

# **Collaborative Planning on State Trust Lands:**

## **A University of Michigan Study**

*for the State Trust Lands Partnership Project  
of the Sonoran Institute and the Lincoln Institute of Land Policy*



## About the Study:

Collaborative planning on state trust lands was identified for further research at the 2004 State Trust Lands Research and Policy Analysis Roundtable convened by the State Trust Lands partnership project of the Sonoran Institute and the Lincoln Institute of Land Policy. In March 2005, under the guidance of Dr. Steven L. Yaffee, a team of eight graduate students from the University of Michigan School of Natural Resources and Environment began conducting a region-wide survey and analysis of eight case studies in which state trust land agencies collaborated with stakeholders in trust land planning and management. The research team conducted 117 on-site and telephone interviews, each lasting roughly one to three hours. Through these interviews, the team answered a set of research questions concerning the benefits, challenges, costs and outcomes of collaborative planning on state trust lands. The goals of this research were to:

- Capture on-the-ground experiences of collaborative planning on state trust lands
- Analyze the advantages and disadvantages of this trust land management approach
- Distill a set of best management practices
- Provide broader recommendations for overcoming barriers to collaborative planning on state trust lands

### Authors:

Stephanie Bertaina, Alden Boetsch, Emily Kelly, Eirin Krane,  
Jessica Mitchell, Lisa Spalding, Matt Stout, Drew Vankat, Steve Yaffee

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## STATE TRUST LANDS OVERVIEW

State trust land is a somewhat obscure classification of lands that exists in a “quiet corner of public land management.”<sup>1</sup> The designation of state trust lands is woven into the history of how the United States developed as a nation. State trust lands are different from and more deeply rooted in the history and political traditions of the nation than federal lands and resources management.<sup>2</sup> While federally owned public land is meant to be managed for the use and enjoyment of the general public, the purpose of state trust land management is to generate revenue for the trust beneficiaries, which include common schools and other public institutions.

This report examines several cases of collaborative planning on state trust lands. However, the unique nature of these lands, with their constitutional mandate to produce revenue for schools and other public institutions, has often served as a perceived barrier for trust land agencies to engage in collaborative planning. In addition, because the public is typically not familiar with the history, purpose and location of the trust lands, it is difficult for trust land agencies to engage others in collaborative planning processes.

This section provides background information on state trust lands, their management and history through a discussion of the following topics:

- The placement of state trust lands in the context of public land management
- A history of state trust lands and how they were created
- The trust system
- Trust resources
- Emerging issues in state trust land management

### STATE TRUST LANDS IN THE CONTEXT OF PUBLIC LAND MANAGEMENT

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The majority of state trust lands were granted by the federal government to the newly-created states to be held in a “perpetual, intergenerational trust to support a variety of beneficiaries including public schools, universities, penitentiaries, and hospitals.”<sup>3</sup> Public schools were designated as the principal beneficiary of most of these grants. From the early 20<sup>th</sup> Century through the present, the primary source of revenue from state trust lands has reflected the focus of Western economies on natural resource extraction. These traditional trust land uses include, but are not limited to, oil and gas leasing, hard rock mining, grazing, agriculture, timber and land sales.

Although the purpose and designation of state trust lands are not as widely known by the general public, they are comparable to federal lands and make up a significant portion of public land in the Western U.S. In total, state trust lands comprise 46 million acres of land in the lower 48 states.<sup>4</sup> The nine states with the largest and most significant holdings of state trust lands are: Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming. Collectively, these states manage more than 40 million acres of state trust lands.<sup>5</sup>

In comparison to federal land holdings, state trust land acreage falls in the middle of the spectrum. However, state trust land generates significantly more revenue than federal land, which highlights how the trust land agencies' mandate to manage these lands in trust for designated beneficiaries, explored further below, influences trust land management (Table 2-1).

**Table 2-1: Federal Lands and State Trust Lands Compared**

	<b>Acres (millions)</b>	<b>Gross Annual Revenues (millions of dollars)</b>	<b>Net Returns to Treasuries (millions of dollars)</b>
<b>U.S. Forest Service</b>	192	1,000	465
<b>Bureau of Land Management</b>	261	187	142
<b>National Park Service</b>	80	97	1
<b>U.S. Fish and Wildlife Service</b>	90	8	5
<b>State Trust Lands</b>	135	4,500	3,500

Source: Jon A. Souder and Sally K. Fairfax, "The State Trust Lands," <http://www.ti.org/statetrusts.html>; Bureau of Land Management, <http://www.blm.gov>.

## **HISTORY OF STATE TRUST LANDS**

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Granting land to support public education is not a new concept. Land grants for educational institutions date back to the Roman Empire, ancient Greece and the kingdoms of Egypt. The American colonies were using land grants by 1785 when Congress established the policy of granting schools in new states some federally-owned sections of land in each 36-square mile township.<sup>6</sup> The early colonial state governments of Connecticut, Massachusetts, New York, New Hampshire, New Jersey, Pennsylvania, North Carolina and Georgia all made substantial land grants in support of public education.<sup>7</sup>

One of the first tasks facing the new American Continental Congress after issuing the Declaration of Independence was managing the rampant land speculation in the Western territories and the westward expansion of settlements. Without a system in place for regularizing the process of land claims and organizing territorial governments, each new Western settlement increased the possibility that some or all of the relocating populations would form independent states outside of the control of the Union.<sup>8</sup> Congress grew increasingly concerned about how to police the newly-settled territories and finance the governments that would be necessary to oversee the new territories.<sup>9</sup> Moreover, Congress wanted to ensure that the new territories would hold to the democratic values that were the fundamental cause for waging the Revolutionary War.<sup>10</sup> As the war drew to a close, the Continental Congress was further limited in its ability to provide federal monies to resolve these pressing issues.

There was a strong sentiment among the Congressional leadership that providing for public education in the territories would be an essential element in ensuring a democratic future for the

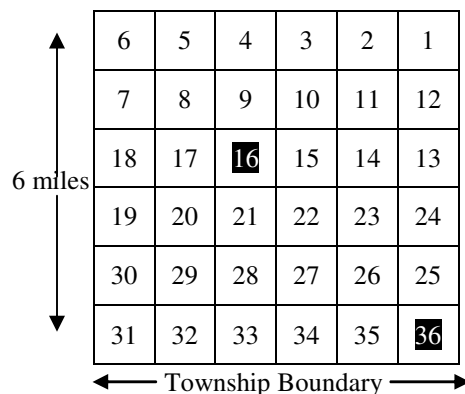
expanding nation.<sup>11</sup> The Eastern states had established a system in which land grants and property taxes could provide the revenues necessary to fund public education. The Western territorial areas lacked these resources, leaving it to the state governments or new federal government to subsidize public schooling until a sufficiently large population and economic base was established. Additionally, lands not settled and in the public domain were exempt from taxation by the new states, thereby limiting the tax base from which a state could draw revenue.

As a solution to the problems of debt, land speculation, expansion and funding for education, Congress began brokering negotiated cessions of the colonies' Western land claims to the federal government. The rationale behind this move was to create a system to administrate land and provide a solution to the organization of settlement and the formation of new states. This system also would provide public education and other essential services while repaying the burgeoning national debt.<sup>12</sup> The Western territories also wanted to gain from their entrance into the Union and the administrative land system that developed into the land grant program filled that need.

### IMPORTANT FEDERAL LEGISLATION

The U.S. federal government passed two important pieces of legislation to lay the groundwork for state trust land grants in the new territories. First, the General Land Ordinance of 1785 established the rectangular survey system, which created rules governing the sale of land by the federal government.<sup>13</sup> The Ordinance also created a process for recording land patents and records necessary to create a chain of title for public domain lands. Finally, it provided for the first reservations of lands for new states, stating that section 16 in every township would be reserved "for the maintenance of public schools within the said township."<sup>14</sup> A section is one square mile of land that adjoins the center of a 36-square mile township (Figure 2-1). The cadastral system and township measurement established by the General Land Ordinance was used as a basic survey system to reference all federal lands. The best way to conceptualize the survey system is to imagine Figure 1 as a grid on top of a map of the U.S.

**Figure 2-1: State Trust Land Granting Patterns**



Source: Souder and Fairfax, *State Trust Lands: History, Management, & Sustainable Use*, 29.

Second, the Northwest Ordinance of 1787 created a system of territorial governments and a process for transitioning territories into new states. The Ordinance also propagated a vision of cheap land, state equality and public education that was considered essential to the success of the Western states.<sup>15</sup> Article III of the Northwest Ordinance reinforced the belief among Congressional leaders that education was an essential element of the Union's foundation. It stated 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." Article V, in turn, provided that Congress should admit every new state on an "equal footing" with the existing states.<sup>16</sup> The concept of equal footing was included to ensure that all states ceding to the Union were given similar acreages of land grants, thus limiting political influence in issues such as slavery on state accession processes. In addition, the Western territories expected some return for their cession and the federal government intended to make the distribution and administration of land grants a self-supporting, even lucrative project.<sup>17</sup> Many of the ideals espoused in the Northwest Ordinance were derived from Thomas Jefferson's vision of an agrarian democracy where the township was the most basic unit of government, with populations oriented around agrarian communities that would provide for the democratic education of their citizens.<sup>18</sup>

The state admission process established by the Northwest Ordinance was never strictly followed by Congress, particularly in the years leading up to and continuing through the Civil War. During this time, the admission of new states was a process that was politically charged with conflicts over slavery and the desire of Northern and Southern states to maintain an equal balance between free and slave states.<sup>19</sup> Ohio was the first public domain state admitted into the Union in 1803 and the first to receive a land grant to support schools. Public domain states were created from land gained by the Union as a result of land purchases or wars. The area currently known as Ohio was originally a British territory that the American government gained after the Revolutionary War. After Ohio, nearly every state admitted to the Union received substantial land grants at admission.<sup>20</sup> However, there were exceptions in so far as the amount of land granted (namely, Maine, Texas and West Virginia).

Land grants to new states were an important component of Congress's effort to control the accession process while balancing the Northwest Ordinance principle that new states should join the Union on an equal footing.<sup>21</sup>

### **THE STATE ACCESSION PROCESS AND THE ENABLING ACT**

The accession process was complex and often characterized by prolonged negotiations between the territory and Congress. The Northwest Ordinance laid out the steps for a state-in-the-making. After a region had been organized into a territory, the Territorial Legislature or its delegate in Congress, or both, could request admission. If the petition was favorably received, Congress would pass an "enabling act" authorizing a constitutional convention for the state-to-be.<sup>22</sup> The state constitutional convention would then meet and draft a governing document, which would be subjected to a referendum in the Territory. In short, the enabling act is an act to enable the people in a territory to form a constitution and a state government.

Upon admission into the Union, new states typically received sections 16 and 36 in each township. The amount of land granted was detailed in the enabling act. While the rectangular

survey system established in the General Land Ordinance of 1735 had mathematical appeal, population centers in the West tended to develop around natural, economic and military features without regard for the artificial township boundaries. Thus, there were not always local governments associated with each township to manage the granted lands.<sup>23</sup> Many lands in these cases were granted to teachers in lieu of a salary, for example, until sufficient tax revenues could be gathered to pay them.<sup>24</sup>

The size of land grants increased significantly as the state accession process moved west of the 100<sup>th</sup> Meridian. With this move west came a marked change in landscape from the rich farmlands that predominated in the east to the steeper and more arid lands of the West.<sup>25</sup> It was therefore necessary for these Western states to receive a larger quantity of land to generate the necessary revenues to support schools and other public institutions.<sup>26</sup> For example, four of the seven states examined in this report – Oregon, Colorado, Montana and Washington – were granted the traditional 16<sup>th</sup> and 36<sup>th</sup> sections, while the other three states studied – Utah, New Mexico and Arizona – received the 2<sup>nd</sup>, 16<sup>th</sup>, 32<sup>nd</sup> and 36<sup>th</sup> sections. Later in the accession process, Congress took up the practice of allowing states to select “in lieu” lands from elsewhere in the public domain when private landowners or various federal reservations already occupied their reserved lands in a given township.<sup>27</sup> Some states also received the beds and banks of navigable waterways as part of their land grants.

The progressive increase in the size of land grants was also a reflection of the growing political power of the West. Initially, Congress provided little guidance to states on how they should manage their trust lands; the lands were granted directly to the township for the use of schools specific to that township.<sup>28</sup> As a result of this lack of management guidance, many states sold all or most of their lands for profit soon after entering the Union. To halt the rapid sale of lands, Congress designated the state as trust land manager and placed increasingly stringent requirements on new states to regulate the use of state trust lands. Since most Western states entered the Union in the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries, including the ones studied in this report, they had to comply with these stricter requirements, and, as a result, today retain most of their original state trust lands.<sup>29</sup>

Of the seven Western states studied in this report, six joined the Union between 1876 and 1912. The exception is Oregon, which was made a state in 1859. Montana, North Dakota, South Dakota and Washington were all admitted under a single omnibus enabling act. However, New Mexico, Arizona and Utah struggled with Congress for decades to find a balancing point that ensured “equal footing” for both sides (Table 2-2).

## **UNDERSTANDING THE TRUST SYSTEM**

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The granting of state trust lands occurred during a time in U.S. history characterized by conflict, political upheaval and economic growth. The conditions of state accession and the language of the enabling acts frequently influenced the granting of trust lands, as seen in New Mexico, Arizona and Utah. As such, the size of the land grant and the laws governing state trust land administration vary substantially from state to state. The trust land management system currently in place has evolved from the original system. For example, the term “trust” was not explicitly

mentioned in state enabling acts until late in the accession process. The differences in trust land management programs make it difficult to generalize across the Western states. However, the history of land grants demonstrates that state trust lands, regardless of location, share a common origin and a common trust responsibility.<sup>30</sup>

**Table 2-2: Trust Land Acres Granted at State Accession**

	<b>Year of Statehood<sup>31</sup></b>	<b>Surface Acres Granted (thousands)<sup>32</sup></b>	<b>Surface Acres Today (thousands)<sup>33</sup></b>	<b>Percent of Original</b>
<b>Arizona</b>	1912	8,093	9,271	115%
<b>Colorado</b>	1876	3,685	2,858	78%
<b>Montana</b>	1889	5,198	5,156	99%
<b>New Mexico</b>	1912	8,711	9,217	106%
<b>Oregon</b>	1859	3,399	773	23%
<b>Utah</b>	1896	5,844	3,5	60%
<b>Washington</b>	1889	2,376	2,9	122%

There are three themes regarding the trust responsibility that apply to most Western states still in possession of trust lands: (1) these lands are held in trust by the state; (2) the state, acting as trustee, has a fiduciary responsibility to manage the lands for the benefit of designated “beneficiaries”; and (3) this fiduciary responsibility constrains the discretion of the state, requiring that lands be managed in a manner consistent with the best interest of the trust.<sup>34</sup>

It also should be noted that the present-day state trust land doctrine has been shaped by judicial decisions at the state and federal level. Modern jurisprudence in this area of land management did not emerge until the early 20<sup>th</sup> Century, starting with the U.S. Supreme Court decision, *Ervien v. United States* in 1919.<sup>35</sup> As a result, it was not until the latter half of the 20<sup>th</sup> Century that states began managing state trust lands with their fiduciary duty in mind.

A litany of terms defines the basic legal elements of trust lands and the states’ consequent fiduciary responsibility. Understanding the legal terminology and lexicon of trust land management elucidates the rationale behind the initial granting and current management practices. The key legal definitions associated with trust land management include:

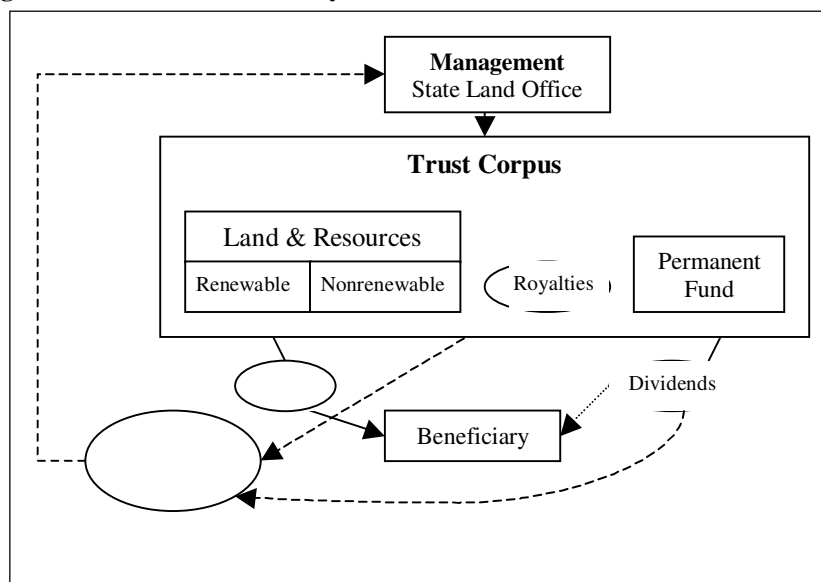
- **Trust:** A legal relationship in which one party holds and manages property for the benefit of another.
- **Trustee:** The person or party who is charged with the responsibility of managing the trust. In the context of state trust land management, the trustee usually is the state.
- **Fiduciary Duty:** A legal obligation imposed on the trustee to act with strict honesty and candor and solely in the interest of the beneficiary.
- **Beneficiary:** The person or party for whose benefit the property is held in trust. In the context of state trust land management, the beneficiaries are the designated public institutions for which the lands were granted (e.g., common schools and state universities).<sup>36</sup>



To understand the mechanics of trust lands and their management, one must not only understand these legal definitions, but also examine the elements that comprise the “trust system.” The trust system includes the permanent school fund, the trust mandate, trust properties and the revenue distribution system. Because trust lands were granted to states to support public institutions, the trust system is focused on fulfilling this duty (Figure 2-2).

State land offices receive revenues from three basic sources: (1) the sale of nonrenewable resources, usually oil, gas, coal and minerals; (2) the sale of granted trust lands; and (3) the use of use of renewable resources, which usually come in the form of agriculture and grazing fees, timber sales, commercial or special purpose leases and the surface rentals and bonus bids received for oil, gas, coal and mineral leases.<sup>37</sup> These revenues are further classified into rents, royalties and dividends that are derived from different parts of the trust and, depending on the classification, are diverted to the permanent fund, the beneficiary or the management of the state trust land agency.

**Figure 2-2: Trust Production System**



Source: Souder and Fairfax, *State Trust Lands: History, Management, & Sustainable Use*, 39.

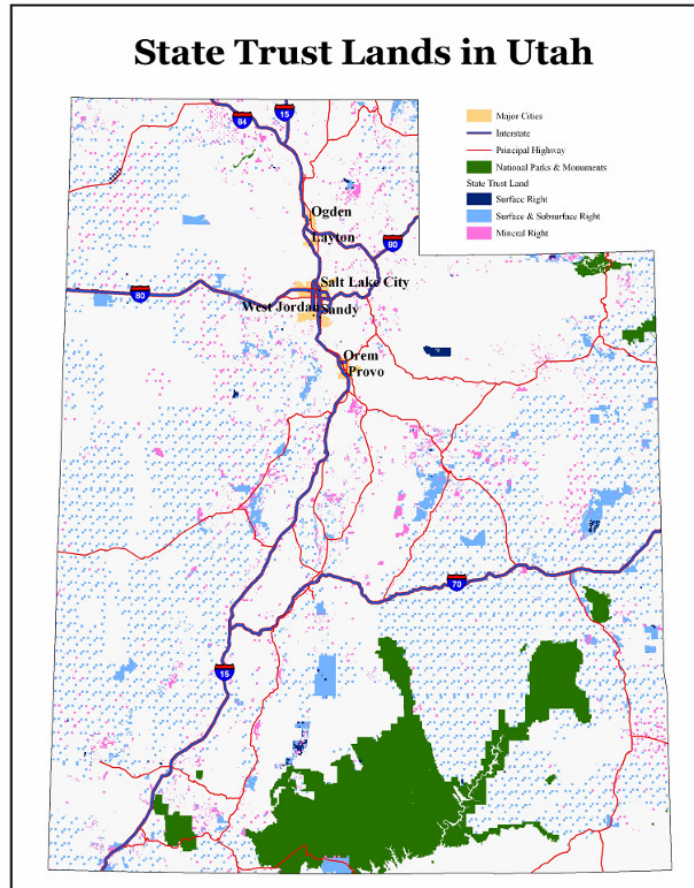
The permanent fund is essentially a bank account into which all revenues from trust land sales and management flows. The advent of permanent funds in state trust land management corresponded with the shift to state-level management in the mid 19<sup>th</sup> Century. Michigan was the first state to set up a permanent fund in its 1835 Enabling Act. The Act states that the proceeds of all lands that have been granted to Michigan by Congress for the support of schools “shall be and remain a perpetual fund, the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of common schools throughout the State.”<sup>38</sup> In most states, neither the state land office nor the beneficiaries have direct control over management of the fund. The revenue distribution varies from state to state, as does the size of the permanent fund. The states with the largest permanent funds tend to be those with significant mineral values or an ability to sell trust land at relatively high prices. For example, oil, gas and coal royalties in New Mexico have produced a permanent fund worth billions of dollars. Arizona and Oregon, on the other hand, are not as rich in mineral resources, but have other profitable

sources of revenue, namely real estate development and timber extraction, respectively, and manage funds worth hundreds of millions of dollars.<sup>39</sup> Some states have smaller permanent funds due to outside interventions. For example, Utah’s permanent fund is one of the smallest because in the 1980s the legislature allowed beneficiaries access to the principal, or the capital of the permanent fund, to maintain their programs.<sup>40</sup>

## TRUST LANDS AND THEIR USES

Outside of Alaska, the lower 48 states have retained approximately 50 million acres of trust land out of the approximately 1 billion granted.<sup>41</sup> Because public or “common” schools are the primary beneficiary of state trust lands, close to 80 percent of the 50 million acres is dedicated to their support. The remaining 20 percent of land is managed for such beneficiaries as public universities, counties, public buildings, prisons, hospitals and other schools and institutions.<sup>42</sup> Recall that trust lands were granted using the Northwest Ordinance’s rectangular grid system. Despite the mathematical appeal of dividing states into townships to facilitate designating trust parcels, the system created a checkerboard pattern of land that has proved challenging to manage. Many of the sections of trust land are “locked” within other types of land, making them difficult to access. An examination of a public land ownership map in any Western state shows this challenge. State trust lands traditionally are designated by light blue on these maps and can be seen in some states that do not have significant consolidated holdings as sprinkled among other land ownership categories. Utah’s public land ownership map illustrates this phenomenon (Figure 2-3).

Figure 2-3: Public Land Ownership in Utah



Source: “Utah Trust Lands,” Trust Land: A Land Legacy for the American West, The Sonoran Institute & Lincoln Institute of Land Policy, available at <http://www.trustland.org>.

The system of land granting also has resulted in a diverse spectrum of land holdings that are valuable for a variety of uses. Trust land uses fall primarily into four main resource extraction categories: minerals, timber, crops and grazing. Sales of trust lands also have been an important

component of revenue generation for the permanent fund. Moreover, recently urban development has created significant earnings for the trust (Table 2-3).

**Table 2-3: State Trust Land Resources (in thousands of acres)**

<b>Trust Lands and Their Uses*</b>	<b>Timber</b>	<b>Grazing</b>	<b>Crops</b>	<b>Oil &amp; Gas</b>	<b>Coal</b>	<b>Minerals</b>
<b>Arizona</b>	35	8,457	161	61	0	21
<b>Colorado</b>	71	2,539	127	1,518	40	91
<b>Montana</b>	727	4,3	350	6,3	6,189	5,848
<b>New Mexico</b>	0	8,700	0	4,875	4,875	0
<b>Oregon</b>	754	620	0	30	0	0
<b>Utah</b>	0	3,561	12	1,777	72	245
<b>Washington</b>	2,078	1,044	164	241	1	69

Source: Jon A. Souder and Sally K. Fairfax, “The State Trust Lands,” [www.ti.org/statetrusts.html](http://www.ti.org/statetrusts.html).

*\*The numbers reflected in this table are circa 1996 and are not necessarily representative of current land uses. The table is meant to be illustrative of the diversity of trust lands management in the seven states examined in this report.*

## **EMERGING ISSUES IN TRUST LAND MANAGEMENT**

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State trust land management has been in a state of flux in recent years as Western communities begin to shift away from natural resource extraction to more diversified, knowledge-based economies.

### **CHANGES IN THE WEST**

Observers of the economic and sociological shifts in the West have stated that key Western natural resource industries are in permanent decline – particularly agriculture, ranching and timber production. The engine of the West’s new economy increasingly is being driven by location and lifestyle choices, a rapid rise in retirement and investment income and the growing attractiveness of communities surrounded by protected public lands to an increasingly-mobile and professional population.<sup>43</sup> Many Western communities also are being rapidly transformed by urbanization.<sup>44</sup> Furthermore, the decline in natural resource industries and the explosive growth in many Western communities is leading some trust land managers to explore lucrative residential and commercial development opportunities on trust lands. States are attempting to balance their fiduciary responsibilities as trust managers with the public values associated with the preservation of landscapes, open spaces and planning for urban growth.<sup>45</sup>

### **NEW MANAGEMENT STRATEGIES**

In addition to the economic and mindset shifts occurring in the West, a number of state court decisions and a more business-minded attitude toward trust land management has

“reinvigorated” trust principles and shifted management toward a more “beneficiary-oriented” approach.<sup>46</sup> Many states reevaluated trust management as a result of state legislation, court rulings and more contemporary interpretations of the trust mandate. For example, in Oregon a state Attorney General Opinion issued in 1992 resulted in a major reassessment of the state’s trust obligations, offering further clarification of the trust mandate language. The original language states that common school lands should be managed with intent of obtaining the “greatest benefit for the people of this state” using sound techniques of land management.<sup>47</sup> The Attorney General Opinion interpreted this language to signify that the state land agency was to maximize revenue in the management of its resources for the state’s permanent fund (known as the Common School Fund). Management of the permanent fund also has become more aggressive with some states experimenting with investing portions of the fund in equities, or stocks. In Oregon, equities investments have become the primary source of revenue for the trust, outshining rents and royalties from resource-based activities. State trust land agencies also have begun to hire staff specifically devoted to managing the multi-million dollar funds.

## **NEW RESOURCES**

State trust land agencies have begun to explore new resources to expand the amount and diversity of revenue sources to the permanent fund. In some cases, this has meant becoming increasingly sensitive to the economic value of products that were historically not worth attention.<sup>48</sup> For example, coastal states like Oregon have begun to respond to the growing market for kelp and oysters. However, the most significant of the new resources in trust land management has been commercial development. Commercial development of state trust lands is one of a few sources of rapidly escalating values for states, especially if they are not endowed with many natural resources.<sup>49</sup> Development will likely be one of the most lucrative endeavors of trust management as Western urban areas, and by proxy land values, continue to increase exponentially. Indeed, several of the collaborative planning processes examined in Section II of this report, like the Houghton Area Master Plan Process in Arizona and the Mesa del Sol Planning Process in New Mexico, deal specifically with urban development of trust land.

Land exchanges are another new avenue trust land agencies are exploring to consolidate land and potentially increase the value of the trust. Typically, land exchanges occur between the state trust land agency and either the federal government or private entities. They can provide benefits for both parties, including adding more land to a national park or monument, which benefits the federal government, and consolidating the trust lands into more contiguous parcels which are often more efficient to manage. Land exchanges can occur in two ways; via an administrative exchange or a legislative exchange. Administrative land exchanges are negotiated by the parties whose land is involved in the exchange. Legislative exchanges are initiated after Congress passes a bill containing the details of the exchange. The case studies in Colorado and Utah both dealt with land exchanges as part of the collaborative process.

## **NEW CONTROVERSIES**

Along with the new resources that have come into play in trust land management and its increasing visibility, new controversies associated with that management also have emerged. These controversies largely revolve around the public misunderstanding that undeveloped state

trust lands are purely open space and the changing public amenity value of trust lands.<sup>50</sup> The controversies and federal legislation relevant to this report that affect trust land management include the pressure to conserve trust lands and the Endangered Species Act of 1973 (ESA).

The ESA is one of many laws that influence how trust lands are managed, especially in regards to the wildlife that inhabit those lands. The primary section of the law that affects the trust land management decisions, section 9, requires a permit from the U.S. Fish and Wildlife Service (USFWS) if a proposed action has the potential to “take” a listed threatened or endangered species. “Take” is defined as harming, harassing or killing a species.<sup>51</sup> To obtain a permit to take a threatened or endangered species, an applicant must prepare a Habitat Conservation Plan that must meet the specifications of the USFWS. State level judicial opinions have held that the trust agencies are not exempt from complying with the ESA.

It remains to be seen how far the issue of preservation for aesthetic reasons, and thereby non-monetary benefits, can be pushed in the context of the trust responsibility. Two court cases in Colorado and Utah suggest that under growing pressure from environmentalists and communities, open space preservation will continue to be part of the state trust land agenda.<sup>52</sup> In 1991, the Colorado Supreme Court took an aggressive approach to aesthetic preservation, halting a mining operation on state trust land in the picturesque Flat Iron Mountains, visible from the city of Boulder.<sup>53</sup> In 1993, the Utah Supreme Court took a somewhat less aggressive approach, but suggested that it may be possible for the trust land division to protect and preserve aesthetic values without diminishing the economic value of the land.<sup>54</sup>

In addition to the growing pressure for aesthetic trust land preservation, environmental advocates, the courts and the states are beginning to explore ways to compensate the trust from parcels specifically managed for preservation. Both the ESA and trust land preservation will continue to be important issues in trust land management as states establish new ways to take into account these considerations while upholding their commitment to the trust responsibility.

The context in which state trust lands are managed has changed considerably since the lands were granted. Recent development and growth of communities surrounding state trust land has increased the public’s interest in state trust land management and has increased scrutiny of this management. Typically, the trust land issues and decisions that are under the most scrutiny deal with controversial issues, include oil and gas leasing, urban development projects, endangered species protection, watershed and forest management and open space preservation. Despite the conflict that accompanies many of these issues, they also offer new opportunities for partnerships and strategies for resource management. The seemingly-competing interests underlying these issues in addition to new resources under exploration by agencies and the greater visibility of state trust land management offer opportunities to explore new and interesting answers to fundamental questions about public resource management. Collaborative planning is a land management tool that can assist trust land agencies and others in providing answers to many of these questions.

## Endnotes

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<sup>1</sup> Jon A. Souder and Sally K. Fairfax, *State Trust Lands: History, Management, & Sustainable Use* (Lawrence, KS: University Press of Kansas, 1996), 1.

<sup>2</sup> *Ibid.*, 15.

<sup>3</sup> Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005, 1.

<sup>4</sup> “Trust Lands: A Land Legacy for the American West,” Sonoran Institute and Lincoln Institute for Land Policy, <http://www.trustlands.org>.

<sup>5</sup> Andy Laurenzi, “State Trust Lands: Balancing Public Value and Fiduciary Responsibility,” *Land Lines* 16:3 (July 2004), available at <http://www.lincolninst.edu/pups/pub-detail.asp?id=911>.

<sup>6</sup> Jon Souder and Sally Fairfax, “The State Trust Lands,” [www.ti.org/statetrusts.html](http://www.ti.org/statetrusts.html).

<sup>7</sup> *Ibid.*

<sup>8</sup> Culp, Conradi and Tuell.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> The General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 375 (Jon Fitzpatrick, Ed. 1933), cited in Culp, Conradi and Tuell, 7.

<sup>15</sup> Culp, Conradi and Tuell.

<sup>16</sup> See Northwest Ordinance, reprinted in 32 Journals of the Continental Congress 334 (1934), cited in *Ibid.*

<sup>17</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 19.

<sup>18</sup> Culp, Conradi and Tuell, 7.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, 8.

<sup>21</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 19.

<sup>22</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*.

<sup>23</sup> Culp, Conradi and Tuell.

<sup>24</sup> *Ibid.*

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- <sup>25</sup> Ibid.
- <sup>26</sup> Ibid.
- <sup>27</sup> Ibid.
- <sup>28</sup> Souder and Fairfax, “The State Trust Lands.”
- <sup>29</sup> Laurenzi, “State Trust Lands: Balancing Public Value and Fiduciary Responsibility.”
- <sup>30</sup> Culp, Conradi and Tuell, 17.
- <sup>31</sup> Culp, Conradi and Tuell, 1; Souder and Fairfax, “The State Trust Lands.”
- <sup>32</sup> Ibid.
- <sup>33</sup> Arizona State Land Department Annual Report 2003-2004, <http://www.land.state.az.us>, (preface and pg. 2); Charles E. Bedford, *The “New” Colorado State Land Board*, 78 Denv. U.L. Rev. 347, 347 (2001); Montana Department of Natural Resources and Conservation, <http://dnrc.mt.gov>; Oregon Department of State Lands, <http://www.oregon.gov/DSL/index.shtml>; Souder and Fairfax, “The State Trust Lands”; Culp, Conradi and Tuell.
- <sup>34</sup> Culp, Conradi and Tuell.
- <sup>35</sup> *Ervien v. U.S.*, 251 U.S. 41 (1919).
- <sup>36</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 2.
- <sup>37</sup> Sally K. Fairfax et al., *The School Trust Lands: A Fresh Look at Conventional Wisdom*, 22 *Envtl. L.* 797, 821 (1992).
- <sup>38</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 31-32.
- <sup>39</sup> Souder and Fairfax, “The State Trust Lands.”
- <sup>40</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 54; Souder and Fairfax, “The State Trust Lands.”
- <sup>41</sup> Souder and Fairfax, “The State Trust Lands”; Trust Lands: A Land Legacy for the American West, The Sonoran Institute & Lincoln Institute for Land Policy, <http://www.trustland.org>.
- <sup>42</sup> Souder and Fairfax, “The State Trust Lands.”
- <sup>43</sup> Ray Rasker et al., *Prosperity in the Twenty-First Century West* (Sonoran Institute, 2004), cited in Culp, Conradi and Tuell.
- <sup>44</sup> Culp, Conradi and Tuell.
- <sup>45</sup> Ibid.
- <sup>46</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 236.
- <sup>47</sup> “Legal Context,” Draft Elliott State Forest Habitat Conservation Plan, August 2005, Oregon Department of Forestry; “Constitution of Oregon: 2003 Version,” Oregon State Legislature, <http://www.leg.state.or.us/orcons/>.

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<sup>48</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 254.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*, 270.

<sup>51</sup> “Habitat Conservation Plans: Section 10 of the Endangered Species Act,” U.S. Fish and Wildlife Service, <http://www.fws.gov/endangered/hcp/>.

<sup>52</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 274.

<sup>53</sup> Colo. State Bd. of Land Comm’rs v. Colo. Mined Land Reclamation Bd., 809 P.2d 974 (Colo. 1991).

<sup>54</sup> Nat’l Parks & Conservation Ass’n v. Bd. of State Lands, 869 P.2d 909 (Utah 1993).