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COMMISSIONER OF HIGHER EDUCATION

OFFICE OF LEGAL COUNSEL

January 19, 2005

TO: Greg Petesch, Legislative Counsel
FROM: Catherine M. Swift
RE: Your proposed bill revising laws governing state land administration

We have reviewed your proposed bill which would clarify that land granted pursuant to the Morrill Acts is not subject to deductions of interest or income for purposes of funding the administration of Morrill Act land. We appreciate your attention to this matter and are in general agreement with the proposed terms of the bill.

We believe, however, that the bill must include a revision of § 77-5-204(4), which allows the land board to require a timber purchaser to pay a fee for forest improvement. Such a fee is in actuality an assessment from the income of the trust. Timber purchasers, knowing of the forest improvement fee, add the fee amount to their bids for timber contracts. DNRC recognizes this fact. In a document prepared by DNRC during one of the legislative sessions DNRC said this about the forest improvement fee:

The timber sale purchaser . . . calculates what he is willing to pay for that timber based on his product markets and his costs in harvesting the timber. His overall costs include what he is required to pay in forest improvement fees. The purchaser is not likely to pay full market value for the timber and then tack on the additional forest improvement fee. If he did, he would likely be losing money. Therefore, the trusts are receiving the full market value available from the timber resource after administrative costs have been paid to the forest improvement program. The income distributed to the trusts is not the total value of the disposition.

The forest improvement fee simply provides a means of doing in a subtle or indirect fashion what is prohibited by law. The fees collected go to the improvement of the land, which is not an unworthy purpose but which is not the express purpose for which the land was dedicated.

The Morrill Act clearly forbids any diversion or diminishment of the trust or the interest by any means whatsoever ["any action or contingency"]. The placement of a fee on the sale of timber decreases the timber revenue and diminishes the income from the trust lands.

The Morrill Act, the Enabling Act and the Montana Constitution demand that all income from the lands, without exception, be devoted to the "endowment, support and maintenance" of the college for which the lands were granted. This purpose is directly thwarted by the forest

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improvement fee and the statute requiring the fee should reflect an exception for the Morrill Act lands.

We urge you to reconsider the revision of the statute allowing for the assessment of a forest improvement fee. We cannot consider this matter resolved unless the bill is revised in this fashion.

Thanks for your consideration of this request.

C: Ann Brodsky
Tom Schultz
Leslie Taylor

Enclosures: DNRC communication regarding SB 48
Pertinent legal citations