

SENATE JOINT RESOLUTION NO. SJ0003

Federal forest emergency.

Sponsored by: Senator(s) Geis

A Bill

for

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

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14 WHEREAS, the Wyoming State Legislature finds that:

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

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

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

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16 (d) Most Wyoming livestock, wildlife and threatened
17 or endangered species are now or are likely to be seriously
18 imperiled by a shortage of available water either directly
19 or indirectly via the impact of the water shortage on their
20 supply of forage or prey base.

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22 (e) Due to the existence of this declared state of
23 emergency it is imperative that Wyoming promptly take
24 necessary actions to restore and increase the aggregate

1 total supply of water available within the state.

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

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11 (g) The existence of excessive and unjustifiable
12 overgrowth on Wyoming's federal forests has been publicly
13 acknowledged and declared both by state officials and in
14 2002 by the President of the United States, members of his
15 cabinet, other administration officials and numerous
16 members of the United States Congress.

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18 (h) Numerous state and local Wyoming elected
19 officials and other citizens have repeatedly petitioned the
20 United States Forest Service over the last several years to
21 take actions needed to remove or eliminate the excessive
22 forest overgrowth conditions that exist on watersheds on
23 the federal lands within the state of Wyoming. All the
24 petitions have been effectively ignored by the Secretary of

1 Agriculture and other officers within the federal
2 government under her authority, reflecting what can only be
3 characterized as their utter disregard for both the needs
4 of Wyoming citizens and wildlife, and Wyoming's lawful
5 rights to the waterflows.

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7 (j) The United States Congress, in pertinent part,
8 expressly provided that "No national forest shall be
9 established, except to improve and protect the forest
10 within the boundaries, or for the purpose of securing
11 favorable conditions of waterflows. . ." 16 U.S.C. § 475.
12 Congress reaffirmed this directive when it passed the
13 Multiple-Use Sustained-Yield Act of 1960 by specifically
14 stating that the national forests "shall be administered"
15 for "watershed" purposes, 16 U.S.C. § 528 et seq.

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17 (k) The United States Supreme Court in *United States*
18 *v. New Mexico*, 438 U.S. 696 (1978) stated "Congress has
19 evidenced its continuing concern with enhancing the water
20 supply for nonforest use by specifically authorizing the
21 President to set aside and protect national forest lands
22 needed as sources of municipal water supplies. 16 U.S.C. §
23 552a." Moreover, the Supreme Court further stated that the
24 "States have exclusive control of the distribution of water

1 on public lands and reservations."

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3 (m) The following facts are indisputable:

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5 (i) Wyoming's watersheds located on federal
6 lands presently contain literally billions of excess and
7 unnecessary junipers and conifers;

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

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14 (iii) Thus, in the aggregate, the billions of
15 excess trees on Wyoming's watersheds unnecessarily consume
16 literally hundreds of billions of gallons of water each and
17 every day of the year;

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19 (iv) The continued existence of the overgrowth
20 serves no legitimate federal or state purpose. In fact,
21 these conditions have been previously declared to
22 constitute a state of emergency because the catastrophic
23 fire potential they create poses a present unreasonable
24 risk to the lives and property of Wyoming citizens;

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

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

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

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

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21 (iii) Therefore, to abate this illicit diversion
22 of Wyoming's water, to increase the aggregate total supply
23 of water available in and to Wyoming in the future, and to
24 thereby remedy the state of emergency declared by this act,

1 Wyoming hereby now affirms and asserts the supremacy of its
2 right over that of the federal government to the ownership
3 and use of those waters that are currently being unlawfully
4 diverted by the federal government without justification to
5 supply the demands of the needless federal forest
6 overgrowth on Wyoming's watersheds.

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

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

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22 **Section 2.**

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

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

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19 (ii) Upon the transfer of the limited
20 jurisdiction, the state shall utilize the police and
21 contract powers of the state to the extent necessary to
22 garner the public and private resources and services needed
23 to mitigate and ultimately eliminate the state of emergency
24 hereby declared.

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Section 3.

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(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 such actions as 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 such 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

1 funds determined by Wyoming to be necessary to enable the
2 state to perform the actions needed to mitigate or
3 eliminate the state of emergency created by the federal
4 government's impairment of Wyoming's watersheds, waterflows
5 and aggregate water supplies.

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Section 4.

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

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

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22 (ii) Obtain a judicial declaration of the
23 impairment of the state's rights to waterflows originating

1 on federal lands as a foreseeable consequence of excessive
2 and unjustifiable forest overgrowth; and

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

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10 **Section 5.** That the Secretary of State of Wyoming
11 transmit copies of this resolution to the President of the
12 United States, to the President of the Senate and the
13 Speaker of the House of Representatives of the United
14 States Congress, to the United States Secretary of Interior
15 and the United States Secretary of Agriculture and to the
16 Wyoming Congressional Delegation.

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(END)