MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 1, 1995, at 3:00 PM

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Committee Business Summary:
Hearing: HB 274, HB 263, HB 381, HB 162
Executive Action: None

(Tape: 1; Side: A)

HEARING ON HB 274

Opening Statement by Sponsor:

REPRESENTATIVE DOUG WAGNER, HD #83, HUNGRY HORSE, told the committee he was introducing HB 274 to assist the Department of State Lands (DSL) in managing its numerous tracts of landlocked trust lands for optimum return **(EXHIBIT #1).**

Proponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, said professional foresters employed by timber companies and DSL field foresters had pointed out that DSL had no viable way to capture timber revenue from many sections of school trust land which are landlocked by private ownership.

He said no one intended to usurp the rights of private property owners who own or lease lands adjacent to timbered school trust lands. The bill stated that in cases where private landowners were willing to grant access for a limited timeframe, the department staff could negotiate a limited timber sale without going through the full MEPA process. Full fair market value would still be secured for timber sold, even though competitive bids would not be solicited. The Bureau of Land Management currently uses a similar system.

Ed Egan, Brand S Lumber Company, Townsend, told the committee he was a professional forester and supported HB 274 because it would give DSL the flexibility needed to properly manage landlocked timber **(EXHIBIT #2).**

George Bailey, President, Montana Association of School Superintendents, supported the bill because his organization felt HB 274 would lead to sustained yield of timber from school trust lands.

Richard Harwood, said there wasn't much timber in Toole County but he had some experience with state leases and was in favor of the bill. If the state's purpose was maximum income on forest land, that land should probably be turned into 5-acre cabin sites **(EXHIBIT #3).**

Dan Pittman, Forest Resources of Montana, said he worked with landowners statewide on forest properties and he supported HB 274.

Opponents' Testimony:

Stan Frasier, Helena, objected to the provision in the bill that would exempt sales from MEPA requirements. He did not object to a shorter timeframe to meet those requirements, however.

Steve Kelly, Friends of the Wild Swan, opposed the bill because it would establish bad public land policy and set a dangerous anti-environmental precedent **(EXHIBIT #4).**

Janet Ellis, Montana Audubon Legislative Fund, was also concerned with the MEPA exemption. Currently salvage sales have to go through MEPA compliance, but in emergency situations that compliance only involves a one-page letter explaining what was done and why. It provides a tracking process.

John Gatchell, Montana Wilderness Association, agreed with **Janet Ellis** on the MEPA exemption in regard to emergencies, as he felt they were being properly treated at the present time.

Debby Smith, Sierra Club, opposed the bill because of the MEPA exclusion.

Jim Emerson, Helena, said several things about the bill concerned him. He said he had property adjoining a school section and he might want to sell 10-acre parcels. His property has good timber. If the state decided to clearcut its timber, **Mr. Emerson's** property value would be depreciated. He asked if that contingency were addressed in the bill.

Questions From Committee Members and Responses:

SENATOR VIVIAN BROOKE asked why the sponsor had not signed the fiscal note.

REPRESENTATIVE WAGNER replied that he not only neglected to sign it, he hadn't even brought it with him. He recalled that he had been uncertain how DSL had arrived at some of the values on the fiscal note and had been referred to the DSL Missoula office. He said they told him timber values change frequently - nothing was locked in and by the time the session was over all costs could be changed so there was no need for him to sign it.

SENATOR BROOKE asked if that meant that he would sign it.
REPRESENTATIVE WAGNER responded that he would.

SENATOR LARRY TVEIT, SD #50, SIDNEY, asked if the timber cutting referred to in the bill would be clearcutting. He asked if there would be control over clearcutting.

REPRESENTATIVE WAGNER said that would be up to DSL. He said the bill was meant to grant access and management capabilities to the department.

SENATOR WILLIAM CRISMORE, SD #41, LIBBY, asked **Bud Clinch** how he would handle a negotiated sale.

Bud Clinch, Commissioner, DSL, said values are determined by using a three-year average of sales. In the case of a specific case where access would be granted by a landowner, they would look at documented stumpage prices of comparable sales and monthly reports. Information on full market value is readily available through his department. It could be provided to anyone requesting it.

SENATOR BROOKE asked about fair and full market value and asked if line 30 should refer to fair or full market value.

MR. CLINCH said the two words are used interchangeably, but relative to their fiduciary requirement for the school trust, the proper term was "full" market value.

SENATOR BROOKE asked **Mr. Bailey** about the fact that there was no mention of additional money coming into schools through this bill. She asked why school superintendents were in such strong support of the bill.

Mr. Bailey replied that he was glad he had been asked that question because it would save him a trip. HB 201 was expected to be heard in several days, and that bill would fund technology for the students of Montana. He said **Mr. Regan** had commented that schools needed help. The legislature had given no extra funding for schools at the time schools should be retooled. If an increased monetary yield from state forests should be realized, HB 201 would assist the school children of Montana.

SENATOR BROOKE asked if the revenue shown on the fiscal note were intended for technology. **Mr. Bailey** said HB 201 would mandate that any increased revenue above 1994 levels would go into a technology fund that would be provided to each district in the state. The projection was around $12 million/year. He thought the state was obligated to either sell the landlocked land or manage it through a bill like HB 274.

CHAIRMAN GROSFIELD asked if DSL were involved in preparation of the fiscal note. **Mr. Clinch** replied that they were. **CHAIRMAN GROSFIELD** said Item 8 of the fiscal note referred to emergencies and he didn't see the definition of emergency in the bill or in MEPA. He asked where it came from.

Pat Flowers, DSL, said that "emergencies" were in the original language of the bill and DSL felt it should be interpreted and it was put in quotes to signify it was a DSL definition.

CHAIRMAN GROSFIELD asked how the assumed annual 1.3 million board feet were determined in Item 3. **Mr. Flowers** said they looked at potential harvest levels that would meet the criteria of "emergency." He said in most instances, salvage operations won't be emergencies.

CHAIRMAN GROSFIELD asked **REPRESENTATIVE WAGNER** about the projected 1 million board feet target in the bill that could be included in an expedited sale, while current law is 100,000. He asked why the total was so high. **REPRESENTATIVE WAGNER** said the department could answer that question better than he.

MR. CLINCH said he assumed it was a figure projected to reflect existing situations. Most emergency situations are substantially smaller than that. Emergency rules were generally not used in larger situations because the department felt that other resources might be impacted and they would do a complete EA.

SENATOR GROSFIELD said he would think there should be a minimum threshold where the department would do some type of programmatic EA. He asked if **Mr. Clinch** could estimate what that minimum number would be. **Mr. Clinch** said he thought there would be instances where small sales of 50,000 board feet, if not done properly and under the supervision of professionals, could result in considerable impacts and large, well supervised sales could result in considerably less impact. The sale of 1 million board feet would probably trigger all the regular MEPA procedures.

Closing by Sponsor:

REPRESENTATIVE WAGNER thanked the committee for a good hearing. HB 274 would not allow DSL to circumvent the Montana Streamside Management Act or the Endangered Species Act or state water quality laws. It would merely give DSL another tool for management of landlocked school trust lands. It would not prescribe clearcuts.

HEARING ON 381

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, HD #93, WINIFRED, told the committee his bill would amend the permitting and enforcement procedures for the metal mine reclamation laws. Section 1 would not allow the Pony mill (if reopened) to be grandfathered.

He said the permitting process had become so complex that he felt changes should be addressed (Section 2).

Section 3 was meant to correct a perceived problem with mine reclamation inspections.

Section 4 would raise the maximum penalty for violations from $1000 to $5000.

Section 5 dealt with suspension of permits and established a procedure for administrative hearings.

The bill had good, broad-based support in the House.

Proponents' Testimony:

Bud Clinch, Commissioner, DSL, said **REPRESENTATIVE KNOX** introduced this bill at the request of his department in response to a Legislative Audit Report. Additional language in the bill adds clarification to existing law.

{Tape: 1; Side: B}

Jeff Barber, Northern Plains Resources Council, supported HB 381, but said the audit of the Hard Rock Bureau had stated the timeframes in existing law forced the bureau to devote all its

resources to permitting, inspections and enforcement. This bill would help, but it would not entirely solve the problem.

He pointed out that while reviewing HB 162 he noted the absence of any public participation in the permitting process for hard rock mines except the MEPA review. He thought that process could be improved by adding an informal public conference.

Jim Jensen, Montana Environmental Information Center, said the committee had heard all the reasons to support the bill, and he thought it did show that something would result from the Legislative Audit. He thought mine permitting would benefit from the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REPRESENTATIVE KNOX thanked the committee for a good hearing. He said he was concerned about the future of responsible mining in Montana, and the general public should have confidence in the process.

HEARING ON HB 162

Opening Statement by Sponsor:

REPRESENTATIVE LILA TAYLOR, HD #5, BUSBY, told the committee she carried HB 162 at the request of the DSL. The bill would simply change the definition of prospecting to reflect the minimum requirements of the Federal Coal Reclamation Law.

The second and most important part of the bill would change the timeframes for renewing existing coal mining permits. The present permitting time is insufficient to deal with permitting and any requested public hearings. Under present law, DSL issues temporary permits, which would be open to legal challenge.

She said changes to existing law were intended to protect the mines as well as the environment.

Proponents' Testimony:

Bud Clinch, Commissioner, DSL, said the two main purposes of the bill were to make appropriate changes in Montana statutes to gain

compliance with the federal regulations that were identified in a deficiency letter from the Office of Surface Mining.

The second purpose was changing timeframes for renewal of a 5-year permit, resulting from situations recently experienced by the department. The proposed change would allow sufficient time for public involvement.

Jeff Barber, Northern Plains Resources Council, agreed with **REPRESENTATIVE TAYLOR** that the most important part of the bill was the permitting timeframe change. Twice in the last three years his organization had encountered a problem with temporary renewals, and he urged the committee to concur in the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REPRESENTATIVE TAYLOR said that even though the mining industry had not attended the hearing she had considerable contact with the mines in her area concerning this bill and she thought they felt they had a good working relationship with DSL and supported this bill.

HEARING ON HB 263

Opening Statement by Sponsor:

REPRESENTATIVE AUBYN CURTISS, HD #81, FORTINE, said she was pleased to carry this bill that would clarify the trust responsibilities of the Board of Land Commissioners **(EXHIBIT #5).**

Proponents' Testimony:

George Bailey, Montana Association of School Superintendents, told the committee he was a native Montanan, educated entirely in Montana and loved this state. His organization supported the bill because it states what should have been stated many years ago. The trust should be managed in a responsible manner. There was no other choice. Every environmental law in Montana would be followed under this bill.

John Hebnes, Superintendent of the Seeley Lake Elementary School, said he supported the bill because it would increase money for the school trust **(EXHIBIT #6).**

Cary Hegreberg, Montana Wood Products Association, supported the bill because it would provide much needed clarification on the management of state school trust lands.

Ed Regan, Brand-S Lumber, Townsend, supported the bill because it would provide that school trust lands be managed for the benefit of public schools **(EXHIBIT #7).**

John Youngberg Montana Farm Bureau, supported optimizing return on state school trust lands and urged support for HB 263.

Opponents' Testimony:

John Gatchell, Montana Wilderness Association, opposed the bill as being anti-public and anti-multiple use **(EXHIBIT #8 & 8A).**

Steve Kelly, Friends of the Wild Swan, opposed the bill because it would not benefit the long-term health and productivity of the state forests or the educational system **(EXHIBIT #9).**

Tom France, Attorney for the National Wildlife Federation, opposed the bill because he thought the language of the bill was ambiguous and the state needs some discretion in the management of state school trust lands.

Allen Rollo, Montana Wildlife Federation, opposed the bill because it did not consider the bigger picture of the state school trust lands.

{Tape: 2; Side: A)

Janet Ellis, Montana Audubon Legislative Fund, also opposed the bill.

Jim Jensen, Executive Director, Montana Environmental Information Center, agreed that it was a bad bill.

Stan Frasier, Prickly Pear Sportsmen's Association, Helena, opposed the bill because it appeared to him that the bill would favor the timber industry.

Jim Emerson opposed the bill because cutting timber on state lands adjoining his property would decrease his property values; also, he liked forests.

Questions From Committee Members and Responses:

SENATOR CRISMORE asked what happened to the increase in the state lands recreational use fee. **Mr. Clinch** said the task force on

use of state lands had recommended a $20 fee for residents and a $50 fee for nonresidents; his department took that recommendation to the State Land Board and the board cut the recommended fee to $10. Hearings were held, the results reported back to the board, and at the last meeting of the board action on the fee increase was postponed.

SENATOR CRISMORE asked **Mr. Rollo** if the fair market value of a day's hunting on state lands had been established, and how his group would feel about raising the price.

Mr. Rollo said he didn't know what the Wildlife Federation would agree was a fair price.

SENATOR CRISMORE asked if the Wildlife Federation had opposed a $25/day fee at any public meetings. **Mr. Rollo** said they did oppose it because they thought grazing fees and cabin site fees should be raised commensurately.

SENATOR BROOKE asked about **Mr. Kelly's** statement concerning the programmatic EIS that had been delayed. **Mr. Flowers** said he hadn't had a chance to read **Mr. Kelly's** statement but did not agree that the EIS was purposely delayed. He said six different alternatives for the management of trust lands had been developed.

SENATOR BROOKE asked **Mr. North** if sales were locked in, as timber prices fluctuate. **Mr. North** said there was a case in Washington where a timber sale was let and the price of timber subsequently dropped. The Washington legislature passed a law allowing their land board to forgive the values in the contract. However, using the school trust concept, the Supreme Court of the State of Washington held that was an unconstitutional act, as the state, acting as trustee, was bound to obtain the contracted value. He said he thought that would also be the result in Montana, whether or not this bill passed.

CHAIRMAN GROSFIELD asked **Mr. Kelly** if he had meant the Department of State Lands had an agenda for the complete liquidation of old growth state forests. **Mr. Kelly** said that appeared to be the current direction.

CHAIRMAN GROSFIELD asked **Commissioner Clinch** to respond to that statement. **Mr. Clinch** said there was no agenda along those lines. The harvest rate had varied considerably over the last 10 years. At no time in the history of state forests has the harvest rate approached the sustained yield level.

CHAIRMAN GROSFIELD said he had originally thought the bill didn't do much because he thought the department and board would act very much the same with or without this bill, but the hearing indicated the bill would do a lot.

Mr. Clinch said the Enabling Act governed the department's actions. The bill was not specific to the timber industry, but spanned a much broader horizon including grazing and agricultural activities. Timber sales are just one aspect of DSL's management duties.

CHAIRMAN GROSFIELD said **Mr. Clinch** had stated the department was directed by the Enabling Act to consider eight worthy objects. **Mr. Clinch** said the eight objects have always been considered to mean the eight trusts for granted land.

CHAIRMAN GROSFIELD said there were some recent cases where "other worthy objects" included other things and multiple use had evolved from that interpretation. The judiciary had expanded the interpretation of "other worthy objects" and HB 263 was aimed at returning to the traditional interpretation, which was the way the Department of State Lands had always operated.

Mr. Clinch commented that HB 263 did not reduce multiple use; it simply stated that management purposes on school trust lands should be for purposes outlined in the Enabling Act. State lands could be managed for wildlife or recreation, but compensation would have to be received for the legal beneficiaries. There are numerous opportunities to blend all uses together on a given site.

CHAIRMAN GROSFIELD asked **Mr. Clinch** if he was saying that the DSL would not use this bill to obtain a large short-term gain at the expense of the long-term value of the trust. **Mr. Clinch** said the department's management activities would be unchanged as a result of HB 263. Without the bill, increased litigation would probably result from people who wanted a different legal definition of "other worthy objects."

SENATOR JEFF WELDON, SD #35, ARLEE, asked **Mr. France** if he could explain his theory that the bill would actually invite litigation. **Mr. France** said he thought there was merit in **Mr. Clinch's** theory, but he thought the answer would go both ways. He said proponents of the bill had emphasized that the purpose of the trust was to produce revenue; he thought it held the potential for litigation when DSL recognized other uses. He thought the guiding principle on school trust lands was generation of revenue.

SENATOR TVEIT asked if state lands would be managed under the federal guidelines that state the Enabling Acts would preempt state laws and constitutions. **REPRESENTATIVE CURTISS** said that was true and other worthy objects would have to defer to the beneficiaries of the trust. However, the bill was not about selling state lands or harvesting timber. It merely reaffirmed what the Enabling Act says. People think the school trust lands are public lands and they should be managed for multiple use. The lands are unique and the entities mentioned in the Enabling Act own them.

Closing by Sponsor:

REPRESENTATIVE CURTISS said federal lands in Montana are subject to a multiple use mandate that has led to a virtual deadlock. If state school trust lands were managed under the same mandate, the result would be the same. The courts have upheld this concept.

ADJOURNMENT

Adjournment: 5:45 PM

LORENTS GROSFIELD, Chairman

THEDA ROSSBERG, Secretary
by Shirley Nevin

LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-1-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS			✓
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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HB 274

Introductory Comments of Rep. Wagner

Mr. Chairman, members of the committee, for the record, my name is Doug Wagner, House District 83. I am introducing this bill to assist the Department of State Lands in managing its numerous tracts of landlocked trust lands for optimum revenue to beneficiaries of those lands.

Particularly in Central Montana, the state owns many tracts of land which are totally surrounded by private lands, and are typically leased to ranchers for livestock grazing. Many of these tracts also have significant stands of unmanaged timber.

In some cases, this timber was not considered merchantable, or at least not highly desirable, so the Department didn't brother with it. However, with today's high timber prices, those isolated stands have become a valuable commodity. This bill is designed to provide some flexibility for the Department to manage to those landlocked sections which require easement across private lands. The bill also precludes an industrial timber land owner from gaining an advantage on state timber land which is surrounded by land owned by that same company.

The bill allows a private timber company to negotiate a timber sale with the state when the company is already operating on the adjacent private land. In many cases, the private landowner is willing to give the company access as long as crews are operating on his private land anyway. He has a contract which includes provisions for damages, accountability and so on. He may not be willing to grant access at some future date to a company he has never dealt with.

Current regulations require a full environmental review with public comment, and then a competitive bid for the timber. The timeframe for the analysis often precludes access being granted, and the landowner may only be willing to grant access to the operator currently on his own property. Thus, the Department is hamstrung in its ability to manage the landlocked section.

I think it should also be pointed out that quite often, the value of standing timber on these sections is significantly higher than the grazing value, which is the classified use of the land. Record high timber values can mean that harvesting a very small acreage can result in more revenue to the trust than 10 years of grazing fees on the entire tract.

Constitutionally, we are obligated to secure the full measure of value from these lands. This bill gives the Department the necessary tools to adequately manage these lands. Mr. Chairman, I urge a do pass recommendation, and reserve the right to close.

EXHIBIT NO. 1
DATE 3-01-95
BILL NO. HB-274

ACCESSING TIMBER RESOURCES ON "LANDLOCKED" TRUST LANDS

HB 274 does the following:

1) Allows Department of State Lands (DSL) to capture limited opportunity to generate timber revenue from isolated tracts.

2) Applies only when private landowner has already granted access to a timber purchaser.

3) Streamlines the environmental review process to accommodate limited time frame.

4) Ensures "full, fair market value" as mandated by statute and, the constitution.

5) Allows DSL to manage classified grazing lands for optimum productivity of timber and grazing capability.

HB 274 does not:

1) DOES NOT allow Department of State Lands (DSL) to circumvent the Montana Streamside Management Act, the Endangered Species Act or State Water Quality Laws.

2) DOES NOT allow DSL or the timber purchaser to avoid applying Voluntary Best Management Practices (BMP's). DSL currently has a 95% compliance rate.

3) DOES NOT diminish recreational values since the "landlocked" sections are inaccessible to the general public anyway.

4) DOES NOT lead to over harvesting because the bill simply expands discretionary authority of DSL professional foresters, it does not mandate timber harvesting.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3-01-95
BILL NO. HB-274

HB 274

SENATE NATURAL RESOURCES COMMITTEE

MR. CHAIRMAN, FOR THE RECORD, MY NAME IS ED REGAN AND I RESIDE IN TOWNSEND. I AM A PROFESSIONAL FORESTER WITH BRAND-S LUMBER CO., AND I SERVE ON THE TOWNSEND SCHOOL BOARD. I SUPPORT HB-274 IN BOTH CAPACITIES.

HB-274 GIVES THE DEPARTMENT OF STATE LANDS THE FLEXIBILITY IT NEEDS TO PROPERLY MANAGEE TIMBER ON LAND LOCKED SECTIONS WHILE GENERATING ADDITIONAL REVENUE FOR MONTANA SCHOOLS. THE CURRENT LAW IS TOO RESTRICTIVE AND RESULTS IN MANY LOST OPPORTUNITIES. SERVING AS A SCHOOL TRUSTEE HAS OPENED MY EYES TO THE FACT THAT OUR PUBLIC SCHOOLS ARE FACING BOTH REVENUE SHORTFALLS AND HIGHER COSTS. THE SUSTAINABLE HARVEST OF TIMBER FROM STATE LANDS SEEMS TO BE A REASONABLE SOLUTION TO OFFSET DECLINING EDUCATION DOLLARS. BESIDES, THE ADDITIONAL TIMBER GENERATED UNDER HB-274 IS NEEDED TO KEEP LOCAL MILLS RUNNING AND MONTANAN TAXPAYERS WORKING.

THROUGHOUT MY SEVENTEEN YEARS IN MONTANA'S FOREST PRODUCTS INDUSTRY I HAVE WORKED WITH HUNDREDS OF PRIVITE LANDOWNERS AND MOST OF THE PEOPLE FROM THE DSL. BASED ON MY OWN PERSONAL EXPERIENCE, I WISH TO RELATE A COUPLE OF EXAMPLES WHERE HAVING A LAW SUCH AS HB-274 COULD HAVE FACILITATED THE SALE OF MORE TIMBER AND YIELDED ADDITIONAL DOLLARS FOR THE TRUST.

My first example occurred in 1991 on Section 36, T7N R24E, Musselshell County. Our company had the timber contract on the Hougardy Ranch, which surrounded this school section. The landowner agreed to

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3-01-95
BILL NO. HB-274

FOR THESE REASONS AND THE LIKELYHOOD OF SIMILIAR SITUTATIONS IN YEARS TO COME, I STRONGLY SUPPORT HB-274 AND I URGE YOUR SUPPORT OF THE MEASURE. THANK YOU FOR THE OPPORTUNITY TO COMMENT.

ED REGAN
129 N. CHERRY
TOWNSEND, MONTANA 59644

give Brand-S free access to the State timber. We negotiated a small green slip sale with the DSL for the purchase of 70 mbf of sawlogs. Had the department not been constrained by the 100 mbf statutory limit, they could have harvested another 300 mbf from this section. Based on todays market that additional volume would have brought in another $30,000 to $60,000. Grant it, timber prices at that time were much lower, nevertheless these types of situations will continue to confront us in the future.

A similiar situtiom occurred in 1986 on school section 36, T6N R23E, located in Golden Valley county. DSL was contacted by Spring Creek Forest Products, of Judith Gap, wherein the company expressed an interest in purchasing the timber on that section. At the time Spring Creek was under contract with Vern Ballard for the harvest rights on his lands. Mr. Ballard agreeded to allow the company free access to remove the timber from the school section. Ballard surrounded the section on three sides. Subsequently, DSL cruised and prepared what looked like a very good sale. Because the volume designated for harvest exceeded the 100 mbf limit, DSL was required to advertise on the open market. Mr. Ballard was concerned about opening his lands to operators whom he did not know or would not have any contractual control over. The sale was delayed while DSL tried to prove a public access across one of Mr. Ballard's neighbors. Failing to secure open access, DSL was forced to negotiate with Ballard. During this time Spring Creek finished logging the Ballard property and had moved out of the area. The school timber was finally sold and logged. I visited with Mr. Ballard the other night and asked him if he had any problems resulting from that sale. He did say that "the parties who logged it were constantly leaving the gates open. Ballard later discovered he was short eight cow/calf pairs of which only six pair were ever recovered." In the final analyisis, both Ballard and I agree that this sort of problem could have been prevented had the timber been sold to Spring Creek, in which case, company had a contractual relationship with Ballard and was accountable to him for any problems or losses resulting from the timber harvest on state land.

IN THE PAST OUR COMPANY HAS ENCOUNTERED SIMILIAR PROBLEMS IN PARK, CHOUTEAU, AND GOLDEN VALLEY COUNTIES. IN ALL CASES DSL HAS DONE ITS JOB PROFESSIONALLY AND BY THE BOOK. HOWEVER, HAD THE DEPARTMENT BEEN ALLOWED MORE FLEXIBILITY UNDER THE LAW, I BELIEVE THEY COULD HAVE SOLD MORE TIMBER, GENERATED HIGHER RETURNS AND IMPROVED THE HEALTH OF OUR FOREST.

Comments on State School Trust Lands.

There is a problem with maximizing the amount or rate of return on State land. As a landlord, the State should act as a responsible person would be expected or required to act. If specific improvements would increase the long term return than the proper action for the state is to assist in funding or make adjustments to leases to insure that such improvements are done.

For example: On Forest land MAXIMUM ECONOMIC RETURN would probably require that all state leases be opened to cabin site development on a 5 or 10 acre basis. The NEXT MAXIMUM would be to encourage thinning of stands INCLUDING Green/Standing timber for firewood/pulping/chipping etc., which would increase the amount and shorten the time for economic logging. This would also increase the grazing potential for GAME animals as well as livestock increasing the potential AUM income and allowing larger numbers of out of state game license. Also the state as a landlord MUST share in the cost of control of noxious weeds.

On crop land leases, encouraging, by cost sharing, fertilizer and other crop enhancement programs an increased return could be expected. In most private leases once the landlord's share is 1/3 (one third) or more, expenses incurred that are improvments to the land are also equally shared.

On grazing leases, there are many lease units in Toole county and other places that were poor quality land in the first place. These units were either not homesteaded or the state ended up with the ground in lew of taxes etc. (Look at a map showing state land in Toole county that are NOT Sections 16 or 36 in each township.) There are specific, well proven actions that can be done to improve the amount of grass (or grain crops for that matter) that are can be raised on these units. Such practices as changes in fencing or improved water access, gouging, direct reseeding, fertilizing, breaking and seeding improved species of grass and/or legumes, spraying herbicides to remove specific problem plant species (sage brush, leafy spurge and knap weed are high on the list) or allowing greater flexibility in stocking rates or timing periods of livestock grazing to affect the plant population. Grazing sheep on leafy spurge areas and high cattle rates for a short time then allowing a rest period are examples of the latter.

The point is that all require higher initial costs or greater management effort. Private landlords (most at any rate), recognize these costs and either share in the cost of providing such improvements or adjust their leases accordingly. This is a two edged sword and I recognize that if such improvements are allowed that the returns received by the state on such improved leases should be equal to the returns received by private landowners and that rates per AUM, crop share or cash lease must be adjustable as well. The only fair way that I can see to accomplish this is for the state department of lands to have a series of three or four GRADES of land use and have varying lease rates to reflect these grades. This would require a land survey by range, crop and recreation specialists with plans to be

developed jointly with the lease holders. These plans would have to have timetables (and flexible ones at that) and funding provided as necessary.

IN MY OPINION, such funding would be of more LONG TERM benefit to the state than having some COAL TAX TRUST FUNDS in financial deposits. I recommend that a revolving credit fund of at least $10,000,000 (ten million) be established to aid leasees in implementing such practices. I look at this proposal as a means to improve the states image as a responsible land owner and as such the interest rate should be no higher than the rate of return on other state funds. This is in fact a subsidy but I view this AS NO DIFFERENT than tenure for TEACHERS whose JOBS YOU are trying to protect. Those individuals in any specific activity that is given state protection should be judged by the same criteria. There is NO DIFFERENCE between minimum wage and worker protection laws and lease holders preference or reduced rate allowances. EACH and EVERY such law should have a (by name) public listing of the benefitiaries. This also includes such things as HIGHER EDUCATION. I CAN SEE NO DIFFERENCE between the State EXPORTING A BUSHEL OF WHEAT AND A GRADUATE OF THE STATE UNIVERSITY SYSTEM.

IF MAXIMUM ECONOMIC YIELD IS THE GOAL THEN EVERYONE SHOULD BE GOVERNED BY THAT RULE.

Thank You for your time in reading this entire tirade.

Yours Truly
Richard T. (Tom) Harwood

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Galata, Mt. 59444
432-2778

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-01-95
BILL NO. HB 274

Friends of the Wild Swan
P.O. Box 5103
Swan Lake, Montana 59911

Montana Senator Lorents Grosfield, Chairman
Senate Natural Resources Committee
State Capitol
Helena, Montana 59620

February 28, 1995

Dear Chairman Grosfield:

On behalf of Friends of the Wild Swan, a non-profit conservation group based in Swan Lake, please accept the following comments on House Bill 274. On its face, HB 274 is a bill designed to benefit large landholders and timber processors, not Montana's school children. Squandering scarce environmental capital — our children's natural forest inheritance — for short-term industry profit makes no sense. We oppose HB 274.

These are **our** state forests. HB 274 is one of a series of bills, written by timber industry lawyers, that establishes bad public land policy and sets a dangerous anti-environmental precedent.

HB 274 is a thinly-veiled attempt to give lumber and pulp producers public resources at less than fair market value, at less than the cost of production — at taxpayer expense.

Section 3(a) refers to "cases of emergency due to fire, insect, fungus, parasite, or blowdown or in cases when the department is required to act immediately to take advantage of a limited access opportunity...." These are all normal occurrences found in the healthiest of forests. "Emergency" must be clearly defined to eliminate abusive discretion, especially if a 50 million board feet annual cut mandate is inacted (See HB 201) prior to a completed state-wide forest inventory and study.

Section 3(b) gives non-competetive, negotiated prices and exclusive rights to adjacent landowners. This section is a welfare clause for Montana's richest land barons and timber corporations. There are more appropriate alternatives to consider when access problems are legitimately identified as the limiting factor to sound timber management.

Section 3(c) is a full exemption from the environmental analysis and disclosure requirements of the Montana Environmental Policy Act (MEPA). This section also violates the statutory requirements of the The Enabling Act and Montana Constitution. An exemption from MEPA effectively returns school trust lands management to the

days of clearcut and environmental ruin of the 1960's. Lost is the scientific and economic knowledge of the past 30 years.

Commercially-sustainable yields of wood fiber should be based on site suitability standards utilizing the following criteria:

- minimum annual cubic feet per acre yield standards
- long-term economic benefit/cost analysis that includes non-cash value costs
- threshold standards for native fish and wildlife habitat
- soil and nutrient capability
- minimum old-growth habitat retention standard
- regeneration capability
- water quality standards

HB 274 violates the public trust. This attempt to weaken environmental laws and reduce protection of Montana's fish and wildlife habitat is out of touch with the public's desires. Unsustainable logging practices raped Montana's corporate forests. They ruined their forests, now they want to cut ours. I urge you not to give in to coroprate power and avarice.

HB 274, combined with HB 201and HB 263, its corporate companions, represent bills that destory big game habitat, native trout streams and old growth forests. HB 274 is fiscally unsound and environmentally destructive. You are creating a huge credibility problem for the 1995 Legislature if you pass this bill.

Thank you for the opportunity to testify in opposition to HB 274.

Sincerely,

Steve Kelly

Steve Kelly
Friends of the Wild Swan

proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided shall be deemed admitted by congress into the Union under and by virtue of this act on an equal footing with the original states from and after the date of said proclamation.

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two, and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the Union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the Union [illegible] states, and where such section, or any parts thereof, have been sold or

otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Cross-References

Management of school lands, Art. X, sec. 4, Mont. Const.
Disposition of income from lease of school lands, Art. X, sec. 5, Mont. Const.
School districts -- property, Title 20, ch. 6, part 6.

Case Notes

Operation and Effect: This is a general granting clause and shows clearly the interest of the Congress in the common schools of the newly admitted state. Texas Pacific Coal & Oil Co. v. St., 125 M 258, 234 P2d 452 (1951).

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising--tillable lands capable of producing agricultural crops for not less than ten dollars ($10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars ($5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale [illegible] deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall

available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

Compiler's Comments

Most Recent Amendment: This section was last amended by the act of June 30, 1967, 81 Stat. 106. This amendment was accepted by the State of Montana by sec. 1, Ch. 14, Sp. L. January 1992.

Previous Amendments: This section was previously amended by the act of April 13, 1948, ch. 183, 62 Stat. 170. This amendment was accepted by the State of Montana by Sec. 1, Ch. 18, L. 1949.

This section was previously amended by the act of June 25, 1938, 52 Stat. 1198. This amendment was accepted by the State of Montana by Ch. 8, L. 1939.

This section was previously amended by the act of May 7, 1932, 47 Stat. 150. This amendment was accepted by the State of Montana by Ch. 84, L. 1933.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.
Public school fund inviolate, Art. X, sec. 3, Mont. Const.
Public school fund revenue, Art. X, sec. 5, Mont. Const.
State university funds, Art. X, sec. 10, Mont. Const.
Administration and leasing of state lands, Title 77.

Case Notes

Leasing for Underground Storage:

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. St. Bd. of Land Comm'rs, 137 M 510, 353 P2d 331 (1960).

The 1953 amendment of 77-3-421 (formerly section 81-1702, R.C.M. 1947(part)) by Ch. 122, L. 1953, is not inconsistent with federal law. State ex rel. Johnson v. St. Bd. of Land Comm'rs, 348 US 961, 99 L Ed 750, 75 S Ct 524 (1955), reversing and remanding State ex rel. St. Bd. of Land Comm'rs, 128 M 462, 279 P2d 393 (1954), which had held that oil and gas leases issued under 77-3-421 (formerly section 81-1702, R.C.M. 1947(part)) as amended in 1953 for 20 years and "as long thereafter as oil and gas in paying quantities shall be produced" were not for a term of years and hence violative of section 11 of The Enabling Act.

Oil and Gas Leases: The amount bid over the minimum of 75 cents per acre as established in section 81-1703, R.C.M. 1947 (since repealed) is considered part of the rental and thus placed in the common school interest and income fund to be apportioned and distributed annually to the several school districts in the state as provided in Art. XI, sec. 5, 1889 Mont. Const. (substantially similar to Art. X, sec. 5, 1972 Mont. Const.). State ex rel. Dickgraber v. Sheridan, 126 M 447, 254 P2d 390 (1953).

Actions Arising Under Federal Law: The fact that the authority of the Legislature to enact certain statutes regulating oil and gas leases upon state lands is derived from The Enabling Act does not mean that a suit to enforce the state statute "arises under" the Constitution or laws of the United States, within the meaning of 28 U.S.C., §1331. Cranston v. Aronson, 124 F. Supp. 453 (D.C. Mont. 1953).

Operation and Effect: The Enabling Act restrictions apply to mineral rights on state lands. A lease of the mineral rights by the state for a period of 5 years, made in 1925, with options to renew, cannot run in total more than 20 years, since Congress in 1921 amended section 11 of The Enabling Act by the act of Aug. 11, 1921, 42 Stat. 158 which limited such leases to 20 years and the amendment was accepted by Montana in 1927 by Ch. 108, L. 1927. Texas Pac. Coal & Oil Co. v. St., 125 M 258, 234 P2d 452 (1951).

Does Not Prohibit United States From Condemning School Lands for Public Works: The Enabling Act, prohibiting the state from disposing of school lands except at public sale after advertising, does not prohibit the United States from condemning school lands in connection with construction of project in program of public works (National Industrial Recovery Act. Secs. 202, 203(a), 40 U.S.C., 402, 403(a)). US v. St., 134 F2d 194 (1951).

Act Not Objectionable as Against This Provision: Treating 77-3-430 (formerly section 81-1702(4), R.C.M. 1947) authorizing the state land board to enter into pooling agreements relative to state lands for the extraction of natural gas, not as a lease but as a sale of an estate or interest therein, the limitation of this section that such lands cannot be sold except at public sale after advertising, has application only where the land as a whole is sold, not merely an interest or estate therein, such as the gas or oil therein, is disposed of. Toomey v. St. Bd. of Land Comm'rs, 106 M 547, 81 P2d 407 (1938).

Disposition of School Land Grant Funds: Article XI, sec. 12, 1889 Mont. Const. (now Art. X, sec. 10, 1972 Mont. Const.), providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions and sections 11, 14, and 17 of The Enabling Act were held not to prohibit use for erection of normal school buildings of income from a land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. State ex rel. Blume v. St. Bd. of Educ., 97 M 371, 34 P2d 515 (1934).

Farm Loan Act Not in Conflict: The "primary" plan of the Farm Loan Act, providing for investment by State Board of Land Commissioners of state funds in farm mortgages, does not conflict with this section of The Enabling Act. St. v. Stewart, 53 M 18, 161 P 309 (1916).

§ 12. That upon the admission of each of said states into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for public buildings at the capital of said states for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.

Compiler's Comments

Amendment: This section was last amended by the act of February 26, 1957, 71 Stat. 5. This amendment was accepted by the state of Montana by Ch. 209, L. 1957.

Cross-References

The Legislature, Art. V, Mont. Const.
The Executive, Art. VI, Mont. Const.
Official reports, [illegible]

The Judiciary, Art. VII, Mont. Const.
Custodial care of capitol buildings and grounds, 2-17-111.
Capitol building and planning committee, Title 5, ch. 17.

Case Notes

Operation and Effect Before Amendment: Capitol land grant funds may be used to repair, renovate, or reconstruct an oil building and install a roll call voting machine in the chambers of the House of Representatives. State ex rel. Morgan v. Bd. of Examiners, 131 M 188, 309 P2d 336 (1957), specifically overruling Bryant v. Bd. of Examiners, 130 M 512, 305 P2d 340 (1956).

Veterans and Pioneers Memorial Building, a Public Building: Ch. 79, L. 1941 (repealed), providing for sale of bonds for erection of Montana Veterans and Pioneers Memorial Building and payable in part from income of capitol building land grant, held not to violate sections 12 and 17 of The Enabling Act since proposed building will be useful and beneficial to the executive and legislative departments and is intended for housing of Historical Society, a department of the state government. Willett v. St. Bd. of Examiners, 112 M 317, 115 P2d 287 (1941).

Farm Loan Act Not in Conflict: The "primary" plan of the Farm Loan Act, providing for investment by State Board of Land Commissioners of state funds in farm mortgages, does not conflict with this section of The Enabling Act. St. v. Stewart, 53 M 18, 161 P 309 (1976).

§ 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states respectively.

Cross-References

Education and public lands, Art. X, Mont. Const.
Public school fund, Art. X, sec. 2, Mont. Const.
Public school fund inviolate, Art. X, sec. 3, Mont. Const.
Public school fund revenue, Art. X, sec. 5, Mont. Const.
State university funds, Art. X, sec. 10, Mont. Const.
Public land trust -- disposition, Art. X, sec. 11, Mont. Const.
Percentage of coal tax proceeds allocated to local impact and education trust fund account, 15-35-108.
Public school fund as separate investment fund, 17-6-203.
Public school fund, Title 20, ch. 9, part 6.

§ 14. That the lands granted to the territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota, and Montana, respectively, if such states are admitted into the union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states

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And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the state of Washington for the the purpose of a university in said state. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the territory of Dakota, for an asylum for the insane shall, upon admission of the said state of South Dakota into the Union, become the property of said state.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
State university funds, Art. X, sec. 10, Mont. Const.

Case Notes

"University Purposes" Construed to Include Pledging Funds to Erect Building at University: Held, that the State Board of Education had the power to pledge income and interest derived from land grant fund of University as security for repayment of loan made to it for erection of a journalism building under Ch. 133, L. 1935 (omitted), as the term "university purposes" includes the erection of necessary buildings. State ex rel. Wilson v. St. Bd. of Educ., 102 M 165, 56 P2d 1079 (1936).

The State Board of Education may pledge a portion of income from a University land grant to repay bonds issued for erection of a chemistry and pharmacy building at State University. State ex rel. Dragstedt v. St. Bd. of Educ., 103 M 336, 62 P2d 330 (1936).

Disposition of School Land Grant Funds: Section 12, Article XI, 1889 Mont. Const. (now Art. X, sec. 10, 1972 Mont. Const.), providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions and sections 11, 14, and 17 of The Enabling Act were held not to prohibit use for erection of normal school buildings of income from a land grant for the state normal schools, nor limit such use to payment of ordinary operating expenses. State ex rel. Blume v. St. Bd. of Educ., 97 M 371, 34 P2d 515 (1934).

§ 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said state of South Dakota for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the territory of Dakota.

The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

Case Notes

Farm Loan Act Not in Conflict: The "primary" plan of the Farm Loan Act, providing for investment by State Board of Land Commissioners of state funds in farm mortgages, does not conflict with this section of enabling act. St. v. Stewart, 53 M 18, 161 P 309 (1916).

§ 16. That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to each of said states, except to the state of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purpose.

§ 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September twenty-eight, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the state of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for state normal schools, eighty thousands acres; for public buildings at the capital of said state, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said state may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the state of North Dakota: A like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the state of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for state normal schools, one hundred thousand acres; for public buildings at the state capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for state charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

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That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

Case Notes

Disposition of State Land Grant Funds: Capitol land grant funds may be used to repair, renovate, or reconstruct an old building and install roll call voting machine in the chambers of the House of Representatives. State ex rel. Morgan v. Bd. of Examiners, 131 M 188, 309 P2d 330 (1957), specifically overruling Bryant v. Bd. of Examiners, 130 M 512, 305 P2d 340 (1956).

Veterans and Pioneers Memorial Building a Public Building: Chapter 79, L. 1941 (repealed), providing for sale of bonds for erection of Montana Veterans and Pioneers Memorial Building and payable in part from income of capital building land grant held not to violate sections 12 and 17 of The Enabling Act since proposed building will be useful and beneficial to the Executive and legislative departments and is intended for housing of Historical Society, a department of the state government. Willett v. Bd. of Examiners, 112 M 317, 115 P2d 287 (1941).

School Lands and Funds Devoted to Maintenance and Perpetuation: Held, that Ch. 3, L. 1905, authorizing the state Board of Land Commissioners to issue and sell bonds, the proceeds to be applied to the erection, furnishing and equipment of an addition to the State Normal School at Dillon, and pledging as security, for the payment of the principal and intereston such bonds, funds realized from the sale and leasing of the lands granted by the United States under this section of The Enabling Act (100,000) acres for State Normal School purposes) and licenses received from permits to cut timber thereon, is void because in violation of section 12, Article XI, of the state Constitution providing that only the interest from investments of such funds together with the rents from leased lands shall be so used. State ex rel. Haire v. Rice, 33 M 365, 83 P 874 (1906), affd. 204 US 291 (1907).

Section 12, Art. XI, of the state Constitution providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions and sections 11, 14, and 17 of The Enabling Act were held not to prohibit use, for erection of normal school buildings, of income from a land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. State ex rel. Blume v. St. Bd. of Educ., 97 M 371, 34 P2d 515 (1934).

Farm Loan Act Not in Conflict: The "primary" plan of the Farm Loan Act, providing for investment by state Board of Land Commissioners of state funds in farm mortgages does not conflict with this section of The Enabling Act. State v. Stewart, 53 M 18, 161 P 309.

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivisions or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said state, in lieu thereof, for the use and benefit of the common schools of said states.

Case Notes

Construction: This section must be read with reference to section 14 of the Organic Act of the Territory of Montana. The words "shall be found" and "in lieu thereof" show that this section applies to lands known to be mineral at the time of survey and clear listing. As soon as the survey identified the land and it was not then mineral, it went to the state for the common school fund. The land passed and with it the after-discovered minerals. Texas Pac. Coal & Oil Co. v. St., 125 M 258, 234 P2d 452 (1951).

§ 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United State within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

§ 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

§ 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts, therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state; the regular term of said courts shall be held in each district at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district court of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

STATE TRUST LAND MANAGEMENT

Manage the State's Trust Land Resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income generating capacity of the land.

The Congress of the United States, by the Enabling Act approved February 22, 1889, granted to the State of Montana, for common school support, sections sixteen and thirty-six in every township within the state. Some of these sections had been homesteaded, some were within the boundaries of Indian reservations, and yet others were otherwise disposed of prior to the passage of the Enabling Act. To make up for this loss, and in lieu thereof, other lands were selected by the state. In addition to the common school, the Act and subsequent acts granted acreage for other educational and state institutions. The original common school grant was for 5,188,000 acres. The additional acreage provided for other endowed institutions included 668,720 acres, for a total of 5,856,720 acres. These acreage figures have fluctuated throughout the years due to land sales and acquisitions.

The Enabling Act provided that the proceeds from the sale and permanent disposition of any of the trust lands or part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. The Montana Constitution provides that these permanent funds shall forever remain inviolate, guaranteed by the state against loss or diversion.

The Enabling Act further provides that rentals received on leased lands, interest earned on the permanent funds arising from these lands, interest earned on deferred payments on lands sold, and all other actual income, shall be available for the maintenance and support of such schools and institutions.

The purpose of the trust land management program is to administer and manage the timber, surface and mineral resources for the benefit of the common schools and other endowed institutions in the State of Montana. The Department's obligation of this management and administration is to obtain the greatest benefit for the school trusts. The greatest monetary return must be weighed against the long-term productivity of the land to ensure continued future returns to the trusts. The program is divided into four primary functions: Forest Management, Mineral Management, Surface Management, and Special Uses Management.

The trust land management program has been returning average annual revenues of 26.3 million dollars to the school trusts over the past five years. Those revenues have been obtained through an average annual expenditure of 2.9 million dollars. Therefore, the ratio of dollars returned to dollars expended is 9 to 1.

Land Ownership of Endowed Institutions
Original Grants and Current Acreage

Grant	Original Acreage		Current Acreage
Common School.	5,188,000	*	4,620,260
		**	5,658,259
University of Montana	46,720		18,556
			33,754
Montana State University - Morrill Grant	90,000		63,780
			77,600
Montana State University - Second Grant	50,000		31,058
			47,277
Montana College of Mineral Science and Technology	100,000		59,507
			86,250
State Normal School	100,000		63,455
			88,102
School for Deaf and Blind	50,000		36,574
			41,171
State Reform School	50,000		68,877
			78,850
Public Buildings	182,000		186,350
			231,390
Total	5,856,720		5,148,417
			6,342,653

* Surface Acreage

** Mineral Acreage

THEREFORE, IT IS MY OPINION:

Saturday should not be considered a banking day for the purpose of determining midnight deadlines for banks open on Saturday for limited teller-type transactions.

Very truly yours,
ROBERT L. WOODAHL
Attorney General

VOLUME NO. 36 **Opinion No. 92**

STATE LANDS — School Lands — General use by state, compensation for; Article X, Sections 3 and 11, Montana Constitution 1972; Sections 81-2701 et seq., Revised Codes of Montana 1947.

HELD: So that the state will not commit a breach of trust under the Enabling Act and Montana Constitution, the state must actually compensate its school trust in money for the full appraised value of any school trust lands designated as or exchanged for natural areas pursuant to the Montana Natural Areas Act of 1974. Such compensation can only be avoided by securing the consent of Congress.

July 7, 1976

Mr. Leo Berry, Jr., Acting Commissioner
Department of State Lands
1625 11th Avenue
Helena, MT 59601

Dear Mr. Berry:

Your office has requested my opinion on whether there must be compensation for school trust lands which are designated natural areas under the Montana Natural Areas Act of 1974.

The Natural Areas Act is codified in Title 81, chapter 27, R.C.M. 1947. Essentially it provides for the setting aside and preservation of certain lands — including school trust lands — qualifying as "natural areas", through "designation" by the state board of land commissioners or the legislature. Natural areas can also come into being by purchase, trade, or gift. Sections 81-2702 through 81-2704.

To answer your question, it is first necessary to examine the nature of school trust lands and the state's responsibility over them. The Enabling Act of February 22, 1889, 25 Stat. 676, which admitted Montana into the Union along with North Dakota, South Dakota, and Washington, granted sections 16 and 36 in every township "for the support of common schools"(§10) and prohibited disposition of such lands "unless the full market value of the estate or interest disposed of...has been paid" (§11). The Montana Supreme Court has long held

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that school lands as well as their proceeds and income constitute a trust. State ex rel. Galen v. District Court, 42 Mont. 105, 114, 115-116, 112 P. 706 (1910); Rider v. Cooney, 94 Mont. 295, 306-307, 23 P.2d 261 (1933); Texas Pacific Coal & Oil Co. v. State, 125 Mont. 258, 263-264, 234 P.2d 452 (1951). Thus, the Enabling Act must be strictly construed and its grants of property devoted exclusively for the stated purposes. Texas Pacific, 125 Mont. at 263; In re Beck's Estate, 44 Mont. 561, 576, 121 P. 784 (1912).

Article X, Sections 3 and 11, of the 1972 Montana Constitution embody the above rules:

> Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.
>
> Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised. (Emphasis added)

These provisions are limitations upon the power of disposal by the legislature. Newton v. Weiler, 87 Mont. 164, 170-171, 286 P. 133 (1930).

While the Enabling Act does not say in so many words that the state is under a duty to sell or lease school trust lands, it is elementary that this trust be administered so as to secure the largest measure of legitimate advantage to the beneficiary. Rider, 94 Mont. at 307. As a practical matter this means the state must do something to generate and sustain income from school trust lands whenever possible. State ex rel. Ebke v. Board of Educational Lands and Funds, 47 N.W.2d 520, 523 (Neb. 1951); Lassen v. Arizona, infra, 385 U.S. at 463. The state's discretion is not whether but how to seek gain from school lands for best advantage to the trust. See Thompson v. Babcock, 147 Mont. 46, 409 P.2d 808 (1966).

Being acts of Congress, enabling acts are paramount authority in situations like the one at hand. Interpretations thereof by the federal courts naturally have far-reaching impact. The case of Lassen v. Arizona, 385 U.S. 458, 17 L.Ed. 2d 515, 87 S.Ct. 584 (1967), is illustrative. Lassen considered whether the state of Arizona, pursuant to the New Mexico — Arizona Enabling Act, was obligated to compensate the school trust for school trust lands taken for highway purposes. The court preliminarily observed that:

> The issues here stem chiefly from ambiguities in the grant itself...The Act describes with particularity the disposition Arizona may make of the lands and of the funds derived from them, but it does not directly refer to the conditions or consequences of the use by the State itself of the trust lands for purposes not designated in the grant... (Emphasis added) 385 U.S. at 461.

After reviewing the terms and legislative history of the Act, the court determined that the grant was plainly expected to produce a school fund, accumulated by the sale and use of the trust lands, and that its restrictions were intended to guarantee the trust appropriate compensation for trust lands. 385 U.S. at 463, 464. The issue was predictably resolved:

> We hold therefore that Arizona must actually compensate the trust in money for the full appraised value of any material sites or rights of way which it obtains on or over trust lands. This standard...most consistently reflects the essential purposes of the grant. (Emphasis added) 385 U.S. at 469-470.

It should be stressed that technically there was no "disposition" of school trust lands in Lassen. (See §10 of Montana's Enabling Act.) Arizona retained full control over the disputed lands, merely changing the "use" from support of education to construction of highways. The lack of such disposition, however, made no impression upon the court. What concerned them was a use or dedication of school trust lands that failed to monetarily enhance the trust.

A brief discussion of the indemnity principle is now in order. Montana's Enabling Act, §10, provides that where sections 16 or 36 had previously been disposed of by Congress, other equivalent lands were granted as indemnity lands. In United States v. 111.2 Acres of Land in Ferry County, Washington, 293 F. Supp. 1042 (E.D. Wash. 1968), aff'd 435 F.2d 561 (9th Cir. 1970), the court explained that...

> the principle of indemnity requires that no land or proceeds be diverted from the school trust unless the trust receives full compensation. This principle is explicitly a part of the Washington (Montana) Enabling Act. 293 F. Supp. at 245.

It was then held that since Congress had established a means of indemnification for loss of school trust land, the state of Washington alone could not statutorily donate rights of way across such land even to the United States. To do so "would constitute a breach of trust which the Court will not countenance." 293 F. Supp. at 1049.

Given the foregoing authorities, the requirement of compensation for school trust lands used for any purposes other than "the support of common schools" is unavoidable absent the express consent of Congress. That uses such as highways, parks, or natural areas might generally benefit the public is immaterial because they simply go beyond the narrow condition of the grant in the Enabling Act.

How much compensation may be necessary in a given instance raises another question. The Enabling Act, §11, calls for "full market value" where estates or interests in school lands are transferred, and for "public sale" (presumably to realize full market value) where the lands themselves are sold. Establishment of natural areas would not fall into either of these two categories, but rather would parallel Arizona's taking of school trust lands for highway purposes. The court in Lassen labeled such taking a "use" or an "acquisition"

which the state could obtain by any procedures "reasonably calculated to assure the integrity of the trust and to prevent misapplication of its lands and funds." 385 U.S. at 461, 462, 465. For example, Arizona was allowed to just pay cash in the amount of the appraised value of the school trust lands it desired. I might add that on account of the unique situation presented when a state seeks school trust lands for its own general use, the comments regarding full market value in Thompson v. Babcock, 147 Mont. at 53, are of little help here.

You have outlined certain constitutional problems that might be encountered in administering the Natural Areas Act in the event it is determined compensation must be paid for school trust lands. For the time being I suggest your department and the state board of land commissioners simply proceed on the assumption such compensation is part and parcel of the Act. If difficulties persist, a declaratory judgment should be sought.

THEREFORE, IT IS MY OPINION:

> So that the state will not commit a breach of trust under the Enabling Act and Montana Constitution, the state must actually compensate its school trust in money for the full appraised value of any school trust lands designated as or exchanged for natural areas pursuant to the Montana Natural Areas Act of 1974. Such compensation can only be avoided by securing the consent of Congress.

Very truly yours,
ROBERT L. WOODAHL
Attorney General

VOLUME NO. 36 **Opinion No. 93**

CITIES AND TOWNS — Special Improvement Districts; CONTRACTS — Special Improvement Districts; Sections 11-2209, 11-2214, Revised Codes of Montana 1947.

HELD: A city council, in its sound discretion, may combine two or more improvement districts into a single contract, provided the competition of bidders is not suppressed thereby.

July 15, 1976

John McKeon, City Attorney
155 South First Avenue East
Malta, Montana 59538

Dear Mr. McKeon:

You recently requested my opinion on the following question:

> Where the city council finds it more equitable for assessment purposes to create more than one special improvement district to lay curb, gutter and pavement in more than one area of the city, can said city council, without violating the competitive bidding reqruiements under Section

10. Public Lands ⇐51

School trust lands are subject to different set of rules than other public lands.

11. Public Lands ⇐54(6)

Since appurtenant water right is interest in land, water right appurtenant to school lands cannot be surrendered by state without school land grant trusts receiving fair market value.

12. Public Lands ⇐55

Water rights appurtenant to school lands belonged to state where none of lessees of state school trust lands alleged payment of consideration to state apart from that required by lease of lands. MCA 70-1-106.

13. Public Lands ⇐51

Any infringement on use or management prerogatives of state that effectively devalue school lands is impermissible.

14. Public Lands ⇐55

Neither regulation which provides that state reimburse departing lessees for reasonable value of improvements made as per section MCA 77-6-115(2), and that any rights thereafter secured by lessee shall be secured in name of state, could be used as direct authorities by lessees of school lands, who claimed title to water rights appurtenant to school lands, where none of alleged rights to water at issue were perfected pursuant to those sections.

15. Constitutional Law ⇐48(1)

Generally, whenever there are differing possible interpretations of statute, constitutional interpretation is favored over one that is not.

16. Public Lands ⇐51

Essence of finding that property is held in trust, school, public, or otherwise, is that anyone who acquires interest in property does so subject to trust.

17. Public Lands ⇐55

State has no power, absent adequate consideration, to grant lessees of school trust land permission to develop nonappurtenant water rights, and every school trust lease carries with it this limitation.

18. Estoppel ⇐62.2(2)

Lessees of school lands had not relied to their detriment upon "representations" by state through laws and regulation, regarding water rights connected with those lands. MCA 77-6-302.

19. Constitutional Law ⇐277(1)
Water and Water Courses ⇐142

State may not affect water right vested at time Constitution was adopted other than through exercise of constitutionally provided powers such as eminent domain or general police power, and without affording due process of law. Const. Art. 2, § 29; Art. 9, § 3(1); Art. 1, § 19.

20. Water and Water Courses ⇐152(11)

By seeking review of portion of final decree of water court which held that title to waters diverted on state school trust land vested in lessee, state, through adjudication process, was claiming rights existing at time 1972 Constitution was adopted and was not unconstitutionally seeking to alter such rights. Const. Art. 9, § 3(1).

21. Waters and Water Courses ⇐158(4)

Lessees of school trust lands under terms of school trust lease were entitled to use of water appurtenant to leased land.

22. Waters and Water Courses ⇐2

Reserved rights doctrine is best confined to situations where it arose and is most appropriate, that is, as accommodation between federal and state interests.

23. Waters and Water Courses ⇐3

Generally, groundwater appropriated and used on state land should be treated no differently than surface waters appropriated and used on those lands. MCA 85-2-102(14), 85-2-501 et seq.; Const. Art. 9, § 3.

Lyle Manley argued, Dept. of State Lands, Helena, John F. North, Dept. of State Lands, for objector and appellant.

John Carr argued, Bliss & Bales Ranch, Miles City, for claimants and respondents.

ta, and South Dakota. The Omnibus Enabling Act, supra, reflects the general policy of Congress as set out above. Even before Montana joined the Union, general principles, evolving from the judicial review of earlier enabling acts, governing the school land grant trusts were well settled. In two cases, the *Trustees of Vincennes University v. State of Indiana* (1852), 55 U.S. 268, 14 L.Ed. 416, and *Springfield Township v. Quick* (1859), 63 U.S. 56, 16 L.Ed. 256, the United States Supreme Court set out three important principles governing school trust lands: 1) that the enabling acts created trusts similar to a private charitable trust which the state could not abridge; 2) that the enabling acts were to be strictly construed according to fiduciary principles, and; 3) that the enabling acts preempt state laws or constitutions. See also *Andrus v. Utah* (1980), 446 U.S. 500, 520, 523, 100 S.Ct. 1803, 1814, 1815, 64 L.Ed.2d 458, 472, 474, where the United States Supreme Court reaffirmed those principles, holding that Congress imposed upon the states a binding and perpetual obligation to use the granted lands for public education.

The courts have been very protective of the trust concept, and emphatic about the need to preserve the value of the trust corpus—the school lands. The seminal case in this regard is *Lassen v. Arizona* (1967), 385 U.S. 458, 87 S.Ct. 584, 17 L.Ed.2d 515. In *Lassen*, the United States Supreme Court held that the Arizona Highway Department was required to fully compensate the State Land Department (administrator of the school lands) for the value of easements taken across school lands. The Court held that the Arizona Enabling Act, ch. 310, 36 Stat. 557 (1910) "contain[ed] 'a specific enumeration of the purposes for which the lands were granted and the enumeration is necessarily exclusive of any other purpose' " *Lassen* at 467, 87 S.Ct. at 589, 17 L.Ed.2d at 522 (quoting *Ervien v. United States* (1919), 251 U.S. 41, 47, 40 S.Ct. 75, 76, 64 L.Ed. 128, 130).

In *State of Utah v. Andrus* (D.Utah 1979), 486 F.Supp. 995, the federal district court concluded that the lessees of state school lands had an implied right of access to their leasehold across adjacent federal lands. The court felt that if it held otherwise, "the very purpose of the school trust lands would fail. Without access the state could not develop the trust lands in any fashion and they would become economically worthless. This Congress did not intend." 486 F.Supp. at 1002. The Court in *Utah v. Andrus* made it clear that any restriction on the use (i.e. access) of school trust land that effectively devalues it cannot be sustained.

This Court has likewise been emphatic in protecting the school trust. In *Rider v. Cooney* (1933), 94 Mont. 295, 23 P.2d 261, we first held that a lease is an "interest" in land. Then, applying the rule that interests in school trust lands cannot be alienated for less than full value, we held that the State musts also obtain full value for a lease thereof. See also *State ex rel. Galen v. Dist. Ct.* (1910), 42 Mont. 105, 112 P. 706; *Gladden Farms, Inc. v. State* (1981), 129 Ariz. 516, 633 P.2d 325; *Arizona State Land Department v. Superior Court* (1981), 129 Ariz. 521, 633 P.2d 330; *City of Sierra Vista v. Babbitt* (1981), 129 Ariz. 524, 633 P.2d 333; *State v. University of Alaska* (Ak.1981), 624 P.2d 807.

[2] In *Jerke v. State Dept. of Lands* (1979), 182 Mont. 294, 597 P.2d 49, we addressed a situation analogous to the one at bar. The general question presented was how far the State could surrender its managerial prerogatives over school lands without violating the trust. Montana law empowers grazing districts to manage and allocate lands within their jurisdiction. This includes the power to grant preference rights to members in the re-leasing of school lands that are within the district. The plaintiff in *Jerke* contended that the preference right unconstitutionally prevented the State from receiving full fair market value for the land. Since the existing lessee who exercised the preference right was not using the land (and thus not "follow[ing] good agricultural practices and mak[ing] improvements on the land" 182 Mont. at 297, 597 P.2d at 51), we held

the preference right was unconstitutional as applied. This was because:

"To allow the preference right to be exercised *in this case* would be to install the Grazing District as the trustee of the land. It, rather than the Department of State Lands, would decide who will occupy the land but it would not be bound by a constitutional or fiduciary duty." 182 Mont. at 297, 597 P.2d at 51.

See also *State ex rel. Thompson v. Babcock* (1966), 147 Mont. 46, 409 P.2d 808 (upholding the Commissioner's discretionary authority to accept lease terms less than the highest bid in order to effectuate sustained yield concepts and insure the long-term strength of the trust corpus); *In Re Montana Trust and Legacy Fund* (1964), 143 Mont. 218, 388 P.2d 366. The Oklahoma Supreme Court in *Oklahoma Education Association v. Nigh* (Ok.1982), 642 P.2d 230 has also addressed the same question as this Court did in *Jerke*. The Oklahoma court went further and found several state statutes limiting the amount of interest that the state could receive on school lands, and creating preferences in the re-leasing of school lands, to be unconstitutional.

Most recently, the Washington Supreme Court upheld the federal land grant trust in holding the Washington Forest Products Industry Recovery Act of 1982, R.C.W. 79.-01.1331-.1339, unconstitutional. The Act was passed in response to the decline of the prices in the forest products industry at the time. It allowed the Washington Department of State Lands to release contracts previously entered into with loggers and other forest products users because the industry stood to lose a great deal, due to the decline in prices, if the contracts were enforced. The Washington Supreme Court, in *Skamania County v. Washington* (1984), 102 Wash.2d 127, 685 P.2d 576, dealt with the contracts on school trust land. Premising its argument by stating: "Every court that has considered this issue has concluded that these are real enforceable trusts that impose upon the state the same fiduciary duties applicable to private trustees," 685 P.2d at 580, the court found the act had violated the trust by transferring trust assets—the contract rights—for less than their full value and held it unconstitutional. 685 P.2d at 583. See also Torve and Handy, *Skamania County v. Washington: A Case of Divided Loyalties*, Fall 1984, Western Natural Resources Litigation Digest Commentary 7.

[3–5] The above cases establish two main points that are important when considering either minor premise leading to our decision. First, an interest in school land cannot be alienated unless the trust receives adequate compensation for that interest. Water that is appurtenant to the school lands is an interest for which the trust must receive compensation. Second, any law or policy that infringes on the state's managerial prerogatives over the school lands cannot be tolerated if it reduces the value of the land. In this case, the DSL contends that to allow lessees to develop private, personal rights on school lands would impermissibly reduce the DSL's ability to manage these lands for their highest value.

Section 70–15–105, MCA states that:

"A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way or watercourse or of a passage for light, air or heat from or across the land of another."

Further, Professor Wells A. Hutchins, in his treatise *Water Rights Laws in the Nineteen Western States* Vol. I at 455 (U.S. Dept. of Agriculture, 1971) states: "Of general application in the West is the rule that an appropriative right becomes appurtenant to the land for the benefit of which the water is applied."

[6, 7] In Montana, the determination of whether water is appurtenant to the land is one of fact. *Yellowstone Valley Co. v. Associated Mortgage Investors, Inc.* (1930), 88 Mont. 73, 290 P. 255; see also *Hutchins*, supra at 459. Here, by stipulated facts, it appears that all of the water rights at issue are used either in whole or in part on the school lands. Additionally, all of the lands

United States Supreme Court.

Two cases that defined endowment trust land obligations follow. In *Ervien v. United States*,[72] the Court held, in 1919, that New Mexico could not spend three percent of its endowment land trust income to advertise the resources and advantages of the state. Such action might be "a wise administration of the property," [73] but because schools would not benefit directly, such action was considered a breach of trust of the state's enabling act whereby the school lands were granted.[74] In *Lassen v. Arizona ex rel. Arizona Highway Dept.*,[75] the Court, in 1967, held that Arizona must directly compensate the trust fund for the "full benefit" of school land the state obtained from trust resources for a highway right-of-way.[76] Even though an activity may ultimately benefit the trust, the trust must nevertheless be fully compensated.[77]

These two Supreme Court rulings – that benefits must accrue only to designated beneficiaries,[78] and that such benefits must be at full fair market value[79] – have been interpreted with the following comments:

> Given the language and attitude found in the relevant case law, including rulings of the United States Supreme Court, any derived benefit from the school trust lands must be used in support of schools and may not be used to support or subsidize other public purposes. Any arrangement not ensuring full fair market value for the use and/or sale of the school trust lands violates the trust obligation mandated by Congress.[80] [Emphasis added.]

> It is clear from the Supreme Court rulings concerning trust lands, that school trust resources are to be closely tied to the best method, economic or otherwise, of supporting public schools. No other public purpose constitutes a valid expenditure of trust resources.[81] [Emphasis added.]

> The United States Supreme Court has held that the interests of the school trust beneficiaries are exclusive -- they are not to be balanced against other interests.[82] [Emphasis added.]

Another interpretation is quite similar and more succinct:

> Neither the Congress nor the states may devalue the monetary trust assets to benefit others. Similarly, the trust lands and their management proceeds may not be devalued to serve other public purposes, ...[83] [Emphasis added.]

State supreme courts.

The "sacred trust" concept has been reinforced by many state supreme court decisions, as the following eight case summaries indicate. In *State ex rel. Ebke v. Board of Educational Lands & Funds*,[84] the Nebraska Supreme Court in 1951 held that the state, as trustee of the endowment lands, has a duty to seek the most advantageous terms possible in managing the lands.[85] In *County of Skamania v. State*,[86] the Supreme Court of the State of Washington in 1984 struck down a law designed to provide economic relief to purchasers of timber from endowment lands by allowing them to default on

contractual obligation or to modify or extend their contracts without penalty. The court determined that because the proposed law did not require fair market value of the contract be returned to the state, under the state's trust obligation the state's fiduciary obligation was breached.[87] The state's fiduciary duty of undivided loyalty prevents it from using state trust lands to accomplish public purposes other than those which benefit the trust beneficiaries.[88]

In *State v. University of Alaska*,[89] the Alaska Supreme Court in 1981 ruled that the endowment lands belonging to the university could not be added to a state park without compensating the trust fund at the fair market value of the land, or an equal value of exchanged land for the trust lands taken.[90] In *Kanaly v. State*,[91] the South Dakota Supreme Court found in 1985 that a state statute converting a unit of the state university into a prison was unconstitutional, because the trust compact required fair market value of the land be paid to the beneficiaries.[92] The court stated that the trust's beneficiaries "do not include the general public, other than government institutions, nor the general welfare of this state."[93]

In *Kerrigan v. Miller*,[94] an interpretation of a state statute by the Wyoming Supreme Court in 1938 stated: "The board shall lease all state lands in such manner and to such parties as shall insure to the greatest benefit and secure the greatest revenue to the state."[95] The court concluded that the terms "greatest benefit" and "greatest revenue" as used by the state legislature were not equivalent, the former probably referring to the general benefit of the citizens of the state.[96] Subsequent rulings in Wyoming took the stance that trust obligations and management were for the general benefit of the entire state.[97] Bassett's comment in 1989 is that "the Wyoming scheme raises serious doubts as to whether this approach to management of school trust lands comports with the holdings of the United States Supreme Court and other courts that have looked at the issue."[98]

Two recent decisions by the Arizona Supreme Court are also relevant. In *Deer Valley Unified School District v. Superior Court*,[99] the Supreme Court held that the state constitution prevented action by a particular school district attempting to acquire a parcel of school trust land through condemnation, because that would not allow for any additional profit that the trust might gain from competitive bidding at advertised public auction. In *Kadish v. Arizona State Land Department*,[100] the Supreme Court held that flat rate (or fixed royalty) leases for minerals extracted from school trust fund lands were unconstitutional, in that such leases provide less than the true value to the trust beneficiaries.

Two common threads weave their way through these cases and are highlighted in *Oklahoma Education Association, Inc. v. Nigh*.[101] The Oklahoma Supreme Court in 1982 reaffirmed the two key points concerning endowment lands: (1) school trust lands must be managed for the exclusive benefit of the public schools, and (2) school trust lands must be managed to obtain full value.[102] This case, perhaps more than any other, crystallizes the endowment land concept. Furthermore, it explicitly defines the manner in which rents, leases and loans from the Oklahoma trust fund are to be administered. The court determined that low-rental leases of trust lands and low-interest mortgage loans of trust funds represented unconstitutional subsidies to farming and ranching. The implications of this decision for other Oklahoma permittees and lessees should be evident.

Conclusion

If there are problems with the management of endowment lands in Idaho, the problems are shared by many other states in the Union. Legal decisions in other states may or may not apply to situations in Idaho. Those that do would clearly circumscribe allowable uses and disposition of benefits from endowment lands. Careful study of the enabling or admission acts of other states would reveal situations legally comparable to the Idaho situation. These federal statutes would be the logical starting point, followed by comparison of state constitutional provisions, then case law interpreting the enabling act and state constitution. For example, the *Nigh* decision in Oklahoma[103] is relevant to Idaho only to the extent that the enabling acts and constitutions of the two states are similar in their grant land provisions. Such interpretations of law are why we have judicial systems and professionals trained to read the law.

Nonetheless, the law concerning endowment lands seems fairly clear on several points. Law concerning the solemn compact or "sacred trust" taken on by the states when they accepted grants of federal land is understandable and clear on two points. First, the benefits from those grants were specifically designated only to certain beneficiaries. Second, there seems to be no way that is consistent with case law that the designated beneficiaries can be denied the full fair market value from those lands. Current beneficiaries (permittees and lessees) other than those institutions designated to receive exclusive and full-valued benefits from grant lands may not necessarily accept these principles of law regarding the endowment lands. Creative solutions to management problems on endowment lands may be possible, but it would seem that the ultimate criterion for land sales and exchanges as well as lease and permit payments will likely have to be full value to the designated beneficiary for whom the land is held in trust by the state.

SEELEY LAKE ELEMENTARY SCHOOL
SCHOOL DISTRICT #34
SEELEY LAKE, MONTANA 59868
JOHN W. HEBNES, SUPERINTENDENT

PHONE 406-677-2265

March 1, 1995

The Honorable Lorents Grosfield
Montana State Senate
Capitol Station
Helena, MT 59620

Dear Chairman Grosfield;

The Seeley Lake Elementary School is in favor of HB263 for the following reasons.

1. It would give the state land back to the beneficiary of the trust.

2. It would help establish fixed guidelines for the Department of Lands to use and manage the trust lands.

3. It would curb some inter-agency disagreements.

4. It would increase money for the trust either from present practices or from new useage.

5. It would decrease some taxes.

Because of the above reasons we would recommend a pass vote for HB263.

Sincerely,

John W. Hebnes

John W. Hebnes
Superintendent

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 3-1-95
BILL NO. HB 263

HB 263

SENATE NATURAL RESOURCES COMMITTEE

MR. CHAIRMAN, FOR THE RECORD, MY NAME IS ED REGAN AND I RESIDE IN TOWNSEND. I AM A PROFESSIONAL FORESTER WITH BRAND-S LUMBER COMPANY, AND I AM ALSO A MEMBER OF THE TOWNSEND SCHOOL BOARD. I SUPPORT HB-263 IN BOTH CAPACITIES.

THERE ARE LITERALLY MILLIONS OF ACRES OF FEDERAL LAND IN MONTANA THAT ARE MANAGED UNDER MULTIPLE USE MANDATES, FOR THE BENEFIT OF THE GENERAL PUBLIC. IN RECENT YEARS, MULTIPLE USE HAS BEEN INTERPRETED TO MEAN ALMOST EVERYTHING BUT TIMBER MANAGEMENT. WE HAVE NATIONAL PARKS, WILDERNESS AREAS, NATIONAL WILDLIFE PRESERVES, AND SPECIAL MANAGEMENT AREAS LIKE THE ELKHORNS RIGHT OUTSIDE HELENA. NEARLY ALL RESOURCE DEVELOPMENT IS OFF LIMITS IN THOSE MILLIONS OF ACRES.

IN FACT, DESPITE ALL THE CLAIMS OF RAMPANT LOGGING ON OUR NATIONAL FOREST, LESS THAN 50% OF THAT ACREAGE IS DESIGNATED SUITABLE FOR TIMBER HARVEST, AND MUCH OF THAT IS ROADLESS LAND WHICH HAS NEVER BEEN LOGGED

THE SCATTERED SECTIONS OF STATE TRUST LANDS WERE ALSO DESIGNATED TO HAVE A PRIMARY USE. THAT IS TO GENERATE REVENUE FOR PUBLIC SCHOOLS. IF WE CAN HAVE MILLIONS OF ACRES WITHDRAWN FROM RESOURCE DEVELOPMENT, IS IT REALLY SO WRONG TO SET ASIDE TRUST LANDS FOR MANAGEMENT ACTIVITIES THAT GENERATE REVENUE AND JOBS? AS A FORESTER I DON'T THINK SO. AS A SCHOOL BOARD MEMBER WITH KIDS IN SCHOOL, I DON'T THINK SO.

THAT IS WHY I AM ASKING YOU TO SUPPORT HB-263 TO CLARIFY THE ROLE OF OUR STATE TRUST LANDS. THANK YOU.

ED REGAN

Montana Wilderness Association
P.O. Box 635 - Helena, MT 59624
(406) 443-7350

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-1-95
BILL NO. H B-263

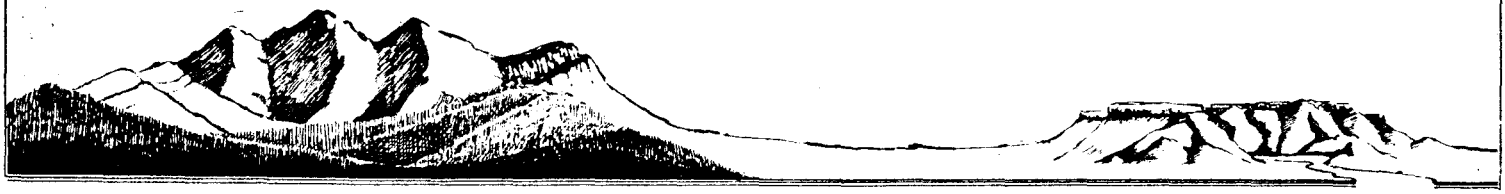
Testimony of John Gatchell, Montana Wilderness Association on HB 263
Senate Natural Resources Committee March 1, 1995

My name is John Gatchell, I represent the 2500 members of the Montana Wilderness Association. MWA is a statewide organization founded in 1958 and dedicated to the conservation of wilderness and responsible management of public lands. Our members hunt, hike, fish, ride and utilize our state's public lands, and some hold leases or make a significant part of their livlihood on state lands and contribute to the school trust.

The intent of this bill is to eliminate multiple uses from the management of state school trust lands. The rationale provided by the bill sponsor Rep. Aubyn Curtiss and the timber lobby is that the state must guard against the so-called "consequences of multiple use management" by eliminating beneficial uses and natural resource values such as watershed, fish, wildlife and outdoor recreation from even being considered as factors in the management of state lands. Rep. Curtiss predicts dire consequences "if we allow our state trust lands to have this same multiple use mandate."

In truth, the "multiple-use mandate" the timber industry is asking you to eliminate with this bill requires only that the various renewable surface resources --timber, watershed, outdoor recreation, grazing, fish and wildlife-- "be managed in a coordinated and harmonious fashion,"... " that will best meet the needs of the American people." I have enclosed the complete text of the Multiple Use-Sustained Yield Act of 1960 for your review. It is an excellent law, articulating general land management principles which have served the people of Montana and the nation for decades.

HB 263 is anti-public and anti-multiple use. This measure is so extreme, it could easily be interpreted in a court of law to force grazing leasees to pay full market value, since family ranches, like recreationists, watershed, fish and wildlife would be excluded from the new qualifications of worthy objects specifically listed in the Enabling Act. By narrowing the range of management considerations, this legislation moves the state away from land stewardship for a multitude of beneficial land values.



Over the long run, conserving water quality, healthy fisheries and wildlife populations and quality outdoor recreation opportunities maintains the intrinsic, long-term values of state forest lands.

Our members urge you to reject single use and vote no on HB 263.

Multiple-Use Sustained-Yield Act of 1960

•Act of June 12, 1960 (P.L. 86-517, 74 Stat. 215; 16 U.S.C. 528(note), 528-531)

Sec. 1. It is the policy of the Congress that the national forests are estabished and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897 (16 U.S.C. 475). Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests (16 U.S.C. 528)

Sec. 2. The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forest due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of this Act. (16 U.S.C. 529)

Sec. 3. In the effectuation of this Act the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests. (16 U.S.C. 530)

Sec. 4. As used in this Act, the following terms shall have the following meanings:

(a) "Multiple use" means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the

productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. (16 U.S.C. 531)

Sec. 5. This Act may be cited as the 'Multiple-Use Sustained-Yield Act of 1960'. (16 U.S.C. 528(note))

opinions

Guest Editorial

Can't have it both ways

The Montana Wood Products Association argues that leased state lands, which are school trust lands, exist for the sole purpose of raising money for public education.

The association has found a receptive audience for that argument among some school officials. It has persuaded the Seeley Lake School District to intervene on the industry's side in a lawsuit filed by environmentalists that seeks to stop a timber sale near Yellowstone National Park.

According to the Seeley school superintendent, John Hebnes, the public wants too much from state lands. "(The lands are) supposed to be managed to make the most money for the schools," he said. "Anything that comes (beyond) that is gravy. It's not set up as a park. It's not set up for all the people."

For an industry that's always complaining that it's being picked on, the wood products association is going out of its way to make many Montanans unhappy. Bankrolling schools to intervene in timber suits doesn't have the makings of a public relations triumph, but the industry (and the schools) aren't interested in that. They're after the money.

Montana has about 5 million acres of school trust lands, received from Uncle Sam at statehood. These lands are leased to raise money for public schools. The claim that they cannot be managed for multiple-use is new, but a study conducted for the state concluded a year ago that most users of state lands were paying too little. The reason, the study said, is that the state Land Board was setting lease rates and user fees at below-market levels.

Some in state government say the constitution requires the state to maximize revenue from school lands. Last year, therefore, the Department of State Lands proposed that certain lands be leased to the highest bidder. Currently, there are provisions in the law to protect traditional users, and which weed out unusually high, or "spike" bids. If the goal is to maximize school revenue, "spike" bids would be eagerly accepted, even if they threw longtime, traditional lessees off the land.

The lands department proposal raised fears that wealthy developers or users would take over these leases and use the lands for their own purposes.

We can't have it both ways. If we must maximize school land revenue, we must abandon tradition and auction leases to the highest bidder. That could be hunting outfitters, or sportsmen's groups, or summer home-site developers, any of whom might be able to outbid traditional users, including the timber industry. That's the direction in which the MWPA argument leads.

— The Montana Standard

DATE 3-1-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: #B-274, HB-263, HB-162
HB-381

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Ed REGAN	BRAND-S LBR.	274 263	X	
DAN PITMAN	SELF	274	X	
RALPH A JACKSON	SELF	274 ~~263~~		X
John Gatchell	MT WILDERNESS ASSOC	HB 263		X
Beth Wheatley	MWF	HB 263		X
James H Emerson	Self	HB 263		X
Steve Kelly	Friends of the Wild Swan	HB 274 HB 263		X
Bud Clinch	DSL	HB-162 HB-381	X	
John Mack	DSL	HB 162 HB 381	X	
John Hebner	Seeley Lake Elev	HB 263	X	
Cary Hegreberg	MT Wood Prod.	HB 263 HB 274	X	
Jeff Barber	NPRC	HB 162 HB 381	X	
Alan Rollo	MWF	HB 263		X
Janet Ellis	MT Audubon	HB 274 HB 263		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Friends of the Wild Swan
P.O. Box 5103
Swan Lake, Montana 59911

STATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3-1-95
BILL NO. HB 263

Montana Senator Lorents Grosfield, Chairman
Senate Natural Resources Committee
State Capitol
Helena, Montana 59620

February 28, 1995

Dear Chairman Grosfield:

On behalf of Friends of the Wild Swan, a non-profit conservation group based in Swan Lake, please accept the following comments on House Bill 263.

HB 263 can not possibly benefit the long-term health and productivity of our state forests or the state's educational system. If HB 263 is inacted by the legislature, Montana citizens, especially our youth, will be poorer. "Other worthy objects," specific language in The Enabling Act , should not be limited to only man-made objects as defined in HB 263. Wildlife habitat protection should not be eliminated as a "worthy object."

Currently, Montana Department of State Lands (DSL) operates its timber program without legal state-wide standards and guidelines.

In 1991, DSL promised Montana District Court Judge Keller of Libby that it would prepare a state-wide forest management plan and programmatic Environmental Impact Statement (EIS). In 1994, DSL again promised a District Court Judge (McKittrick) that a programmatic forest management plan, with state-wide standards and guidelines, would be produced "before" the legislature meets in January 1995. DSL lied twice. Today, no plan exists because DSL has deliberately stonewalled, expecting the 1995 Legislature to legislate weaker enviromental laws. DSL has gambled and lost.

HB 263 sends a strong message — the wrong message — to all Montanans. The message: School trust forests are nothing more than a cash cow to be exploited to reduce property tax contributions collected to fund schools.

Fish, wildlife, water quality and old-growth habitat on school trust lands will count for nothing if HB 263 is inacted.

This is no way to manage the public's forests. Who in their right mind would liquidate Montana's priceless, rapidly appreciating, god-given environmental capital without

any idea what the net benefits and costs are? You cannot know because no analysis has been done. DSL doesn't know because it hasn't completed its twice-promised state-wide EIS. Capitol assets that took thousand of years to accumulate will be sent to sawmills, where the real profit is made — not for Montana schools, but for greedy out-of-state owners. Same as it ever was.

Economic efficiency must be studied or losses to the School Trust are likely. It is wrong to assume that higher harvest volumes will automatically generate net revenue increases from DSL's timber program. DSL's accounting procedures are not adequate to determine economic efficiency.

In recent years, DSL's annual cut has ranged between 18 and 30 million board feet per year. A 50 million board feet annual target requirement (See HB 201) will lead to overcutting. Overcutting causes detrimental environmental effects that ultimately produce real costs to the State of Montana. Clean-up and habitat restoration costs can often exceed the revenue generated by cutting down wild forests. Prevention of environmental damage is the always the best, most cost efficient forest management policy.

HB 263 cannot comply with existing state and federal laws. It is fiscally unsound and environmentally destructive. <u>It will not withstand public scrutiny or judicial review. Friends of the Wild Swan opposes HB 263 in the strongest terms.</u>

Thank you for the opportunity to comment on HB 263.

Sincerely,

Steve Kelly
Friends of the Wild Swan

Region

Poll shows most want forests for recreation and wildlife

WASHINGTON (AP) — Most Americans want national forests used for recreation and wildlife protection rather than lumber production or other commercial ventures, according to a recent poll conducted for the U.S. Forest Service.

Results of the survey are being considered as the agency works to reorganize and streamline some services, Forest Service Chief Jack Ward Thomas says. The poll was conducted last year by a private, Florida-based consulting firm.

Environmentalists contend the Forest Service has tried to keep results of the random sample under wraps because of the support for cutbacks in logging, mining and livestock grazing on federal lands.

For example:

■ 61 percent of the respondents agree threatened and endangered species in U.S. public forests and grasslands should be protected even if that results in a negative economic impact for some.

■ 65 percent support increased regulation of commercial use of public forests. Some 38 percent said they "strongly agreed" with that statement. About 22 percent disagreed and 13 percent had no opinion.

■ 79 percent agree the long-term health of public forests should not be compromised by short-term need for natural resources

■ 36 percent agree natural resources in public forests should be made available to produce consumer goods, while 47 percent disagree.

The poll, conducted last year by a private, Florida-based consulting firm, has a margin of error of 5 percentage points.

The Forest Service used the survey to develop the internal reorganization plan proposed for congressional approval. The agency also published a so-called "reinvention document" last year that includes some of the poll's general findings but not all the details.

"The authors of the report made selective use of the findings of the poll," said Phil Pittman of the advocacy group Public Employees for Environmental Responsibility in an interview.

Jeff DeBonis, the group's executive director and a former Forest Service worker, said the omission of actual survey data from the reinvention report "demonstrates the Forest Service's well-known penchant for burying information that contradicts the emphasis of current programs.

"The real meaning of the national opinion poll is that the public wants long-term environmental health and protection — not short-term commodity needs — to be the primary purposes of national forest management," DeBonis said.

Thomas denies his agency was trying to keep the results secret, noting they were published and made available to the public last summer, separate from the reinvention report.

"I hardly see how you can publish the poll in June in its entirety and then be accused of covering it up. There's been absolutely no cover-up," Thomas said in an interview.

"If we are going to be consumer sensitive, we need to understand their views," he said of the survey.

Still, Thomas said, "It is very difficult to understand what the public was thinking about when they responded to these questions."

Chris West, vice president of the timber industry's Northwest Forestry Association in Portland, Ore., also questioned the respondents' understanding of the national forest system.

"It's obvious many people don't understand the difference between national forests and national parks," West said.

"In parts of the country where there are national forests, the public has a different understanding about the real value of forests and how they can be used for many things," he said.

Kaset International of Tampa, Fla., which conducted the poll, surveyed 500 U.S. residents last spring. About one-fourth were from the Northeast, another fourth were from the Southeast and the remaining half from the West, Midwest, Mountain and Southwest regions.

The results released were not broken down by region.

The responses "indicate that the overriding concern of United States residents is maintaining healthy public forests and grasslands" and that most believe this is "somehow tied to the quality of life in this country," the firm said in a summary of responses to the 26 statements in the survey.

"The public does not seem willing to sacrifice the health of the forests in order to produce consumer goods or increase profits to private companies," the summary said.

DATE 3-1-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: HB-274, HB-263, HB-162, HB-381

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Name	Representing	Bill No.	Check One: Support	Oppose
Jim Richard	MWF	263		✓
Richard P. Harwood	SELF	263 274	✓	
GEORGE BAILEY	MASS	263 274	✓	
Dick Juntunen	Self	381	✓	
Deborah Smith	Sierra Club	274 ✓ 381 ✓ 263 ✓		✓
Jim Mockler	MT Coal Council	HB162	✓	
Jim Jensen	MEIC	HB 274 HB 263		✓
Larry Brown	Self	274 ~~384~~ 381 162 263	✓	
Robert Ham	MTFBF 2	263	✓	
Stan Frasier	Self	274 263		X
John Youngberg	MT Farm Bureau	263	✓	
Dallas D Erickson	Self	263	✓	
LISA HALLENBECK	self / NWF	263		✓

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