

1 SENATE BILL NO. 217

2 INTRODUCED BY B. HAMLETT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATERSHEDS AND
5 CATASTROPHIC FIRES; FINDING THAT WATERSHEDS AND THE DRINKING WATER SUPPLIES OF MANY
6 MONTANA COMMUNITIES ARE AT RISK FROM CATASTROPHIC FIRES IN FEDERALLY MANAGED
7 WATERSHEDS; DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO
8 ANALYZE FOREST LAND FOR POTENTIAL ZONES OF INFESTATION AND ADVOCATE FOR AUTHORITY
9 TO CONDUCT WATERSHED RESTORATION AND PROTECTION SERVICES ON FEDERAL LAND;
10 AUTHORIZING THE ATTORNEY GENERAL TO INTERVENE IN LITIGATION OF FEDERAL FOREST
11 MANAGEMENT PROJECTS; AND AMENDING SECTIONS 76-13-301, 76-13-303, 76-13-701, AND 76-13-702,
12 MCA."
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14 WHEREAS, properly functioning watersheds are critical to Montana's economic prosperity, the health
15 of its citizens, and the culture of the state but the management of many of these watersheds has left them
16 impaired or at risk for not functioning properly; and

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

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

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

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

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

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

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

3 **"76-13-301. Policy.** (1) It is the public policy of the state to:

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

5 (b) to protect the forests and watersheds of Montana, especially those watersheds that are most affected

6 by insect pests and tree diseases and are critical to water supplies;

7 (c) to enhance the production of forests;

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

9 (e) to protect the recreational values of the forest; and to

10 (2) It is further the public policy of the state to independently and through cooperation with the federal

11 government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest

12 insect pests and tree diseases."

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

15 **"76-13-303. Creation of zone of infestation.** (1) Whenever the department determines that The

16 department shall annually produce a list of areas where:

17 (a) there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest

18 growth on forest lands within the state and that the infestation is of such a character as to be a menace to the

19 timber or forest growth of this state; and

20 (b) an infestation of forest insect pests or forest tree diseases in a watershed makes the watershed at

21 risk for wildfire, places the functionality of the watershed at risk, or creates other conditions that threaten the

22 watershed, the

23 (2) The department shall, with the approval of present the list annually to the board of land

24 commissioners, declare the existence of to determine if a zone of infestation exists and, if so, and shall fix the

25 boundaries so as to definitely describe and identify the each zone."

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

28 **"76-13-701. Findings and policy.** (1) The legislature finds that the sustainable management of public

29 forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential

30 for the benefit of all Montanans.

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

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

7 (4) The legislature finds that:

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

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

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

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

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

21 ~~(4)~~(5) The legislature declares that it is the policy of this state to promote the sustainable use of all public
 22 forests within the state through sound management and collaboration with local, state, and federal entities."
 23

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

25 **"76-13-702. Duties -- authority.** To implement the policy of 76-13-701, the department of natural
 26 resources and conservation:

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

29 (2) shall provide technical information and educational assistance to nonindustrial, private forest
 30 landowners;

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

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

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

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

12 (a) treat insect-infested trees;

13 (b) reduce hazardous fuels; and

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

16 ~~(6)~~(7) may assist local government entities in establishing cooperative agency status and coordination
 17 with federal agencies;

18 ~~(7)~~(8) shall promote the development of an independent, long-term sustained yield calculation on
 19 Montana's federal forests;

20 ~~(8)~~(9) has the authority to intervene in litigation or appeals on federal forest management projects that:

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

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

24 ~~(9)~~(10) has the authority to enter into agreements with federal agencies to participate in forest
 25 management activities on federal lands; and

26 ~~(10)~~(11) shall participate in and facilitate collaboration between traditional forest interests in reaching
 27 consensus-based solutions on federal land management issues."
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29 **NEW SECTION. Section 5. Federal forest management projects -- attorney general authority to**
 30 **intervene.** To fulfill the purposes of Title 76, chapter 13, the attorney general has the authority to intervene in

1 litigation or appeals on federal forest management projects that could affect watershed protection or restoration.

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

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