

F. Trust Land Management in New Mexico

The New Mexico State Land Office is responsible for managing approximately nine million surface acres of trust lands and thirteen million acres of subsurface lands.¹ New Mexico's trust lands are distributed throughout the state, with trust lands located in virtually every county,² and encompassing environments ranging from heavy forest to barren desert. Although the majority of the trust's surface ownership exists in scattered parcels (corresponding to the reserved sections in the original land grants), New Mexico was afforded a significant number of *in lieu* selections – nearly five million acres of the thirteen million acres in its original grant. As a result, New Mexico has a large number of significant, contiguous parcels, many of which approach hundreds of square miles in size.

1. New Mexico's Land Grant

With racial, religious, political, and economic tensions preventing the state from entry into the Union, New Mexico made some eleven separate bids for statehood before its ultimate admission in 1910. Although statehood was contemplated for the New Mexico territory as early as the end of the Mexican War in 1848, Congress ultimately denied statehood to the region, creating the New Mexico Territory with the passage of the Organic Act in 1850. The New Mexico Territory was later partitioned in half to create the Arizona Territory. Because of the long delays in achieving statehood, New Mexico already had a functioning land office with a Commissioner of Public Lands well before statehood. In light of the protracted nature of the statehood process and the growing needs of the territorial government, the 1899 Ferguson Act established the Commissioner's office as well as a Land Grant Permanent Fund, both of which were later confirmed in the state's Enabling Act.³

The 1850 Organic Act had reserved sections sixteen and thirty-six in every township for the support of common schools; the 1910 Enabling Act (which also admitted the state of Arizona) added to these reservations and granted the state sections two, sixteen, thirty-two, and thirty-six in every township for the support of the common schools. In addition to this common school grant, the state also received specific grants for a variety of other public institutions, including: 100,000 acres for legislative, executive, and judicial public buildings; 100,000 acres for penitentiaries; 100,000 acres for insane asylums; 100,000 acres for schools and asylums for the deaf, dumb and blind; 50,000 acres for miners' hospitals; 200,000 acres for "normal schools"; 100,000 acres for charitable, penal, and reformatory institutions; 150,000 acres for agricultural and mechanical colleges; 150,000 acres for a school of mines; 100,000 acres for military institutes; and 1,000,000 acres for the payment of county bonds and thereafter to common schools (the majority of this latter grant eventually devolved to the New Mexico common schools trust).⁴ New Mexico retains approximately 69 percent of its state trust lands granted at statehood.

2. Enabling Act and Constitutional Requirements

As discussed in section II(C)(3), due to their late entry into the Union, New Mexico and Arizona have some of the most restrictive Enabling Act provisions with regard to trust lands of any Western state. Most importantly, New Mexico and Arizona were the first states in which Congress indicated that the granted lands were to be held "in trust," to be "disposed of in whole or in part only in the manner as herein provided," and providing that any disposition of trust lands or the monies and resources derived from trust lands in a manner contrary to the provisions of the Enabling Act "shall be deemed a breach of trust."⁵

Like Arizona, New Mexico's Enabling Act identifies a series of detailed restrictions on trust land dispositions. Most significantly, the Enabling Act prohibits any mortgage or encumbrance of trust lands, and requires that trust lands and the natural products of trust lands may only be sold or leased

¹ NEW MEXICO STATE LAND OFFICE FY 2004 ANNUAL REPORT, 2, 9 (2005).

² Lawrence Spohn, *UNM, state agree to inventory species on N.M. land*, ALBUQUERQUE TRIBUNE (January 25, 2001).

³ SOUDER AND FAIRFAX, *supra* note 4, at 25.

⁴ New Mexico-Arizona Enabling Act 36 Stat. 557, § 7 (1910).

⁵ *Id.* at § 10.

“to the highest and best bidder at a public action,”⁶ providing for only a few exceptions to this strict public auction requirement. The Act also specifies notice requirements and other details regarding the conduct of the auction, requires trust lands to be appraised at their true value and disposed for no less than this value, and other restrictions (essentially identical to those discussed for the state of Arizona in section V(B)).⁷ Because the Enabling Act was so extensive in its detailing of the use of school trust lands, the New Mexico Constitution actually contains relatively few provisions with regard to trust lands.⁸

3. New Mexico’s Trust Responsibility

The extreme specificity of New Mexico’s Enabling Act has been interpreted by the courts to impose a rigid federal trust responsibility that is among the most restrictive in the Western states. Based on this trust responsibility, the courts have held that:

- The State was not permitted to expend a percentage of the annual income from leases and sales in advertising and marketing the state to prospective residents; although this would indirectly benefit the trust by increasing the market for state trust lands, it was impermissibly designed to benefit the state as a whole.⁹
- The State must lease lands in the best interests of the trust, and thus cannot grant a grazing lessee an absolute right to renew a short-term grazing lease.¹⁰
- The State could not utilize funds produced by trust lands to help defray general government expenses.¹¹
- Commissioner of Public Lands of New Mexico must charge the State Highway Commission for the value of rights-of-way and easements across state lands, as well as for the removal of sand and gravel for state highways.¹²

4. Governance of Trust Lands in New Mexico

Pursuant to the state’s Constitution, New Mexico’s trust land is administered by a Commissioner of Public Lands, who presides over the State Land Office (SLO) and is elected by the citizens of the state to four-year terms.¹³ The Commissioner is also advised by a State Land Trusts Advisory Board, which is composed of seven members appointed by the Commissioner of Public Lands with the advice and consent of the Senate. Each Board member’s term lasts for six years and the board members are to represent a geographic balance from across the state. Two members are required to represent the beneficiaries of the state trust land, one represents extractive industry, one represents agricultural industry, one represents conservation interests, and finally, two members represent the public at large. No more than four members of the Advisory Board are allowed to be from the same political party.¹⁴

The Advisory Board assists the Commissioner in maximizing the income for the trust and protecting and maintaining trust assets and resources, reviewing policies and practices of the Commissioner, and advising the Commissioner on a wide variety of other matters.¹⁵ The Board and Commissioner are required to meet four times per year, and although the actions of the Board are not

⁶ *Id.*

⁷ *Id.*

⁸ SOUDER AND FAIRFAX, *supra* note 4, at 26.

⁹ *Ervien v. U.S.*, 251 U.S. 41 (1919).

¹⁰ *State ex rel. McElroy v. Vesely*, 52 P.2d 1090 (N.M. 1935); *see also Ellison v. Ellison*, 146 P.2d 173 (N.M. 1944) (renewal not absolute right).

¹¹ *State ex rel. Shepard v. Mechem*, 250 P.2d 897 (N.M. 1952).

¹² *State ex rel. State Highway Commission v. Walker*, 301 P.2d 317 (N.M. 1956).

¹³ N.M. CONST. Art V § 1; *see also* N.M. STAT. ANN. § 19-1-5.

¹⁴ N.M. STAT. ANN. at § 19-1-1.1.

¹⁵ *Id.* at § 19-1-1.4.

binding on the Commissioner (who has the ultimate constitutional and fiduciary responsibility as the trustee), New Mexico's Administrative Code advises the Commissioner to cooperate with the Board and obtain its consensus.¹⁶ In addition, the Board and Commissioner hold an annual joint meeting with representatives of the beneficiaries of the trust to report on the performance of trust assets.

The SLO is divided into three sections: Surface Resources (which includes the Commercial section), Mineral Resources, and Administration. The SLO maintains twelve district offices located across the state. Unlike many other Western states, New Mexico's SLO is self-funding, with the agency's salaries and expenses paid from a "state lands maintenance fund."¹⁷ Pursuant to New Mexico statutes, income that is derived from state lands is first deposited into the state lands maintenance fund; distributions are made to the permanent funds only after the expenses of the state land office are deducted;¹⁸ all necessary costs and expenses that are incurred in the management, protection, sale, or lease of state lands are charged to the appropriate beneficiary of those lands.¹⁹

5. Trust Land Management in New Mexico

New Mexico's SLO manages state trust land under its "ABC program" principles:

Administer state trust land to generate the highest possible level of sustainable revenues for New Mexico's public schools, public institutions of higher learning, and other public institutions, so that all New Mexicans can enjoy a higher quality of life.

Benefit the trust and its natural resources through responsible stewardship which creates a strong economic environment that will contribute to healthy rural and urban communities so that future generations will continue to benefit from their endowment.

Conduct the operations of the SLO with the highest level of fiscal accountability, efficiency, customer service, and employee relations.²⁰

The vision for the SLO is to be "the nation's model for state trust land management, providing for current and future productivity of the state trust lands for the next generation of beneficiaries."

New Mexico's trust management activities can be roughly divided into three categories: surface uses, subsurface uses, and trust land sales and other uses. New Mexico currently receives virtually all of its trust revenues (96 percent) from subsurface activities and surface leasing (4 percent), with less than 1 percent of revenues derived from land sales or other permanent dispositions. However, the state is positioned to significantly increase its revenues from dispositions of trust lands for commercial, industrial, and residential development.

a. Surface Uses

Pursuant to the requirements of the state's Enabling Act, state trust lands can generally only be leased to the "highest and best bidder at public auction."²¹ However, many of the leases administered by the SLO take advantage of an exception to this strict public auction requirement, which allows lands to be leased for less than five years without public auction.²²

Grazing and agricultural leases in New Mexico are almost universally administered under these short-term, five-year leases without public auction.²³ New Mexico has issued approximately

¹⁶ N.M. ADMIN. CODE § 19.2.18.

¹⁷ N.M. STAT. ANN. § 19-1-12.

¹⁸ *Id.* at § 19-1-11.

¹⁹ *Id.* at § 19-1-14.

²⁰ 2004 ANNUAL REPORT, *supra* note 658, at 4.

²¹ New Mexico-Arizona Enabling Act, 36 Stat. 557 § 10.

²² *Id.*

²³ N.M. STAT. ANN. § 19-7-30.

three thousand five hundred leases covering 8.7 million acres of land; 1/5 of these leases are renewed each year.²⁴ Leases are available from the land department upon application. When an existing short-term lease expires, the leases are generally advertised and are open for bid from existing or prospective lessees. In the event that there is more than one bid, the department awards the lease to the highest bidder.²⁵ However, existing lessees who are in good standing with their leases are also eligible for a “preference right,” which allows them to win a new short-term lease by matching the highest bid.²⁶ Another exception in the Enabling Act allows for provisions that protect lessees’ rights to improvements by requiring purchasers or subsequent lessees to compensate the existing lessee for those improvements.²⁷ In addition, these leases cannot be cancelled at will – without the written consent of the lessee, grazing leases cannot be canceled absent fraud, collusion, mutual mistake, or default by the lessee.²⁸ Agricultural leases are afforded somewhat less protection, with the Commissioner generally authorized to withdraw up to half of a section of agricultural lease land from a lease upon ninety days notice to the lessee if a higher and better use is identified, unless there is an adverse impact on the lessee’s water rights.²⁹

Lease rates for grazing leases are set on a per-acre basis, based on an economic valuation of the carrying capacity of the leased land, and considering economic conditions at the time of the lease. These rates are subject to established “minimum rental rates” (ranging from \$0.03 per acre for five head per section, and topping out at \$0.22 per acre for twenty-two head per section and up). However, the Commissioner is authorized to reduce minimum rental rates by up to 1/3 in the event of drought or adverse economic conditions.³⁰ In addition, New Mexico operates a Range Stewardship Program that provides economic incentives for range management techniques that maintain or improve range quality, allowing for up to a 25 percent reduction in range fees.³¹ Similarly, the SLO facilitates agricultural lessees’ participation in federal conservation and environmental programs such as the Conservation Reserve Program, the Environmental Quality Incentive Program, and the Ogallala Aquifer Recharge Program.³²

Business (commercial) leases may be issued “for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules,” at a public auction. At the Commissioner’s discretion, a lessee may be granted a “non-bid lease” (without auction) for a term of five years or less. Business leases may also be used to lease trust lands to state parks or to extend the boundaries of local government parks on terms not to exceed twenty-five years.

New Mexico issues recreational permits for virtually all state lands,³³ although vehicle travel is limited to established, ungated roads; otherwise access to state lands is limited to foot travel.³⁴ Administrative rules provide for a broad set of authorizations and restrictions for recreational users of state lands.³⁵

Surface leases (including commercial uses) contributed approximately \$12 million to the trust, or about 4 percent of revenues generated in 2004. Of that amount, grazing leases generate the greatest portion for New Mexico’s trust beneficiaries, at over \$7.6 million in fiscal year 2004, with business leases next at with \$2.3 million.³⁶

²⁴ 2004 ANNUAL REPORT, *supra* note 658, at 18.

²⁵ N.M. ADMIN. CODE § 19.2.8.9.C.

²⁶ N.M. STAT. ANN. § 19-7-49.

²⁷ *Id.* at § 19-7-14.

²⁸ *Id.* at § 19-7-35.

²⁹ N.M. ADMIN. CODE § 19.2.8.10.A, B.

³⁰ N.M. STAT. ANN. § 19-7-29.

³¹ SOUDER AND FAIRFAX, *supra* note 4, at 281; N.M. ADMIN. CODE § 19.2.8.20.

³² 2004 ANNUAL REPORT, *supra* note 658, at 18.

³³ N.M. ADMIN. CODE § 19.2.2.10.

³⁴ *Id.* at § 19.2.19.12.

³⁵ *Id.* at § 19.2.19.16.

³⁶ 2004 ANNUAL REPORT, *supra* note 658, at 7.

b. Subsurface Uses

The New Mexico Constitution provides broad authority to the state to issue contracts for the development and production of minerals or geothermal resources on state lands under “such terms and provisions as provided by the legislature,” provided that the contracts further the interests of the trust.³⁷ As noted above, New Mexico currently obtains approximately 96 percent of its total trust revenues from subsurface rentals and royalties; virtually all of these revenues are derived from oil and gas, with only a little over one half of 1 percent derived from all other subsurface activities. Like other Western states, New Mexico reserves the mineral and hydrocarbon rights on any state trust lands when they are disposed, together with access rights to develop the same.³⁸ New Mexico law also affirmatively prohibits the sale of lands on which saline resources, valuable minerals, or oil and gas are known to be located.³⁹

New Mexico administers two types of oil and gas districts. “Restricted” districts are usually on proven oil and gas areas and are created by the Commissioner, while “unrestricted” districts lie outside any restricted district.⁴⁰ In restricted districts, a variety of classifications are applied to define oil and gas trends, the oil and gas traps, reservoir volume, and recovery ratings, bonus ratings, and exploration and drilling activity.⁴¹ Leases on restricted lands can only be granted to the highest and best bidder at a public auction.⁴² Unrestricted lands are also normally offered at auction; however, the Commissioner retains the discretion to issue a lease without bidding if it is in the best interests of the trust.⁴³ Lease rates are based on a low surface “rental” (of between \$0.25 and \$1 per acre)⁴⁴ to cover up to two sections worth of land,⁴⁵ plus royalty payments for oil and gas that is produced from the lease property,⁴⁶ plus a variety of fees.⁴⁷

Mineral leases are issued on terms for three years, and thereafter as long as minerals are produced in paying quantities, based on a surface “rental” (\$1 per acre) plus royalties of between 2 percent and 50 percent of gross returns less smelting and transport costs. If minerals are not discovered in the first three years, a secondary term of five additional years can be issued for a substantially higher surface rent (\$10 per acre).⁴⁸ Leases are issued to the highest bidder at a public auction,⁴⁹ are limited to six hundred forty acres,⁵⁰ and are subject to a strict mine development and reclamation plan to provide for orderly development and prevent resource waste.⁵¹

Coal leases are administered on a similar system, issued for minimum five year terms that continue as long as one percent of the estimated recoverable reserve is produced.⁵² Royalties are a fixed 12.5 percent of proceeds for surface mined coal and 8 percent of underground coal unless the Commissioner can justify a lower rate.⁵³ Leases are issued to the highest bidder at public auction, although existing leases that were issued prior to 1989 can be renewed without competition.⁵⁴

Leases for sand, gravel, clay, and similar materials are issued for five year terms, generally issued on a non-competitive basis at market value with an established minimum of \$0.55 per cubic

³⁷ N.M. CONST. Art. XXIV § 1.

³⁸ N.M. ADMIN. CODE § 19.2.14.8.

³⁹ N.M. STAT. ANN. § 19-7-25.

⁴⁰ N.M. ADMIN. CODE § 19.2.100.1.

⁴¹ *Id.* at § 19.2.100.11.A.

⁴² *Id.* at § 19.2.100.25.

⁴³ *Id.* at § 19.2.100.12.

⁴⁴ *Id.* at § 19.2.100.14.

⁴⁵ *Id.* at § 19.2.100.16.

⁴⁶ *Id.* at § 19.2.100.69.

⁴⁷ *Id.* at § 19.2.100.15.

⁴⁸ *Id.* at § 19.2.2.47.

⁴⁹ *Id.* at § 19.2.2.11.

⁵⁰ *Id.* at § 19.2.2.23.C.

⁵¹ *Id.* at §§ 19.2.2.31, 19.2.2.28.

⁵² *Id.* at § 19.2.6.14.C.

⁵³ *Id.* at § 19.2.6.15.

⁵⁴ *Id.* at § 19.2.6.24.

yard.⁵⁵ However, when the estimated amount of material to be removed from state lands exceeds forty thousand cubic yards, competitive bids are required.⁵⁶

c. Land Sales and Other

As noted elsewhere, New Mexico's Enabling Act imposes a series of strict requirements on sales of trust lands, including that trust lands and the products of trust lands be sold "to the highest and best bidder at a public auction." In addition, the Enabling Act requires that auctions be held at the county seat where the lands are located, that public notice be provided for not less than ten weeks in a newspaper of general circulation at the state capitol and in whatever newspaper is published nearest the lands that are the subject of the auction. Finally, the New Mexico Enabling Act provides that no sale or disposal of trust lands can be made for less than the "true value" of those lands as determined by appraisal, and provides that legal title cannot pass until this consideration is paid. The Act also requires "ample security" for any sales on credit.⁵⁷

Similar requirements apply to sales of participation agreements, sales of natural products (including timber), and most other permanent dispositions of trust resources.⁵⁸ There are only a few exceptions to the public auction requirements, such as a special provision for sales of dead and down firewood;⁵⁹ New Mexico now operates a free firewood harvesting program to help reduce overgrown stands of timber on eight trust parcels.⁶⁰

One of the key exceptions to these requirements applies to rights-of-way and easements. Under New Mexico statute, "the Commissioner may grant rights-of-way and easements over, upon, or across state lands for public highways, railroads, tramways ... and other purposes upon payment by the grantee of the price fixed by the Commissioner, which shall not be less than the minimum price for the lands, used, as fixed by law." Although this requires the Commissioner to obtain full market value for easements, it does not necessarily require this value to be obtained at public auction.⁶¹ This broad authorization is also interpreted to allow for the grant of conservation easements by the SLO.⁶²

New Mexico law also permits land exchanges when they are in the best interests of the trust; although exchanges typically only include the surface estate, mineral estates are sometimes offered where the circumstances justify it.⁶³ Exchanges may be made for either federal or private lands that are equal or greater in value,⁶⁴ provided that an environmental assessment is performed to ensure that there are no hazardous materials on the exchanged lands.⁶⁵ Exchanges must be advertised for ten weeks;⁶⁶ in addition, the beneficiaries of the appropriate trust(s) must be notified.⁶⁷ All exchanges must be packaged in a manner that will result in a net increase in trust acreage statewide.⁶⁸

⁵⁵ *Id.* at §§ 19.2.5.9.E, 19.2.5.9.D.

⁵⁶ *Id.* at § 19.2.5.9.

⁵⁷ New Mexico-Arizona Enabling Act, 36 Stat. 557 § 10.

⁵⁸ *Id.*

⁵⁹ N.M. ADMIN. CODE § 19.2.13.9.

⁶⁰ Personal Communication with Michael Bowers, State Land Office, March 24, 2005.

⁶¹ N.M. ADMIN. CODE § 19.2.10.8.

⁶² A recent Nature Conservancy report indicates that conservation easements are rarely issued in New Mexico, although in late 2002, the Land Office granted Santa Fe County a conservation easement for the use of trails and the protection of open space on state trust lands located along the Santa Fe River. *Santa Fe Canyon Preserve*, Nature Conservancy, available at <http://www.nature.org/wherework/northamerica/states/newmexico/preserves/art9769.html>.

⁶³ N.M. ADMIN. CODE § 19.2.21.8.A.

⁶⁴ *Id.* at § 19.2.21.8.B – C.

⁶⁵ *Id.* at § 19.2.21.9.I.2.

⁶⁶ *Id.* at § 19.2.21.9.A.

⁶⁷ *Id.* at § 19.2.21.12.

⁶⁸ 2004 ANNUAL REPORT, *supra* note 658, at 16.

Table V(F): FY 2004 Revenues – New Mexico State Land Office

Source	% of Revenue	Receipts
Surface Uses		
Commercial	0.8%	\$2,313,273
Grazing	2.8%	\$7,629,897
Rights-of Way	0.7%	\$1,869,562
Water	0.1%	\$253,606
Other	0.0%	\$1,240
Total Surface	4.4%	\$12,067,578
Subsurface Uses		
Coal	0.0%	\$96,680
Oil and Gas	95.1%	\$263,812,377
Minerals	0.5%	\$1,374,429
Total Subsurface	95.6%	\$265,283,486
Sales and Other		
Other	0.0%	\$1,353
Total Sales and Other	0.0%	\$1,353
Grand Total	100%	\$277,352,417
Agency Budget*		14,000,000

* Figure includes operating and special project expenses.
Source: New Mexico State Land Office Annual Report FY 2004

6. Trust Revenue Distribution in New Mexico

There are twenty-one beneficiaries who receive revenues generated from trust activities in New Mexico. These beneficiaries include: (1) the Common Schools; (2) Eastern New Mexico University; (3) New Mexico State University; (4) New Mexico Institute of Mining and Technology; (5) the University of New Mexico; (6) Western New Mexico University; (7) New Mexico Highlands University; (8) Northern New Mexico Community College; (9) New Mexico School for the Deaf; (10) New Mexico School for the Visually Handicapped; (11) Public Buildings at Capital; (12) Penitentiary of New Mexico; (13) New Mexico Boys' School; (14) Carrie Tingley Hospital; (15) Charitable Penal and Reform;⁶⁹ (16) New Mexico State Hospital; (17) Rio Grande Improvements; (18) UNM Saline Lands; (19) Water Reservoirs; (20) Miner's Hospital of New Mexico; (21) New Mexico Military Institute. Each acre of trust land is designated to a specific beneficiary.

⁶⁹ Seven institutions receive equal shares of the Charitable Penal & Reform beneficiary; these include: Carrie Tingley Hospital, Las Vegas Medical Center, Los Lunas Hospital, Miner's Colfax Medical Center, Penitentiary of New Mexico, New Mexico Boys' School, and the Youth Diagnostic and Development Center.

Revenues from renewable resource uses and rentals – such as from grazing leases, commercial leases, mineral, oil, and gas rentals, right-of-ways, and interest on earnings and bonuses – are deposited into the state Maintenance Fund; once the costs of SLO operations are deducted, these revenues are distributed directly to beneficiaries. Revenues to the maintenance fund totaled \$42.5 million from all trust lands in 2004, of which SLO operations, including special projects, cost \$14 million.⁷⁰

By contrast, revenues from nonrenewable uses – such as the royalties from oil and natural gas extraction and the proceeds of land sales – are credited to the appropriate beneficiary and are deposited into the Land Grant Permanent Fund.⁷¹ The monies in the Land Grant Permanent Fund are invested by the State Investment Officer under the oversight of the State Investment Council. Monies may be invested in various federal, state, and local bonds;⁷² warrants; and stocks listed on national exchanges, including international securities, provided that no more than 65 percent of the fund can be invested in corporate stocks, and no more than 15 percent in international securities.⁷³

Under the New Mexico Constitution, the beneficiaries receive a fixed 5 percent return on the corpus of the Permanent Fund (regardless of the actual investment earnings on the Fund); all earnings and additions to the Permanent Fund (including interest, dividends, and capital gains) are credited to the Fund. Each month, a fixed percentage of the value of the Permanent Fund is distributed to each beneficiary, while the investment interest on the fund is used to maintain the principal of the fund to offset distributions.⁷⁴

New Mexico public schools, entitled to revenues from 6.8 million surface acres, are the largest recipient of trust benefits. In fiscal year 2004, common schools received \$314,296,60 in total trust land fund distributions from both trust revenues and interest from the Permanent Fund, out of total distributions to all beneficiaries of \$352.5 million.⁷⁵ The market value of the Land Grant Permanent Fund was \$7.6 billion in 2004.⁷⁶

In addition, under a 2003 constitutional amendment that is intended to fund an ongoing educational reform effort in the state, the common school beneficiaries are to receive an additional 0.8 percent of the average of the year-end market value of the fund (for the preceding five years) from 2005 through 2012, and an additional 0.5 percent for 2013-2016, unless the five year average balance of the fund drops below \$5,800,000,000. (The amendment is expected to produce an additional \$67 million for public school funding annually).⁷⁷

Regardless, in New Mexico, state trust land revenues are generally used to offset, not supplement funds for education from the general fund; revenues from state trust lands become a part of the Public School Fund, which in combination with General Fund monies goes to meet state equalization payments, transportation costs, and certain supplemental distributions.⁷⁸ Thus, even though New Mexico's trust land revenues are some of the highest in the West, they represent about 13 percent of the state's overall pre K-12 budget of 2.6 billion.⁷⁹ As such, increases in trust revenues do not necessarily translate into increased educational funding in the state.

⁷⁰ 2004 ANNUAL REPORT, *supra* note 658, at 6.

⁷¹ N.M. STAT. ANN. § 19-1-18.

⁷² N.M. CONST. Art. IX § 11.

⁷³ *Id.* at Art XII § 7.

⁷⁴ N.M. STAT. ANN. § 19-1-17.

⁷⁵ 2004 ANNUAL REPORT, *supra* note 658, at 8.

⁷⁶ *Id.* at 7.

⁷⁷ 2003 NM PUBLIC EDUCATION DEPARTMENT ANNUAL REPORT, available at: <http://www.ped.state.nm.us/resources/downloads/2003.annual.report.pdf>.

⁷⁸ Don Gaspar, *How New Mexico Public Schools are Funded*, N.M. DEPT OF EDUCATION (2001).

⁷⁹ *Annual Survey of Local Government Finances 2002-2003, Summary of Public School System Finances for Elementary-Secondary Education by State*, U.S. CENSUS BUREAU (2005), available at <http://www.census.gov/govs/www/school.html>.

7. Recent Developments and Emerging Issues in New Mexico

a. Development Opportunities on State Lands

New Mexico is actively working to increase revenues from commercial and residential development on state trust lands to exploit the rapid growth of many of New Mexico's cities and towns. Although the state currently receives relatively little income from commercial, industrial, and residential uses of state land, the SLO's Economic Development Working Group is currently exploring on a variety of development projects around the state, and has identified approximately thirty thousand acres of state trust land that have current development potential.⁸⁰

Among other projects identified by the Working Group are:

- Edgewood Town Center, a 600-acre mix of retail, offices, and residential uses;
- 11,000 acres near Las Cruces for residential and commercial development;
- Las Leyendas, a master-planned residential development near Edgewood, NM;
- San Cristobal, a 1,775-acre master-planned community in Santa Fe County;
- Sandia Science and Technology Park, a 90-acre industrial development in Albuquerque;
- Loma Barbon, a 600-acre master-planned community in Rio Rancho;
- Mesa Del Sol, a 12,000-acre master-planned community near Albuquerque;
- Santa Teresa, a 1,000-acre residential and industrial development;
- Tierra Madre, a sustainable community comprised largely of straw bale homes constructed by community residents.

b. Community Development Partnership Program

The Surface Resources Management program is continuing to identify trust lands ideally suited for development, and involve the private sector to develop neighborhoods and communities. Such projects often take years to plan and will develop slowly relative to real estate market conditions.

One of the first major planning projects undertaken by the SLO was the Mesa Del Sol development, a master-planned community that will be located on twelve thousand four hundred acres of state land near Albuquerque that represents the largest parcel of land under single ownership in the city. The project was initiated in 1987 under the leadership of Commissioner Jim Baca. Partners on the Mesa del Sol project include the Sandia National Laboratories, the Department of Energy, and the University of New Mexico. The Mesa Del Sol project envisions residential, retail, recreational, and open space areas in a sustainable development model that incorporates urban and rural villages, recreational centers, community parks, open space, trails, a two thousand eight hundred-acre nature refuge (Press Advisory, May 26, 2004, New Mexico State Land Office), and an environmental education campus to be known as "La Semilla," or "the seed," which will provide an ecological field station, a research and demonstration center for renewable energy, agriculture, and horticulture, and an arboretum and ranch interpretive center.⁸¹

Mesa Del Sol represents the SLO's first attempt to preserve trust lands for conservation purposes as a part of development projects; however, this idea has now been incorporated into other planned development projects, including the Solana and San Cristobal. This innovative, large-scale sustainable development, designed for buildout over a seventy-year period, has faced a number of challenges. Thus far, the state has had some difficulty recruiting businesses that are willing to enter into joint venture agreements with the state on leased land; in addition, although a highway (a.k.a., the University Boulevard Extension) has been contemplated for years, the site is currently accessed by largely unpaved roads. Without a 1.5 mile extension of University Boulevard from Albuquerque, the state continues to face reluctance among businesses and potential residents to move to the

⁸⁰ See State Land Office Website, <http://www.nmstatelands.org/GetPage.aspx?sectionID=32&PagID=156>.

⁸¹ See *id.* at <http://www.nmstatelands.org/landoffice/MdelSol/MdelFisc.asp>.

developing location. Currently, more than \$21 million in funding has been pledged for the \$27 million project.

The scale of this development highlights the impact of different trust management philosophies among administrations over the lifespan of a long-term project. While the current SLO administration under Commissioner Lyons is following through on Mesa del Sol and other commercial projects, it is generally opposed to state-led master planning on trust lands. The rationale for this position is that state-led planning is unattractive to the developers who undertake the actual development of property and the financial risks associated with that development.⁸² This position is somewhat controversial; a recent letter to the editor alleges that the state is missing opportunities to capture enhanced value from trust lands, with the profits instead flowing to land developers.⁸³

c. Outdoor Classroom Program

The SLO has recently begun operation of an Outdoor Classroom Program in which New Mexico public schools are granted an environmental education easement on trust land (subject to availability of suitable lands) for outdoor classroom activities relating to archaeology, geology, range analysis, re-vegetation, watershed rehabilitation, and wildlife preservation; the easements may additionally be secured in perpetuity to provide for environmental and conservation goals.⁸⁴

Farmington and Santa Fe public schools heavily utilize the Outdoor Classroom program in their curricula, by providing hands-on experiences in geology, rock climbing, and mineral development in Farmington; and river restoration, wildlife, watershed ecology, team building, and leadership skills programs in Santa Fe. The program, known as the "River Angels", has expanded to Silver City where children are enhancing watersheds and building trails.⁸⁵

d. Statewide Biological Assessment

Under a 2001 Memorandum of Understanding negotiated between the SLO and the University of New Mexico, the University of New Mexico and New Mexico Tech have agreed to undertake a comprehensive biological survey of plants, animals, and biological conditions on trust lands throughout the state, and to construct an "inventory" that can be used by the SLO to protect trust assets for future generations. Data will be collected by university faculty and students and will benefit both the lands and the university educational programs. This information will become part of the LOGIC (Land Office Geographic Information Center) database that is maintained by the State Land Office – a web-based mapping service is also in the works to allow the public to access the LOGIC database and produce Geographic Information Systems (GIS) maps.⁸⁶

e. Don't Trash the Trust Program

For years, illegal dumping has posed a health risk on school trust lands and has generally degraded the value of the lands. However, in 2003, the state initiated a cooperative clean up program with local, state, and federal entities and communities to restore and preserve thirteen million acres of state trust lands. In the view of State Land Commissioner Patrick Lyons, "by preserving the trust assets we create jobs, economic development opportunities and maximize revenues for the trust beneficiaries.... Keeping trust lands clean is essential to our mission."⁸⁷ As of the end of 2003, the state office had partnered with an oil lessee to clean up one of the most egregious illegal dumping sites, it had also cleaned up a few other sites, and was working on several more illegal dump removal projects across the state.⁸⁸

⁸² Personal Communication, M. Bowers, State Land Office, March 29, 2005.

⁸³ Joe Chavez, "Mesa is pay dirt for Ohio firm," ALBUQUERQUE JOURNAL (February 22, 2005).

⁸⁴ 2004 ANNUAL REPORT, *supra* note 658, at 22.

⁸⁵ *Id.*

⁸⁶ *Id.* at 18.

⁸⁷ Press Release, *Land Commissioner Targets Illegal Dumping On Trust Land*, New Mexico State Land Office (December 9, 2003).

⁸⁸ *Id.*

f. Wind Energy

The New Mexico SLO recently expanded its wind energy program when Commissioner Lyons signed two leases to develop wind generating facilities in New Mexico. In fiscal year 2004, Commissioner Lyons signed an agreement with a Texas company to develop a wind power generating facility on 1,840 acres of state trust lands southeast of Tucumcari in Quay County. The facility is expected to consist of 80 turbines, 20 of which will be located on trust lands, and is expected to produce eighty megawatts of power. In 2003, Commissioner Lyons leased 1,160 acres of trust lands near House, also in Quay County, to Florida Power and Light to develop the New Mexico Wind Energy Center. The facility consists of 136 turbines, sixteen of which are located on trust lands, and produces enough electricity to power a city the size of Santa Fe. The output is marketed by the Public Service Company of New Mexico.