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5 MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY  
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7 MONTANA BOARD OF REGENTS OF  
HIGHER EDUCATION on behalf of  
8 MONTANA STATE UNIVERSITY-  
BOZEMAN, MONTANA STATE  
9 UNIVERSITY-BILLINGS, THE UNIVERSITY  
OF MONTANA-MISSOULA, MONTANA  
10 TECH OF THE UNIVERSITY OF MONTANA  
and the UNIVERSITY OF MONTANA-  
11 WESTERN,

12 Plaintiffs,

13 vs.

14 THE DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION OF  
15 THE STATE OF MONTANA and the BOARD  
OF INVESTMENTS OF THE DEPARTMENT  
16 OF COMMERCE OF THE STATE OF  
MONTANA and the STATE OF MONTANA,  
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18 Defendants.  
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Cause No.: \_\_\_\_\_

COMPLAINT FOR  
DECLARATORY RELIEF,  
DAMAGES AND  
EQUITABLE RELIEF

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21 **Nature of the Claim**

22 1. In 1889 when Montana attained statehood, the Congress of the United States granted the  
23 new state large parcels of public land. The proceeds from several of these land grants  
24 were dedicated to the exclusive benefit of various institutions of higher education. The  
25 special nature of this income (i.e., intended exclusively for higher education) was

1 recognized in both the 1889 and 1972 state constitutions. Over the past four decades the  
 2 State Legislature has, through the enactment of five separate statutes, directed that monies  
 3 previously destined for these higher education trusts should henceforward be used to fund  
 4 various administrative functions within the two departments of state government which  
 5 are named as Defendants. This has the effect of enriching other state governments funds,  
 6 primarily the general fund, at the expense of the higher education trusts. This practice  
 7 violates federal law, the state Enabling Act, the state Constitution, and is inconsistent with  
 8 other state statutes. The Regents request that this Court protect the higher education trusts  
 9 from further diminution and declare that this practice is legally inappropriate and must  
 10 end. The Regents also request that the Court direct the State of Montana to make whole  
 11 the various higher education trusts and restore them to the condition they would have been  
 12 in had no improper assessments on, or diversions from, the trusts been made.

**Jurisdiction and Venue**

- 15 2. This Court has jurisdiction over this matter pursuant to 3-5-302 MCA, 27-8-101ff. MCA,  
 16 27-19-101ff. MCA.
- 17 3. Venue rests in this District pursuant to 25-2-125 and 126 MCA.

**Parties**

- 19 4. The Board of Regents of Higher Education is created by the Constitution and is therein  
 20 given responsibility for “the government and control of the Montana University System”  
 21 and has “full power, responsibility, and authority to supervise, coordinate, manage and  
 22 control the Montana University System.” Art. X, Sec. 9.
- 24 5. The Department of Natural Resources and Conservation is an agency of state government  
 25 created by 2-15-3301 MCA. The Department is responsible for the administration of state  
 lands, including those making up the higher education lands granted by the federal

1 government in the state Enabling Act. The Department carries out its duties of state land  
2 administration through its Trust Land Management Division pursuant to authority granted  
3 in Title 77, MCA.

4 6. The Board of Investments is an agency of state government created by 2-15-1808 MCA  
5 and pursuant to that statute it is lodged within the Department of Commerce. The Board  
6 of Investments is responsible, pursuant to 17-6-201ff. MCA, for administering the  
7 investment of state funds. Among the funds invested by the Board of Investment are the  
8 monies belonging to the higher education trusts. Art. VIII, Sec. 13.

9 7. The State of Montana is named as a general defendant because some of the relief sought  
10 cannot, as a practical matter, be secured from the two state agency defendants alone.

11 **Allegations Regarding the Creation of the Higher Education Land Grants**

12 8. The Congress of the United States on February 22, 1899 passed an act (hereinafter the  
13 Enabling Act) entitled: “An Act to provide for the division of Dakota into two states and  
14 to enable the people of North Dakota, South Dakota, Montana and Washington to form  
15 constitutions and state governments and to be admitted into the Union on an equal footing  
16 with the original states, and to make donations of public lands to such states.”

17 9. The State of Montana accepted the terms and conditions of the Enabling Act in Ordinance  
18 No. 1, Seventh Section, and in Article I of the current State Constitution.

19 10. Section 14 of the Enabling Act granted Montana 72 sections of public land, provided that  
20 “the income thereof be used exclusively for university purposes.” The state Legislature  
21 subsequently designated the university at Missoula to be the beneficiary of this grant.

22 Laws of 1893, p. 173ff, approved February 17, 1893.

23 11. Section 17 of the Enabling Act granted Montana 100,000 acres of public land “for the  
24 establishment and maintenance of a school of mines.” The state Legislature subsequently  
25

1 designated the college at Butte to be the beneficiary of this grant. Laws of 1893, p. 176ff.,  
2 approved February 17, 1893.

3 12. Section 17 of the Enabling Act granted Montana 100,000 acres of public land “for state  
4 normal schools.” The state Legislature initially designated the college at Dillon to be the  
5 beneficiary of this grant. Laws of 1893, pp. 180 and 181, Laws of 1893. Subsequently,  
6 the Legislature specified that the university system colleges at Dillon and Billings were to  
7 split the proceeds of the normal school grant evenly between them. Sec. 1, Chapter 19,  
8 Laws of 1957.

9 13. Section 17 of the Enabling Act granted Montana 50,000 acres of public land “for  
10 agricultural colleges.” Section 16 of the Enabling Act granted Montana 90,000 additional  
11 acres of public land “for the use and support of agricultural colleges . . . as provided in the  
12 acts of Congress making donations of lands for such purpose.” This latter reference was  
13 to the so-called Morrill Act passed by Congress on July 2, 1862. The state Legislature  
14 subsequently designated the college at Bozeman to be the beneficiary of both these grants.  
15 Laws of 1893, p. 171ff., approved February 16, 1893.

16 14. The higher education land grant trusts now are comprised of two elements. The first  
17 element is the land itself and the rights accompanying that land, along with the proceeds  
18 that flow directly from that land, such as timber sale revenues, grazing lease revenues and  
19 mineral and oil royalties. The second element is a permanent fund of monies made up of  
20 that portion of the proceeds from the land grants which are not either distributed to the  
21 beneficiary campuses for immediate use or taken by one of the defendants via the fees  
22 described below. The earnings and interest from the permanent funds are distributed to  
23 the beneficiary campuses except for any portion that is taken by one of the defendants via  
24 the fees described below.

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**Allegations Regarding the Assessment of Fees and Charges Against Higher Education Land Grant Proceeds**

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3 15. In 1963 the Legislature enacted what is now called a forest improvement fee. Sec. 219,  
4 Chapter 147, Laws of 1963. This fee is codified at 77-5-204(4) MCA. The fee is charged  
5 to persons harvesting timber from state lands, including lands granted by the Enabling Act  
6 exclusively for higher education purposes. The fee does not go to any University System  
7 beneficiary but is “deposited in the state special revenue fund to the credit of the  
8 Department [of Natural Resources and Conservation].”
- 9 16. In 1967 the Legislature enacted what is now called a resource development fee. Chapter  
10 295, Laws of 1967, now codified at 77-1-601ff MCA. The fee is assessed against income  
11 generated from state lands, including lands granted by the Enabling Act exclusively for  
12 higher education purposes. The fee currently is 3% of such income. The fee does not go  
13 to any University System beneficiary but instead goes to a resource development account  
14 that is expended by the Department of Natural Resources and Conservation for purposes  
15 related to the management and development of state lands.
- 16 17. In 1991 the Legislature authorized the State Board of Investments to assess a fee against  
17 the earnings of the permanent trusts made up of the accumulated proceeds from the lands  
18 granted by the Enabling Act exclusively for higher education purposes. Sec. 1, Chapter  
19 291, Laws of 1991, now codified at 17-6-201(7). The fee does not go to any University  
20 System beneficiary but instead goes to the Board of Investment to pay for the  
21 administration and accounting costs of the Board of Investments.
- 22 18. In 1993 the Legislature created a timber sale account made up of the proceeds from a  
23 newly authorized fee assessed on timber sale proceeds from certain state lands. Chapter  
24 533, Laws of 1993 now codified at 77-1-613 MCA. The University System is unable to  
25 determine whether or not this fee has ever been assessed against the proceeds derived

1 from the lands of the higher education land grants. However, the Department of Natural  
2 Resources and Conservation has stated that they have under consideration the assessing of  
3 this fee against proceeds from lands of the higher education land grants. If the  
4 Department were to make such an assessment the fee would not go to any University  
5 System beneficiary but would instead go to the Department of Natural Resources and  
6 Conservation.

7 19. In 1999 the Legislature created a trust land administration account. Chapter 122, Laws of  
8 1999, now codified at 77-1-108 and 109 and other miscellaneous sections. The fee is  
9 assessed in part against the corpus of the permanent trusts made up of the accumulated  
10 proceeds from the lands granted by the Enabling Act exclusively for higher education  
11 purposes. The fee does not go to any University System beneficiary but instead goes to  
12 the Department of Natural Resources and Conservation for administrative purposes.

13 **Allegations Relating to the Nature of the Higher Education Land Grant Trusts**

14 20. The lands granted for higher education purposes by the Enabling Act and their proceeds  
15 together make up a series of discrete trusts each of which is intended to benefit a specific  
16 campus within the Montana University System, as noted in paragraphs 10-13 above.

17 21. The state Constitution says that these land grants “shall be held in trust for the people . . .  
18 for the respective purposes for which they have been or may be granted, donated or  
19 devised.” Art. X, Sec. 11.

20 22. The state Constitution says: “The funds of the Montana university system . . . from  
21 whatever source accruing, shall forever remain inviolate and sacred to the purpose for  
22 which they were dedicated. The various funds shall be respectively invested under such  
23 regulations as may be provided by law, and shall be guaranteed by the state against loss or  
24 diversion. The interest from such invested funds, together with the rent from leased lands  
25

1 or properties, shall be devoted to the maintenance and perpetuation of the respective  
2 institutions.” Art. X, Sec. 10.

3 23. The federal Morrill Act governs the agricultural college grant created by Sec. 16 of the  
4 Enabling Act. Sec. 3 of the Morrill Act forbids any state that accepts public land under  
5 the Act to assess the costs of administration against the proceeds of such a land grant.

6 24. It is not consistent with judicially established Congressional intent to allow the proceeds  
7 from one higher education land grant to subsidize in any way any other land grant.

8 25. It is not consistent with either the state Constitution or state statute (e.g., 77-1-606 MCA)  
9 for the proceeds from one higher education land grant trust to subsidize in any way any  
10 other land grant.

11 **Allegations Regarding the Assessment of the Administrative Fees**

12 26. The Department of Natural Resources and Conservation has not assessed the fees noted in  
13 paragraphs 15, 16, 18 and 19 in such a way so that the fees relating to any one higher  
14 education trust relate exclusively to the costs of administration of that trust.

15 27. The Board of Investments has not assessed the fee noted in paragraph 17 in such a way so  
16 that the fees relating to any one higher education trust relate exclusively to the costs of  
17 administration of that trust.

18 **The Fees Violate Federal and State Law**

19 Count One

20 28. The fees assessed against the proceeds from lands granted for higher education purposes  
21 pursuant Sec. 16 of the Enabling Act violate Sec. 3 of the Morrill Act.

22 Count Two

23 29. The fees assessed against the proceeds granted for higher education purposes in Secs. 14,  
24 16 and 17 of the Enabling Act violate Art. X, Secs. 10 and 11 of the Montana  
25 Constitution.

Count Three

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2 30. Even if it were legally allowable to assess fees against the proceeds from the higher  
3 education land grants, the failure of the Defendants to allocate the fees in a manner that  
4 corresponds to the costs of administration associated with each individual trust fund or  
5 land grant is violative of both federal law and state law in that such intermingling of fees  
6 and costs from various trusts and grants inevitably results in some improper burdening or  
7 subsidization of one or another of the trusts and grants.  
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**Prayer for Relief**

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10 **Therefore,** Plaintiff Board of Regents of Higher Education requests the Court to grant the  
11 following relief to it and the respective campuses of the Montana University System on whose  
12 behalf it has filed this action:

13 31. An order declaring that the fees described in paragraphs 15-19 above, and any other  
14 similar fees whether currently in existence or not, are legally inappropriate.

15 32. An order prohibiting the Defendants from henceforward assessing any of the fees  
16 described in paragraphs 15-19 above, or any other similar fees whether currently in  
17 existence or not, against the proceeds of the higher education land grants described in  
18 paragraphs 10-13 above, or any other similar higher education trust fund including the  
19 permanent funds referred to in paragraph 14 above.

20 33. An order directing that the Defendants deposit in or restore to each appropriate higher  
21 education permanent trust fund all fees that have ever been assessed against, deducted  
22 from or otherwise diverted from the proceeds of the higher education land grants or trust  
23 funds, plus an amount equal to the statutory rate of interest calculated from the time the  
24 fee was assessed or collected until the date of restoration to the appropriate fund.

25 34. Any further relief the Court deems just, fair or equitable.



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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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LeRoy H. Schramm  
Counsel for Plaintiffs