

— DNR Land Exchange History in the BWCAW —

1951 —

Federal purchase of 468 acres in Nerstrand Big Woods offered and accepted in exchange for 9,218 acres of School Trust Land located in Lake County.

1986 —

MOU - "Land Exchange Between Minnesota Department of Natural Resources and Forest Service, United States Department of Agriculture." Signed by Deputy Commissioner DNR and Forest Supervisors of the Chippewa and Superior National Forests.

Recommended - Developing mutually agreeable lists of possible exchange lands and identifying the methods and procedures to follow on land appraisals and timber evaluations aimed at reducing the costs of exchanges.

1993 —

DNR completes a land exchange with U.S. Forest Service. 2,520 trust fund acres valued at \$174,000 for 1,681 of federal land also valued at \$174,000. All land in St. Louis County.

1997 —

Minnesota Congressional Delegation sends letter to the Secretary of Agriculture urging an allocation of \$10 million for the initiation of a program to begin acquiring state-owned lands in the BWCAW.

1997 —

Letter from the Iron Range Delegation sent to Representative Oberstar in opposition to the "money for land" proposal and in favor of a "land for land" exchange - as the only solution.

1998 —

Office of the Legislative Auditor. "School Trust Land A Program Evaluation Report" pp.64-67.

Recommended — DNR should continue to pursue compensation to the PSF for the trust land in the BWCAW. If the federal government's purchase of some or all of the trust land is the most realistic option, then it should be pursued.

1999 —

H.F 426 Resolution No. 3

"Memorializing the President and Congress to enact a law that will expedite the exchange of intermingled state and federal lands within the exterior boundaries of the Superior National Forest..."

1999 –

S.F. 1288. \$200,000 is appropriated to fund an inventory to be conducted by the University of Minnesota, Duluth. The purpose of the inventory is to provide the legislature and state officers with more precise information as to the nature, extent, and value of the state owned land located within the BWCAW.

2001 –

The scope of the UMD inventory is modified to include an appraisal of 5,000 acres of land in the Trout Lake area of the BWCAW. The purpose of the appraisal is to provide data and values on a site-specific area that the state could offer for exchange and to provide current land values that could be extrapolated to the remaining lands within the BWCAW.

2002 –

June letter sent to Dale Bosworth, Chief of the U.S. Forest Service from Allen Garber, Commissioner of DNR requesting a land exchange of approximately 5,000 acres of state land in the Trout Lake area of the BWCAW.

2002 –

October response letter sent to Allen Garber, Commissioner of DNR from Jack Craven, Director of Lands U.S. Department of Agriculture directing the DNR to work with Jim Sanders, Superior National Forest Supervisor. The letter also included the following statement: "While your initial exchange proposal is relatively small (5,000 acres), the Forest Service must consider the cumulative effect of the total project (93,000 acres and an unknown amount of federal land) in the analysis of impacts."

2003 –

University of Minnesota, Duluth presents its inventory and valuation of lands located within the BWCAW to the legislature. Value of the School Trust Lands estimated to be \$72.3 million.

Pojar
02/23/2004



The Minnesota Congressional Delegation

2366 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-6211

November 3, 1997



The Honorable Dan Glickman
Secretary of Agriculture
14th & Independence Avenue, S.W.
Washington, D.C. 20250

James L. Oberstar, Chairman
Paul D. Wellstone
Rod Grams
Martin Olav Sabo
Bruce F. Vento
Collin Peterson
Jim Ramstad
David Minge
Gil Gutknecht
William P. Luther

Dear Secretary Glickman:

We write to urge you to move forward with an allocation of at least \$10 million from the Land and Water Conservation Fund (LWCF), for the acquisition of some state-owned lands within the Boundary Waters Canoe Area Wilderness (BWCAW), and to indicate to you how important the LWCF is for Minnesota.

For over 30 years, the LWCF has helped provide the recreational areas and wildlife habitat all Americans enjoy. The Fund has protected more than seven million acres of forests, rivers, watersheds, urban parks, and recreation projects in all 50 states. Aside from the many benefits the LWCF provides to the nation, our major concern in ensuring full funding for the LWCF is that its funds can be used to help resolve an on-going land dispute in the BWCAW of northeastern Minnesota.

As you know, the LWCF provides funding for land purchases within Federally-managed lands. The BWCAW is a jewel in the crown of America's wilderness areas, yet, as a result of its unique historical development, the State of Minnesota still holds 93,260 acres of School Trust status land within the BWCAW. The intent of State-owned lands with this status is to generate income for school systems, but auditors have long been concerned that School Trust lands have not fulfilled this requirement.

The LWCF could be used to purchase the School Trust lands, and state acquired lands. It is our understanding that the Forest Service would give high priority to begin making some of these purchases, and that Forest Service officials in Minnesota have already requested funding for these purchases. By making this allocation from the LWCF, USDA will be helping to meet the needs of school systems and local governments in Minnesota, while improving the BWCAW and resolving a long-standing dispute between the Federal government and the State of Minnesota.

We look forward to working with you to ensure that the contentious issue of State-owned lands within the BWCAW is resolved with the help and support of this Congress. Using the LWCF for land purchases in the BWCAW fulfills the fundamental goals of this neglected program, by making important additions to the Wilderness and providing needed funding to local governments, which, too often, are unfairly penalized because of the unique evolution of the BWCAW.

We thank you for your consideration, and support of the LWCF.

Sincerely,

Paul D. Wellstone
Paul D. Wellstone, U.S.S.

Rod Grams
Rod Grams, U.S.S.

James L. Oberstar
James L. Oberstar, M.C.

Bruce F. Vento
Bruce F. Vento, M.C.

Martin Olav Sabo
Martin Olav Sabo, M.C.

Jim Ramstad
Jim Ramstad, M.C.

Collin Peterson
Collin Peterson, M.C.

David Minge
David Minge, M.C.

Bill Luther
Bill Luther, M.C.

Gil Gutknecht
Gil Gutknecht, M.C.



November 13, 1997

United States Representative James Oberstar
Minnesota Eighth Congressional District
2366 Rayburn House Office Building
Washington, DC 20515

Dear Representative Oberstar:

We are writing to clarify our opposition to the recently proposed Minnesota Congressional Delegation's effort to secure federal funds in exchange for state lands in the Boundary Water Canoe Area (BWCA) and Voyageurs National Park. We want to apologize to you for not making our position more clear to you. We are in favor of exchanging land for land at an equal value in order to replace the approximately 100,000 acres of state land that are locked up as wilderness in the BWCA and Voyageurs Park.

Being an Iron Ranger, you are well aware of the fact that Rangers and people of Northeastern Minnesota have made their living off the land. We feel that the people of Northeastern Minnesota will be much better served by getting 100,000 plus acres that can continue to be worked by our people to create wealth for everyone. Again we apologize that the delegation did not inform you of this. Some of us were working on Senator Wellstone and Commissioner Sando of the Minnesota Department of Natural Resources (DNR) and thought you had been informed on the subject. We are disappointed that Senator Wellstone seems to be leading the money for land effort along with the state DNR. We expressly pointed out to Senator Wellstone and Commissioner Sando that money is not acceptable but, rather, an equal exchange of land is necessary and should be demanded.

We feel it is of the utmost importance that you convince your fellow members of the Minnesota Delegation to introduce a bill to exchange land for land. In doing this, over 100,000 acres would be freed up for multiple use purposes. This would allow our people to continue to make a living off the land and enjoy recreational opportunities like they and their ancestors have for a 100 years.

We have enclosed some information for you about the permanent school fund lands and recent state legislation on leased lakeshore lands. Also enclosed is data illustrating the new and old lease rates. The legislation would allow individuals, leasing lakeshore lots from the DNR, to buy the land or limit the level of lease increases the DNR could assess. By looking at the enclosed materials, Representative Oberstar, you will see the extremely high values placed on the leases by the DNR; lease rates that our constituents are paying.

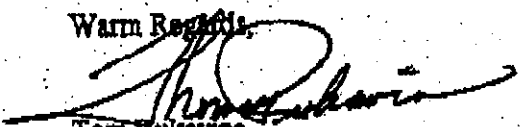

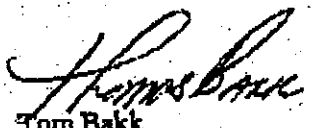
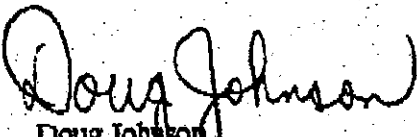
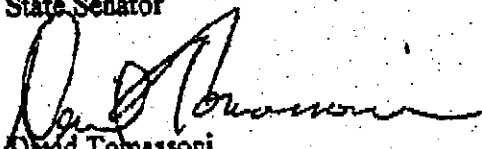
Page 2

Land Exchange continued:

Applying these DNR valuations to BWCA and Voyager Park land, which would only be appropriate, would clearly make it prohibitive for the federal government to pay the *actual value* of the land. In fact, if the federal government paid the same value, assessed by the DNR for lakeshore lots, for the BWCA and Voyagers land, the federal government would go bankrupt.

Again, we apologize for any prior confusion on our opposition on any plan for a land for money deal. Thank you for your past assistance on this matter. Please contact us with any questions and the progress of your efforts on this dispute.

Warm Regards,


Tom Rukavina
State Representative
Jerry Anderson
State Representative
Loren Solberg
State Representative
Tom Bakk
State Representative
Doug Johnson
State Senator
Jerry Janzich
State Senator
Robert Lessard
State Senator
David Tomassoni
State Representative

P.S. - Some of us just met with DNR Commissioner Rod Sando about the contents of this letter. His statement was that if land of equal value could be exchanged, he would also prefer this option.

Enclosures

A RESOLUTION

1
2 memorializing the President and Congress to enact laws
3 that will expedite the exchange of intermingled state
4 and federal lands located within the exterior
5 boundaries of the Superior National Forest to
6 consolidate land ownership for the purpose of enabling
7 each government to properly discharge its respective
8 management duties.

9

10 WHEREAS, pursuant to the Organic, Enabling, and other acts
11 relating to the establishment of the state of Minnesota, land
12 commonly referred to as school trust land has been granted to
13 the state of Minnesota for public school and other purposes and
14 has been constitutionally accepted and dedicated by the citizens
15 of the state for such purposes by applying these lands to the
16 production of income for the state's permanent school fund, all
17 as described in detail in Minnesota Statutes, section 1.0451,
18 subdivision 2; and

19 WHEREAS, pursuant to the federal Enabling Act authorizing
20 the establishment of the state of Minnesota, on an equal footing
21 with the original 13 states, and the Constitution of Minnesota,
22 by which the citizens of Minnesota accepted the terms and
23 conditions of the Enabling Act, the ownership of navigable
24 waters and their beds was transferred to the state of Minnesota,
25 all as described in detail in Minnesota Statutes, section
26 1.0451, subdivision 1; and

27 WHEREAS, approximately 100,000 acres of state-owned land

1 (mostly school grant land) and approximately 172,000 acres of
2 state-owned waters, or a total of over 272,000 state-owned
3 acres, make up one-quarter of the 1,078,000 acres that are
4 included within that portion of the Superior National Forest
5 that has been designated by Congress as the Boundary Waters
6 Canoe Area Wilderness; and

7 WHEREAS, the extraordinary nature of the land and waters
8 located in this wilderness area has been described by the 8th
9 U.S. Circuit Court of Appeals as follows in its decision
10 in *State of Minnesota by Alexander v. Block*, 449 F.Supp. 1223
11 (D. Minn. 1980), 660 F.2d 1240 (8th Cir. 1981), Cert. denied 431
12 U.S. 939 (1982):

13 "The Boundary Waters Canoe Area is the largest
14 wilderness area east of the Rocky Mountains and the second
15 largest in our wilderness system. It is our Nation's only
16 lakeland canoe wilderness - a network of more than 1,000
17 lakes linked by hundreds of miles of streams and short
18 portages which served as the highway of fur traders who
19 followed water routes pioneered by Sioux and Chippewa
20 Indians. Despite extensive logging, the BWCA still
21 contains 540,000 acres of virgin forests, by far the
22 largest such area in the eastern United States.

23 This last remnant of the old "northwoods" is
24 remarkable not only for its lakes and virgin forests, but
25 also for its wildlife. *** [M]any western wilderness areas
26 lack such complete food chains. This natural ecosystem is
27 a valuable educational and scientific resource; it has been
28 the focal point of important research in wildlife behavior,
29 forest ecology, nutrient cycles, lake systems, and
30 vegetation history."; and

31 WHEREAS, within this wilderness that contains a network of
32 more than 1,000 lakes linked by hundreds of miles of streams and
33 short portages and a land surface that is crowned with a forest
34 which includes 540,000 acres of virgin or "old growth" timber
35 that hosts unique plant and animal ecosystems such as that of
36 the timber wolf, the state of Minnesota's school grant and other

1 lands are scattered in a checkerboard fashion across the entire
2 area, a consequence of the fact that the lands were granted
3 almost entirely in Sections 16 and 36 in most townships in what
4 now is designated as a federal wilderness; and

5 WHEREAS, as a consequence of decisions by the federal
6 courts in the above cited case of *State of Minnesota by*
7 *Alexander v. Block*, where the state unsuccessfully challenged
8 the unilateral action by Congress of extending federal
9 jurisdiction from federally owned land to state-owned water, the
10 state's free exercise of authority over its state-owned lands
11 and waters was severely diminished; and

12 WHEREAS, in the 18 years since the federal courts upheld
13 this congressional extension of federal authority over state
14 water, the only revenue earned on school and other state grant
15 lands from wilderness users has been derived from a token
16 campground reservation fee that is reappropriated for necessary
17 campground maintenance and therefor adds nothing to the
18 permanent school fund, the fund constitutionally established to
19 support public schools of the state out of income derived from
20 school and other grant land sale and natural resource management
21 revenues; and

22 WHEREAS, continuance of state land ownership within the
23 Boundary Waters Canoe Area Wilderness not only defeats the
24 purpose for which the state school grant lands were granted and
25 dedicated, it also unnecessarily handicaps federal management
26 duties relating to the wilderness area; and

27 WHEREAS, the Minnesota Constitution, article XI, sections 8
28 and 10, provide that school and other grant lands may be sold
29 only at public auction or exchanged; and

30 WHEREAS, consolidation of federal land ownership within the
31 Boundary Waters Canoe Area Wilderness through an exchange of
32 Superior National Forest land that is located outside the
33 wilderness area for state land that is located within the
34 wilderness area will mutually benefit both the federal and state
35 governments by simplifying federal wilderness area management
36 activities through efficiencies arising from single land

1 ownership and by enabling the state to properly manage its
2 school trust lands for the purposes for which these lands were
3 granted and dedicated, as was first contemplated for these lands
4 by the Minnesota legislature in the enactment of Laws 1917,
5 chapter 448, which created the Minnesota state forests in the
6 counties of Cook, Lake, and St. Louis, the first state forests
7 established in Minnesota; and

8 WHEREAS, there appears, preliminarily, to be sufficient
9 acreage of federal land that is located within the exterior
10 boundaries of the Superior National Forest, exclusive of lands
11 in the Boundary Waters Canoe Area Wilderness, to exchange for
12 the high value state-owned school grant and other land
13 inholdings located within the wilderness area; NOW, THEREFORE,

14 BE IT RESOLVED by the Legislature of the State of Minnesota
15 that Congress is requested to speedily enact laws that would
16 expedite the exchange of federally owned land located within the
17 Superior National Forest that lies outside of the Boundary
18 Waters Canoe Area Wilderness for land owned by the state of
19 Minnesota located within the Boundary Waters Canoe Area
20 Wilderness.

21 BE IT FURTHER RESOLVED that in its deliberations concerning
22 this request, Congress is requested to be especially cognizant
23 that the legal title of the state of Minnesota to its school and
24 other grant lands located within this wilderness area has been
25 preserved, relatively unaltered, since being separated by grant
26 from the federal public domain at statehood, and that the state
27 of Minnesota's checkerboard land ownership pattern gives these
28 lands a unique value because the lands are an integral part of
29 what the 8th U.S. Circuit Court of Appeals recognized in *State*
30 *of Minnesota by Alexander v. Block* as "...our Nation's only
31 lakeland canoe wilderness - a network of more than 1,000 lakes
32 linked by hundreds of miles of streams and short portages which
33 served as the highway of fur traders..." and which "...still
34 contains 540,000 acres of virgin [old growth] forests, by far
35 the largest such area in the eastern United States."

36 BE IT FURTHER RESOLVED that Congress also be cognizant that

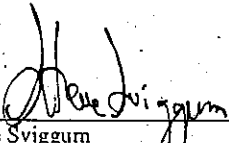
1 the Minnesota Constitution, article XI, section 10, relating to
2 the exchange of school grant and other state lands, requires the
3 state to reserve mineral and water power rights in lands
4 transferred by the state and, in addition, that Minnesota has
5 never leased any state-owned minerals located on lands within
6 the area that is federally designated as the Boundary Waters
7 Canoe Area Wilderness, and further, that since 1976, under
8 Minnesota Statutes, section 84.523, state law prohibits, except
9 when needed in a national emergency declared by Congress, the
10 exploration and mining of state-owned minerals and the
11 harvesting of state-owned peat.

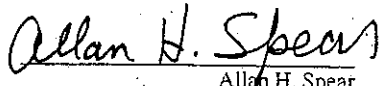
12 BE IT FURTHER RESOLVED that while the state of Minnesota is
13 cognizant of the fact that Congress may authorize the federal
14 government to acquire state-owned school grant and other lands
15 by eminent domain proceedings brought in federal courts, a
16 procedure which entails congressional appropriation of the
17 substantial amount of money necessary to pay Minnesota the
18 market value of these lands as approved by the federal courts,
19 the state hereby affirms that the mutual best interests of both
20 the federal and state governments are best served by land
21 exchange as a solution to the long-standing problem of
22 intermingled land ownership within the Superior National Forest.

23 BE IT FURTHER RESOLVED that the Secretary of State of the
24 State of Minnesota is directed to prepare copies of this
25 memorial and transmit them to the President of the United
26 States, the President and the Secretary of the United States
27 Senate, the Speaker and the Clerk of the United States House of
28 Representatives, the chair of the Senate Committee on Energy and
29 Natural Resources, the chair of the House Committee on
30 Resources, and to each of Minnesota's Senators and
31 Representatives in Congress for the purpose of assisting those
32 members in the discharge of duties imposed by Minnesota
33 Statutes, section 1.0451, especially those duties set forth in
34 subdivision 3 relating to land exchange.

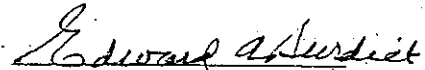
RESOLUTION No. 3
H.F. No. 426

This resolution was passed in conformity to the rules of each house and the joint rules of the two houses as required by the Constitution of the State of Minnesota.

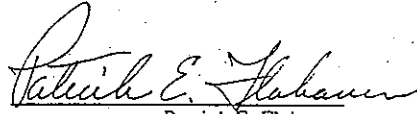

Steve Sviggum
Speaker of the House of Representatives.


Allan H. Spear
President of the Senate.

Passed the House of Representatives on April 8, 1999.


Edward A. Burdick
Chief Clerk, House of Representatives.

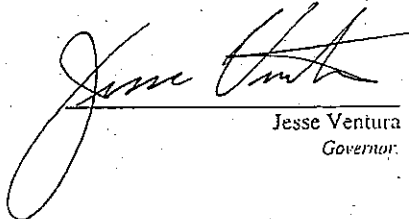
Passed the Senate on April 13, 1999.


Patrick E. Flahaven
Secretary of the Senate.

This resolution is properly enrolled and was presented to the Governor on April 20, 1999.


Michele L. Timmons
Revisor of Statutes

Approved on April 23, 1999, at 11:53 A.M.


Jesse Ventura
Governor.

Filed on April 23, 1999.


Mary Kiffmeyer
Secretary of State.

Exhibit 1: Legislative Charge

S.F No. 1288, 3rd Engrossment: 81st Legislative Session (1999-2000)
Posted on May 10, 2000

12.31 Sec. 21. [APPROPRIATIONS.]

12.32 \$200,000 is appropriated from the state forest suspense
12.33 account to the commissioner of natural resources for transfer to
12.34 the University of Minnesota Duluth for the purpose of funding
12.35 the inventory conducted pursuant to this section and is
12.36 available until expended. Because the University of Minnesota
13.1 is a land grant university, and because most of the state-owned
13.2 land to be inventoried is granted land, the chancellor of the
13.3 University of Minnesota Duluth is requested to direct the School
13.4 of Business and Economics to conduct an inventory of state-owned
13.5 land located within the Boundary Waters Canoe Area for the
13.6 purpose of providing the legislature and state officers with
13.7 more precise information as to the nature, extent, and value of
13.8 the land. The inventory must include the following: (1) a list
13.9 of the tracts of state-owned land within the area, together with
13.10 the available legal description by government tract, insofar as
13.11 possible; (2) the number of linear feet of shoreline in each
13.12 tract, together with a general description of that shoreline,
13.13 whether it is rocky, sandy, or swampy, or some other descriptive
13.14 system that generally describes the shoreland; (3) the acreage
13.15 of each tract; (4) a general description of the surface of each
13.16 tract, including topography and the predominant vegetative cover
13.17 for each tract and any known unique surface features, such as
13.18 areas of virgin and other old growth timber; and (5) using
13.19 available real estate market value information and accepted real
13.20 estate valuation techniques, assign estimates of the value for
13.21 each tract, exclusive of minerals and mineral interests, using
13.22 each of the real estate valuation techniques adopted for the
13.23 inventory. For the purposes of this section, "state-owned land"
13.24 is defined as any class of state-owned land, whether it is
13.25 granted land such as school, university, swampland, or internal
13.26 improvement, or whether it is tax-forfeited, acquired, or
13.27 state-owned land of any other classification. At the request of
13.28 the university, the commissioner of natural resources shall
13.29 promptly provide the university with all published maps, whether
13.30 federal, state, or county, together with a descriptive list of
13.31 state-owned land in the area, using available legal
13.32 descriptions, forest inventories, and other factual information,
13.33 published data, and photographs that are necessary for the
13.34 university's inventory. From these maps, lists, data, and other
13.35 information, the university is requested to prepare a report of
13.36 its inventory. The legislature requests that the University of
14.1 Minnesota submit the report to the legislature by January 15,
14.2 2002.

Source: <http://www.senate.leg.state.mn.us/departments/scr/billsumm/SF1288.htm>



United States
Department of
Agriculture

Forest
Service

Superior
National
Forest

8901 Grand Ave. Place
Duluth, MN 55803-1102
Phone: (218) 626-4300
Fax: (218) 626-4398

File Code: 5430

Date: April 11, 2001

RECEIVED

APR 16 2001

COMMISSIONER

Mr. Allen Garber
Commissioner
Minnesota Dept. of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4037

Dear Allen:

Thank you for your letter of February 23, 2001, discussing issues related to a possible future land exchange involving State school trust lands in the BWCAW. In your letter, you asked that I document a process or sequence of events to effect exchange of State land. I have enclosed a one-page sheet that outlines our typical process and specific steps that we are required to meet in order to legally accomplish an exchange. While I recognize that the State lands in the Boundary Waters Wilderness Canoe Area may not be a typical situation, I think it is important to understand how the process has been set up to avoid parties from expending unnecessary time and money.

In our previous discussions, we outlined the concern about the "useable life" of appraisals due to both the active real estate markets and Office of Management and Budget (OMB) guidelines. Under our process, it is the major reason why we do not normally order appraisals until a specific proposal has been made between the parties, public comment has been initiated and other critical barriers have been addressed. While the Forest Service has some flexibility in our process, I know you understand that there are legal constraints associated with the exchange of public lands that are not subject to agency discretion.

In previous meetings with members of the DNR team working on the inventory process, the majority of the discussion has been focused on the valuation objective of the legislatively mandated process. If the focus is now also shifting to outlining a specific exchange proposal, I would suggest we look at what efforts we can jointly outline to meet the important early steps leading to an "Agreement to Initiate". Through these steps, including appropriate public involvement, we could avoid unnecessary expenditures of both State and federal funds.

AFJ
11/2001



I would suggest a work meeting in the near future between you and I and our key staffs, specific to this issue, would ensure that we are working cooperatively to meet each agency's overall responsibilities.

Sincerely,



For JAMES W. SANDERS
Forest Supervisor

ENCLOSURE

cc:

Senator Dayton

Senator Wellstone

Congressman Oberstar

Regional Forester Bob Jacobs

Paul Stockinger, RO

LAND FOR LAND EXCHANGE

TO: All Parties Interested in Land-For-Land Exchange With the Superior National Forest:

This handout provides information to better acquaint you with the process we are required to follow, if you wish to exchange land with the Superior National Forest. Generally, it takes about two years to complete an exchange once the Forest Supervisor accepts the proposal and work on the case begins. Proposals are reviewed annually to determine exchanges that will be processed in the subsequent fiscal years. Initial discussions and questions should be directed to the local Ranger District Office on the Superior National Forest.

The exchange proponent is expected to pay and/or share the cost of some required steps in the land exchange process such as newspaper advertising, contract appraisal services, purchase of a title insurance policy on the nonfederal land, transaction screening (haz/mat) inspections and, if necessary land survey work on the nonfederal tracts.

PROCESS FOR LAND EXCHANGE

- A. Discussion between proponent and FS regarding a land exchange**
- B. Determine the exchange lands on both sides**
- C. Proponent submits proposal to the District Ranger**
- D. District Ranger recommends or rejects proposal**
- E. District Ranger prepares a report recommending the proposal and submits it to the Forest Supervisor (SO)**
- F. If the Forest Supervisor concurs with the Ranger's recommendation, the proposal is prioritized with other land exchange proposals.**

PROCESS FOR LAND EXCHANGE

Page 2

When action on the exchange begins, the following steps occur:

1. A title insurance commitment is acquired for the nonfederal land
2. Request a consultation report from FS Appraiser (to determine preliminary value or value range) (the request will be after receipt of the title documents)
3. Feasibility Analysis prepared and sent to RO and WO for review and approval
4. An Agreement to Initiate (ATI) is prepared for proponents signature
5. Have survey of lands done, if necessary
6. The following surveys and reports are ordered and completed: Mineral Character Determination, Threatened and Endangered Species, Floodplains and Wetlands Survey, Cultural Resources Inventory, Transaction Screening (Haz/Mat Inspection)
7. Obtain additional public comment or input. (Public scoping)
Exchange Notice and land list published for 4 consecutive weeks in local paper
Notification to: County Governments, Congressional Delegations, other interested publics
8. Review Title & prepare Certificate of Use and Consent
9. Inspect and prepare Certificate of Possession
10. Arrange for protection of the interests of Special Use permittees, if necessary
11. Prepare title file documents
12. Prepare an Environmental Analysis (EA) and send out for 30 day comment period
13. Contact Senior Review Appraiser and request appraisal. (All alternatives or land configurations requiring valuation must be determined prior to ordering appraisal)
14. Appraisal is Reviewed and Approved
15. Submit to OGC for Preliminary Title Opinion
16. Prepare Decision Notice (DN)
17. Prepare Exchange Agreement
18. Case reviewed/approved by National Landownership Adjustment Team (NLAT)
19. Case approval at appropriate level
20. Sign Decision Notice (DN) and inform interested parties of decision, and post decision notices.
Send for 45 day appeal period
21. Exchange Agreement signed and accepted
22. Thirty day Congressional oversight and Secretary of Agriculture approval, where required
23. Request cash equalization payments (if needed)
24. Arrange for signing and recording of federal and nonfederal land deeds
25. Obtain Title Insurance Policy
26. Transmit final title file to OGC
27. Close case file: notify County and District of completed exchange and update status records



Minnesota Department of Natural Resources

OFFICE OF THE COMMISSIONER

500 Lafayette Road
St. Paul, Minnesota 55155-4037

June 11, 2002

Dale Bosworth, Chief
US Forest Service
Dept of Agriculture
Sidney R. Yates Federal Bldg
201 14th St SW
Washington DC 20250

Dear Chief Bosworth:

The State of Minnesota owns approximately 93,000 acres of lands within the federally designated and managed Boundary Waters Canoe Area Wilderness (BWCAW). As you know, the State is directed to manage these lands for the benefit of the Permanent School Fund.

Because there are restrictions that generally preclude the state from managing these lands for revenue generation, the State desires to exchange its inholdings for federal land outside the BWCAW. To facilitate the exchange process, the DNR is inventorying and appraising its lands, and has identified approximately 5,000 acres of state-owned land in the Trout Lake area for an initial exchange package (see attached map and parcel listings).

I hereby request that the Forest Service and the State formally initiate exchange proceedings. Given the diverse stakeholder interests regarding federal and state land ownership and management, and the interest that national organizations have in this Wilderness Area, I believe that attention from your Regional and Washington Office staff may be needed to accomplish the exchange.

In addition, I suggest that we meet to discuss not only this specific exchange but also resolution of the long-standing issue of all State BWCAW inholdings. It is my understanding that the BWCAW contains the largest inholding of state lands in any Wilderness in the United States. The future of these lands has been debated for years in Minnesota; it would benefit all parties involved to resolve the issue. This topic likely will warrant top-level attention from your agency, and may eventually even require Congressional action. I believe it would be helpful for us to explore a variety and breadth of potential solutions to the problem.

DNR INFORMATION: 651-296-6157, 1-888-646-6367 (TTY: 651-296-5484, 1-800-657-3929) FAX: 651-296-4799

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WHO VALUES DIVERSITY

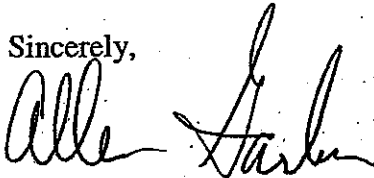


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MINIMUM OF 10% POST-CONSUMER WASTE

Page 2
Bosworth
June 11, 2002

Thank you for consideration of this request. I look forward to your response and to meeting with you to begin the discussion.

Sincerely,

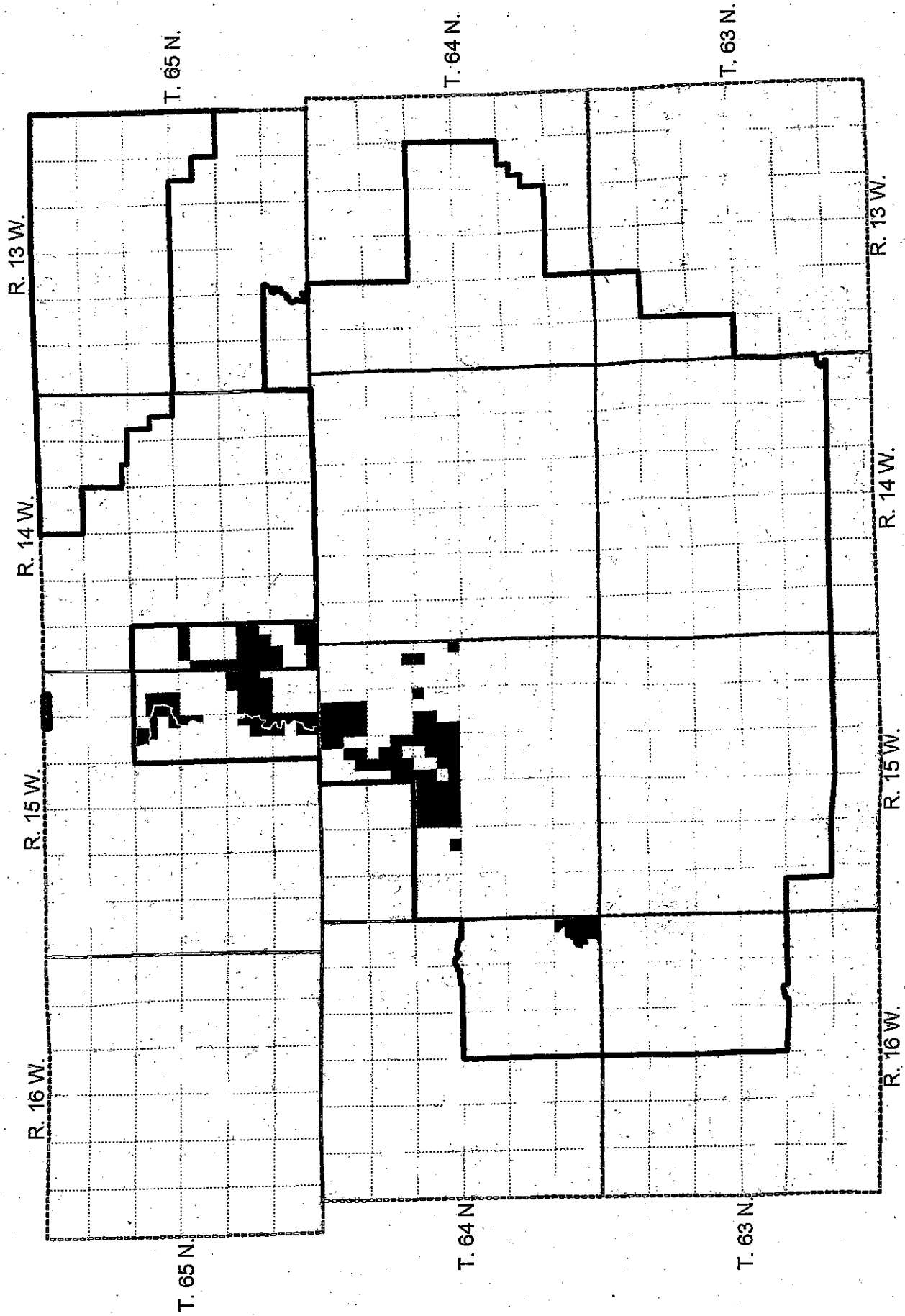


Allen Garber
Commissioner

Attachment

c: Minnesota Congressional Delegation
Ann Veneman, US Secretary of Agriculture
Randy Moore, USFS Regional Forester
Jim Sanders, Supervisor, Superior National Forest
Mike Hatch, Attorney General
Steven Morse, Deputy Commissioner
✓ Brad Moore, Assistant Commissioner for Operations
Bill Brice, Directors Lands & Minerals
Doug Johnson, State Senator
Tom Baak, State Representative
Tom Rukavina, State Representative

PROPOSED STATE-FEDERAL LAND EXCHANGE TROUT LAKE AREA



Trust Fund Lands Proposed for Exchange
 BWCAW

TRUST FUND LANDS IN PARTS OF
 T64N,R15W
 T65N,R14W
 T65N,R15W
 T64N,R16W

| CTY | TWP | RNG | SEC | FTY TEXT | FTY CODE | GLO | ACRES |
|-----|-----|-----|-----|-------------|-------------|-----|-------|
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| 69 | 064 | 16 | 36 | SESE (44) | 00 | 40.00 |
| 69 | 064 | 16 | 36 | SWSE (43) | 06 | 38.25 |

Brad - FYI



United States
Department of
Agriculture

Forest
Service

Washington Office

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

File Code: 5430

Date: OCT 23 2002

Allen Garber
Commissioner
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4037

Dear Commissioner Garber:

Thank you for your letter of June 11, 2002, discussing the potential for land exchanges involving State School Trust lands in the Boundary Waters Canoe Area Wilderness (BWCAW). We understand and appreciate the State's concerns relating to the management of these lands.

For many years, the State of Minnesota and the Forest Service have enjoyed a productive partnership relating to the management of the BWCAW. I am aware that the State of Minnesota has promulgated rules and regulations for the BWCA, including direction for joint agreements with the federal government for purpose of optimum management and enforcement in the BWCA. The Forest Service values this cooperative relationship, and feels that a continued State "presence" in the BWCAW would be positive and significant.

Current Forest Service land adjustment priorities in the BWCAW have emphasized the acquisition of County and private lands. The 1993 BWCA Wilderness Management Plan allows for the existence of state-owned lands within the BWCAW, providing that uses on these lands are compatible with wilderness values. A few years ago, the option of a direct purchase of State School Trust lands within the BWCAW was seriously explored and supported by the Forest Service and the State; however, the effort was unsuccessful.

If the State wishes to dispose of its holdings in the BWCAW, the Forest Service may be interested in acquiring them. However, a mix of purchases and some limited land exchanges would likely be the preferred approach. If land exchanges are initiated, Forest Service policy requires that they be in the public interest. Significant public issues and resource concerns would likely be associated with any exchange of large acreages of National Forest land necessary to equal the value of the State's holdings. While your initial exchange proposal is relatively small (5,000 acres), the Forest Service must consider the cumulative effect of the total project (93,000 acres and an unknown amount of federal land) in the analysis of impacts.

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OCT 28 2002

COMMISSIONER

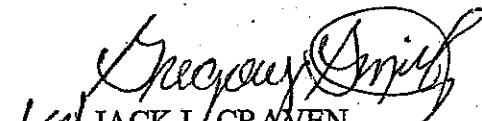


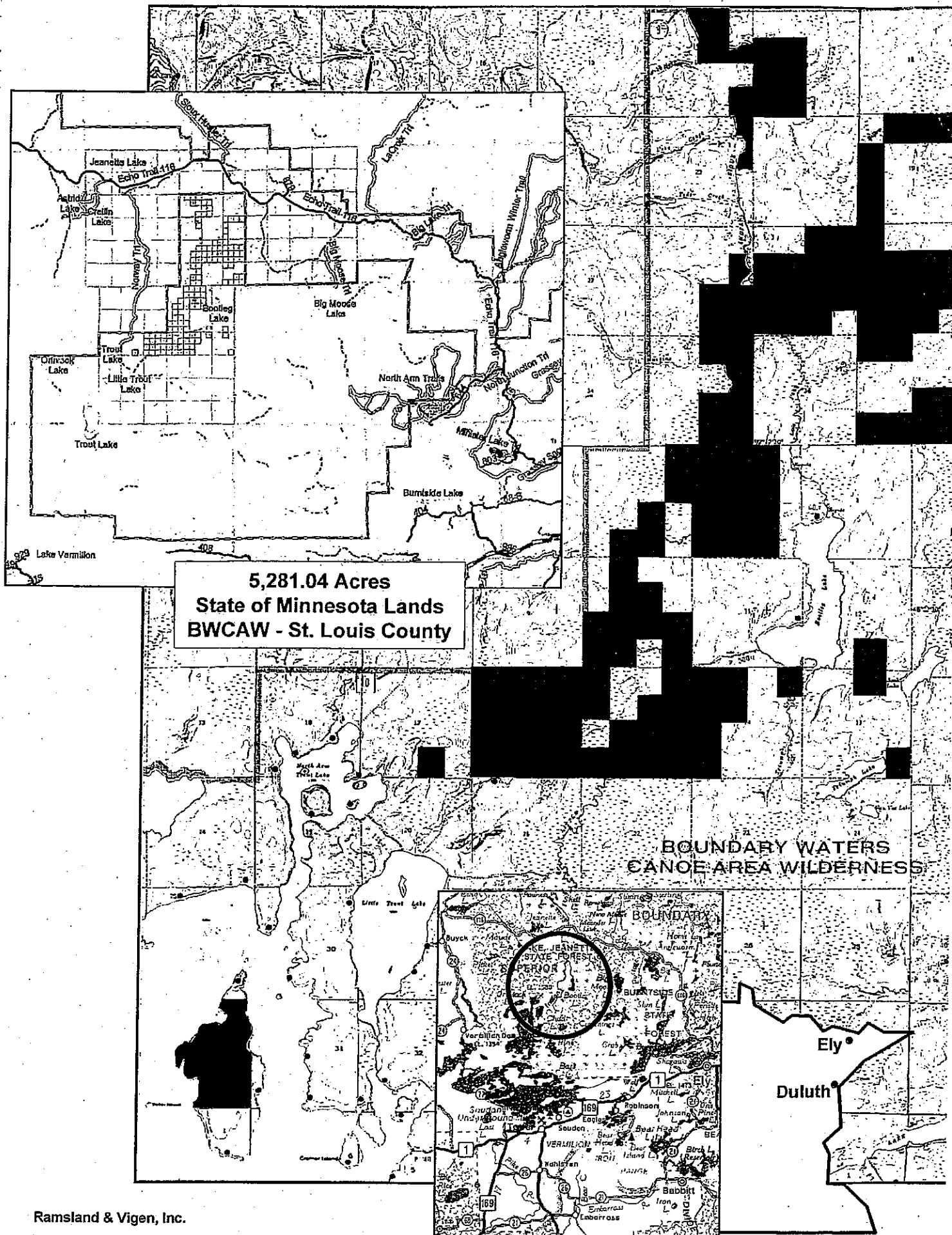
Allen Garber

2

Issues associated with land adjustment such as priorities, funding, cost recovery, state laws, etc. are better addressed at the local level rather than from Washington, D.C. I ask that you work with Jim Sanders, Superior National Forest Supervisor at (218) 626-4302, as you explore opportunities to meet your objectives with school trust lands in the BWCAW.

Sincerely,


JACK L. CRAVEN
Director of Lands



LAND CATEGORY CLASSIFICATION VALUATION SUMMARY

A Land Category Classification analysis of the subject's 5,281.04 acres attempts to abstract from the market evidence of price expectation applicable to lands of certain physical characteristics. For example, the river influenced wetland edge, tributary stream estuaries, and undulating uplands adjacent comprise most of merchantable Units 1 and 3. These were combined to represent Land Category 1. Conversely, Gowan Lake, which comprises merchantable Unit 3, Sioux Island, and others, were allocated to form a total of five land categories.

The universe of sale data was researched with comparables selected in accordance with their comparability to an individual land type classification. Three to five comparables plus occasional additional observations were provided for each. The analysis took into consideration quantifiable adjustments for date of sale and regional location as well as qualitative allocations applicable to access, size, physical/functional characteristics and eco-quality. Through this procedure, a supportable, probable per acre price expectation applicable to a given category was developed. A summary of the five classifications is below.

| <u>Land Type</u> | <u>Acreage</u> | <u>Price/Acre</u> |
|--|----------------|-------------------|
| 1 - River/ Wetland Influence | 3,129.20 | \$350 |
| 2 - Mixed Topography, Interior Forest | 1,021.59 | \$450 |
| 3 - Future Development, Lakeshore Acreage | 680 | \$1,200 |
| 4 - Independent Development Sites, Remote Lakeshore Location | 159.5 | \$950 |
| 5 - Developable Island | 290.75 | \$5,000 |
| Total | 5,281.04 | |

Marketable Unit Valuation Summary

In accordance with the highest and best use analysis as well as client directives, the subject as a whole was separated into six marketable units as identified in exhibits herein. The intent of this partitioning is to mirror the most probable disposition opportunities for the subject as a whole as witnessed through other large land disposition models evidenced throughout the region. As part of the land type classification valuation analysis, most of the merchantable units, by the nature of their physical characteristics, were independently valued. A summary of these conclusions follow.

| Marketable Unit # | Acreage | Market Value Estimate |
|----------------------|----------|--------------------------|
| 1 | 423.20 | \$150,000 |
| 2 | 1,021.59 | 460,000 |
| 3 | 2,706 | 1,000,000 |
| 4 | 680 | 952,000 |
| 5 | 159.5 | 160,000 |
| 6 | 290.75 | <u>1,400,000</u> |
| | | 4,122,000 |

The highest and best use analysis concluded recreation/residential development and forest stewardship represent a most probable highest and best use applicable to the subject as a whole. Also, for disposition purpose, it is anticipated the total 5,281.04 acres to be separated into six merchantable units based upon a probable use scenario. Federal Appraisal Standards as well as most valuation practitioners recognize a discount may be necessary to offset additional sale/management cost when parcelized disposition occurs. While this is accepted theory, such discounts are difficult to abstract from the market. The subject acreage is located within a desirable sector of northern Minnesota's wilderness edge. Its immediate region experienced upper tier value expectation, limited marketing time, and positive consumer demand. Other such circumstances, consumer demand and supported price escalation should more than offset a discount for that purpose. Nevertheless, a nominal 5% factor applicable to this theory is appropriate and calculated below.

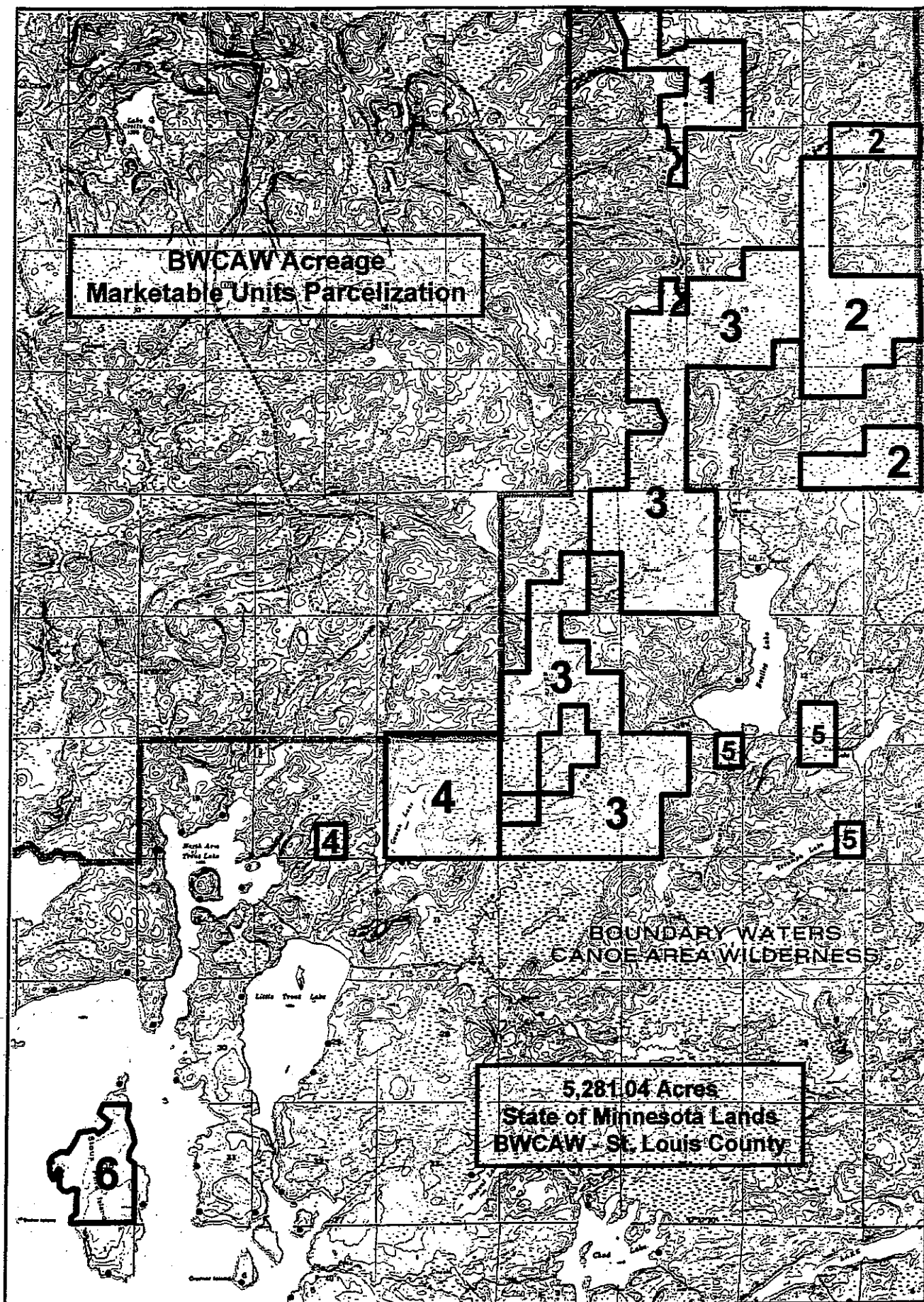
$$4,122,000 \times .95 = \$3,915,900$$

(R) \$3,916,000

Predicated on an appraisal procedure presented herein, the subject's most probable market value, under the hypothetical valuation scenario which is the basis for this appraisal, and assuming parcelized disposition, can be estimated as of September 1, 2002

THREE MILLION NINE HUNDRED SIXTEEN THOUSAND DOLLARS

(\$3,916,000.00)



University of Minnesota Duluth
School of Business and Economics
Bureau of Business and Economic Research
Research Report

**A Physical Inventory and Valuation
of State-Owned Lands within the
Boundary Waters Canoe Area Wilderness**

Volume 1: Valuation Report, Volume 1 of 3

See also Volume 2: 2002 Appraisal Report, and
Volume 3: GIS Maps and Physical Inventory

January 2003

Minnesota State Legislature



*Copies of BBER research can be found on the World Wide Web at
<http://www.d.umn.edu/sbe/departments/bber/>*



A Physical Inventory and Valuation of State-Owned Lands within the Boundary Waters Canoe Area Wilderness

Volume 1: Valuation Report, Volume 1 of 3

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| Exhibit 4: Initial Sample Stratification Data | |
| Exhibit 5: Original Request for Bids for Professional Appraisal Services | |
| Exhibit 6: Informational Briefing Handouts | |
| Exhibit 7: School Trust Fund Lands: Some Facts | |
| Exhibit 8: Final Request for Bids for Professional Appraisal Services | |
| Exhibit 9: Steigerwaldt (1998) Data Sets | |
| Exhibit 10: EMV and SALES Regression Analysis | |
| PROJECT STAFF | 72 |

PROJECT SUMMARY

Charge

Provide a legal and physical inventory and valuation of all state-owned lands within the Boundary Waters Canoe Area Wilderness.

Components

- (1) Maps and an inventory of legal and physical characteristics of target lands produced by the Geographic Information Systems (GIS) lab of the Natural Resources Research Institute using land records provided by the Minnesota Department of Natural Resources.
- (2) Complete and self-contained 2002 appraisal of approximately 5280 acres of target lands jointly produced by Tom Turner & Associates and Ramsland & Vigen, Inc.
- (3) Valuation report produced by the University of Minnesota Duluth Bureau of Business and Economic Research using (1) and (2) above, as well as, appraisal results from 1978-1998 U.S. Forest Service appraisal reports.

Findings

Acree of target lands by land category:

| Land Category | | Description | Acres |
|----------------|-----|----------------------------|------------|
| Waterfront | A | Islands | 5,192.83 |
| | B | Large Lake Frontage | 13,161.24 |
| | C | Large-Medium Lake Frontage | 2,886.28 |
| | D | Medium-Small Lake Frontage | 4,554.14 |
| | E | Small Lake Frontage | 14,000.14 |
| Non-Waterfront | F | Major Flowage | 41,932.47 |
| | G | Flowage Influence | 14,869.63 |
| | H | Wetlands | 2,213.25 |
| | I | Uplands | 17,748.99 |
| | A-I | Total | 116,558.97 |

Source: UMD Bureau of Business and Economic Research

Estimated value of all target lands as of September 2002:

Based on 2002 Vigen-Turner appraisal:

\$88.80 - \$96.84 million with a "medium" value of \$91.71 million

Based on 1978-1998 U.S. Forest Service appraisals:

\$78.17 - \$99.26 million with a "medium" value of \$90.39 million

Acreage and 2002 valuation of target lands by county and land type:

| | | COUNTY | | | |
|-----------|-----------------------|-------------------------|-------------------------|-------------------------|--------------------------|
| | | St. Louis | Cook | Lake | TOTALS |
| LAND TYPE | School Trust Fund | 34672.1 \$29,478,531 | 25982.7 \$19,737,211 | 25640.7 \$23,088,565 | 86295.5 \$72,304,306 |
| | University Trust Fund | 390.2 \$172,760 | 2070.0 \$1,672,878 | 0.0 \$0 | 2460.1 \$1,845,637 |
| | DNR Acquired | 17804.5 \$10,198,843 | 0.0 \$0 | 0.0 \$0 | 17804.5 \$10,198,843 |
| | County Tax Forfeit | 3662.1 \$2,082,243 | 2262.3 \$2,187,592 | 4074.6 \$3,092,863 | 9999.0 \$7,362,698 |
| | TOTALS | 56528.7 \$41,932,376 | 30315.0 \$23,597,680 | 29715.3 \$26,181,427 | 116559.0 \$91,711,483 |

Source: UMD Bureau of Business and Economic Research



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Session Statistics**Education****Trust land compensation** Published (5/6/2004)

The House voted 126-0 to send a resolution to Congress seeking federal compensation for school trust lands that have been part of the Boundary Waters Canoe Area Wilderness since the late 1970s.

The memorial resolution ([HF2242/SF2222*](#)), sponsored by [Rep. Barb Sykora](#) (R-Excelsior) and [Sen. Steve Kelley](#) (DFL-Hopkins), will be sent to the state's congressional delegation.

The resolution, which passed the Senate 53-10 April 12, does not require the governor's signature.

In the resolution the Legislature specifically asks Congress to increase a user reservation fee in the popular canoe wilderness area by \$3. That could raise up to \$90,000 annually for the state's permanent school fund, Sykora said

Leases, royalties, timber sales and fees from approximately 2.5 million acres of school trust lands provide about \$20 million a year for schools. However, the 87,000 acres in the federal wilderness area remain a sore point with state legislators who maintain the state has never been compensated for the land.

Audio & Video:

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BWCAW/School Trust Briefing

Meeting of the Governor and the Congressional Delegation
October, 2003

1. What is the Issue?
2. DNR Fact Sheets
 - a. School Trust Fund Lands
 - b. DNR Land Exchange History in the BWCAW
 - c. Overview of DNR activities during 2000-2003
3. Legislative Reports
 - a. School Trust Land: A 1998 Legislative Auditor's Report (Excerpts on Trustee Obligations)
 - b. The Permanent School Fund – Background and Issues: A 2001 Minnesota House Fiscal Analysis (Trust Land Management and Permanent School Fund Investment)
4. Examples of Competing Interests
5. Map of State-Owned Land within the BWCAW

What is the issue?

- As a condition of being granted statehood by Congress, the State of Minnesota in 1858 took on an obligation to act as a trustee for lands granted by Congress for the use of schools.
- A "Permanent School Fund" (PSF) was established by Minnesota's Constitution to ensure a long-term source of funds for public education. The fund currently consists of approximately 2.9 million acres of land and all the cash generated from school land timber sales, land leases, and mineral royalties over the last 155 years.
- There is much legal precedent that the State's trust obligation should be governed by the same fiduciary principles that apply to the management of private trusts.
- Currently about 86,000 acres of school land lies within the boundaries of the BWCAW.
- Use restrictions imposed by the Wilderness designation prevent substantially all income generating activities within the BWCAW.
- Since school lands within the BWCAW cannot be managed to earn income, the trustee obligations of the state are not being met.
- Attempts have been made over the years to resolve this problem. During the 1980s and early 1990s one exchange was completed and others were contemplated, but progress on the process was terminated. In 1997 proposals were made to allow federal land managers to begin purchasing the BWCAW school lands. This effort however was met with rejection by the Minnesota Legislature, which concluded that only an exchange of land for land was acceptable.
- In 2002 the state proposed an exchange of 5280 acres of land in the BWCAW but was advised by the U.S. Forest Service that a cumulative impact analysis of all the state lands (about 100,000 acres) and any federal exchange lands (presumably a similar amount) would have to be completed before the proposed exchange could be initiated.
- There currently seems to be a stalemate.

State Lands in the BWCAW

— School Trust Fund Lands —

When Minnesota became a state in 1858 the federal government granted it millions of acres of land specifically designated for particular purposes. The U.S. Congress granted Minnesota sections 16 and 36 within each township, for the use of schools. Where these sections had already been disposed of, an equivalent acreage of land was made available. At the time of statehood, 2.9 million acres of land, referred to as School Land, was dedicated to the use of schools.

On October 13, 1857 the citizens of Minnesota accepted the school trust land grant by voting to adopt the state's constitution. An important part of the state constitution is a section that establishes a Permanent School Fund (PSF). The main purpose of the PSF is to ensure a long-term source of funds for public education in the state. The fund basically consists of the accumulation of cash generated from land and timber sales, land leases, and mineral royalties earned off PSF lands. As income continues to accumulate, it forms a perpetually growing principal that is invested. The interest and dividends earned off the principal is available for school use.

By the mid 1880s much of the original school lands had been sold. However over the next several decades the State Legislature dedicated additional income earned from other federally granted lands to the PSF. Today the number of acres associated with the PSF is about 2.5 million acres of land and an additional 1 million acres of "severed" mineral rights. The Department of Natural Resources is the agency that currently manages the PSF's lands and minerals.

There are approximately 142,000 acres of PSF land within areas that restrict or prohibit revenue generation. About 5000 acres lie within State Park boundaries and another 51,000 are within Peatland Scientific and Natural Areas that were designated by the Legislature in 1991. The department submitted capital bonding and LCMR funding requests to the legislature to compensate the school trust for these lands. About 86,000 acres of similarly restricted lands lie within the federally managed BWCAW. Since activities within the BWCAW are mainly restricted to primitive camping and non-motorized recreation, the DNR is unable to manage the PSF lands within the wilderness in a manner that provides revenue generation.

During the 2000 Legislative Session the Minnesota Legislature determined that compensation for the PSF lands located within the BWCAW should be considered. In order to provide basic information about the lands (value, use potential, income generating capacity, etc) the legislature provided funds for the University of Minnesota at Duluth (UMD) to complete a research study. The information developed by the study places the estimated value of the state owned lands at approximately \$92 million.

Over the years there has been debate over the best means of compensating the trust for the BWCAW lands that are restricted from generating revenue. Suggestions have ranged from federal/state land exchanges and outright purchases, to leasing the land or sharing fees paid by users of the Wilderness. In the late 1990's the federal government seemed interested in purchasing some BWCAW lands from the state. However, a 1999 resolution of the Minnesota Legislature, sent to the President and U.S. Congress, clearly concluded that a land exchange rather than a sale of land was the state's preferred option. On the basis of this position the DNR submitted a modest sized exchange proposal in 2002.

State Lands in the BWCAW

— DNR Land Exchange History in the BWCAW —

The following is a list of exchanges and studies related to potential exchanges, that have been conducted over the past 50 years, relative to lands within and adjacent to the present location of the BWCAW.

1951 –

Federal purchase of 468 acres in Nerstrand Big Woods in exchange for 9,218 acres of state land in Lake County. Minnesota Lands p. 129.

1961 –

Report of Hearings Concerning: "A proposed program of land exchange between the State of Minnesota and the United States Forest Service within and adjacent to the Superior National Forest." (A 41-page report).

1967 –

Minnesota Outdoor Recreation Resources Commission Report "Land Exchange in Minnesota" pp. 58-60.

1969 –

Minnesota Conservation Department, Division of Lands and Forestry "Land Exchange Study Report" pp. 20-29.

1970 –

The Minnesota Land Exchange Review Board "Proceedings of the Land Exchange Review Symposium" pp. 33-42.

1986 –

MOU - "Land Exchange Between Minnesota Department of Natural Resources and Forest Service, United States Department of Agriculture." Signed by Deputy Commissioner DNR and Forest Supervisors of the Chippewa and Superior National Forests.

Recommended - Develop mutually agreeable lists of possible exchange lands and identify the methods and procedures to follow on land appraisals and timber evaluations aimed at reducing the costs of exchanges.

1993 –

DNR completed a land exchange with U.S. Forest Service. 2,520 trust fund acres valued at \$174,000 for 1,681 of federal land also valued at \$174,000. All land in St. Louis County.

1997 –

Minnesota Congressional Delegation letter to the Secretary of Agriculture urging an allocation of \$10 million for the acquisition of some of the state-owned lands in the BWCAW.

1997 –

Letter from the Iron Range Delegation to Representative Oberstar in opposition to the money for land proposal and in favor of land for land exchange as the only solution.

State Lands in the BWCAW

1998 –

Office of the Legislative Auditor. "School Trust Land A Program Evaluation Report" pp.64-67. Recommended – DNR should continue to pursue compensation for the PSF for the trust land in the BWCAW. If the federal government's purchase of some or all of the trust land is the most realistic option, then it should be pursued (see Summary - page xx)

1999 –

H.F 426 Resolution No. 3

"Memorializing the President and Congress to enact a law that will expedite the exchange of intermingled state and federal lands within the exterior boundaries of the Superior National Forest..."

1999 –

S.F. 1288. \$200,000 is appropriated to fund an inventory to be conducted by the University of Minnesota, Duluth. The purpose of the inventory is to provide the legislature and state officers with more precise information as to the nature, extent, and value of the state owned land located within the BWCAW.

2001 –

The scope of the UMD inventory is modified to include an appraisal of 5,000 acres of land in the Trout Lake area of the BWCAW. The purpose of the appraisal is to provide data and values on a site- specific area that the state could offer for exchange and to provide current land values that could be extrapolated to the remaining lands within the BWCAW.

2002 –

June letter to Dale Bosworth, Chief of the U.S. Forest Service from Allen Garber, Commissioner of DNR requesting a land exchange of approximately 5,000 acres of state land in the Trout Lake area.

2002 –

October response letter To Allen Garber, Commissioner of DNR from Jack Craven, Director of Lands U.S. Department of Agriculture directing the DNR to work with Jim Sanders, Superior National Forest Supervisor. The letter also included the following statement: "While you initial exchange proposal is relatively small (5,000 acres), the Forest Service must consider the cumulative effect of the total project (93,000 acres and an unknown amount of federal land) in the analysis of impacts."

2003 –

University of Minnesota, Duluth presents its inventory and valuation of lands located within the BWCAW to the legislature.

State Lands in the BWCAW

— Overview of DNR activities during 2000-2003 —

Approximately 86,000 acres of PSF land currently lie within the federally managed Boundary Waters Canoe Area Wilderness (BWCAW). Although these lands have both federal and state directives to be managed in a manner that produces income for schools, no revenue can be generated. Commercial development and the use of natural resources were prohibited when the area was given Wilderness status in the 1970's.

The BWCAW covers approximately 1.09 million acres. There are about 117,000 acres (about 10.7 percent of the total) in state ownership, both DNR-managed and county-managed. Of this, approximately 86,000 acres (7.9 percent) are Trust Fund lands, 18,000 (1.7 percent) are non-trust lands acquired by grant, and less than 10,000 (1 percent) are county managed tax-forfeited lands. The acreages reported here are based on estimates made in 2003 and will vary from earlier reported values.

The 2000 Legislature directed the University of Minnesota at Duluth (UMD) to conduct an inventory and evaluation of state-owned land within the BWCAW. After a public informational briefing in January 2001, UMD held an appraisers conference. During the conference it became apparent that there was insufficient time and funding available to complete an appraisal of the multiple sites originally desired for analysis. The 2001 Legislature subsequently approved a reduction in the scope of the study to fit within the original budget. As a consequence of this decision, it was determined that one area should be selected and that its appraised value be extrapolated to estimate the value of the rest of the state-owned lands within the BWCAW. In addition, it was planned that the area would serve as an initial exchange site.

Various factors were used to select approximately 5,000 acres in the Trout Lake area in St. Louis County for appraisal. This area was chosen because access was somewhat easier than in many other parts of the BWCAW, because it still had a mix of natural features, and because it was a manageable size for possible land exchange.

The report delivered by UMD to the 2003 Legislature included legal and physical descriptions of a 5,280-acre area near Trout Lake that had an appraised value of \$3,916,000. Based on this appraisal and other available information, the University estimated the value of all state owned land within the BWCAW to be approximately \$91,700,000.

In 2002 the DNR contacted the U.S. Forest Service in Washington D.C. to propose an exchange involving the 5280 acres of land that had been appraised for the UMD study. The Forest Service response was that although Minnesota was only seeking a modest sized exchange, the Forest Service would have to consider the cumulative effect of the total project (all state owned lands in BWCAW, and an unknown amount of federal land) in an analysis of impacts. While this process may be necessary, if all the lands must be analyzed anyway perhaps the proposed exchange should be substantially increased in size.

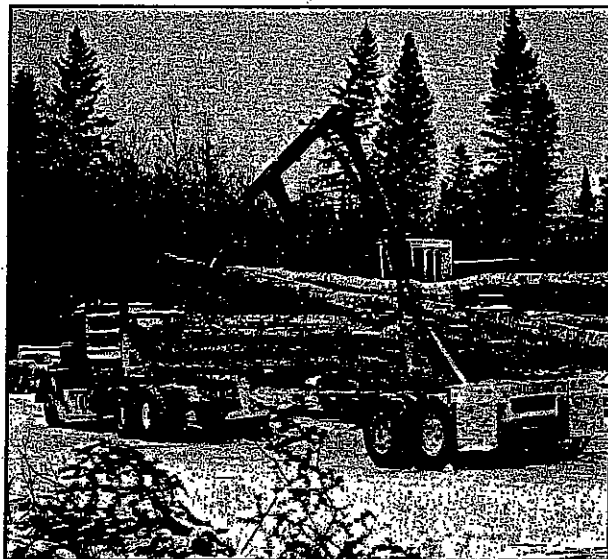
If the State of Minnesota decides to continue seeking an exchange, advice should be sought from Minnesota's Congressional delegation, the Minnesota Legislature, and others on the most efficient way of proceeding, and how to fund the studies (impact analysis, land appraisals, timber evaluations, etc.) that will be part of the exchange process. If advised to do so, the DNR will begin discussions with the appropriate federal agencies.

School Trust Land

Report # 98-05

February 1998

A PROGRAM EVALUATION REPORT



**Office of the Legislative Auditor
State of Minnesota**

Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155 • 612/296-4708

A Portion of the Legislative Auditor's Report

**Addressing Responsibilities
of the State
In Its Role as Trustee**

DIFFERENCE BETWEEN SCHOOL TRUST LAND AND OTHER STATE-OWNED LAND

A trust relationship that governs school trust land was created when the federal government granted specific land to the state and the state accepted the land for the use of schools. Minnesota's school trust land and the principal of the Permanent School Fund are held in trust for public school districts pursuant to the federal enabling act and the state constitution.

**The
Legislature,
DNR, and SBI
are trustees for
public schools.**

Although the Minnesota Constitution does not specifically identify a trustee, when the state accepted the terms and conditions of the federal land grant, it accepted the position of trustee for public schools in Minnesota. The U.S. Supreme Court has recognized the State of Minnesota as trustee of the federal land grant and acknowledged that "the legislature was the body representing the state."¹⁵ A broader legal interpretation might hold that, in Minnesota, entities of government with authority to make management decisions affecting the school trust land and fund should also be considered trustees. Since the Minnesota Legislature has delegated such responsibilities to the Department of Natural Resources and the State Board of Investment, these agencies also serve as trustees.¹⁶ In contrast, the constitutions in many other states provide for the creation of state land boards, composed of various combinations of constitutional and executive branch officers, to serve as trustees of school trust land.¹⁷

The trust status of the federal land grant imposes constraints and obligations on the trustees that would not apply if the state owned the land outright. There have not been any court cases on the nature of the trust relationship related to school trust land in Minnesota. We examined cases from federal district courts and circuit courts of appeals that could be applicable to Minnesota. A great deal of case law and commentary have emphasized that:

- The trust is a real trust that should be governed by the same fiduciary principles that apply to the management of private trusts.

The Washington Supreme Court in 1984 noted that the federal land grant trusts were created to benefit certain beneficiaries and that "[e]very court that has considered the issue has concluded that these are real enforceable trusts."¹⁸ For further support of this interpretation, the court cited the U.S. Supreme Court, which concluded:

¹⁵ *Stearns v. State of Minnesota ex rel. Marr*, 179 U.S. 252-53, 45 L. Ed. 162 (1990).

¹⁶ Interview with Assistant Attorney General Andrew Tourville, June 18, 1997.

¹⁷ Of the states we examined, Colorado, Idaho, Montana, Nebraska, Oregon, South Dakota, and Wisconsin have constitutionally created state land boards.

¹⁸ *County of Skamania v. State*, 102 Wn.2d 129, 132, (1984) as cited in Opinion of the State of Washington's Office of the Attorney General (AGO 1996 No. 11), 9.

There have been intimations that school land trusts are merely honorary, that there is a "sacred obligation imposed on (the state's) public faith," but no legal obligation. These intimations have been dispelled by *Lassen v. Arizona* "This trust is real, not illusory."¹⁹

As a result, the state has several responsibilities in managing school trust land. First, the state must manage the land according to the terms of the trust as established in the enabling act and the state constitution. In Minnesota these conditions are fairly simple to: sell school trust land at public auction, deposit income from the land sales in the Permanent School Fund, and distribute interest from the fund to school districts.

Second, common law principles governing the administration of private trusts must be applied to the state in managing the school trust land. The Washington Supreme Court, in *County of Skamania v. State*, concluded that fiduciary principles apply to state actions regarding federal land grants. The opinion stated that the federal grant land trusts "impose upon the State the same fiduciary duties applicable to private trustees."²⁰ As a practical result, a legislature may be constrained with respect to enactments affecting school trust land.

A trustee is required to act prudently in managing a trust.

The duties of a trustee are summarized in Figure 1.1. A trustee is required to act prudently in managing a trust.²¹ The trustee should manage the trust to serve the interests of the trust beneficiaries. Cases from other states that address trustee duties have concluded that "undivided loyalty" to the trust beneficiaries is a trustee's chief duty. In other words, the trustee's primary responsibilities are to the trust, not to other considerations.

For instance, in *Skamania* the court ruled that the state as trustee may not use trust assets to pursue other state goals. The court held that the state had violated its duty of undivided loyalty to trust beneficiaries and its duty to act prudently by enacting a law aimed at benefiting the timber industry and the state economy in general at the expense of trust beneficiaries. The Nebraska Supreme Court (in *State ex rel. Ebke v. Board of Education Lands and Funds*) ruled that the state may not enact legislation for the benefit of lessees of public school land at the expense of the beneficiaries of the trust. In *State v. University of Alaska*, the Alaska Supreme Court ruled that the state had breached its duty to administer the trust solely in the interests of beneficiaries by failing to compensate the trust for the value of university land included in a state park.²²

19 *United States v. 111.2 Acres*, 293 F. Suppl. at 1049, (E.D. Wash. 1968), aff'd, 435 F.2d 561 (9th Cir. 1970) as cited in Washington Opinion, 9.

20 *County of Skamania v. State*, 102 Wn.2d 129, 132, (1984) as cited in Washington Opinion, 4, 11-12. The state must comply with common law duties in administering the federal trust lands. However, the state's management decisions are given deference not granted a private trustee because of the presumption of constitutionality that applies to state legislative authority.

21 A trustee's duties are enumerated in American Law Institute, *Restatement (Second) of the Law: Trusts* and *Restatement (Third) of the Law: Trusts* (St. Paul: American Law Institute Publishers, 1959 and 1990), secs. 169-185.

22 *Skamania* 136-139, *State ex rel. Ebke v. Board of Educ. Lands and Funds*, 154 Neb. 520, 525-26 (1951), and *State v. University of Alaska*, 624 P.2d 807, 813-814 (Alaska 1981), as cited in Washington Opinion, 13-14.

Figure 1.1: Duties of a Trustee

Duties of a trustee include to:

- Administer the trust;
- Demonstrate undivided loyalty;
- Delegate trustee duties only when reasonable;
- Keep and render accounts;
- Furnish information to beneficiaries;
- Exercise reasonable care and skill in managing the trust;
- Take and keep control of trust property;
- Preserve trust property;
- Enforce claims held by the trust;
- Defend actions that may result in loss to the trust;
- Keep trust property separate from other property;
- Use reasonable care regarding bank deposits;
- Make trust property productive;
- Pay income to the beneficiaries; and
- Follow the direction of persons given control over the trust.

SOURCE: American Law Institute, *Restatement (Second) of the Law: Trusts and Restatement (Third) of the Law: Trusts* (St. Paul: American Law Institute Publishers, 1959 and 1990), secs. 169-185. Opinion of the State of Washington Attorney General's Office (1996 AGO No. 11), 13.

Trustees of perpetual trusts should balance short- and long-term interests of beneficiaries.

Some duties of a trustee, such as making the trust productive, or maximizing its economic returns, have different standards for application than others. The trustees of a perpetual trust, such as the school trust land, must reasonably balance the short- and long-term interests of the current and future trust beneficiaries. While a trustee must make the trust economically productive at the present time, a trustee must also protect the productivity of the trust in the long run. In other words, a trustee cannot simply be concerned with maximizing current income.²³ The conflict between maximizing economic returns and preserving the trust property may be more pronounced with trust land because of its perpetual nature.

Washington State statutes adopting a sustained yield policy for the state-owned forested land reflect consideration of the common law duty of making the trust productive over time. Sustained yield requires managing the forest to provide for harvesting a specific amount on a continuing basis so that there is not a major prolonged curtailment of harvest.

Some beneficiaries of federal grant land have suggested that the trust need only comply with general laws if the laws serve the beneficiaries' economic interest. The courts have held, however, that state legislatures may pass laws that apply

²³ Washington Opinion, 2.

generally, such as environmental laws, and that those laws apply to trust land just as they apply to all other land in the state. This same argument applies to federal laws of general application.²⁴

The Minnesota Constitutional Study Commission in 1972 discussed some of these issues and concluded that school trust land should be managed in the interest of the trust beneficiaries, not for other purposes. Outside interest groups suggested that the Natural Resources Committee of the Study Commission endorse a constitutional amendment to authorize the use of school trust land for strictly non-income producing purposes (such as scientific and natural areas) without compensating the trust. The Committee rejected the suggestion in its November 1972 report to the Constitutional Study Commission. While noting that school trust land is included in state forests and thus is available for many recreational and scientific purposes, the Committee concluded in its report that:

The trust fund lands should be managed for income, although ecological considerations are important in the minds of those responsible for their administration. A scientific or natural area is probably not income producing. Hence, trust administrators would consider such use of trust fund lands a violation of their obligations.

While the state forests are, in one sense, investments of the public in the natural resources of the state, they can also serve to provide other uses to the citizens. . . . Since the state committed itself, when accepting these lands, to use the proceeds for school purposes, the principal objective must be sound management for income consistent with overriding public concerns. . . .

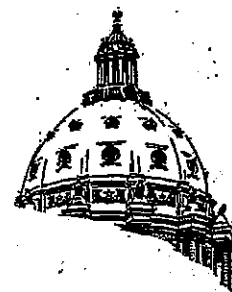
There are very good arguments for preserving and protecting wilderness areas, scientific areas, and parks. The Legislature can accomplish this by appropriating the necessary funds for the purchase of land. In proper circumstances it ought to do so. The stream of future finance for the schools, which the trust fund lands represent, ought to be protected too.²⁵ [Emphasis added.]

**The state
should manage
the trust in the
interest of trust
beneficiaries.**

According to our interpretation, the state is constrained in how it may manage the school trust land and revenues from the land in a way that it would not be if the state held the land outright. Most important, the state should manage the trust in the interest of the beneficiaries of the trust, current and future, and should not sacrifice the economic interests of the beneficiaries of the trust by using trust assets to serve other purposes. The long-term objective should be to receive as much revenue as possible to aid public education for both current and future beneficiaries.

²⁴ Washington Opinion, 3, 18-21.

²⁵ As cited in Office of the Legislative Auditor, *A Review of the Department of Natural Resources' Operation and Management of the Permanent School Fund* (St. Paul, 1981), 12-13, and Minnesota Department of Natural Resources, *School Trust Land Management Report* (St. Paul, 1983), 21-22.



The Permanent School Fund - Background and Issues

(Updated January 2001)

Money Matters: Number 01.01

Peter Skwira, Fiscal Analyst 296-4281

Bill Marx, Chief Fiscal Analyst, 296-7176

This paper provides background information and examines a number of issues involving the Permanent School Fund.

Introduction

The Permanent School Fund (PSF) is a trust that consists of two parts, lands granted to the state by the federal government and the principal of the fund generated by those lands. A variety of lands have been consolidated into the PSF including school trust, swamp, and internal improvement lands. These lands are managed by the Department of Natural Resources (DNR). The principal or corpus of the trust includes cash and investments generated from land sales, mining royalties, timber sales, lakeshore and other leases, gifts to the fund and any other sources. The State Board of Investment (SBI) is responsible for investment of the principal.

A Permanent University Fund also exists separate from the PSF.

Source of Land

Land was placed in a School Trust when Minnesota became a state. Lands in the PSF trust came from three major sources (Table 1).¹

Table 1: Federal Land Grants to the State of Minnesota

| Acres | Source of Acres |
|-----------|---|
| 2,995,628 | School lands granted to the state in the Enabling (Statehood) Act of 1857. This land consisted of sections 16 and 36 of most townships and lands selected in lieu of those sections where sections 16 or 36 were no longer available. |
| 4,770,000 | Swamp or overflowed lands granted to the state in 1860. Most of this acreage was sold or granted away but the remaining 1,560,000 acres were combined with the PSF trust lands by a 1962 constitutional amendment. |
| 500,000 | Acres granted to the state as internal improvement lands in 1866. All but 6,677 acres of this land was sold and a 1974 constitutional amendment transferred all remaining land, cash, and investments of the internal improvement land fund to the PSF. |
| 8,265,628 | Total Acres Granted to Minnesota |

In the late 1800s it was state policy to convey these lands into private ownership as quickly as possible². Therefore, many of these lands were sold in the years following statehood, mostly in the good farming soil regions of the state. Any PSF land sold must be done so at a public auction³.

Beginning in the early 1900s, the policy of selling trust fund land was modified and various types of public land were withdrawn from sale. The state policy started to shift toward an awareness that public management of the land was in the best long-term interest of the school trust fund. Of the 8.3 million acres of lands granted to the state, 2.5 million acres remain in the PSF. Most of these remaining lands are in the northern part of the state; over 85 percent is located in Koochiching, St. Louis, Itasca, Lake, Cass, Aitkin and Cook counties. Of the 2.5 million acres, 1.8 million acres are in DNR management units as follows

¹March 1983, Permanent School Fund Management Report, DNR.

²Ibid.

³Minnesota Constitution Article XI, Section 8.

(the numbers for management areas will add to a number greater than the total because some land parcels are in more than one management area):

Table 2: PSF Land in DNR Management Units ⁴

| DNR Management Unit | Acres |
|-------------------------------------|-----------|
| State Forests including Campgrounds | 1,737,123 |
| Wildlife Management Areas | 85,681 |
| Scientific & Natural Areas | 51,000 |
| State Parks | 5,745 |
| Riverways | 756 |
| Water Access | 2,880 |

In 1997 there were about 150,000 acres of PSF land in management units that prohibited the generation of revenue for the PSF including 93,260 acres in the Boundary Waters Canoe Area (BWCA).⁵ Table 3 on the next page shows the total acres of land in non-revenue earning sites.

An additional 706,800 acres are managed by DNR outside established management areas. These acres are primarily forestry lands but also include mineral, agricultural and lakeshore lands and other smaller categories. In addition to the 2.5 million acres of land, the PSF also includes the severed mineral rights only for another almost 1 million acres.⁶

Management of PSF Land

The DNR's goal for management of PSF lands is "to secure the maximum long-term economic return from the school trust land consistent with sound natural resource conservation and management principles and specific policy guidance as provided in state law."⁷

A constitutional amendment passed in 1984 allows PSF land to be exchanged for other state lands. Prior to that, PSF land could only be exchanged for federal or private land. The goal of land exchanges is to remove PSF land from management areas where it had no potential of earning revenue for the PSF. The most obvious example of this was PSF land in state parks. When some state parks were established, the PSF land was considered to be state land and included in the park with no reimbursement to the PSF.

⁴February 1998, Legislative Audit Report on School Trust Land.

⁵ Ibid.

⁶Data from March 1983, Permanent School Fund Management Report, DNR and updated by DNR in October, 1996.

⁷March 1983, Permanent School Fund Management Report, DNR.

**Table 3: School Trust Fund Land in Uses That Prohibit the
Generation of Revenue, 1997 ⁸**

| Use | Estimated Acres |
|---------------------------------------|-----------------|
| State Parks | 5,060 |
| Peatland Scientific and Natural Areas | 51,000 |
| Boundary Waters Canoe Area Wilderness | 93,260 |
| Estimated Total: | 149,320 |

During the early 1990s, DNR implemented land exchange packages that resulted in 5,400 acres of PSF land in state parks being exchanged for state land outside parks. These exchanges removed about 50 percent of the PSF land from state parks. After these exchanges were completed, PSF land still remains in Itasca, Nerstrand Woods, Savanna Portage, and Hill Annex Mine state parks.

Sale of lakeshore lots that had previously been leased by individuals was authorized by the Legislature in each year 1988 through 1993. The sale authorization was provided as an option because those leasing the lots were objecting as lease rates were being increased over a number of years to be comparable with non-state leases. During this period, a total of 1,156 lakeshore lots were sold at public auction. Approximately 90 percent of the lots were on PSF land. A total of \$14.1 million in down payments and contracts for deed has been credited to the PSF for lakeshore land sold.

Legislation passed in 1998 required the DNR to exchange the remaining 582 lakeshore leases with land from the county in which the lease existed. The counties are then required to offer the lots for sale to the current lessees. The exchange process allows the lots to be offered to the lessees without going through a public auction. As of January 2001, Cook, Hubbard and Koochiching counties have completed the land exchanges. Five counties (Beltrami, Cass, Crow Wing, Lake and St. Louis) have had their land exchanges approved by the Land Exchange Board and are scheduled to be completed April 2001. Three counties (Aitkin, Itasca and Polk) are still in the early stages of exchange, estimated to be completed by June 2001. Approximately 97 percent of the land received in exchange of the lakeshore leases are managed by the DNR Division of Forestry. ⁹

Approximately 50 percent of the wild rice leases that the state administers are on PSF land. Discussions are ongoing about how to promote wild rice operations and also provide income to the PSF including the possibility of exchanging or condemning and selling the trust interest in the land. ¹⁰

⁸February 1998, Legislative Audit Report on School Trust Land.

⁹Data updated from DNR presentation to the PSF Advisory Committee on September 21, 2000.

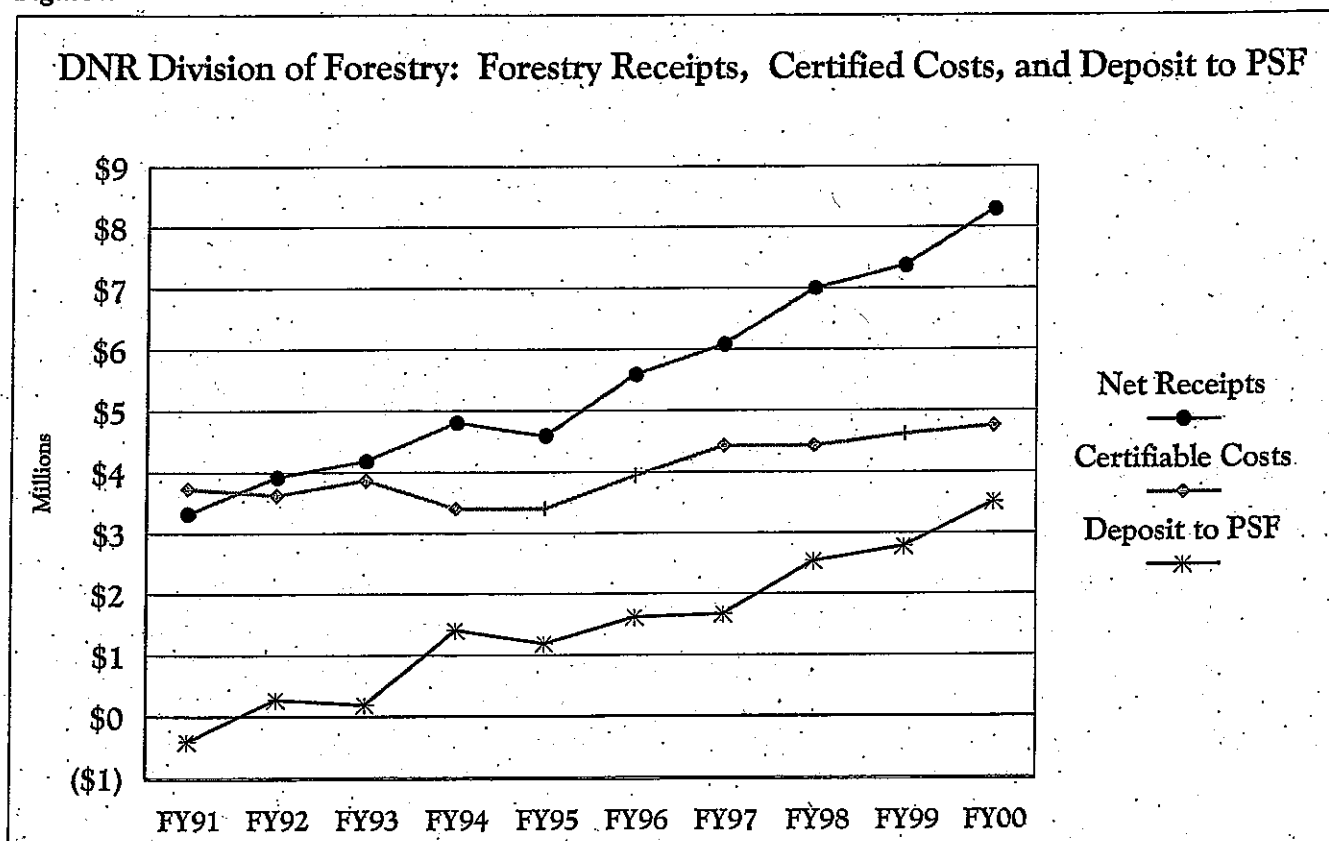
¹⁰Wild rice leases are authorized in M.S. 92.501.

Land is also leased for the removal of sand and gravel.¹¹ All these leases are administered by DNR.

DNR incurs considerable costs in the management, administration and protection of PSF land. State law allows the costs of protection, improvement, management and administration of state forest trust fund lands and construction and improvement of forest roads to be deducted from forestry proceeds earned by those lands.¹² Costs included are fire suppression protection, timber sale preparation, timber regeneration, law enforcement, insect and disease protection, soil survey and general office operations.

The amounts of forestry receipts on PSF lands and the amount deducted from those proceeds for DNR uses in recent years are shown in the chart below¹³.

Figure 2



The costs that DNR incurs for management, administration and protection of non-forest lands are covered by the state general fund appropriation for the operation of the agency.

¹¹Leasing authorized in M.S. 92.50.

¹²M.S. 16A.125.

¹³Data from DNR certifications required under M.S. 16A.125.

The PSF Principal Must Remain Perpetual and Inviolable

The principal of the PSF must remain perpetual and inviolate forever.¹⁴ The market value of the principal of the PSF was \$579,000,000 as of June 30, 2000.¹⁵ The principal is managed by the Department of Finance and invested by the SBI.

The Commissioner of the Department of Children, Families, and Learning is authorized to accept donations for deposit in the PSF.¹⁶

The principal in the fund has been generated from a variety of sources. The single largest source of revenue has been proceeds from mineral sales and mineral exploration. About three fourths of the PSF principal has been generated by rentals and royalties for leasing lands and removing minerals from PSF lands and from the iron ore occupation tax. About ten percent of the PSF principal has been generated by timber sales. The remaining PSF principal has come from the sale of PSF land, easements from lakeshore leases, wild rice leases, agricultural leases, utility licenses and other commercial leases. Although about two-thirds of the PSF land has been sold, the sale of land has contributed less than ten percent of the PSF principal.¹⁷

In 1991, \$5.25 million was added to the PSF principal from the sale of the Minnesota Educational Computing Corporation.¹⁸

The SBI invests the PSF principal to produce a high, consistent level of income for the fund within the existing legal and fiscal limits. Several legal restrictions limit the investment of the PSF principal. Any realized net capital losses must be offset against dividend income before that income can be distributed to school districts. Any net realized gain on the sale of investments must be added to the principal of the fund. Net interest and dividend earning are distributed in the year in which they are earned.¹⁹

Prior to fiscal year 1998, the PSF principal had been invested entirely in fixed income securities. This asset allocation maximized current income from the PSF but limited the long term growth. During the 1997 legislative session, estimates of current income from the PSF were reduced to allow for the approximately 50 percent of PSF investments to be shifted to equities. At the end of FY 2000, the asset mix of the PSF was 52.1 percent in domestic stocks, 46.4 percent in domestic bonds and 1.5 percent in cash.²⁰

¹⁴Minnesota Constitution Article XI, Section 8.

¹⁵Data from the State Board of Investment.

¹⁶M.S. 127A.32.

¹⁷Figures are estimates based on the March 1983, Permanent School Fund Management Report.

¹⁸See 1989 Laws, Chapter 202, Section 3.

¹⁹M.S. 11A.16.

²⁰Letter from Howard Bicker to the Permanent School Fund Advisory Committee dated September 21, 2000.

Investment Earnings are Distributed to School Districts

The interest earned by the investment of the PSF principal is distributed each year to school districts. This distribution is made on a per pupil unit basis as part of the general education formula allowance as part of state aid payments in September and March.²¹ Because these funds are part of the general education formula, they, in effect, reduce the amount of state general fund money needed to fund that formula. Amounts distributed in recent school years are shown below:²²

Table 4: Distributions to
School Districts

| | |
|-----------|--------------|
| 1988-89 | \$30,916,000 |
| 1989-90 | 32,967,000 |
| 1990-91 | 31,179,000 |
| 1991-92 | 34,382,000 |
| 1992-93 | 31,918,000 |
| 1993-94 | 33,772,000 |
| 1994-95 | 35,730,000 |
| 1995-96 | 31,190,000 |
| 1996-97 | 30,603,000 |
| 1997-98 | 23,392,000 |
| 1998-99 | 19,513,000 |
| 1999-2000 | 20,860,000 |
| 2000-01 | 22,240,000 |

A Process Exists for Ongoing Review of PSF Issues

The Legislative Audit Commission, in a report issued in 1981, pointed out a number of areas where management of the PSF could be improved. In response to this the 1982 K-12 Education Finance Bill established the Permanent School Fund Advisory Committee.²³ This committee, made up of the chairs of the House and Senate Education Committees, the chairs of the House Ways and Means and Senate Finance Committees, the Commissioner of Children, Families, and Learning and two school superintendents, has met periodically since the summer of 1982 to review DNR management policies for PSF land and SBI management of the PSF principal. The PSF Advisory Committee is also designated, by state law, as the temporary trustee for PSF land that is involved in a land exchange.²⁴

For more information contact Peter Skwira at 651-296-4281 or Peter.Skwira@house.leg.state.mn.us
or Bill Marx, Chief Fiscal Analyst, at 651-296-7176 or Bill.Marx@house.leg.state.mn.us.

²¹M.S. 127A.33.

²²Information from the Department of Children, Families, and Learning and consolidated fund statements issued by the Department of Finance. These numbers show the amounts paid in September and March of a particular school year (fiscal year). The payments are the investment earnings accrued at those times. The State Board of Investment would report a different number for the actual earnings in the July 1 - June 30 fiscal year.

²³M.S. 127A.30.

²⁴M.S. 94.342, subdivision 5.

Examples of Competing Interests

- I. **Loggers/Forest Industry** – have taken the position that they would prefer an exchange rather than a sale/condemnation. They are concerned that timber is available to supply the industry and meet consumer needs. The industry also supplies jobs. They are more likely to argue that the Trust would benefit best from a perpetual income stream generated by using resources located on land received through exchange. Such income could then be invested to generate more income.
- II. **Wilderness Advocates** – Some individuals and groups have taken the position that a condemnation/purchase by the federal government would be preferable. They want federal lands outside the BWCAW to remain federal in order to buffer the Wilderness. Some have expressed the belief that the Trust would benefit best from investment of the income generated by the sale/condemnation of Trust Lands.
- III. **Others** – some individuals and groups prefer that no action be taken, while others prefer that a multitude of options be used, including: condemnation, exchange, leases, and new user fees.

*Paul FVI
BWSW Study*

DEPARTMENT: Natural Resources

STATE OF MINNESOTA

Office Memorandum

DATE : February 20, 2002

TO : Kathy Lewis
Transaction Manager

FROM : Ross P. Cass *Ross P. Cass*
Regional Operations

PHONE: 218-327-4420

SUBJECT: Delinquent Lease No. 144-015-0237
G.L. 2 Sec. 16-63-9W
U.S. Forest Service

In 1962, the Department of Conservation and U.S. Department of Agriculture entered into a 30 year State Forest Lease Agreement. The agreement allowed the U.S Forest Service to gather fire data, and develop and maintain a campground. There was no charge for the lease. The site is located on Lake One and has become one of the major entrance points into the BWCAW.

In 1992, we contacted the Forest Service and then prepared a lease that was assigned lease number 144-015-0237. The lease has never been signed or returned and no payments have been made. They have since indicated on several occasions that no payments will be made until the Department resumes the BWCA campground maintenance payments that were discontinued several years ago.

It does not appear this situation will be resolved quickly. Long term, a land exchange may be the best alternative. Therefore I believe the best course of action is as follows: The ongoing use should be considered and handled as an encroachment on state land. The situation should be documented and tracked via an UNAUTHORIZED USE OF STATE LAND report. The information in the lease file should be attached to the UNAUTHORIZED USE report for background and future reference. Tracking this as an encroachment will allow the lease file to be closed thus eliminating the problems associated with trying to keep track of an old delinquent lease. The Area Forest Supervisor in Tower supports this approach and has submitted an UNAUTHORIZED USE OF STATE LAND REPORT.

Based on the above I am requesting the file for lease # 144-015-0237 be closed.

Cc: Mike Magnuson
Joe Rokala
Jean Matthew
Marty Vadis

REPORT OF UNAUTHORIZED USE OF STATE LAND

REPORTED BY: MIKE MAGNUSON

DATE: 1-22-02

PHONE: 218 753 4500 DISCIPLINE/AREA/DISTRICT: FORESTRY - TOWER AREA

LOCATION OR LEGAL DESCRIPTION: _____

PART OF GOV'T LOT 2 - SEC 16 - Twp 063N - Rg 9W
(8 ACRES)

SECTION 16 TOWNSHIP 063N RANGE 9W COUNTY LAKE

IS SURVEY NEEDED TO VERIFY BOUNDARY LOCATION? Yes _____ No X

ARE THERE IMPROVEMENTS INVOLVED? Yes X No _____

IF YES, DESCRIBE: PUBLIC CANOE LAUNCHING SITE INCLUDING
LARGE BACK-TOP PARKING AREAS AND "OUTHOUSE" RESTROOMS.

DESCRIPTION OF UNAUTHORIZED USE (Be specific): _____

A LEASE WAS DRAWN UP IN 1994 AND ISSUED TO
THE USFS. THE USFS HAS REFUSED TO MAKE ANY
PAYMENTS ON THIS LEASE SINCE IT WAS ISSUED.

THIS LAUNCH SITE IS ONE OF THE LARGEST ACCESS
POINTS TO THE BWCAW. IT IS LOCATED ON LAKE ONE
AT THE END OF THE FERNBERG ROAD (EAST OF ELY).

PLEASE SEE ATTACHED LEASE APPRAISAL + MAP.

(Draw map on reverse side)

DESCRIPTION

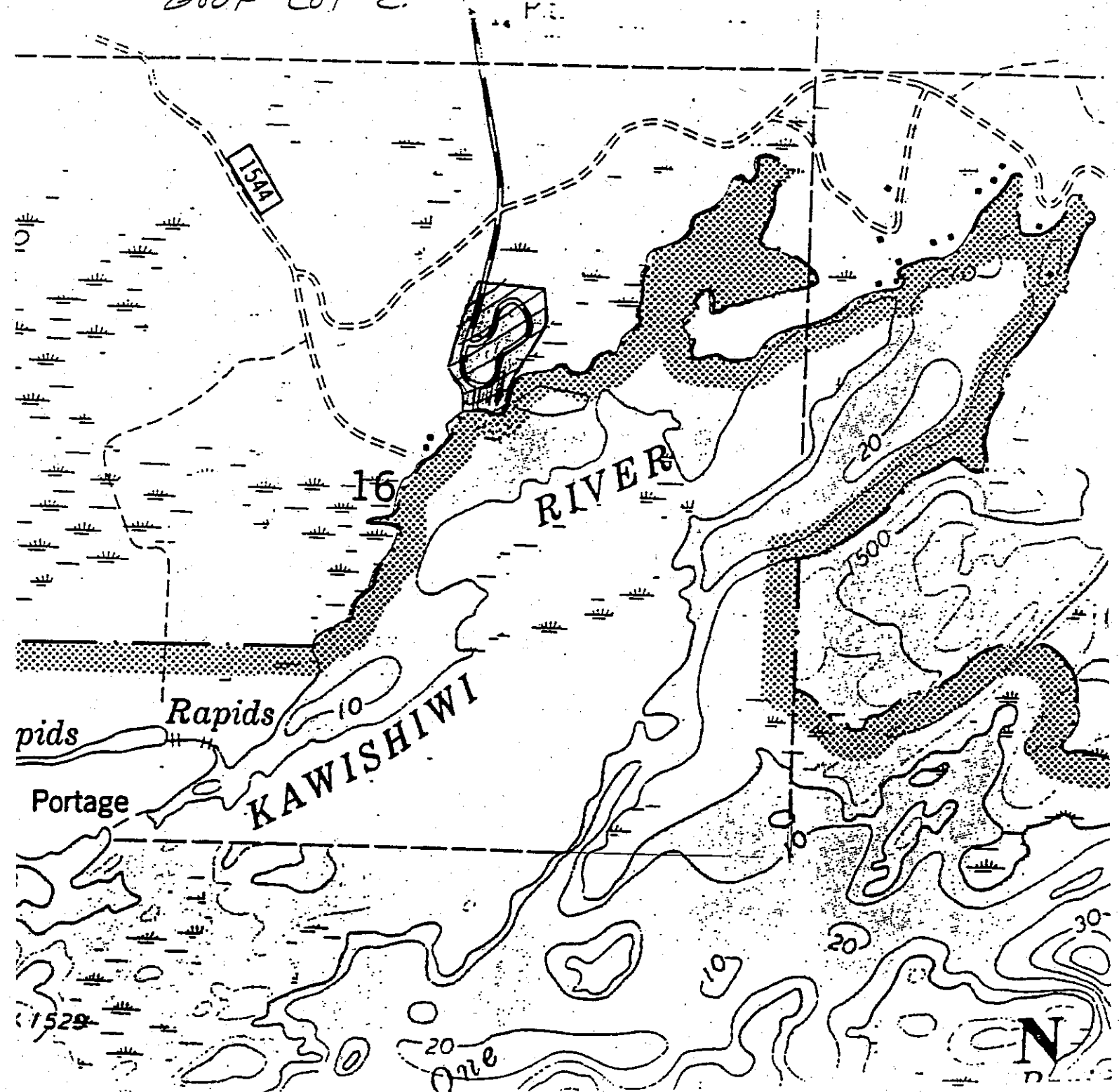
Part of Government Lot 2, Section 16, Township 63N, Range 9W, Lake County. Said parcel contains 8 acres more or less, and is approximately shown on the attached map which is made a part of this lease.

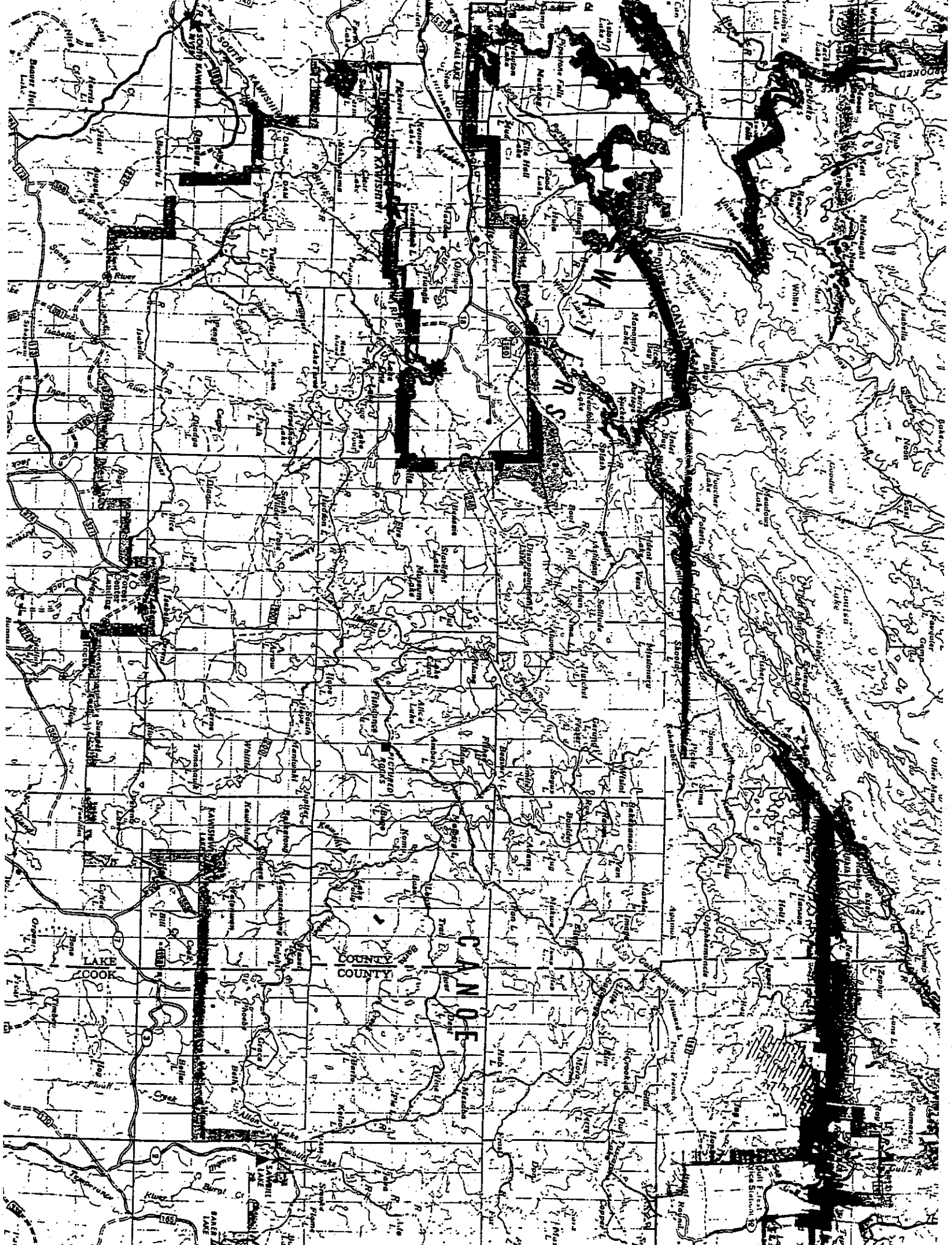
Lake One - Proposed area

≈ 8 acres

≈ 300' shoreline

For land exchange we may be interested in all of
about Lot 2.





144-15-237
373P
144-15-237
STATE OF MINNESOTA
DEPARTMENT OF CONSERVATION
DIVISION OF FORESTRY

STATE FOREST LEASE AGREEMENT

THIS AGREEMENT, made pursuant and subject to limitations as provided in M.S.A. sections 89.01 and 89.17 as amended by Chapter 223, Laws of 1961, by and between the State of Minnesota by the Commissioner of Conservation of said State, hereinafter called the Lessor, and the United States of America by the Secretary of the Department of Agriculture, hereinafter called the Lessee,

WITNESSETH:

THAT IT IS AGREED between the parties hereto as follows:

1. The Lessor, in consideration of good and sufficient value and the covenants and agreements hereinafter set forth, hereby grants to the Lessee the right to use for the purposes of gathering fire data for the administration and protection of forests and forest lands, and for a public campground, during the term and subject to the conditions hereinafter set forth, the property described as follows:

Government Lots Two (2) and Three (3), and the North Four Hundred (400) Feet of Government Lot Nine (9), all in Section Sixteen (16), Township Sixty-three (63) North of Range Nine (9) West of the Fourth Principal Meridian, Lake County, as shown on the attached plat which is made a part of this lease, subject to mineral reservations as provided by statute.

2. For a further consideration herein the Lessee shall permit the Lessor full use of such fire data obtained from the above location as may be of value to the State Division of Forestry.

3. The term hereof shall be from the 20th day of October, 1962, to the 19th day of October, 1992, inclusive, unless sooner terminated as hereinafter provided.

4. This lease is made subject to the following conditions:

(1). That the Lessee shall develop a campground on the leased area with campground facilities comparable in quality to facilities on other campgrounds developed by the Lessee in the Superior National Forest during the three years next preceding this lease and within two years of the date when this lease is approved by the said Commissioner.

(2). That the Lessee will maintain in a clean and orderly condition said campground at all times during the term of this lease.

(3). That the Lessee shall not cut upon the premises any timber or any trees, saplings, seedlings, or sprouts which may become timber except such as may be reasonably necessary for the purposes for which this lease is granted and in the latter event, the Lessee shall pay the Lessor for all such timber so cut.

(4). That the Lessee will keep all existing public roads, trails and portages running across said premises unobstructed and open for public use.

5. This lease shall be cancellable at the discretion of the Commissioner of Conservation of the State of Minnesota, upon thirty (30) days mailed notice directed to the Secretary of Agriculture or his successor, at Washington, D. C.,

(a) Upon failure of the Lessee to conform to the conditions set forth above in paragraph 4, clauses 1, 3 and 4;

(b) If the Lessee fails to maintain said premises as a campground as above provided for a one year period;

(c) And in the further event that upon determination by the said Commissioner that an existing national emergency may require in the public interest that the minerals in or upon the premises be mined or removed.

6. This lease may be terminated by the Lessee upon ninety (90) days written notice to the said Commissioner sent by first class mail and addressed to him at the Centennial Building, Saint Paul 1, Minnesota.

7. Provided, that at the time of termination of this lease, for whatever reason, the Lessee shall have the right to remove any improvements, structures or appurtenances placed on the land by the Lessee, for a period of 180 days from the effective date of termination, after which all remaining improvements, structures or appurtenances shall revert to the Lessor.

8. Nothing herein contained shall obligate the Lessee to the expenditure of public funds for which appropriations have not been made by the Congress.

STATE OF MINNESOTA

CLARENCE PROUT
Commissioner of Conservation

By E. L. Kautz
Director, Division of Forestry

The United States, Secretary of the
Department of Agriculture
Lessee

By L. J. Neff
Forest Supervisor

Approved by Commissioner of Conservation

By Clarence Prout

Approved by the Executive Council
of the State of Minnesota

Dated November 6, 1962

Approved as to Form and
Execution

WALTER F. RONDEL
Attorney General

Frank S. Murray
FRANK S. MURRAY
Deputy Attorney General

ACT AUTHORIZING A STATE GOVERNMENT

[Passed Feb. 26, 1857]

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the inhabitants of that portion of the Territory of Minnesota which is embraced within the following limits, to-wit: Beginning at the point in the center of the main channel of the Red River of the North, where the boundary line between the United States and the British Possessions crosses the same; thence up the main channel of said river to that of the Bois de Sioux river; thence up the main channel of said river to Lake Traverse; thence up the center of said lake to the southern extremity thereof, thence in a direct line to the head of Big Stone lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa; thence along the northern boundary of said state to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects with the St. Louis river; thence down the said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British Possessions; thence up Pigeon river and following said dividing line to the place of beginning, be and they hereby are authorized to form for themselves a constitution and state government by the name of the State of Minnesota, and to come into the Union on an equal footing with the original states, according to the Federal Constitution.

Sec. 2. *And be it further enacted,* That the State of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said state and any state or states now or hereafter to be formed or bounded by the same; and said river or waters leading into the same shall be common highways, and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.

Sec. 3. *And be it further enacted,* That on the first Monday in June next, the legal voters in each representative district then existing within the limits of the proposed state, are hereby authorized to elect two delegates for each representative to which said district shall be entitled according to the apportionment for representatives to the territorial legislature; which election for delegates shall be held and conducted, and the returns made, in all respects in conformity with the laws of said Territory regulating the election of representatives, and the delegates so elected shall assemble at the capitol of said Territory on the second Monday in July next, and first determine by a vote whether it is the wish of the people of the proposed State to be admitted into the Union at that time; and if so, shall proceed to form a constitution, and take all necessary steps for the establishment of a state government, in conformity with the Federal Constitution, subject to the approval and ratification of the people of the proposed State.

Sec. 4. *And be it further enacted,* That in the event said convention shall decide in favor of the immediate admission of the proposed State into the Union, it shall be the duty of the United States marshal for said Territory to proceed to take a census or enumeration of the inhabitants within the limits of the proposed State, under such rules and regulations as shall be prescribed by the secretary of the interior, with the view of ascertaining the number of representatives to which said State may be entitled in the Congress of the United States. And said State shall be entitled to one representative, and such additional representatives as the population of the State shall, according to the census, show it would be entitled to according to the present ratio of representation.

Sec. 5. *And be it further enacted,* That the following propositions be and the same are hereby offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States, and upon the said State of Minnesota, to-wit:

First—That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools.

Second—That seventy-two sections of land shall be set apart and reserved for the use and support of a state university, to be selected by the governor of said State, subject to the approval of the commissioner at the general land office, and to be appropriated and applied in such manner as the legislature of said State may prescribe; for the purpose aforesaid, but for not other purpose.

Third—Ten entire sections of land to be selected by the governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth—That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining or as contiguous as may be to each, shall be granted to said State for its use; and the same to be selected by the governor thereof within one year after the admission of said State, and, when so selected, to be used or disposed of on such terms, conditions and regulations as the legislature shall direct; *provided*, that no salt spring or land the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State.

Fifth—That five per centum of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements as the legislature shall direct; *provided*, the foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall nonresident proprietors be taxed higher than residents.