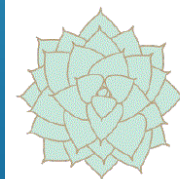


# CHALLENGES IN MANAGING MULTIPLE USE LANDS & TOOLS TO ENABLE SUCCESS

Rocky Mountain Land Use Institute Conference  
March 13, 2015

Susan Culp  
Principal, NextWest Consulting, LLC



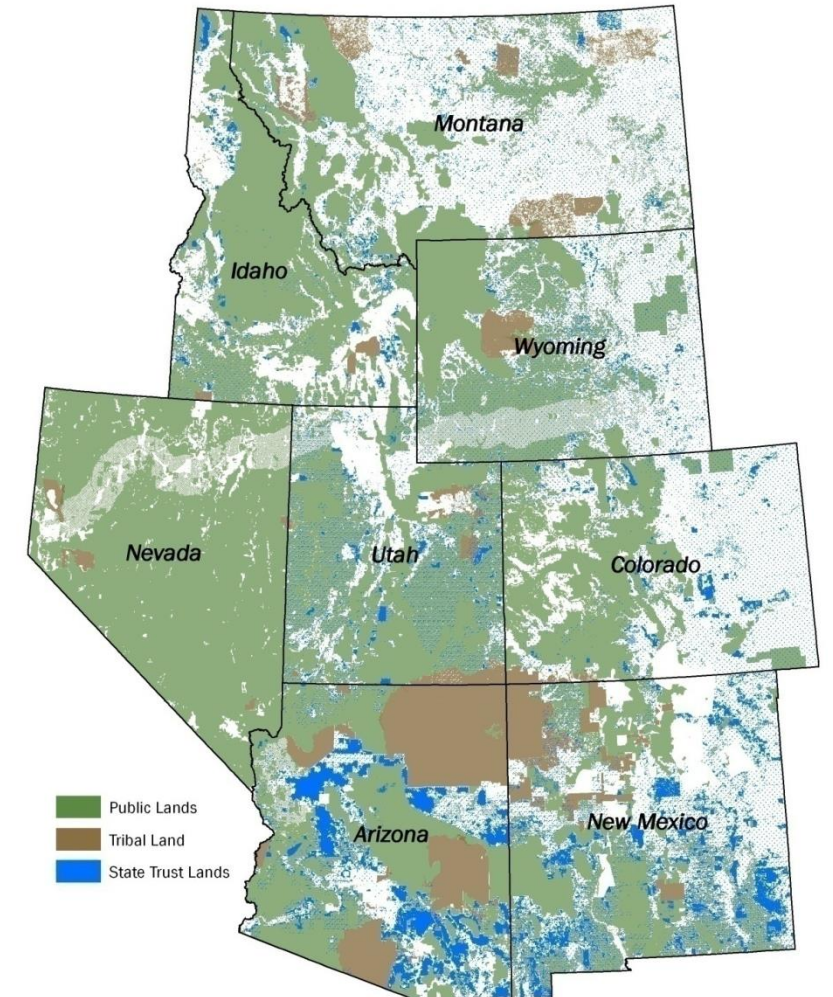
NextWest  
consulting llc



# Challenges to Achieving Conservation on State Trust & Federal Multiple Use Lands

# State Trust Lands: a Brief History

- Trust lands were 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



# The Trust Responsibility & Fiduciary Mandate for Trust Land Management

- Early history of trust lands fraught with extensive land fraud and rapid disposals
  - Several states divest themselves of virtually all trust lands and/or trust funds in ill-considered transactions
  - States and Congress imposed more restrictions on land disposals as experience with lands grew
- Michigan (1837) – Constitution included provisions requiring proceeds from sale of state lands go into a permanent fund
- Soon complemented by increasingly complex restrictions on sale and lease of these lands
  - Minimum sales price, fair market value appraisals
  - Public auctions
  - Long term retention of lands rather than disposal

# Fiduciary Duties of State Trust Land Managers

- ▶ 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

# Trust Responsibility & Conservation Values



- Trust responsibility is frequently held to require “revenue maximization” and highest and best use of trust lands. However...
  - Ignores the significance of the trust as a *perpetual, public* trust and the objectives that trust lands were created to serve
  - Sally Fairfax: “Maximum financial return is barely tolerated as a controlling notion, and is rarely practiced even on lands privately held by corporations.”
- The trust responsibility ultimately requires a holistic and sustainable approach to the management of land that can be used to improve trust management and achieve meaningful conservation
- **Shift toward concepts of total asset management**

# Federal Public Lands & Multiple Use Management

- ▶ Definition laid out in the Federal Land Management Policy Act of 1976 (FLPMA)
- ▶ States that multiple use means that “the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people... a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural, scenic, scientific, and historical values...”
- ▶ Goes on to say...”not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”

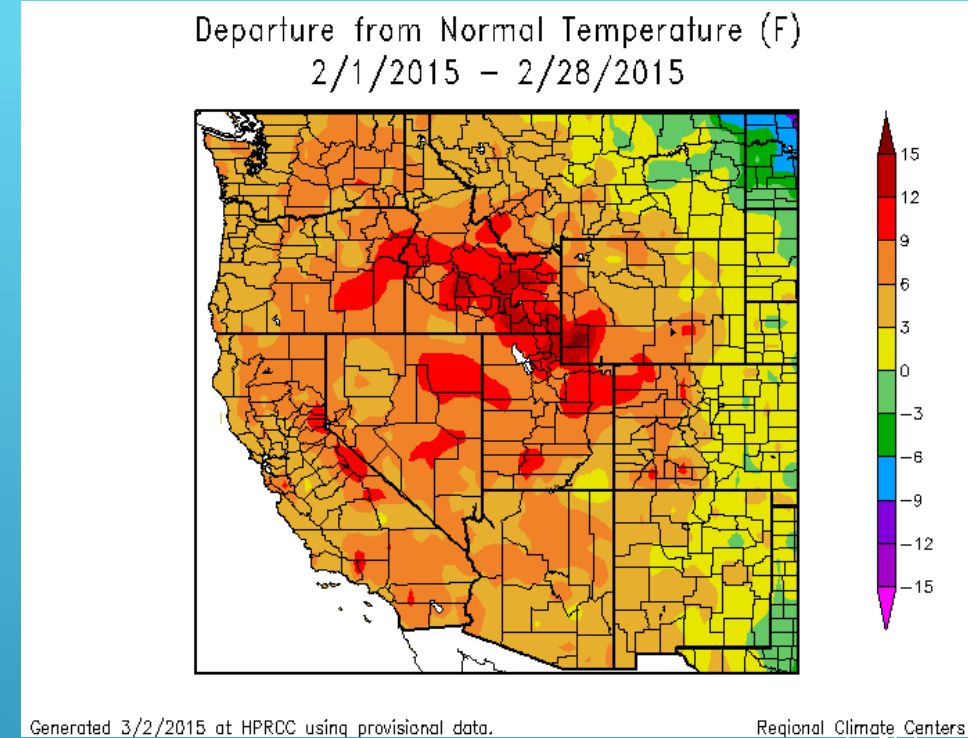




# TRENDS AFFECTING CONSERVATION IN THE INTERMOUNTAIN WEST

# A Changing Climate

- ▶ Temperature Increases
- ▶ Changes in precipitation patterns
- ▶ Prolonged, severe drought
- ▶ Reduced snowpack; alterations in stream flow regimes
- ▶ Expansion in range & season for pests & disease vectors
- ▶ Changes in vegetation cover & species ranges



# Invasive Species



- ▶ Increasing impact on ecosystem function as a result of highly successful invasive species:
  - ▶ Tamarisk (salt cedar)
  - ▶ Cheatgrass; buffelgrass
  - ▶ Crayfish
  - ▶ Quagga mussels



# Renewed Energy Development Pressures – Extraction & Line Siting



jason black/iStock/Thinkstock

# Continued Expansion of Urban Footprint




# ESA Designations



Courtesy Wild Earth Guardians



# Landscape Scale Problems in Need of Landscape Scale Solutions

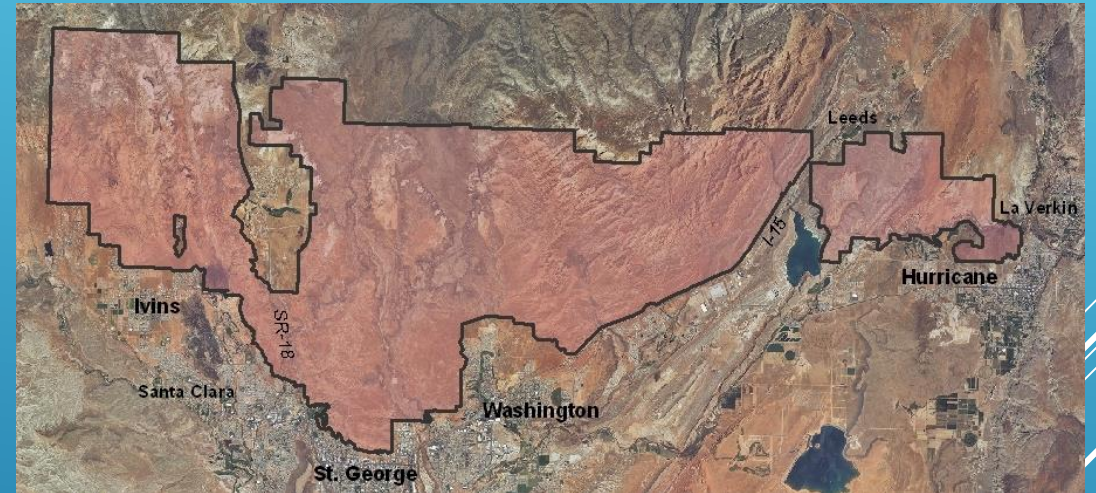
- ▶ Cross-jurisdictional Cooperation Between Agencies & Landowners
  - ▶ Strategies to meet federal multiple use objectives as well as strategies that will fit with trust land managers' fiduciary and trust responsibilities
- 
- A series of white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

# Conservation Tools to Enable Success


- ▶ Land tenure adjustment – land exchanges
  - ▶ Ecosystem services markets
  - ▶ Conservation sales, designations & set-asides
  - ▶ Conservation achieved through the planning process
- 
- A series of white diagonal lines of varying lengths and thicknesses, located in the bottom right corner of the slide, creating a modern, abstract graphic element.

# Land Tenure Adjustment

- ▶ Important tool for cash-poor agencies to accommodate conservation goals on lands not designated for such management
- ▶ Rationalize land use ownership patterns – reduce problematic checkerboard
- ▶ Improvements – streamline appraisal process; better incorporate conservation values in appraisal process



# Example: Utah Recreational Land Exchange Act of 2009

- ▶ Exchange between the Bureau of Land Management and Utah School & Institutional Trust Lands Administration (SITLA)
  - ▶ Act passed in 2009, and in May of 2014, the exchange was completed between the two agencies – goal was to enhance recreational and conservation on lands transferred to the federal agency, while opening up lands with mineral values to state trust land agency
  - ▶ Consolidate land ownership
  - ▶ Protect environmentally sensitive lands
  - ▶ Provide state trust land managers with lands suitable for development
- 
- A series of white diagonal lines of varying lengths and thicknesses are positioned on the right side of the slide, extending from the middle towards the bottom right corner.

# Participation in Ecosystem Service Markets



- ▶ Emerging market for natural resources and environmental values – and an important tool in achieving conservation outcomes for lands that are under a fiduciary directive for revenue generation
- ▶ Compensatory mitigation – Clean Water Act; Endangered Species Act
  - ▶ Mitigation banking for wetlands under Section 404
  - ▶ Conservation banking for endangered species
- ▶ Payments for Ecosystem Services (PES) or Payments for Watershed Services (PWS)

# Example: From Forests to Faucets

- ▶ Example of a “payment for watershed services” (PWS) structure to provide revenue to protect vital ecosystem services – such as Denver’s drinking water supply
- ▶ Partnership between Denver Water & the U.S. Forest Service – Rocky Mountain Region
- ▶ Denver Water is providing matching funds to the USFS for forest thinning and wildfire fuel reduction treatments to improve forest and watershed health and reduce the risk of sedimentation in critical water supplies
- ▶ Matching funds are provided by a small surcharge to rate payers (approximately \$1.65 per year) to help fund treatments to protect the water supply

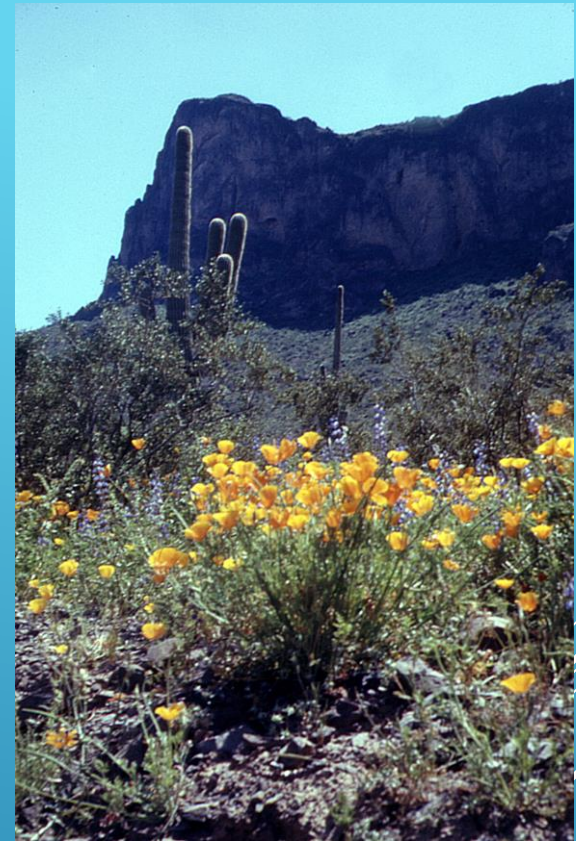


# Conservation Sales, Leases, & Designations

- ▶ Simple & straightforward means to achieve conservation objectives
- ▶ Conservation sales & leases can bring in revenue for state trust land managers
- ▶ In some cases, trust land managers and federal agencies can make special designations of lands that are particularly ecologically valuable or sensitive & manage for those purposes
  - ▶ Colorado State Land Board – Stewardship Trust
  - ▶ National Landscape Conservation Service (NLCS)
  - ▶ Wilderness Areas

# Example: Arizona Preserve Initiative

- ▶ Program established in 1996 to provide a mechanism for the sale of state trust lands in Arizona for conservation purposes
  - ▶ Nomination process for lands that have high conservation suitability
  - ▶ State Land Commissioner determines which lands are eligible of those nominated
  - ▶ Lands must be purchased at fair market value
- ▶ To date, over 40,000 acres of state trust lands have been approved under the API program and over 16,000 acres have been sold for conservation to local governments and NGOs



# Conservation through the Master Planning Process

- ▶ Increasingly common to designate significant open space in the master planning process – as a quality of life amenity to buyers
- ▶ Growing interest in recognizing “contributory value” – nonmonetary consideration in transactions – i.e. by conserving adjacent lands, increase the value of parcels for development
- ▶ Can be a tool to conserve land while also meeting state trust obligations for revenue generation



*Photo Courtesy Verrado Realty*

# Example: Mesa del Sol – New Mexico

- ▶ 12,400-acre master planned community outside of Albuquerque, NM focusing on development of a series of mixed-use urban & rural villages
- ▶ 800 acres were set aside as open space for the community
- ▶ The New Mexico State Land Office was able to secure higher revenues for the trust beneficiaries by securing a percentage of profits gained from land sales after the lands were platted, entitled, and infrastructure provided – potentially a model for contributory value of trust lands involving significant conservation set-asides



Photo: Courtesy Mesa del Sol

# Audience Exercise: Other Strategies to Achieve Conservation

- ▶ Share other strategies that you know have been used successfully in meeting multiple goals while incorporating ecological health
  - ▶ Concepts worth further investigation
- 
- A series of white lines of varying lengths and orientations are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

# THANK YOU!

Susan Culp

(928) 554-4546

[sculp@nextwestconsulting.com](mailto:sculp@nextwestconsulting.com)

Several white lines of varying lengths and slopes are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.