



State Managed Forest Trust Lands: The Trust Mandate

B. Bruce Bare, Dean
College of Forest Resources
University of Washington, Seattle
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Topical Outline

- State of the College
- Background: the changing nature of natural resource management and how it impacts trust land management
- Trust mandate for state managed forest trust lands

Shift in Management Philosophy

- 20th Century
- Agricultural Model
- Utilitarian
- Output oriented
- Stand level
- Timber primacy
(sustained yield)
- Multiple use
- 21st Century
- Ecosystem Model
- Naturalistic
- State oriented
- Landscape view
- Multi-resource
(sustainability)
- Integrated use

21st Century

- Societal emphasis on:
 - protection forests vs. production
 - natural forests vs. plantations
 - preservation vs. conservation
 - use value vs. exchange value
 - passive management vs. active

Why a Paradigm Shift?

- Changing societal values of a growing and urbanizing population
- Growing influence of the science of ecology
- Popular issues –
 - Climate change, biodiversity, invasives, tropical deforestation, restoration, endangered species, wildfire, clean water, and forest health

Why a Paradigm Shift?

- Additional issues –
 - ecosystem loss and fragmentation
 - loss of habitat connectivity
 - forest land conversion
 - loss of ecosystem services
 - loss of forest structures and biodiversity in managed forests
 - policy incentives to seek higher returns from land investments

Sustainable Forestry

- A type of management that views the forest not as the source of any one economic product or service, but as an integrated whole
- Respects the full range of environmental, social, and economic values of the forest and attempts to integrate these diverse values

Source: Roundtable on Sustainable Forests

State Managed Forest Trust Lands

- Management of our State's forest trust assets is growing increasingly complex as a consequence of these issues and pressures
- How do we ensure that these assets will continue to be managed productively to retain their characterization as working forests?

State Managed Forest Trust Lands

- Federal grant lands (1889)
 - 3 million acres of land; now 1.5 million acres of forest land
- State forest lands
 - State forest transfer lands (1930's)
 - now 546,000 acres of forest land
 - State forest purchase lands (1920's)
 - now 80,000 acres of forest land

State Managed Forest Trust Lands

- Community College Forest Reserve (1990)
 - 3,200 acres of forest land
- King County Water Pollution Control Division (1995)
 - 4,300 acres of forest land
- TOTAL State Managed Forest Trust Lands: 2.1 million acres (1.4 westside; 0.7 eastside)

Federal Grant Lands

- Feb 22, 1889 Enabling Act and Nov 11, 1889 State Constitution
- Separate grants given to State for specific purposes (K-12 schools, university, scientific school, agricultural college, capitol, penitentiary, other normal schools and public institutions)
- Trust revenues used principally for construction

Federal Grant Lands

- Courts have ruled that granted lands are to be treated as trusts for the purposes for which they were granted
- the Legislature is the trustee
- as trustee, the Legislature must (essentially) act as a private trustee
- DNR is the trust manager

State Forest Lands

- State forest transfer lands are treated as a single trust and managed similarly to the federal forest grant lands
- State forest purchase lands are not held in trust under federal or state statute; but they are managed similarly to the federal forest grant lands
- Unlike the federal grant lands, the Legislature can change the purpose of the trust

State Managed Forest Trust Lands: Trust Mandate

- DNR's legal duty is to produce long-term income for the trust beneficiaries. The trust mandate is grounded in four tenets:
 - prudent person doctrine
 - undivided loyalty to the trusts
 - intergenerational equity versus maximizing current income
 - avoiding foreclosing future options
- The trust mandate must be implemented with respect to other applicable laws and rules as well

Source: Policy for Sustainable Forests

State Managed Forest Trust Lands

- Duties of a trustee originate from common law
 - Must adhere to terms of the trust as established in the Enabling Act (grant lands) or state statute (state transfer lands)
 - Must act prudently
 - Account to trust beneficiaries for earnings and expenses
 - Must manage trust only for interests of the beneficiaries (undivided loyalty)

Source: AGO No. 11, 1996

State Managed Forest Trust Lands

- Must diversify assets of the trust if prudent to manage risk
- Make trust productive
- If multiple beneficiaries exist, all must be treated impartially
- A perpetual federal grant trust must balance long-term and short-term interests so current and future beneficiaries are not harmed

Trust Manager Duties

- Must comply with statutory directives such as laws of general application
- Discretion is measured against an abuse of discretion standard
- May only take into account factors consistent with ensuring economic value and productivity of the trust

Source: AGO No. 11, 1996

Skamania vs. State of Washington

- 1983 court case upheld by WA Supreme Court concluded that federal grant lands are trusts and require the same fiduciary duties from the State as applicable to private trustees
- Three trust principles were explicitly cited: undivided loyalty, prudent trust asset management, and preserve principal of the trust

Resource Management Cost Account

- An account created solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering state grant lands and aquatic lands
- Applies to all federal grant lands except agricultural college lands
- Funds pooled into a single account
- BNR adopts rules necessary and proper to manage account

Source: RCW 79.64.020

Resource Management Cost Account

- BNR sets size of the deductions authorized under this section which shall not exceed thirty percent of the money received (until FY 08)
- HB 1045 (passed House) and SB 5462
- An accounting shall be made annually of the accrued expenditures from the pooled trust funds in the account

Source: RCW 79.64.020



The End
