

Permanent School Fund Advisory Committee
Sale and Exchange of Property & BWCA Subcommittee
August 12, 2009 Discussion

Resolving Revenue Generation from School Lands within BWCAW

The Goal: Ensure that revenue associated with the School Trust Lands, currently located in the BWCAW, can be generated for the benefit of Minnesota's school children.

In General: The options that have been discussed over several years are to either:

- 1) convert the trust land into cash, through sale or condemnation; or
- 2) replace the trust land with other lands that have an opportunity to generate income.

Both options have had supporters and detractors. To resolve the situation will require a consensus of the U.S. Congress, the Minnesota Legislature, and the federal and state Executive Branch agencies that manage and regulate activities on lands within and without the BWCAW.

Specific Options:

1. A land exchange could be conducted between the U.S. Forest Service and the Minnesota Department of Natural Resources. This would involve approximately 87,700 acres of School Trust Fund Land and an undetermined amount of U.S. Forest Service land. The Forest Service should be contacted to determine how receptive the current administration might be to moving forward with a major land exchange.

Pros

- Exchange procedures exist; and
- The process has resulted in success for two moderately sized exchanges involving BWCA lands in 1951 and in 1993.

Cons

- Exchanges conducted to date have not approached the size of the School Trust Land ownership that exists in the BWCAW;
- Any future exchange, even one of moderate size, would (according to the Forest Service) require a cumulative impact analysis of an exchange involving all School Trust Lands in the BWCAW;
- Selection of exchange lands, impact analysis, land appraisals, and the other procedures associated with an exchange are extremely time consuming and costly;
- It is likely that a number of moderately sized exchanges, conducted over a number of years, would be needed to address all of the School Trust Lands in the BWCAW;
- An exchange or exchanges of the magnitude needed to address all lands might be challenged through court actions.

2. The school lands within the BWCAW could be condemned, thereby in effect replacing use of the lands with an amount of money equal to their estimated

market value, as determined through court action. The process of condemnation is needed because Minnesota's Constitution requires that the sale of School Trust Lands to only take place through a public sale. The State Supreme Court has determined that a condemnation by the state or federal government is an acceptable legal alternative to a public sale.

Pros

At the State Level

- The condemnation process has been used on numerous occasions by state of Minnesota agencies to compensate the Permanent School Trust Fund for the purchase and subsequent use of school lands;

At the Federal Level

- An initiative by Minnesota's Congressional Delegation was begun in 1997 to use the federal Land and Water Conservation Fund (LWCF) "to help resolve an on-going land dispute in the BWCAW of northeastern Minnesota."
- The LWCF provides funding for land purchases within federally managed lands;

Cons

In 1997 the Iron Range Delegation to the Minnesota Legislature opposed the plan to use LWCF monies for the purchase of the School Lands. In 1999 the entire legislature in a resolution to the President and Congress unanimously resolved, "...that Congress is requested to speedily enact laws that would expedite the exchange of federally owned land located within the Superior National Forest that lies outside the Boundary Water Canoe Area Wilderness for land owned by the state of Minnesota located within the boundary Waters Canoe Area Wilderness."

3. Conservation Easements could potentially be purchased by non-governmental organizations and others interested in preventing development of school lands within the BWCAW. This would not only ensure perpetual conservation of the area, but would also provide revenue for the use of schools.

Pros

- The Legislature has established a procedure whereby non-governmental organizations are authorized to purchase conservation easements.
- Some have suggested use of the new constitutionally authorized sale tax increase to purchase easements in order to protect resources on School Lands.

Cons

- This proposal would require a consensus of several parties, who have had opposing views on this issue in the past.
- Legislation would be needed to authorize the issuance of conservation easements on school trust lands. To date, the interpretation of the constitution is that permanent easements on school trust lands may only be issued to units of government.

4. The state could initiate a Reverse or "Inverse" condemnation proceeding, related to the School trust lands in the BWCAW. Inverse condemnation is a term used in the law to describe a situation in which the government takes private property but fails to pay the just compensation required by the Constitution. In order to be

compensated, the owner must then sue the government. In such cases the owner is the plaintiff and that is why the action is called inverse – the order of parties is reversed, as compared to the usual procedure in direct condemnation where the government is the plaintiff who sues a defendant-owner to take his or her property. The taking can be physical (i.e. land seizure, flooding, retention of possession after a lease to the government expires, deprivation of access, removal of ground support) or it can be a regulatory taking (when regulations are so onerous that they make the regulated property unusable by its owner for any reasonable or economically viable purpose. The preceding is a partial explanation of the term Inverse Condemnation from the wikipedia website.

Pros

- This is a process that allows a landowner the possibility of being compensated for a taking of their property.

Cons

- The example explanation given above clearly addresses a private landowner, and may not apply when the landowner is a state; and
- As with any court related action there is no guarantee that the decision will be favorable for the beneficiaries of the School Trust Lands. Previous precedents should be investigated to determine the amount of risk associated with this option.

5. A number of Congressional actions could be considered to help resolve the situation of School Trust Lands, located within the BWCAW. These could include:

1. Directing the U.S. Forest Service to conduct a comprehensive land exchange with Minnesota to expeditiously resolve the issues of School Land inholdings currently located within the BWCAW.
2. Acknowledging that because the wilderness status created in 1976 by Congress has caused School Lands in the BWCAW to no longer be available for the use of schools, in the same manner as when Congress originally made the land grant in 1858, that the process of granting other lands equivalent to the original school lands be conducted in accordance with the procedures that were established by Congress that at the time of Minnesota's statehood.
3. Resurrecting the proposal to use federal funds to condemn (purchase) the School Trust lands located in the BWCAW.

Pros

- Because Congressional actions have been involved with all the decisions that have impacted the creation and useability of the School Trust Lands within the BWCAW, it is the only body that has the power to resolve the situation in a manner that ensures transparency and defies protracted legal challenge.

Cons

- Before Congressional debate can even begin, a consensus by the major parties involved in the ultimate resolution of the issues must occur.