



LEGISLATIVE FINANCE COMMITTEE

61st Montana Legislature

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

SENATE MEMBERS

KEITH BALES
STEVE GALLUS
DAVE LEWIS
RICK RIPLEY
DAVID WANZENRIED
CAROL WILLIAMS

HOUSE MEMBERS

WILLIAM GLASER
CYNTHIA HINER
GALEN HOLLENBAUGH
LLEW JONES
JON SESSO
JANNA TAYLOR

DIANE MCDUFFIE, Secretary
AMY CARLSON, Director

MINUTES STATE LAND BOARD SUBCOMMITTEE OF THE LEGISLATIVE FINANCE COMMITTEE

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. RICK RIPLEY
SEN. DAVID WANZENRIED

STAFF PRESENT

AMY CARLSON, DIRECTOR
DIANE MCDUFFIE, SECRETARY

VISITORS

Visitors' list, Attachment #1

CALL TO ORDER

00:01:35 **Sen. Wanzenried**, Chair called the State Land Subcommittee to order on Friday, June 25, 2010 at 1:30 p.m.. The meeting was held in Hearing Room 152 of the State Capital, Helena Montana.

OPENING REMARKS & INTRODUCTION OF PARTICIPANTS

00:01:20 Amy Carlson, Director, Legislative Fiscal Division thanked everyone for coming.

The following is a list of attendees:

Katie Guffin - Attorney General's Office
Anthony Johnson - Attorney General's Office
Cannon Luerkens -Secretary of State
Kenny Eck, Attorney General's Office
Ann Gilkey, Office of Public Instruction
Rusty Harper, Secretary of State
Jaret Coles, Legislative Services Division
Amy Carlson, Legislative Fiscal Division
Sen. Rick Ripley. Committee Member
Sen. Dave Wanzenried, Chair
Barbara Smith, Legislative Fiscal Division

Tom Schultz, Department of Natural Resources
Candace West, Department of Natural Resources
Mary Sexton, Department of Natural Resources
Jesse Laslovich, State Auditor's Office
Sen. Brad Hamlett, Senate District 10
Joe Kolman, Legislative Services
Hope Stockwell, Legislative Services
Susan Fox, Legislative Services

UPDATE ON PPL CASE

00:04:54 Anthony Johnstone, Assistant Attorney General provided background information on the PPL Lawsuit and discussed the timing. PPL's petition is due by August 12 to the U.S. Supreme Court PPL's petition. The Attorney General's opposition is September 13 and will be distributed to the Justices on September 29. On October 15 the Justices would meet on the case and decide whether or not to grant review or decide not to decide. If review of the case is denied that would be the end of the litigation. If the Supreme Court grants review it would be heard and decided by next June. One other remote option is the court could call for the views of the U.S. Solicitor General. There is no schedule for this option and typically can take four to five months before submitting a brief.

00:15:38 **Sen. Ripley** asked if the bond is good until the October 15. Mr. Johnstone said the bond is good until the Supreme Court is done with the review. The amount (\$52.7 million) scheduled on the bond is calculated through June 30, 2011. If the case goes beyond that a new bond would have to be negotiated.

UPDATE ON PROPOSED TRANSACTIONS

00:17:12 Barbara Smith, presented a spreadsheet on the Montana Legacy Project - Proposed Parcels for State Purchase. (Exhibit 1) This document identifies all the parcels related to the Legacy Project and a couple of parcels that were also Natural Conservancy (TNC) lands that were purchased originally from Plum Creek.

00:21:29 **Sen. Ripley** asked if appraisals have been completed on all parcels and did they come in at purchase price. Ms. Smith said Fish Creek is a closed acquisition and the department has an accurate appraisal. Potomac II, Miller Creek and Lincoln are all in due diligence process and the Swan will be in due diligence soon. The department does have an appraisal on Marshall Block and Potomac I. **Sen. Ripley** requested copies of the appraisals on all parcels when completed.

00:22:38 **Sen. Wanzenried** asked for information on the parcels in terms of fiber and log supply.

- 00:22:25 Mary Sexton, Director, DNRC said the number of mills in Montana has decreased, however, there are a number of active mills still in the state utilizing private lands, forest service lands, and school trust lands. Potomac I, Potomac II and Chamberlain are very highly productive timber land. The Miller Creek and Lincoln lands also have been for active timber management in the past.
- 00:26:40 **Sen. Wanzenried** asked which of these projects will be stalled until the monies are received. Ms. Sexton said Potomac II, Swan, Miller Creek and Lincoln.
- 00:27:48 **Sen. Ripley** asked if Potomac 1 and II been logged. Ms. Sexton said in the past it has been logged but has good second growth and the department feels there is a significant amount of merchantable timber.
- 00:28 Tom Schultz, DNRC said the department expects over the long term to have a consistent sustainable supply of stocking rate of about 1,000,000,000 board feet of timber from 100,000 acres of timber land.

DISCUSSION OF LEGAL POSITIONS: APPROPRIATION AUTHORITY

- 00:34:43 Candace West, Chief Legal Counsel, Land Board focused her comments to include a discussion of the Land Boards general authority for the management of the trust principle and the affect of the damages award as part of the trust principle to compensate the trust and make it whole. She also discussed the perspective of the facts in the case and why there is a recommendation that the expenditure of the compensatory damage award falls within the exemption as defined by the legislature.
- 00:58:21 Jaret Coles, Attorney, Legislative Services Division, (LSD) provided a copy of specific statutes and constitutional provisions that relate to this issue and discussed specific examples and whether there is authority by the Land Board in statute or the constitution. (Exhibit 2) Mr. Coles said the board of land commissioners can not claim authority under Article X, Section 11 of the Constitution, which states "...Any public land may be exchanged for other land, public or private..." This does not give the land board authority to purchase land. Article X, Section 4 states the board of land commissioners has authority to direct, control, lease, exchange, and sell school lands but these are not school lands.
- 01:19:38 **Sen. Ripley** asked if the court specifically ordered that the school trust be compensated. Mr. Johnstone said the court order determined that these are part of Article X, Section 11, public land trust.
- 01:23:06 **Sen. Wanzenried** asked Mr. Coles if he is suggesting that the land board does not have authority to purchase lands under the constitution. Mr. Coles said under Article X, Section 4, it specifically deals with school trust lands and his argument is the land board's authority over school trust lands. The authority the land board has over non school trust lands is further clarified in statute. He said he does not see any power of the land board on its own.
- 01:24:50 Ms. West commented that constitutional authority for the land board is to "direct, manage, and control" both the school trust and all state lands. She said statute recognizes the duty to appraise for acquisition thus identifying the authority under the management and

control authority under the broad constitutional provisions.

01:34:08 **RECESS**

01: 45:46 **MEETING RECONVENED**

01:45:55 **Sen. Wanzenried** asked counsel for the land board and counsel for the legislature to summarize the essence of their position. Also, provide a written summary of their position to the Legislative Fiscal Division on Monday to send to members of the Legislative Finance Committee for discussion.

01:47:14 Ms. West, concluded that the damages awarded by the District Court was awarded to the trust for compensation of the trust for past damages. Therefore, it is an award to the trust principle. The resolution of the land board directed that the damages be placed into the principle of the trust by acquiring land to be held as part of the permanent trust for the long term support of education. The damages are not general fund revenues and are not for the guarantee account. The land boards resolution complies with the opinion of the Supreme Court and is accomplished in a manner that is consistent with state trust law and with state authority for management of the trust lands.

01:48:53 Jaret Coles stated that it is not clear that the damages are principle. It is not clear that the land board has authority to purchase land nor is there any statutory appropriations available that give the land board the authority to use the damage proceeds to purchase land. It's also not clear how violating a state land law in the constitution turns these funds into non state source. Funds typically come from other parties, including tax payers which would be a non state source. If these funds would have been spent initially from the start they would have been spent operating funds of state government. The statute specifically provides that the funds would have been expended for the operation of institutions.

01:50:56 **Sen. Wanzenried** said it seems both parties agree the proceeds is for the benefit of education.

01:51:32 Ms. West said that is a clear identification of the purpose of the funding but keep in mind the responsibilities of the land board to serve as the fiduciary and has a duty to be impartial, fair, and reasonable to all current and future beneficiaries.

01:56:43 Mr. Coles said he believes the legislature did intend for the damages to be used for the public schools. The legislature could decide to spend the funds on purposes provided for in the enabling act.

ADJOURNMENT

01:58:10 The meeting adjourned at 3:25 p.m.