

CLASS Notes



Fourth Edition

Spring 2004

1. 2004 CLASS Conference Invitation	2
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2. Money Matters	
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LAND GRANT PERMANENT FUND SHOULD BE PROTECTED	3
--	----------

Patrick H. Lyons, New Mexico Commissioner of Public Lands

3. Commissioner's Corner	4
---------------------------------	----------

WORKING FOR EDUCATION OUT OF OUR BASEMENT	
--	--

*Mark Winkleman,
Arizona State Land Commissioner*

4. Reports From the States—Spring 2004	
---	--

Alaska, Arizona	5
-----------------	---

California	6
------------	---

Colorado, Oklahoma	7
--------------------	---

Montana, Oregon	8
-----------------	---

New Mexico, Washington	9
------------------------	---

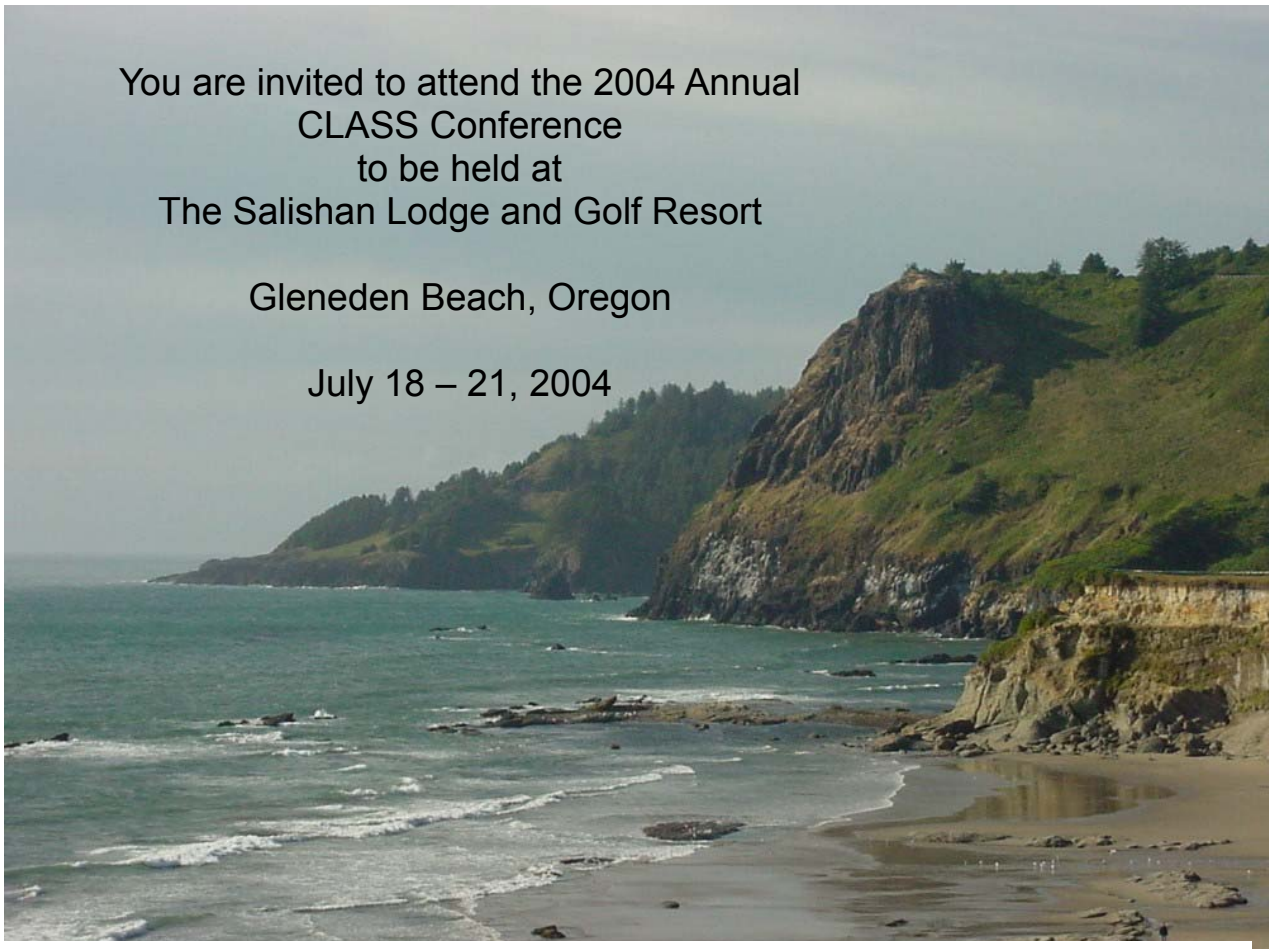
Wyoming, Utah	10
---------------	----



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You are invited to attend the 2004 Annual
CLASS Conference
to be held at
The Salishan Lodge and Golf Resort
Gleneden Beach, Oregon
July 18 – 21, 2004



The conference is being held in conjunction with the summer conference of the Western States Land Commissioners Association (WSLCA) and participants will have the opportunity to attend the WSLCA Roll Call of the States and participate in a workshop where commissioners and beneficiaries will explore how the groups can best work together to accomplish the trust mission.

The CLASS Conference will focus on the financial portion of the school land trust portfolio. State Treasurers and Jim Callahan of Callan Associates will be presenters. In addition, participants will learn from Duane S. Black of SunCor who has been involved in development projects on trust lands in three states.

Sunday will be the basic training day for first-time attendees with concurrent advanced sessions covering Washington D.C. Issues, Legal Issues and Round Table discussions about advocacy and ensuring the revenue makes a difference.

An agenda and registration form is available on the website www.childrenslandalliance.com
Under Conferences

Accommodations may be made at
Salishan Lodge & Golf Resort at 1-800-452-2300
or
Siletz Bay Lodge at 1-888-430-2100

Registration is limited – Please register right away

LAND GRANT PERMANENT FUND SHOULD BE PROTECTED

Last year, New Mexicans narrowly approved a constitutional amendment to increase distributions from the Land Grant Permanent Fund to the state's General Fund to pay for a comprehensive education reform bill passed by the Legislature.

I support greater accountability in our public schools and I support teachers. My wife, Sandy, is a teacher. My children, Kimberly and Daniel are enrolled in public school, and my daughter Amy attends the School for the Visually Handicapped.

As Commissioner of Public Lands it is my job to protect our children's trust fund, now and for generations to come. The Land Grant Permanent Fund was created by our state's founding fathers with the idea that it would serve as a reliable source of funding for New Mexico's public schools. Despite the rhetoric, the permanent fund is not a "rainy day" fund; it is an endowment that is required by law to benefit our public schools indefinitely.

Funding education is our business at the State Land Office. Last year, we distributed \$363 million to our beneficiaries, with public schools receiving 82 percent, or \$296 million.

Right now, the corpus of the Land Grant Permanent Fund is about \$7.6 billion. Before the amendment passed, our state constitution called for an annual payout of 4.7 percent of the five-year average market value of the fund. That percentage allowed the endowment to survive unstable markets and a fluctuating economy. In FY01-FY03, for example, the permanent fund lost \$1.2 billion due to an unpredictable stock market and a poor economy, which equates to a \$46.8 million loss to our public schools.

Upon passage of Amendment 2, the distribution rate increased to 5 percent. Beginning in 2005 the distribution rate will jump to 5.8 percent, until 2012, when it reverts to 5.5 percent until 2016. Should the five-year average market value of the Land Grant Permanent Fund drop below \$5.8 billion, the distribution rate reverts back to 5 percent. The thing is, the balance for the current year could be \$0 and yet show a five-year average of \$5.8 billion.

Consider this: the New England Pension Consultants, the Richardson administration's very own financial consultants, warned against his spending plan. In a recent report, NEPC indicated that the long-term spending target for endowments larger than \$1 billion is 4.9% and that there are long-term benefits of controlled spending rates well below 5%. Raiding the permanent fund would require a 9-11% return on our investments annually in order to maintain the growth of the fund. At a 5.8% distribution rate, the probability of meeting the required return is less than 48%.

We must also remember that the Land Grant Permanent Fund consists of income from oil, gas and mineral royalties. The petroleum industry funds 90 percent of all school capital investment through payments to the Land Grant Permanent Fund, and pays 20 percent of New Mexico's \$4 billion budget. Oil, gas and minerals are a non-recurring source of revenue; they are non-renewable resources. When they're gone, they're gone, and so is the main source of income that pays for our children's education.

I support a quality education for not just one generation of children, but for future generations as well, which is precisely why I opposed increasing the distribution rate. Amendment 2 isn't going to save our schools, but it could very well put our education trust fund in jeopardy and future generations of children at risk.

Patrick H. Lyons
New Mexico Commissioner of Public Lands

WORKING FOR EDUCATION OUT OF OUR BASEMENT

When you enter the basement auditorium of the Arizona State Land Department you might think you have returned to your high school days. The room is a cramped lecture hall and the chairs, upholstered in a Brady Bunch era cranberry color velvet, are held together by duct tape. There are times when the aroma is closer to a gymnasium than a classroom.

On Wednesday of last week, crammed in these musty, subterranean surroundings, the Phoenix Mayor and a Phoenix City Council Member, a leader of the State Senate, CBS, NBC, ABC, and Fox News, more than 50 brokers, lawyers, developers and real estate professionals, and nearly 1,000 friends that tuned in over the internet, watched as we auctioned 276 acres of Arizona State Trust Land for \$100,500,000. That's right, \$100,500,000 in one sale—a new Arizona record for Arizona State Trust Land auctions.

Although the Land Department basement where we auction State Trust Land is old and tired, the dedication to our mission, to generate revenue for public education, has a renewed energy, focus and spirit. We will have a record year in every revenue category, and sales revenue will be several hundred million dollars, significantly higher than ever before.

When Governor Janet Napolitano appointed me Land Commissioner in January, 2003, I committed to make whatever changes that were required to transform the Land Department into a sophisticated real estate company. We control about 1,000,000 acres of land that is located in Arizona's rapidly growing urban areas, mainly Phoenix, Scottsdale, Peoria, and Tucson. I determined that, in order to earn as much revenue as possible for the beneficiaries, the Land Department must be a competitive player in the one of the most competitive real estate markets in the Southwest. We should do all we can to direct responsible growth and development to our property, rather than private land. Here is how we began.

First, I wanted to ensure that we were ready for the challenge. I learned quickly that the Land Department staff is a dedicated group of talented people that has a clear understanding and dedication to the mission of the Trust. Staff adopted the new direction of the agency with tremendous energy. Our employees work every day to bring land to auction at the right time and at the right price to obtain the most competitive auctions possible, and, therefore, the highest price.

Second, we reached out to the communities where our land is located to work cooperatively. The Land Department wants to properly plan and orderly dispose of State Trust Land to ensure there is successful development and vibrant communities with public and private amenities such as open space, schools, community centers and trails. The leadership and staff of the communities of Phoenix, Scottsdale, Peoria, Tucson, among many others have all welcomed the chance to work together for the betterment of their city. They have also come to a greater understanding of the Trust, our mission and the fact we earn money for public education.

Third, I included the private real estate community into our activities. In Arizona, the potential to earn money on the development of State Trust Land was a well kept and closely guarded secret among a handful of real estate professionals. By positively marketing our role in growth in Arizona to the real estate community and actively publicizing our successes to the public, we have expanded the people who want to buy State Trust Land. Where in the past, the Land Department held auctions where one or no bidders appeared, today we have auctions where several bidders actively compete raising the price to sometimes three times appraised value. Thanks to our outreach efforts, the acquisition of State Trust Land is not longer an "inside game".

Finally, I want the people of Arizona and the beneficiaries to know about and enjoy our successes. We have made a concerted effort to educate the public about our mission and the money we are earning. The Land Department and the trust mission have been highlighted on news stories on every major television channel in Phoenix. Positive articles about our sales have appeared consistently on the front page of the Arizona Republic, the state's largest publication. The business and real estate press is writing stories about State Trust Land sales every week.

The beneficiaries are a larger part of our mission and should be a part of our team. At our most recent \$100 Million auction which was broadcast world wide on the internet, we invited school board members, retired teachers, and education association representatives to appear and be recognized for helping us. (The bad thing was that with so many teachers or former teachers present, I was nervous about whether I was using correct grammar in my opening remarks!)

On auctions days, the Arizona State Land Department invites city and state leaders, the assembled press, the private real estate industry, the beneficiaries and friends into a dark and musty basement. Within those muggy confines, we are having record breaking auctions, historic success in generating revenue and working with the great pride knowing that we are earning hundreds of millions of dollars for Arizona public education.

Mark Winkleman
Arizona State Land Commissioner

REPORTS FROM THE STATES

Alaska

The Alaska PTA Board of Managers has been considering their involvement in school trust lands. A member of the board is an employee of the Alaska Mental Health Trust and explained to the board that “dabbling” in this issue is not an option. He advised that they either jump all the way in or stay out. So they jumped. The board has created a committee to represent school children in the fight for school trust lands revenues and have included a budget appropriation to help send a representative to the 2004 CLASS Conference.

Representative Vic Kohring of Wasilla, Alaska has introduced HB 479 Education Fund/Land Endowment. The bill will not be heard further this session but creates a vehicle to encourage study, discussion and ultimately for making some changes with the Public School Lands and funds in Alaska. There appears to be support within the governor’s office.

Suellen Appelof, *President*
Alaska PTA

Arizona

The Arizona legislature is currently embroiled in the annual budget debate. They have not yet considered the trust lands reform package agreement assembled and presented to them by a coalition of stakeholders this year. Adoption of the reform package requires action by the legislature with some provisions also requiring a vote of the people and at least one also needing congressional approval.

A group of developers in Arizona recently questioned the constitutionality of the Arizona Preserve Initiative (API) which has suspended three purchases of school trust lands near Scottsdale, Phoenix and one in Pima County slated to be put into open space preservation. The API was created by the Arizona legislature in 1996 as a vehicle for communities to purchase school lands at appraised value during auction for open space. While the law does not prevent anyone from bidding, the parcels auctioned under the API include a deed restriction requiring open space preservation.

To facilitate the ability of communities in preserving open space, in 1998 a statewide vote of the people made available \$20 million to match funds raised by local communities for the initiative.

The developers contend that the practice gives communities an unfair advantage over the public and violates the constitution by creating artificially low value by taking competitive bidding out of the process. The API has put about 2300 acres into open space preservation since 1996 and provided almost \$40,000,000 to the trust.

California

Much has been done in California regarding research into school trust lands since the CLASS conference in July, 2003. CLASS provided an eye-opening education on the issues involved, and these issues were discussed with other Pacific Region states at the National School Boards Association (NSBA) regional conference immediately following CLASS. The 9 Pacific Region state school boards associations were asked to look into the trust lands issues and report back to the group at our winter conference in December. We drafted and discussed 3 resolutions for consideration by the National School Boards Delegate Assembly. Following is a brief status of these efforts.

California School Boards Association legal and policy staff researched the evolution of trust lands constitutional and statutory provisions and met with our State Lands Commission office. The short story is that California's constitution was modified by statewide proposition in the general election of 1964 to remove provisions for the School Land Fund, and all unencumbered balances were transferred to the State General Fund. This was done to simplify state accounting for "special funds," and it was believed that other constitutional provisions were sufficient to ensure financial support for public schools. In 1984, the State Legislature created the School Land Bank Act, which granted management of school lands to the State Lands Commission and provided that all net revenues, moneys, and remittances from the use of school lands and lieu lands be deposited into the State Teachers Retirement Fund. These revenues now total approximately \$4 million annually. Only 478,000 acres remain in the State's School Land Bank Fund, along with a reserve of \$42 million dedicated to acquiring and enhancing school lands.

Whether and how we choose to address our current arrangement is a matter for further policy and political discussion.

Our fellow Pacific Region states presented an overview of their trust lands investigations at our December conference. As expected, each state has a unique set of circumstances and concerns, but the research exercise broadened the view of the school board leaders and associations present. Last, we debated the draft resolutions to deal with federal completion of trust land grants, expedited handling land exchanges, and payment of royalties. A common concern was that any federal action at this time concerning trust land issues could have an impact on current payments received from the federal government in lieu of taxes on federally-owned land. Because of the progress being made by NSBA and others in congressional consideration of the Utah Resolution (APPLE Initiative) regarding the impact to education of federal land ownership, and the desire to not dilute the attention toward that effort, we chose to wait on the resolutions.

Dan B. Walden

Past President, California School Boards Association

Past Chairman, Pacific Region, National School Boards Association

Colorado

We on the Colorado School Land Trust Steering Committee are pleased to report that we survived another potentially devastating legislative session. The most disheartening part was the resolution introduced by former State Board of Education member, now Senator, John Evans, who proposed a constitutional amendment to force the sale of our lands to fund our constitutionally-required increases in public administration. Those increases equate to inflation plus 1% until 2011 and inflation thereafter. He admitted he introduced this resolution hastily without doing his research, but even a hasty review would show that we don't have enough lands to sell to meet annual funding for our schools. Thankfully, the bill did not get out of committee. This just shows we have a lot more educating to do!

We did have the opportunity to present various policy options to the Joint Budget Committee. They were most interested in the options that did not negatively affect the General Fund, of course. They have asked the Land Board to conduct a review of converting to an enterprise or a more independent authority. They are also interested in exploring an equities strategy for the investment of our Permanent Fund. Although, legislation was not introduced this session, we are hopeful that by working together throughout the summer, we can help influence more thoughtful legislation than the resolution previously mentioned.

The Steering Committee also would like to welcome the new director of the Colorado Board of Land Commissioners, Britt Weygandt, and their chief financial officer, Tobin Follenweider, to our Committee. We look forward to creating and collaborating on joint communication tools, which we hope to share with CLASS in July.

*Karen Gerwitz, Executive Director
Colorado State Board of Education*

Oklahoma

We have been busy with the legislative session and especially in watching bills proposed by our new Land Office Secretary, Clifton Scott. HB 2680 is a proposal to define realized capital gains in Oklahoma law as interest and dividends and allows the land commissioners the discretion to distribute any portion. The intent is for realized capital gains to benefit both current and future beneficiaries by distributing a portion and retaining a portion. Initially there were no caps on the distributed portion. The distributed amount was at the will of the land commissioners. An amendment has been added to set the distribution limit at 10% of a five-year rolling average of realized capital gains. Of course, a cap can be easily lifted during difficult economic times to generate a larger distribution. At the same time, this option would relieve pressure on the land office to invest increasing portions of the fund in more risky investments in response to policy makers desiring to increase the distribution of the fund.

The land office has been looking at acquiring a state-owned resort and golf course at the beautiful Lake Texoma resort area that has the potential of generating significant revenue for the trust. Legislative approval is required for the land office to be involved in the project. The beneficiaries are enthused about the opportunity, however amendments have been placed in the measure that create roadblocks for the land office in moving the proposal ahead.

Another measure, HB 2681 eliminates a provision in Oklahoma law requiring that all land exchanges involve commercial property. If the bill passes, it will facilitate exchange of isolated agricultural parcels to be exchanged for other agricultural property giving the land office authority to exchange remote sections into consolidated blocks that are more accessible. HB 2681 also allows the land office to hire realtors on a commission basis for commercial leasing of trust property.

*Cathy Post, Immediate Past President
Oklahoma PTA*

Montana

Effective March 1, 1992 Montana implemented a licensing program for recreational use of their State School Trust lands. Since that time, most trust lands that are legally accessible from adjacent public roads, public lands, or with permission of landowners if crossing private land is involved, are open to folks 12 years of age and older who purchase a *State Land Recreational Use License* to engage in most types of non-commercial and non-concentrated recreational activities classified as being “general” recreational uses. Licenses are sold through license agents of the Department of Fish, Wildlife & Parks (DFWP). Some lands are categorically closed because of the nature of their primary use (i.e. lands leased for home sites, military activities, commercial uses, and agricultural lands between planting and harvest), while a few others are temporarily or permanently closed or restricted on a site-specific basis for issues related to public safety, resource protection or agricultural management.

Initially, “general” recreational use included only fishing and hunting with a corresponding license price of \$5 per individual; however, the definition of general recreational use has been periodically expanded and today includes most other common recreational activities such as hiking, bird watching, mountain biking, picnicking, etc. License cost now ranges from \$5-\$10 per individual depending on their age or a \$20 family license is also available. With the exception of \$2/license, which is used for agent commission and program administration, all monies received from license sales are deposited into the various trusts. The Department of Natural Resources and Conservation (DNRC) who administers the program, estimates that approximately 97% of the use is by persons hunting, fishing and trapping, while the remaining 3% is for other types of ventures. License sales and corresponding revenues have generally increased each year, ranging from 29,000 licenses and \$145,000 in 1992 to 47,750 licenses and \$493,000 in 2002.

Recognizing the opportunity for increasing trust revenue, the 2003 Legislature approved SB130, law that allows partial revision to the recreational licensing requirements by allowing DNRC and DFWP to enter into an agreement, whereby authorization for access to state land **only for hunting, fishing, or trapping** is now included under authority of a Montana Wildlife Conservation License. Persons engaging in activities **other than hunting, fishing, or trapping** are still required to possess the State Land Recreational License and the cost of that license remains unchanged. Under the agreement, which became effective March 1, 2004 DFWP will now compensate DNRC \$2 for each Wildlife Conservation License sold. Of those proceeds, 90% will be disbursed to the trusts and the remaining 10% will be used for program administration, weed control, damage reimbursement, and road maintenance associated with recreational use. The cost of the conservation license was increased (non-optional) by \$2 to cover this compensation. With sales of conservation license sales averaging approximately 460,000 in recent years, total revenue generated through this agreement coupled with proceeds received from sales of State Land Recreational Licenses is estimated to increase to around \$935,000 representing roughly a 90% increase in overall income over 2002 sales.

Jeanne Holmgren, *Bureau Chief for Special Use Management*
Montana Department of Natural Resources and Conservation

Oregon

CLASS participants from Oregon welcome you to the 2004 CLASS Conference this summer on our beautiful Oregon coast. The Salishan Lodge and Golf Resort is a wonderful facility in which to participate in a conference. Many of the conference rooms boast large windows to bring the outdoors in and the facility itself is a short walk to the beach. Activities of the conference have been organized to encourage some venturing away from the main facility. Participants will be the guests of Taft High School and their nationally acclaimed culinary arts students. In addition, we will enjoy dinner one evening with the Western State Land Commissioners Association inside the Newport Aquarium. As always the agenda is full and we will be discussing issues we haven't tackled before. We look forward to seeing you and learning what interesting issues are surfacing in your states and how you are addressing them.

The surf is calling your name – and we look forward to welcoming you here!

Beth Nead, *President Elect*

New Mexico

The New Mexico PTA has formed a committee that is consulting with the New Mexico State Land Office about how to get the school trust land message out to the public. They are considering the different audiences and the best vehicles as well as potential available resources. Some options under consideration are a video, public service announcements from land users about their contribution to schools through the trust, a possibility for augmenting current New Mexico geography curriculum in elementary schools, adopting a "cartoon character" for messaging on school trust lands information used when interfacing with schools and a short warm-up video to introduce what school trust lands do for New Mexico schools that could be used by the PTA, land office and others when making a presentation to a community group, school or policy makers. The New Mexico PTA welcomes any ideas from readers in addition to those outlined here.

*Renata Witte, Immediate Past President
New Mexico PTA*

Washington

In December the Department of Natural Resources (DNR) held public hearings on six alternatives for its Sustainable Harvest Calculation policy for the next ten years. The choices ranged from no change (minimal forest management and harvesting) to intensive forest management using the best science and biodiversity methods. In January the board of DNR reviewed the public comment and began to focus on selecting their preferred alternative. In February the board unanimously decided on the alternative, which uses intensive forest management and the best science and biodiversity methods. This alternative was supported by the board of directors of the Washington State School Directors Association upon recommendation of its School Trust Lands Task Force which has been monitoring the two and half year process. It is estimated that this change will increase the trust lands harvest by 30% over the next ten years.

The Washington Environmental Council and similar agencies vigorously opposed the decision. It may lead to a lawsuit against DNR.

The next step is the completion of the Final EIS, which is expected, in early June. DNR hopes to approve the FEIS in late June and immediately put the policies in place to make this significant change. It will take at least two years for the increase in income to the school trust lands to be felt.

*Quent Goodrich, Vice President
Washington State School Directors Association*

Wyoming

In Wyoming, issues related to coal bed methane development on trust lands are becoming increasingly prominent. Coal bed methane, which is found in the seams of underground coal beds, is the same compound as the methane, which is the primary energy source in natural gas. We have seen tremendous growth in the number of producing coal bed methane wells in Wyoming, from about 850 wells in 1999 to over 10,000 wells today. Many of these wells are under or adjacent to school trust lands.

This increasing development of coal bed methane wells has created a number of conflicts between the interests of trust beneficiaries, the well developers, and surface land leaseholders. The process that releases the coal bed methane also releases underground water to the surface, sometimes in large quantities. There is an ongoing dispute over how much compensation developers should have to pay for this water release and other forms of surface damage caused by well development. There are also growing disputes over the appropriate amount of payment to the trust for the impact of access roads, pipelines, and other features placed on surface land by developers. Surface land leaseholders have rights to some compensation from well developers for the impacts caused on the surface land they lease, but developers are now complaining that these leaseholders are using these rights to hold up well development in order to obtain unreasonable compensation.

These various competing interests have created a difficult situation for the state land office and land board. It is beneficial to trust beneficiaries for well development to continue, as it is an excellent source of revenue. At the same time, developers should be required to pay appropriate levels of compensation for how they use and impact the surface of trust lands. Surface leaseholders should receive fair compensation for the impact of well development on their use of trust lands, but they should also not be able to unreasonably benefit from their position. Currently the land office is undertaking a review of these issues and of the procedures they use to determine fair compensation. Trust beneficiaries here are giving their input to the land office and will continue to monitor these issues for the benefit of the school children of Wyoming.

Greg Hacker, *Attorney*
Wyoming Education Association

Utah

The Utah legislature approved some changes this year to the management of the financial portion of the trust portfolio. The trust beneficiaries place investment experts on an Investment Advisory Committee which advises the State Treasurer about investment of the permanent fund. The changes require quarterly meetings of the Investment Advisory Committee, adds a member to the committee selected by the Land Board and creates a process that allows the Treasurer greater investment flexibility.

During the process of distributing the annual interest and dividends the beneficiaries discovered that interest accumulating during the distribution, which can take a few weeks to a couple of months, is swept and sent to the General Fund of the state. The practice is contrary to trust law so a restricted account was created where all interest will accrue to the trust.

The major political parties met in state convention in May and have both adopted statements in their platforms supporting the prudent and profitable use of school trust lands and supporting that the distribution go to local schools for academic improvement. It is a step towards institutionalizing support for the trust in Utah.

Paula Plant, *School Trust Lands Specialist*
Utah State Office of Education

The editor wishes to thank all who have contributed to this issue of CLASS Notes recognizing that many have been heavily involved in legislative sessions where the priority must be to protect children's needs, education budgets and the school trust.