

## ANALYSIS AND RECOMMENDATIONS

### BLACKFOOT CLEARWATER STEWARDSHIP ACT OF 2017 SENATOR JON TESTER (D-MT)

**Michael G. Bader\***

#### I. EXECUTIVE SUMMARY

Senator Jon Tester (D-MT) introduced the Blackfoot Clearwater Stewardship Act (BCSA) in the U.S. Senate. As of this report the bill had not yet received a number. The bill establishes two motorized recreation areas, three additions to existing Wilderness areas and contains special management language for forest and fuels management applicable to the entire Seeley Lake Ranger District, Lolo National Forest, Montana.

The BCSA is best described as “place-based legislation” and represents a continued effort to shift management of National Forest System lands away from full public involvement through the National Forest planning process and towards local control by private collaborative groups via site-specific federal legislation. It limits and expedites environmental analysis under the National Environmental Policy Act. It also shifts emphasis towards motorized recreation uses. It authorizes these shifts absent any environmental review.

The BCSA mandates a ten-year schedule of restoration projects that include commercial forest products. It allows private groups to construct and maintain trails for motorized and mechanized use within sensitive wildlife and roadless areas, without environmental analysis of the potential impacts on threatened and endangered species, habitat for important herds of elk and impacts on other recreational users.

The language of the bill is crafted to qualify the private Southwest Crown of the Continent Collaborative and the ten-year schedule of projects for federal funding from Congress and the Forest Service under the Collaborative Federal Land Restoration Program.

The BCSA gives inordinate management authority and influence to the private collaborative that put the bill together and may be a step towards *de facto* leasing of National Forest System lands for management by private interests, while limiting opportunities for involvement by the general American public owners of these national public lands.

The political management of National Forests by Congressional fiat, District by District, Forest by Forest, threatens the integrity and consistency of National Forest System management in a “balkanization” process. Agency management, based on the best available science as required by the National Forest Planning Rule, is undermined. Protection of the Public Trust may be compromised.

## II. KEY ELEMENTS OF THE BCSA

- pertains to the Seeley Lake Ranger District, Lolo National Forest, Montana
- establishes two adjacent motorized and mechanized recreation areas totaling 6,082 acres within the bounds of the Monture Inventoried Roadless Area and the Grizzly Bear Primary Conservation Area
- designates 79,062 acres of Wilderness, primarily as additions to the Bob Marshall and Scapegoat Wilderness Areas
- mandates a landscape review and a ten year schedule of restoration projects, both in cooperation with private collaborative interests; a primary purpose is to supply commercial forest products to Pyramid Mountain Lumber Company, Seeley Lake, Montana
- mandates that the Secretary of Agriculture shall give priority to expanded motorized and non-motorized recreation opportunities throughout the Seeley Lake Ranger District that “are in the public interest”
- mandates that the Secretary of Agriculture shall perform National Environmental Policy Act analysis on any proposal submitted by a local group to construct new trails for motorized and mechanized uses anywhere on the Seeley Lake Ranger District
- mandates that the Secretary of Agriculture take certain actions as well as act on proposals from collaborative groups without providing a funding mechanism, creating unfunded mandates
- allows private groups to contribute labor and finances towards construction of new trails, including motorized routes
- allows temporary roads and timber harvest to accommodate the motorized and mechanized uses in the new recreation areas
- contains language qualifying the private collaborative to receive federal funding

## III. REVIEW AND ANALYSIS

This review is based upon the intent and actual and expected outcomes of the BCSA upon the environment, public process, policy and interests. In this review, the actual text of the BCSA appears in Century font. Review and Analysis appears in Times New Roman font.

The active text in the BCSA is relatively sparse. Thus, to properly consider the legislative intent and potential outcomes of the BCSA, one must consider sources of information in addition to the plain text of the bill. These include the public statements and materials provided by Senator Tester, the Southwest Crown of the Continent Collaborative, the

Blackfoot Clearwater Stewardship Project, the Montana Wilderness Association and Pyramid Mountain Lumber Company, as well as media reports and specific provisions of other acts of Congress that are referenced or incorporated into the BCSA.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

SEC. 2. DEFINITIONS.

Section 1 contains standard language and format for the bill title and table of contents.

Section 2 has standard language and format for definitions.

## TITLE 1 — FOREST RESTORATION

SEC. 101. LANDSCAPE ASSESSMENT.

(a) LANDSCAPE ASSESSMENT.—Not later than 3 years after the date of enactment of this Act, the Secretary, in collaboration with interested parties, shall complete a landscape assessment of the District.

(b) REQUIRED COMPONENTS.—The landscape assessment under subsection (a) shall—

(1) assess the ecological condition of forests and watersheds within the District; and

(2) identify restoration actions needed to facilitate ecosystem sustainability, resilience, and health by assisting in the recovery of forest ecosystems within the District.

(c) USE OF EXISTING ASSESSMENTS.—The Secretary may fulfill the requirement under subsection (a) through the use of any landscape assessment being carried out as of the date of enactment of this Act that contains the components required under subsection (b).

(d) RESTORATION SCHEDULE.—As soon as practicable after the completion of the landscape assessment under subsection (a), the Secretary, in collaboration with interested parties, shall develop for the District a 10-year schedule of restoration projects.

### A. REVIEW AND ANALYSIS OF SECTION 101

Section 101 mandates that the Secretary of Agriculture in cooperation with private collaborative interests complete a landscape assessment of the Seeley Lake Ranger District within 3 years of the date of enactment. This assessment is limited to assessing the ecological condition of forests and watersheds and identification of needed restoration actions.

It is unclear if the Secretary of Agriculture must adhere to the 2012 National Forest Planning Rule<sup>1</sup> in completing this assessment. Ordinarily, legislative language would include a phrase to the effect, “Subject to all existing laws and regulations governing the Forest Service...” Leaving it silent creates uncertainty and leaves the door open to complete the assessment outside of the planning process.

Subsection (c) allows the Secretary to use existing assessments in progress but does not require it.

Subsection (d) mandates preparation of a ten-year schedule of restoration projects in cooperation with private collaborative interests.

---

<sup>1</sup> 36 CFR, Part 219 (2012)

The unspoken intent of this section is two-fold. It would provide a steady supply of commercial timber products to Pyramid Mountain Lumber in Seeley Lake.<sup>2</sup> The public statements by Senator Tester and Pyramid Chief Operating Officer Loren Rose give further weight to this conclusion.<sup>3</sup> It would also provide extraordinary influence over management by the private collaborative.

Section 101 substantially replaces the existing National Forest planning process on the Seeley Lake Ranger District, including the Lolo National Forest Plan Revision, slated to begin in 2017-2018. Moreover, it potentially ties the hands of Forest Service managers by mandating a schedule of restoration projects without providing a funding mechanism. This could potentially take resources and staff time away from other Ranger Districts on the Lolo National Forest and other National Forests in Region 1.

## SEC. 102. ENVIRONMENTAL REVIEW OF COLLABORATIVELY DEVELOPED RESTORATION PROJECTS.

### DEFINITION OF COLLABORATIVELY DEVELOPED RESTORATION PROJECT.—

(a) In this section, the term “collaboratively developed restoration project” means an activity or set of activities that fulfills the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of Public Law 111–11 (16U.S.C. 7303(b)).

(b) ENVIRONMENTAL REVIEW.— A collaboratively developed restoration project within the District may be carried out in accordance with the provisions applicable to hazardous fuel reduction projects under sections 104, 105, and 106 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6514–6516).

(c) OBJECTOR MEETING.— In accordance with section 218.11 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act), the Secretary may request a meeting with an objector to any collaboratively developed restoration project within the District.

## B. REVIEW AND ANALYSIS OF SECTION 102

Section 102 subsection (a) defines collaboratively developed restoration projects as per the Collaborative Forest Landscape Restoration Program (CFLRP)<sup>4</sup>, part of the Omnibus Public Land Management Act of 2009. The SWCCC has received large sums of taxpayer dollars through this program. In a hypothetical example provided by the Forest Service and shown on the SWCCC web site, a partner can consider \$2,000 of its work expenses as a non-cash contribution to a project. The Forest Service would pay the partner \$5,000 cash, which may include CFLRP funds, “to pay for the partner’s salary, fuel for vehicles, and supplies toward the project.” In one actual example, one non-profit member of the SWCCC has received \$2.5 million in federal funds for its non-cash, in-kind contributions of \$903,000.<sup>5</sup>

The members of the collaborative are receiving direct remuneration, providing an

---

<sup>2</sup> BCSA one page fact sheet provided by Senator Tester

<sup>3</sup> R. Chaney, *Tester Announces New Wilderness Bill for Blackfoot Clearwater*, MISSOULIAN, Feb. 24, 2017

<sup>4</sup> 16 USC § 7303, Pub. L. 111-11 (2009)

<sup>5</sup> Swan View Coalition Newsletter, Summer-Fall 2015.

incentive to overlook problems and shortcomings since the projects are an income source. It is a get paid to play scenario. This compromises objectivity and accountability and increases conflicts of interest. The BCSA institutionalizes this arrangement for another ten-year period, essentially supplanting the authorized Forest Planning process.

CFLRP has been interpreted as such: “The Collaborative Forest Landscape Restoration Act . . . is largely being used to circumvent existing environmental laws and give control of the management of our National Forests to local special interests.”<sup>6</sup>

Subsection (b) allows projects developed pursuant to the BCSA to be implemented under the fuel reduction provisions of Sections 104, 105 and 106 of the Healthy Forests Restoration Act (HFRA).<sup>7</sup> The potential for abuse of these sections is relatively high. HFRA has two definitions for Wildland –Urban Interface. Up to 1.5 miles from communities and essential infrastructure; up to 2.5 miles if the community has an approved Wildlife Protection Plan.<sup>8</sup> Combined with provisions in CFLRP and the Agriculture Act of 2014, a large percentage of the Seeley Lake Ranger District would be open to projects with limits on public involvement and judicial review. HFRA projects also have streamlined environmental analysis with just two alternatives, rather than the broad range of alternatives required by the NEPA.<sup>9</sup> Expedited and limited environmental analyses are endemic to the HFRA, CFLRP and Agriculture Act of 2014.

Subsection (c), as literally worded, potentially leaves meetings with objectors at the sole discretion of the Secretary of Agriculture, rather than the 2012 Planning Rule, which identifies the Deciding Official, a line officer one step up from the Responsible Official, as the one with the discretion in this matter.

## TITLE II—RECREATION

### SEC. 201. OTATSY RECREATION MANAGEMENT AREA.

(a) ESTABLISHMENT.— Subject to valid existing rights, certain Federal land in the Lolo National Forest comprising approximately 2,013 acres, as generally depicted on the Map, is designated as the “Otatsy Recreation Management Area” (referred to in this section as the “recreation management area”).

(b) MANAGEMENT.—The Secretary shall manage the recreation management area in accordance with—

(1) this section, to conserve, protect, and enhance the scenic, fish and wildlife, recreational, backcountry heritage, and other natural resource values of the recreation management area; and

(2) any laws (including regulations) relating to the National Forest System.

(c) PROHIBITIONS.—Except as provided in subsections (d) and (e), the following shall be prohibited on Federal land within the recreation management area:

(1) Permanent roads.

(2) Timber harvest.

(3) Except as necessary to provide for snowmobile use, to meet the minimum

---

<sup>6</sup> Letter from retired U.S. Forest Service fisheries biologists Al Espinosa and Harry Jageman to the U.S. Senate Subcommittee on Public Lands and Forests. Aug. 21, 2010.

<sup>7</sup> Pub. L. 108-148 (2003)

<sup>8</sup> Pub. L. §. . . . . (2003)

<sup>9</sup> 42 U.S.C. § 4321 et seq

requirements for the administration of the recreation management area, and to protect public health and safety—

(A) the use of motorized and mechanized vehicles; and

(B) the establishment of temporary roads.

(d) USE OF SNOWMOBILES.—The use of snowmobiles shall be allowed within the recreation management area—

(1) between December 1 and April 1;

(2) during periods of adequate snow cover, as determined by the Secretary; and

(3) subject to such terms and conditions as the Secretary determines to be necessary.

(e) WILDFIRE, INSECT, AND DISEASE MANAGEMENT.—

In accordance with this section, the Secretary may carry out any measures in the recreation management area that the Secretary determines to be necessary to control fire, insects, and diseases, including, as the Secretary determines to be appropriate, the coordination of those activities with a State or local agency.

(f) WITHDRAWAL.—Subject to valid existing rights, the recreation management area (including any Federal land acquired after the date of enactment of this Act for

inclusion in the recreation management area) is withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

### C. REVIEW AND ANALYSIS OF SECTION 201

Section 201(a) establishes the Otatsy Recreation Management Area. It is important to note that it does not establish a National Recreation Area. This area is wholly within the Monture Inventoried Roadless Area<sup>10</sup> and is in prime occupied grizzly bear habitat within the Primary Conservation Zone for grizzly bears in the Northern Continental Divide Ecosystem.<sup>11</sup> It is located between the Scapegoat Wilderness Area and the Blackfoot-Clearwater Wildlife Management Area.

It is designated as Management Area 12 (recommended Wilderness) in the Lolo National Forest Plan,<sup>12</sup> and marked as closed year-round to motorized use.<sup>13</sup> On the Forest Visitor Map (2001)<sup>14</sup>, the area is designated as Area 1, “Lolo NF lands closed yearlong to ALL motorized vehicles including snowmobiles.” The Purpose of the Restriction is “Non-motorized recreation, reduce soil erosion, reduce wildlife disturbance.”<sup>15</sup>

---

<sup>10</sup> 36 CFR Part 294, Final Rule (2001)

<sup>11</sup> U.S. Fish & Wildlife Service, *Draft Conservation Strategy for Grizzly Bears in the Northern Continental Divide Ecosystem* (2013); U.S. Fish & Wildlife Service, *Grizzly Bear Recovery Plan* (Missoula, MT 1992)

<sup>12</sup> Lolo National Forest Plan (1986)

<sup>13</sup> Motorized Use Map, Seeley Lake Ranger District, Lolo National Forest (2016)

<sup>14</sup> Visitor Map, Seeley Lake Ranger District, Lolo National Forest (2001)

<sup>15</sup> Travel Plan Map Legend, Seeley Lake Ranger District, Lolo National Forest (2001)

It was previously proposed for wilderness designation in Senator Tester's Forest Jobs and Recreation Act,<sup>16</sup> and has been included in several other bills including the Northern Rockies Ecosystem Protection Act<sup>17</sup> (introduced in U.S. Senate and U.S. House of Representatives).

Subsection (b) states the Secretary of Agriculture *shall* (emphasis provided) manage the area in accordance with the section and, "to conserve, protect, and enhance the scenic, fish and wildlife, recreational, backcountry heritage, and other natural resource values of the recreation management area; and  
(2) any laws (including regulations) relating to the National Forest System."

However, while the Secretary of Agriculture must conserve the values listed in subsection (b) the subsequent subsection states construction of trails and temporary roads, and even timber harvest and permanent roads, are allowable if they are in support of the motorized recreational uses. While Subsection (c)(1 & 2) prohibits road building and timber harvest, Subsection (c)(3)(A & B) while poorly worded, appears to allow temporary roads, timber harvest, and motorized use "as necessary to provide for snowmobile use, to meet the minimum requirements for the administration of the recreation management area, and to protect public health and safety." Otherwise, motorized use by vehicles other than snowmobiles appears to be limited to the exceptions outlined.

The Secretary of Agriculture is presented with conflicting mandates. The uses and activities permitted can hardly be compatible with "conserving, protecting or enhancing the scenic, fish and wildlife, or backcountry heritage" of the area. How does trail and road building along with motorized use equate with backcountry heritage values? The reality on the ground is that this area is known as prime range for wintering elk<sup>18</sup> and is occupied grizzly bear habitat. The boundary of the Recreation Management Area borders the proposed Wilderness addition. Snowmobiles will be allowed right to the Wilderness boundary, which encourages illegal intrusions, intended or not, into designated Wilderness. How does the Secretary of Agriculture comply with these conflicting subsections at the same time?

Subsection (d) establishes a general window for snowmobile use from December 1 to April 1. Subsections (e) and (f) contain standard language for management of fires, insects and disease and mineral withdrawal, respectively.

#### SEC. 202. SPREAD MOUNTAIN RECREATION AREA.

(a) ESTABLISHMENT.—Subject to valid existing rights, certain Federal land in the Lolo National Forest, comprising approximately 3,835 acres, as generally depicted on the Map, is designated as the "Spread Mountain Recreation Area" (referred to in this section as the "recreation area").

(b) MANAGEMENT.—The Secretary shall manage the recreation area in accordance with—

- (1) this section, to conserve, protect, and enhance the scenic, fish and wildlife, recreational, backcountry heritage, and other natural resource values of the recreation area; and
- (2) any laws (including regulations) relating to the National Forest System.

---

<sup>16</sup> S. 37, The Forest Jobs and Recreation Act, Senator Jon Tester (D-MT) (2013)

<sup>17</sup> S. 3022, The Northern Rockies Ecosystem Protection Act, Senator Sheldon Whitehorse (D-RI) (2016)

<sup>18</sup> Lolo National Forest Plan (1986)

(c) PROHIBITIONS.—Except as provided in subsection (e), the following shall be prohibited on the Federal land within the recreation area:

- (1) Permanent roads.
- (2) Timber harvest.
- (3) Except as necessary to meet the minimum requirements for the administration of the recreation area and to protect public health and safety—
  - (A) the use of motorized vehicles; and
  - (B) the establishment of temporary roads.

(d) MECHANIZED VEHICLES, PEDESTRIANS, AND HORSE TRAVEL.—Nothing in this section prohibits—

- (1) the use of mechanized vehicles, access by pedestrians, or horse travel within the recreation area; or
- (2) the construction of trails for use by mechanized vehicles, pedestrians, and horse travel within the recreation area.

(e) WILDFIRE, INSECT, AND DISEASE MANAGEMENT.—In accordance with this section, the Secretary may take any measures in the recreation area that the Secretary determines to be necessary to control fire, insects, and diseases, including, as the Secretary determines to be appropriate, the coordination of those activities with a State or local agency.

(f) WITHDRAWAL.—Subject to valid existing rights, the recreation area (including any Federal land acquired after the date of enactment of this Act for inclusion in the recreation area) is withdrawn from all forms of—

- (1) entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

#### D. REVIEW AND ANALYSIS OF SECTION 202

Subsection (a) establishes the Spread Mountain Recreation Management Area, which is not a National Recreation Area. This area is wholly within the Monture Inventoried Roadless Area and is in prime occupied grizzly bear habitat within the Primary Conservation Zone for grizzly bears in the Northern Continental Divide Ecosystem. It is designated as Management Area 12 (recommended Wilderness) in the Lolo National Forest Plan, and marked as closed year-round to motorized use. On the Forest Visitor Map, the area is designated as Area 1, “Lolo NF lands closed yearlong to ALL motorized vehicles including snowmobiles.” The Purpose of the Restriction is “Non-motorized recreation, reduce soil erosion, reduce wildlife disturbance.”

It was previously proposed for wilderness designation in Senator Tester’s Forest Jobs and Recreation Act, and has been included in several other bills including the Northern Rockies Ecosystem Protection Act (introduced in U.S. Senate and House of Representatives).

Subsections (b) and (c) contain identical language as subsections (b) and (c) in Section 201.

Subsection (d) states that nothing in this section prohibits the use of mechanized vehicles, access by pedestrians, or horse travel within the recreation area; or the construction of



trails for use by mechanized vehicles, pedestrians, and horse travel within the recreation area. Thus, if motorized use and/or the construction of new trails is found to be detrimental to grizzly bears and other wildlife including elk, it may be shielded from judicial challenges on those issues by the BCSA.

Subsections (e) and (f) contain standard language for management of fires, insects and disease and mineral withdrawal, respectively.

The BCSA is strangely silent regarding the true purpose of the Spread Mountain Recreation Area. It establishes a 3,800 acre play area for mountain bike users. The one page fact sheet released by Senator Tester states: “The bill also protects access to 3,800 acres of mountain bike trails...and provides the opportunity to create additional trails in the area for future generations of bikers to enjoy.”<sup>19</sup>

The establishment of this area sets a negative precedent for wildlife management. Creating designated mountain bike “play areas” in prime roadless grizzly bear habitat would increase encounters and mortality risks for both bears and people. A newly constructed network of mechanized trails would have innumerable impacts on wildlife, fish, soils, the wilderness character and wild nature of the area. Combined with the adjacent Otatsy Recreation Management Area for snowmobiles, the expanded year-round high speed motorized and mechanized use would cause significant disturbance to grizzly bears, elk herds and other wildlife.

Due to the inherent conflicts between mechanized mountain bike use, equestrian and foot travel, separate trail systems may be proposed, spreading impacts across an even greater area. Moreover, the Recreation Management Area would share an extensive border on three sides with designated Wilderness. Mountain bikes would be allowed right to the Wilderness boundary, encouraging accidental and intentional illegal intrusions into designated Wilderness. The headwaters of Lake Creek and Camp and Otatsy Lakes will be prime destinations, and likely sites for proposed trail construction loops.

#### SEC. 203. TRAIL-BASED RECREATION.

(a) DEFINITION OF COLLABORATIVELY DEVELOPED.—In this section, the term “collaboratively developed” means a proposal that is developed and implemented through a collaborative process that—

- (1) includes multiple interested persons representing diverse interests; and
- (2) is transparent and nonexclusive.

(b) EXPANDED TRAIL RECREATION OPPORTUNITIES.—

(1) IN GENERAL.—If a local collaborative group submits to the Secretary, by not later than 5 years after the date of enactment of this Act, a collaboratively developed proposal to improve motorized and nonmotorized recreational trail opportunities within the District, the Secretary—

- (A) shall analyze the proposal in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (B) subject to appropriations, and in accordance with subsection (d), may provide for the construction of any of the routes included in the proposal.

(2) PRIORITY.—In completing the analysis required by paragraph (1)(A), in accordance with subsection (d), the Secretary shall give priority to expanding motorized and nonmotorized recreational trail opportunities within the

---

<sup>19</sup> BCSA One pager released by Senator Tester

District that are in the public interest.

(3) DEADLINE.—The Secretary shall complete the analysis required by paragraph (1)(A) by not later than 3 years after the date on which the Secretary receives the applicable collaboratively developed proposal.

(c) USE OF VOLUNTEER SERVICES AND CONTRIBUTIONS.—The Secretary may accept volunteer services and contributions from non-Federal sources to construct and maintain recreational trails under this section.

(d) COMPLIANCE.—In carrying out this section, the Secretary shall comply with—

(1) each provision of law (including regulations) that is generally applicable to the National Forest System; and

(2) this Act.

(e) EFFECT OF SECTION.—Nothing in this section affects the ownership or management of, or any other right relating to, any non-Federal land (including any interest in non-Federal land).

## E. REVIEW AND ANALYSIS OF SECTION 203

Subsection (a) defines collaboratively developed projects as those that “includes multiple interested persons representing diverse interests; and is transparent and nonexclusive.” This language is taken directly from the Agriculture Act of 2014.<sup>20</sup>

Subsection (b) contains sweeping new requirements for the Secretary of Agriculture and new authority for private local collaborative groups. For example, a collaborative has up to five years from the date of enactment to submit proposals for new trail construction and the Secretary of Agriculture shall analyze the proposal under NEPA and if appropriations are available, may expend public funds implementing the private proposals.

Subsection (b)(2) “the Secretary *shall* (emphasis provided) give priority to expanding motorized and non-motorized recreational trail opportunities within the District that are in the public interest.” How is public interest defined? No definition is provided in Section 2 of the BCSA. It is not defined by the national public interest, as only “local” groups are allowed to submit proposals for NEPA analysis. Thus, the mandates of Section 203 go well beyond the recreation areas established under Sections 201 and 202 to include the entirety of the Seeley Lake Ranger District. Turning the Seeley Lake Ranger District into a haven for motorized recreation use appears to be in direct conflict with the primary values of the area that include grizzly bears, bull trout, water quality, scenery, solitude, hunting and angling.

Subsection (b)(3) states the Secretary of Agriculture must complete NEPA analysis within 3 years of receiving the proposal. In combination with the other provisions of subsection (b), the BCSA commits the public to numerous time-consuming and costly NEPA analyses of proposals that may be frivolous, duplicative or poorly thought out.

Subsection (c) states: “The Secretary may accept volunteer services and contributions from non-Federal sources to construct and maintain recreational trails under this section.” This allows the private snowmobile and mountain bike groups to construct and maintain their own trail systems for their own exclusive use on federal public land, giving them an

---

<sup>20</sup> Pub. L. 113–79 (2014)

extraordinary level of management control.

Subsection (d) contains standard language regarding to compliance with existing laws and regulations (of which the BCSA would be one).

Taken together, Sections 201, 202 and 203 are worded so that the SWCCC and the ten-year schedule of restoration projects will qualify for funding under CFLRP. Section 4003 of the Omnibus Public Land Act<sup>21</sup> spells out numerous eligibility requirements for collaborative groups seeking funding. Subsections (b) and (c) are particularly relevant to the BCSA:

- (b) Eligibility Criteria- To be eligible for nomination under subsection
- (c), a collaborative forest landscape restoration proposal shall--
  - (1) be based on a landscape restoration strategy that--
    - (A) is complete or substantially complete;
    - (B) identifies and prioritizes ecological restoration treatments for a 10-year period within a landscape that is--
      - (i) at least 50,000 acres;
      - (ii) comprised primarily of forested National Forest System land, but may also include land under the jurisdiction of the Bureau of Land Management, land under the jurisdiction of the Bureau of Indian Affairs, or other Federal, State, tribal, or private land;
      - (iii) in need of active ecosystem restoration; and
      - (iv) accessible by existing or proposed wood-processing infrastructure at an appropriate scale to use woody biomass and small-diameter wood removed in ecological restoration treatments;

The SWCCC, the area comprised by the Seeley Lake Ranger District, the ten-year schedule of projects and Pyramid Mountain Lumber all fit these requirements, setting the table for another ten-year funding program. Adding HFRA authority further expedites and limits environmental reviews and provides other federal funding opportunities for the collaborative.

### TITLE III—CONSERVATION

Title III contains the wilderness designations in the BCSA within Section 301.

#### F. REVIEW AND ANALYSIS OF SECTION 301

The BCSA designates 79,062 acres as Wilderness, of the approximately 126,000 acres eligible on the Seeley Lake Ranger District, or 63%. These include additions to the Bob Marshall, Scapegoat and Mission Mountains Wilderness Areas.

There are significant reductions in the Monture-North Fork Blackfoot Inventoried Roadless Area from what Senator Tester included in his Forest Jobs and Recreation Act. The 6,082 acres designated as Recreation Management Areas were previously proposed for Wilderness designation. The BCSA designates approximately 67,000 acres of the 99,000 acre Monture-North Fork Blackfoot IRA as Wilderness.

An approximately 9,000 acre section of the Swan Front Inventoried Roadless Area, the scenic face of the Bob Marshall country, is left undesignated from Crescent Mountain south to the Canyon Creek and Dunham Creek divide and is subject to the provisions of

---

<sup>21</sup> Pub. L. 111-11 § 4003. (2009)

Sections 101, 102 and 103.

The addition to the Mission Mountains Wilderness designates 4,463 acres, but leaves 6,080 acres unprotected. This area is adjacent to the designated area and the Mission Mountains Tribal Wilderness and is part of an important wildlife linkage area to the Rattlesnake Wilderness Area and the South Fork Jocko Tribal Primitive Area.

**SEC. 302. ADMINISTRATION OF WILDERNESS AREAS.**

(a) **MANAGEMENT.**—Subject to valid existing rights, each wilderness addition designated by section 301 shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that any reference in that Act to the effective date of the Act shall be considered to be a reference to the date of enactment of this Act.

(b) **INCORPORATION OF ACQUIRED LAND AND INTERESTS.**—

Any land within the boundary of a wilderness area designated by section 301 that is acquired by the United States shall—

- (1) become part of the wilderness area in which the land is located;
- (2) be withdrawn in accordance with subsection (c); and
- (3) be managed in accordance with this section, the Wilderness Act (16 U.S.C. 1131 et seq.), and any other applicable law.

(c) **WITHDRAWAL.**—Subject to valid existing rights, the Federal land designated as wilderness by section 301 is withdrawn from all forms of—

- (1) entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

(d) **WILDFIRE, INSECT, AND DISEASE MANAGEMENT.**—

In accordance with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), the Secretary may carry out any measures in the wilderness additions designated by section 301 that the Secretary determines to be necessary to control fire, insects, and diseases, including, as the Secretary determines to be appropriate, the coordination of those activities with a State or local agency.

(e) **ACCESS TO PRIVATE LAND.**—

In accordance with section 5(a) of the Wilderness Act (16 U.S.C. 1134(a)), the Secretary shall provide to any owner of private land within the boundary of a wilderness addition designated by section 301 access to the private land.

(f) **FISH AND WILDLIFE.**—Nothing in this title affects the jurisdiction or responsibilities of the State with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping.

(g) **SNOW SENSORS AND STREAM GAUGES.**—

Nothing in this title prevents the installation or maintenance of hydrological, meteorological, or climatological instrumentation in a wilderness addition designated by section 301, if the Secretary determines that the installation or maintenance of the instrumentation is necessary to advance the scientific, educational, or conservation purposes of the wilderness area.

(h) **LIVESTOCK.**—

The grazing of livestock in the wilderness additions established by section 301, if established before the date of enactment of this Act, shall be allowed to continue, subject to such reasonable regulations, policies, and practices as the Secretary determines to be necessary, in accordance with—

- (1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and
- (2) the guidelines described in House Report 96–617 to accompany H.R. 5487 of the 96th Congress.

(i) OUTFITTING AND GUIDE ACTIVITIES.—

(1) IN GENERAL.—In accordance with section 4(d)(5) of the Wilderness Act (16 U.S.C. 1133(d)(5)), commercial services (including authorized outfitting and guide activities) within the wilderness additions designated by section 301 may be authorized to the extent necessary for activities that fulfill the recreational or other wilderness purposes of the wilderness areas, in accordance with section 1503(b)(6) of Public Law 111–11 (123 Stat. 1035).

(2) EFFECT.—

Nothing in this title requires the Secretary to modify any permit in effect as of the date of enactment of this Act to provide outfitting and guide services within the wilderness additions designated by section 301 on a determination by the Secretary that the activities are in compliance with section 4(d)(5) of the Wilderness Act (16 U.S.C. 1133(d)(5)).

(j) ADJACENT MANAGEMENT.—

(1) IN GENERAL.—

The designation of a wilderness addition by section 301 shall not create any protective perimeter or buffer zone around the wilderness area.

(2) NONWILDERNESS ACTIVITIES.—

The fact that a nonwilderness activity or use can be seen or heard from an area within a wilderness addition designated by section 301 shall not preclude the conduct of the activity or use outside the boundary of the wilderness area.

## G. REVIEW AND ANALYSIS OF SECTION 302

Subsection (a) includes the phrase that the Wilderness designated by the BCSA shall be administered “in accordance with the Wilderness Act”, but in reality the special provisions and management language in the BCSA make this unlikely.

All of the areas designated as Wilderness in Section 301 are additions to existing Wilderness Areas. For management consistency they should be administered under the same rules and protections as the existing Bob Marshall, Scapegoat, and Mission Mountains Wilderness Areas. However, the BCSA includes a number of provisions that depart from the protections afforded by the Wilderness Act. Even provisions that seem to echo language from the Wilderness Act depart in significant ways.

Subsection (e) addresses access for in-holders to private land. The Wilderness Act<sup>22</sup> balances the interests of wilderness preservation with access for the owners of state or private lands surrounded by Wilderness by providing the owners “such rights as may be necessary to assure adequate access to such State-owned or privately owned land...or [the land] shall be exchanged for federally owned land in the same State of approximately equal value.” (Section 5(a)). The intent of this provision is to ensure that access to private or state-owned land does not compromise the wilderness character of the area or, in those cases where access would harm wilderness, that the interest of the landowner can be met through an exchange. The U.S. Attorney General has interpreted this provision to mean “Absent a prior existing access right, the Secretar[ies] may deny ‘adequate access’ to land within a [wilderness area], but must offer a land exchange as indemnity.”<sup>23</sup>

The BCSA appears to preclude the Federal government’s ability to offer exchanges in lieu of access. By stating the Federal government “shall” provide access without also stating the Federal government may instead offer an exchange, the BCSA may preclude the Federal agencies’ ability to preserve the wilderness character of the areas when access

---

<sup>22</sup> Pub. L. 88-577

<sup>23</sup> 43 U.S. Op. Atty.Gen. 243.

plans are proposed that would damage or destroy the wilderness character. The BCSA does not require the Federal government to provide any specific type or mode of access to inholdings, so the actual effect of the BCSA language is uncertain. Moreover, the map of the BCSA<sup>24</sup> does not show any private land within the areas designated as Wilderness so this language is not necessary and should be removed.

Subsection (g) allows for the “installation or maintenance of hydrological, meteorological, or climatological instrumentation...if the Secretary determines that the installation or maintenance of the instrumentation is necessary to advance the scientific, educational, or conservation purposes of the wilderness area.” Conversely, the Wilderness Act prohibits structures and installations unless they are necessary to preserve the area’s wilderness character. The Wilderness Act requires that the purposes of Wilderness, which include recreational, educational, scientific, scenic, conservation, and historical uses, must be conducted in way that preserves the area’s wilderness character. By turning the prohibitions in the act on their head—that is, allowing prohibited structures and installations to meet one of the purposes of wilderness—the BCSA opens the door to further proposals which might allow mechanized or motorized uses to meet the recreational purpose of Wilderness. This provision is unprecedented in wilderness legislation and should be removed from the bill.

Subsection (j), Adjacent Management, states the BCSA doesn’t establish a protective perimeter or buffer zone around the Wilderness. It goes further to state the “fact that a nonwilderness activity or use can be seen or heard from an area within a wilderness addition designated by [the BCSA] shall not preclude the conduct of the activity or use outside the boundary of the wilderness area.”

This would appear to prevent the Forest Service from limiting an activity outside the Wilderness because of its impact on the Wilderness. It effectively establishes a non-wilderness buffer zone inside the designated Wilderness because the sights, sounds, smells, or scenic impacts of activities outside the Wilderness can have significant impacts on those within the Wilderness areas. This may be especially problematic in the areas designated by the BCSA because the law creates motorized and mechanized play areas right on the boundaries of the Wilderness Areas.

The provisions in Section 302 create management confusion and conflict. Requiring these relatively small additions to existing Wilderness to be administered under a different set of rules than the Wilderness Areas they will become part of does not make sense. They have been managed by the Forest Service as small “w” wilderness since at least 1986. There is no reason to believe the provisions in the Wilderness Act are not equally appropriate in these areas.

## IV. DISCUSSION AND RECOMMENDATIONS

### A. IS PAST PROLOGUE?

To properly analyze the intent, purposes and likely outcomes of the BCSA, the history and record of the collaborative that created it must be considered, as their collaborative compromise would be legislated into law by the BCSA.

To be sure, the SWCCC has participated in important stream restoration work that has

---

<sup>24</sup> Senator Jon Tester website

improved streambeds and improved or removed culverts harmful to native fish. However, their forest restoration work has been decidedly oriented towards commercial timber production. Much of the funding for the timber production has come through the CFLRP.

The SWCCC website states: “In 2010 the SWCC was selected in a competitive process as one of 10 Collaborative Forest Landscape Restoration (CFLR) projects nationally to receive up to \$4 million annually for 10 years with a 1:1 matching requirement to collaboratively implement and monitor fuel reduction and restoration projects. Matching funds may include a combination of Forest Service appropriated funds, permanent and trust funds, forest product value exchanged for restoration treatments (in stewardship contracts) or partner non-cash, cash, and in-kind contributions.”<sup>25</sup>

On its face, a ten-year schedule of restoration projects sounds very positive, particularly if the projects were focused exclusively on ecological restoration of areas damaged by previous management actions, including road building and logging in sensitive areas.

The ten-year history of the restoration projects carried out by the Southwest Crown of the Continent Collaborative and Blackfoot Clearwater Stewardship Project shows a liberal definition of restoration has been applied to many projects. The collaborative claims over 50 million board feet of commercial saw logs have been produced along with many metric tons of small diameter trees and woody material.<sup>26</sup> The Montana Wilderness Association, a key member of the collaborative, described three components of the project on their website and included the following statement regarding the restoration component: “Restoration: Fish and wildlife habitat and support for a sustainable timber economy in Seeley Lake has so far been accomplished through the Southwest Crown Collaborative (SWCC) with the help of Senator Jon Tester. The SWCC has created or maintained 160 jobs by injecting \$56 million into the regional economy since 2010.”<sup>27</sup>

Senator Tester’s fact sheet on the BCSA reads: “Sustainable timber harvest was a cornerstone of the BCSP, which established the Southwest Crown of the Continent Collaborative. Senator Tester then led the charge to secure funding so the Collaborative could implement its important restoration work.” And, “...to date, the Southwest Crown of the Continent Collaborative has retained or created 138 jobs and brought in over \$19 million in federal dollars, leading to an overall investment of \$33 million in the local economy.”<sup>28</sup> As the *Missoulian* newspaper reported, most of this activity pertains to the Pyramid Mountain Lumber Company.<sup>29</sup>

According to Loren Rose, chief operating officer of Pyramid Mountain Lumber and a key member of the collaborative, “Everyone who collaborates does so with the expectation they will get something out of it. We got logs on trucks. Our conservation partners got very little out of this Southwest Crown of the Continent work.”<sup>30</sup> This observation is backed by statistics from the collaborative itself showing virtually all their timber

---

<sup>25</sup> <http://www.swcrown.org/partnership-agreements/>

<sup>27</sup> [www.wildmontana.org](http://www.wildmontana.org)

<sup>28</sup> BCSA One Pager issued by Senator Tester

<sup>29</sup> R. Chaney, *Tester Announces New Wilderness Bill For Blackfoot Clearwater*, MISSOULIAN, February 24, 2017

<sup>30</sup> R. Chaney, *Tester Announces New Wilderness Bill For Blackfoot Clearwater*, MISSOULIAN, February 24, 2017

production targets were met, but very few of their conservation goals were achieved. In an editorial published in the *Missoulian* newspaper, the steering committee of the Blackfoot Clearwater Stewardship Project wrote: “However, the recreation and conservation components of the BCSP are yet to be realized – and the time is now to finish what we started a decade ago.”<sup>31</sup>

While the partners say it is time to achieve conservation goals, the track record is clearly poor in this regard. Given the BCSA provisions mandating that the collaborative be involved in preparing both the landscape assessment and the ten-year schedule, and the key collaborative member, Pyramid Mountain Lumber Company, the prospects for a repeat performance are considered likely.

The key members of the SWCCC are openly in favor of “place-based” management that is outside the National Forest Planning process. They favor limits on public involvement and are hostile towards those who are not members of the collaborative. In a letter to Senator Steve Daines (R-MT)<sup>32</sup> they wrote: “Work with coalitions of the willing. Deference to organizations and individuals who oppose collaborative approaches to forest management and reform merely maintains a status quo that does not serve the interests of most Montanans.”

At his recent “Listening Tour” session in Missoula<sup>33</sup>, Senator Tester appeared to support the request by Loren Rose to amend the upcoming Farm Bill by expanding the provision for categorical exclusion of timber sales from 3,000 acres to 7,000 acres. The exclusions limit public involvement, streamline environmental reviews and exempt projects from judicial review. Rose also wanted to remove the provision prohibiting construction of permanent roads. Senator Tester replied, “We’re going to try to give you some more tools to work with through the upcoming Farm Bill.”

It may well be that Senator Tester’s full intentions go beyond the actual legal effect of the BCSA, but the BCSA appears to be a pathway towards them.

## B. SHORTCOMINGS OF THE COLLABORATIVE APPROACH

Not all collaborative groups are created equally and the results have often been mixed. Even proponents of collaborative process on National Forest System lands state there are hurdles to overcome.<sup>34</sup> Local collaborative groups often have socio-economic and public land use values that are not in sync with national opinion. This can collide with the national interest when collaborative proposals are embodied in federal legislation. Michael McCloskey wrote: “The expectation that collaboration will operate under consensus rules would not be a problem if these processes were purely advisory in nature. Now that many seek to engraft them onto public policy, however, major problems appear. Most fundamentally the consensus rule serves to overthrow the basic suppositions of representative democracy.”<sup>35</sup>

---

<sup>31</sup> A. Marx, J. Stone, T. Love, S. Thompson and C. Long, Editorial in *MISSOULIAN*, Jan. 19, 2016

<sup>32</sup> Letter to Senator Steve Daines, Jan. 14, 2015

<sup>33</sup> *Conservation & Timber*, hosted by Senator Jon Tester, Missoula, MT Oct. 28, 2016

<sup>34</sup> M. Albrecht, J. Buckley and G. Severson. *Understanding and Addressing Emerging Frustration Among Citizens’ Collaborative Groups Interacting with the USDA Forest Service*. White Paper. (2015)

<sup>35</sup> M. McCloskey. *Problems with Using Collaboration to Shape Environmental Public Policy*. 34 Val. U. L. Rev. 423 (2000).



Many collaborative groups believe that locals should have more influence over National Forest management than those living further away. Since few people are invited to become members of a collaborative so they can represent the national public interest, this interest does not have a seat at the table. Collaborative process can be contentious and very time consuming, further weeding out potential participants, leaving those with lots of time and direct financial compensation for that time. Non-agency, non-industry and non-large non-profit organization affiliated individuals are often put on an uneven footing or not invited at all. Congress, through financial incentives in legislation such as CFLRP, has further shaped the makeup and goals of collaborative groups involved in forest management.

Martin Nie and Peter Metcalf offer an extensive review of collaborative process on National Forests, concluding many arise from frustration with the pace of Forest Service project analysis and implementation.<sup>36</sup> Most push for streamlined and expedited environmental review. They wrote: “National Forest management is increasingly complicated and its politics even more so...Most proposed remedies to this problem include restricting to various degrees the application of NEPA and judicial review. We respectfully disagree with this diagnosis and remedy. Our view is that the core environmental laws governing the national forests are more necessary and important today than ever before. And collaboration is no substitute for accountability.”

The BCSA substantially usurps and replaces the National Forest Planning process for the Seeley Lake Ranger District. The Lolo National Forest plans to begin work on a Revision to the Forest Plan beginning in 2017-2018. The Plan Revision would include an extensive public comment and involvement process, as well as a full Environmental Impact Statement that would be substantially negated by the BCSA on the Seeley Lake Ranger District. To the contrary, the BCSA is the product of a small group of participants in the collaborative group.

Another major purpose of the BCSA is to substantially turn planning and management of the Seeley Lake Ranger District over to the private SWCCC. Due to its geographic location as the only sawmill for miles around creates the practical effect of sending all commercial forest products on the District to the Pyramid Mountain Lumber Company in Seeley Lake, creating a nearly sole beneficiary market monopoly. It is to some degree a “lease” of National Forest System lands for private profit and resource management. This sets a bad precedent for management of National Forest System lands.

If past is prologue, based on factual sources, public letters and statements, it can be expected that a majority of the restoration projects will have a commercial timber sale component. Section 101 is not necessary and should be reworded to incorporate the existing Forest Planning process, including Forest Plan Revision, or removed from the Act entirely.

### C. RECREATION MANAGEMENT AREAS

The proposed Otatsy and Spread Mountain Recreation Management Areas are problematic in several regards. First and foremost, they will allow extensive motorized and mechanized recreation use up to seven miles within the Monture Inventoried

---

<sup>36</sup> M. Nie and P. Metcalf. *The Contested Use of Collaboration & Litigation in National Forest Management*. Bolle Center for People & Forests. U. of MT College of Forestry & Conservation, Missoula. (2015)

Roadless Area and proposed Wilderness, and the Grizzly Bear Primary Conservation Area. These areas were included in Senator Tester's FJRA as Wilderness. The Lolo National Forest manages this area as Management Area 12, recommended for Wilderness. Title II expressly allows temporary roads, construction of trail facilities and harvest of timber to accommodate new trail and facility construction.

Impacts to wildlife from recreational use even within protected areas, is a major concern for wildlife managers. A recent study found "Snow-based activities had more evidence for an effect than other types of recreation, with effects observed 1.3 times more frequently."<sup>37</sup>

These types of recreation areas would be better located on other parts of the Forest that have already been compromised by road and trail systems and are not as sensitive. Locating them in a highly sensitive proposed Wilderness and wildlife management area popular for quality elk hunting and primitive recreation is poor public lands management and policy.

Through Section 203, a private mountain biking organization would be allowed to construct new trails in the Spread Mountain area, allowing timber harvest to accomplish this work.

If these areas and actions were proposed by the Forest Service rather than being encapsulated in federal legislation, due to the complexity of the issues preparation of at least an Environmental Assessment and more likely an Environmental Impact Statement would be required, applying the regulations in the 2012 Planning Rule. An extensive public comment process would be included. Given these areas are wholly within the Grizzly Bear Primary Conservation Area, such a drastic change in management emphasis would likely require Section 7 Formal Consultation with the U.S. Fish & Wildlife Service.<sup>38</sup> But under the BCSA, there is no need to gain approval.

Sections 201, 202 and 203 also contain no provisions for monitoring, as would be required by the Forest Planning process. Who will monitor trail construction, motorized and mechanized uses? Who will perform boundary patrols to prevent illegal intrusions into Wilderness? Enforcement issues are not addressed. Will enforcement be limited to self-policing by user groups?

The Otatsy and Spread Mountain areas would be more effectively managed if incorporated into Title III and the Monture addition or left out of the bill to await further analysis as part of the Lolo National Forest Plan Revision process.

Sec. 203 empowers the SWCCC to have further influence and control over management of the Seeley Lake Ranger District. For example, subsection (b)(1) restricts submission of proposals for trail construction to "local" groups, further disenfranchising the general American public owners.

#### D. PROPOSED WILDERNESS

Senator Tester's statement includes: "This landscape is one of the few in the lower 48 states

---

<sup>37</sup> C. Larson, S. Reed, A. Merenlender and K. Crooks. *Effects of Recreation on Animals Revealed as Widespread through a Global Systematic Review*. PLOS ONE | DOI:10.1371/journal.pone.0167259 Dec. 8, 2016

<sup>38</sup> 16 U.S.C. § 1536(a)(2) (1988)

with its original native species intact.” The BCSA designates about 63% of the area eligible for Wilderness. Ordinarily, one might think that is a fair compromise. But consider that these areas are part of the Northern Continental Divide Ecosystem, anchored by Glacier National Park and the Bob Marshall Wilderness Complex. This is the showcase of wild America and the finest assemblage of wildlife and wildlands in the contiguous states. It is called the Crown of the Continent because it represents the best of the best. The 47,000 acres left unprotected could represent a significant loss to this ecosystem, particularly if the roadless area is reduced and impacted by roadbuilding and active vegetation management.

The Monture-North Fork Blackfoot Inventoried Roadless Area has long been the most significant proposed addition to the south end of the Bob Marshall Wilderness Complex and included in most of the proposed wilderness bills dating to the 1980s. It has been managed as non-motorized Forest Service wilderness for more than 30 years. Dedicating 32,000 acres of this area to non-wilderness, motorized and mechanized uses would dramatically change the character of the area and impact its effectiveness as grizzly bear and elk habitat. Section 301 should designate the entire 99,000 acre Monture-North Fork Blackfoot IRA as Wilderness.

Rob Chaney wrote: “It seems odd to stand beside Seeley Lake, looking at the mountains that border the Bob Marshall Wilderness Complex, and not actually see the wilderness.”<sup>39</sup> In fact, what is seen from Seeley Lake is the 9,000 acre roadless area adjacent to the Bob Marshall Wilderness that is left unprotected under the BCSA. Leaving this area of the scenic Swan Front unprotected between the Grizzly Basin and Monture additions threatens the scenic integrity of the area and habitat important for numerous wildlife species.

The influence exerted by the SWCCC, and particularly its motorized and mechanized use advocate members, has resulted in Senator Tester slicing 32,000 acres from the Monture-North Fork Blackfoot IRA, and placing a 6,082 acre year-round motorized recreation play area in the heart of the area. The sacrifices in habitat security and availability in prime elk and grizzly bear habitat, as well as dramatic changes from historical Forest Service management of the area, would be institutionalized by the BCSA.

## V. CONCLUSION

The BCSA borrows language and ideas from the Agriculture Act of 2014, the Healthy Forests Restoration Act and the Collaborative Forest Landscape Restoration Program, while adding new provisions empowering a local private collaborative group. It is “place-based” legislation.

Conservation and wilderness interests have been the weak link throughout the history of the Southwest Crown of the Continent Collaborative. Some participants have a company profit motive, others a direct special use interest, while others appear to have more interest in civics than conservation and restoration outcomes. The prospects of this

---

<sup>39</sup> R. Chaney, *Bob Backers Push For Wilderness Half Of Landscape Deal*, MISSOULIAN, Jul. 20, 2016

collaborative doing an about-face pivot towards conservation-focused restoration are considered unlikely.

The BCSA sets a negative precedent for management of National Forests nationwide, whereby individual members of Congress legislate special management for portions of the National Forest System. The political management of National Forests by Congressional fiat, District by District, Forest by Forest, threatens the integrity and consistency of National Forest System management in a “balkanization” process. Agency management based on the best available science as required by the 2012 Planning Rule, is undermined by this legislation. Protection of the Public Trust may be compromised.

---

This review was commissioned by the Flathead-Lolo-Bitterroot Citizen Task Force

\*Michael G. Bader, B.S. in Resource Conservation from the School of Forestry and Conservation, University of Montana, Missoula with graduate courses in public policy and environmental studies. Over 30 years of experience in natural resource management and policy including field work as a seasonal ranger at Yellowstone National Park primarily involved in grizzly bear research and management, restoration work and wildland fire, and also worked as a wilderness guide in several wild areas.

Author of several peer-reviewed papers in science journals and law review articles on threatened and endangered species law and management. He was the lead author of the petition for bull trout listing and negotiated the Consent Decree with the U.S. Fish & Wildlife Service Washington office designating critical habitat for bull trout in the 48 states. He worked as para-legal researcher on bull trout litigation under the Endangered Species Act and National Forest Management Act. He has professionally reviewed dozens of federal proposals and pieces of congressional legislation. He has formally been requested to give oral testimony before the U.S. House of Representatives and the U.S. Senate on numerous occasions. He has given professional presentations at the University of Montana, University of Oregon, University of Colorado and Georgetown University Law Schools.

[mbader7@charter.net](mailto:mbader7@charter.net)