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Tester's wilderness bill: amend it, pass it, but don't brag about it

By James Conner

That's my position on Senator Jon Tester's 84-page Forest Jobs and Recreation Act of 2009. Provided some fixes are made, the good will outweigh the bad, and the bill should become law. It rates a "C+" at best. Compared to a failing grade, that's not bad. But because our best lands deserve Grade "A" protective legislation, this bill doesn't make the Dean's List and we shouldn't pretend that it does.

Citizens need to keep several things in mind:

The campaign of 2012 is a factor

Tester won his seat by a whisker-thin 4.1 votes per precinct plurality. Together, Conrad Burns and Stan Jones received 206,660 votes to Tester's 199,845. If Tester faces just one challenger in 2012, he could be in trouble even with the advantages of incumbency. Politically, he's working with next to no margin for error. Favoring, or seeming to favor, one group at the expense of another on public lands issues is a prescription for political suicide.

Tester's goals are worthy

I believe Tester considers himself as acting in the highest tradition of the New Deal and progressive politics. Montanans are hurting. Unemployment is high. Parts of the timber industry, a traditional industry in Montana, are collapsing — witness the demise of even some Plum Creek operations. When industry cannot improve the economy, government must. Tester knows that. He's trying to generate jobs, and in the process, improve the health of our forests and provide permanent protection for the best of our wildlands. Those are worthy goals.

Allocation is political, management is professional

Politics determines how we allocate public lands, how we choose the purposes to which the various lands are put. We make those choices democratically through our governmental institutions, the United States Congress and state legislatures. But once the allocations are made, civil servants hired on the basis of their professional qualifications manage the lands as specified by law. That the execution of this division of labor gets messy at times does not diminish the wisdom in which it is grounded.

In particular, Congress should not hardwire numerical timber targets into public lands legislation. I find myself in agreement with Harris Sherman, Undersecretary of Agriculture for Natural Resources and Environment, when he testifies that:

> S. 1470 in particular includes levels of mechanical treatment that are likely unachievable and perhaps unsustainable. The levels of mechanical treatment called for in the bill far exceed historic treatment levels on these forests, and would require an enormous shift in resources from other forests in Montana and other states to accomplish the treatment levels specified in the bill.

The U.S. Forest Service has become greener in recent years, but the Timber Beast's lust to cut still courses through the agency's veins — so when Harris Sherman warns that Tester's bill mandates actions that are "…likely unachievable and perhaps unsustainable…[and]…far exceed historic treatment levels on these forests," you can be sure that the groups that cut the deals for the bill went too far.

What is in the bill matters more than how it got there

Rep. Morris Udall made this point in remarks addressing wilderness legislation in the 1970s. But how what's in Tester's bill got there cannot be dismissed as irrelevant if the process by which the bill was crafted led to the practical exclusion of the views of interested citizens. And it looks as if that is what happened to motorized user groups, some extractive industries, and environmentalists who were loath to surrender another roadless acre to the chainsaw, bulldozer, or ORV.

Collaborative groups — legitimate private associations or vigilantes?

Agreements reached by self-selected private parties working together in collaboration groups provide much of the foundation of the FJRA's wilderness reservations and land management directives. If you're familiar with Montana's wilderness wars, you'll recognize some of the names. Here's a sampling:

> The Beaverhead-Deerlodge Partners include the Montana Wilderness Association, the National Wildlife Federation, Montana's chapter of Trout Unlimited, RY Timber (Townsend and Livingston), Pyramid Lumber (Seeley Lake), Smurfit-Stone (Missoula), Sun Mountain Lumber (Deerlodge), and Roseburg Forest Products (Missoula).
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> The Blackfoot-Clearwater Stewardship Project includes the Wilderness Society, the Montana Wilderness Association, the Blackfoot Challenge, Pyramid Mountain Lumber, the Clearwater Resource Council, Sustainability, Inc., Alaska Wood Energy Associates,

retired wilderness outfitter Smoke Elser, and retired supervisor of the Lolo National Forest Orville Daniels.

Now, in a nation of people with the right of free association, there's nothing wrong with private citizens meeting together to discuss issues of mutual concern, and perhaps to agree on a proposal they can recommend to public officials. Twenty years ago, as a leader of Montana's wilderness movement, I met with allies and adversaries, attempting to secure support for wilderness designation for Montana's premier unprotected wildlands. Such discussions are a prelude to the formal, more inclusive, process of lawmaking, which includes Congress' formally obtaining the opinions and input of other citizens, experts, and the agencies that would execute the legislation.

In those meeting, we sought common ground, but we didn't really attempt to negotiate a deal. That would have been presumptuous. We owned the lands, but not exclusively. The other owners — all other Americans — had equal rights of ownership. As a practical matter, we couldn't meet with everyone — but even had that been possible, the U.S. Constitution vested the power to decide the lands' fate in Congress. We had no right to set up a rump government to settle the issue, and we knew it. If Congress didn't do its job, the issue didn't get settled.

Others disagreed. If Congress would not do its job, they decided, well they would do the job and present Congress with an agreement for a wilderness and jobs bill that boasted the support of both tree fellers and tree huggers. This occurred not just in Montana but all across the west. One of the most famous accords was the Quincy Library Group's 1998 agreement on three national forests in the Sierra Nevada in California affected by the Endangered Species Act. It had local political support, but as Erica Rosenberg, a former staff attorney for the House Resources Committee, wrote in Counterpunch, that wasn't enough:

> The proposal increased logging while protecting pristine areas. When it landed in Congress, California Rep. George Miller insisted on adding one provision: All environmental laws would apply. That meant the Quincy Library logging plan had to go through the same environmental analysis a Forest Service plan would.
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> The Quincy Library proposal, held up at the time as a model of local, consensus-based decision-making, has never been fully implemented. Why? Primarily because it didn't jibe with Endangered Species Act guidelines protecting the California spotted owl. In other words, it did not pass scientific or legal muster.
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> That environmentalist "stakeholders" signed on to the Quincy Library agreement in the first place highlights the danger of the collaboration fad. After years of being tarred as obstructionist ideologues, some environmental groups now have a seat at the negotiating table — indeed, are seen as crucial to legitimizing any deal. Enjoying their newfound popularity, these self-appointed decision-makers become heavily invested in reaching an accord, regardless of the science, the law or the long-term effect on the land.

I share Rosenberg's concern. Unfortunately, avoiding becoming a collaborationist is difficult — not only because of local political pressure generated by business interests and the timber and mineral industries, but because of the influence of a growing subset of environmentalists and self-appointed community peacemakers who are desperate for solutions, who are conflict averse, and who have lost confidence in government. Their attitude, "Since government cannot solve these problems, we'll solve the problems for government," is the good intention that starts them down the road to hell.

We undermine government and democracy itself when we organize extra-legal posses to capture and lynch (after a "fair trial") outlaws because we think the sheriff and courts have failed; when we organize para-military private border guards to apprehend illegal immigrants because we have contempt for the border patrol and our immigration laws; when we organize unofficial planning committees to devise a new master land use plan because we think the planning board and county commissioners can't or won't draft a new plan of their own; when we sit down with local lumber mill owners to cut a deal on the use of national forest land because we think Congressional foot dragging somehow sprinkles holy water on extra-constitutional initiatives.

When a dysfunctional government fails to make timely decisions, the remedy is repairing government. When we take the law into our own hands, no matter how well intentioned the attempt, or righteous the cause, we enter the abyss of rule by warlord and vigilante. The concerned citizens who collaborated on S-1470 stand somewhere in the twilight between that abyss and the bright sunshine of constitutional legitimacy.

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