

A MEMORIAL

REQUESTING THE UNITED STATES FOREST SERVICE TO ENGAGE WITH NEW MEXICO STATE AGENCIES AND LOCAL GOVERNMENTS IN MEANINGFUL WATERSHED HEALTH PLANNING AND MANAGEMENT.

WHEREAS, thirty-eight percent of New Mexico land is managed by the federal government, originally set aside by the Organic Act of 1897; and

WHEREAS, forty-four percent of New Mexico land is owned as private property, and the majority of landowners also own approximately eighty-five percent of the water of the public trust, while maintaining beneficial use through irrigation; and

WHEREAS, twelve percent of New Mexico land is tribal land, protected by the public trust of the United States; and

WHEREAS, unlike the national parks, which were created primarily to preserve natural beauty and provide unique outdoor recreation opportunities, the national forests were created as working forests with multiple objectives; and

WHEREAS, the Organic Act of 1897, by which most national forests were established, states: "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 water flows, and to furnish a continuous supply of timber for the use and necessities of

citizens of the United States"; and

WHEREAS, the United States forest service and the federal bureau of land management are primarily obligated to New Mexico under the Organic Act of 1897 "to improve and protect the forest within the reservation for the purposes of securing favourable conditions of water flows"; and

WHEREAS, two decades of catastrophic wildfires throughout New Mexico have adversely affected private property, community commerce and the soil and water of the public land of New Mexico; and

WHEREAS, wildfires covering one hundred thousand to two hundred fifty thousand acres have had large-scale negative impacts on the public trust water of New Mexico through the post-burn effects of massive evaporation and water runoff across burned soil and landscapes; and

WHEREAS, the erosion of soil from these large-scale catastrophic wildfires choke New Mexico rivers and fill New Mexico reservoirs with siltation; and

WHEREAS, these losses of soil and water constitute a taking of the public trust water of New Mexico and the public trust land of the American people; and

WHEREAS, the Organic Act of 1897 recognizes the preeminence of a state's water rights, stating: "All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the

laws of the state wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder"; and

WHEREAS, the United States forest service should, therefore, recognize and respect the authority of individual states to allocate water that is available for appropriation; respect valid, existing water rights; and manage the water resources in national forests so as to minimize phenomena that adversely affect the exercise of those rights; and

WHEREAS, pursuant to the Organic Act of 1897, the United States forest service is obligated to manage forest service lands and facilities in order to secure favorable conditions for water flows, suitable for multiple uses; and

WHEREAS, the United States forest service should maintain, protect and restore watersheds, including soil, water and aquatic resources, as appropriate, through adaptive management; and

WHEREAS, the United States forest service is required to recognize and respect the authority of states to manage water quality under the Federal Water Pollution Control Act and to assume greater responsibility for achieving state water quality goals on forest service lands; and

WHEREAS, the extent to which, and the process through which, the United States forest service achieves these goals should be determined through mutual, written agreements; and

WHEREAS, the United States forest service has a duty to cooperate with state and federal agencies, tribal governments, stakeholders and holders of valid water rights to provide mutually beneficial programs for restoring, maintaining and utilizing water resources; and

WHEREAS, the United States forest service is required to utilize a forest planning process that will integrate the implementation of the above principles with the sustainable production of goods and services; and

WHEREAS, the United States forest service is mandated to collaborate on and integrate its watershed management plans with local, regional and state water plans; and

WHEREAS, United States forest service management of public trust land greatly impacts tribal communities and reservations through common borders and jurisdictions; and

WHEREAS, United States forest service planning and management greatly impacts many New Mexico communities that are facing drought, wildfires and degradation of wildlife habitats; and

WHEREAS, the New Mexico Subdivision Act enables counties and municipalities to plan for public health, welfare and safety, and catastrophic wildfires present an acute threat to the public health, welfare and safety of New Mexicans; and

WHEREAS, the office of the state engineer, the interstate stream commission and the water trust board have

adopted and implemented the state water plan; and

WHEREAS, the interstate stream commission has developed and adopted sixteen regional water plans; and

WHEREAS, in 2004, New Mexico developed and adopted the New Mexico forest and watershed health plan; and

WHEREAS, the forest and watershed health office of the energy, minerals and natural resources department has developed and adopted forty community wildfire protection plans; and

WHEREAS, New Mexico has entered into several tribal water rights settlements in conjunction with the federal bureau of reclamation; and

WHEREAS, the Organic Act of 1897 states: "The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of the Act of March 3, 1891, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions"; and

WHEREAS, the Organic Act of 1897 goes on to say: "The jurisdiction, both civil and criminal, over persons within

national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their right and privileges as citizens or be absolved from their duties as citizens of the State";

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the United States forest service, in light of the history of wildfires on public land in New Mexico and in light of the United States forest service's breach of regulatory and fiduciary responsibilities to New Mexico, be requested to engage with New Mexico state agencies and local governments in meaningful watershed health planning and management; and

BE IT FURTHER RESOLVED that the state engineer, the attorney general and the state forester be requested to take necessary steps to enforce the obligation of the United States, under the Organic Act of 1897, to provide for and protect watershed health in New Mexico's forests; and

BE IT FURTHER RESOLVED that state agencies be requested to integrate local, state and tribal watershed plans and management with those of the United States forest service, the federal bureau of land management, the United States army

corps of engineers and the federal bureau of reclamation; and

BE IT FURTHER RESOLVED that the United States forest service, the federal bureau of land management, the United States army corps of engineers and the federal bureau of reclamation be requested to integrate range and forest planning with the New Mexico state water plan and the New Mexico forest and watershed health plan; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the New Mexico congressional delegation, the chief of the United States forest service, the state engineer, the state forester, the secretary of the United States department of the interior and the state director of the federal bureau of land management.