

Important Election of Land Board Positions on Nov. 4TH

All eyes are on the election of the next President of the United States come November 4TH. Here in Montana, voters will also elect five statewide elected officials - Governor, Attorney General, Secretary of State, State Auditor and Superintendent of Public Instruction - who make up Montana's Board of Land Commissioners.

The Land Board members are stewards of Montana's approximately 5.2 million acres of mountains, plains and river bottoms, a vast public estate that is roughly the size of Massachusetts. The Land Board meets monthly to address all matters concerning the management of our abundant state lands.

What's at stake? This summer news broke about possible oil and gas drilling on state land on the Rocky Mountain Front. Just when Montanans thought the land was off-limits thanks to Sen. Baucus' removal of federal leases, drilling the Front on state lands is again in the sights of oil and gas developers.

Conservationists are also concerned - as you've read in this issue - about Land Board decisions to harvest timber in precious old growth forests, as well as a decision to allow oil and gas lease sales that could allow drilling on the banks of the Yellowstone and Boulder Rivers. These sites stand to lose their pristine beauty and water quality if drilling is allowed to occur.

Montanans deeply value the clean water, open spaces and wildlife these lands provide, and we all have a stake in policy decisions concerning access, use, and long-range stewardship of these state lands.



P.O. Box 853
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Online at www.mtvotersedfund.org/landboard

On November 4TH, you have a chance to vote for people who will stand up for Montanans' deeply held value of clean water, open space and access to state lands. Please take the important opportunity to inform yourself about the various candidates and their positions regarding stewardship of state lands. ■

Final Print Issue of MCVEF Land Board Publication

Since 2001, MCVEF has produced hard copy editions of *Focus on Montana State Lands and the Montana Land Board* as a free public service to keep conservationists abreast of the latest actions affecting our rich heritage of state public lands.

In an effort to save paper and trim printing and mailing costs, this publication will now make the transition to an electronic newsletter. Ideally this change will also allow more regular and timely updates and the inclusion of alerts and action items.

We hope you've enjoyed reading this publication over the years, and to make sure you don't miss out in the future, subscribe with your e-mail address at our website to ensure delivery.

To sign up for electronic updates, go to:
http://www.mtvotersedfund.org/sign_up

If you have no e-mail and would like to receive a hard copy in the U.S. Mail, we will still offer this service for a \$25.00 annual contribution to the MCV Education Fund.

Please call 254-1593 or send a letter to P.O. Box 853, Billings, MT 59103 to request this method of delivery. ■



Sept. 2008

Focus on Montana State Lands and the Montana State Land Board

www.mtvotersedfund.org

Oil and gas leases rile residents

Plans by the Department of Natural Resources and Conservation (DNRC) to offer oil and gas leases on state lands in the Bridger Canyon and Bozeman Pass area, as well as on the Yellowstone, Shields and Boulder Rivers near Big Timber faced stiff opposition from dozens of concerned citizens and conservationists at the Land Board's August meeting. Despite the turnout, however, the results for conservation were decidedly mixed.

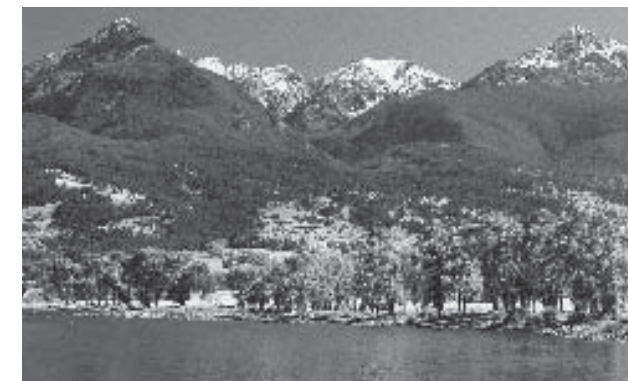
Yellowstone, Boulder and Shields River leases

Area residents and representatives from the Greater Yellowstone Coalition, Montana Trout Unlimited, and local TU chapters brought their concerns over DNRC's plans to offer oil and gas leases on state sections through which the Yellowstone, Boulder and Shields Rivers flow.

Initial news reports raised worries that the leases would actually allow drilling in the riverbeds. That, however, did not turn out to be the case. Instead, the Land Board assured the citizens that no drilling would be done in the rivers and DNRC's director, Mary Sexton, said the department was planning to require a quarter-mile setback from the rivers for any drilling rigs.

Scott Bosse, the Aquatic Conservation Director of the Greater Yellowstone Coalition, testified that the 28 leases being considered along the rivers amounted to thousands of acres. "Congress is funding a cumulative effects study of the Yellowstone River Corridor," Bosse said, "and it doesn't make sense to lease these parcels while those studies are on-going." Plus, Bosse pointed out that Fish, Wildlife & Parks has fishing access sites in the proposed lease areas, so activities on state lands should match the current uses.

Finally, Bosse mentioned that tens of thousands of dollars have been invested in two Future Fisheries projects to improve natural spawning near the mouth of Rock Creek, and asked that the smaller tributaries also be protected and that "the leases should be withdrawn for 6 months so Fish, Wildlife & Parks' comments can be digested, so the public can understand what's at stake, and so a sensible statewide policy for oil and gas drilling near rivers and streams can be developed."



Bosse's comments were echoed by several other conservationists, all of whom asked that the leases be temporarily withdrawn to give the public more time to be involved. As Kerry Fee from the Joe Brooks chapter of TU noted: "I've been aware of this oil and gas sale for about a month now and gone around with my board to try

and inform people of what's going on. About 99% of the people I talk to are totally unaware this is going on. The only way we found it was dealing with DNRC on Mill Creek and my secretary found it. This is not the way this should be done - by having to plow through DNRC's computer. There should be much more transparency, it should be brought out to public more so they can come in and comment. It's our mission to conserve, protect, and restore the Yellowstone River and its tributaries. Big rivers are important, but those tributaries are where the trout spawn and are especially important to cutthroat."

While the setback provisions ameliorated some of the concerns, the issue of which rivers the setbacks would apply to was left unresolved. Nor did the Board take any action to temporarily withdraw the leases. According to Tom Schultz, the administrator of DNRC's Trust Land Division, the Board couldn't postpone the leases because "it wasn't an action item, just a discussion item. So someone could come in and say it



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About MCV Education Fund

The Montana Conservation Voters Education Fund (MCVEF) is dedicated to building the capacity of Montana's conservation and environmental community to advance conservation issues within the state's democratic process. MCVEF seeks to build leadership and involvement in government, to preserve and enhance Montana's water, air, open spaces, and wildlife for future generations.

MCVEF is a non-profit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. A board of directors governs the organization and MCVEF's work is carried out by a board, staff, supporters and consultants who share a commitment to MCVEF's mission.

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wasn't noticed and challenge the action."

Bozeman Pass & Bridger Canyon

Oil and gas exploration, and the damage it can cause, is not a new issue to the residents of the Bridger Canyon and Bozeman Pass area. Back in 2001 the residents of the area organized a zoning and planning district, pushed through county zoning, and even took the fight to the legislature to stop J.M. Huber from drilling coalbed methane wells on state leases in the area. They won and Huber gave up the leases. But now, with new state leases back on the table, the area residents are up in arms again.

Leading off the testimony was area resident Bob Sands, who asked if those who came to oppose the leases would stand and about 20 people did. "As a practical matter," he said, "there was no notice and no opportunity for public comment," adding that DNRC put notice in Great Falls, Billings, and Helena, but none in Belgrade and none in Bozeman. "In terms of good process and reasonable procedure and citizen information, there was no time for us to even make comments." Sands also told the Board it was a "sensitive area with a lot of natural beauty but no commercial activity other than ag and recreation." Pointing out two people who live in the sections being proposed for leases, he asked "should there be holes drilled in their front yards?"

Sands closed by requesting the lease sale be postponed, adding that he "ran into the local elk herd yesterday while walking and we'd like them to remain. You hear owls and sandhill cranes, too, and we'd like them to remain. We need to find some kind of a solution that doesn't require drilling in our backyards or close to our homes."

Deb Strafford, a board member of the Bridger Property Owners Association, told the Board the local paper only picked up the leasing story on July 27th and reiterated the request to defer the leases to allow more time to work something out with DNRC. She also noted that DNRC Director Sexton had told them the only way to permanently remove the minerals from leasing would be some kind of a land exchange.

Governor Schweitzer then asked Sexton what the process is for public notice. Sexton replied that "in the leasing phase we're required to post notice in publications of statewide circulation. We also send out a press release to all newspapers regarding oil and gas lease sales four times a year. We're also looking at other

means of notifying landowners, local outreach, and this has been going on for some time."

Schweitzer then asked if there was a lot of activity to lease minerals on private lands in the area and was informed that the Teepee Ridge Homeowners Association had bought all the private mineral rights in that area and re-attached them to surface ownership and that there were no known private landowners subject to a lease.

The Governor then asked if local landowners had received notice of the leases, saying: "I thought we decided that in the future we'd be contacting neighboring landowners. We have someone who owns land within the section -- did we do that?"

Director Sexton replied that her agency was "still working on how to contact neighboring landowners. We're still working through it, but we have lots of leases." That prompted the Governor to ask "if I have a thousand acres of land next to a state section and lease the section for grazing, will I get a letter?" "That's what we're going to do," Sexton answered. "But not now?" the Governor asked. "We're working on that now," replied Sexton, adding that "word spreads through the private sector, but we're working on making that process better."

In the end, Director Sexton concluded that the landowners should bid on the leases and "if they bid and win, they'll have 10 years to work out other options."

State Auditor John Morrison, attending via speakerphone, said "the Teepee Ridge residents have made a pretty good case to put off leases until after September 9th. Seems we should have used the Bozeman Chronicle for notice," and adding "the residents seemed unified and that there should be alternatives to compensate the Trust especially since they're in sensitive areas, which I don't particularly like. If feasible, I would propose putting these leases off until after Sept. 9th."

Conclusion

The Board took no action on the leases, but afterwards, DNRC announced that the Bridger Canyon and Bozeman Pass leases would be postponed until they were reposted in the local papers. Unfortunately -- and despite the stiff opposition from residents and conservationists -- DNRC decided not to postpone the Yellowstone, Boulder and Shields River leases. ■

Giving away our old growth forests

Does giving away the state's old growth timber at bargain basement prices in a severely depressed lumber market make sense? Conservationists say "no," but DNRC and some Land Board members say it's part of a necessary effort to maintain the state's timber industry in tough economic times. The role of the state -- and the disposition of state trust land resources to bolster private timber companies -- is a debate which is likely to heat up significantly in the coming months.

The state's highly controversial Three Creeks timber sale, which is primarily old growth situated in critical wildlife and fisheries habitat, is a prime example of the issue. The state received about \$46 per ton two years ago when it sold the first of the three-phases of the Three Creeks sale. Now, however, the remaining timber will be offered for sale at about one-third of that price, at \$16.75 per ton. While some Land Board members question the wisdom of selling valuable timber in a hugely depressed lumber market, others say the sales are necessary "to preserve the state's timber infrastructure."

At the August meeting of the Land Board, the sale of the last two remaining parcels of the Three Creeks project were approved. DNRC director Mary Sexton told the Board the Small Lost Timber sale, was a "small project we put together so local folks could bid." As Sexton described the sale, she added that it "won't meet old growth criteria once it is harvested." That comment prompted Governor Schweitzer to ask for clarification and Sexton replied: "This 15 acres is old growth and it won't be there once harvested."

The Three Creeks #3 sale followed, which put the remaining 242 acres of the state's largest old growth timber sale on the block for a minimum bid of \$16.75 per ton, which prompted State Auditor John Morrison, who was attending the Board meeting via speakerphone, to comment on the price. "My concern is that we did the Three Creeks sale in March of last year at \$45.96 per ton. Three Creeks #2, this year, was \$21 per ton. Now, with Three Creeks #3, we're talking a minimum bid of \$16.75 per ton. It seems like the price just keeps going down." Morrison went to say he commended the department on the salvage sales for pine beetles, but noted that it is "bound to create a growing glut in the market for timber and there's a heck

[Continued on page 4](#)

(Old Growth - Cont. from pg. 3) of a lot of pine beetle killed timber yet to be removed. So why are we cutting 240 acres of healthy old growth at \$16.75 per ton when we have all these dead pines we could harvest?"

In response to Morrison's question, Sexton replied that: "Yes, the timber market is down at this time. We're getting half of what we used to get from timber sales. But we're working with communities and stakeholders because if there isn't an on-going effort to provide timber, there may not be a timber industry. We're working hard to maintain on-going harvests in a sustained fashion and improvements we are implementing on the ground are having a significant impact on the land."

Morrison then asked Sexton: "What is our obligation as Trustees when the timber industry and market price is such that it is not in the best interest of the trust to sell at that price?"

Sexton replied: "You have to look at the long term, what we can harvest 50-60 years down the road. If there aren't any mills, we will pay a significant price for that. We only supply 10% of the harvest in Montana, so we are a small player."

"So," Morrison replied, "your position is that sometimes we have to sell when the price is low so the industry can be there when the price is high?"

"It's part of the cyclical nature of these things," said Sexton. "If we pull out when the price is low, we may not have the [timber] infrastructure when the price is high."

"It concerns me to be doing the largest timber sale since I've been on the Land Board when prices are so low," Morrison replied.

"When we initiated this sale, prices were high," said Sexton.

Although neither Land Board members nor DNRC staff brought it up, Anne Hedges of MEIC points to a Washington State legal ruling (County of Skamania v. State, 685 P.2d 576, 578-579 -- Wash. 1984) that affirms that trustees must have "undivided loyalty" to the trust –

not to third parties or interests – and cites a report from the Sonoran Institute that explains the issue succinctly.

"In 1982, in response to collapse in timber prices precipitated by falling housing starts, the Washington Legislature passed the Forest Products Industry Recovery Act, which enabled timber companies to either extend timber contracts on state lands at no cost or to terminate contracts, essentially without penalty. The Act contained language indicating that by helping the timber companies, it would ultimately benefit the trust beneficiaries, noting that if the companies went bankrupt, there would be no buyers for state timber in the future. (at 578-579). Skamania County ultimately sued the state, arguing that the grant of lands to the state constituted a trust, and the Forest Products Industry Recovery Act violated the state's fiduciary duties as a trustee of state lands (the County was joined in the suit by the State Board of Education and the Board of Regents for the University of Washington).

The court ultimately agreed, holding that the grant of lands to the state in fact constituted a trust. Because the Act provided direct, tangible benefits to the contract purchasers and the state economy, at the expense of the trust beneficiaries, the state's actions violated its undivided duty of loyalty as a trustee. (at 581-82)."

"Every time the Land Board puts the interest of the timber industry

ahead of the interests of the trust it is violating the law," said Hedges. "Old growth forests have value beyond immediate short term timber revenues. By selling old growth at bargain basement prices, the Land Board devalues the long term interests of the trust to the benefit of short term timber industry profits. There are plenty of state lands where timber could be harvested to generate revenue for schools that would not result in destroying valuable old growth habitat. But the Land Board bows to the short term interests of the timber industry instead of the interest of present and future generations."

Despite a letter from Friends of the Wild Swan and MEIC explaining that their staffers could not be at the August Land Board meeting and opposing the last Three Creeks sales, in the end the Board unanimously approved the sale except for Attorney General Mike McGrath, who was absent and not voting. ■

Plum Creek's state easements stir controversy

For months now the secret negotiations between Plum Creek Timber and U.S. Undersecretary of Agriculture Mark Rey have raised serious concerns that they will enable the subdivision of Plum Creek's forest lands. Rey, a former timber industry lobbyist, has maintained that the negotiations were merely to "clarify" the easements, which led Missoula County and the WildWest Institute to file Freedom of Information Act requests and U.S. Senator Jon Tester to initiate a General Accounting Office investigation. The worry is that new forest subdivisions will bring with them vastly increased costs for fire, police and emergency services for both state and local taxpayers. Now, it has come to light that the state has recently "restated and amended" dozens of Plum Creek easements across state lands that will likewise enable the subdivision of Plum Creek's lands.

The issue first came to light in late July, when *Great Falls Tribune* Capitol Bureau Chief John S. Adams obtained several dozen easements between the state and Plum Creek that had been amended to widen the easements from 40 feet, which was used for logging roads, to 60 feet, which is legally required for residential subdivisions. But the story didn't start there, it goes back to the Racicot and Martz administrations and the 1999 change of Plum Creek from primarily a timber-producing company to a Real Estate Investment Trust (REIT).

Shortly after the transformation, Plum Creek began selling off some of the millions of acres of land granted to its predecessors, the railroads, by the federal government a century and a half ago. It was also right about then when DNRC, under Director Bud Clinch, another former timber lobbyist appointed by Governor Racicot and retained in that position by Governor

Martz, began the process of amending the easements. In 2004, in the closing days of the Martz administration, DNRC filed the "amended and re-stated" easements that expanded the rights-of-way. Only one problem – Clinch didn't take the easements to the Land Board, as required, and simply slid them across Governor Martz's desk for her signature then filed them.

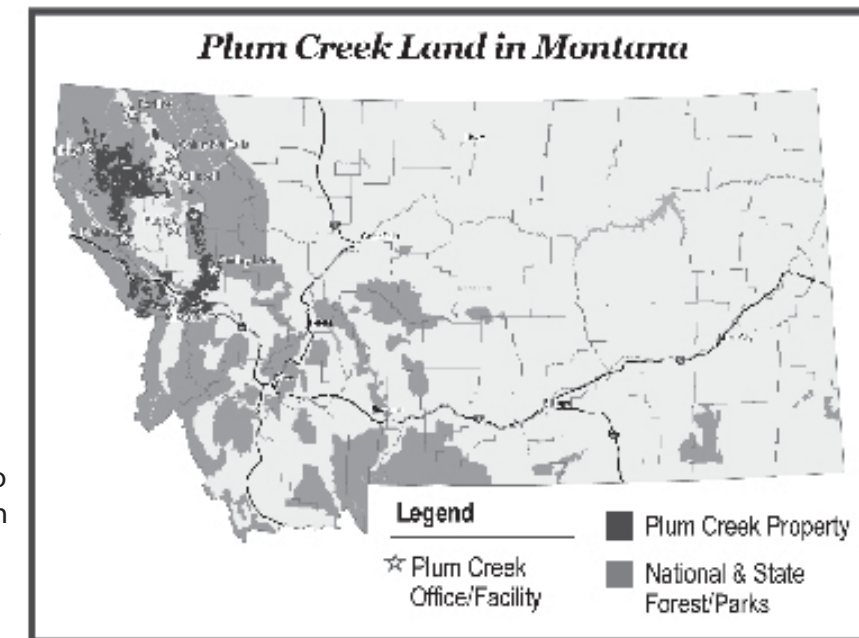
Fast forward to 2007, when DNRC's new director, Mary Sexton, brought the easements back before the Land Board for approval. Unfortunately, Sexton portrayed the Board's approval of the easements as merely fixing an administrative error, not as enabling the future subdivision of Plum Creek lands. Moreover, the environmental assessments done on the easements, some of which were more than 10 years old, did not

analyze the impacts that would result from subdivision of the forest lands, even though one EA mentioned that subdivision would likely result from the changes.

Yet in her testimony, this is what Sexton told the Board: "This is something we have inherited, it is an amendment and re-statement of an easement and there will be more to come between the state and Plum Creek Timber. These were

signed by the Governor in 2003 – 2004 without going to the Land Board. They are old easements which were amended to increase the easement from a 40-foot right-of-way to a 60-foot right-of-way and instead of going through the Land Board, which they should have, they went directly to the Governor. We realized the error and have been working with Plum Creek Timber to rectify the issue."

Consequently, and perhaps because this action in 2007 preceded the concerns over Plum Creek's secret negotiations with Rey, Board members merely voted to approve the easements without discussing the real potential of what the new 60-foot rights-of-way would mean to Montana's future. [Continued on page 6](#)



(Plum Creek - Continued from page 5)

Adams' story, from which many of the quotes below were taken, blew the issue open and as Anne Hedges, Program Director of the Montana Environmental Information Center, said: "Clearly something changed, and now they're acting like this is just an administrative matter, that they're just making this consistent with their policies. This is absolutely not an administrative matter." Hedges' comments were echoed by Arlene Montgomery of Friends of the Wild Swan, who told Adams: "The change of use isn't just the widening of the road. The change of use is anything goes. The state is not going to analyze the effects of each individual project beyond what happens on their land."

DNRC director Mary Sexton disputes the claims that the agency should have analyzed the impacts that subdivision of the Plum Creek lands would cause, however, saying the law which authorized DNRC to enter into reciprocal access easements with other landowners does not require such analysis.

Not so, says Bethanie Walder of Wildlands CPR. "There are at least three places in the (environmental assessment) where I think they could have analyzed the impact of subdivisions, and they didn't." Walder says even the marginal checklist EAs used by the department require analysis of impacts on air and water quality, demands on natural resources and government services. "They argue that there will be no impacts when there will clearly be impacts to air, water and land if they build subdivisions there. They say the project as proposed will have few if any adverse impacts to wildlife. But again, they know this project will involve subdivisions, which could have significant impacts on wildlife."

"Never once did they tell the Land Board why this was important," Hedges said. They just said it was to make it consistent with DNRC policies and goals. I do not believe this Land Board was properly informed about the impacts of the decision it was making when it made that decision. It was made to sound like it was a clerical

error that was being fixed instead of what it really is, which is allowing Plum Creek to open up countless acres to subdivisions."

At the August Land Board meeting Governor Schweitzer brought up the Plum Creek easements, but instead of concentrating on the impacts the newly-widened easements would cause, he simply asked Sexton to "discuss how much notice, public activity, etc., have occurred." Sexton told the Board that the public has had opportunities to comment, such as appearing before the Land Board, and that the agency has "to look at interest of public, issues involved, and gain revenue for trust." Schweitzer then pointed out that there was a 1 percent conveyance fee attached to the easements that would produce a "continuous



revenue stream" for the state every time the lands changed hands.

Jim Jensen, executive director of MEIC, told the Board that he appreciated the Board's interest that the state would "continue timber-based use of these lands and not to encourage Plum Creek subdivisions." But then he produced the EA on the McGregor Lakes easement and noted that Plum Creek's

purpose in asking for these reciprocal agreements was "to develop a subdivision on McGregor Lakes."

"There's no need for 60-foot access for timber purposes," Jensen testified. "Plum Creek wanted the 60 foot width because they want to subdivide. DNRC has engaged in the process of changing from 40 feet to 60 feet easements without discussing these impacts." Jensen then added: "Plum Creek is the largest landowner [in these counties] and, as we all know, the majority of landowners can kill any zoning."

Despite the clear intent and obvious impacts from the restated and amended easements, the Board took no action and, for now at least, the looming problems of the subdivision of Plum Creek's former timber lands continue to hang over the heads of state and county officials – and taxpayers – like the Sword of Damocles. ■

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Land Board Schedule

September 15, 2008
October 20, 2008
November 17, 2008
December 15, 2008

All Land Board meetings are on the third Monday of each month and begin at 9:00 a.m. The meetings are held in Room 303 in the State Capitol building and are open to the public. Copies of agendas are available on the Montana Land Board web page at <http://dnrc.mt.gov/commissions>.

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