

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - SPECIAL SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Yellowtail, on December 17, 1993, at 11:10 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Fredella D. Haab, Committee Secretary

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

Committee Business Summary:

Hearing: HB 72
Executive Action: None

HEARING ON HOUSE BILL 72

Opening Statement by Sponsor: Representative Ray Brandewie, District 49 stated that the school trust fund would benefit from logging. He pointed out that 26 million board feet of timber died last year and could have been salvaged from already existing roads and trails. He said the amendment on the House floor would require a deposit of up to 10% in case of a court challenge. People could still pick huckleberries according to the enabling act, but would have to pay for the use of that land and reserve it for huckleberries. He said the maximum is supposed to be recovered from state lands and the school trust is not receiving it. He handed in support information. (exhibit 1 and exhibit 2)

Proponents' Testimony: Don Waldron, MREA, (Montana Rural Education Association) said MREA is in support of this bill. He had talked to a forester who told him we could get as much money from our state timber lands as anyone else received.

Cary Hegreberg, Montana Wood Products Association, said the Association supports the bill. He handed in a chart on Montana Trust Land timber sales (exhibit 3) and testimony from Peggy Olson Trenk (exhibit 4) as well as his own written testimony. (exhibit 5)

Jack Mahon, Manager, R-Y Timber in Townsend spoke in support of HB 72 and handed in testimony. (exhibit 6)

Opponents' Testimony: James Jensen, MEIC, (Montana Environmental Information Center) said they oppose HB 72 for three reasons. Section 1 is already in the state law, Section 2 is unconstitutional on it's face and Section 3 is unnecessary because of legislation passed in the 1993 regular session. He said Section 2 would not let poor people file suits whether frivolous or meritorious, but the rich would be able to do so.

Stan Frazier, Montana Wildlife Federation, said not all of the 26 million board feet are in one place and the disturbance on the wildlife habitat must be considered as well as the watershed. he said this bill would make the public unable to give input to the government on this issue, and that was wrong.

Vicki Watson, Missoula, speaking for herself and her son, said this bill was not in the best interests of her son or other Montana school children. It would make it difficult, if not financially impossible, for parents to use the courts as the last resort to contest timber sales. She said she believed the forests should be around to support the schools in the future.

Janet Ellis, Montana Audubon Council, said currently the DSL (Department of State Lands) is doing an EIS (Environmental Impact Statement) on their program, and if they don't deal with salvaging in HB 488, they will deal with it in the EIS.

Informational Testimony: NONE

Questions From Committee Members and Responses: Senator Grosfield asked Mr. Frazier if the Montana Wildlife Federation supports an increase in the recreational fees along the lines of the study to \$25. Mr. Frazier said it is his contention that they would be happy to raise, or double, the recreational fee and he did not believe there would be a big objection generally to the recreational access fee, even though other states around us have none. Senator Grosfield asked if this was true if it were at the \$25 level and Mr. Frazier said he would agree with that providing the grazing fees are up where they should be.

Senator Grosfield said Rep. Brandewie stated in his opening

remarks that some of the information we received talked about the volume of timber that is out there and is sustainable. He asked Mr. Clinch if he agreed that we were growing about 86 million board feet per year. Mr. Clinch said he believed that number of 86 million board feet had been lifted from one of our annual reports as being basically the gross annual volume.

Senator Grosfield asked if the sustained yield is what you can cut every year and still maintain basically the same total of 50 million board feet. Mr. Clinch said the biologically sustained ability is about 50 million board feet. It may be important to interject why that number is different than the amount grown. You have to recognize that we have certain tracts of land that are inaccessible. There may be a number of reasons why timber grown in those sections is unavailable for harvest as well as additional restraints relative to threatened endangered species, water quality acts, and other environmental regulations that basically screen out portions of that potential harvest across the state. Fifty million board feet is what is biologically sustainable. The harvest that we annually have is further screened as we develop individual sales, and respond to public comment and environmental concerns. We factor in a whole host of other environmental concerns relative to visual, esthetics various wildlife habitats species, stream side management zones, and they further limit our ability to capture what is biologically sustainable.

Senator Grosfield said the other two numbers I have that have been mentioned were last year's harvest has been between 17 and 20 and the mortality has been around 24 so apparently we are harvesting, if those numbers are right, less than are dying naturally out there. He asked what that will mean to the school trust when we are not harvesting the sustained yield amount or the amount that is dying and if those numbers are correct.

Mr. Clinch said those numbers were correct to the best of his understanding and if one was to carry out our harvest under that scenario indefinitely into the future, what impact that is going to have on our forests and the revenues if one was to assume that we would continue to harvest at the trend that we are now at, 19-20 million board feet, that would remain constant. However, the forest itself would change considerably because we would see a general increase in the average volume per acre, a general increase in a whole host of other components, standing, dead, and dying trees as well as down woody material as well. Your question may need to be whether we going to be able to capture that in the future and suggested the answer to that is probably no. There is a certain degree of sustained ability that you don't harvest this year that will be available in the future. There is a certain degree of it that is loss in terms of commercial harvest ability.

Senator Doherty asked Mr. Clinch if it was correct that there has been four law suits and Mr. Clinch said that is correct.

Senator Doherty asked how many thousand or million board feet did those four law suits represent and Mr. Clinch said he believed the four lawsuits combined are 6.1 million board feet or in that neighborhood.

Senator Doherty said the plaintiffs lost one so you were able to harvest a certain amount. The total amount that has ever been tied up in any way or is currently tied up would be approximately how much and Mr. Clinch said the one relative to the Swan was 2 to 3 million board feet, the remaining is about 4 million board feet. The important thing to consider is the remaining three law suits are still ongoing.

Senator Doherty said the total amount that has been delayed in any way throughout the history of Montana is 4 million board feet and Mr. Clinch said that is the total amount and the history is over the last three years.

Senator Doherty said if the figures are true that we are not currently harvesting as much as is dying, it sounds to me like you are not managing your department very well. He asked if he had requested more foresters so the job could be done properly and a greater return in both management and money be returned to the state. Mr. Clinch said that is precisely the case and during the last legislative session they had appealed for an increased staff through HB 652 and were granted some additional people for the next biennium.

Senator Doherty asked what Mr. Clinch had done before becoming the Commissioner of State Lands. Chair Yellowtail ruled the question out of order, as it was not germane to the bill.

Senator Doherty said Dennis Casey was the previous Commissioner, and Mr. Clinch as the current commissioner, and asked if either had been known for their extreme environmentalism in the past. Mr. Clinch said he had no problem answering the question. He was proud of his previous employment with the Montana Logging Association. He believed several of the opponents would speak on his behalf relative to some of the issues that he had represented for that industry in terms of environmental issues and believed he had a strong reputation in terms of environmentalism.

Senator Crippen asked Mr. Jensen about his statement that Section 3 was unconstitutional. Mr. Jensen said he had referred to Section 2. Senator Crippen asked if he would tell them a little more about why he deemed Section 2 as unconstitutional. Mr. Jensen said Section 3 is constitutional as far as he could tell. He handed out a copy of the opinion that Section 2 is unconstitutional, and said he believed the staff already had a copy. (No copy was received by the Secretary) He said imposing a bond as a condition of access to the court without any regard for the ability of the individual bringing the suit to pay, clearly violates Article II, Section 16 which grants every Montanan the right of access to their courts.

Senator Crippen asked Ms. Lane if Mr. Jensen was correct. Ms. Lane said she believed it was a problem and read from section 16, "Courts of justice shall be open to every person, speedy remedy afforded for every injury of person, property or character and said there were some other words such as "the right and justice shall be administered without sale, deny, or delay" and it was on the basis of those words the Supreme Court in 1978 ruled that having a bond with no circuit breaker of any kind prevented people or the indigent to respond. She had not had time to thoroughly research this, other than to read the above mentioned case. The case they referred to was, there was a statute that failed an appeal out of JP Court to the District Court that you couldn't appeal a judgement against you without a bond in the amount double the damage that had been recovered in JP Court. An indigent woman took that to the Supreme Court and they said it was unconstitutional because it denied her right to go to court. I think that arguments could be made on the grounds that you can't get into court without posting a bond. However, there are situations where appeals are not allowed without bonds.

Senator Crippen said that is after judgement and Ms. Lane said that was right. She believed there was a problem in this instance where you can't even get into court without posting a bond. The same reasons exist that the statute could be applied to this. She believed there were problems but that she was not prepared to give the answers to these questions.

Senator Crippen asked if there were any attorneys or anybody else on the other side who would like to make a comment. I just think there is a problem with this.

Representative Brandewie said he was not an attorney and if you look at the section of law which deals with injunctions and posting of restraining orders which require posting bonds, the language is very similar to what we have here. The language was put into a compromise, and taken from this, when this was first visited in Bannack in 1867 and is still on the statutes. The last time it was visited was in 1979. He said his explanation is the amount of the security required may be as much as, but not greater than, the amount of the damage. First of all, a judge has to set the bond. Under this language he can set it at nothing if he thinks the plaintiff has some standing in the case. If he thinks that the bond hearing has no standing he can probably ask them to put up the loss to the state. It is up to the discretion of the judge and we argued this on the floor of the House. He said he did not understand the constitutionality. In the one case you're asking to post a bond for damages that would be caused to the State and the School Trust Fund and then to say that is unconstitutional. When you try to stop Wal Mart from building or stop them because their paint is the wrong color or some other thing, you have to post a bond at that time. So, I don't think we have limited poor people with this. The judge is the final arbiter of how much the bond is and I think the constitutional question is a red herring. If it is not a red

herring, then this section of law is also unconstitutional. I don't think we can have it both ways.

Senator Towe asked Representative Brandewie how many dollars are in a million board feet and Representative Brandewie said about \$500 per thousand.

Senator Towe asked how much of that \$500 would go to DSL and Representative Brandewie said if a logger bids on a sale at \$500 per thousand board feet and the sale is for \$500,000. He bids to the State Lands.

Senator Towe said when you talk about damages in the amount to put up a bond, are you talking about the delay that it would take, and is that what you mean by as much but not greater than the amount of damage suffered by the logger. Representative Brandewie gave the example that if you took the \$500,000 at 3% it would be \$15,000 annualized interest. To find the monthly cost you would multiply by .0833.

Senator Towe asked how he would respond to the technical note in the fiscal note that Section 1, paragraph 2 requires maximum harvesting within timber sales units and it may conflict with the concept of long term sustained income. Representative Brandewie said he would respond in about the same manner as Senator Towe. We know what the sustained yield is and it does not say that you are going to cut beyond the sustained yield or even to the sustained yield necessarily.

Senator Towe asked if it was the sponsor's position that this bill, if adopted, would not require an increased yield or an increased harvest to such an extent that it would damage long term income production from our state lands. Representative Brandewie said this bill doesn't ask that we harvest and ruin our resources. He said that would contradict everything he had said in testimony in regards to maximizing the return. It doesn't mean raping the land, it means getting the most you can on a sustained basis. A sustained yield is somewhere between a 40 and 50 million board feet range and that would put between 8 and 12 million dollars in the school trust fund each year assuming that the price of timber stays where it is. I don't see it going down any.

Senator Blaylock addressed a question to Mr. Clinch. He said using the \$500,000 figure, if we sold \$500,000 worth of timber is that considered permanently removed from the land, so that it would flow into the permanent school trust fund rather than the I&I (Interest & Income) fund and Mr. Clinch said he believed a bill several sessions back made it clear that those funds go into the I&I Fund not into the permanent trust.

Senator Halligan asked Mr. Jensen if the bond provisions were removed from the bill, realizing you said other provisions might be unnecessary because of past legislation, is this bill still

very objectional if the bond provisions are removed and Mr. Jensen said only as a tax payer, he would probably not want you to spend any more money printing this bill in your short stay here in Helena to do something useless. The bill would not be objectionable to us and we would support at least Section 3 as it is currently written. I think it is important though that Senator Blaylock's point be understood, that the amendment put on the floor by the House in Section 2 talks about the Trust Fund and this money does not go into the Trust Fund. I think the fiduciary responsibilities mentioned by Mr. Hegreberg needs to be questioned. The fiduciary has an obligation to future beneficiaries not only current beneficiaries and maybe that statute passed a few years ago should be examined by future legislatures or the next legislature for its constitutionality to determine whether that is the policy Montana wants. It would have all the income from our forests and spend it now rather than put it in the Trust Fund.

Senator Grosfield said recognizing that there might be a technical problem with some of the language here, asked Mr. Clinch if it is his sense that passing this bill is going to help increase the flow of money to schools in Montana. Mr. Clinch answered yes.

Senator Bartlett asked a question of Mr. Clinch or the legal staff. She said concerning the four cases that have been filed, what grounds were they filed on and Mr. Clinch deferred the question to Jeff Jahnke, DSL. Mr. Jahnke said they were all filed for a variety of reasons, but most were related to the Montana environmental policies.

Senator Bartlett said alleging that the Department did not follow the procedures necessary to make the decisions so that in fact they weren't brought to set aside the sale of timber to delay the cutting but to require the Department of State Lands to follow the procedures that are laid down in state law when making a decision about whether or not there should be a timber sale. Mr. Jahnke said that is probably the most common element of the four suits.

Chairman Yellowtail asked why those were challenged or were they challenged as frivolous and Mr. Jahnke said he did not believe so.

Closing by Sponsor: Representative Brandewie said that out of the four that have been challenged over this long history, three have been in the last 18 months and two of them have been put forth by friends of the Wild Swan. They have lost one of their suits. They have one pending in the Swan Forest. If there is another sale put up, they'll put up another complaint. It is an ongoing thing up there. As recently as 1985 the state Supreme Court of South Dakota stated that beneficiaries of School Trust Plans do not include the general public other than government institutions nor the general welfare of this state. It is

important to note that South Dakota School Trust Plans is under the same enabling act as Montana. Arizona has found the same thing. The School Trust Lands are to be maintained for those purposes set forth in the Enabling Act. I want you to know that this morning I heard that the School Board in Seeley Lake has entered the law suit on the Tom Meyers sale as a friend of the court. At some point in time we have to pass this and get the income and the revenue that is deserved by the schools and the Trust Fund. These lands do not belong to me as a sportsman. The Enabling Act is very clear about that. If this bill is not constitutional then how are injunctions and restraining orders constitutional. It has been in our history ever since we became a state.

Senator Doherty said as a matter of point of personal privilege he would like to, formally and on the record, apologize to both Mr. Clinch and the Committee for his comments. He said what he was attempting to bring out, and was wrong in doing it, was in Mr. Clinch's former life he did a very good straightforward professional job and in his current life as Commissioner of State Lands he does a professional job. He said that was what he was trying to get out and he apologized for the way he went about it.

Chairman Yellowtail thanked Senator Doherty and said the meeting was adjourned.

ADJOURNMENT

Adjournment: 12:10 p.m.



SENATOR DOHERTY, Vice Chair



LINDA CASEY, WPC Supervisor

SD/11c

FAX 752 6114

Attn Ben Long

Management Direction For Montana Trust Lands

EXHIBIT NO. 1

DATE 12-17-9

BILL NO. HB 7

SM 1

Montana statute states:

"...the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state (emphasis added)

Montana Attorney General said:

"...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." (emphasis added)
Volume 36, opinion #92

Montana statute states:

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

The courts said:

"trust beneficiaries do not include the general public, other than government institutions, nor the general welfare of this state."
(South Dakota Supreme Court; Kanaly v. State 1985)

The Oklahoma Supreme Court in 1982 reaffirmed two key points concerning endowment lands: 1) school trust lands must be managed for the exclusive benefit of the public schools; 2) school trust lands must be managed to obtain full value (Oklahoma Education Association v. Nigh)

Two historic U.S. Supreme Court cases, *Ervien v. United States*, and *Lassen v. Arizona ex rel. Arizona Highway Dept.*, have been interpreted as follows by various legal scholars:

"...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...The U.S. Supreme Court has held that the interests of trust beneficiaries are exclusive--they are not to be balanced against other interests." (K.A. Bassett, "Utah's School Trust Lands," 9J. Energy Law & Policy 195 (1989))

We are not suggesting that any public agency over-harvest its timberland. In the case of Montana's school trust lands, we ask only that the Board of Land Commissioners manage those lands for the long-term financial interests of the trust beneficiaries. The Enabling Act which granted federal land to the State of Montana, as well as an extensive body of case law, firmly establishes a mandate for maximizing revenues from those lands. The sole purpose of school trust lands is to financially support schools.

In 1976, Montana Attorney General Robert Woodahl issued an opinion (Volume 36, number 92) concerning the use of school trust lands for the creation of state "Natural Areas." Following are excerpts of his decision:

"...it is elementary that this trust be administered so as to secure the largest measure of legitimate advantage to the beneficiary. As a practical matter, this means the state must do something to generate and sustain income from school trust lands whenever possible. The state's discretion is not whether, but how to seek gain from school lands for best advantage to the trust."

"...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."

Two U.S. Supreme Court cases, Ervien v. United States, and Lassen v. Arizona ex rel. Arizona Highway Dept., held that benefits from trust lands must accrue only to designated beneficiaries, and that such benefits must be at full, fair market value. These two cases have been interpreted with the following comments:

"Given the language and attitude found in the relevant case law, including rulings of the U.S. 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...the interests of school trust beneficiaries are exclusive--they are not to be balanced against other interests." (K.A. Bassett, "Utah's School Trust Lands," 9J. Energy Law & Policy 195, 1989, p. 202)

As recently as 1985, the South Dakota Supreme Court stated that beneficiaries of school trust lands, "do not include the general public, other than government institutions, nor the general welfare of this state." It is important to note that South Dakota was granted trust lands under the same Enabling Act as Montana.

"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." (N. Handy, "Legal limitations on federal or state efforts to impose log export restrictions on the federal land grant trusts," mimeo., Washington State Department of Natural Resources, Olympia, WA (1989))

Given the body of case law surrounding the use of state trust lands, it is the contention of Montana Wood Products Association that the multiple use statute governing state lands could be shown unconstitutional in a court of law.

We further contend that DSL management of timber lands which grants "substantive effect" to MEPA, mitigating for perceived impacts such as elk hiding cover, aesthetic concerns, deer winter range, old growth, cumulative effects, and others, is a constitutional violation of the trust mandate.

Financial return to the school trust from forested lands is currently about 40 percent of its sustainable annual potential, resulting in gross negligence of the trust mandate.

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, non-mineral, unreserved public lands of the United States within the state.

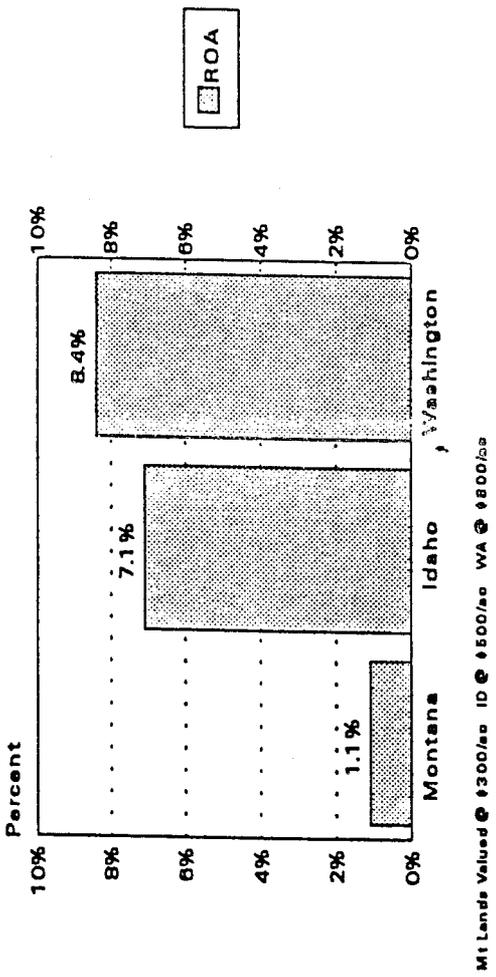
Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such 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 of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be

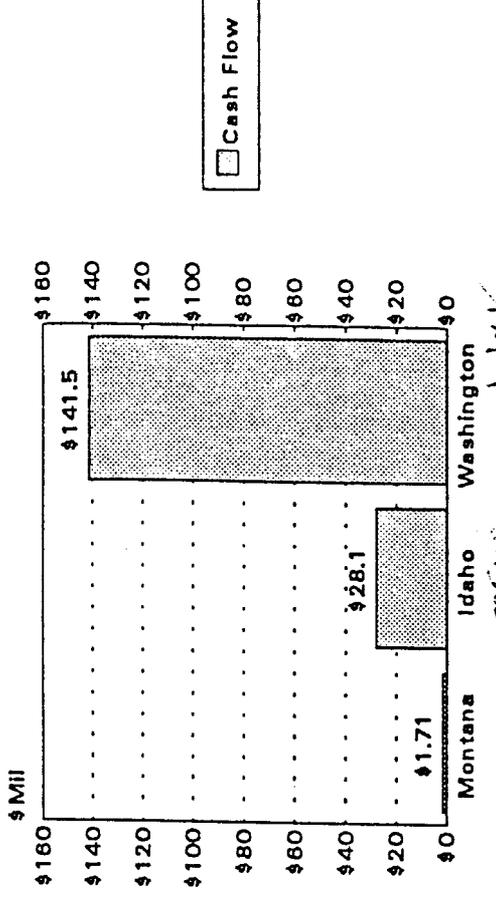
12-17-93
HB 72

Comparative Returns



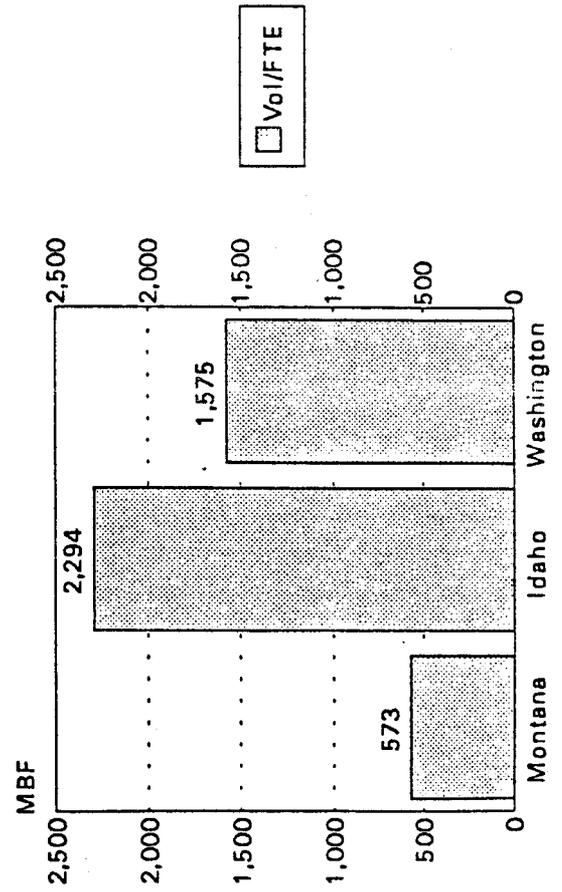
MI Lands Valued @ \$300/acre ID @ \$500/acre WA @ \$800/acre

Comparative Cash Flows

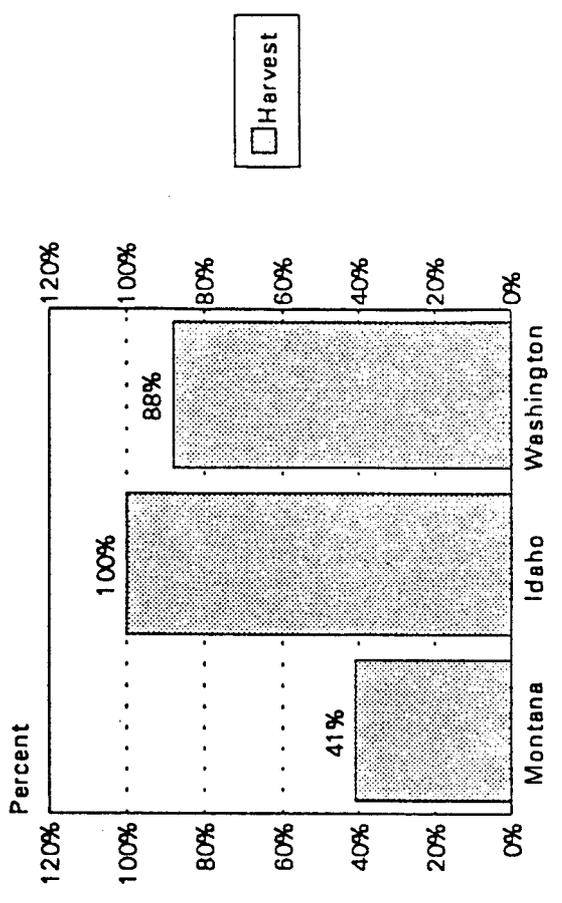


Costs 57,000
59%
785,000
46%
2 mil 100k
Net 14%

Productivity per Forester



Percent Harvested of Sustained Yield



DEPARTMENT OF STATE LANDS

EXHIBIT 1
12-17-93
HB 72

	MONTANA	IDAHO	WASHINGTON
ACRES	507,900	785,000	2,100,000
VOLUME MBF	3,353,404	9,167,000	21,220,000
GROWTH MBF	86,907	188,000	840,000
MORTALITY MBF	24,346	60,000	87,000
SUSTAINED YLD	50,000	193,000	575,000
FTE'S	36	85	320
\$REVENUES	4,200,000	34,614,567	164,824,000
HARVEST (MBF)	(20,612)	(195,000)	(504,000)
\$ COST	2,500,000	6,500,000	23,300,000
NET CASH FLOW	1,700,000	28,114,567	141,524,000
\$ SOLD	5,400,000	84,561,333	?
	(18,128)	(220,000)	

59%

19%

14%

Source of data: information was obtained from the Department of State Lands for each state.

EXHIBIT NO. 2
DATE 12-17-93
BILL NO. HB 72 SMI

LETTERS SUPPORTING HB 72. THAT HAVE BEEN FORWARDED TO REPRESENTATIVE
RAY BRANDEWIE:

Dale E. Huhtanen, Superintendent
School District No. 12
Beaverhead County, Lima

Ryan D. Taylor, Ed.D., Superintendent
School District No. 6
Columbia Falls

Jack Eggensperger, Superintendent
School District No. 9
Darby

Patricia Hereim, vice-Chairperson
School District No. 8
White Sulphur Springs

Robert Aumaugher, Superintendent
Evergreen School District No. 50
Kalispell

Roger A. Dettaan, School Board Member
Townsend School District

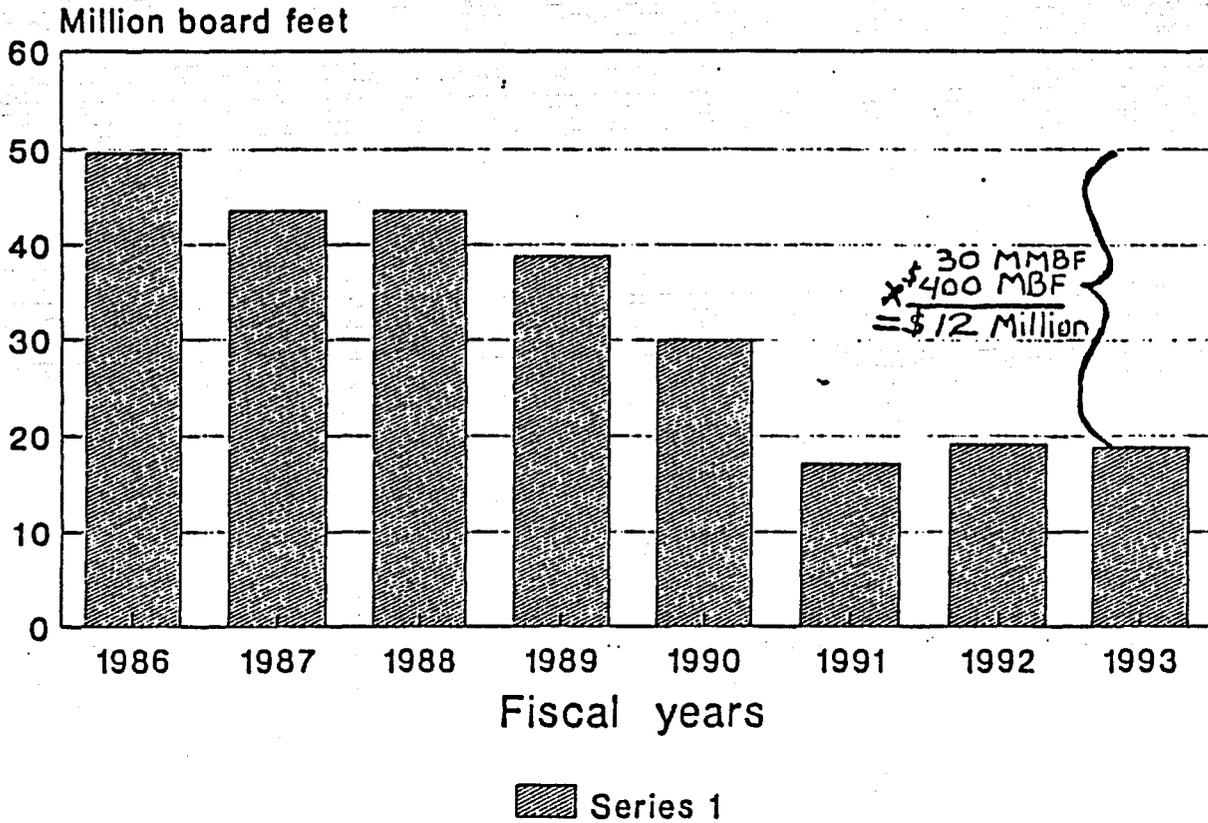
Anthony C. Colter, Board Member
School District No. 1
Deer Lodge

Alan Redfield, Chairman of the board of Trustees
School District 75
Pray

Edward Murgel, Chairman
East Helena Schools

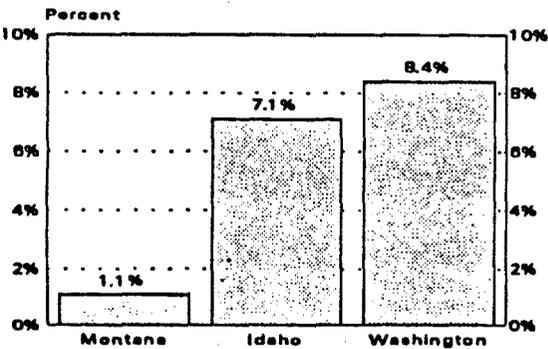
SM 1

Montana Trust Land Timber Sales

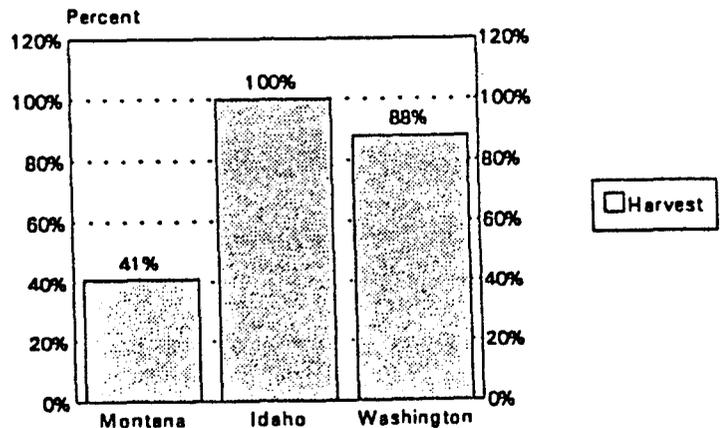


State Owned Lands

Comparative Returns



Percent Harvested of Sustained Yield



Value of \$200/acre ID @ \$800/acre WA @ \$800/acre
Estimated Return on Asset Value

FACT SHEET

Legislation to Optimize Revenue from Forested Trust Lands

- * In Montana's Enabling Act, the U.S. Congress granted two sections of land in each township to be "held in trust" and managed for the benefit of public schools and specified institutions.
- * In FY '93 Montana's forested Trust land produced a net return on asset value of only about 1%. In contrast, Idaho's forested Trust lands returned 7.1%, and Washington State returned 8.4%.
- * 50 million board feet (MMBF) per year can be sustainably cut on Montana's Trust land, while actual timber sales from Trust lands have fallen to 17 - 20 MMBF;
- * At current high values, this represents foregone revenue of approximately \$12 million, of which \$8 million would go directly to public schools;
- * While neighboring states are harvesting 80 - 100 percent of the sustainable yield from Trust timberlands, Montana is harvesting only about 40%;
- * In FY '93, tree mortality on Trust lands totalled about 24 MMBF. That is 5 MMBF more than was actually sold for harvest;
- * Case law applicable to Trust lands clearly states that schools and specified institutions are the sole beneficiaries of Trust lands and that their financial interests are not to be balanced against other public objectives.
- * Idaho law requires that anybody seeking a court injunction to halt a timber sale must post a bond equal to 10% of the Trust's financial interest in the sale.
- * A timber purchaser compensates the Trust with a 20% down payment immediately upon bid approval. Even if a lawsuit is frivolous and unwarranted, both the Trust and the purchaser incur financial harm, while the plaintiff has no financial interest at stake.
- * Despite its otherwise cumbersome, bureaucratic process, even the U.S. Forest Service is authorized to categorically exclude salvage sales from review under NEPA to expedite harvest of dead/dying timber.
- * Other state agencies own and manage "public lands" for single use purposes such as parks, campgrounds, wildlife refuges, etc. As long as DSL complies with all applicable laws, why shouldn't Trust lands be managed for the primary purpose of generating desperately needed revenue for schools?

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 12-17-93

FILE NO. 14 B 72

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
HB 72

J.M. I

December 17, 1993

Mr. Chairman, Members of the Committee, my name is Peggy Olson Trenk and I am here today representing the members of the Western Environmental Trade Association - a Coalition of Agriculture, Mining, Oil & Gas, Business, Timber and Recreational interests. We would like to go on record in support of HB 72.

We would like to encourage this Committee to give particular attention to the issue of sustainability as it is being discussed today.

The term itself is becoming a popular topic, for which there are all kinds of definitions. HB 72 speaks specifically to a "sustainable" level of timber harvest - which is certainly a desired objective.

I would like to invite this Committee to also consider the question of what is sustainable in a much broader context. Another definition of sustainability is one that not only requires our actions be environmentally sound, but that they maintain the social fabric of our communities.

Clearly, our ability to offer our children the quality of education that prepares them for the future, as well as our ability to provide for those segments of society with special needs, is an integral part of a community's social structure, whether we are talking about the community we call Montana or the community of Great Falls. Those needs may not be more important than that of providing a "clean & healthful" environment, but they certainly cannot be less important.

Over the last few weeks, we've watched this body struggle with painful decisions about where to cut expenses in our educational system and elsewhere.

While it won't fix everything, HB 72 does propose to substantially increase trust income. It could alleviate some of the impact of those cuts and help provide our children the kind of education they need, now and into the future. I know our parents taught us that money doesn't grow on trees, but in this case it kinda' does. And it does so without jeopardizing our environment or the state's long-term interest in managing its trust lands.

To me, that goes to the heart of the sustainability question, and I urge you to PLEASE vote YES on HB 72. Thank you for the opportunity to testify.

SENATE JOURNAL
EXHIBIT NO. 5
DATE 12-17-93
BILL NO. HB 72

HB 72 Testimony

Cary Hegreberg, Executive Vice President
Montana Wood Products Association

SMI

Mr. Chairman, members of the Committee, my name is Cary Hegreberg, executive vice president of the Montana Wood Products Association, representing a diverse membership of forest products manufacturers in the state.

House bill 72 is about two things, both of which we strongly support: One is additional funding for schools in the neighborhood of \$8-\$10 million per year. The second is about **sustainable, responsible management of forested trust lands.**

Unfortunately, Montana's forested trust lands have largely succumbed to a barrage of conflicting goals and special interests, leading to a point where these lands are not fulfilling their Constitutional mission of producing revenue for intended beneficiaries. Indeed, Department of State Lands own statistics show there is more timber dying on trust lands than is being harvested. In other words we're not even preserving the capital asset in the form of healthy forests.

These trust lands were granted to Montana by Congress in the Enabling Act for the clear, specific purpose of generating income for schools and other institutions. These lands are "public lands" only to the extent they are held in **trust** for the intended beneficiaries who are: public schools, MSU College of Ag, U of M, Western Montana College, Montana School for the Deaf & Blind, Pinehill School, Montana Tech. School of Mines, Montana Veterans Home, and the State Capitol Buildings fund.

These beneficiaries have a legal, constitutional right to a reasonable rate of return on their assets. The current return on investment from forested trust lands is about 1 percent annually. The state Board of Investments is currently earning from 6-8 percent on its various funds. The State of Idaho is earning more than 7 percent return on its forested trust lands, while Washington State, even with Spotted Owls, is earning 8 percent return for its public schools.

Courts around the country have repeatedly reaffirmed the Constitutional mandate governing state trust lands. Following are several excerpts of applicable case law citations:

U.S. Supreme Court: "interests of school trust beneficiaries are exclusive--they are not to be balanced against other interest."

U.S. Supreme Court: "Trust lands and their management proceeds may not be devalued to serve other public purposes"

South Dakota Supreme Court: "The trust's beneficiaries do not include the general public, other than specified government institutions, nor the general welfare of this state.: (same enabling act)

Oklahoma Supreme Court: "School trust lands must be managed for the exclusive benefit of public schools, and school trust lands must be managed to obtain full value."

The proponents of this bill, including the forest products industry, are only asking the state to exercise its fiduciary responsibility to beneficiaries of the trust through sustainable, responsible forest management. Opponents will stand before you and accuse the big greedy corporate timber companies of trying to plunder state forests. Our member companies have a vested interest in sustained timber production from trust lands into the future. Most of our member companies are small, family-owned sawmills in places like Darby, Olney, Eureka, Thompson Falls, and Seeley Lake. Several have been owned in the same families for several generations, much like family farms, and they represent the employment and tax base of their local communities. They are not the "cut and run" timber mongers opponents will characterize them as.

What you won't hear opponents offer today are alternatives. During the last hearing on this bill, opponents chastised Champion International and warned that industry's version of sustainable forestry was not to be trusted. I'm not here to defend any one company, but I can tell you that virtually every federal timber sale was appealed last year by environmental groups, collectively making Yellowstone Park their preferred version. We all know what happened to the trees in Yellowstone.

In terms of specifics, section two dealing with security deposits is modelled after a similar statute adopted by the Idaho legislature. It is an effort to protect the financial interests of the trust and of the timber purchaser from frivolous lawsuits seeking to obstruct the process. As it now stands, when a court injunction is sought on a Land

Board approved timber sale, both the trust and the timber purchaser have a financial stake at issue, while the plaintiff does not. The timber purchaser makes a 20 percent down payment, which can be upward of \$150,000. If a court injunction delays a legitimate timber sale, the trust loses the income opportunity, and the timber purchaser has huge amounts of capital tied up with no cash flow generated. This bill assures that all parties to litigation have financial standing.

Section 3 is straightforward and simply gives the department a method of harvesting dead trees in small tracts before their value is lost due to deterioration. It will not result in violation of any environmental laws. The department still must comply with all existing statutes governing water quality and endangered species. It simply allows the department to dispense with lengthy documentation and public comment in selling small amounts of dead timber.

If you have seen the Christmas tree under the rotunda, you'll note it did not come from state lands. For one reason or another, the department could not provide the capitol building with a tree. I joked with Commissioner Clinch that they probably couldn't complete the necessary EA until June, so we assisted in securing an 18 ft. tree which was cut from private timber land clear cut in the 1970s.

Members of the Committee, trees are a sustainable, renewable resource. State trust lands can and should be managed under a sustainable system using best management practices, which our member companies and logging contractors are pledged to follow.

Thank you.

EXHIBIT 6
12-17-93
HB 72

BILL NO. _____

Testimony on HB 72

Jack Mahon, Manager, R-Y Timber in Townsend, MT

Mr. Chairman, members of the committee, my name is Jack Mahon, manager of R-Y Timber in Townsend. We are a small, privately held mill that has operated in the Townsend area for.....years.

We support this bill because it not only supports the people who work at the mill and in the woods, it also provides a legitimate source of desperately needed revenues for our schools. In many communities like Townsend, the sawmill is the major employer and local businesses supply us goods and services. A major part of the tax base is supported by a mill that converts a raw resource into a value-added product.

But we must have access to the raw resource before we can employ people to add value through processing and shipping lumber. We are struggling to hang on as the U.S. Forest Service timber program is in a free-fall. The few federal sales available are nearly always appealed and intentionally delayed by some of the same opponents to this bill.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 12-17-93
BILL NO. HB 72

EXHIBIT 4
12-17-93
HB 72

Small mills like ours are extremely vulnerable as competition for logs increases, even from out of state mills. This bill helps ease the supply crisis under a wise, sustained yield management system. We are not advocating the state over-harvest its trust lands. We are just asking that you put a system in place that allows the Department of State Lands to manage for sustainable yield.

Sure, I have a vested interest in this bill. I'm the guy who has to hand pink slips to hard-working people when I can't buy timber because it's all tied up in a bureaucratic mess. I'm the guy who has to explain to them why government agencies can't even manage to sell dead trees to sawmills like ours to produce lumber that is in demand all over the country.

(Explain dead/dying timber problem)

I urge this committee to support schools, to support local communities like Townsend, to support our state's tax base, and to support good, sustainable forestry by voting yes for this bill.

Thank you.