

Wyoming's School Trust Lands And General Recreational Access: A Policy Analysis

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⊙ Definitions

- *School Trust Land?*
- *Beneficiaries?*
- *Trust?*
- *Trustees?*

⊙ The Law

- *What is the legal nature of school trust lands?*
- *Modern trust doctrine*

⊙ Wyoming's Current Policy

- *1988 decision*

⊙ The Problem

- *Fiduciary Responsibility*
- *Illegality of status quo*
- *Conservation issues*
- *Management issues*
- *Who, how, why?*

(Cont'd.)

⊙ Review of Related Work

- *Hobson's Choice?*
By Sean E. O'Day
- *Conservation leases*

⊙ Methods and Procedures

- *Research question*
- *Method*
- *Assumptions, risk*
- *Procedure*

⊙ Results

- *Proposal 1*
- *Proposal 2*

⊙ Conclusion/Recommendation

- *Further study*

Definitions

◎ School Trust Land

- Where did it come from? Why?
 - *General Land Ordinance of 1785*
 - *Northwest Ordinance of 1787*
- What was/is it's purpose
 - *Congress' intent*
 - *Enabling Act and Constitution*
 - *Common Schools*
 - *"for the maintenance of public schools within the said township."*

(Cont'd.)

◎ Trust

- *A fiduciary relationship by which one party is subject to equitable duties to keep or use property for the benefit of another*

◎ Beneficiary

- *The party for whom the trustee is holding the property; trustee manages property on behalf of the beneficiary*

◎ Trustee

- *Is under a duty to the beneficiaries not to be influenced by the interest of any third person or by motives other than the accomplishment of the purposes of the trust*

The Law

⦿ Ervien v. United States (1919)

- State of New Mexico was prohibited from using its trust land to advertise, even though the state argued the increase in population would support land values
- ⦿ Free advertising, regardless of purpose, did not obtain, “...*direct compensation for the use of these lands.*”

(Cont'd.)

- ⦿ Lassen v. Arizona Highway Department (1967)
 - AZ Land Commis. rule changing status quo of giving the state's highway department rights-of-way over school trust lands at no charge
 - New rule required H. Dept. to compensate trust according to fair market value for these rights-of-way
 - H. Dept. sued arguing that developing infrastructure across the lands would enhance their value, and therefore, indirectly provide revenue for the trust
- ⦿ *“All these restrictions in combination indicate Congress' concern both that the grants provide the most substantial support possible to the beneficiaries and that only those beneficiaries profit from the trust.”*

(Cont'd.)

- ◎ County of Skamania v. State of Washington (1984)
 - Lumber producers prohibited from backing out of their contracts when the price of lumber plummeted
 - Challenged constitutionality of a state statute that would allow producers to renegotiate their contracts, excusing several million dollars the beneficiaries were owed
- ◎ *“Every court that has considered the issue has concluded that these are real, enforceable trusts that impose upon the state the same fiduciary duties applicable to private trustees..,”* and there is no *“sacred obligation imposed on the state’s public faith...”*

Wyoming's Current Policy

- ◎ 1988 Decision

- Legally accessible trust land open and free to the public

- ◎ *“If it were within the Board’s reasonable ability to collect the market rate for these uses on state land, the Board would be obligated to do so. However, a trustee appears not to be required to do more than a prudent businessman would do in managing trust assets. The state’s land ownership pattern and the lack of staff would make the uniform collection and enforcement of a market rate fee for these uses of state land expensive and arguably impossible.”*

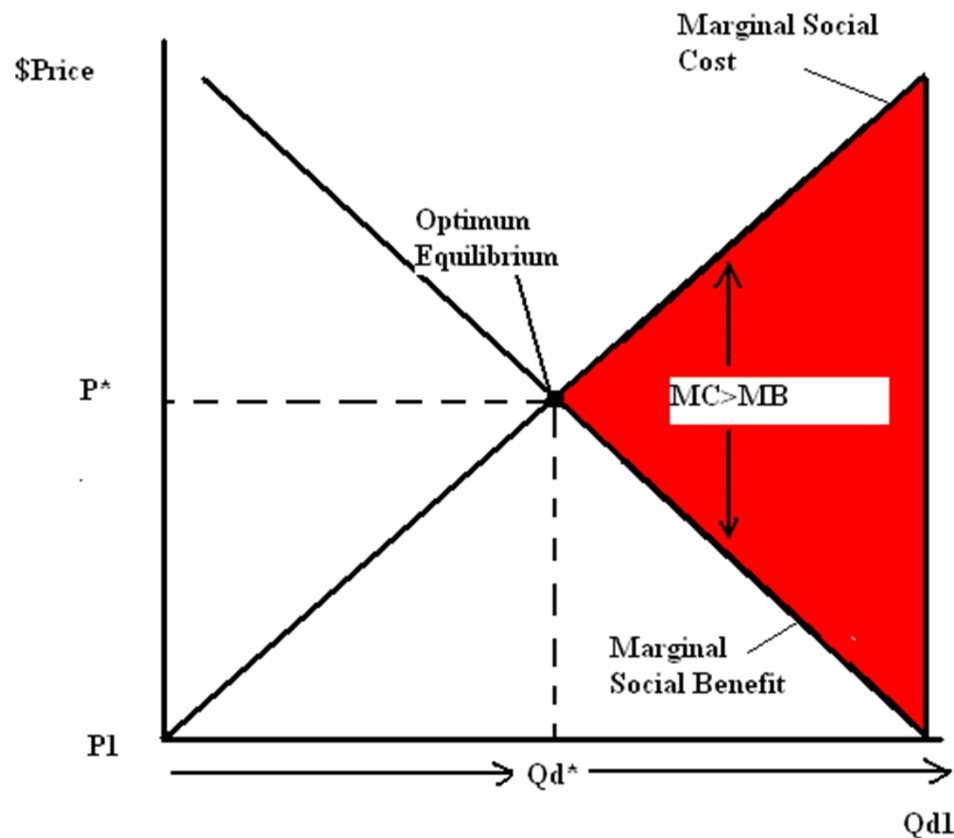
- Then Attorney General, Joseph Meyer

The Problem



- Public land, 10 miles northeast of Laramie.*
- Legally accessible, open and free to the public*

(Cont.d)



- At Price= 0, the marginal social costs associated with free access to trust land outweigh the marginal social benefits. The resource suffers, and its sustainability called into question in some instances.

(Cont'.)

◎ Tragedy of the Commons

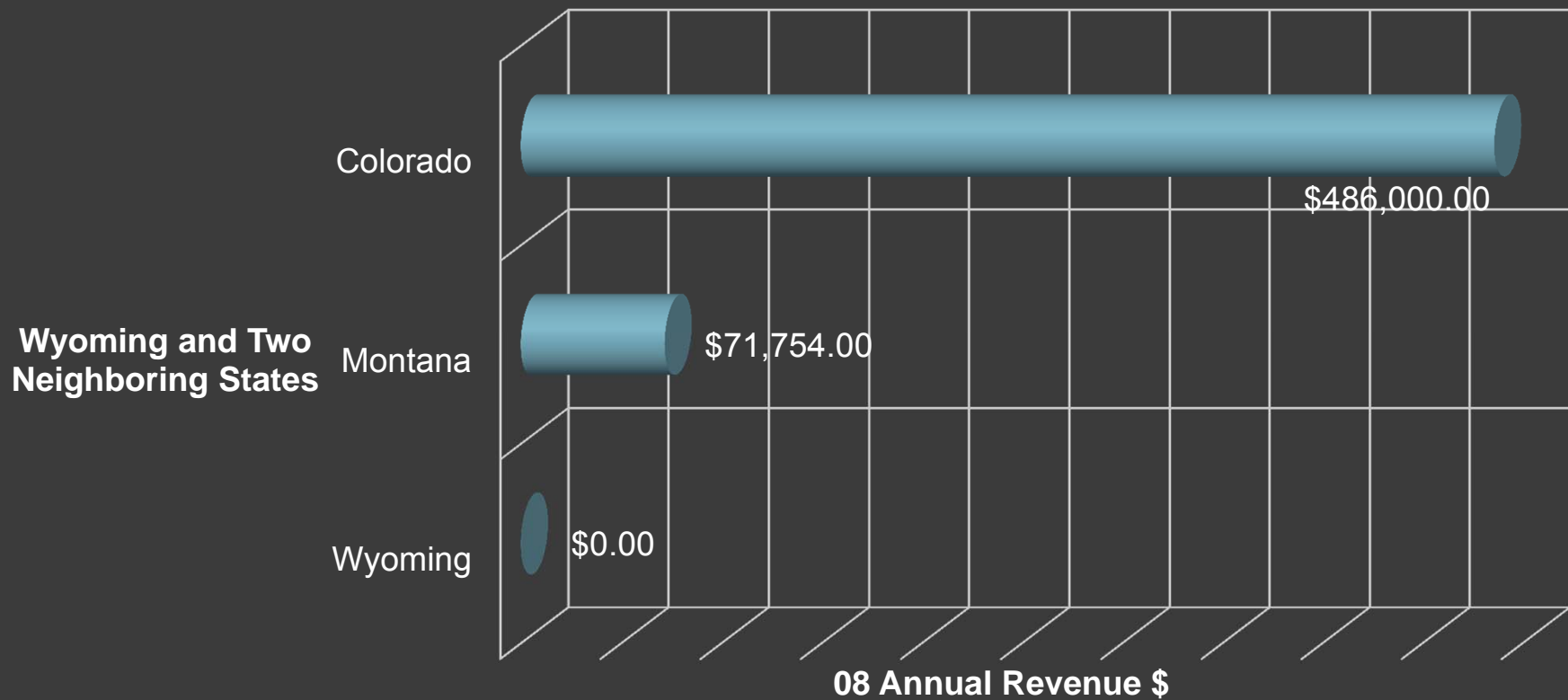
- *situation in which multiple individuals, acting independently, and solely and rationally consulting their own self-interest, will ultimately deplete a shared limited resource even when it is clear that it is not in anyone's long-term interest for this to happen*

◎ Game Theory, Prisoners Dilemma

- *describes circumstances in which two people resist cooperating even though it would be in their long term best interest to do so; incentive to defect*

(Cont'd.)

FY 2008 Revenue Generated From General Recreational Access



Review of Related Work

- School Trust Lands: The Land Manager's Dilemma between educational Funding and Environmental Conservation, A Hobson's Choice?
 - *A Hobson's choice presents itself because the manager has no choice but to manage the lands for the benefit of the trust beneficiaries*
 - *Conservation Leasing*

Methods and Procedures

Data

- *Financial stmts. from agency websites*
- *2008 PLPW Survey*
- *Game and Fish financial stmts. and statistics*

Procedure

- *Step 1: Identification of the Affected Parties' Interests*
- *Step 2: Identification of Evaluative Criteria*
- *Step 3: Identification of Policy Proposals*
- *Step 4: Analysis of Policy Proposals*

Step 1: Identification of Interests

- ① *Wyoming Board of Land Commissioners (Land Board)*
- ① *WEA and WSBA*
- ① *Surface lessees*
- ① *Recreationists (hikers, hunters, fishers)*

Step 2: Evaluative Criterion

- ⦿ *Does the plan benefit the trust beneficiaries, relative to the status quo?*
- ⦿ *Is it manageable, relative to the status quo?*
- ⦿ *Does it protect the resource for future generations, relative to the status quo?*

Step 3: Identify Proposals

- ⦿ *Institute a recreational use licensing system to be administered by the Game and Fish for all legally accessible state lands (The Montana Model).*
- ⦿ *Lease all legally accessible state lands to the Game and Fish at a blanket rate. Game and Fish administers public access program through special licensing and monitors all lands (The Colorado Model).*

Step 4: Analysis

⦿ Montana Model:

- *Generates about 6 percent of its total recreational revenue from the sale of general access licenses*
- *WYO. STAT. ANN. 36-2-107*
- *Sheriff's department, game wardens, or trust land personnel would have the authority to punish users if they did not have a valid recreational license, as this would be considered an abuse of the land*

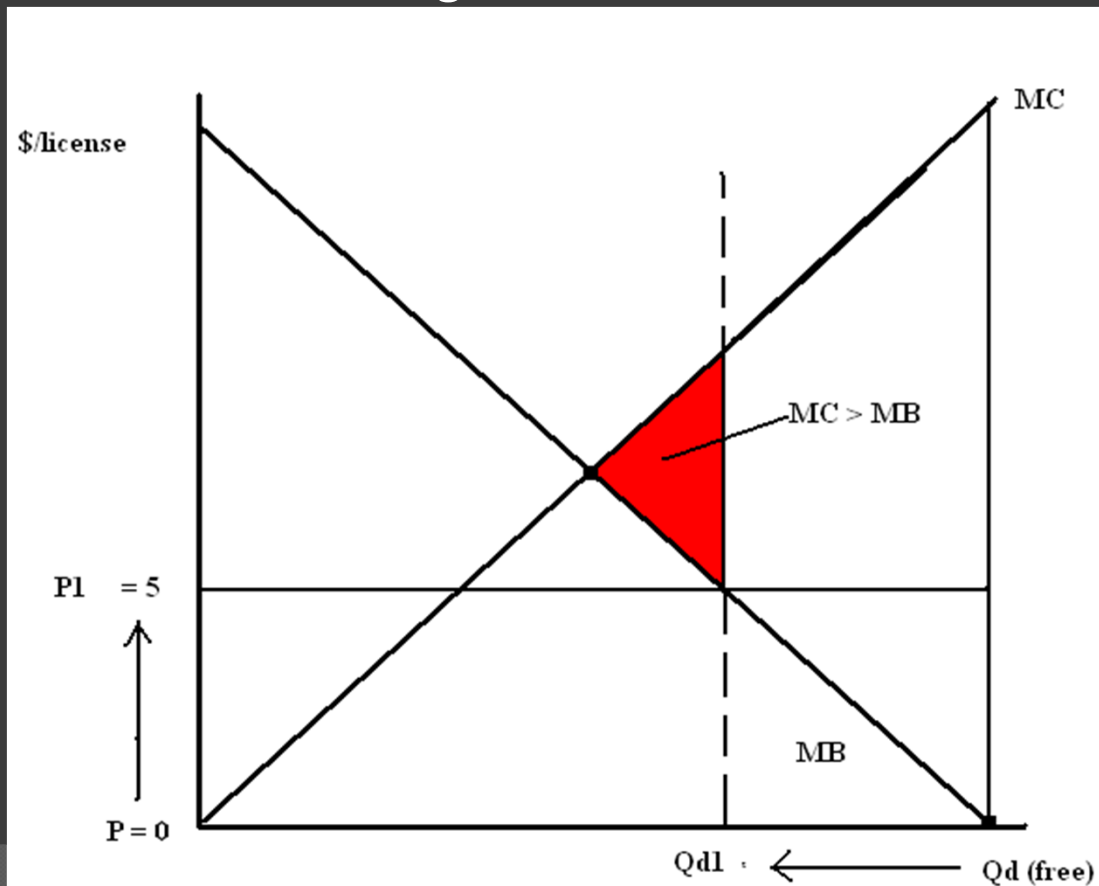
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◎ The Colorado Model

- *leases and the Habitat Stamps enable the state to collect revenues that are earmarked for eight beneficiaries, the largest of which is Colorado's K-12 public school system. (\$486,000 in FY 2008)*
- *also leased for other leasing activities including farming, livestock grazing, mining and logging during non-hunting seasons*
- *Policed by the DOW, overseen by the Land Board*

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Both proposals would cause a move along the MC and MB curves, and give users more of an economic incentive to abide by the Board rules and regulations.



Results

◎ Montana Model

- *\$60,000 - \$70,000 in average annual revenue*
- *Slightly more enforceable than status quo*
- *Slightly more sustainable than status quo (MC=MB)*

◎ The Colorado Model

- *~ \$500,000 in average annual revenue*
- *Highly enforceable/manageable (Board and DOW)*
 - *Alternative uses*
- *Much more sustainable than status quo (MC=MB)*

Conclusions/Recommendations

◎ Colorado Model

- *Could be a viable alternative to the status quo*
- *More efficient than the Montana Model*

◎ BUT.....

- *Would the land board consider this proposal?
Why not?*
- *Would it take a lawsuit by the WEA or WSBA?*
- *Why might these entities not want to sue the land board? Why might they want to?*

Further Study

- ◎ More Evaluative Criteria
 - Cost effective?
 - Protect existing leaseholds?
 - Fair market value?
- ◎ More Primary Data
 - Willingness to pay survey?

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◎ More Policy Proposals

- *What if recreational lease rights were attached to the agricultural or mineral lease, increasing the base rental to reflect the fair market value of recreational access fees?*
- *What if lands which experience access problems were simply sold or transferred to another state agency?*
- *Could the land board lease all lands identified as having high amenity value for recreational use on a case-by-case basis?*

Questions?

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