State Trust Lands in the West

Fiduciary Duty in a Changing Landscape | **Updated**

POLICY FOCUS REPORT LINCOLN INSTITUTE OF LAND POLICY
PETER W. CULP, ANDY LAURENZI, CYNTHIA C. TUELL, AND ALISON BERRY

POLICY FOCUS REPORTS

The Policy Focus Report series is 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.

ABOUT THIS REPORT

This newly updated edition, prepared by Western Lands and Communities, a joint program of the Lincoln Institute of Land Policy and the Sonoran Institute, includes data from fiscal year 2013 that inform the figures, the Facts and Figures section, and the references to acreages and lease rates.

Beginning in the 1800s, state trust lands were granted to states upon their entrance into the Union for the sole purpose of generating income for public institutions, particularly schools. To this end, the lands were managed, leased, or sold for a range of uses, including mining, grazing, and agriculture to satisfy the fiduciary trust responsibility. This report explains the concept of state trust lands, shows the 23 states in which they currently occur, and provides a historical overview of the policies for large-scale disposal of public lands.

The trust responsibility and case laws that govern state trust lands can constrain the ability of trust managers to adapt to new demographic and economic forces. 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.

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.

The report presents specific examples of initiatives and trends to help land managers 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.

LINCOLN INSTITUTE OF LAND POLICY

113 Brattle Street, Cambridge, MA
02138-3400, USA
P (617) 661-3016 or (800) 526-3873
F (617) 661-7235 or (800) 526-3944
help@lincolninst.edu
lincolninst.edu

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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).

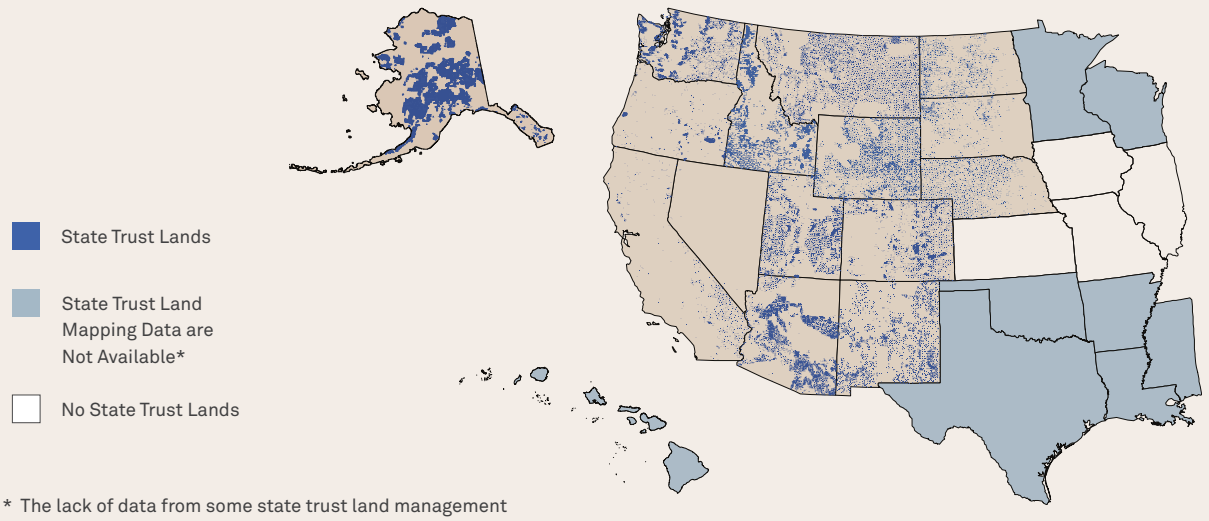
State trust land management traditionally has focused on the leasing and sale of natural products, including timber, oil, and gas. Many western states continue to obtain significant financial benefits from these activities. However, in many parts of the West, communities are changing rapidly as a result of both population growth (the top four 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 being driven increasingly by lifestyle choices, technological advances, a higher proportion of retirement and investment income, and the attractiveness of living close to protected public lands. The result is 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.

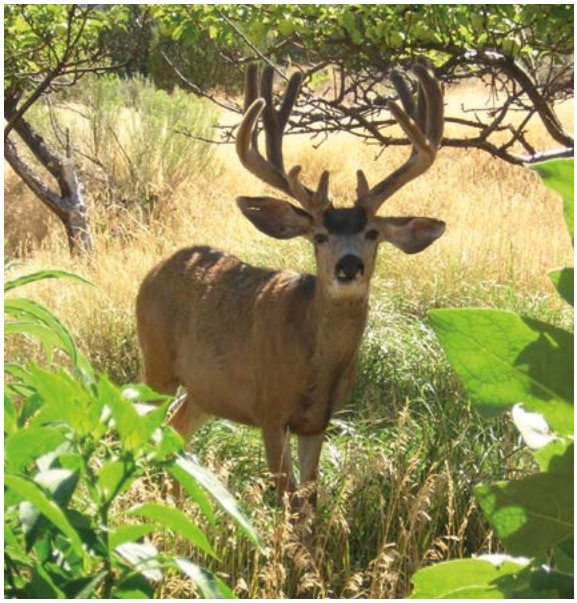
The first section of this report introduces the trust lands that currently reside in the 23 contiguous

Figure 1
State Trust Lands in the United States



* The lack of data from some state trust land management agencies is due to the low number of state trust land acres in their states or the limited resources of the agencies to provide such data.

Courtesy of Sonoran Institute.



western states. 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 began 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 flexibility in trust management 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 view. These challenges create a critical need—and a real opportunity—to explore additional means of generating trust revenues that serve the 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. This report highlights a variety of innovative practices that

- establish comprehensive asset management frameworks that balance short-term revenue generation with long-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.

CHAPTER 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 Intermountain 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 that provides a key land base for settlement and generates 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 provide the bulk of the revenues derived from trust lands in Colorado, New Mexico, Utah, and Wyoming; 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 increased the prominence of state trust lands, 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 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 increasingly many communities 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 1787 Northwest ordinance created a system of territorial governments and a process 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.

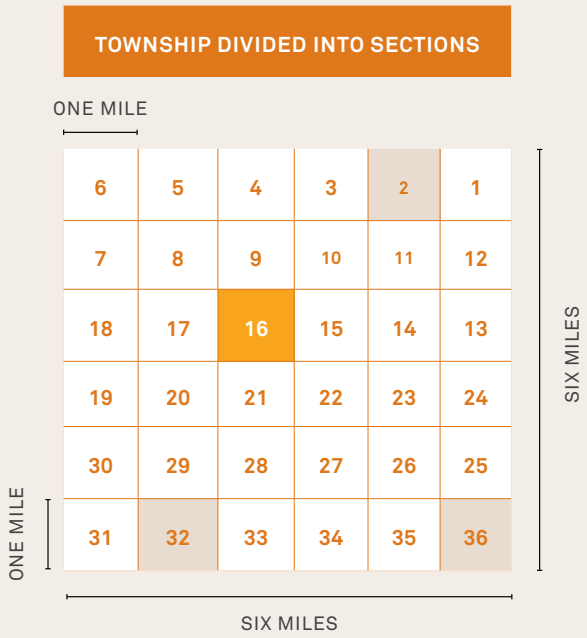
Box 1

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 designated the 36-square-mile township as the most basic unit of government, distributed across the landscape with the mathematical precision of a rectangular survey. The scheme oriented populations 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]).

Figure 2

Township Sections Were Reserved for Public Education

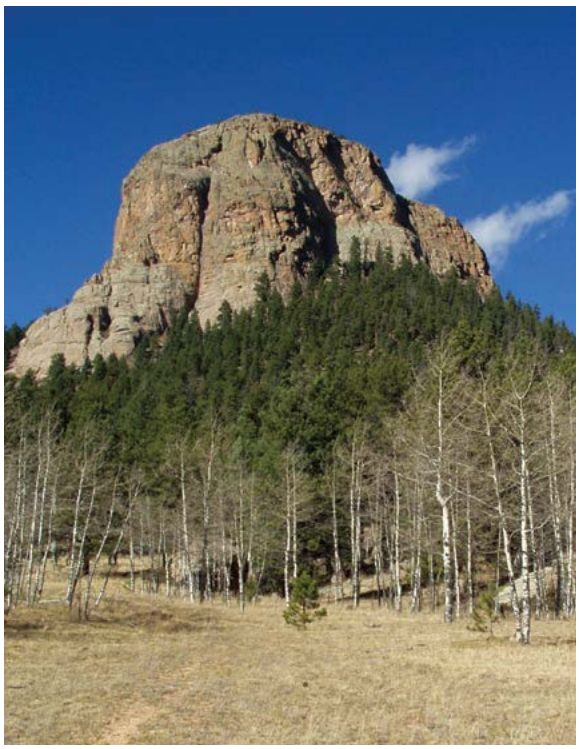


The rectangular survey system divides land into 36-square-mile "townships," six miles on a side, that are measured from the intersection of an identified north-south meridian (line of longitude) and a baseline. Each township is divided into 36 "sections" of one square mile, each containing 640 acres. 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.

The Trust Land Grant Program

In 1803, Ohio 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. Virtually every state that was admitted to the Union after Ohio received substantial land grants (see Appendices).

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, 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. Additionally, local governments did not always exist or have the resources to manage the lands.



Box 2

In Lieu Lands Offer Some States a Modern Gold Mine

Initially, in lieu selections were not the panacea the states wanted. Washington's territorial government 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 allow the states to acquire large, contiguous parcels that are 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.

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 19th century, Congress had abandoned the local management concept altogether and, beginning with 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, 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. The era of state trust lands essentially ended with their accession as the 47th and 48th states (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 failed, 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 supported 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 occurred 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.

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.

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 detailed provisions for the management and disposition of trust lands and the management of the revenues derived from them. Most 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).

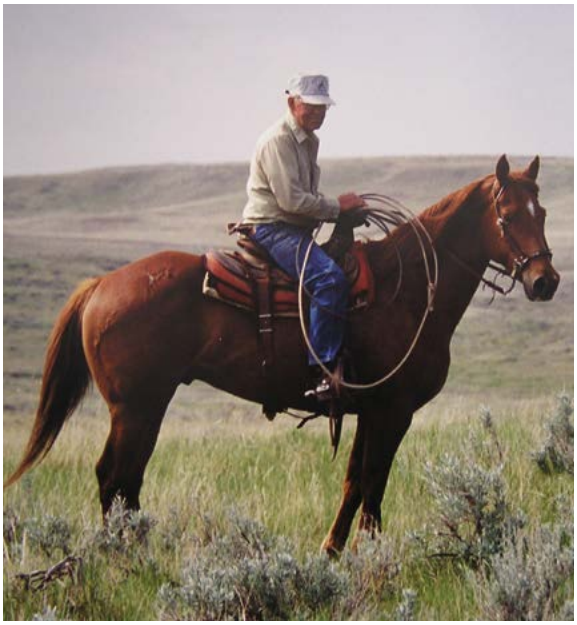
A Common Thread: The Trust Responsibility

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 (*Ervien 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 Arizona and New Mexico that would 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.

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 specific restrictions on how the lands were to be managed or disposed. However, the court found that the Utah Constitution did impose such requirements, 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.

The next chapter discusses the principles underlying the trust responsibility in greater detail and explores the implications of this singular mandate for trust land management.

Box 4

Key Decisions in New Mexico and Arizona Affirmed the Trust Responsibility

Ervien 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, so 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.

CHAPTER 2

Trust Land Management, Revenues, and Revenue Distribution

Twenty-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, and Wyoming each still 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 9.2 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), 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).

Figure 3

State Trust Land Holdings Support Schools and Other Trusts, 2013

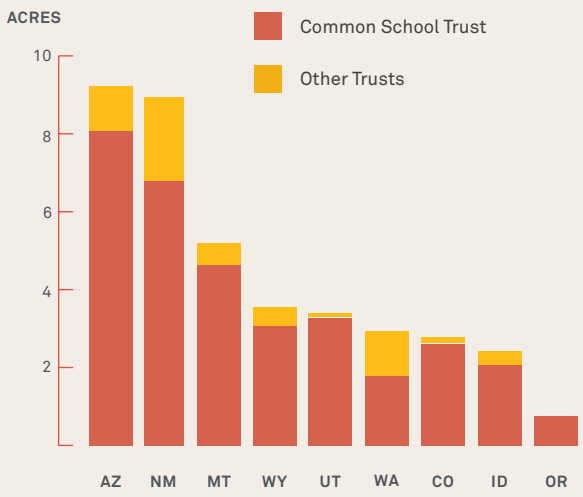


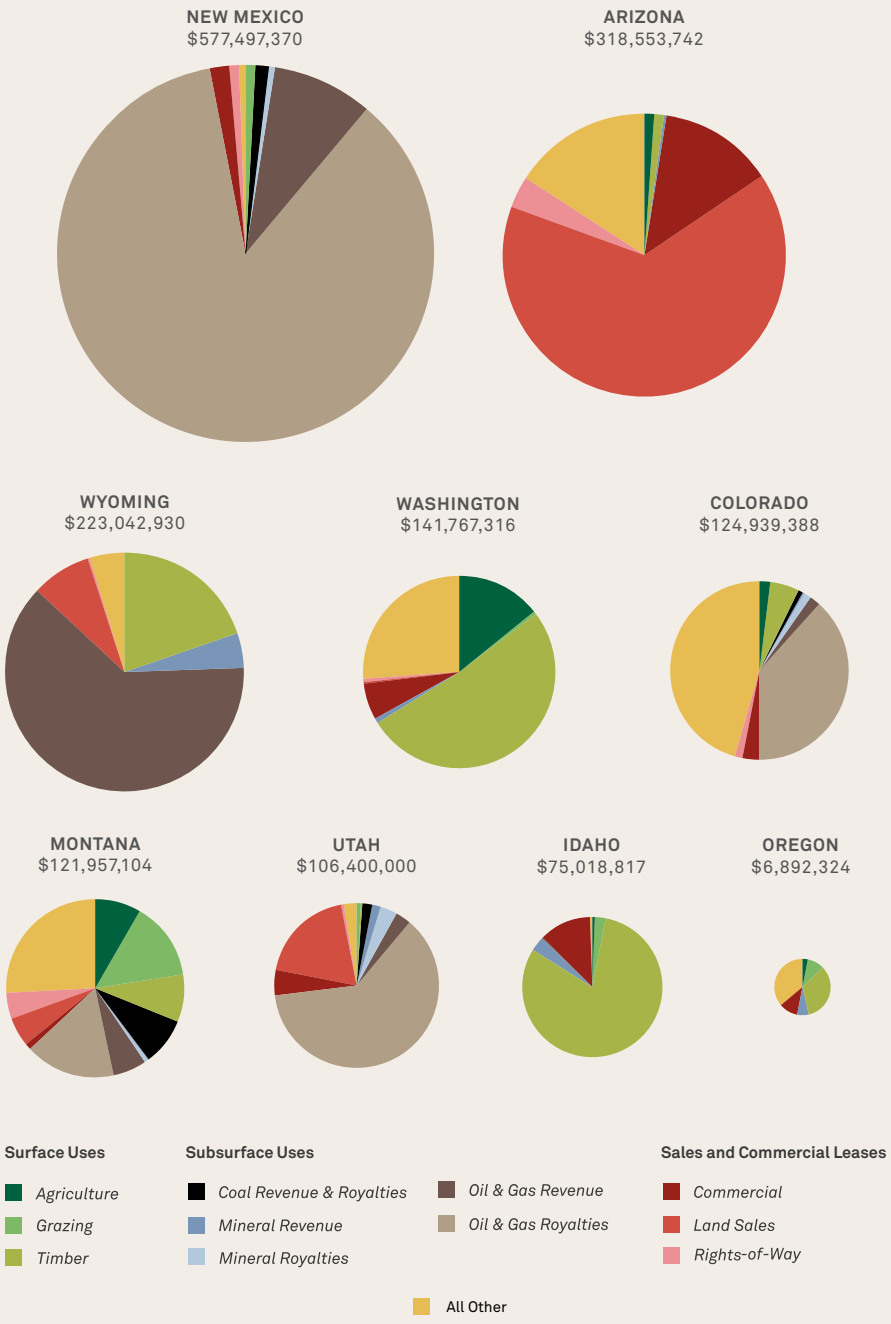
Figure 4

Gross Revenues from State Trust Lands Vary Widely, 2013

Sources: All data were derived from the applicable state's 2013 annual report, except: Colorado data are from *Income & Inventory Report Fiscal Year 2012–13*; Oregon data are from *Annual Report on Land Asset Management for Fiscal Year 2013*; Utah data are from FY13 revenues provided by Lisa Schneider, Finance Director, Utah Trust Lands Administration; and Washington data (for figure 3) are from FY13 provided by Bob Redling, Washington State Department of Natural Resources. Washington data do not include aquatic lands.

Figure 5

Composition and Revenue by State, 2013



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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 traditionally 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 also 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 $0.30 per acre for these leases. By contrast, agriculture revenues are $28 per acre in Arizona, $26 per acre in Idaho, and $20 per acre in Washington (Arizona State Land Department 2014; Idaho Department of Lands 2013; Washington State Department of Natural Resources 2015).

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 on 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. Colorado, Montana, 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 between 12 and 17 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 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, but some allow only the disposal of lands that are challenging to manage, are no longer valuable for 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. Single sales of small parcels have fetched 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 these lands are predicted to see significant growth during this century. In 2013, Montana, Utah, and Wyoming also brought in a sizeable portion of trust revenues from land sales (see chapter 5).

Figure 6
Schools Are the Primary Beneficiaries of State Trust Lands

	Public & Common Schools	Public Buildings, Capitals & Libraries	Penitentiaries	State Charitable Institutions	Deaf & Blind Schools	Normal Schools	Other Schools & Colleges	Universities	State & Other Hospitals	Military Institutes	Reservoirs & State Parks
Arizona	●	●	●	●	●	●	●	●	●	●	
Colorado	●	●	●				●	●			●
Idaho	●	●	●	●		●	●	●	●		
Montana	●	●		●	●	●	●	●			
New Mexico	●	●	●	●	●		●	●	●	●	●
Oregon	●										
Utah	●	●		●	●	●	●	●	●		●
Washington	●	●	●	●		●	●	●			
Wyoming	●	●	●	●	●		●	●	●		

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 subsequent acquisition of commercially valuable properties with long-term revenue generating potential.

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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 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 various mechanisms; some agencies are funded by legislative appropriation, while others use an enterprise funding mechanism that uses trust proceeds to fund operations.

Figure 7

New Mexico Holds the Largest Permanent Fund Balance, 2013

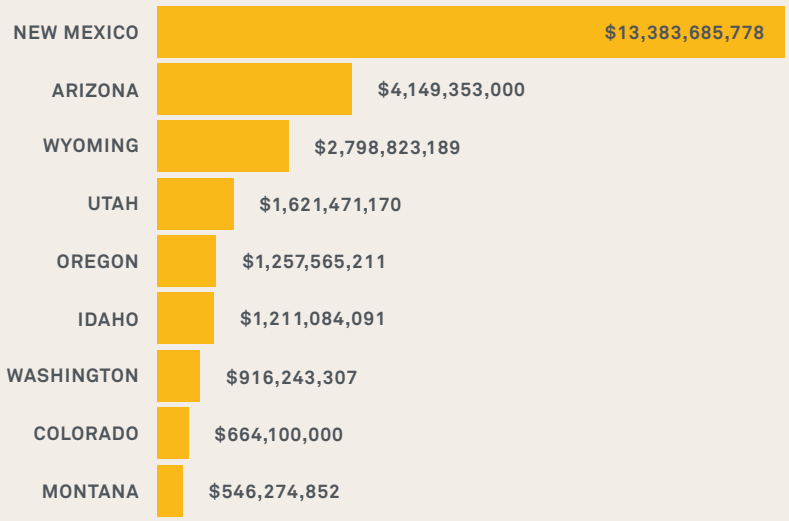
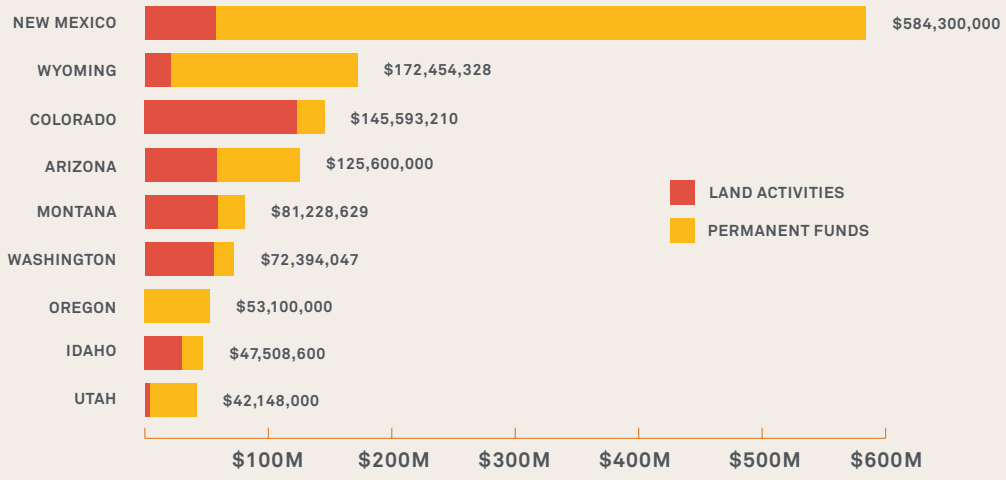


Figure 8

Annual Distributions to Beneficiaries Derive from Land Activities and Permanent Fund Interest, 2013



All data are from the applicable state's FY 2013 annual report except as follows: Colorado data are from the Board of Land Commissioners *Income & Inventory Report FY 2013*; Oregon data are from the *Annual Report on Land Asset Management for Fiscal Year 2013* and *The Children's Land Alliance Supporting Schools OR FY 2013 State Report* (for figure 8); Utah data are from FY13 revenues provided by Lisa Schneider, Finance Director, Utah Trust Lands Administration, *SITLA Financial Reports and Statistics FY 2013* (for figure 8), Utah Permanent School Fund Balance Sheet (for figure 8), and SITLA Statement of Revenue, Expenses, and Distributions FY 2013 (for figure 8); and Wyoming data are from the *Summary of State Trust Land Revenue* (for figure 8) and the WY State Treasurer *Annual Report FY 2013* (for figure 8). Washington data do not include aquatic lands.

Figure 9

Trust Lands Governance Frameworks Differ Across States

	ADMINISTRATION			DIRECTOR/COMMISSIONER			LAND COMMISSION OR LAND BOARD			
	Agency Department	Independent Agency	Self-Funded	Director/ Commissioner	Elected	Apppointed by	Board	Elected	Appointed by	Stakeholder Representation
Arizona		●		●		Governor				
Colorado	●		●	●		Board	●		Governor	●
Idaho		●	●	●		Board	●	●		
Montana	●		●	●		Governor	●	●		
New Mexico		●	●	●	●		*		Commissioner	●
Oregon		●	●	●		Board	●	●		
Utah		●	●	●		Board	●		Governor	●
Washington	●			●	●		●	**		●
Wyoming		●		●		Governor	●	●		

* *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.*

CHAPTER 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 continues 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 to further the purposes of the trust. Courts may authorize changes to trusts under some circumstances, particularly if 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 beneficiaries. 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 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

Box 5

What Is a Trust?

The 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 are required for every trust relationship:

- Settlor—establishes the trust and provides the trust property
- Trustee—manages the trust in keeping with the settlor's instructions
- Beneficiary—receives the benefits from the property held in trust

Three elements are 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
- Beneficiary or charitable public purpose is identified 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.

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 identified. 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 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 the managers. For example, based on the fiduciary requirements that commonly 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 decline is invalid, as it confers benefits to third parties that would not occur in a private contract; and
- 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 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 when this causes a direct loss to the trust. Most significantly, the state can pass laws that regulate its own behavior, even

Box 6

Arizona's State Trust Has Multilayered Requirements

Even when 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.

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 to a trust.

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 for a private trustee. These laws and doctrines effectively supplant

traditional trust principles. Thus, the primary role of the trust doctrine 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 muddied by the fact that many entities that consider themselves either 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 lawmaking and rule-making body. Thus, many trust decisions 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 a 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, to obligate them to embrace notions of intergenerational equity by investing portfolios in management strategies that 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 have the flexibility to consider how they can obtain revenues for trust beneficiaries without diminishing other values that may be associated with those lands.

CHAPTER 4

The Big Picture: Developing a Management Framework for Decision Making

Historically, trust managers often functioned 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 bring a desired stability and predictability to the system (i.e., traditional resource extraction activities). While such approaches may serve the trust well, increasingly trust managers 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 the land 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 duties 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 the particular characteristics of each trust: the perpetual nature of the trust; any 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 in both the short- and long-term.

A critical element of asset management is 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 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 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.

Box 7

Oregon's 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 regarding 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 detailed management direction for all land assets, resource-specific management direction and descriptions for all land assets, 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 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 well as various economic, environmental, and social factors. The plans 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 to 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 Assesses Institutional Capacity

The state of Wyoming developed 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 State Trust Land Program within the Lincoln Institute of Land Policy and Sonoran Institute joint program partnered with OSLI to assess OSLI's current institutional capacity and future needs to achieve 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 Applications Committee.

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 in the state. Since federal lands like National Parks are operated under a preservation-oriented model, this creates inherent conflicts between federal land management goals and the revenue generation goals of the state's trust managers.

To resolve these conflicts and protect environmentally sensitive trust lands, Utah and the federal government have engaged in a series of land exchanges. Through an exchange of land, the properties with high conservation value are traded into federal ownership, and tracts that are better suited for development are transferred to the state. In 2014, Utah finalized the transfer of 25,000 acres along the Colorado River corridor to the U.S. Bureau of Land Management. In exchange, the state gained 35,000 acres with mineral development potential. This exchange adds to the more than 540,000 acres of environmentally sensitive lands that the state has helped to protect and preserve since 1994.

Utah trust managers also engage in asset management through block planning. In 2002, the School and Institutional Trust Lands Administration 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.

A final wrinkle in asset management of trust lands is the recognition that the revenues from the sale of land or nonrenewable 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), 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. 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 in which 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 result in value-added outcomes must build on participant expertise and skills to enhance an 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 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. These experiences suggest collaboration will remain a valuable tool to help managers 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).

Box 10

Whitefish, Montana, Uses Collaborative Planning Process

In 2004, the Montana Department of Natural Resources and Conservation completed a collaborative, community-based land use planning process in the city of Whitefish, a gateway community to Glacier National Park. Traditionally, the Whitefish economy was based on the timber and rail industries, but rapid growth and expansion created a shift from a resource-based economy to a service-based economy that relies on the natural amenities of the area. Nearby state trust lands, historically managed for timber, were 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.

The Board of Land Commissioners engaged a diverse group of community stakeholders to develop the Whitefish Area Trust Lands Plan because of the controversy and the high political stakes involved with the potential development of these lands. The plan 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.

Since the plan was approved by the Board of Land Commissioners and adopted by Flathead County and the city of Whitefish, several projects have been undertaken as part of the plan's implementation. Projects include land exchanges that protect amenities and environmentally sensitive areas while creating opportunities for development and needed infrastructure. In addition, the Department of Natural Resources and Conservation has worked with the city and other partners to build a recreational trail through the area with access to Whitefish Lake.

CHAPTER 5

Evolving Strategies for Trust Land Management

This chapter highlights strategies to expand real estate development and enhance conservation uses with revenue potential in response to trust managers' interests in diversifying their approaches to asset management. 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 use various types of information to guide the disposition of trust lands for residential or commercial development. Other empirically based analytical tools may help identify trust lands that are suitable for development (see box 11). Such tools decrease the risk 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, which leads 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 more fiscally responsible and use land more efficiently (see box 12).

Figure 10
State Trust Lands Are Located Near Many Urban Areas

Box 11

Montana Program Analyzes Development Suitability

In 2005, Montana 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 are 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. The plan focuses on urban real estate opportunities and limits development in rural areas to about 5 percent of the total program. It also 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

Although 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 New Mexico State Land Office (NMSLO) has identified approximately 50,000 acres of state trust land that have current development potential.

One of the first major planning projects undertaken by the NMSLO was the Mesa Del Sol development, a master-planned community on 12,400 acres of state trust land near Albuquerque. The project build-out is estimated to take 50 years. In 2002, NMSLO selected Forest City Covington NM, LLC, to be the primary developer. They bought 3,000 acres and leased an additional 6,000 acres; the master plan included 1,400 acres for industrial and commercial development, 4,400 acres for residential and retail use, and 3,200 acres of parks and open space (Culp and Marlow 2015). In 2010, Forest City Covington broke ground on the first residential neighborhood and the first residents began moving into the development in 2012.

Other community development projects are underway in cities and towns across the state, with state land providing space for industrial parks, commercial centers, schools, fire stations, housing, and more.

PARTICIPATION AGREEMENTS

Some trust management agencies have experimented 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 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. In many cities and towns, it is common practice to engage in private-public partnerships to stimulate land development for economic purposes or to reclaim brownfield areas. It stands to reason that these same benefits can accrue to trust land agencies given the underutilized aspect of trust lands in this context.

Joint ventures or participation agreements are an increasingly common private-sector tool for the development of large-scale, master-planned communities, because these types of arrangements can

Box 13

Participation Agreements Facilitate Development in Utah

Based 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 the municipalities of St. George and Cedar City, and in Utah and Tooele counties (State of Utah School and Institutional Trust Lands Administration 2003, 17).

SITLA uses 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). SITLA's Development Group also has 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

Trust 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.

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).

make development projects more feasible by reducing capital risk. 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 urban form.

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. Large tracts of land with one owner are easier to plan comprehensively than parcels of mixed sizes and multiple owners.

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 in developing the 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 spaces, environmental values and functions, and recreational uses. This demand can lead to conflicts regarding trust management decisions, but 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 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 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 strictly fiduciary perspective, a public auction can help ensure that the trust land disposition will maximize revenue. However, trust land managers who want 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.

Box 15

Arizona Preserve Initiative Protects Trust Lands for Conservation

Real estate development activities in the Phoenix area generated intense public outcries when sensitive lands were identified 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 not generating 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.

Even with these constraints, many trust land managers are embracing conservation as a legitimate use of trust land with revenue-enhancing opportunities. In Idaho and Arizona, 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 more 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 to 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 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 multispecies conservation plans that provide for certain trust lands to be "set-aside" for conservation use. These plans allow for the incidental taking of endangered 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 reducing 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 of trust lands, currently many trust managers 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, mitigation banking, and exchange of trust lands with federal agencies.

Box 16

New Mexico Universities Undertake Biophysical Assessment

Under a 2001 Memorandum of Understanding negotiated between the New Mexico State Land Office (NMSLO), 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 NMSLO to protect trust assets for future generations. The information will become part of the Land Office Geographic Information Center (LOGIC) database that is maintained by the NMSLO. A web-based mapping service is also planned to allow the public to access the LOGIC database and produce geographic information systems (GIS) maps.

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 by better information to guide decision making.

MULTIPLE USES

Most states 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 interested in ensuring 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 other users than by the lessees themselves, which provides a potential method to increase the limited resources that are generally available for trust enforcement.

Box 17

Colorado Program Requires Multiple-Use Management Plans

Colorado'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 plans that prescribe management goals, restrictions related to habitat improvements, and monitoring and evaluation. The Colorado Division of Wildlife leases more than 400,000 acres of trust land for hunting, fishing, and recreation on a nonexclusive basis, funded by a surcharge on hunting and fishing licenses.

CHAPTER 6

Meeting Fiduciary Obligations in a Changing Landscape

State trust lands have served many purposes 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 played other important public roles 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 resources.

The Multiple Roles of the Trust

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.

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

- 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.

Trust managers have considerable discretion in choosing how and on what terms to generate revenues, although in some cases there may be unavoidable tensions between obtaining financial returns for trust beneficiaries and addressing the concerns of the broader public. In many instances this discretion should allow trust managers to find ways to accommodate public needs and benefits in a manner that is compatible with their fiduciary duty.

This report describes how certain trust activities in real estate development and conservation can satisfy the fiduciary interests of the trust while also focusing on other public values. Planning is valuable 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. 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 can act quickly to limit budgetary capacity or regulate management behavior in ways that will not necessarily help trust beneficiaries. In order to recognize the public nature of trust assets, trust managers need to 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.

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. Historic trust restrictions that made sense in the context of the 19th- or early-20th-century West may no longer be appropriate. Managers must protect natural resources, improve planning for residential and commercial development, or adopt more flexible land management techniques. 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 in several states. 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 the goal of optimizing returns for trust beneficiaries. Although SITLA retains significant stakeholder representation on its governing board—which is appointed by a complex process of stakeholder advisory committees— the agency's culture is now quite different from other state agencies, and it 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 educational goals. 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 management. The council members and recipients of the funds develop an appreciation for the value that trust-related revenues can bring to public education.

In Colorado, trust reform has taken a different strategy from 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, the board 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.

In 2006, Arizona presented a comprehensive reform proposal that sought to modernize the management of state trust lands by addressing many of the limitations in the state's enabling act and constitution. Although the ballot initiative to reform state trust land management in Arizona did not win the support of voters, it provided a model of compromise between the business-oriented approach of Utah and the conservation emphasis of Colorado.

The Arizona initiative proposed 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.

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.

The organizations supporting Arizona's 2006 reform learned some valuable lessons, which resulted in a more scaled-back approach to state trust land reform. In addition, there was interest in creating reforms that would improve management options for other publicly held land in the state, particularly military lands, and consider the impacts on the economy overall.

In 2012, Arizona voters approved Proposition 119, an amendment to the state constitution that allows the exchange of trust lands with federal agencies for the purpose of converting trust lands to public use. This amendment protects ecologically or culturally important parcels, while at the same time gives the state land department access to other parcels with high potential for revenue generation.

In each of these three states, trust reforms were 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 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 put new emphasis on trust accountability in terms of both revenue and non-economic values, such as the preservation of important natural assets via conservation mechanisms or increased involvement in 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 trust managers must pursue new economic opportunities, particularly in the areas of real estate development and conservation use, develop more strategic approaches to managing trust assets, and engage a wider set of stakeholders.

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 for trust managers to meet these challenges, even as the custodians of a perpetual, intergenerational trust.

In this context, there are 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 long-term value maintenance and enhancement.
- Collaborative planning approaches to 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.
- Comprehensive reforms that 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.

APPENDICES

History of State Land Grants in the United States

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

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

** 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 for swamplands 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).

Facts and Figures on Nine Western States

Arizona

Management Agency:

Arizona State Land Department:
https://land.az.gov

Current Land Holdings:

9.2 million surface acres; 9 million subsurface acres
(88 percent of original land grant of 10.5 million acres)

Uses:

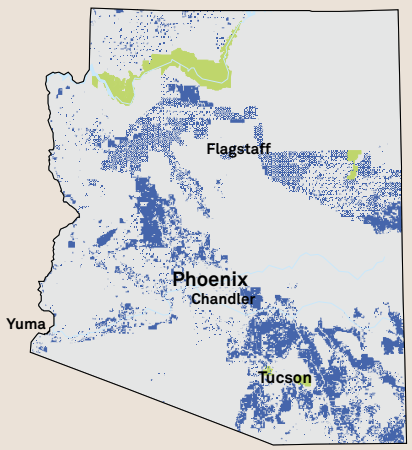
agriculture | grazing | mining of oil, gas, coal, and minerals | commercial leases | land sales for commercial and residential development

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 is one of the most restrictive states for 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 by the governor.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Common schools and county bonds | University of Arizona | University land code | Normal schools | Agriculture and mechanical colleges | School of mines | Military institutes | State charitable, penal, and reformatory | Miners' hospital | Penitentiary | Legislative, executive, and judicial buildings | State hospital | School for the deaf and blind

ARIZONA FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	1.4	$4,326,771
Grazing	0.9	$2,775,849
Timber	0	$0
Other	3.7	$11,781,049
Total Surface Uses	**5.9**	**$18,883,668**
Subsurface Uses		
Coal Revenues & Royalties	0	$0
Minerals Revenue	0.1	$371,832
Minerals Royalties	0	$0
Oil and Gas Revenue	0.3	$900,509
Oil and Gas Royalties	0	$0
Other	0.5	$1,458,432
Total Subsurface Uses	**0.9**	**$2,730,774**
Sales, Commercial Leases, and Other		
Commercial	13.2	$42,078,225
Land Sales	64.8	$206,413,029
Rights-of-Way	3.8	$12,025,100
Other	11.4	$36,422,947
Total Sales, Commercial Leases, and Other	**93.2**	**$296,939,300**
Total Revenue	**100**	**$318,553,742**
Agency Budget*		$12,562,300

Source: Arizona State Land Department FY2013 Annual Report. Note: Totals may not add up due to rounding.
* Agency budget source: The Executive Budget, State of Arizona.
http://www.ospb.state.az.us/documents/2014/FY15-Budget%20Summary%20-%20online%20edition.pdf

Colorado

Management Agency:

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

Current Land Holdings:

2.8 million surface acres; 4 million subsurface acres
(58 percent of original land grant of 4.8 million acres)

Uses:

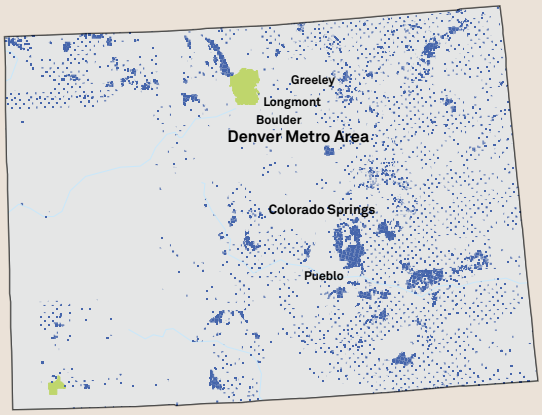
agriculture | grazing | timber | mining of oil, gas, coal, and minerals | commercial leases | land sales for commercial development | rights-of-way

Primary Revenue Source:

Oil and gas 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.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Common schools | Public buildings | Penitentiaries | University of Colorado | State parks | Colorado State University | Fort Lewis College

COLORADO FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	2.2	$2,684,459
Grazing	5.2	$6,458,485
Timber	0	$0
Other	1.8	$2,269,610
Total Surface Uses	**9.1**	**$11,412,554**
Subsurface Uses		
Coal Revenue and Royalties	0.8	$1,013,686
Minerals Revenue	0.4	$431,448
Minerals Royalties	1.3	$1,610,676
Oil and Gas Revenue	2.1	$2,623,022
Oil and Gas Royalties	38.3	$47,845,024
Other*	43	$53,683,852
Total Subsurface Uses	**85.8**	**$107,207,708**
Sales, Commercial Leases, and Other		
Commercial	3.0	$3,772,167
Land Sales	0	$975
Rights-of-Way	1.3	$1,614,638
Other	0.8	$931,346
Total Sales, Commercial Leases, and Other	**5.1**	**$6,319,126**
Total Revenue	**100**	**$124,939,388**
Agency Budget**		$4,974,521

Source: Colorado State Board of Land Commissioners Annual Report FY2012–2013. Note: Totals may not add up due to rounding.
* Includes bonus on all subsurface activities. ** Agency budget source: Natural Resources FY2013–2014 Budget Request.
http://www.colorado.gov/cs/Satellite?c=Page&childpagename=OSPB%2FGOVRLayout&cid=1251634369486&pagename=GOVRWrapper

Idaho

Management Agency:

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

Current Land Holdings:

2.4 million surface acres; 3.3 million subsurface acres (65 percent of original land grant of 3.7 million acres)

Uses:

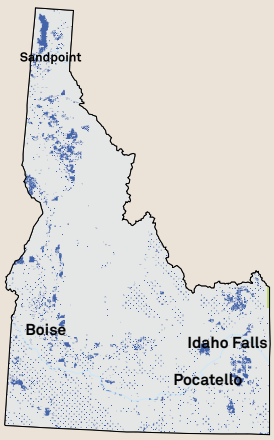
agriculture | grazing | timber | mining of minerals, oil, and gas | commercial leases

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), which operates under the management directives of the Idaho State Board of Land Commissioners (ISBLC), consisting of the governor, superintendent of public instruction, secretary of state, attorney general, and state controller. The ISBLC is responsible for appointing the director of the IDL.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Idaho public schools | University of Idaho | State hospitals for the mentally ill | Lewis-Clark State College | State veterans homes | Idaho State University | Capitol Commission | Idaho School for the Deaf and Blind | Idaho's juvenile corrections system and prison system

IDAHO FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	0.7	$536,045
Grazing	2.6	$1,932,652
Timber	80.8	$60,599,527
Other	0	$0
Total Surface Uses	**84.1**	**$63,068,224**
Subsurface Uses		
Coal Revenue and Royalties	0	$0
Minerals Revenue	3.3	$2,494,654
Minerals Royalties	0	$0
Oil and Gas Revenue	0.2	$123,651
Oil and Gas Royalties	0	$0
Other	0	$0
Total Subsurface Uses	**3.5**	**$2,618,305**
Sales, Commercial Leases, and Other		
Commercial	12.2	$9,116,694
Land Sales	0	$0
Rights-of-Way	0	$0
Other	0.3	$215,594
Total Sales, Commercial Leases, and Other	**12.5**	**$9,332,288**
Total Revenue	**100**	**$75,018,817**
Agency Budget*		$46,137,600

Source: Idaho Department of Lands 2013 Annual Report. Note: Totals may not add up due to rounding.
* Agency budget source: Historical Summary, Department of Lands.
http://legislature.idaho.gov/budget/publications/LBB/FY2014/NatRes/LandsLBB.pdf

Montana

Management Agency:

Montana Department of Natural Resources and Conservation
Trust Land Management Division:
http://www.dnrc.mt.gov/trust

Current Land Holdings:

5.1 million surface acres; 6.2 million subsurface acres
(86 percent of the original land grant of 5.9 million acres)

Uses:

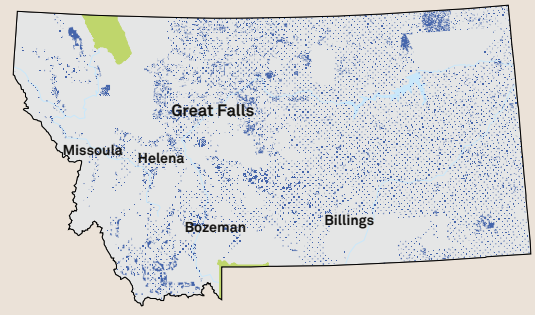
agriculture | grazing | timber | mining of coal, minerals, oil and gas | commercial leases | land sales | rights-of-way

Primary Revenue Source:

Oil and gas royalties

Trust Requirements:

Lands are held in trust pursuant to the state enabling act and state constitution, requiring revenues from the land sales to 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.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Common schools | University of Montana | Montana State University | Montana Tech | University of Montana, Western | Montana State University, Billings | State reform school | State normal school | Montana School for the Deaf and Blind | Montana Veterans Home | Public buildings

MONTANA FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	8.4	$10,238,748
Grazing	14.4	$17,588,573
Timber	8.6	$10,504,738
Other	0	$0
Total Surface Uses	**31.4**	**$38,332,059**
Subsurface Uses		
Coal Revenue and Royalties	8.6	$10,442,023
Minerals Revenue	0	$19,943
Minerals Royalties	0.8	$951,253
Oil and Gas Revenue	6.2	$7,515,726
Oil and Gas Royalties	16.4	$19,944,734
Other	0	$0
Total Subsurface Uses	**31.9**	**$38,873,679**
Sales, Commercial Leases, and Other		
Commercial	1.1	$1,308,690
Land Sales	5.3	$6,472,800
Rights-of-Way	4.6	$5,618,211
Other	25.7	$31,351,665
Total Sales, Commercial Leases & Other	**36.7**	**$44,751,366**
Total Revenue	**100**	**$121,957,104**
Agency Budget*		$27, 743,634

Source: Montana DNRC Trust Lands Management Division Annual Report FY2013. Note: Totals may not add up due to rounding.

* Agency budget source: Schweitzer Budget for 2014–2015.
http://budget.mt.gov/Portals/29/execbudgets/2015_Budget/Yellow_Book.pdf

New Mexico

Management Agency:

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

Current Land Holdings:

9 million surface acres; 12.7 million subsurface acres
(69 percent of original land grant of 13 million acres)

Uses:

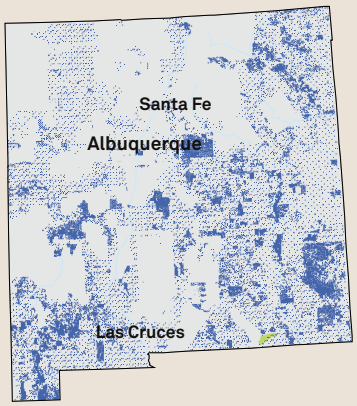
grazing | mining of coal, minerals, oil, and gas | commercial leases | rights-of-way

Primary Revenue Source:

Oil and gas 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, which is composed of seven stakeholders appointed by the State Land Commissioner and approved by the State Senate.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Common schools | New Mexico Boys' School | New Mexico Military Institute | School for the deaf | School for the blind and visually impaired | Eastern New Mexico University | New Mexico Highlands University | New Mexico Institute of Mining and Technology | New Mexico State University | Northern New Mexico College | University of New Mexico | Western New Mexico University | Hospitals | Public buildings | Charitable, penal, and reform institutions | Irrigation reservoirs | Penitentiary | Rio Grande improvements

NEW MEXICO FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	0	$0
Grazing	1.0	$5,968,412
Timber	0	$0
Other	0.2	$1,138,924
Total Surface Uses	**1.2**	**$7,107,336**
Subsurface Uses		
Coal Revenue and Royalties	1.0	$5,520,892
Minerals Revenue	0	$108,820
Minerals Royalties	0.7	$4,259,335
Oil and Gas Revenue	8.4	$48,705,164
Oil and Gas Royalties	85.6	$494,131,482
Other	0.2	$1,347,871
Total Subsurface Uses	**95.9**	**$554,073,564**
Sales, Commercial Leases, and Other		
Commercial	1.6	$9,206,913
Land Sales	0	$0
Rights-of-Way	0.9	$5,251,352
Other	0.3	$1,858,205
Total Sales, Commercial Leases, and Other	**2.8**	**$16,316,470**
Total Revenue	**100**	**$577,497,370**
Agency Budget*		$13,076,800

Source: New Mexico State Land Office 2012–2013 Annual Report. Note: Totals may not add up due to rounding.

* Agency budget source: New Mexico State Land Office FY2015 Appropriation Request.
http://www.nmlegis.gov/LCS/handouts/ALFC%20102313%20Item%207%20PRESENTATION%20-%20State%20Land%20Office.pdf

Oregon

Management Agency:

Oregon Department of State Lands:
http://www.oregon.gov/DSL

Current Land Holdings:

776,000 surface acres; 766,700 subsurface acres;
1.26 million waterway aces (23 percent of original land grant of 3.4 million acres)

Uses:

agriculture | grazing | timber | mining of minerals | commercial leases

Primary Revenue Source:

Timber

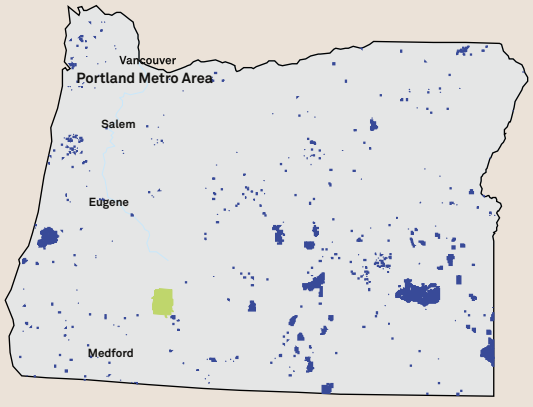
Trust Requirements:

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 such 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 FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	3.2	$220,363
Grazing	9.7	$668,944
Timber	33.5	$2,305,411
Other	32.0	$2,208,876
Total Surface Uses	**78.4**	**$5,402,645**
Subsurface Uses		
Coal Revenue and Royalties	0	$0
Minerals Revenue	6.9	$473,082
Minerals Royalties	0	$0
Oil and Gas Revenue	0	$2,166
Oil and Gas Royalties	0	$0
Other	0	$1,990
Total Subsurface Uses	**6.9**	**$477,238**
Sales, Commercial Leases, and Other		
Commercial	10.6	$730,747
Land Sales	0	$0
Rights-of-Way	0	$0
Other	4.1	$280,745
Total Sales, Commercial Leases, and Other	**14.7**	**$1,011,492**
Total Revenue	**100**	**$6,892,273**
Agency Budget*		$20,903,054



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Source: Oregon 2013 Annual Land Management Report. Note: Totals may not add up due to rounding.

* Agency budget source: Analysis of the 2013–2015 Legislatively Adopted Budget. The budget is the annual average for 2013–2015. *https://www.oregonlegislature.gov/lfo/Documents/2013-15%20LAB.pdf*

Utah

Management Agency:

Utah School and Institutional Trust Lands Administration: *http://trustlands.utah.gov*

Current Land Holdings:

3.4 million surface acres; 1.1 million subsurface acres (45 percent of original land grant of 7.5 million acres)

Uses:

agriculture | grazing | mining of coal | minerals, oil, and gas | commercial leases | land sales | rights-of-way

Primary Revenue Source:

Oil and gas royalties

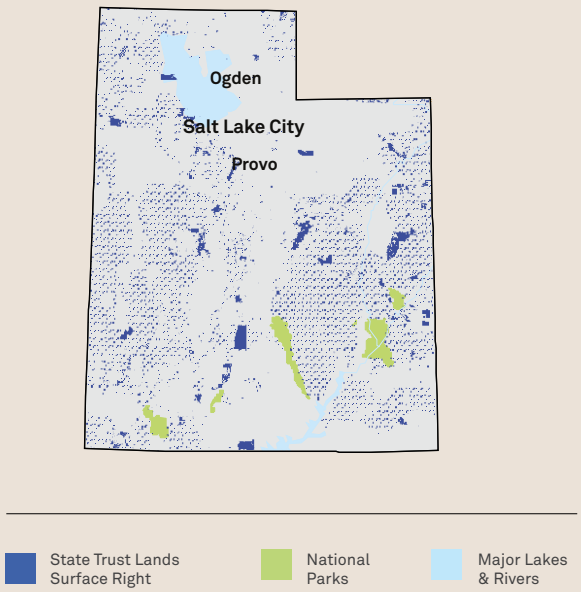
Trust Requirements:

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 | Utah State University | School for the deaf | Utah State Hospital | Institution for the Blind | Miners' hospital | Normal school | Public buildings | Youth development center | Reservoirs | School of mines | University of Utah

UTAH FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	0.2	$166,088
Grazing	0.9	$933,427
Timber	0.2	$247,786
Other	0.2	$161,088
Total Surface Uses	**1.4**	**$1,508,382**
Subsurface Uses		
Coal Revenue and Royalties	2.0	$2,158,716
Minerals Revenue	1.7	$1,783,447
Minerals Royalties	3.3	$3,458,665
Oil and Gas Revenue	3.1	$3,261,644
Oil and Gas Royalties	61.8	$65,797,259
Other	0.9	$912,358
Total Subsurface Uses	**72.7**	**$77,372,089**
Sales, Commercial Leases, and Other		
Commercial	5.0	$5,368,729
Land Sales	18.9	$20,128,847
Rights-of-Way	0.7	$688,934
Other	1.3	$1,333,019
Total Sales, Commercial Leases, and Other	**25.9**	**$27,519,529**
Total Revenue	**100**	**$106,400,000**
Agency Budget*		$19,284,900



Source: FY13 revenues provided by Lisa Schneider, Finance Director, Utah Trust Lands Administration.
Note: Totals may not add up due to rounding.
* Agency budget source: 2013–2014 Appropriations Report. *http://le.utah.gov/interim/2013/pdf/00001950.pdf*

Washington

Management Agency:

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

Current Land Holdings:

2.2 million acres (73 percent of original land grant of more than 3 million acres)

Uses:

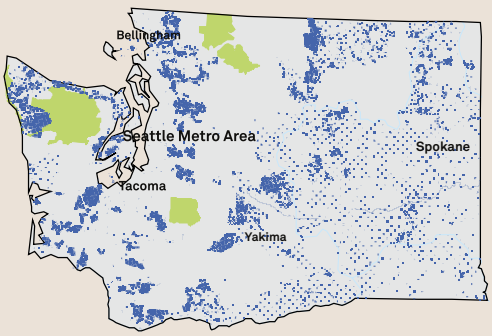
agriculture | grazing | timber | mining of minerals | commercial leases | land sales | rights-of-way

Primary Revenue Source:

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, must be sold at public auction, and must go 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, a commissioner of public lands who is elected by the state, and a supervisor who is appointed by the commissioner.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Common schools | Public buildings | Charitable, educational, penal, and reform institutions | Normal schools | University of Washington | Washington State University

WASHINGTON FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	15.3	$21,739,287
Grazing	0.6	$834,420
Timber	55.3	$78,426,922
Other	18.2	$25,762,576
Total Surface Uses	**89.4**	**$126,763,205**
Subsurface Uses		
Coal Revenue and Royalties	0	$0
Minerals Revenue	0.8	$1,098,919
Minerals Royalties	0	$0
Oil and Gas Revenue	0	$0
Oil and Gas Royalties	0	$0
Other	0	$0
Total Subsurface Uses	**0.8**	**$1,098,919**
Sales, Commercial Leases, and Other		
Commercial	6.7	$9,516,697
Land Sales	0.3	$443,500
Rights-of-Way	0.6	$844,300
Other	2.2	$3,100,659
Total Sales, Commercial Leases, and Other	**9.8**	**$13,905,198**
Total Revenue	**100**	**$141,767,316**
Agency Budget*		$224,936,000

Source: 2013 Annual Report, Washington State Natural Resources. Note: Totals may not add up due to rounding.

* Agency budget source: Department of Natural Resources Recommendation Summary. The budget is the annual average budget for 2013–2015. *http://ofm.wa.gov/budget15/recsum/490.pdf*

Wyoming

Management Agency:

Wyoming Office of State Lands and Investment:
http://lands.wyo.gov/

Current Land Holdings:

3.5 million surface acres; 3.9 million subsurface acres (83 percent of original land grant of 4.2 million acres)

Uses:

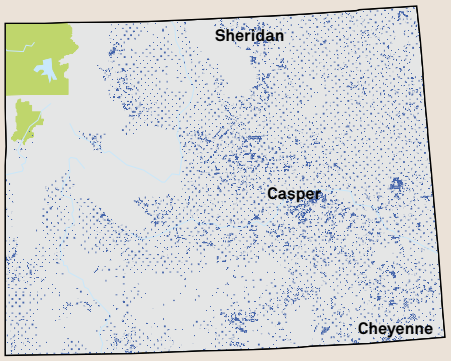
timber | mining of coal, minerals, oil, and gas | land sales | rights-of-way

Primary Revenue Source:

Mining of oil and gas

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 Investment (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.



State Trust Lands Surface Right | National Parks | Major Lakes & Rivers

Beneficiaries:

Common schools | University of Wyoming College of Agriculture | Home for the deaf | Wyoming Game and Fish Department | Wyoming State Hospital | Miners' hospital | Departments of health, corrections, and family services | Penal, reform, and educational institutions | Public buildings | Veterans home | State law library | State library | University of Wyoming

WYOMING FY2013 REVENUE		
SOURCE	**% OF REVENUE**	**RECEIPTS**
Surface Uses		
Agriculture	0	$0
Grazing	0	$0
Timber	0.1	$164,725
Other	0	$0
Total Surface Uses	**0.1**	**$164,725**
Subsurface Uses		
Coal Revenue and Royalties	19.9	$44,356,644
Minerals Revenue	4.6	$10,171,304
Minerals Royalties	0	$0
Oil and Gas Revenue	62.7	$139,734,586
Oil and Gas Royalties	0	$0
Other	0	$0
Total Subsurface Uses	**87.1**	**$194,262,535**
Sales, Commercial Leases, and Other		
Commercial	0	$0
Land Sales	8.0	$17,907,273
Rights-of-Way	0.3	$625,416
Other	4.5	$10,082,981
Total Sales, Commercial Leases, and Other	**12.8**	**$28,615,670**
Total Revenue	**100**	**$223,042,930**
Agency Budget*		$114,324,491

Source: Office of State Lands and Investments Annual Report 2013. Note: Totals may not add up due to rounding.
* Agency budget source: Annual Report FY13.
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Ron Carlson, Audit Manager

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About the Authors

Peter W. Culp is a partner with Squire Patton Boggs in Phoenix, Arizona. He was formerly project manager at the Sonoran Institute for the State Trust Lands Project and the Institute's attorney for programs. He holds a J.D. from the University of Arizona and a B.A. in politics from the University of California, Santa Cruz. He is a member of the State Bar of Arizona and the American Bar Association.

Andy Laurenzi is the Southwest Field Representative for Archaeology Southwest where he manages the cultural resource protection efforts in Arizona and New Mexico. He was formerly the director of the Land and Water Policy Program for the Sonoran Institute. He holds an M.S. in zoology with a specialization in ecology from Arizona State University.

Cynthia C. Tuell is a law clerk for the Honorable Jan Kearney in the Arizona Superior Court in Pima County. As an intern with the Sonoran Institute's State Trust Lands Project, she conducted research on issues related to the management of state trust lands. She earned a J.D. from the University of Arizona and a B.S. in ecology and evolutionary biology from the University of Arizona.

Alison Berry is the energy and economics specialist at the Sonoran Institute, where her work focuses on land use issues in the West. Prior to joining Sonoran, she was a research fellow at the Property and Environment Research Center (PERC), with a concentration on natural resource economics, forestry, and public land management. She holds a B.A. in biology from the University of Vermont and an M.A. in forestry from the University of Montana. Her work has been published in the *Wall Street Journal*, the *Journal of Forestry,* and the *Western Journal of Applied Forestry*, among others.

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Founded in 1990, the Sonoran Institute helps communities conserve and restore those resources and manage growth and change through collaboration, civil dialogue, sound information, practical solutions, and big-picture thinking.

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Western Lands and Communities is a joint program of the Lincoln Institute of Land Policy and the Sonoran Institute that takes a long-term strategic perspective on shaping growth, sustaining cities, protecting resources, and empowering communities in the Intermountain West. The program began with a focus on state trust land issues in 2003, but has since broadened in scope. However, state trust lands remain one of the core elements of the program. For more information, visit our website about state trust land management at www.statetrustlands.org.

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PROJECT MANAGER & EDITOR
Emily McKeigue/Ann LeRoyer

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Sarah Rainwater Design

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113 Brattle Street, Cambridge, MA
02138-3400, USA
P (617) 661-3016 or (800) 526-3873
F (617) 661-7235 or (800) 526-3944
help@lincolninst.edu
lincolninst.edu

State Trust Lands in the West

Fiduciary Duty in a Changing Landscape | **Updated**

This report, updated with data from 2013, 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. This report highlights a variety of innovative practices that

- **establish comprehensive asset management frameworks that balance short-term revenue generation with long-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. This report presents specific examples of these initiatives 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.

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