

COMMENTS ON THE SWAN STUDY  
November, 2016

As first envisioned, the proposed Lake County Conservation District Conservation Forest (Swan Forest Initiative) of 60,000 acres in the Flathead National Forest would be managed in trust by Montana's Department of Natural Resources and Conservation, the beneficiary of which would be the LCCD: "Managing the Conservation Forest using State laws likely (would) allow timber harvest revenues to be used to address ... natural resource conservation needs in the LCCD." However, based on economic considerations and legal arguments, we believe that the Swan Initiative is not a workable plan.

On the basis of an early version of the Swan Initiative, the firm of Mason, Bruce and Girard prepared an "Estimate of Revenues and Costs for a proposed LCCD Conservation Forest" in July, 2015. To quote from that report, "Under this proposal the LCCD would ask Montana Department of Lands to manage in trust the Conservation Forest for commercial timber harvest on a sustainable basis for 100 years." According to the study, LCCD would pay DNRC fire protection costs like private Montana forest landowners. The Flathead National Forest would retain all other management such as recreation, outfitters and guides, grazing, etc. Timber harvest would be managed by Montana DNRC under the Montana Environmental Protection Act while the US Forest Service would manage their activities under the National Environmental Protection Act. Mason, Bruce and Girard estimated that the LCCD would receive net revenues of between \$497,950 and \$1,646,950.

A legal analysis of the Swan Initiative was also requested. This report was prepared by Donald D. MacIntyre, J.D., LL.M. and Maresa Jenson, Legal Intern. The draft report, received in June, 2016, defined a conservation forest as one in which "selective timber harvesting on a national forest is managed through leases or agreements with a local conservation district."

A revised legal analysis was received in July, 2016. In this revision, timber harvest was not mentioned. Rather, it focused on managing the "Conservation Forest pursuant to Montana laws, rules and regulations." Economic focus also changed: "All net revenues generated from proactively managing the Conservation Forest are to be invested in conservation work on the **Flathead National Forest, and in that part of the Swan within the boundaries of the LCCD.** Revenues may be invested in conservation practices outside the Swan Valley when money is available." What criteria would LCCD use to determine how money received would be invested on the Flathead National Forest?

These changes as written in the current legal analysis (removing "timber harvest" specifically from the plan, and restriction of potential revenue use) would seem to require a revision of the economic analysis for it to have any validity.

The legal study further summarizes its examination of state and federal laws pertaining to the "conservation forest." It concludes that a conservation forest is not feasible under existing federal law, and also recommends that the "State Conservation District Law be

amended to include a specific reference to the authority of a CD to enter into the necessary leases or agreements with the United States to implement a Conservation Forest.” Not only would Montana State law need to be changed by legislative action, but explicit US Congressional authorization would be required. There are additional legal barriers to a transition of management. Federal and State Laws conflict. The Initiative document itself is unclear. With the exception of the Montana Environmental Policy Act, no analysis is made concerning what laws, rules and regulations would manage a LCCD “Conservation Forest.” What is the difference between MEPA and NEPA? Is the forest to be managed for the greatest financial return, or according to Federal law, that national forests should be used “for a balanced combination of outdoor recreation, range, timber, watershed, and wildlife purposes”? Without a basic comparison and understanding of both sets of laws, how can we support a change in the way the Swan study area forest lands should be managed? In their legal analysis, Mr. MacIntyre and Ms Jenson examined the following Federal Laws: The National Forest Management Act, the Tribal Forest Protection Act, the Multiple Use Sustained Yield Act, and the Equal Access to Justice Act. State Laws were the Enabling Act, and the Conservation District Law. These laws contain obstacles to the implementation of a LCCD Conservation Forest. Most succinctly, MUSYA mandates management of national forests to “best meet the needs of the American people.” The acres in the Swan Initiative belong to the American people, not the citizens of Lake County. Because the Enabling Act of the State of Montana recognizes the supremacy of Federal policy and federal law over public lands, these issues further complicate a potential lease or agreement of a LCCD Conservation Forest.

The obstacles to the establishment of a Conservation Forest within the Flathead National Forest are many; resolution of legal conflicts appears to be doubtful, particularly since the LCCD Conservation Forest is difficult to understand and comment on. It has never been clearly defined and has undergone significant changes, as evidenced by changes between the draft and final legal analyses, the reduction in size of more than a third, and changes since preparation of the economic analysis. We feel that a more practical alternative for the best use of forest lands would be support of programs currently developed on both the state and federal levels.

The comment period for the National Forest Management Act (NFMA) plan for the Flathead National Forest ended October 3, 2016. This plan was prepared by a wide range of specialists with input from a large number of individuals and organizations, with the exception of LCCD. Why would LCCD want to scrap this plan for a block of forest that is surrounded by the Flathead National Forest and still mandated to be managed according to the NFMA in “one integral system”?

On July 18, 2016, Governor Bullock signed an agreement with the US Forest Service under the Good Neighbor Authority as defined in the FY 2014 Appropriations Act and the 2014 Farm Bill. Included is the following: “**Authorized Activities:** Only authorized forest, rangeland and watershed restoration services are allowed under the SPA (Supplemental Project Agreement) which includes activities to treat insect and disease infected trees; activities to reduce hazardous fuels; and any other activities to restore or improve forest, rangeland and watershed health, including fish, and wildlife habitat.” Why not support programs such as this, keep our organization out of

the controversy and concentrate our efforts on our traditional role?

## SUMMARY

According to a recent poll reported in the Missoulian, 59% of Montanans oppose transferring control to the state and 31% support. From a guest column in the June 20, 2016, Missoulian by Associated Students representatives of MSU and UM: “Having recognized federal public lands as an essential part of Montana’s heritage, a majority of Montanans, including students at UM and MSU, are appalled by the short sighted and irresponsible agenda to transfer ownership or management of American public lands to state or private hands.” Quoting USFS Chief Tom Tidwell, as reported in the Sept 21, 2016, Missoulian, “When you focus on harvest, that sends the wrong message. It sends the message that timber is what you are focused on, versus improving forest health or ecological resilience. That creates more controversy and questions about what you are really after.”

In the 1990’s Montana citizens finally won the right for recreational use of school trust lands. Stream access and public land access are a continuing battle. In 1970 Montana’s population was about 700,000. It is currently over 1,000,000. Demand for recreational use of our public lands, especially our national forests, is continually increasing. Let’s leave state land management a state responsibility and federal lands a federal responsibility.

The Swan Initiative proposal transfers management to state lands with undetermined LCCD responsibilities. It is also a time consuming detour from our responsibilities as a conservation district and will ignite new controversies. LCCD’s role in the “Conservation Forest” has never been clearly defined other than being the vehicle for transfer to the state. Do we have any responsibility other than a means of transfer to state management? If not, then this proposal is disingenuous. What has LCCD identified about the draft Flathead Forest Plan that is unacceptable? Wouldn’t we, as the vehicle by which management is transferred, have to approve the new “LCCD Swan Conservation Forest Plan”? Wouldn’t that require an in depth knowledge of the Flathead Forest Plan and the LCCD Swan Conservation Forest Plan? What criteria would we use to grant the money we supposedly would receive and also oversee its expenditure? Why would we consider involvement in a very controversial proposal that may open us up to lawsuits? Do we desire to be the reason for more dissension in Lake County?

Enough time and money have been spent on this dead end proposal. It is time to let it die and concentrate on our current responsibilities.

Submitted by:

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