

Executive Summary—Analysis of S. 1470

S. 1470, the “Forest Jobs and Recreation Act,” (FJRA) sponsored by Senator Jon Tester (D-MT), has generated controversy over both its intent and content. Many views expressed concerning the legislation have been based on rumor and speculation, rather than a careful reading of the bill. The services of Mike Bader Consulting were obtained to analyze, section by section, the FJRA.

The FJRA affects over 3 million acres of National Forest System and Bureau of Land Management lands in Montana and contains a nearly bewildering list of new definitions, designations, management practices, required studies, reports and publications. Approximately 680,000 acres are designated as new Wilderness Areas, another 336,000 acres as National Recreation Areas, Protection Areas, Recreation Areas, and Special Management Areas, each with their own management language. Nearly 3 million acres are designated as Stewardship Areas where logging is expressly allowed and encouraged. It mandates that at least 100,000 acres of the Beaverhead-Deerlodge National Forest and the Three Rivers District of the Kootenai National Forest be logged within 10 years as well as an undetermined amount on the Seeley Lake District of the Lolo National Forest.

This analysis determines that the findings, purposes and subsequent sections of the FJRA clearly define it as a bill whose primary purpose is promotion of commercial logging through localized management of National Forest System lands.

Touted as a bill that is good for the environment, the FJRA would accomplish several conservation goals, including the designation of new wilderness areas and headwaters protection for several streams important to native fish. The FJRA does contain admirable language for restoration of fish, wildlife and watersheds, and there is a potential to lower road density in some watersheds. However, the FJRA effectively jeopardizes these goals through its action provisions and the methods dictated.

The various sections of the bill have been carefully constructed to affect a desired outcome that would be difficult to challenge through citizen appeals or litigation. For example, Sec. 2(a)(2)(A) “encourages the economic, social, and ecological sustainability of the region and nearby communities.” Sec. 2(a)(2)(B) “promotes collaboration,” 2(b)(2) declares a major purpose “to reduce gridlock and promote local cooperation and collaboration in the management of forest land.” It does this through use of “advisory committees” or “local collaborative groups.” Again, this seeks the localization, through private interests, of National Forest System lands. 2(b)(3) states a purpose is enhancement of forest diversity and *production of wood fiber to accomplish habitat restoration and generation of a more predictable flow of wood products for local communities*. This purpose is later matched with the definitions of the bill to establish commercial logging as the primary means of fish and wildlife habitat restoration. For example, one of the definitions FJRA uses for restoration is *“maintaining the infrastructure of wood products manufacturing facilities.”*

The FJRA is not a budget-neutral bill. It authorizes practically unlimited expenditures from the U.S. Treasury and other sources, and empowers “Resource Advisory Committees” or

“Local Collaboration Groups” to spend federal funds, including on private, non-National Forest System lands. This provision and others in the FJRA give the “Resource Advisory Committees” or “Local Collaboration Groups” sweeping powers that could effectively, if not officially, usurp management and budgetary authority from the Forest Service and grant it to private interests. Professional staff from the Forest Service will be replaced with citizen committees whose members are mandated to include industry groups.

It also authorizes the Secretary of Agriculture to expend taxpayer funds for Fiscal Year 2010 to pay a federal share in construction of “combined heat and power biomass systems that can use materials made available from the landscape-scale restoration projects.”

The different funding provisions of the bill raise a real potential for other National Forests and Forest regions to have their funds transferred to projects under the FJRA. Pitting one forest against another for funding is unhealthy and does not promote a wholistic, ecosystem approach to public lands management in the Northern Rockies.

It is important to note that in legislation there is specific legal meaning to terms such as “shall” versus “may” or “can.” The word “*shall*” has the force of law, once a bill is enacted and signed into law by the President. Thus, when the FJRA states the Secretary “*shall generate revenue*”, “*shall maintain the infrastructure of woods products manufacturing facilities that provide economic stability to communities in close proximity to the aggregate parcel (timber harvest unit) and to produce commercial wood products*,” it means just that. It will be the law that the Secretary must keep specific, private timber mills open and fed with timber from public lands, at least through the term of authority, if not indefinitely. This is not only an open-ended subsidy, it interferes with free enterprise.

Ultimately, where there is a question of ambiguity, Courts will review a bill’s purposes and its legislative history to divine Congress’ intent. When purposes conflict, the overall goals of the bill will prevail. When wilderness and ecological restoration are consistently listed last, as they are in FJRA, a Court can be expected to conclude the logging provisions take precedence.

In summary, the FJRA is a significant departure from traditional wilderness bills. It contains several major precedent-setting provisions potentially detrimental to national public lands management that may be repeated in future bills. These include—

- 1) **Localizing of National Forest management by private, local entities for private profit.** Other members of Congress may seek to exploit similar special management for national public lands in their states. This could represent the fragmentation of National Forest system management and regulations to a serious degree and ignores the basic principle that national public lands belong to all Americans, not just those in nearby local communities.
- 2) **Mandated logging of National Forest land is an unscientific override of current forest planning by professional Forest Service staff. The logging mandates greatly exceed the average levels since the 1950s on the Beaverhead-Deerlodge and are an unbelievable 14 times the sustainable level recently calculated by**

the Forest Service. The mandated logging area includes the Three Rivers District of the Kootenai National Forest, where the endangered grizzly bear population is nearly extinct due to very heavy logging and roadbuilding.

- 3) **Numerous unfunded mandates and blank check spending authority for the Secretary of Agriculture and Secretary of the Interior.** Gives “Resource Advisory Committees” or “Local Collaboration Groups” spending authority and allows funds to be drawn from other forests and Forest Service regions to implement FJRA, pitting forests against another for funding. This creates hard feelings and mistrust rather than cooperation. Authorizes the Secretary to build heat and power generating facilities, a new expansion of authority. Mandates numerous studies, reports, plans and publications, and numerous 10-year contracts, competing with other forests in the region for staff time, printing and distribution. Dedicating staff to the numerous reports and planning removes them from other management duties.
- 4) **Contains several provisions that abrogate the Wilderness Act by allowing non-conforming uses including military aircraft landings, motorized access, and other intrusions.**
- 5) **Releases numerous Wilderness Study Areas protected by law under S. 393, sponsored by the late Senator Lee Metcalf (D-MT), and releases BLM-administered Wilderness Study Areas that have been protected for more than 30 years.**
- 6) **Requires expedited environmental analysis under NEPA and adds new provisions to appeal regulations that place additional requirements on appellants that will limit some citizens’ ability to participate in the planning process.**