

## Program Evaluation

# Agriculture, Grazing & Recreational use of State Trust Lands

Trust Land Management Division, DNRC



**ENVIRONMENTAL QUALITY COUNCIL**

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## Introduction

The Environmental Quality Council is required to evaluate programs within the Department of Natural Resources and Conservation pursuant to 75-1-324, MCA. That law requires the EQC to “review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy.”

The policy reads as follows:

The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

For each bureau within the Trust Land Management Division of the DNRC, the council allocated 68 hours of staff time.

## Agriculture and Grazing

### Background

The Agriculture and Grazing Bureau oversees the farming, stock grazing, and the recreational use of state trust land.

Agriculture and grazing leases for state trust land date back to the late 1800s. Much of the land leased traces its history to the Enabling Act approved by Congress in 1889 granting sections 16 and 36 in every township within the state to Montana for the benefit of education. Subsequent acts also granted land for educational and state institutions.<sup>1</sup>

The state owns about 5.2 million surface acres and 6.2 million subsurface mineral acres, the difference the result of the sale of surface but the retention of mineral rights as required by law.<sup>2</sup> The Land Board oversees the management of these lands.

As of July 1, 2015, there were 8,734 agriculture or grazing leases on almost 4.6 million acres of land classified by the department as suitable for farming or grazing. Another 218 licenses were issued for mostly grazing on just less than 163,000 acres of classified forest land. The state also enrolls land in the Conservation Reserve Program (CRP) of the U.S. Department of Agriculture.

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<sup>1</sup> DNRC Trust Land Management Division [Annual Report, 2014](#)

<sup>2</sup> Ibid. 77-2-304, MCA

Total Acres Leased	Ag Acres	CRP Acres	Hay Acres	Grazing Acres	AUM	Aftermath AUM <sup>3</sup>
4,756,678.47	439,438.02	82,297.13	51,580.50	4,183,710.65	968,615	14,052

Wheat, barley, and peas are the main crops raised on state lands, but others include corn, sugar beets, potatoes, peas, lentils, garbanzo beans, canola, safflower, alfalfa seed, and native grass seed.

Top Harvests for Crop Year 2014		
Crop	Acres	Production in bushels
Wheat	222,274	7,372,186
Barley	19,912	1,019,358
Peas	22,172	490,489

## Rental Rates

Leases are issued for five or 10 years based largely on the department's evaluation of the range and crop land condition. Pursuant to state law, the state is required to obtain full market value for the use of the land and leases are competitively bid.

Lease rates for crop land are on a crop share rental basis of least 25 percent. If a winning bid exceeds a crop share rental of one-third, a minimum annual guarantee of \$15 an acre is required to prevent unrealistic bids and possible underreporting of crop share.<sup>4</sup>

For grazing leases, the rate is based the carrying capacity of the land to sustain an "animal unit" defined as one cow, one horse, five sheep, or five goats. An animal unit month (AUM) is the term assigned to how much forage it takes to feed an animal unit in a month.

To determine the carrying capacity, the department considers:<sup>5</sup>

- inventory of the forage resources, including kind, amount, and location of vegetation;
- accessibility and usability of the forage resource as influenced by topography, availability of stock water, and season of usability;
- condition of soils, including erosion;
- other and related resources such as timber, game animals, and need for watershed protection;
- record of needed improvements and facilities, including fuel and stock water, revegetation, rodent control, trails, fences, and the like;
- pertinent facts and figures submitted by stockgrowers living in the area and directors of state grazing districts including the land or in its vicinity;
- carrying capacity set for similar land in a state grazing district in which the land is situated.

<sup>3</sup> An aftermath AUM is when animals are allowed to graze crop or hay land after harvest.

<sup>4</sup> 77-6-501, MCA.

<sup>5</sup> 77-6-201, MCA.

To obtain full market value, the Land Board sets the per annum rental rate by multiplying a factor established by the board times the average price per pound of beef cattle in Montana the previous year times the AUM carrying capacity of the land.<sup>6</sup>

Based on a study commissioned by the state, the multiplying factor was changed in 2011. While competitive bidding of grazing leases is required, the study found that 95 percent of leases are renewed by the current leaseholder without bids, meaning the lease is set at the minimum. The study found that about one-third of state parcels are inholdings, making them inefficient for other lessees to use. Through a survey, the study also found a reluctance of neighbors to bid against neighbors on a grazing lease, even if the state parcel would work well in their grazing operation. Only about one out of every five ranchers surveyed said they would definitely bid against a neighbor.<sup>7</sup>

The study found state rates were less than those charged on private lands, lands administered by the Bureau of Indian Affairs, and the C.M. Russell Wildlife Refuge, but were substantially higher than rates on lands managed by the Bureau of Land Management and the Forest Service.

The study suggested the multiplier be increased to make the state rate 70 percent of the private rate and have the agency monitor for leases being vacated because of the increase. If leases continued to sell, the study said the rate could be raised to 75 percent - 80 percent of the private rate.

To achieve full market value, the land board originally considered nearly doubling the multiplier to 13.18. Ultimately, the board opted to phase in an increased multiplier, starting with 8.13 in 2012 and increasing to 10.48 in 2016. In adopting the rule, the board noted that lessees are required to control for weeds, that drought conditions can make forage amounts uncertain, and that a reduced rental rate would encourage rest-rotation grazing. The phased increase allowed lessees to economically adjust their operations. The rules also allow for a 50% reduction in the rental rate if the lessee agrees not to graze the tract for the remainder of the lease and the grazing lands possess characteristics that prohibit livestock use.

Fewer than 10 leases have been dropped since the inception of the increase.

## Leasing Procedure

About 1,000 leases are up for rebidding each year. Each lease is inspected before it is put up for bid. The inspector determines the condition of the land in terms of weeds, erosion, riparian health, and other factors. Leases are typically issued for 10 years. However, any management issue identified in the inspection may be addressed by recommending nonrenewal, a five-year lease, or special conditions. The most common special lease conditions required the lessee to develop and implement a management plan or to address weeds.<sup>8</sup>

In fiscal year 2012, there were 915 leases up for renewal. Of those, 37 were renewed with five-year terms and 84 were required to meet special lease conditions. The next year, out of 950 leases, two were not renewed. Five-year terms were granted to 28 lessees and another 75 had special conditions placed on the lease.<sup>9</sup>

If a lessee wants to continue a lease and there are no competing bids, the rental rate continues at the minimum. However, if there are one or more competing bids, the lessee can retain the lease by matching the high bid. Until 2004, this was considered an absolute preference right. However, a district judge declared the law, 77-6-205(1), MCA unconstitutional because it deprived the Land Board of its discretion to obtain the best possible lessee for the

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<sup>6</sup> 77-6-507, MCA

<sup>7</sup> Montana Trust Land, Grazing Lease Rate Valuation Analysis, 2011; Bioeconomics, Inc.

<sup>8</sup> DNRC [Enforcement and Compliance Report to EQC](#), 2013

<sup>9</sup> Ibid.

trust. The decision further noted that the statute could not be interpreted to require a hearing or investigation by the Land Board to determine the best lessee when a preference right is exercised.<sup>10</sup>

The district court ruling was not appealed. While the unconstitutional law remains in statute, the Land Board adopted a rule in 2004 stating that the Land Board retains the right to select the best lessee possible to fulfil the operating obligations under any lease. The rule also said the DNRC director may grant a request for a hearing on a competitive lease and the director shall recommend who should be selected as the lessee.<sup>11</sup>

## Fiscal Overview

The rental of state land for farming and grazing brought in nearly \$29 million in the most recent year.

Fiscal Year	Grazing Revenue	Agriculture Revenue	Total Revenue
1990	\$4,133,290	\$7,350,754	\$11,484,044
1991	\$4,397,372	\$7,561,710	\$11,959,082
1992	\$4,341,521	\$8,703,800	\$13,045,321
1993	\$4,178,056	\$7,660,483	\$11,838,539
1994	\$4,264,030	\$9,486,264	\$13,750,294
1995	\$4,726,597	\$8,108,128	\$12,834,725
1996	\$4,385,636	\$10,087,192	\$14,472,828
1997	\$3,747,968	\$10,046,553	\$13,794,521
1998	\$4,113,142	\$9,318,295	\$13,431,437
1999	\$4,608,145	\$8,644,162	\$13,252,307
2000	\$4,494,637	\$9,331,416	\$13,826,053
2001	\$5,364,305	\$8,654,425	\$14,018,730
2002	\$6,047,838	\$7,232,111	\$13,279,949
2003	\$5,818,832	\$8,297,415	\$14,116,247
2004	\$5,467,667	\$8,419,535	\$13,887,202
2005	\$6,566,134	\$9,227,415	\$15,793,549
2006	\$6,984,191	\$9,868,305	\$16,852,496
2007	\$7,872,625	\$9,849,729	\$17,722,354
2008	\$7,098,951	\$12,790,465	\$19,889,416
2009	\$7,163,795	\$14,650,880	\$21,814,675

<sup>10</sup> Broadbent v. State Cause No. BDV-2003-361 Mont. 1st Judicial District Court Lewis & Clark County.

<sup>11</sup> [MAR Notice No. 36-25-102, page 2361](#)  
[MAR 23-12/2/04, page 2918](#)

2010	\$6,483,884	\$11,472,726	\$17,956,610
2011	\$6,625,329	\$14,088,829	\$20,714,158
2012	\$8,262,292	\$15,636,680	\$23,898,972
2013	\$10,238,748	\$17,588,573	\$27,827,321
2014	\$11,607,840	\$16,887,382	\$28,495,222
2015	\$14,484,256	\$14,408,035	\$28,892,291

The increase in grazing revenue in 2012 reflects the 2011 rate increase. The jump in agriculture revenue starting in 2011 is attributable to increased production and commodity prices. Trust land enrolled in the Conservation Reserve Program (CRP) of the U.S. Department of Agriculture generated about \$2.3 million in fiscal year 2015, half of which goes to the lessee and half of which goes to the state.

Revenue generated by the agriculture and farming leases is deposited in the appropriate trust as well as an administrative account that pays for administration of trust lands.<sup>12</sup>

The program has 21.75 employees, including 8.75 in Helena and 13 in field offices. Personnel services accounts for about \$1.4 million a year and operating expenses are another \$274,000.

## Audits

The Agriculture and Grazing Bureau has not been the subject of a legislative performance audit.

## Recreational Use

### Background

In 1991, the Legislature clarified that state lands, including those whose primary use may be for agriculture, grazing, or timber harvesting, are open for general recreational use subject to legal access and rules established by the Land Board.<sup>13</sup> The annual fee was \$5, which lawmakers arrived at by determining that \$3 was the value of one year of recreational use and \$2 was the annual administrative cost.<sup>14</sup>

In 1993, the Legislature took out the specific fee and required that recreational use of state trust land must obtain full market value.<sup>15</sup> The Land Board in 1996 set the full market value of recreational use at \$5 for people 17 years of age or younger and those 60 years of age or older. For individuals between those ages, the fee is \$10. A household family license is \$20.<sup>16</sup>

However, it became apparent that many people who used state land were probably unaware that they were also required to buy a recreational use license, meaning the trusts were not being compensated for the use of the land. In

<sup>12</sup> 77-1-108, MCA

<sup>13</sup> 77-1-203, MCA

<sup>14</sup> Ch. 609, 1991

<sup>15</sup> Ch. 586, 1993

<sup>16</sup> 36.25.146, ARM

2003, the DNRC and FWP proposed a bill requiring that anyone buying a conservation license – hunters, anglers, and trappers – would pay an increased amount to compensate for using trust land to hunt, fish, or trap.<sup>17</sup>

As adopted, the law requires FWP and the DNRC reach an agreement on the extra fee.<sup>18</sup>

A special recreational use license is required for:<sup>19</sup>

- commercial recreational activities, such as outfitting, in which a private person, corporation, group, or other entity charges a fee or obtains other consideration;
- non-commercial recreational activities conducted by an organization, such as a lodge, business, church, union, or club;
- overnight recreational use on leased or licensed lands by one or more persons outside a designated campground and more than 200 feet from a customary and legal access point or water body; and
- overnight horse use.

The department must determine what the full market value of a special use is and those licenses may be subject to competitive bidding.

The Legislature has largely left the regulation of recreational use of state lands up to rules adopted by the board. Many of the rules have remained the same for the last 20 years; however, a bill passed in 2015 will require some rule revisions. [Senate Bill No. 326](#) provides for motorized use on trails developed by the department, allows camping for 16 days in a 30-day period, provides requirements for overnighting a horse, and revises public notice requirements for restrictions on general recreational use.

## Fiscal Overview

The table below shows licenses and revenue for recreational use for the year ending June 30, 2015.

Conservation Licenses Sold	498,556
Revenue	\$997,112
General Recreational use Licenses Sold	7,111
Revenue	\$71,431
Special Recreational Use Outfitting Licenses	150
Revenue	\$163,630

Fifty cents from each recreational license sold is returned to the dealer as a commission. The rest is apportioned to each trust based on the trusts percentage of the total acreage and used to pay for administering trust land use.<sup>20</sup>

The administration of recreational uses costs about \$44,000 a year. The department contracts with FWP for two game wardens to enforce state land regulations for an annual cost of about \$141,000.

<sup>17</sup> [Senate Bill No. 130](#), 2003.

<sup>18</sup> 77-1-801-802, MCA

<sup>19</sup> 36.25.145, ARM

<sup>20</sup> 77-1-802, MCA

## Enforcement

Violations of laws and rules for state lands is a mix of criminal and civil penalties.

Using state land without a license is a misdemeanor, punishable by a fine of at least \$50 and up to \$500, up to six months in jail, or both a fine and jail time.<sup>21</sup> The 2015 Legislature, through Senate Bill No. 326, also made unauthorized dumping of refuse on state land a misdemeanor crime punishable by a fine of up to \$1,500.

However, violations of rules adopted by the board are civil penalties punishable by up to \$1,000 a day.<sup>22</sup>

In 2010, the DNRC proposed to change all recreational use violations to misdemeanors because the civil penalties, which much be pursued by agency attorneys instead of going to a local justice of the peace, are difficult to administer and can go unresolved. The agency also said the difference was confusing for game wardens.<sup>23</sup>

The EQC voted 13-2 against allowing the proposal to be predrafted and the agency did not pursue the idea in the 2011 Legislature.

In fiscal year 2012, there were 10 civil violations issued with \$685 in fines collected. The next year, \$830 was collected from eight civil violations.<sup>24</sup> For the most recent year, there were eight civil penalties with fines of \$800.

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<sup>21</sup> 77-1-801, MCA

<sup>22</sup> 77-1-804, MCA

<sup>23</sup> DNRC [2011 Legislative Proposal Summaries](#)

<sup>24</sup> DNRC [Enforcement and Compliance Report to EQC](#), 2013