# Exploring Ecosystem Services on State Trust Lands in the West

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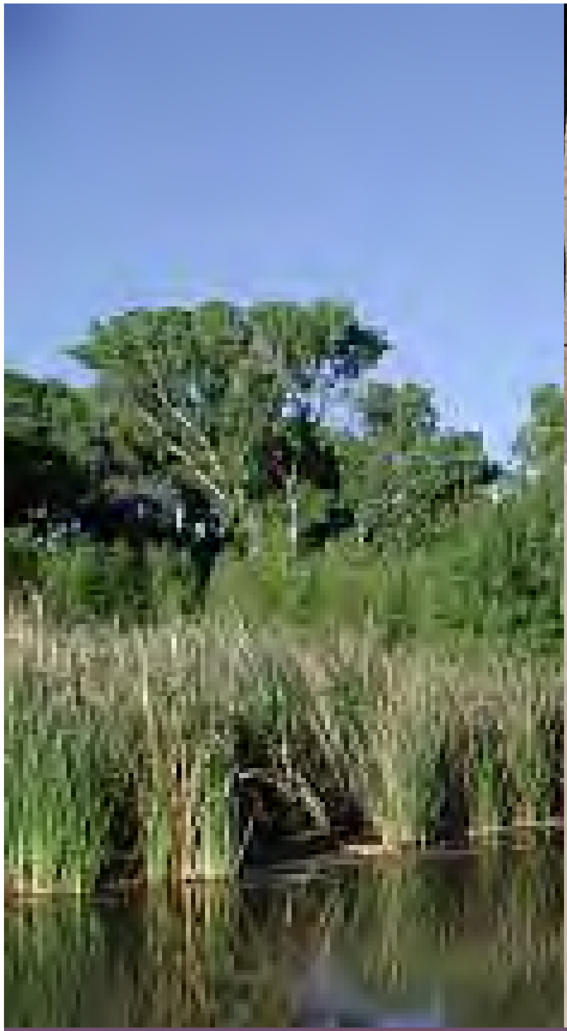
Western Lands and Communities

A Joint Venture of the Lincoln Institute of Land Policy and Sonoran Institute

*The Sonoran Institute inspires and enables community decisions and public policies that respect the land and people of Western North America.*

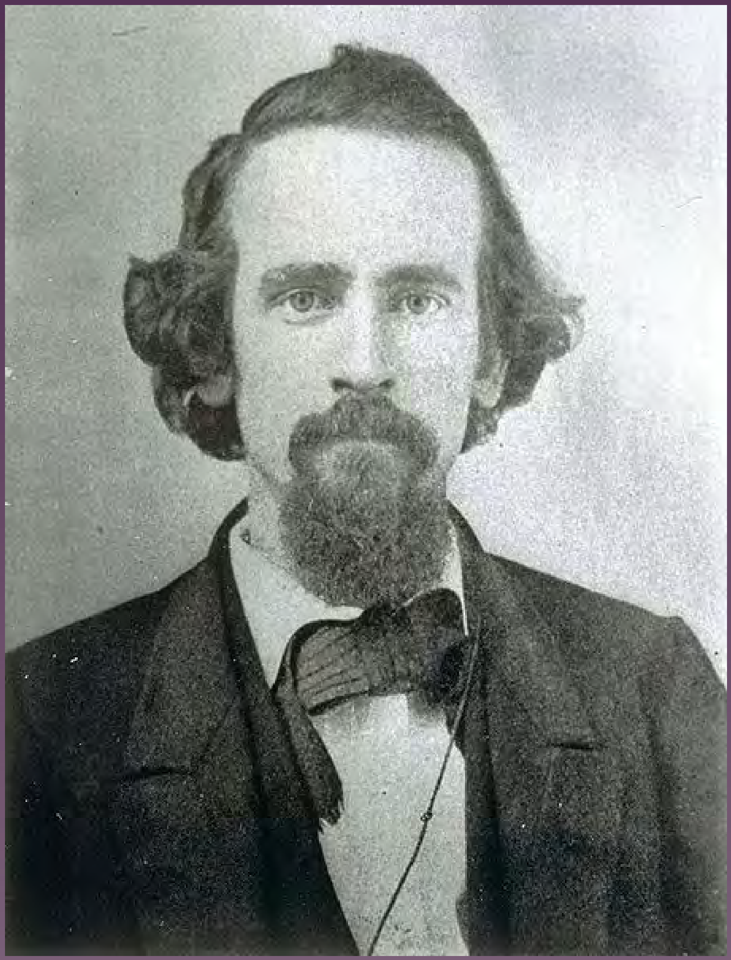



*Our Vision:*
*A West of healthy landscapes, resilient economies, and vibrant communities.*

# Western Lands & Communities

## A joint venture of the Sonoran Institute and the Lincoln Institute of Land Policy

- Partnership established in 2004
- Lincoln Institute of Land Policy founded in 1974 by the Lincoln family – inspired by the works of Henry George
- *Progress and Poverty* (1879)
- Land value tax – concept that land ownership and valuation structures could be used to generate public goods



# Western Lands and Communities State Trust Land Program

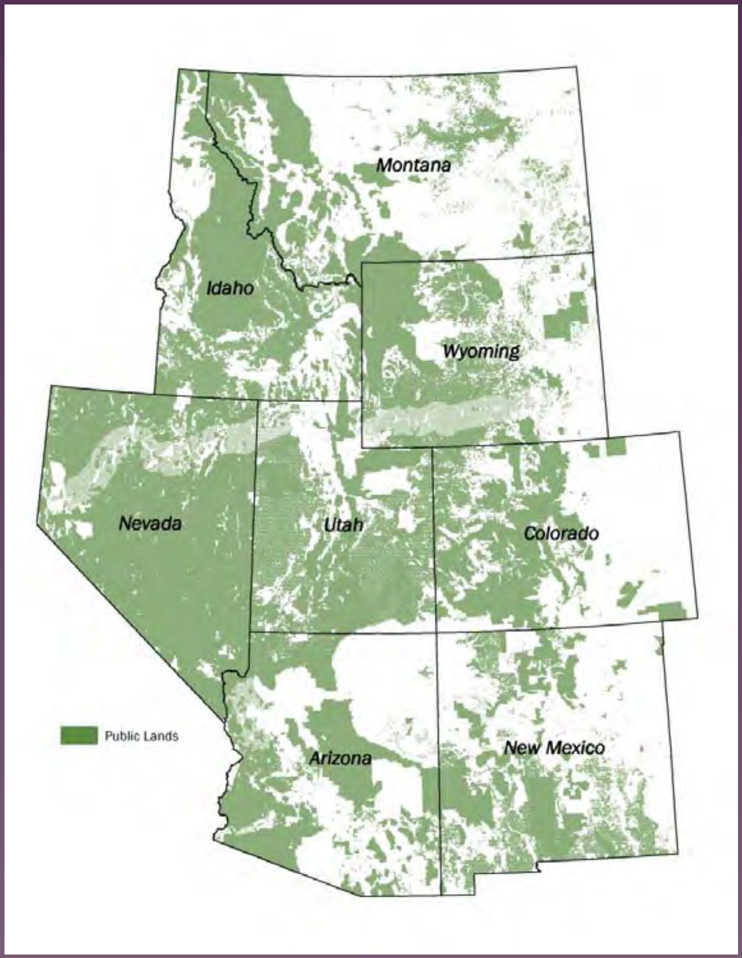
- Seeks to broaden the range of land use information, tools, and policy options available to state trust land managers and diverse stakeholders for long-term, sustainable management of trust lands.

# What and Where are State Trust Lands?

- Intermountain West: Sonoran Institute's core geography

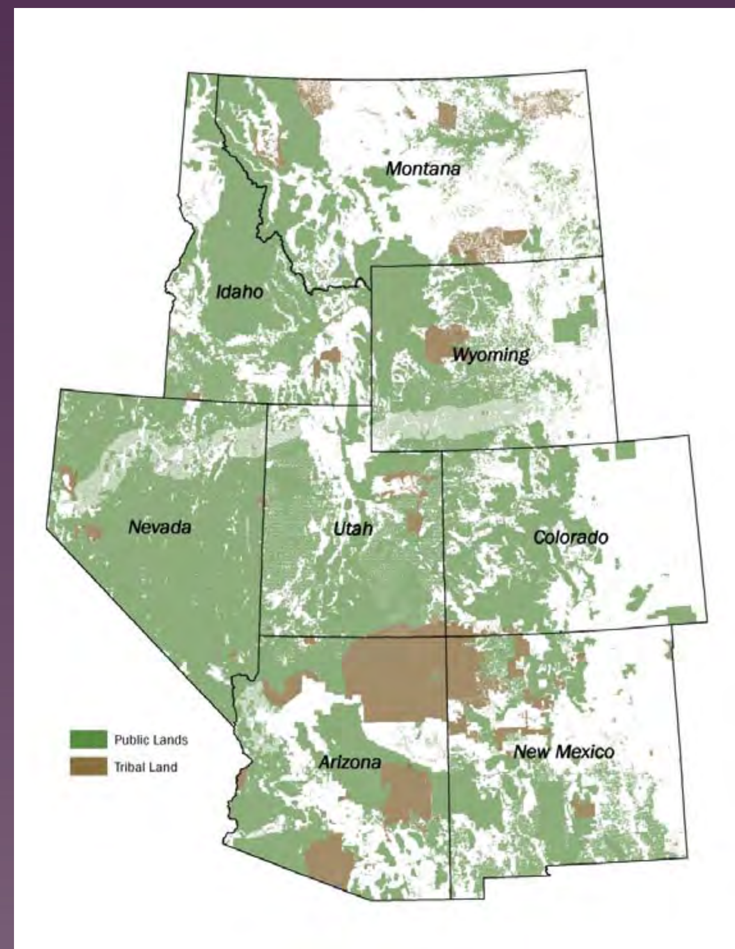
# Public Lands in the West

- Public lands in the West that are in federal ownership
  - BLM
  - US Forest Service
  - Parks & wilderness areas



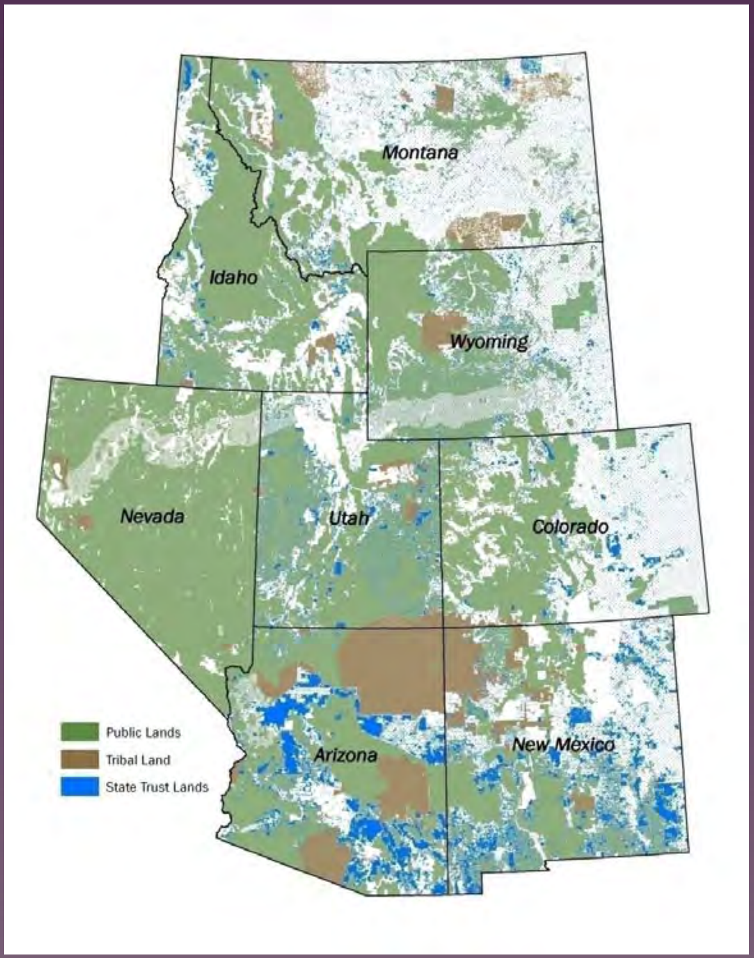
# Add in Tribal Lands…

- Federal public lands
- Tribal lands



# State Trust Lands: A Unique Category of Lands in the West

- Granted to states by Congress upon entrance into the Union
- Held in a perpetual, intergenerational trust to support a variety of public institutions – the primary beneficiary being public schools
- Managed largely for revenue generation – grazing and agricultural leasing, commercial leasing, real estate development, oil/gas/mineral extraction
- 23 states still hold state trust lands from their original grant – mostly in the interior West – totaling approximately 46 million acres

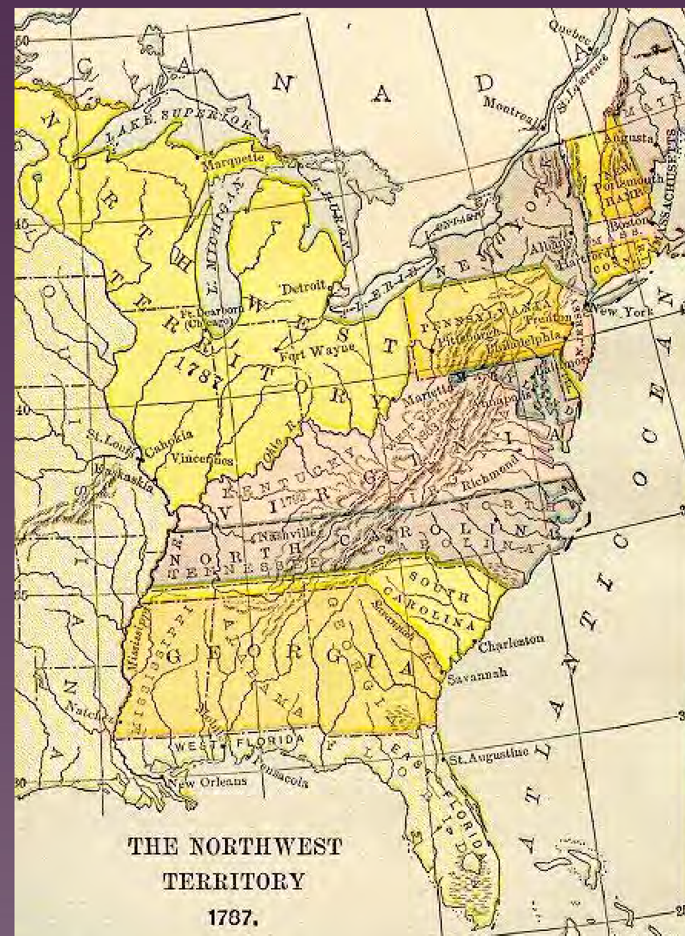


# Origin of State Trust Lands

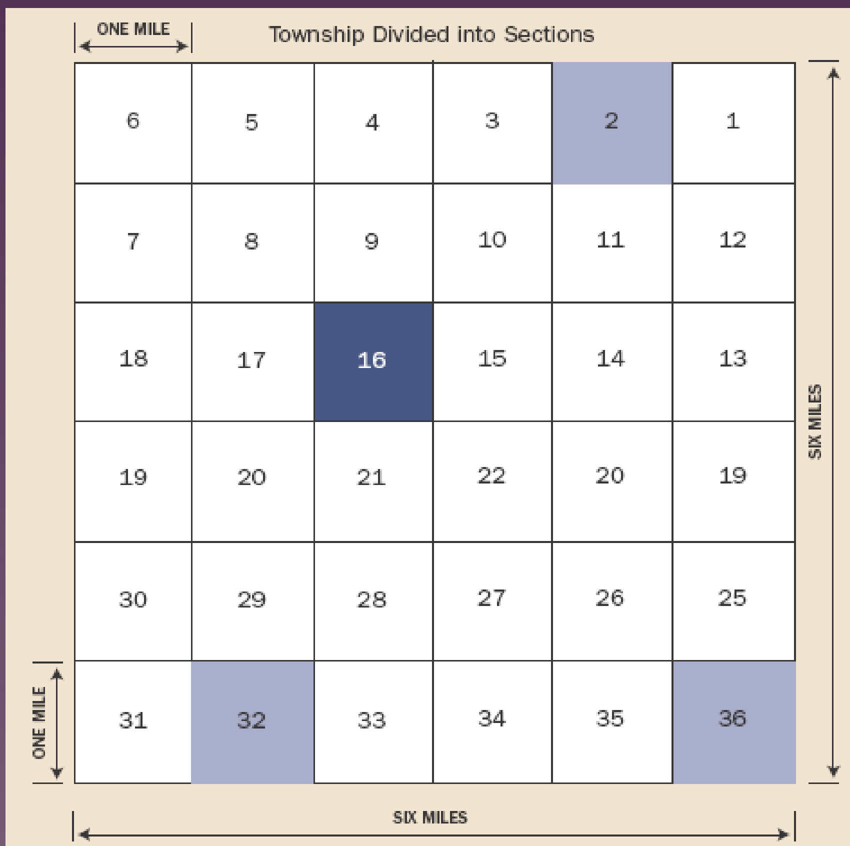
- Following Revolutionary War, Congress faced three-part challenge
  - Flood of recent immigrants and settlers heading West
    - Jeffersonian vision: a free people must be an educated people
  - Need to secure claims to the frontier from rebellion or European rivals
  - Massive war debts and limited federal revenues
- Solution: General Land Ordinance (1785) and Northwest Ordinance (1787)
  - Federal government had one resource in abundance: land
  - Organizing settlement through rectangular survey, repaying national debt through sale of lands, providing for education and essential services through trust grants

# Northwest Ordinance (1787)

- Created a system of territorial governments and process for transitioning territories into new states
- Article V required that states be admitted on "equal footing" with the existing states
- Carried through the vision of cheap land, state equality and public education as critical to the success of western settlements
- Ohio (in 1803) was the first "public domain" state admitted to the union which received a land grant in support of schools



# State Trust Land Grants




- New states received the central section of every township as reserved lands (Section 16) to support public education
  - Mathematical vision of community-building
  - Originally reserved to local township, consistent with agrarian vision
    - Later, reserved to the state
  - Grants later expanded to include 2, 32, 36 as well (Western lands not amenable to farming)
- Congress also issued block grants for universities, hospitals, and other essential state functions

# The Trust Responsibility

- The trust lands grants in the lower 48 states were brought to a close with the New Mexico-Arizona Enabling Act of 1910
  - Most extensive land grants of any of the lower 48 states
- Enabling Act imposed detailed requirements for trust management and stated explicitly that lands were held in “trust”
  - U.S. Supreme Court found that a legal “trust” was created by the Enabling Act
  - Since then, all Western states except CA have found that their lands are also held “in trust”

# What is a "trust"?

- A trust is a legal relationship in which one party holds property for the benefit of another.
- Three parties:
  - "Settlor" or "trustor" – establishes the trust
  - "Trustee" – administers the trust
  - "Beneficiary" – receives the benefits of the trust
- Identified beneficiary or charitable public purpose for which the property is held in trust. Typical examples:
  - Family trust for education of direct descendants
  - Charitable trust for education of children in the community (state trust doctrine similar to charitable trust)
    - NOTE: state trust is NOT a private trust – it has a public mission and public beneficiaries

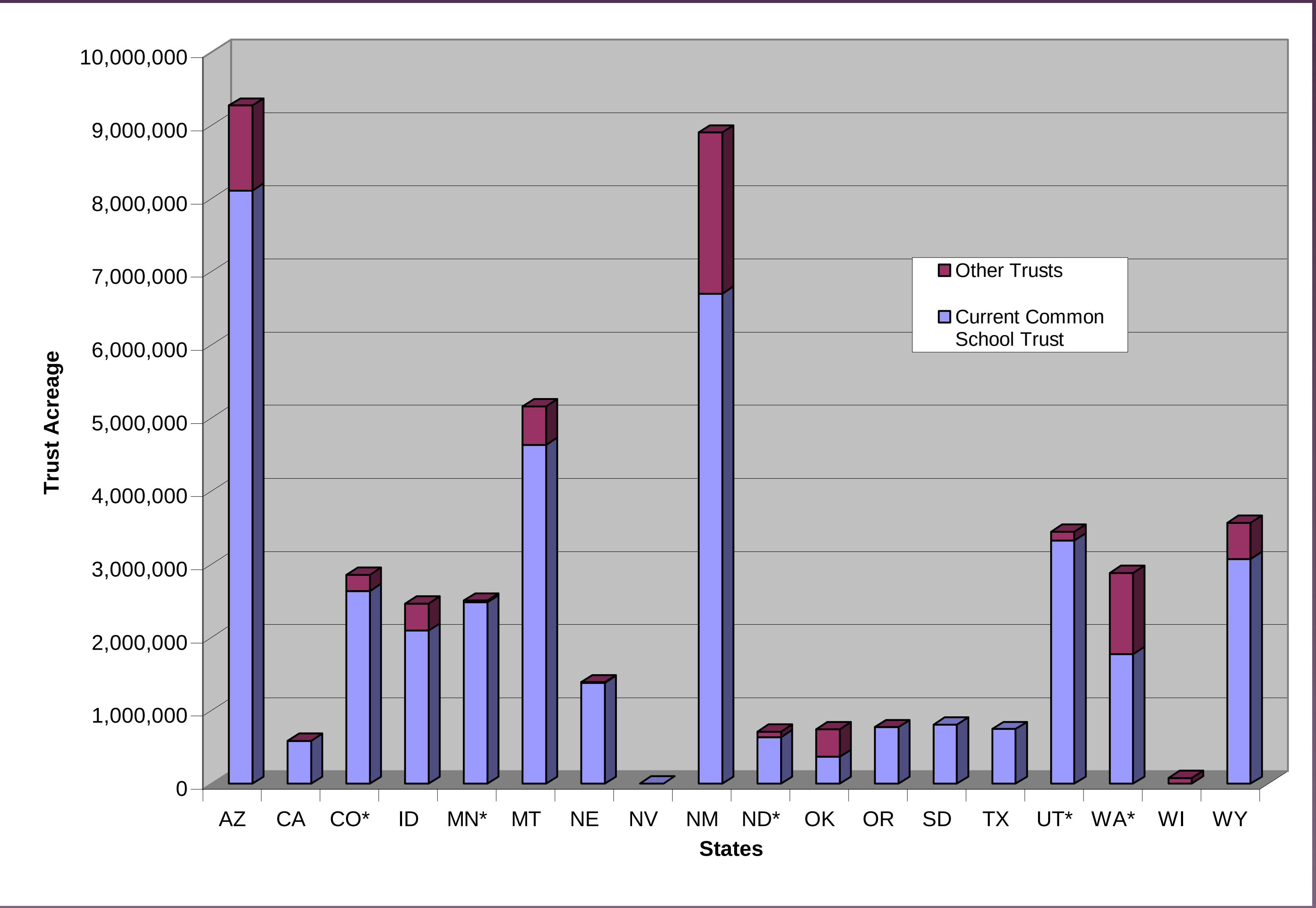
# Fiduciary Duties of Trustees

- Duty to follow the settlor's instructions
  - Manage trust resources for the intended purpose
- Duty of loyalty
  - Cannot put interests of self or third parties ahead of interests of trust/beneficiaries
- Duty of prudence
  - Due care, diligence, and skill in management of trust (affirmative and negative conduct)
    - Appropriate expertise, diversification, investigation and assessment, monitoring and re-assessment
- Duty to preserve the trust
  - Protect trust corpus to ensure that trust objectives are met for the long term

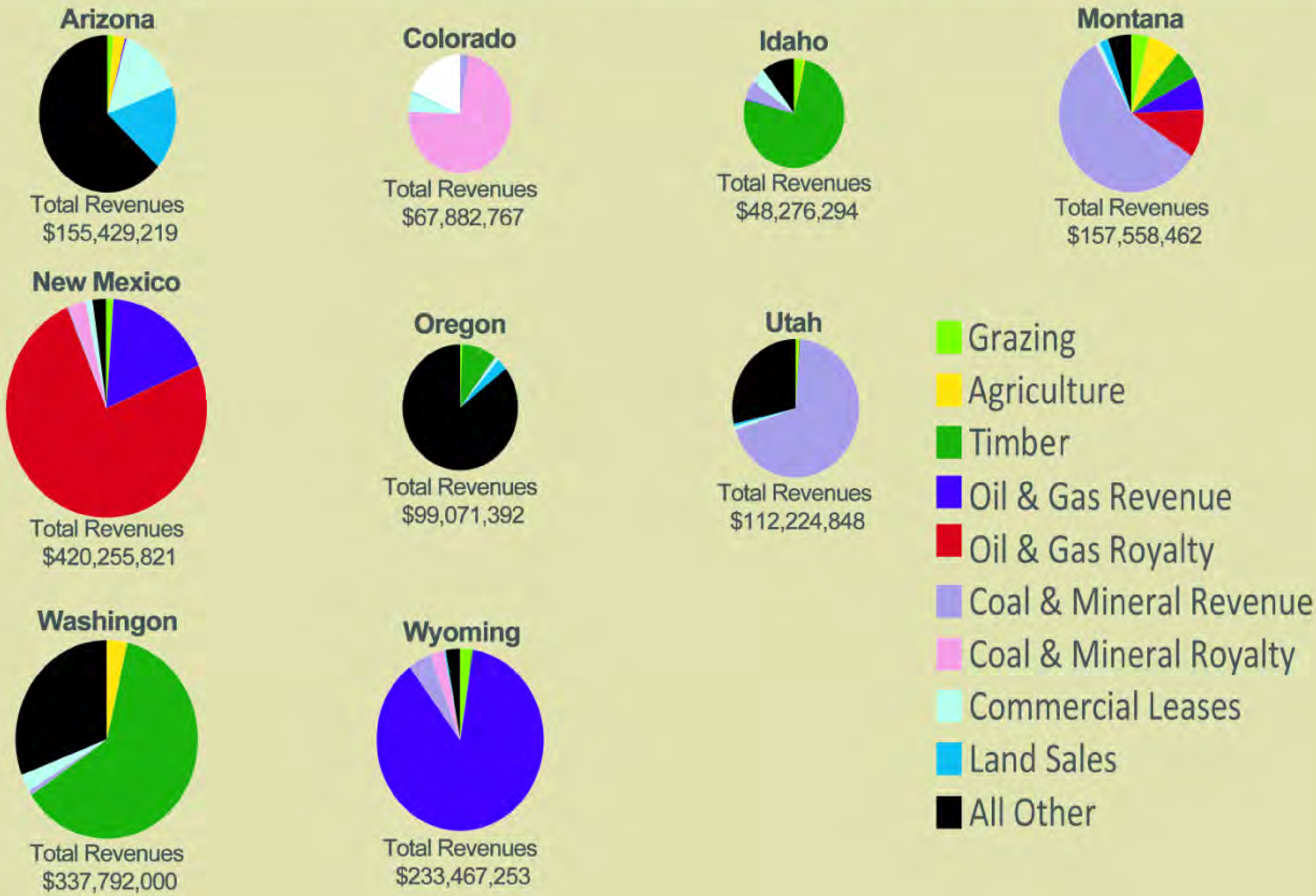
# Trustee's Additional Obligations as a Public Entity

- Important to understand that state trust managers are NOT private trustees, and trust beneficiaries are NOT private beneficiaries
  - Trust is a public obligation to public beneficiaries
  - It is not the school board association's trust or the teacher's union's trust – it is a trust for a broad public purpose, intergenerational in nature, with a long term focus for current as well as future beneficiaries
- Trust land managers have a broader obligation as public agencies
  - Higher standards for environmental analysis of trust activities
  - Consideration of fiscal impacts to communities before approving developments on state trust lands (Colorado & Arizona)
  - Public notice and reporting of trust related decisions
  - Hold public hearings, maintain public records, and accept public comments
  - Subject to legislative appropriations and directives (although legislature is ALSO subject to the trust responsibility)

# Total Trust Land Holdings in the Western U.S.



# Composition and Revenue by State, 2010



# Importance of State Trust Lands to the Future of the West

- Trust lands represent a tremendous resource for education, conservation, and for the future development in western states
  - They are – in some states – the largest tracts of remaining un-subdivided lands in proximity to growing urban areas
  - Ideal for master-planned communities and other large-scale uses
  - Many state trust land holdings have significant environmental, recreational, and open space values
  - Ideal for landscape-scale preserves accessible to urban areas – or sustaining ecosystem services the benefit society
  - Could generate tremendous revenues for public education
  - The manner in which they are developed and conserved will contribute greatly to shaping the future development patterns and quality of life in the West

# Challenges for State Trust Land Managers in the New West

- Changing demographics leads to changing perceptions of traditional land uses
- New pressures on state trust lands – recreation, public desire for open space
- Changing economy means that many state trust land revenue portfolio's are not always capturing the highest value for the lands

# Western Lands & Communities State Trust Lands Work

- Improved Planning Tools
  - Disposition planning
  - Large-scale regional planning
  - Collaborative planning
- Revenue-generating Conservation Tools
  - Ecosystem services
  - Contributory value
  - Land tenure adjustment
- Renewable Energy Opportunities for State Trust Lands

# Ecosystem Services Markets & State Trust Lands

- Compliance Markets
  - Endangered Species Act – U.S. Fish & Wildlife Service
  - §404 of Clean Water Act (wetlands mitigation) – U.S. Army Corps of Engineers
  - Mitigation & Conservation Banking

- Pre-Compliance Markets & Voluntary Markets
  - Carbon credits

# New EPA Mitigation Rules – a Game Changer for Large Landowners

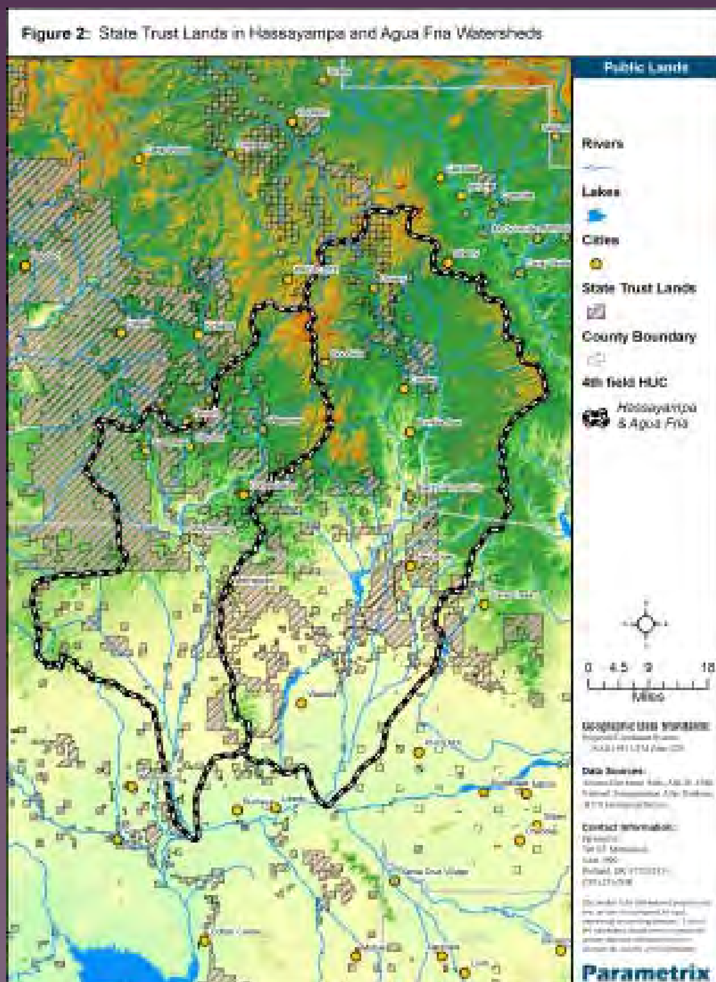
- 2008 EPA Mitigation Banking Rule §404 – no longer a preference for "on-site" mitigation, but rather mitigation that preserves larger-scale intact systems
  - Reduces piece meal "postage stamp" approach to conservation efforts by establishing larger reserves that can better preserve intact ecosystem functions and habitat connectivity
- State trust land agencies, as large landholders, are in an ideal position to identify lands suitable for mitigation or conservation banking, and make them available to the ecosystem services market

# State Trust Land Managers Have Unique Advantages…

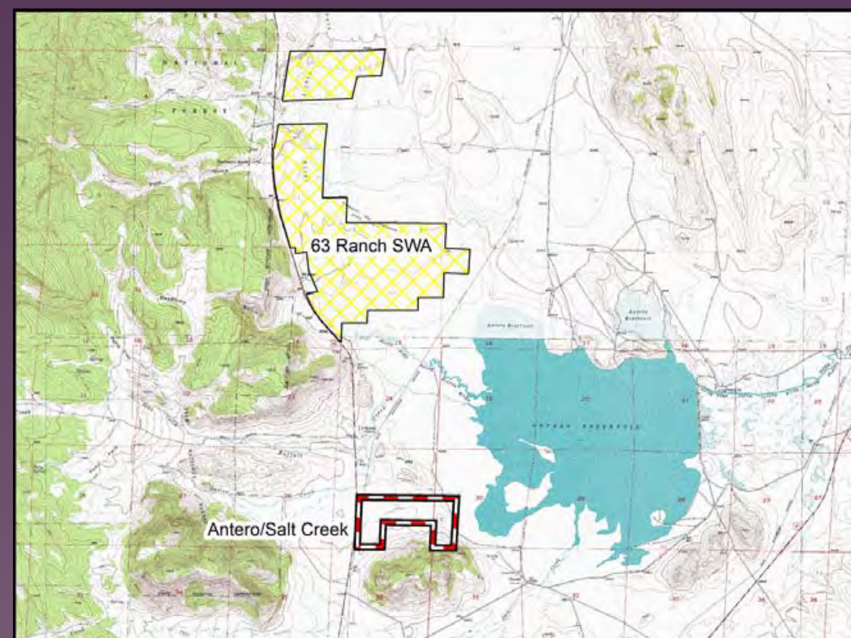
- Supply and demand
  - Many ecosystem services are not priced in the market yet – but may eventually be…
  - As human activities continue to impact the environment, ecosystem services will continue to increase in value
- Vast land holdings compared with other bank operators
- Low carrying costs on land – held indefinitely

# Pilot Efforts to Explore the Potential of Ecosystem Services on State Trust Lands

**Wetland Mitigation in Arizona**




**Ecosystem Services Assessment in Colorado**



Thank You!

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# Colorado State Land Board Ecosystem Services Analysis

- Recommendation #1: The Colorado State Land Board should conduct a comprehensive inventory of its land holdings to identify the best and most marketable opportunities for ecosystem services.

# Colorado State Land Board Ecosystem Services Analysis

- Recommendation #2:  Develop a set of discrete and consistent criteria specific to wetlands mitigation, endangered species mitigation and PES transactions to guide identification of lands for ecosystems services.

# Colorado State Land Board Ecosystem Services Analysis

- Recommendation #3: Use ecosystem services criteria to conduct a strategic assessment of the SLB's Stewardship Trust lands.

# Colorado State Land Board Ecosystem Services Analysis

- Recommendation #4: SLB should develop appropriate internal expertise and experience with ecosystem services markets in order to effectively evaluate opportunities and ensure the best return on investment.

# Colorado State Land Board Ecosystem Services Analysis

- Recommendation #5: The SLB should establish a policy to guide the use of real estate instruments – like conservation easements – to enable lands to qualify for mitigation banking credits.

# Colorado State Land Board Ecosystem Services Analysis

- Recommendation #6:  Cultivate relationships with key regulating agency staff to facilitate access to current and emerging information about demand and opportunities for ecosystem service provision.