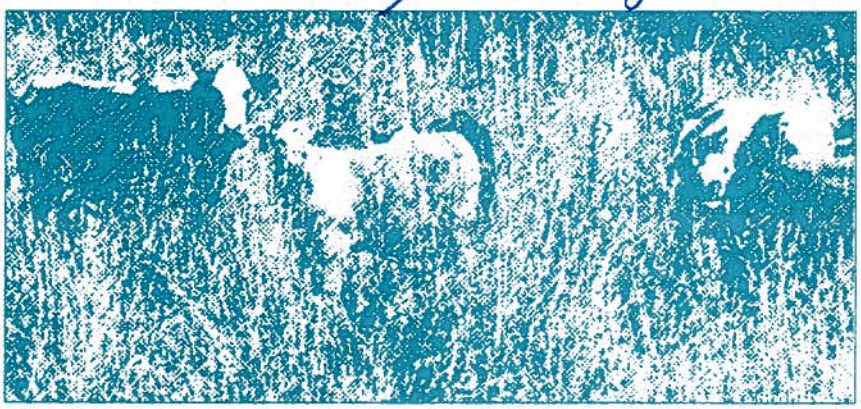
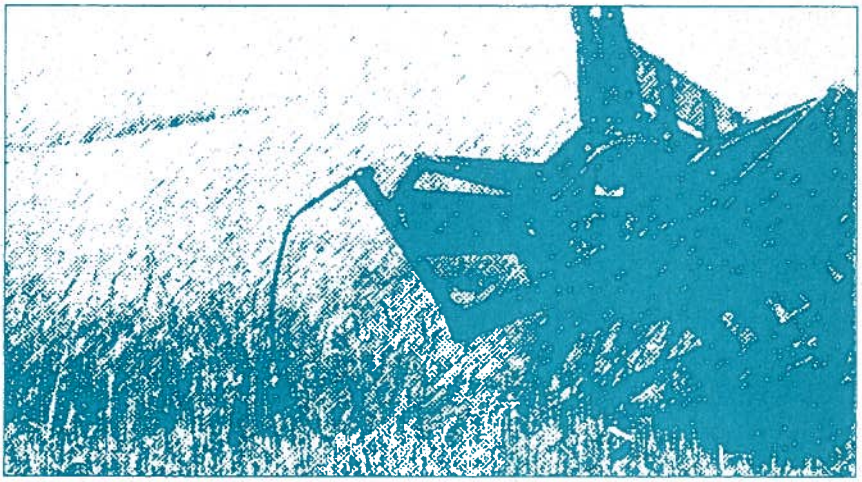
Clay Sprague

Final

Agricultural and Grazing Lands Program

Policy Plan





WASHINGTON STATE DEPARTMENT OF
Natural Resources

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Acknowledgements-Committee Members

Unless noted otherwise, individuals listed below work for the Department of Natural Resources.

Goals and Definitions Committee

Harold Beeman
Dave Bortz
Rick Cooper
Jerry Otto
Lysle Parsons
Buzz Strickland, Washington Cattlemen's Association
Dick Wedin

Management of the Land Base Committee

Don Alexander, Washington Department of Agriculture
Norbert Bochsler
Clay Brown
Bill Harder, Washington Cattlemen's Association
Don Huston
Howard Isaacson
Charlie McKinney, Washington State University
Bill Schwerin, Washington Association of Wheatgrowers
Neil Smith

Asset Management Strategy Committee

Harold Beeman
Brent Heinemann, Washington Department of Agriculture
Rod Hilden
Don Huston
Don Pless
Jerry Richardson, Washington Wool Growers Association
Bill Scott
Gayle Willett, Washington State University

Lease Marketing and Management Committee

Bruce Allen, Washington State Horticultural Association
Phil Aust
Dick Coon, Washington Cattlemen's Association
Lloyd Henry, Washington State Grange
Herb Hinman, Washington State University
Bruce Mackey
Bert Moon
Dick Olsen
Lysle Parsons

Sale of Valuable Material and Leasing For Other Land Uses Committee

Gale Allen
Bill Boyum
Judi Brunner
Bonnie Bunning
Mary Burke, Washington Cattlemen's Association
Ron Teissere

Forest Land Grazing Committee

Lloyd Burbery
Al Hedin
Charlie Judd, Washington Cattlemen's Association
Jerry Kammenga
Neil Kayser, Washington Cattlemen's Association
Ted Klein
Jim Tiedeman, Washington State University

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Public Use Committee

Tom Brannon, Washington State University
Larry Charlton
Nelson Cordell, Sr., Washington Cattlemen's Association
John Edwards
Dave Kiehle
Bert Moon
Chuck Perry, Washington Department of Wildlife

Relationship to Government and Other Entities Committee

Dick Dunton
Ron King
Lanny Quackenbush
Bob Rose
Dick Wedin
Glenn Yeary

Resource Protection Committee

Wes Culp
Jeff Graham, USDA, Soil Conservation Service
Jack Hulsey
Don McClure, Washington State Grange
Don Palmer
Chuck Perry, Washington Department of Wildlife
Ben Roche', Washington State University
Mark Sheehan

Water Rights and Management Committee

Tom Buchholtz
Bill Gray, U.S. Bureau of Reclamation
Don Huston
Howard Isaacson
Harold Jenkins, Washington State Grange
Tom Musser
Howard Powell, Washington Department of Ecology
Paul Silver

Cooperative Research and Personnel Development Committee

Wes Culp
Kit Metlen
Dennis Oldenstadt, Washington State University
Lysle Parsons
Walt Wruble

Legal Context Committee

Lysle Parsons
Paul Silver
Ken Solt
Dick Wedin

Project Coordinator	**Dick Wedin**
Consultant	**Bill Swain**

Publication Team:

Designer	**Jane Grobins**
Editors	**Carol Lind**
	Camille Blanchette
Printer	**State Printer**

Table of Contents

	Page
Acknowledgements	Inside front cover
Preface	iii
Introduction to Trust Land Management	3
Summary: Agricultural and Grazing Lands Goal, Objectives and Policies	11
Part I: Department of Natural Resources Responsibilities and Legal Framework	19
Enabling Act	19
Board of Natural Resources	19
Common Law	20
User Responsibility	20
Significant Court Cases	20
Significant Legislation	22
Trust Accounting	23
Source of Department Operating Funds	23
Legal Authority to Lease	25
Legal Authority to Sell, Purchase or Exchange	25
Taxes and Assessments	25
Part II: Goal and Objectives	29
Part III: Policy Explanations	33
Management Policies	33
Trust Asset Management	33
Management of the Land Base	33
Land Use Conversion	34
Capital Investments by the Department	34
Capital Investments by Others	34
Rent Determination	35
Product Marketing	35
Federal Farm Programs	36
Weed and Pest Control	36
Water Rights	36
Water Adjudication	37
Water Resource Development	37
Leasing for Other Uses	37
Applied Research	38
Public Access and Use	38
Easements	39
Road Use	39

	Page
Lease Management	41
Lease Marketing	41
Awarding a Lease	41
Lease Covenants	42
Lessee Management	42
Lease Adjustments	42
Lease Compliance	43
Lease Assignment	43
Subleasing	43
Woodland Grazing	44
Timber Production and Grazing	44
Grazing Systems	44
Grazing Management Planning	45
Environmental Review and Resource Protection	46
Environmental Review	46
Soil Management	46
Vegetation Management	46
Water Resource Management	47
Riparian Zones	47
Endangered, Threatened and Sensitive Species	47
Archaeological and Cultural Resources	48
External Relations and Staff Development	49
Relationship to Agencies, Public and Industry	49
Cooperative Research	49
Information Exchange	49
Staff Development	50
Glossary	51
Bibliography	59

Tables

1 Federal Land Grants: Remaining Acreage by Trust as of June 1988	4
2 Trust Agricultural and Grazing Lands: Leases/Permits, Acreage, Revenue (Fiscal Year 1988)	6
3 Flow of Revenue by Trust	24

Figures

1 Department of Natural Resources Table of Organization	7
2 Department Administrative Unit Boundaries	8
3 Riparian Zone	51

Preface

In 1893 the Washington State Land Commission issued its first recorded agricultural and grazing lease. Since then, trust land management has evolved under various managing authorities with differing management policies.

Today the Department of Natural Resources (department) manages 1.1 million acres for agricultural and grazing use. Because this responsibility has become increasingly complex, a public review process was conducted by the department to analyze policy and produce a plan for future land management.

To develop an Agricultural and Grazing Lands Program policy, the department organized 11 teams comprising department staff, personnel from other state and federal agencies, faculty members from Washington State University and representatives from the agriculture industry. Each team developed alternate policy proposals for a specific issue area previously identified by department staff, state and local government officials, and the public (see inside front cover for issue areas, team members and affiliations). This document presents those alternatives preferred by an executive review team that included the Commissioner of Public Lands and top managers from the department.

A draft Agricultural and Grazing Lands Program Policy Plan was published on August 5, 1988. Over 2,000 copies were distributed to commodity organizations, interest groups, county commissioners and planners, other state and federal agencies, and to department agricultural and grazing lessees. In September, the department conducted seven public meetings around the state to receive public comments/suggestions and answer questions concerning the draft policy plan. Comments received were synthesized with the draft to produce this final policy plan.

A brief "Introduction" (p. 3) and an overview of "Department Responsibilities and Legal Framework" (p. 19) provide a background for readers unfamiliar with agricultural history and trust land management in Washington. "Goal and Objectives" are presented on p. 29. The "Summary" section begins on p. 11.

The "Policy Explanations" section (p. 33) forms the core of this document. Here each policy is briefly clarified. Although the policy statements are presented individually, they are intended to support department goal and objectives. Further, they are in many ways interdependent, so implementing any one policy requires an understanding of the other policies. Readers should also recognize that the Agricultural and Grazing Lands Program is interdependent with other department programs.

The "Glossary" (p. 53) defines terms that may be unfamiliar or used in a special manner.

Introduction to Trust Land Management

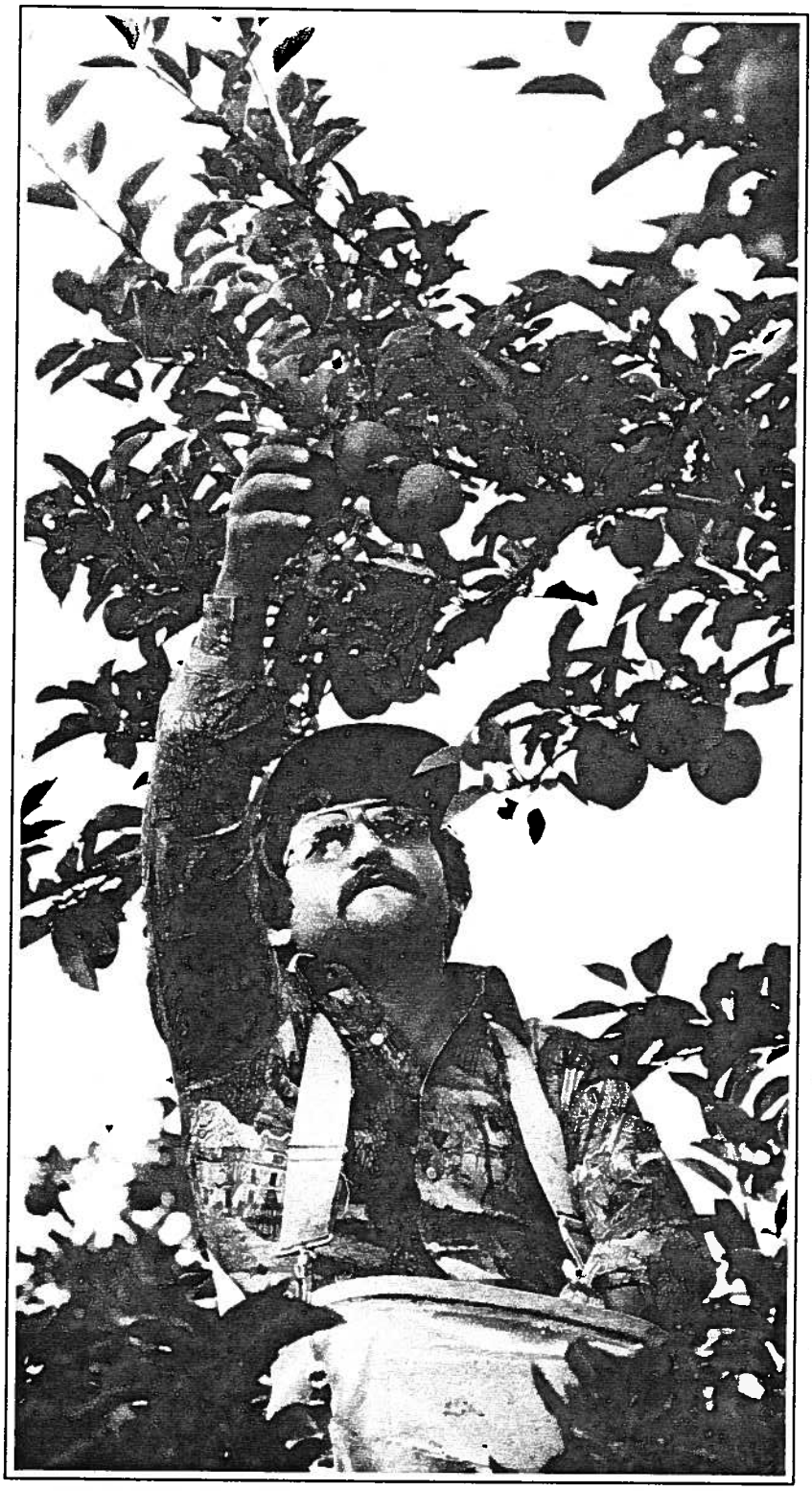


Photo courtesy *Daily Record,* Ellensburg

Introduction to Trust Land Management

The Department of Natural Resources (department) manages five million acres acquired from the federal government through the Congressional Enabling Act of 1889, from counties, or from individuals through gift, purchase and escheat. While two million acres of aquatic land provide public benefits for all citizens of the state, three million acres of uplands generate income for various trust beneficiaries.

Of these three million acres, 1.1 million support a diversity of crop and livestock production that encompasses the entire agriculture industry. The department manages agricultural and grazing lands primarily through leasing. In 1987, almost 3,000 leases earned more than $4 million for distribution to the trust beneficiaries and management funds. The magnitude of trust land acreage, the diversity of agricultural and grazing operations and the scope of management responsibilities make the department the largest agricultural land manager in the state. Management policies for trust agricultural and grazing lands have evolved from a complex history.

To supply its trading posts, the Hudson's Bay Company established the first sizable farming operation in the Pacific Northwest by developing several thousand acres on the north bank of the Columbia River between 1824 and 1835. In 1833 it pioneered farming in what became Thurston and Pierce Counties, and later in Lewis County. When Great Britain and the United States established the 49th parallel as the U.S.-Canadian border in 1846, the Company moved to Canada. However, many of its managers and farmhands stayed behind and divided the farmland.

Concerned with the problem of firmly establishing United States supremacy in newly acquired territory, the United States Congress passed land laws that allowed the federal government to grant lands to encourage settlement, to develop transportation systems and to support state institutions. The Oregon Donation Law of 1850 resulted in much of the land along the Columbia River west of the Cascades and in the Puget Sound Valley being transferred to private ownership.

Congress established Washington as a territory on March 2, 1853, and immediately transferred almost 10 million acres to the Northern Pacific, the Great Northern and the Union Pacific railroads to encourage the development of heavy rail transportation. The railroads benefited stockmen by providing access to markets for Washington livestock and were also responsible for a substantial increase in cropland agriculture. With millions of acres of land to sell, railroad real estate agents recruited farmers from the American Midwest as well as from Europe.

East of the Cascades the cattle industry blossomed, stimulated by gold strikes in the late 1850s in Canada, Idaho and Montana. The mines were major markets for livestock from 1859 to 1869, and the numbers of cattle and sheep operations increased dramatically.

The 1862 Homestead Act stimulated agricultural settlement through the transfer of thousands of acres of federal land between 1863 and 1910. Stockmen used this free land act to claim available water holes and gain control of the surrounding grazing land, particularly in the arid regions of the state. The act also accelerated fencing and plowing the most productive grazing sites on both sides of the Cascades. Additional acreages were transferred through the Desert Land Act of 1887 and the stock grazing Homestead Act of 1916.

On November 11, 1889, Congress admitted the Territory of Washington as the forty-second state in the Union. The 1890 census reported 18,056 farms that produced commodities with an estimated $13.7 million farm value. With statehood came grants of federal lands for the development and support of state institutions. Common school grants included sections 16 and 36 in each township, which if already occupied were substituted by unoccupied sections. Additional grants were made for other beneficiaries, and a total of 3,044,471 acres was transferred to the state in original grants. Today Washington has 42.6 million acres with about 2.3 million acres held in trust for designated beneficiaries (Table 1), which the department manages along with two million acres of aquatic lands, 600,000 acres of forest board lands and other miscellaneous holdings.

The Enabling Act which admitted Washington to the Union gave the state the option of selling, leasing or managing trust lands. Washington State's first legislative session in 1889 established the State Land Commission to supervise and control public uplands and aquatic lands and created the School Land Commission to supervise selling and leasing school lands.

Early settlers found it more economical to acquire land through federal homestead acts than to purchase trust lands; thus, more agricultural and grazing lands were leased than were sold. In retrospect, this benefited the trusts because the income from leasing lands historically has been higher than the interest income from the permanent funds where money from the sale of land is deposited.

Table 1. Federal Land Grants: Remaining Acreage by Trust as of June 1988

Trust	Acreage
Common School	1,798,158
Capitol grant	107,963
University transfer (U. of W.)	84,210
Scientific school (W.S.U.)	80,164
Charitable, educational, penal and reformatory institutions	72,334
Agricultural school (W.S.U.)	70,187
Normal school (regional universitites)	64,400
Original university	1,995

Washington orchard

The State Land Commission issued its first recorded lease to J.F. Dotson for 320 acres in Lincoln County on August 20, 1893. (From 1889 to 1893 the counties leased trust lands for agriculture and grazing.) Later that year the two commissions (that is, the State Land Commission and the School Land Commission) were combined into the State Board of Land Commissioners. The leasing of trust land for agricultural and grazing uses continued as settlers filed claims on adjoining federal land.

By 1910, 445,000 acres were under lease, providing a total revenue of $135,000. Slightly more than half the land was used for grazing. Trust land leases, acreage and revenue increased until 1938 when the effects of the Great Depression caused acreage devoted to agriculture to decrease.

During this time of rapid change, the state legislature passed laws that would long affect the management of trust lands. The State Board of Forest Commissioners had been formed in 1905 to supervise protection of forest land, and its powers were expanded in 1911 to include forest policy and management. A complete revision of land administration came in 1921. Duties of the Board of Forest Commissioners and the State Forester were vested in the new Department of Conservation and Development and its Division of Forestry. The Commissioner of Public Lands assumed most of the duties of the Board of State Land Commissioners. Also in 1921, the state legislature allowed the inclusion of trust lands into irrigation and reclamation districts, which promoted trust land irrigation. In 1923 grazing legislation was passed that established the current permit range system.

In 1949 new state legislation gave the State Land Commissioner the authority to lease agricultural lands on a share crop basis (since the inception of the State Land Office in 1889, leases had been issued on a straight annual cash rental). Unwilling to plunge into a program that had not been proven, the State Land Department (during the 1950-52 biennium) converted 41 expiring leases to sharecrop leases that covered 13,776 acres. These leases demonstrated a 300 percent increase in revenue, and sharecropping became "an established procedure in the state land office." During the next four years 482 leases representing 123,000 acres were converted to sharecrop.

During the postwar period farmers, encouraged by new agricultural technology and a promising economy, began to cultivate sagebrush range land to produce wheat. Expansive wheat farming continued until the mid-50s when the United States government introduced federal allotments to control the amount of land that could be planted to wheat. There was a reduction in acreage and for the next 30 years the number of dryland sharecrop leases and acreage remained fairly constant.

The State Timber Resources Board, established in 1945, had attempted to consolidate state trust land management into one agency, but it was rejected by referendum in 1946. Then, in 1951, a committee on state government organization recommended a sweeping reorganization of public land management. A bill introduced in 1953 failed to gain support, but the committee successfully re-argued its conviction that a single forest and land management agency be created. In 1957 the legislature established the Department of Natural Resources to administer state trust and aquatic lands. Table 2 presents the scope of the department's trust agricultural and grazing lands management responsibility.

Table 2. Trust Agricultural and Grazing Lands: Leases/Permits, Acreage, Revenue (Fiscal Year 88)

Use	Acres	No. of Leases/ Permits	Revenue by Use
Grazing permits	283,654	98	$ 74,780
Grazing leases	711,004	1,700	507,340
Dryland agriculture	9,509	294	170,982
Irrigated agriculture	33,720	213	1,249,328
Sharecrop	130,022	488	2,689,260
Total	1,167,909	2,793	$4,691,690

The department also manages agricultural and grazing lands for other state agencies on a contractual basis. For example, the department manages agricultural land for the Department of Social and Health Services at Eastern Washington State Hospital and for the Department of Veterans Affairs' Old Soldiers Home near Orting. Contracted lands are managed in the same manner as trust lands.

Today Washington agriculture is a $7.5-billion industry that contributes over $936 million to state exports. Approximately 38,000 farms account for 16 million acres under cultivation. Over the years wheat has been the primary production crop. Nationally, Washington is first in apples, sweet cherries, hops, lentils, spearmint oil, dry edible peas, red raspberries, Concord grapes and carrot processing. It is second in fall potatoes, pears, apricots, peppermint oil and asparagus. Washington is among the top 10 states in the production of 25 commodities and is the third most important state in fruit production. It is second nationally in diversity of agricultural products.

Because the department is responsible for maintaining the value of trust lands, it is sensitive to technological advancement in the agricultural industry and to fluctuations in the farm economy. The department actively participates with industry, interest groups and individuals to ensure a viable agricultural industry in Washington.

Figure 1 outlines the operating structure of the department. Generally, the divisions create research and development programs while the department's regional offices carry out the programs in the field. The Divisions of Aquatic Lands and Real Estate, however, develop and carry out programs without major direction to the regional offices. Department administrative unit boundaries are shown in Figure 2.

Figure 1. Department of Natural Resources Table of Organization

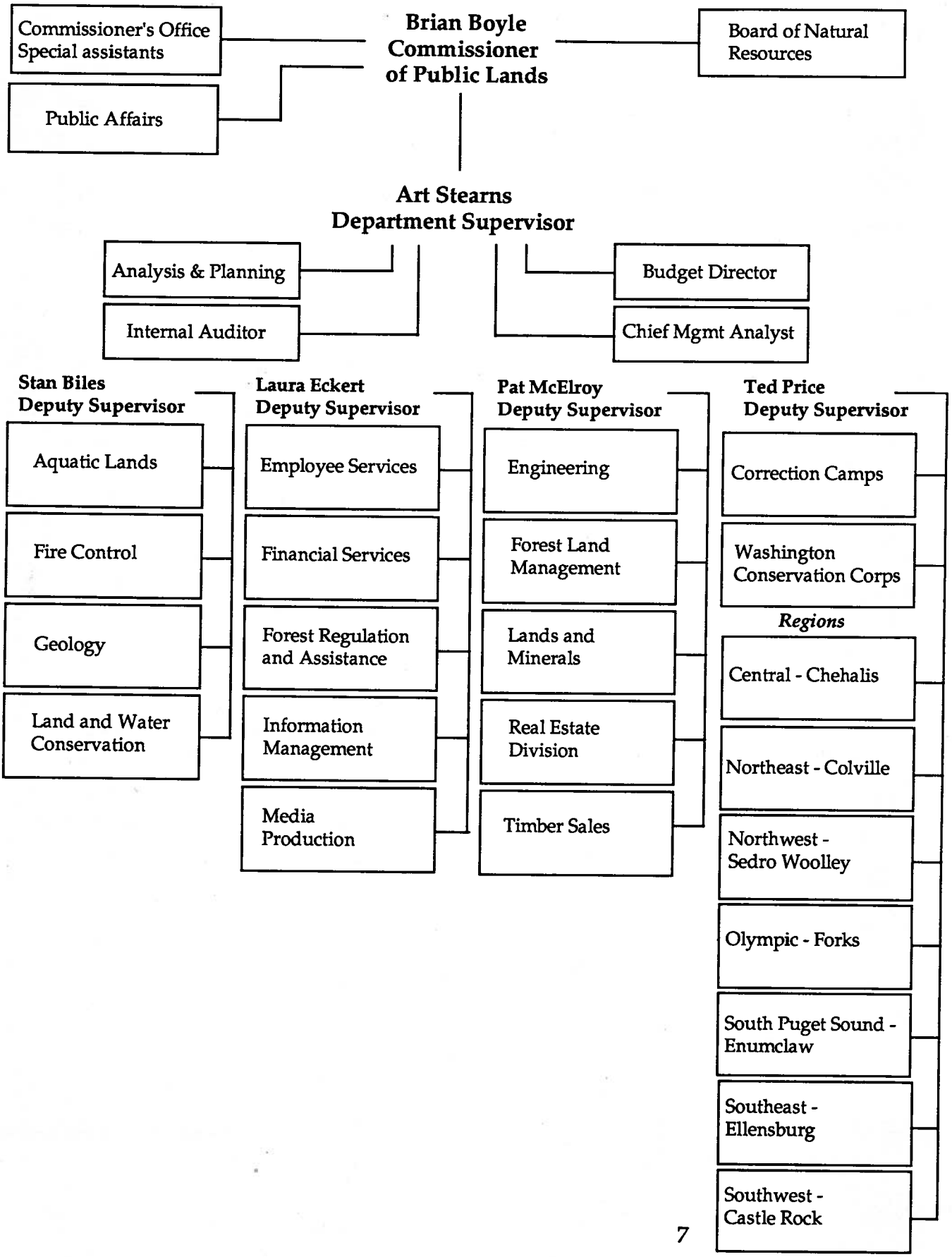
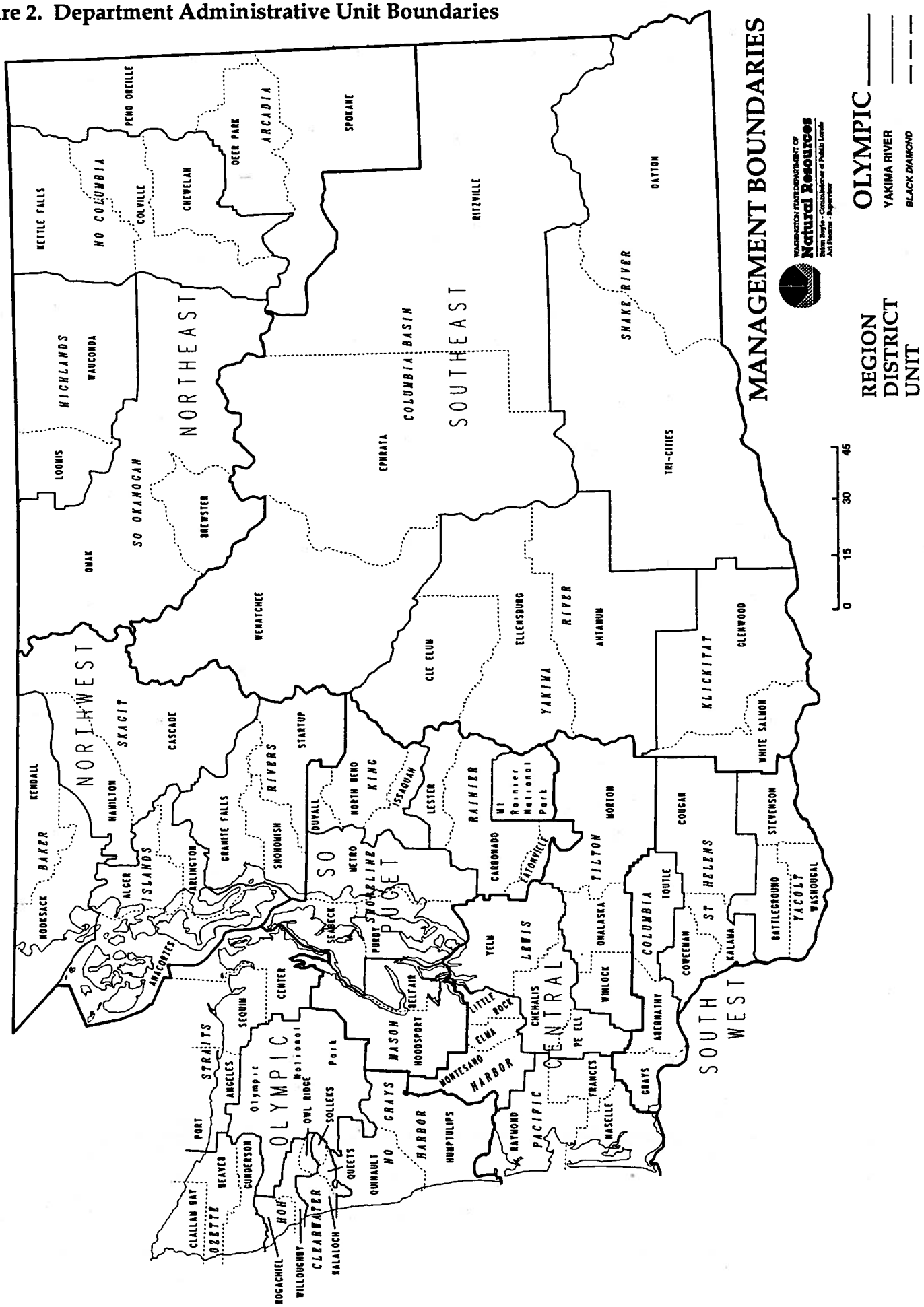
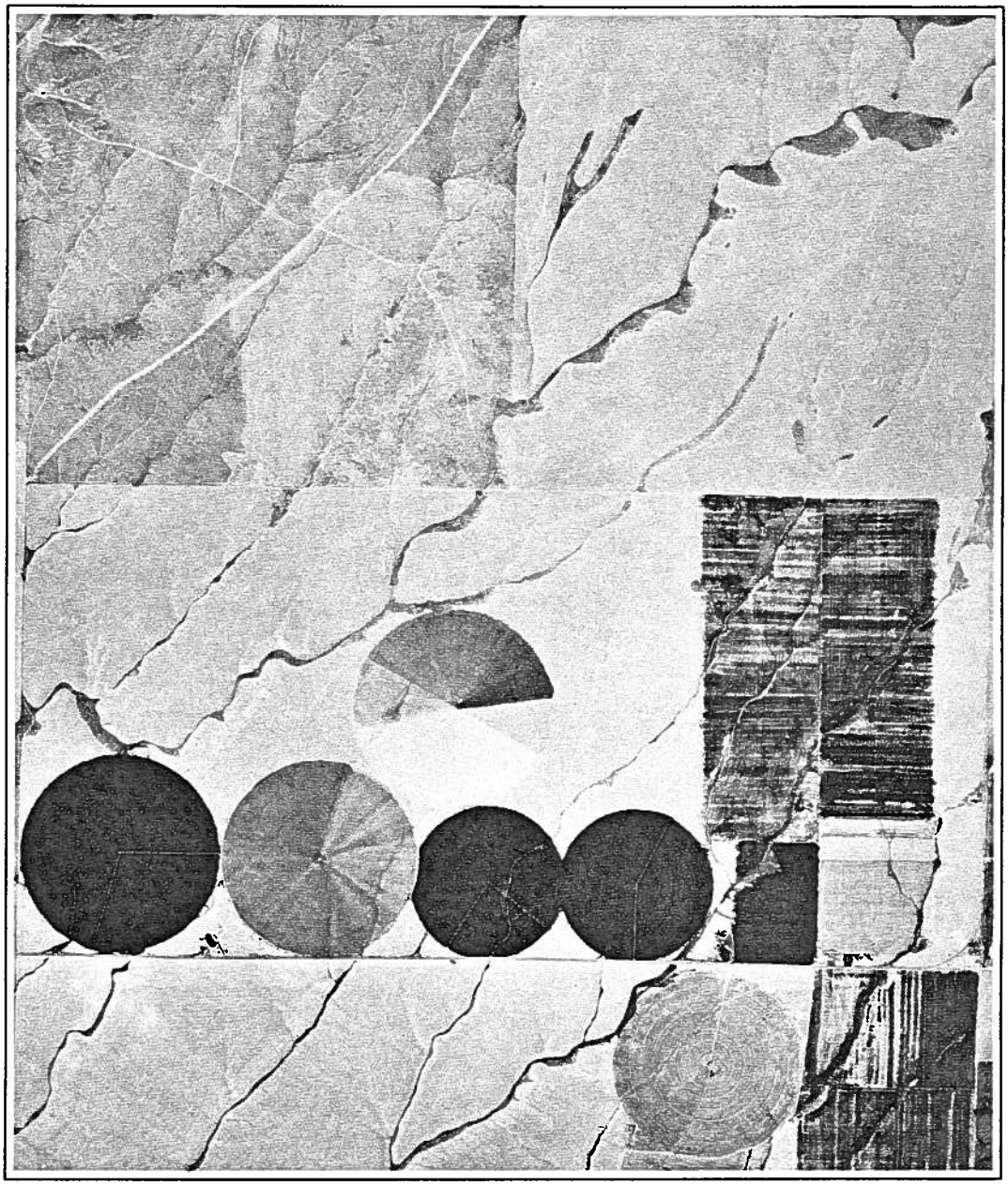


Figure 2. Department Administrative Unit Boundaries



Summary: Agricultural and Grazing Lands Goal, Objectives and Policies



Irrigated farmland, aerial photo

Summary: Agricultural and Grazing Lands Goal, Objectives and Policies

Goal

- ❑ Conserve and manage Washington's trust agricultural and grazing lands to enhance the financial performance of trust assets in perpetuity.

Objectives

- ❑ Optimize income from land assets to meet short- and long-term needs of trust beneficiaries consistent with acceptable risk and good management practices.
- ❑ Provide for environmental protection through site-specific application of current technology and comply with environmental laws.
- ❑ Maintain and improve the soil and forage resource on a site-specific basis to enhance continuous productivity.
- ❑ Cooperate with government entities and comply with applicable laws.
- ❑ Promote good external relationships with lessees and others.
- ❑ Open lands for public access when feasible.

Management Policies

Trust Asset Management (Complete text on pp. 33 - 40.)

Management of the Land Base

- ❑ Manage lands through leasing or other means to balance both short- and long-term incomes, and to optimize asset values and opportunities within acceptable levels of risk that benefit the trusts .

- ❑ Alter the composition and location of the land base when the transaction benefits the trusts.

- ❑ Maintain a broad and diversified land base by acquiring lands to replace disposed properties.

Land Use Conversion

- ❑ Change the use of property to highest and best use when the capitalized value of expected net lease revenues and asset values are substantially greater than those of the current use.

Capital Investments by the Department

- ❑ Make capital investments on agricultural and grazing lands to enhance the income and asset value when such investments meet acceptable financial and risk criteria.

Capital Investments by Others

- ❑ Authorize capital investments on agricultural and grazing lands when in the best interest of the trust beneficiaries.

Rent Determination

- ❑ Secure the best rental arrangements and fair market rentals for agricultural and grazing leases.

Product Marketing

- ❑ Market products through the best means available to achieve the highest net return consistent with acceptable risk.

Federal Farm Programs

- ❑ Participate in federal farm programs when in the best interest of the trust beneficiaries.

Weed and Pest Control

- ❑ Actively participate with public and private sectors in developing and implementing pest and weed management programs that are compatible with department goals.

Water Rights

- ❑ Acquire and maintain water rights for department-managed lands that benefit from such rights.

Water Adjudication

❑ Actively participate in water adjudications that affect department-managed lands, and maintain and preserve records and evidence of water use.

Water Resource Development

❑ Establish efficient uses of land and water and develop water resources when in the best interest of the trust beneficiaries.

Leasing for Other Uses

❑ Sell valuable materials from and lease, permit or contract agricultural and grazing lands for other surface and subsurface uses when in the best interest of the trust beneficiaries. In such cases:

- Existing agricultural lessees will be compensated by subsequent users for loss when crops or authorized improvements are damaged, when the lease is terminated, or lease renewal negotiation is denied.

- Existing grazing lessees will be compensated by subsequent users for loss when authorized improvements are damaged, when the lease is terminated, or lease renewal negotiation is denied.

Applied Research

❑ Develop options for timely implementation of management techniques that are based on current research.

Public Access and Use

❑ Open agricultural and grazing lands for public use if there is legal public access and those public uses do not conflict with current and intended uses.

Easements

❑ Grant and acquire easements when in the best interest of the trust beneficiaries.

Road Use

❑ Close roads or otherwise limit vehicle use across agricultural and grazing lands where necessary to protect the interest of the trust beneficiaries and/or leaseholder.

Lease Management (Complete text on pp. 41 - 43.)

Lease Marketing

❑ Offer agricultural and grazing lands for lease in a manner that is cost-effective, provides public notice and opportunity to acquire, and results in awarding the lease to those who will optimize the long-term return to the trust beneficiaries and enhance the productivity of the resource base.

- Offer unleased lands at public auction.
- Advertise and consider new bids before negotiating with an existing lessee prior to lease expiration.

Awarding a Lease

❑ Award leases to bidders who submit proposals that protect the resource and enhance the financial performance of trust assets over time.

Lease Covenants

❑ Design leases to protect the interests of the trust beneficiaries in accordance with Agricultural and Grazing Lands Program policy.

Lessee Management

❑ Require lessees to manage in a manner that (1) maintains or improves the resource base, (2) optimizes income to meet short- and long-term needs of the trust beneficiaries, (3) complies with applicable laws, and (4) provides environmental protection.

Lease Adjustments

❑ May change the terms and conditions of a lease at lessee request or concurrence without establishing precedent, when in the best interest of the trust beneficiaries.

Lease Compliance

❑ Work with lessees to ensure compliance with the terms and conditions of the lease.

Lease Assignment

❑ May assign leases only upon approval of the department.

Subleasing

❑ May sublease only upon department approval.

Eastern Washington cornfield (Photo courtesy *Daily Record*, Ellensburg)

Woodland Grazing (Complete text on pp. 44 - 45.)

Timber Production and Grazing

- ❑ Integrate forage and timber management to provide the most favorable short- and long-term economic return to the trust beneficiaries.

Grazing Systems

- ❑ Employ a cost-effective, flexible woodland grazing management system to provide sustained optimum resource production and protection.

Grazing Management Planning

- ❑ Coordinate grazing and forestry use in forest land management planning and communicate planned activities with affected parties.

Environmental Review and Resource Protection (Complete text on pp. 46 - 48.)

Environmental Review

- ❑ Comply with the State Environmental Policy Act (SEPA) by managing activities on trust agricultural and grazing lands through a phased review process.

Soil Management

- ❑ Actively maintain or enhance soil productivity and quality on agricultural and grazing lands.

Vegetation Management

- ❑ Maintain and enhance desirable vegetative communities on trust lands used for crop production, grazing and wildlife habitat when compatible with agricultural and grazing program goals.

Water Resource Management

- ❑ Maintain or enhance the quality and longevity of water resources originating from, flowing through, or applied on department-managed lands.

Riparian Zones

- ❑ Recognize the natural resource values of riparian zones and implement management plans to maintain or enhance these zones.

Endangered, Threatened and Sensitive Species

- ❑ Avoid effects on plant and animal species considered endangered. Within trust management obligations the department will avoid adverse effects on species considered threatened and consider avoiding or lessening effects on species considered sensitive.

Archaeological and Cultural Resources

- ❑ Within trust management obligations, protect significant archaeological and cultural resources on agricultural and grazing lands.

External Relations and Staff Development (Complete text on pp. 49 - 50.)

Relationship to Agencies, Public and Industry

- ❑ Actively promote and maintain long-term relationships with public and private organizations that affect the agricultural and grazing program.

Cooperative Research

- ❑ Support cooperative research and development of agricultural and grazing practices that can potentially benefit the trusts.

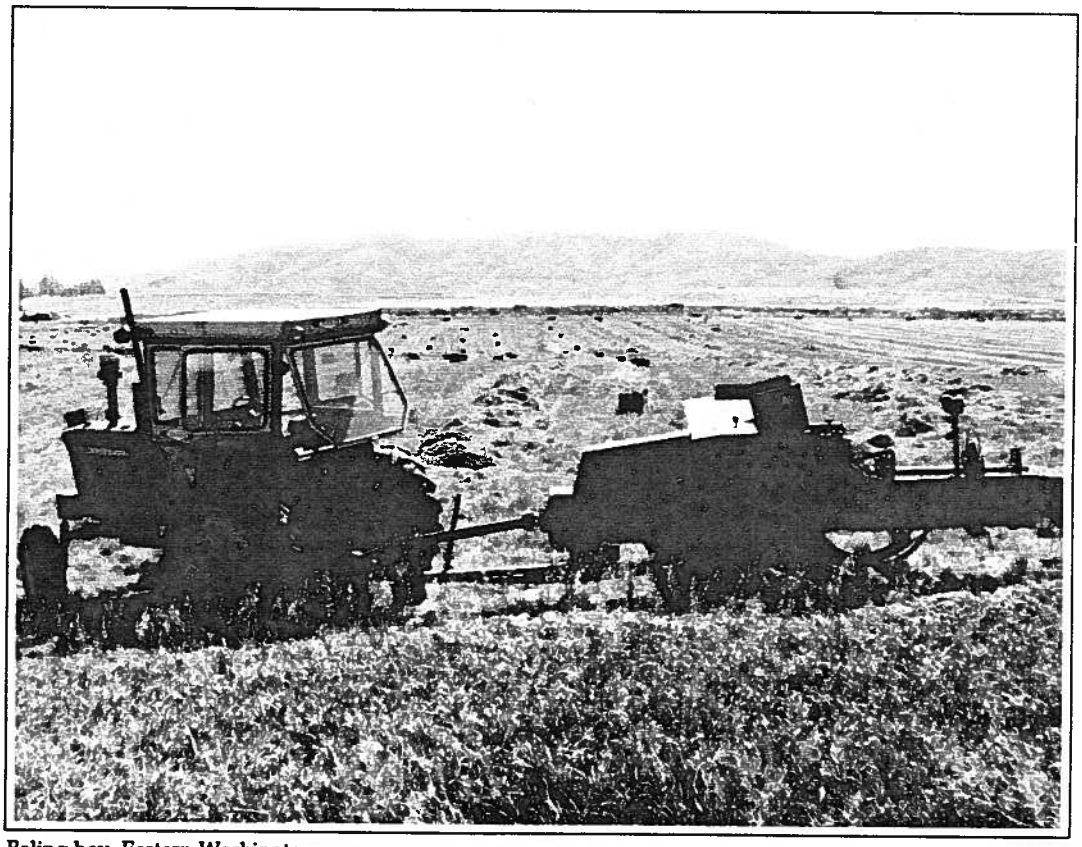
Information Exchange

- ❑ Develop and maintain a flexible and timely information exchange among staff, lessees, educational and research institutions, and other parties of interest.

Staff Development

- ❑ Support development of staff in current agricultural and grazing lands management practices.

Part I.
Department of Natural Resources Responsibilities and Legal Framework



Baling hay, Eastern Washington

Department of Natural Resources Responsibilities and Legal Framework

Enabling Act

The Congressional Enabling Act of 1889 admitted Washington to the Union and established federal land grant trusts by endowing land to the state to be sold or managed to support designated beneficiaries in perpetuity. These donated lands were expressly reserved for:

- Support of common schools
- Construction of public buildings for legislative, executive and judicial use
- Use and support of an agricultural college (Washington State University)
- Use and support of a state university (University of Washington)
- Use and support of a scientific school (Washington State University)
- Use and support of state normal schools (now regional universities)
- Use and support of state charitable, educational, penal and reformatory institutions

The Enabling Act and Washington State Constitution create an expressed trust, and the Washington Legislature has designated the Department of Natural Resources as manager and trustee while retaining authority to pass laws governing trust management.

Board of Natural Resources

The Board of Natural Resources establishes policies and regulations to ensure that the acquisition, management and disposition of all land and resources within the department's jurisdiction are based on principles designed to achieve effective development and use for the trusts' beneficiaries (RCW 43.30.150).

The board is comprised of the Governor; the Commissioner of Public Lands; the Superintendent of Public Instruction; the Dean of the College of Agriculture, Washington State University; the Dean of the College of Forestry, University of Washington; and a county commissioner who represents Washington counties having Forest Board lands.

The Commissioner of Public Lands has broad authority to issue and administer leases and permits through the Department of Natural Resources. The board prescribes the application fees for such documents.

Common Law

In addition to state constitutional and statutory mandates, the department as trust manager has responsibilities under traditional trust doctrines. Five particular duties are essential to efficient trust management. The department accepts (1) its duty as trustee to follow the state constitution, Enabling Act and laws which affect state land management programs. The courts clearly recognize both (2) the duty to administer the trust in the interest of the beneficiaries and not for the benefit of others and (3) the duty to use reasonable care and skill to preserve the trust property. Implicit in various case rulings is (4) a duty to use reasonable care and skill to make trust property productive of income without unduly favoring present beneficiaries over future beneficiaries. Although it has not been specifically addressed by the courts, the department appreciates (5) its duty to diversify the management of federal land grant trust assets to reduce risk of loss. The concept of "in the best interests of the trusts" (used throughout this policy plan) includes, but is not limited to, these five core elements.

The department is primarily concerned with generating income for trust beneficiaries, but will manage prudently, take precautions to preserve trust assets for future beneficiaries and conform with the Enabling Act, the Washington State Constitution and other relevant legislation.

User Responsibility

Users of trust lands must know, consider and observe all laws that are relevant to their activities on such lands. The user is responsible for compliance.

Significant Court Cases

The following federal and state cases illustrate how the courts have applied general principles to the sale, lease and management of federal grant trust lands:

In *Ervien v. United States, 251 U.S. 41 (1919)*, the United States Attorney General sued for an injunction to prevent the New Mexico Land Commissioner, trustee of New Mexico land grants, from spending trust earnings to publicize the resources and advantages of New Mexico, an unauthorized purpose. The New Mexico Land Commissioner argued that advertising was a proper administrative expense because it could increase the value of trust lands. The United States Supreme Court, however, granted the injunction, ruling that the trusts were individually created only to support public institutions specified in the Enabling Act; therefore, the trustee could not use proceeds from a specific trust to benefit the state generally, even if the trust might be indirectly benefited. Congress intended that the trustee apply trust earnings to the fund that was created to "support" the public institution designated in the Enabling Act.

In *Lassen v. Arizona, 385 U.S. 458 (1966)*, the Arizona Highway Department argued that it need not compensate the trust for use, since a highway across trust lands would enhance the value of remaining trust lands in an amount at least equal to the value of the trust lands taken. The United States Supreme Court rejected the argument and agreed with the commissioner that the department must pay the trust for the property, stating that:

> The Enabling Act unequivocally demands both that the trust receive the full value of any lands transferred from it and that any funds received be used only for the purposes of the trust. First, it requires that before the trust lands or their products are offered for sale, they must be "appraised at their true value" and that "no sale or other disposal...shall be made for a consideration less than the value so ascertained...." Second, it imposes a series of careful restrictions upon the use of trust funds. As this Court has noted, the Act contains a "specific enumeration of the purposes for which the lands were granted and the enumeration is necessarily exclusive of any other purpose." [Ervien v. United States, Supra.] The Act thus specifically forbids the use of "money or thing of value directly or indirectly derived" from trust lands for any purposes other than those for which that parcel of land was granted. It requires the creation of separate trust accounts for each of the designated beneficiaries, prohibits the transfer of funds among the accounts, and directs with great precision their administration. "Words more clearly designed . . . to create definite and specific trusts and to make them in all respects separate and independent of each other could hardly have been chosen." [*United States v. Ervien, 246 F. 277, 279*] All these restrictions in combination indicate Congress' concern both that the grants provide the most substantial support possible to the beneficiaries and that only those beneficiaries profit from the trust.

U.S. v. 111.2 Acres of Land in Ferry County, Washington, 293 F. Supp. 1042, affirmed 435 F. 2d 561 (1970), applies principles set forth in Ervien and Lassen. The United States government sought to acquire state school trust lands for a federal irrigation project. The United States argued that, as trust grantor, it was permitted to take the land without paying for it. The court disagreed, stating:

> The school lands provisions of the Enabling Act further a liberal policy of school support.... In this context the principle of indemnity requires that no land or proceeds be diverted from the school trust unless the trust receives full compensation. This principle is explicitly a part of the Washington Enabling Act.

The state court concluded that donating school trust lands to the United States would constitute a breach of trust by the trustee (the state of Washington). The court ordered the United States to pay the trust the full market value of the land.

More recently, in *County of Skamania et al. v. State of Washington, 102 Wn.2d 127 (1984),* the Washington State Supreme Court reaffirmed the responsibility of the trustee as mandated in the Enabling Act. The Forest Products Industry Recovery Act of 1982 (RCW 79.01.1331 - .1339), which permitted purchasers of timber from state trust lands to default on their contracts or to modify or extend their contracts without penalty, was found to violate Article 16, Section 1 of the Washington State Constitution. The court held that the legislation breached the state's fiduciary duty as a trustee to act with undivided loyalty to the trust beneficiaries and to manage trust assets prudently.

The Washington State Supreme Court cited the New Mexico (*Ervien)* decision with approval which held that the state, as trustee of these federally granted lands, may not use them to pursue other laudable state goals. The sole goal to be accomplished by the trustee is to benefit the designated beneficiary. *Skamania, 102 Wn. 2d at 137.*

The Washington State Supreme Court also cited the Alaska decision cited below for the proposition that federal trust lands may not be set aside as a park for recreational uses without full compensation to the trust beneficiary. *Skamania, 102 Wn. 2d at 137.*

In *State v. University of Alaska, 624 P.2d 807 (Alaska, 1981)*, Alaska sought to include university grant land within Chugach State Park. The university opposed this action and sought a declaratory judgment as to whether the land could be used other than to support the university. The Alaska Supreme Court ruled with the university, stating:

> "Because the land was to be held in trust for the university, we must determine whether inclusion of the land in Chugach State Park caused a breach of the trust. The trial court concluded that the inclusion of university land in the park violated the trust provision of the federal grant. We agree. The use that can be made of park lands as compared to state lands in general is severely restricted. Trees may not be cut, minerals may not be removed, nor can the land be used for raising farm animals. The general principle is that park lands are to be managed in a way that will increase the 'value of a recreational experience.' It is apparent that this objective is incompatible with the objective of using university land for the 'exclusive use and benefit' of the university. The implied intent of the grant was to maximize the economic return from the land for the benefit of the university. This intent cannot be accomplished if the use of the land is restricted to any significant degree."

Significant Legislation

The department complies with state and federal legislation in the management of trust lands. The following are important examples of legislation that concerns broad areas of the Agricultural and Grazing Lands Program Policy Plan:

The Multiple Use Act (RCW 79.68) directs the department to provide for simultaneous, multiple uses of trust lands whenever such uses are in the best interest of the state and the general welfare of the citizens and consistent with the provisions of the trust.

The federal Endangered Species Act (16 U.S.C. s1531, *et. seq)* with some standard exceptions, prohibits specific action relating to designated endangered and threatened species.

The State Environmental Policy Act (SEPA) (RCW 43.21C) directs that all applicable state policies, regulations and laws be administered with specific concern for protection of the environment.

The Water Code of 1917 (RCW 90.03), administered by the Department of Ecology, establishes guidelines for diversion, maintenance of minimum flows and levels, and protection of standing or flowing surface waters of the state.

Regulation of Public Ground Waters (RCW 90.44) extends the applicable statutes for surface waters to ground waters.

The Water Pollution Control Act (RCW 90.48), administered by the Department of Ecology, provides for the maintenance and protection of state water resources. Compliance with minimum standards is mandatory.

The federal Reclamation Reform Act of 1982 (43 U.S.C. s390aa) supplements and amends the federal Reclamation Act of 1902 (43 U.S.C. s371). These federal statutes and the regulations derived from them (43 CFR Part 426 *et. seq)* establish the terms and conditions under which federal reclamation project water may be supplied to arable lands.

The Hydraulics Code (RCW 75.20.100) is part of the Fisheries Code, which states that no person or government agency can use, direct, obstruct or change the natural flow of any river or stream, or use water or material from the streambed without approval from the Departments of Fisheries or Wildlife (whichever is appropriate).

The Shorelines Management Act of 1971 (RCW 90.58), administered by the Department of Ecology, establishes a state policy to plan and foster all reasonable uses of state shorelines.

Trust Accounting

Before 1966, all revenue received from state trust land was deposited into permanent funds. Only the interest received from these funds was channeled to the trust beneficiaries. In 1966 the state constitution was amended to allow the department to deposit proceeds from renewable resources (timber sales and leases) with the State Treasurer's Office for direct distribution. For example, revenue from leasing common school trust agricultural lands is distributed to the Common School Construction Fund. Proceeds from the sale of rock and other nonrenewable resources, including the sale of land, are still deposited in the permanent fund of the trust from which the income was generated (Table 3). The State Investment Board manages these permanent funds.

Source of Department Operating Funds

The Resource Management Cost Account (RCW 79.64.030) provides funds to defray the costs and expenses incurred by the department in managing public lands. The Board of Natural Resources is authorized to use up to 25 percent of the total revenue received, which is deposited in the Resource Management Cost Account. The state legislature appropriates funds from this account for the management of state lands and any excess funds are returned to the trust beneficiaries.

The Forest Development Account (RCW 76.12.110) funds activities of the department on State Forest Board Lands and reimburses expenditures from the Resource Management Cost Account used for managing State Forest Board Lands.

Table 3. Flow of Revenue by Trust

Source	Revenue: Land sales, non-renewable	Revenue: Leasing, product sales, renewable	Interest
Trust	------- Where applied ----------		
Common school	Perm. Fund [1]	CSCF [2]	CSCF
Agricultural school	Perm. Fund	Perm. Fund	Bond [3]
Scientific school	Perm. Fund	Perm. Fund	Bond
University transfer	Perm. Fund	Bond	Bond
Normal school	Perm. Fund	Perm. Fund	Bond
CEP&RI [4]	Cur. Account [5]	Cur. Account	Cur.Account
Capitol grant	Cur. Account	Cur. Account	Cur.Account

[1] Permanent fund
[2] Common School Construction Fund
[3] Bond Redemption Fund (for specific trust beneficiary)
[4] Charitable, educational, penal and reformatory institutions
[5] Current Account (current operating funds for specific trust beneficiary)

Legal Authority to Lease

State statutes and regulations, primarily in RCW 79.01, RCW 79.12, WAC 332-22, 332-100, and 332-110, provide extensive guidelines directing the department's leasing program. Guidelines addressing grazing on permit ranges can be found in RCW 79.28 and WAC 332-20.

Legal Authority to Sell, Purchase or Exchange

Before 1966, proceeds from sales of state lands were placed in the permanent funds. In 1977 and 1984, statutory changes recognized departmental need to dispose of lands that could not be managed effectively and to replace those lands to maintain the publicly-owned land base. The Land Bank (RCW 79.66) facilitates such transactions. RCW 79.01 provides further explanation of state land sales procedures and criteria.

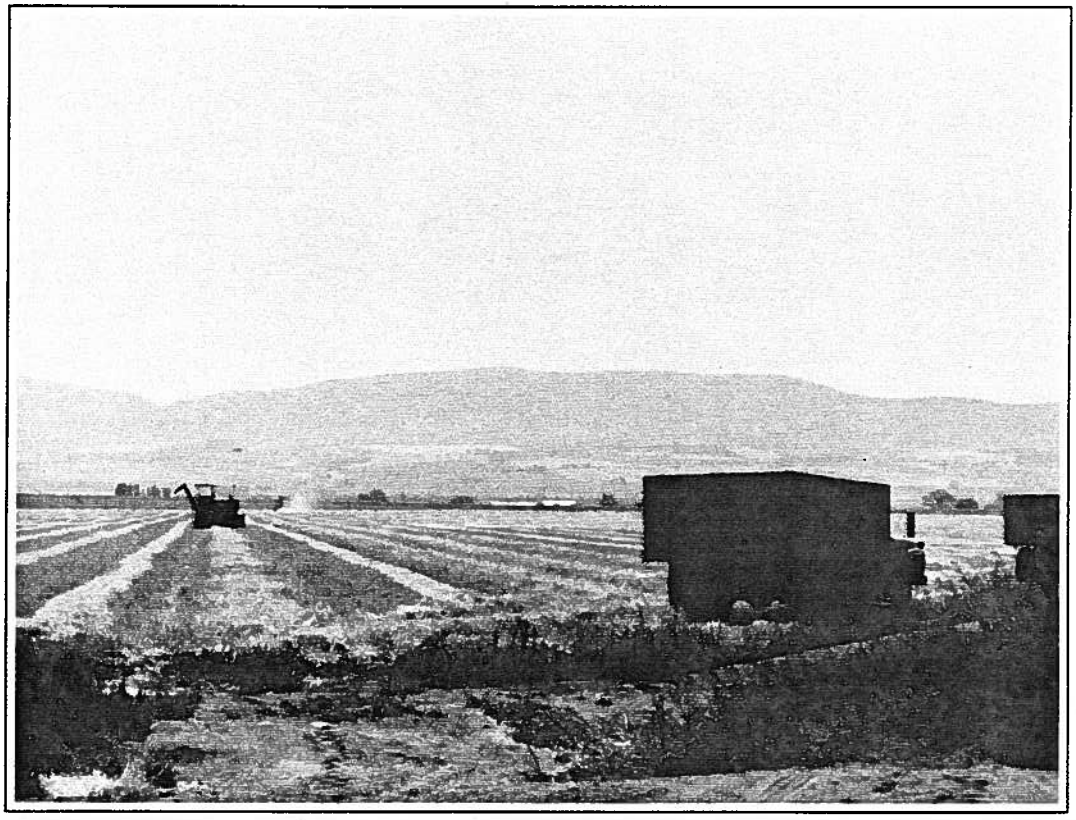
The department is authorized to purchase land for resource production (timber, agriculture, or grazing) and for income production. All purchases and sales must be approved by the Board of Natural Resources, acting as the State Board of Appraisers (RCW 43.30.150, RCW 79.66). The department may exchange state land with board approval under authority of RCW 79.08 and RCW 79.66.

Taxes and Assessments

The department requires land users to pay taxes and assessments applicable to user activities on leased property. Provisions regarding taxes and assessments include RCW 82.29A (Leasehold Excise Tax), RCW 79.44 (Assessments Against Public Lands) RCW 17.04.180 (State Lands in Weed Districts), RCW 84.40.250 (Improvements on Public Lands), and RCW 87.03.025 (State Lands in Irrigation Districts).

Evaluating tank samples (Chris Bennion photo, Washington Wine Institute)

Part II.
Goal and Objectives



Eastern Washington harvest

Goal and Objectives

Goal

The following goal guides trust managers regarding agricultural and grazing lands:

❑ Conserve and manage Washington's trust agricultural and grazing lands to enhance the financial performance of trust assets in perpetuity.

Objectives

The following objectives are essential to achieving this goal:

❑ Optimize income from land assets to meet short- and long-term needs of trust beneficiaries consistent with acceptable risk and good management practices.

❑ Provide for environmental protection through site-specific application of current technology and comply with environmental laws.

❑ Maintain and improve the soil and forage resource on a site-specific basis to enhance continuous productivity.

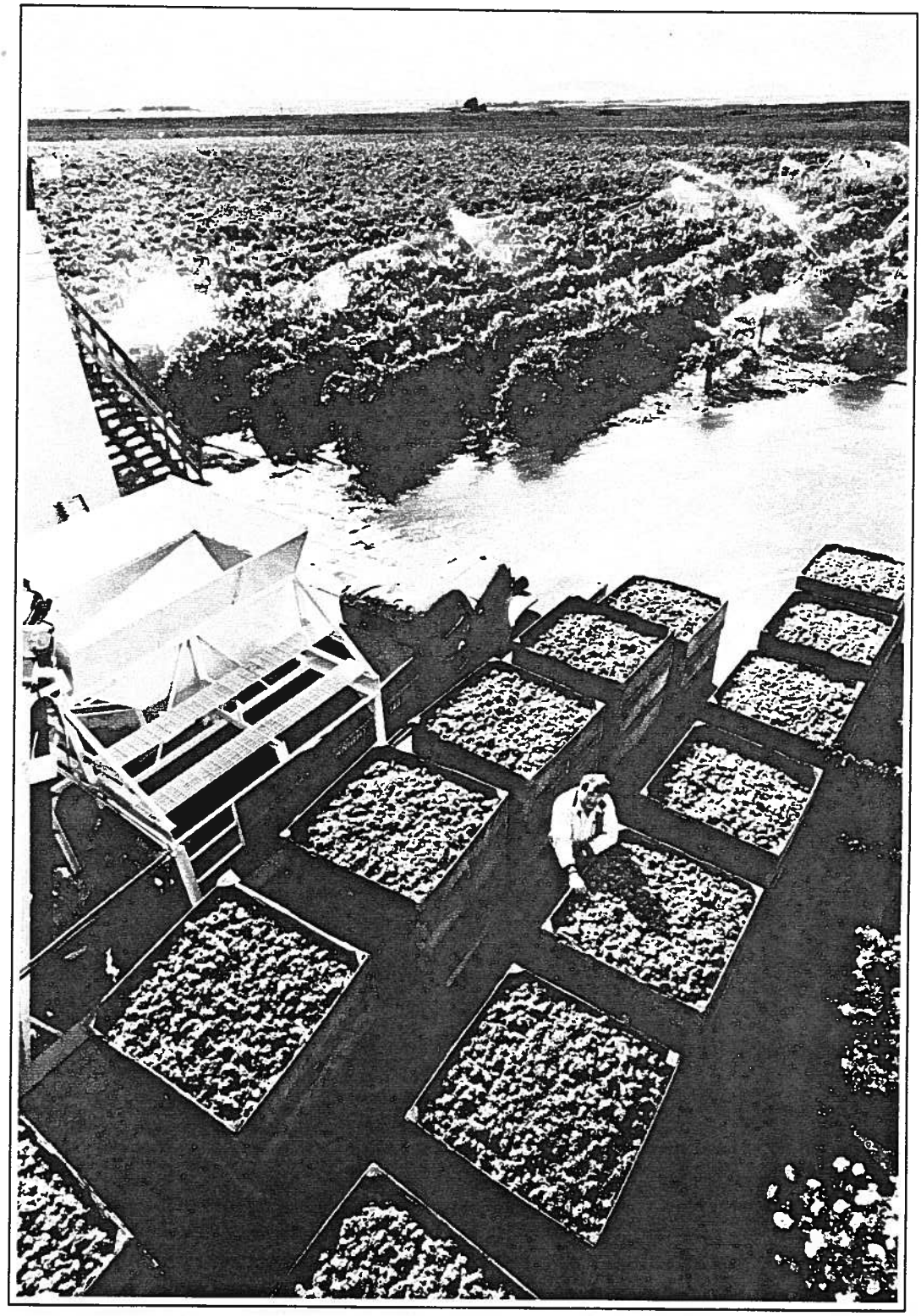
❑ Cooperate with government entities and comply with applicable laws.

❑ Promote good external relationships with lessees and others.

❑ Open lands for public access when feasible.

The Agricultural and Grazing Lands Program is only one program. The department has several programs for managing a diverse landscape across the state. The challenge in each of the programs is to find how best to meet the needs of the trust beneficiaries and the people of Washington. Like all programs, the Agricultural and Grazing Lands Program must meet this challenge. Developing clear and visionary policies is a cornerstone. Thirty-eight policies have been outlined in the following section; each is clarified with a brief explanation. While presented separately, they are in many ways interdependent. Implementing any one policy will require an understanding of the whole.

Part III.
Policy Explanations



Wine harvest in the Columbia Valley

Policy Explanations

Management Policies

Trust Asset Management

Management of the Land Base

The department will:

- **Manage lands through leasing or other means to balance both short- and long-term incomes and to optimize asset values and opportunities within acceptable levels of risk that benefit the trusts.**

- **Alter the composition and location of the land base when the transaction benefits the trusts.**

- **Maintain a broad and diversified land base by acquiring lands to replace disposed properties.**

The department must manage trust property to provide income for both present and future beneficiaries. Therefore, reasonable care must be taken not to favor present beneficiaries by permitting uses that erode the land or otherwise decrease its potential. Asset values can be increased by capital improvements and by capturing opportunities for highest and best uses. An eclectic management philosophy will allow the department to choose the best management plans from diverse sources or systems in given situations. For example, the department may allow a parcel of grazing land to be mined for gravel and, as a provision of the contract, the land would be reclaimed for agricultural use.

Trust managers must be knowledgeable about trust lands and their uses, and avoid or mitigate risk whenever possible. Trust law sets acceptable levels of risk as well as acceptable yields and limits the type of investments that trust managers are able to make. The department wants to approach risk management prudently and diffuse the impact of risk by diversifying trust assets and investments. The department wants to maintain varying kinds of assets in different industries, markets and geographic regions.

Selling, exchanging and buying land are other options to improve the value and productiveness of the trust land base (RCW 79.66.010).

Land Use Conversion

❑ **Change the use of property to highest and best use when the capitalized value of expected net lease revenues and asset values are substantially greater than those of the current use.**

Land use conversion (for example, converting grazing land to irrigated agricultural land) can increase income to the trusts; therefore, the department seeks opportunities to convert land to highest and best uses and to develop management plans that make such conversions possible. Land use conversion is contingent upon reasonable management costs and an acceptable level of risk. Keeping in mind that it is managing trust lands over time, the department will recognize and discount income potential. Converting grazing land to orchard, for example, would provide no return from the crop for several years, but an established orchard would likely provide substantially more income and increase the asset value over time. In such cases the department will analyze income loss and potential gain in current capitalized dollars.

Capital Investments by the Department

❑ **Make capital investments on agricultural and grazing lands to enhance the income and asset value when such investments meet acceptable financial and risk criteria.**

When selecting projects and determining the level of capital investment, the department must consider anticipated rates of return and associated levels of risk. The first investments normally selected will be those with high expected rates of return and low risk.

Development of agricultural and grazing lands has been successful despite wide fluctuations in product markets when each project begins with a realistic assessment of both anticipated costs and revenues. The department can make capital investment decisions according to individual case considerations, taking into consideration the possible economic benefits by analyzing the project's net present value, internal rate of return, and benefit/cost. The department prepares six-year capital project plans and updates them biennially. Ultimately, capital investments must be scrutinized by the Office of Financial Management before being submitted to the legislature for funding through the Resource Management Cost Account. The department will track the returns on capital investments.

The department's capital investments will be limited within budgeted funds to those projects that demonstrate economic feasibility and require little or no maintenance: irrigation wells, for example, require less maintenance than irrigation pumps.

Capital Investments by Others

❑ **Authorize capital investments on agricultural and grazing lands when in the best interest of the trust beneficiaries.**

Over the years, lessees have made substantial capital investments on trust agricultural and grazing lands to enhance income and management. Typical investments have included fencing, spring developments, storage facilities, orchards, irrigation systems and management residences. Lessees should note that the department does not subordinate trust land (the rights of the trust will remain superior to those of any lender); however, mortgages can be secured by the leasehold interest.

The department may authorize improvements that benefit the use for which the land is leased or that increase the value of the trust assets. All improvements on trust lands require prior written authorization; how the improvements will be made and how they will be disposed of is specified in contracts and defined by statute (RCW 79.01.092). Ownership of improvements at lease expiration typically will remain with those who placed the improvements on the land. RCW 79.01.136 and 79.01.148 mandate compensation for authorized improvements and define the means by which such improvements will be valued.

Rent Determination

❑ **Secure the best rental arrangements and fair market rentals for agricultural and grazing leases.**

RCW 79.01.242 requires that the department receive "fair market rental value." The department has the option to select from a variety of rental arrangements: (1) percentage rent (sharing in the gross receipts from the sale of contracted or pooled commodities), (2) sharecrop rent (the department receiving a share of the crop in-kind), (3) cash rent, or (4) any combination of the three. Generally, agricultural land will be leased under percentage rent or sharecrop arrangements and grazing land for cash rent.

Both percentage and sharecrop rents should be based on relative contributions of the lessee and the landlord to production. Production is, in part, a function of the lessee's capital investment, labor and managerial skill. The department will avoid paying any portion of the operating expenditures (expenditures for fertilizers, herbicides, etc.) necessary to produce a crop. In addition to the contribution approach, the department will consider soils, precipitation, location, capital improvements, transportation systems, and proximity to markets in determining fair market rental values. Rent for grazing land is based on the carrying capacity of the land per animal unit month (AUM). For winter grazing, the department increases the rent to reflect the cost the lessee saves for not having to buy hay.

Risk and expected rental amounts are interrelated. For example, the lessee paying cash rent in advance bears all the risks and uncertainties of planting, growing, harvesting and marketing the crops. Consequently, lessees discount prepaid cash rents to compensate for risk. Recognizing this, the department will share the risk associated with prices and yields by utilizing percentage and sharecrop rental arrangements. Offsetting the risk is the opportunity to capture larger revenue from agricultural lands. The magnitude of land ownership, diversity of land location and use, and the employment of staff educated in the agricultural sciences—all help reduce risk.

Product Marketing

❑ **Market products through the best means available to achieve the highest net return consistent with acceptable risk.**

Every marketing strategy has an associated risk factor. The department and its lessees will employ a variety of marketing strategies in an effort to generate optimal income. Since 1957, for example, the department has marketed its own share of cereal grains (over 500,000 bushels annually) through state licensed and bonded warehouses and elevators. This is the typical process the department employs for crops that are issued negotiable warehouse receipts (wheat, barley, dry peas and lentils, for example). In contrast, lessees

will be responsible for selling the department's share of hay. For fruits and vegetables and other perishable crops, the department's share is marketed along with the lessees through grower contracts and pools. Payments for contracted and pooled crops may be set up either as a percentage of the value of the crop at the time of delivery or sale to the packing house, or as a percentage of the value of the product packed and sold.

Federal Farm Programs

❑ **Participate in federal farm programs when in the best interest of the trust beneficiaries.**

The Agricultural Adjustment Act of 1933 and the Agricultural Marketing Agreement of 1937 originated federal farm programs and, over the years, continued to influence the various programs including the present program passed by Congress. Since that time, trust lands have been involved in farm programs in varying degrees. For example, in the 1950s the department participated in and ensured strict compliance (like all producers) to obtain marketing certificates to market its share of cereal grains. In contrast, during the mid-1970s, the federal program was voluntary and thus participation by lessees was also voluntary. The only exception was registering acreage planted with the county Agricultural Stabilization and Conservation Service office to maintain "wheat history."

The level in which the department will require compliance depends upon the individual farm program at the time and the provisions in the program—all of which will ensure that the trust and the lessee are able to receive program benefits. The department will continue to comply and will encourage its lessees to participate in farm programs when mutual benefit can be derived from such participation.

Weed and Pest Control

❑ **Actively participate with public and private sectors in developing and implementing pest and weed management programs that are compatible with department goals.**

The Noxious Weed Control law (RCW 17.10) insists upon control and emphasizes that primary control rests with landowners. Lessees are responsible for weed and pest control on leased land while the department is responsible for unleased lands. The department will participate at state, regional and local levels to meet its legal obligation to control weeds on trust lands. Recognizing that weed infestation is not bound by land ownership, the department will actively seek the cooperation of landowners, lessees and other agencies in the control of noxious weeds when in the best interest of the trust.

Pests may pose threats similar to those of weeds. There are instances when the department may undertake or assist with pest control. An example would be severe grasshopper infestations on rangeland.

Water Rights

❑ **Acquire and maintain water rights for department-managed lands that benefit from such rights.**

The department will develop and use water resources to optimize revenue from trust lands. Like a private landowner, the department works through the Department of Ecology and the Bureau of Reclamation to acquire various water rights.

Irrigation sprinkler (photo courtesy

The department complies with the Water Code of 1917 (RCW 90), which specifies that the right of an individual to use water must conform to the doctrine of appropriation (first in time shall be first in right) and to the riparian water right doctrine. Once acquired, the right becomes appurtenant to the land and is retained only through continuous use. Since the department can lose a water right through action or inaction of its lessees, lease agreements will specify compliance.

Water Adjudication

❑ **Actively participate in water adjudications that affect department-managed lands, and maintain and preserve records and evidence of water use.**

When sufficient water may not be available to meet the demands of all parties who claim existing rights, the relative rights of all users typically will be determined through a formal adjudication process (RCW 90.03). Any party with a claim to water rights, including the department, can participate in an adjudication. The department will monitor water right adjudications and take action when necessary to protect trust assets. Since evidence is important to the outcome of adjudication, the department will retain correspondence, records, inquiries, photographs and other substantiating data that could be used to support a claim on lands managed by the department.

Water Resource Development

❑ **Establish efficient uses of land and water and develop water resources when in the best interest of the trust beneficiaries.**

The department will convert arid grazing land to irrigated agricultural land, when economically sound to do so, to increase asset value and income flow to the trusts. This may range from providing a simple canal turnout to constructing a complete irrigation system. Through the Coordinated Resource Management Planning process the department, in cooperation with users and other landowners, can develop springs, ponds, etc., for the benefit of livestock as well as wildlife.

The department employs agricultural engineers who work with lessees to design and manage irrigation systems that can provide optimal conservation of water, land and energy resources. The department, for example, may encourage conversion from high pressure systems to low pressure systems to conserve water and energy if the soil composition is such that no undue erosion will occur.

Daily Record, Ellensburg)

Leasing for Other Uses

❑ **Sell valuable materials from and lease, permit or contract agricultural and grazing lands for other surface and subsurface uses when in the best interest of the trust beneficiaries. In such cases:**

- **Existing agricultural lessees will be compensated by subsequent users for loss when crops or authorized improvements are damaged, when the lease is terminated, or lease renewal negotiation is denied.**

- **Existing grazing lessees will be compensated by subsequent users for loss when authorized improvements are damaged, when the lease is terminated, or lease renewal negotiation is denied.**

The department may authorize compatible multiple uses of trust lands to maximize financial returns to the trust beneficiaries. For example, several thousand acres of woodland can support grazing as well as timber production. The department may also lease subsurface rights of agricultural and grazing lands for oil and gas exploration. If multiple uses are incompatible, the department may authorize the highest and best uses.

RCW 79.01, WAC 332.22, the lease agreement and other department contracts address the issue of compensation to the lessee should damage occur to authorized improvements owned by the lessee, should the lease be terminated, or if a lease with authorized improvements owned by the former lessee is offered at public auction.

Applied Research

❑ **Develop options for timely implementation of management techniques that are based on current research.**

Department staff strive to stay current with applied research that, when implemented by lessees, will make the land more productive. Field staff maintain direct contact with lessees. The department, in cooperation with Washington State University Cooperative Extension, is available to provide both information and assistance.

The department, through the USDA Soil Conservation Service (SCS), can provide its lessees "field-proven" methods for reducing soil erosion. Using Resource Protection Agreements (RPA), the department along with SCS staff can develop an agreement with lessees that will permit them to incorporate new methods of farming into their management practices. Examples include annual cropping, leaving more stubble residue in the field, planting cover crops and conversion to "no till" farming.

Recognizing the diversity of land uses and lessee management, the department will be flexible in its recommendations for applying new technology. Many factors, including the cost and the degree of change from current methods must be considered by the department.

Public Access and Use

❑ **Open agricultural and grazing lands for public use if there is legal public access and those public uses do not conflict with current and intended uses.**

Two types of public use usually occur on trust land: those that take place in developed facilities, such as camping or picnicking (generally located in forested areas), and those activities that occur outside developed facilities identified as dispersed public uses such as hunting and fishing.

Trust lands are open to dispersed uses although lessees may apply for written permission to post. RCW 79.01.244 authorizes the department to close trust lands because of fire hazard and to give lessees written approval to post agricultural and grazing lands to prevent damage or to avoid undue interference with a departmental or agency program.

Should a parcel of trust land not be served by a state highway, county road or an easement that authorizes public access, users will need to obtain permission from appropriate landowners to cross their property to secure legal public access.

The Multiple Use statute (RCW 79.68) establishes public recreational use as an acceptable use as long as it is compatible with basic activities that fulfill the financial obligations of trust management. The department will review potential public use and consider the following points in relation to the natural resources, leased use and land improvements:

- Time of year use will occur
- Duration of use
- Number of users at any one time
- Resource that attracts users
- Weather conditions during potential use periods
- Mobility of the user (driving or walking?)
- Type of crop on the parcel
- Management practices to take place during use period
- Type of soil found on the parcel
- Compatibility with local land use regulations
- Potential damage to improvements
- Other pertinent site specific factors

When conflicts cannot be resolved, the department will subordinate public use to leased use to protect the trust beneficiaries, lessee investments and the contract interests. Further, "public use" does not necessarily mean free public use.

Easements

❑ **Grant and acquire easements when in the best interest of the trust beneficiaries.**

For department-managed lands not served by state or county roads, the department will seek from adjacent landowners easements for access and occasionally for uses such as irrigation pipelines and powerlines. The department may acquire access through condemnation procedures (RCW 8.04.010), a process the department employs only when reasonable attempts to acquire access by other means have been exhausted. The "prudent person" approach requires that the department carefully consider the cost of acquiring access in relation to what the land will return in present and future revenue.

Conversely, the department may grant easements on trust lands with terms and conditions that will minimize impact to the land and that do not limit present or future use of the property. In these cases compensation would be based on fair market value.

RCW 79.38 provides the authority and procedures the department follows in the acquisition and permitting use of access roads.

Road Use

❑ **Close roads or otherwise limit vehicle use across agricultural and grazing lands where necessary to protect the interest of the trust beneficiaries and/or leaseholder.**

Agricultural and grazing lands are generally open to public use; however, unrestrained use of roads can disrupt the use for which the land is leased and decrease its income potential through erosion and the spread of noxious weeds. Roads crossing trust agricultural and grazing lands typically serve only the lessee, who uses them for farm-related activities. Often these roads are temporary, mineral soil-based, not maintained and neither designed nor signed to protect the user.

WAC 332.52 provides authority for the department to close roads on trust lands. However, the department closing a road need not preclude public use. For example, hunters can park their vehicles elsewhere and hunt on trust lands.

Lease Management

Lease Marketing

❑ **Offer agricultural and grazing lands for lease in a manner that is cost-effective, provides public notice and opportunity to acquire, and results in awarding the lease to those who will optimize the long-term return to the trust beneficiaries and enhance the productivity of the resource base.**

- **Offer unleased lands at public auction.**
- **Advertise and consider new bids before negotiating with an existing lessee prior to lease expiration.**

Statutes direct how the department is to lease land. Unleased lands are offered at public auction. The department advertises a pending public auction in newspapers. The ads describe the location of the property, the use authorized by the proposed lease and the bidding process. Public notices are posted in the department's Olympia office, the department's regional office that has management responsibility and the county auditors office in which the property is located. The notice details the bidding process and bidder qualifications. RCW 79.01 outlines criteria for advertising, public notice and department acceptance of bids.

RCW 79.01 (along with WAC 332-22) also details the process the department follows when an existing agricultural or grazing lease is about to expire. The department has the option of either negotiating with the existing lessee or letting the lease expire. Generally, the process for negotiating is similar to public auction; that is, public notice is given by advertising that the department is entering into negotiations and will accept, for a limited time period, other written offers. Offers will be evaluated on the managerial and financial capabilities of the proponent to protect the resource and enhance the financial performance of trust assets over time. Should another offer be acceptable to the department, the lessee has the opportunity to match it at the time of negotiation: that is, the lessee has the first right of refusal. Finally, should the department and the lessee fail to negotiate a new lease, the department may offer the lease at public auction.

Awarding a Lease

❑ **Award leases to bidders who submit proposals that protect the resource and enhance the financial performance of trust assets over time.**

Department decisions to award leases at public auction will depend heavily on potential lessee knowledge of agriculture, management capabilities and qualifications, and financial abilities to carry out intended farming operations. The department generally requires a minimum of two years successful experience or formal education germane to the use for which the land will be leased. Lease proposals will also be evaluated for impact on the resources and for long-term return to the trust.

Lease Covenants

❑ **Design leases to protect the interests of the trust beneficiaries in accordance with Agricultural and Grazing Lands Program policy.**

The department designs leases to clarify each party's rights, responsiblities, and obligations. The lease also specifies permitted uses. Department leases are "triple net," which means the lessee is responsible for all costs of land use. The department does not participate in costs such as fertilizer and herbicides; thus, the gross rental rates for trust agricultural lands may be less than private rates for similar land. Department lease agreements require the lessee to pay all assessments, taxes and other costs charged or assessed against the land or resulting from the lessees operation. Toxic or hazardous material used by lessees are to be transported, stored, applied and disposed of in accordance and compliance with federal and state laws.

Washington's Public Lands Act (RCW 79) sets the parameters for leasing agricultural and grazing lands. The maximum terms of department leases are 10 years for sharecrop and grazing leases, 25 years for agricultural leases and 55 years for orchard or vineyard leases (RCW 79.01.096). The term of a lease may be tempered either by the lessees or the department's planning horizon, or by external requirements. For example, the maximum term of a lease in a federal reclamation district is (in order to satisfy federal water law) 25 years, orchard and vineyard lands included.

Lessee Management

❑ **Require lessees to manage in a manner that (1) maintains or improves the resource base, (2) optimizes income to meet short- and long-term needs of the trust beneficiaries, (3) complies with applicable laws, and (4) provides environmental protection.**

A lease is usually the primary agreement between the department and the lessee. Over time there may be other agreements between the department and the lessee that "supplement" the lease. A Resource Protection Agreement is an example. Through lease and supplemental agreements like the RPA, the department will require its lessees to practice management strategies that support specific policies developed throughout this document.

Lease Adjustments

❑ **May change the terms and conditions of a lease at lessee request or concurrence without establishing precedent, when in the best interest of the trust beneficiaries.**

During the life of a lease, situations may arise in which both the department and lessee agree that the conditions of the lease need to be changed. RCW 79.01.096 will allow for change when in the best interest of the trust. The department will consider those situations that might result in change to be unique and will not adjust leases if adjustments convey an advantage over other lessees or interests who were not afforded the same opportunity in similar circumstances.

Lease Compliance

❑ **Work with lessees to ensure compliance with the terms and conditions of the lease.**

The department will periodically audit percentage rent and sharecrop accounts and inspect lease property. The purpose of the audit and inspection is not only to ensure that the lessee is meeting the terms and conditions of the lease but also an opportunity for both staff and lessee to review the lessee's operation. The frequency and extent of compliance review depends on (1) complexity of the lease, (2) capital investment on the property, (3) managerial skills of the lessee and, (4) revenue generated by the property. Where discrepancies arise, department field staff will advise lessees in methods to re-establish compliance. Lessees failing to comply may have their leases canceled according to default provisions in the lease.

Lease Assignment

❑ **May assign leases only on approval of the department.**

During the term of a lease, lessees may want to transfer their leasehold interests. Lessees retiring from farming might wish to pass on leased land along with deeded land to their children, or simply want to sell a farm and transfer a lease to the buyer of the deeded land. In some instances lessees may also want to create other legal interest in their leasehold, such as extending the lease as additional security to lenders when obtaining a loan.

To protect the interests of the trust, the department will require that the assignee (the person to whom the lease is being transferred) be in a position to carry out the terms and conditions of the lease. RCW 79.01.292 and WAC 332.22.120 detail the assignment process. The department will develop standards and criteria to use in determining when and under what conditions to grant lease assignments.

Subleasing

❑ **May sublease only upon department approval.**

The department may permit subleasing to increase revenues or capture other opportunities that benefit the trusts. However, the use of subleasing is an exception rather than the rule. Unlike assignments, subleasing does not convey leasehold interest in property. Thus, the department does not relieve the lessee of the responsibility to meet all terms and conditions of the lease even though the sublessee may be the primary producer.

Woodland Grazing

Timber Production and Grazing

❑ **Integrate forage and timber management to provide the most favorable short- and long-term economic return to the trust beneficiaries.**

Many Eastern Washington forest lands are open stands suitable for both grazing and timber production. These forest lands comprise over one-third of the grazing land in the state and contribute significantly to the state's timber harvest. Properly managed, grazing will benefit the trusts directly through increased forage revenues and indirectly through improved timber production by reduced shrub or understory competition as well as reduced fire hazard. Some livestock operations depend on department-managed range to complete year-round grazing. These lands can also provide habitat for wildlife that co-exist with livestock if the land is managed properly.

RCW 79.28 allows the Commissioner of Public Lands to issue grazing permits. This legislation, along with grazing rules (WAC 332-20), provides authority for grazing of trust forest lands. In contrast, rangeland and pastures are managed by provisions set forth in RCW 79.01 and WAC 332-22. Under current statute fundamental differences exist in the management of these lands. A lease conveys use and possession of property, while a preference grazing permit only conveys the use of property. In contrast to negotiating lease fees, the department sets grazing fees for preference permits by formula. Where a leaseholder has no inherent preference right to release a piece of property, a preference permit holder is given such a right.

Grazing Systems

❑ **Employ a cost-effective, flexible woodland grazing management system to provide sustained optimum resource production and protection.**

Whether grazing is authorized by permit or lease, the department will be guided by the following common objectives:

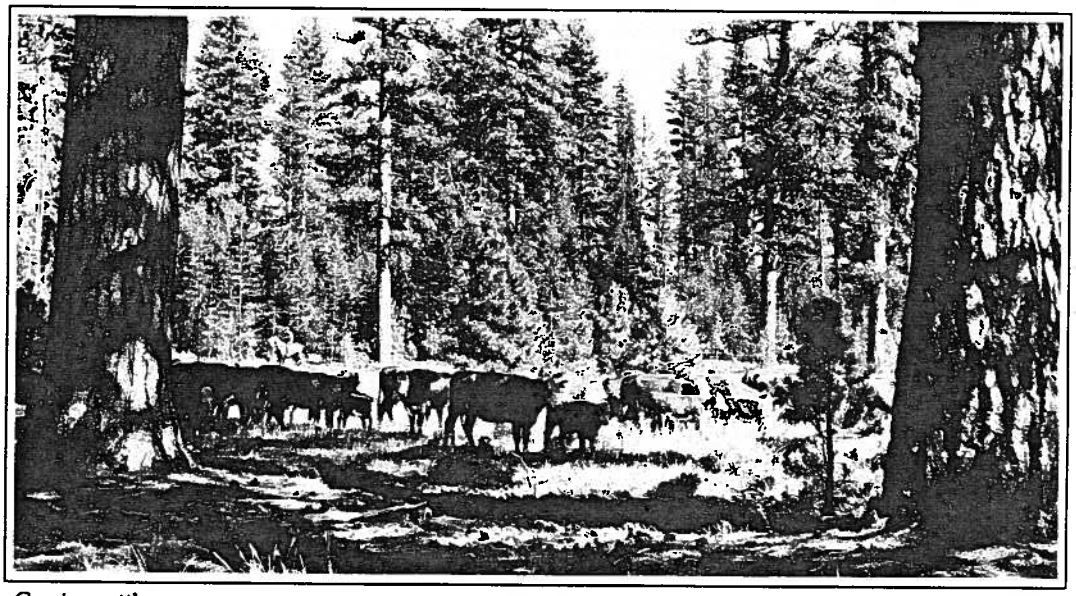
- Secure the highest return through good management practices.
- Conserve the natural resources on both state and related lands through wise use, protection and development.
- Correlate the best practical, social and economic use of state lands with adjacent lands when in the best interest of the trust beneficiaries.
- Promote a healthy livestock industry that makes use of state land.

To achieve these objectives, the department is developing a grazing management program that will allow flexibility for managers and users to balance production and protection. The department is concerned with measures to sustain range in "good" condition and to improve range in "poor" condition. Management of trust grazing lands must be efficient and also effective to ensure that operations benefit the users of the grazing resource while meeting trust obligations.

Grazing Management Planning

❑ **Coordinate grazing and forestry use in forest land management planning and communicate planned activities with affected parties.**

To meet its objectives, the department will integrate grazing and forestry production in its resource management planning efforts and involve those affected. For example, the department participates in several Coordinated Resource Management Plans (CRMP) in Eastern Washington. CRMP is a process that allows lessees, permit holders, private and other public landowners, and the department to interact in a cooperative atmosphere in developing management plans for a designated geographical area. Through CRMP, the department and other participants are able to achieve their objectives while maintaining or improving the resource base.



Grazing cattle

Environmental Review and Resource Protection

Environmental Review

❑ **Comply with the State Environmental Policy Act (SEPA) by managing activities on trust agricultural and grazing lands through a phased review process.**

The department supports a flexible, interdisciplinary approach to state environmental policy analysis and consults agencies of jurisdiction and interested parties to determine the appropriate use and protection for a particular parcel. For actions not exempt by SEPA (converting grazing land to irrigated agriculture, for example) the department will review trust land to identify potentially sensitive elements, to determine what level of protection might be needed, and to develop measures to mitigate potential problems in phases as provided for in RCW 43.21 c, WAC 197.11.060, and WAC 197.11.776.

Soil Management

❑ **Actively maintain or enhance soil productivity and quality on agricultural and grazing lands.**

Soil is the basic resource in agriculture and its loss often has cumulative effects. Erosion, for example, has numerous effects on the environment. Besides losing valuable top soil, the quality of vegetative cover often declines as does water quality in nearby streams.

The department has and will continue to take an active role in soil protection through implementation of voluntary Resource Protection Agreements in support of section 208 of the federal Clean Water Act. RPAs are designed to reduce soil erosion to meet "T" levels (the levels at which a particular type of soil is able to replace itself over time). Through these agreements the department can specify management practices, such as crop rotation, which decrease soil loss while increasing soil tilth and productivity.

Vegetation Management

❑ **Maintain and enhance desirable vegetative communities on trust lands used for crop production, grazing and wildlife habitat when compatible with agricultural and grazing program goals.**

Vegetation on agricultural and grazing lands is a source of revenue for the trusts and habitat for wildlife. Soils, precipitation and management practices all affect the quality and quantity of vegetation found on any particular site. Therefore, the department will work with its lessees to maintain or enhance vegetation on its agricultural and grazing lands that will benefit not only the trusts but also other users of the resource base. Leases may require growing the most economically advantageous crops on agricultural land, many of which provide excellent habitat. The department will also encourage seeding ecologically desirable grasses, shrubs and forbs species on grazeable woodlands benefiting livestock and wildlife through timber sale contracts and agreements with permittees.

Water Resource Management

❑ **Maintain or enhance the quality and longevity of water resources originating from, flowing through, or applied on department-managed lands.**

Water quality and quantity are important elements in managing trust lands. To ensure that trust agricultural and grazing lands continue to benefit, the department will work with lessees and other public agencies to develop means to protect and maintain the longevity (water quality, quantity and continuance) of water resources on department-managed lands. For example, staff agricultural engineers may work with the Department of Ecology, Bureau of Reclamation and other agency personnel to design irrigation systems on trust agricultural land which minimize the effects of irrigation on surface and ground waters.

Riparian Zones

❑ **Recognize the natural resource values of riparian zones and implement management plans to maintain or enhance these zones.**

Throughout Washington, riparian zones make up a small part of the total land base, yet they receive disproportionately heavy use. These zones are unique, highly productive ecosystems. They display a greater diversity of plant, fish, wildlife and other animal species and vegetation structure than adjoining ecosystems. Healthy riparian systems filter and purify water, reduce sediment loads and enhance soil stability, provide microclimate moderation when contrasted with extremes in adjacent areas and contribute to groundwater recharge and base flow. The maintenance of riparian zones is important to maximize their long-term benefits.

The department will inventory riparian areas located on agricultural and grazing lands and then develop and implement site-specific plans. The goal is to protect zones in good condition and to provide remediation to zones in poor condition. The department will work with lessees and permittees to devise methods based on applied research and technologies to improve and manage riparian zones.

Endangered, Threatened and Sensitive Species

❑ **Avoid effects on plant and animal species considered endangered. Within trust management obligations, the department will avoid adverse effects on species considered threatened and consider avoiding or lessening effects on species considered sensitive.**

The department considers rare plant and animal species to be Endangered, Threatened or Sensitive according to designation by its own Natural Heritage Program and the Washington Department of Wildlife. The state Natural Area Preserves Act (RCW 79.70) and the federal Endangered Species Act (P. L. 93-205) require that agencies must provide means to protect endangered, threatened and sensitive species.

Staff from the department's Natural Heritage Program and the Department of Wildlife inventory both forest and agricultural and grazing lands for special plants, animals and plant communities. Once a species or community has been identified options are available to protect it. For example, protection for plant species and communities can include dedicating land as Natural Area Preserves. Preserves are characterized as large areas,

either land or water, predominantly in their natural states, and largely undisturbed by human activity. Once designated, the land is withdrawn from the trust land base and the trust is compensated at fair market value. Protection for animal species can include minimizing adverse effects by limiting certain activities during certain periods of the year.

Archaeological and Cultural Resources

- **Within trust management obligations, protect significant archaeological and cultural resources on agricultural and grazing lands.**

Significant archaeological and cultural resources are protected by state Archaeology and Historic Preservation law (RCW 43.51A), the National Historic Preservation Act (P. L. 89-665 as amended) and the Archaeological and Historic Preservation Act of 1974 (P. L. 93-291). The Office of Archaeology and Historic Preservation (OAHP) maintains a register of these sites, which it updates as new sites are discovered.

Cultural resources may become an issue primarily when the department converts trust land from one use to another: converting grazing land to irrigated agriculture, for example. The department works with the Office of Archaeology and Historic Preservation in sharing information on a site-specific basis; if significant objects or places are found mitigation measures are evaluated and implemented.

External Relations and Staff Development

Relationship to Agencies, Public and Industry

❑ **Actively promote and maintain long-term relationships with public and private organizations that affect the agricultural and grazing program.**

The department interacts with other agencies, industry and the general public to accomplish the goals of the Agricultural and Grazing Lands Program. Regular attendance by the department at interagency, lessee and special interest group meetings will ensure timely awareness of situations that might affect trust land management.

Through various brochures and documents, the department will seek to inform the public concerning the trusts, the department's role in managing trust lands and the objectives of the Agricultural and Grazing Lands Program—particularly in relation to lessee rights and responsibilities and public use of leased property.

Cooperative Research

❑ **Support cooperative research and development of agricultural and grazing practices that can potentially benefit the trusts.**

The trusts benefit from applied research through more efficient agricultural and management practices. For example, the department has funded research projects at Washington State University that measured the effects of alternative grazing systems that could be used on trust lands. The Agricultural and Grazing Lands Program depends on the land grant university system and other research institutions for agriculture research. Therefore, the department will continue to support research through direct assistance and in cooperation with other organizations.

Information Exchange

❑ **Develop and maintain a flexible and timely information exchange among staff, lessees, educational and research institutions, and other parties of interest.**

Acquiring and disseminating quality, timely information allows the department to meet its goals. The department will monitor government, public organizations and industry publications to collect current agricultural information for its staff and others who have an interest in trust lands. It will disseminate information through correspondence, brochures, documents and other media.

Staff Development

❑ **Support development of staff in current agricultural and grazing lands management practices.**

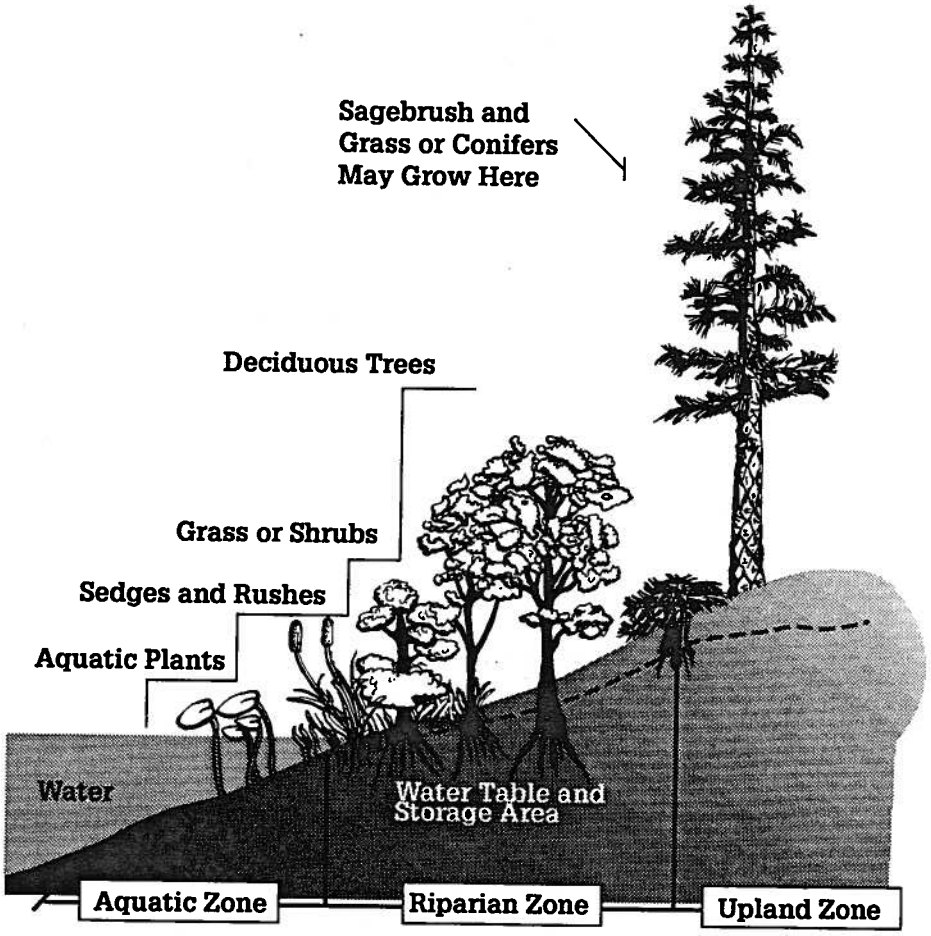
The success of the Agricultural and Grazing Lands Leasing Program rests with the people who are responsible for implementing its policies. In addition to hiring people with appropriate education, the department will provide opportunities for its staff to grow personally and professionally. The department supports staff participation in workshops, training sessions, seminars and short courses. The department also develops internal programs and encourages participation in professional organizations.

Glossary

Figure 3. Riparian Zone

What is a RIPARIAN area?

It is the green area immediately adjacent to water, such as streams, springs, rivers, ponds and lakes.



Riparian zones are identified by the presence of vegetation that requires large amounts of free or unbound water.

Source: Oregon Watershed Improvement Coalition

Glossary

Adjudicate: The exercise of judicial power by hearing, trying and determining the claims of litigants before the court.

Adjudication: *Law.* A judicial decision or sentence.

Agricultural and grazing land: Land, improved or unimproved, and those support facilities devoted to or best suited for the production of crops and forage for grazing.

Animal month: A month's tenure on grazing land by one animal.

Animal unit (AU): One mature cow, with or without a less than six-month old calf, or the equivalent based upon average daily forage consumption of 26 pounds of dry matter per day.

Animal unit conversion factor: A number expressing the forage requirements of a particular kind or class of animal relative to the requirement for an animal unit. A conversion factor is satisfactory with respect to the amount of forage required to maintain an animal, but may not be applicable in determining stocking rates for range use for particular kinds or classes of animals because of different grazing preferences. Factors used by the department are cow, with or without a calf under six months, 1; bull, 1; yearling calf, .66; fall (weaned) calf, .50; sheep, .20.

Animal unit month (AUM): The amount of forage required by one mature cow with calf, or the equivalent, for one month. Other animals are considered through animal conversion factors.

Aquatic lands: All state-owned tidelands, shorelands, harbor areas and the beds of navigable waters.

Archaeological and cultural resources: Districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and (1) associated with events that have made a significant contribution to the broad patterns of our history; or (2) associated with the lives of persons significant in our past; or (3) embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or (4) have yielded, or may be likely to yield, information important in prehistory or history.

Assignment: An instrument by which a lessee transfers their leasehold interest to a third party. Requires written approval from the department.

Benefit/cost ratio: A number derived by dividing the sum of discounted revenues by the sum of discounted costs. A value greater than 1 means the benefits (of a project or investment) exceed the costs; a value less than 1 means that costs exceed benefits. (See discounting.)

Bonus bid: The dollar amount offered, to be paid one time only, over and above the periodic rent or share of the crop.

Cancellation: Involuntary surrender of a lease. A result of lessee failure to cure a default of a covenant. In contrast to termination.

Crop aftermath: Residue and/or regrowth of plants grazed after harvesting a crop.

Discounting: The process of applying a rate of interest to a capital sum. It is widely employed to find the equivalent value today of sums (of money) receivable or payable in the future.

Easement: A right held by one person to make use of the land of another for a limited purpose, such as a right of way. It is a nonpossessory right.

Endangered species: A vascular plant or wildlife species in danger of becoming extinct or extirpated in Washington within the foreseeable future if factors contributing to its decline continue. Populations have typically been reduced to critically low levels, or the habitat has been significantly degraded or depleted. (Extinction means the species is completely gone throughout its range; extirpation means it is gone from part of its range.)

Escheat lands: Land acquired by the state when a land owner dies without heirs.

Fair market value: The highest price in terms of money which a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller, each prudently knowledgeable and assuming the price is not affected by undue stimulus.

Fair market rental value: The total rental that a property would command on the open market as determined by comparable rental rates being paid for comparable uses.

Fiduciary: A person who holds something in trust for another in the scrupulous good faith and candor which it requires. A trustee possesses a fiduciary responsibility to the beneficaries of the trust to follow the terms of the trust and the requirements of applicable state and federal law.

Fixture: An article in the nature of personal property which has been so annexed to the realty that it is regarded as part of the land. That which is fixed or attached to something permanently as an appendage, and not removable. (See Improvements.)

Forage: All browse (leaves, twigs and their young shoots) and herbaceous broad-leaved flowering plants that are available to grazing animals. Act of consuming forage.

Forest Board Lands: A term referencing State Forest Board Transfer lands and State Forest Board Purchase lands. The Forest Board, a managing agency, was abolished in 1957 and the powers and duties of the board were transferred to the Department of Natural Resources. Laws of 1957, ch. 38.

Grazeable woodland: Forest land that produces, at least periodically, sufficient understory vegetation suitable for forage that can be grazed without significantly impairing wood production and other forest values.

Grazing: Utilization of forage by animals.

Grazing Lands: Rangeland, grazeable woodland, meadows and pasture.

Habitat: An area with a number of plant communities that provide food, water, cover and space, and which supports one or many wildlife species through all or part of a year.

Highest and best use: The use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible and that results in the highest present land value. A highest and best use must pass the following tests: be physically possible, legally permissible, financially sound and maximally productive.

Improvements: Anything considered a fixture in law placed upon or attached to such lands that has changed the value of the lands, or any changes in the previous condition of the fixtures that changes the value of the land.

In-kind: Instead of money, payments made in commodities. Typical of sharecrop leases where the department receives a share of the crop based on a percentage detailed in the lease.

Internal rate of return: A rate of discount at which the present worth of future cash flows is exactly equal to the initial capital investment. Hence, it gives a measure of the "break even" rate of return on an investment, since it shows the highest rate of interest at which the project show neither a profit or a loss. If the internal rate of return is greater than the rate of interest that has to be paid, the project is profitable.

Lease: As used in this document, a contract transferring the right to the possession, use and enjoyment of real estate for a definite period of time.

Leasehold interest: Lessee property interest created by the lease.

Leasehold Tax: Tax on department leases designed to compensated local government for loss of property tax as a result of the state owning property in the taxing district. The department/state does not pay property tax.

Legal public access: Access via a state highway or county road, or an easement or agreement specifying public access. Alternatively, a user obtaining written permission from appropriate private landowner(s) if there is no public access.

Net present value: The sum that results when the discounted value of the expected costs of an investment are deducted from the discounted value of the expected returns.

Pasture: A relatively small, well-delineated grazing area with introduced forage species and intensive management to increase forage production, including planting, fertilization, irrigation, etc. Used in rotation with crops or as an annual crop.

Perpetuity: (1) The state or character of being perpetual. (2) Endless or indefinitely long duration or existence. (3) Something that is perpetual. (4) An annuity paid for life. (5) *Law*. A limitation or arrangement by which property is rendered not alienable for longer than the law allows.

Pest: Any insect, animal or disease organism that may cause economic loss to the production of agricultural commodities.

Rangeland: Land on which the native vegetation is predominantly grasses, grasslike plants, forbs or shrubs suitable for grazing or browsing.

RCW: Revised Code of Washington. Statutes enacted by the legislature are codified in the RCW.

Rent: The stated return or payment made by the lessee for the possession and use of property.

Riparian Zone: The banks and adjacent areas of water bodies, water courses, seeps and springs, whose water provides soil moisture sufficiently in excess of what would be available from natural precipitation to provide a more moist habitat than found in contiguous flood plains and uplands.

Risk: The possibility that an asset will not produce an expected net income or the value of trust assets may decline.

Sensitive species: (1) A vascular plant species with small populations or localized distribution that is not now endangered or threatened, but whose populations and habitats will be jeopardized if current land-use practices continue. (2) A wildlife species of concern because of its uniqueness, rarity, scientific value or vulnerability to human disturbance or land-management activities.

Sublease: A lessee leases their leasehold interest to a third party for a limited time period. Requires written approval from the department. The lessee does not relinquish their responsibilities and obligations contained in the lease.

Support facilities: Structures that are required to support the farming operation.

Termination: Voluntary surrender of a lease by either lessee or the department. In contrast to cancellation.

Threatened species: A vascular plant or wildlife species likely to become endangered in Washington within the foreseeable future if factors continue that contribute to its population decline or to habitat degradation or loss.

Tilth: The physical condition of the topsoil after tillage.

Triple net lease: Provides for the lessee to pay all operating costs associated with the lease.

Trust: A fiduciary relationship in which one entity (the trustee) holds the title to property (the trust, estate or trust property) for the benefit of another (the beneficiary).

Understory: Vegetative cover growing under taller and more dominant plants (for example, shrubs growing under trees, grass growing under shrubs, etc).

Valuable materials: Any product or material, such as forest products, forage or agricultural crops, stone, gravel, sand, peat and all other materials of value except mineral, coal, petroleum and gas, as provided for under Chapter 79.01 RCW.

Vehicle: Any motorized device capable of being moved upon a road and in, upon, or by which any persons or property is or may be transported or drawn upon a road. It shall include, but not be limited to, automobiles, trucks, motorcycles, motorbikes, motorscooters and snowmobiles, whether or not they can be operated on the public highways.

WAC: Washington Administrative Code. The rules and regulations adopted pursuant to a chapter in the state statutes (Revised Code of Washington).

Weed: An unwanted plant, or more specifically, any plant that may cause economic loss in a given management system. This includes poisonous, injurious, or low value plants capable of utilizing limited resources and thereby reducing the productive potential of valuable forage plants. Includes species declared noxious by the State Noxious Weed Control Board.

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