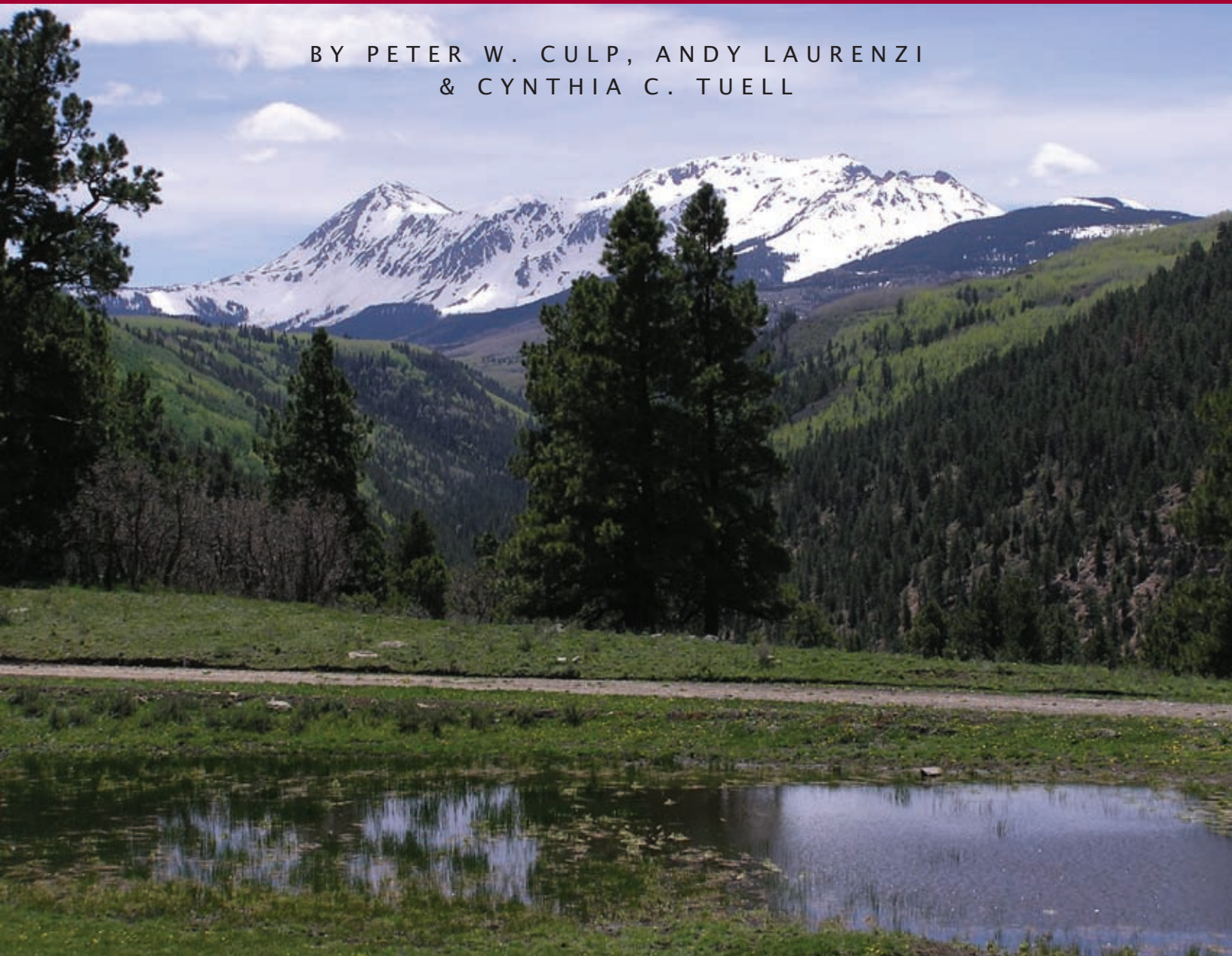




# State Trust Lands in the West

## Fiduciary Duty in a Changing Landscape

BY PETER W. CULP, ANDY LAURENZI  
& CYNTHIA C. TUELL



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Fiduciary Duty in a Changing Landscape

## Policy Focus Report Series

This report is one in a series of policy focus reports published by the Lincoln Institute of Land Policy to address timely public policy issues relating to land use, land markets, and property taxation. Each report is designed to bridge the gap between theory and practice by combining research findings, case studies, and contributions from scholars in a variety of academic disciplines, and from professional practitioners, local officials, and citizens in diverse communities.

This report was prepared with the Sonoran Institute as part of the Lincoln/Sonoran State Trust Lands Project.

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# Executive Summary

State trust lands, an often misunderstood category of public land ownership in the United States, date to the earliest decades after the Revolutionary War, when Congress granted lands to the newly formed states to support essential public institutions. While most state trust lands have long since passed into private ownership, the remaining 46 million acres are a significant resource, concentrated primarily in nine western states (see Figure 1).

State trust land management traditionally has focused on the leasing and sale of natural products, including timber, oil, and gas, and many western states continue to obtain significant financial benefits from these activities. However, in many parts of the West communities are changing rapidly as a result of both population growth (five of the six fastest growing states over the last decade are in the West) and an ongoing nationwide shift toward a more diversified, knowledge-based economy.

This transformation has diminished the role of natural resource extraction in many regional economies, while elevating the importance of cultural, environmental, recreational, and location-based amenities. The economies of many communities are now being driven increasingly by lifestyle choices, a rapid rise in retirement and investment income, and the attractiveness of living close to protected public lands for a better-educated and more mobile population.

Although the extent of this transition varies among states and communities, these changes have led trust managers to experiment with new trust activities. For example, explosive growth has led some managers to explore opportunities for lucrative residential and commercial development on trust lands. At the same time, the changing landscapes, economies, and demographics of the West lead many communities to view their state trust lands as public assets that produce valued services in terms of open space, watershed protection, fish and wildlife, and recreation.

This report calls attention to these unique lands and their significant past and future roles in the American West.

**FIGURE 1**  
**The Extent of Trust Lands Varies Across the Western States**



The first section introduces trust lands today in the 23 contiguous western states in which they occur. An historical overview places trust lands in the context of western settlement in the United States, beginning with the General Land Ordinance of 1785 and the Northwest



Ordinance of 1787. The practice of granting reserved lands in support of schools started when Ohio was admitted to the Union in 1803, and continued throughout the process of state accession.

While these special grants of land were grounded in a trust responsibility to support various public institutions, primarily the public schools, there was considerable variation in the federal and state enabling legislation that directed the accession of states. The most significant trend was the reduced trust management flexibility afforded the later states. As Congress became increasingly disenchanted with runaway sales of trust

lands, it established progressively stricter laws that governed trust land administration, culminating in an explicit and inflexible trust mandate in Arizona and New Mexico.

The trust responsibility and case laws that govern state trust lands sometimes constrain the ability of trust managers to adapt to new demographic and economic forces, and these pressures also bring trust management issues into the public eye. These challenges create a critical need—and a real opportunity—to explore additional means of generating trust revenues that serve the needs of trust beneficiaries while aligning trust activities with the economic futures of western communities.

Many state trust land managers have been responding to these challenges with new strategies and approaches. We highlight a variety of innovative practices that

- establish comprehensive asset management frameworks that balance short-term revenue generation with longer-term value maintenance and enhancement;
- incorporate collaborative planning approaches with external stakeholders to achieve better trust land management;
- encourage real estate development activities that employ sustainable land disposition tools and large-scale planning processes, especially in fast-growing areas;
- support conservation projects that enhance revenue potential, offer ecosystem services, and allow multiple uses of trust lands; and
- introduce comprehensive reforms to expand the flexibility and accountability of trust land management systems.

All of these activities are consistent with the fiduciary duty of state trusts, and each has been employed by at least one trust manager in the West. The report presents specific examples of these initiatives in order to help land managers and other interested parties fulfill their multiple trust responsibilities while producing larger, more reliable revenues for trust beneficiaries, accommodating public interests and concerns, and enhancing the overall decision-making environment for trust management.



## PART 1

# What Are Trust Lands?



State trust lands comprise approximately 46 million acres of land spread across 23 of the lower 48 states, primarily west of the Mississippi River. These landscapes span the forests and mountain ranges of the Inter-Mountain West and the Pacific Northwest, the grasslands and rich farmlands of the Midwest, and the arid deserts of the Southwest.

The vast majority of these lands are held in trust by the states for the benefit of public education, including “common schools” (K–12) and public universities. In each state a specific agency, frequently overseen by a land board, is responsible for managing the trust land portfolio by selling and leasing the lands and their natural products to generate revenue for the beneficiaries of the trust. In most states a portion of these revenues is invested in a

permanent fund, thus establishing ongoing interest revenues for the beneficiaries as well.

Throughout the historical development of the West, state trust lands have represented an important resource providing a key land base for settlement and generating revenue to help build and sustain important public institutions. At the same time, these lands—together with federal public lands—have served important roles in the local economies of western states.

Traditionally, state trust land management has focused on the leasing and sale of natural products, and a number of states continue to obtain significant financial benefits from natural resource activities. For example, oil, gas, coal, and other mineral extraction provides the bulk of the revenues derived from trust lands in Colorado, New Mexico, Utah,



and Wyoming; and timber management still raises significant revenues in Idaho, Montana, Oregon, and Washington.

Despite some continued financial success with traditional management practices on state trust lands, mining, logging, ranching, and farming play a diminished role in today's economy. The rapidly growing population and an ongoing shift toward more diversified, knowledge-based economies with more mobile and better-educated residents in many western areas have increased the importance of cultural, environmental, recreational, and location-based amenities.

Although the extent of this transition varies from state to state and community to community, in many parts of the West these economic shifts have brought state trust lands into increasing prominence, leading trust managers to diversify trust activities or change management strategies to better utilize trust assets.

For example, explosive growth in some places has led some trust managers to explore opportunities for lucrative residential and commercial development on trust lands. At the same time, the changing landscapes, economics, and demographics of the West mean that many communities increasingly view state trust lands as public assets that have value for open space, watershed protection, fish and wildlife, and recreation—a perspective that has brought new scrutiny to the use of these lands.

## CONCEPTUAL ORIGINS OF TRUST LANDS

In the decades after the Revolutionary War, early Congressional programs reflected the tension between the belief in the need for westward expansion and the belief that a free people must be educated. Thomas Jefferson was a strong proponent of the latter view; his frequently cited concept of “agrarian democracy” described a society that would

draw its strength from well-educated farmers whose commitment to the land would provide the foundation for both equality and freedom. This belief in the essential relationship between people and place was a major influence in the development of the state land grant programs.

Although rapid expansion into the western territories was viewed as both inevitable and essential to secure the new nation's claims to that frontier, the debt-ridden, post-Revolutionary War government faced significant financial challenges associated with providing for public education and other essential services. Granting lands to settlers and to the new states that would govern them helped to organize settlements, establish new governance systems, provide services, and repay the burgeoning national debt, while creating a permanent relationship between the settlers and the land they were to inhabit.

The General Land Ordinance of 1785 and the Northwest Ordinance of 1787 established the innovative policies that would govern the large-scale disposal of the public domain to settlers and the creation of new states. Under this framework, a centrally located parcel in each surveyed township would be reserved for the support of schools. Once the territory became a state, it would receive title to these reserved parcels, as well as land grants to support other public institutions.

The General Land Ordinance of 1785 established the rectangular survey system, along with a process for recording land patents and the related records for public domain lands. The Ordinance provided that section 16 in every township (one square mile of land, adjoining the center of each 36-square-mile township) would be reserved “for the maintenance of public schools within the said township” (see Box 1 and Figure 2).

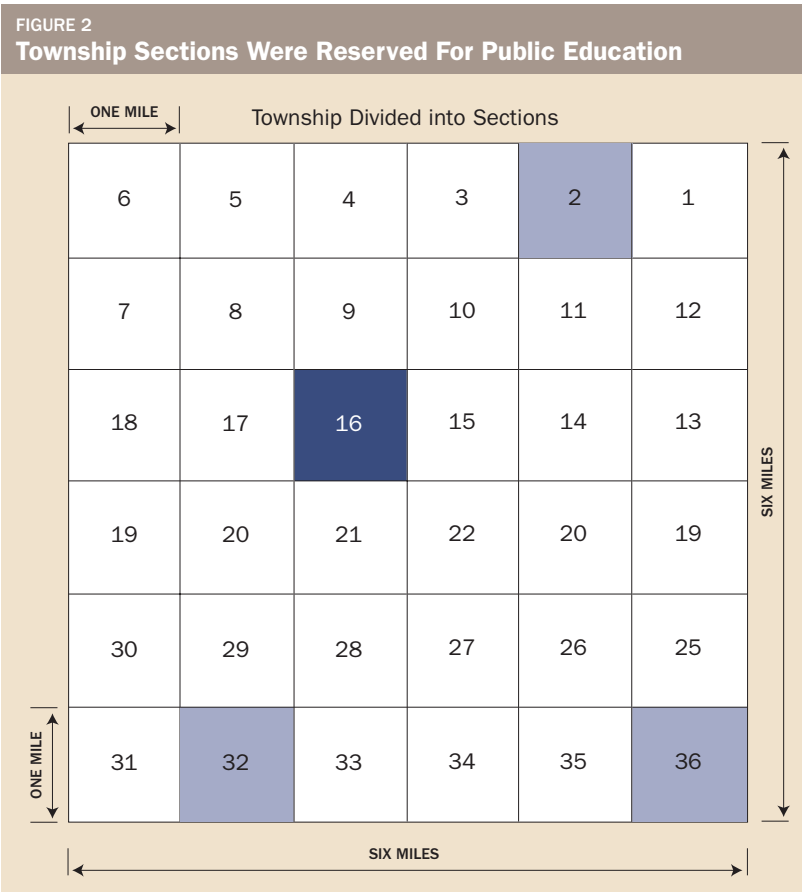
The Northwest Ordinance of 1787 created a system of territorial governments and a pro-

cess for transforming territories into new states. It also maintained the vision of connecting land and public education that was considered critical to the success of the western settlements and the newly emerging states. The Northwest Ordinance announced that “Religion, Morality, and Knowledge being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged,” and that Congress should admit every new state on an “equal footing” with the existing states.

### THE TRUST LAND GRANT PROGRAM

Ohio (1803) was the first public domain state admitted to the Union, and the first to receive a grant of reserved lands to support schools. This practice was continued and expanded throughout the process of state accession, with virtually every state admitted to the Union after Ohio receiving substantial land grants (see Appendix).

Over time, however, the doctrines governing these land grants changed significantly. The impracticability of reserving specific sections to maintain schools in that township became increasingly manifest as population centers tended to develop around natural,



The rectangular survey system divides land into 36-square-mile “townships,” six miles on a side, that are measured from the intersection of an identified north-south meridian (line of longitude) and an identified baseline. Each township is divided into 36 “sections” of one square mile, each containing 640 acres. School lands were reserved out of each township; early states received only section 16, while later states received sections 16 and 36 or sections 2, 16, 32, and 36.

BOX 1

Township Government: A Mathematical Vision of Community

The concept of state trust lands was strongly informed by the revolutionary sentiments related to public education, enlightenment-era rationalism, and the concept of agrarian democracy. This system of organizing land and education envisioned the 36-square-mile township as the most basic unit of government, distributed across the landscape with the mathematical precision of a rectangular survey, and with populations oriented around small, agrarian communities that would provide for the democratic education of their citizens. In the words of the U.S. Supreme Court, by reserving a centrally located section within each township, Congress could “consecrate the same central section of every township of every State which might be added to the federal system, to the promotion ‘of good government and the happiness of mankind,’ by the spread of ‘religion, morality, and knowledge,’ and thus, by a uniformity of local association, to plant in the heart of every community the same sentiments of grateful reverence for the wisdom, forecast, and magnanimous statesmanship of those who framed the institutions for these new States, before the constitution for the old had yet been modeled” (*Cooper v. Roberts*, 59 U.S. 173, 178 [1855]).



economic, and military features without regard for the artificial township boundaries. Many trust lands were not located near these centers, and thus could not provide meaningful support for schools, and local governments did not always exist or have the resources to manage the lands.

In response, Congress gradually shifted away from township-centered administration, first by granting lands to county governments to benefit schools in their townships, and later by centralizing management of the lands in the state government, while reserving the benefits of the lands to the corresponding townships. By the middle of the nineteenth century, Congress had abandoned the local management concept altogether and, beginning with its grant to the State of Michigan in 1837, granted the reserved lands directly to the states for the support of schools statewide.

As new state admissions moved into the steeper, more arid, and less productive lands

of the West, Congress began granting more reserved sections. Beginning in the 1850s, Congress granted two sections out of each township instead of just one, and later expanded these grants to four sections. The federal government also began to allow states to select “in lieu” lands from elsewhere in the public domain when the reserved lands in a given township were already occupied by private homesteaders or railroad grantees, or reserved for Indian reservations, military bases, parks, and other federal purposes (see Box 2).

Congress also began granting more generous amounts of land to underwrite county bonds and to support other public institutions, such as state universities and agricultural colleges, schools for the deaf, dumb, and blind, penitentiaries, and public buildings. For example, the 1841 Preemption Act granted 500,000 acres of land to eligible states, and the Agricultural College Act of 1862 granted lands to endow agricultural and mechanical colleges.

In addition, Congress frequently granted lands to states to finance railroads and other essential infrastructure, or in advance of statehood to support territorial governments. These programs were supplemented by a number of post-statehood grants, such as the Morrill Act grants for colleges, and culminated in the Jones Act of 1927, which granted states the mineral rights in all previously granted lands.

When New Mexico and Arizona were admitted in 1910, they received not only four sections of land per township, but also enormous additional grants for a long list of public purposes. With their accession as the 47th and 48th states, the era of state trust lands essentially ended (see Box 3).

## **CHANGING RULES FOR TRUST LANDS**

The rules and restrictions applicable to state trust lands also changed significantly through



the history of the grant programs. When the land leasing experience of the early states proved to be a failure, Congress subsequently passed legislation retroactively granting all states the authority to sell land to generate revenue. Following this change, most early states rushed to sell their lands in the frenzy of frontier land disposals. While this served to support early school systems, it provided few lasting benefits for schools.

By the 1830s, states were becoming increasingly concerned with the sustainability of this approach to managing trust lands. One of the early innovations to address this problem appeared with the admission of Michigan in 1837. Its constitution adopted specific restrictions on the use of revenues from trust lands and required the state to place sale proceeds into a permanent fund that would then be invested. The interest from these investments, combined with rental revenues, would be used to fund school activities.

This widely adopted innovation was soon complemented with increasingly complex restrictions on the sale and lease of trust lands that grew out of experience with questionable land transactions (and in many cases, outright fraud) and the efforts of a growing public school lobby to protect the trust grants. Many states began to impose constitutional requirements for minimum land sale prices, provisions requiring the state to receive fair market value in all land sales, and requirements for sales and other dispositions to be conducted at public auction.

The first significant restrictions imposed by Congress came with the passage of the Colorado Enabling Act in 1875, which picked up several of these key provisions from previous state constitutions. These restrictions culminated in the New Mexico–Arizona Enabling Act of 1910, which has detailed provisions for the management and disposition of trust lands and the management of the revenues derived from them. Most

#### BOX 2

#### In Lieu Lands Now Offer Some States a Modern Gold Mine

In lieu selections were not initially the panacea that the states wanted. Washington's territorial government had hoped to use its in lieu selections to profit from the frenzied land speculation that dominated the early history of the state; however, this did not happen because the state land selections occurred last, after mill companies, land speculators, prospectors, settlers, and railroad companies had already laid claim to most of the land near railroad lines and navigable waterways.

For the states that continue to hold their trust lands today, however, in lieu selections have conveyed significant advantages. They allowed the states to acquire large, contiguous parcels that have been far more practical to manage than the scattered one, two, or four sections per township that states normally received. In Arizona, once remote in lieu selections have become an invaluable resource. The Arizona State Land Department now controls more than 30 percent of the land available for urban development in Maricopa County—the fastest growing area of the state—and holds much of it in large, contiguous blocks that are ideal for master-planned development and urban open space.

#### BOX 3

#### Trust Lands in Hawaii and Alaska Are Treated Differently

Following the admission of Arizona and New Mexico in 1910, the state-making process was not reinstituted until the admission of Hawaii and Alaska in the 1950s. Hawaii's statehood act ratified an existing trust established on royal lands to support schools (based on the Great Mahale of 1848). The federal government also returned all of the lands held by the U.S. to Hawaii at the time of statehood. Alaska, by contrast, was given the largest land grant of any state—more than 110 million acres. However, unlike previous land grants, the vast majority of Alaska's lands were given to the state without any special restrictions on the revenue uses; only 1.2 million acres were dedicated for school purposes, with an additional one million acres dedicated to support mental health services in the state.

significantly, this act provided that the granted lands were to be held “in trust” for the purposes specified (public education, universities, penitentiaries, and so forth).

### **A COMMON THREAD: THE TRUST RESPONSIBILITY**

The ever-changing nature of the historical program of granting lands to the states has resulted in substantial differences among state requirements and approaches to managing these lands, ranging from whether lands must be sold or leased at public auction to more subtle variations with implications not yet tested in the courts. These differences frequently relate more to what Congress did not specify than to what it did, since the lack of guidance provided by most state enabling acts left states free to improvise in developing trust asset management practices. Nevertheless, trust lands share a common origin and thus have many common themes. The most important of these is the concept of the trust responsibility.

Court decisions that interpreted the requirements of the earliest trust grants to the states generally found that although Congress had specified the purposes for which the lands

were granted (e.g., to support public education), it did not create any binding obligations on the states. For example, in *Cooper v. Roberts* (1855), the U.S. Supreme Court found that the condition in Michigan’s Enabling Act that lands were for “the use of schools” constituted a “sacred obligation imposed on its public faith,” but was not enforceable against the state. Similarly, in *State of Alabama v. Schmidt* (1914), the U.S. Supreme Court concluded that Alabama’s obligation was ultimately “honorary” in nature. As such, the states were free to manage the lands as they saw fit.

As the courts looked to the later state grants, however, a very different position began to emerge. Two decisions of the U.S. Supreme Court (*Ervin v. U.S.* and *Lassen v. Arizona*) interpreting the New Mexico–Arizona Enabling Act of 1910 essentially redefined the state lands doctrine (see Box 4). In that act Congress specified that the lands granted to Arizona and New Mexico were to be held “in trust” for the purposes provided in the grants, mirroring provisions adopted by several previous states in their state constitutions. The Court found that through this provision Congress had intended to impose a federal trust responsibility on





#### BOX 4

#### Key Decisions in New Mexico and Arizona Affirmed the Trust Responsibility

**E**rvien v. U.S. (1919) considered the validity of a program under which the New Mexico land commissioner proposed to utilize funds derived from school lands to advertise the state lands to prospective residents. The stated rationale was that this advertising would ultimately benefit the schools by increasing demand for trust lands. The Eighth Circuit Court of Appeals disagreed, noting that the Enabling Act of 1910 required that funds derived from those lands be used to support specific public institutions. Because the advertising program would take funds intended for these specific purposes to benefit the state as a whole, while providing only incidental benefits to the trust, the Eighth Circuit found that the program was a breach of trust. The U.S. Supreme Court upheld this interpretation, but did not explain the characteristics of the trust to which the state was bound.

Nearly 50 years later, *Lassen v. Arizona* (1967) considered the validity of Arizona's long-standing practice of granting rights-of-way to the State Highway Department free of charge (despite a requirement in the state enabling act providing that lands could be sold or leased only at public auction to the highest and best bidder). The Arizona Supreme Court initially held that highways built on trust lands would always enhance the value of those trust lands in an amount at least equal to the value of the right-of-way, such that compensation to the trust was not required.

The U.S. Supreme Court reversed the decision, noting that under its previous holding in *Ervien*, the state was required to manage the school lands in a manner consistent with the purposes and requirements specified in the enabling act. The Court held that the act required that the beneficiaries receive the full benefit from the disposal of trust land. Because a discount for "enhanced value" would require the state to make an inherently uncertain estimate of the value of the enhancement, this would risk diverting a portion of the benefits away from trust beneficiaries.



Arizona and New Mexico that would affirmatively require the states to manage the lands granted to them for the purposes specified in the act.

Although these were not the first decisions to find a trust responsibility associated with state trust lands, they were the first U.S. Supreme Court decisions to impose a legally binding trust. Thus these cases have exerted a powerful influence on subsequent decisions, which have made clear that the determination of whether or not a trust exists in a given state requires a case-by-case analysis of the terms of each state's enabling act and constitution (see *Papasan v. Allain* [1986]). Regardless, since *Ervien* and *Lassen*, virtually all of the western states whose courts have considered the issue have found that trust relationships were created by their individual enabling act grants, even though other enabling acts had not explicitly stated that the lands were to be held in trust.

In recent years, several courts—including those in Colorado, Utah, and Wyoming—have revisited the issue of whether or not the restrictions in their enabling acts were explicit enough to create a trust, with varying results. In *Branson Sch. Dist. RE-82 v. Romer* (1998), the Tenth Circuit Court of Appeals reviewed the history of the Colorado Enabling Act and determined that several restrictions, such as a requirement that lands be sold at public auction and the imposition of a minimum sales price, showed sufficient intent to create a trust by imposing specific duties on the state for the benefit of schools.

By contrast, in *District 22 United Mine Workers of America v. Utah* (2000), the same court examined the Utah Enabling Act, which grants lands for a state miners' hospital, and found that no trust had been created because the act did not place any specific restrictions on how the lands were to be managed or disposed. However, the court found that the Utah Constitution did impose such require-

ments, and the lands were thus held in trust pursuant to the constitution.

A similar result was reached in *Riedel v. Anderson* (2003), where the Wyoming Supreme Court found that neither the state's admission act nor its constitution imposed a trust responsibility on the management of its state



trust lands, since neither imposed specific restrictions on the state. As a result, the Wyoming legislature can unilaterally alter the requirements for the management of the state's trust lands. However, the court did find that those lands were held in trust pursuant to Wyoming statutes, which used "explicit trust language" and imposed trust-like requirements.

It seems doubtful that western states will revisit the adoption of the trust doctrine with regard to the administration of their state trust lands in the future. Today, all of the western states except California recognize some form of trust responsibility associated with their lands—a responsibility that imposes a fiduciary duty on the state agencies that are responsible for these lands to manage them in the best interests of the trust beneficiaries.

Part 3 of this report discusses the principles underlying the trust responsibility in greater detail, and explores the implications of this singular mandate for trust land management.



## PART 2

# Trust Land Management, Revenues, and Revenue Distribution

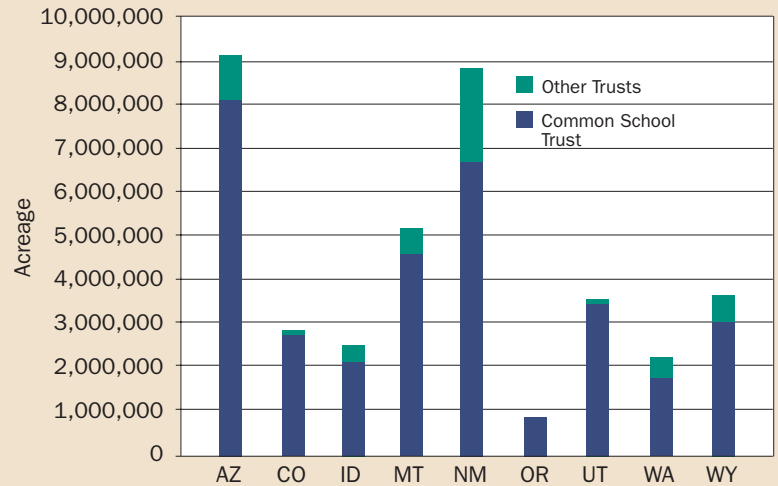
**T**wenty-three states continue to hold some state trust lands from their original grants: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Louisiana, Minnesota, Mississippi, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming. Several of these states have retained only a small fraction of the original lands—Nevada, for example, holds only around 3,000 acres of its original 2.7 million acre grant. By contrast, Arizona, Montana, Washington, and Wyoming each have more than 80 percent of their original land grants.

In the lower 48 states, Arizona and New Mexico have by far the largest holdings of state trust lands, with about 9.3 million and 9 million acres, respectively (see Figure 3). Just nine of the eleven contiguous western states (Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming) hold nearly 85 percent of all existing trust lands, totaling almost 40 million acres.

Although a few states hold large quantities of consolidated lands due to in lieu selection programs (Arizona, Idaho, New Mexico, and Washington), the vast majority of state trust lands consist of scattered, checkerboard sections. Because of the management challenges associated with these scattered holdings and the limited utility of many parcels, these trust lands return significant revenues to only a few states (see Figure 4).

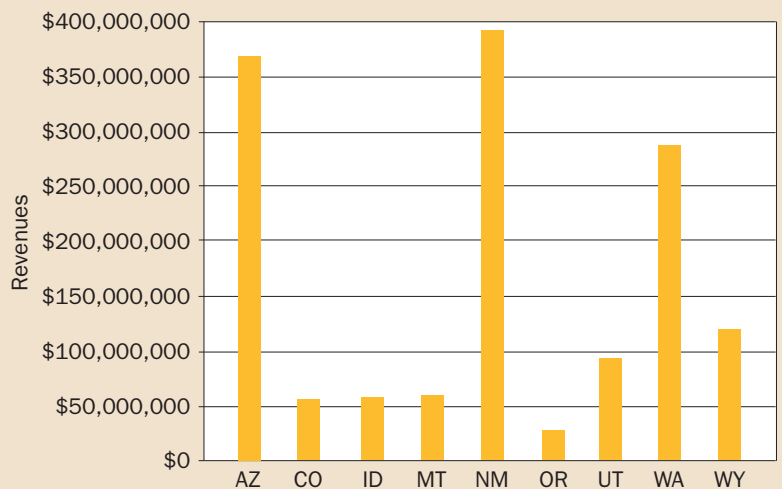
Most trust revenues are generated on a subset of lands that contain high-value timber (Idaho, Montana, Oregon, and Washington), oil and gas reserves (Colorado, Montana, New Mexico, Utah, and Wyoming),

**FIGURE 3**  
State Trust Land Surface Holdings Support Schools and Other Trusts, 2005



Sources: All data were derived from the applicable state's 2005 annual report, except as follows: Arizona data are from a 2005 draft annual report. Data for Colorado are available online at <http://www.trustlands.state.co.us/Documents/TLObyben.pdf>. Data for Oregon are available online at <http://www.egov.oregon.gov/DSL/DO/aboutcsf.shtml>.

**FIGURE 4**  
Three States Received Significant Gross Revenues from State Trust Lands in 2005



Sources: All data were derived from the applicable state's 2005 annual report, except as follows: Arizona data are from a 2005 draft annual report. Colorado data are from an August 24, 2005 memorandum to Land Board Commissioners and Other Interested Parties. Oregon data are from the state's 2003 biennial report. Washington data do not include aquatic lands.



coal and other mineral deposits (Colorado, Montana, Utah, and Wyoming), or lands with significant potential for commercial and residential development (Arizona and Utah). Other uses of trust lands include transfers for conservation, rights-of-way, licenses, cottage sites, sand and gravel leases, and land exchanges. Some states also allow easements for schoolhouse sites, parks, or community buildings. However, few of these latter uses currently generate significant revenues in most states (see Figure 5).

### **GRAZING, AGRICULTURE, AND TIMBER LEASES**

State trust lands in the West are utilized primarily for grazing or agriculture. The users are generally granted short-term leases for 5 to 15 years, with some states allowing longer-term leases under special circumstances. Leases are normally awarded to the highest bidder, although many states extend a preference to existing lessees, allowing them to meet the highest bid offered by a conflicting lessee or requiring conflicting lessees to buy out the improvements of existing users. Multiple uses of the land are permitted in a few states, stacked on top of the grazing or agricultural lease.

Many western states now face challenges to grazing lease programs, which have tradi-

tionally incorporated a series of preferences for grazing lessees and have not always been administered on a competitive basis. In Arizona, conservation groups have successfully sought to lease grazing lands for conservation use, and Oregon, Montana, and New Mexico have recently seen challenges brought against preference systems and other elements of their grazing programs.

Revenues generated from grazing leases are minimal in virtually all states, while agriculture revenues tend to be comparatively higher. For example, Idaho, Washington, and Wyoming each generates less than \$2 per acre for grazing leases before expenses; Arizona generates only around \$0.25 per acre for these leases. By contrast, agriculture revenues in these states range from \$18 to \$50 per acre.

Timber production in some states represents a significant source of income for trust beneficiaries, but it is also one of the most controversial uses of trust lands, generating legal and political conflicts over impacts to fish, wildlife habitat, clean water, aesthetics, and recreational use. Generally, fair market value is the minimum price set for timber sales on state trust lands. These sales can occur at public auction or via competitive bidding, although low volume or low value sales may occur on a noncompetitive basis. For example, Washington allows expedited sales of timber damaged by fire, wind, or floods. It also allows trust managers to reserve portions of harvested forests from sales or leases to promote reforestation and to protect the future income potential of the lands.

### **SUBSURFACE USES**

Those states fortunate enough to have oil and gas deposits below their trust lands enjoy substantial revenues from oil and gas development. New Mexico, Utah, and Wyoming receive a substantial percentage of their trust revenues from these sources. Oil and gas leases are generally issued on a competitive



basis via sealed bid or public auction. Some states allow noncompetitive leases if the oil or gas is discovered by the lessee. An annual per-acre rental is charged initially, with royalties (normally around 12.5 percent) charged on actual production. Revenues and royalties from subsurface uses are generally deposited into a state's permanent fund.

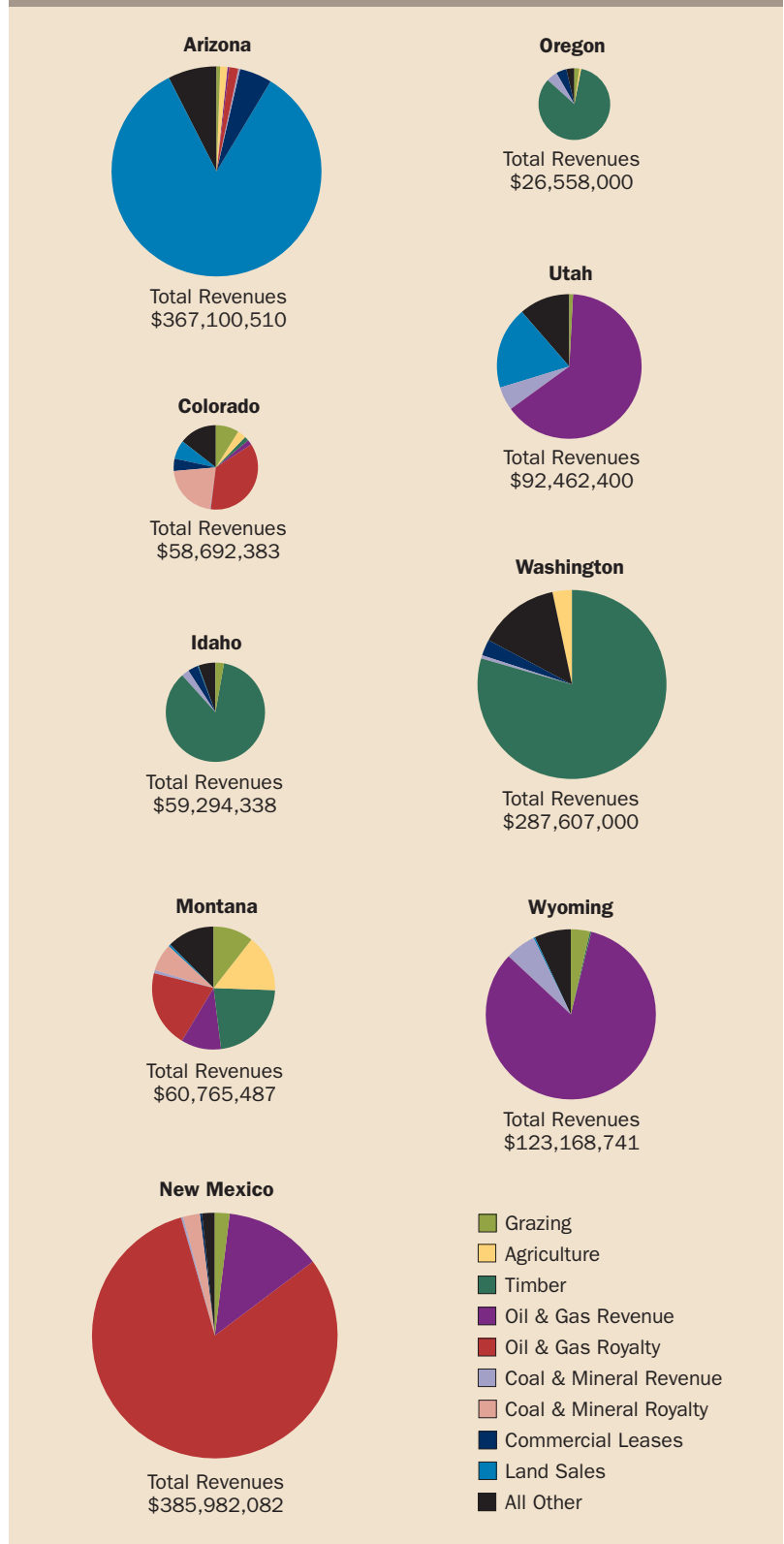
Production of coal and other minerals and the royalties associated with them are an important source of revenue from trust lands in Colorado, Montana, and Wyoming. Most states allow prospecting permits to encourage mineral exploration on trust lands and give the permit holder a preferential right to lease lands for production once minerals are discovered. Leases are generally issued at public auction, with a right of first refusal normally granted to the discoverer, subject to a continuing royalty of around 12.5 percent on the minerals produced by the permittee. Metallic mineral leases are usually issued through a competitive bidding process, and some states allow nonmetallic minerals to be leased through a noncompetitive process.

### COMMERCIAL LEASES, LAND SALES, AND DEVELOPMENT

Commercial leases (normally for industrial, commercial, and residential uses) are an increasingly common source of revenue from trust lands. Although most states provide for short-term commercial leases, a growing number also allow for long-term leases. For example, Arizona and Montana permit leases of up to 99 years. Nearly all states require a public auction or competitive bidding process for commercial leases, although some exceptions are provided for short-term leases.

Virtually all states provide a mechanism for trust lands sales, although some allow only the disposal of lands that are challenging to manage, are no longer valuable for

FIGURE 5  
Composition and Amount of Revenues Vary Greatly by State, 2005



Sources: All data were derived from the applicable state's 2005 annual report, except as follows: Arizona data are from a 2005 draft annual report. Colorado data are from an August 24, 2005 memorandum to Land Board Commissioners and Other Interested Parties. Oregon data are from the state's 2003 biennial report. Washington data do not include aquatic lands.



revenue generation, or utilize a land banking mechanism that requires any lands that are sold to be replaced with other lands. Trust lands normally must be disposed at public auction to the highest and best bidder, with a minimum bid price established at the land's fair market value.

Land sales are currently the major source

of revenue only in Arizona, which has substantial amounts of trust lands located in rapidly growing areas. These lands comprise more than 30 percent of the available urban development land in Maricopa County, including the Phoenix metro area, the fastest-growing part of the state. Although these lands clearly represent a major asset for the trust due to their potential value for development, in many cases they also have important value for urban open space.

Arizona applies a relatively sophisticated approach to land disposals, identifying lands with high development potential and engaging in planning and infrastructure development to increase the value of those properties prior to sale. Recent land sales in Arizona have broken records for land dispositions, with single sales of small parcels fetching tens and even hundreds of millions of dollars at auction, at prices as high as \$800,000 per acre. Commercial, residential, and industrial development of trust lands is likely to become an increasingly important revenue source in other states as well, since population centers near

**FIGURE 6**  
**Schools Are the Primary Beneficiaries of State Trust Lands**

	Public and Common Schools	Public Buildings, Capitals and Libraries	Penitentiaries	State Charitable Institutions	Deaf and Blind Schools	Normal Schools	Other Schools and Colleges	Universities	State and Other Hospitals	Military Institutes	Reservoirs and State Parks
AZ	X	X	X	X	X	X	X	X	X	X	-
CO	X	X	X	-	-	-	X	X	-	-	X
ID	X	X	X	X	X	X	X	X	X	-	-
MT	X	X	-	X	X	X	X	X	-	-	-
NM	X	X	X	X	X	-	X	X	X	X	X
OR	X	-	-	-	-	-	-	-	-	-	-
UT	X	X	-	X	X	X	X	X	X	-	X
WA	X	X	-	X	-	X	X	X	-	-	-
WY	X	X	X	X	X	-	X	-	X	X	-

these lands are predicted to see significant growth over this century (see Part 5).

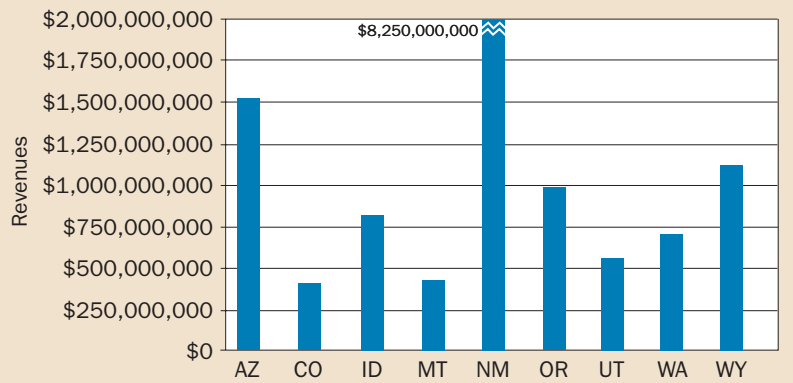
## TRUST BENEFICIARIES AND REVENUE DISTRIBUTION

The revenues generated from state trust lands support a variety of beneficiaries, corresponding to the purposes for which lands were granted by Congress in the original land grants (see Figure 6). The largest single beneficiary is the common school system (K–12), which generally receives 90 percent or more of the trust revenues in any given state. Public universities, state hospitals, schools for the deaf and blind, state penitentiaries, public buildings, and other institutions are also beneficiaries of these lands.

Most states utilize a permanent fund mechanism to retain the proceeds from permanent disposals of trust lands or their nonrenewable natural resources (such as oil, gas, and minerals). Some of these fund balances are now in the billions of dollars (see Figures 7 and 8). These funds are generally invested in a combination of safe, interest-bearing securities, although a few states allow a percentage of their funds to be invested in more lucrative (and risky) equity-based securities. In some states a portion of these funds are also used to guarantee school bonds, loans, and other beneficiary-related public debts.

The proceeds from land sales can sometimes be deposited in a holding account that the trust managers can use to acquire replacement assets for the trust. If the funds in the holding account are not used within a specified timeframe, they are directed to the permanent fund. The interest derived from the permanent funds is generally combined with revenues from leasing, permitting, and other renewable activities on trust lands for annual distribution to the trust beneficiaries. Washington is particularly noteworthy in this regard, as that state continues to diversify its portfolio through land sales and sub-

FIGURE 7  
New Mexico Holds the Largest Permanent Fund Balance in 2005



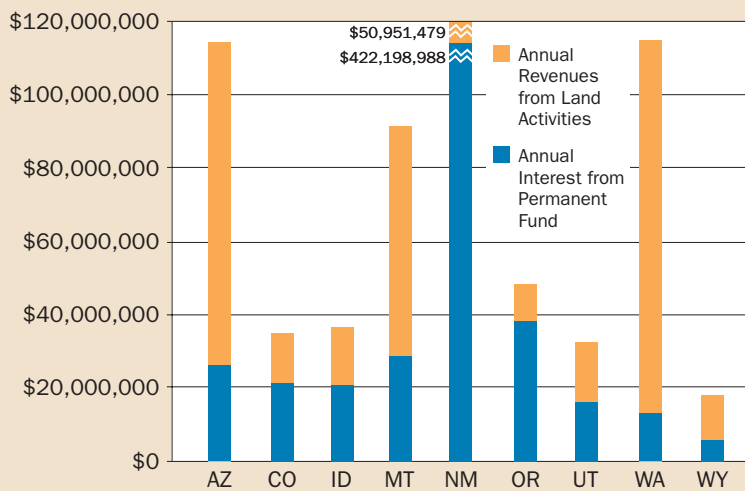
Sources: All data were derived from the applicable state's 2005 annual report, except as follows: Arizona data are from a 2005 draft annual report. Colorado data are from an August 24, 2005 memorandum to Land Board Commissioners and Other Interested Parties. Idaho data are from FY 2005 State of Idaho Endowment Funds Administered by the Endowment Fund Investment Board. Oregon data are from 2005 and are available online at: <http://egov.oregon.gov/DSL/DO/aboutcsf.shtml>. Washington data are from 2006 and are available online at: [http://www.sib.wa.gov/financial/fp\\_pf.html](http://www.sib.wa.gov/financial/fp_pf.html).





sequent acquisition of commercially valuable properties with longer-term revenue generating potential.

**FIGURE 8**  
**Annual Distributions to Beneficiaries Derive from Land Activities and Permanent Fund Interest in 2005**



Sources: All data were derived from the applicable state's 2005 annual report, except as follows: Arizona data are from a 2005 draft annual report. Colorado data are from an August 24, 2005 memorandum to Land Board Commissioners and Other Interested Parties. Idaho data are from FY 2005 State of Idaho Endowment Funds Administered by the Endowment Fund Investment Board. Oregon data are from the state's 2003 biennial report. Utah data are from the 2005 consolidated balance sheet, available online at: <http://www.utahtrustlands.com/lib/viewDocument.asp?docID=331>. Washington data do not include aquatic lands.

## GOVERNANCE OF STATE TRUST LANDS

There are essentially two management frameworks at work: systems in which oversight or control of the agency and/or board that manages trust lands is vested in appointed officials; and systems administered by elected officials (see Figure 9). Within these broad frameworks, there remain significant differences between management regimes, typically centered on the existence of and/or composition of the land board or commission and the degree and type of stakeholder representation. For example, Arizona is managed by a single appointed official and New Mexico by an elected official. Utah has an appointed board, whereas Montana has an elected commission. Trust land administration is also funded through different mechanisms; some agencies are funded by legislative appropriation, while others use an enterprise funding mechanism that uses trust proceeds to fund operations.

**FIGURE 9**  
**Trust Lands Governance Frameworks Differ Across States**

State	Administration			Director/Commissioner			Land Commission or Land Board			
	Agency Dept.	Indep. Agency	Self-Funding	Director/Commissioner	Elected	Appointed by	Board	Elected	Appointed by	Stakeholder Representation
Arizona		X		X		Governor				
Colorado	X		X	X		Board	X		Governor	X
Idaho		X	X	X		Board	X	X		
Montana	X		X	X		Governor	X	X		
New Mexico		X	X	X	X		*		Commissioner	X
Oregon		X	X	X		Board	X	X		
Utah		X	X	X		Board	X		Governor	X
Washington	X			X	X		X	**		X
Wyoming		X		X		Governor	X	X		

\* New Mexico State Land Trusts Advisory Board (advisory only).

\*\* Washington's Board of Natural Resources includes elected officials and unelected representatives from the universities and county governments.



### PART 3

## The Trust Responsibility

As a result of the provisions contained in state enabling acts and constitutions, most state trust lands that remain in public ownership today are recognized as being held in a perpetual, intergenerational trust to support a variety of beneficiaries, including public schools (the principal beneficiary), universities, penitentiaries, and hospitals. Only California and Wyoming have found that neither their enabling acts nor their constitutions impose any trust responsibilities on the state, although Wyoming holds its lands in trust pursuant to the direction of the state legislature.

The precise nature of the trust responsibility varies substantially depending on the specific enabling act, constitutional, and statutory requirements that apply in each state.

This doctrine is also continuing to evolve as courts consider challenges to the decisions of trust managers through litigation and as states adopt new statutory and constitutional requirements.

Several common themes apply to most of the states that hold trust lands west of the Mississippi River: (1) these lands are held in trust by the state; (2) the state, as the trustee, has a fiduciary duty to manage the lands for the benefit of the beneficiaries of the trust grant; and (3) this fiduciary duty operates as a constraint on the discretion of the state and requires that lands be managed in a manner consistent with the best interests of the trust. However, this fiduciary duty is in certain ways very different from that which applies to other types of trust managers.



## FIDUCIARY DUTIES OF TRUST MANAGERS

The manager of any type of trust is charged with a series of express or implied fiduciary duties to the beneficiary of the trust (see Box 5). The most important of these duties are the following.

### *The Duty to Follow the Settlor's Instructions*

The trustee is normally required to follow the instructions of the settlor in administering the trust assets. However, depending on the level of detail associated with the restrictions established by the settlor, the trustee may have broad discretion in managing trust assets—as long as this discretion is exercised in furtherance of the purposes of the trust. Courts may authorize changes to trusts under some circumstances, particularly where compliance with trust instructions becomes illegal or impracticable due to changed conditions.

### *The Duty of Good Faith*

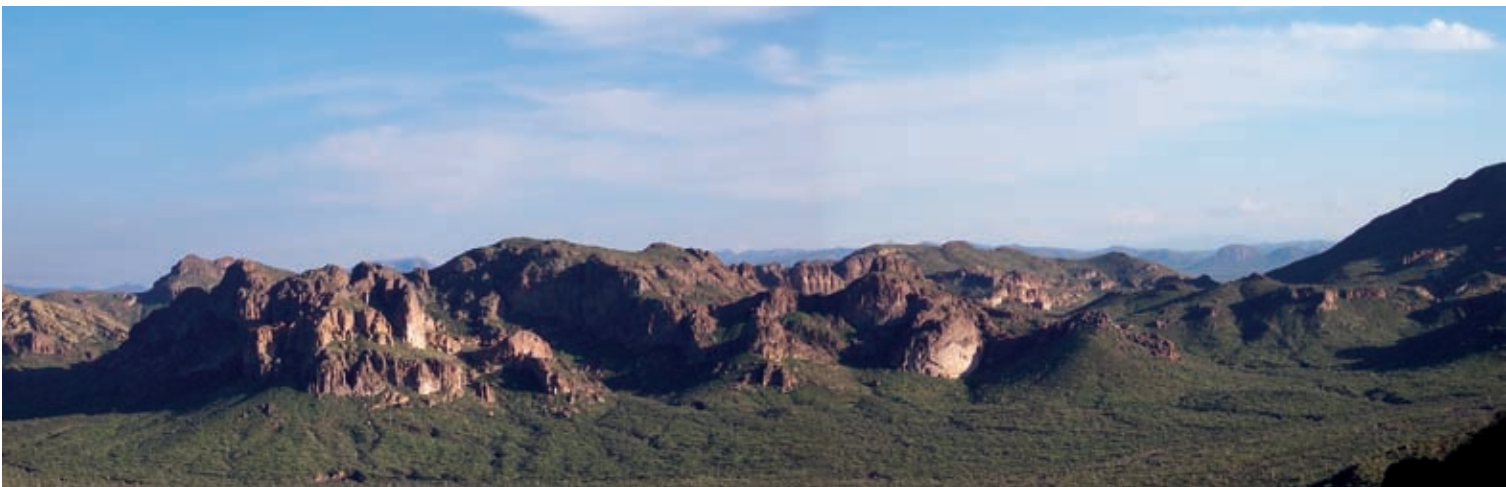
The duty of good faith requires that the trustee act honestly and with undivided loyalty to the interests of the trust and its beneficiary(ies). The trustee cannot put his own interests or those of third parties ahead of the interests of the trust.

### *The Duty of Prudence*

The duty of prudence involves a number of interrelated components requiring the trustee to act with due care, diligence, and skill in managing the trust. First, it requires the trustee to bring the appropriate level of expertise to the administration of the trust asset, or to retain experts to assist with management. Second, this duty is generally understood to imply a requirement that the trustee distribute the risks of loss through a reasonable diversification in the trust portfolio that meets the trust's long-term management objectives; significantly, courts have recently found that this prudence standard should be applied to investments not in isolation but in the context of the overall trust portfolio. Third, this duty requires the trustee to make decisions using the proper level of care, precaution, attentiveness, and judgment; investigate and evaluate alternatives; assess risks and rewards; and then make the best choice in light of this information for the strategy of the overall portfolio. Finally, the duty of prudence implies a requirement to constantly monitor and reassess trust-related decisions over time.

### *The Duty to Preserve the Trust Assets*

The duty to preserve and protect the assets of the trust is closely related to the duty of prudence. It requires the trustee to manage





#### BOX 5

### What Is a Trust?

**T**he legal concept of trusts dates back to the earliest history of European legal theory. In its simplest form, a trust is a legal relationship in which one party holds property for the benefit of another.

#### Three parties required for every trust relationship:

- **Settlor**—establishes the trust and provides the trust property or “res”
- **Trustee**—manages the trust in keeping with the settlor’s instructions
- **Beneficiary**—receives the benefits from the property held in trust

#### Three elements needed to establish a trust:

- Clear manifestation of intent by the settlor to create a trust
- Trust property held by the trustee for the benefit of another
- Identified beneficiary or charitable public purpose for which the property is held in trust

A typical example of a private trust is one established by parents for the benefit of their children (or multiple generations of descendants) to provide for education, health care, or maintenance payments, with a specified person (such as a lawyer, banker, or family member) serving as the trustee. The private trust is the purest form of the trust relationship, in which the settlor, trustee, and beneficiaries can be easily (and specifically) identified. This has particular significance with regard to who can enforce the terms of the trust, as the trustee’s duties are owed only to the specific individuals who are the identified beneficiaries of the trust. Private trusts are generally limited in duration, having a purpose that will be achieved within some identifiable period of time, after which the trust terminates.

the assets with a long-term perspective, ensuring that the trust can satisfy both the present and future needs of the beneficiary. In the context of a perpetual trust, this generally requires the trustee to manage the trust corpus in a manner that will ensure that the trust will remain undiminished to serve the needs of future beneficiaries in perpetuity.

### STATE TRUSTS AS CHARITABLE TRUSTS

In a charitable trust, the term “charity” has a broad meaning that embraces any trust that serves a public purpose and benefits an indefinite number of persons, such as trusts that benefit educational, religious, medical, or social welfare institutions, or that set aside property for public use, such as a public park. Charitable trusts are also permitted to be perpetual trusts since the public purposes

for which they are granted are frequently not limited in time.

Charitable trusts devote some portion of the equitable interest in the trust property to the public or to the community at large. Unlike a private trust the charitable trust beneficiaries cannot be definitely ascertained. Thus, charitable trusts can be enforced more broadly than private trusts, and as a result they can be enforced by the state attorney general or any person with a special interest in the trust.

State trusts are most similar to common law charitable trusts in that grants for the benefit of common schools embrace a purpose that is among the most basic of the charitable trust purposes recognized under the common law. The secondary trust grants for hospitals, schools for the deaf and blind, and public buildings are also traditional

charitable purposes. All of these grants benefit either an indefinite class of beneficiaries (such as the common schools), or specific public institutions that are properly the subject of a charitable trust. The grants also establish the trusts in perpetuity, embracing purposes that will continue from generation to generation without a foreseeable end.

Decisions interpreting the requirements of state trusts have applied a variety of these common-law fiduciary principles to trust managers. A typical case is *State ex rel. Ebke v. Board of Educ. Lands and Funds* (1951), in which the Supreme Court of Nebraska found that the state was subject to a number of common law trust principles.

- Trust lands are required to be administered under rules of law applicable to trustees acting in a fiduciary capacity, and laws adopted by the legislature that govern the activities of trust managers must be consistent with the duties and functions of a trustee.
- The state owes a duty of undivided loyalty and good faith to the trust beneficiaries,

and lands must be administered in the interest of those beneficiaries.

- The state must balance its duty to protect the trust assets in a manner that bears a reasonable relationship to the risk of loss.

These fiduciary duties have significant implications for trust management, as they can constrain the activities of trust managers. For example, based on the fiduciary requirements that are commonly held to apply to the managers, other courts variously found that:

- Public auctions and competitive bidding are required for all sales of land, even when the purchaser is a governmental entity (although a few courts have permitted condemnation).
- Provisions granting rights of renewal to grazing lessees or denying the participation of conservation groups in grazing lease auctions are invalid, as the state is always required to grant leases competitively and in accordance with the best interest of the trust.
- Legislation allowing lessees to cancel their leases when market conditions declined was invalid, as it conferred benefits to third parties that would not occur in a private contract.
- The value of rights-of-way, leases, minerals, and other products of trust land, however incidental, must always be established by appraisal, not fixed by statute.

These or similar requirements are typically understood to apply to most state trust managers. However, there are significant variations in goals, terms, and restrictions on trust managers as a result of the multilayered requirements contained in enabling act provisions, state constitutions, state legislation, and administrative rules (see Box 6). There are also a number of differences between state trusts and common law trusts relating to the status of the state trust parties as government

#### BOX 6

#### Arizona's State Trust Has Multilayered Requirements

Even where a state's constitutional provisions simply mirror the requirements of the state's enabling act, courts may ultimately adopt different interpretations of the same provisions. In *Deer Valley Unified School District v. Superior Court* (1988), the Arizona Supreme Court adopted a strict construction of the Arizona Constitution to prevent the state and its local jurisdictions from condemning state trust lands, despite the fact that the U.S. Supreme Court had interpreted identical language in the state's enabling act to allow condemnations.

The Arizona Supreme Court subsequently prohibited exchanges of state trust lands in *Fain Land & Cattle Co. v. Hassell* (1990), concluding that exchanges would constitute a sale without public auction in violation of the Arizona Constitution, despite the fact that the enabling act expressly allows exchanges and provides that exchanges are not sales for purposes of the act.



bodies with public obligations that extend beyond the normal duties of a private settlor or trustee.

The trust doctrine can be used by state trust managers, beneficiaries, user groups, and others to argue that the managers lack discretion over resource management and must always act to maximize returns from state trust lands for the benefit of the beneficiaries, to the exclusion of other considerations. A closer examination of the laws and operating environments within each state indicates that there is greater flexibility within the trust mandate than generally assumed. This inherent variation among the states argues against a one-size-fits-all approach for trust land management.

### UNIQUE FEATURES OF STATE TRUSTS

Trustees are normally subject to a duty of undivided loyalty to the interests of the trust and cannot alter the terms under which a trust is managed. However, state trustees are also sovereign governments that are responsible for passing and enforcing laws and protecting the public welfare. State trusts are

subject to laws of general application even where this causes a direct loss to the trust. Most significantly, the state can pass laws that regulate its own behavior, even if this requires the state to behave in a manner that would not be required of a private trustee.

For example, state environmental laws frequently hold state trust managers to a higher standard than a private trustee, requiring environmental analysis of trust activities similar to that required of federal agencies under the National Environmental Policy Act. In *Noel v. Coel* (1982) and *Ravalli County Fish and Game Association v. Montana Department of State Lands* (1995), Washington and Montana courts held that trust managers are obligated to prepare environmental impact statements even if this would impose additional costs and put the trust at a competitive disadvantage as compared to privately managed lands.

Other provisions require state trustees to (1) consider fiscal impacts on local communities before approving developments on state trust lands; (2) give public notice of trust-related decisions; (3) hold public hearings and accept public comment; (4) maintain all materials related to trust administration





as public records subject to inspection (including by economic competitors); (5) produce annual reports; and (6) conduct trust-related management activities under the direction of legislative appropriations (which may not allocate agency resources in a way that optimizes the management of trust resources). These requirements may direct trust assets and resources to serve purposes other than those specified in the trust grant.

In a common law charitable trust, the enforcement of the trustee's responsibilities is essentially limited to the state attorney general (who may or may not take the appropriate level of interest) and those individuals or entities that can evince a special interest in the charitable trust. By contrast, where the trustee is a public agency, the number of interested parties that can seek to enforce the trustee's responsibilities (and the range of available enforcement tools) can be significantly expanded (or limited) because the trust requirements are defined by federal laws, state constitutional provisions, and state statutes and regulations (instead of a private trust instrument). Furthermore, standing (the right of a party to sue a public agency) is governed by a different set of rules and judicial doctrines than would normally apply in a trust context.

These rules also extend varying degrees of deference to state legislatures and state

agencies in their interpretations of federal laws, state constitutional provisions, and state statutes, giving state trustees more flexibility than would be allowed to a private trustee. These laws and doctrines effectively supplant traditional trust principles. Thus, the trust doctrine's primary role with regard to trust lands is to define a background of fiduciary principles that inform the interpretive framework within which an agency's decisions will be evaluated, that is if standing is proper and if the court is not required to grant deference to the agency's decision.

However, courts may apply different standards for review of trust decision making depending on who is challenging the decision. Although the court might review a decision not to renew a lease under a relatively deferential standard where this decision was challenged by a lessee, it might apply a much less deferential standard if the decision is challenged by a trust beneficiary.

The availability of standing may also be driven by the kind of decision that is being challenged. Standing to contest individual decisions will generally lie in the parties affected by those specific decisions. However, standing to challenge a broader set of agency decisions, a pattern or policy of decision making, or a strategic framework for trust asset management may lie only in an entity that can demonstrate the requisite level of special interest in the trust to show harm from that decision.

The judicial doctrines governing standing and deference help to explain why state and federal courts have been somewhat inconsistent in their recognition of standing in various state trust beneficiaries. Some courts have recognized standing in beneficiaries as varied as school districts and school children, state educational organizations, teachers and parents of school children, and county governments. Other courts have denied standing to these same types of

individuals and entities under seemingly similar circumstances.

State trust enforcement is also muddled by the fact that many entities that perceive themselves either as trust beneficiaries (school boards, school administrators, teachers' unions, and other school advocates) or trust stakeholders (lessees, development interests, conservationists, or even the public), may also be represented in the legislative and administrative processes that govern trust management decisions. Depending on the governance model, trust managers may be answerable to beneficiaries, user groups, and voters in some instances in a manner that would be inappropriate or at least unusual in the context of a private trust. As a result, there is usually no clean separation among the roles of the state as a trustee, public agency, and law-making and rule-making body. Many trust decisions thus involve political considerations that are unrelated to the agency's theoretical duties as a trustee.

### THE PERPETUAL TRUST

Perhaps the most important characteristic of state trusts is their perpetuity. They are intended to endure and provide benefits from generation to generation without foreseeable end. This characteristic of state trust doctrine has significant implications for the common fiduciary requirement that trusts be managed for the exclusive benefit of the trust beneficiaries. Some trust managers have interpreted this obligation as a requirement to pursue the highest monetary returns possible for trust beneficiaries, regardless of other considerations.

However, modern trust doctrine embraces a much more flexible theory of portfolio management that incorporates the concepts of balanced risk and return and of management for long-term sustainability. These concepts require trust managers to look beyond revenue maximization, and at least in theory obligate

them to embrace notions of intergenerational equity by investing portfolios in management strategies that will maintain healthy trust assets for future generations.

The perpetual nature of the state trusts and the larger public significance of state trust lands may also require trust managers to consider a variety of nonmonetary values that are associated with trust lands. In *National Parks and Conservation Association v. Board of State Lands* (1993), the Utah Supreme Court found that the perpetual nature of the trust requires the state to consider and preserve a much broader range of values associated with its trust lands, such as scenic, historic, and archaeological values.

In *Branson School District RE-82 v. Romer* (1998), the Tenth Circuit Court upheld a revision to Colorado's trust management scheme that required consideration of beauty, nature, open space, and wildlife habitat in connection with trust decisions. Trust managers thus have the flexibility to consider how they can obtain revenues for trust beneficiaries without diminishing other values that may be associated with those lands.





## PART 4

# The Big Picture

## Developing a Management Framework for Decision Making

**T**rust managers often functioned historically by reacting to markets through applicant demand (i.e., responding to outside interests that propose economic uses for the land) and by maintaining historical uses that lend a desired stability and predictability to the system (i.e., traditional resource extraction activities). While such approaches may serve the trust well, trust managers increasingly recognize that reactive approaches to trust management need to be complemented by activities that involve deliberate positioning, planning, and entitlement of trust lands, and provide short-term revenue while maintaining or enhancing their value over the long term. Such planning or portfolio management occurs both internally, through what most trust land managers refer to as asset

management, and externally, through activities such as collaborative planning with partners, other public agencies, key stakeholders, and citizens.

### ASSET MANAGEMENT

While all trust management agencies engage in asset management to some degree, it is becoming more apparent to trust managers (and state legislatures) that to improve trust management and to honor their fiduciary duty more fully they need to establish a more holistic framework within which to structure their decision making (see Boxes 7, 8, and 9).

Asset management can be defined in different ways, but in this context it is the process of guiding the use, disposal, and acquisition of assets to make the most of their revenue potential and to manage the





related risks and costs over the entire life of those assets. This approach incorporates the economic assessment of trade-offs among alternative investment options to help make cost-effective investment decisions, including how to allocate resources most effectively to achieve desired goals.

Management of state trust land assets must account for their particular characteristics: the perpetual nature of the trust; externally imposed limitations in resources available to manage the trust (i.e., legislative appropriations); the permanent fund as a capital asset alternative to the land asset; and the state's obligations as both a trustee and a public agency with, in some instances, broader public responsibilities.

In the absence of more holistic approaches to trust management that embrace these considerations, there is little guarantee that management strategies and decisions will deploy and adaptively manage trust assets in a manner that will produce superior benefits to the trust over the short term while ensuring that management practices are both forward-looking and sustainable over the long term.

A critical element of asset management relates to each state agency's ability to engage in strategic management of trust portfolios, which requires aligning organizational resources with a strategic vision. This is essential for any institution or company, and especially for trust managers, given the constrained institutional capacity of these public agencies to fund trust management activities, as a result of budgetary limitations imposed by legislative appropriations. These constraints hamper attempts to improve trust land management and in many cases even limit the trust manager's ability to assess the current shortcomings in trust management or explore opportunities for improvement.

If trust management is to be improved, state executives and legislatures must take

#### BOX 7

#### Oregon Establishes an Asset Management Plan

The trust land management activities of the Oregon Department of State Lands (DSL) are guided by an Asset Management Plan (AMP), which establishes management philosophies and strategies tailored to the State Land Board's legal obligations with regard to trust assets. The AMP was developed with the goals of establishing a coordinated, comprehensive real estate management philosophy; proactively managing the Land Board's real estate assets with the same vigor applied to the investment portfolio; increasing net revenues from real estate assets to meet Land Board goals; and providing a guide to balance revenue generation and resource conservation decisions.

The AMP provides an overall management philosophy, guiding principles for more detailed management direction for all land assets, resource-specific management descriptions, and strategies to resolve potential conflicts between resource stewardship and revenue enhancement. Finally, the plan includes overall implementation measures developed with input from stakeholders, other affected parties, and the Land Board to define the actions necessary to carry out the plan.

Real estate assets are classified as forest lands, agricultural lands, rangelands, industrial/commercial/residential lands, special interest lands, waterways, and mineral lands. Management activities in each classification are governed by a set of principles embodied in the AMP, and these are prioritized for planning based on the potential for sale, exchange, development, or public interest. Each plan addresses geographic location, resource type, revenue generation potential, and inventory, as appropriate, as well as various economic, environmental, and social factors. When completed, the plans are intended to govern all management activities undertaken by the DSL within the subject area.

In addition to the AMP, the DSL has developed a strategic plan to outline current and future needs, and craft a set of goals that reflect the input of the public, staff, environmental consultants, organizations, and associations. The achievement of the strategic plan, as well as the asset management and other plans, is tracked under a set of performance measures developed as part of the overall state government framework for measuring success.

BOX 8

## Wyoming Legislature Prompts Assessment of Institutional Capacity

The state of Wyoming recently embarked on an effort to develop a comprehensive asset management plan for trust lands. A legislative mandate required the Wyoming Office of State Lands and Investments (OSLI) to adopt this approach; however, OSLI's ability to carry out this directive was constrained by a lack of resources. The Lincoln/Sonoran State Trust Lands Project partnered with OSLI to assess its current institutional capacity and future needs to achieve identified institutional strategic goals, objectives, and trust responsibilities. The results of this assessment were provided to a legislative task force that evaluated OSLI's institutional capacity and prepared a draft report with recommendations for the Wyoming Legislature's Joint Committee on Agriculture, Public Lands and Water Resources and the Joint Appropriations Committee.

institutional capacity needs seriously, assess these needs objectively, and provide the resources necessary to manage trust resources effectively. Given that trust lands are one of the few revenue-generating activities of government in these states, funding decisions should not be a problem.

Certain states have asset management strategies that include acquisition of new assets in concert with disposal of existing assets, either through lease or outright sale. These states seek to reposition land assets by acquiring other replacement lands with higher future revenue potential. Repositioning the trust land assets is often done through land exchanges and land banking programs. In the case of land banking, the funds realized from the sale of trust assets are reserved for future acquisition of both vacant and improved land. Usually these funds are directed to the permanent fund if they are not spent within a specified timeframe.

A final wrinkle on asset management in a trust land context is the recognition that the revenues from the sale of land or non-



renewable resources are usually deposited in a permanent fund, and the earnings are dispersed to trust beneficiaries. A comprehensive asset management strategy will consider the costs and benefits of monetizing land and natural resource assets. In cases where the permanent fund is managed by another agency (e.g., the state treasurer in Arizona), a comprehensive approach to asset management is more complicated.

### **COLLABORATIVE PLANNING**

Even with the best internal planning by land management agencies, as large landowners in the West they are subject to a great degree of external scrutiny by other agencies, organizations, and the public regarding their land use activities. Since conflicting visions for the land and its resources can

significantly delay or constrain landowner choices, resolution of conflicts is essential, and avoidance of conflict is preferred. Over the past 20 years, collaborative planning has proven to be a valuable tool in land and water management by helping to reduce conflict and reach creative solutions that meet the needs of many people and produce enduring solutions (see Box 10).

Collaborative planning is a process whereby individuals, agencies, and organizations, often with widely varied interests, work together to share knowledge and resources, and achieve mutually beneficial goals through structured, civil dialogue. When utilized effectively, collaboration can serve as an alternative dispute resolution process.

Natural resource management in the West is viewed increasingly within the context of natural ecosystems or landscapes, but multijurisdictional governance and diverse land tenure do not always align well with natural systems. Creative planning approaches that will result in value-added outcomes must build on participant expertise and skills to enhance any one agency's or organization's efforts to accomplish its mission.

While the use of collaboration in natural resource management decision making has received increased attention and application, the benefits and costs remain open to

#### BOX 9

#### Land Exchanges and Block Planning Enhance Asset Management in Utah

Much of Utah's trust land is held in a scattered ownership pattern that corresponds to the 640-acre section reservations of its original school land grant. This checkerboard pattern presents particular challenges for Utah trust managers because of the large federal land base, which is now operated under a preservation-oriented model, creates inherent conflicts between federal land management goals and the revenue generation goals of the state's trust managers.

To resolve these conflicts and accomplish the protection of environmentally sensitive trust lands, Utah has recently participated in two large land exchanges with the federal government: a 375,000-acre transfer that exchanged lands in the Grand Staircase–Escalante National Monument and other Utah national parks and national forests for cash and mineral lands; and an exchange in 2001 of more than 100,000 acres of trust lands in several proposed federal wilderness areas for larger, consolidated blocks of Bureau of Land Management lands with greater revenue potential. A third exchange in 2002 addressing lands in the San Rafael Swell met with public criticism and ultimately failed in the U.S. Senate.

Utah trust managers also engage in asset management through block planning. In 2002 the School and Institutional Trust Lands Administration (SITLA) developed the block planning process to provide detailed, asset management plans tailored to the more than 50 areas of the state where the trust manages 5,000 or more acres in a contiguous block.







#### BOX 10

#### Whitefish, Montana, Uses Collaborative Planning Process

**T**he Montana Department of Natural Resources and Conservation recently completed a collaborative, community-based land use planning process in the town of Whitefish, a gateway community to Glacier National Park. Although traditionally the Whitefish economy has been based on the timber and rail industries, the community has grown rapidly over the past few decades and has shifted from a resource-based economy to a service-based economy that relies on the natural amenities of the area. The state trust lands in the area, currently managed for timber, are under increasing pressure for development, as well as for the preservation of recreational and conservation uses that contribute significantly to the local economy and its growth potential.

Because of the controversy and the high political stakes involved with the potential development of these lands, the Board of Land Commissioners engaged a diverse group of community stakeholders to develop a Whitefish State Lands Neighborhood Plan. The plan strongly reflects the community's concerns by allocating only a small amount of land for development in the near term. It proposes to develop new revenue generation mechanisms that will increase value to the trust while preserving the lands for traditional uses (such as timber production) or to identify disposition strategies that will result in the conservation of the lands.

discussion, and collaborative skills vary greatly among individuals, organizations, and agencies. Nonetheless, trust land managers throughout the West are engaging in the collaborative planning process, and these experiences suggest it will remain a valuable tool to assist the managers to effectively involve stakeholders in trust decisions, and to engage in other land planning efforts not under their sole discretion.

To investigate recent examples of collaborative planning on state trust lands, the Lincoln/Sonoran State Trust Lands Project partnered with Dr. Steven Yaffee, a nationally known expert in collaborative planning and evaluation, and a team of eight master's students at the University of Michigan's Department of Natural Resources and Environment. Through detailed case studies, their report provides descriptions of each planning effort as seen through the eyes of participants; identifies lessons learned; assesses relative costs and benefits of collaborative planning; and provides both best management practices and recommendations to improve the efficacy of collaborative planning efforts involving trust lands (University of Michigan 2006).



## PART 5

# Evolving Strategies for Trust Land Management

In response to trust managers' interests in diversifying their approaches to asset management, we highlight strategies to expand real estate development and enhance conservation uses with revenue potential. These activities are consistent with a trust's fiduciary duty, are being used by trust managers throughout the West, and will help managers meet a broader set of public concerns about trust lands.

## RESIDENTIAL AND COMMERCIAL DEVELOPMENT

The rapid growth in many parts of the West is generating new opportunities for trust managers to participate in the development of land for commercial, residential, and industrial uses. A rough mapping exercise demonstrates that in 11 western states, more than 2.7 million acres of state trust lands are within an hour's drive of cities with populations greater than 100,000, suggesting that these lands are within the immediate path of development (see Figure 10).

A number of innovative practices are being employed by state trust managers and others to determine appropriate development uses for these lands.

### Disposition Tools

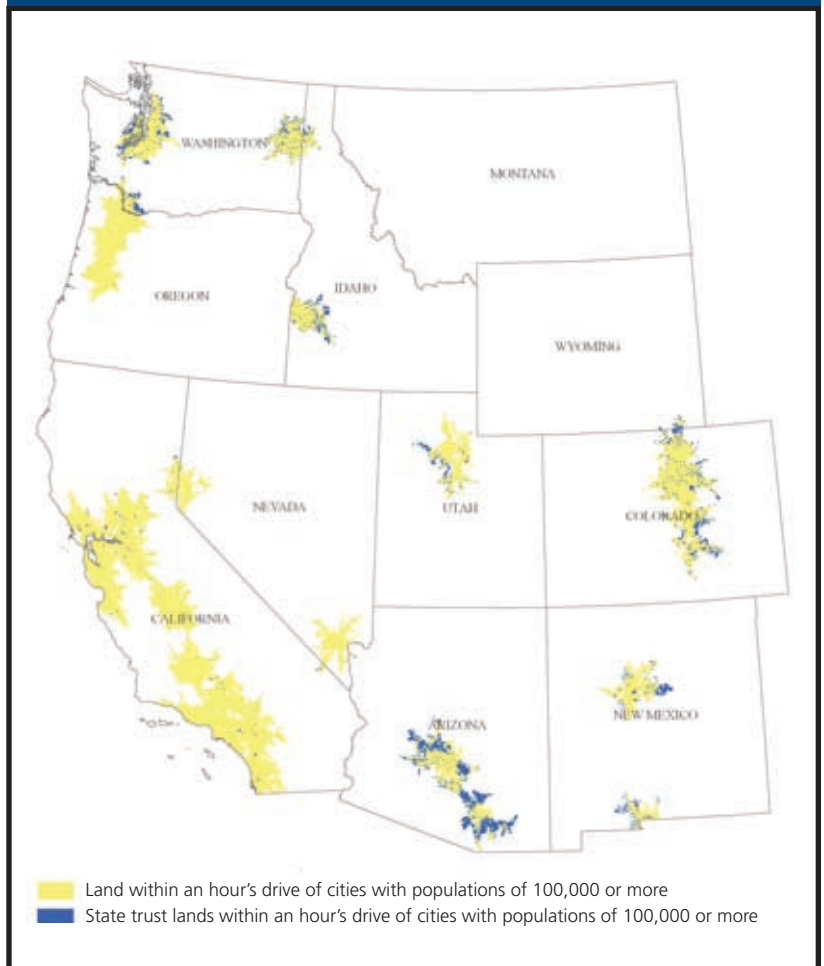
Trust managers currently use various types of information to guide the disposition of trust lands for residential or commercial development, and other empirically based analytical tools may help identify trust lands that are suitable for development (see Box 11). Without such tools, the risks may be greater that projects will be driven by external stakeholders, opportunity costs will be difficult to evaluate when considering multiple projects, or dispositions will not be

timed to yield the highest possible returns.

Proactive, agency-driven actions, presuming they are reasonably transparent, can provide both stakeholders and local communities with better information to make decisions, leading to better planning for growth and development. The large amount of trust land in the path of development also suggests that thoughtful, objective approaches to real estate development by trust managers may lead to growth patterns that are

FIGURE 10

### State Trust Lands Are Located Near Many Urban Areas



**BOX 11****Montana Program Analyzes Development Suitability**

**M**ontana recently completed a planning process for residential and commercial development on its trust lands that incorporates a number of noneconomic considerations in trust decision making. The plan, which was adopted by the Land Board following the completion of a programmatic environmental impact statement (PEIS), sets forth a process for investigating the commercial, industrial, residential, and conservation development potential of state lands. The PEIS represents a marked departure from Montana's historical trust management regime, which focused almost exclusively on natural resource surface management.

The plan relies on a “funnel filter” methodology for identifying and evaluating development opportunities that involves a progressive analysis of development suitability. Under this plan, project opportunities would be evaluated initially in relationship to the lands identified as potentially suitable for development, followed by a project-level analysis of market demand and economic factors, local planning, environmental analysis, and consideration of other regulatory constraints and requirements. As adopted by the Land Board, the plan will focus on urban real estate opportunities. It limits development in rural areas to about 5 percent of the total program, and requires the department to follow a variety of smart growth principles, such as ensuring connectivity with local infrastructure and encouraging mixed-use development.

**BOX 12****New Mexico Focuses Development Near Growing Cities**

**A**lthough the state currently receives relatively little income from commercial, industrial, and residential uses of state land, New Mexico is actively working to increase revenues from development on trust lands near rapidly growing cities and towns. Under its Community Development Partnership Program, the State Land Office's (SLO) Economic Development Working Group has identified approximately 30,000 acres of state trust land that have current development potential.

One of the first major planning projects undertaken by the SLO was the Mesa Del Sol development, a master-planned community that will be located on 12,400 acres of state land near Albuquerque. The project will be built out over the next 70 years, incorporating residential, retail, recreation, and open space areas in a sustainable development model that features urban and rural villages, recreation centers, community parks and trails, a 2,800-acre nature refuge, and an environmental education campus.

more fiscally responsible and use land more efficiently (see Box 12).

***Participation Agreements***

Some trust management agencies have begun experimenting with more sophisticated approaches to the planning and disposal of specific parcels identified for commercial, residential, and industrial uses. For example, participatory mechanisms can facilitate larger-scale developments that will increase trust revenues over time (see Box 13). In a participation agreement, a landowner enters into a long-term arrangement with a project developer to provide land for development and then receives a share of the profits once the lands are titled, supplied with infrastructure, developed, and sold. These arrangements limit the up-front costs, carrying costs, and risks to the developers.

***Large-scale Planning***

Similarly, large-scale projects can offer trust managers much higher potential returns on the disposal of lands for development, since the trust can share in the significant increases in value that occur as lands are converted from “raw” land to developed property (see Box 14). Unlike a private party—who must finance the acquisition of land and/or pay taxes for its ownership—the state trust manager has little or no carrying costs associated with the continued ownership of a trust parcel under a joint venture or participation arrangement. Private-public partnerships to stimulate land development for economic development purposes or to reclaim brown-field areas have been a common practice in many cities and towns. It stands to reason that these same benefits can accrue to trust land agencies given the underutilized aspect of trust lands in this context.

Because these types of arrangements can make development projects more feasible by reducing capital risk, joint ventures or par-





ticipation agreements are an increasingly common private-sector tool for the development of large-scale, master-planned communities. For those trust agencies that own land in large blocks in the path of development, participation agreements can facilitate the disposition of appropriately situated land for real estate projects that foster comprehensive, planned development. In general, larger-scaled, planned community development has led to more desirable outcomes in relation to urban form.

Recent studies of large, master-planned communities indicate that these developments often incorporate smart growth elements such as continuous, integrated open space, mixed uses, mobility options, greater ranges of housing choices, and phased infrastructure development. At the very least, large tracts of land with one owner are easier to plan comprehensively than parcels of mixed sizes and multiple owners.

#### BOX 13

#### Participation Agreements Facilitate Development in Utah

**B**ased on the principle that “active engagement in property planning and development can greatly increase the value of lands and resulting revenues for the trust beneficiaries over the long run,” Utah’s School and Institutional Trust Lands Administration’s (SITLA) Development Group is working on development opportunities on a variety of trust parcels around the state, primarily in the municipalities of St. George and Cedar City, and in Utah and Tooele counties.

SITLA has begun to engage in participation arrangements, including the development of investment properties (such as industrial parks), development leases (in which the land is leased by a developer during the development stage and the trust receives compensation based on the final sales price of developed lots), and arrangements in which the agency participates as a member of a limited liability company and obtains a share of the profits. As a part of this transition, the Development Group has also initiated planning efforts in a number of communities to integrate trust lands planning with larger community planning, placing particular emphasis on smart growth issues such as open space, mixed uses, and maintenance of trail corridors.

BOX 14

**Superstition Vistas Area Offers Large-scale Development Opportunities Near Phoenix**

**T**rust lands may offer some unparalleled opportunities for real estate development and planning due to the sheer size of trust portfolios. For example, at the eastern edge of the Phoenix metropolitan area is a vast tract of undeveloped state trust lands. This area embraces the Superstition Wilderness Area, the Tonto National Forest, and Bureau of Land Management lands on the north and east, and the Gila River Indian Community and the fast-growing cities of Apache Junction, Mesa, Coolidge, and Florence on the south and west.

Known as the Superstition Vistas Study Area, this parcel of state trust land encompasses nearly 270 square miles, making it one of the largest pieces of land under single ownership in any metropolitan area. The development of this large land area will shape the future of the Phoenix metropolitan region. If developed properly, it could yield billions of dollars for public education in Arizona, preserve important scenic and ecologically important areas, and provide a model for the future development of the valley.

The Lincoln/Sonoran State Trust Lands Project, in collaboration with Pinal County, the City of Apache Junction, the City of Queen Creek, the City of Mesa, the Salt River Project, the East Valley Partnership, and the Central Arizona Project, contracted with the Morrison Institute for Public Policy at Arizona State University to study this important area. The purpose was to consider how the Arizona Land Department could best plan for the development and conservation of this area in the future.

The study identified critical factors and constraints that will affect development, including water supply, demographic and population projections, real estate development trends, and key social and economic issues. These and other data, combined with interviews, public meetings, and surveys to identify desirable and undesirable future conditions, will be used to develop a set of conceptual scenarios that will be presented to the public and become the foundation for future detailed planning in the area (Morrison Institute for Public Policy 2006).





### ***Infrastructure Investment***

Another concern regarding real estate dispositions of trust lands is ensuring that these transactions are guided by a strategy that invests a portion of trust resources in longer-term planning efforts, such as regional transportation and sewer and water infrastructure development. Decisions about such investments can add substantial asset value to trust lands given the importance of infrastructure to the development value of land.

### **LAND CONSERVATION**

Even as rapid growth may offer opportunities for real estate development on state trust lands, demand is also increasing for the conservation of these lands to preserve viewsheds,

natural open space, environmental values and functions, or recreational uses. While this demand can lead to conflicts regarding trust management decisions, it can also create opportunities to find methods that both serve conservation goals and bring revenues to the trust.

### ***Revenue Enhancement***

Conservation in this context can be considered the use of land to prohibit adverse effects that will impair conservation values and/or affirmative rights to manage the land for specific conservation purposes such as wildlife habitats, cleaner water, and recovery of endangered species populations (see Box 15). There are remarkably few tools

#### **BOX 15**

#### **Arizona Preserve Initiative Protects Trust Lands for Conservation**

**R**eal estate development activities in the Phoenix area generated intense public outcries when sensitive lands were identified for development and subject to planning for residential and commercial development and subsequent sale at public auction. In the mid-1990s this caused then-Governor Fife Symington to freeze trust land sales. His office led a successful legislative effort to provide a mechanism for conservation of trust lands.

Under the Arizona Preserve Initiative (API), a state or local government, business, state land lessee, or citizen group can petition the state land commissioner to reclassify state trust lands as “suitable for conservation purposes.” If the land is reclassified, the commissioner may adopt a plan that allows the land to be withdrawn from sale or lease for three to five years to enable prospective lessees or purchasers time to raise funds. The trust lands may then be leased or sold for conservation purposes at auction. A 1998 amendment also provided for a \$220 million public-private matching grant program to assist the purchase or lease of trust lands for conservation.

This program has been subject to recent challenges from opponents who believe it is unconstitutional, since the law requires that the land be subject to deed restriction prior to auction to ensure its use as conservation land. This violates the constitutional requirement that trust land be sold without encumbrances, a requirement intended to guarantee that trust lands are sold to the highest and best bidder. The program has been suspended by the state land commissioner, and real estate activity sales on sensitive lands has stopped due to the continued public controversy regarding their conservation values. While a strict constitutional interpretation may protect the trust by helping to ensure that revenues are maximized, the reality is that these trust lands are generating no revenue as local and state decision makers seek to avoid the resulting public controversy if these lands were sold at auction and put at risk from development.





available to trust managers to maximize conservation uses as part of a diverse portfolio management approach.

A review of trust land management practices suggests that in many western states conservation uses are constrained for several reasons: legislative or institutional cultures that are predisposed against conservation; politically powerful natural resource industries that view conservation uses as a threat to their access to trust resources; and limited support among conservation interests in monetizing conservation uses of trust lands. Certain states create artificial use classifications that predispose the land for certain purposes rather than provide for the highest and best use.

Public auction requirements on any outright sale of trust lands also limit the degree to which conservation end users are willing to promote the sale of trust lands with high conservation value. When these parcels are sold at auction, they may be put at risk from a successful bidder with interests adverse to conservation use. From a strict fiduciary perspective, a public auction can help ensure that the trust land disposition will maximize revenue. However, an aggressive

stand by trust land managers to sell environmentally sensitive land can create added controversy and conflict. In the long run, this may instead reduce the return to the trust by miring managers in nonrevenue-producing activities to resolve the controversy or conflict.

Even with these constraints, many trust land managers are embracing conservation as a legitimate use of trust land with revenue-enhancing opportunities. In recent litigation in Idaho and Arizona, the courts have ruled on the fiduciary necessity of considering bids from conservation entities whose stated purpose is to provide leased lands a rest from overgrazing by livestock. Montana, for example, has conservation lease options in place. Other options include land exchanges in which high-value conservation lands are exchanged with the federal government for more desirable public lands that improve land consolidation and have better revenue-generating potential.

### ***Ecosystem Services***

Another fertile area for trust managers to explore is the marketing of ecosystem services. Increasing attention is being paid to the economic values provided by natural systems, and there is greater openness among conservation interests and economists in monetizing the value of these services as a means of promoting market-based approaches to the delivery of conservation-related outcomes. Carbon sequestration, watershed protection, and mitigation banking are some of the mechanisms that would have application on trust lands.

Mitigation banking in particular is receiving increased consideration as trust managers in Montana, Washington, and Oregon have developed habitat or multi-species conservation plans that provide for certain trust lands to be “set-aside” for conservation use. These plans allow for the incidental taking of en-

dangered species when conducting other trust activities, such as forestry or real estate development. Similarly, trust land managers are assessing the value of establishing mitigation banks on trust land that would allow them to sell mitigation credits to other entities for mitigating impacts to threatened and endangered species and wetlands.

### **Research and Analysis**

Although the majority of states utilize some sort of classification system to identify potential uses associated with trust lands, many trust managers currently lack inventories of conservation values associated with trust land portfolios (see Box 16). Research could identify and even prioritize a land base for conservation uses with revenue potential, including outright sales of full fee or partial interests (e.g., development rights), conservation leases, exchange of trust lands with federal agencies, and mitigation banking.

In certain instances a better understanding of conservation and recreation values of trust lands can assist managers in minimizing or avoiding conflicts when trust activities are perceived as adverse to these values. A prudent trust manager recognizes that fiduciary duty is enhanced with better information to guide decision making.

### **Multiple Uses**

Most states also allow, or at least do not prohibit, multiple uses of the trust lands, such as stacking recreational or conservation leases on top of grazing, agriculture, or oil, gas, and mineral licenses (see Box 17). Wyoming often stacks surface leases with subsurface uses to maximize the revenue generation of surface uses, which is relatively insignificant compared to subsurface uses. Allowing multiple uses of trust lands may also benefit the trust by increasing the number of users with an interest in ensuring

#### **BOX 16**

#### **New Mexico Universities Undertake Biophysical Assessment**

**U**nder a 2001 Memorandum of Understanding negotiated between the State Land Office (SLO) and the University of New Mexico and the New Mexico Institute of Mining and Technology, the schools have agreed to undertake a comprehensive biological survey of plants, animals, and biological conditions on trust lands throughout the state.

This inventory by university faculty and students will benefit the schools' education programs and provide data that can be used by the SLO to protect trust assets for future generations. The information will become part of the LOGIC (Land Office Geographic Information Center) database that is maintained by the SLO. A web-based mapping service is also planned to allow the public to access the LOGIC database and produce geographic

#### **BOX 17**

#### **Colorado Program Requires Multiple-Use Management Plans**

**C**olorado's Multiple-Use Management Policy was created by the Board of Land Commissioners in 1992 after more than two years of research and public input. The policy requires trust assets to be managed in a manner that preserves and enhances the long-term productivity and value of all trust land assets, and to promote increased annual rents by creating opportunities for nontraditional agricultural lessees to use state trust lands for such activities as hunting, hiking, camping, and biking.

These stacked uses are managed under multiple-use management plans that prescribe management goals, restrictions related to habitat improvements, and monitoring and evaluation mechanisms. The Colorado Division of Wildlife now leases more than 400,000 acres of trust land for hunting, fishing, and recreation on a nonexclusive basis, funded via a surcharge on hunting and fishing licenses.

the continued productivity and value of a given parcel. Lands that are being mismanaged or damaged by lessees are more likely to be reported by those using the land for recreation than by the lessee himself, providing a potential method to increase the limited resources that are generally available for trust enforcement.



## PART 6

# Meeting Fiduciary Obligations in a Changing Landscape

### THE MULTIPLE ROLES OF THE TRUST

State trust lands have served many roles in the West. First and foremost, and in keeping with the trust mission, they have been a revenue-generating mechanism for the trust beneficiaries. However, these lands have served other

important public purposes as well: facilitating the settlement of the West; providing a resource base for the growth of western agriculture, ranching, and other natural resource industries; and providing an environment for public recreation and the preservation of natural re-

sources. In many communities, trust lands play a critical role in local economies and landscapes, and thus are the subject of ongoing public interest and concern—an outcome that is fully in keeping with Congress's intention to use the granting of lands in trust to ensure the continuation of public education and democratic traditions in the West.

Rarely are trust management decisions made in a vacuum; on the contrary, most trust agencies must be politically responsive to diverse stakeholders and concerns:

- the state legislatures that approve their budgets;
- the governors' offices that propose those budgets, appoint key staff, and set overall state policy;
- the constituencies that use and benefit from trust lands and their natural resources, influence legislative and executive officials, and in some cases may be represented on the governing board of the trust itself;

- the beneficiaries who receive the financial returns from trust decisions; and
- the general public whose local advocacy pushes an agenda that seeks to preserve key natural and ecological assets that may or may not align with the strictly fiduciary concerns of the trust.

Although in some cases there may be unavoidable tensions between obtaining financial returns for trust beneficiaries and addressing the concerns of the broader public, trust managers have considerable discretion in choosing how and on what terms to generate revenues. In many instances this discretion should allow trust managers to find ways of accommodating public needs and benefits in a manner that is compatible with their fiduciary duty. We have described how certain trust activities in the areas of real estate development and conservation use can satisfy the fiduciary interests of the trust while also focusing on other public values. We draw attention now to the value of planning in both an internal and external context to better anticipate and resolve these tensions.

As fiduciaries, trust managers must consider the influence of larger public concerns and political realities on trust decision making and trust outcomes if they are to fulfill their responsibilities. Ignoring those concerns can constrain trust management because of conflicts and interest-group advocacy through political bodies or the courts. Groups whose concerns have been ignored—or an irate public—can act quickly to limit budgetary capacity or regulate management behavior in ways that will not necessarily help trust beneficiaries. Recognizing the public nature of trust assets requires that trust





managers embrace a broader set of approaches to trust management, such as collaborative planning, a tool that has provided public and private land managers with a variety of benefits.

At the same time, traditional trust management techniques or historic requirements of enabling acts, state constitutions, and state statutes and regulations may be placing undue burdens on trust managers who are trying to adapt to social and economic changes in the West. The managers also must protect natural resources, improve planning for residential and commercial development, or adopt more flexible land management techniques. Historic trust restrictions that made sense in the context of the nineteenth- or early-twentieth-century West may no longer be appropriate. In other cases, trust management institutions may be dominated by stakeholder and user interests that benefit from trust management in a manner that prevents effective adaptation and change.

### **TRUST REFORMS IN UTAH, COLORADO, AND ARIZONA**

These challenges have led to notable efforts to reform the management of state trust lands over the past decade or more. The cases of Utah, Colorado, and Arizona offer diverse approaches that may be applicable in other states.

Longstanding frustration in Utah over the apparent control of the trust management system by ranching, agriculture, mining, and oil and gas interests—and significant conflicts of interest in agency decision making as a result—led a group of education groups (including the Utah Parent-Teacher Association, Utah Education Association, and Utah Education Coalition) to push the state legislature into a comprehensive reform of Utah's trust land management system during the late 1980s and early 1990s.

This reform established the School and



Institutional Trust Lands Administration (SITLA) as a separate agency, with a goal of optimizing returns for trust beneficiaries. Although SITLA retains significant stakeholder representation on its governing board, which is appointed via a complex process of stakeholder advisory committees, the agency's culture is now quite different from other state agencies, and it effectively regards itself as a business with a long-term, revenue-generating mission. This change has resulted in marked increases in revenues generated by the trust; a strong emphasis on the exploration of new revenue sources, including real estate development; and a noticeably more aggressive posture by the agency in local planning decisions and attempts to reposition trust assets through land exchanges.

Utah's reform has also emphasized increased local involvement in the management of trust resources. To more effectively

distribute trust proceeds, the Utah legislature created a system of School Community Councils. Rather than distributing the funds to schools on a strictly formulaic basis, this system requires school districts to plan for ways to spend the money that will achieve the state's ultimate goal of having 90 percent or more of all third graders reading at grade level in 2006. Each school district is required to establish a council that is responsible for preparing a school improvement plan subject to the approval of the local school board. The plan provides for school improvement and staff professional development, and recommends expenditures of school trust revenues designed to improve academic achievement.

The trust funds provided to these councils are one of the few sources of discretionary funds available to school districts. As a result the program has grown rapidly in popularity, as it provides a source of revenue that can be used to fund school activities and needs that are not met through regular educational funding programs. In addition, the program has generated strong local constituencies in each district that take an active interest in

trust lands and trust lands management. The council members and recipients of the funds distributed by them develop an appreciation for the value that trust-related revenues can bring to public education.

In Colorado, trust reform has taken a different strategy than Utah's revenue-focused, business approach. In 1996 voters approved Amendment 16 to the Colorado Constitution, which significantly altered the terms of the state's trust mandate to emphasize a mission of long-term stewardship rather than just revenue generation. This stewardship principle requires consideration of both economic values and other public values, including environmental, aesthetic, and recreational values. The amendment declared that "the economic productivity of all lands held in public trust is dependent on sound stewardship, including protecting the beauty, natural values, open space, and wildlife habitat thereof, for this and future generations." Rather than requiring the State Land Board to maximize revenues, it is instead required to manage trust lands in order to produce "reasonable and consistent" income over time.





The amendment also required the board to establish a stewardship trust of up to 300,000 acres to preserve long-term returns to the state. Only uses that will protect and enhance the beauty, natural values, open space, and wildlife habitat are permitted on those lands, and they cannot be sold or exchanged unless they are first removed from the stewardship trust (and replaced with other lands) by a supermajority vote of the board.

The amendment required state trust managers to include terms in agricultural leases to encourage sound stewardship, promote community stability, and manage natural resources in a manner that conserves their long-term value. It also authorized the board to sell or lease conservation easements, licenses, or similar interests in the land. Finally, the amendment required the board to abide by local land use regulations and plans when considering commercial, industrial, or residential development of lands, and to consider fiscal impacts on local school districts.

Amendment 16 was subsequently challenged by a school district that argued that the revised trust mandate conflicted with the state's fiduciary duty to generate revenues for

the beneficiaries. However, in *Branson School District RE-82 v. Romer*, the Tenth Circuit Court of Appeals found that the trust responsibility did not require the state to manage lands for the maximization of revenues, and that the revised mandate was not in conflict with the state's fiduciary duties:

*we believe that the “sound stewardship” principle merely announces a new management approach for the land trust. The additional requirement to consider beauty, nature, open space, and wildlife habitat as part of the whole panoply of land management considerations simply indicates a change in the state’s chosen mechanism for achieving its continuing obligation to manage the school lands for the support of the common schools. A trustee is expected to use his or her skill and expertise in managing a trust, and it is certainly fairly possible for a trustee to conclude that protecting and enhancing the aesthetic value of a property will increase its long-term economic potential and productivity. The trust obligation, after all, is unlimited in time and a long-range vision of how best to preserve the value and productivity of the trust assets may very well include attention to preserving the beauty and natural values of the property.*



Arizona is also in the process of considering a comprehensive reform proposal that seeks to modernize the management of state trust lands by addressing many of the limitations in the state's enabling act and constitution. In certain respects, this effort



represents a compromise between the business model of Utah and the conservation emphasis of Colorado.

The Arizona reform effort grew out of a failed attempt that led to a ballot-box show-

down in 2000 between conservationists and developers. If successful, the new reform would bring a number of changes:

1. create a board of trustees, composed of a majority of beneficiary representatives, who would exercise oversight of certain trust-related activities of the state land department and direct a percentage of proceeds from trust land dispositions to fund trust management activities;
2. require collaborative planning of trust lands for development and open space uses in urban areas by the Land Department and local jurisdictions;
3. enable modern real estate disposition tools, such as development agreements, participation agreements, and infrastructure financing mechanisms, to maximize returns from the sales of trust lands, and allow entitlement "trades" between the Land Department and local communities, and other forms of nonmonetary consideration to pay for open space;
4. enable disposals of rights-of-way without auction and allow consideration of value increases to the benefited trust lands in setting the price for disposal; and

5. establish a 700,000-acre conservation reserve composed of permanent reserve lands set aside for open space and conservation-compatible surface uses, educational reserve lands set aside for university and research uses, and provisional reserve lands that would be protected temporarily and purchased from the trust at fair market value.

In each of these three states, trust reforms have been driven by a perceived need to alter management approaches and trust mandates to fit more closely with the changing needs of the public, trust beneficiaries, and trust stakeholders. These reforms have emphasized new tools for trust managers, including land dispositions for real estate development and conservation. They have proposed new approaches to trust management that move trust decision making away from more traditional processes for managing natural resources (which have typically been dominated by natural resource users with vested interests in the extraction of resources from public lands).

Finally, these reform efforts have put new emphasis on trust accountability in terms of both revenue and noneconomic values, such as the preservation of important natural assets via conservation mechanisms or increased involvement in and oversight of revenue-generating activities by trust beneficiaries.

The contrasts among Utah's revenue-focused business model, Colorado's stewardship program, and Arizona's collaborative planning approach demonstrate the significant flexibility that can exist within the limitations of the states' fiduciary responsibilities as trust managers. One thing is clear: these efforts will not be the last attempts to explore this flexibility through the reform of state trust land management in the West.



## Conclusion

In many parts of the West, state trust land managers are under increasing pressure to accommodate the larger social, economic, and environmental costs and benefits associated with management decisions made within the framework of trust doctrines and priorities. The unique history of these lands—and their distinctive trust mandate—present challenges that are quite different from those facing other public land managers.

As the economies of western states continue to diversify and as population pressures grow, the trust duty leads trust managers to pursue new economic opportunities, particularly in the areas of real estate development and conservation use, and to develop more strategic approaches to managing trust assets and engaging a wider set of stakeholders. Trust land managers also must recognize the evolving challenges of managing a land resource in a way that harmonizes public values with the fiduciary duty that trust managers are obligated to honor.

These changes create a critical need—and a real opportunity—to explore various means of generating trust revenues that serve the needs of trust beneficiaries while increasing the compatibility of trust activities with the economic futures of western communities. The historic trust responsibility provides sufficient flexibility to allow trust managers to meet these challenges. Indeed, it may even mandate trust managers to do so as the custodians of a perpetual, inter-generational trust.

In this context, we have identified a number of innovative activities that are consistent with the fiduciary duty of trust managers and are already being used throughout the West:



- comprehensive asset management frameworks that balance short-term revenue generation with longer term value maintenance and enhancement;
- collaborative planning approaches to trust decision making that engage external stakeholders;
- real estate development activities that employ a variety of tools and planning processes, especially in fast-growing areas;
- conservation projects that enhance revenue potential, offer ecosystem services, and allow multiple uses; and
- comprehensive reforms to enhance the flexibility of trust land management.

These activities will help trust managers produce larger, more reliable revenues for trust beneficiaries, accommodate public interests and concerns, and enhance the overall decision-making environment within which trust management occurs.



## APPENDIX

# History of State Land Grants in the United States

Year of Statehood	State	Sections Granted	Common Schools (acres)*	All Public Institutions (acres)**	All Land Grants (acres)***
1803	Ohio	16	724,266	1,447,602	2,758,862
1812	Louisiana	16	807,271	1,063,351	11,441,032
1816	Indiana	16	668,578	1,127,698	4,040,518
1817	Mississippi	16	824,213	1,104,586	6,097,064
1818	Illinois	16	996,320	1,645,989	6,234,655
1819	Alabama	16	911,627	1,318,628	5,007,088
1821	Missouri	16	1,221,813	1,646,533	7,417,022
1836	Arkansas	16	933,778	1,186,538	11,936,834
1837	Michigan	16	1,021,867	1,357,227	12,143,846
1845	Florida	16	975,307	1,162,587	24,208,000
1846	Iowa	16	1,000,679	1,336,039	8,061,262
1848	Wisconsin	16	982,329	1,320,889	10,179,804
1850	California	16	5,534,293	5,736,773	8,852,140
1858	Minnesota	16	2,874,951	3,167,983	16,422,051
1859	Oregon	16, 36	3,399,360	3,715,244	7,032,847
1861	Kansas	16, 36	2,907,520	3,106,783	7,794,669
1864	Nevada	16, 36	2,061,967	2,223,647	2,725,666
1867	Nebraska	16, 36	2,730,951	2,958,711	3,458,711
1876	Colorado	16, 36	3,685,618	3,933,378	4,471,604
1889	N. Dakota	16, 36	2,495,396	3,163,476	3,163,552
1889	S. Dakota	16, 36	2,733,084	3,432,604	3,435,373
1889	Montana	16, 36	5,198,258	6,029,458	6,029,458
1889	Washington	16, 36	2,376,391	3,044,471	3,044,471
1890	Idaho	16, 36	2,963,698	3,663,965	4,254,448
1890	Wyoming	16, 36	3,472,872	4,248,432	4,345,383
1896	Utah	2, 16, 32, 36	5,844,196	7,414,276	7,507,729
1907	Oklahoma	16, 36	2,044,000	3,095,760	3,095,760
1912	New Mexico	2, 16, 32, 36	8,711,324	12,446,026	12,794,718
1912	Arizona	2, 16, 32, 36	8,093,156	10,489,156	10,543,931

\*  
Figures include acreage derived from the reservation of sections in each township for common schools.

\*\*  
Figures include all grants of lands for schools, universities, penitentiaries, schools for the deaf and blind, public buildings, repayment of county bonds, and similar public institutions and purposes.

\*\*\*  
Figures include all lands granted to states, including grants for regranting to railroads; lands for roads, wagon trails, canals, and river improvements; and swamp-lands grants. In some cases there is a discrepancy in the source between the total land grants to the states and the total of the figures provided in the table for each of the individual grants. The total of the figures provided for the individual grants was used.

Source:  
Gates 1968, Appendix C



# Arizona

## Management Agency:

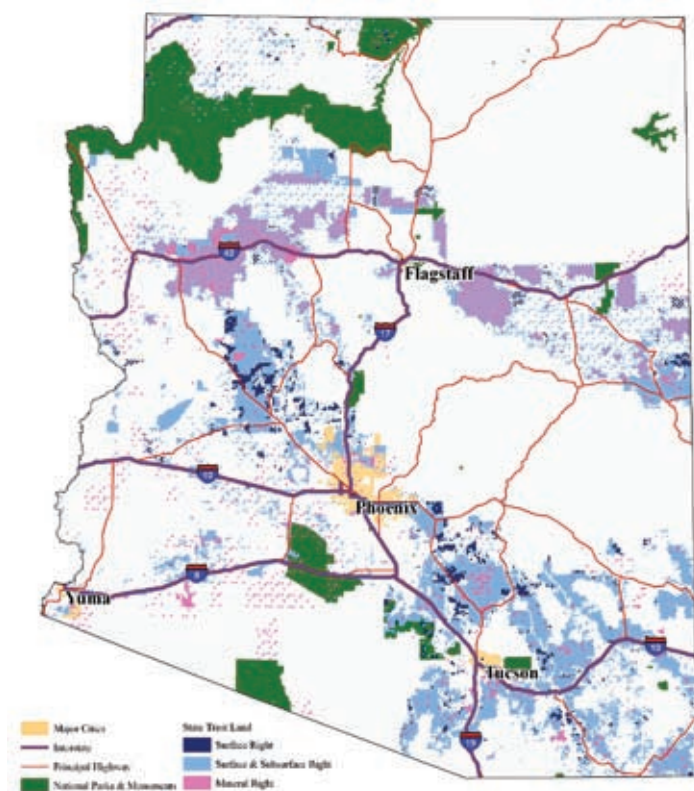
Arizona State Land Department  
http://www.land.state.az.us/index.html

**Current Land Holdings:** 9.3 million surface acres; 9 million subsurface acres (88 percent of original land grant of 10.5 million acres)

**Uses:** agriculture, grazing, mining of oil, gas, and minerals, commercial leases, and land sales for commercial development

**Primary Revenue Source:** land sales for commercial and residential development

**Trust Requirements:** Lands are held in trust pursuant to the state enabling act and state constitution. Arizona has one of the most restrictive trust management requirements: trust lands and their natural products may be sold only to the "highest and best bidder at public auction;" all lands and leases must be appraised at their "true value" before being offered; and lands cannot be disposed for less than the appraised value. Lands are managed by the Arizona State Land Department under the direction of a state land commissioner who is appointed and serves at the pleasure of the governor.



## Beneficiaries:

- common schools
- universities
- legislative, executive, and judicial public buildings
- penitentiaries
- insane asylums
- schools and asylums for the deaf, dumb, and blind
- miners' hospitals
- normal schools
- charitable, penal, and reformatory institutions
- agricultural and mechanical colleges
- a school of mines
- military institutes
- county bond payment (once repaid, grant is passed to common schools trust)

## Arizona FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	1.1	\$3,992,348
Grazing	0.7	\$2,375,066
Timber	0.0	\$0
Other	5.1	\$18,846,785
<b>Total Surface Uses</b>	<b>6.9</b>	<b>\$25,214,199</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	0.0	\$0
Minerals Revenue*	0.6	\$223,078
Minerals Royalties	0.0	\$0
Oil and Gas Revenue	0.1	\$460,511
Oil and Gas Royalties**	1.4	\$5,190,275
Other	<0.1	\$146,312
<b>Total Subsurface Uses</b>	<b>1.6</b>	<b>\$6,020,176</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	5.0	\$18,474,021
Land Sales***	84.4	\$309,731,553
Rights of Way	0.7	\$2,671,109
Other	1.4	\$4,989,454
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>91.5</b>	<b>\$335,866,137</b>
<b>Total Revenue****</b>	<b>100</b>	<b>\$367,100,510</b>
<b>Agency Budget</b>		<b>\$14,600,100</b>

Source: Arizona State Land Department, Annual Report FY 2005 Draft

\* Includes mineral material

\*\* May include mineral royalties

\*\*\* Includes land sale principal, sales interest, and rights-of-way sales principal

\*\*\*\* Total may vary due to rounding

# Colorado

## Management Agency:

Colorado State Land Board  
http://trustlands.state.co.us/

**Current Land Holdings:** 2.8 million surface acres; 3 million subsurface acres (58 percent of original land grant of 4.8 million acres)

**Uses:** agriculture, grazing, timber, mining of oil, gas, coal, and minerals, commercial leases, and land sales for commercial development

**Primary Resource Revenue:** coal, oil, and gas revenues and royalties

**Trust Requirements:** Lands are held in trust pursuant to the state enabling act, which does not expressly indicate that these lands are to be held in trust, but does identify a series of restrictions on disposals of these lands and also requires the establishment of a permanent school fund. Lands are managed by the Colorado Department of Natural Resources, Colorado State Land Board, a five-member stakeholder board appointed by the governor with the consent of the Senate, and led by a director who is appointed by the board.

## Beneficiaries:

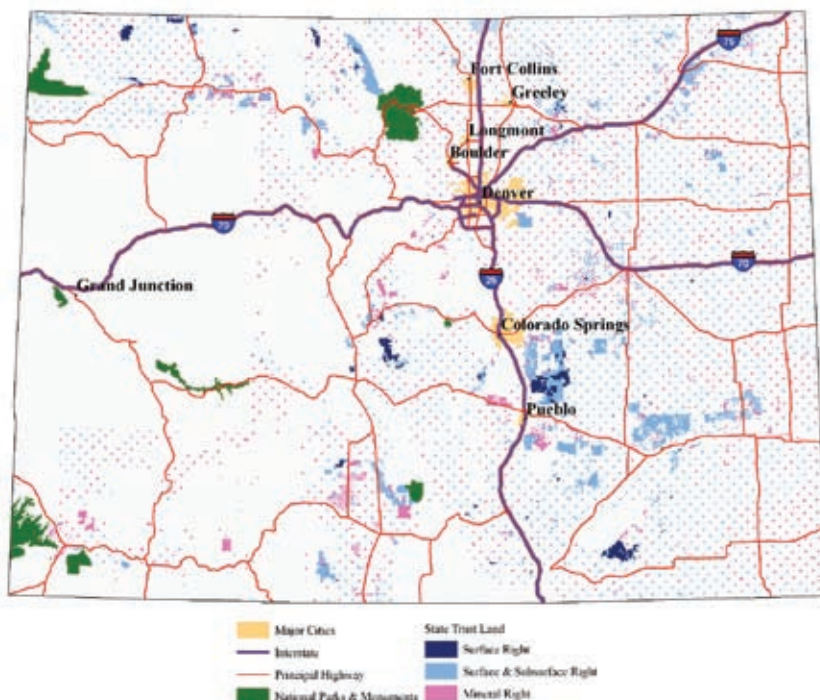
- common schools
- public buildings
- penitentiaries or prisons
- a state university
- Saline Lands Trust and the Internal Improvements Trust (to benefit state parks)
- Colorado State University Trust
- Hesperus Trust (to benefit Fort Lewis College)

## Colorado FY 2004–2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	3.5	\$2,075,864
Grazing	9.0	\$5,300,790
Timber	0.2	\$91,947
Other	2.3	\$1,343,068
<b>Total Surface Uses</b>	<b>15.0</b>	<b>\$8,811,669</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	20.6	\$12,123,903
Minerals Revenue	0.1	\$66,335
Minerals Royalties	1.2	\$709,096
Oil and Gas Revenue	1.9	\$1,143,001
Oil and Gas Royalties	36.8	\$21,604,211
Other	10.4	\$6,084,820
<b>Total Subsurface Uses</b>	<b>71.1</b>	<b>\$41,731,366</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	4.8	\$2,834,554
Land Sales	7.2	\$4,202,508
Rights of Way	1.3	\$737,613
Other	0.7	\$374,673
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>13.9</b>	<b>\$8,149,348</b>
<b>Total Revenue*</b>	<b>100</b>	<b>\$58,692,383</b>
<b>Agency Budget</b>		<b>\$4,269,773</b>

Source: Colorado State Land Board, Interested Party Memo for FY 2004–2005

\* Total may vary due to rounding; does not include interest on school permanent fund



# Idaho

## Management Agency:

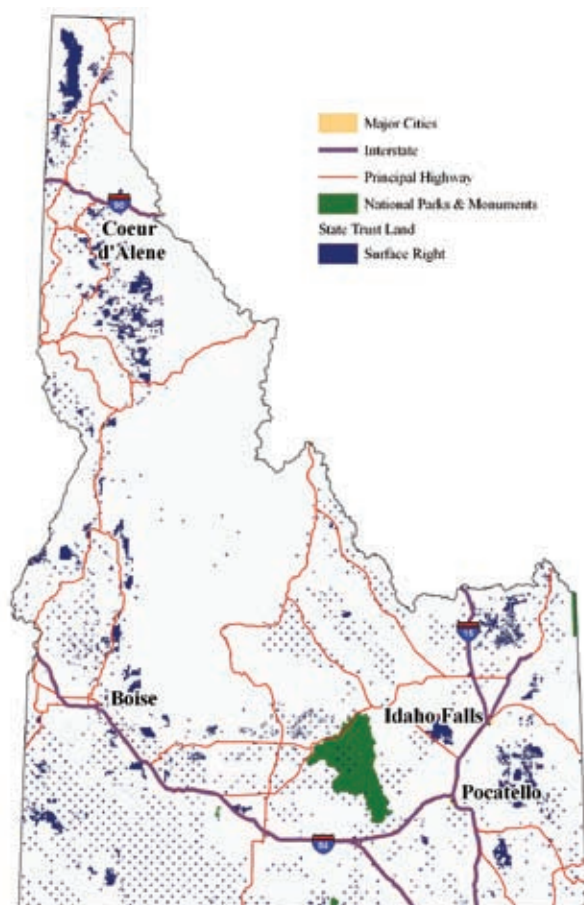
Idaho Department of Lands  
http://www.idl.idaho.gov/index.htm

**Current Land Holdings:** 2.5 million surface acres; 3 million subsurface acres (68 percent of original land grant of 3.7 million acres)

**Uses:** grazing, timber, mining of minerals, commercial leases, and land sales for commercial development

**Primary Revenue Source:** timber

**Trust Requirements:** Generally referred to as endowment lands, these lands are held in trust pursuant to the state enabling act and state constitution, but without an express indication that these lands are to be held in trust. There are a series of restrictions on the use of these lands and the proceeds from such uses, including requirements to "secure the maximum long-term financial return" to the beneficiary and to prohibit the sale of lands for less than the "appraised price." Lands are managed by the Idaho Department of Lands (IDL), Idaho State Board of Land Commissioners (ISBLC), consisting of the governor, superintendent of public instruction, secretary of state, attorney general, and state controller, and led by the director of the IDL who is appointed by the ISBLC.



## Beneficiaries:

- common schools
- University of Idaho
- an agricultural college
- a scientific school
- penitentiaries
- insane asylums
- the state university
- normal schools
- charitable, educational, penal, and reformatory institutions
- agricultural and mechanical colleges
- public buildings

## Idaho FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	0.0	\$0
Grazing	2.9	\$1,758,820
Timber	85.6	\$50,735,864
Other	0.0	\$0
<b>Total Surface Uses</b>	<b>88.5</b>	<b>\$52,494,684</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	0.0	\$0
Minerals Revenue*	2.6	\$1,524,497
Minerals Royalties	0.0	\$0
Oil and Gas Revenue	0.0	\$0
Oil and Gas Royalties	0.0	\$0
Other	2.0	\$0
<b>Total Subsurface Uses</b>	<b>2.6</b>	<b>\$1,524,497</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	3.3	\$1,932,395
Land Sales	0.1	\$110,500
Rights of Way	0.0	\$0
Other	5.5	\$3,232,262
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>8.9</b>	<b>\$5,275,157</b>
<b>Total Revenue**</b>	<b>100</b>	<b>\$59,294,338</b>
<b>Agency Budget***</b>		<b>\$15,942,355</b>

Source: Idaho Department of Lands, Annual Report FY 2005

\* May include mineral royalties

\*\* Total may vary due to rounding

\*\*\* Includes direct program expense and managerial overhead for endowment trust lands from Annual Report FY 2005



# Montana

## Management Agency:

Montana Department of Natural Resources and Conservation  
Trust Land Management Division  
<http://dnrc.mt.gov/trust/default.asp>

**Current Land Holdings:** 5.2 million surface acres; 6.2 million subsurface acres (89 percent of original land grant of 5.9 million acres)

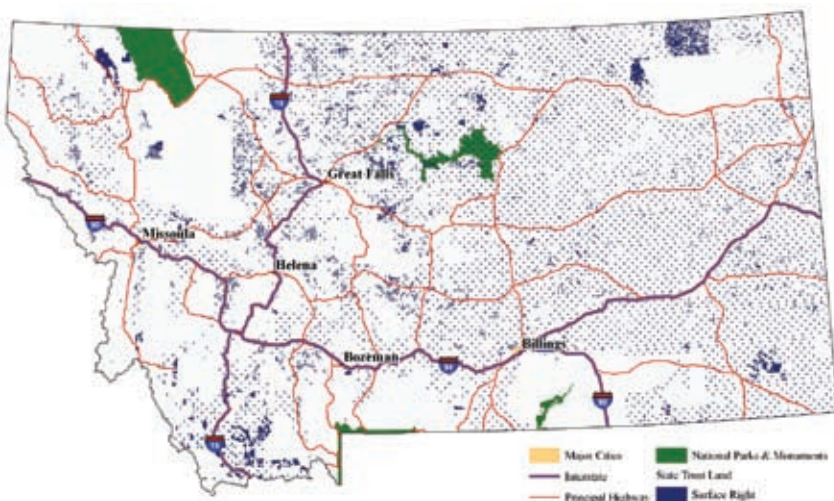
**Uses:** agriculture, grazing, timber, mining of oil, gas, coal, and minerals, and land sales for commercial development

**Primary Resource Revenue:** renewable resource leases for surface uses

**Trust Requirements:** Lands are held in trust pursuant to the state enabling act and state constitution, requiring revenues from the land sales be placed in a permanent fund and that the "full market value" be obtained for any land disposal. Unique to Montana, the constitution imposes a public obligation on the state as the land manager to protect and enhance the inalienable right of all Montanans to a clean and healthful environment. Lands are managed by the Trust Land Management Division of the Montana Department of Natural Resources and Conservation (DNRC), State Board of Land Commissioners, which is made up of five elected officials (the governor, secretary of state, attorney general, superintendent of public instruction, and state auditor), and led by the director of DNRC who is appointed by the governor, subject to Senate confirmation, and serves at the pleasure of the governor.

## Beneficiaries:

- common schools
- universities
- a school of mines
- normal schools
- agricultural schools
- schools and asylums for the deaf, dumb, and blind
- public buildings
- higher education



## Montana FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	15.2	\$9,227,415
Grazing	10.8	\$6,566,134
Timber	22.5	\$13,651,631
Other	4.9	\$2,944,560
<b>Total Surface Uses</b>	<b>53.4</b>	<b>\$32,389,740</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	7.0	\$4,279,922
Minerals Revenue	<0.1	\$25,684
Minerals Royalties	0.4	\$230,560
Oil and Gas Revenue	10.8	\$6,554,239
Oil and Gas Royalties	20.6	\$12,546,647
Other	<0.1	\$4,796
<b>Total Subsurface Uses*</b>	<b>38.9</b>	<b>\$23,641,848</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	0.0	\$0
Land Sales	<0.1	\$25,797
Rights of Way	1.8	\$1,068,335
Other	6.0	\$3,639,767
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>7.8</b>	<b>\$4,733,899</b>
<b>Total Revenue*</b>	<b>100</b>	<b>\$60,765,487</b>
<b>Agency Budget**</b>		<b>\$8,400,000</b>

Source: Montana Department of Natural Resources and Conservation, Trust Land Management Division, Annual Report FY 2005

\* Total may vary due to rounding; does not include trust and legacy interest

\*\* Agency budget is annual average

# New Mexico

## Management Agency:

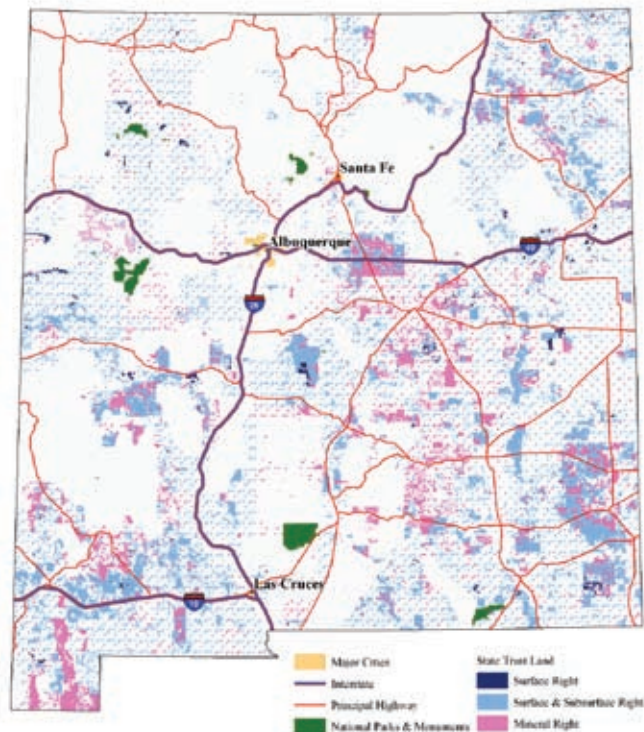
New Mexico State Land Office  
http://www.nmstatelands.org/

**Current Land Holdings:** 8.9 million surface acres; 13 million subsurface acres (68 percent of original land grant of 13 million acres)

**Uses:** grazing, mining of oil, gas, coal, and minerals, and commercial leases and development

**Primary Revenue Source:** oil and gas revenues and royalties

**Trust Requirements:** Lands are held in trust pursuant to the state enabling act and state constitution. New Mexico has one of the most restrictive trust management requirements: trust lands and their natural products may be sold only to the "highest and best bidder at public auction;" all lands and leases must be appraised at their "true value" before being offered; and lands cannot be disposed for less than the appraised value. Lands are managed by the New Mexico State Land Office under the direction of a commissioner of public lands who is elected by the citizens of the state and is advised by a State Land Trusts Advisory Board, composed of seven stakeholders appointed by the commissioner with the advice and consent of the Senate.



## Beneficiaries:

- common schools
- legislative, executive, and judicial public buildings
- penitentiaries
- insane asylums
- schools and asylums for the deaf, dumb, and blind
- miners' hospitals
- normal schools
- charitable, penal, and reformatory institutions
- agricultural and mechanical colleges
- a school of mines
- military institutes
- county bond payment (once repaid, grant is passed to common schools trust)

## New Mexico FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	0.0	\$0
Grazing	2.0	\$7,651,517
Timber	0.0	\$0
Other	<0.1	\$278,560
<b>Total Surface Uses</b>	<b>2.1</b>	<b>\$7,930,077</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	0.3	\$1,121,132
Minerals Revenue	<0.1	\$132,712
Minerals Royalties	1.9	\$7,454,658
Oil and Gas Revenue	12.9	\$49,958,804
Oil and Gas Royalties	80.9	\$312,251,910
Other	<0.1	\$1,921
<b>Total Subsurface Uses</b>	<b>96.1</b>	<b>\$370,921,137</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	<0.1	\$1,694,282
Land Sales	0.0	\$0
Rights of Way	0.8	\$2,984,661
Other	0.6	\$2,451,924
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>1.8</b>	<b>\$7,130,867</b>
<b>Total Revenue*</b>	<b>100</b>	<b>\$385,982,082</b>
<b>Agency Budget</b>		<b>\$11,941,507</b>

Source: New Mexico State Land Office, Annual Report FY 2005

\* Total may vary due to rounding

# Oregon

**Management Agency:**

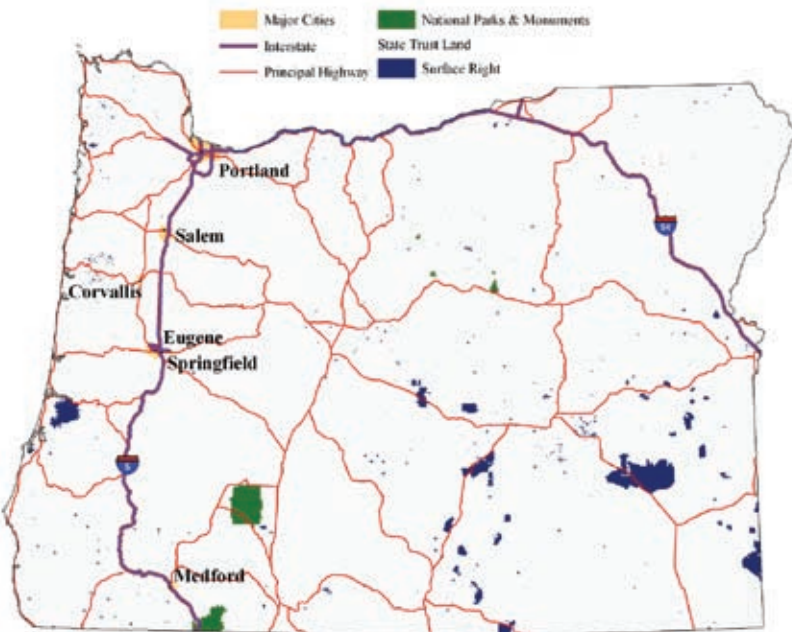
Oregon Department of State Lands  
State Land Board  
<http://www.oregon.gov/DSL/index.shtml>

**Current Land Holdings:** 773,000 surface acres; 2.1 million subsurface acres  
(23 percent of original land grant of 3.4 million acres)

**Uses:** agriculture, grazing, timber, mining of minerals, and commercial leases and development

**Primary Resource Revenue:** timber

**Trust Requirements:** Lands are held in trust pursuant to the state admission act and state constitution. Oregon has one of the most general trust management descriptions with laws and constitutional amendments requiring the creation of a “common school fund” for the support and maintenance of common schools. Lands are managed by the Department of State Lands, the administrative arm of the State Land Board, composed of the governor, secretary of state, and state treasurer, and led by a director who is appointed by the board.



**Beneficiaries:**

- common schools

## Oregon FY 2001–2003 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	0.8	\$199,000
Grazing	2.4	\$644,000
Timber	83.7	\$22,221,000
Other	1.6	\$433,000
<b>Total Surface Uses</b>	<b>88.5</b>	<b>\$23,497,000</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	0.0	\$0
Minerals Revenue*	5.0	\$1,323,000
Minerals Royalties	0.0	\$0
Oil and Gas Revenue	0.0	\$0
Oil and Gas Royalties	0.0	\$0
Other	0.0	\$0
<b>Total Subsurface Uses</b>	<b>5.0</b>	<b>\$1,323,000</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	4.7	\$1,261,000
Land Sales	0.0	\$0
Rights of Way	0.0	\$0
Other	1.8	\$477,000
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>6.5</b>	<b>\$1,738,000</b>
<b>Total Revenue**</b>	<b>100</b>	<b>\$26,558,000</b>
<b>Agency Budget</b>		<b>\$15,421,000</b>

Source: Oregon Department of State Lands, Biannual Report FY 2001-2003

\* Reported as leases, and includes sand and gravel; royalties not listed in Biannual Report FY 2001-2003

\*\*Total may vary due to rounding; does not include investment earnings, waterway leases, submerged and submersible lands, hydro-electric leases, or violations, fines, and forfeitures



## FACTS & FIGURES ON NINE WESTERN STATES

# Utah

### Management Agency:

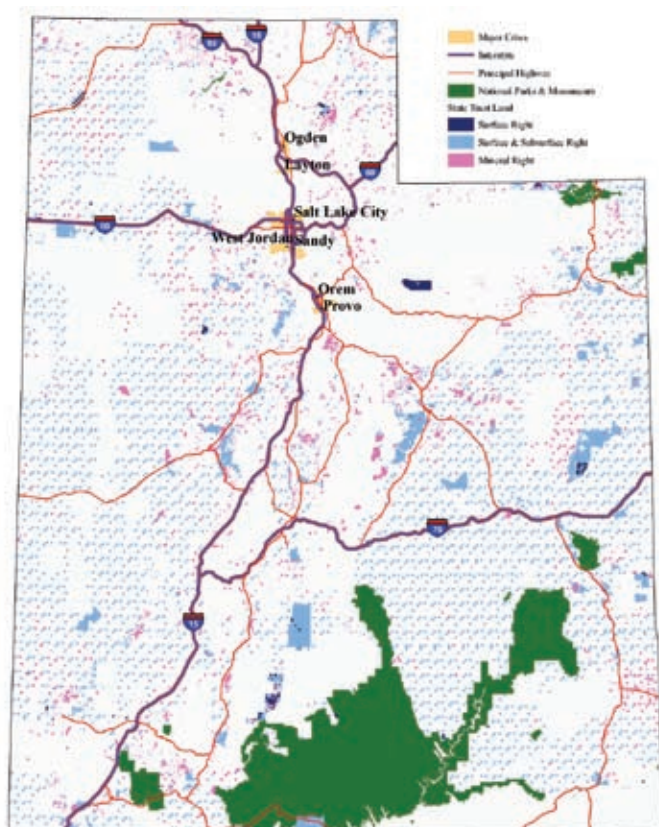
Utah School and Institutional Trust Lands Administration  
<http://www.trustland.org/state/state-ut.cfm>

**Current Land Holdings:** 3.5 million surface acres; 4.5 million subsurface acres  
 (47 percent of original land grant of 7.5 million acres)

**Uses:** grazing, mining of oil, gas, and minerals, and land sales for commercial development

**Primary Revenue Source:** mining of oil and gas

**Trust Requirements:** Lands are held in trust pursuant to the state constitution that establishes a permanent state school fund derived from the proceeds of trust land sales and revenues from nonrenewable resources. Lands are managed by the School and Institutional Trust Lands Administration (SITLA) board of trustees, consisting of seven members appointed by the governor with the consent of the Senate, and led by a director who is appointed by a majority vote of the board.



### Beneficiaries:

- common schools
- water reservoirs
- an insane asylum
- a school of mines
- asylum for the deaf and dumb
- a state reform school
- normal school
- a miners' hospital
- state agricultural college
- University of Utah
- public buildings

### Utah FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	0.0	\$0
Grazing (includes forestry)	1.0	\$899,000
Timber	0.0	\$0
Other	11.2	\$10,340,000
<b>Total Surface Uses</b>	<b>12.2</b>	<b>\$11,239,000</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	0.0	\$0
Minerals Revenue*	5.5	\$5,089,200
Minerals Royalties	0.0	\$0
Oil and Gas Revenue	64.1	\$59,233,600
Oil and Gas Royalties	0.0	\$0
Other	0.0	\$0
<b>Total Subsurface Uses</b>	<b>69.6</b>	<b>\$64,322,800</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	0.0	\$0
Land Sales**	18.3	\$16,900,600
Rights of Way	0.0	\$0
Other	0.0	\$0
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>18.3</b>	<b>\$16,900,600</b>
<b>Total Revenue***</b>	<b>100</b>	<b>\$92,462,400</b>
<b>Agency Budget</b>		<b>\$7,662,282</b>

Source: Utah School and Institutional Trust Lands Administration, Annual Report FY 2005

\* Includes coal; royalty payments not included in Annual Report FY 2005

\*\* Listed as "development" in Annual Report FY 2005

\*\*\* Total may vary due to rounding; does not include interest on daily operations

# Washington

## Management Agency:

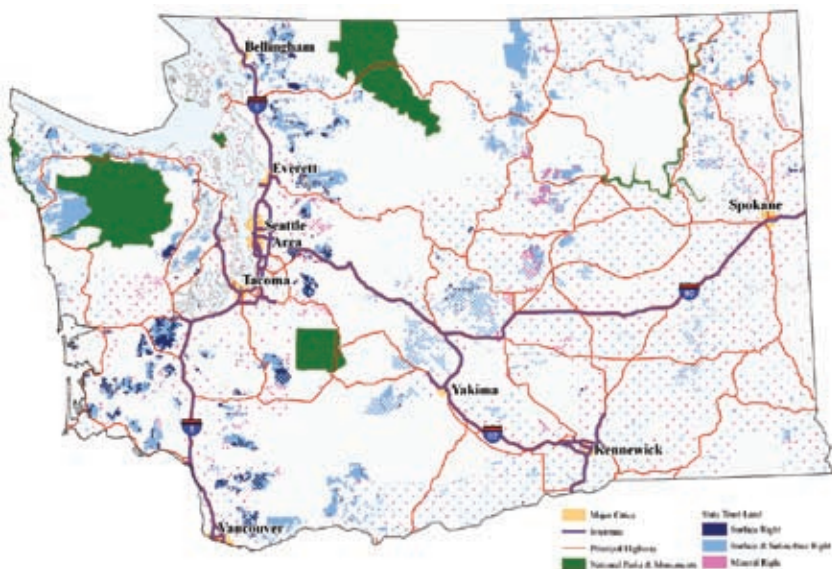
Washington State Department of Natural Resources  
http://www.dnr.wa.gov/

**Current Land Holdings:** 2.3 million surface acres  
(96 percent of original land grant of more than 3 million acres)

**Uses:** agriculture, timber, mining of minerals, and commercial leases and development

**Primary Resource Revenue:** timber

**Trust Requirements:** Lands are held in trust pursuant to the state enabling act and state constitution that require revenues from the sale of lands be placed in a permanent fund and that school lands cannot be sold for less than fair market value, at public auction, and to the highest bidder. Washington's state law requires its agencies to adhere to the State Environmental Policy Act and prepare an environmental impact statement for all management decisions, including those for trust lands. Lands are managed by the Department of Natural Resources, which consists of a stakeholder Board of Natural Resources, a commissioner of public lands who is elected by the state, and a supervisor who is appointed by the commissioner and serves at the commissioner's pleasure.



## Beneficiaries:

- common schools
- agricultural colleges
- a scientific school
- normal school
- public buildings
- university purposes
- charitable, education, penal, and reformatory institutions

## Washington FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	3.2	\$9,096,000
Grazing	0.0	\$0
Timber	79.6	\$228,887,000
Other	1.8	\$5,088,000
<b>Total Surface Uses</b>	<b>84.6</b>	<b>\$243,071,000</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	0.0	\$0
Minerals Revenue*	0.6	\$1,789,000
Minerals Royalties	0.0	\$0
Oil and Gas Revenue	0.0	\$0
Oil and Gas Royalties	0.0	\$0
Other	0.0	\$0
<b>Total Subsurface Uses</b>	<b>0.6</b>	<b>\$1,789,000</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	2.8	\$8,190,000
Land Sales	0.0	\$0
Rights of Way	0.5	\$1,316,000
Other	11.6	\$33,241,000
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>14.9</b>	<b>\$42,747,000</b>
<b>Total Revenue**</b>	<b>100</b>	<b>\$287,607,000</b>
<b>Agency Budget</b>		<b>\$135,683,000</b>

Source: Washington State Department of Natural Resources, Annual Report FY 2005

\* Reported as leases in Annual Report FY 2005

\*\* Total may vary due to rounding; does not include aquatic lands

# Wyoming

## Management Agency:

Wyoming Office of State Lands and Investments  
http://slf-web.state.wy.us/

**Current Land Holdings:** 3.6 million surface acres; 4.2 million subsurface acres (84 percent of original land grant of 4.3 million acres)

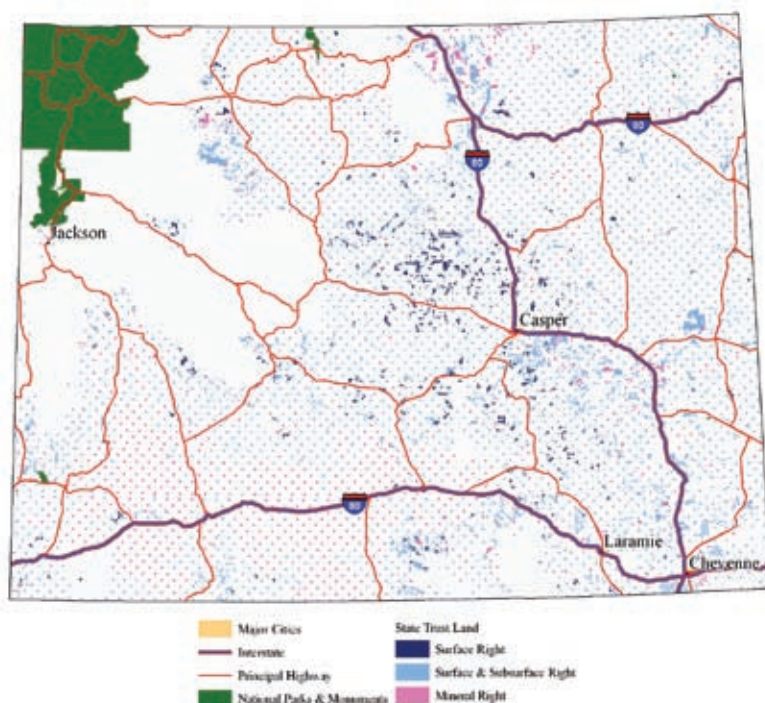
**Uses:** grazing, timber, mining of oil, gas, coal, and minerals, and land sales for commercial development

**Primary Revenue Source:** oil and gas revenues and royalties

**Trust Requirements:** Lands are held in trust pursuant to state statute, giving the state legislature broad authority to establish the disposition rules for lands. Lands are managed by the Wyoming Office of State Lands and Investments (OSLI) under a director who is appointed by the governor with the consent of the Senate. OSLI serves as the advisor and administrator to the Board of Land Commissioners and the State Loan and Investment Board, each of which is composed of the governor, secretary of state, state treasurer, state auditor, and superintendent of public instruction.

## Beneficiaries:

- common schools
- a state university
- a fish hatchery
- an agricultural college
- an insane asylum
- an asylum for the deaf, dumb and blind
- a poor farm
- a miners' hospital
- public buildings
- charitable, educational, penal, and reformatory institutions
- The University of Wyoming



## Wyoming FY 2005 Revenues

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	0.0	\$0
Grazing	3.7	\$4,503,911
Timber	0.3	\$347,441
Other	0.7	\$880,896
<b>Total Surface Uses</b>	<b>4.7</b>	<b>\$5,732,248</b>
<b>Subsurface Uses</b>		
Coal Revenue and Royalties	5.0	\$6,189,140
Minerals Revenue*	5.8	\$7,159,038
Minerals Royalties	0.0	\$0
Oil and Gas Revenue*	83.1	\$102,396,402
Oil and Gas Royalties	0.0	\$0
Other	0.0	\$0
<b>Total Subsurface Uses</b>	<b>94.0</b>	<b>\$115,744,580</b>
<b>Sales, Commercial Leases &amp; Other</b>		
Commercial	0.0	\$0
Land Sales	0.3	\$394,393
Rights of Way	0.0	\$0
Other	1.1	\$1,297,520
<b>Total Sales, Commercial Leases &amp; Other</b>	<b>1.4</b>	<b>\$1,691,913</b>
<b>Total Revenue**</b>	<b>100</b>	<b>\$123,168,741</b>
<b>Agency Budget***</b>		<b>\$7,945,094</b>

Source: Wyoming Office of State Lands and Investments, Annual Report FY 2005

\* May include royalties

\*\* Total may vary due to rounding

\*\*\* Agency Budget is for five major programs in FY 2005





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The State Trust Lands partnership project of the Sonoran Institute and the Lincoln Institute assists trust land managers in meeting their fiduciary duty in the changing West. The project seeks to broaden the range of land use information, tools, and policy options available to state trust managers and diverse stakeholders for the long-term, sustainable management of trust lands. Our goal is to enhance the value of the trust for its beneficiaries by fostering better planning and implementation of residential and commercial development on trust lands and increasing the amount of trust land in conservation use.

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# State Trust Lands in the West

## Fiduciary Duty in a Changing Landscape

This report provides an overview of the complex history, nature, and management of state trust lands in the West, explores the challenges facing trust managers in this changing landscape, and highlights opportunities for improving and adapting trust management while honoring the unique purpose of these lands and their singular fiduciary mandate.

Many state trust land managers have been responding to these challenges with new strategies and approaches. We highlight a variety of innovative practices that

- establish comprehensive asset management frameworks that balance short-term revenue generation with longer-term value maintenance and enhancement;
- incorporate collaborative planning approaches with external stakeholders to achieve better trust land management;
- encourage real estate development activities that employ sustainable land disposition tools and large-scale planning processes, especially in fast-growing areas;
- support conservation projects that enhance revenue potential, offer ecosystem services, and allow multiple uses of trust lands; and
- introduce comprehensive reforms to expand the flexibility and accountability of trust land management systems.

All of these activities are consistent with the fiduciary duty of state trusts, and each has been employed by at least one trust manager in the West. The report presents specific examples of these initiatives in order to help land managers and other interested parties fulfill their multiple trust responsibilities while producing larger, more reliable revenues for trust beneficiaries, accommodating public interests and concerns, and enhancing the overall decision-making environment for trust management.