



WYOMING LEGISLATIVE SERVICE OFFICE

# Issue Brief

## STATE TRUST LANDS: MANAGEMENT PRACTICES AND REVENUE MAXIMIZATION

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by

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### EXECUTIVE SUMMARY

State trust lands in the Western U.S. generate a significant amount of revenue for the support of common schools and institutions. Wyoming is one of the few states that has retained over 80 percent of its original grant of trust lands from statehood. Wyoming also has the least restrictive trust language regarding state trust lands, allowing the legislature broad authority over management practices. In other states, trust language is more restrictive, requiring full market value, public auctions for leasing, and revenue maximization. In several states case law has contributed to important decisions in trust management, indicating a shift in practices. While oil and gas royalties are the main source of revenue for trust lands in Wyoming and several other states, other sources of revenue have become prevalent in management practices, such as residential and commercial development, and conservation efforts. These alternative state land uses have been added to traditional trust management practices to maximize revenue generation opportunities for the trust beneficiaries in the long term.

### DISCUSSION

#### *Background on State Trust Lands in the U.S.*

There are approximately 46 million acres of state trust lands in the lower 48 states. Nine states in the Intermountain West region hold 85 percent of all state trust lands (Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming). States were granted state trust lands upon admission to the Union to support public beneficiaries, including common schools, state hospitals, and universities. Some states that received these lands have sold most of the original holdings, while others, Wyoming among them, have kept most of their original grant of acreage. State trust lands are held in perpetual intergenerational trust with the state acting as trustee for the

PAGE 1

beneficiaries. Trust authority and duties as outlined in state acts of admission and state constitutions vary, with some states such as Wyoming and California, having no explicit trust requirement in their act of admission or constitution,<sup>1</sup> While other states that gained statehood later, like New Mexico and Arizona, have very strict trust obligations detailed in their act of admission and state constitution.<sup>2</sup>

Raising revenue through the leasing of state trust lands for agricultural and resource extraction services (oil and gas, minerals, timber) has filled the primary role of each state's fiduciary duty towards trust beneficiaries. These traditional state land leasing activities are still highly prevalent in many western states, contributing to a significant portion of state trust land revenue. For example, in Wyoming, the subsurface rights of state trust lands are held by the state in perpetuity, and a significant amount of the revenue raised from state lands each year comes from oil and gas royalties.<sup>3</sup> Rapid urbanization and increased interest in outdoor recreation, wildlife habitat protection, open space preservation, and ecosystem services have led to new opportunities for state trust land management, as well as challenges.

The guidelines for each state's fiduciary duties towards the trust lands and beneficiaries have been the subject of significant decisions from state supreme courts and the U.S. Supreme Court. The evolving use of state trust lands has led to several pivotal decisions in the courts as to the duties of the trustees in raising revenue for the trust beneficiaries, such as the long-term versus short-term goals of state land management, and whether non-traditional uses of lands, such as awarding grazing leases to conservation groups, could ultimately reap a greater reward for the trust beneficiaries.<sup>4</sup>

### ***Wyoming's State Lands Trust***

The nature of the trust holding Wyoming's state lands has been the subject of some case law, a notable case being Riedel v. Anderson<sup>5</sup>, for which the Wyoming Supreme Court drew upon the language of Wyoming's Act of Admission, Constitution, and statutes in determining the nature of Wyoming's state lands trust. The court determined that although neither Wyoming's Act of Admission nor its Constitution created a trust for the management of state lands, the language in the Act of Admission authorizes the legislature to determine how state lands are to be leased or sold namely, that state lands "shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, as the state legislature may provide."<sup>6</sup> Thus, the court determined that the Wyoming legislature can unilaterally alter state trust land management requirements. Regarding the stipulation in the Wyoming Constitution about the permanent fund which reads "all

<sup>1</sup> Riedel v. Anderson, 2003 WY 70, 70 P.3d 223.

<sup>2</sup> Lassen v. Arizona Highway Dept., 385 U.S. 458 (1967).

<sup>3</sup> Annual Report Fiscal Year 2021, Wyoming Office of State Lands and Investments.

<sup>4</sup> Conservation Leases on Wyoming State Trust Lands white paper, Wyoming Outdoor Council.

<sup>5</sup> Riedel v. Anderson, 2003 WY 70, 70 P.3d 223.

<sup>6</sup> Wyoming Admission Act, 26 Stat. 222 § 4 (1890).

funds belonging to the state for public school purposes, the interest and income of which only are to be used, shall be deemed trust funds in the care of the state, which shall keep them for the exclusive benefit of the public schools”<sup>7</sup>, the court decided that although the permanent fund is held in trust, the lands are not held in trust according to the constitution, but were held in a statutorily created trust.

### ***Wyoming State Trust Land Management***

Wyoming’s State Land Trust is composed of three assets: State Trust Land, Trust Minerals, and the State Permanent Land Fund. The Wyoming Constitution directs the Board of Land Commissioners (the Board), which consists of the five statewide elected officials of the state to manage the trust assets for their long-term growth in value, and optimum, sustainable revenue production. The State Loan and Investment Board (SLIB), as directed by the Wyoming Legislature and consisting of the same membership as the Board, oversees the State’s permanent funds, including the Common School Permanent Land Fund, and the Permanent Mineral Trust Fund. The Office of State Lands and Investments (OSLI) is the administrative agency that carries out the directives of the Boards in managing the approximately 3.5 million surface acres and 3.9 million subsurface acres of state trust land dispersed throughout Wyoming.<sup>8</sup> For a detailed breakdown of state trust land acreage, see **Appendix A**. Most state trust lands managed by OSLI are held in trust by the state for the benefit of common schools, as stipulated in the 1890 Act of Admission.<sup>9</sup> The state received over 3.5 million acres of land to support common schools from the federal government in this act, and as of 2021, over three million acres of this original allotment remain, available for lease.<sup>10</sup>

As with many other western states, Wyoming received sections 16 and 36 of each township for the purpose of maintaining common schools. These sections are spread throughout the state, forming a checkerboard distribution (see **image 1**). The Act of Admission (the Act) granted further acreage for the support of other state institutions, such as the University of Wyoming, the State Hospital, and the Veteran’s Home.

The Act stipulates that school lands may only be sold through public auction<sup>11</sup> The Wyoming Constitution reiterates the requirement for a public auction and adds that agricultural and grazing leases shall not exceed ten years in duration.<sup>12</sup> Lastly, the Act of Admission and the Wyoming Constitution grant the Wyoming Legislature broad authority over the management of state trust lands, with very few limitations including those mentioned above.<sup>13</sup> This management primarily

<sup>7</sup> Wyo. Const. Art VII § 6.

<sup>8</sup> Annual Report Fiscal Year 2021, Wyoming Office of State Lands and Investments.

<sup>9</sup> Wyoming Admission Act, 26 Stat. 222 § 4 (1890).

<sup>10</sup> Annual Report Fiscal Year 2021, Wyoming Office of State Lands and Investments.

<sup>11</sup> Wyoming Admission Act, 26 Stat. 222 § 4 (1890).

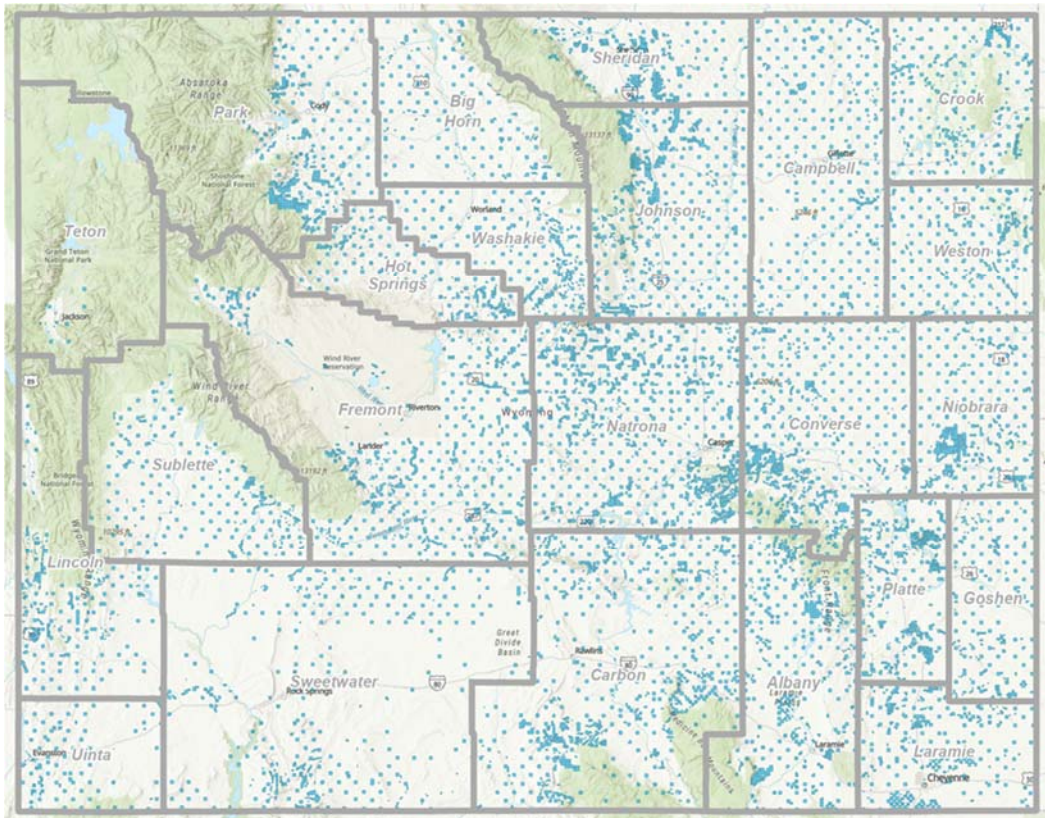
<sup>12</sup> 26 Stat. at Large 222, Ch. 664 (1890) Wyoming Admission Act, 26 Stat. 222 § 4 (1890).

<sup>13</sup> Id.

takes the form of mineral and grazing leases, as well as special use leases renewable energy leases, timber sales, and temporary use permits.

In fiscal year 2021, the state’s approximately 3.5 million surface acres and 3.9 million subsurface acres produced \$100,587,888. Of that, roughly \$85 million came from mineral leases and royalties, \$66 million of which was from oil and gas. The year’s other \$15 million came from grazing leases, special use leases, temporary use permits, payments for “surface damages,” and to a much lesser extent, timber, and real estate sales.<sup>14</sup>

**Image 1: Distribution of State Trust Lands.**



Source: Office of State Lands and Investments.

## STATE LAND MANAGEMENT AND STATUTORY AUTHORITY

### *State Land Sales*

The Board may engage in state trust land sales to raise revenue for the beneficiaries of the trust, however, this is not exercised often, as evidenced by the fact that over 85% of the original 3.5 million acres of land granted to the state in the Wyoming Act of Admission, for the benefit of common schools, remain available for lease. Land sales may be undertaken if the proposed sale is

<sup>14</sup> Annual Report Fiscal Year 2021, Wyoming Office of State Lands and Investments.

in the best interest of the state land trust, the proceeds can be protected from inflationary effects, and the proceeds will earn a higher rate of return than could be realized by retaining the land.<sup>15</sup> Sales must also be considered by the Board as to whether they increase the manageability of state lands, meet the needs of a community or school, better meet multiple-use objectives of the beneficiaries of the trust, or realize a long-term benefit to the trust which exceeds the probable benefit gained from continued ownership.<sup>16</sup> Sales must take place at a public auction and land is to be sold at the appraised value at a minimum, and not less than ten dollars an acre.<sup>17</sup>

### ***State Land Exchanges***

Land exchanges of state trust lands are an authorized activity the Board may use in managing state trust lands for the benefit of the trust beneficiaries. The Board may promulgate rules and regulations as needed for the director of OSLI to enable land exchanges. The land exchanges may be performed if the proposed exchange is needed to improve the manageability of state lands, for example, if a state lands parcel is surrounded by land of private or other public ownership and is inaccessible via a road. Also, if a land exchange would help meet specific needs of a school or community for land, such as for school construction. Additionally, an exchange could allow for multiple use objectives, and thus a greater revenue potential for the beneficiaries, such as swapping land fit for only one use with land fit for stacked uses, like a grazing lease, and a minerals lease. Lastly, if land exchanges allow managers to realize a clear long-term benefit to the trust beneficiaries which reliably exceeds the current benefits from continued ownership, an exchange could be performed.<sup>18</sup> The Wyoming Supreme Court has opined on state land exchanges and whether the constitution prohibits the exchange of state and school trust lands without a public auction, deciding that the constitution does not forbid the exchange of state lands without a public auction. Only the sale of state lands without a public auction is prohibited.<sup>19</sup>

### ***State Land Leasing and Permits***

The day-to-day management of state land leasing is the responsibility of OSLI, while the Board may grant qualified applicants leases as well as cancel leases for cause. Leases may only be awarded if the lessee is a U.S. citizen who has reached the age of majority, is in good legal standing and authorized to conduct business in Wyoming.<sup>20</sup> The rental fee of any lease must be based on an economic analysis conducted by the OSLI and reflect at least fair market value for the same or similar use of the land. The assessment of fair market value must be based on a formula adopted by the board, using criteria that include “[r]eadily available data averaged over an adequate number of years to remove any radial fluctuations”<sup>21</sup>, factors that reflect the true market value of the state

<sup>15</sup> W.S. § 36-9-101(a)

<sup>16</sup> W.S. § 36-9-101(a)(i)-(iv)

<sup>17</sup> W.S. § 36-9-102.

<sup>18</sup> W.S. § 36-1-111 (a) (i)-(iv)

<sup>19</sup> Dir. of the Office of State Lands & Invs. v. Merbanco, Inc., 2003 WY 73, ¶ 29, 70 P.3d 241.

<sup>20</sup> W.S. § 36-5-101(a).

<sup>21</sup> W.S. § 36-5-101(a)(i).

lease, the Board's ability to respond to changing conditions and market demand, and the contributions of the lessee.<sup>22</sup>

The OSLI manages the application process for new lessees as well as renewal procedures for current lessees, including receiving applications and sending notices for renewal. Additionally, matters of preference in the event of even bids are determined by granting the lease to the applicant that owns land nearest to the lands they have applied to lease.<sup>23</sup> Leases of state lands must be conducted in a manner and to persons that would secure the greatest benefit to the state trust land beneficiaries. Lessees must have actual and necessary use of land to be leased, be able to gain access to the land and offer a rental fee not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b).<sup>24</sup>

State land leases for the purpose of agriculture or grazing are not to be issued for a term exceeding ten years.<sup>25</sup> The OSLI calculates minimum rental rates for grazing leases using data averages provided by the Wyoming Agricultural Statistics Service and the National Agricultural Statistics Service. Appraisals are subject to change upon the reappraisal or reclassification of land, or a change in minimum rent based on the OSLI's formula.<sup>26</sup>

Mineral leases may be issued by the Board for a primary term of 10 years. These leases can remain in effect so long as oil or gas is produced in paying quantities on the leased land.<sup>27</sup> The Board sets rental payments at monthly or annual minimum rates, to be applied against the royalty accrued of at least five percent of all oil and gas produced and not used in operations, or \$0.05 per ton of coal produced from leased lands under a coal lease. Board-issued mineral leases are to be separate and distinct from other leases, such as grazing leases, of the same land, allowing for stacked usage of state lands.<sup>28</sup>

Special use leases can be granted by the Board for state land uses other than agriculture, grazing, or mineral production. These special use leases for industrial, commercial, and recreational<sup>29</sup> purposes are authorized under W.S. 36-5-114 and have a maximum term of 75 years. In issuing these leases the Board must consider compatible use of the surface area of state lands, and any lease for an industrial, commercial, or recreational purpose, as with other lease types, special use

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<sup>22</sup> W.S. § 36-5-101(b)(i)-(iv).

<sup>23</sup> W.S. §§ 36-5-103; 36-5-105 & 36-5-108.

<sup>24</sup> For a detailed description of each category of state trust land leases see the [LSO memo](#) presented in June 2022 to the Joint Agriculture Committee.

<sup>25</sup> W.S. § 36-5-102.

<sup>26</sup> Board of Land Commissioners Rules and Regulations Ch. 5 § 7.

<sup>27</sup> W.S. § 36-6-101(a).

<sup>28</sup> W.S. § 36-6-101(c).

<sup>29</sup> W.S. § 36-5-115 defines "recreational purpose" as "land used for cabin sites, public camp sites, public parks and recreation areas, golf courses and any associated residential development, youth groups and ski or winter sports areas."



leases must garner the greatest long-term benefit to the trust beneficiaries.<sup>30</sup> As with agricultural and grazing leases, the board must set a rental fee for special use leases no less than fair market value. If a Wyoming school district intends to lease state lands under this lease type for the construction of school buildings and facilities, the rental fee is \$100 per acre or determined by the assessed fair market value of the land, whichever is less.<sup>31</sup> The Board is to establish rules for the administration of these leases. These rules must include requirements that leaseholders of industrial, commercial, or recreational purposes issued under the authority of W.S. 36-5-114 through W.S. 36-5-117 comply with all applicable planning and zoning laws, with leases subject to cancellation by the Board for good cause shown.<sup>32</sup>

The final category of state land use management the Board and OSLI may use, temporary use permits, draws its statutory authority from the Board's rule-making authority, outlined in W.S. 36-2-107(a):

“The board shall have the power and authority to promulgate and adopt rules and regulations not inconsistent with the laws of the state, as it may from time to time deem necessary in the direction, control, disposition and care of all state lands, and to preserve the value of the land and to recognize the fiduciary duties of the state land office.”<sup>33</sup>

In issuing temporary use permits, the Board's rules have the provision that “uses which are more appropriately authorized under other Board authorizations shall not be authorized under this chapter”<sup>34</sup>, meaning that activities such as those qualified for agricultural or grazing leases, commercial, industrial, or recreational purposes which may be issued a special use lease, agriculture or grazing leases, or mineral leases, are not qualified for a temporary use permit. These permits are issued for five years or less, for uses such as construction activities, hot mix facilities, organized recreation activities, roadways, water wells, outfitting or guiding activities, and other appropriate facilities and activities of temporary duration.<sup>35</sup> The Board's rules describe permit use types<sup>36</sup>, the permit application process<sup>37</sup>, applicable fees, reclamation procedures<sup>38</sup>, permit cancellation,<sup>39</sup> and more regarding the administration of temporary use permits.

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<sup>30</sup> W.S. § 36-5-114(b).

<sup>31</sup> W.S. § 36-5-114(c).

<sup>32</sup> W.S. § 36-5-114(d).

<sup>33</sup> W.S. § 36-2-107(a).

<sup>34</sup> Board of Land Commissioners Rules and Regulation Ch 14 § 3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Board of Land Commissioners Rules and Regulation Ch 14 § 7.

<sup>38</sup> Board of Land Commissioners Rules and Regulation Ch 14 § 5(b).

<sup>39</sup> Board of Land Commissioners Rules and Regulation Ch 14 § 9.

### ***Case Law on Leasing***

According to the Wyoming Supreme Court, the discretion of the Board in both the leasing and sale of state trust lands has been given “a very broad scope subject only to the limitation that review by the courts may be had of its action in the event of the Board's transgression of provisions of positive law, fraud or having committed a grave abuse of that discretion.”<sup>40</sup> Additionally, the Court has found that regarding the authority of the Board in leasing state lands and subsequent judicial review:

"The exercise of the power conferred upon the board to lease the lands of the State in the manner and to parties which shall inure to the greatest benefit and secure the largest revenue to the State, requires judgment and discretion. No inflexible rule is laid down for the guidance of the board in those matters. The judgment and discretion to be exercised is judicial in character, and in an application for the writ of mandamus it is not proper for the court to interpose its opinion and judgment in the place of that of the board, even if the conclusion which the latter has reached upon the facts should appear to have been erroneous."

Because the determination of the greatest benefit to the state is at the discretion of the Board, the Wyoming Supreme Court has opined that absent fraudulent practices in the Board's administrations, or illegal action, the court would not substitute its judgment for that of the Board.<sup>41</sup>

## **REVENUE MAXIMIZATION – WYOMING'S CURRENT PRACTICES AND LEGISLATION**

Neither the Wyoming Act of Admission nor the Constitution contain language requiring the State as trustee, to “maximize” revenue from state trust lands.<sup>42</sup> Instead, as mentioned above, the Act of Admission and Constitution delegates broad authority to the Legislature in determining the best trust land management practices.<sup>43</sup> The Wyoming Legislature's authority over state trust land management stands in contrast to states like Arizona and New Mexico, whose enabling act contains strict trust language and requirements to achieve full market value in all leasing activities.<sup>44</sup> Furthermore, case law in several states, such as Idaho<sup>45</sup>, Montana<sup>46</sup>, and Arizona<sup>47</sup> has challenged traditional trust land management practices, such as grazing and agricultural leases, on the grounds of revenue maximization, leading trust managers to consider alternative land uses,

<sup>40</sup> Mayor v. Bd. of Land comm'rs, 64 Wyo. 409, 192 P.2d 403 (1948).

<sup>41</sup> Thompson v. Conwell, 363 P.2d 927 (Wyo. 1961).

<sup>42</sup> Wyoming Admission Act, 26 Stat. 222 § 4 (1890).

<sup>43</sup> Wyo. Const. Art VII § 6.

<sup>44</sup> New Mexico and Arizona Enabling Act of 1910, Pub. L. No. 219, §§ 10, 28, 36 Stat. 557, 563, 574.

<sup>45</sup> Idaho Watersheds Project v. State Bd. of Land comm'rs, 133 Idaho 64, 982 P.2d 367 (1999).

<sup>46</sup> Montanans for the Responsible Use of the Sch. Tr. v. State ex rel. Bd. of Land comm'rs, 1999 MT 263, 296 Mont. 402, 989 P.2d 800.

<sup>47</sup> Forest Guardians v. Wells, 201 Ariz. 255, 34 P.3d 364 (2001).



such as leasing grazing lands to conservation groups if they are the highest bidders, to maximize long term income for the trust beneficiaries. While case law in Wyoming challenging traditional revenue streams for state lands is sparse, there have been several notable instances of legislation in Wyoming dealing with the concept of “maximizing” revenue from state trust lands.

In one example of such legislation, 1997 Wyoming Session Law Chapter 200 Section 3 outlines guidance for the Board of Land Commissioners and OSLI that prioritizes long-term revenue generation from state lands through leasing over short-term revenue maximization from sales:

- (i) The state land trust, consisting of trust lands, trust minerals, and permanent land funds shall be managed under a total asset management policy;
- (ii) The state land trust is intergenerational. Therefore, the focus is on protecting the corpus for the long term;
- (iii) Trust land should remain a substantial, integral component of the state land trust portfolio. There is no mandate to sell any trust asset to maximize revenue in the short term;
- (iv) All leases of trust land shall assure a return of at least fair market value considering the management practices and risk assumed by the lessee when determining fair market value;
- (v) Investment policies shall ensure that the earning power of the permanent land fund is not reduced from the effect of inflation.<sup>48</sup>

In another example, 2020 Wyoming Session Law Chapter 158<sup>49</sup> created the State Trust Lands-Proposal Act requiring OSLI to seek proposals for “opportunities for development of identified school trust land parcels and of any other state trust lands in Teton county that would maximize the value of the parcel to the greatest extent possible.”<sup>50</sup> Specific directions to OSLI in the implementation of this act include posting a map of available land parcels for the public to view, reviewing all submissions for their feasibility, and creating a report describing plans and recommendations for development of parcels deemed feasible by the office.

<sup>48</sup> 1997 Wyo. Sess. Law Ch. 200 Section 3.

<sup>49</sup> House Bill 162 included state lands from the entirety of the state in its original form as introduced in the 2020 budget session. The introduced version of the bill read “The office of state lands and investments shall solicit proposals on opportunities for development of any school trust land parcel and of any other state trust lands that would maximize the value of the parcel to the greatest extent possible.” House Bill 162 is a second attempt at similar legislation that was brought to the 2019 general session, HB0294 School Trust Lands-Studies. This bill had it been successful, would have required OSLI to study and prepare a plan for the development of specified school trust lands, soliciting proposals and presenting the plan to the Joint Appropriations Committee and the Board of Land Commissioners. With similar language to the 2020 budget session House Bill 162, the plan OSLI was to make for the development of the selected school trust land parcels would: “identify and recommend opportunities for development on the school trust land parcels ... in order to maximize the value of the parcels to the greatest extent possible.”

<sup>50</sup> 2020 Wyo. Sess. Laws, Ch 158 Section 1 (a).

Governor Gordon allowed Session Law Ch. 158 to pass into law without his signature. In his letter to the Secretary of State describing his rationale for not signing the act, he attested that the Wyoming Constitution outlines clear boundaries between the executive, judicial, and legislative branches. He added that the Wyoming Constitution places the responsibility for the direction, control, and management of state trust lands with the constitutionally created Board of Land Commissioners. His letter indicates that Session Law Ch. 158 does not properly respect these roles as stated in the Wyoming Constitution. The Governor also stated that OSLI, as the administrative arm of the Board of Land Commissioners, has an obligation in determining the fair market value of all state lands, not just those in Teton County.<sup>51</sup>

Session Law Ch. 158 directs the Office of State Lands and Investments (OSLI) to solicit proposals for the development of identified school and state trust lands in Teton County. This act requires OSLI to review proposals for the development, transfer, exchange, or lease of these lands, and make recommendations for the Board of Land Commissioners. Session Law Ch. 158 directs OSLI to identify proposals for this project that would “maximize the value of the parcels to the greatest extent possible.”<sup>52</sup> Under this law, OSLI must also consider the impact of submitted proposals on the level of public access for hunting, fishing, and other recreational activities, as well as “the potential impacts to existing grazing leases, water right, and irrigation and drainage ditches.”<sup>53</sup>

OSLI is to include in their proposed recommendations only the opportunities that would retain all the state’s royalty or other income interests in the parcels. Additionally, the recommendations are to include only those proposals which OSLI determines are “feasible to implement and that would maximize the value of the parcels to the greatest extent possible.”<sup>54</sup> OSLI is directed to “consult with agencies, local governments and other interested parties and engage in good faith with representatives from Teton county and the county commissioners, recognizing the objectives of the comprehensive master plan for Teton county.”<sup>55</sup>

Progress reports were made by OSLI to the Joint Appropriations Committee and the Select Committee on Capital Financing and Investments during the 2020 Interim, as required by the legislation. At the October 26-27<sup>th</sup>, 2020 Joint Appropriations Committee meeting the Director and Deputy Director of OSLI informed the committee that they had sought input from the local county commissioners, Game and Fish Commission, Grand Teton National Park representatives and others in reviewing proposed uses of the selected state lands in Teton County included in the proposal-study. The Deputy Director also explained that other proposals might be submitted later through a formal request for proposal process and were not submitted through the proposal-study

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<sup>51</sup> Governor’s Office, Bills signed by Governor Gordon, HB0162/HEA 83 no signature, <https://governor.wyo.gov/state-government/bills>.

<sup>52</sup> 2020 Wyo. Sess. Laws, Ch 158 Section 1 (a).

<sup>53</sup> Id., Section 1 (b).

<sup>54</sup> Id., Section 1 (b) (viii) (e).

<sup>55</sup> Id., Section 1 (g).

request due to a lack of confidentiality, since all proposals were publicly available to view on OSLI's website.<sup>56</sup>

In a meeting with the Board of Land Commissioners on February 11, 2021, OSLI presented its October 2020 report and discussed further steps in the process of carrying through the requirements of Session Law Ch. 158. OSLI presented several uses for the identified parcels and the corresponding proposals received by the office, including conservation leases, a sale of land to the National Park System, grazing leases, and a luxury glamping venture. One identified land parcel, Section 36 of Township 42 North Range 117 West, referred to as the Highway 390 parcel, received several proposals for commercial opportunities.

The interest garnered by the Highway 390 parcel led OSLI to recommend a formal request for proposal process according to the Department of Administration and Information procedures, to promote this parcel in a competitive, market-driven process for commercial development. By this recommendation and with encouragement from the Board, OSLI conducted a Commercial Permit Solicitation from December 2021 – February 1, 2022, to offer select tracts in the Highway 390 parcel for commercial development with temporary use permits. Specific objectives OSLI posed in the Commercial Permit Solicitation include:

- To permit the identified tracts for their highest and best use through a commercial solicitation;
- To better meet the beneficiaries' short and/or long-term needs by improving income generating potential through single or multiple uses;
- To meet a specific community needs by improving stability, providing growth opportunity, or improving access/recreational opportunity; and
- To achieve operation of the commercial project as soon as possible.<sup>57</sup>

OSLI received 18 proposals from the solicitation, some making use of more than one of the nine tracts of land contained within the Highway 390 Parcel that were advertised for this solicitation. Proposals were scored by OSLI according to their "compatibility with the long-term management goals for the parcel, financial compensation to the trust beneficiaries, disturbance to the land asset, the financial ability of the applicant to sustain the project, and potential management issues."<sup>58</sup> Five proposals were identified by OSLI to present to the Board of Land Commissioners, chosen for their consistency with the objectives outlined by OSLI in the solicitation, including "progressive land uses, fair market compensation, minimal surface disturbance, and consistency with management goals for the parcel."<sup>59</sup> These opportunities include stockpile sites for

<sup>56</sup> Meeting Minutes, October 26-27<sup>th</sup>, 2020 Joint Appropriations Committee, <https://wyoleg.gov/Committees/2023/J02>.

<sup>57</sup> April 7, 2022, Board of Land Commissioners, Board Matter G-3.

<sup>58</sup> Id. page 2.

<sup>59</sup> Id. page 2.

landscaping companies, a stockpile site for an excavation company, a storage unit yard, and an off-grid accommodation glamping site.

The solicitation from OSLI for the Highway 390 parcel tracts drew authority from W.S. § 36-2-107 which outlines the Board of Land Commissioners' rule-making authority, and the Board of Land Commissioners' Rules and Regulations Chapter 14, Section 7 which describes the application and selection process for a temporary use permit. The solicitation outlines that the tracts included in the solicitation are not subject to local county planning and zoning commission regulations or restrictions, as outlined in Wyoming Statutes §§ 18-5-201 through 208, yet, proposals are asked to "identify development activities that deviate from local county land use plans and efforts to remedy such deviations, or identify where compliance with local land use plans cannot be accomplished within the proposal."<sup>60</sup> This solicitation did not reference Session Law Ch. 158, or any requirements outlined in the legislation, including the requirement that in implementing this Act, "the office of state lands and investments shall consult with agencies, local governments and other representatives from Teton county and the county commissioners, recognizing the objectives of the comprehensive master plan for Teton county."<sup>61</sup>

The OSLI presented five recommendations to the Board during the April 7, 2022, regular meeting of the SLIB and Board of Land Commissioners. These recommendations included the issuance of temporary use permits for a term of 5 years to five commercial businesses, including some businesses that previously held temporary use permits on the identified Highway 390 tracts. The Board granted Yellow Iron Excavating (tract 4), Arbor Works Tree Services (tract 6), and Hole Landscaping (tracts 7 and 8) temporary use permits during this meeting. The Board tabled the recommended proposals for temporary use permits by Basecamp LLC (tract 9) and Wilson Investments LLC (tracts 2, 3, and 5) to the next regular meeting of the Board in June 2022 to provide more time for public comment on these two proposals.<sup>62</sup>

The Teton County Board of County Commissioners wrote a letter to the Board of Land Commissioners citing the noncompliance of two proposed temporary use permits for the Highway 390 tracts with the Comprehensive Plan of the County Valley District, and the Rural-1 zone county zoning allowed uses.<sup>63</sup> The two proposals cited by the commissioners were Basecamp LLC, an upscale, off-grid glamping resort, which OSLI recommended to the board to grant a temporary use permit for tract nine, and Wilson Investments, a storage unit yard, which OSLI recommended to the Board to issue a temporary use permit for tracts two, three, and five. The letter references Chapter 5, section 6 of the Board of Land Commissioners Rules and Regulations, which stipulated

<sup>60</sup> The Office of State Lands and Investments, Commercial Permit Solicitation, December 13, 2021.

<sup>61</sup> House Bill 162, House Enrolled Act 83, 2020 Wyo. Sess. Laws, Ch 158 Section 1 (g).

<sup>62</sup> April 7, 2022, SLIB/SLBC Regular Meeting, <https://www.youtube.com/watch?v=HHle8cr3JIo> (Last accessed May 16, 2023).

<sup>63</sup> A letter from the Teton County Board of Commissioners to the Wyoming State Lands and Investments Board, State Land Parcels -Teton County, (May 9, 2022), <https://tetoncountywy.gov/DocumentCenter/View/22101/SLIB-Teton-County-State-Land-Trust-Parcels-05092022> (Last accessed May 16, 2023).

that an applicant for a special use lease “shall include evidence that all proposed uses within the proposed lease are in compliance with all applicable land use planning and zoning laws for the jurisdictions where the property is located.”<sup>64</sup> However, this rule applies specifically to special use leases distinct from temporary use permits. In addition to the letter from the Teton County Board of County Commissioners, OSLI received extensive public comment opposing the proposal made by Basecamp LLC for a glamping site. Wilson Investments’ storage unit facility proposal received objections, to a lesser extent along with many letters of support.<sup>65</sup> The Board issued temporary use permits to both Basecamp LLC (tract 9) and Wilson Investment LLC (tracts 2,3, and 5) during the June 2, 2022, regular meeting of the Board. Extensive public commentary accompanied the presentation of these two proposals, including concerns over the issuance of a temporary use permit rather than a special use lease for both proposals, and alternative proposals for the use of tracts 9, 2, 3, and 5.<sup>66</sup>

## STATE LAND MANAGEMENT AND REVENUE MAXIMIZATION IN OTHER STATES

In recent decades, western states have struggled to reconcile shifting environmental and economic realities as well as population growth, with resource extraction and development. Although this transition takes many different forms across the West, these changes have led trust managers to diversify trust portfolios, especially as school funding shortfalls and rapid growth rates exert pressure on trust managers to maintain or increase trust revenues. For example, the decline in extractive industries and the explosive growth in many Western communities have led some trust managers to explore different opportunities for lucrative residential and commercial development on trust lands.

Aside from residential and commercial development, in many communities trust lands are viewed as public assets with value for open space, watershed protection, wildlife, fishing, and recreation. This change in state land use priorities from traditional uses, such as grazing and timber, has brought scrutiny to natural resource production on state trust lands regarding their impact on conservation values, their contribution to economic growth, and their long-term value to trust beneficiaries.

### Montana

By the Enabling Act of 1889, Montana was accepted into the Union and granted sections 16 and 36 in every township throughout the state.<sup>67</sup> The Department of Natural Resources and Conservation (DNRC) Trust Lands Management Division oversees the management of 5.2 million

<sup>64</sup> Board of Land Commissioners, Rules and Regulations, Chapter 5 Section 6 (2023).

<sup>65</sup> Office of State Lands and Investments, Commercial Permit Solicitation, *Public Comments Received*, <https://lands.wyo.gov/commercial-permit-solicitation> (Last visited March 23, 2023).

<sup>66</sup> June 2, 2022, SLIB/SLBC Regular Meeting, <https://www.youtube.com/watch?v=6-igdOk9JgQ>, (Last accessed May 17, 2023).

<sup>67</sup> Omnibus Enabling Act of 1889, Ch. 180, §§ 10, 18, 25 Stat. 676, 679, 681–82.

surface acres and 6.2 million subsurface acres. The 5-member Board of Land Commissioners (the Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and Commissioner of Securities and Insurance) oversees state lands and is the deciding body when it comes to selling these lands. In the fiscal year 2022, there were 129.3 total full-time equivalent employees in the DNRC Trust Lands Management Division. Oil and gas royalties totaled \$10.6 million and oil and gas rentals \$2.2 million, coal royalties were \$27.7 million, with total revenue generation at \$119.2 million in fiscal year 2022, including trust and legacy interest.<sup>68</sup>

Montana's trust management principles focus on generating revenue for trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land. The State's Land Banking Program, which authorizes the State to use the proceeds from the sale of state school trust lands to buy other lands, is an example of these trust management principles.<sup>69</sup> Land banking is designed to improve the overall returns to the trust and increase public access to state lands through the sale of state lands that are predominantly isolated in nature, or not legally accessible.<sup>70</sup> The State must realize the full market value of the land sold through the program.<sup>71</sup> In general, when purchasing land, easements, or improvements for existing trusts, the DNRC must follow specific appraisal and revenue projection procedures to ensure that the proposed purchase is "likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold, among other restrictions."<sup>72</sup>

The DNRC has identified some trust land parcels as those with the "highest and best use" for commercial development. Most of these parcels are located within city limits of growing communities, like Bozeman, Missoula, and Kalispell. As of fiscal year 2022, 121 commercial and 467 residential leases for state trust lands were active. Less than one percent of the trust portfolio surface acreage is designated for developed real estate business activities including residential, commercial, community, and conservation properties. In contrast, approximately 78 percent of trust surface acres are classified as grazing lands, and the remaining acres are classified as agriculture and forested lands, at 11 and 10 percent of total surface ownership, respectively.

### ***New Mexico***

The Arizona - New Mexico Enabling Act of 1910 was the first to explicitly require that state trust lands be held "in trust" for the beneficiaries.<sup>73</sup> The federal Ferguson Act of 1898 and the Enabling

<sup>68</sup> Annual Report Fiscal Year 2022, Trust lands Management Division, Montana Department of Natural Resources and Conservation, [https://dnrc.mt.gov/\\_docs/Trust-Land/Planning-and-Reports/TLMD\\_HQT\\_REPORTS/20220630\\_TrustLands\\_AnnualReport\\_FY22\\_TLMD.pdf](https://dnrc.mt.gov/_docs/Trust-Land/Planning-and-Reports/TLMD_HQT_REPORTS/20220630_TrustLands_AnnualReport_FY22_TLMD.pdf) (Last accessed May 9, 2023).

<sup>69</sup> MONT. CODE ANN. § 77-2-364.

<sup>70</sup> Id.

<sup>71</sup> Id.(2).

<sup>72</sup> Id.(4), (5).

<sup>73</sup> New Mexico and Arizona Enabling Act of 1910, Pub. L. No. 219, §§ 10, 28, 36 Stat. 557, 563, 574.

Act granted New Mexico a total of 13.4 million acres of land, sections 2,13, 32, and 36 of each township to be held in trust for specific beneficiaries. Furthermore, the Act requires that state trust lands must be sold or leased for no less than full market value and may only be disposed of through lease or sale at a public auction to the highest and best bidder in the county in which the state trust lands lie.<sup>74</sup>

New Mexico's state trust lands now total approximately 9 million surface acres and 13 million subsurface acres.<sup>75</sup> The New Mexico State Lands Office manages the state's trust lands and funds and is led by the Commissioner of Public Lands, an elected official. The 2022 budget for the Office was \$19.9 million, with 179.5 full-time equivalent employees.<sup>76</sup> In Fiscal Year 2022, New Mexico state trust lands raised over 2.4 billion dollars in revenue and distributed over 2.4 billion dollars to trust beneficiaries. Of the total amount of revenue raised, approximately 89 million dollars were raised from rental fees, with \$12.1 million from business leases, and \$12.1 million from wind and solar energy rentals. Most of the revenue raised in the fiscal year 2022 derived from oil and gas royalties, totaling 2.3 billion dollars.<sup>77</sup>

Commercial, industrial, and residential uses make up a small portion of New Mexico's state lands revenue, as opposed to oil, gas, and other forms of mineral leasing.<sup>78</sup> However, the state is actively working to increase revenue from the development of trust lands near growing urban areas. In keeping with the goal of increasing revenue generation through development, the New Mexico State Lands Office's Commercial Division contains a Planning and Development – Business Leasing section. The Commercial Resources Division has 21 full-time employees with six in business leasing and two in economic development and special projects.<sup>79</sup> Planning and Development leases are issued to support the Office's commitment to use planning and development to help local governments achieve the goals of job creation and economic development. Furthermore, in 2000 the New Mexico State Lands Office established the Community Partnership Program. This program works with over 100 municipalities and 32 counties throughout the state with trust lands near or within their borders. Over 50,000 acres of trust land had been identified through the Community Partnership Program for their development potential.<sup>80</sup>

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<sup>74</sup> Id.

<sup>75</sup> Annual Report Fiscal Year 2022, New Mexico State Lands Office, [https://www.nmstatelands.org/wp-content/uploads/2023/01/NMSLO-FY22-Annual-Report\\_FINAL\\_1.6.23.pdf](https://www.nmstatelands.org/wp-content/uploads/2023/01/NMSLO-FY22-Annual-Report_FINAL_1.6.23.pdf) (Last accessed May 8, 2023).

<sup>76</sup> Id.

<sup>77</sup> 2022 State Land Office Audit, New Mexico State Lands Office, <https://www.nmstatelands.org/wp-content/uploads/2023/02/NM-Commissioner-of-Public-Lands-FY2022-Final-Audit.pdf> (Last visited May 8, 2023).

<sup>78</sup> Annual Report Fiscal Year 2022, New Mexico State Lands Office, [https://www.nmstatelands.org/wp-content/uploads/2023/01/NMSLO-FY22-Annual-Report\\_FINAL\\_1.6.23.pdf](https://www.nmstatelands.org/wp-content/uploads/2023/01/NMSLO-FY22-Annual-Report_FINAL_1.6.23.pdf) (Last accessed May 8, 2023).

<sup>79</sup> Id.

<sup>80</sup> Planning and Development, New Mexico State Lands Office, <https://www.nmstatelands.org/divisions/commercial-resources/planning-and-development/> (Last accessed May, 8, 2023).



## Utah

Trust lands are lands held in trust by the state of Utah for the benefit of specific public institutions, such as schools, universities, and hospitals. Utah was granted sections 2, 12, 32, and 36 in each township for the benefit of public schools, resulting in a checkerboard pattern across the state.<sup>81</sup> The Utah School and Institutional Trust Lands Administration (SITLA) manages these lands and generates revenue from them. A seven-member Board of Trustees oversees the operations of SITLA as established in Utah Code.<sup>82</sup> The Governor, with the consent of the Senate, appoints seven members for nonconsecutive six-year terms. A separate agency, the School and Institutional Trust Funds Office invests the funds raised and manages the annual distributions to the beneficiaries.

SITLA manages approximately 3.4 million acres of trust lands throughout the state. The lands are managed for a variety of uses, including grazing, mining, oil and gas development, recreation, and conservation. Management objectives of the Office include maximizing the commercial gain from trust land uses for school and institutional trust lands consistent with long-term support of beneficiaries and ensuring that no less than fair market value is received for the use, sale, or exchange of school and institutional trust lands. In the fiscal year 2022, SITLA raised over 145 million dollars in revenue from school and institutional trust land management, over 67% of which was derived from oil and gas rents, leases, and royalties.<sup>83</sup> There are 69 full-time equivalent employees in the SITLA, with a budget of \$17.6 million in fiscal year 2022.<sup>84</sup>

The property planning and development group of SITLA manages approximately one percent of Utah's state trust lands, which have been identified for their higher potential surface value to the trust beneficiaries. The group uses real estate development, land planning, and land conservation in its management of these properties.<sup>85</sup> Planning efforts focus on smart growth issues like open space, mixed uses, and maintenance of trail corridors. As stated in the agency's 2004 annual report, "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."<sup>86</sup> Therefore, diversifying income streams, including through planning and development, is a priority of Utah's state trust land management strategy.

If you have any further questions, please do not hesitate to contact LSO Research at 777-7881.

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<sup>81</sup> Utah Enabling Act, Act of July 16, 1894, Ch. 138, 28 Statutes at Large 107.

<sup>82</sup> Utah Code – Board SITLA

<sup>83</sup> Learn about Utah Oil and Gas, State of Utah School and Institutional Trust Lands Administration, <https://trustlands.utah.gov/work-with-us/oil-gas/learn-about-utah-oil-and-gas/> (Last accessed May 8, 2023).

<sup>84</sup> Budget of the State of Utah fiscal years 2022 and 2023, <https://le.utah.gov/interim/2022/pdf/00002327.pdf> (Last accessed May 8, 2023).

<sup>85</sup> Property Planning and Development, State of Utah School and Institutional Trust Lands Administration, <https://trustlands.utah.gov/work-with-us/property-planning-development/>

<sup>86</sup> Annual Report Fiscal Year 2004, State of Utah, School and Institutional Trust Lands Administration.

# APPENDIX A

**Inventory of State Trust Lands (Acres) – Fiscal Year 2021**

<b>Land Grant</b>	<b>Acreage Entitlement</b>	<b>Lands Received</b>	<b>Balance of Lands to be Selected to Satisfy Grant</b>	<b>Lands Sold (Contract or Patent)</b>	<b>Misc. Vacant or used by Institutions</b>	<b>Available for Lease</b>
<b>Act of Congress Prior to Act of Admission: 1881, 1888</b>						
University Land	46,080.00	46,079.02	0.98	16,220.99	1.11	29,858.03
Fish Hatchery	5,640.00	5,336.26	303.74	2,655.46		2,680.80
<b>Act of Admission: 1890</b>						
Common School	3,545,182.98	3,544,058.60	1,124.38	500,813.96	648.29	3,043,244.64
Agricultural College	90,000.00	90,000.12	(0.12)	18,933.24		71,066.88
Deaf, Dumb & Blind Asylum	30,000.00	29,999.02	0.98	11,730.69	0.75	18,268.33
Poor Farm	10,000.00	10,727.90	(727.90)	522.88		10,205.02
Penitentiary	30,640.00	30,637.45	2.55	10,379.35		20,258.10
Public Buildings at the Capitol	107,000.00	106,994.44	5.56	30,671.32	123.16	76,323.12
Penal, Reform & Educational Institutions	30,000.00	29,939.93	60.07	14,671.17		15,268.76
Insane Asylum	30,000.00	29,990.06	9.94	1,813.68		28,176.38
Miner's Hospital	30,000.00	29,998.80	1.20	15,099.25		14,899.55
<b>State Charitable, Education, Penal &amp; Reform:</b>						
Soldiers & Sailors Home	30,000.00	30,047.79	(47.79)	7,224.64	0.73	22,823.15
State Law Library	15,000.00	14,967.09	32.91	3,284.38		11,682.71
State Library	15,000.00	14,992.72	7.28	5,191.38		9,801.34
Omnibus	200,000.00	199,979.84	20.16	61,523.37	1,558.19	138,456.47
<b>Subsequent Acts: 1957</b>						
Carey Act	24,007.44	24,007.44		5,195.82	1,196.15	18,811.62
<b>Donation from Petronomics: FY03</b>						
Common School	2,460.09	2,460.09				2,460.09
<b>Land Acquired through Acquisition (Common School):</b>						
Duncan Ranch: FY06	6,439.11	6,439.11				6,439.11
Moriah Ranch: FY12	12,947.00	12,947.00				12,947.00
Sodergreen: FY12	278.26	278.26				278.26
Moskee: FY20	4,349.51	4,349.51				4,349.51
<b>TOTAL</b>	<b>4,265,024.39</b>	<b>4,264,230.45</b>	<b>793.94</b>	<b>696,920.46</b>	<b>3,528.38</b>	<b>3,567,309.99</b>