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National Forests Policy Assessment: Report to Montana Senator Jon Tester (University of Montana, College of Forestry and Conservation, Sept. 2008)

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Excerpt from Jim Burchfield & Martin Nie, *National Forests Policy Assessment: Report to Montana Senator Jon Tester (University of Montana, College of Forestry and Conservation, Sept. 2008)*, in *THE PAST, PRESENT, AND FUTURE OF OUR PUBLIC LANDS: CELEBRATING THE 40TH ANNIVERSARY OF THE PUBLIC LAND LAW REVIEW COMMISSION'S REPORT—ONE THIRD OF THE NATION'S LANDS* (Natural Res. Law Ctr., Univ. of Colo. Law Sch. 2010).

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Recommendation 7. Comprehensive Review

The problems and opportunities evident in National Forest management necessitate a comprehensive examination by a diverse range of interests and perspectives. With appropriate sideboards and a clearly defined charter, a large-scale study of National Forest law and management has the potential of providing enduring solutions to a wider-range of problems than discussed in this report.

There are four major reasons why we recommend a comprehensive and well-represented examination of National Forest law and policy:

1. More than thirty years have passed since NFMA's enactment in 1976. New laws, planning processes, court decisions, executive orders, science, technology, fires, population growth, private land development, economic transitions, collaborative efforts, motorized recreation, and international trade deals, among other developments, are but a few reasons why it is time to revisit our National Forest laws and regulations in systematic fashion. Comprehensive assessments in other areas of environmental policy have recently taken place and National Forest policy deserves a similar revisitation.
2. A comprehensive and careful assessment is preferable to an Executive-dominated "shotgun approach" or predetermined congressional committee studies or task forces that are immediately questioned by opposing parties. A comprehensive approach might help us avoid unintended consequences that could result from a more partisan piecemeal tinkering of environmental/forest law.
3. We suspect that many of the problems facing the USFS do not originate in one single law or regulation but rather from their cumulative nature. The judiciary repeatedly recognizes the significance of this body of law and its impact on forest management, but other institutions often fail to do so. A comprehensive assessment will help untangle this Gordian knot of laws and policies and examine how they fit and fail to fit together.

The process will place forest management in its appropriate historical and legal context and explain the magnitude of these laws and their congressional design. It will also focus on how intersecting laws, such the General Mining Law of 1872, impact National Forest management. Such an undertaking would ask whether or not it is the nature of these laws or their implementation by the USFS that is most problematic.

4. A comprehensive assessment will generate constructive dialogue and analysis among a broad cross-section of interests. It might uncover some common ground among various actors. Numerous collaborative efforts demonstrate that such agreements exist and that political institutions and legal parameters play an important role in their formation and implementation. The assessment will also help crystallize some of the core differences of opinion and force interests to speak with more clarity and vision. The process would provide the public and decision makers an accurate assessment of what has transpired since NFMA's enactment in 1976 and what lessons might be learned from its implementation.

For these reasons, we have proposed to organize a comprehensive study of forest policy and management and are now seeking Congressional funding and/or private financial support. Our proposed process (a more detailed overview on file with authors) includes assembling a diverse national-level steering committee that will collectively shape the study's focus and questions. Well-represented "policy teams" will then be responsible for answering these questions in a series of peer-reviewed reports that will be presented at a symposium. These teams will be charged with identifying areas of common interest and disagreement. Such an undertaking would provide valuable information to lawmakers and the USFS.