

HOUSE MEMORIAL 65

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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A MEMORIAL

REQUESTING THE UNITED STATES FOREST SERVICE TO ENGAGE WITH NEW MEXICO STATE AGENCIES AND LOCAL GOVERNMENTS IN MEANINGFUL WATERSHED HEALTH PLANNING AND MANAGEMENT.

WHEREAS, thirty-eight percent of New Mexico land is managed by the federal government, originally set aside by the Organic Act of 1897; and

WHEREAS, forty-four percent of New Mexico land is owned as private property, and the majority of landowners also own approximately eighty-five percent of the water of the public trust, while maintaining beneficial use through irrigation; and

WHEREAS, twelve percent of New Mexico land is tribal land, protected by the public trust of the United States; and

WHEREAS, unlike the national parks, which were created primarily to preserve natural beauty and provide unique outdoor

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1 recreation opportunities, the national forests were created as
2 working forests with multiple objectives; and

3 WHEREAS, the Organic Act of 1897, by which most national
4 forests were established, states: "No national forest shall be
5 established, except to improve and protect the forest within
6 the boundaries, or for the purpose of securing favorable
7 conditions of water flows, and to furnish a continuous supply
8 of timber for the use and necessities of citizens of the United
9 States"; and

10 WHEREAS, the United States forest service and the federal
11 bureau of land management are primarily obligated to New Mexico
12 under the Organic Act of 1897 "to improve and protect the
13 forest within the reservation for the purposes of securing
14 favourable conditions of water flows"; and

15 WHEREAS, two decades of catastrophic wildfires throughout
16 New Mexico have adversely affected private property, community
17 commerce and the soil and water of the public land of New
18 Mexico; and

19 WHEREAS, wildfires covering one hundred thousand to two
20 hundred fifty thousand acres have had large-scale negative
21 impacts on the public trust water of New Mexico through the
22 post-burn effects of massive evaporation and water runoff
23 across burned soil and landscapes; and

24 WHEREAS, the erosion of soil from these large-scale
25 catastrophic wildfires choke New Mexico rivers and fill New

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1 Mexico reservoirs with siltation; and

2 WHEREAS, these losses of soil and water constitute a
3 taking of the public trust water of New Mexico and the public
4 trust land of the American people; and

5 WHEREAS, the Organic Act of 1897 recognizes the
6 preeminence of a state's water rights, stating: "All waters
7 within the boundaries of national forests may be used for
8 domestic, mining, milling, or irrigation purposes, under the
9 laws of the state wherein such national forests are situated,
10 or under the laws of the United States and the rules and
11 regulations established thereunder"; and

12 WHEREAS, the United States forest service should,
13 therefore, recognize and respect the authority of individual
14 states to allocate water that is available for appropriation;
15 respect valid, existing water rights; and manage the water
16 resources in national forests so as to minimize phenomena that
17 adversely affect the exercise of those rights; and

18 WHEREAS, pursuant to the Organic Act of 1897, the United
19 States forest service is obligated to manage forest service
20 lands and facilities in order to secure favorable conditions
21 for water flows, suitable for multiple uses; and

22 WHEREAS, the United States forest service should maintain,
23 protect and restore watersheds, including soil, water and
24 aquatic resources, as appropriate, through adaptive management;
25 and

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1 WHEREAS, the United States forest service is required to
2 recognize and respect the authority of states to manage water
3 quality under the Federal Water Pollution Control Act and to
4 assume greater responsibility for achieving state water quality
5 goals on forest service lands; and

6 WHEREAS, the extent to which, and the process through
7 which, the United States forest service achieves these goals
8 should be determined through mutual, written agreements; and

9 WHEREAS, the United States forest service has a duty to
10 cooperate with state and federal agencies, tribal governments,
11 stakeholders and holders of valid water rights to provide
12 mutually beneficial programs for restoring, maintaining and
13 utilizing water resources; and

14 WHEREAS, the United States forest service is required to
15 utilize a forest planning process that will integrate the
16 implementation of the above principles with the sustainable
17 production of goods and services; and

18 WHEREAS, the United States forest service is mandated to
19 collaborate on and integrate its watershed management plans
20 with local, regional and state water plans; and

21 WHEREAS, United States forest service management of public
22 trust land greatly impacts tribal communities and reservations
23 through common borders and jurisdictions; and

24 WHEREAS, United States forest service planning and
25 management greatly impacts many New Mexico communities that are

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1 facing drought, wildfires and degradation of wildlife habitats;
2 and

3 WHEREAS, the New Mexico Subdivision Act enables counties
4 and municipalities to plan for public health, welfare and
5 safety, and catastrophic wildfires present an acute threat to
6 the public health, welfare and safety of New Mexicans; and

7 WHEREAS, the office of the state engineer, the interstate
8 stream commission and the water trust board have adopted and
9 implemented the state water plan; and

10 WHEREAS, the interstate stream commission has developed
11 and adopted sixteen regional water plans; and

12 WHEREAS, in 2004, New Mexico developed and adopted the New
13 Mexico forest and watershed health plan; and

14 WHEREAS, the forest and watershed health office of the
15 energy, minerals and natural resources department has developed
16 and adopted forty community wildfire protection plans; and

17 WHEREAS, New Mexico has entered into several tribal water
18 rights settlements in conjunction with the federal bureau of
19 reclamation; and

20 WHEREAS, the Organic Act of 1897 states: "The Secretary
21 of Agriculture shall make provisions for the protection against
22 destruction by fire and depredations upon the public forests
23 and national forests which may have been set aside or which may
24 be hereafter set aside under the provisions of the Act of March
25 3, 1891, and which may be continued; and he may make such rules

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1 and regulations and establish such service as will insure the
2 objects of such reservations, namely, to regulate their
3 occupancy and use and to preserve the forests thereon from
4 destruction; and any violation of the provisions"; and

5 WHEREAS, the Organic Act of 1897 goes on to say: "The
6 jurisdiction, both civil and criminal, over persons within
7 national forests shall not be affected or changed by reason of
8 their existence, except so far as the punishment of offenses
9 against the United States therein is concerned; the intent and
10 meaning of this provision being that the State wherein any such
11 national forest is situated shall not, by reason of the
12 establishment thereof, lose its jurisdiction, nor the
13 inhabitants thereof their right and privileges as citizens or
14 be absolved from their duties as citizens of the State";

15 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
16 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the United
17 States forest service, in light of the history of wildfires on
18 public land in New Mexico and in light of the United States
19 forest service's breach of regulatory and fiduciary
20 responsibilities to New Mexico, be requested to engage with New
21 Mexico state agencies and local governments in meaningful
22 watershed health planning and management; and

23 BE IT FURTHER RESOLVED that the state engineer, the
24 attorney general and the state forester be requested to take
25 necessary steps to enforce the obligation of the United States,

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1 under the Organic Act of 1897, to provide for and protect
2 watershed health in New Mexico's forests; and

3 BE IT FURTHER RESOLVED that state agencies be requested to
4 integrate local, state and tribal watershed plans and
5 management with those of the United States forest service, the
6 federal bureau of land management, the United States army corps
7 of engineers and the federal bureau of reclamation; and

8 BE IT FURTHER RESOLVED that the United States forest
9 service, the federal bureau of land management, the United
10 States army corps of engineers and the federal bureau of
11 reclamation be requested to integrate range and forest planning
12 with the New Mexico state water plan and the New Mexico forest
13 and watershed health plan; and

14 BE IT FURTHER RESOLVED that copies of this memorial be
15 transmitted to the New Mexico congressional delegation, the
16 chief of the United States forest service, the state engineer,
17 the state forester, the secretary of the United States
18 department of the interior and the state director of the
19 federal bureau of land management.

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