chas Vincent, April 28, 2010.
[26] http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/lands/msti.Par.79135.File.dat/MSTI-Winter-2012-Newsletter.pdf
[27] U.S. Government Accountability Office. Federal Land Management: Additional Documentation of Agency Experiences with Good Neighbor Authority Could Enhance Its Future Use. GAO-09-277, Feb 25, 2009 http://www.gao.gov/products/GAO-09-277

Subsequent legislation included the BLM and extended the authority to Utah. And earlier this year, the passage of the 2014 Farm Bill made the Good Neighbor Authority a nationwide policy.[28]

Montana Laws

Montana legislators have long taken an interest in the management of federal lands within the state's borders. State laws on the subject focus on the authority state and local governments have when interacting with federal agencies.

Several Montana laws passed in recent years speak to involvement in federal land use decisions.

In 2007, the Legislature declared it the policy of the state, "to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities."[29]

To implement that policy, the Department of Natural Resources and Conservation:

- 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;
- may assist local government entities in establishing cooperative agency status and coordination with federal agencies;
- shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;
- has the authority to intervene in litigation or appeals on federal forest management projects that comply with state policy and in which local and state interests are clearly involved or involve fuel-loading conditions that the department considers to be a significant threat to public health and safety;
- has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and
- shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues.[30]

The Legislature did not appropriate funds specific to this statute and implementation of the provisions of 76-13-702, MCA that deal directly with the state engaging the federal government in land management decisions has been limited.

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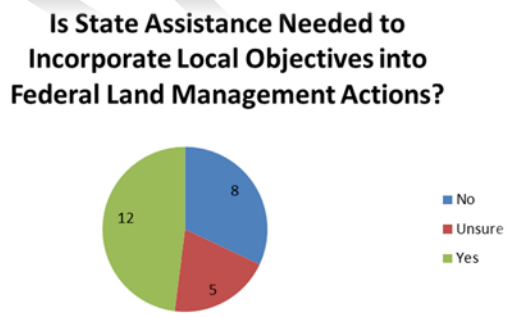
[28] Forestry Provisions in the 2014 Farm Bill, Congressional Research Service. http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43431.pdf
[29] 76-13-701, MCA.
[30] 76-13-702, MCA.

Amendments to 76-13-702, MCA to assist local government entities were made at the request of the Montana Fire Suppression Interim Committee, whose work in 2007 and 2008 included a study of federal land management.[31]

But the Fire Suppression Committee concluded that "federal agencies can implement very little change in forest management without change at the national and congressional levels."

We actively engage federal/and managers to ensure they are aware of our objectives as they relate to jobs, forest health, wildlife habitat, etc. In most instances we agree on management actions, but in cases where we have differing objectives we are usually able to come to a mutual understanding.
Missoula County

In light of that finding, the committee sponsored a resolution urging Congress to grant a governor the authority declare a crisis when there is an excess of fire fuels on federal lands to create a process to fast-track a fuel reduction project. Another resolution sponsored by the committee asked that federal land management and wildfire policies be immediately modified to allow state and local governments to wildfire management activities and to minimize road closures that may restrict access to fight fires. Both resolutions passed the Legislature.[32]



Realizing that the state may have more resources than local communities to deal with federal land management plans, the Legislature in 2011 passed a bill allowing the Department of Commerce to advocate on behalf of local governments by reviewing, analyzing, and commenting on prospective impacts on local socioeconomic conditions from federal land management proposals. No requests to the department have been made.[33]

The state, through the DNRC and the Department of Fish Wildlife and Parks provided legal support in 2012 in the form of an amicus brief for the Colt Summit Restoration and Fuels Project just north of Seeley Lake. **Appendix H**

[31] http://leg.mt.gov/css/Committees/Interim/2007_2008/fire_suppression/default.asp
[32] House Joint Resolutions Nos. 4 and 7.
[33] 90-1-18, MCA and 90-1-182, MCA

The 2013 Legislature passed several bills dealing with federal land management.

House Bill No. 169 clarified in statute that a county growth policy may be used as a resource management plan for the purposes of establishing coordination or cooperating agency status with a federal land management agency.[34]

Two bills require the DNRC to advocate for federal legislation to establish a good neighbor policy that

Members of the EQC, Helena officials, and Forest Service officials inspect the Red Mountain Flume in September 2013.

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 reduce wildfire threats and protect watersheds on federal lands. Authority is sought in both bills to treat insect-infested trees and reduce hazardous fuels. Both Senate Bill No. 201 and Senate Bill No. 217 allow the attorney general to intervene in litigation or appeals.[35]

State and Federal Agreements

Following the 2009 Legislature, the DNRC and Region One of the Forest Service signed a memorandum of agreement (MOA) acknowledging that both entities, "have obligations to the public in contributing to the quality of the human environment, the public health, and the regional economy and natural

[34] 76-1-607, MCA.
[35] http://leg.mt.gov/bills/2013/billpdf/SB0201.pdf http://leg.mt.gov/bills/2013/billpdf/SB0217.pdf

resource base. Our efforts will assist in maintaining a vibrant forest industry infrastructure in order to meet our natural resource goals." **Appendix I**

The agreement requires the Forest Service to: [36]

- Serve as the responsible party for ensuring compliance with all applicable federal regulations and guidelines relating to federal land management planning and policy development.
- Systematically notify the DNRC of opportunities to participate in the development of individual Forest planning revisions and amendments at the Forest level and in future federal forest policy development at the Regional level.
- Retain decision making authority for management of the National Forests. This authority is not modified by the MOA.

The DNRC is required to:

- Participate in the development of individual Forest plan revisions, and Forest plan amendments. This may include, but is not limited to assisting in the development of draft planning documents and establishing environmental objectives and monitoring systems.
- Participate in the development of federal forest policy including but not limited to climate change, renewable energy standards, forest restoration, and water resource protection.
- Provide advice and information throughout the Forest plan revision or amendment process to enhance a cross-jurisdictional partnership. DNRC will provide information or data on particular issues, including social, economic and/or forest health and wildfire hazard concerns. DNRC may assemble and present the data or information with the assistance of experts retained by DNRC. This MOA does not obligate DNRC to expend funds at the request of the Forest Service in furtherance of activities contemplated by this MOA.
- Provide advice and information on regional management strategies and vegetation management project prioritization.
- Coordinate and communicate with the Forest Service regarding proposed planning documents and policies that require review and comment by the DNRC under this MOA.
- Work with the Montana forest products industry and the USDA- Forest Service Region One to improve communication and coordination regarding timber program issues, opportunities, and communications in order to sustaining a vibrant forest products infrastructure.

Under a new agreement, the state and the Forest Service will share costs to reduce fire hazards in the Ten Mile area.

[36] The agreement expired in 2013. As of May 2014, revisions are under consideration. Correspondence with Bob Harrington, DNRC.

Chessman Reservoir is the primary drinking water source for the City of Helena.

In September 2013, the DNRC and Northern Region of the USFS signed an agreement allowed under congressional authority "to achieve land management goals for the national forests that meet local and rural community needs." The authority includes the ability to exchange goods, such as timber, for services, such as tree-thinning. Projects may include treatment of hazardous fuel loads, forest stand health improvements, and habitat enhancement. Non-timber related projects could include weed control and water-quality related improvements such as road maintenance, culvert replacements, and stream restoration. **Appendix J**

The first project undertaking thought by the new agreement is logging and restoration work in the Ten Mile Watershed outside of Helena. The area supplies much of the drinking water for the city of Helena and has been hammered by mountain pine beetles in recent years, leaving thousands of dead trees around Chessman Reservoir. At risk is the Red Mountain Flume.

The EQC toured the area in September 2013 with city and federal officials.

Under the agreement, the state shares costs and personnel with the Forest Service. The project is on federal lands, but nearby lands have been treated for fuel reduction. The 490-acre project on Forest Service land include removal of trees that could fall and damage the flume. Fuel reduction along the flume and near the reservoir aims to reduce the chance the area would experience a high-intensity fire, creating buffer zones against erosion, ash and sediment damaging the flume or contaminating the reservoir during a forest fire.

Collaborative Efforts

There are representatives of varied groups in Montana with interests in federal land management that work within existing laws and regulations by forming collaborative groups.

Two of them include the Montana Forest Restoration Committee and the Southwestern Crown Collaborative.

The Montana Forest Restoration Committee formed in 2007 to help guide restoration of Montana's national forests. Founding members included representatives of state and federal government, the wood products industry, environmental groups. The group's principles establish a "zone of agreement" where controversy, delays, appeals, and litigation are significantly reduced. The principles include

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integrating restoration with socioeconomic well-being, an emphasis on sustainable management, and reestablishing fire as a natural process on the landscape. [37]

There are local restoration committees in the Bitterroot, Helena and Lolo national forests as well as the Lincoln district and the Elkhorn Management Area. The group touts consensus on several projects.

In 2009, Congress established the Collaborative Forest Landscape Restoration Program. The goal is to encourage, "the collaborative, science-based ecosystem restoration of priority forest landscapes."[38]

In 2010, the federal program awarded just more than $1 million to the Southwestern Crown Collaborative, which covers the Bob Marshall Wilderness Complex and surrounding areas. State and federal officials are partners as well as representatives of other groups. Recent projects include stream restoration, weed control, and trail maintenance.[39]

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[37] http://www.montanarestoration.org/home
[38] http://www.fs.fed.us/restoration/CFLRP/overview.shtml
[39] http://www.swcrown.org/