



Minnesota Department of Natural Resources

OPERATIONAL ORDER # 121

SUBJECT: Management of School Trust Lands

SPONSOR: Commissioner's Office

DATE: January 20, 2012

SUPERCEDES: NA

I. PURPOSE

The purpose of this Operational Order is to clarify DNR management objectives on School Trust lands.

Background. At the time of statehood, the federal government granted land to the States for the use of the schools. These lands are known as School Trust lands and include both the surface and mineral rights. When the States accepted the School Trust lands, they accepted the terms and conditions of the grant and took on the role of trustee for the lands for the benefit of the public schools. This trustee relationship extends to all who make decisions affecting the School Trust lands.

The Minnesota State Constitution also created a framework to establish a long-term funding source for public schools in the State through the creation of the Permanent School Fund (PSF or Trust). Minn. Const. art. XI, sec. 8. One of the sources of income to the PSF comes from revenue generated from School Trust lands.

In addition to the Constitutional directive, the Minnesota Legislature has stated that the goal of the PSF is to:

....secure the maximum long-term economic return from the School Trust lands consistent with both the fiduciary responsibilities imposed by the trust relationship established in the Constitution, with sound natural resource conservation and management principles and with other specific policy provided in state law. Minn. Stat. § 127A.31.

This statutory language must be read to be consistent with the obligations set forth in the Constitution to the extent possible but when the two are inconsistent, the Constitutional obligations control and must take precedence.

The Minnesota Legislature delegated to the Commissioner of the DNR the authority to manage the School Trust lands. In this role, the DNR acts as a trustee of the lands with fiduciary responsibilities to the beneficiaries of the Trust. The Minnesota Legislature also created the Permanent School Fund Advisory Committee (PFSAC) to advise the DNR on the management of the School Trust lands and provide recommendations to the legislature for management of such lands. Minn. Stat. § 127A.30.

Case law in other jurisdictions has found that because School Trust lands are held in trust, constraints and obligations are imposed on trustees of these lands that would not apply if a state owned the land outright. This trust which holds the School Trust lands is governed by the same fiduciary principles that apply to the management of private trusts. The perpetual nature of this trust requires a trustee to manage it in a way that ensures its long term productivity and economic potential for the benefit of current and future trust beneficiaries. The duties of a trustee include the duty to manage the assets of the trust in accordance with the terms of the trust, the duty to demonstrate undivided loyalty to the trust beneficiaries and the duty to act prudently. A fiduciary must act with utmost care to represent the sole benefit and interests of

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the beneficiaries of the trust. The fiduciary must not act in its own interest and must not profit from the trust relationship.

II. POLICY

The DNR acts as a trustee for School Trust lands, including minerals, with fiduciary duties to the beneficiaries of the Trust. This responsibility imposes obligations on the DNR that typically do not apply when the DNR manages acquired lands in accordance with its traditional natural resources mission which includes balancing a variety of values including outdoor recreation and natural resources protection and development.

The School Trust lands are not DNR lands, even when included within the boundaries of agency-designated management units, and the primary mission for School Trust lands is different than for other DNR-managed lands. Under the law, the primary management priority for School Trust lands is to maximize their long term economic return. This priority must be managed consistent with sound natural resource conservation and management principles. In most instances, these two goals are complementary and the appropriate balance can be achieved. This is true particularly with those natural resource management practices that are essential to maintaining a sustainable economic return such as ensuring good forest soil productivity for the long term health of timber harvest yields. However, in those circumstances where there is an unresolvable conflict between maximizing long term economic return and protecting natural resources and recreation values, the DNR must give precedence to long term economic return in its management duties.

If the DNR decides to manage School Trust land to protect natural resource and recreation values and in doing so either restricts or prohibits long-term economic return in a way that conflicts with its Trust obligations, the DNR must seek a way to compensate the Trust. This may include buying the land or exchanging it for income-producing land. For example, where the DNR designates protection of old-growth forest on School Trust land and in doing so restricts or prohibits long term economic return from timber harvest on the land, the DNR must seek a way to compensate the Trust.

As trustee, the DNR must also look for short term economic return but must balance those with the need to protect the revenue generating capacity of the Trust in the long run. For example, it is important to manage forest harvest on School Trust lands for a specific amount of yield on a continuing and sustainable basis so there are not periods of timber unavailability resulting in periods of no income to the Trust. Accordingly, managing harvest cannot focus exclusively on short term revenue at the expense of long-term harvest yields. Further, given the perpetual nature of the Trust, the DNR must use adaptive management principles to ensure sustainable economic returns on School Trust lands over the long run. In doing so, the DNR must monitor and take into account uncertainties such as climate change, invasive species and land use trends and address these factors based on sound scientific principles.

In summary, School Trust lands must be managed differently than other DNR-managed lands because their primary missions are different. The primary management goal for School Trust lands is long term economic return; for other DNR-managed lands it includes a wide range of goals including outdoor recreation and natural resources protection and development. Most of the time these goals can be managed consistent with one another but at other times unresolvable conflicts may arise between achieving the maximum long term economic return and natural resources protection and recreation. On School Trust lands, maximizing long term economic gain takes precedence when there is an unresolvable conflict between the economic and natural resources and recreation management objectives. When the DNR decides to preserve the natural resource or recreation values on certain School Trust lands because of their significance, and in doing so restricts or prohibits the land's long term revenue generating potential in a way that conflicts with its Trust obligations, the DNR must seek a way to compensate the Trust.

III. ACTIONS

To ensure the DNR meets its obligations to the Trust the Department will:

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1. Centralize management oversight of School Trust lands to ensure the interests of the Trust are represented in all department decisions associated with management of School Trust lands and certification of costs associated with management of those lands.
2. Manage the School Trust land program employing business best practices including a quarterly business review to be presented to the Commissioner of the DNR and the PSFAC to include reports on actual and forecasted annual revenues generated from School Trust lands, actual and forecasted annual costs attributed to School Trust lands, market trends and performance metrics. Provide a report at least annually to the Commissioner of Education and the PSFAC discussing revenues, costs and management priorities for School Trust lands.
3. Develop and implement a business plan for the School Trust land program. The plan will include:
 - a. A comprehensive evaluation of management practices and costs associated with all aspects of agency work on School Trust lands including forest, minerals and recreation management with targeted actions to improve efficiency, reduce costs and increase revenue consistent with goals for these lands. This includes an analysis of the impacts of land sales and exchanges on overall agency funding and budgets; streamlining the processes and procedures for the sale (including condemnation), lease and exchange of School Trust lands; and consideration of investments made on School Trust lands that may improve the marketability or potential to generate income (i.e., improving access, etc.).
 - b. Explore opportunities to simplify flow of funds/costs and make management of forest and mineral accounts consistent to improve transparency.
 - c. Create a process of continuous improvement with focus on new revenue sources for School Trust lands.
4. Conduct an inventory of all School Trust land and minerals and do a highest and best use analysis looking at the potential maximum long term economic return on the land and minerals as well as natural resources and recreation values.
 - a. With respect to riparian School Trust lands:
 - i. The inventory should include an assessment of natural resource and recreation values as well as development potential which will form the basis of a strategic plan for the sale, exchange, lease or management of these lands consistent with the goals for the PSF.
 - b. With respect to School Trust lands that may be located in State Parks, Scientific and Natural Areas (other than those in Peatlands which have a designation by the legislature), Forest Recreation Areas, Wildlife and Aquatic Management Areas, and Public Water Access sites:
 - i. The inventory should form the basis for a plan to purchase, lease or exchange those School Trust lands, where maximum long term economic return is prohibited or limited in a manner inconsistent with Trust obligations, for lands with revenue-producing potential. Alternatively, if possible, the plan should identify a way to manage the lands in a way that generates long term economic return for the Trust.
 - c. With respect to School Trust lands that have DNR policy designations that may restrict or prohibit long term economic return such as High Conservation Value Forest, Old Growth, Ecologically Important Lowland Conifers, Representative Sample Areas and Registry Agreements:
 - i. The inventory should include an evaluation of the designation to ensure it is overall consistent with goals for the Trust and a plan to seek funding to compensate the Trust if it is not.

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5. Expedite to the extent practicable the exchange and sale of all School Trust lands located in the Boundary Waters Canoe Area Wilderness.
6. Secure long term funding from the legislature to pay for the real estate transaction costs associated with implementing plans to sell, lease and execute land sales and exchanges of School Trust lands.
7. Communicate to Department staff on an ongoing basis the role of the Department in managing School Trust lands and develop clear guidelines on how to exercise this management responsibility across the agency disciplines including a process for prompt dispute resolution. Communicate to Department staff how Departmental policies apply to School Trust lands including those related to mining and related exploration, forest certification, extended rotation forestry, forest planning, invasive species, climate change, recreation management, cultural resource protection and endangered species.
8. Require each DNR division that manages or uses School Trust lands to be responsible for making management decisions that are consistent with the Policy outlined herein. This includes a process whereby the division promptly identifies when a conflict exists in its Trust responsibilities on certain School Trust lands between natural resources values and long term economic return; clearly identifies the specific conflict and evaluates whether the natural resources values are of such high importance that they need to be preserved; and if it is determined that the natural resources values need preservation, develop a plan to compensate the Trust including through purchase, lease or exchange of those School Trust lands within a certain timeline for those with revenue-producing potential.

Approved by:

Tom Landwehr, Commissioner

Date: _____