

Chapter 1

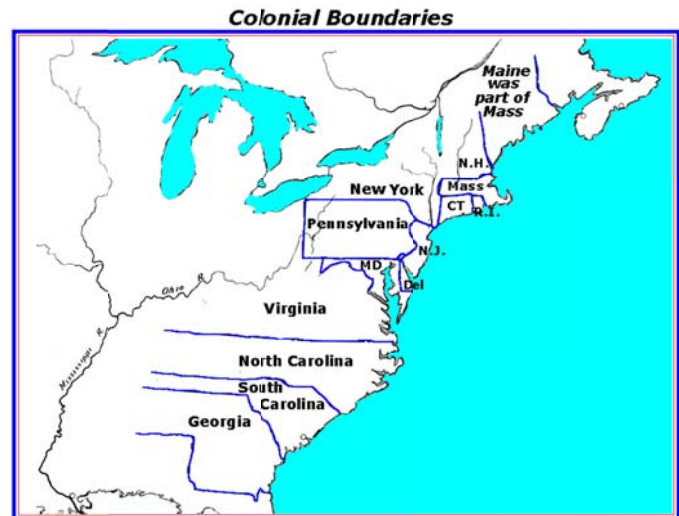
Federal and State Ownership of Land

Federally Owned Lands

Prior to the Revolutionary War, during what is known as the Colonial Period of our nation, Spain claimed much of the lands to the west of the Mississippi River and those lands southeast and southwest of the colonies. France claimed the lands north and south along the Mississippi up into the Ohio River Valley.

The thirteen colonies as "territories" received land grants from the British Empire. In some cases, the grants extended from the Atlantic Ocean to the Pacific Ocean. When the United States first became a nation, the founding fathers determined that all lands located within the original boundaries of each colony would remain the property of those states; therefore, the U.S. Government claimed none of these lands as public land.

Six of the colonies had defined western boundaries (New Hampshire, Rhode Island, New Jersey, Delaware, Pennsylvania, and Maryland). With the belief that the western boundary for the other seven colonies extended to the Pacific Ocean, no one was quite sure where to draw the western boundary line for these new states. The Pacific Ocean was not only an unreasonable but an impossible delineation since, at that time, the western boundary of the United States only extended as far west as the Mississippi River, with the French and Spanish claiming ownership of the lands west of the Mississippi.



The newly-founded U.S. Government proposed that these colonies fix their western state lines far short of the Mississippi River. The vast areas in-between these fixed state lines and the Mississippi became disputed lands. Both the individual states and the federal government were fighting for the rights of ownership to these lands, because each knew the sale of the land

to settlers moving west would generate significant revenue. In the end, the federal government won the battle over the ownership of these disputed lands. All lands within the western boundaries, as determined by the U.S. Government, remained the property of those states, and the disputed lands became what are known as public lands owned by the federal government.

A handful of the colonies had disputed boundaries between themselves, such as New Hampshire, which claimed the territory to the west, in conflict with New York, which made the same claim. The colony of Virginia believed that her northern boundary ran northwest and continually widened as it traveled in that direction. This belief conflicted with the claims of Maryland and of Pennsylvania.

Prior to the Revolutionary War, many colonial land speculators believed that fortunes could be made from western lands. Around 1766, there was an uncontrolled land rush, by which many powerful and wealthy families invested in the surveying and purchasing of very large tracts of land. In some cases, the purchases were made from Native American tribal governments. In other cases, the purchases came from the individual colonies which claimed the rights to the land. As an example, Georgia sold over 25,000,000 acres of land to three land companies, charging one cent per acre.

After the Revolutionary War, the new government proposed that a fixed western boundary be set for each of the original colonies and that the remaining western territory should be divided into additional states. The proposal was met with furious opposition from states like Virginia and Georgia. They knew that future land sales would be like having a gold mine in their back yard, and that such a proposal would critically limit their ability to make money from the western lands.

Those wanting to buy land were equally conflicted because no one knew if this new federal government was as motivated in selling the lands as were the individual states. Therefore, land speculation increased.

But the U.S. Government was motivated. They desperately wanted the revenue, primarily to pay off debt incurred from the war. In 1784, a compromise was reached whereby the thirteen states ceded their claims to the western lands and the states of Vermont, Maine, and Kentucky were formed out of lands that had been in dispute.

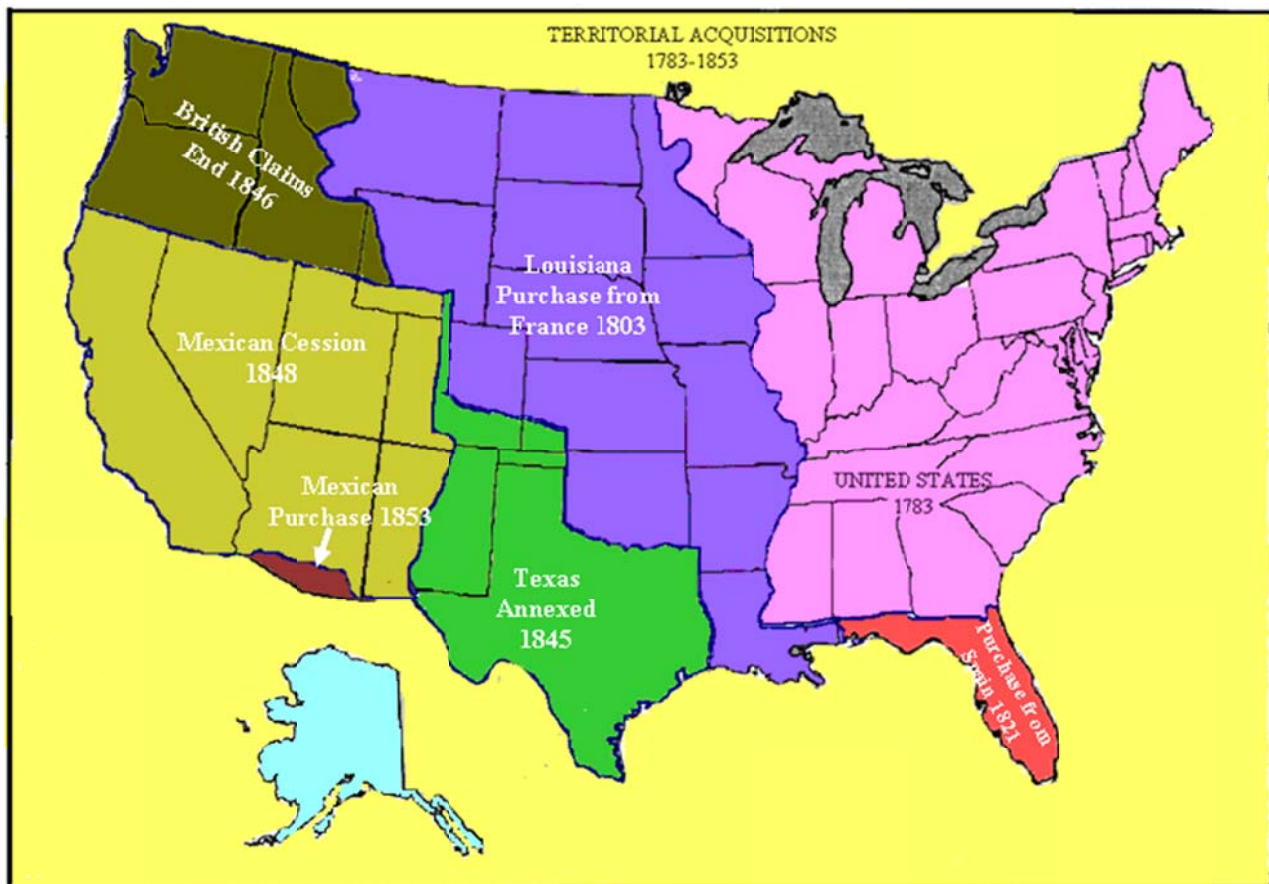
Acquisition of Lands by the United States Government

Although the surrender at Yorktown in 1781 marked the end of the Revolutionary War, there were minor battles between the American colonists and the British during the next two years. It was not until February of 1783

that King George III issued his *Proclamation of Cessation of Hostilities* and agreed to *The Peace Treaty of 1783*. The agreement formally ended the United States' War for Independence and transferred to the United States all lands claimed by England that were east of the Mississippi River. For the next two decades, the boundary of our new nation stayed the same.

With this cessation of hostilities, the United States now encompassed the original 13 colonies, Vermont, Maine, Kentucky, West Virginia, and an additional land mass that would eventually become the states of Ohio, Indiana, Illinois, Mississippi, Illinois, Michigan, Wisconsin, parts of Minnesota, Tennessee, Mississippi, and Alabama.

In 1783, the shape and size of the United States was not as it is today. In order to understand some very important title issues that surround the ownership of land and minerals, it is important to appreciate how the United States acquired title to the rest of our present day nation's territory. The acquisitions were made in several ways: through treaty, purchase, and annexation.



Beginning in 1803, the United States began to expand its public lands through acquisitions from France, Britain, Mexico, The Republic of Texas,

and Russia. The first acquisition was from France, whereby the U.S. Government purchased 523 million acres of land for three (3) cents an acre. This purchase of French land comprised present-day North and South Dakota, Nebraska, Kansas, Iowa, Missouri, Arkansas, and Louisiana, most of Wyoming, Montana, Minnesota, and Oklahoma, and the northeastern portion of Colorado. This acquisition is known as *The Louisiana Purchase*. In 1821, what is now known as Florida was purchased from Spain. *The Oregon Compromise of 1846* resolved the British-American dispute over the northwest boundary and in that year the British claim of ownership was extinguished. Washington, Oregon, Idaho, and lands in northwestern Montana, and west central Wyoming were then added to the rapidly growing nation. Under *The Treaty of Guadalupe Hidalgo* (1848), Mexico agreed to sell to the United States, for \$15 million, all of what is now California, Nevada, Utah, and Arizona north of the Gila River, New Mexico west of the Rio Grande River, and parts of Southwestern Colorado, totaling 334,479,360 acres. In 1845, Texas was annexed into the Union. Five years later, Texas sold to the United States 78,842,880 acres of its western lands for \$10 million. The lands that were sold are now portions of present-day New Mexico, Oklahoma, Wyoming, Colorado, and Kansas. In 1853, James Gadsden negotiated with Mexico to purchase a tract south of the Gila River in Arizona for \$10 million. In 1867, Alaska was purchased from Russia by the United States, with the U.S. Government paying \$7 million for these 18,961,920 acres.

At the end of the expansion, the western boundary of the United States did extend to the Pacific Ocean and the federal government held title to over 80 percent of the 1.9 billion acres that comprised the lower 48 states. With the purchase of Alaska, an additional 365 million acres of land was acquired. Since the vast portion of these western frontier lands sat vacant, unoccupied, and unsettled, the government devised a plan to occupy this area and make it productive. That plan resulted in what is today known as "Land Grants."

Public Lands

Public land is a term that refers to that part of the United States (the public domain) that belonged to the federal government but was intended to be sold or disposed of under *The General Land Ordinance of 1785*, *The Northwest Ordinance of 1787*, or *The Homestead Act of 1862*. These laws set forth a governmental policy to oversee the creation of new states and establish a course of action related to the granting of these vast lands.

It was these *public lands* that were granted to pioneers moving west. These lands should be distinguished from land that was originally granted or sold to individuals by the British prior to the Revolutionary War. Originally, *public*

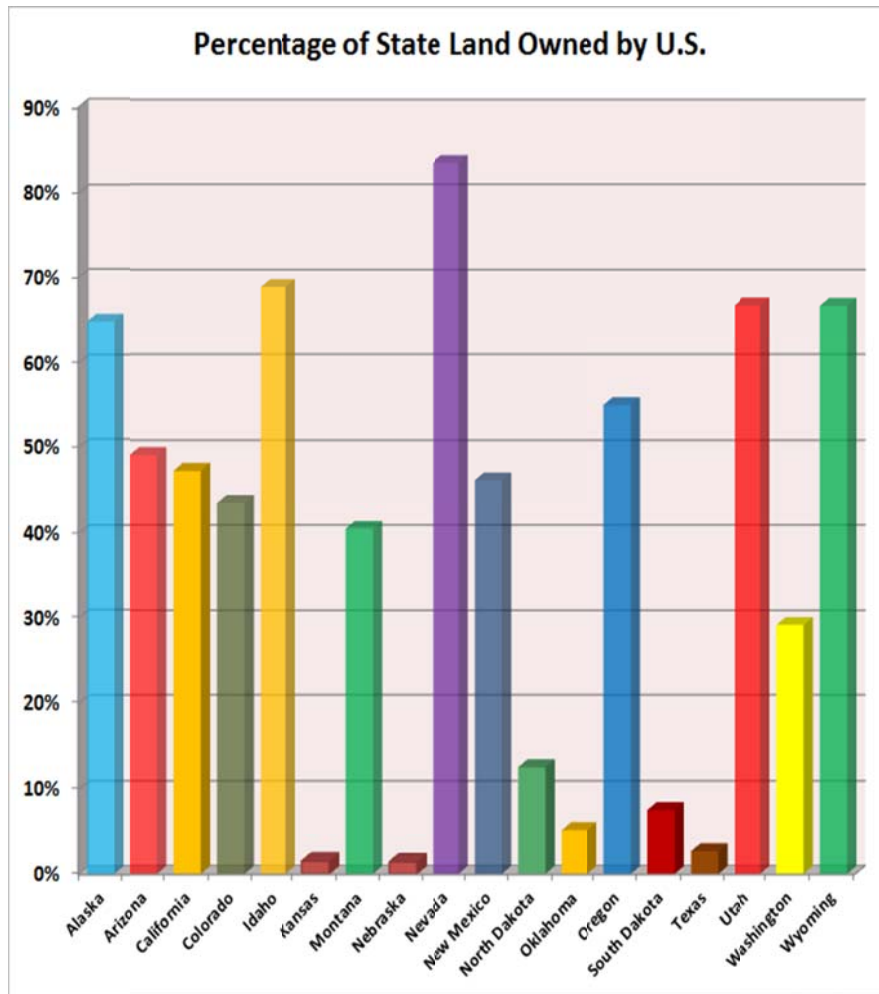
lands consisted of all land outside the original 13 colonies, and today's boundary of West Virginia. As the United States grew, additional land was added to the public domain through the taking of Indian land, by treaty, and those acquisitions from other governments.

The thirty states formed from these public lands are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. The original thirteen colonies, plus Kentucky, Maine, Tennessee, Texas, Vermont, and later West Virginia and Hawaii, were formed from what is known as state land states.

Most people do not realize how much of the land in the United States is still owned by the federal government. The following chart illustrates the breakdown of that federal ownership per state. Roughly 700 million acres of mineral lands are owned by the United States and managed by the Bureau of Land Management (BLM). This number refers only to on-shore lands.

State	Total State Acreage	Federal Minerals	Federal Surface Lands	BLM-Managed Public Lands	Split-Estate Federal Minerals	Indian Trust Minerals
Alaska	365.48	237	237.0	73	0.0	1.2
Arizona	72.69	35.8	33.0	12.2	3.0	20.7
California	100.21	47.5	45.0	15.3	2.5	0.6
Colorado	66.49	29	24.1	8.3	5.2	0.8
Eastern States		40	40.0	0.1	0.3	2.3
Hawaii	4.11	0.6	0.6	0.0	0.0	0.0
Idaho	52.93	36.5	33.1	11.6	3.4	0.6
Kansas	52.51	0.8	0.7	0	0.1	0.0
Montana	93.27	37.8	26.1	8.0	11.7	5.5
Nebraska	49.03	0.7	0.7	0.1	0.0	0.1
Nevada	70.26	58.7	58.4	47.8	0.3	1.2
New Mexico	77.77	36	26.5	13.4	9.5	8.4
North Dakota	44.45	5.6	1.1	0.1	4.5	0.9
Oklahoma	44.09	2.3	1.7	0.1	0.5	1.1
Oregon	61.6	33.9	32.4	16.1	1.5	0.8
South Dakota	48.88	3.7	2.1	0.2	1.6	5.0
Texas	168.22	4.5	4.5	0.1	0.0	0.0
Utah	52.7	35.2	34.0	22.8	1.2	2.3
Washington	42.69	12.5	12.2	0.4	0.3	2.6
Wyoming	62.34	41.6	30.0	18.3	11.6	1.9
Total	1,529.72	699.7	643.2	247.9	57.2	56.0

As can be seen in the chart, the federal government's ownership is greatest in the western states, with U.S. Government ownership of nearly 84% of Nevada, 69% of Idaho, and 67% of both Utah and Wyoming. Three percent of Texas is federally owned. Eleven of the states have 40% or more of their lands owned by the U.S., with six of those states having over 50% or more of their lands owned by the U.S. Government.

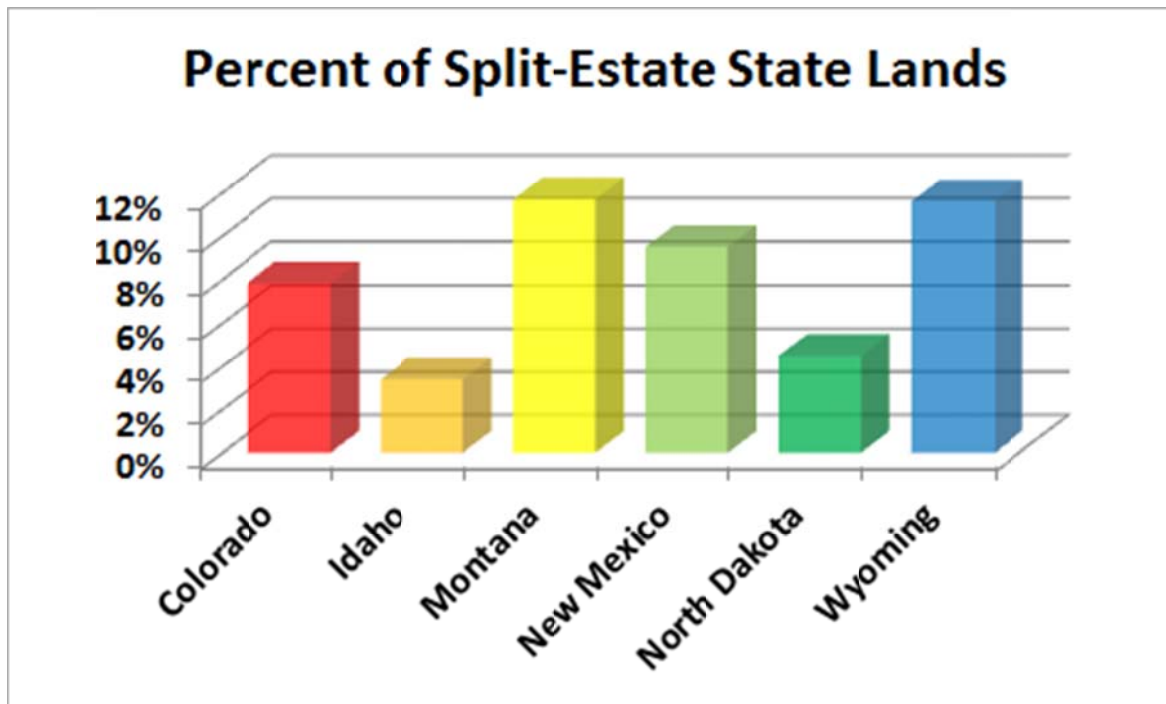


Split Estate Lands

Prior to the invention of the automobile, the grants from the federal government to those moving west generally contained a grant of all surface and subsurface lands. After the invention of the automobile, the true value and worth of oil and gas sub-surface minerals was realized. The automobile ushered in the first "real" oil boom, making many people very wealthy. Politicians in Washington realized that they had been granting all minerals to

the pioneers moving west. In order to “cash in” on the development of this new industry, they began reserving all minerals in the conveying deeds back to the United States. This created lands with two estates. The surface estate was owned by the homesteader and the subsurface estate was owned by the government. These lands were called “split estate lands.”

As seen in the graph, the states affected most by this were western states that had yet to be fully colonized. Today, over 10% of Wyoming and Montana have split estate lands. New Mexico comes in third with over 8% and Colorado with over 6%. Consider the vast ownership of both surface and subsurface rights by the federal government in a state like Wyoming. The total land mass in Wyoming is 62.34 million acres. Of that acreage, 67% of the mineral lands are owned by the government, and over 48% of the surface lands are owned by the government, with another 1.9 million acres owned by the government on behalf of native American Indians.



The Bureau of Land Management (BLM)

The Bureau of Land Management (BLM) manages nearly 700 million acres of mineral lands in the United States. This number includes all federally owned surface acreage, plus any split estate lands.

Alaska – There are two BLM districts in Alaska: Fairbanks and Anchorage. Combined, these offices manage approximately 75 million surface acres of land.

California – Nearly 15% of the state’s land mass is managed by the BLM, or 15.2 million acres of public lands. This office also manages 1.6 million acres of land in northwestern Nevada, 47 million acres of subsurface mineral lands beneath the federal surface land, 2.5 million acres beneath privately owned land, and 592,000 acres of Native American tribal lands where the BLM is acting in trust for mineral operations.

Colorado – The BLM manages 8.4 million acres of public lands in Colorado and 29 million acres of mineral lands. These lands are located primarily in the western portion of Colorado.

Northeastern States Field Office – The BLM has management responsibilities in 20 northeastern states including: Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

Southeastern States Field Office – This office manages public lands from Florida to Louisiana and into Arkansas. The office manages 23 million acres of federal mineral resources, which include oil and gas, coal, and other minerals.

Idaho – Approximately 36.5 million subsurface acres are managed from this office including mining claim records and mineral leases for lands managed by other federal agencies.

The Great Falls Oil and Gas Field Office – This office does not manage any surface public lands, but does oversee the oil and gas program support in the Western and Central Montana district offices.

North Dakota – Approximately 4.1 million acres of federal and Indian Trust mineral lands, and 58,000 acres of public lands, are managed by this office.

South Dakota – This office oversees over 274,000 surface acres and approximately 1.7 million acres of subsurface mineral acres.

Nevada – The BLM administers nearly 48 million acres of public land in Nevada comprising nearly 67% of the state's land mass.

New Mexico – This office manages 13.4 million surface acres and 26 million subsurface acres in New Mexico.

Oregon and Washington – The BLM is divided into ten separate districts within the states of Oregon and Washington.

Utah – This office administers nearly 22.9 million acres of public lands in Utah comprising nearly 42% of the state’s land mass.

Wyoming – The BLM oversees more than 17.5 million acres of public lands and 40.7 million acres of federal mineral lands in Wyoming.

Original Grants from the United States of America

An original grant for a parcel of land to a homesteader would be found on what is called a "land patent." A land patent can be defined as an exclusive grant or conveyance by a sovereign entity to another party. As homesteaders moved west, the ownership of the land they were settling was secured through these official grants and was then filed of record in the county where the land was located. In the United States, all land can be traced back to either a land patent, the first title deed to the land, or to title documented from lands originally owned by France, Spain, England, Mexico, Russian, or Native Americans.

A land patent can also be known as "letters patent," and usually issues the land to the grantee and to their heirs and assigns "forever." The patents received from the government asserted that all pre-existing title to the land had been reviewed by the sovereign authority and that clear title was sealed as irrefutable. On lands considered homesteads, these documents established supreme title to the land. In many cases, the patents granted all surface and subsurface lands to the grantee; in many others, the patents contained reservation language that reserved all minerals to the United States. Therefore, when dealing with patented lands, it is incumbent upon the title examiner to obtain a copy of the patent and to determine whether all or any portion of the mineral estate was reserved to the United States.

Native American Indian Lands

The U.S. Government also oversees and provides technical supervision for approximately 56.2 million acres of Native American Indian lands. There are approximately 326 Indian land areas in the United States known as reservations, pueblos, Rancherias, missions, villages, or communities. The Navajo Nation, which is the largest reservation, comprises 16 million acres located in Arizona, New Mexico, and Utah. The Pit River Tribe's cemetery, located in California, is the smallest, and comprises 1.32 acres. These Indian lands are still owned by the government and held in trust for the Native American Indians. One exception to this rule is the Osage Indian lands, located in Oklahoma, and owned outright by the Osage Indians.

Allotted lands – Today, over 10,000,000 acres of lands are held in trust by the U.S. Government for *individual* Native American Indians. These lands would be considered "allotted lands." According to 30 USCS § 1702, Title 30; Mineral Lands and Mining; Chapter 29; Oil and Gas Royalty Management, the term "Indian allottee" refers to "any Indian for whom land or an interest in land is held in trust by the United States or who holds title

subject to Federal restriction against alienation.” The allotment of these lands began in the late 1880’s. A few years after the Civil War, over 11,000 patents were issued to allottees through different treaties and laws.

Restricted status lands – Certain lands are considered restricted status lands or restricted fee lands. Title to these lands is held by an individual Native American or a tribe. Certain limitations contained in the conveyances restrict these lands from any encumbrances without the approval of the Secretary of the Interior.

State Indian reservation lands – Title to certain tribal lands are held in trust as *state trust lands* on behalf of a tribe. These lands evolved from treaties or other settlements made between a tribal group and the state, are not subject to state property tax, but are subject to state law.

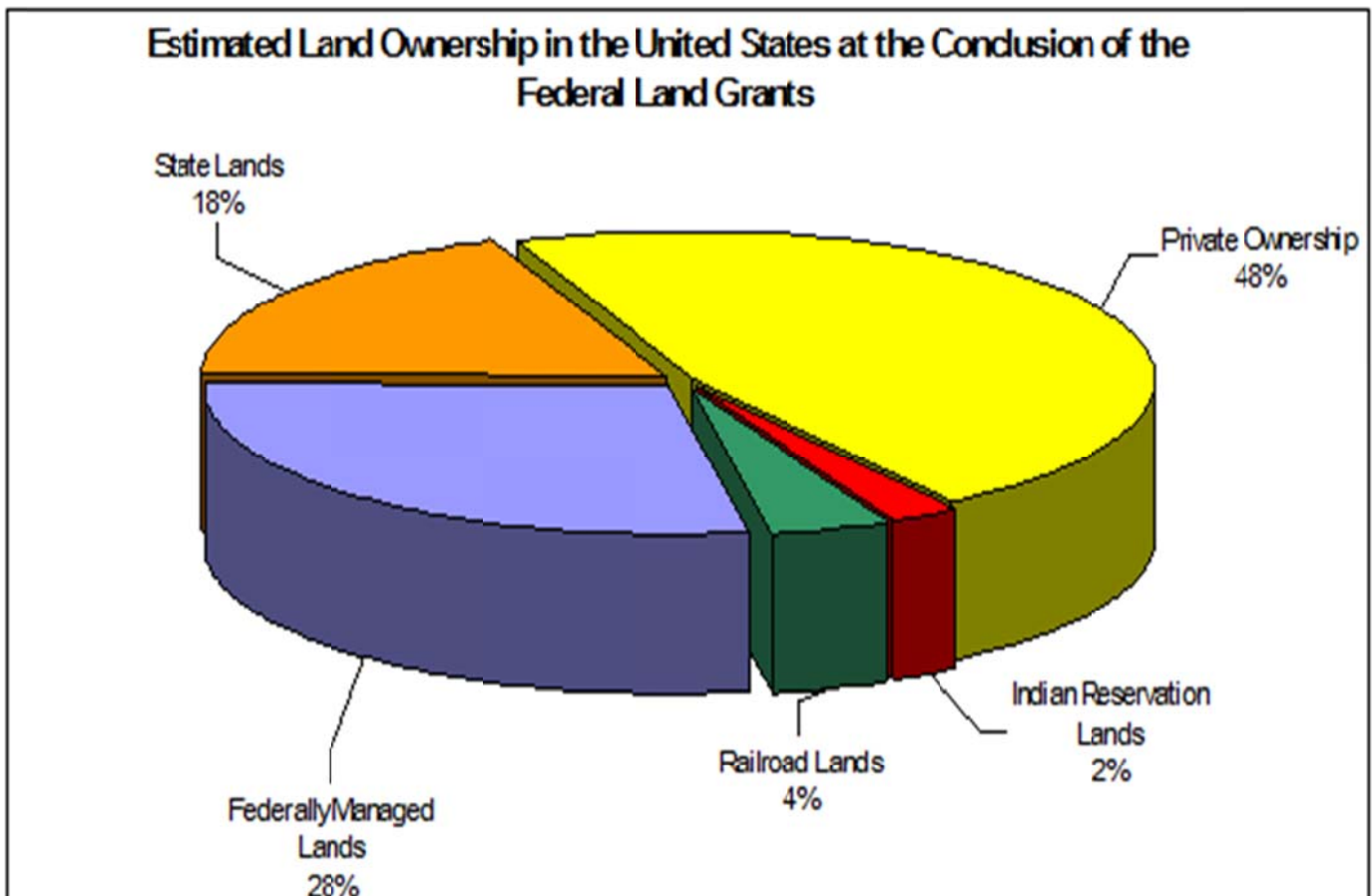
The Bureau of Indian Affairs (BIA) – The BIA is the primary federal agency responsible for overseeing the government’s *trust* responsibility on behalf of Native American Indian lands. Their Mission Statement is as follows:

“The BIA’s mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of self-determination.”

There are twelve regional BIA offices responsible for all Bureau activities within a defined geographical area. They are Alaska, Eastern (covering eleven states, from Maine, to Florida, to Louisiana), Eastern Oklahoma, Great Plains (covering portions of South Dakota, North Dakota, and Nebraska), Midwest (covering Iowa, Michigan, Minnesota, and Wisconsin), Navajo (covering portions of Arizona, Utah, and New Mexico), Northwest (covering Washington, Oregon, Idaho, Montana), Pacific (covering California), Rocky Mountain (covering portions of Montana, Wyoming, and North Dakota), Southern Plains (covering portions of Oklahoma, Kansas, Nebraska, and Missouri), Southwest (covering portions of New Mexico and Colorado), and Western (covering Arizona, Nevada, and Utah).

Who owns what percentage of the land?

The land mass of the United States totals close to 2.3 billion acres of land. The following chart gives an estimate of how the land ownership of the United States was divided at the conclusion of the Federal Land Grants. Mineral ownership is quite another matter. The federal government reserved 58 million acres of subsurface minerals from the fee lands. States sold nearly half of their land to settlers, and in many cases the minerals were conveyed with the surface. The railroads also sold great portions of their surface acreage, keeping large portions of the minerals.



State Owned Mineral Lands

During the time that the federal government was forming states out of territories, education was a priority to the founding fathers, and influenced their land policy. They did not want an expanded country full of illiterates, and they did not want children to grow up without the ability to receive an education. Therefore, *the Land Ordinance of 1785* and *The Northwest Ordinance of 1787* established guidelines for "state trust lands," or lands that would be held by the states for the purpose of education. *The Northwest Ordinance* stated that public education was considered critical to the success of the western settlements; it further stated, "Religion, Morality, and Knowledge being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged."

Public education was a critical issue even before the expansion of the west. Many of the original thirteen colonies required the education of all children, and some even required the education of all citizens. Thus, it was no wonder that one of the first orders of business was to grant to the states or territories certain lands set aside for public education, and then place the success of this institution squarely into the hands of the individual states.

The important thing to remember is that when these lands were granted to the states, oil and gas mineral reservations were seldom invoked by the federal government. Therefore, in most cases, these minerals passed to the states and are an issue today in the oil and gas industry. During this period of settlement, over eighty million acres of surface and mineral lands were granted into these state trust lands.

Between 1803 and 1858, fourteen new states were admitted to the Union: Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, California, and Minnesota. During this time, only Section 16 was designated as school trust land.

Beginning with the admission of Oregon to the Union in 1858, two sections (Section 16 and Section 36) were designated as school trust lands. Several states, including Oregon, Kansas, Colorado, Nebraska, Idaho, Oklahoma, Wyoming, Washington, Montana, North Dakota, and South Dakota received these two sections.

Later, as Utah, Arizona, and New Mexico were admitted to the Union, four sections were granted as school trust lands (Sections 2, 16, 32, and 36).

Nevada received 2,000,000 acres in lieu of specified sections

lot 4	lot 3	lot 2	lot 1	lot 4	lot 3	lot 2	lot 1	lot 4	lot 3	lot 2	lot 1	lot 4	lot 3	lot 2	lot 1	lot 4	lot 3	lot 2	lot 1
lot 5																			
lot 6	6			5				4								2			1
lot 7																School Lands			
lot 1																			N/2 of Section - 320 Ac
lot 2																			
lot 3	7			8				9											12
lot 4																			100 ac
lot 1																			NW/4
lot 2																			NE/4
lot 3	18			17				16											13
lot 4								School Lands											SW/4
lot 1																			SE/4
lot 2				20															
lot 3	19							21											24
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lot 4				School Lands															School Lands

Normal Township and Range showing State Trust Lands in New Mexico

Overall, the U.S. Government granted to states or territories lands for Public Buildings, Penitentiaries, Universities and School Lands (as a source of revenue for support of the common schools).

Arkansas – In 1939, the General Assembly of the State of Arkansas required that the Commissioner of State Lands reserve unto the State “all coal, oil, gas, and mineral rights” on lands owned by the state and thereafter returned to private ownership. Act 94 of the Acts was later approved and became effective on February 24, 1943. This Act stipulated that any deed disposing of lands that had been forfeited to the State because of non-payment of taxes would not contain any restrictive covenants or reservations relative to such oil, gas, and mineral rights. Section 5 of Act 331.

Colorado – In Colorado, the State Land Board owns over four million acres of land. These lands are divided into three categories:

1. Surface and sub-surface mineral state (oil, gas, coal, and other minerals);
2. Surface ownership only;
3. Sub-surface mineral estate ownership only.

The State Land Board manages the exploration and development of coal, oil, gas, and other minerals. It oversees quarterly oil and gas lease sales, and

makes sure that the State is compensated for its resources. Currently, the state's leases require a five-year term, rentals of \$2.50 per acre per year for the life of the lease regardless of production, and a royalty of 1/6 or 16.67% of all production.

Permanent School Fund – Most of the lands owned by the state of Colorado were lands granted to the state by the U.S. Government as state school lands. The State sees these lands as an endowment of assets that should be held in a perpetual trust for the funding of public schools. Therefore, several years ago, Colorado set up a permanent school fund to help finance public primary education. The money that comes from state oil and gas royalty payments is deposited into this fund. Only dividends and interest from these funds are distributed to school districts on a per pupil basis. In 2011, the State Land Board's mineral revenue totaled over \$108 million.

Louisiana – To fully understand mineral ownership in the state of Louisiana you must first understand Louisiana's history.

In 1682, LaSalle, a French explorer, named the region of Louisiana after Louis the 14th, the King of France. The territory of Louisiana eventually spread all the way to Canada, and comprised lands in Arkansas, Oklahoma, Missouri, Kansas, Nebraska, Iowa, Minnesota, North Dakota, South Dakota, Wyoming, Colorado, and Montana. The French claim on Louisiana changed in 1803 when President Thomas Jefferson negotiated the purchase of the Louisiana territory from Napoleon for \$15 million. Nine years later, on April 30, 1812, the United States admitted Louisiana as the 18th state into the Union. It covers 51,843 square miles, making it the 31st largest State. 43,566 square miles of this area cover land and 8,277 square miles cover water area regarded as state territory. All lands in Louisiana were once owned by France, Spain, the United States, or the State of Louisiana. The land grants from the United States or the State of Louisiana to homesteaders were typically done through the patent process.

French influence on present day mineral ownership

Since Louisiana is a civil law state, having established its laws from Napoleonic Code rather than from common law rules, Louisiana is much different than most every other state when it comes to mineral ownership. For instance, in most states a mineral owner can sell or reserve mineral rights into perpetuity. Louisiana recognizes what is called *mineral servitude*. Since, mineral ownership is not a part of land ownership in the state of Louisiana, the landowner can only convey or reserve what he or she owns. In this case, the landowner only owns the right to produce minerals. When this right is conveyed or reserved, a mineral servitude is created. This is much like a 10-year term conveyance. This servitude is subject to what is known as *prescription* resulting from non-use of the minerals for 10 years. If a

party owns a mineral servitude for a period of ten years and the minerals have not been used, they will revert back to the current landowner.

A mineral servitude can only belong to someone other than the landowner. The owner of the mineral servitude does not own the minerals but only possesses the exclusive right to explore and develop the property for oil and gas, which can be reduced to ownership only through actual drilling and production. Thus, the owner of the servitude has the right to lease the minerals or drill their own well.

Louisiana State owned minerals

Since 1921, the Louisiana Constitution provided that all mineral rights on property sold by the state would be reserved to the state. LSA-Const. Art. 9, §4 (formerly LSA-Const.1921. Art. 4, §2).

Sec. 4 (A), "the sale of state lands will automatically effect a reservation of mineral rights." This reservation of minerals takes place even if the conveying document from the State fails to reserve the mineral rights.

Subsection (B) "lands and mineral interests of the state, of a school board, or of a levee district shall not be lost by prescription." The prescription of minerals does not apply to the state owned minerals as they are owned by the state perpetually.

If the state acquires property and the mineral rights have been reserved by the landowner, the 10-year prescription period would not apply as long as title to the surface is held by the state. Normally, the reserved mineral interest would be subject to the 10-year period of non-use, but this does not apply to sales acquired by the state. If the state were to sell the same land to an entity not covered by the statute, the 10-year prescription would begin again where it had left off. On the other hand, the state could acquire property from a landowner who only owned surface lands, but whose interest had already been burdened by servitude, and whose interest was subject to the 10-year prescription of non-use. In other words, at the end of 10 years of non-use the mineral interest would revert back to the landowner. If the landowner reserves the minerals in the sale of the property to the State of Louisiana, prescription will continue to run on the existing servitude.

Michigan – The state of Michigan can obtain ownership of land when a land owner fails to pay taxes. When this happens, the state will often sell the surface and retain the mineral rights. *Winter v State Highway Comm*, 376 Mich 111; 135 NW2d 364 (1965).

All minerals, including oil and gas minerals owned by the State of Michigan, are controlled by the Department of Natural Resources (DNR) MCL 324.502,

.2156, .33936. Oil and gas leases are granted on behalf of the state by the DNR with the state receiving tax exempt royalty. MCL 324.502. Effective April 5, 2002, oil and gas production beneath the Great Lakes is prohibited except for existing leases. 2002 PA 148.

Prior to 1963, all lands used for county roads and highways that were conveyed to a board of county commissioners or to the state included all oil and gas rights, unless those rights were specifically excepted in the conveyance. *Winter v State Highway Comm'r*, 376 Mich 11; 135 NW2d 364 (1965). A review of each conveyance should be made in order to determine the government's claim to oil and gas rights.

After 1963, and under the Michigan Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*, unless the oil and gas rights are specifically included in a conveyance to the state or county agency, they are deemed to be excluded. MCL 213.53. Likewise, ownership of the oil and gas minerals beneath platted streets and alleyways may, indeed, belong to those who own land contiguous to the streets and alleyways, and may not belong to villages and counties in Michigan. *Village of Kalkaska v Shell Oil Co* (after remand), 433 Mich 348; 446 NW2d 91 (1989).

Montana – When Montana first became a state, Congress granted certain lands to the state in order to help support a variety of public institutions, primarily public schools. These state trust lands are held in trust for designated beneficiaries and are managed by the Minerals Management Bureau, who oversees all permitting, leasing, competitive bidding, collecting, and posting lease rentals and royalties. Land can also be sold in order to generate revenue for the designated beneficiaries. Designated beneficiaries include, among others, Common Schools, the University of Montana, technical schools, the School for Deaf and Blind, the State Reform School, and veterans' homes.

Since 1927, when a patent was issued by the state, all oil, gas, and other mineral deposits were reserved. Thus, the purchaser of state lands acquired no interest in the minerals. MCA Section 77-2-304.

Today, there are approximately 5 million surface acres and 6.2 million mineral acres of trust lands in the state. The surface acres are managed for agriculture, grazing, timber, and commercial uses. The mineral acres are managed for oil, gas, coal, and other mineral development.

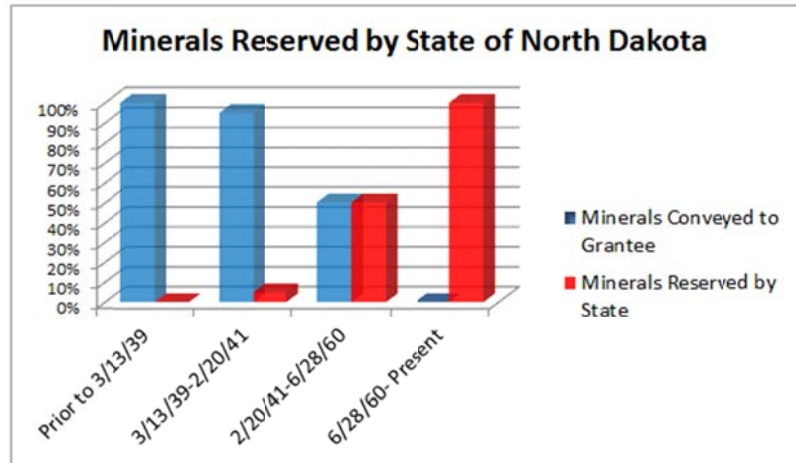
North Dakota – When a patent was issued by the State of North Dakota prior to March 13, 1939, the State's mineral estate as well as the surface estate was conveyed. N.D. Mineral Title Standard 2-02.1.

After March 13, 1939, but prior to February 20, 1941, a reservation of minerals by the State included a 5% interest in oil, gas, and related hydrocarbons.

After February 20, 1941, but prior to June 28, 1960, a reservation of minerals by the State was the same, except that the percentage was 50%. N.D. Mineral Title Standard 2-02.2.

Since June 28, 1960, in any transfer of original grant lands, the State has reserved all minerals, including oil and gas. N.D. Mineral Title Standards 2-02.3-01.

For non-grant lands, from June 28, 1960 to July 1, 1973, the State reserved 50% of all oil and gas. From July 1, 1973 to the present, the State reserves all interest in oil and gas. N.D. Mineral Title Standards 2-02.3-02 and 2-02.3-02.2.



Oklahoma – Mineral ownership in Oklahoma is tied firmly to its history. In 1803, the land now known as Oklahoma was purchased by the United States from France as part of the Louisiana Purchase.

In the 1820's, the U.S. Government developed a policy to move all Native American Indian tribes located east of the Mississippi River to the Indian Territory in western Arkansas and Eastern Oklahoma. A large area of land, designated as the last homeland for several Native American Indian tribes, was established, which covered most of present day Oklahoma. Tribes created distinct nations, governments, and schools. Five tribes, known as the Five Civilized Tribes (Cherokee, Chickasaw, Choctaw, Creek, and Seminole) were among the tribes relocated. Each of these five tribes were given large allotments of land and became self-governing "Nations." This accounts for the large Native American Indian population in Oklahoma today.

After the Civil War, tens of thousands of pioneers began moving west and the U.S. Government enacted new treaties that forced the tribes to exchange their communal lands for individual property allotments.

In 1870, the Osage Tribe, which had been located in Kansas, was also removed from their reservation lands. With the payment they received, the tribe purchased from the Cherokee Indians 1.57 million acres of land they had previously occupied in the Territory of Oklahoma. Because of this purchase of land, they claimed a stronger position of control over the land than did other tribes who only had the right of occupation for their tribes.

Through the purchase, the Osage received surface and subsurface mineral rights to the land.

Between 1889 and 1895, the U.S. Government held six land runs. Future land owners came from everywhere including Poland, Germany, Ireland, and the Slavic nations. Under the provisions of the Homestead Act of 1862, a legal settler could make a claim to 160 acres of public land if they lived on and made improvements to the land for five years. Most of the patents from the government to these sellers conveyed both surface and subsurface rights.

On November 16, 1907, Oklahoma became the 46th state, created from both the Tribal lands and the Oklahoma Territory. As a result, the state contains 44.45 million areas of land.

BLM Land – Approximately 2.3 million acres are managed by the Bureau of Land Management, “BLM,” on behalf of the United States. These lands comprise 1.7 million surface acres, 0.1 million public land acres, and 0.5 million split estate acres.

Indian Trust Lands – In 2009, 1.1 million acres were managed by the BLM on behalf of the Indian Trust lands. The BLM provides technical supervision of mineral development on more than 56 million acres of American Indian trust lands across in the United States. The Osage lands are an exception. The BLM Oklahoma Field Office ensures that any oil and gas operations on Indian lands are in accordance with the lease terms and approved plans for development.

State owned lands – The state of Oklahoma owns approximately 1.1 million acres of oil and gas royalty rights, plus an additional 758,000 surface acres. These lands are managed by the Oklahoma Commissioners of Land Office, “COLO.” Patents issued by the State of Oklahoma prior to 1933 did not contain any mineral reservation. After 1933, the COLO evaluated lands as to their potential oil and gas value. If the land was considered potentially valuable for oil and gas purposes, the COLO had the right to reserve those minerals in their patents. §64 O.S. 282, 1064.

After March of 1967, all leases granted by the COLO contained a Pugh clause, whereby the secondary term of the lease would only be extended “as to the producing formation or formations.”

Osage Nation Mineral Estate – The Osage Mineral Estate is managed by the Osage Agency and covers approximately 1.475 million acres also known as Osage County, Oklahoma. The tribe own 100% of all mineral rights within the county. Tribal lands have been allotted but all mineral rights are held in common so that every member of the tribe is entitled to one “headright” (an equal share of oil and gas royalty).

Texas – Texas’ mineral ownership is also heavily influenced by the state’s history. The first pioneers to receive land grants received them from the governments of Spain and Mexico. Later, the Republic of Texas and the State of Texas issued patents to settlers. Although certified copies of the patents that were obtained from the General Land Office are usually recorded, they were not required to be recorded in the county where the land was located, *Mathews v. Caldwell*, 258 S.W. 810, 813 14 (Tex. Comm’n App. 1924).

The first land grants from either Spain or Mexico vested title in only the soil and excluded the rights to mines, metals, or minerals, unless the conveying grant expressly designated otherwise. Texas adopted this same procedure and continued to grant only surface rights. Therefore, land granted prior to 1866 contained no conveyance of minerals unless expressly granted.

The state Constitutions of 1866, 1869, and 1876 changed this procedure and retroactively released complete ownership of mines and minerals back to the owner of the soil. In Texas, it is assumed that a grant to land that occurred prior to 1876 contained a grant to all minerals, unless the grant contained an express reservation.

Possible mineral reservations on patented lands that were offered between September 1, 1895 and August 21, 1931, should be determined through the General Land Office with a letter or Certificate of Facts, rather than from the patent itself.

Permanent School Fund Lands – In 1876, Texas set aside 42,500,000 acres of unsold land as “public free school land,” and determined that these lands be set aside to create a Permanent School Fund (PSF). The intent was for the land to be sold and the money used to help finance public schools. Money received from these lands was to be deposited, with only interest income used for education. This interest income is dispersed by the State Board of Education and allocated to every school district on a per-pupil basis. The principal sum remains untouched, creating an inexhaustible source of money for educational purposes. Since its beginning, more than \$11 billion has been deposited into the PSF from oil and gas production. The General Land Office manages these lands, including leasing the subsurface minerals. Currently, the majority of the revenue generated from these lands comes through oil and gas revenue.

The Texas PSF currently owns:

- 14 million acres of mineral land
- 5.8 million acres of surface and mineral land

PSF lands are leased by the Texas School Land Board on a sealed bid basis. The sales are held quarterly and tracts of land are nominated by those in the

industry. To nominate a tract of land, a nomination letter must be sent with a \$100 per tract nomination fee.

Mineral Classified Lands – Between 1895 and 1931, most of the unsold land within Texas was located in western Texas and placed into one of four categories. The categories were “grazing land,” “mineral land,” “agricultural land,” or “timber land.” Approximately seven million acres of this land was set aside as mineral classified lands. As the state sold this land, they reserved the mineral estate. Although the state owns the minerals to these lands, the surface owner acts as the agent of the state for leasing purposes. As a result, the state allows the surface owner to receive 50% of all bonus and royalty. The revenue generated from this land goes to the PSF. For leasing purposes, the Texas General Land Office, “GLO,” must approve any bonus amount and no lease becomes effective until it is approved by the GLO.

Free Royalty – Free Royalty lands covers approximately 829,000 acres that have been sold by the state. These conveyances did not reserve minerals to the state, but rather reserved royalty or non-participating to the state. Reservations ranged from 1/16th to 1/8. The revenue generated from this free royalty goes to the PSF. For leasing purposes, a certified copy of the lease on these lands must be filed in the Land Office and any pooling of the State’s interest must be approved by the School Land Board.

Permanent University Fund Lands – Originally, in 1839, the Republic of Texas set aside 221,400 acres of land to help fund “higher” education. The Texas Constitution, in 1876, expanded the idea into the Permanent University Fund “PUF.” This state endowment was created to help fund universities. The revenue was to be generated from 2.1 million acres of public lands located mostly in West Texas. The fund currently contributes to 18 institutions and 6 agencies.

Wyoming – When Wyoming became a state, the federal government granted approximately 4.2 million acres of land to the state, in order to help finance and maintain schools and other state institutions. Beneficiaries to the funds generated from these lands include among others, the University of Wyoming, common schools, veterans’ homes, boys and girls Schools, the State Hospital, penitentiaries, and a Miner’s Hospital. These lands are managed by the Board of Land Commissioners by and through the Office of State Lands & Investments.

Permanent Land Funds or Permanent Income Funds – Revenue that comes from mineral royalties (non-renewable resources) goes into the *Permanent Land Account*. Only interest derived from these funds are distributed to the beneficiaries. Revenue that comes from lease rentals or lease bonus (renewable resources) is deposited into the *Permanent Income*

Accounts. The total income from these funds can be distributed to the beneficiaries. The Wyoming State Treasurer's Office manages and distributes these funds to the beneficiaries. In Wyoming, there are a minimum of three competitive Oil and Gas Lease Auctions each year. Prior to an auction, lands can be nominated by a company or an individual. Prior to the auction, the lands are mapped and either accepted or withdrawal by the Board, the Department of Game and Fish and the State Historic Preservation Office.

New York – New York Environmental Conservation - Title 11 - § 23-1101 provides a procedure for obtaining a lease from the state.