

# Proposal for an Upper Missouri River Trust

## Overview

We propose that Congress create an Upper Missouri River Trust to manage in perpetuity federal lands in the Upper Missouri River Breaks National Monument for the benefit of the American people. The trust purpose is to manage the lands to restore and maintain them to approximately the condition they were in when Lewis & Clark visited them in 1803–1805. To achieve that purpose Congress should authorize the trustees to permit, regulate, and charge for recreation and other uses of the lands, and to educate the public about the history of the area and the process of restoration and management.

To establish the trust, Congress will enact legislation that declares the purposes of the trust and gradually transfers management responsibility, although not title for the land, from the Bureau of Land Management to the Upper Missouri River Trust. Congress would direct the BLM to transfer authority upon completion of the drafting of bylaws for the trust. Congress would, in addition, provide the trust an endowment. Finally Congress would establish criteria for review and evaluation of trust management of the monument, and for evaluating success of the endeavor.

The existing fifteen-member Missouri River Subgroup Resource Advisory Committee (RAC) would write the trust bylaws and select a founding board of trustees. The RAC would operate through the formal transition from BLM to trust management. After the transfer, a board of trustees—which might initially include some members of the RAC—would direct endowment management, collection of user fees, and expenditure of funds to achieve the trust purpose.

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The Upper Missouri River Trust proposal has nine elements:

1. Purpose;
2. Board of trustees;
3. Friends of the Upper Missouri River;
4. Funding;
5. Authority;
6. Bylaws and transition process;
7. Accountability;
8. Monitoring and evaluation; and
9. Enforcement.

### 1. Purpose

The Congressional act creating the Upper Missouri River Trust shall constitute the *trust declaration*. That declaration will state:

The purpose of the trust is to manage the 377,346 acres of federal lands and resources in the Upper Missouri River Breaks National Monument to preserve and restore those lands to approximately the condition they were in when Lewis & Clark visited them in 1803–1805. In furtherance of this purpose, the trust may:

- Conduct research;
- Engage in public education programs;
- Restore ecosystems in and near the monument;
- Purchase conservation easements on private lands in and near the monument;
- Accept donations of private lands in and near the monument;
- Permit, regulate, charge for recreation, livestock grazing, mineral exploration and extraction, and other uses that are compatible with the trust purpose and the president's proclamation creating the monument; and
- Take other steps necessary and appropriate to achieving the purposes of the trust.

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Congress may also authorize the trust to allow oil & gas leasing and other commercial uses inside the monument boundaries, *provided* such uses do not conflict with the primary purpose of the trust and that they produce revenue for purchasing conservation easements on private lands to further the purpose of the trust. This is compatible with, and only a slight expansion of, the authority granted by the presidential proclamation creating the monument. Finally, Congress may give the trust the responsibility of managing 75,000 to 100,000 acres of federal land immediately outside the monument boundary for commercial purposes to obtain revenue for achieving the trust's primary purpose.

## 2. Board of Trustees

The Upper Missouri River Board of Trustees shall consist of nine to fifteen members serving staggered, three-year terms. No member may serve for more than two successive terms. The Montana state director or Lewistown field manager of the Bureau of Land Management shall be an *ex officio* non-voting member.

The bylaws will specify how the initial board members and their eventual replacements will be selected. They should insure that trustees include individuals from an appropriate array of the interested community and may give the Secretary of the Interior or Montana's governor or both the power to appoint some of the board members.

Although the bylaws should provide for including individuals on the board of trustees who reflect an array of experiences and priorities, trustees are bound by the obligation of undivided loyalty to the trust and its purpose and are not expected or allowed to speak for or represent specific interest groups.

## 3. Friends of the Upper Missouri River

The Friends of the Upper Missouri River will be a non-profit (501(c)(3)) corporation with a

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membership open to any member of the public willing to pay a nominal (initially \$20 to \$25) annual fee. The organization will assist the trust in carrying out its purpose by soliciting local, regional and national interest in the monument and participation in trust programs; providing a structure and activities in which volunteers are available to participate in trust management activities; and by raising funds, and educating the public.

As initial board members are replaced, members in good standing of the friends group will elect one third of new trustees. The rest are to be appointed, perhaps by the Secretary of the Interior, Montana's governor, or some combination of federal, state, or local officials.

The friends group is intended to be the public outreach arm of the trust and an important element of trust accountability: its major function is to provide a pipeline through which interested citizens can take an increasingly active role in monument activities, trust committees and management programs. The friends group is authorized to retain the membership fees to support its programs but may in addition elect to fund monument programs and management activities in consultation with, and with the approval of the trustees. In addition, the trustees are authorized to provide support for friends group efforts to involve, educate, and attract support from diverse groups and individuals.

The friends group is directed to conduct membership drives, education programs, and other activities with the goal of producing an appropriate mix of participation from local, regional and national communities. The Friends should identify goals for such a mix, perhaps aiming to attract one third of their members from outside Montana, and of those, at least one third from east of the Mississippi.

Nevertheless, the friends group is intended to be friendly to the Upper Missouri River, not, at bottom, to the trust or the monument. This is because the Friends also play an important role in trust enforcement. The friends group is authorized to sue to challenge the prudence of trustee decisions, and their conformity with the trust purpose. In addition, the friends group is

authorized to petition Congress to call attention to the legislatively established criteria for evaluating trust management and, if those criteria are not met, may recommend revesting authority for management of the monument lands with the BLM.

## 4. Funding

Congress would provide an initial endowment equal to ten years of the estimated historic annual cost to the BLM of managing the lands inside the monument. The trust board would manage the endowment, expending interest only to achieve the purposes of the trust.

The board is authorized to set and collect fees for all uses on federal lands in the monument and such additional lands outside the monument that Congress assigns to the trust. This would include but not be limited to grazing, minerals, and recreation. In addition the trustees are required, in consultation with the friends group, to develop resource access and development programs that will provide funding for trust purposes that are compatible with those purposes.

## 5. Board Authority

The board of trustees would have exclusive authority to make all management decisions regarding the 377,346 acres of federal land within the Upper Missouri River Breaks National Monument, plus any additional lands acquired by the federal government within the monument, plus nearby federal lands outside the monument assigned to the trust by Congress. On these lands, the trust could:

- Plan for the long term restoration, management, and use of the federally owned lands within the monument. The board is authorized to continue operations under the State Director's Interim Guidance adopted March, 2001, and the established rules, plans, and management projects until it has developed its own programs and priorities.
- Regulate use. The board is authorized to change rules, regulations, and operating procedures; however, it cannot terminate valid existing permits, contracts, leases, or

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similar, without paying the penalties and compensation provided for in those agreements.

Further, the board cannot terminate existing grazing permits except by agreement with the permittee and after paying appropriate compensation.

- Charge fees for recreation use, grazing access, and all other uses of Monument resources and lands.
- Collect royalties for all mineral exploration and extraction.
- Charge other fees, as appropriate, for any other use of trust lands and resources.
- Withdraw any lands and waters from any use not compatible with the trust purpose or trust management plans and priorities, or restrict the timing and intensity of any use to a level that is compatible.

The president's proclamation creating the trust withdraws lands inside the monument from all sales, leases, and mineral entry, "other than by exchange that furthers the protective purposes of the monument," and subject to valid existing rights. In accordance with this, the trust would manage existing uses, including livestock, mining, and oil & gas, and collect all revenues from those uses. The trust would also be authorized to allow new mineral, geothermal, or oil & gas entry in an exchange that furthers the protective purposes of the monument. In addition, Congress could expand this authority slightly to authorize the trust to allow mineral entry and oil & gas leases if such leases are compatible with the trust purpose and if they provide capital for purchases of easements that further the protective purposes of the monument.

Congress may also want to provide the board with the responsibility for managing lands just outside the monument, particularly lands in T25N, R8E; T22 and 23N, R14E; T23N, R16 & 17E; T26N, R20, 21, & 22E; T23N, R24E; T20N, R21 & 22E; and T20 & 21N R16 & 17E. These add up to roughly 75,000 to 100,000 acres of land. On these lands, the board would have more flexibility to authorize mineral or oil & gas leasing and use the revenues from those leases to further trust purposes inside the monument. These lands would be covered by the trust's restoration purpose but not included in the proclamation's restrictions regarding leasing.

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The trustees are authorized to hire appropriate consultants and staff, to establish office and similar facilities necessary to implementing trust programs, and to manage the endowment, balancing the need to protect the corpus with the need to produce returns. The trustees are also authorized to engage in a limited range of real estate transactions to achieve trust purposes, including the lease and exchange of land and the purchase of conservation easements. Fees from alienation of nonrenewable resources would be deposited into a special fund in the endowment. The trustees would be authorized to spend this part of the endowment to purchase conservation easements or implement other capital projects as authorized by its bylaws, and could spend the interest on that special fund on any trust activity. The trust would not be authorized to expend trust funds for fee-simple purchases of land, but would be allowed to accept title in behalf of the federal government and to manage donated lands. The trustees would, in addition, be authorized to acquire easements on land, to hold title to those easements, and to enforce them.

Finally, the trustees are authorized to retire grazing or other use permits if either the trust or another entity compensates permittees willing to sell their permits. Trustees may support programs that would make it profitable for both private landowners and public grazing permittees to make a transition to managing bison and other indigenous wildlife.

In keeping with the trust's purpose, oil and gas and other mineral extraction would be allowed inside the monument only if it did not degrade the river or otherwise conflict with the trust purpose. Finally, the trustees are authorized to work with the friends group to establish appropriate subcommittees to assist the trustees in development, oversight, and implementation of programs and activities that achieve the trust purpose.

## **6. Bylaws and Transition Process**

The existing fifteen-member Missouri River Subgroup Resource Advisory Committee (RAC), or its parent Central Montana Resource Advisory Committee, would write the trust bylaws, select the original board of trustees, and oversee the transition from BLM to trust management.

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The Secretary of the Interior would be encouraged to comment on a draft version of the bylaws. Legislation establishing the trust would direct the Bureau of Land Management to relinquish management authority over the lands within ninety days of the completion of the trust bylaws. An outline of a suggested bylaws is included at the end of this overview.

The bylaws should include, at a minimum, provisions that specify how many members should be on the board, and how replacement trustees will be selected. The bylaws should also establish decision rules, including a provision that any changes to the trust bylaws and any sale of land or nonrenewable resource would require a two-thirds majority. The RAC may decide to include in the bylaws a process for changing them, but nothing in the bylaws will allow the board of trustees to change the purposes of the trust without the express consent of Congress.

During the transition period, the BLM will manage the monument according to the Interim Guidance adopted by the state director on March 12, 2001, with the exception that the agency will begin charging user fees for river and other recreation. During the transition period, the BLM should not make any irreversible decisions regarding minerals, oil & gas, or other commodity extraction from within the expanded corridor. Half of all fees collected during the transition period would go into an account to be turned over to the trust when the bylaws are complete and the trustees take over management of the land. This account could also be made available to the RAC to fund its meetings and provide per diem support for members during the bylaw drafting process.

Finally, the bylaws should define criteria and a process which would permit the board of trustees to conclude, with the advice of the friends group, that the trust has failed. Should that occur, the bylaws should specify that easements on land owned by the trust will become the property of a similarly situated non-profit organization near to the monument to be selected by the trustees, and will be managed by that organization to meet trust purposes.

## 7. Accountability

Until appropriate elements of the strategic plan are adopted, the trustees are authorized to continue operations under the existing rules and regulations for monument activities established by the BLM. The board of trustees will move as expeditiously as is prudent to develop a strategic plan that will incorporate, modify, or replace, as necessary, the state director's interim guidance and existing BLM land management rules, guidance, and plans referenced therein. In so doing, it will work with the friends group and appropriate subcommittees to procure necessary participation from interested groups and individuals. The plan will be reviewed, updated, and evaluated in a timely manner to be determined by the trustees, in consultation with the friends group.

The trustees will publish an annual report of receipts, expenditures, and investments. The report should show how planned and completed activities fulfill the purpose of the trust.

Beyond these standard trustee obligations, the board of trustees will work with the friends group to assure the fullest possible participation of local, regional, and national publics in monument activities and trust programs. Trust accountability to the public will be achieved primarily through the education and active participation of interested citizens. The board will establish committees and subcommittees appropriate to trust programs and activities that will include interested citizens in monument management. The trustees will conduct trust business in an open and participatory way, drawing new leaders into trust management in part through the education programs and Friends of the Upper Missouri River committees and programs.

## 8. Monitoring and Evaluation

The Friends will monitor the trust and publish a brief annual report evaluating the trust using, at minimum, the following criteria:

1. Is the trust improving land stewardship by:

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- Producing a variety of goods and services;
  - Conserving biological diversity;
  - Maintaining the productive capacity of ecosystems;
  - Maintaining ecosystem health and vitality; and
  - Monitoring to insure the above conditions are met?
2. Is the trust reducing the financial burden on taxpayers by:
- Reducing the long-run costs to the Treasury;
  - Helping managers make long-term capital investments as well as fund operations and maintenance;
  - Reducing or eliminating subsidies to various resources; and
  - Insuring an accurate accounting of costs and benefits?
3. Is the trust increasing public satisfaction with public land management by:
- Providing for public involvement in both planning and management by a broad spectrum of local, regional, and national interests;
  - Promoting cooperation rather than polarization;
  - Improving employee morale and user satisfaction;
  - Improving local community economies; and
  - Minimizing the negative effects on other land owners in and near the monument?

Congress may add to this list when it creates the trust and the Friends may find other worthwhile criteria to use in the course of their monitoring. The Friends must also use these criteria to justify any recommendation it might ever make to Congress that the trust be terminated.

## 9. Enforcement

Any interested citizen or group of citizens is authorized to bring suit to challenge decisions of the trustees. The USDI regional solicitor would be authorized and required to assist the trust on legal matters, including litigation, involving the trust at no cost to the trust. However, the board

of trustees is also authorized to engage additional attorneys at the expense of the trust.

## Suggested Bylaws

The following provide a starting point for bylaws for the Upper Missouri River Trust.

### BYLAWS OF THE UPPER MISSOURI RIVER TRUST

#### ARTICLE ONE: DECLARATION OF TRUST

The trust declaration of the Upper Missouri River Trust shall be as described in section I of the Upper Missouri River Trust Act of 2002, which is incorporated in and made a part of these bylaws as if fully set forth herein. This trust declaration together with these bylaws shall regulate the internal affairs of the trust. In the event that any provision of said trust declaration is contrary to or inconsistent with any provision of these bylaws, the provision of the trust declaration shall govern and control, notwithstanding the fact that such provision of these bylaws might have been adopted subsequent to the adoption of such provision of the trust declaration. Except as provided for in the trust declaration, only Congress may amend the trust declaration.

#### ARTICLE TWO: BOARD OF TRUSTEES

2.01. *Initial board.* The initial board of trustees shall consist of nine members selected by the Upper Missouri River Subgroup Resource Advisory Committee. The terms of office for trustees shall be three years, staggered so that one-third expire each year. The initial board shall draw lots to determine which members terms expire after the first, second, and third years.

2.02. *Board replacements.* As terms of three trustees expire each year, one shall be replaced by appointment by the Secretary of the Interior; one shall be replaced by appointment by the Governor of the State of Montana; and one shall be replaced by a vote of members in good standing of the Friends of the Upper Missouri River. The Governor and Secretary of the Interior shall insure that the three members they each eventually appoint shall at all times represent a

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balance of: 1) livestock, mineral, oil & gas, motorized recreation, or other commodity interests; 2) environmental, nonmotorized recreation, or archeological interests; and 3) elected officials, employees of state resource agencies, native American tribes, academicians in the natural sciences, or the general public. No board member shall serve more than two successive terms. Notwithstanding any other provision of these bylaws, while serving on the board all trustees shall have an undivided loyalty to the trust and its purposes.

2.03. *Board vacancies.* In the event of a board vacancy prior to the end of a board member's term, the person or group that originally appointed the departing member shall replace that board member.

2.04. *Board meetings.* The board shall meet at least three times a year at a time and place determined by the chair. All meetings shall be open to the public except when dealing with personnel matters. The board may meet by telephone or similar equipment for special meetings but not for the three regular meetings.

2.05. *Quorum.* Two-thirds of the board constitutes a quorum for transaction of any business at any meeting of the board.

2.06. *Voting.* Except as noted in 2.07, the board may take any action in furtherance of the trust declaration upon a vote of the majority of board members present at a meeting.

2.07. *Supermajority votes.* The following decisions may be made only with the assent of at least six board members: a. The sale or exchange of any nonrenewable resource within the Upper Missouri River Breaks National Monument; and b. Amendment to these bylaws.

2.08. *Board authority.* Except as noted in article 2.09, the board has the power to take any action consistent with and in furtherance of the trust declaration. The board may hire employees or contract services to manage trust resources, collect user fees from recreationists and other resource users, apply those fees to trust activities, purchase conservation easements from willing

sellers, accept donations of land, engage in research, and promote educational activities.

2.09. *Limitations.* Notwithstanding any other provision of these bylaws, the board may not purchase land; spend fees collected from users of non-renewable resources on anything other than conservation easements or other capital improvements; or engage in or permit any activity that will degrade trust resources.

2.10. *Conflict of interest.* No board member shall vote on any contract or other transaction between the board and any other corporation, firm, association, or entity in which the director is financially interested. Such director shall announce such interest prior to a discussion and shall abstain from the discussion and the vote.

### ARTICLE THREE: OFFICERS

3.01. *Officers.* The board shall appoint from its membership a chair, a secretary, and a treasurer, as well as any other officers the board deems appropriate.

3.02. *Terms of office.* Officers shall serve one-year terms. Officers may be re-appointed for successive terms so long as they remain on the board.

3.03. *Duties of the chair.* The chair shall schedule, provide public notice of, and preside over all board meetings. The chair shall be the chief operating officer of the trust and shall sign all corporate documents on behalf of the trust, as authorized by the board, unless the chair instructs that the signing be done by some other officer or employee. The chair shall see that all actions taken by the Board are executed and shall perform all other duties incident to the office.

3.04. *Duties of the secretary and treasurer.* The secretary shall record the minutes of all board meetings and shall be the custodian of trust records. The treasurer shall have charge and custody over corporate funds, keep accurate books and records, deposit all monies and securities received by the trust in such depositories as the board shall designate, and complete

all required corporate filings.

#### ARTICLE FOUR: THE FRIENDS OF THE UPPER MISSOURI RIVER

4.01. *Incorporation.* The initial board of directors shall cause to recognize or be incorporated a Friends of the Upper Missouri River, a 501(c)(3) organization. Membership in the Friends must be open to the public for an annual fee no greater than \$25 per year in 2003, with increases allowed at the rate of inflation.

4.02. *Activities.* Members of the Friends may elect their own board and officers and write their own bylaws overseeing educational, research, and other conservation activities in the Upper Missouri River Breaks National Monument. Members also elect one third of the trustees of the Upper Missouri River Trust as specified in article 2.02 above.

4.03. *Oversight.* The Friends may sue the trust to challenge the prudence of trustee decisions and their conformity with the trust declaration. By a two-thirds vote of its membership, the Friends may recommend to Congress that the Upper Missouri River Trust be dissolved and its authority returned to the Bureau of Land Management.

#### ARTICLE FIVE: AMENDMENTS

5.01. *Amendments.* The board may amend these bylaws with a two-thirds vote of all board members. The board may not amend the trust declaration unless provided for by Congress.

5.02. *Limitation.* The board may not amend article 2.02 in such a way as to reduce the proportion of board members elected by the Friends of the Upper Missouri River without the approval of a majority of members of the Friends of the Upper Missouri River.

#### ARTICLE SIX: DISSOLUTION

Should the Upper Missouri River Trust dissolve or be dissolved by Congress, the lands

managed by the trust that were federally owned at the time of the trust's creation will revert to management by the Department of the Interior. Funds in the trust's initial endowment provided by Congress will be returned to the U.S. Treasury. Any additional lands, conservation easements, or funds acquired by the trust since its creation will be turned over to appropriate 501(c)(3) conservation groups, as determined by the board of trustees.

#### OTHER ARTICLES

Other articles may deal with committees, corporate documents, monitoring and evaluation criteria, employee compensation, the location of trust offices, and other affairs as deemed necessary by the RAC.

## Rationale

### Goals

The proposal adapts familiar trust principals to the management of the Upper Missouri River Breaks National Monument in order to achieve four goals.

- The first is the efficient, prudent, and publicly accountable management of important national cultural and natural resources. Management of the monument must be both financially self-sustaining and responsive to interested citizens.
- The second goal is to provide experience that will expand our national understanding of appropriate goals and institutions for management of publicly owned resources. This is not a pallid modification of familiar multiple-use management but a distinctly different philosophical and organizational approach. Experiences gained from the implementation of this proposal can be applied to the reform of other federal land policies and management.
- Third, the trust proposal is intended to provide a learning experience in the gentle management of working landscapes. The goal of the trust is restoration of the ecosystem, and that is absolutely controlling. However, restoration programs must be supported by

use of the same ecosystem. Hence, the proposal provides neither for non-use, nor for politically dominated or uncontrolled use, but for gentle use of a cherished landscape.

- Finally, the proposal is intended to alter public expectations regarding public accountability. The intention is to develop a culture of citizen participation in difficult choices balancing use and restoration, and in implementation of those choices, in actual management. The opportunity to comment upon plans and similar documents is the beginning step in participation, not the zenith of it. The Congress will provide some criteria for evaluating the trust and its activities; however, the principle element of trust accountability is intended to be the willingness of interested citizens to contribute time and effort to the trust and the management of the monument. If the trustees cannot sustain that effort and support, the trust will ultimately fail.

This proposal combines the trust doctrine, previous experience with trust land management, and existing regional institutions to provide a smooth transition from existing BLM management to the Upper Missouri River Trust. In addition it provides for interim management and a gradual transition to the trust's single priority of restoring the resources of the monument. Valid existing rights will be protected—the proposal mandates that the trustees adopt the rules, programs, and plans of the current BLM administration and proceed under them until they have developed alternative courses of action. Even then, existing rights holders will be compensated if their current activities are not continued.

## Checks and Balances

The trust principles that are the core of this proposal provide a familiar, flexible, and easily discussed framework for defining clear goals, assigning responsibilities, and enforcing management accountability. The underlying philosophy of both the trust and the established criteria of prudence by which courts evaluate trustee decisions mandates conservative management oriented toward preservation the resources. A perpetual trust such as proposed

here moves even further, directing the trustees to act evenhandedly, preferring no generation of beneficiaries over any other. However, the trust also requires the trustees to act in a prudent, business-like manner in managing profit-making activities on the monument. Prudence requires that the trustees balance risks against benefits of activities, all within the context of undivided loyalty to the trust purpose.

- Giving the resource advisory committee the authority to write the bylaws and select the initial board of trustees would insure continuity with existing institutions. Moreover, it insures that the crucial step of drafting the bylaws will be undertaken by a group that has extensive experience with the political and social context in which the trust must operate, the issues that will make or break it during its first crucial years of operation, and an established culture for working together. The bylaws must be completed fairly quickly and this seems the best way to maximize that possibility. The proposal provides for consultation with the Secretary of the Interior regarding the bylaws but does not allow her to approve or disapprove the document. Unfortunate experience in the context of several currently operating trusts suggests the wisdom of this provision.
- The friends group appears to have enormous responsibilities—and some may fear too much of a role. It is helpful to keep this role in perspective. The proposal envisions an all-volunteer organization not unlike the familiar national parks associations. The primary difference is that the parent organization is not a federal bureaucracy but a trust and trustees relatively independent of the federal bureaucracy. The fact that the Friends may depend on the trust for some financial support is, in that context, not particularly troublesome. The Friends is also authorized to retain and expend its membership fees and could in addition raise funds by running trips, selling guides, books, t-shirts, and other educational products. The proposal cannot anticipate every eventuality that might make the relationship between the trustees and the Friends troublesome. But we believe that there is enough experience with similar organizational arrangements that trustees and Friends will be able to fulfill their expected roles in monument management.

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- The proposal contemplates that the friends group will provide some leavening to the contentious issue of local versus national interests in managing national resources. This will be achieved by encouraging them to recruit for national as well as local members.
- The proposal provides that the friends group will elect one third of the trustees. Accompanying this provision is a risk that elections may unduly politicize the board. Given the commitment inherent in the proposal to achieving accountability by creating a ladder of increasingly involved and responsible public participation, the voting element seems a reasonable and necessary risk. The current notion of agency accountability focuses on the undeniably vacuous “right” to review and comment upon proposals. As a signal that more is intended and expected in the trust context, voting seems *de minimus*, a relatively painless first step towards more active participation in monument management. In any case, the initial board is not elected, which will allow the board a period of time to establish a culture of undivided loyalty and of working together as trustees rather than as representatives of interests.
- The proposal also gives the friends group the job of independently monitoring and evaluating the trust. Since none of the friends associations currently affiliated with national parks, monuments, forests, or other public lands has that job, this could break new ground in public land monitoring and review. One of the benefits of this process is that the Friends may find new and innovative ways to monitor and evaluate land management activities.
- It may be similarly risky to give the Friends such an active role in declaring the trust a failure and calling in Congress. However, this is intended not to create a threat to the trust than to cabin the inevitable. It is not inconceivable that irritated interests of all stripes and locations might be moved so to petition Congress. The proposal recognizes that and invites the friends group to be a filter, a focus, or a forum for framing and dealing with such complaints.
- Funding the trust out of its own revenues will give it an incentive to provide access to

resources and recreation experiences that meet public demands so long as they conform to the trust's purpose. This requirement is not designed primarily to reassure existing permittees and lessees, but it ought to have that effect. The monument will neither be preserved nor left unmanaged; use will be tightly regulated to encourage gentle development compatible with the trust's purpose. Allowing the trust to sell minerals or other nonrenewable resources, so long as such sale is compatible with the trust's purpose, could provide revenue for conservation easements and other major expenses. When combined with the trust purpose of involving interested community members in the management of the resources, it will also provide experience and learning about the sustainable gentle use of resources.

- Giving the trust an endowment will provide a reliable source of initial income, a relatively simple-to-manage resource to build trustee confidence, and a continuing source of income for the achievement of trust purposes.
- Giving the trust the authority to purchase conservation easements, but not fee-simple title, from willing sellers will give the trust an important tool for protecting private lands without threatening landowners with condemnation or withdrawing land from the tax base. Moreover, the easements will not be owned or managed by the federal government. The proposal does not contemplate expanding the monument except through the donation of land, and the trustees are barred from even secretly harboring the aspiration to extend their domain much beyond land currently owned by the federal government. Should the trust fail, conservation easements and donated lands will pass to a similarly situated nonprofit, as is normal among 501(c)(3) organizations.
- The trust will continue to allow livestock grazing but could become the vehicle for transitioning to indigenous wildlife management on a scale that will be profitable for local landowners as well as the trust.
- The proposal does not contemplate that the trust would comply with NEPA, FLPMA or similar federal planning rules and regulations. We anticipate, however, that it would be

subject to other federal regulations that operate on federal lands, including FACA. Experience has demonstrated, however, that a part of accountability is meeting public expectations regarding the public's right to know and comment upon plans for management of publicly owned land. One of the proposal's goals is to alter those public expectations regarding trust accountability and participation, or at least to modify them to include participation in management instead of just in planning. Nevertheless, established expectations about notice and comment in participatory planning may color and shape the Friends' and trustees' actions.

## Actions Needed for Implementation

### Gaining Public Support for the Proposal

To publicize this proposal, FREE and Gallatin Writers should invite thirty to thirty-five people to a one-day conference about the monument. Invitees should include:

- All members of the Central Montana Resource Advisory Committee and/or its Missouri River Subgroup;
- All members of the Montana congressional delegation or their representatives;
- Montana's governor or her representative;
- Representatives of the Bureau of Land Management and the Secretary of the Interior;
- Representatives of leading Montana conservation organizations, including National Wildlife Federation, Defenders of Wildlife, Trout Unlimited, Montana Wilderness Association, and Boone & Crockett Club;
- Representatives of ranchers who graze livestock on federal lands inside the monument;
- Representatives of other landowners whose land is inside or bordering the monument; and
- Representatives of companies or entities who hold federal permits for other uses inside the monument.

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To promote honest discussion and discourage political grandstanding, this initial meeting should not be open to the public. During the first half of the meeting, the lead author of the winning proposal should present the proposal to the conference. Lead authors of the second- and third-place winners in the competition should also present their proposals if they offer interesting or unique ideas not included in the winning proposal. Each presentation should be followed by comments from a panel consisting of an elected official (or their representative), a conservationist, and a rancher or other resource user. The remainder of the morning would be devoted to questions and answers and to an open discussion of the proposals.

During the second half of the day, conference participants should be divided into two or three committees, each of which is asked to develop an implementation plan for one of the two or three project proposals presented in the morning. They would be free to combine useful portions of the other projects into theirs so that each implementation plan is written for a project that each committee thinks is the best possible overall combination of ideas. During the last hour of the conference, the groups would report back to the conference as a whole, followed by discussion of where to go from there. Ideally, the results will include:

- A consensus on the best way to reformulate the top proposals;
- A detailed implementation plan;
- Support for the final plan from a variety of groups.

Even a partial accomplishment of these results will do much to further the plan. Following this meeting, shorter meetings could present the proposal to the general public in Lewistown, where resource users are concentrated, and Missoula, where environmental interests are concentrated. Ideally, these follow-up meetings would be conducted with the help of the BLM and/or RAC.

The next steps will be to ask the RAC to endorse the proposal and to ask the Secretary of the Interior to submit the proposal to Congress, probably as a part of the next annual budget. Draft legislation must include:

*Proposal for an Upper Missouri River Trust*<sup>22</sup>

- The trust declaration;
- A trust endowment;
- Authorization for the trust to keep all receipts from users of trust resources;
- Direction to the Secretary of the Interior to turn over trust resources to the trust within ninety days of the writing of trust bylaws;
- Criteria to review and evaluate trust management of the monument and to evaluate the success of the endeavor.

Additionally, the legislation could include:

- The addition of 75,000 to 100,000 acres of federal lands to the trust to both supplement the trust's income and assist the trust in managing lands surrounding the monument;
- Authorization for the trust to sell or lease minerals or oil & gas within the monument, receipts from which must be spent on conservation easements or other capital projects that promote trust purposes, and so long as such sales or leases do not conflict with the primary purpose of the trust. The president's proclamation already allows the exchange of such resources if such exchange "furthers the protective purposes of the monument." This only slightly expands this authority.

Assuming that the resource advisory committee endorses the plan, FREE and Gallatin Writers should encourage the committee to take the first steps towards forming a Friends of the Upper Missouri River. This preliminary friends group could coordinate public education efforts regarding the proposal, gain endorsements from various interest groups, and insure that the press and elected officials fully understand the plan.

FREE and Gallatin Writers, or the Friends of the Upper Missouri River once it is active, should contact and seek the support of various other groups for the proposal. These groups could include, among many others:

- Community groups throughout the country, such as the Quincy Library Group, that have

formed to reach collaborative agreements on the use of federal lands;

- The Land Trust Alliance and other groups that support the use of trust principles or have applied those principles to conserve natural resources;
- Property rights groups concerned with federal land management that will be interested in the ways in which this proposal incorporates and protects property rights in and around the monument.

## Implementing the Proposal

At some point, Congress must pass an Upper Missouri River Trust Act that includes the trust declaration and directs the Secretary of the Interior to transfer authority over the lands to the trust upon the completion of the bylaws. Once this legislation is passed, the RAC must write trust bylaws, select the initial board of trustees, and advise the BLM on any other transition matters. The RAC should seek out experts on trust law and consult bylaws and other documents written for other trusts such as the Platte River Trust and the Great Lakes Fisheries Trust. Within ninety days of the completion of this task, the trust would take over management of the land and endowment.

At that point, if not before, the initial trust board must create or formalize its relationship with the Friends of the Upper Missouri River. If, as suggested above, the friends group has already been created, then the board of trustees must simply insure that the group's membership is open to the public as required in the bylaws and ask the group to set up a process for electing future members of the board of trustees.

The initial board should also arrange for an in-depth course of instruction on the legal purposes and obligations of a trust. Trusts whose boards of trustees understand their legal limits and responsibilities are the most likely to succeed. Successors to the initial board should also be required to familiarize themselves with trust principles, either through a short-course or reading materials provided by the trust.

## Biographical Sketch of Principle Authors

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