

## Forest Service Partnership Enhancement Act (H.R. 3818 and S. 2676) Questions and Answers

### **1) What is the Forest Service Partnership Enhancement Act?**

The Partnership Enhancement Act (FSPEA) would improve the Forest Service's ability to work with a wide variety of cooperators by expanding, clarifying, and simplifying legal authority to enter into mutual benefit agreements. Two bills have been introduced into Congress with bipartisan support, H.R. 3818 and S. 2676. They are based on a proposal sent to Congress by the Administration.

### **2) What is the current status of the legislation in Congress?**

H.R. 3818 was introduced by Representative Greg Walden (R-OR) and cosponsored by Representative Tom Udall (D-NM) on September 15, 2005. A hearing was held before the House Resources Forests and Forest Health Subcommittee on September 27, 2005. The testimony is posted at: <http://resourcescommittee.house.gov/archives/109/ffh/092705.htm> On October 19, 2005, the Resources Committee approved the bill. The bill was also referred to the House Agriculture Committee, which must act on it prior to any further action in the House of Representatives.

S. 2676 was introduced by Senators Crapo (R-ID) and Lincoln (D-AR) on April 27, 2006. It has been referred to the Senate Committee on Agriculture, Nutrition, and Forestry. It is similar to H.R. 3818, with a new section relating to the National Forest Foundation. The Administration also supports enactment of this bill. You can find the current status of the bills on the internet site: [www.thomas.loc.gov](http://www.thomas.loc.gov) by entering the bill number into the search box on the home page.

### **3) How would this legislation help the Forest Service enter into different kinds of cooperative work relationships?**

The FSPEA would cut red tape by providing legal clarity. It provides a single source for authorizing the Forest Service to enter into a wide variety of mutual benefit type agreements with cooperators to further the Forest Service's mission. Current authorities are scattered in various pieces of legislation, are sometimes unclear, sometimes limit the Forest Service's ability to work with others, and in other cases must be reauthorized through annual appropriations bills. It also gives Congress an opportunity to provide clarification and update authorities to reflect new kinds of cooperative work relationships.

### **4) How are agreements authorized under the FSPEA different from procurement contracts, grants, and cooperative agreements already**

**authorized under the Federal Grants and Cooperative Agreements Act (FGCAA)?**

Congress enacted the FGCAA to create uniform legal guidelines for agencies to use in determining whether a potential transaction involves a procurement of goods or services for the direct benefit of the government (which requires use of a contract) or assistance to stimulate a public purpose (which requires use of a grant or a cooperative agreement).

Agreements under the FSPEA would differ from grants and cooperative agreements as defined under the FGCAA, since they require some type of contribution by all participating parties and require that all parties benefit from the activities or services being performed.

This type of agreement is very important, since the Forest Service often encounters situations where a transaction does not fit the definitions of procurement or assistance, but rather takes on characteristics of both. This bill would permanently authorize mutual benefit agreements for the Forest Service.

**5) What is the difference between HR 3818 and S. 2676?**

The primary difference between the two bills is that S. 2676 has a provision that would expand the National Forest Foundation board of directors from 15 to 30 members and authorize appropriations for matching funds to the NFF for an additional 5 years. The administration requested an amendment that would replace the amount of appropriation from "such sums as necessary" with "up to \$2,500,000".

**6) What new kinds of opportunities would this authority allow?**

Because the Forest Service currently has only temporary authority for mutual benefit type agreements, this legislation would allow for long-term planning in cooperative working relationships. The types of mutual benefit agreements authorized by this legislation would vary widely and include projects like trail improvements, watershed restoration, cooperative pollution abatement, development of environmental education and forest history materials, and many other mutual benefit type agreements.

**7) Would the FSPEA permanently authorize watershed restoration and enhancement agreements?**

Yes. The Forest Service has successfully used mutual benefit agreements to carry out activities within watersheds to protect, restore, and enhance resources and reduce fire risk on or near National Forest System lands under temporary authority since 1999. These types of agreements are sometimes called "Wyden" agreements, after its original sponsor, Senator Ron Wyden (D-OR).

**8) How do watershed restoration and enhancement agreements work?**

This authority has been used since 1999 to protect, restore and enhance fish and wildlife habitat and other resources on public or private land within watersheds, and to reduce the risk from natural disaster where public safety is threatened. The Forest Service has partnered with State, Tribal, Federal and local governments, private and nonprofit entities, and landowners with common objectives and mutual benefit. Benefits have included:

- Improved, maintained and protected ecosystem conditions through collaborative administration and implementation of projects
- Increased operational effectiveness and efficiency through coordination of efforts, services, and products to accomplish the highest priority work

**9) How would the legislation change the way the Forest Service and its partners provide educational and interpretive information?**

The bill would provide new authority to allow for the sharing of facilities such as visitor centers and contact stations, whether on or near National Forest System lands. Under current law, the Forest Service cannot invest in modifying a facility off National Forest System lands to accommodate a work area or interpretive displays, resulting in unnecessary and costly duplication of visitor facilities and inconveniences to visitors.

New authority to sell health and safety convenience products such as sunscreen, bottled water, insect repellent; and convenience products such as photography supplies will serve our visitors well in remote locations. Allowing for the collection of funds on behalf of cooperators for the sale of the materials mentioned above will improve efficiency while maintaining fiscal controls.

The FSPEA would eliminate another barrier to agency partnerships by allowing for the collection of funds on behalf of cooperators for the sale of the materials mentioned above. Current law does not confer sufficient authority for Forest Service employees to accept payment for these materials on behalf of agency cooperators. As a result, visitors are unable to purchase these materials during a cooperator's absence or must purchase materials at two different cash registers at the same counter. Enhanced authority will improve efficiency and service to visitors while maintaining fiscal controls.

The FSPEA includes broad authority to work with others to provide educational and interpretive materials and products, within the framework of existing law or regulation, such as the Government Printing and Binding Regulations. The Cooperative Funds and Deposits Act of 1975 (P.L. 94-148), which authorizes the Forest Service to enter into cooperatively performed projects to develop and publish environmental education and forest history materials, is limited.

**10) The FSPEA specifies that printing services can be obtained from cooperators in connection with jointly produced publications. Does this mean that the Forest Service would bypass the Government Printing Office?**

The bill will not change the way the Forest Service currently obtains printing services. Government Printing and Binding Regulations specify under which conditions publications must be cleared through proper agency channels and printed by the Government Printing Office, and when it is acceptable for a cooperator, through a formal agreement, to print and distribute materials. An agency Publications Control Officer reviews arrangements for cooperative publications.

Materials produced by Federal employees as part of their official duties are in the public domain and cannot be copyrighted; therefore, anyone may reproduce Federal Government publications without permission, including articles written by Federal employees on official time that appear in a private, copyrighted publication.

**11) How would the FSPEA improve cooperation with cash-poor partners?**

The FSPEA would benefit cooperative work relationships with cash-poor communities by providing that in-kind contributions from volunteers recruited, trained, and supported by the cooperator constitute a value contributed toward the project. It also allows for funds to be advanced to cooperators within terms of the agreement. These provisions will encourage cooperative undertakings with new partners by recognizing the value of non-monetary contributions toward a common goal.

**12) How will the value of volunteer contributions be determined?**

If enacted, guidelines will be developed to provide Forest Service employees and cooperators with information on how to value the contributions of volunteers.

**13) This bill seems to focus on education and interpretation. Why so much detail?**

The FSPEA emphasizes the importance of working with a variety of entities for mutual benefit to achieve the mission of the Forest Service, including watershed restoration and forest health projects. The bill includes specific language relating to education and interpretive efforts resolves some specific long-standing issues related to education and interpretive facilities and services and is not intended to disproportionately elevate those partnership efforts above others.

**14) How does this authority relate to that of other Federal land management agencies such as the Park Service, Fish and Wildlife Service, and BLM?**

The Forest Service coordinated with other Federal land management agencies in developing this legislation. Although these agencies have authorities that enable them to work with cooperators, there are differences. The FSPEA would provide the Forest Service with authority similar to some other federal land management agencies.

**15) Would this new authority affect existing cooperative programs currently administered under the Forest Service Research or State and Private branches?**

Many of the existing authorities used by the Forest Service, particularly in the State and Private and Research branches, involve grants and cooperative agreements. These authorities would not change if this legislation were enacted. However, the new authority would allow for mutual benefit agreements (as opposed to grants, cooperative agreements, or procurements) between the Forest Service and other entities, including states and tribes. Land-based projects would apply only to National Forest System lands, except for watershed restoration and enhancement agreements or agreements for facilities involving educational and interpretive materials, products, programs, and services. However, the mutually beneficial activity would not have to be land-based--it could be an educational activity.

**16) The Forest Service currently works with the National Forest Foundation and Interpretive Associations. Why is authority needed to work with more cooperators?**

The National Forest Foundation (NFF) and Interpretive Associations (IAs) have been valuable Forest Service partners. The NFF has authority for and has been active in administering private gifts of funds and land to benefit National Forests, and facilitates the creation and development of community based organizations interested in conservation. The Forest Service also cooperates with non-profit Interpretive Associations to provide interpretive services to National Forest visitors. The legislative proposal would enhance the agency's authority to work with Interpretive Associations and others to provide interpretive and educational services.

These ongoing relationships are important and valued. Both the NFF and IAs play unique roles in engaging the public in National Forest conservation and providing interpretive information, which will continue. They are part of the large network of citizens, communities, organizations, and government entities that can maximize shared resources and expertise to achieve lasting solutions for people and the land. Broadening the number of cooperators we work with will expand the Forest Service's ability to fulfill its mission of "caring for the land and serving people".

**17) Why would this bill repeal the "challenge cost share" authority from the FY 1992 Interior Appropriations Act?**

The FSPEA would provide permanent, centralized, and clear authority for mutual benefit agreements, which would replace and reinforce "challenge cost share" types of agreements.

**18) The bill would allow agreements with cooperators to sell education and interpretive materials, products, programs, and services. What happens to the money raised by these efforts?**

Cooperative educational and interpretive ventures would be conducted under the terms of an agreement that specifies shared goals, roles, and benefits. Funds raised by a cooperator within the terms of such an agreement would be used to contribute toward the mutual goals. For example, an agreement to provide interpretive walks on a National Forest might include a nominal charge to visitors to cover the cost of providing the service. Funds raised through sales of an educational brochure might defray the printing costs. In each of these cases, the cooperator would account for the funds as part of their share of the agreement.

**19) This bill gives you authority for selling items like sunscreen and film; can you assure that these sales won't compete with the private sector?**

Sales of safety and convenience products envisioned in this legislation are expected to be very minor. The Forest Service anticipates using this authority in remote locations, where competing vendors are not present, and the low volume of projected sales makes concession of these products neither cost-effective nor viable. Provision of safety and convenience products (sun-block, bug spray, water, etc.) is important to the health and safety of visitors to the National Forests in these remote locations. For example, a visitor could drive some 50 miles from a town to a ranger station, with no commercial outlets available for purchase of these products. Guidelines will be prepared to aid decision-making on what products can be sold at visitor contact stations.

**20) What will the Forest Service do to avoid conflicts of interest when working with for-profit companies?**

The Forest Service currently has authority to cooperate with for-profit companies. As we currently do, the agency will continue to ensure that all employees involved in these mutual benefit agreements are aware of and abide by federal laws pertaining to conflicts of interest, regardless of who the cooperator may be.

Special care must be taken when working with all cooperators to avoid actual or perceived conflicts of interest. Shared benefits exist when both the Forest Service and the cooperator share in the results of an undertaking in the same qualitative way, when the result is used by both parties to accomplish their respective, common missions.

We have learned that the public is especially concerned that agreements with for-profit companies be carried out in an ethical manner. It would be inappropriate to enter into an agreement where the cooperator's direct benefit would further its monetary interests. The legislative proposal specifies that no agreement under its provisions may be entered into where a procurement contract, grant, or cooperative agreement covered by the Federal Grants and Cooperative Agreements Act are the appropriate instruments to use. Regulations and guidelines

will provide guidance to Forest Service managers and our perspective cooperators to maintain the public's trust.

**21) If the bill passes, will regulations be required?**

The legislation would require regulations for implementation, thus providing more detailed guidance for Forest Service managers. For instance, direction would aid decision-makers in determining what kind of instrument to use in working with others (such as procurement contract, grant, cooperative agreement, or mutual benefit agreement).

**22) What can I do to make sure this bill passes?**

Forest Service employees are prohibited from lobbying by the Hatch Act, the Anti-lobbying Act (18 USC 1913), and Forest Service regulations (FSM 1510). The annual appropriation bill contains language prohibiting "any activity or the publication or distribution of literature that in any tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete other than to communicate to members of Congress." Forest Service employees can provide information to others about pending legislation, and can provide information about current successful partnerships, but cannot organize or promote public support or opposition to any legislative matter.

Of course, citizens may communicate with congressional offices on matters important to them.

**23) Does this bill relate to the upcoming 2007 Farm Bill reauthorization?**

No, this bill is unrelated to the discussions and listening sessions on the reauthorization of the Farm Bill.

**24) Some have expressed concern that this authority will allow over development and commercialization of the Forests. Is that true?**

The public participation process guides all development on National Forest system lands. Forest plans set the long-range vision for managing National Forests, including desired conditions and development levels for different areas, and provide guidelines for achieving those conditions. Projects are carried out to fulfill the vision set forth in the Forest Plan. Throughout the process, the Forest Service consults with the public and complies with various laws such as the National Environmental Policy Act. Partnerships are a tool that can be used to expand the Forest Service's ability to achieve the objectives of the Forest Plan and the overall Forest Service mission.

**25) Can you provide examples on some of the potential partners we work with in mutual benefit agreements, and who might we work with in the future if the bill is signed into law?**

Because mutual benefit is a required criterion for a partnership, we consider the following transactions as “partnerships”: challenge cost-share, joint venture, cost reimbursable, interpretive association and participating agreements. These types of partnerships will continue with permanent authorization through the FSPEA.

Hundreds of projects have been completed under the current temporary authority, including: trail construction and maintenance; habitat enhancement; watershed planning assessments; wildland urban interface fire risk analysis and information dissemination; an environmental sustainability program for winter sports; historic and cultural restoration; interpretive and educational programs and services; and many other worthy projects. In fiscal year 2004 alone, projects valued at nearly 75 million dollars were accomplished, with a roughly one to one match in contributions between the Forest Service and cooperators.

Some examples of the variety of partnerships the Forest Service enters into include the following:

Pacific Crest Trail Partnership: The Shasta-Trinity National Forest, California Conservation Corps (CCC), Backcountry Horsemen of America (BCHA), and the Pacific Crest Trail Association (PCTA) partnered together to rehabilitate and maintain 30 miles of an overgrown and remote section of the Pacific Crest Trail in northern California. The Forest Service and PCTA provided \$25,000 for maintenance that was matched with \$64,000 by the CCC (Shasta Cascade Operations, Redding, CA). A total of 6,105 hours of trail maintenance work was carried out in a section of the trail that had received minimal maintenance over the years. Thirty miles of trail was maintained to standard including brushing, rock work, stream crossings and grading. The BCHA volunteered over 75 hours of time to survey the trail, determine the necessary maintenance needs, identify high priority areas for maintenance, and help move the CCC camps throughout the process. The PCTA provided the camp with food and cooks for 8 weeks.

Ashley – Redlands Dove Fields: On the Chattahoochee and Oconee National Forests in Georgia, Forest Service, state and non-profit partners joined together to convert an abandoned grazing allotment into prime habitat for quail, turkey, dove, and other game species. Through a combination of plantings, mowing and prescribed burning, invasive weeds such as fescue, privet and kudzu were eliminated. The fields were planted with favorable forage species of millet and milo and then fertilized and limed. The \$12,500 partnership treated over 200 acres and sportsmen celebrated with over one hundred people participating in the opening day of dove season. Partners included the Georgia Department of Natural Resources, Georgia Forestry Commission, Quail Unlimited, The National Wild Turkey Federation, and Georgia Power.

Upper Joseph Creek Watershed: In northeastern Oregon, the Wallowa Whitman National Forest, Wallowa Country, several State agencies, tribal representatives, and community groups

including Wallowa Resources, initiated an assessment and planning process for the Upper Joseph Creek Watershed. The Watershed is approximately 174,000 acres and contains a combination of private and federal lands as well as the birthplace of Chief Joseph of the Nez Perce Tribe. The collaborative assessment effort produced a forest and fuels inventory across the watershed, stream and riparian condition surveys, a roads analysis, initiated a series of cultural surveys, and acquired updated imagery and updated a geographic information system database. Over \$215,000 in non-federal funding was raised to implement high priority actions including culvert replacements, stream restoration, and range improvements.

Greater Ruidoso Area Wildland Urban Interface Group: The Lincoln National Forest, New Mexico State Forestry and Environment Departments, Lincoln County, Village of Ruidoso, and several private businesses joined together after catastrophic fires in 2000 to build a strategy for reducing hazardous fuels in the national forest and surrounding wildland urban interface. The strategy focused on the overall health of the forests as well as on economic health of the local communities, by developing new markets and businesses for the small diameter wood removed in the fuels reduction process. Since 2000, over 17,000 acres have been treated in the wildland urban interface, and over 5,000 acres on the Lincoln National Forest. In October of 2004 a community wildfire action plans was completed for the Greater Ruidoso Area Wildland Urban Interface.

Southern Center for Wildland-Urban Interface (WUI) Research & Information: In 2002, the Southern Research Station and the Southern Region of the USDA Forest Service partnered with the University of Florida and the Southern Group of State Foresters to create the Southern Center for Wildland-Urban Interface Research & Information. The University of Florida helps the Center with both research and technology transfer activities and the State Foresters advise the Center through a Wildland-Urban Interface Council. The partnership produced a 16-page "Wildfire Risk Assessment Guide for Homeowners in the Southern United States," as well as training modules for natural resource managers to better understand and address the challenges of managing resources in a changing urban/rural landscape.

Sustainable Slopes: In 1999 and 2000, The National Ski Areas Association (NSAA) partnered with the Forest Service and others to develop an environmental charter for ski area operation. This charter has evolved into a full environmental program of NSAA called "Sustainable Slopes". It provides the framework for resorts across the country to implement best practices, assess environmental performance and set goals for improvement. It includes an environmental code of the slopes to provide snow sport participants a role in implementing the charter. An outreach campaign was developed and sustainable slopes events now take place annually a number of resorts around the country. In addition to Sustainable Slopes, the Forest Service has also partnered to deliver a range of conservation education programs including Ske-Coloy, Ski With a Ranger, and Snow Monsters Meet Mother Nature, an educational film for children telling a story of "respect" for mother nature.

Princess Cruise Lines: The Forest Service has been working in partnership with Princess Cruise Lines for several years to bring environmental education programs to southeast Alaska cruise line passengers each year. In 2005, five Forest Service interpreters will board 122 cruise ships in Ketchikan and present information is presented Alaskan ecosystems, wildlife and marine life,

Native Alaskan groups, resource and recreation opportunities, the history of the Tongass National Forest and Forest Service multiple-use management. Princess Cruise Lines contributes \$21,000 to the partnership, matched by in-kind support from the Forest Service. The partnership meets mutual objectives, enhancing the visitor experience for those on the cruise and providing the Forest Service and opportunity to provide educational and interpretive information to visitors. In 2004, over 9,000 people attended environmental programs on the ships. In 2005, the Tongass National Forest and Princess Cruise will pilot a ride-along interpretive program where interpreters will board a ship in Ketchikan and ride to Juneau.

Additional examples of partnerships can be found on the Partnership Resource Center website: <http://www.partnershipresourcecenter.org/>