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.”
- 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.
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
Wyoming and Two Neighboring States

FY 2008 Revenue Generated From General Recreational Access

- Wyoming: $0.00
- Montana: $71,754.00
- Colorado: $486,000.00

08 Annual Revenue $
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

- Wyoming Board of Land Commissioners (Land Board)
- WEA and WSBA
- Surface lessees
- 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
(Cont.d)

- **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
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?
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?


