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**A Matter of Trust: The Changing Face of State Trust Land
Management in Montana**

by

Tim Westby

~~B.A. University of Arizona, 1994~~

presented in partial fulfillment of the requirements

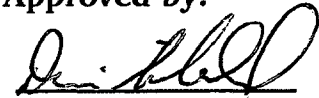
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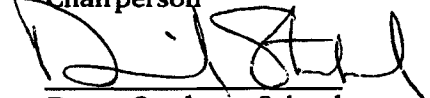
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A Matter of Trust: The Changing Face of State Trust Land Management in Montana (27pp.)

Director: Dennis Swibold 

Upon statehood in 1889, the federal government handed Montana 5.8 million acres for “common school support” under the auspices of the Enabling Act. That federal law and Montana’s Constitution require these lands be managed for the benefit of public education.

Today, trust lands receive scant attention from the media and are often misunderstood by the public. Many people believe trust lands are public. They’re not. Nonetheless, continued public concern over the environment is forcing officials to rethink management philosophies. This means dramatic changes are afoot. In a series of in-depth newspaper-style articles, I look at these changes and what they mean for the land and people of Montana.

The first article focuses on the growing trend toward commercial development on trust lands. A plot of land outside of Kalispell has been leased and farmed by the same family for over 60 years. But the state is pursuing plans for commercial development, pushing the family off the land in the process. The new plan sharply increases revenue, but critics call it state-mandated sprawl.

The second article asks: Is the state doing what’s best for old growth forests? Critics say no, arguing the state isn’t even following its own forest plan, which calls for protecting half of all old growth. Others argue that protecting old growth is not only bad trust management; it’s bad land management.

The next article looks at how other states are grappling with trust lands. Colorado is attempting to protect environmentally sensitive places, while pushing for commercial development on other lands. Environmentalists, meanwhile, are calling on states to allow “conservation leases.”

The final piece focuses on the proposed McDonald gold mine -- arguably the most controversial environmental issue in Montana in the 1990s. From a Montana Supreme Court decision asserting Montanans’ right to a clean and healthful environment to a push from conservationists to change the foundation of trust land management, the fight over the mine’s impact on trust land policy is profound.

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Chapter One

Flathead field offers glimpse into future of state land management

Clinton Groswiler's uncle started growing wheat on a 620-acre field north of Kalispell about the time the Great Depression set in. In the decades that followed, the job of tilling the land passed from his uncle to his father then to Clinton himself.

But things change.

The Groswiler field is now ground zero for a debate involving a wide range of conflicting interests. The needs of public school children are pitted against the needs of struggling farmers and ranchers. And the mandate of a powerful state agency is colliding with the concerns of local communities.

Groswiler's field lies on state trust land he leases in 10-year spans from the Montana Department of Natural Resources and Conservation (DNRC). Montana's Constitution and federal law mandates that these lands -- 5.2 million acres statewide -- make as much money as possible for the trust's beneficiaries, mainly public schools. Because office buildings and apartment complexes bring in more cash than wheat fields, large chunks of Groswiler's wheat field will likely make way for urban development before long.

State and city officials say pushing Groswiler off the land will be good for Kalispell and Montana's school kids. Community activists' counter it's state mandated sprawl, and they forced the state to take another look at the idea. But no one doubts that Groswiler's field offers a glimpse into the future. As Montana's cities grow, more trust lands will see urban development.

No future for agriculture

Montana is following a trend occurring all over the West. As cities sprawl into the surrounding countryside with burgeoning populations, states are slowly converting their once agriculturally-based trust lands into urban development. Colorado is leading the charge with several trust holdings in Denver and nearby suburbs. Other states, in particular Arizona, New Mexico and Utah are also looking to cash in on their booming populations as well.

In fact, Groswiler's field isn't the first trust land in Montana to see commercial development. That distinction belongs to a 33-acre parcel on Bozeman's northwest edge the state is currently readying for development.

According to the chief of DNRC's special use bureau, Clive Rooney, "several thousand" more acres of state land near urban areas are vulnerable to development. He lists a number of areas around the state including large chunks of consolidated lands in the Flathead Valley and southeast of Bozeman that could see possible commercial

development. There are smaller sections north of Billings and in Missoula County too, he says, that are attracting the attention of developers.

"A number of properties will be converted from agricultural to commercial or other uses in the future," says Rooney. As for when more trust lands will see commercial development, Rooney can't say. That depends on state funding, commercial interest and when leases fall due, he says.

A look at Groswiler's lease explains the state's push toward commercial development. Groswiler's entire 620-acre section makes \$10,000 a year for the state's School Trust Fund. But shortly after the city annexed the land in the early 1990s roughly a quarter of the section -- about 160 acres -- was converted to city ballparks. Those parks now bring in \$35,000 a year to school coffers.

In Bozeman, the difference is even more dramatic. The 33-acres currently brings in about \$1,000 annually as farmland, but once the land is fully developed it will generate \$380,000 a year.

"When a quarter of the section is worth four times as much as all the ag(ricultural) land, it's obvious its future is not ag," says Rooney about the Groswiler field. "Like it or not, we'll probably start to see more and more ag lands going to commercial development all across the state."

Although the Montana Stockgrowers Association does not have an official position on the issue, the group's director is leery of the idea and what it could mean to ranchers and farmers. "We want to do everything we can to preserve agricultural lands," says Steve Pilcher. "They serve a very important need for Montana's economy."

Nonetheless, as it did with the Bozeman tract, the state is using the Flathead field to test the water on how to conversion agricultural land to urban development with the least harm to the local community.

The state's plan

In a 7 to 2 vote in June, the Kalispell City Council signed off on the state's plan to develop the land with a variety of commercial, office, residential, and recreational uses. The plan divides the site into four sections.

One section will expand the already existing athletic complex on the southeast corner. A second section will be a mix of offices and business. Agricultural businesses will be encouraged; taverns, casinos and auto dealerships will be specifically forbidden. The third section allows schools and equestrian facilities. And the last section will have residential development, most likely upscale mobile home parks, retirement homes and college dormitories for nearby Flathead Valley Community College.

The plan calls for "generous green space requirements" throughout the site. And, at the request of the City-County Planning Board, areas farthest away from town will be

developed last. A truck bypass route for Highway 93 is proposed to slice through the field as well.

Although legally exempt from local planning ordinances, state officials brought the plan through the city and county planning process to make sure it complies with city zoning.

"We don't believe it's good planning to do something that goes against the community. But we want to be treated as any other land owner at the same time," says Rooney.

Kalispell's mayor, an ardent supporter of the plan, was pleased with the state's willingness to work with the city.

"What we've discovered is that the state is extremely willing to work with us," says Mayor Bill Boharski.

Because the site is already partially surrounded on three sides by some sort of development, Boharski is quick to dismiss criticisms of urban sprawl calling the plan "more infill than anything." Then he adds, "Anything we get services to is probably not sprawl."

State mandated sprawl?

But opponents say that if the plan presents a blueprint for the future management of trust lands, then communities all over Montana should be on guard. Converting state-owned open space at the edge of a city to commercial use, they argue, presents a host of problems state officials haven't begun to work out.

"It's precedent-setting," says Mayre Flowers, program director of Citizens for a Better Flathead of the plan. "And it's going to suck business from the city core."

In a strongly-worded letter to Bud Clinch, director of the Department of Natural Resources and Conservation, the community group blasted the agency for pushing a "precedent setting action...the state has had little dealings with..."

The letter goes on to accuse the department of failing to follow the state's seminal environmental law – the Montana Environmental Policy Act -- by not taking into consideration the plan's impact on Kalispell businesses. The group points out that the part in Montana's Constitution that mandates trust lands make as money as possible says the economy of the local community must benefit as well as the state.

Despite the state's emphasis to work within the local planning process, Flowers doesn't think local officials had much choice because the state ruled out selling or swapping the land from the beginning, she says. And, says Flowers, there's nothing that says the state will work with local officials next time.

“The land will not be sold only leased,” says Flowers. “The city will be providing services, but not collecting taxes on the land. The city should be the lead on a project like this, not the state.”

It’s an argument that carried weight at the state Land Board’s monthly meeting in October. The Land Board is charged with oversight of trust land management. While the board stopped short of killing the proposal, it put the plan on hold until the state can answer how DNRC will comply with the city’s subdivision rules and include an economic analysis on the effect of the development on local businesses and property taxes. The plan must also meet the Montana Environmental Policy Act by comparing development to other options like more intensive agricultural or trading the land.

To Flowers’ criticisms, Rooney responds, “sprawl is in the eye of the beholder.” But says his department will answer the concerns and make the project as favorable for the community as it can. He concedes, however, that his department is likely to continue running into community resistance as more trust lands see urban development.

"People want these lands to remain as grazing and ag lands. They want these open spaces to remain open."

Political testing ground

Few people know what trust lands are. Even fewer understand how they are managed. Most state officials who deal with trust lands grumble that the public often regards trust lands as public. The public does not understand, they say, that trust lands are managed for a specific purpose: to help fund schools and other beneficiaries.

"People think these lands belong to the public, but they don't," says Jeff Hagener, administer for the DNRC's Trust Land Management Division. "And what is truly best for the trust, might not be what the public thinks is best."

When Montana became a state in 1889, the federal government -- flush with land -- turned over nearly 6 million acres to the state in trust lands as mandated by the Federal Enabling Act passed that same year. Township boundaries, which had 36 one-mile-square-sections, were the main unit of measurement when the government handed out the lands. Like most states, Montana received two parcels per township. The sections fell where they may. The early trust map looked like a checkerboard -- and still does east of the Rocky Mountains.

Schools have by the far the largest piece of the trust land beneficiary pie, about 87 percent. But nine other institutions, including four of the state's colleges, the School for the Deaf and Blind, the State Reform School, and the Veteran's Home, divide the remaining chunk of change.

In 1998, just over \$44 million -- or \$270 per student -- was pumped into public school coffers from state trust lands. During the last decade, trust lands accounted for 7 to 10

percent of the state's primary education budget. In Montana, \$5,825 is spent per student, ranking the state 17th in the nation.

The state's top five elected officials sit on the state Land Board. All five members of the board, which includes Gov. Marc Racicot (the board's lone Republican), Superintendent of Public Instruction Nancy Keenan, Secretary of State Mike Cooney, Attorney General Joe Mazurek, and State Auditor Mark O'Keefe will be pushed from office by term limits in 2000. All except Racicot are seeking higher office.

Steve Thompson, an environmental consultant, activist and columnist, calls the Land Board, "an all-purpose political testing ground for the next 12 months."

Writing on the wall

If the state's plan gets the eventual nod from the Land Board for the plot of land outside of Kalispell -- and most believe it will -- the future will almost certainly bring a bypass route around the city. Then a variety of commercial, residential and recreational uses will follow on land the Groswiler family has tilled for seven decades and three generations. In no more than 20 years the wheat field should be gone completely.

But Groswiler isn't resentful. He says saw the writing on the wall years ago. His wheat field, after all, is a swath of open space surrounded on three sides by development: an apartment complex and residential neighborhood to the north, a community college on the east, the city itself encroaching ever closer on the south

Groswiler admits it's a large portion of his families' operation. But he also admits he is experiencing the same economic woes of farmers nationwide. These problems, he says, are likely to force him from farming regardless of what the state does. But he thinks that if he tried to commercially develop his private land, there would be even greater resistance from the community.

"We have a section of land right across the road. There would be an uproar if we tried to do anything like this," he says. "Seems like we've got to bear the burden of people wanting to keep open space."

110 years of changes for Montana's trust lands

1889 -- The federal government grants statehood to Montana and designates about 5.8 million acres of federal land to the state through the Enabling Act for "common school support." Two sections in each 36-square-mile township are identified as trust lands.

1927 -- Following similar decisions in other states, the Montana Supreme Court affirms the state's rights to maintain mineral leases values on trust lands the state has sold. This increased the mineral-rights acreage to just over 6.3 million acres.

1993 -- The court case *Sheep vs. Sheep* forced the state to do environmental assessments for most lease transfers.

1995 -- A Legislative report by University of Montana economics professor John Duffield entitled *Economic Analysis of the Values of Surface Uses of State Lands*, shows that the state is charging well below fair market value for its lands. The Legislature votes to dump trust lands revenue into the state's general fund before distributing it to the beneficiaries.

1997 - State leases its first commercial development on land near Bozeman.

1998 -- ~~Montanans for the Responsible Use of the School Trust (MonTRUST)~~ sues the state for not charging fair market value for leases.

1999 -- State begins significantly raising lease rates -- in some case as much as 1,200 percent. Legislature votes to weaken requirements for an environmental assessment under the Montana Environmental Policy Act to counter the *Sheep vs. Sheep* decision. State leases its second commercial development near Kalispell with plans for more.

Chapter Two

Critics battle state over old growth forests

Steve Thompson was a journalist by training before becoming an environmental consultant and activist. One thing his training as a newspaper reporter taught him, he says, is how to spot a scam. And he thinks the state of Montana -- the Department of Natural Resources and Conservation (DNRC) in particular -- is running a scam when it comes to the last remaining stretches of old growth forest left on state trust land.

Thompson claims the DNRC, which is charged with managing state trust lands, is ignoring its own forest plan by calling areas of second or even third growth old growth, allowing more true virgin forest to be logged. As a result, says Thompson, more old trees -- the most valuable in the forest both economically and biologically -- are cut.

To his support, a small but knowledgeable following has gathered: a forest biologist, a fire ecologist, and a logger. Each worked for the state at one time and quit because of disputes with the DNRC over old growth forest management.

Together, this group of four is raising troubling questions about the state's old growth forest management plan and whether the DNRC can maintain its environmental responsibilities while still turning a profit for schools.

Progressive plan

In 1996, the DNRC released what Thompson calls "an unexpectedly progressive" forest plan that called for the protection of 50 percent of the remaining virgin forests on state land. The department is required by the Montana Constitution to raise as much money as possible off trust lands, funneling most of the funds to education. At the same time, it must also protect the corpus, or body, of the trust to allow for a consistent income over time. By protecting 50 percent of old growth, the most valuable timber in the forest, the corpus of the trust is protected for future generations, so the argument goes.

It's a good way of managing old growth, says Thompson. If only the state would follow it.

"The idea of a trust is that you make as much as you can from it while maintaining what you started with at the same time," says Thompson. "That means maintaining all the pieces, including the critters and the biodiversity."

In spite of the forest plan, Bud Clinch, DNRC's director and a former timber company executive, is blunt when it comes to his department's management of old growth, "We have no legal mandate to protect old growth. Our mandate is to manage state lands and to optimize income on those lands."

Montana Old Growth Project

Thompson grew suspicious of the state's unwillingness to follow its own forest plan when he found out a section of state trust land near his home in Whitefish was classified as old growth. The area, known as Coal Creek, is heavily logged second or even third growth, says Thompson. "There is absolutely no old growth up there," he says. "Their definition of old growth is completely at odds with the Society of American Foresters' definition."

Calling areas of second growth old growth, Thompson says, allows more virgin stands to be cut in other areas, allowing the state to claim it is protecting old growth.

With the help of his band of three, Thompson formed the Montana Old Growth Project to take the DNRC to task over this policy.

Jane Adams was DNRC's lead biologist in northwest Montana until last spring when she was pushed out of the department, she says, for not supporting a 600-acre timber sale in the Swan Valley that would have taken out a huge swath of old growth.

"Ninety-seven percent of the sale was in old growth. The EIS (environmental impact statement) didn't even mention that," says Adams...

Adams says she complained to her supervisors repeatedly but was told to back the sale or face reassignment.

"When I didn't support the sale, they made things very uncomfortable for me until I finally quit," says Adams.

Clinch brushes off Adams' quitting, saying no one in the agency supported her beliefs.

The Swan Valley sale was eventually stopped over concerns for bull trout, a federally listed threatened species. Adams is now testifying as an expert witness for the plaintiff in a lawsuit by the Skyline Sportsmen's Club against the DNRC over a similar timber sale south of Dillon.

"They think they can go into a virgin stand of old growth, cut most of the trees and still call it old growth," says Adams. "You can't go into a virgin stand, leave six trees and still call it old growth."

In May, the Old Growth Project took its cause before the Land Board, the state's top five elected officials who ultimately oversee management of trust lands. Then in early July, Superintendent of Public Instruction Nancy Keenan, a Land Board member running for Congress, and several Land Board staffers took a field trip with Thompson to the Coal Creek stand outside of Whitefish.

As a result of the group's protests, the DNRC is reconsidering whether to classify the area as old growth. Thompson says his group doesn't necessarily support a "no logging"

agenda, but thinks Clinch and the DNRC are ignoring the other side of the trust land mandate, which states that lands must be managed at sustainable levels for future generations.

Besides the economic values of old growth, Thompson believes there's the potential for untapped biological values. He points to the Pacific yew, a stout shrub-like tree growing in northwestern Montana, that for years was considered of little economic value. Today it is highly sought after for its cancer-fighting qualities.

"There is so much we still don't know about the biological values of old growth," says Thompson.

Should old growth be logged?

Not everyone agrees that old growth is worth protecting. Roger Bergmeier is one of them.

Bergmeier says he wants what is best for Montana's school kids and state forests. And as a retired forester with the DNRC after 17 years, Bergmeier doesn't buy the Old Growth Project's arguments.

When the state adopted the 1996 forest management plan, the timber cut off state lands dropped from over 100 million board feet a year to 44 million. Bergmeier calls this "bad trust management and bad land management."

Cutting less old growth means more trees will die, says Bergmeier, leaving forests vulnerable to fire and disease. And eventually less money will go to the state trusts.

In 1998, trust lands raised \$44 million for beneficiaries, the vast majority of that going to public education, with \$6.2 million coming from logging operations. Over the last decade, money from trust lands accounted for 7 percent to 10 percent of the state's education budget.

Bergmeier points to turn-of-the century forest surveys by the U.S. Forest Service in the Flathead Valley that show there is actually more old growth now than in the past. He believes the same to be true on trust lands throughout the state because of fire suppression in the last hundred years.

"Before Anglos came to western Montana, fire swept through forests on a regular basis, giving them a more wide open look with younger trees," says Bergmeier. "The reality is that there may be more old growth now than there ever was."

Thompson dismisses Bergmeier as an "old school forester" who "doesn't like the forest to be too messy."

Bergmeier says he cares deeply that trust lands are managed for the benefit of Montana's school children. In 1997, Bergmeier formed the five-member Montanans for the

Responsible Use of the School Trust, or MonTRUST. Made up of Bergmeier, two other former state foresters, a school superintendent and a Missoula attorney, MonTRUST wasted no time in taking the DNRC to court. In the ensuing court battle, the agency agreed to 11 of MonTRUST's 14 issues, but is contesting the last three issues before the Montana Supreme Court.

"These are school lands. They are supposed to be for schools," he says. "If the state were managing them the way it should be managing them, then maybe we wouldn't have schools closing in Missoula," says Bergmeier, referring to the recent closures of two elementary schools.

Bergmeier points to figures that rank Montana dead last in the West for the amount of money generated per acre of state land. Montana makes \$5.29 per acre of trust land compared to the \$18.54 average for all western states. Then he pulls out a 1995 report written by a former University of Montana economics professor and commissioned by the Legislature that chastises the state for not charging fair market.

"State lands have a 100 percent rental rate because everyone knows it's a good deal. In private industry 85 percent to 90 percent is considered fair for all sides," says Bergmeier.

But Jeff Hagener, who oversees the management of state lands within the agency, says Bergmeier's lawsuit has had little impact.

The agency was already in the midst of implementing many of the changes the lawsuit was seeking, he says. Nonetheless, the agency has started raising the cost of leases in the last six months. In some cases the raises were dramatic, causing another set of problems.

The lease for Elk Island in the Clark Fork River, for example, went from \$100 a year to \$8,374 causing the state Fish, Wildlife and Parks Department, which was managing the island as waterfowl habitat, to drop its lease. Such increases have unleashed an frenzy of complaints from the environmental community that the state is doling out increases unfairly for land leased for conservation purposes.

Bergmeier supports the raises and is unflustered by the complaints. He says if the public feels wildlife habitat is important enough, then the state constitution should be rewritten to change the mandate of trust lands.

"Until it's changed, do it right," he asserts.

An embarrassment of riches

For the moment, things are quiet for Thompson and Bergmeier. Each is focusing on raising enough money to help further his cause. And each is waiting for the state before making his next move. Bergmeier is awaiting a Supreme Court's decision before taking his old growth cause before the Land Board. Thompson is waiting to see what, if any, changes the DNRC will make on the Coal Creek section.

It could be said that Montana has an embarrassment of riches. Many states, particularly those east of the 100 meridian, sold their trust lands early in the century, but the amount of land in Montana's trust system has remained remarkably constant. Unlike most states in the West, Montana ended up with some of the best timberlands within its borders because of land exchanges with the federal government after Glacier National Park and the Bob Marshall Wilderness were created.

As Thompson puts it, "The state is now blessed with the problem of how to manage the last, best old growth in the state."

Chapter Three

Unranchers and states rethink trust land management

In the high desert of northwestern New Mexico, willow and cottonwood saplings are beginning to sprout again along a once barren section of the Rio Puerco River.

But it's a slow return.

"The whole watershed is in such bad shape from grazing that it's not recovering as fast as I would have liked," says John Horning, disappointment lacing his voice. "This is the most grossly overgrazed watershed in the Southwest. It's just devastated."

In 1996, the organization Horning works for, Forest Guardians, bid \$770 a year to lease a 550-acre tract along the Rio Puerco. The bid doubled what a rancher paid in the past and marked the first time environmentalists were allowed to lease state-owned trust land in the West.

Since then, the Santa Fe-based conservation group has nailed down two more bids, bringing the total acreage under its care to 3,000. On each parcel the group implemented an aggressive restoration plan once the cows were gone. They even coined a phrase for themselves: Unranchers.

"We have no interest in cows. There are enough places in the West with cows," says Horning.

The Forest Guardians success sparked similar attempts by other western environmental groups. In Montana, the Audubon Society and the Nature Conservancy lease small chunks of state land rich in wildlife habitat. Groups in Washington and Idaho have been aggressive in their attempts to lease state land.

The Forest Guardians move came at a time when some states were starting to take a hard look at how they managed their trust lands. As a result, states started making changes, including greater environmental protection, while producing an ever-higher return.

The old way

Cluster all the state trust lands in the nine western states, and you have a state nearly the size of Washington. These lands, given to each state by the federal government upon statehood, were a way of helping to support public education. Traditionally, this meant leasing to ranchers, farmers and the occasional timber company.

In Montana, by far the vast majority of trust lands are used for grazing and farming -- mainly east of the Rocky Mountains. Throughout the West, leases for trust lands are often passed from generation to generation. In fact, regulations in some states actually

discourage competition despite the federal mandate to produce as much revenue as possible.

Over time, some farmers and ranchers started to think of these lands as theirs. When the occasional state official would make an appearance, angry words, threats of violence, and cries over property rights were often exchanged. And so for generations, state trust lands throughout the West were largely ignored.

Ten years ago two University of Utah scientists, after years of research, ranked state lands dead last in ecological health among all lands -- federal, state and private.

Horning puts the matter more bluntly: "State lands are just treated like crap."

Enter environmental awareness

Environmental awareness may finally be trickling down to state lands, however.

About the same time the Forest Guardians was making its first bid in 1996, Colorado voters passed Amendment 16. It was a philosophical shift in how state lands should be managed. Instead of maximizing revenues from these lands through leases, the amendment only required "reasonable and consistent income over time."

"Amendment 16 bluntly said to the Land Board: Go find 300,000 acres of your highest quality lands and hold them. Give environmental groups and communities a chance to buy them," says Charles Bedford, director of the Colorado Board of Land Commissioners.

Suddenly, state land could be managed for values other than money, says Bedford, like open space or wildlife habitat. Opponents, including the governor at the time, warned the measure would only hobble public schools. School kids will lose out on the \$25 million trust lands bring into school coffers, they argued.

Instead, according to Bedford, income continued to rise steadily, reaching \$37 million in 1998. Bedford says the amendment allowed his department to start selling off environmentally sensitive land to more aggressively pursue urban and commercially desirable land. Currently, the state owns land occupied by two parking lots in downtown Denver, an apartment building in Pueblo, an office building in Ft. Collins, several gas stations around the state, and a hog farm in Kiowa County in the state's eastern plains.

"It's not a very large part of our portfolio. Most of our income still comes from ag lands, but we're moving toward more commercial development," says Bedford. Each partial leased out for commercial use brings in several times what agricultural land does, he says.

Jeff Hagener, lead administrator for the Montana Department of Natural Resources and Conservation's Trust Land Division, is doubtful Montana voters would ever go for a similar measure because of the state's largely rural population. Still, Hagener

acknowledges that his division is watching Colorado closely and following its lead in going to commercial development.

"Much of what works in Colorado, will work for Montana," says Hagener, who is also president of the Western States Land Commissioners Association.

'Condo vs. cows'

State officials across the West rattle off similar reasons for pushing for more commercial development. Montana officials, spurred by a 1995 report by University of Montana economics professor John Duffield that criticized the state for failing to get fair market value for its land, make no secret of their desire to commercially develop more state lands. But while the impetus in Montana is economic, in Colorado it's environmental. As in Montana, critics of Colorado's plan say commercial development can set up a situation where the state is encouraging sprawl. Bedford admits the issue is a vexing one. He points to a 28,000-acre chunk of trust land currently used for grazing on the outskirts of Aurora, a suburb of Denver, as a perfect example.

"If we develop, there is definitely a long-term potential for sprawl," he says. "On the other hand, it just can't sit there." Bedford's hope is that the county will offer to lease or buy part of it for open space.

Horning says he doesn't buy into what he calls the "cows vs. condo argument." Commercial development on trust lands accounts for less than one percent of all trust lands, he says. Instead, the focus should be on restoring the health of trust lands. In most cases, he says, that means removing or scaling back the number of cows.

'Unranching' grows

Ranchers say they're more concerned with the public perception that they don't take care of the land than losing trust lands to environmentalists.

"It doesn't really set a precedent," says Al Schnedberger of the New Mexico Cattlegrowers Association of the Forest Guardians' efforts. "They'll continue to find a few leases on the fringes, that's all."

But as the movement grows, there may be cause for ranchers to worry.

In Idaho, a Sun Valley architect named Jon Marvel started the Idaho Watersheds Project in the early 1990s. The group has since spearheaded a full frontal assault to push ranchers off all public lands – federal and state. State officials blocked Marvel's attempts to lease state lands at every turn, in spite of the fact that he was consistently outbidding ranchers several times over.

In response, Idaho Watershed Project sued the state and the case went all the way to the Idaho Supreme Court. In April, the court handed Marvel a victory, ruling that anyone is allowed to bid on trust lands regardless of their intention to graze.

Washington officials seem more open to the idea of Unranchers. In July, a consortium of environmental groups raised \$13.1 million in 15 months for a 25,000-acre swath of land in north-central Washington, known as the Loomis State Forest.

The area is habitat for the largest remaining lynx population in the lower 48. The deal worked out between the state and environmentalists allows recreation and grazing, but permanently forbid road building and logging.

"We're trading stumps for schools and its got to stop," says Mitch Friedman of Northwest Ecosystem Alliance, the lead group in the consortium.

In Montana, conservation leasing is likely to get a cold reception by some. The director of the Montana Stockgrowers Association, Steve Pilcher, makes his feelings clear when it comes to environmentalists bidding for leases.

"Our organization would be strongly opposed to leasing agricultural land to any group that doesn't intend to put it into productive use," says Pilcher. "It's a waste of natural resources."

Trust lands account for a small percentage of any state's annual school budget, usually no more than 10 percent, sometimes as little as 1 percent. The percentage stands around 7 percent in Montana. But because school officials regularly have to fight for every dollar from legislators, there is always pressure on trust lands. This raises the question: Are states that lease or sell development rights to environmentalists doing what is best for schools?

Horning thinks so. He calls the situation a win for both sides. Environmentalists often bid more than ranchers, thus increasing school revenue while restoring the land in the process, he says.

But in Montana, environmentalists have been slow to act when it comes to state lands. Steve Thompson, an environmental activist and consultant in Whitefish, acknowledges that Montana's environmental community has not given state lands the attention they deserve. Instead, he says, they've been distracted over battles involving mining, clean water, and federal lands which make up 33 percent of Montana.

"Environmental groups (in Montana) tend to focus on federal lands. They don't understand the trust land mandate," he says.

Last spring trust land management finally captured the attention – and the ire – of environmentalists when the Montana Department of Natural Resources and Conservation (DNRC) announced dramatic rate increases for the few conservation-based leases in the state. Four hundred and forty-two acres the Montana Audubon Society leases along the Flathead and Stillwater Rivers went from \$550 a year to \$22,100. The Nature Conservancy saw similar increases for trust land it leases as part of the Pine Butte Preserve along the Rocky Mountain Front.

At first, DNRC said such rate hikes were justified because land with “conservation values” commands a higher fair market value.

“They reclassified all these lands as stewardship leases and wanted a 5 percent return on what the land is per year,” says Janet Ellis, president of the Montana Audubon Society.

Ellis and others went before for the Land Board in August to voice their concerns. The DNRC eventually backed down, slashing the rate hikes.

“It seems like they realized they were way out of line,” says Ellis.

The future

Environmentalists in Montana say they are watching and learning from the success of “Unranching” in other states. Thompson says that if the contentious issues swirling around federal lands and mining die down, the Montana environmental community may finally focus long-term on state lands. Including, he says, bidding on conservation leases.

Although “Unranching” isn't getting the publicity it did a few years ago, Horning says his group is still in the thick of it. The group is appealing two separate lawsuits in New Mexico and Arizona that would make the bidding process more competitive in each state. In New Mexico, Forest Guardians plans to make “three or four more bids” this fall.

Says Horning, “This issue is alive and well, but the system is so backward that it takes a long time to change.”

How do Montana's trust lands stack up?

Arizona

Statehood: 1912

Original acres granted: 10.8 million

Current surface acres managed: 9.4 million

1998 Permanent Fund balance: \$882.7 million

1998 contribution to beneficiaries: \$80.2 million

California

Statehood: 1850

Original acres granted: 9 million

Current surface acres managed: 570,000

1998 Permanent Fund balance: \$0 (Sold trust lands early)

1998 contribution to beneficiaries: \$3.2 million

Colorado

Statehood: 1876

Original acres granted: 4.8 million

Current surface acres managed: 2.9 million

1998 Permanent Fund balance: \$275 million

1998 contribution to beneficiaries: \$37 million

Idaho

Statehood: 1890

Original acres granted: 3.7 million

Current surface acres managed: 2.5 million

1998 Permanent Fund balance: \$443.5 million

1998 contribution to beneficiaries: \$16.7 million

Montana

Statehood: 1889

Original acres granted: 5.8 million

Current surface acres managed: 5.2 million

1998 Permanent Fund balance: \$309 million

1998 Contribution to beneficiaries: \$44 million

Nevada

Statehood: 1864

Original acres granted: 2.7 million

Current surface acres managed: 2,976

1998 Permanent Fund balance: \$46.4 million

1998 contribution to beneficiaries: \$3.2 million

New Mexico

Statehood: 1859

Original acres granted: 8.7 million

Current surface acres managed: 4.3 million

1998 Permanent Fund balance: \$3.9 billion

1998 contribution to beneficiaries: \$274.8 million

Oregon

Statehood: 1859

Original acres granted: 4.3 million

Current surface acres managed: 784,000
1998 Permanent Fund balance: \$720 million
1998 contribution to beneficiaries: \$9.7 million

Utah

Statehood: 1896
Original acres granted: 7 million
Current surface acres managed: 3.7 million
1998 Permanent Fund balance: \$70.5 million
1998 contribution to beneficiaries: \$10 million

Washington

Statehood: 1889
Original acres granted: 3.1 million
Current surface acres managed: 2.9 million
1998 Permanent Fund balance: \$4.5 billion
1998 contribution to beneficiaries: \$184 million

Wyoming

Statehood: 1890
Original acres granted: 4.2 million
Current surface acres managed: 3.6 million
1998 Permanent Fund balance: \$817 million
1998 contribution to beneficiaries: \$113 million

Chapter Four

Fight over Blackfoot mine changes state lands policy

Seven miles east of the tiny town of Lincoln, Mont., three streams flow into one. Here, the Blackfoot River collects itself, beginning a nearly 120-mile journey West. This is also the place where a small Colorado-based gold mining company wants to develop on a wedge of school trust lands one of the largest gold mines in North America. A ferocious 11-year battle over the McDonald gold mine has waged ever since the Phelps Dodge Co. first proposed it in 1988.

Currently, there's a lull in the fight. But to nearly everyone involved, it's just a lull. Nothing more. Two upcoming lawsuits leveled by each side on the debate against the state of Montana guarantee the action will continue for years to come.

Regardless of what happens with the next round of lawsuits, most observers doubt miners will be allowed to break ground anytime soon -- if ever. They also agree the fight's ramifications for the mining industry and Montana's state-trust land policy are likely to be profound. Indeed, the Clark Fork Pend Oreille Coalition, a conservation group at the forefront of the fight, hopes the fallout from the fight might someday change trust land management on the national level.

"It's very interesting how one little gold mine can cause so much," says Tracy Stone-Manning, executive director of the Missoula-based Clark Fork Pend Oreille Coalition.

The fight over a legend

Thanks in no small part to Robert Redford's 1992 movie *A River Runs Through It* based on Norman Maclean's novel of the same name, the Blackfoot River is the stuff of legend. Renowned for trout fishing and scenic beauty, it's said that if western Montana has a soul it can be touched along the Blackfoot.

Near the Blackfoot's headwaters, Canyon Resources Corp. wants to literally remove two large hills in order to mine an estimated 9.3 million tons of gold and 10 million tons of silver on six parcels of state trust land intermingled with private land. Because the gold is mostly low-grade ore averaging as little as .019 ounces of per ton of hillside, or more than 52 tons of rock per ounce of gold, cyanide heap-leach technology is required to remove the precious metals from the rocks. Removing so much ore means the McDonald mine would likely compare to Butte's legendary behemoth copper mine, the Berkeley Pit, by the time its played out.

Because the proposed mine site sits mostly on state trust land, an estimated \$60 million would be pumped into public school coffers over the 15 to 20 year life of the mine. Montana Tech in Butte would see an additional \$3.4 million annually because the mine's trust land is specifically set aside for the school. That is, if the mine is ever built.

Mining on the run

The fight against the McDonald mine brought together two groups usually seeped in pitch battles with one another: environmentalists and Blackfoot Valley ranchers. So far, each side on the debate – environmentalists and ranchers one side, the mining industry on the other -- has doled out millions of dollars for their respective causes. Much of the money went to two knockdown, drag-out initiative campaigns in 1996 and 1998. The 1996 initiative would have strengthened the state's water quality laws, making the development of McDonald nearly impossible.

After business and industry groups led by mining poured an estimated \$2 million into the campaign, voters soundly rejected the measure. But in 1998 environmentalists came back with a vengeance and voters passed Initiative 137 by 52 to 48 percent. I-137 bans cyanide heap-leach technology in new or expanded mines and brought the already troubled mining industry and Canyon Resources to its knees.

In the past, the state counted on a steady diet of 15 to 25 percent of its trust land income from mining, including gas and oil development. In 1998, trust lands as a whole added \$44 million to the state's education funding, with \$8.3 million coming from mineral leasing. But it's not likely the state can count on that level of contribution in the future.

Exploration has come to a dead halt and several large mining companies, facing unrelated financial problems and citing the state's nearly never-ending permitting process have pulled out of Montana. In 1988, 56 companies spent \$28.6 million searching the state for minerals. Ten years later, just eight companies spent less than \$500,000. Virtually no one was looking for minerals in 1999. As a result, the Montana Mining Association, also citing a host of financial woes from a 70 percent loss of the group's membership, closed up shop in August after 27 years.

Jill Andrews, the industry association's former executive director, admitted in an interview in June that much of the industry's problems result from the fight over McDonald.

It was a fight Andrews doesn't think Canyon should have waged. She believes the controversy surrounding the mine and the intricacies of the permitting such a large and complex mine are simply too much for a small company to handle.

"Canyon Resources is a good little industrial company. But they got in way over their heads," says Andrews.

But more than anyone, Andrews blames the environmental community for the industry's current predicament. "Environmental organizations have to have an enemy in order to raise money," she says. "The mining industry has been their poster child for years. When we're gone, they'll find some other industry to destroy."

Robin McCulloch, a mining engineer at the Montana Bureau of Mines and Geology agrees. "The overall effect," he says, "is the environmentalists are winning."

Canyon Resources' woes

But Canyon Resources and the McDonald project were in trouble long before the 1998 election. In October 1997, Canyon Resources lost its deep-pocketed partner when Phelps Dodge Co. abruptly pulled out, selling its nearly three-quarters share to Canyon for a song.

Publicly, Phelps Dodge said it wanted to consolidate operations to copper mines in the Southwest and South America. But it's widely believed that privately company officials thought the fight and the lengthy and expensive state permitting process weren't worth it.

In the months following Phelps Dodge's exit, Canyon suffered a series of setbacks stemming from a combination of factors: its lack of financial prowess, an inability to find another partner, and the lowest gold prices in two decades. In the summer of 1998, the state effectively put the permitting process on hold indefinitely. After a decade and nearly \$70 million spent on permitting, Canyon has been teetering on the edge of bankruptcy ever since. The low point came when the company's stock prices fell below a dollar a share in August, and the American Stock Exchange threatened to drop the company.

In spite of the setbacks, Canyon Resources president Richard DeVoto remains defiant. "We still think it's a viable mine. In fact, it would be a world-class mine. We've said all along that the mine will be good for Montana, the taxpayers of Montana and the working people of Montana."

Fundamental right

For environmentalists, the fight to block the mine went all the way to the state's highest court. And in October, the Montana Supreme Court handed them what is likely a crucial victory. In a landmark decision, the court ruled Montanans' have a right to a clean and healthful environment.

"Our constitution does not require that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protections can be invoked," wrote Justice Terry Triewweiler on behalf of the court.

The court decision sprang from a lawsuit by the Clark Fork Bend Oreille Coalition and other conservation groups against the state after the McDonald project was allowed to release water contaminated with high levels of arsenic into the Blackfoot River. The release came after a series of well water pump tests. Environmentalists cried foul and pointed to the preamble of the state's 1972 constitution that proclaims Montanans have a right to a clean and healthful environment.

How will the Supreme Court's decision affect the McDonald mine and trust lands in particular? No one is sure yet.

“It’s really early to tell what this will mean. I’m sure it will take a number of lawsuits to flesh out the decision,” says Bonnie Gestring of the Montana Environmental Information Center, the group that led the charge for I-137.

Tom France, the Missoula attorney who represented conservation groups in the case, says the impact could be profound. “No court in the country has recognized such a profound right or given it such a powerful meaning,” says France.

France agrees with Gestring that it’s still too early to know exactly what the impact will be on trust lands. But, he says, whenever the state legislature wants to weaken environmental protections it will have to show there is a compelling urgency and the statute is drafted narrowly enough to allow for only minimal impacts to the environment.

Environmentalists sue state again

But the Clark Fork coalition isn’t stopping there. While the court’s ruling and I-137 killed the mine for the near future, the coalition wants to make sure a steep rise in gold prices or new technology doesn’t revive it. And the group is using the mine’s proposed placement on state trust land as its trump card.

The group is suing the state because it believes the state broke its own rules on two separate occasions. Stone-Manning says first the state combined six non-contiguous trust leases into one and then extended the single lease indefinitely.

Stone-Manning says state law stipulates that only trust land sections that are contiguous can be joined together. In the case of the McDonald mine, however, the trust land sections are intermingled with private lands. State law also makes it clear, she says, that leases can only be extended for a set amount of time before the leasee must reapply. In most cases it’s 10 years, but the state is allowing Canyon Resources to lease the sections indefinitely -- albeit for a hefty \$150,000 a month.

Dan Rapkoch, a spokesman for the Department of Environmental Quality, the agency charged with permitting the mine, would not comment of the lawsuit but says his agency followed the law.

DeVoto, Canyon Resources’ president calls the lawsuit “frivolous.”

Stone-Manning expects the lawsuit to go before a judge sometime in the summer of 2000, but says her group is readying its next move. The coalition will likely begin lobbying Congress next year to change the federal Enabling Act, the law that granted federal land to each state upon statehood primarily for the benefit of public education.

Because many people wrongly assume that trust land is somehow public land, they’re stunned when scenic spots, or as in the case of the Blackfoot River, environmentally sensitive, areas are developed. Most states east of the Mississippi sold off their trust lands years ago, but every western state except California maintains large trust holdings.

Because trust lands generate such a small portion of the overall education budget in every state, Stone-Manning believes the law should be changed to reflect the public's growing concern over environmental protection. At the very least, she says, the law should allow for "stewardship" or "conservation" trusts.

Stone-Manning points to attempts by environmentalists from Arizona, New Mexico, Colorado, Oregon, Idaho and Washington to create similar trusts. For the most part, state officials around the West are skeptical of the idea, but she believes changing the law at the federal level will provide the necessary prodding to make officials more accepting of the change in land management philosophy.

"A century ago, even 50 years ago, managing these lands for schools was fine, but now these lands should be managed in a way more in keeping with what the public wants," says Stone-Manning.

Last gasp

Environmentalists call Canyon Resources' latest threat a "last gasp effort." Nonetheless, it's clear they're worried.

When I-137 passed a year ago, Canyon Resources threatened to level a \$600-million "takings" lawsuit against the state for lost development rights. Given the company's shaky financial status, many believed it was just an idle threat. That changed in September when Franco-Nevada Mining Corp., the world's largest gold royalty investment company, handed Canyon Resources a \$3.5 million bailout.

The money allowed Canyon to pay back rent on the leases. But more importantly it is helping finance the takings lawsuit, which Franco-Nevada insisted Canyon pursue as part of the deal. In return for its financial support, the Toronto-based company will receive a 4 percent royalty if the mine goes into production or one-third of any takings settlement – potentially \$200 million.

DeVoto calls the deal "a major endorsement of the mine's merit" and says the lawsuit will be filed "soon."

Stone-Manning admits the bailout worries her. "We expected something like this would happen. Franco-Nevada is the largest mining company in the world," she concedes. "I assume they got to be that way because they had good returns on their investments."

Stone-Manning even admits one of her group's own lawyers warned against supporting I-137 because of the takings issue. But she can point to two bright spots. First, if her group wins its lawsuit the state leases for the mine likely would be declared void – halting any takings lawsuit dead in its tracks.

Second, "It would be a horrendous PR move," says Stone-Manning of the potential lawsuit. "No one is going to freely support them."

Montana Environmental Information Center's Gestring is less worried about the takings suit. "The first provision of a taking is that you have real property taken. But they have no real property. It's all state land they lease. And they can only lease if they follow state laws."

Blessing in disguise

One thing environmentalists are grateful for is that the proposed McDonald mine is on state trust land. "It's actually a blessing that it was not on federal land. The 1872 Mining Law would have opened the door wide for any mine and there would have been nothing we could do."

It's an ironic twist, she says. Federal lands are public, but the federal mining law would have allowed development of the mine in spite of any public outcry. State trust lands aren't actually public, but public sentiment was the driving force in stopping the mine.

Says Stone-Manning, "The fact that it's on state [trust] land allowed the fight to occur."

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