

# Finding Middle Ground on Wilderness: From the Wilderness Act of 1964 to the Forest Jobs and Recreation Act of 2013

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Finding Middle Ground on Wilderness: From the *Wilderness Act of 1964* to the *Forest Jobs and Recreation Act of 2013*

Colin W. Phelps\*

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## INTRODUCTION

In the more than four score years since the first few thousand acres were protected by bureaucratic memorandum, the wilderness movement has been propelled along by that mixture of idealism and pragmatism which characterizes many successful social movements.<sup>1</sup>

Wilderness designation is a critical tool in protecting the few remaining areas in the United States that are pristine and wild. As with many issues relating to public lands management in Montana, the issue of wilderness designation is polarizing and is receiving increased scrutiny. Wilderness designation is a permanent land management decision which is often highly contentious because the many groups with a stake in the management of public lands disagree about how these lands should be managed. Wilderness designation, however, is not an all or nothing proposition. When the various stakeholders take a practical approach to the pursuit of their numerous public lands management goals, that is, when they seek to compromise, the result has historically been progress on public lands management.

This paper explores the importance of compromise in wilderness designation. It begins with a brief look at early wilderness preservation efforts and the negotiations which resulted in the passage of the *Wilderness Act of 1964* ("the Act"). This history demonstrates there likely would not be a Wilderness Act if parties on both sides of the issue were unwilling to compromise. Part II examines the inherent give and take found in the wilderness designation processes provided for in the Act. These processes were founded on the concessions made during the drafting of the Act and further illustrate that compromise has always been a key component in the wilderness designation process. The analysis in

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1. John D. Leshy, *Contemporary Politics of Wilderness Preservation*, 25 J. LAND, RESOURCES, & ENVTL. L 1, 3 (2005).

Part III focuses on the *Forest Jobs and Recreation Act* (“FJRA”).<sup>2</sup> It begins by examining the emergence of a new approach to designating wilderness—landscape-level collaborative efforts that attempt to include all the various stakeholders from the beginning of the public lands management decision process. It then analyzes the three landscape-level collaborative efforts that formed the foundation of the FJRA—the Beaverhead-Deerlodge Partnership, the Blackfoot-Clearwater Stewardship Project, and the Three Rivers Challenge. Next, it analyzes the various stakeholders’ arguments for and against the FJRA. It concludes that the compromises represented in the FJRA provide the best opportunity for future wilderness designation in Montana.

#### I. A BRIEF HISTORY OF WILDERNESS PRESERVATION EFFORTS AND THE *WILDERNESS ACT OF 1964*

Prior to passage of the *Wilderness Act of 1964*, national forests across the country were already managed to protect them in their “natural state.”<sup>3</sup> In 1919, the Forest Service preserved the White River National Forest in Colorado to protect its wilderness qualities, which appears to be the first time an area was protected solely to preserve these characteristics and values.<sup>4</sup> A decade later, a directive authorized the Chief of the Forest Service to designate

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2. Forest Jobs and Recreation Act of 2013, S.37, 113th Congress (2013), available at <https://www.congress.gov/113/bills/s37/BILLS-113s37rs.pdf>.

3. Margaret Shulenberger, *Construction and Application of Wilderness Act (16 U.S.C.A. § 1131 et seq.) Providing for National Wilderness Preservation System*, 14 A.L.R. Fed. 508, 510 (1973).

4. *Id.* The national park system is often cited as the first effort to designate wilderness areas; however, “rather than being positively identified as a value in its own right, wilderness became the residuum in master planning” in the parks. Michael McCloskey, *The Wilderness Act of 1964: Its Background and Meaning*, 45 OR. L. REV. 288, 295-96 (1965-1966).

protected *primitive areas*.<sup>5</sup> The purpose of this directive, known as Regulation L-20, was to:

Maintain the primitive conditions of transportation, subsistence, habitation and environment to the fullest degree compatible with their highest public use with a view to conserving the values of such areas for purposes of public education and recreation.<sup>6</sup>

The Forest Service created 73 primitive areas consisting of about 13 million acres between 1929 and 1939.<sup>7</sup>

However, Regulation L-20 did not effectively protect the wilderness qualities of these areas. For starters, “roads, simple shelters, and limited woodcutting were permitted” in the *primitive areas*.<sup>8</sup> Furthermore, these areas were not uniformly administered because management decisions were left to “the discretion of Forest Service personnel in the field.”<sup>9</sup> Thus, “these primitive areas were no real answer to the goal of preserving wilderness in perpetuity.”<sup>10</sup>

The Forest Service issued new regulations in 1939 to address these concerns—the U-Regulations.<sup>11</sup> These regulations “barred roads, motorized vehicles, and commercial timber

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5. Daniel Rohlf & Douglas Honnold, *Managing the Balances of Nature: The Legal Framework of Wilderness Management*, 15 *ECOLOGY L.Q.* 249, 250 (1988).

6. Douglas W. Scott, *A Wilderness-Forever Future: A Short History of the National Wilderness Preservation System*, Pew Wilderness Center Research Report, 3 (2001), available at [http://wilderness.nps.gov/celebrate/Section\\_Two/NWPS % 20History.pdf](http://wilderness.nps.gov/celebrate/Section_Two/NWPS%20History.pdf).

7. Shulenberger, *supra* note 3, at 510.

8. *Id.*

9. Scott, *supra* note 6, at 3.

10. *Id.*

11. John C. Hendee, George H. Stankey, & Robert C. Lucas, *Wilderness Management*, U.S. Department of Agriculture Forest Service Miscellaneous Publication No. 1365, 62 (October 1978), available at [http://www.fs.fed.us/cdt/carrying\\_capacity/wilderness\\_management\\_misc\\_pub\\_1365.pdf](http://www.fs.fed.us/cdt/carrying_capacity/wilderness_management_misc_pub_1365.pdf).

cutting.”<sup>12</sup> Under the U-Regulations, the Forest Service reviewed and reclassified the L-20 primitive areas using three land use designations: *wilderness*, *wild*, and *roadless*.<sup>13</sup> The areas that were not reclassified remained *primitive areas*.

Both the L-20 Regulations and the U-Regulations were administrative designations. Wilderness advocates feared that these regulations were unsecure and that the “discretionary administrative protection of wilderness would crumble in the face of demands for development”<sup>14</sup> By the 1940s, the goal of permanently preserving wilderness had been advanced for decades. People like Aldo Leopold and Bob Marshall had long recognized the fundamental value of protecting wilderness areas.<sup>15</sup> Leopold sought to protect areas that provide for “a continuous stretch of country preserved in its natural state . . . big enough to absorb a 2-week pack trip, and kept devoid of roads, artificial trails, cottages, or other works of man.”<sup>16</sup> The Wilderness Society—founded by Bob Marshall in 1935—served as the “philosophical and political focal point for the growing national wilderness movement.”<sup>17</sup>

Following World War II, wilderness supporters began advocating more strongly for Congress to provide for statutory protection of wilderness areas.<sup>18</sup> Further support for statutorily protected wilderness areas came from a 1949 Legislative Reference Service of the Library of Congress report.<sup>19</sup> This report “highlighted the widely disjointed programs for wilderness preservation,” and detailed “substantial concern for the future of

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12. Michael McCloskey, *The Wilderness Act of 1964: Its Background and Meaning*, 45 OR. L. REV. 288, 296 (1965-1966).

13. Hendee, Stankey, & Lucas, *supra* note 11, at 62-63. *Wild* was a roadless area less than 100,000 acres; *wilderness* was a roadless area greater than 100,000 acres; and *roadless* became *canoe* and was the designation for the Boundary Waters Canoe Area in Minnesota. *Id.*

14. Rohlf & Honnold, *supra* note 5, at 250.

15. Scott, *supra* note 6, at 1-5.

16. Hendee, Stankey, & Lucas, *supra* note 11, at 35.

17. Scott, *supra* note 6, at 5.

18. McCloskey, *supra* note 12, at 297.

19. Hendee, Stankey, & Lucas, *supra* note 11, at 63.

wilderness and widespread support for wilderness protection.”<sup>20</sup> In January of 1956, Howard Zahniser, the executive secretary of the Wilderness Society, began drafting what would eventually become the Wilderness Act.<sup>21</sup> Senator Hubert Humphrey (D-Minnesota) introduced the Act in the Senate and Representative John Saylor (R-Pennsylvania) introduced it in the House in June of 1956.<sup>22</sup>

From its inception, the Act required compromise. The passage of the Act took nearly “9 years of deliberation and the introduction of 65 different bills.”<sup>23</sup> Eighteen Congressional hearings were held, “thousands of pages of transcript were compiled, and congressional mail ran as heavy as on any natural resource issue of modern times.”<sup>24</sup> As the bill moved through the legislative process it “substantially changed” to accommodate all the various stakeholders.<sup>25</sup> These changes epitomize the “compromises that had to be made in order to secure Congressional support.”<sup>26</sup>

The Bureau of Budget opposed the original version of the bill because it included land within Indian Reservations.<sup>27</sup> The Forest Service also initially opposed the bill because it limited the agency’s authority to manage these lands as it saw fit.<sup>28</sup> Congressional delegates from western states, opposed to limiting development of public lands, refused to allow temporary wilderness status to lands called for by early versions of the bill.<sup>29</sup> These same Congressional delegates also insisted that wilderness areas only be designated by individual affirmative acts of Congress to halt “the erosion of Congressional authority to the executive.”<sup>30</sup> Representatives of the lumber, mining, power, and irrigation

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20. *Id.*

21. Scott, *supra* note 6, at 10.

22. *Id.* at 11.

23. Shulenberger, *supra* note 3, at 511.

24. McCloskey, *supra* note 12, at 298.

25. Hendee, Stankey, & Lucas, *supra* note 11, at 64.

26. *Id.* at 65.

27. McCloskey, *supra* note 12, at 298.

28. Hendee, Stankey, & Lucas, *supra* note 11, at 64-65.

29. *Id.* at 65.

30. *Id.*

interests also “bitterly resisted” the Act throughout the process.<sup>31</sup> Stakeholders with vested interests in the lands at stake opposed the original version of the bill because it prohibited such things as commercial enterprises, motor vehicles, the landing of aircraft, and new grazing, and these interests helped to ensure that “the prohibitions on nonwilderness uses were less restrictive” in the final version of the bill.<sup>32</sup>

Finally, proponents of the bill also had to “yield ground” in order to reconcile their interests for statutory wilderness preservation with the interests of the bill’s opponents.<sup>33</sup> According to John Leshy, a former Solicitor for the U.S. Department of the Interior, these compromises by wilderness proponents were “large and downright ugly” and went “way beyond garden-variety protections for ‘vested’ or ‘valid existing rights’ that appear in most legislation.”<sup>34</sup> These compromises included:

- (a) giving the President open-ended authority to approve reservoirs and other water works, power projects, transmission lines, and “other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof” in national forest wilderness areas; (b) giving hardrock mining companies a twenty-year window to stake new mining claims—any of which could turn into open pit mines—in national forest wilderness areas; (c) giving the Secretary of the Interior a twenty-year window to issue new oil and gas, coal, and other kinds of mineral leases in national forest wilderness areas; and (d) allowing livestock grazing to continue where already established, subject to reasonable regulation.<sup>35</sup>

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31. McCloskey, *supra* note 12, at 298.

32. Hendee, Stankey, & Lucas, *supra* note 11, at 64-66.

33. Leshy, *supra* note 1, at 2.

34. *Id.*

35. *Id.* at 2-3.



These concessions “must have been difficult for wilderness advocates to swallow.”<sup>36</sup> However, “wilderness advocates went along” because they knew these compromises “were necessary to get the legislation through the congressional gauntlet.”<sup>37</sup> The concessions made by all of the interested parties highlight the fact that “the Wilderness Act clearly was a product of compromise,” and without those compromises, “it is unlikely the bill would have ever passed.”<sup>38</sup>

The compromises required to pass the bill led to the objectives of the final version of the Act not being “wholly in accord with one another.”<sup>39</sup> The Act contains three main objectives: “1) to announce a national policy to protect wilderness, 2) to establish a National Wilderness Preservation System, and 3) to prevent federal agencies from creating wilderness.”<sup>40</sup> Further, the Act “provides only broad guidelines and directions,” and therefore, it “was not intended to be an all-inclusive guide” in how to classify and manage wilderness.<sup>41</sup> The general guidelines found in the Act, and the fact that the Act provides a management overlay on federal ownership, means that “parts of the Wilderness Act are subject to widely differing interpretations, depending on one’s particular wilderness philosophy.”<sup>42</sup>

As codified in statute, the Act contains six sections.<sup>43</sup> The first section outlines a statement of policy, imposes restrictions on the manner of implementation, and provides definitions for designating wilderness.<sup>44</sup> The second section provides the

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36. *Id.* at 3.

37. *Id.*

38. Hendee, Stankey, & Lucas, *supra* note 11, at 66.

39. Journal of Land, Resources & Environmental Law, *The Wilderness Act of 1964: A Practitioner’s Guide*, 21 J. LAND RESOURCES & ENVTL. L. 219, 222 (2001).

40. *Id.*

41. Hendee, Stankey, & Lucas, *supra* note 11, at 66.

42. *Id.*

43. 16 U.S.C. §§ 1131-36 (2012).

44. 16 U.S.C. § 1131.

mechanisms for designating wilderness areas.<sup>45</sup> Section three prescribes the management policies for these areas.<sup>46</sup> The fourth section describes how access should be granted to private or state-owned inholdings within wilderness areas.<sup>47</sup> Section five of the Act deals with gifts, bequests, and contributions of land for preservation as wilderness.<sup>48</sup> Finally, the sixth section directs the Secretaries of Agriculture and the Interior to make reports to the President for transmission to Congress on the status of the wilderness system at the beginning of each session of Congress.<sup>49</sup> Although each of these sections play a vital role in the National Wilderness Preservation System, the remainder of this paper focuses on the second section—the processes for designating wilderness.

## II. AN OVERVIEW OF THE MECHANISMS FOR DESIGNATING WILDERNESS AREAS

The authority of Congress to designate wilderness is based on the Property Clause of the Constitution, which grants Congress the “Power to dispose of and make all needful Rules and regulations respecting the Territory or other Property belonging to the United States.”<sup>50</sup> Section two of the Act<sup>51</sup> provided for two initial classification procedures for wilderness lands: “1) Areas that were defined by the Act itself as wilderness, and 2) areas which required agency application and argument, Presidential recommendation, and Congressional approval.”<sup>52</sup> The Forest Service had designated 14.5 million acres under the L-20 and U Regulations as *wilderness*, *wild*, *canoe*, or *primitive* prior to passage of the Act.<sup>53</sup> Early drafts of the Act called for all of this land to be

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45. 16 U.S.C. § 1132.

46. 16 U.S.C. § 1133.

47. 16 U.S.C. § 1134.

48. 16 U.S.C. § 1135.

49. 16 U.S.C. § 1136.

50. U.S. Const. art. IV, § 3, cl. 2.

51. 16 U.S.C. § 1132(a)-(c).

52. Hendee, Stankey, & Lucas, *supra* note 11, at 93.

53. *Id.* at 120.

designated wilderness; however, opponents objected to this blanket designation, and again, a compromise was struck.<sup>54</sup>

Of these 14.5 million acres, 9.1 million acres were immediately included in the National Wilderness Preservation System.<sup>55</sup> The remaining 5.4 million acres went through a formal review process prescribed by the Act.<sup>56</sup> This process required the Secretary of Agriculture to submit a recommendation for each remaining area to the President.<sup>57</sup> Before the recommendation could be forwarded to the President, the Act required that public notice of the proposals be given and local public hearings held.<sup>58</sup> The President reviewed the recommendation and altered the boundaries or added contiguous areas. The President then submitted a recommendation to Congress. Finally, “wilderness designation only took effect upon an affirmative act of Congress.”<sup>59</sup> By the end of the ten-year review timeframe prescribed by the Act, Congress classified 1.8 million acres as wilderness and the Forest Service recommended the remaining 3.6 million acres be classified wilderness as well.<sup>60</sup> The Act provided that these remaining lands be managed to preserve their wilderness qualities “until Congress either designate[d] them as ‘wilderness areas’ or direct[ed] that some other management be undertaken.”<sup>61</sup>

Not only did the land within the boundaries of the proposed areas need to be managed to preserve wilderness qualities, but, during this review process, courts ruled that “the eligibility of contiguous areas for wilderness designation could not be jeopardized.”<sup>62</sup> In *Parker v. U.S.*<sup>63</sup>, the Tenth Circuit evaluated a

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54. J. Land Resources & Envtl. L., *supra* note 39, at 226-27.

55. *Id.* at 227. All areas designated as “wilderness,” “wild,” or “canoe” at least 30 days before September 3, 1964, were designated as wilderness areas under the Act. 16 U.S.C. § 1132(a).

56. Hendee, Stankey, & Lucas, *supra* note 11, at 69.

57. 16 U.S.C. § 1132(b).

58. 16 U.S.C. § 1132(d)-(e).

59. J. Land Resources & Envtl. L., *supra* note 39, at 227-29.

60. Hendee, Stankey, & Lucas, *supra* note 11, at 94.

61. McCloskey, *supra* note 12, at 302.

62. J. Land Resources & Envtl. L., *supra* note 39, at 227-29.

63. *Parker v. U.S.*, 448 F.2d 793 (10th Cir. 1971).

lower court's decision to enjoin the Forest Service and a timber contractor "from performing a contract of sale and harvest of designated timber located on public lands."<sup>64</sup> The lands in question were not contained within the boundary of the area being reviewed for wilderness designation, but were contiguous to it.<sup>65</sup> The Tenth Circuit affirmed the decisions of the lower court that the contiguous area had wilderness value and that the land should be included "in the wilderness study report of the Secretary of Agriculture."<sup>66</sup> This decision, along with subsequent lawsuits, led to a "system-wide study to identify and manage national forests for potential inclusion in the National Wilderness Preservation System."<sup>67</sup>

Although the Act and the courts prescribed how the lands going through the recommendation process must be managed, "nothing compel[led] Congress to act" to designate the area as wilderness.<sup>68</sup> Congress had three options once the mandatory recommendation process was completed: "designate the area as wilderness, prohibit further consideration for wilderness designation . . . or fail to act."<sup>69</sup>

The initial wilderness classification procedures analyzed above are not the only way a wilderness area can be designated. As stated previously, one of the major compromises found in the Act is that "Congress reserved exclusive authority to designate wilderness areas in itself."<sup>70</sup> The Act specifically provides that "no Federal lands shall be designated as 'wilderness areas' except as provided for in this chapter *or by a subsequent Act*."<sup>71</sup> This exclusive statutory scheme ensures the wilderness designation process relies on the action, or inaction, of Congress.

During each session of Congress, "free-standing bills to designate wilderness areas are typically introduced and

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64. *Id.* at 794.

65. *Id.*

66. *Id.* at 795, 798.

67. J. Land Resources & Envtl. L., *supra* note 39, at 228.

68. *Id.* at 229.

69. *Id.*

70. *Id.* at 223.

71. 16 U.S.C. § 1131(a) (emphasis added).

considered.”<sup>72</sup> These bills “are not amendments to the Wilderness Act, but typically refer to the act for management guidance and sometimes include special provisions.”<sup>73</sup> For example, most wilderness bills “direct management of designated wilderness in accordance with the Wilderness Act.”<sup>74</sup> However, wilderness legislation also sometimes includes provisions that seek to “compromise among interests by allowing other activities in the area.”<sup>75</sup>

As of December 31, 2013, the original Act and 118 subsequent bills have designated 759 wilderness areas totaling nearly 110 million acres.<sup>76</sup> However, the 112th Congress (which ended in January of 2013) was the “first Congress since 1966 that did not add to the wilderness system.”<sup>77</sup> Prior to the passage of the *National Defense Authorization Act for Fiscal Year 2014*,<sup>78</sup> which designated almost 250,000 acres of new wilderness,<sup>79</sup> the 113th Congress had passed only one wilderness bill out of the eighteen pieces of wilderness legislation pending before it.<sup>80</sup> Many of these

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72. Katie Hoover, Kristina Alexander, Sandra L. Johnson, *Wilderness: Legislation and Issues in the 113th Congress*, Congressional Research Service R41610, Summary Page (November 15, 2013) (on file with *Pub. Land & Resources L. Rev.*).

73. *Id.*

74. *Id.*

75. *Id.*

76. Katie Hoover, Kristina Alexander, Sandra L. Johnson, *Wilderness: Legislation and Issues in the 113th Congress*, Congressional Research Service R41610, 1 (April 17, 2014), available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41610.pdf>.

77. *Id.* at Summary Page.

78. *H.R. 1960 (113th): National Defense Authorization Act for Fiscal Year 2014*, <https://www.govtrack.us/congress/bills/113/hr1960>, Govtrack.us (last visited Jan. 6, 2015).

79. Phil Taylor, Manuel Quiñones, & Annie Snider, *Major Package of Wilderness, Parks and Energy Bills Hitches Ride on Defense Authorization*, E&E News (Dec. 3, 2014), available at <http://www.eenews.net/stories/1060009816>.

80. *113th Congress Wilderness Bills*, The Wilderness Society, <http://wilderness.org/article/113th-congress-wilderness-bills> (last visited Feb. 19, 2015). On March 13, 2014, President Obama signed into law the *Sleeping*

pending wilderness bills were introduced during the 112th Congress, but Congress failed to act on them.<sup>81</sup> One reason for Congressional inaction is that wilderness designation is controversial and Congress must address the “general pros and cons of wilderness designation and specific provisions regarding management of wilderness areas” when drafting and considering wilderness legislation.<sup>82</sup>

This Congressional designation process requires compromise between competing interests. Proponents of wilderness designation seek to “preserve the areas in their current condition and to prevent development activities from altering their wilderness character.”<sup>83</sup> Whereas wilderness opponents “generally seek to retain development options for federal lands” which provide economic opportunities.<sup>84</sup> Balancing these interests and making decisions about wilderness “cannot be based on a clear cost-benefit or other economic analysis” because “the potential benefits and opportunity costs of wilderness designation can rarely be fully quantified and valued.”<sup>85</sup> Rather, Congressional decisions on wilderness “commonly focus on trying to maximize the benefits of preserving pristine areas and minimize the resulting opportunity costs.”<sup>86</sup> The Congressional compromises vital to maximizing the benefits and minimizing the opportunity costs associated with wilderness designation traditionally involved “the size of an area, the drawing of lines on maps, the releasing of lands to multiple use management, the use of alternative protected land designations, and fights over non-conforming uses and special provisions related to such things as grazing, access, and water management.”<sup>87</sup>

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*Bear Dunes National Lakeshore Conservation and Recreation Act* which designated 32,557 acres of wilderness in Michigan. *Id.*

81. *Id.*

82. Hoover, Alexander & Johnson, *supra* note 72, at 3.

83. *Id.* at 2.

84. *Id.* at 3.

85. *Id.*

86. *Id.*

87. Martin Nie, *Wilderness & the Politics of Compromise*, A New Century of Forest Planning (Oct. 13, 2010), <http://forestpolicy.com/2010/10/13/wilderness-the-politics-of-compromise-2/>.

These compromises have usually taken place at the federal level—Congress and the agencies in charge of managing these public lands. For example, the Forest Service tried to “maintain control of the wilderness designation process” through the Roadless Area Review and Evaluation II (“RARE II”) process.<sup>88</sup> Under the RARE II process, the Forest Service “identified national forest lands it deemed suitable for wilderness designation.”<sup>89</sup> As a result of the RARE II process, the Forest Service recommended “over 60 million acres of *de facto* wilderness” be included in the National Wilderness Preservation System.<sup>90</sup> However, because the “task of designating wilderness was a legislative, not administrative, job,” a state’s congressional delegation would review the RARE II proposals and write “wilderness bills to sort out these issues in their home state.”<sup>91</sup> During the 1970s and 1980s, this resulted in “statewide wilderness bills” that represented a “one-size-fits-all solution.”<sup>92</sup>

Although there are fifteen designated wilderness areas totaling over 3.4 million acres in Montana,<sup>93</sup> many of these areas were designated as wilderness during the decade following the passage of the Wilderness Act.<sup>94</sup> This is in large part due to the fact that wilderness designation is so hotly contested in Montana that

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88. Scott Friskics, *Wilderness and Everyday Life*, 23 (Aug. 2011), available at [http://digital.library.unt.edu/ark:/67531/metadc84205/m2/1/high\\_res\\_d/thesis.pdf](http://digital.library.unt.edu/ark:/67531/metadc84205/m2/1/high_res_d/thesis.pdf).

89. *Id.* at 49.

90. *Id.* at 23.

91. *Id.* at 49.

92. *Id.* at 48.

93. *Wilderness by the Numbers*, Montana Wilderness Association, <http://wildmontana.org/discover-the-wild/what-is-wilderness/factsheet/> (last visited Feb. 20, 2015). The recently passed *Rocky Mountain Front Heritage Act* does not create a new wilderness area and instead designates 67,000 acres of new wilderness in the Bob Marshall Wilderness Complex. *An Historic Day for Wilderness*, Montana Wilderness Association (Dec. 12, 2014), <http://wildmontana.org/blog/an-historic-day-for-wilderness>.

94. *Wilderness Areas*, Montana Wilderness Association, <http://wildmontana.org/discover-the-wild/montanas-public-lands/wilderness-areas/> (last visited Feb. 20, 2015).

“wilderness is an issue that one loses elections over.”<sup>95</sup> In 1988, Representative Pat Williams (D-Montana) and Senator John Melcher (D-Montana) introduced the *Montana Wilderness Bill*—a statewide wilderness bill aimed at addressing the status of Montana’s RARE II lands.<sup>96</sup> Although the bill passed both houses of Congress, President Reagan announced he would veto the bill right before the election in the 1988 Senate race, and Conrad Burns “used this political defeat to attack Melcher and his pro-wilderness position.”<sup>97</sup> Burns went on to defeat Melcher in the election.<sup>98</sup> Partly because wilderness designation is such a hotly contested topic in Montana politics, the most recent designation in the State, prior to the recent passage of the *Rocky Mountain Front Heritage Act* (“RMFHA”), occurred in 1983—the Lee Metcalf Wilderness in the Beaverhead-Deerlodge and Gallatin National Forests southwest of Bozeman.<sup>99</sup> The following section analyzes one effort to change the nature of the wilderness debate in Montana—the *Forest Jobs and Recreation Act*.

### III. THE FOREST JOBS AND RECREATION ACT: A WAY FORWARD?

While the lands eligible for wilderness designation are federal lands owned by the people of the United States, their management directly impacts the local communities surrounding them. Therefore, the issues surrounding the management of public lands are “embedded within the larger social, cultural, economic, and ecological context of a particular place.”<sup>100</sup> Because of this, there are many competing interests at stake when it comes to management decisions regarding these lands, especially when wilderness designation is involved.

The stakeholders in public lands management have long viewed themselves as being in a battle with one another, and this

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95. Friskics, *supra* note 88, at 51.

96. *Id.* at 49-50.

97. *Id.* at 50.

98. *Id.*

99. Montana Wilderness Association, *supra* note 94.

100. Friskics, *supra* note 88, at 9.



has led to “a tremendous amount of political and legal conflict” over how these lands are managed.<sup>101</sup> This political and legal conflict has resulted in “a deep sense of frustration with the current state” of public lands management.<sup>102</sup> This frustration has in turn led to a new approach to “resolving multiple use conflicts.”<sup>103</sup> Landscape-level collaborative efforts are starting to replace “umbrella legislation covering all national forests.”<sup>104</sup> These landscape-level efforts are described as “bottom-up, piecemeal approach[es]” designed to resolve “conflicts at the unit-level.”<sup>105</sup>

This relatively recent approach to wilderness designation “continues the tradition of political compromise” found in the more traditional wilderness designation processes described earlier.<sup>106</sup> However, these compromises are occurring at a different point in the process and involve a broader range of management decisions affecting more localized tracts of public lands. In other words, landscape-level collaborative efforts have led to “place-specific wilderness laws [which] typically contain an assortment of special management provisions.”<sup>107</sup> In fact, these bills are not really wilderness bills in the traditional sense, “they are package deals that have been developed over years of negotiation and compromise among local stakeholders.”<sup>108</sup> These landscape-level proposals “frame the whole question of wilderness in a very different context than the one that many people have come to see as politically intractable and philosophically suspect.”<sup>109</sup>

Senator Tester’s FJRA epitomizes not only this more recent, landscape-level approach, but also the necessary compromises the competing interests need to make in designating new wilderness areas. The first three parts of this section provide an

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101. Martin Nie & Michael Fiebig, *Managing the National Forests Through Place-Based Legislation*, 37 *ECOLOGY L.Q.* 1, 4 (2010).

102. *Id.*

103. *Id.* at 2.

104. *Id.*

105. *Id.*

106. *Id.* at 20.

107. *Id.* at 19.

108. Friskics, *supra* note 88, at 9.

109. *Id.* at 71.

overview of the landscape-level collaborative efforts represented in Senator Tester’s FJRA—the Beaverhead-Deerlodge Partnership, the Blackfoot-Clearwater Stewardship Project, and the Three Rivers Challenge. These three efforts show that when the various stakeholders in the management of our public lands get together and compromise, solutions can be found. The fourth part of this section analyzes the most recent version of Senator Tester’s FJRA—including the arguments of both the critics and supporters of the bill. Ultimately, it concludes that the compromises found in the FJRA are necessary to future wilderness designation in Montana. These compromises are necessary because they represent an understanding that wilderness designation must be linked with the broader social, cultural, economic, and ecological issues surrounding the management of our public lands.

#### *A. The Beaverhead-Deerlodge Partnership*

The Beaverhead Deerlodge National Forest (“BDNF”) lies in Southwest Montana and covers 3.38 million acres of land.<sup>110</sup> The BDNF is known for “its nationally renowned trout streams, large elk populations, and uncrowded backcountry recreation.”<sup>111</sup> Within its boundaries are 219,000 acres of designated wilderness.<sup>112</sup> The BDNF also contributes to “commodity production, and to local economic opportunities.”<sup>113</sup> It does so through timber production, livestock grazing, and leasable mineral development.<sup>114</sup> For example, timber production yielded an average of 14 million board feet per year from 1987 through 2005.<sup>115</sup> The BDNF also provides for motorized use and recreation, and “nearly eighty five-percent of

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110. *Beaverhead-Deerlodge National Forest Land and Resource Management Plan*, USDA Forest Service 2 (Jan. 2009), available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5052767.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5052767.pdf).

111. *Id.*

112. *Id.* at 5. The Anaconda-Pintler Wilderness and the Lee Metcalf Wilderness are located partially in the BDNF. Montana Wilderness Association, *supra* note 94.

113. USDA Forest Service, *supra* note 110, at 2.

114. *Id.* at 6-7.

115. *Id.* at 6.

approximately 6,800 miles of roads are open to motorized public use.”<sup>116</sup> Of the approximately 2,600 miles of trails, “[a]lmost half . . . are also available to motorcycles or ATVs.”<sup>117</sup>

In the late 1980’s, the Forest Service completed a Resource Management Plan<sup>118</sup> for the BDNF.<sup>119</sup> The purpose of these management plans is to establish “guidance for all resource management activities on a National Forest.”<sup>120</sup> In response to its management plan, the Forest Service faced legal challenges from almost every interested party:

Conservationists were unhappy with timber harvest guidelines, the timber industry wanted more harvest, counties worried about timber receipts payments, wilderness proponents wanted more protection, motorized users wanted more access, and grazing permittees wanted more grass.<sup>121</sup>

In response to these challenges, the Forest Service facilitated a negotiation process with the interested parties in an “effort to reduce the length of the court battle.”<sup>122</sup> These negotiations eventually “led to a full settlement, amending the Forest Plan without court action.”<sup>123</sup>

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116. *Id.*

117. *Id.*

118. Resource Management Plans are required by the National Forest Management Act of 1976. Martin Nie & Emily Schembra, *The Important Role of Standards in National Forest Planning, Law, and Management*, 44 *Envtl. L. Rep. News & Analysis* 10281 (April 2014).

119. Nie & Fiebig, *supra* note 101, at 25.

120. USDA Forest Service, *supra* note 110, at 1.

121. Karen DiBari, *Beaverhead-Deerlodge Working Group*, Conserve Montana, <http://www.conservemontana.org/content/beaverhead-deerlodge-working-group/cnm96B07CA6E4852B239> (last visited Feb. 20, 2015).

122. *Id.*

123. *Id.*

In 2005, the Forest Service again drafted a management plan for the BDNF.<sup>124</sup> And again, the interested groups “expressed frustration at what they considered to be a broken forest planning process.”<sup>125</sup> Senator Conrad Burns (R-Montana) urged the parties “to sit down together and compare visions for the management of the forest.”<sup>126</sup> In response, three conservation groups and five timber companies came together and formed the Beaverhead-Deerlodge Partnership (“BDP”) early in 2006.<sup>127</sup> This landscape-level collaborative effort had its origins in the negotiations over the Forest Service management planning process from the late 1980’s.<sup>128</sup> The BDP is now supported by nearly 60 groups and people, including: environmental groups, timber companies, county commissions, unions, state legislators, and local chambers of commerce.<sup>129</sup>

The BDP shaped a strategy for managing the BDNF with the objective of “creat[ing] a forest plan that provides greater predictability, diffuses conflict, and implements meaningful on-the-ground projects.”<sup>130</sup> The strategy provided for:

Land use allocations, and defines forest standards for motorized and non-motorized recreation, transportation systems, timber harvest, fish and

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124. Ted Fellman, *Collaboration and the Beaverhead-Deerlodge Partnership: The Good, the Bad, and the Ugly*, 30 PUB. LAND & RESOURCES L. REV. 79, 93 (2009).

125. Nie & Fiebig, *supra* note 101, at 25.

126. *Montana Forests Campaign*, Montana Wilderness Association, <http://wildmontana.org/our-work/campaigns/montana-forests-campaign> (last visited Feb. 20, 2015).

127. Fellman, *supra* note 124, at 93.

128. DiBari, *supra* note 121.

129. *Beaverhead-Deerlodge Partnership Supporters*, Montana Forests.org, [http://www.montanaforests.org/bill/beaverhead-deerlodge\\_partnership/supporters](http://www.montanaforests.org/bill/beaverhead-deerlodge_partnership/supporters) (last visited Feb. 19, 2015).

130. *Partnership Strategy for the Beaverhead-Deerlodge National Forest*, Ecosystem Research Group 1 (Apr. 14, 2006), available at <http://www.mtmultipleuse.org/wilderness/B-DpartnershipStrategy.pdf>.

wildlife conservation, and restoration of damaged landscapes, and wilderness.<sup>131</sup>

The BDP submitted their strategy for consideration by the Forest Service.<sup>132</sup> Instead of considering the BDP's strategy as an alternative to the management plan, "the USFS added an 'alternative 6' to the BDNF's Revised Draft Plan to partly respond to the Partnership's proposal."<sup>133</sup> Although the Forest Service chose this alternative, "the Partnership decided that its interests were not adequately addressed in the adopted forest plan."<sup>134</sup> So, the BDP drafted the *Beaverhead-Deerlodge Conservation, Restoration and Stewardship Act of 2007*.<sup>135</sup> This draft legislation was eventually incorporated as part of the FJRA.

The BDP represents the largest and most controversial landscape-level collaborative effort included in the FJRA. As discussed below, part of the reason it is controversial is because it has been argued that it represents more of a negotiation between a few conservation groups and the timber industry, rather than a collaborative effort involving all of the stakeholders.<sup>136</sup> This may be part of the reason Senator Tester chose to include it in a package deal and not introduce it as a separate legislative proposal. Regardless, the fact that conservation groups and timber industry representatives were able to sit down and compromise in order come up with a proposal that worked for both sides, represents a dramatic shift in how these groups advocate for the management of our public lands.

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131. *Id.* at 1.

132. Nie & Fiebig, *supra* note 101, at 26.

133. *Id.*

134. *Id.*

135. *Id.*

136. *See* Fellman, *supra* note 124, at 100-01.

*B. The Blackfoot-Clearwater Stewardship Project*

The Lolo National Forest (“LNF”) lies in west central Montana and covers two million acres of land.<sup>137</sup> The LNF contains “nationally significant big-game populations,” threatened and endangered species, and a “wide spectrum” of recreational opportunities.<sup>138</sup> The LNF also contains 363,608 acres of wilderness.<sup>139</sup> Like the BDNF, the LNF contributes to local economies through commodity production—mainly timber harvesting and livestock grazing.<sup>140</sup> There has not been a forest wide management plan completed on the LNF since 1986.<sup>141</sup>

The Blackfoot River runs through the LNF.<sup>142</sup> The Blackfoot valley is home to “some of the most productive fish and wildlife habitat in the Northern Rockies,” and it has a deep history of farming and ranching.<sup>143</sup> The residents of the Blackfoot valley also have a strong history of working together on conservation—the Scapegoat Wilderness, the “first citizen-initiated wilderness in the

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137. Lolo National Forest, <http://www.fs.usda.gov/main/lolo/home>, USDA Forest Service, (last visited Feb. 20, 2015).

138. USDA Forest Service, *The Lolo National Forest Plan*, USDA Forest Service II-2, II-3 & II-9 (Feb. 1986), available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5299100.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5299100.pdf).

139. *Id.* at i. The Rattlesnake National Recreation Area & Wilderness and the Welcome Creek Wilderness lie entirely in the LNF, while the Selway-Bitterroot Wilderness and the Scapegoat Wilderness lie partially within the LNF. USDA Forest Service, Lolo National Forest, *Recreation*, <http://www.fs.usda.gov/recmain/lolo/recreation> (last visited Feb. 20, 2015).

140. USDA Forest Service, *supra* note 138, at VI-28 to VI-30.

141. *Id.* at Title Page. After not finding a more recent management plan, the author contacted the Lolo National Forest Supervisor’s Office and confirmed that the 1986 plan is the current operating plan.

142. *A Vision for a Landscape*, The Blackfoot Clearwater Stewardship Project, <http://www.blackfootclearwater.org/about> (last visited Feb. 20, 2015).

143. *A Guide to Land Conservation in the Blackfoot Using Conservation Easements*, The Blackfoot Challenge 2, available at <http://blackfootchallenge.org/Docs/PDF/Brochures/ConservationEasement.pdf>.

nation,” came about because of the efforts of residents of the Blackfoot valley.<sup>144</sup>

In 2005, a broad-based group of stakeholders came together to develop a plan to protect the rural way of life and wilderness characteristics of the Blackfoot valley.<sup>145</sup> The stakeholders—representing the timber industry, conservation groups, ranchers, outfitters, and motorized users—formed the Blackfoot-Clearwater Stewardship Project (“BCSP”).<sup>146</sup> They did so because the “broad plans created by the U.S. Forest Service to manage public lands” were not working for the folks on the ground.<sup>147</sup> Ultimately, the stakeholders involved in the BCSP realized that they all shared the same goal—responsibly managed forests.<sup>148</sup>

The BCSP represents a “common-sense approach that recognizes diverse uses of the land” and is something the people in the Blackfoot valley “have tried to do for 30 years.”<sup>149</sup> The vision of this collaborative effort “includes protecting traditional ranching, hunting, fishing and other uses, in concert with conserving water and wildlife, wilderness and sustainable forest activities.”<sup>150</sup> Ultimately, the BCSP plan seeks to “secure a more permanent balance between wilderness, restoration, resource use, and

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144. *Blackfoot Clearwater Landscape Stewardship Project, Project Description*, The Blackfoot Clearwater Stewardship Project 1 (Spring 2007), available at <http://www.blackfootclearwater.org/files/blackfootclearwater.pdf>.

145. Michael Jamison, *Blackfoot Plan Balances Diverse Goals, From Logging to Conservation*, Missoulian (Jan. 25, 2007), available at <http://www.blackfootclearwater.org/press/articles/3>.

146. *Id.*

147. *Id.*

148. *Blackfoot Clearwater Stewardship Project*, Montanaforests.org, [http://www.montanaforests.org/bill/blackfoot\\_clearwater\\_stewardship\\_project](http://www.montanaforests.org/bill/blackfoot_clearwater_stewardship_project) (last visited Feb. 20, 2015).

149. Eve Byron, *Plan Unveiled for Blackfoot Valley Lands*, Helena Independent Record (Jan. 25, 2007) (quoting Bob Ekey, Northern Rockies Regional Director of the Wilderness Society and Jim Stone, Ovando, MT rancher), available at <http://www.blackfootclearwater.org/press/articles/4>.

150. The Blackfoot Clearwater Stewardship Project, *supra* note 144, at 1.

recreation.”<sup>151</sup> The plan seeks this balance through a wide variety of management proposals.

The BCSP plan includes maintaining traditional pack trails in the LNF.<sup>152</sup> It also includes maintaining existing snowmobile trails and areas, and it creates a 2,000 acre “winter motorized use area.”<sup>153</sup> 87,000 acres of new wilderness would be designated under the BCSP.<sup>154</sup> The plan also creates the Blackfoot Cooperative Landscape Stewardship and Restoration Pilot Project that would authorize funding for restoration projects to address “water quality, sediment control and reduction, endangered species protection, weed management, habitat restoration and recreation needs.”<sup>155</sup> The restoration activities include:

road relocation and closures; culvert and bridge replacements; stream restoration and bank stabilization; invasive species management; trail head and campground improvement, under story removal and vegetative treatment; tree planting and pre-commercial thinning; prescribed burning; and trail reclamation and relocation.<sup>156</sup>

Finally, the plan calls for the Seeley Lake Biomass Pilot Project.<sup>157</sup> This 3.2 megawatt co-generation facility would increase forest industry jobs, provide a source of power for Pyramid Lumber, and “create the model and vision for rebuilding lost infrastructure in the West.”<sup>158</sup> The BCSP was initially a separate legislative proposal as well;<sup>159</sup> however, Senator Tester included it as part of the broader FJRA.

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151. Nie & Fiebig, *supra* note 101, at 22.

152. The Blackfoot Clearwater Stewardship Project, *supra* note 144, at 1.

153. *Id.*

154. *Id.*

155. *Id.* at 3.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*



Each one of the proposals in the BCSP plan represents a compromise between the local stakeholders involved in the process. The residents of the Blackfoot valley have a long history of coming together to find compromises on the management of public lands and the BCSP represents another effort by these residents to come together and move public lands management forward in their community. Ultimately, the BCSP is about “people and community” and its strength is that “it’s homegrown. It’s not grown by folks in New York or Washington D.C., telling us how to manage our land.”<sup>160</sup>

### C. *The Three Rivers Challenge*

The Kootenai National Forest (“KNF”) is located in Northwestern Montana and contains 2.2 million acres of land.<sup>161</sup> The KNF includes “some of the most diverse and productive forests” in Montana and “is the home of many rare plant and animal species.”<sup>162</sup> Like the LNF and BDNF, the KNF is an “important contributor to the local economy.”<sup>163</sup> It does so through timber production, mineral development, livestock grazing, and special forest and botanical products.<sup>164</sup> The KNF also provides for a “variety of motorized” recreational opportunities.<sup>165</sup> Finally, the KNF includes one designated wilderness area, the Cabinet Mountains Wilderness, which totals 93,700 acres.<sup>166</sup> In 2013, the Forest Service proposed a management plan revision in order to “provide direction for the management” of the KNF.<sup>167</sup>

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160. Rob Chaney, *Blackfoot Clearwater Plan Hears Support*, Missoulian (May 8, 2009) (quoting Jim Stone, Ovando, MT rancher), available at <http://www.blackfootclearwater.org/node/86>.

161. USDA Forest Service, *Land Management Plan, 2013 Revision, Kootenai National Forest*, USDA Forest Service 7 (2013), available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5436473.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5436473.pdf).

162. *Id.*

163. *Id.* at 8.

164. *Id.* at 38-40.

165. *Id.* at 33.

166. *Id.* at 44.

167. *Id.* at 1.

The Yaak Valley is located in the KNF.<sup>168</sup> The valley lies in a transition zone between the Pacific Northwest and the Rocky Mountains, and due to its low elevation and high precipitation, has a unique climate for Montana.<sup>169</sup> This unique climate leads to a diverse blend of habitats.<sup>170</sup> The valley “provides essential regional core habitat linkage possibilities” for a wide range of species, including: grizzly bears, bull trout, wolverine, lynx, great gray owl, and many others.<sup>171</sup> In fact, “it is the only valley in the Lower 48 for which it can be said no species has gone extinct since the end of the last Ice Age.”<sup>172</sup> Ninety-seven percent of the Yaak Valley is public land managed by the Forest Service.<sup>173</sup> The valley is also “the most productive forestland in the Rockies.”<sup>174</sup> Because the valley contains unique habitat, endangered species, historically excessive timber harvests, and motorized recreational users, there has long been conflict between the various stakeholders in the Yaak valley.<sup>175</sup>

In 1997, local residents concerned with the management of the valley came together to form the Yaak Valley Forest Council (“YVFC”).<sup>176</sup> The YVFC began discussions with the various

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168. *About the Yaak*, Yaak Valley Forest Council, <http://www.yaakvalley.org/about-the-yaak.html> (last visited Feb. 19, 2015).

169. *Id.*

170. *Id.*

171. *Id.*

172. Sen. Energy & Natural Resources Committee, Subcommittee on Public Lands, Forests, and Mining, *Misc. Public Lands Bills*, 113th Congress, 46 (July 30, 2013), available at <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg82863/pdf/CHRG-113shrg82863.pdf> (written statement of Three Rivers Challenge Partnership, Troy, MT).

173. Yaak Valley Forest Council, *supra* note 168.

174. *Three Rivers Challenge*, [Montanaforests.org](http://www.montanaforests.org), [http://www.montanaforests.org/bill/three\\_rivers\\_challenge](http://www.montanaforests.org/bill/three_rivers_challenge) (last visited Feb. 19, 2015).

175. Lawrence Allen Byrd III, *The Public Land Manager in Collaborative Conservation Planning: A Comparative Analysis of Three Case Studies in Montana*, 26–28 (unpublished thesis, U. Mont 2009) (available at [http://etd.lib.umt.edu/theses/available/etd-06122009-134838/unrestricted/Master\\_thesis.pdf](http://etd.lib.umt.edu/theses/available/etd-06122009-134838/unrestricted/Master_thesis.pdf)).

176. Yaak Valley Forest Council, <http://www.yaakvalley.org/index.html> (last visited Feb. 20, 2015).

stakeholders, including: conservationists, motorized users, hunters, outfitters, and the timber industry.<sup>177</sup> For forty years these groups fought each other, and it gained them nothing.<sup>178</sup> In fact, prior to the YVFC, “there had never been an organized effort” by Yaak valley locals to “implement conservation and restoration programs” in the valley.<sup>179</sup> However, out of these discussions between seemingly competing interests came the Three Rivers Challenge (“3RC”).<sup>180</sup>

The 3RC is relatively modest when compared to the BDP or the BCSP—it provides for land management on about 100,000 acres in the KNF.<sup>181</sup> The 3RC also differs from the BDP and BCSP in that it is “strictly a partnership of local citizens.”<sup>182</sup> However, similar to both the BDP and BCSP, the 3RC represents a landscape-level collaborative effort aimed at promoting “forest health, sustainable landscape management, and sustainable communities and forests.”<sup>183</sup> The 3RC seeks to revitalize the timber products industry, preserve both motorized and non-motorized recreation opportunities, and protect backcountry areas.<sup>184</sup> The plan seeks to accomplish these goals through a variety of means.

Similar to the BDP proposal, the 3RC contains mandated stewardship logging. Under the plan, the Forest Service is required to harvest an average of at least 3,000 acres per year.<sup>185</sup> These stewardship logging projects are “part of a series of broader

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177. [Montanaforests.org](http://montanaforests.org), *supra* note 174.

178. Bill Schneider, *Yaak Forest Group Champions Sustainable Local Economy*, NewWest (Jan. 20, 2009) (quoting Wayne Hirst, Lincoln County, MT accountant), *available at* [http://newwest.net/topic/article/yaak\\_forest\\_group\\_champions\\_sustainable\\_local\\_economy/C41/L41/](http://newwest.net/topic/article/yaak_forest_group_champions_sustainable_local_economy/C41/L41/).

179. Byrd III, *supra* note 175, at 26.

180. *Three Rivers Challenge*, Yaak Valley Forest Council, <http://www.yaakvalley.org/three-rivers-challenge.html> (last visited Feb. 20, 2015).

181. Schneider, *supra* note 178.

182. Byrd III, *supra* note 175, at 28.

183. Yaak Valley Forest Council, *supra* note 180.

184. *Id.*

185. *Forest Jobs and Recreation Act*, Senator Jon Tester, <http://www.testersenate.gov/?p=issue&id=70> (last visited Feb. 20, 2015).

restoration projects of at least 30,000 acres.”<sup>186</sup> The plan also creates the Three Rivers Special Management Area, which includes motorized and non-motorized areas.<sup>187</sup> Finally, it designates 29,500 acres of wilderness.<sup>188</sup> This would be the first ever wilderness designation in the Yaak Valley.<sup>189</sup> The 3RC represents the third, and final, collaborative landscape-level effort included in Senator Tester’s FJRA.

Landscape-level approaches such as the BDP, BCSP, and 3RC “provide detailed alternatives to the status quo and shift the debate over forest management in significant ways.”<sup>190</sup> While the three proposals found in the FJRA continue the tradition of compromise on wilderness, the give and take has occurred at a different point in the process than it did in the majority of older wilderness bills. The negotiations and compromises took place within the communities affected by the management of these public lands instead of at the federal level. Through years of negotiation, the various stakeholders in all three efforts largely resolved their historical conflicts on specific forests before the proposals were even brought to Senator Tester. The resolution of these conflicts required all three proposals to address a wider range of management proposals than just wilderness designation. These broad based proposals acknowledge and respect the wide-ranging impact public lands management has on local communities. The negotiations and compromises found in the BDP, BCSP, and 3RC resulted in the “multi-faceted” FJRA<sup>191</sup>—a bill that represents a “significant departure from the status quo.”<sup>192</sup>

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186. *Id.*

187. *Id.*

188. *Id.*

189. Sen. Energy & Natural Resources Committee, *supra* note 172, at 46.

190. Nie & Fiebig, *supra* note 101, at 50.

191. *Id.*

192. Martin Nie, *Place-Based Forest Law: Questions and Opportunities Presented by Senator Tester’s Forest Jobs and Recreation Act*, 31 PUB. LAND & RESOURCES L. REV. 175, 175 (2010).

*D. The Resulting Forest Jobs and Recreation Act*

Since the failure of the *Montana Wilderness Bill* in 1988, wilderness designation had become so “politically toxic” in Montana that “no Montana legislator dared to address” the issue until Senator Tester first introduced the FJRA in 2009.<sup>193</sup> However, during that time, wilderness bills had changed. Wilderness legislation had gone from “statewide bills that were all about locking up lands,” to “local, bipartisan bills that also include economic benefits for the local rural communities.”<sup>194</sup> This change was due in large part to local, landscape-level collaborative efforts such as those described in the previous sections.

Senator Tester first introduced the FJRA in 2009, and then again in 2011.<sup>195</sup> However, both of those versions of the bill died in Committee.<sup>196</sup> In 2011, Senator Tester tried to attach the FJRA to a congressional budget deal.<sup>197</sup> However, Representative Denny Rehberg (R-Montana), who opposed the measure, made sure that leaders of the House of Representatives would not accept it as part of the budget deal.<sup>198</sup> In 2012, Senator Tester and Representative

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193. Friskics, *supra* note 88, at 51.

194. John Q. Murray, *Local Wilderness Discussions Move Forward for Lolo National Forest*, Clark Fork Chronicle (Dec. 21, 2006), available at <http://www.blackfootclearwater.org/press/articles/2>.

195. Phil Taylor, *Senate Plan Mixes Wilderness, Timber Harvests in Bid to Rescue Mont. Ecosystem*, The New York Times (Sept. 14, 2011), available at <http://www.nytimes.com/gwire/2011/09/14/14greenwire-senate-plan-mixes-wilderness-timber-harvests-i-70006.html?pagewanted=all>.

196. *Forest Jobs and Recreation Act of 2009*, Govtrack.us, <https://www.govtrack.us/congress/bills/111/s1470> (last visited Feb. 20, 2015); *Forest Jobs and Recreation Act of 2011*, Govtrack.us, <https://www.govtrack.us/congress/bills/112/s268> (last visited Feb. 20, 2015).

197. Associate Press, *Partisan Differences Doom Wilderness, Logging Plan*, Billings Gazette (Dec. 16, 2011), available at [http://billingsgazette.com/news/state-and-regional/montana/partisan-differences-doom-wilderness-logging-plan/article\\_613ec132-280c-11e1-bf70-0019bb2963f4.html](http://billingsgazette.com/news/state-and-regional/montana/partisan-differences-doom-wilderness-logging-plan/article_613ec132-280c-11e1-bf70-0019bb2963f4.html).

198. *Id.*

Rehberg faced off in an intense race for U.S. Senate.<sup>199</sup> Senator Tester ended up beating Representative Rehberg by nearly 16,600 votes.<sup>200</sup> The FJRA was an important issue in the race and a key distinction between the two candidates.<sup>201</sup> The re-election of Senator Tester showed that wilderness bills, particularly the new type of wilderness bill represented by the FJRA, are no longer issues one loses elections over.

Senator Tester most recently introduced the FJRA on January 22, 2013.<sup>202</sup> On December 19, 2013, the FJRA received bipartisan support and passed out of the Senate Energy and Natural Resources Committee.<sup>203</sup> The key provisions in the 2013 version of the FJRA as introduced in the Senate largely come from the three landscape-level collaborative groups described above. These provisions include: designating 670,000 acres of new wilderness,<sup>204</sup> keeping more than 6,500 miles of trails and roads from being closed

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199. Matt Gouras, *Jon Tester vs. Denny Rehberg: Montana Senate Election Heats Up Ahead of 2012*, Associated Press (July 2, 2011), available at [http://www.huffingtonpost.com/2011/07/02/jon-tester-denny-rehberg\\_n\\_889239.html](http://www.huffingtonpost.com/2011/07/02/jon-tester-denny-rehberg_n_889239.html).

200. Mike Dennison, *Reporter's Notebook: How Did Tester Win? Big Margins in Cities – and Some Help From Friends*, Billings Gazette (Nov. 11, 2012), available at [http://billingsgazette.com/news/state-and-regional/montana/reporter-s-notebook-how-did-tester-win-big-margins-in/article\\_e0d351c8-4b02-527e-aae9-4e11895637ef.html](http://billingsgazette.com/news/state-and-regional/montana/reporter-s-notebook-how-did-tester-win-big-margins-in/article_e0d351c8-4b02-527e-aae9-4e11895637ef.html).

201. Mike Dennison, *Tester, Rehberg Have Different Takes on Accomplishments*, Billings Gazette (Oct. 28, 2012), available at [http://billingsgazette.com/news/state-and-regional/montana/tester-rehberg-have-different-takes-on-accomplishments/article\\_0830eb9d-349e-51d5-9667-5d9e67880c28.html](http://billingsgazette.com/news/state-and-regional/montana/tester-rehberg-have-different-takes-on-accomplishments/article_0830eb9d-349e-51d5-9667-5d9e67880c28.html).

202. *Forest Jobs and Recreation Act of 2013*, Govtrack.us, <https://www.govtrack.us/congress/bills/113/s37> (last visited Feb. 20, 2015).

203. Rob Chaney, *Tester's Forest Jobs and Recreation Act Passes Senate Committee*, Missoulian (Dec. 20, 2013), available at [http://missoulian.com/news/local/tester-s-forest-jobs-and-recreation-act-passes-senate-committee/article\\_bfda0078-68c2-11e3-83f4-0019bb2963f4.html](http://missoulian.com/news/local/tester-s-forest-jobs-and-recreation-act-passes-senate-committee/article_bfda0078-68c2-11e3-83f4-0019bb2963f4.html).

204. *Why Conservationists Support Tester's Forest Jobs and Recreation Act*, Montanaforests.org, [http://www.montanaforests.org/docs/fact-sheet\\_conservation.pdf](http://www.montanaforests.org/docs/fact-sheet_conservation.pdf) (last visited Feb. 20, 2015).

to motorized use;<sup>205</sup> directing the Forest Service to conduct stewardship logging on 100,000 acres of land over 15 years;<sup>206</sup> and designating more than 300,000 acres of national recreation/special management areas.<sup>207</sup> The FJRA “advances the debate over national forest management in significant ways—putting all the big issues and conflicts squarely on the table.”<sup>208</sup> However, the FJRA has also led to increased debate among the various stakeholders about the management of our public lands.

### 1. *Critics Arguments Against the Forest Jobs and Recreation Act*

Critics of the FJRA represent a broad array of interest groups, including: local government officials, conservation groups, and multiple use advocates. There are also those that question whether the landscape-level proposals which led to the FJRA represent collaborative efforts—particularly when it comes to the BDP. Finally, there are those that question local collaborative efforts on our public lands generally.

Local government officials have concerns about how “wilderness designation [in their counties] would affect ranchers and county tax proceeds.”<sup>209</sup> These local governments feel they were also left out of the processes which led to the creation of the

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205. *Why The Forest Jobs and Recreation Act Ensures Motorized Recreation*, Montanaforests.org, [http://www.montanaforests.org/docs/fact-sheet\\_motorized.pdf](http://www.montanaforests.org/docs/fact-sheet_motorized.pdf) (last visited Feb. 20, 2015).

206. *Why Do Members of the Wood Products Industry Support the Forest Jobs and Recreation Act?*, Montanaforests.org, [http://www.montanaforests.org/docs/fact-sheet\\_timber.pdf](http://www.montanaforests.org/docs/fact-sheet_timber.pdf) (last visited Feb. 20, 2015).

207. *Why Sportsmen Support the Forest Jobs and Recreation Act*, Montanaforests.org, [http://www.montanaforests.org/docs/fact-sheet\\_sportsmen.pdf](http://www.montanaforests.org/docs/fact-sheet_sportsmen.pdf) (last visited Feb. 20, 2015).

208. Nie, *supra* note 192, at 177.

209. Daniel Person, *Madison, Beaverhead County Leaders Shaken by Baucus Support*, Bozeman Daily Chronicle (Oct. 28, 2009), available at [http://www.bozemandailychronicle.com/news/article\\_2cb9c299-41a6-5a0e-b0d1-11bceaf18eef.html](http://www.bozemandailychronicle.com/news/article_2cb9c299-41a6-5a0e-b0d1-11bceaf18eef.html).

bill.<sup>210</sup> They believe the “partnership strategy,” which they argue only contained conservation and industry groups, was “too small to represent real community perspective and didn’t let in enough outside participation.”<sup>211</sup> They further argue that the “bill would not provide promised jobs and would lock people out of public lands.”<sup>212</sup> Local government officials have testified against the FJRA arguing that the low price of timber will result in the bill’s mandated landscape restoration projects having little to no chance of success, resulting in fewer funds for local governments.<sup>213</sup> Finally, they argue that the mandated landscape restoration projects restrict “traditional management prescriptions and remov[e] management flexibility for the Forest Service.”<sup>214</sup>

Some conservation groups believe “the mandated logging provisions are unprecedented and represent an unscientific override of current forest planning.”<sup>215</sup> These groups have analyzed historical logging data on the BDNF and argue that the mandated logging requirements “far exceed anything this forest has ever seen.”<sup>216</sup> In their view, the FJRA “overrides 100 years of federal

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210. Tim Leeds, *Contrasting Views of Tester’s Montana Forest Bill*, *Havre Daily News* (Jan. 27, 2011), available at <http://www.havredailynews.com/story/2011/01/27/local/contrasting-views-of-testers-montana-forest-bill/422220.html>.

211. Rob Chaney, *Multiple-Use Groups Condemn Tester’s Wilderness Legislation*, *Missoulian* (Sept. 12, 2009), available at [http://missoulian.com/news/local/article\\_09856d1a-9f5b-11de-b8d3-001cc4c03286.html](http://missoulian.com/news/local/article_09856d1a-9f5b-11de-b8d3-001cc4c03286.html).

212. *Id.*

213. Sen. Energy & Natural Resources Committee, Subcommittee on Public Lands, Forests and Mines, *Public Lands and Forests Legislation*, 111th Cong., 37–41 (Dec. 17, 2009), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg55952/pdf/CHRG-111shrg55952.pdf> (statement of Mike McGinley, Commissioner, Beaverhead County Commission, Dillon, MT). This hearing was on the first version of the FJRA that Sen. Tester introduced during the 111th Congress. However, many of the arguments remain the same.

214. *Id.* at 40.

215. *Id.* at 47.

216. *A Clear Look at the “Forest Jobs and Recreation Act,” S 1470*, Last Best Place Wildlands Campaign, <http://testerloggingbilltruths>.



forest management policies.”<sup>217</sup> Further, they argue the bill “threatens proper congressional management” of federal lands.<sup>218</sup> They also argue the FJRA “removes the necessary protections for roadless wild lands” while only providing for “minimal designations of seriously fragmented ‘wilderness areas.’”<sup>219</sup>

Multiple use advocates argue that the FJRA does not do “much more than designate a bunch of new Wilderness.”<sup>220</sup> They believe it is just a wilderness bill in disguise that eliminates recreational opportunities and does not actually “designate any ‘new areas for recreation.’”<sup>221</sup> In their view, the bill would “immediately lock away a million acres . . . from all uses except primitive recreation,” without increasing any motorized recreational opportunities.<sup>222</sup> Those multiple use recreational opportunities created by the bill are also not guaranteed, they argue.<sup>223</sup> In sum, these multiple use advocates believe the FJRA has “absolutely no tolerance for multiple use.”<sup>224</sup>

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wordpress.com/by-the-numbers-tester % E2 % 80 % 99s-mandated-logging-vs-historical-logging/ (last visited Feb. 20, 2015).

217. *Comments from Coalition Members*, Last Best Place Wildlands Campaign 3, [http://testerloggingbilltruths.files.wordpress.com/2010/01/lbpwc\\_comments1.pdf](http://testerloggingbilltruths.files.wordpress.com/2010/01/lbpwc_comments1.pdf) (last visited Feb. 18, 2015).

218. *Id.*

219. *Id.* at 2-3.

220. Brian Hawthorne, *Forest Jobs and Recreation Act A Teachable Wilderness Bill*, Blue Ribbon Coalition, <http://www.sharetrails.org/node/14614>. (last visited Feb. 18, 2015).

221. *Id.*

222. Fred Hodgeboom, Greg Hinkle, Verdell Jackson, & Daniel Zolnikov, *No Thanks, Sen. Tester: Forest Jobs and Recreation Act Is Not Even Close to the Compromise It Is Touted as*, Missoulain (Feb. 16, 2012), available at [http://missoulain.com/news/opinion/columnists/no-thanks-sen-tester-forest-jobs-and-recreation-act-is/article\\_fae9fa2c-58ae-11e1-b971-0019bb2963f4.html](http://missoulain.com/news/opinion/columnists/no-thanks-sen-tester-forest-jobs-and-recreation-act-is/article_fae9fa2c-58ae-11e1-b971-0019bb2963f4.html).

223. Dave Skinner, *An Alternative to Tester’s Forest Jobs and Recreation Act*, Flathead Beacon (Aug. 5, 2009), available at [http://www.flatheadbeacon.com/articles/article/an\\_alternative\\_to\\_testers\\_forest\\_jobs\\_and\\_recreation\\_act/12165](http://www.flatheadbeacon.com/articles/article/an_alternative_to_testers_forest_jobs_and_recreation_act/12165).

224. Chaney, *supra* note 211 (quoting Montana State Representative Debby Barrett, R Dillon).

A key criticism of the FJRA is that the collaborative landscape level partnerships that led to the bill were not collaborative because the process “was not an open and inclusive process that welcomed diverse interests to the table.”<sup>225</sup> These critics claim, particularly when it comes to the BDP, that “such an exclusionary process is more akin to a negotiation than a true collaboration.”<sup>226</sup> The critics of the BDP “question the legitimacy of the process,” and argue “three mainstream conservation organizations met privately with five timber companies to hammer out the details of the deal without seeking or even allowing broader participation.”<sup>227</sup> As mentioned above, local governments argue that they were not invited to participate in the processes that led to the FJRA. Some conservation groups also argue that the FJRA was a “repudiation of meaningful public involvement.”<sup>228</sup> Many multiple use advocates agree that the processes which led to the FJRA relied “on closed-door machinations.”<sup>229</sup> These groups feel they were “kept completely out of the loop until the bill of goods was ready for sale.”<sup>230</sup>

There are also those that criticize collaborative processes on federal public lands generally. They argue that “collaboration threatens to undo important elements of federal procedural law, federal substantive law, and emerging national priorities.”<sup>231</sup> They further argue that collaborative efforts by “unelected, unappointed local citizens councils” on public lands are illegal because federal law does not delegate “powers of decision over federal natural resources” to these groups.<sup>232</sup> They see “very few positive results”

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225. Fellman, *supra* note 124, at 105.

226. *Id.* at 101.

227. *Id.* at 100.

228. Last Best Place Wildlands Campaign, *supra* note 217, at 2.

229. Skinner, *supra* note 223.

230. *Id.*

231. George C. Coggins, *Regulating Federal Natural Resources: A Summary Case Against Devolved Collaboration*, 25 *ECOLOGY L.Q.* 602, 608 (1999).

232. *Id.* at 602-03.

from collaborative efforts and argue that “much local decision-making has been narrow, greedy, and shortsighted.”<sup>233</sup>

## 2. *Supporters Arguments in Favor of the Forest Jobs and Recreation Act*

A poll conducted in 2009 found that seventy three-percent of Montanans support Senator Tester’s FJRA.<sup>234</sup> Interestingly, supporters of the FJRA represent stakeholders with seemingly similar interests to those of the critics. These groups include members of the timber industry, conservation groups, sportsmen, local government officials, local chambers of commerce, and multiple use groups.<sup>235</sup>

Members of the timber industry argue the FJRA “gives the Forest Service a workable tool to manage our forests . . . while protecting and creating jobs that are necessary.”<sup>236</sup> These people argue that “25 years of fighting over the use of our public lands,” and use of public lands that has been “out-of-balance” has put the timber industry at “serious risk of survival.”<sup>237</sup> They point out that at one time there were 38 sawmills in Montana employing 15,000 people and today there are just 10 sawmills employing 5,000

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233. *Id.* at 604.

234. Kellyn Brown, *Poll: 73 Percent of Montanans Support Tester’s Forest Jobs and Recreation Act*, Flathead Beacon (Aug. 11, 2009), available at [http://www.flatheadbeacon.com/articles/article/poll\\_73\\_percent\\_of\\_montanans\\_support\\_testers\\_forest\\_jobs\\_and\\_recreation\\_act/12333](http://www.flatheadbeacon.com/articles/article/poll_73_percent_of_montanans_support_testers_forest_jobs_and_recreation_act/12333).

235. *Supporters of the Forests Jobs and Recreation Act*, Montanaforests.org, <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CFMQFjAF&url=http%3A%2F%2Fwww.missoulachamber.com%2FExternal%2FWCPages%2FWCWebContent%2FWebContentPage.aspx%3FContentID%3D11391&ei=BbdSUHGIISwyASP8YDICw&usg=AFQjCNEICtRR3VEMIjsk4705r6XEKObrNA&sig2=9uZKIGSe0Y9EK2tSVyHpTg&bvm=bv.65058239,d.aWw> (last visited Feb. 18, 2015).

236. Sen. Energy & Natural Resources Committee, *supra* note 213, at 46 (statement of Sherman Anderson, President and Owner, Sun Mountain Lumber, Inc., Deer Lodge, MT).

237. *Id.* at 45.

workers.<sup>238</sup> Timber industry representatives believe the FJRA “solves some of the controversy through extensive collaboration by many diverse partnerships.”<sup>239</sup> Through this collaborative process, the partners realized that they “may never agree on everything,” but realized that they actually “agree on a lot.”<sup>240</sup> The main argument timber industry representatives make regarding the FJRA is that the bill “will produce more jobs in the woods, [and] strengthen our timber industry and communities.”<sup>241</sup>

The agency in charge of managing the vast majority of the lands covered in the FJRA, the Forest Service, has expressed concerns with the specific timber supply requirements which it views as “not reasonable or achievable.”<sup>242</sup> Although the Forest Service is concerned, it also “strongly supports many of the concepts” in the bill.<sup>243</sup>

Some conservation groups believe the bill will provide for “robust working forests, improved fish and wildlife habitat, recreational opportunities, healthy local and rural economies, and permanent protection for our most beloved wild places.”<sup>244</sup> These groups point out there had been no new wilderness designation in Montana for over 30 years and argue that the FJRA “embraces wilderness as part of Montana’s badly needed stewardship.”<sup>245</sup> They believe the landscape-level collaborative efforts that led to the FJRA represent Montanans “set[ting] past battles aside and

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238. *Id.* at 47.

239. *Id.* at 45.

240. Loren Rose, Pyramid Mountain Lumber, *An Alternative to Washington-Style Politics*, Helena Independent Record (Oct. 27, 2013), available at [http://helenair.com/news/opinion/readers\\_alley/an-alternative-to-washington-style-politics/article\\_c783af1a-3dcd-11e3-a67c-0019bb2963f4.html](http://helenair.com/news/opinion/readers_alley/an-alternative-to-washington-style-politics/article_c783af1a-3dcd-11e3-a67c-0019bb2963f4.html).

241. *Id.*

242. Sen. Energy & Natural Resources Committee, *supra* n. 213, at 17 (statement of Harris Sherman, Under Secretary, Natural Resources and Environment, Department of Agriculture).

243. *Id.* at 16.

244. *Id.* at 57 (statement of Tim Baker, Legislative Campaign Director, Montana Wilderness Association).

245. Rick Bass, *A Welcome Change*, Missoula Independent (Jul. 24, 2009), available at <http://missoulanews.bigskypress.com/missoula/a-welcome-change/Content?oid=1154504>.

seek[ing] solutions for local communities and their surrounding forests.”<sup>246</sup> They respond to the critics claims that the FJRA was not collaborative and done in secret as:

laughable, given how participants have promoted their community projects, posted websites with proposed drafts of the bill, mailed out brochures, invited comment for years, held open community meetings, asked for input and drove to meet in person the very people who are now claiming falsely to have been excluded.<sup>247</sup>

Most importantly, they argue, the FJRA “will permanently protect nearly one million acres of spectacular backcountry throughout western Montana.”<sup>248</sup> This protected acreage includes “magnificent places conservationists have fought hard to protect for decades.”<sup>249</sup>

Local government officials have supported the bill because they see it as “jobs bill with recreation and wilderness components designed to protect the things we love about our state.”<sup>250</sup> These local officials believe the FJRA provides for balance by addressing “all sides of the issue: timber, wildland restoration, conservation, and recreation.”<sup>251</sup> They further argue the FJRA “includes critically

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246. *Id.*

247. *Id.*

248. *Our Work*, Montana Wilderness Association, <http://wildmontana.org/our-work/> (last visited Feb. 20, 2015).

249. *113th Congress Wilderness Bills*, The Wilderness Society, <http://wilderness.org/article/113th-congress-wilderness-bills> (last visited Feb. 20, 2015).

250. Missoula County Commissioners, Lewis & Clark County Commissioners, & Broadwater County Commissioners, *Forest Bill Should Be Pursued in Next Session of Congress*, Helena Independent Record (Jan. 3, 2011), available at [http://helenair.com/news/opinion/forest-bill-should-be-pursued-in-next-session-of-congress/article\\_0ea90fd8-16f9-11e0-a115-001cc4c03286.html](http://helenair.com/news/opinion/forest-bill-should-be-pursued-in-next-session-of-congress/article_0ea90fd8-16f9-11e0-a115-001cc4c03286.html).

251. Missoula County Commissioner Jean Curtiss, *Daines Should Join Bipartisan Support of Forest Jobs and Recreation Act*, Missoulian (Feb. 2, 2014), available at <http://missoulian.com/news/opinion/columnists/daines->

needed forest reform to increase timber harvest, advance forest restoration, and protect our outdoor traditions.”<sup>252</sup> Also, former Montana political leaders from both sides of the aisle support the bill because they see it as a workable compromise between diverse interests.<sup>253</sup>

Local chambers of commerce and small businesses support the FJRA as well. These interests argue that the FJRA will ensure that “Western Montana remains attractive to tourists and recreational users.”<sup>254</sup> They further argue that the bill “gives Western Montanans the opportunity to move beyond the false notion that the interests of these diverse groups cannot be mutually advanced.”<sup>255</sup> A coalition of over 60 small businesses from 20 towns across Montana, Business for Montana’s Outdoors, argues that a large part of the reason Montana’s economy remains strong and is outperforming the US economy is “due to our state’s remarkable outdoor assets.”<sup>256</sup> These businesses support the FJRA because they feel it strengthens the “quality of life” in Montana that attracts people to live and work here.<sup>257</sup> They argue that “by balancing forest restoration and logging with the protection of wilderness and

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should-join-bipartisan-support-of-forest-jobs-and-recreation/article\_aa9b6122-8a99-11e3-b32d-0019bb2963f4.html.

252. *Id.*

253. See Marc Racicot, *Tester’s Bill Can Break Logjam on Forest Policy*, Billings Gazette (Sep. 13, 2009), available at [http://billingsgazette.com/news/opinion/guest/guest-opinion-tester-s-bill-can-break-logjam-on-forest/article\\_97b19a1a-a01d-11de-a2ae-001cc4c002e0.html](http://billingsgazette.com/news/opinion/guest/guest-opinion-tester-s-bill-can-break-logjam-on-forest/article_97b19a1a-a01d-11de-a2ae-001cc4c002e0.html); Pat Williams, *Tester’s Wilderness Bill Deserves Montanans’ Support*, Senator Jon Tester (July 23, 2009), <http://www.testersenate.gov/?p=news&id=2601>.

254. Missoula Chamber of Commerce, *Forest Jobs and Recreation Act*, Missoula Chamber Advocacy Center, <http://missoulachamberadvocacycenter.com/positions/forest-jobs-and-recreation-act> (last visited Feb. 20, 2015). The following other Chambers of Commerce also support the FJRA: Kalispell, Missoula, Powel County, Townsend Area, and Seeley Lake.

255. *Id.*

256. *About Us*, Business for Montana Outdoors, <http://www.businessformontanasoutdoors.com/about-us/> (last visited Feb. 20, 2015).

257. Laura Lundquist, *Montana Businesses Rally Behind Tester Forest Bill*, Bozeman Daily Chronicle (July 24, 2013), available at [http://www.montanaforests.org/forest\\_bill/montana\\_businesses\\_rally\\_behind\\_tester\\_forest\\_bill](http://www.montanaforests.org/forest_bill/montana_businesses_rally_behind_tester_forest_bill).

recreation areas the [FJRA] will generate diverse jobs and economic development for our communities.”<sup>258</sup>

Finally, there are those that support collaborative efforts in the management of our public lands generally. They believe these efforts are “democratic in the most fundamental sense of the word because [they are] nothing more nor less than the effort of people to shape the conditions under which they live.”<sup>259</sup> They argue the “collaboration movement is a pragmatic response to the slowly accumulating evidence that our historical experiment with proceduralism produces mixed results at best.”<sup>260</sup> These proponents of collaborative efforts point to the fact that collaborative management of public lands is spreading all over the West.<sup>261</sup> They believe these efforts are expanding “because many of the people with the greatest stakes in the landscapes in question find that the existing decision system cannot reconcile competing stakes in these resources as effectively as can the stakeholders themselves acting on their own initiative.”<sup>262</sup> Ultimately, they argue, “ecosystem management is about people and communities.”<sup>263</sup>

### 3. *Changes in Response to Critics and Conclusions Regarding Compromise and the Forest Jobs and Recreation Act*

In response to criticisms of the FJRA, Senator Tester made changes to the legislation.<sup>264</sup> One change is that 23,000 acres of proposed wilderness have been switched to “less-restrictive

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258. Dan Vermillion, *FJRA Will Benefit Montana's Businesses, Economy*, Montanaforests.com (July 28, 2013), [http://www.montanaforests.org/news/oped\\_pieces/fjra\\_will\\_benefit\\_montanas\\_businesses%20economy](http://www.montanaforests.org/news/oped_pieces/fjra_will_benefit_montanas_businesses%20economy)).

259. Daniel Kemmis & Matthew McKinney, *Collaboration and the Ecology of Democracy*, 12 SUSTAINABLE DEV. L. & POL'Y 46 (Fall 2011).

260. *Id.* at 47.

261. *Id.*

262. *Id.*

263. Timothy P. Duane, *Community Participation in Ecosystem Management*, 24 ECOLOGY L.Q. 771, 771 (1997).

264. Chaney, *supra* note 203.

recreation areas.”<sup>265</sup> That brings the total of new wilderness added by the most recent version of the FJRA to 637,000 acres.<sup>266</sup> Another change includes “a requirement for the U.S. Forest Service to file a compliance report if it fails to meet the bill’s performance requirements.”<sup>267</sup> Also, the FJRA requires “a guarantee the Montana pilot program won’t draw funds from other state programs of Forest Service regions.”<sup>268</sup> The bill also contains other provisions to address local concerns, “such as modifying the wilderness boundaries in one area because of ranching issues.”<sup>269</sup> One thing that has not changed is that over the course of the five years since the FJRA was originally introduced, the bill has been about “people working together to build a better vision for our public lands, and that type of work never stops.”<sup>270</sup>

Both its critics and supporters have valid arguments regarding the FJRA. The FJRA does not address every interested group’s concerns, but the reality is that it would be unfeasible to do so. There will always be people “that philosophically don’t believe we need any wilderness, period, and those that want everything to be wilderness.”<sup>271</sup> The various landscape-level collaborative efforts represented in the FJRA did not include every group with an interest in the management of our public lands. However, they did include groups interested in coming together and finding areas of compromise in order to move the management of our public lands forward. These collaborative groups and the resulting FJRA

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265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. Deborah Courson Smith, *A Couple of Tweaks Brings Victory for ‘Forest Jobs’ Bill*, Public News Service (Dec. 20, 2013), <http://www.publicnewsservice.org/2013-12-20/public-lands-wilderness/a-couple-of-tweaks-brings-victory-for-forest-jobs-bill/a36408-1>.

270. *Id.*

271. Murray, *supra* note 194 (quoting Gordy Sanders of Pyramid Mountain Lumber in Seeley Lake).



represent a “Made in Montana” solution to public lands management.<sup>272</sup>

The management planning process for public lands in Montana often leads to conflict and lawsuits, with little progress made on the actual management of these lands. This stalemate and hostility resulted in politicians not getting re-elected and no new wilderness designation in Montana for 31 years. However, Senator Tester and the collaborative efforts described above have found a middle ground with the FJRA that pushes the management of public lands forward.

### CONCLUSION

Compromise requires various stakeholders to make concessions in order to come to an agreement or make progress on an issue and wilderness designation has always required compromise. The nine-year process to pass the Wilderness Act required major concessions from all sides. These concessions covered a broad range of issues, including: what areas to initially designate as wilderness; how these areas would be managed; who would manage these areas; and the process for designating new wilderness areas. The designation process called for in the Act requires further compromise because a wilderness bill has to pass both houses of Congress—a process necessitating give and take on any issue.

The top-down, statewide wilderness bills Congress historically used to designate wilderness were characterized by the drawing of lines on a map. These bills primarily dealt with a single issue—whether to designate certain lands as wilderness. As such,

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272. *Id.* (quoting Gordy Sanders of Pyramid Mountain Lumber in Seeley Lake); *Supporters of the Forest Jobs and Recreation Act*, Montanaforests.org, <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDIQFjAB&url=http%3A%2F%2Fwww.MissoulaChamber.com%2FExternal%2FWCPages%2FWCWebContent%2FWebContentPage.aspx%3FContentID%3D11391&ei=rgJU8jrEuGdyQG07IDgAw&usg=AFQjCNEICtRR3VEMIjsk4705r6XEKObrNA&sig2=xD9sqGpjA64R64rUGf5c2A&bvm=bv.65058239,d.aWc> (last visited Feb. 18, 2015).

the compromises in these bills focused on the benefits and costs of wilderness designation on broad areas of land. Frustration with this process led to the development of bottom-up, landscape-level collaborative efforts. While these place-specific efforts still require compromises to be made regarding the larger costs and benefits of wilderness designation generally, they also include compromises on a wide range of other management provisions. Because these landscape-level collaborative efforts involve more than just wilderness designation, negotiation and compromise between various local stakeholders is a principal characteristic of the process.

Senator Tester's FJRA embodies this new landscape-level collaborative process. In Montana, public lands management, and particularly wilderness designation, sparks intense debate. This debate has led to a standstill on public lands management in Montana. The FJRA was born from compromise between groups that had been on all sides of this standstill for decades. Yes, not every interested group is represented by the FJRA. However, the compromises found in the FJRA represent enough interests to serve as a way forward for wilderness designation in Montana.

#### AFTERWORD

Shortly after this article was accepted for publication, the *Rocky Mountain Front Heritage Act* was passed as part of a public lands package attached to the *National Defense Authorization Act for Fiscal Year 2014*.<sup>273</sup> The RMFHA designates 67,000 acres of new wilderness to the Bob Marshall Wilderness Complex, creates a 208,000 acre Conservation Management Area, and directs the Bureau of Land Management ("BLM") and Forest Service to prioritize noxious weed management on the Front.<sup>274</sup> The passage

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273. Missoulian Staff, *President Signs Bill Protecting North Fork, Rocky Mountain Front*, Missoulian (Dec. 20, 2014), available at [http://missoulian.com/news/local/president-signs-bill-protecting-north-fork-rocky-mountain-front/article\\_355374c2-60de-5bd9-8ff8-31df446a2abe.html](http://missoulian.com/news/local/president-signs-bill-protecting-north-fork-rocky-mountain-front/article_355374c2-60de-5bd9-8ff8-31df446a2abe.html).

274. *An Historic Day for Wilderness*, Montana Wilderness Association (Dec. 12, 2014), <http://wildmontana.org/blog/an-historic-day-for-wilderness>.

of the RMFHA embodies both the local level and federal level compromises necessary in designating new wilderness.

The RMFHA is a landscape-level collaborative effort similar to the FJRA.<sup>275</sup> The group that spearheaded the RMFHA, the Coalition to Protect the Rocky Mountain Front, is “an organization of ranchers, hunters, anglers, outfitters, guides, local business owners, Tribal members, public officials, conservationists, and other Montanans.”<sup>276</sup> The Coalition came about because there was “no plan in place to protect those existing multiple uses on the Front’s over 400,000 acres of public lands and keep things the way they are today.”<sup>277</sup> Because the RMFHA was brought about by the negotiations and compromises of local stakeholders, it is “custom-tailored for the Front” and it provides “certainty for the people who live, work, and play long [sic] the Front.”<sup>278</sup> Passage of the RMFHA is seen by the Coalition as “a testament to nearly two decades of hard work and compromise by local people, businesses, and organizations who came together to craft the right bill for this special place.”<sup>279</sup> Similar to the landscape-level collaborative efforts found in the FJRA, the negotiations and compromises found in RMFHA represent a bottom-up approach to public lands management.

Passage of the RMFHA also required compromises at the federal level. Senators Tester and John Walsh (D-Montana) worked with former Representative, now Senator, Steve Daines (R-Montana) to include the RMFHA and the North Fork Protection

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275. Coalition to Protect the Rocky Mountain Front, *Made-In-Montana*, Save the Front, <http://www.savethefront.org/made-in-montana.html> (last visited Feb. 18, 2015).

276. Coalition to Protect the Rocky Mountain Front, *Joint Press Statement from Members of the Coalition to Protect the Rocky Mountain Front on Passage of the Rocky Mountain Front Heritage Act*, Save the Front, <http://www.savethefront.org/rocky-mountain-front-passes.html> (last visited Feb. 18, 2015).

277. Coalition to Protect the Rocky Mountain Front, *Why the Heritage Act*, Save the Front, [http://www.savethefront.org/why\\_heritage.html](http://www.savethefront.org/why_heritage.html) (last visited Feb. 18, 2015).

278. *Id.*

279. Coalition to Protect the Rocky Mountain Front, *supra* note 276.

Act along with “six other Montana lands bills in a broader lands package.”<sup>280</sup> The broader public lands package attached to the *National Defense Authorization Act for Fiscal Year 2014* includes “70 public land management bills” which “make about 250,000 acres in new wilderness designations and protect other lands from energy development.”<sup>281</sup> However, the bills in the public lands package do not just protect public lands; they also open up public lands to resource development. Some of the other bills pertaining to Montana lands allow for the development of 112 million tons of coal on the Northern Cheyenne Reservation and release multiple Wilderness Study Areas to energy development in eastern Montana.<sup>282</sup> Some view the costs associated with these compromises as being “far too high.”<sup>283</sup> These groups say the public lands package “will result in logging, mining and grazing in exchange for modest wilderness protections.”<sup>284</sup> Other groups, however, supported the package because it secured “significant conservation gains, including the Rocky Mountain Front Heritage Act[,] that diverse Montanans have created and supported over many years.”<sup>285</sup>

Montana’s Congressional delegation chose to attach the Montana bills on to the Defense Authorization Act because they believed “there was no other vehicle to get them across the finish line.”<sup>286</sup> Senator Daines had not previously publicly supported the

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280. Missoulia Staff, *supra* note 273.

281. *Id.*

282. Montana Environmental Information Center, *Top 5 Offensive Provisions of the Public Lands Rider*, <http://meic.org/2014/12/top-5-offensive-provision-public-lands-rider/>.

283. *Id.*

284. Karl Puckett, *Groups Want Public Lands Bills Pulled from Defense Act*, Great Falls Tribune (Dec. 9, 2014), *available at* <http://www.greatfallstribune.com/story/news/local/2014/12/08/groups-want-public-lands-bills-pulled-defense-act/20120251/>.

285. *Id.* (quoting Peter Aengst of the Wilderness Society).

286. Karl Puckett, *Front Protected in Defense Bill*, Great Falls Tribune (Dec. 3, 2014), *available at* <http://www.greatfallstribune.com/story/news/politics/2014/12/03/front-bill-included-defense-measure/19843065/>.

RMFHA.<sup>287</sup> Senator Max Baucus (D-Montana) first introduced the RMFHA in 2011.<sup>288</sup> Although former Representative Rehberg held listening sessions on the RMFHA,<sup>289</sup> he never cosponsored the bill while he was in Congress.<sup>290</sup> Senator Daines held similar listening sessions,<sup>291</sup> but never cosponsored the bill during the 113th Congress.<sup>292</sup> It is very likely that including the bills opening up public lands to natural resource development in Montana was necessary in order to get Senator Daines's support for including the RMFHA in the package. While critics and proponents argue over whether such compromises were worth it, it seems clear the compromises were necessary in order to get the RMFHA through Congress and end the 31-year wilderness designation drought in Montana.

At this point, it is unclear what impact the passage of the RMFHA will have on the FJRA. What is clear, however, is that freshman Senator Daines, an incoming member of the Senate Energy and Natural Resources Committee, will greatly influence whether the Act gets through Congress.<sup>293</sup> Senator Daines believes

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287. *Id.*

288. Matt Gouras, *Baucus to Sponsor Rocky Mountain Front Heritage Act to Add Wilderness*, Missoulian (Oct. 28, 2011), available at [http://missoulian.com/news/state-and-regional/baucus-to-sponsor-rocky-mountain-front-heritage-act-to-add/article\\_166235cc-01c4-11e1-ab4d-001cc4c002e0.html](http://missoulian.com/news/state-and-regional/baucus-to-sponsor-rocky-mountain-front-heritage-act-to-add/article_166235cc-01c4-11e1-ab4d-001cc4c002e0.html).

289. Marnee Banks, *Rocky Mountain Front Heritage Act Meeting Draws Hundreds*, KRTV (April 21, 2012), <http://www.krtv.com/news/rocky-mountain-front-heritage-act-meeting-draws-hundreds/>.

290. *S.1774 - Rocky Mountain Front Heritage Act of 2011*, Congress.gov, <https://www.congress.gov/bill/112th-congress/senatebill/1774/cosponsors> (last visited Feb. 20, 2015).

291. Associated Press, *Daines to Hear Rocky Mountain Front Proposals*, Missoulian (March 26, 2013), available at [http://missoulian.com/news/state-and-regional/daines-to-hear-rocky-mountain-front-proposals/article\\_5e0b1d5a-9627-11e2-a555-0019bb2963f4.html](http://missoulian.com/news/state-and-regional/daines-to-hear-rocky-mountain-front-proposals/article_5e0b1d5a-9627-11e2-a555-0019bb2963f4.html).

292. *S.364 Rocky Mountain Front Heritage Act of 2013*, Congress.gov, <https://www.congress.gov/bill/113th-congress/senate-bill/364/cosponsors> (last visited Feb. 20, 2015).

293. Tristan Scott, *Daines Calls for Statewide Forest Management Reform*, Flathead Beacon (Feb. 11, 2015), available at

the FJRA is “not far-reaching enough” in reforming forest management in Montana.<sup>294</sup> While Senator Daines said he plans on “working together” with Senator Tester as they “look at forest management reforms going forward,” he also admitted that “[i]t’s going to be difficult to get that bill [the FJRA] through a Republican-controlled Senate.”<sup>295</sup> He disagrees with the fifteen year sunset clause on the logging provisions in the FJRA and believes those provisions need to be permanent.<sup>296</sup> Senator Daines’s recent vote on potentially releasing wilderness study areas on BLM lands also caused some conservation groups to question his support for wilderness.<sup>297</sup> Only time will tell what compromises may be necessary to get Senator Daines on board with the FJRA.

Similar to the bill itself, the fate of the FJRA is open to debate. What seems closed to debate, however, is that landscape level collaborative efforts like those behind the FJRA and RMFHA, are the way forward for wilderness designation in Montana. These efforts, like the Wilderness Act itself, are founded on compromise. Wilderness designation has always relied on finding middle ground, and it seems likely that it will continue to do so.

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<http://flatheadbeacon.com/2015/02/11/daines-calls-statewide-forest-management-reform/>.

294. *Id.*

295. Rob Chaney, *Daines Calls for Wide-Ranging Forest Reform in Phone-in Town Hall Meeting*, Ravalli Republic (Feb. 3, 2015) available at [http://ravallirepublic.com/missoula/news/state-and-regional/article\\_87ccdd3e-9a1d-56fb-897b-7884d4ae6af7.html](http://ravallirepublic.com/missoula/news/state-and-regional/article_87ccdd3e-9a1d-56fb-897b-7884d4ae6af7.html).

296. *Id.*

297. Chris Peterson, *Daines’ Votes Rankle Wilderness Advocates*, Hungry Horse News (Feb. 11, 2015), available at [http://www.flatheadnewsgroup.com/hungryhorsenews/daines-votes-rankle-wilderness-advocates/article\\_2af5bf8a-b20c-11e4-98e1-274dd6373847.html](http://www.flatheadnewsgroup.com/hungryhorsenews/daines-votes-rankle-wilderness-advocates/article_2af5bf8a-b20c-11e4-98e1-274dd6373847.html).