

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON NATURAL RESOURCES: RECREATIONAL ACCESS TO STATE LANDS

Call to Order: By BEN COHEN, on March 14, 1991, at 11:00 AM

ROLL CALL

Members Present:

Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)

Members Excused:

Bob Ream (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Julia Tonkovich, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

DISCUSSION OF COMPROMISE BILL ON RECREATIONAL ACCESS TO STATE LANDS

REP. COHEN said many legislators do not believe the compromise bill will be passed on the floor because of the proposed fee for public access to state lands. There is no fee for access to federal and private lands, which are intermingled with state lands. There is value to recreation; however, constituents will not readily accept being charged for using state lands. It may be possible to have a nominal fee for the use of state lands, and also a separate fee that will go into a fund to indemnify lessees of state land whose property or property improvements have been damaged.

REP. ELLISON said the fee should be charged of all users; otherwise, the state could be sued.

Garth Jacobson, Secretary of State's Office, said he understands the difficulties of charging a fee for activities long regarded as "free." However, the proposal should be seen as a proactive measure that will ensure citizens' access to state lands, and that will also provide fair treatment to all Montanans. In the future, there will be pressure (financial and otherwise) on the Department of State Lands to provide exclusive recreational

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rights to lands that everyone has access to at present. The Department may have difficulty turning down such an offer, and later offers as well; it is possible that a majority of state lands could be parceled out in this fashion. This legislation not only deals with problems of access to leased land, but protects Montanans' rights of access to all state lands. The fee may be a shock to some constituents, but it will ensure that those constituents will not be denied access in the future.

Tony Schoonen, Coalition for the Appropriate Management of State Lands, said **REP. COHEN's** request is a reasonable one. State lands have always been open, and even a minor fee compensates the trust. Managing wildlife and providing law enforcement on those lands should be part of the consideration of this fee. Some users might go from state lands to leased lands and will be charged two fees.

Dennis Casey, Department of State Lands (DSL), said DSL is trying to avoid having competitive bidding for exclusive use of certain tracts of state land. Most Montanans do not want that. Recreational users would rather have the land open with certain restrictions for hunting, and would be willing to pay a modest fee for land use.

REP. COHEN said if sporting organizations decide to take the state to court, they could win a decision that all state lands should be accessible to recreational users. Then, none of the lessees' concerns about damage to improvements, weed infestation, etc. would be addressed. **Mr. Casey** said this is a possibility. However, the court may also rule that the Board of Land Commissioners must obtain fair market value for trust lands, and the best way to obtain this value is individual bidding. This would deny recreational access to many Montanans.

Mr. Schoonen said currently, the lessee has near-exclusive rights on the lease. If the legislature can draft a compromise bill on access to state lands, it can also draft a bill to protect the present lessees from being outbid. The issues cannot be divided. The bidding issue is a red flag that should not be raised at this time. **Mr. Casey** said the issue is important. Two years ago, in Bozeman, a developer sought an easement from the Department of State Lands for a timber shed near which he was planning a residential development. DSL determined the value of the timber shed. If the developer had supplied the money, it would have been DSL's obligation to take his proposal to the Board of Land Commissioners, and it would have been very difficult for them to deny that request. It is possible, as this demonstrates, for someone to come in and offer a price for the exclusive use of a tract.

Jim Peterson, Montana Stockgrowers' Association, said there is also a constitutional responsibility to the school trust properties. The issue is not segregating one set of state land acreage from another; it relates instead to receiving value for

use of that land. In the past, the leased land has been generating income to the school trust land, while other lands have not. Everyone agrees that there is value to the recreational use of state land, but it does not seem logical or fair to segregate one group of state land from the other when all state land has recreational value. This value needs to be determined, which is why the stockgrowers support an Environmental Impact Study (EIS) process. If this bill is going to be defensible in court, the school trust obligation must be addressed fairly.

Mr. Schoonen said the current competitive bidding process for state lands is controlled by the infrastructure that controls the grazing lessees. The coalition tried to bid on a tract, but these bids can always be bettered. The school trust responsibilities are not being met. The coalition is trying to set a smaller fee for those lands that are already open, and is more than willing to pay a fee on those lands that are leased and not open to the public.

REP. COHEN said the indemnification is not for state lands, but for lessees, who have the responsibility to DSL for weed control, improvements, etc. **Mr. Casey** said of the proposed \$10 fee, \$6 is to go to the school trust, and \$4 is to go to DSL. **REP. COHEN** said he understands that money from recreational purposes going to the school trust clearly establishes that recreation has value, and that value should be protected and/or enhanced.

REP. ELLISON said he cannot see a more reasonable way to obtain market value for tracts than competitive bidding.

Mr. Peterson said the bidding process benefits the school trust because it generates more money. Fees for school trust have not been ignored in the bidding process. The livestock industry would probably support a competitive bidding process for recreational rights, although the recreational industry probably would not. A lessee's preference right is a different subject. **REP. COHEN** said this may result in closing off many tracts into game preserves. The will of the legislature will probably be that all state lands be available to all Montanans for recreational purposes, as long as it does not degrade other values which are necessary to maintain funding for the school trust.

Mr. Sihler explained changes to the bill draft. **Exhibit 1** Section 13, page 13-14, changes the fee from \$10 to \$5, and also changes the distribution of that fee from \$6 and \$4 to \$3 and \$2.

Mr. Peterson asked whether putting a stamp on the conservation license would be a better method than selling a separate access card. **Pat Graham, Fish, Wildlife and Parks Commission**, said the license agents could sell a separate license, and more information on the number and form of the access card is needed before a cost estimate can be made. If the card is to be

distributed by a license agent, 50 cents/card goes to the agent. The advantage of having a conservation license as a prerequisite to having an access stamp is that the conservation licenses already have a number and system; the disadvantage is some people may see the cost of the conservation license (\$4) as prohibitive, and consequently will not buy an access stamp. **REP. ELLISON** said the objective isn't how many stamps the state sells, but how much money it can raise.

John North, DSL, and Mr. Sihler discussed numerical changes to the form of the bill.

REP. BROWN said the fee is now \$5.50, not \$5; should 25 cents be taken out of each of the subsection A and B accounts to make up the 50 cents difference? **George Schunk, Department of Justice,** said that could lead to a diversion problem; as the bill is currently drafted, all \$3 (which represents the "value" of the recreational experience) should go into the school trust fund. The 50 cents goes to the dealers, specified in subsection 4B. **REP. BROWN** said to leave the fee as it stands.

Mr. North said the first sentence of the first paragraph of section 14 is where the question of whether the civil penalty applies to the lessee as well as the recreationalist should be addressed. The civil penalty is imposed for violation of the rules; currently, the bill does not state that the rules must allow access, and therefore, the rules could be adopted without actually authorizing access. To ensure the rules authorize access, and define "unauthorized access" with regards to a civil penalty, the first sentence should be amended to "the board shall adopt rules authorizing and governing the recreational use..." **Mr. Schunk** said this was acceptable.

Mr. Peterson said allowing emergency closure (subsection 2) only after notice and hearing, as the first draft did, does not seem practical. That has been changed in this draft.

REP. FAGG said "growing crops and livestock" should be added to 3B for clarification. **REP. BROWN** asked whether cases in which the lessee has one cow on a tract would be allowed. **REP. FAGG** said that would be up to the land board to decide.

Mr. Peterson said "farm steads" should be called "agricultural buildings, structures and facilities" in subsection 3A (blanket closures) as well as in the statement of intent. Many state leases have buildings on them; subject to the rules of this bill, if the building is significant for production, the lessee might go to the state land board and request closure provision for the area where the buildings are. **Mr. Casey** said DSL licenses some farm buildings, such as granaries, and asked whether only those buildings owned by the state are addressed. **Mr. Peterson** said all agricultural buildings on state lands are addressed. Categorical closures of all state lands with buildings on them are not desirable; those closures should be taken care of on a

case-by-case basis. **Mr. Schunk** said an additional subsection under section 5 would rectify that problem.

Mr. Peterson said closure for livestock is also reasonable; a lessee with a herd should not need to petition the board to protect the herd area. There needs to be some protection for the lessee in cases of livestock grazing on state lands. **Mr. Schunk** asked how the problem of moving herds would be addressed, since closures usually mean closing off a specific geographical region for a specific period of time. A separate rule for limiting recreational access where such use will interfere with the presence of livestock should be adopted, but there should not be blanket closures of state lands due to livestock. This creates a new subsection 7; the subsequent sections should be renumbered accordingly. **REP. BROWN** said that will allow the land board sufficient flexibility.

REP. BROWN said in Wyoming, if a lessee wants to close lands to move a herd, s/he sends a postcard telling the DSL what day or week the herd will be moved. **Mr. Schunk** said there should be a general rule that would apply no matter where the livestock are; this is why the Board of Land Commissioners will ultimately make the specific rule.

Mr. Schoonen said the time at which the recreationalist is to make a "reasonable effort to contact lessee" would be an ideal time to find out which of that lessee's lands had livestock on them.

Mr. Peterson said he is concerned about management. There should be a way for lessees to verify that people on their state land have a permit. The recreationalist should be required to show a permit or stamp; there are possible civil problems, but the lessee must be afforded some security. The recreationalist should be obligated to contact the lessee, not merely to make a "reasonable effort" at contact. **Mr. Schoonen** said there are some out-of-state ranchers who own 10 or more ranches in Montana and who are never on their property. These people are impossible to contact.

Mr. Schunk said two issues are being addressed: the responsibility of the recreationalist to give prior notice, and the right of a private citizen to request identification from another private citizen. This is legally problematic; a private citizen cannot "tarry and frisk;" even law enforcement officers are quite limited in that respect because of the Fourth Amendment. Enforcing the permit requirement will be an administrative nightmare for wardens; however, a private citizen cannot be given law enforcement powers at whim. **REP. ELLISON** said the card should be displayed on the vehicle, which would take care of most recreationalists. **Mr. Schunk** said there are many state lands that are inaccessible by car. **Mr. Schoonen** said when the recreationalist makes contact with the lessee, s/he could also give the lessee the number of the recreation permit;

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this would give the lessee at least nominal protection.

Mr. North presented amendments regarding block management to Section 15. **Exhibit 2** Renumbering is necessary. DSL needs authority to restrict access in accordance with block management programs administered by the Fish, Wildlife and Parks Department. This would replace language in Subsection 1. The new section (now Subsection 8) will give DSL authority to administratively assess a civil penalty. This replaces the current language which requires the department to go to court to assess civil penalties. At the close of the administrative procedure proposed by this new section, the citizen could go to court if s/he didn't agree with the outcome of the procedure. This section applies to both recreationalists and lessees.

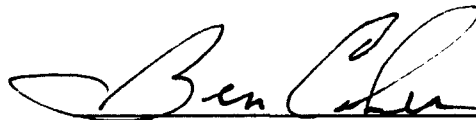
Mr. North explained the fine addressed in Subsection 2 of Section 15. The recreationalist is liable for fires to the same extent as the lessee; s/he is liable for negligently starting a fire, and is also responsible for not making reasonable efforts either to suppress it or to notify the Fire Suppression Agency. The current lease states that the lessee is responsible for fire suppression; the lessees are concerned that they will be responsible for any fires started by recreationalists on their leased lands. This language clarifies that the recreationalists will also be held responsible.

Mr. Jacobson said language should be inserted into Section 16 requiring the recreationalist to provide identification to the lessee. **Mr. Schunk** said "identifying the recreational user," should be inserted after "purposes of." This section is patterned after current statutes on big game hunting, as is most of the bill. And, as with big game hunting, if the recreationalist goes onto private property without permission, the recreationalist is guilty of trespassing whether s/he knew the property was private or not.

Mr. Jacobson said the problem of high-density use is addressed in three ways. 1) Special use permits 2) Subsection 14-A, which states DSL (not the lessee) can close land on a case-by-case basis if recreational use becomes too heavy 3) Continued damage to property improvements by heavy recreational use.

ADJOURNMENT

Adjournment: 1:00 PM



BEN COHEN, Chair



JULIA TONKOVICH, Secretary

BC/jmt

EXHIBIT 1
DATE 3/14/91
HB Subcomm. on
State Lands
Access

DRAFT

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COMPROMISE BILL PROVIDING RECREATIONAL ACCESS TO STATE LANDS

[Including Amendments discussed Wednesday, March 13, 1991]

STATEMENT OF INTENT

(1) A statement of intent is required for this bill because [section 14] requires the board of land commissioners to adopt rules to implement the provisions for recreational use of state lands established by this bill. Consistent with the provisions of this bill, it is intended that public recreational use of state lands be accomplished to the fullest extent possible. It is acknowledged that certain state lands will merit closure from public recreational use due to considerations including, but not limited to the presence of growing crops and livestock, and the proximity of dwellings and agricultural farmsteads. Nothing in the bill authorizes or purports to authorize trespass on private lands to reach state lands.

(2) This bill requires the board to adopt rules governing the actions of the recreational user of state lands. These rules will address protection of the resource value, compensation for damage to improvements, criteria of closure, restrictions upon certain recreational activities, and where requested by any surface lessee, provision for the recreational user to make reasonable effort to provide prior notice of the type and extent of the recreational use contemplated.

(3) [Section 19] authorizes the board to adopt rules for weed control activities. It is the intent of the legislature that the board establish a procedure whereby weed infestations on state lands that are attributable to recreational access are controlled or eradicated. Examples of programs that fulfill this intent include:

- (a) a departmental weed control program;
- (b) payments for weed control activities; and
- (c) payments to county weed boards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-8-504, MCA, is amended to read:

"19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or moneys distributed under 3-10-601(4), all such collections are statutorily appropriated to the account until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 2. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising

from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties of the board set forth in subsection (1) that the people are entitled to use state lands for general recreational purposes to the extent the trusts are compensated for the value of the recreation.

~~(2)~~ (3) When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser.

Section 3. Section 77-1-203, MCA, is amended to read:

77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing

needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) Multiple-use management of state lands includes provision for general recreational use, as defined in 77-1-101, [See Section 20 below] including those lands that are leased primarily for other purposes. General recreational use is limited to legally accessible state lands, as defined in 77-1-101, [See Section 20 below] that have not been closed to some or all recreational uses in accordance with rules promulgated under [section 14].

(4) The department shall include in all new or renewal leases and licenses a provision providing that these lands are not to be closed at any time to the uses of leased public for approved, general recreational purposes without the advanced written permission of the department."

Section 4. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses

other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

Section 5. Section 77-1-402, MCA, is amended to read:

"77-1-402. Basis for classification or reclassification. (1)

The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs."

Section 6. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and the privilege to hunt, fish, or trap within this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than \$500 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than \$300 or more than \$1,000, imprisoned in the county jail for not more than 6 months,

or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than \$200 or more than \$600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than \$50 or more than \$200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be

imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than \$500 or more than \$1,000.

(3) A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later.

(4) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 7. Section 87-1-502, MCA, is amended to read:

"87-1-502. Qualifications, powers, and duties. (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish and those persons who make recreational use of state lands for hunting and fishing, as defined in 77-1-101, have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection."

Section 8. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property - wardens as ex officio fire wardens. (1) It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), and [Sections 13 and 16] on private lands being used for recreation purposes of hunting and fishing and to act as ex officio fire wardens as provided by 77-5-104.

Section 9. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) Except as provided in subsection (6), all ~~All~~ money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsection (6), all ~~All~~ money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the

manner, method, and amount to those uses that do not result in such violation.

(6) All money collected or received from fines or forfeited bonds for the violation of [Section 13], [Section 16], or 87-2-109, must be deposited as follows:

(a) 50% in an account for use by the department of fish, wildlife, and parks for the enforcement of [Section 13], [Section 16] and 87-2-109; and

(b) 50% in the State Lands Recreational Use Fund established by [section 17] for use by the department of state lands in the management of state lands."

Section 10. Section 87-2-109, MCA, is amended to read:

87-2-109. Carrying and exhibiting license. NOTE:

SUBSTANCE OF THIS SECTION AMENDED INTO OTHER SECTIONS; SECTION NUMBER TEMPORARILY MAINTAINED TO KEEP INTERNAL REFERENCES CONSISTENT -- P. Sihler

Section 11. Section 87-2-201, MCA, is amended to read:

"87-2-201. Wildlife conservation license prerequisite for other licenses. Except as provided in 87-2-803(5), it is unlawful for any person or persons to purchase any hunting, fishing, recreational use, or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

Section 12. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application -- stamp attachment -- fee -- expiration. (1) A wildlife conservation license shall be sold upon written application. The application shall contain the

applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, recreational use, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of \$2.

(4) Licenses issued shall be void after the last day of February next succeeding their issuance.

NEW SECTION. Section 13. Stamp required to use state lands for recreational purposes - Penalty.

(1) It is unlawful for any person 12 years of age or older to use state lands as defined in 77-1-101 for any recreational purpose without a wildlife conservation license, obtained pursuant to 87-2-202, that bears a recreational use license stamp purchased from the Department of Fish, Wildlife, and Parks.

(2) A person shall, upon request by a peace officer or fish and game warden, present for inspection his recreation use stamp.

(3) A violator of subsections (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50.00, or more than \$500.00, imprisoned in the county jail for not more than 6 months, or both.

(4) The fee for the recreational use license stamp is \$5. The fee is based upon:

(a) a \$3 charge as the value of one years' recreational use of state lands; and

(b) a \$2 surcharge for the administrative costs of providing recreational access to state lands and the maintenance of a State Lands Recreational Use Fund pursuant to [Section 18].

(5) All monies received by the Department of Fish, Wildlife, and Parks from the sale of recreational use licenses shall be credited as follows:

(a) proceeds collected under subsection (2)(a) shall be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts; and

(b) proceeds collected under the surcharge of subsection (2)(b), less \$.50 per license to be returned to the license dealers, shall be deposited in State Lands Recreational Use Fund established by [section 17] for use by the Department of State Lands in the management of state lands open to recreational use.

NEW SECTION. **Section 14. Board to prescribe rules for recreational use of state lands.** (1) The board shall adopt rules governing the recreational use of state lands allowed under 77-1-203. Rules adopted may not impair Block Management agreements.

(2) Rules adopted under the authority of this section shall address the circumstances in which the board may close legally accessible state lands from recreational use. Such action by the board may be taken upon its own initiative or upon the application of any individual, organization, corporation or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing, except where the department of state lands is acting under rules adopted by the board for an emergency closure. Closed lands shall be posted by the lessee at customary access points with signs provided, or authorized, by the Department of State Lands.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

- (a) cabin site and home site leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.

(4) The board shall adopt rules providing an opportunity for any individual, organization, or governmental agency to petition

the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for reasons including, but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) repeated damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection; or

(f) noxious weed control;

(5) Rules adopted under this section may impose restrictions upon recreational activities including the discharge of weapons, camping, open fires, and vehicle use. Motorized vehicle use by recreationists on state lands shall be restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

(6) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in [section 20], shall be prohibited on state lands unless it occurs under the provisions of a recreational special use license.

(7) The violation of rules adopted by the board pursuant to this section subjects the violator to payment of a civil penalty of up to \$1,000 for each violation. The board shall adopt rules establishing a procedure enabling the department to initiate a civil action for the collection of penalties. Civil penalties collected under this subsection are to be deposited as provided in [Section 9, subsection 6].

NEW SECTION. Section 15. Liability of the State of Montana and the lessee. (1) The provisions of 70-16-302 limiting the liability of a landowner or his tenant for the recreational use of property apply to the State of Montana and any lessee of state lands used for recreational purposes.

(2) The lessee is not responsible for the suppression of, or damages resulting from, a fire on his leased land caused by a recreationist, except that a lessee that observes a fire caused by a recreationist shall make reasonable efforts to suppress the fire, or report it to the proper fire fighting authority.

NEW SECTION. Section 16. Prior notification to the lessee of recreational use - Trespass - Penalty.

(1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon the respective leasehold, the lessee shall post, at customary access points, signs provided, or authorized, by the department. The sign shall set forth the lessee's name, or agent, address, and telephone number. Where state land is so posted recreational users shall make reasonable effort to contact the lessee or agent for purposes of minimizing

impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Where property is posted in accordance with subsection (1), and adjacent private property is owned by the lessee of state lands, every recreational user of state lands must have obtained permission of the lessee, or agent, before entering the adjacent private property owned by the lessee. Entry without such permission is an absolute liability offense punishable as a misdemeanor. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than \$50.00, or more than \$500.00, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post for trespass in accordance with § 45-6-201, MCA.

NEW SECTION. **Section 17. State Lands Recreational Use Fund.**

(1) There is created a state special revenue fund, the State Lands Recreational Use Fund, with moneys received from the recreational use surcharge established by [Section 13], moneys received from the imposition of fines under [Sections 9, 13 and 16], and moneys recovered from civil penalties imposed pursuant to [Section 14].

(2) Money deposited in the State Lands Recreational Use Fund may be used by the Department of State Lands for the following purposes:

(a) compensation for the damage to the improvements of leases which has been proven to be caused by recreational users pursuant to [Section 18];

(b) assistance in weed control management necessitated by the provision of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) to administer and manage the implementation of recreational use of state lands.

NEW SECTION. Section 18. Compensation for damage to improvements.

A lessee may apply to the department for reimbursement of documented costs of repair to improvements damaged by recreational users of state lands. Such application must include an affidavit by the applicant-lessee setting forth the nature of the loss, allegations and proof supporting the involvement of recreational users, and documentation of repair costs. Upon review of the application, supporting proof, and additional investigation as required, the department shall either grant, modify or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section shall be made from the State Land Recreational Use Fund established by [Section 17] and the liability of the department for damage payments is limited to the existing balance of the fund. Claim applications are to be considered in the order they are received.

NEW SECTION. Section 19. Weed Control Management.

(1) The department shall establish a weed control management program for the control of noxious weeds proven to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program which may include direct compensation for noxious weed control activities, or participation in district and county weed control projects, or department-initiated weed control activities.

(2) Funding for this program shall come from moneys deposited in the State Lands Recreational Use Fund pursuant to [Section 17].

NEW SECTION SECTION 20. Section 77-1-101, MCA is amended to include the following definitions:

(5) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(6) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, nature study, photography, bird watching, water skiing, horseback riding, winter sports, viewing or enjoying historical or scenic sites, and such other activities determined by the board to be compatible with the use of state lands.

(7) "Legally accessible state lands" means state lands that can be accessed via public road, right-of-way, or easement, via public waters, via adjacent federal, state, county, or municipal land if such land is open to public use, or via adjacent private land if permission to cross such land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

NEW SECTION. Section 21. Codification instruction.

Sections 13 through 20 are to be codified as an integral part of Title 77, Montana Code Annotated.

NEW SECTION. Section 22. Severability.

If a part of [this bill] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this bill] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 23. Effective Date.

[Sections 14 and 23] shall be effective upon passage and approval. All other sections are effective October 1, 1991.

Exhibit 2

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(5) Rules adopted under this section may impose restrictions upon recreational activities including the discharge of weapons, camping, open fires, and vehicle use. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands shall be restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

(7) ~~The~~ For violation of rules adopted by the board pursuant to this section, the department may assess subjects the violator to payment of a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, Chapter 4, part 6 establishing a procedure enabling the department to initiate a civil action for the collection of penalties. Civil penalties collected under this subsection are to be deposited in the State Lands Recreational Use Fund established in [Section 17].

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NEW SECTION. Section 17. State Lands Recreational Use ~~Fund~~ Account.

(1) There is created a in the state special revenue fund, a special account designated the State Lands Recreational Use Fund, account. ~~with moneys~~ Moneys received from the recreational use surcharge established by [Section 13], moneys received from the imposition of fines under [Section 8], and moneys recovered from civil penalties imposed pursuant to [Section 14] must be deposited in the account.

(2) Moneys deposited in the State Lands Recreational Use Fund account are statutorily appropriated, as provided in 17-7-502, and must ~~may~~ be used by the Department of State Lands for the following purposes: