

**Montana Audubon • Montana Conservation Voters
Montana Environmental Information Center • Friends of the Wild Swan
Montana Old Growth Project • Montana Chapter of the Sierra Club**

December 24, 2007

Governor Brian Schweitzer
Attorney General Mike McGrath
State Auditor John Morrison
Superintendent of Public Instruction Linda McCulloch
Secretary of State Brad Johnson

Dear Members of the Board of Land Commissioners:

We write to express our shared concern over the Land Board's approval of Phase II of the Three Creeks Timber sale in the Swan River State Forest at its December 17, 2007 meeting. This Land Board decision is disturbing for a number of reasons. First, we believe the Land Board has reneged on a commitment it made to have DNRC form and consult with an advisory committee prior to considering Phase II of this sale. Second, the Land Board has shown that it is unwilling to hold DNRC accountable to even the most basic procedural directions given by the Board. Third, at its December 17th meeting, Land Board members implied that somehow the public was responsible for DNRC's failure to comply with the instructions provided by the Land Board on the process that needed to be followed before Phase II could appear before the Land Board for a vote.

We believe it is the duty of the Land Board to follow its own decisions, and hold DNRC accountable to Land Board decisions. Towards that end, we specifically request that the Land Board:

- Immediately halt Phase II of the Three Creeks sale from proceeding;
- Require DNRC to form and consult with an advisory committee representing diverse interests *before* proceeding with this Phase II timber sale;
- Reaffirm its February 20, 2007 directions to DNRC staff to instruct the advisory committee to 1) review Phase I of the Three Creeks timber sale, 2) discuss DNRC's assumptions on the Three Creeks Timber sales regarding predicted impacts to water quality and wildlife; and 3) develop recommendations for Phase II of this sale.

When the Three Creeks Timber sale was first proposed, people around the state expressed concern over the insufficiency of the MEPA process, the amount of old growth habitat included in the sale, and the impact of this project on both water quality and threatened and endangered species. This concern arose because the Three Creeks area specifically, and the Swan River State Forest generally, contain some of the most biologically important forestland in Montana, providing important habitat for species like the grizzly bear, lynx, bull trout and pileated woodpecker.

Commitment to Form an Advisory Committee

During its February 20 2007 meeting, the Land Board's approval of Phase I of the Three Creeks Timber sale was preceded by a lengthy discussion of the need for DNRC to form an advisory committee to discuss the sale, its impacts on water quality and biological diversity, and the work done on Phase I. The advisory committee was then supposed to make recommendations on subsequent phases of the project. As State Auditor Morrison said when introducing the idea of the formation of an advisory committee at the February meeting:

“One of the advantages we have here is the three phases that this project over time is supposed to go through. It has been suggested to me, and it makes sense and I've talked to a couple of other Land Board members, that we have some kind of advisory group consisting of people representing the different view points in the valley that are brought together before Phase II to evaluate how Phase I has gone in these areas and have a face-to-face instead of having just an exchange of paper words so we can get that interaction going and done before Phase II comes before this Land Board. So, I'd like to ask you what you think of that and ask other Land Board members if they [are] agreeable to creating that kind of advisory committee going forward.”

During the subsequent discussion, the Land Board was clear on the process it wanted DNRC to follow prior to moving forward with Phase II. Additionally, Director Mary Sexton said that the department would be “glad” to have DNRC form an advisory committee to review Phase I and make recommendations for Phase II. DNRC staff provided assurances that since this project was to be split into three phases, concerns could be addressed in subsequent phases. Specifically, DNRC staff stated:

“This first project, as you know, is before you today, the second and third proposed timber sales would be brought forward sometime in 2008. So between now and 2008 we can meet with different folks and have the advisory committee talk about what some of the issues are and see if we can find some solutions to some of the concerns they may raise. And try to incorporate those into the development of those next two projects.”

While approving Phase I of the Three Creeks Timber sale, several Land Board members indicated that there was consensus amongst the Land Board that an advisory committee would be formed to address issues before Phase II of the sale could proceed, including Auditor Morrison:

“I am going to vote in favor of this [Phase I sale] due to our trust obligation but also with the understanding there is going to be an on-going dialogue and accountability that the way we do this is going to leave this forest better than we found it.”

And when the Governor called for the motion to adopt Phase I of the Three Creeks sale, he indicated that some evaluation of Phase I would occur prior to moving forward with subsequent phases:

“Governor Schweitzer said there has been some discussion about potentially a modified motion, we have a motion on the table. There has been a suggestion of modifying it in some way, that we're not buying the whole pizza we are taking a slice or 1/3 of the pizza at this time and looking at how it worked out, and then taking a look at how it worked out. Do we need to modify that or can we go ahead with this motion?”

To that suggestion, Attorney General McGrath said that since there was no resistance from DNRC to form the advisory committee, that it was unnecessary to modify the original motion:

“Mr. McGrath said I think we can handle the suggestions Mr. Morrison made informally. I don't sense any resistance from the department.”

Commitments Not Honored

After the above commitments were made in February, you can imagine our surprise when Phase II of the Three Creeks Timber sale appeared on the December 17, 2007 Land Board agenda. During the 10 months between the February and December Land Board meetings, DNRC staff didn't follow-through on their commitment: no advisory committee was formed, and it appears that no one at DNRC even discussed issues about these timber sales with those concerned about the sales. We were also surprised at the

December 17th meeting, when DNRC staff told the Land Board that no meaningful changes would be allowed in Phase II of this timber sale, so there was no purpose in delaying approval of Phase II in order to allow formation and input from an advisory group.

Since the DNRC staff did not follow the clear and direct process detailed by the Land Board, and the Land Board was willing to make a decision which disregarded its past directive, our organizations are concerned that promises made by both the Land Board and DNRC at the February meeting were based upon political expedience. The failure for DNRC or the Land Board to follow through with those promises calls into question the sincerity and accountability of DNRC in the future. The public has a right to expect that DNRC's staff will follow explicit instructions handed to it by the Land Board—expecting anything less makes a mockery of the commitments made by the Land Board at its meetings.

DNRC Should Follow Clear Directions Given by the Land Board Without Public Oversight

One additional issue that was discussed at the December 17th Land Board meeting was why environmental organizations had failed to make the Three Creeks Timber sale advisory group come to fruition. While we clearly should be invited to participate in an advisory committee, for a number of reasons we believe the duty to form the advisory committee belonged solely to DNRC. First, DNRC was directed to form the advisory Committee—the public was not. Assigning the task to DNRC was appropriate as it is the entity proposing the sale. In fact, DNRC clearly accepted that responsibility in February. Second, only DNRC has the ability to bring the necessary parties together to form the advisory group. And third, and perhaps most importantly, the public was not clear what timeline DNRC was following to prepare Phase II of the sale. In fact, the February 2007 minutes of the Land Board meeting indicated that the Land Board and DNRC didn't even intend to move forward with the advisory group until the end of 2007.

“Mr. Morrison said the kind of advisory group I am talking about would really sink its teeth into this after the results of Phase I started to become clear so they could make recommendations and comments to us so we could be best advised as we move into Phase II. I would imagine they wouldn't get involved until sometime later in this calendar year.” (Emphasis added.)

To this, DNRC staff replied:

“Mr. Groeschl said that would make sense. You can go along and look at what we do know as far as on-the-ground work that has been accomplished and look at what some of the monitoring commitments are, even in the EIS, associated with the riparian areas as far as the crossing being removed in each of the projects, the restoration and rehabilitation work that is going to occur, and the roads that are planned to be built in each of these projects. There are definitely things like that they can look at whether any harvest has occurred in various units.” (Emphasis added.)

Therefore, the public had no way of knowing when DNRC intended to proceed. DNRC never notified interested persons of its project timeline other than in the Environmental Impact Statement (EIS). But upon review of the EIS, the “Proposed Schedule of Activities” on page I-3 says:

“The first contract package is tentatively scheduled for presentation to the Land Board in January 2007. If the Land Board approves the timber sale, the sale may be advertised that winter. Separate contracts would be presented to the Land Board and, upon approval, the timber volume would be advertised the following spring of 2007 and the fall/winter of 2007. The harvest treatments and roadwork activities would occur for approximately 2 to 3 years after the sale is sold...” (Emphasis added.)

This description in the EIS does not clearly indicate how the phases will proceed or what the timeframe is for approval. This timeline is designed to be flexible—so environmental organizations could not have

known when the advisory committee would need to be appointed if DNRC was going to complete its work before Phase II of the sale was approved.

In Conclusion

We understand DNRC's concern that this subunit is open for a limited duration due to the impacts of harvesting on grizzly bears, however that does not eliminate their duty to protect water quality or fish and wildlife habitat—nor is it a valid reason to ignore the Land Board's request.

DNRC's accountability to the Land Board is imperative if the Land Board is to prudently manage state school trust lands and the public is to trust that the agency and the Board will follow through on prior commitments. We urge you to take action today and withdraw your approval of the Phase II Three Creeks Timber sale—and reinstruct DNRC to form and consult with the above discussed advisory committee.

Sincerely,

Anne Hedges, Program Director
Montana Environmental Information Center

Signing for:

Janet Ellis, Program Director
Montana Audubon

Theresa Keaveny, Executive Director
Montana Conservation Voters

Arlene Montgomery, Program Director
Friends of the Wild Swan

Jane Adams, President
Montana Old Growth Project

Jerry Nichols, Conservation Chair
Montana Chapter of the Sierra Club

cc: Mary Sexton, DNRC Director