

HJR 33 Study contract timber harvesting

FINDINGS:

- Contract timber harvesting can be a valuable tool that should be made available to the Department of Natural Resources and Conservation to effectively and efficiently manage forested trust land.
- Contract timber harvesting should be allowed on a limited number of board feet to determine its effectiveness and usefulness.
- Contract timber harvest has the potential of increasing revenue to the various trust beneficiaries, but carries additional risk to the trusts.
- Other western states have had success, in terms of increased revenue and better forest management, with the use of contract timber harvest.
- Contract timber harvest will provide an option for harvesting and managing timber in environmentally sensitive areas.
- The use of contract timber harvest will potentially provide access to timber sales to smaller businesses and more opportunities resulting in higher income to the trusts and better management and health of trust land forests.

RECOMMENDATIONS

- The Department of Natural Resources and Conservation should conduct a cost-benefit analysis on any contract timber harvest activity.
- Legislation should be drafted and presented to the 2007 Legislature to allow the Department of Natural Resources and Conservation to conduct contract timber harvest for a certain percentage of board feet each year. No more than 10% of total harvest.

HJR 10 Study fire related statutes for suppression and mitigation

FINDINGS

- Statutes related to fire in numerous titles throughout the Montana Code Annotated need to be made consistent, clear, and current and need amendment to reflect the realities of fire protection across multiple jurisdictions.
- Authorities for imposing restrictions on activity during periods of high fire danger are not clearly articulated in the Montana Code Annotated, nor is it clear how areas may be closed to access during fire-related disasters and emergencies.

- A state fire policy, codified in the Montana Code Annotated, would express the Legislature's general intent with regard to wildland fire mitigation and suppression and would help maintain consistency as statutes are amended and new statutes are enacted.
- Wildfire mitigation and suppression in the wildland urban interface (WUI) is significantly different from wildland fire mitigation and suppression, both in tactics used and in cost.
- While Western state governments have adopted a variety of approaches to regulate development and building in the WUI, there also exist ways for individuals, private enterprise, and communities to mitigate catastrophic fire in the WUI outside of a regulatory environment.
- In Montana, it is unclear what means exist for local governments to regulate development and require certain building standards in subdivisions located in the WUI and it is unclear how that authority may be implemented, which has resulted in litigation.
- The WUI presents a complex set of challenges that may require more time to address than the EQC is able to devote.

RECOMMENDATIONS

- A working group of interested individuals and experts in fire mitigation and suppression should undertake a thorough review of the sections in the Montana Code Annotated that deal with fire.
- The subcommittee will consider the legislation proposed by the working group to update and clarify fire-related statutes, to fill in blanks where needed authority to restrict activity during wildfire season is unclear or nonexistent, and to remove conflict and provide consistency. The subcommittee will recommend that the legislative proposals it considers to be appropriate be formally requested by the EQC and drafted by staff for introduction in the 2007 legislative session.
- The subcommittee does not encourage development of legislation that imposes more regulation or restriction on building in the WUI, but agrees that current local authority to do so is unclear and is inconsistently applied.
- The subcommittee will consider any WUI proposals, agreed upon by the working group, as the subcommittee's schedule allows. However, if the working group needs more time to develop those proposals, the subcommittee recommends that the EQC exercise its prerogative under section 5-5-202(3), MCA, and refer the WUI portion of the HJR 10 study to the Local Government subcommittee of

the Education and Local Government Interim Committee. Following the Local Government subcommittee's acceptance of that referral, the HJR 10 working group would take its direction from and bring its proposals before that entity.

Water Policy and Member Defined Issues

Water quality monitoring, assessment and improvement (TMDL'S)

FINDINGS:

- The Department of Environmental Quality (DEQ) is proceeding in an organized and efficient manner to complete all Total Maximum Daily Loads (TMDLs) in Montana.
- TMDLs must be done in a way that encourages on the ground implementation of the watershed restoration plan once the TMDL is completed.
- It is important that DEQ be as efficient and effective as possible when working with stakeholders.
- Stakeholder involvement in the TMDL development process is critical to implementation of TMDLs.
- DEQ is currently operating under the conditions of a consent decree and a court order which require reassessments of all water delisted from the 1996 303(d) list by July, 2006 and completion of all TMDLs by 2012.
- A TMDL is a component of a watershed restoration plan and the clean water act.
- It is important to complete as many TMDLs as possible while at the same time developing the "Phase I" elements and tools, including reassessment of waters delisted from the 1996 list, to facilitate completion of all TMDLs by 2012.
- Field work, including site visits and sampling, has been completed for the reassessment requirement. Analysis of the field data and the completion of the reassessment must be finalized by July 2006.

RECOMMENDATIONS

- DEQ should continue to use as many resources and programs as possible in a coordinated way to facilitate TMDL completion with out unduly burdening ancillary programs.
- DEQ should work to complete "Phase I" of the TMDL program as quickly as possible while ensuring accuracy and accountability.

Wading into Montana Water Rights revision

FINDINGS:

- Water rights and the adjudication of water in Montana are a high profile issues.
- With the passage of HB 22 in the 2005 session and the resulting water right bills being sent out in January 2006, there are many water users with questions regarding water rights and processes associated with obtaining and changing water rights and other water right issues.
- It is critical that the water users of Montana fully understand the nature and value of their water rights.

RECOMMENDATIONS:

- Revise the "Wading into Montana Water Rights" handbook, in a cooperative manner with DNRC, to include changes made to water right laws in the 2005 session and any new rule changes.
- Distribute the revised handbook as quickly as possible through DNRC field offices, the Montana Water Center, and the Legislative Environmental Policy Office to water users who need or want the information.

Surface water/ ground water interaction

FINDINGS:

- Montana, as other Western States, manages and distributes water based on the prior appropriation doctrine.
- Surface water/ground water interaction appears to be most contentious in closed basins.
- Surface water/ground water connectivity is a very emotional, complex, and diverse issue.
- The presence or absence of a connection between surface water and ground water in basins in Montana could significantly affect the ability to develop new water rights in closed basins.
- The measurement of adverse effect, as provided in the prior appropriation doctrine, is an important element in determining whether a new appropriation may be allowed by DNRC.

- It is important to work with all interested parties if a solution to concerns or problems regarding surface water/ground water connectivity is going to be addressed in a way that will not harm senior water right holders.

RECOMMENDATIONS:

- DNRC Work Group should continue to work to try to find a consensus solution to address surface water/ground water connectivity concerns in closed basins.
- Explore whether requesting a study resolution to address this issue is reasonable or feasible.

Domestic well exemption for the filing of a water right.

FINDINGS:

- Any changes to the <35 gpm/<10 ac feet domestic well exemption should be done with caution since it would effect many people and could have an impact on commercial and residential development in Montana.

RECOMMENDATIONS

- None at this time.

Water adjudication chronology

FINDINGS:

- The water adjudication chronology, initially developed in 2004, is an important source that outlines where the adjudication program has been and the steps it has been through.

RECOMMENDATIONS:

- Update the chronology as time is available and make it available on the EQC website.

St. Mary's Canal Project Milk River

FINDINGS:

- Rehabilitation of the St. Mary Project is critical to the hi-line of Montana.

The St. Mary's Diversion provides up to 70% of the flow of the Milk River in dry years.

- This project provides not only irrigation water crucial to maintaining the economy of this region it also provides water for municipal purposes and directly benefits recreation and fish and wildlife in the area.

RECOMMENDATIONS:

- Send a letter to the Montana Congressional Delegation to encourage and request support for federal funds directed towards the St. Mary Rehabilitation Project and any Congressional Authorization that may be necessary to ensure a timely response to the serious issues associated with this project.

DNRC Funding to Administer State Trust Lands

Morrill Act Lands

FINDINGS

- Montana's federally granted lands are held in trust pursuant to the Enabling Act and the Montana Constitution.
- The language in the granting act determines how the asset is managed and provides sideboards that were conditions of accepting the grant from the federal government. By accepting the grant the state accepted the associated conditions.
- There are 9 land trusts managed for specific beneficiaries. The Morrill Act Land Trust is managed for the University System, specifically the "Agricultural College".
- Morrill Act Lands were granted to the state by acts of Congress in the First Morrill Act of July 2, 1862 and the Second Morrill Act of August 30, 1890.
- Sec.3.(5) of the Morrill Act states that "all expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned."
- The States of North Dakota, South Dakota, Montana and Washington were part of the same Enabling Act facilitating their statehood.
- In 1912 Department of Interior Secretary Walter L. Fisher issued an opinion to the Montana Board of Land Commissioners providing that "it is clear that the use of any portion of the principal or income derived from the lands or funds set aside

and appropriated by the acts of Congress mentioned for the endowment and support of agricultural colleges in payment of administration expenses is a violation of law".

- The 1912 Department of the Interior opinion also stated that "the State is required to cease the use of any portion of the moneys in question in payment of administrative expenses, and to replace moneys heretofore taken from such funds."
- In Chapter 70 of the Laws of the 13th General Assembly, the Montana Legislature appropriated "the sum of Nineteen Thousand, Three Hundred Seventy-two Dollars and thirty-two cents, to reimburse said income fund for moneys heretofore taken therefrom for the administration of the land grants of said Agricultural College for the fiscal years 1897 to and including the fiscal year 1912."
- In 1996 the Washington Attorney General issued a legal opinion stating "By virtue of Section 16 of the Enabling Act and 7 U.S.C. § 303, a provision in the first Morrill Act, the state is precluded from charging the expense of managing and administering Section 16 lands against proceeds of the sale of the lands. Proceeds of the sale of the lands include proceeds from the sale of resources that are part of the lands".
- The Montana Department of Natural Resources and Conservation stopped deducting administrative costs for management of the Morrill Act lands from Morrill Act land revenue in 2003.
- DNRC did not request or obtain an appropriation through the legislative process to pay for administrative costs associated with Morrill Act lands, therefore, the other trusts managed by DNRC have absorbed this administration cost.

RECOMMENDATIONS

- Based on the clear language of the first Morrill Act and further supported by the 1912 Department of Interior Opinion, the 1913 Montana Legislature's payback for administrative costs, and the Washington Attorney General Opinion (AG096-11) the legislature should fund administration of Morrill Act lands from some source other than trust revenues.
- Request a bill to:
 - provide for a statutory appropriation to ensure that DNRC's fiduciary responsibilities to the Morrill Act trust are not hindered by lack of or inadequate funding;
 - make it clear in statute that administrative fees of any kind may not be assessed against Morrill Act trust lands revenue.

Other Trust Lands

FINDINGS

- There are 9 trusts that the Department of Natural Resources and Conservation manages for different beneficiaries.
- Providing funding for the administration of the trusts through revenues received from those trusts provides stability and continuity to DNRC which in turn provides an environment conducive to DNRC meeting its fiduciary responsibilities to the trusts.
- Other than the Montana University System, none of the beneficiaries associated with the trusts has expressed concern regarding the use of revenues from the trusts to pay for administering the trusts.
- In 1967, Attorney General Forrest Anderson issued AG Opinion 32 Mont. Atty. Gen. Op. 8. In that opinion Attorney General Anderson concluded that the State of Montana has, in executing the trust imposed by the grant of school trust lands, an inherent equitable right to reimbursement for the trust for all charges and expenses necessarily incurred in the execution of the trust where no provision exists to the contrary in the grant creating the trust.
- In a letter dated February 24, 1994, Mr. Greg Petesch, Chief Legal Counsel, Legislative Services Division advised the Legislature that he harbored concerns regarding funding the administration of school trust lands with revenues received from the lands. Mr. Petesch felt that use of interest from the permanent fund and income from the school trust lands violated the Enabling Act and Article X, section 5 of the 1972 Montana Constitution.
- On September 15, 2005, Attorney General Mike McGrath provided a letter of counsel to Governor Schweitzer. Attorney General McGrath concluded that Article X, section 5 of the 1972 Montana Constitution does not prohibit the deduction of revenue to administer the various school trusts. Further, Attorney General MCGrath affirmed the conclusions reached by Attorney General Anderson in 1967.
- The Legislature has provided, in statute, for the funding of administration of trust lands through the use of revenues since the early 1960's.

RECOMMENDATIONS

- Make no changes to statute at this time, other than changes necessary to address the Morrill Land trust administrative costs.