

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

A JOINT RESOLUTION regarding a declaration of emergency; declaring a state of emergency in the watersheds located on the national forests within Wyoming; using the police and contract powers of the state and applicable federal law to empower the state to take actions on the national forests as are necessary to thin the excessive overgrowth that is impairing critical watersheds and depriving Wyoming's rivers, streams, aqueducts, reservoirs and aquifers of the water necessary for the health, safety and welfare of the state's citizens, communities, livestock and wildlife including threatened or endangered species and their habitats.

WHEREAS, the Wyoming State Legislature finds that:

(a) A state of emergency exists in Wyoming due to a shortage, and ever diminishing aggregate total supply, of water available to its citizens, communities, livestock, wildlife and their habitats.

(b) Virtually all Wyoming communities have been seriously threatened and impacted by a shortage of available water within the last calendar year.

(c) Virtually all Wyoming waterways are either presently experiencing, or within the last calendar year have experienced, a significant depletion of available water as well as the streams and tributaries that contribute water to the waterways.

(d) Most Wyoming livestock, wildlife and threatened or endangered species are now or are likely to be seriously imperiled by a shortage of available water either directly or indirectly via the impact of the water shortage on their

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

supply of forage or prey base.

(e) Due to the existence of this declared state of emergency it is imperative that Wyoming promptly take necessary actions to restore and increase the aggregate total supply of water available within the state.

(f) This state's aggregate total supply of water is significantly dependent upon watersheds located on federal lands. To achieve an increase in the aggregate total supply of water in Wyoming it is imperative for the state to take appropriate actions that may be available to remedy the presently existent deteriorated conditions of these watersheds.

(g) The existence of excessive overgrowth on Wyoming's federal forests has been publicly acknowledged and declared both by state officials and in 2002 by the President of the United States, members of his cabinet, other administration officials and numerous members of the United States Congress.

(h) Numerous state and local Wyoming elected officials and other citizens have repeatedly petitioned the United States Forest Service over the last several years to take actions needed to remove or eliminate the excessive forest overgrowth conditions that exist on watersheds on the federal lands within the state of Wyoming. All the petitions have been effectively ignored by the Secretary of Agriculture and other officers within the federal government under her authority, reflecting what can only be characterized as their utter disregard for both the needs of Wyoming citizens and wildlife, and Wyoming's lawful rights to the waterflows.

(j) The United States Congress, in pertinent part,

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

expressly provided that "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of waterflows. . ." 16 U.S.C. § 475. Congress reaffirmed this directive when it passed the Multiple-Use Sustained-Yield Act of 1960 by specifically stating that the national forests "shall be administered" for "watershed" purposes, 16 U.S.C. § 528 et seq.

(k) The United States Supreme Court in *United States v. New Mexico*, 438 U.S. 696 (1978) stated "Congress has evidenced its continuing concern with enhancing the water supply for nonforest use by specifically authorizing the President to set aside and protect national forest lands needed as sources of municipal water supplies. 16 U.S.C. § 552a." Moreover, the Supreme Court further stated that the "States have exclusive control of the distribution of water on public lands and reservations."

(m) The following facts are indisputable:

(i) Wyoming's watersheds located on federal lands presently contain millions of excess and unnecessary junipers and conifers;

(ii) Each of these excess trees individually consumes from ten (10) to two hundred (200) gallons of water each and every day of the year, depending on its size;

(iii) Thus, in the aggregate, the millions of excess trees on Wyoming's watersheds unnecessarily consume hundreds of acre feet of water each and every day of the year;

(iv) The continued existence of the overgrowth

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

serves no legitimate federal or state purpose. In fact, these conditions have been previously declared to constitute a state of emergency because the catastrophic fire potential they create poses a present unreasonable risk to the lives and property of Wyoming citizens;

(v) The federal government's persistent failure to remove the excess tree overgrowth from Wyoming's watersheds prevents downstream flow to Wyoming in violation of the state's legal entitlement to the diverted waters under both state and federal law.

(n) Based on the foregoing findings of fact, the following conclusions are indisputable:

(i) Wyoming has a legal entitlement to the waterflows that either are or may be derived from federal lands within the state;

(ii) The excessive overgrowth on the watersheds is depriving the state of Wyoming of its legal entitlement to the waters in direct violation of the mandates of the United States Congress and the rulings of the United States Supreme Court;

(iii) Therefore, to abate this illicit diversion of Wyoming's water, to increase the aggregate total supply of water available in and to Wyoming in the future, and to thereby remedy the state of emergency declared by this act, Wyoming hereby now affirms and asserts the supremacy of its right over that of the federal government to the ownership and use of those waters that are currently being unlawfully diverted by the federal government without justification to supply the demands of the needless federal forest overgrowth on Wyoming's watersheds.

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

*NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE
LEGISLATURE OF THE STATE OF WYOMING:*

Section 1. That the legislature declares the existence of a state of emergency due to a shortage of water available to Wyoming caused in significant part by the deteriorating conditions of the state's watersheds located on federal lands. These conditions are due in turn to unnecessary excessive forest overgrowth. This overgrowth is unlawfully diverting Wyoming's waterflows, thus depleting Wyoming's total supply of water available to its citizens, communities, livestock, wildlife and wildlife habitats.

Section 2.

(a) The legislature further finds that the continued existence of the state of emergency poses a direct threat to the health, safety, well-being and economic viability of Wyoming's citizens and to the continued health and viability of its communities, livestock, wildlife and wildlife habitats. It is therefore imperative that Wyoming take such actions as may be necessary to mitigate or eliminate the federal forest watershed overgrowth conditions that shall include the following:

(i) The state shall take any and all actions necessary to obtain a transfer to the state of such limited jurisdiction over federal lands as may be necessary to enable the state to take appropriate actions that are needed to restore the state's watersheds to a condition of health, and to increase waterflows available within Wyoming; and

(ii) Upon the transfer of the limited jurisdiction, the state shall utilize the police and

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

contract powers of the state to the extent necessary to garner the public and private resources and services needed to mitigate and ultimately eliminate the state of emergency hereby declared.

Section 3.

(a) The legislature further finds that to further achieve the objectives of this resolution, within ninety (90) days of the passage of this resolution, the governor of this state shall consider:

(i) Taking actions necessary and appropriate pursuant to the provisions of 7 U.S.C. § 2268 and any other state or federal law that may be determined relevant by the attorney general of this state in order to request and obtain from the United States Secretary of Agriculture limited jurisdiction over relevant federal lands as may be necessary for Wyoming to restore its watersheds to a condition of health and thereby increase the waterflows that may be derived from the watersheds; and

(ii) Including within the application to the United States Secretary of Agriculture for the transfer of the limited jurisdiction an express provision that any acceptance by Wyoming of a transfer of limited jurisdiction to restore watershed health upon federal lands shall be conditioned on Wyoming's receipt of sufficient federal funds determined by Wyoming to be necessary to enable the state to perform the actions needed to mitigate or eliminate the state of emergency created by the federal government's impairment of Wyoming's watersheds, waterflows and aggregate water supplies.

Section 4.

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

(a) The legislature further finds that in the event limited jurisdiction coupled with necessary federal funds are not made available by the United States Secretary of Agriculture to Wyoming within one hundred eighty (180) days from the date this resolution is passed, the governor shall direct the Wyoming attorney general to consider the preparation, filing and pursuit of a lawsuit on behalf of Wyoming to:

(i) Obtain a judicial declaration of Wyoming's lawful right to the waterflows originating from watersheds located on federal lands within the state;

(ii) Obtain a judicial declaration of the impairment of the state's rights to waterflows originating on federal lands as a foreseeable consequence of excessive and unjustifiable forest overgrowth; and

(iii) Compel the United States, the Secretary of Agriculture and the Forest Service to take such actions as may be determined by a court of law to be necessary, appropriate and lawful to mitigate or eliminate the state of emergency declared by this act.

ORIGINAL SENATE
JOINT RESOLUTION
FILE NO. 0003

ENROLLED JOINT RESOLUTION NO. 3, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

Section 5. That the Secretary of State of Wyoming transmit copies of this resolution to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the United States Congress, to the United States Secretary of Interior and the United States Secretary of Agriculture and to the Wyoming Congressional Delegation.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk