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I was asked by Senator Tester to provide written testimony on S. 1470. I want to thank the Senator, and the Subcommittee on Public Lands and Forests, for the opportunity to do so. I am a professor of natural resource policy in the College of Forestry and Conservation at the University of Montana. The following testimony draws from my research on the problems and opportunities presented by "place-based" National Forest law. I write to neither support or oppose the Forest Jobs and Recreation Act (FJRA) as currently written. Instead, I ask a number of questions that deserve serious consideration by the Committee.

There is increasing interest in "place-based," or national forest-specific legislation. In several places divergent interests are negotiating how they would like particular forests to be managed. These proposals often include provisions related to wilderness designation, economic development, forest restoration, and funding mechanisms, among others. But unlike more typical collaborative efforts, some groups are interested in possibly codifying the resulting agreements.

While S. 1470 has garnered national interest, there are place-based initiatives happening on other National Forests, including the Lewis and Clark, Colville, Clearwater and Nez Perce, Fremont-Winema, Tongass, and federal forests in Arizona, among others. Each initiative is different in significant ways. But all are searching for more durable, bottom-up, and pro-active solutions to National Forest management. Some negotiations, like that on Idaho's Clearwater and Nez Perce, may result in proposed legislation. But others, including arrangements on the Colville and Fremont-Winema, are not based on forest specific laws but instead operate through formalized agreements and protocols with the U.S. Forest Service. This bigger picture is important and I hope the Committee considers the possible impact of S.1470 on these other initiatives.

S. 1470 is a bold and constructive response to a dysfunctional status quo. It advances the debate over National Forest management in significant ways, by forcing us to address several intractable system-wide problems. Nonetheless, the legislated approach to National Forest management is a significant departure from the status quo and it raises several significant questions. Laid out below are some of the most important. They go beyond S. 1470, with the assumption that if enacted, similar place-based forest laws are forthcoming.

1. Would a proliferation of place-based forest laws disunify the relatively consistent mission and mandate of the USFS?

If replicated more broadly, the place-based approach to forest management could further disaggregate the National Forest system. Law-by-law, the National Forests could be governed by forest-specific mandates, not unlike the unit-specific enabling laws governing the National Parks and National Wildlife Refuges. A relatively consistent mission and mandate applicable to the National Forests would be replaced by more site-specific prescriptive laws detailing how particular forests must be managed. This might be good for some forests, but what effect would it have on the National Forest *System*?

2. Will the FJRA conflict with preexisting Forest Service mandates, environmental laws, and planning requirements?

Forest-specific laws already codified, like the Tongass Timber Reform Act and the Herger-Feinstein (Quincy Library) Act, have engendered more conflict than consensus partly because of how these laws sometimes fail to fit into the preexisting legal and planning framework. In these and other cases the USFS is forced to walk a statutory minefield with legal grenades thrown from all directions. One way or another, the agency gets

sued for either complying with existing environmental laws or for ostensibly subordinating the new place-based one. These cases show that the answer to forest management might not be another law placed on top of myriad others but rather an untangling or clarification of the existing legal framework.

NEPA is one big unanswered question in S. 1470. The bill requires the USFS to satisfy its NEPA duties within one year. But without additional support it is hard to fathom the agency meeting this deadline, given that it takes the USFS about three years to complete an EIS. When it comes to meeting NEPA obligations, the USFS needs more funding, leadership, and institutional support, not more law.

3. Can the FJRA be successfully implemented and how will it be paid for?

One purpose of S. 1470 is to generate a more predictable flow of wood products for local mills, thus the bill's timber harvest mandate. The probability of achieving community stability through forest management has been debated *ad nauseum*. Alas, most agree that there are simply too many uncontrollable impediments to achieving this objective, like fluctuating housing starts, cheap Canadian imports, vacillating court decisions, swings in agency budgets, and so on. Nonetheless, S. 1470 is to be admired for its focus on sustainable forests and communities, and for understanding the benefits of having a functional timber industry in Montana.

Before proceeding with a controversial legislated harvest mandate, lawmakers should consider some alternative ways to achieve greater predictability. This includes an innovative effort on the Colville National Forest to provide a steadier, sustainable, and less contested stream of timber for local mills, with accompanying restoration objectives. In this case, a collaborative group works with the agency to achieve its objectives via formalized agreement and a mutually agreed upon decision making protocol.

S. 1470 would be primarily implemented and paid for by using stewardship contracting. This tool's popularity stems partially from the highly uncertain congressional appropriations process, a process that chronically underfunds the USFS and its non-fire related responsibilities and needed restoration work. But on the Beaverhead-Deerlodge National Forest, there are serious questions as to whether there is enough economic value in this lodgepole pine-dominant forest to pay for the restoration work. As a safety valve, S. 1470 authorizes spending additional money to meet its purposes, but there is no guarantee that such funds will be appropriated, or if so, they would not come from another part of the agency's budget.

The question, then, is what happens if such envisioned funds don't materialize? Will money be siphoned from other National Forests in order to satisfy the mandates of S. 1470? Consider, for example, the White Mountain stewardship project in Arizona. The Government Accountability Office (GAO) found that this project incurred greater costs than expected and such costs have "taken a substantial toll on the forest's other programs." Furthermore, some other fuel reduction projects were not completed because their funding sources were being "monopolized" by the White Mountain project. Other National Forests in the region also paid a price to service the terms of this contract, and "[a]s the region has redirected funds toward the White Mountain project, these other forests have become resentful of the disproportionate amount of funding the project has received."

Several other budget related questions are raised by the possible replication of place-based forest laws. For example, might the approach move the National Forests closer to a National Park Service model, where congressional delegations exercise increased control over a unit via Committee and purse strings? Will senior congressional delegations be more successful in securing funding for place-based laws in their states? Will it create a system of "haves" and "have nots" in the National Forest system? And perhaps most important, would these budgetary situations benefit the National Forest system as-a-whole?

4. What precedent will be set if the RJVA is enacted?

There is a remarkable amount of interest in S. 1470. This is partly because of the precedent the bill would set by legislating management of particular National Forests, including a legislated timber supply requirement. The place-based initiatives referenced above could be impacted by S. 1470. If the bill passes in its current form, more groups will seek place-based forest laws in the future, and some of those proposals would undoubtedly contain some type of a legislated timber supply mandate. Thus, the FJRA has national implications, and for this reason it should be scrutinized carefully.

Congress has a history of deferring to state congressional delegations in wilderness politics. So, for example, if one delegation defers to Montana's in passing S.1470, Montana's delegation will be asked to play by the same rules when a different wilderness bill is being considered. And recent history shows that those proposals may not be carefully crafted or in the national interest. Potential for abuse is even more acute if individual forest bills contain special privileges and exemptions that are not available elsewhere. In this regard, subsequent efforts in codifying place-based agreements could have a dangerous snowball effect.

Also legitimate is the fear that if passed, S. 1470 creates a precedent and possible expectation that future wilderness bills must be packaged with economic development provisions (among other nonconforming uses *within* wilderness areas) if they are to be politically feasible. And special provisions are often replicated in wilderness law. Once used, provisions related to such matters as water rights and buffer areas are regularly stamped onto future wilderness bills as a matter of course.

To be sure, compromise is inherent in the Wilderness Act, and all sorts of special exemptions and political deals are written into wilderness laws with some regularity. But trading wilderness for a timber harvest mandate is a different beast altogether. The real question here is not whether it is reasonable to require two National Forests to mechanically treat 100,000 acres over the next ten years; but rather what those numbers will look like in other states if all of a sudden harvest mandates are politically palatable.

5. Why not experiment in more serious fashion?

S. 1470 includes a vague reference to "adaptive management," and thus an implicit acknowledgement that there are uncertainties inherent in the bill. In this vein, the bill sets up a monitoring program whereby the USFS will report to Congress on the progress made in (1) meeting the bill's timber supply mandate, (2) the cost-effectiveness of the restoration projects, and (3) whether or not the legislation has reduced conflict as measured by administrative appeals and litigation. Not included on the list are specific ecological (non-timber related) monitoring requirements.

This is a good start. But given the importance of S. 1470, and the impact it could have on other place-based proposals, why not approach matters in a more deliberately experimental fashion? This could be accomplished in different ways but the principles would be the same: proceed cautiously, try different approaches in different places, carefully monitor the results, and go from there. These experiments could be housed within a more structured experimental framework, with appropriate legal sideboards and oversight, such as that provided by the recently enacted Collaborative Forest Landscape Restoration Program. Such a legislatively-created framework is one way of ensuring that future place-based proposals do not become used as a backdoor way of undermining environmental law and devolving federal lands to self-selected stakeholders.

If such a framework is not used, I recommend making the purpose of experimentation more central to S. 1470. This could be done by strengthening the bill's monitoring and evaluation requirements, to include other ecological and policy/process considerations. Ecological monitoring requirements should be mandated.

Changes should also be made to S.1470 to ensure that its ecological restoration goals are achieved in tandem with its harvest mandate. I propose a reciprocal or staged stewardship contracting approach whereby future timber projects cannot proceed until certain restoration objectives are met; and once met, future timber is released in a sort of tit-for-tat sequence. This approach will alleviate widespread concerns that restoration will take a back seat to the bill's more clearly articulated timber supply mandate.

Another possibility is to carve out some space in the bill to experiment with different ways of improving the forest planning and NEPA process. Why not try different approaches to its implementation and learn lessons from that experience? In doing so, S.1470 could teach valuable lessons that might be tried elsewhere, and the USFS could be brought into the process as partners, rather than subjects.

With a more deliberately experimental design, S. 1470 could inform a larger system-wide look at National Forest law and management. All sorts of ways in which to reform National Forest management have been proposed in the past, and most of those proposals focus on systemic measures imposed on all forests from the top-down. Rarer are proposals seeking to learn lessons from the bottom-up, and S. 1470 offers such an opportunity. So do the other place-based initiatives referenced above. All of these efforts are admirable in their goals to secure broader-based solutions and conservation strategies. It is my hope that lawmakers and others carefully study these place-based initiatives as part of a more structured and comprehensive review of National Forest law and management.