



# MONTANA LEGISLATIVE BRANCE

## Legislative Fiscal Division

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Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: February 16, 2006

TO: Members of the Legislative Finance Committee  
Members of the Environmental Quality Council

FROM: Barbara Smith, Associate Fiscal Analyst  
Legislative Fiscal Division (LFD)

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Krista Lee Evans, Research Analyst  
Legislative Environmental Policy Office (LEPO)

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RE: Management of state-owned lands

### ISSUE

Lands owned by the state are considered an asset. Some lands are held in trust; other lands are developed for recreational purposes or reserved as wildlife habitat. Revenues from the land are used to support K-12 education, the university system, and other state-endowed institutions. Since land is an asset, it can be argued that it should be managed as such. Research done for legislative requests has highlighted potential issues with coordination and maximization of asset management between the two primary agencies responsible for state lands.

This memo is designed to advise the Legislative Finance Committee (LFC) on the issues. Because the issues also fall within the jurisdiction of the Environmental Quality Council (EQC), this memo is being presented to that committee with the option of proposing joint action.

### Background

The Trust Land Management Division of the Department of Natural Resources and Conservation (DNRC) is responsible for managing 5.1 million surface acres and 6.3 million mineral acres for the largest return possible for the beneficiaries while managing that acreage under a multiple land use policy. The Field Services Division of the Department of Fish, Wildlife and Parks (FWP) is responsible for managing 300,000 acres of fee title land and 371,000 acres in conservation easements for recreation and wildlife habitat. All lands are owned/managed by the state. Each agency has its own duties, obligations, and goals regarding their programs. Therefore, situations arise when management principles of the agencies conflict and can cause state agencies to work against one another.

The process associated with the purchase, sale, or exchange of state land is different for each agency, but both must ultimately receive approval from the Board of Land Commissioners (land board) for most transactions. (Statute provides authority to the FWP Commission to approve

transactions involving less than 100 acres or less than \$100,000 without land board approval.) The transactions in front of the land board are often complex and interrelated, but each transaction must stand alone for evaluation. In trust land transactions, the benefit to the trusts involved must also be considered. On occasion, the land board delays decisions in order to obtain additional information from one of the departments, requests resolution of outstanding issues, or extends time for public participation. Transactions are completed only after the land board has received and reviewed information and has approved the transaction. The land board is responsible for contemplating the cost/benefit to the state as a whole.

Transactions in front of the land board have been a source of legislative information requests to Legislative Environmental Policy Office (LEPO) and LFD staff members. In the research and coordination of the responses, staff has identified multiple policy issues, many with fiscal implications. Because the issues are complex and because the environment of land transactions has changed significantly in the last 5 to 10 years, staff felt it advisable to inform both committees of these issues and present options for further committee action.

### **Research That Led to the Issue**

After the January land board meeting, staff received a legislative request to examine a proposed land exchange (DNRC/JR Miller), which led to the review of proposed Habitat Montana land transactions and the subsequent acceptance of federal funds to purchase tracts in the North Swan Valley that are contained in a budget amendment approved by the Office of Budget and Program Planning (OBPP). As a result, staff identified what appears to be the lack of an overall land management plan. In addition, legislative requests resulted in research that produced policy and fiscal questions that the Legislature should be aware of and might consider reviewing in more detail.

### **DNRC – JR Miller Land Exchange**

The land board recently considered an exchange of 500 acres of timberland and 300 acres of grassland in the Sula area from DNRC to JR Miller for 1,400 acres of timberland and 58 acres of grassland in the Lincoln area. According to the record of decision issued by DNRC, the exchange of state lands in Sula for lands in Lincoln is an equal exchange. Closely related to the transaction is a proposed \$320,000 donation to DNRC. It has been stated that this donation is to mitigate access concerns. DNRC has already identified another 320 acres to purchase with this donation in the Lincoln area. Yet, in this exchange, the citizens of Ravalli County lose access to state land while residents of Lincoln gain access to state lands. Furthermore, the transaction was not evaluated on a per-trust basis; in fact in the public notices regarding the exchange, the trusts affected by the exchange were not identified. After raising issues to DNRC the trust-to-trust evaluation was done, but the evaluation was based on the potential allocation of land, as the actual allocation of land had not been identified. Overall Management questions raised include: Is there a role for cash donations in the exchange of state owned lands? Is it in the best interest of the state or the trusts to significantly reduce public access in one area of the state to improve public access to another? Is a cash payment to mitigate access issues in the best interest of the state? Since there are two trusts affected by this trade, which trust would benefit?

## **Budget Amendment**

The OBPP recently processed a budget amendment for FWP to accept \$2.8 million in federal funds (Forest Legacy funds) to purchase a specific parcel of land in the North Swan Valley. While the concept of the North Swan Valley Conservation Project (which includes this transaction) has been presented to the land board, the specific land transaction has not. The actual management of this land after acquisition has not been settled. Information regarding final management responsibilities does not appear to be consistent, which leads to confusion and additional questions. This essentially illustrates that the state has secured land without coordination among principle agencies and without regard to the future management of that land. Overall management questions raised include: Is it in the best interest of the state to accept funds to purchase a parcel where future management plans have not been considered? Should management responsibilities and costs be considered prior to trying to procure federal grant dollars or is the cost of this determination too high in the event funds are not finally procured? Is the legislature willing to appropriate funds to allow this work to be done in advance of other actions? Which agency is the most appropriate to manage forested lands? Should the state increase trust land holdings?

## **Other Policy Questions**

Other policy questions in addition to the previous research led to a number of questions, including:

- Is the land board able to fulfill its role with current statutory direction regarding its powers and ultimate duty to the state of Montana?
- Who decides what information is provided to the land board?
- Does the land board receive the appropriate information at the appropriate time to make decisions that are in the best interest of the state?
- As state lands are acquired or exchanged, are the costs associated with land management taken into consideration?
- Does the multiple land use policy of the state provide ample protection to the value of state trust lands and protect the state's interest in non-trust lands?
- Are all facts regarding the sale, acquisition, or exchange of state lands part of the public process? (For example facts related to which trusts are affected, other state land ownership, access revisions, conservation easements and other potential issues.)
- Should cash payments be allowed to mitigate other issues surrounding land transactions such as access, or is this in essence selling a piece of land?
- Is the appropriate agency managing state-owned lands?
- When and how should land exchanges between agencies occur?
- What is the priority of the state regarding land management? (Multiple uses, conservation, trust returns?)
- Can the state accept federal dollars to purchase a specific parcel prior to approval from the land board?
- Is the process to acquire, sell, or exchange land equally applied to all types of state land?
- Does the state have an overall land management plan that encompasses all land types for multiple use?
- Do land board policies regarding transactions apply to all agencies, if so how and when?
- The perception is that state land equals trust land. Is this acceptable or should policies apply to all state lands regardless of which agency is responsible for management?

- Are all options related to the sale and exchange of land reviewed prior to presenting the transaction to the land board?

## Options

Staff has identified four options for consideration by the committees:

1. Direct staff to draft a joint study resolution from the LFC and EQC for the 2007 session to complete an in-depth review of the issues associated with the management of state land, including potential resolutions and a report to the 2009 Legislature.
2. Direct staff to draft a study bill from the LFC and EQC for the 2007 session to complete an in-depth review of the issues associated with the management of state land, including potential resolutions and a report to the 2009 Legislature. A study bill would also include an appropriation to assist with the costs of the study, which could include contracted staff, committee expenses, or travel.
3. Direct staff to undertake a study this interim to address selected policy issues, the results of which might be proposed legislation. (This option is limited due to staff time committed to current workloads. Work plan adjustments will be needed if this option is selected.)
4. Take no action at this time.

## Timeline

The LFC and EQC are on different timelines; both committees are scheduled to meet in March. This provides the opportunity for each committee to evaluate their options. Because the LFC meets before the EQC, LFD staff will relay the decision of the LFC to the EQC. The following timeline would need to be followed to implement option 1 or 2.

March 2006	LFC → Select option at March 9, 2006, meeting EQC → Select option at March 17, 2006, meeting
April 2006	Staff draft study resolution or study bill
May 2006	EQC → Approves draft resolution or bill at May 19, 2006, meeting
June 2006	LFC → Approves draft resolution or bill at June 9, 2006, meeting EQC → public comment period (30 days)
July 2006 or September 2006	EQC final adoption after considering public comment
October 2006	LFC final adoption