

School Trust Lands - Montana and Land Board Commissioners

In an effort to fully appreciate the contribution and value of Montana's State School Trust Lands and their relation to the public at large, it is essential to thoroughly understand the origins and evolutionary processes associated with these lands.

The following, not intended to be an exhaustive or comprehensive review, presents a general overview of the rationale and reasoning associated with these lands and the resource assets held and utilized for the public benefit.

OVERVIEW & PERSPECTIVE:

FEDERAL GRANT ORIGINS

- The federal government, for more than 100 years, has made grants totaling millions of acres to the states as they joined the Union. Political policies varied over the years, however, the overall concept of the grants was to support the educational system.
- The 1785 General Land Ordinance and the 1787 Northwest Ordinance were at the forefront of acreage contributions made to territories. The lands of the west were surveyed in accordance with the rectangular survey system, which structured the lay of the lands into six mile by six mile "townships", each being further divided into thirty-six sections of one square mile each. With the adoption of this survey concept, the granting of section sixteen was made for public schools in the townships.
- In accordance with the 1785 Ordinance, a population base of 60,000 was required for statehood eligibility and Union admittance. Having attained this population, a Congressional "enabling act" would be passed permitting a constitutional convention to be held for the prospective new state. It was this enabling act that made provision for lands to be granted by the federal government to the newly formed state.
- The history of land grants by the Federal government is a study in itself, and has evolved over time. When Montana was admitted to the Union in 1889, the Omnibus Enabling Act called for both sections sixteen and thirty-six of each township to be vested in the State for support of common schools. The Montana grant comprised some five million acres, of which nearly 90% remains with the State today.

- The early grants of lands were placed under the administration of the “township”, however over time, this too evolved so that the State administrated the grants for the benefit of schools, which allowed for the financing of the schools within the State.
- In accordance with the Constitution of the State of Montana, the granted lands are “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.” This concept is contained in the 1889 as well as the 1972 Constitution.

MONTANA TRUST LANDS

- In Montana, as well as other states, when the sections sixteen and thirty-six were not available because of prior sale or disposition, an “in lieu” list was prepared of select lands and submitted to the Secretary of the Interior to make up for the acreage shortfalls. Lands comprising Indian and military reservations were not available for selection. Interestingly, lands determined to be mineral in character were also excluded. The 1927 Jones Act reversed this mineral exclusion, granting title to the mineral estate under lands with a previous reservation. Under Jones, the sale of mineral interests involved with the State lands is prohibited and provisions for the leasing of these interests is provided with the proceeds of any lease, including rentals and royalties, to be credited to aid in the support of the public and common schools.
- The provisions of the Omnibus Enabling Act included language regarding the placement of proceeds associated with the regulated sale of public lands to the permanent fund account, with interest from the fund to go to the schools. Over time, changes by the legislature have been made with respect to the disposal (sale) of these lands. Again, the granting of easements and other rights by the State have been realized with changes to the initial Act. *NOTE*: the Permanent Fund Balance is presently over \$700 million.
- Montana’s 1889 and 1972 Constitutions provided that the federal grant lands be “held in trust for the people....” Additionally, the Montana legislature has spoken to the trust directive in addressing the sale of these public lands. The sale of State-owned mineral interests are not permitted. As well, the sale of lands that are adjoining navigable and non-navigable meandering lakes and streams are not allowed. State Forest land management is also legislatively restricted. Legislative actions have addressed and apply to the exchange of State lands.

- The Land Banking program was established to purchase lands, under strict guidance, specifically intended to increase the return to the Trust while at the same time providing additional access to the public on State lands. The program allows for the sale of isolated parcels of public lands or those with no legal access. Appraisals of the properties to be sold or proposed for purchase are made with future revenue-generating capabilities projected regarding agricultural and grazing leases or commercial viability for development, including use of the surface for renewable energy resources. Again, in Land Banking sales, no State-owned minerals are ever included in sales, and where possible, acquisitions look to include the mineral estate.
- Generally then, the land assets are held in Trust to provide for the educational system, and it is the responsibility of the administrative body for the Trust to maintain and maximize these assets and the return generated for this benefit.
- The Constitution of the State of Montana establishes the State's trust relationship with the institutional beneficiaries. This trust arrangement is provided for under Article X, Section 4, as follows:

“Board of Land Commissioners. The governor, superintendent of public instruction, auditor, secretary of state and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.”

The legislature, with some specificity, set out the role of the Board:

“It is in the best interest and to the great advantage of the State of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.” [Mont. Code. Ann. § 77-1-604]

“The Board exercises general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the Board of Investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration.” [Mont. Code. Ann. § 77-1-202(1)]

The management of state lands is conducted under the mandate of a multiple-use of concept, defined more specifically as the “management of all the various resources of the state lands so that: (a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources of related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and (b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.” [Mont. Code. Ann.§ 77-1-203(1)]

The Department of Natural Resources and Conservation (DNRC) is the administrative arm of the Board, which “has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands.” Under the directive of the Board it is required to carry out “other duties the Board directs, the purpose of the department demands, or the statutes require.” [Mont. Code. Ann.§ 77-1-301(1)]

Within the DNRC there are four divisional units that oversee the Trust assets:

- 1 - Forestry Division
- 2 - Water Division
- 3 - Conservation/Resource Development Division
- 4 - Trust Land Management Division

Note is made that the Montana Board of Oil and Gas Conservation is also a part of the DNRC.

The Trust Land Management Division, manages and administers the mineral, surface and timber assets of the State Trust, and is further divided into four separate bureaus:

- A - Agriculture and Grazing Management Bureau administers and directs all agriculture and grazing leases, the recreational use program and the Montana Antiquities Act performance.

Policies: Montana Code Annotated

- Ag/Grazing – Title 77, Chapter 6
- Recreational Use – 77-1-801 thru 77-1-820

- 2020 F Y Revenues:

- Ag Leases = \$14.8 million
- Grazing = \$13.3 million
- Recreational = \$1,052,910

- B - Forest Management Bureau administers the State forest interests, including management and sales of forest products and directing the Forest Improvement Program, which utilizes fees obtained from timber sales for the long-term forest improvement and productivity of the forests.

Policies: - Montana Environmental Policy Act (MEPA)
- Habitat Conservation Plan (HCP)
- State Forest Land Management Plan (SFLMP)
- Forest Management Administrative Rules
- Sustainable Yield Calculation

- 2020 FY Revenues:
- 53.9 million board ft. sold = \$10.5 million

- C - Minerals Management Bureau handles leasing and permitting of the State mineral interests in oil, gas, coal, sand, gravel, metalliferous and non-metalliferous resources.

Policies: - Montana Environmental Policy Act (MEPA)
- Montana Code Annotated
- Title 77, Chapter 3
- ARM 36.25, Subchap. 2(O&G), 6(Metalliferous),
11(Navigable Waterways)
Regulated by DEQ and Board of O&G Conservation

- 2020 FY Revenues:
- Total Mineral Activities = \$22.4 million
- Oil & Gas Royalties = \$7 million
- Coal Royalty = \$13.6 million
- Oil Gas Rentals/Bonus = \$1.8 million

- D - Real Estate Management Bureau is responsible for the ownership matters involved with Trust lands, the included duties regarding sales and acquisitions under the Land Banking Program, cabin/home site sales and leasing, easements over State lands and all exchanges. With an increased interest in renewable energy resources such as wind and solar, which have had an 11.5% increase in average annual revenues over last 6 years, the Real Estate Management Bureau has been actively engaged in negotiations for options, leases and permits on State lands.

Policies: - Montana Code Annotated
- Title 77, Chapter 1, 2, 6
- Montana Administrative Rules
- Title 36, Section 25, Chapters 1, 7, 8, 9, 10, 11
- Montana Environmental Policy Act (MEPA)

- Real Estate Management Plan
(Adoption by 2005 Final Programmatic Environmental Impact Statement (FEIS) Record of Decision)
- Board of Land Commissioner's Access Road Policy
- Board of Land Commissioner's Reciprocal Access and Easement Exchange Policy
- 2020 FY Revenues:
 - Land Banking:
 - Cabin Sales (41 sites) = \$7.5 million
 - Land Sales = \$3.6 million
 - Residential Lease = \$2.2 million
 - Commercial Lease/License = \$2.2 million
 - ROW/Ease. = \$1.5 million
 - Hydro Lease = \$4.9 million
 - (Undistributed \$20+ million – escrowed)

NOTE: 2006-2020

- Land Bank Sales – 86,231ac. - \$75.2 million
- Land Bank Acquired – 98,228ac. - \$53.3 million

The Common Schools distributive share of the revenues for the year 2020, although somewhat lower than the previous year, was \$41.2 million.

The lands vested in the State of Montana include most of the original common schools grant as well as additional acres held for endowed institutions. All of these lands are managed by the DNRC, for the varied beneficial interests as follows:

- Common Public Schools
- University of Montana
- Montana State University – Morrill Grant
- Montana State University – Second Grant
- Montana Tech University of Montana
- State Normal School (Montana State University Billings & University of Montana Western)
- School for the Deaf and Blind
- State Reform School (Pine Hills)
- Veterans Home
- Public Buildings

Over the years, there have been several legal contests regarding the precise relationship between the State and the public school lands. It has been uniformly interpreted that the State is a trustee for the beneficiaries of these lands – public schools. The Montana Supreme Court has upheld this relation and ruled, dating to 1896, that the Omnibus Enabling Act constituted a trust.

More recent legal challenges involving the application of fair market value of State lands and the duty of its undivided loyalty to the beneficiaries are frequently referenced in the Land Board activities of today.

Briefly, a citizen group known as Montanans for the Responsible Use of the School Trust, colloquially referenced as Montrust, was involved in three separate actions dating from 1999 through 2012. Montrust I challenged the constitutionality of fourteen separate state statutes related to market value of rights-of-way, cabin-site land, tree-cutting and agricultural leases. The Montana Supreme Court consistently held the trust directive of the State.

The second challenge by this group is known as Montrust II, a 2005 action, addressed the lack of application of trust duties by the Board of Land Commissioners in dealing with mineral royalties and an assertion of an unaccounted commingling of interests on trust assets. An interesting and involved case, the Supreme Court found no violation of trust duties by the Board.

Montrust III, dating from 2012, which is often referenced in the actions of the Land Board of today, addressed the program involving the leases of cabin sites. In this instance, a settlement between the parties was successfully reached and thus no court decision was delivered. The action presented alleged that the application and implementation of administrative rules under a 2011 statute violated the fiduciary and trust duties of the Constitution by the State in not securing the full market value of the sites being sold. A permanent injunction of the statute and applicable rules, was reached in the settlement, with an agreement that lease rates be administered by the State under well-defined terms applicable to sales going forward. A strict review would be conducted at two-year intervals with revisions made as necessary.

With the advent of the Montrust cases, the activities of the Land Board have come under greater scrutiny and the application of its actions more clearly defined in its management of trust interests.

Additional legal actions have occurred in recent years addressing the management of the trust interests, beneficial duties and the administration of the assets to best serve the future interests and financial support of the education system.

In summary, the State of Montana trust lands have been established as a public asset to be administered and preserved for the beneficial interests of the public schools system. The courts have upheld this opinion in the past, and will very likely be involved in the future as watchful eyes are ever vigilant on maintaining and preserving the trust interests for all generations to come.

It is an immeasurable and inviolate responsibility that is vested in the State Land Board Commissioners and the Department of Natural Resources, which requires the good judgment of all in overseeing these entrusted duties.

RECENT TRUST LANDS ACTIVITY

The State of Montana did not receive all of the lands to which it was entitled under the 1889 Enabling Act. The total acreage due to the State comprised 5,816.63 acres. In the furtherance of its Trust responsibilities, the DNRC has, over some considerable time, been actively engaged with the BLM in discussions to secure the additional acreage and complete the Federal obligation.

The background and historical context of the equalization process is absorbing, with “in lieu” selections presented to the BLM by the State and recent approvals made in 1984 and 1990, that left a settling balance of 1,184.16 acres, known as the “base” lands.

The BLM and the State agreed in 2013 that the State would take the balance of the in lieu lands based upon value rather than upon acreage quantity, using a comparable sales method, leaving a value which was determined to be \$4,104,727. In 2015, the State selected 16,055.74 acres under an application filed with the BLM for parcels in Chouteau, Custer, Fallon, Hill, Prairie, Richland and Yellowstone Counties, having a value of \$7,429,360.

The BLM made a decision in 2017 to divide the conveyance process into two separate “Phases”, with the Phase I conveyance approved by the Land Board at its February 20, 2018 meeting. That transfer comprised 2,126.11 acres in Chouteau, Custer and Hill Counties with a value of \$1,824,980.

In 2018, the obligation was fulfilled under Phase II for all of its remaining acreage. The Land Board, at its September 17, 2018 meeting, voted its approval for the acceptance and transfer to the State for 5,816.63 acres situated in Richland, Prairie and Custer Counties. The trust beneficiary was Common Schools and had a value of \$2,291,756.

With the approval and completion of the two Phases, the \$4.1 million obligation to the State by the federal government was fulfilled and the acreage accepted into the Trust for Common Schools.

INEQUITABLE DISTRIBUTION OF LANDS WITHIN THE STATE

The State of Montana is vested with over 5 million acres of Trust lands, of which 4.7 million are included in agriculture and over 780 thousand in timber. The Trust also holds title to approximately 6.2 million mineral acres.

There have, over time, been opinions voiced and questions raised regarding the extent of State of Montana public land holdings in the various counties throughout the state. In 2012, it was clearly brought to the attention of the Board of Land Commissioners with discussion particularly directed at the holdings in Daniels County, noted by one Commissioner to be seemingly one-third State land. As pointed out earlier, the lands granted under the Enabling Act were initially to comprise Sections 16 and 36 of each township. However, again as mentioned, where these sections were not available due to prior ownership by individuals, Tribal reservations, national and state forests, parks, etc., the shortfalls were to be made up with additional acreage granted in various configurations. This is seen in counties such as Daniels and Valley. The Land Banking program has addressed this matter by sales and purchases of Trust acreage as it continues to focus on maximizing the return on investment while benefitting, as well, the community needs.

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