



MONTANA UNIVERSITY SYSTEM
Office of the Commissioner of Higher Education

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November 30, 2005

Hon. Walter L. McNutt
Chair, Study Subcommittee
Environmental Quality Council

Re: Montana University System Proposal for Resolution of Trust Land Issues

Dear Representative McNutt:

In an effort to resolve the issues relating to the administrative assessments from Montana University System trust lands, I offer the following proposals for presentation to the study subcommittee of the Environmental Quality Council at their January 26, 2006, meeting. This plan is offered as a means for resolving all of the assessment issues relating to university system trusts, not just the issues surrounding the Morrill Act Trusts. Our main objective is to eliminate the administrative assessments from the trust income in the future. If this objective can be realized, the Board of Regents may be willing to compromise the repayment aspects to the extent consistent with our fiduciary responsibilities.

I. Morrill Act Trust.

A. Summary of Proposal: The assessments from this trust appear clearly illegal under the terms of the Morrill Act [7 USC, § 301 et seq.], the Enabling Act and the Montana Constitution. There are two issues that need to be addressed regarding the Morrill Act Trust. (1) the charges for administration made against the trust distributions from the Morrill Act trust from 1963 – 2003¹ and (2) the charges for administration for Morrill Act lands charged against the other university trust distributions after 2003.

An appropriate and fair resolution would include the following terms: (1) amendment of the statutes to prohibit assessments from the Morrill Act Trust distributions, (2) repayment of the actual amounts diverted from the Trust distributions since 1963, in full, with reasonable interest; (3) repayment of the Morrill Trust assessments which were apportioned to other university trusts

¹ In 2003, DNRC discontinued charging administration costs against the Morrill Act Trust distributions. Since 2003, the costs of administration for Morrill Act trust lands have been absorbed by the other land trusts, including other university trusts.

since 2003, in full, with reasonable interest; and (4) authorization, statutory if necessary, to place those repayment amounts into the Morrill Act Trust permanent fund (trust corpus) and the permanent funds of the other university trusts, to grow the trusts for future generations.

B. Amounts Involved: The actual amount diverted from the Morrill Act Trust distributions for DNRC administration costs and Montana Board of Investment charges is approximately \$514,485. With interest this number is approximately \$1.1 million. The actual amount owing to the other university trusts for apportioned Morrill Act administrative costs since 2003 is \$18,944. (Interest has not been computed).

C. Legislation Needed: Correcting this issue will require legislation prohibiting the assessing of the Morrill Act Trust for administration of the trust lands. We will defer to Greg Petesch and DNRC to identify statutory changes but we agree with the concept as laid out in the proposed bill. We support a statutory appropriation for DNRC to fund the administrative costs needed for the management of the Morrill Trust lands. The annual amount needed to replace these amounts has been estimated by DNRC to be \$40,000. Legislation may also be needed to place the trust repayment amounts into the Morrill Act Trust and the other university trusts' permanent funds.

II. Forest Improvement Fee.

A. Summary of Plan: Section 77-5-204(4), MCA, requires successful contractors on university trust land timber contracts to pay fees for forest improvement. Prospective contractors know that they will be assessed this fee and the fees are "built in" to their bids. If the other trust land diversions are unlawful diversions, these appear to be also, despite the more indirect nature of the fee. These fees represent well over half of the total amount at issue.

The university system supports the improvement of trust land forests. If the forest improvement fee could be restructured such that it is not an unlawful assessment for administration of the trust (perhaps as a reclamation bond imposed upon bidders rather than a fee on contractors), and if the amounts so collected are authorized solely for forest improvement costs, the university system will withdraw its objection to the assessment of this fee.

B. Amounts Involved: Actual fees withheld since 1963 amount to \$4,157,641. There will be no cost to the state to restructure the fee and, if restructured, the university system will not seek repayment of FI fees assessed on timber contracts on university lands in the past.

C. Legislation Needed: We suggest restructuring the law with the objective of setting up a reclamation bond or charge on bidders to be devoted to forest improvement.

III. Other University Trusts

A. Summary of Plan: Four additional university land trusts exist, conveyed by Congress in 1889. Since 1963, statutorily-authorized assessments have been taken from the income on these lands, despite Montana constitutional language which requires that the rents

from such lands be “devoted to the maintenance and perpetuation of the respective universi-ties.” (Art. X, § 10). Unless we address the issue of these assessments, the legality of these assessments will remain in limbo and the stakes for the state and the university system will mount. We recommend addressing these trusts in the same manner as has been proposed for the Morrill Act Trust, i.e. by repealing the statutory authorization for assessments on these lands by DNRC and setting up a statutory appropriation for the funding of the administrative costs associated with these trusts. The amounts to be repaid to the trusts (amounts withheld since 1963) should be paid into the permanent funds of each trust. The university system is willing to compromise on the amounts to be repaid and the interest on such amounts in exchange for the placement of these funds back into the permanent funds and correction of this problem for the future.

B. Amounts Involved: The total amount DNRC diverted from the non-Morrill Act trusts since 1963 (without the forest improvement and Board of Investment assessments) is \$2,000,162. As I understand it, there is no way of knowing what the actual costs of administering these lands were and we have no recommendation on the amount needed to replace these assessments in the future.

C. Legislation Needed: All of the university trusts, including Morrill, can be resolved through legislation repealing or revising §§ 77-1-604ff, 17-6-201(7) and 77-1-613. We support legislation establishing a statutory appropriation for the funding of the management of these lands. Legislation may also be needed to authorize the repayment amounts to be placed into the various permanent funds.

IV. **Board of Investments.**

A. Summary of Plan. Pursuant to § 17-6-201(7), MCA, enacted in 1991, the Board of Investments has been statutorily authorized to assess an administrative fee against the university trust land funds invested by the BOI. These assessments are not large but may be unlawful under federal and state law.

B. Amounts Involved. Between 1997 and 2005, the BOI has withheld the total amount of \$27,515 from university trusts not counting Morrill diversions. Amounts for years between 1991 and 1997 will have to be estimated. The annual amount needed to replace these assessments is approximately \$4,000 per year.

C. Legislation Needed. Assessments for the Board of Investments should not be authorized from Morrill Act or other university trust income. Legislation should also be implemented to compensate the Board of Investments for its services to the trusts.

V. **Conclusion**

I believe this plan represents a fair method of resolving this issue. The most important aspect is the correction of this issue for the future. We are working with the Governor’s Office on this issue, and, as noted above, in an effort to resolve this matter amicably, I will recommend

to the Board of Regents that we consider a compromise in regard to the repayments and interest. We urge the subcommittee to adopt this plan, request that needed legislative changes be drafted, and recommend this plan to the EQC as a proposed bill for consideration by the 2007 legislature.

Sincerely,



Sheila M. Stearns
Commissioner of Higher Education

c: Krista Lee Evans
Board of Regents
Mary Sexton