

2-1-402. Legislative declaration. (1) (a) In enacting this part, the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of this part will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this part ultimately

will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12, 1995, that are implemented in Montana comply with state policy as established by the legislature;

(h) nothing in this part may be construed to create a private cause of action.

2-1-403. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments.

(2) "Legislative council" means the statutory committee established in 5-11-101.

2-1-404. State programs to implement federal statutes. (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

2-1-405. Requirement for budget recommendation -- reporting on federal mandates -- savings. Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor

shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in the governor's budget based upon the information.

2-1-406. Information regarding federal mandates. (1) The information prepared pursuant to 2-1-405 must be received by the governor prior to the governor's preparation of the state budget for the ensuing biennium. The governor may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council.

2-1-407. Report -- recommendations. (1) The governor shall examine the information received pursuant to 2-1-405 and, based upon the information, shall present a report to the legislature meeting in its next regular session that includes the following:

(a) recommendations regarding contracts that the state may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; and

(b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions of 2-1-405.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order.

2-1-408. Legislative review and oversight. (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature.

7-8-2507. Land management alternatives. The board may:

(1) (a) grant permits or licenses to use the lands in the manner that the board determines and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of the permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of natural resources and conservation;

(3) trade or exchange the lands with individuals or other state or federal governmental agencies, pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for the purposes and uses that the board determines are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of the leases and the consideration to be paid by any lessee; and

(5) sell the lands or any part of the lands pursuant to the procedures provided in this part.

7-33-2212. Activity restrictions in high fire hazard areas. (1) A board of county commissioners may designate areas on private land or on land that is not under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas.

(2) Except as provided in 87-3-106(2), in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease operations or activities or to adjust working hours to less critical periods of the day.

(3) The presiding officer of the board may control ingress and egress into a high fire hazard area if an emergency or disaster is declared under the provisions of Title 10, chapter 3, part 4.

(4) (a) An entity that is conducting official business, an entity having actual residence as a permanent or principal place of abode in the designated area, or an entity engaged in employment that does not present a fire hazard must be allowed ingress and egress unless there is a significant risk to human health or safety.

(b) For the purposes of this section, "official business" includes but is not limited to the functions of governmental agencies and the activities of utilities, cooperatives, and telecommunications providers to operate, construct, repair, and maintain utility facilities that are essential to the public.

7-33-2215. County firewarden authorized -- duties. (1) A county governing body may appoint a county firewarden.

(2) A county firewarden appointed under this section shall demonstrate knowledge in local, state, and federal wildland fire policy and wildland fire suppression.

(3) A county firewarden shall act as a liaison between local, state, and federal agencies to coordinate training and wildland fire prevention, detection, suppression, investigation, and mitigation. The county governing body may establish any additional duties that the governing body determines to be necessary.

(4) The position of county firewarden is distinct from the position of a county rural fire chief appointed under 7-33-2203 and from a firewarden appointed by the department of natural resources and conservation under 76-13-104.

76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources;

(viii) sand and gravel resources; and

(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

- (i) define the criteria in 76-3-608(3)(a); and
- (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
 - (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
 - (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
 - (i) delineate the wildland-urban interface; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
 - (C) adequate water supply for fire protection.
 - (4) A growth policy may:
 - (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
 - (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
 - (c) establish an infrastructure plan that, at a minimum, includes:
 - (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;
 - (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;
 - (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;
 - (iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;
 - (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;
 - (vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;
 - (vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

- (A) threatened or endangered wildlife and critical wildlife habitat and corridors;
 - (B) water available to agricultural water users and facilities;
 - (C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;
 - (D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;
 - (E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;
 - (F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and
 - (G) agricultural lands and agricultural production; and
- (ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in 76-1-607.

76-1-607. Growth policy -- use and amendment for coordination and cooperation with federal agencies. (1) A local governing body may use a growth policy as a resource management plan for the purposes of establishing coordination or cooperating agency status with a federal land management agency.

(2) The governing body may amend the growth policy to include any elements required by a federal land management agency to establish coordination or cooperating agency status.

76-13-104. Functions of department -- rulemaking. (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) The department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface.

(9) (a) The department shall advocate for the inclusion of Montana in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperating and coordinating agreement or contract that would authorize the state forester to engage in forest management and education activities to reduce wildland fire risk and intensity on federal land designated as wildland-urban interface under 76-13-145.

(b) Forest management activities to reduce wildland fire risk and intensity included in the good neighbor policy must include the authority to:

(i) treat insect-infested trees;

(ii) reduce hazardous fuels; and

(iii) conduct any other activities to improve the overall diversity and vigor of forested landscapes.

(10) The department has the authority to intervene in litigation or appeals on federal forest management projects that involve reduction of hazardous fuels or other activities to mitigate the risk of wildland fire in the wildland-urban interface.

76-13-115. State fire policy. The legislature finds and declares that:

(1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

(2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;

(3) interagency cooperation and coordination among local, state, and federal agencies are intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(7) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources;

(8) development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss; and

(9) catastrophic wildland fire in wildland-urban interface areas resulting from inadequate federal land management activities to reduce fire risk has the potential to jeopardize Montanans' inalienable right to a clean and healthful environment guaranteed in Article II, section 3, of the Montana constitution.

76-13-136. Cooperative agreements with owners and lessees of land for fire protection and conservation.

(1) For the purpose of more adequately promoting and facilitating cooperation, financial and otherwise, between the state and all of the public and private agencies, the department of natural resources and conservation may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing on the land and also in the conservation and perpetuation of the lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer may receive money that may be appropriated or allotted for the purposes listed in subsection (1) by the state, counties, municipalities, the United States government or any department of the federal government, or other organization or individual.

76-13-145. Designation of wildland-urban interface parcels. (1) Subject to the provisions of this section, the department shall identify the parcels of property in the state that are considered to be wildland-urban interface parcels, delineate those parcels on maps, and ensure that the maps and information on the maps are available to the public, local governing bodies, and governmental fire agencies organized under Title 7, chapter 33.

(2) (a) Except as provided in subsection (2)(b), the department shall identify a county's wildland-urban interface parcels based on the wildland-urban interface designation developed as part of the county's completion of a community wildfire protection plan under 16 U.S.C. 6501, et seq., the Healthy Forests Restoration Act of 2003.

(b) If a community wildfire protection plan has not been adopted, the department shall:

(i) provide notice to the county governing body that the department intends to designate the wildland-urban interface within the county's jurisdictional boundary;

(ii) allow up to 18 months for the county to complete and adopt a community wildfire protection plan if a county had begun the process of developing a plan prior to receiving the notice from the department under subsection (2)(b)(i);

(iii) review and consider the analysis of the potential for fire and wildland fire in the county's growth policy, as required in 76-1-601(3)(j) if a growth policy has been adopted;

(iv) consult with the county governing body and governmental fire agencies organized under Title 7, chapter 33, regarding appropriate parcels to designate as wildland-urban interface parcels; and

(v) clearly identify and make available to the county governing body and governmental fire agencies the criteria the department intends to use in designating parcels.

(3) Location of a property within the wildland-urban interface designated under this section may not be the sole reason for assessing additional fire protection fees, impact fees, or other fees against the property.

(4) The department shall review each county's wildland-urban interface designation every 5 years, make changes as necessary, and maintain accurate maps and other identifying information.

76-13-150. Fire suppression account -- fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account, and the money in the account is subject to legislative fund transfers.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for the purpose of paying expenses for fire prevention, including fuel reduction and mitigation, forest restoration, grants for the purchase of fire suppression equipment for county cooperatives, and fire suppression costs.

(5) Interest earned on the balance of the account is retained in the account.

(6) Except as provided in subsections (7) and (8), by August 15 following the end of each fiscal year, an amount equal to the balance of unexpended and unencumbered general fund money appropriated in excess of 0.5% of the total general fund money appropriated for that fiscal year must be transferred by the state treasurer from the general fund to the fire suppression account. General fund appropriations that continue from a fiscal year to the next fiscal year and any general fund appropriations made pursuant to 10-3-310 or 10-3-312 are excluded from the calculation.

(7) The provisions of subsection (6) do not apply in a fiscal year in which reductions required by 17-7-140 occur or if a transfer pursuant to subsection (6) would require reductions pursuant to 17-7-140.

(8) The fund balance in the account may not exceed \$100 million.

(9) Up to \$5 million each biennium may be used for the purpose of fuel reduction and mitigation and forest restoration.

(10) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in subsection (4).

76-13-154. Federal forest management projects -- attorney general authority to intervene. (1) The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

(2) The authority provided in subsection (1) includes the authority to fulfill the purposes of Title 76, chapter 13, to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration.

76-13-301. Policy. (1) It is the public policy of the state to:

(a) protect and preserve forest resources from destruction by forest insect pests and tree diseases;

- (b) protect the forests and watersheds of Montana and restore those watersheds that are most affected by insect pests and tree diseases and are critical to water supplies;
- (c) enhance the production of forests;
- (d) promote the stability of forest industry; and
- (e) protect the recreational values of the forest.

(2) It is further the public policy of the state to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.

76-13-303. Creation of zone of infestation. (1) The department shall annually produce a list of areas where:

(a) there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and where the infestation is of such a character as to be a menace to the timber or forest growth of this state; and

(b) an infestation of forest insect pests or forest tree diseases in a watershed makes the watershed at risk for wildfire, places the functionality of the watershed at risk, or creates other conditions that threaten the watershed.

(2) The department shall present the list annually to the board of land commissioners to determine if a zone of infestation exists and, if so, shall fix the boundaries to definitely describe and identify each zone.

76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

(3) The department may consider controlled burning or logging as methods to suppress or eradicate forest insect pest infestation or forest tree disease.

76-13-405. Contracts with fire protection agencies. The department is authorized to enter into contracts with fire protection agencies, including agencies of the United States, for fire hazard reduction or management when in its opinion the work can best be accomplished in that manner.

76-13-701. Findings and policy. (1) The legislature finds that the sustainable management of public forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential for the benefit of all Montanans.

(2) The legislature finds that public forests in Montana should be sustainably managed to maintain biodiversity, productivity, regeneration capacity, vitality, and potential to fulfill relevant ecological, economic, and social functions.

(3) The legislature finds that sustainable forest stewardship and management of Montana's public forests requires a balanced approach that ensures a stable timber supply, active restoration,

healthy watersheds and fish and wildlife habitat, areas for natural processes, and allowances for multiple uses.

(4) The legislature finds that:

(a) there is overwhelming evidence that the management, protection, and conservation of watersheds in Montana is critical to the well-being of the state;

(b) the water supplies of some of the state's most populous cities and surrounding areas originate in federally managed watersheds that are at risk for catastrophic wildfire, the severity of which could be reduced by proper management;

(c) a catastrophic wildfire in any one of those municipal watersheds would result in ash and sediment inundating and degrading the water supply, leaving tens of thousands of residents without drinking water, creating a severe public safety situation, and decimating millions of dollars worth of water infrastructure;

(d) a burned-out watershed also affects the timing of snow melt and stream flow, which detrimentally affects irrigation and fisheries; and

(e) federal land managers are not giving due consideration to the constitutionally protected water rights of the state and its citizens, the exercise of which would be impaired by a catastrophic wildfire.

(5) The legislature declares that it is the policy of this state to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities.

76-13-702. Duties -- authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status and coordination with federal agencies;

(6) shall advocate that Montana be included in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperative agreement or contract that would authorize the state forester to provide watershed restoration and protection services on federal land. Watershed restoration and protection services included in the good neighbor policy must include the authority to:

(a) treat insect-infested trees;

(b) reduce hazardous fuels; and

(c) conduct any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.

(7) may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

(8) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

(9) has the authority to intervene in litigation or appeals on federal forest management projects that:

(a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; or

(b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety or to hamper watershed restoration and protection;

(10) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

(11) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

76-14-106. Duties of rangeland resources committee. (1) The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing

lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate properties.

76-16-113. Powers of commission. The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state districts, including appeals of decisions made by the board of directors of an individual state district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and state districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter;

(3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state districts that, for whatever reason, no longer have access to historical grazing preference records;

(4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts;

(5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;

(6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;

(7) requiring state districts to annually furnish itemized financial reports; and

(8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of environmental quality, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for acceptance.

77-1-214. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

77-1-613. Administrative costs associated with sale of timber from state trust lands. (1) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for timber sale preparation, documentation, administration, and contract harvesting costs.

(2) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(3) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs conducted pursuant to 77-5-201.

77-1-617. Management of isolated trust lands -- reciprocal access. (1) To facilitate the management of isolated tracts of all classifications of state lands, the department may negotiate reciprocal access agreements that may include easements. For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose.

(2) In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.

77-1-804. Rules for recreational use of state lands -- penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

- (a) cabin site and home site leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

- (b) damage to surface improvements of the lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;
- (d) the presence of unique or special natural or cultural features;
- (e) wildlife protection;
- (f) noxious weed control; or
- (g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. **Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.**

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601(8).

77-2-201. Exchange of land with United States or tribal governments. (1) (a) **The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.**

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with

Public Law 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; however, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. No contract or agreement may be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be exchanged are located.

77-2-401. Sale or transfer of federal land -- when hearing required. (1) Prior to the sale or transfer of land in the state that is owned or controlled by an agency of the United States government, the director of the department shall determine whether there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit because of the sale or transfer.

(2) If the director determines under subsection (1) that there would be an adverse impact and that a hearing or public meeting has not been or will not be conducted by a federal agency to provide an opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, the director shall hold a public hearing prior to the sale or transfer in order to provide the opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the director shall require the attendance of a representative of the department for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section.

77-2-402. Hearing requirements. Any hearing required under 77-2-401 must be held in a county in which the land involved in the proposed sale or transfer is located and must be held according to procedural rules that must be adopted by the director of the department in accordance with the Montana Administrative Procedure Act.

77-2-403. Action by director. The director of the department shall take action that the director considers appropriate, consistent with federal jurisdiction, to address concerns and issues raised during the hearing. The action may include but is not limited to:

(1) the filing of formal requests for action by the appropriate federal agency that would alleviate concerns expressed at the hearing;

(2) the filing of a formal protest to the proposed sale or transfer.

77-5-222. Determination of annual sustainable yield. (1) (a) On July 1, 2013, the department, under the direction of the board, shall commission a new study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands. **The department shall direct the qualified independent third party to determine the yield pursuant to, but not exceeding, all state and federal laws.**

(b) A new study may be commissioned by the department, under the direction of the board, at any time during the 10-year period provided for in subsection (2).

(2) A determination of annual sustainable yield under subsection (1) must be reviewed and redetermined by the department, under the direction of the board, at least once every 10 years.

82-11-173. Legislative findings -- purpose. (1) The legislature finds that a delay in the development of certain coal bed methane wells may inadvertently result in the loss of coal bed methane resources.

(2) The legislature further finds that because of the nature of this subsurface mineral resource, it is highly susceptible to collateral extraction and use through development efforts on adjacent federal, tribal, or other states' lands to the economic detriment of Montana and its citizens.

(3) The legislature further finds that there is a compelling state interest to authorize the board through this limited program to act in a timely and expeditious manner to permit coal bed methane wells to offset the collateral permitting of wells by other entities on nonjurisdictional lands that are not subject to permitting by the board under 82-11-103 in order to:

- (a) protect coal bed methane mineral reserves from collateral extraction by others;
- (b) provide economic benefits to the state;
- (c) protect the private property rights of the owners of the mineral reserves;
- (d) promote the balanced development of state lands and protect the mineral reserve interest held in trust for the benefit of state schools; and
- (e) assist in providing much needed energy resources to the region.

82-11-174. Offset permitting -- geographic requirements. **The board is authorized and directed to issue, upon application and subject to the regulatory requirements of the program and 82-11-175, permits for coal bed methane production wells that will offset permitting by federal agencies, tribal agencies, or agencies of other states of coal bed methane wells that are located within 1 mile of the perimeter of lands that are under the jurisdiction of the board.**

85-1-101. Policy considerations. It is hereby declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution thereof are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water of the state of Montana is not in the interest of the people and is to be restricted.

(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan".

85-1-222. Conformity to federal regulations authorized. For the purpose of obtaining financial aid from the United States of America, the department may adjust the plans and operation of a project, created under this chapter, to conform to the laws and regulations of the federal government and the supervision of any agency constituted under that authority and may exercise those powers whenever conferred.

85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319.

85-2-116. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

85-2-703. Negotiation with federal government. The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

87-1-201. Powers and duties. (1) Except as provided in subsection (11), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (11), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) Except as provided in subsection (11), the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(11) The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

- (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

87-1-210. Research, training, and other projects. (1) The department may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train personnel for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

87-1-217. Policy for management of large predators -- legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

- (a) protect humans, livestock, and pets;
- (b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and
- (c) preserve citizens' opportunities to hunt large game species.

(2) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(3) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock if the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.

(4) The department shall work with the livestock loss board and the United States department of agriculture wildlife services to establish the conditions under which wolf carcasses or parts of wolf carcasses are retrieved during wolf management activities and when those carcasses or parts of carcasses are made available to the livestock loss board for sale or auction pursuant to 2-15-3113.

(5) The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.

(6) As used in this section:

(a) "consultation" means to actively provide information to a county or tribal government regarding proposed policy decisions on matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on those tribal lands and to seek information and advice from counties or tribal governments on these matters;

(b) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(c) "large predators" means bears, mountain lions, and wolves.

87-1-227. Hunting rights on adjoining federal wildlife preserve. (1) The department shall negotiate for and enter into written agreements with owners, lessors, lessees, or others having control of areas, tracts, or parcels of land adjoining or contiguous to any United States federal wildlife preserve, including any wildlife refuge for migratory waterfowl in any section of Montana, for the purpose of securing equal hunting and shooting rights for all resident holders of fish and game licenses in Montana on such adjoining and contiguous lands and preventing such preserves from being surrounded by lands whereon such licensees may not enter. The department shall, further, open or cause to be opened to public hunting and shooting of migratory waterfowl on any roads, lanes, and trails not a part of the traveled portion of any federal-aid highway system within a 1-mile limit from the boundaries of any such preserve or refuge. The department shall cause any such area, tract, road, lane, or trail to be plainly posted with clear signs showing the boundaries of the areas, tracts, roads, lanes, or trails open to shooting and hunting by licensees.

(2) The department is hereby authorized to negotiate the payment of a reasonable sum to landowners, lessors, or lessees for the right of the department to create a public shooting area upon their lands. The amount that may be paid for such purpose shall rest in the discretion of the department.

87-1-257. River restoration program. (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to a change in appropriation right or leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) A project conducted under the program may not restrict or interfere with the exercise of any water right.

87-1-279. Program rules. (1) The department may not use more than 15% of the program funds for administration.

(2) The department shall develop a simple application procedure and accountability system.

(3) The department shall make every effort to expend or obligate funds for shooting range improvement grants within the year for which they are appropriated.

(4) The department shall prioritize grant applications according to those that provide facilities for the greatest number of shooters, that accommodate the use of a combination of hunting arms, and that meet other criteria established by the department.

(5) The department may not grant more than 30% of the eligible funds for the establishment or improvement of any single facility in any year.

(6) The department shall promote the use of publicly owned land for shooting range facilities. The department may negotiate with federal, state, and local agencies to encourage land trades, shared or specific use designations, and other mechanisms to provide land for shooting range facilities.

87-1-294. (Temporary -- effective January 1, 2014) Unlocking state lands program -- purpose -- commission rulemaking authority. (1) The legislature finds that increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational activities as determined by the commission.

(2) The department may establish and administer a voluntary program to encourage access through private land to parcels not previously deemed legally accessible to be known as the unlocking state lands program.

(3) Private land is not eligible for the unlocking state lands program if outfitting or commercial hunting restricts public hunting opportunities on that land.

(4) If the parcel not previously deemed legally accessible is leased state land under Title 77, chapter 1, only the lessee with a qualified access to that state land under 15-30-2380 is eligible for the unlocking state lands program.

(5) (a) A contract for participation in the unlocking state lands program is established through a cooperative agreement between the landowner and the department that guarantees reasonable access to state land through the landowner's private land. This contract serves as certification that the landowner is providing qualified access to state land and is eligible for the tax credit identified in 15-30-2380. The contract must include a certification number for identification purposes. The department shall provide a copy of the contract to the landowner and notify the department of revenue of the certification number.

(b) Contracts may be established with landowners who, prior to January 1, 2014, provided access to state land that was otherwise not legally accessible under subsection (9). Landowners who establish contracts under this subsection (5)(b) are eligible to receive the tax credit identified in 15-30-2380.

(6) The commission shall develop rules for establishing contracts under this section regarding:

- (a) duration of access;
- (b) types of qualified access; and
- (c) reasonable landowner-imposed limitations.

(7) The department shall provide public notice of any available qualified access to state land established through the unlocking state lands program.

(8) Recreational users of access established by the unlocking state lands program shall remain in the prescribed access route as defined by the contract in subsection (5).

(9) For purposes of this section, "parcels not previously deemed legally accessible" means state land that cannot be accessed by:

- (a) public road, right-of-way, or easement;
- (b) public waters;
- (c) adjacent federal, state, county, or municipal land that is open to public use; or
- (d) adjacent private land because that landowner has not granted permission to cross.

(Terminates December 31, 2018--sec. 6, Ch. 346, L. 2013.)

87-1-303. Rules for use of lands and waters. (1) Except as provided in 23-1-111, 87-1-301(7), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

- (i) require a fee for domestic livestock trailing or related activities; or
- (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours.

87-1-622. Forest management plan -- sustainable yield study required -- definition. (1) The commission and the board shall adopt forest management plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and the board shall review and redetermine the annual sustainable yield for lands under their jurisdiction at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5.

87-1-709. Cooperation with United States for wildlife restoration. The department, in the name of the state and with the approval of the governor, shall have the power to enter into the cooperative agreements on federally owned lands with the government of the United States or some department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the congress of the United States and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson Act of the congress of the United States. The state of Montana does reserve to itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided the department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-708 through 87-1-710.

87-1-711. Acquisition of land by United States for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in section 31, township 18 north, range 20 west, Lake County, Montana, and section 36, township 18 north, range 21 west, Sanders County, Montana, excepting the Northern Pacific railway and state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big game animals, reserving, however, to the state of Montana full and complete jurisdiction and authority over

all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of applicable federal regulations.

87-1-713. Federal waterfowl and wildlife area acquisitions -- submission to affected county governing bodies for review. The governor, the department, or their agents, responsible under federal law for final approval of land, wetland, and water acquisitions in fee by the United States government or its agents for waterfowl protection areas or wildlife refuges, or the United States fish and wildlife service shall submit the proposed acquisitions to the governing body of each county in which all or part of the land, wetland, and water areas are proposed to be located for the governing body's recommendations.

87-1-714. Hearings on proposed waterfowl and wildlife area acquisitions. (1) The governing body of the county affected by a proposed federal acquisition of land under 87-1-713, the department, and the United States fish and wildlife service shall, within 21 days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas, if the governing body deems such inspection appropriate.

(2) If requested by the governing body, the agencies described in subsection (1) shall hold a joint public hearing on the proposed acquisition and shall give public notice of the date, time, and place of the hearing. The hearing shall be held in the county in which the proposed acquisition is located. The hearing shall be held within 30 days of the governing body's receipt of the acquisition proposal. The notice shall be published once a week for 2 successive weeks in a newspaper of general circulation in each county in which all or part of the proposed acquisition is located. The notice shall include the substance of the proposed action and a legal description of the proposed acquisitions.

87-3-308. Development of maps identifying land ownership boundaries. In recognition of potential problems associated with identifying property boundaries in the field when seeking permission for hunting, the department shall work cooperatively with all state and federal land management agencies, state and local organizations representing hunters, state and local landowner organizations, and other interested persons to develop accurate land ownership maps that identify land ownership boundaries in the state.

87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state that are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as that list may be modified.

(2) (a) The department shall conduct a review of the state list of endangered species every 2 years. The department may propose specific legislation to amend the list by additions that are considered appropriate and at times that are considered appropriate.

(b) Whenever a species or subspecies is removed from the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) and that species or subspecies is also on the state list of endangered species in ARM 12.5.201, the department shall amend the state list to remove that species or subspecies. The removal of a species or subspecies from the state list pursuant to this subsection (2)(b) does not require approval by the legislature.

(3) Except as otherwise provided in this part, it is unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as that list may be modified.

(4) Any species or subspecies of fish and wildlife appearing on any of the enumerated lists that is brought into the state from another state or from a point outside the territorial limits of the United States and that is transported across the state destined for a point beyond the state may be brought into the state and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) If the United States' list of endangered native fish and wildlife is modified by additions, the modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts the modification for the state.

87-5-108. Establishment of programs. (1) The director shall establish programs, including acquisition of land or aquatic habitat, that are considered necessary for management of nongame and endangered wildlife. The department shall establish policies that are necessary to carry out the purpose of 87-5-109 and this section.

(2) In carrying out programs authorized by this section, **the department may enter into agreements with federal agencies**, political subdivisions of the state, or with private persons for administration and management of any area established under 87-5-109 and this section or used for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by the governor and, to the extent practicable, use those programs in furtherance of the purposes of 87-5-109 and this section. The governor shall also encourage other state and federal agencies to use their authorities in furtherance of the purposes of 87-5-109 and this section.

87-5-508. Federal actions injuring fish and wildlife. The department shall observe acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will, or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such information, the department shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. The department shall keep complete files and records, available for public inspection, of all matters and things done and all communications and correspondence sent and received pursuant to this section.

90-1-181. Functions of department of commerce -- socioeconomic advocacy. The department of commerce may, if funds are available, advocate on behalf of local governments, as defined in 7-11-1002, by reviewing, analyzing, and commenting on prospective impacts on local socioeconomic conditions from federal land management proposals.

90-1-182. State assistance to local governments in review of and comment on federal land management proposals -- rulemaking. (1) In carrying out the provisions of 90-1-181, the department of commerce may conduct on behalf of local governments a socioeconomic impact review and analysis of significant federal land management proposals. The department of commerce may use the review and analysis to comment in a timely manner on the federal proposals regarding projected impacts on local government.

(2) The department of commerce may:

(a) establish a minimal procedure for local governments to request from the department a review and analysis of significant federal land management proposals that may have a direct socioeconomic impact on the community for which the local government has requested the review. The request must include sufficient details about the federal land management proposal for the department of commerce to determine a deadline by which the review must be conducted.

(b) contract with a unit of the Montana university system experienced in technical, doctorate-level analysis of the socioeconomic impacts of federal land management proposals to provide an independent economic analysis of the federal proposals;

(c) advocate on behalf of the local government before the agency issuing the federal land management proposals, using the reports generated under this subsection (2); and

(d) report to an appropriate legislative interim committee regarding the number of requests, the types of requests, and the number of responses handled annually. The department shall post the information under this subsection (2)(d) on its website along with a summary of each requested analysis.

(3) The department of commerce may adopt rules to implement this section.

2-1-102. Sovereignty and jurisdiction of the state. The sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States.

Offense on Federal Forest Property -- No Reservation of Exclusive Federal Jurisdiction or Preemption by Federal Law: Wagner was observed by federal officials while he was trying to collect marijuana grown in the Kootenai National Forest and was subsequently arrested and convicted under state law for attempted sale of the drug. After conviction, his counsel filed a petition for postconviction relief, alleging that Wagner's former counsel was ineffective for failing to raise a lack of subject matter jurisdiction. Citing section 4 of The Enabling Act and 16 U.S.C. 480, the Supreme Court found that there was no intent by Congress to reserve exclusive federal jurisdiction over national forest property. Citing 21 U.S.C. 903, 21 U.S.C. 841, and cases from other jurisdictions, the Supreme Court also held that there is no conflict between federal drug laws and 45-9-103. The Supreme Court therefore concluded that the state courts had jurisdiction over the offense and that Wagner's counsel was not ineffective for failing to raise the issue of lack of jurisdiction. *Wagner v. St.*, 270 M 26, 889 P2d 1189, 52 St. Rep. 61 (1995).

2-1-201. Jurisdiction in federal enclaves. The extent of the jurisdiction of this state over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

Territory Under Control of United States: Under section 40, Pol. C. 1895 (now 2-1-102 and 2-1-201), the state consents to the purchase, condemnation, or acquisition of lands by the United States. Where, however, the United States still retains its original ownership of the land, neither purchase, condemnation, nor acquisition is necessary, but actual occupation for any purpose indicated in these sections stands in lieu thereof. Mere occupancy of government land by the military for any purpose not indicated in the law or the United States Constitution would not of itself be sufficient to divest the state of the sovereignty granted to it by Congress, nor does the right reserved to serve state process on these reservations infringe on the exclusive jurisdiction of the United States. *St. v. Tully*, 31 M 365, 78 P 760 (1904).

2-1-202. Jurisdiction over lands purchased by United States -- reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of this state that are acquired by the complete purchase by the United States for any of the purposes described in paragraph 17 of the constitution of the United States. The jurisdiction must continue as long as the lands are held and occupied by the United States for the described purposes. The state reserves the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or outside of the territory. The state also reserves the right to tax persons and corporations and their franchises and property within the territory. The state and its inhabitants and citizens reserve the right to fish and hunt and the right of access, ingress, and egress to and through the ceded territory to all persons owning or controlling livestock for the purpose of watering the livestock. The state reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of environmental quality and the enforcement of any regulations promulgated by the departments in accordance with the laws of the state. Jurisdiction does not vest until the United States, through the proper officers, files an accurate map or plat and description by metes and bounds of the lands in the office of the county clerk and recorder of the county in which the lands are situated. If the lands are within the corporate limits of any city, the map or plat must also be filed in the office of the city clerk of the city. The filing of the map constitutes acceptance of the jurisdiction by the United States as ceded.

Ceding Statutes to Be Strictly Construed: The filing of the map and description of the land taken is a condition precedent to transfer of jurisdiction to the United States. The mere fact that sections 24, R.C.M. 1935 (since repealed), and 83-108, R.C.M. 1947 (now 2-1-202 and 2-1-203), consent to the purchase of state land for governmental purposes does not imply that the state ipso facto is divested of sovereignty, and exclusive control over the area is assumed by the federal government; jurisdiction does not pass until notice of assumption is given and other conditions required by the ceding statutes have been performed. *Valley County v. Thomas*, 109 M 345, 97 P2d 345 (1939).

2-1-203. Withdrawal of offer to cede legislative jurisdiction. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An Act Giving the Consent of the State of Montana to the Purchase, by the United States, of Land in any City or Town of the State, for the Purpose of United States Courthouse, Post Office and for Other Purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An Act Giving the Consent of the State of Montana to the Purchase by the United States of Land in any City or Town of the State for the Purpose of United States Courthouse, Post Offices and for Other Like Purposes", approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

2-1-205. Glacier national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier national park", saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of said park; and saving, further, to the state the right to tax persons and corporations, their franchises and property on the lands included in said park; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that it assumes police or military jurisdiction over said park.

Jurisdiction of State: There are no words in this section which can be interpreted as excluding the Glacier National Park lands from the state or terminating the state's sovereignty or jurisdiction over them, and any such intent is negated by the reservation of certain powers. State ex rel. St. Bd. of Equalization v. Glacier Park Co., 118 M 205, 164 P2d 366 (1945).

2-1-207. Yellowstone national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone national park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately 198 square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside the lands aforesaid, as long as the lands herein described are used for a national park and no other purposes.

2-1-208. Withdrawal of consent to purchase additional state lands for national park. The consent of the state of Montana to the purchase by the United States of lands within the state of Montana to be embraced in Yellowstone national park, other than the lands described in 2-1-207, and the consent of the state of Montana to the exercise of legislative jurisdiction by the United States over any additional lands to be embraced in said national park, as such consents may be contained in the act of the second legislative assembly of the state of Montana approved February 14, 1891, entitled, "An Act Ceding to the United States Jurisdiction Over Certain Lands" or any amendment of said act is hereby withdrawn, and exclusive legislative jurisdiction over all lands within the state of Montana that may be added hereafter to said national park shall be retained in the state of Montana.

2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States -- reservation of rights to state. Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction is ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by the dam, the land under the body of water, and any lands now owned or that may be acquired by the United States and that touch the body of water, all such land and water being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana. The state reserves the right to serve civil or criminal process within the limits of the territory over which jurisdiction is ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in this state, within or outside of the territory. The state also reserves the right to tax persons and corporations and their franchises and property within the territory. The state and its inhabitants, citizens, and nonresidents reserve the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through the ceded territory to all persons owning or controlling livestock for the purpose of watering the livestock. The state reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of environmental quality and the enforcement of regulations promulgated by the departments in accordance with the laws of the state. Jurisdiction does not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over the territory.

2-1-210. Consent to purchase of lands by United States for national forest purposes -- jurisdiction. (1) For the purpose of more effectively cooperating with the United States in the consolidating and rounding out of national forests in accordance with land use plans and to facilitate the placing of forest lands other than national forest but which are integral with national forest lands under stable protection and administration to the end of public benefit and to help landowners, including the counties of the state in their discretion, to dispose of such of their lands as may be needed for national forest purposes, consent of the state of Montana is hereby given to the purchase by the United States of such lands in the state of Montana as in the opinion of the secretary of agriculture are needed for the purposes contemplated in section 6 of the act of congress approved March 1, 1911, commonly known as and called the Weeks law, and/or section 6 of the act of congress approved June 7, 1924, commonly known as the Clarke-McNary law, and/or any other provisions of any act of congress authorizing the purchase of land for national forest purposes.

(2) The jurisdiction of the state of Montana, both civil and criminal, over persons upon areas acquired under this section shall not be affected or changed by reason of their acquisition and administration by the United States, except so far as the punishment of offenses against the United States is concerned.

(3) The state shall have the same jurisdiction in respect to such lands as it has in respect to other national forest lands within the state.

(4) All property rights, easements, and benefits retained by or reserved to owners of lands purchased by the United States shall be subject to the tax laws of the state.

2-1-211. Consent to purchase lands for migratory bird reservations -- jurisdiction. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land, water, or land and water in the state of Montana as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, (as amended), entitled "An Act to More Effectively Meet the Obligations of the United States under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of such Birds; and Authorizing Appropriations for the Establishment of such Areas, their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

2-1-212. Acceptance of concurrent jurisdiction over veterans center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans center, Fort Harrison, Montana, as ceded by Public Law 91-45, 88 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield. The state of Montana accepts the retrocession in Public Law 88-24, which was approved May 17, 1963, and made effective upon acceptance of the retrocession by the state of Montana of such jurisdiction as had been ceded by this state to the United States over the lands within the boundaries of the Big Hole national battlefield. This state recognizes the reservation in the United States of concurrent legislative jurisdiction over such lands.

2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes. (1) Concurrent jurisdiction over crimes and offenses under the laws of the state is ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

- (a) Big Horn Canyon;
- (b) Grant-Kohrs national historic site;
- (c) Big Hole national battlefield; and
- (d) Fort Union trading post.

(2) The concurrent jurisdiction ceded by subsection (1) is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands within the designated areas are dedicated to park purposes.

2-1-215. Acceptance of jurisdiction over federal lands. The consent of the state is hereby given to the retrocession of jurisdiction, either partially or wholly, by the United States of America over lands owned by the United States of America within the boundaries of Montana that are used for national park purposes. The governor is authorized to accept for the state retrocession of jurisdiction.

2-1-216. Filing of acceptance of jurisdiction over federal lands. (1) When the state receives written notification from the authorized official or agent of the United States of America that the United States desires or is willing to relinquish to the state jurisdiction, or a portion thereof, over certain lands owned by the United States within Montana that are used for national park purposes, the governor may accept relinquishment.

(2) After acceptance and approval by the governor, retrocession of jurisdiction becomes effective upon filing of the original acceptance with the secretary of state of Montana.

No. 94-199

IN THE SUPREME COURT OF THE STATE OF MONTANA

1995

WAYNE THOMAS WAGNER,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Respondent.

FILED

FEB 15 1995

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and for the County of Lincoln,
The Honorable Robert S. Keller, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Wayne Thomas Wagner, Littleton, Colorado (pro se)

For Respondent:

Scott B. Spencer, Lincoln County Attorney, Libby,
Montana; Hon. Joseph P. Mazurek, Attorney General,
John Paulson, Assistant Attorney General, Helena,
Montana

Submitted on Briefs: November 17, 1994

Decided: February 15, 1995

Filed:



Clerk

Justice James C. Nelson delivered the Opinion of the Court

Appellant, Wayne Thomas Wagner, filed a petition for post-conviction relief in the Nineteenth Judicial District Court, Lincoln County. Wagner appeals from the District Court's dismissal of his petition. We affirm.

The issue on appeal is whether the District Court erred in dismissing Wagner's petition for post-conviction relief.

On August 17, 1988, United States Forest Service officials were conducting a surveillance of property which was being used for the cultivation of marijuana. As the United States Forest Service officials were observing the property, Wagner drove towards the marijuana field on a motorcycle, carrying a duffle bag. After following him to an illegal camp on forest service property, the officials approached Wagner who immediately fled from the camp. Wagner left behind a duffle bag and two baggies containing marijuana.

The camp was searched pursuant to a search warrant, further evidence was seized, and the Lincoln County Justice Court issued an arrest warrant for Wagner. Wagner was served with the arrest warrant on August 26, 1988. On September 6, 1988, Wagner pled guilty to the charge of criminal possession with intent to sell. Wagner was sentenced on September 29, 1988.

On September 27, 1993, Wagner filed a petition for post-conviction relief with the District Court, alleging that the District Court lacked subject matter jurisdiction over the criminal possession charge and that his trial counsel had been ineffective

for failing to raise the jurisdiction defense. After considering the parties' briefs, the District Court issued an order dismissing the petition on April 7, 1994, for failure to state a claim for relief. Wagner appeals from this order.

STANDARD OF REVIEW

The facts underlying Wagner's conviction and petition for post-conviction relief are not in dispute. Rather, Wagner argues the District Court erred in its legal conclusion when it determined that the State had subject matter jurisdiction. In reviewing a district court's denial of post-conviction relief, we will not overturn the court's legal conclusions if the tribunal's interpretation of the law is correct. *Eiler v. State* (1992), 254 Mont. 39, 42, 833 P.2d 1124, 1126.

DISCUSSION

Wagner argues that the State lacked jurisdiction to prosecute the offense committed within the boundaries of the Kootenai National Forest. Wagner contends that the United States government has exclusive jurisdiction over the Kootenai National Forest absent consent or cession of jurisdiction to the State of Montana.

To determine whether the District Court was correct in concluding that the State court has jurisdiction within the Kootenai National Forest, we must examine the federal government's power under the Property Clause of the United States Constitution, Article IV, Section 3, clause 2. The Property Clause provides that "Congress shall have Power to dispose of and make all needful Rules

and Regulations respecting the Territory or other Property belonging to the United States"

In *Kleppe v. New Mexico* (1976), 426 U.S. 529, 96 S.Ct. 2285, 49 L.Ed.2d 34, the United States Supreme Court addressed the federal government's jurisdictional power under the Property Clause. The Court observed that states are free to enforce their criminal and civil laws on federal land so long as these laws do not conflict with federal legislation passed pursuant to the Property Clause. The United States Supreme Court stated:

Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause. U.S. Const., Art. VI, cl. 2. (Citations omitted.)

Kleppe 426 U.S. at 543, 96 S.Ct. at 2293, 49 L.Ed.2d at 45.

In *California Coastal Com'n v. Granite Rock Co.* (1987), 480 U.S. 572, 582, 107 S.Ct. 1419, 1425, 94 L.Ed.2d 577, 591, the United States Supreme Court reaffirmed its holding in Kleppe that the states may exercise criminal and civil jurisdiction on federal lands so long as the laws do not conflict with federal law. The United States Supreme Court added, "[t]he Property Clause itself does not automatically conflict with all state regulation of federal land." California Coastal Com'n, 480 U.S. at 582, 107 S.Ct. at 1425, 94 L.Ed.2d at 591.

Accordingly, we must address two questions: (1) whether the State of Montana consented or ceded exclusive jurisdiction to the United States over lands within the Kootenai National Forest; and

(2) whether the federal government has enacted legislation which has pre-empted state law regarding drug related crimes occurring on national forests.

The federal government can acquire exclusive jurisdiction over state land in any one of three ways: (1) excepting the place from the jurisdiction of the state upon the state's admission into the Union; (2) by a cession of jurisdiction to the United States by a state after statehood; or (3) by federal purchase of land with state consent, pursuant to Article I, Section 8, clause 17 of the United States Constitution. *Fort Leavenworth R.R. Co. v. Lowe* (1885), 114 U.S. 525, 5 S.Ct. 995, 29 L.Ed. 264; *State v. Cline* (Okla. Cr. 1958), 322 P.2d 208, 212; *State v. Vaughn* (Ariz. App. 1989), 786 P.2d 1051, 1054.

The Organic Act of the Territory of Montana, 13 Stat. 85, established a temporary government for the territory of Montana. While the Organic Act excepted certain Indian lands from territorial jurisdiction, no special jurisdictional provision was made for public lands within the territory. In 1889, the Enabling Act provided for the establishment of the State of Montana. 25 Stat. 676. Section 4, of the Enabling Act disclaimed on behalf of the people of the proposed state "all right and title" to the unappropriated public lands lying within the boundaries of the proposed state. However, the Enabling Act did not consent or cede exclusive jurisdiction to the United States over the public lands.

The President of the United States was empowered to create forest reserves under the provisions of Ch. 561, Sec. 24, 26 Stat.

1103 (repealed by 16 U.S.C.A. § 471 (1976)). President Theodore Roosevelt established the Kootenai National Forest by presidential proclamation issued on August 13, 1906. 34 Stat. 3225. However, the proclamation did not expressly reserve exclusive federal jurisdiction.

The foregoing demonstrates that the United States government did not specifically reserve exclusive federal jurisdiction. Finally, we note that pursuant to 16 U.S.C. § 480, the states retain criminal and civil jurisdiction over national forest land. See also, *United States v. County of Fresno* (1977), 429 U.S. 452, 455, 97 S.Ct. 699, 701, 50 L.Ed.2d 683, 687; *United States v. State of California* (9th Cir. 1980), 655 F.2d 914, 919.

Next we address whether federal legislation has pre-empted Montana from prosecuting drug crimes on federal lands. Because of the Supremacy Clause of the United States Constitution, Article VI, clause 2, federal legislation necessarily overrides conflicting state laws. Kleppe, 426 U.S. at 543, 96 S.Ct. at 2293, 49 L.Ed.2d at 45. The federal government has passed extensive legislation regarding drug crimes. See e.g., 21 U.S.C. § 801 et. seq., Comprehensive Drug Abuse Prevention and Control Act of 1970; 16 U.S.C. § 559b et. seq., National Forest System Drug Control Act of 1986. However, 21 U.S.C. § 903 expressly provides:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of

this subchapter and that State law so that the two cannot consistently stand together.

Section 45-g-103, MCA, governs the offense of criminal possession with the intent to sell. This section in no way conflicts with the statutes concerning drug abuse which are contained in the federal code, including the statute which makes it unlawful for any person to knowingly or intentionally distribute or possess a controlled substance with the intent to distribute. 21 U.S.C. § 841. Therefore, concurrent viability of both statutes is possible. Accordingly, we conclude that the federal legislation has not pre-empted Montana's jurisdiction in this case.

Finally, we note that other courts which have examined this issue have found state courts retain criminal jurisdiction over offenses committed on national forest property. See e.g., *Hankins v. State* (Mo.App. 1989), 766 S.W.2d 467 (Missouri Court of Appeals had jurisdiction over homicide occurring in Mark Twain National Forest). In a case factually similar, the Arizona Court of Appeals concluded that the state court had jurisdiction over drug violations occurring in the Tonto National Forest. *State v. Quick* (Ariz.App. 1991), 806 P.2d 907.

In the instant case, the District Court relied on Klewwe, and California Coastal Comm'n, to reach its conclusion that the State of Montana had subject matter jurisdiction under the facts and circumstances presented here. Accordingly, the court concluded that Wagner's counsel was not ineffective for failing to raise the claim of lack of subject matter jurisdiction. We agree. We hold that the District Court's interpretation of the law was correct,

and that it properly dismissed Wagner's petition for post-conviction relief

AFFIRMED.


Justice

We Concur:


Karla M. Gray


William E. Hines


Troy Trawick


Carl A. Hehr
Justices

February 15, 1995

CERTIFICATE OF SERVICE

I hereby certify that the following certified order was sent by United States mail, prepaid, to the following named:

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

BY: _____
Deputy

