

## FIDUCIARY DUTIES IMPOSED ON ALL TRUSTEES

1. Duty of Undivided Loyalty to the Beneficiary.  
This duty includes the duty "to administer the trust solely in the interest of the beneficiary." (Restatement on Trusts, § 170, p. 431)
2. Duty to Preserve Trust Property  
"The Trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property." (ibid. § 176, p. 451)
3. Duty to Exercise Reasonable Care and Skill  
"The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has." (ibid. §174, p. 448)
4. Duty to Make Trust Property Productive  
"The trustee is under a duty to use reasonable care and skill to make the trust property productive." (ibid. § 181, p. 466)  
"A trustee of land is normally under a duty to lease it or to manage it so that it will produce income." (ibid. § 181, p. 466)  
"... the Trustee is not under a duty to make the land productive if the land is unimproved land which cannot be leased and cannot otherwise be made productive without making improvements which the trustee is not empowered to make." (ibid. § 181, p. 466)
5. Duty not to Delegate  
"The trustee is under a duty to the beneficiary not to delegate to others the doing of acts which the trustee can reasonable be required personally to perform." (ibid. § 171, p. 441-2)
6. Duty to Take and Keep Control  
"The trustee is under a duty to the beneficiary to take reasonable steps t take and keep control of the trust property." (ibid. § 175, p. 450)  
This duty includes the duty to take and keep exclusive control.
7. Duty to Keep and Render Accounts  
"The trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust." (ibid. § 171, p. 445)
8. Duty to Furnish Information  
"The trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him or a person duly authorized by him to inspect the subject matter of the trust and the accounts and vouchers and other documents related to the trust." (ibid. § 173, p. 447)

9. Duty to Pay Income to Beneficiary

"Where a trust is created to pay the income to a beneficiary for a designated period, the trustee is under a duty to the beneficiary to pay to him at reasonable intervals the net income of the trust property." (ibid. § 182, p. 467)

10. Duty to Keep Trust Property Separate

"The trustee is under a duty to the beneficiary to keep the trust property separate from his individual property, and so far as it is reasonable that he should do so, to keep it separate from other property not subject to the trust and to see that the property is designated as property of the trust." (ibid. § 179, p. 456)

He (she) must keep different trusts separate and not mingle funds of separate trusts. However, the trustee "can properly deposit in a single trust account ... the funds of several trusts, provided that it keeps an account record of the contributions of the separate trusts." (ibid. §179, p. 457-8)

11. Duty to Earmark Trust Property

"Ordinarily it is the duty of the trustee to earmark trust property as trust property. Thus, title to land acquired by the trustee as such should be taken and recorded in the name of the trustee as trustee." (ibid. § 179, p. 458) I think the state has recorded trust property in its name and not as trustee for \_\_\_\_\_.

"Certificates of stock should be issued in the name of the trustee as trustee." (ibid. § 179, p. 458)

"The trust property should be ordinarily so earmarked as to indicate not only that it is trust property but that it is property of the particular trust upon which it is held." (ibid. § 179, p. 458)

12. Duty to Defend Action

"The trustee is under a duty to the beneficiary to defend actions which may result in a loss to the trust estate, unless under all the circumstances it is reasonable not to make such defense." (ibid. § 178, p. 456)

The trustee must appeal if trust loses and it is reasonable to appeal.

The trustee is empowered to compromise or arbitrate claims.

13. Duty to Enforce Claims

"The trustee is under a duty to the beneficiary to take reasonable steps to realize on claims which he holds in trust." (ibid. § 177, p. 454)

14. Power to Compensate, Arbitrate, and Abandon Claims

"The trustee can properly compromise, submit to arbitration, or abandon claims affecting the trust property, provided that in so doing he exercises reasonable prudence." (ibid. § 192, p. 513)

15. Duty to Deal Impartially with Beneficiaries

"When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them." (ibid. § 183, p. 468)

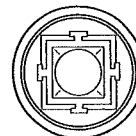


4. Rights and Powers of Beneficiaries-

a. §199 Rest II of Trusts

- i. To compel the trustee to perform his duties as trustee
- ii. To enjoin the trustee from committing breach
- iii. To compel trustee to redress a breach of trust
- iv. To appoint a receiver to take over possession of the trust property
- v. To remove the trustee

b. Burden of Proof- the crux of a trustee's duties



SUMMARY CASE FACTS:

*United States v. Ervien*, 251 U.S. 41 (1919, United States Supreme Court)

1. Arizona/New Mexico Enabling Act stated: “the public lands granted to the State of New Mexico.. shall be held in trust for the .. objects for which the lands were granted, and any disposition of such lands.. shall be deemed a breach of trust.” The Enabling Act also imposed procedures for selling and leasing the land, and for handling its proceeds.
2. New Mexico Legislature passed a bill authorizing Land Commissioner to use up to 3% of gross revenue from sales and leases of trust land for publicity promoting tourism and development of the State.
3. State’s intention was that promoting New Mexico increased the value of the trust lands by increasing demand, and helped pay for administration of the trust because of additional revenue it tended to generate.
4. The attorney general of the U.S. sued New Mexico arguing the law was a breach of trust.

*Lassen v. Arizona* (1967, United States Supreme Court) 385 U.S. 458.

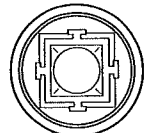
1. Arizona Enabling Act requires that school trust lands may only be sold at “public action” but it does not say anything about what use the state, itself, may make of trust lands.
2. Arizona statutes permitted the state highway department to take rights of way across school trust lands by paying the trust for its appraised value, minus the enhanced value of the land created by the road.
3. In practice, Arizona, presumed that highway access enhanced the value of the land in excess of the value of the right of way taken (so no money was put in the trust account).

*State ex rel Ebke v. Board of Educational Lands & Funds*, 47 N.W.2d 520, (Nebraska 1951).

1. By regulation, the State Land Board established a fixed lease rate for school trust lands based on an appraised value formula.
2. State statute permitted a prior lessee to renew his lease at the fixed rate if he could demonstrate that he had taken good care of the land.
3. A competing bidder offered a \$2,500 cash bonus in addition to the formula rental.
4. The land board turned down the high bid and awarded the lease to the renewing lessee at the formula rate.

*MonTRUST v. State of Montana* (Montana, 1999) 1999 Mont. 263, 989 P.2d 800

1. In court, school trust beneficiaries group attacked 15 statutes as unconstitutional violations of trust obligations.
2. One of the statutes allowed long-standing users of rights of ways across trust lands (25 years or more) to apply for a perpetual permit to continue that use at a cost measured by 1974 values.
3. MonTRUST argued that this grant offended common law trustee duties.
4. MonTRUST also asked the court to award it attorney’s fees as a beneficiary suing to enforce trust responsibilities.



## Bibliography

Bogert, "Trusts and Trustees" (multiple editions)

Loring, "A Trustee's Handbook," Ed. Charles E. Rounds, Jr., Aspen publishers. (Updated annually)

Scott on Trusts (multiple editions)

Restatement of Trusts, II and III, American Law Institute

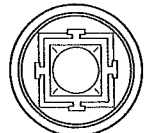
Fairfax & Issod, "Trust Principles As a Tool for Grazing Reform: Learning From Four State Cases," Environmental Law Review, Vol. 33, p. 341 (2003)

Misc. reports and position papers at StateTrustLands.org, a national non-profit information clearinghouse and advocacy organization (primarily composed of the Sonoran Institute, the Lincoln Institute of Land Policy), at:

<http://statetrustlands.org/>

In particular, the following link contains an excellent summary of the trust responsibilities of state school trust managers in light of the legal, political, and practical issues that affect trust management:

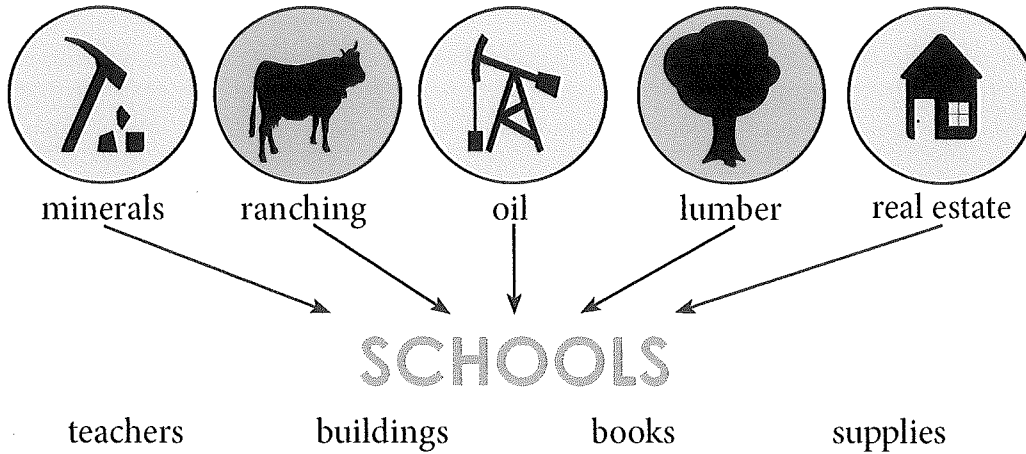
<http://statetrustlands.org/about-state-trust-lands/trust-responsibility.html>



# What are School Trust Lands?

When states were created, Congress granted them school trust lands. The money that the states earned from these lands was to be put in trust funds so future, as well as current, generations would have money for education.

## What are trust lands used for?

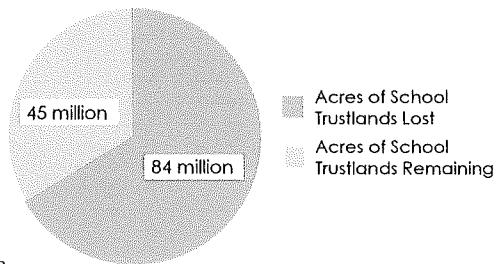


## But there's a problem!

Over the years, school trusts lands and funds have been **overlooked** and **mismanaged**.

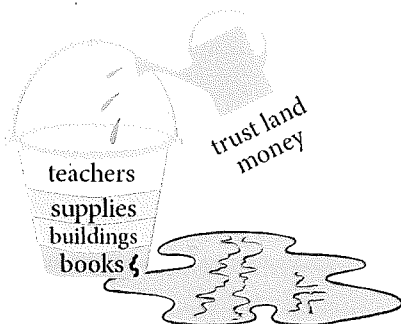
Over time, **134 Million** acres of school trust lands were granted.

That's about the size of California and Florida combined! Imagine if all the land in those two states was used just to generate money for education.



Today only an estimated **45 million** acres continue to benefit schools. That's only one third of the original total grants.

Today **trust lands money is leaking out of education funding**. That means school children are losing their money.



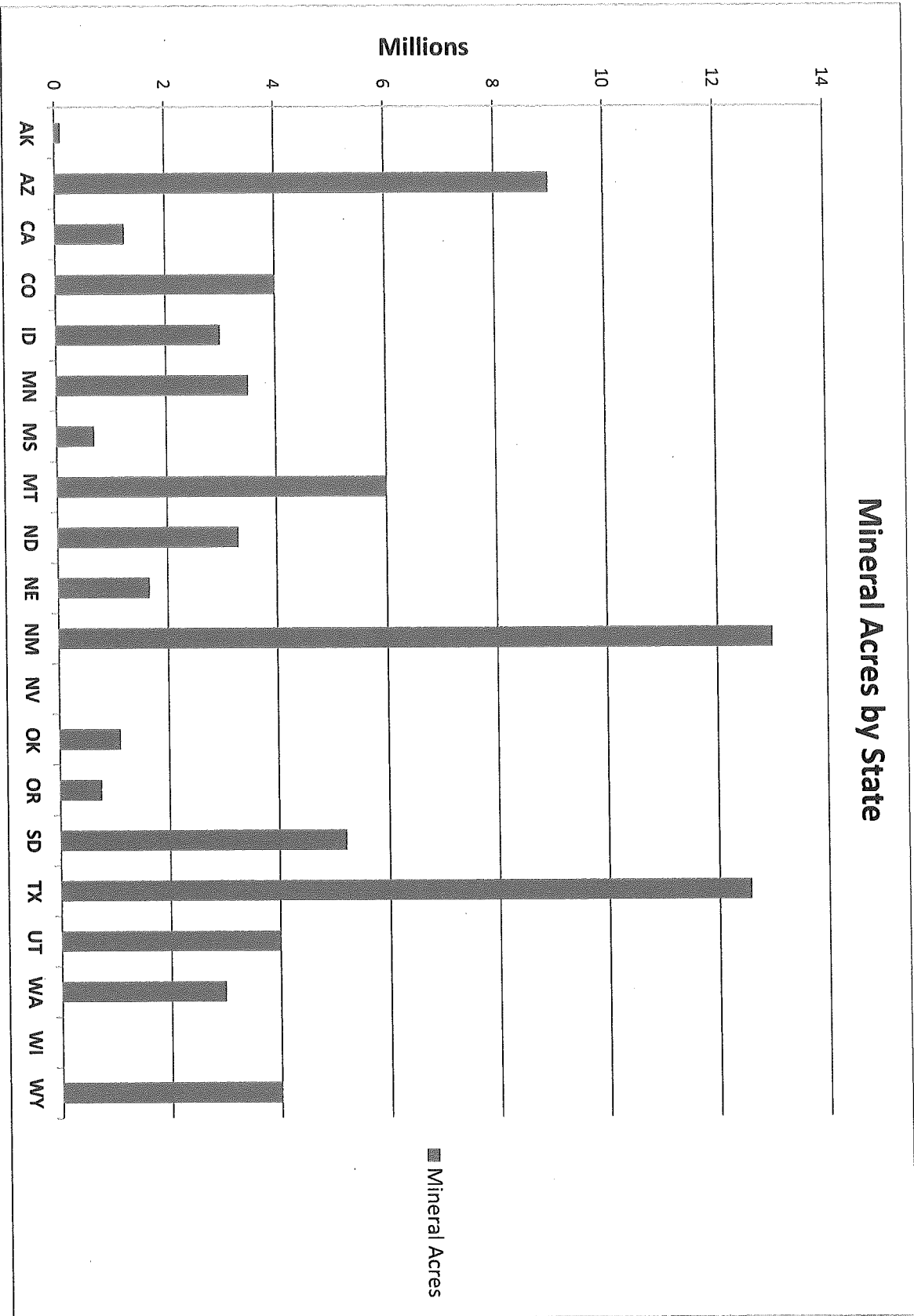
## FY 2010 THREE LARGEST REVENUE SOURCES BY STATE

|           |  |
|-----------|--|
| <b>AK</b> | Assumed to be oil and gas and minerals. No data has been provided by the Land office.  |
| <b>AZ</b> | Perpetual Rights-of-Way (\$52 million)<br>Mineral Royalty (\$24 million)<br>Commercial Leases (\$22 million)                                 |
| <b>CA</b> | Geothermal (\$5 million)<br>Oil and gas (\$1 million)<br>Surface Rentals (\$163 thousand)  |
| <b>CO</b> | Oil and Gas (\$44 million)<br>Coal (\$7 million)<br>Grazing (\$6 million)  |
| <b>ID</b> | Forestry (\$36 million)<br>Residential real estate (\$5 million)<br>Minerals (\$3 million)   |
| <b>MN</b> | Iron Ore/Taconite (\$10 million)<br>Timber and forestry (\$8 million)<br>Non-ferrous mineral lease revenue (\$290 thousand)                  |
| <b>MS</b> | Oil and gas royalty (\$26 million)<br>Surface rents(\$19 million)<br>Timber sales (\$16 million)   |
| <b>MT</b> | Minerals (\$118 million)<br>Trust and Legacy Interest (\$23 million)<br>Grazing and agriculture (\$18 million)                               |
| <b>ND</b> | Oil and gas (\$294 million)<br>Net capital gains (\$93 million)<br>Royalty (\$88 million)  |
| <b>NE</b> | Agricultural rent and bonus (\$31 million)<br>Mineral rent and bonus (\$2 million)<br>Land sales, easements, and condemnations (\$1 million) |
| <b>NM</b> | Oil and gas (\$390 million)<br>Coal (\$8 million)<br>Grazing (\$5 million)   |

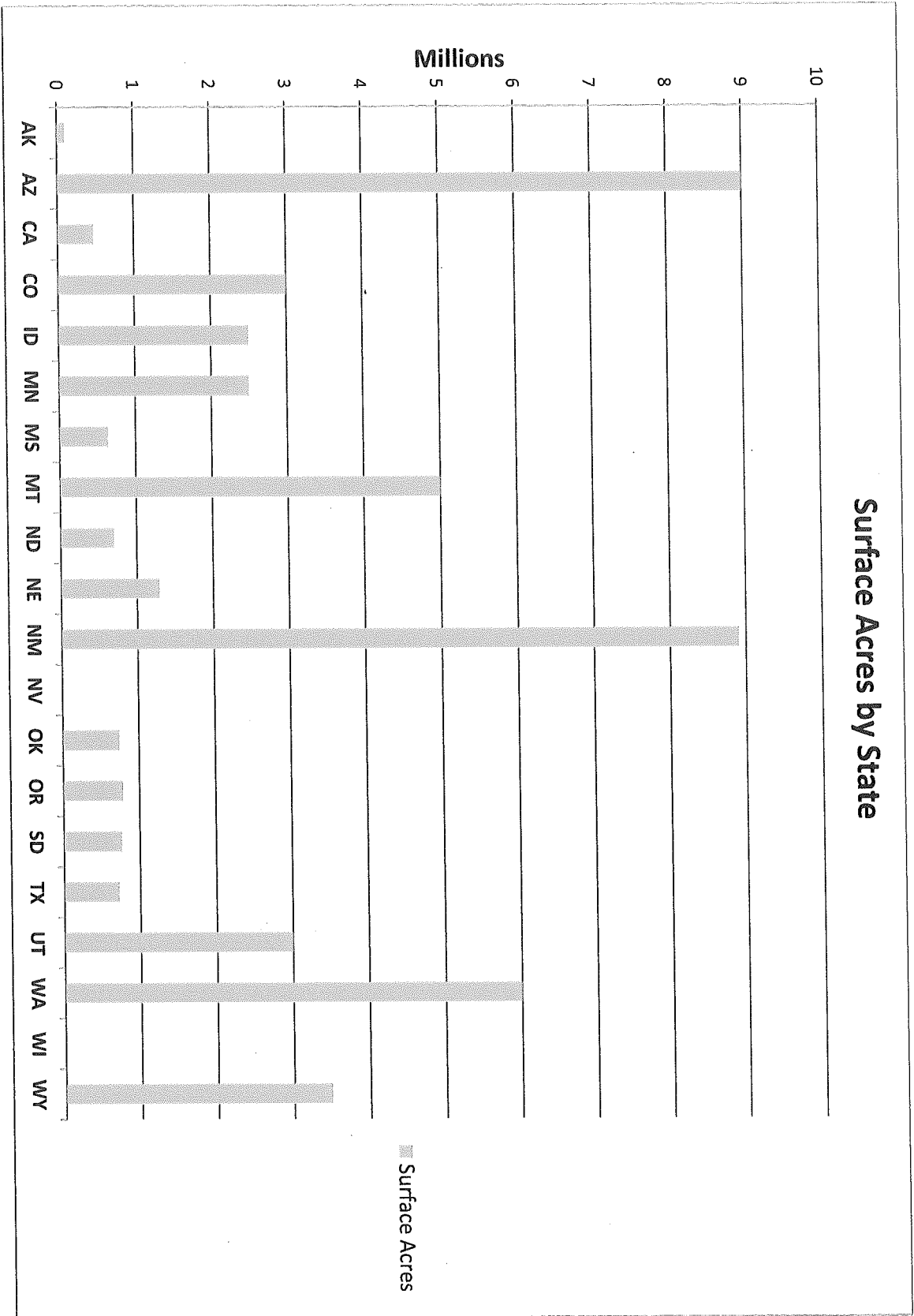


|           |  |
|-----------|--|
| <b>NV</b> | There are less than 3,000 acres of remaining school trust lands in Nevada.<br>Easement fees<br>Lease fees for use          |
| <b>OK</b> | Gains from sales of securities (\$102 million)<br>Bond income (\$78 million)<br>Oil and gas royalty (\$39 million)         |
| <b>OR</b> | Forestland (\$10 million)<br>Land sales (\$3 million)<br>Waterways and other statutory revenue (\$3 million)               |
| <b>SD</b> | Surface leases (\$5 million)<br>Interest on investments (\$4 million)<br>Minerals (\$3 million)                            |
| <b>TX</b> | Oil and gas (\$304 million)<br>Surface revenue (\$35 million)  |
| <b>UT</b> | Oil and gas(\$56 million)<br>Coal (\$16 million)<br>Other minerals (\$4 million)   |
| <b>WA</b> | Timber sales(\$178 million)<br>Aquatic leases (\$30 million)<br>Agricultural leases including grazing (\$12 million)       |
| <b>WI</b> | Fines and forfeitures (\$18 million)<br>Unclaimed and escheated property (\$15 million)<br>Timber revenue (\$337 thousand) |
| <b>WY</b> | Oil and gas (\$196 million)<br>Coal (\$12 million)<br>Sodium trona (\$9 million)   |

# Mineral Acres by State



# Surface Acres by State



# State Surface & Mineral Acres

