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March 20, 2018

Environmental Quality Council
State Capitol, Room 172
1301 E 6th Ave
Helena MT 59601

Mister Chairman and Committee Members:

Please accept this submission by the Montana Forest Owners Association (MFOA, described below) concerning the topic of prescribed burning to be discussed on March 22 at 8:30 a.m. as part of "Fire-related study topics (Tab 7). Specifically it addresses Joe Kolman's analysis titled "Prescribed Burning: Fires Not Gone Wild." Dr. Peter Kolb, the author of the attached analysis, is a highly respected forestry expert in Montana and the Northwest. He is the MSU Extension Forestry Specialist and Associate Professor Forest Ecology & Management. Dr. Kolb is surely known to many members of this Committee.

MFOA strongly supports the use of prescribed burning as a tool for forest landowners; however, not when prescribed burning puts neighboring landowners at an unreasonable risk of life, forest, financial equity, and the emotional investment that their properties represent.

During the 2017 legislative session, the MFOA vigorously opposed the prescribed burning bill (HB 587) which was discussed in, and attached to, Mr. Kolman's analysis. It appears that the purpose of HB 587 was to shift liability away from those who make a business out of prescribed burns. The bill on its face might lead one to believe it had safeguards; but, it failed to define the criteria to qualify for a prescribed burn, the specific requirements to qualify as a burn boss, the requirements to qualify as a prescribed fire manager, and who would be liable for damage done to the properties of the innocent victims.

In summary, the MFOA supports prescribed burning, but only when the burners assume the liability. What possibly could be the justification that "It is safe enough to burn, but not safe enough to assume the liability?"

Thank you for your consideration and time.

Sincerely,

Mike Christianson
President

The Montana Property Owners Association, has been a Montana non-profit corporation since 1995. The MFOA's sole purpose is to protect and serve the interests of private forest landowners. There are more than 29,000 private owners owning in excess of four million forested acres in Montana. For more information, google MFOA or go to www.MontanaForestOwners.org

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3-20-18

Mike Christianson, President
Montana Forest Owners Association
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Dear Mike,

Thanks for the opportunity to review the Montana EQC summary by Joe Kolman to be submitted March 22, 2018 regarding prescribed burning across Montana landscapes. I have been working with private forest landowners for over 30 years, cumulatively in Wisconsin, Minnesota, Idaho and Montana. The last 30 years have been in Idaho (9 ½ years) and Montana (21 years). I am also very familiar with the use of prescribed burning having significant educational and practical experience with prescribed broadcast burning in Idaho and Montana as both a professional but also a Non-Industrial Private Forest Landowner with an active logging and fuels program myself. I am actively engaged with the Montana Logging Association and many Private Forestry Consultants that rely on using prescribed fire to meet the Montana Slash Reduction Law. As such I regard the use of prescribed fire as a very useful tool in the practice of land management and conservation. But it needs to be done correctly and with honest consequences for those that use it inappropriately.

A review of EQC comments titled: Prescribed Burning: Fires Not Gone Wild for the Montana Forest Owners Association

Below are several bolded and underlined terms from the referenced document and my concerns.

Certified prescribed burn is described to explain its purpose, who conducts it, and exempts liability from the person conducting it.

Concerns: The statement does not indicate who or what entity determines and certifies the standards that define a prescribed burn plan, a prescribed burn boss, and appropriate precautionary measures. Also, it does not indicate who is liable for damages if a prescribed burn causes damages (to other properties and persons) if the fire escapes approved burn parameters due to factors other than negligence (a gust of wind blowing embers across fire lines, a burning tree falling over, a rolling piece of burning woody debris would be the most common scenarios where a prescribed burn may escape). Who determines what constitutes negligence as fires are complex phenomenon, or is each case to be determined on an individual basis, and if so will this be completed in an interdisciplinary panel of experts, landowners, state employees, or in a court of law?

State-based prescribed burning laws in other states: Using prescribed burning laws from other states to assess appropriate burn regulations and liability for Montana.

Concerns: Every geographic area within the United States (and North America) has its own unique climate and weather which in turn dictates the kinds of vegetation, fuels and historic pre-European fire patterns occurred over time. The Holocene is considered the most modern proxy for these landscape patterns and parameters from which historical natural patterns of vegetation and disturbances might be defined and parameterized. Within the Holocene are various identifiable climatic extremes during which either warm, dry, wet, and dry climatic trends caused significant fluctuations in the role of fire and vegetation types across landscapes. Thus the historic role and interactions of fires with vegetation and climate vary tremendously across both time and geography, making comparisons across the enormous diversity of forest types and climatic time frames difficult. For example, the climatic and vegetation parameters that make prescribed burning a relatively safe and reasonable practice in Georgia and Florida do not exist in Montana. Geographically closer, the wetter weather and calmer wind conditions that make prescribed burning a reasonably safe practice in North Idaho, rarely occur across much of Montana that correspondingly has more drought and windy conditions, unpredictable weather patterns because of the interaction of Polar, Pacific and SW air masses along the continental divide, and vegetation that consistently has lower live fuel moistures and is more flammable. Prescribed burning as a broadcast application across these conditions has historically been tried on countless occasions, and the consensus of applied experiences has repeatedly led to the same conclusions that it is mostly an unwise and dangerous practice for many geographic areas across Montana. Similarly, using historical patterns of wildfire as a proxy for today are also flawed since the North American (and northern Hemisphere) climate has been changing rapidly across the past two centuries from what has been referred to as the "mini-ice age" to modern "global warming". The climatic paradigms and their relationship to fire from the early 1800's thus do not apply equally to the early 2000's. Prescribed burning laws, practices and cost of their consequences must be uniquely developed and correspond to the vegetation and current climatic conditions for each specific geographic location.

Montana fire policy notes that prescribed burning is a sound forest management activity that improves "the overall diversity and vigor of forested landscapes……." It is further defined for air quality rules under which it is stated that "it may be conducted year round, but in winter months can create poor air quality and the burner must get permission from" DEQ.

Concerns: Much of this centers on air quality restrictions and some of this summary is misleading. Although it may not to my knowledge be stated within Montana code (I am not an attorney well versed in Montana code), prescribed burning cannot be conducted year round due to summer fire restrictions when the risk of uncontrollable wildfires is considered too high. These restrictions typically start in the middle of June and extend until the middle of September or longer. This leaves a very short time frame in which prescribed fire can be safely conducted based upon local fuel and weather conditions and without significantly impacting air quality.

Spring broadcast burning also has very different consequences than fall burning, where spring burning typically only reduces short term fine fuels, kills some younger trees (often creating a greater fuel hazard unless burned a second time 3-10 years later), and can hold over in smoldering pitchy stumps for weeks if not months until fire danger and escape becomes extreme. Fall broadcast burning is typically much more effective for ecological restoration and fuels reduction as larger woody fuels are dry enough to burn, and surface fires reduce not only fine fuels but thick organic layers that tie up soil nutrients and prevent pioneer tree species such as western larch and pines from regenerating. Fall broadcast burning is also risky across most geographic areas outside of NW Montana as dry larger woody fuels release much more energy creating convection columns and risk of spotting, summer beetle killed trees are flammable at

this time (so called red trees) and fine fuels on a landscape basis are dry enough to allow spotting from greater convection columns to ignite outside of fire lines. In other regions such as North Idaho, fall rain and snow can play an important role containing and extinguishing prescribed fires. Across Montana, weather fronts that bring rain and snow are typically preceded with high winds, which add a considerable risk of fire escape. Thus as a practical reality there are often only a few days (if any) in which safe prescribed burning at a landscape level can be conducted. There must also be taken into context the difference between burning slash piles with extremely small and containable perimeters, and broadcast burning where significant acreages are ignited for the purpose of initiating a surface fire that burns across a given landscape with an extensive perimeter that can be very difficult to contain.

Second, fire does not always increase overall diversity and vigor of forests. Fires tend to decrease tree and plant diversity of species specifically adapted to shaded environments associated with "old-growth" characteristics. Ancient trees with previous fire scars are particularly susceptible to mortality from fire. There are currently 254 vascular plants listed as rare or threatened of which many are not benefited by wildfires. In addition, fire typically enhances the occupancy and spread of noxious weeds. As with grazing practices fire results in "increasers and decreasers" with respect to certain plants. If not carefully planned, fire can rob native wildlife of critical winter habitat. Unintended consequences can be forcing local ungulate populations onto other lands because their winter forage has been destroyed, resulting in locally unsustainably concentrated animal populations. Finally, landscape fires can significantly alter hydrological cycles allowing for burned landscapes to shed snow and rainfall versus allowing the soil to absorb it, resulting in soil erosion, downstream flooding and summer drought. Thus the role of fire is not always good, or bad, but must be carefully considered for all its consequences, especially those that impact surrounding landscapes and landowners that are often not considered by prescribed burn plans.

Other States:

Concerns: As already indicated, other states with vegetation and climates that pose minor risks to prescribed fire escapes such as Florida already have extensive prescribed burning practices and laws. Those practices and regulations take into account significant times when vegetation and weather allow for very minor risk of a prescribed fire escaping. However, even under those conditions prescribed fires do escape resulting in considerable lability costs. Using laws and regulations from other states can be very useful but only if the risks of prescribed fires turning into escaped wildfires are appropriately accounted for with regard to other state conditions versus those found across Montana. As previously stated, the time window of opportunity for safe prescribed burning across Montana is extremely limited, and in some locations and years does not occur. This is the reason that broadcast burning of forest and range lands has never occurred to any great extent across most of Montana even in previous decades prior to existing laws; the conditions are typically simply too dangerous to do so safely. There is a reason that all of the other states cited have wet humid seasons where prescribed burning is feasible and risks of prescribed fires turning into wildfires are extremely low.

Production Process tables: There are many examples of bureaucratic regulatory processes in place for the purpose of regulating and safeguarding prescribed burns.

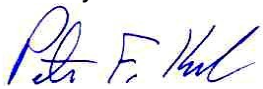
Concerns: Simply put, the more regulation the more cost there will be to enforce regulation. It is not clear who will fund and develop the protocols for the proposed greater freedom from liability to conduct prescribed burns, and who will pay for the significantly higher costs of enforcement.

Liability: "Fire does not always do what the guy with the match intends." "the results of a prescribed fire gone wrong are often treated under civil law."

Concerns: The above statements quoted from the text are exactly the problem. Also as previously stated, there are no laws prohibiting prescribed fire unless air quality will be negatively impacted as regulated by the DEQ, or the risks of a fire escape turning into an uncontrollable wildfire are deemed too high based on fuel moisture and fire weather as determined by fire districts within federal agencies and DNRC. However, as currently written into Montana Code, whoever ignites a fire is liable for the damages that fire causes. A fire expert, as has been attempted to be defined as "a prescribed fire burn boss" will be able to conduct a prescribed burn successfully without incurring any unwanted or unforeseen damage to the area burned or the lands and property of adjoining landowners. Appropriate prescribed burning is conducted across Montana every year by such experts. As such there is no need to change the law as it stands. However, if prescribed burning is to be instigated at a more frequent basis, and under more risky circumstances, and by "fire burn bosses" who may have the bureaucratic and academic credentials but lack the actual experience of successfully burning across the challenging conditions of Montana, then the liability of conducting a prescribed burn is of greater concern. Instigating greater regulation with regard to prescribed burning offers greater confidence for safe prescribed burning on paper, but passes the liability on to the adjoining landowners who would suffer the direct consequences, both financial and emotional as all their work and often a lifetime or multiple generations of stewardship are destroyed. Having worked with landowners attempting to rehabilitate burned-over lands I can personally attest to the enormous emotional damage such an event takes from individuals and families. Passing the responsibility of another's poor judgement onto their surrounding neighbors in a civil lawsuit by changing the current Montana code to the proposed HB 587 is highly irresponsible in my opinion, and one that I would guess most forest landowners would not agree to. Especially when Montana presents a unique set of circumstances with respect to prescribed fire, wildfires, and without clearly defined responsibilities of who would test certified burn bosses, who would write the requirements of practice, who would inspect and certify the burn plans, and who would pay for all of the added bureaucracy?

Finally, is giving the example of federal landowners and managers who currently are exempted from the liability and damages associated with an escaped prescribed burn, truly the standard that Montana wants to pursue? Based on the number of private forest landowners who over the past several years have had thousands of their own acres and assets deliberately burned by federal agencies during wildfire burnout procedures, and are vividly upset and currently pursuing class action lawsuits against the federal agencies responsible, I would expect that the State of Montana would actually pursue legislation that holds those who set prescribed burns more responsible for their actions, not less.

Sincerely,



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