
From: Steve Thompson [sthompson@NPCA.ORG]
Sent: Tuesday, May 30, 2006 2:19 PM
To: Evans, Krista Lee
Subject: Comments on HJR 33 white paper

Krista,

I've reviewed the draft HJR 33 white paper and would like to pose some questions and provide some comments.

Overall, I think this is a very useful and relatively thorough examination of this issue. I largely concur with the recommendations. As one of the early proponents of the use of forest stewardship contracts on national forest lands in 1993, through the Flathead Forestry Project, I'm glad to see these tools getting some life breathed into them.

I'm particularly glad to see such a cogent discussion of the option of separating the stewardship contracting work (or contract logging) from the sale of products. The Forest Service has largely abandoned this important separation of contracts and has thus bastardized the original stewardship contracting concept into a messier, less workable process. I especially applaud the approach, discussed in the second paragraph of Chapter Two, of pre-selling logs as standing trees. This should go a long way toward addressing the concerns about utilization, cutting specs, and sorts.

A few comments and questions:

- a) The draft white paper occasionally uses the first person singular in various sections, yet this person is not identified. For example, "I admit to being an armchair forester." Who is "I?" I suggest the final report abandon first-person references.
- b) The report states that the logger would be paid by the ton (a piece-rate contract). It also states that the state would reserve the right to select the most qualified bidder based on price and other factors. I did not find a discussion about how pricing for the forest stewardship contracts would be established for projects generally involving timber that is too small to be commercially valuable. What is the committee's recommendations on this issue? And how do you establish a price bid when tonnage is not the only contract objective?
- c) I believe the distinction between a logging contract (in which sold volumes are included in the sustained yield harvest levels) and a forest stewardship contract (in which sold volumes are not included in the sustained yield calculation) is fuzzy, confusing and unuseful. In reality, every logging contract should probably include forest stewardship provisions. And, as noted in the report, forest stewardship contract could yield merchantable products.

While I'm not opposed in concept to the notion that volume harvested under the forest stewardship aspect of the contract-logging program should not be included as a part of the state's annual sustained yield harvest, I think this provision could be ripe for abuse. In certain circumstances, there might be pressure to increase volumes harvested from state lands by too broadly defining projects as forest health projects exempt from the sustained yield calculations.

Further, the list of four forest stewardship objectives on page 1 is incomplete and overly focused on trees. Let's not lose sight of the forest for the trees. Additional objectives might include wildlife habitat conditions (such as cutting back browse species to generate young growth), weed control, slash treatment, road obliteration, recreational trail construction, relocation or maintenance, watershed restoration, etc.

For all these reasons, I suggest that this unnecessary distinction between "forest stewardship projects" and "contract harvesting" be eliminated. All such contracts should be called stewardship contracts and most should include various forest health objectives beyond tree harvesting. The pricing for such multi-objective projects will be more

complex, or at least situation-specific, than price-per-ton. As noted in the report, price-per-ton is problematic because it creates an unfortunate incentive for contractors to maximize volume, which is not necessarily consistent with forest health goals. A better approach would be to develop Requests for Proposals that establish selection criteria tailor-made for each project. This may result in price bids based on a total project bid, a per-acre bid, a per-ton bid, or some sort of combination. Fortunately, I think DNRC is nimble enough, and has the requisite expertise, to manage projects based upon specific conditions and opportunities. This price bid would be paired with an evaluation of qualifications to select the best contractor to satisfy the dual mandate of generating income for the trust while maintaining and enhancing the health and integrity of the corpus of the trust for future generations.

d) The report states that attendees at the initial meeting of the subcommittee included representatives from environmental groups and public education. These constituencies do not appear to be among the contributors to the draft white paper (Appendix B). Did environmental and public education reps not participate after the initial meeting? Was there any unresolved controversy that resulted in these constituencies not contributing to the white paper? If so, is there a "minority report?" The final report should address this gap between a diverse starting point for this subcommittee's discussions and the less-diverse ending point of contributors.

I should note that I was invited to participate in this subcommittee, representing the environmental community. While very interested and supportive of stewardship contracts, my current employment is unrelated to this topic and I was unable to participate due to an overburdened schedule. I appreciate the opportunity to review and provide comments on this draft white paper.

Please share my comments with the the subcommittee and the EQC.

Steve Thompson
PO Box 4471
Whitefish, MT 59937

From: Schultz, Tom (DNR)
Sent: Thursday, May 25, 2006 2:29 PM
To: Evans, Krista Lee; Groeschl, David
Cc: Ziesak, Roger; Everts, Todd
Subject: RE: Edits to Draft Contract Harvesting Bill

Krista,

In Section 3(1), we want the ability to do any of those activities. "Or" sounds as if we can only do one "or" the other. If you think "and" requires we do all or nothing, then I'd suggest alternate language that we can do "any or all of the following activities":...

Thanks,

Tom

From: Evans, Krista Lee
Sent: Thursday, May 25, 2006 1:37 PM
To: Groeschl, David
Cc: Ziesak, Roger; Schultz, Tom (DNR); Everts, Todd
Subject: RE: Edits to Draft Contract Harvesting Bill

Here is my revised copy -- I am still struggling with the forest health concerns definition -- hope this one makes sense? Let me know what you think. My remaining concerns are:

+ In Section 3(3) I'm not sure I worded it any better than you guys had already done - I was trying to make it as clear as possible?!?!?

+ In Section 3(1) in the last sentence you had changed it to and the transportation -- are you sure you don't want it to be or. The reason I had made it or is because I didn't want you to have to do ALL of the three to be able to contract. Guess you could have problems either way though. I changed it to and in the draft and if that is how you want to keep then great.

Let me know ASAP what your thoughts are. I think it is ready to go.

Krista

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Krista Lee Evans

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PLEASE NOTE: MY EMAIL ADDRESS HAS CHANGED TO KEVANS@MT.GOV

-----Original Message-----

From: Groeschl, David
Sent: Thursday, May 25, 2006 11:39 AM
To: Evans, Krista Lee
Cc: Ziesak, Roger; Schultz, Tom (DNR)
Subject: Edits to Draft Contract Harvesting Bill
Importance: High

Krista,

Attached are edits to the draft Contract Harvesting Bill. The format is a little messed up since we had to convert the PDF file to a word doc so we could embed our edits. Please give me a call if you have any questions. I think we addressed all your questions/concerns. Thanks.

David.

<< File: LChj33_5_24_061 (fmb edits 5.25.06).rtf >>

David A. Groeschl

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the contract harvest program; defining terms for the contract harvesting and direct sale of forest products from state trust lands; authorizing contract harvesting of timber and forest products on state trust lands; authorizing the direct sale of forest products by the department of natural resources and conservation; creating a contract harvesting revolving account for the deposit of gross proceeds from contract harvesting sales and the payment of contract harvesting costs; providing rule making authority for the board of land commissioners to implement the contract harvesting program; amending sections 77-5-201, and 77-5-204, MCA and providing an immediate effective date
."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Statement of policy.** The application of contract harvesting provides potential revenue benefits to the trust beneficiaries and more flexible management options when addressing forest health or other environmentally sensitive issues. Contract harvesting will allow the department

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to manage these stands while maintaining a high level of oversight, which allows for timely on-the-ground adaptations to changing conditions. The ability to address forest health concerns promptly, while not having the volume harvested as a result of addressing the forest health concerns counted towards the annual sustained yield, will allow the department to act prudently and quickly to address concerns while not disrupting the green sale program.

NEW SECTION. **Section 2. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Contract harvesting" means a timber harvest or timber sale occurring on state trust lands by which:
 - (a) the department contracts with a firm or individual to:
 - (i) perform all necessary work to harvest and process trees into merchantable forest products; and
 - (ii) sort trees pursuant to contract specifications and department utilization standards including the transportation and delivery of the products to forest product purchasers
 - (b) the department sells the forest products directly to one or more forest product purchasers.
- (2) "Contract harvesting costs" are those expenses related to the production of log sorts or other merchantable products from a stand of timber and the transportation of such products to

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point-of-sale locations. These expenses may include but are not limited to:

- (a) sale preparation;
- (b) road building and maintenance;
- (c) labor for felling, bucking, yarding, and loading; and
- (d) the transportation of sorted logs and other

merchantable products from the harvest site to forest product purchasers.

(3) "Decked" means a pile of logs or other merchantable forest products that have been prepared for sale or shipment and placed upon a landing.

(4) "Director" means the director of the department of natural resources and conservation.

(5) "Forest health concerns" can be addressed through management or harvest of merchantable or non-merchantable trees and include:

- (a) forested lands that are overcrowded or stagnant (showing little or no measurable annual growth).;
- (b) wildland/urban interface areas where timber harvest or forest management is necessary to prevent catastrophic or other damage to forested lands, livestock, buildings, or other infrastructure;
- (c) fire fuels build up and treatment on forested lands;
- (d) forested lands susceptible to imminent or repeated insect or disease attack and timber degradation;
- (e) forested lands that are highly decadent or rapidly

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deteriorating;

(f) forested lands with high recreational use and high degradation risk; and

(g) forest lands under drought stress.

(6) "Forest products" means any product produced from the forest that the department can sell through competitive bid or direct negotiation.

(6) "Saw logs" means merchantable timber prepared and sorted as decked scaled logs and sold f.o.b., as defined in 30-2-319, at a designated location, expressed in terms of dollars per thousand board feet or dollars per ton.

(7) "Scaled" means the measure volume, weight, or other measurement of a log or load of logs or other products.

(8) "Stumpage" means the value of timber as it exists, uncut, within a harvest unit, expressed in terms of dollars per thousand board feet, dollars per ton, or other appropriate value per unit designation.

(9)(a) "Timber" means any wood growth on state trust land, mature or immature, alive or dead, standing or down, that is capable of furnishing merchantable raw material used in the manufacture of lumber or other forest products.

 (b) The term does not include cultivated Christmas trees.

NEW SECTION. Section 3. Contract harvesting authorized.

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(1) The department is authorized to directly sell timber and forest products from contract harvest sales and to contract with firms and individuals for any or all of the following including the removal of timber and forest products from state trust lands, the preparation of those materials into merchantable form, and the transportation of those materials to a point of sale.

(2) Except as provided in subsection (3), the department may not conduct contract timber harvesting on state trust lands in an amount greater than 10% of the annual sustained yield.

(3) (a) If the department is addressing forest health concerns as provided in [section 4], the amount harvested will not be counted against the 10% maximum provided for in subsection (2) and will not be counted towards the department's annual sustained yield level.

(b) The department may not exceed 10% of the annual sustained yield when ~~conducting timber harvest or management activities that~~ address forest health concerns.

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NEW SECTION. **Section 4. Contract timber harvest to address forest health concerns.** All contract harvesting sales meant to address specific forest health concerns must be designed to:

(1) improve the overall health, productivity, and long-term revenue potential for the timber stand;

(2) be consistent with the state forest land management plan; and

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(3) comply with all applicable state laws, rules, and regulations.

NEW SECTION. **Section 5. Rules.** (1) The board may adopt rules to implement the contract harvesting program. The board must evaluate each proposed contract harvest to determine if, in the board's judgement, contract harvesting will fulfill its duty to prudently obtain the maximum long-term revenue for the trust beneficiaries or to address forest health or other environmental concerns.

(2) The board may adopt rules that impose specific appraisal requirements and sale procedures for any forest products directly marketed and sold by the department.

(3) The board shall adopt rules describing the procedures necessary to ensure that the trust beneficiaries receive the full market value of the forest products.

NEW SECTION. **Section 6. Contract harvesting revolving account -- authorized expenditures -- termination.** (1) An account, called the contract harvesting revolving account, must be created as a sub-account of the forest improvement account established in 77-5-204, to deposit gross revenues and to pay for expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract

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harvesting sale must be deposited into this account and must be retained in the account until all contract harvesting costs have been paid.

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) Monies equal to the harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must then be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring \$500,000 into the contract harvesting revolving account from the forest improvement account provided for in 77-5-204.

(5) If the contract timber harvest program is terminated or discontinued for more than ten years, any balance remaining in the contract harvesting account in excess of \$500,000 must be distributed to the appropriate trust. The remaining \$500,000 must be transferred to the forest improvement account provided for in 77-5-204.

Section 7. Section 77-5-201

, MCA, is amended to read:

"77-5-201. Sale of timber. (1) Under the direction of the

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board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method, a lump sum method, or directly marketed by the state through contract harvesting as provided in [sections 1 through 6].

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency due to fire, insect, fungus, parasite, or blowdown or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for

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bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

{*Internal References to 77-5-201: None.*}

Section 8. Section 77-5-204

, MCA, is amended to read:

"77-5-204. Sale of timber -- fee for forest improvement.

(1) The board may sell timber on state lands, ~~at a price per 1,000 board feet, when appropriate, that,~~ or other forest products removed from state lands as provided in [sections 1 through 6], at a per unit price, when in the board's judgment, it is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and

burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the per unit value per ~~1,000 board feet~~, when appropriate, of all merchantable ~~timber~~ forest products.

(4) In addition to the price of the ~~timber~~ forest products established under subsection (1), the board may require a timber or other forest product purchaser to pay a fee for forest improvement. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

- (a) disposing of logging slash;
- (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;
- (c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and
- (d) complying with legal requirements for timber harvesting;
- (e) contract harvesting on state trust lands;
- (f) transportation of forest products to a point of sale;
- (g) marketing of forest products and administration of harvesting contracts;
- (h) scaling of forest products prior to transporting to a

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point of sale; and

(i) sale development costs."

{Internal References to 77-5-204:

77-5-208 x}

NEW SECTION. Section 9. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 10. {standard} Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [sections 1 through 6].

NEW SECTION. Section 11. {standard} Effective date. [This act] is effective on passage and approval.

- END -

{Name : Krista Lee Evans
Title : Resource Policy Analyst

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