

INTRODUCTION

The Lake County Conservation District (LCCD) is located in Lake County, Montana, and is responsible for promoting and supporting the wise use of Lake County's natural resources. In early 2011, members of Montana's Lake County Conservation District Board of Supervisors met with the Supervisor of the Flathead National Forest and the District Ranger in charge of managing national forest lands in the Swan Valley, in Lake County. The purpose of the meeting was to express the LCCD Board's concern about the unprecedented buildup of forest fuels in the Swan Valley and the effect that a very hot forest fire would have on soil quality/fertility and water quality draining from these soils after the fire. The LCCD Board urged the Supervisor to look for proactive measures that would begin to address these concerns. The Supervisor and the District Ranger had a few suggestions that would allow our concerns to be heard by others, basically in a collaborative group environment.

We left the meeting disappointed, but determined to look for a solution. This began a two-year journey of exploration during which time three different solutions were considered and discarded before a fourth model was developed. This fourth model is referred to as a "Conservation Forest." Although the LCCD Board did not know it at the time, this two-year journey of **Discovery** was the first phase of a six-year study called the Swan Resource Management Study or the **Swan Study**.

CONSERVATION DISTRICT BACKGROUND

To appreciate the concept of a Conservation Forest, it is useful to understand how Conservation Districts were established across the United States, and more specifically in Montana.

In the 1930's, President Roosevelt introduced many new government managed experiments designed to pull the United States out of a deep depression. At the same time, the United States was experiencing a prolonged, multistate drought referred to as the dustbowl. In 1934, the U.S. Department of Agriculture initiated a program whereby the federal government might persuade and assist landowners, primarily farmers and ranchers, to utilize soil conserving methods. In April of 1935, the Conservation Act was rolled out, creating legislation that survives today and is cited as one of the most successful federal/state partnerships ever created.

Montana passed legislation in 1939 establishing Conservation Districts as a subdivision of State government specifying how Conservation Districts are to be established and operated. The legislation also included a Conservation District purpose statement as follows:

76-15-102. **Declaration of policy.** It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

Conservation District enabling legislation provides authority for managing private, state and federal lands if given permission to do so. Any profit from a management venture must be reinvested in conservation work within the boundaries of the Conservation District.

SWAN VALLEY CONSERVATION FOREST MODEL

The Conservation Forest model that was developed in late 2012 has undergone changes as questions were raised about operations, fire-fighting legality and investment of funds. The model that is being used today is as follows:

1. A 60,000 acre Conservation Forest would be established on federal lands currently managed by the United States Forest Service (USFS). United States Congressional legislation would be required to accomplish this objective.
2. Conservation Forest lands are federal lands and would always remain so. All citizens of the United States would have undiminished access to these public lands.
3. The United States Forest Service would most likely retain the responsibility for managing land trades, rights-of-way, recreation, leases and audits of forest management activities.
4. The Conservation Forest would be managed by Montana's Department of Natural Resources and Conservation for 100 years at no cost to the federal government and then returned to the federal government for management.
5. The federal government would not seek to charge, or in any way increase, State of Montana, Lake County, or LCCD costs as a result of establishing a Conservation Forest.
6. The Conservation Forest would be managed in accordance with State of Montana laws, rules and regulations pertaining to forest management. Laws like the Threatened and Endangered Species Act, Clean Air Act, and Clean Water Act would remain in place. All legal challenges would be brought forward in Montana State courts. The Equal Access to Justice Act would not apply to these suits.
7. The Conservation Forest would be proactively and sustainably managed for forest fuels reduction, the growth, sale and harvest of saw log quality trees and all other aspects of forest management required by Montana State law.
8. The revenue generated would be used to cover all associated State of Montana forest management costs and the cost of an annual forest fire protection fee.
9. Net revenues would be deposited in a Lake County Conservation District Conservation Fund. Projected net revenues would average \$500,000 per year.
10. An appointed board of 5 to 7 residents, all from Lake County, Montana, would be responsible for determining how the Conservation Fund monies would be spent. Appointments would be made by the Confederated Salish and Kootenai Tribes, the LCCD Board, the Lake County Commissioners, Lake County based environmental groups, and the Swan Valley community. At least two members on the board would be residents of the Swan Valley in Lake County.
11. For the first 30 years of inception, net proceeds from the Conservation Forest would be invested in forest fuels reduction projects in the Swan Valley.

12. A Conservation Fund administrator would be hired and paid from the fund. The fund administrator's role would be to take minutes at meetings, accept Conservation proposals, assist in conducting meetings, field-review conservation projects for compliance with proposals, manage all accounting needs and perform other duties as assigned by the board.
13. The LCCD Board would review and approve all Conservation Fund projects.

THE SWAN STUDY

In 2013, the LCCD Board decided to make this study as transparent as possible. To that end, Lake County's State legislators, the Lake County commissioners, Montana's State delegation, the Flathead National Forest Supervisor, Montana's Department of Natural Resources and Conservation, the governor's office, and the Confederated Salish and Kootenai Tribal council have received periodic updates on the study's progress.

The LCCD Board applied for and was awarded two grants totaling \$25,000 from the State of Montana in September of 2013. The grants were awarded to enable the LCCD Board to pursue a study that would determine the feasibility of establishing a Conservation Forest in the Swan Valley. This was the beginning of the second phase of the Swan Study referred to as **Outreach**.

Throughout the second phase, the LCCD Board wanted to know if the residents of Lake County would support spending taxpayer money on the study. The LCCD Board hired a consultant in 2014 to assist during this approximately eight-month process. During this period the LCCD Board had a consultant develop a web page (swanforestinitiative.org) to study progress and record results, held 4 open house meetings, made 19 presentations to clubs and civic groups, had articles in our local papers, and produced infomercials for broadcasting on our local radio station. The results of an electronic survey on the web page resoundingly supported the study and wanted the LCCD Board to continue.

The third phase of the study, referred to as **Environmental Review**, was designed to develop an understanding of what Montana forests need in order to thrive and how forest management can play a role in an ecosystem where change is constant in a world that is currently warming. This phase is not to be compared to an environmental assessment or an environmental impact statement. A series of five videos was developed by a forest ecologist from Montana State University in Bozeman, Montana. The videos are posted on our web page and are also used by the forest ecologist as teaching aids.

The fourth phase was an **Economic Analysis** built on the premise that a 60,000 acre conservation forest could be proactively managed. The value of timber sold was derived from actual State of Montana timber sale results in the Swan Valley. Sustained harvest calculations were derived from growth and yield studies that were recently conducted on the adjacent 56,000 acre State of Montana forest lands in the Swan Valley. The consulting firm, Mason, Bruce, and Girard, from Portland Oregon, conducted the study. The study analyzed three different sizes of Conservation Forest, yielding three different stumpage values. The least optimistic of the nine scenarios estimated an average return of \$500,000 per year. The

average return is net, with all State of Montana costs and an annual fire protection fee being deducted from the average gross income.

The fifth phase of the study was **Legal Review** during which all laws affecting the establishment of a Conservation Forest were examined. The purpose of this step was to (1) confirm the suspicion that the U.S. and State of Montana constitutions did not prohibit the concept; (2) identify as many federal laws as possible that may currently prevent this concept from being implemented; and (3) provide transparency for our congressional delegation, so they would understand the legal obstacles that need to be addressed. We knew that it would literally take an Act of Congress to waive current restrictions preventing establishment of a Conservation Forest. Federal laws that were reviewed include the National Forest Management Act, Multiple-Use Sustained-Yield Act, Equal Access to Justice Act, and the Tribal Forest Protection Act. State laws reviewed include the State of Montana Enabling Act, and Conservation District law.

The most recent, and possibly the last phase, is referred to as **Politics**. The LCCD Board opened up the study for public comment in December 2016 and closed at the end of August 2017. During that period, 21 presentations were made to Lake County clubs and civic groups and public announcements about the comment period were made in area newspapers and over the radio. About 20 individual articles, both supporting and opposing the Conservation Forest concept, appeared multiple times in our western Montana newspapers. When the public comment period ended, the LCCD Board had received 1,384 opinions about the study, about half of which were accompanied by comments. Lake County residents accounted for 423 of the opinions, 54% of which supported the study and the establishment of a Conservation Forest. The remaining 961 comments were from other counties in Montana or from other states. The majority of these comments opposed the study and the concept of a Conservation Forest.

On September 14, 2017, the LCCD Board met. One of the many items on the agenda was to determine if the idea of establishing a Conservation Forest in the Swan Valley should go forward or be dropped. Considerable discussion ensued after a motion was made to drop the study. When the question was called, the motion failed. A second motion was made to continue pursuing the Conservation Forest concept and that passed, 4 to 2. The Board then decided that our three congressional representatives should be approached so they could better understand the concept and then so the LCCD Board could examine options for the best path forward.

DISCUSSION

The LCCD board is not unified in its support of a Conservation Forest in the Swan Valley. Following are proponent and opponent points to consider.

Proponent:

- The Lake County Conservation District is a subdivision of Montana State government. The state legislature gave conservation districts the responsibility of encouraging residents to wisely manage their natural resources, but provided little money to get the job done. Establishing a "Conservation Forest" in the Swan Valley would create a Fund for 100 years to do conservation

work not only on federal lands, but on all lands in Lake County regardless of ownership. The owner or manager of land, regardless if the land is private, government or tribal, may ask their Conservation District for assistance.

- In the summer of 2017, the Rice Ridge fire near the town of Seeley Lake burned over 160,000 acres and cost over \$45 million to suppress. This fire consumed forest fuels similar to the conditions that exist less than sixty miles away in the Swan Valley. The most important LCCD conservation work to be done is fuels reduction in the Swan Valley. Much of the Swan is in danger of a very hot, catastrophic fire due to fuel loads. When burned, the Swan will sustain significant damage to soil and water quality as well as wildlife and wildlife habitat. Homes will be damaged or destroyed and lives changed, the unique beauty of the will be diminished for decades. Establishing a Conservation Forest would provide the funding necessary to reduce fuels so that when a fire *does* occur, it will not burn as hot and will be more easily contained and extinguished.
- Forest fuels reduction is a priority, but other important conservation work remains to be accomplished throughout the LCCD. Nonpoint sources of pollution are unregulated by the federal, state and local governments. Creating incentives rather than creating laws results in support for changed habits and methods of managing pollution sources, and avoids creating a regulatory bureaucracy. Nonpoint sources of pollution include farming and ranching practices that contribute fertilizers and soil to our waterways, old technology used to treat human waste, erosion from dirt roads, and smoke from wildfires. Other conservation projects like stream restoration, threatened and endangered species habitat improvement projects, white bark pine restoration and protection of our waterways from introduced invasive species deserve attention and funding.
- Asking the State of Montana or the federal government for grants to do conservation work is not only time consuming but often futile. Even when grant money is awarded, it is often inadequate for accomplishing all of the conservation work that needs to be done. A thoughtfully managed conservation forest would sustainably provide money for 100 years from a renewable resource, right here in Lake County.

Opponent:

- National Forest lands belong to all Americans, not just those living in Lake County. Just as National Parks are owned and managed by the Department of Interior for the benefit of all U.S. citizens, ownership and management of National Forests belong with the Department of Agriculture.
- Since these lands belong to all U S citizens, all citizens should have equal voice and benefit from their management. Any financial return should not be just for citizens of Lake County. Neither should greater consideration be given to Lake County opinions since they can be influenced by the promise of free money. Of the 1,384 opinions submitted during the comment period, 80% opposed the establishment of a Conservation Forest in the Swan Valley.
- National Forest lands are managed for multiple uses rather than the greatest financial return. This gives equal value to all uses including wildlife and the many forms of recreation.

- The Flathead Forest Plan that provides management direction for those lands, after considerable study by a wide range of specialists and extensive public input, is in the final stages of completion. Transferring management to the state would abandon that plan and replace it with a plan centered on financial return.
- To transfer management would require action by the United States Congress and the Montana Legislature. In light of recent moves to sell or give federal public lands to states, this could set a dangerous precedent. It is extremely unlikely that Congress would look at only 60,000 acres in the Swan Valley. Instead, if they were to take action, they almost certainly would make it nationwide.
- For the last several years, Congress has reduced Forest Service personnel, cut budgets, refused to fund catastrophic fires and retained legislation that makes it difficult for collaboratively developed projects to move forward. The proposed 2018 budget, with additional reductions, likely will not be in place at the beginning of the fiscal year. At the same time, fires have taken considerably more of the FS budget, from 18% in 1995 to 52% in 2016, eliminating other forest work such as fuels reduction. How ethical is it to place those restrictions on performing mandated work, and then say you are not doing your job so we are going to transfer management to the state?
- More and more, homes are being built in what is called the wildland-urban interface. This places them at increased risk for fire and adds a burden to local fire departments. Is harvesting more trees the best solution? When and where should fires be allowed to burn? Those are questions for fire scientists. Transferring management to the state is not the solution.

PATH FORWARD

The LCCD Board is in the process of contacting Montana's congressional delegation through their staffers. The results of this effort remain inconclusive, although some political facts of life have been learned. Most significantly, stand-alone, congressional legislation that affects only a single place in the United States rarely passes. Creating an amendment that can be attached to a larger piece of legislation has a better chance of succeeding. If stand-alone legislation establishing the concept of a Conservation Forest is to pass, the legislation must create an extensive base of support and provide Conservation Forest opportunities to all states.