IN-LIEU LANDS FOR SCHOOLS IN SOME WESTERN STATES

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July 11, 2004

Hundreds of millions of acres of land were once held in trust to support our public schools. Of those original trusts, schools still hold beneficial title to about 40 million acres. One hundred and fifty four years since some of the lands were granted, the United States has not issued title to a portion of the lands to which schools were entitled. In some cases, federal agencies have taken decades to act on state requests for in-lieu lands for schools. In other cases, litigation has slowed the process. In yet other cases, state trust land managers have not sought title to the in-lieu lands to which schools were entitled, leaving federal land managers with no ability to complete the selections which must be initiated by the state land managers. In almost all cases, beneficiary representatives of the schools have not been informed of their entitlements and have not acted to seek a remedy to the school entitlements. As of spring 2004, there are over sixty thousand acres of in-lieu school entitlements and an additional $1.2 million of in-lieu value that have not been transferred to the schools in at least eight western states. This paper was written to provide beneficiaries with the data needed to seek resolution of the matter on behalf of the schools in their state.

Background On School Grants

The concept of granting lands as an economic base for the support of education predates the United States Constitution. On May 20, 1785, Congress adopted an ordinance that provided for the survey and sale of land, dividing territory into six-square mile townships. Each township was then subdivided into 36 one-mile square sections. This 1785 ordinance reserved section 16 in the middle "of each township, for the maintenance of public schools within the said township."[1] A grant of section 16 in each township to support schools was included in the statehood enabling legislation beginning with Ohio in 1802.

Most of the states in the United States received land grants from Congress to support schools. The only exceptions were the original thirteen colonies which had no federal land, Vermont admitted in 1791, Kentucky in 1792, Maine in 1820 because Maine was originally a district of the colony Massachusetts which had no federal lands, Texas in 1845 which entered as a sovereign nation and granted school lands to itself, and West Virginia in 1863 created out of Virginia with no federal land. Pennsylvania, Connecticut, New York, Georgia, New Jersey, North Carolina, Maine, Massachusetts, Texas and New Hampshire granted lands to themselves for their common schools.

Many states also received a specified number of acres from Congress to support certain institutions such as public buildings to build capitols, schools for the deaf and blind,

[1] Laws of United States of America, 1789-1815, Vol. I, Chapter 32, pages 563-569.

reform schools, miners' hospitals, teachers colleges, universities, reservoirs, and other purposes.

The school and institutional grants were part of a bilateral compact in which the state accepted the lands in trust for the support of schools and institutions, and in turn the state agreed not to tax the federal lands within their borders. The untaxed federal domain within many western states has become an increasing burden as migration patterns have significantly increased populations in western states in which there remain small private property bases in a sea of federal lands to support schools and other governmental services.

Grants of one section in each township were made to all states that joined the union from 1802 to 1850.[2] These states include Ohio, Alabama, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Missouri, and Mississippi. Then beginning with California that was admitted September 9, 1850, two sections per township were set aside for schools.[3] States receiving two sections include California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Washington, and Wyoming. Nevada was originally granted two sections totaling close to four million acres but accepted 2 million acres with the right to select those acres from any of the unappropriated federal lands instead of the scattered sections 16 and 36. Because of the arid nature of Utah, Arizona and New Mexico, they were each granted four sections.[4] Alaska was granted two sections to schools in its Organic Act, but federal legislation[5] after statehood ultimately decreased the school grant from millions of acres down to 75,000 acres in addition to the relatively small school acreage to which title had passed by 1980.

In-lieu Provisions of Grants

At the time of the school grants, Congress realized that there would be valid existing rights on some of the designated school sections. Many of the states had taken decades to achieve statehood, thus many school lands had been homesteaded prior to statehood. In addition to settlement, there were national forests and Indian reservations that predated statehood. In the case of Oklahoma, the schools were to be paid $5 million for the school lands inside Indian Territory because there were concerns of whether there was enough remaining federal acreage from which to satisfy in-lieu grants for lands within Indian Territory. Many railroads were also granted a certain amount of land within a radius of the railroad as an incentive for the westward expansion of the nation. Some of the railroad grants conflicted with the designated school sections. Also, title to the school lands did not pass until the townships were surveyed, and in the case of some states, surveys were still not completed more than a century after statehood. In order to not disrupt property rights, Congress granted lands "in-lieu" of the designated school sections.

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[2] Section 16.
[3] Sections 16 and 36.
[4] Sections 2, 16, 32, and 36.
[5] ANILCA

A state's enabling or statehood act contains the provisions for grants of specific sections for the support of schools, the grant of a certain number of acres for institutions other than schools, the grant of saline lands for particular purposes, the grant of navigable rivers, streams and lakes for state sovereign purposes, and the provision for lands in-lieu of the specified school sections when necessary. The enabling or statehood act precedes the admission of the state into the union and sets out the actions a territory must take in order to become a state. Courts have referred to enabling acts as bilateral compacts between two sovereigns—the state and the federal government. An enabling act must pass Congress and the people in the state acknowledge their acceptance through a vote on their state constitution. In the hierarchy of the law, if there is a conflict between a state enabling act and a state constitution, the enabling act always wins. Thus the grant of in-lieu lands by Congress and the acceptance of the grant by a vote of the people within the state create a binding contract with respect to the remaining in-lieu entitlement.

The exact in-lieu provisions in enabling acts grew increasingly specific over time.[6] Also, Oklahoma and Utah were prohibited in their enabling acts from receiving the school land grant within any national permanent reservations or from receiving indemnity, or in-lieu lands for those lands within national reservations that existed at the time of statehood.[7] In

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[6] For example, Oregon's Admission Act states, "That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools." (Oregon Admission Acts, Section 4, 1859) By 1910 Arizona's Enabling Act granted four sections in each township for the support of the common schools and specifies, "where sections two, sixteen, thirty-two, and thirty-six, or any part thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any Act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to pre-emption or homestead, or improvement thereof with a view to desert-land entry has been made the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, and Acts amendatory thereof or supplementary thereto, are hereby made applicable thereto and to the selection of lands in-lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein: Provided, however, that the area of such indemnity selections of account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships containing eleven thousand five hundred and twenty acres or more, two sections for such townships containing five thousand seven hundred and sixty acres or more, nor one section for such townships containing six hundred and forty acres or more. It goes on to specify that school sections within national forests now or in the future will be administered as part of the forests with the title not vesting in the state and with the Secretary of the Treasury paying the state the schools proportional gross proceeds.

[7] Utah's 1894 Enabling Act reads,

> Provided, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Oklahoma's Enabling Act of 1906 reads,

> Provided, That sections sixteen and thirty-six embraced in permanent reservations for national purposes shall not at any time be subject to the grant nor the indemnity provision of this Act, nor

Oklahoma's case there appeared to be concern that there may not be sufficient unreserved federal domain within the state to cover the grant. There was also a provision that the acreage of the school lands that were granted and confirmed by the Territory of Oklahoma would be deducted from the quantity granted at statehood. In addition, Oklahoma was granted $5 million from the United States' Treasury for the use and benefit of the schools "in-lieu of sections sixteen and thirty-six; and other lands of the Indian territory."[8]

An interesting phenomenon occurred with in-lieu lands. On the whole they turned out to be more valuable than the school lands within the specified school sections of Sections 2, 16, 32, or 36. Those in-place school sections fell wherever the boundaries of those sections fell; whereas, the in-lieu school lands could be selected by the state from any unreserved federal domain. Generally speaking, the in-lieu lands were chosen by individuals wanting to purchase them, so the individuals were likely to select the more valuable lands. When title passed to the state, then the individual that requested the selection of land generally would become the purchaser. For these reasons, the in-lieu lands were more valuable on the whole, but they were also the lands that were more likely to be sold soon after title passed to the state. The relinquished lands that were unavailable as school sections also were generally more valuable as evidenced by their early settlement or by the presence of navigable rivers and lakes or by their inclusion in a national forest.

Definitions

Several definitions and distinctions are in order:

Base – Base lands are the school lands that could not be granted to schools because they were previously settled, because they were within a national forest or Indian Reservation, because they contained less than 640 acres due to navigable sovereign waters, etc.

In Place School Sections – These are the school lands granted "in place of" the sections named in the enabling or admissions act. In Place or Indemnity lands refer to selections made elsewhere when the school sections referenced above "had been previously sold, pre-empted, or included within any Indian, military, or other reservation or were otherwise disposed of by the United States."[9]

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shall any land embraced in Indian, military or other reservations of any character, nor shall land owned by Indian tribes or individual members of any tribe be subjected to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain:. . .

[8] Oklahoma Enabling Act, Section 7, 1906.

[9] Letter 2000(924.10) from Kim O. Prill, Acting Chief, Branch of Land Resources, Montana State BLM Office to Margaret Bird dated March 9, 2004, page 2.

Indemnity Selections – These are the school lands selected by the state and approved by the Bureau of Land Management in-lieu of the school sections that fell within national reservations or homesteads at statehood. Indemnity lands and in-lieu lands are interchangeable expressions.

Deficiency Lands – These are the lands granted to schools when a school section falls short of the normal size of 640 acres per section. These shortfalls generally occur along a state border or when surveys require lots instead of 16 forty-acre pieces within a section because of the curvature of the earth. These deficiency acres derive from "fractional townships deficient as a result of: 1) fractional unsurveyed townships within unreserved and unappropriated public domain; 2) natural causes where the aggregate area of a section is less than 640 acres; or 3) permanent body of water."[10]

Quantity Grants – These are the lands granted to institutions other than the common schools in the enabling acts. Some of the institutions may include specific educational institutions such as schools for the blind, deaf, and delinquent, as well as agricultural colleges and universities.

Indemnity Selection List – When a state wishes to exercise its right to a selection, the state as trustee for the schools submits an indemnity selection list to the Secretary of the Interior specifying the lands being used as base and the in-lieu lands to be selected.

Indemnity Clear List – When the Bureau of Land Management has reviewed the base and the selected lands and if it determines the selection to be acceptable, then the Indemnity Clear List is sent to the state passing title to the selected in-lieu lands to the state on behalf of the schools and indicating the state has relinquished all claims to the base lands used for the indemnity selection.

Methodology of This Study

Letters were sent to the State Director of the Bureau of Land Management (BLM) in Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico/Oklahoma, Oregon/Washington, Utah, and Wyoming, (see Attachment A). When responses were unclear or non-responsive to the question, follow up letters were sent. There is no office for the BLM in Nebraska, North Dakota, and South Dakota, so responses from the State Land Commissioner were relied upon. After responses were received from the federal managers, a similar request for information was submitted via email by a beneficiary representative who was also a member of the Children's Land Alliance Supporting Schools (CLASS). Responses by Land Commissioners were forwarded back to CLASS for compilation and comparison with the BLM responses.

Disclaimer: This study is intended to provide beneficiary representatives with a snapshot in time of in-lieu lands as of Spring 2004. It is not intended to be a Ph. D. level thesis or the final word on the matter. It is, however, hoped that with this information a dialogue may begin, if it has not already, between education leaders, BLM State Directors and

[10] Ibid.

Land Commissioners in those states in which in-lieu rights are still owed to the schools or in which a final accounting has not been provided to the representatives of the common school beneficiary. If title to all the in-lieu lands were to pass tomorrow to the states, it is recognized that the impact will not be substantial in the overall portfolios of each of the states with remaining in-lieu lands. But it is recognized that if those lands had become school lands a century ago, the impact of the revenue cumulatively over that century may have been significant. And it is always recognized that a better education is always significant in the eyes of the child that may receive it. It is hoped that amid the bureaucracy of this issue, that land managers may catch the vision of what these additional lands may be able to provide in the lives of children. The land and the rights to its income have been theirs since statehood—there is no better time than the present to remedy the injustice that has occurred to prior generations from this unfulfilled entitlement. It is hoped that all involved will step to the plate.

Prior Attempts to Resolve the Issue

Attempts to resolve in-lieu selections for schools are as varied as the states in which the lands reside. Some states, such as Arizona, have made gargantuan efforts to complete the selection of millions of acres of in-lieu lands. Arizona completed the process in 2002 and now has no remaining in-lieu selection rights and no remaining quantity grant selections. Several of the issues of entitlement have had to wind their way through the courts before the federal and state parties could come to agreement. The Montana Department of Natural Resources worked collaboratively with the Montana State BLM office in 1963 to reach a consensus on in-lieu selections. Each office provided an employee, and they worked together to determine the indemnity lands and the deficiency lands. There was an audit done of the Washington indemnity rights completed by BLM in 1979 and with final in-lieu selection clear lists issued on September 28, 1984, the Washington indemnity selections were satisfied.

The Western States Land Commissioners Association (WSLCA) is an organization of twenty-three states that manage school trust lands, institutional trust lands, and state lands. The association meets twice a year to address issues of commonality. As long ago as 1981 a Memorandum of Understanding was signed between the association and the BLM which included resolution of in-lieu lands. Again on December 2, 1994, another Memorandum of Understanding was signed between the association and the BLM to encourage annual meetings, consult and share resolutions, promote compatibility including computer systems, mapping, satellite imagery, geographic information systems, appraisals, etc. Specific to in-lieu lands, the resolution reads:

> The WSLCA and the BLM agree to work cooperatively to fulfill outstanding state in-lieu land selections and other state land entitlements as well as to consider land exchanges which will consolidate ownership patterns and otherwise address mutual benefits.

The courts have also ruled at least three times on in-lieu issues. In the first case, Utah had been frustrated in its attempts to select about 223,000 acres of in-lieu school lands by over thirty years of BLM administrative delay, valuation disputes, and changes in the federal land policies. In 1976 Utah sued[11] the Secretary of the Interior to force recognition of its entitlements. The United States Supreme Court reversed the two lower court decisions stating that the 1934 Taylor Grazing Act modified the enabling act provisions for an equal number of acres in-lieu of the original school lands and authorized the Secretary of the Interior to reject applications for in-lieu lands that were not also equal in value to the originally granted lands. The Utah selections were for higher valued lands and were disallowed.

New Mexico had its remaining entitlement to in-lieu lands severed as a result of a judgment issued May 22, 1980.[12] It is apparent that the New Mexico Land office fought this decision, but at this time the circumstances of the case are not known.

In 1991, a lawsuit filed over Oregon's remaining indemnity selection rights determined that the state was still entitled to about 4,000 acres. Prior to this determination, it had been thought that Oregon had already completed its remaining entitlement. In 1998, the Oregon Division of State Lands used 640 acres of these school in-lieu lands to acquire a tract near Bend, Oregon in the central portion of the state. A portion of the property is zoned for low density housing and as Bend grows it is hoped that the site could provide residential units, a government complex, park, school and a retail and commercial site—significant economic benefit to the schools of Oregon.

Issues in Indemnity School Selections

There are six primary issues concerning indemnity school selections. Each issue is compelling for schools to reach a timely solution to this long-standing federal debt to schools in the West. The issues are:

- availability of lands to select
- valuation
- inertia
- adequate and proper accounting for in-lieu credits and deficiency credits
- lost revenue to schools in the past
- opportunities to position indemnity selections well for the future

Availability of Lands: Over time the national parks and national forests in most western states have expanded their boundaries. New monuments have been declared using the Antiquities Act; some monuments have involved millions of acres. Unresolved wilderness has resulted in environmental groups pushing for ever-increasing designations of wilderness. New land designations have been created such as Areas of Critical Environmental Concern (ACEC), National Natural Monuments, and roadless areas. All

[11] CLASS is seeking a copy of the decision in this case.
[12] Civil No. 76-543-P. CLASS is seeking a copy of this judgment.

of these designations result in a shrinking inventory from which states may make indemnity selections.

Valuation: It is difficult to find lands in close proximity to the school base lands that are of equal acreage and equal value. Accurate appraisals are difficult as there are few if any comparables for most lands found within national designations. In most western states where school lands are islands within a federal sea, sales are rare if existent at all. This means there are few comparables to establish the surface value for the school base lands. States that auction school trust lands have found that the appraisals generally lag the market value as bidding is frequently in excess of 160% of the value set by the appraisal.

Inertia: There are no incentives for BLM to act on indemnity selection rights. Any selection requires significant work by BLM to do the environmental analysis and process the application. Many times there may be no funding, as the agency is expected to shoulder an increased work load with diminished dollars. Processing an application removes land from their management portfolio, transferring title to the state. Consequently, it should come as no surprise that the average length of the current pending indemnity selections for the states in this study currently exceeds ten years. The longest pending selection is Oregon's for 36 years. Conversations with Oregon staff indicate the state may withdraw this long-standing request for an indemnity selection.

Without beneficiary involvement, some state offices have also been reluctant to begin a statewide search for lands to complete their indemnity selections. Many state offices have limited resources to manage their existing school lands.

Adequate Accounting: One of the abiding duties of a trustee is to provide a proper accounting to the beneficiary. Representatives of the common schools in western states may want to send written notice to their state land office, as trustee, to provide a complete accounting for the base and deficiency lands as well as the corresponding indemnity lands granted.

The Montana State BLM office appears to be the only one that has investigated the issue jointly with a representative of the state land office. Montana beneficiary representatives may find comprehensive records in that state.

Because of the1991 Oregon lawsuit, it is assumed that the indemnity credits and deficiencies have been thoroughly studied. The lawsuit resulted in Oregon being able to select another 4,000 acres when it had been perceived that the state had exhausted their credit previously. A final accounting would still be a reasonable request.

As the representative of the common schools, each state board of education is entitled to a proper accounting of the indemnity selections and deficiencies. They are entitled to know which school lands were used as base and which lands were acquired as indemnity for that base. It may be that the schools are still entitled to significant credits as occurred in Oregon after they believed the indemnity selections were satisfied. Until a proper accounting is required by the beneficiary from the state land managers, as trustee,

education leaders will not know if schools have received all the lands to which they are entitled.

Each state BLM office was asked to provide "the total school acres that qualified as base for subsequent in-lieu selections."[13] The answer to the question was unknown in eight states. Only seven states responded to the question, indicating in those seven states over 8 million acres qualified with three-fourths of those lands being in Arizona. With that large of a base, the probability of error is high. Also, with today's technology, it may be prudent for beneficiaries to request a current accounting to which they are entitled under trust law.

Lost Revenue: Schools have lost revenue on their remaining indemnity selections from statehood to the present since the indemnity selections have not been completed and the land is not in their portfolio. In other words, these unselected indemnity lands have not earned revenue as land and have not earned interest as an investment. The unselected indemnity lands have been an un-utilized asset—a credit and that is all.

Current Opportunity: An opportunity exists for the states with remaining indemnity selections. States with known remaining selection rights for schools as of Spring 2004 are Alaska, California, Montana, Oklahoma, Oregon, Utah, and Wyoming. Had their remaining indemnity selections occurred shortly after statehood, the state probably would have submitted Indemnity Selection Lists on behalf of settlers wanting to purchase lands, and if approved and clear listed by the General Land Office, the lands would usually have been sold to the settler for a minimal amount. The funds would have been placed in the permanent school fund, invested in bonds, and would have had an even lower per acre value today. By selecting today and using reasonable prudence, it may be possible to acquire some profitable lands in the path of development. The Oregon Division of State Lands Expressed well their objective for selecting the remaining indemnity lands when they said in the Oregon Sustainability Plan, "However, the primary consideration must be fiduciary responsibility to the Common School Fund." Many BLM lands are in the path of development in the expanding west. Such lands hold enormous potential for schools.

Status of Remaining Indemnity Selection Rights for Schools and Other Institutions

According to BLM responses in Spring 2004, there remain 60,602.37 acres in Alaska, California, Montana, Oklahoma, Oregon and Wyoming of selection rights and $1,221,000 in Utah where the rights have been converted to a dollar value. Most BLM offices have no idea how many acres of school lands qualified as base for indemnity selection and how many acres of deficiencies existed.

The chart that follows summarizes the responses received from the State Directors of the State Offices of the Bureau of Land Management for the 16 states in this study. In states

[13] See Addendum B, Question 4.

that no longer have BLM offices, the data from State Land Commissioners was used and so noted. Any discrepancies in data between the data provided by the BLM State Director and the State Land Commissioner are also footnoted.

State	# Acres Remaining	Pending Selection Acreage (Date Filed)	Most Recent Approval Date	Total Base Acres and Deficiency Acres	Quantity Grants
AK[13]	560	560(12/6/1993)[29]	None	NA[30]	20,082,280[31]
AZ[14]	0	None	12/17/2002	5.6 million	0
CA[15]	47,234[33]	None	3/26/1990[34]	NA[32]	0
CO[16]	7,000	1,852(8/8/96)[35]	4/4/1984	"large acreage"[36]	235.57 Univ 95.38 Pub. Bldgs. 14.51 Penitentiary
ID[17]	0	None	12/18/1998	1,199,000[37]	0
MT[18]	1,021.09[38]	None	7/18/1983	27,021.66[40]	162[39]
ND[19]	0	None	Unknown	Unknown	Unknown
NE[20]	0	None	Unknown	Unknown	0
NM[21]	0[41]	None	1978[42]	Unknown	0
OK[22]	80	None	1960's	Unknown	74.26[43]
OR[23]	3,618.89[45]	146.06(9/20/68)[44]	6/18/2002[46]	781,510.80[47]	0
SD[24]	No Data Available				
TX[25]	Not Applicable				
UT[26]	$1,221,000[54]	4,080.91 (12/22/94) (11/18/96) (12/17/03)	4/24/98	223,000	6,083.32[49]
WA[27]	0	None	9/28/1984	2,861[48]	0
WY[28]	1,088.386[50]	None	8/29/1972[51]	27,239.66[52]	406.86[53]

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[13] Per letter from Henri R. Bisson, Alaska State BLM Director, dated March 17, 2004.

[14] Per letter from Carl Roundtree for Elaine Y. Zielinski, BLM State Director, dated March 22, 2004.

[15] Per response of Mike Pool, California State BLM Director, undated and received March 1, 2004, reply 2020 (p). These numbers do not agree with the response by Ninette Lee, Public Land Management Specialist at the California State Lands Commission, date June 9, 2004. (See footnotes 22 and 23.

[16] Per response of Ron Wenker, Colorado State BLM Director, dated February 12, 2004. CLASS has not yet received a response from the Colorado Division of State Lands.

[17] Per letter from Jimmie Buxton, Chief, Branch of Lands and Minerals, Resource Services Division, Idaho BLM, dated February 19, 2004. Winston Wiggins, Idaho State Land Commissioner concurred.
[18] Letter from Kim O. Prill, Acting Chief, Branch of Land Resources, Montana State BLM Office, dated March 9, 2004, referenced as 2620 (322). There has been no response from the Montana State Land Office to check this information against.
[19] There is no longer a BLM office in North Dakota; therefore, information was provided by Gary Preszler, Commissioner, the North Dakota Land State Land Department on June 2, 2004.
[20] There is no longer a BLM office in Nebraska; therefore, information was provided by Cindy Kehling, Nebraska Board of Education Lands and Funds on May 25, 2004.
[21] Per letter from Linda S. C. Rundell, Director, New Mexico State BLM Office, dated March 5, 2004.
[22] Ibid. The New Mexico State BLM Office also covers Oklahoma. There was no response from the Oklahoma Commissioners of the Land Office so this federal information has not been checked against state records.
[23] Per letter from Judy Ellen Nelson for Elaine M. Brong, State Director, Oregon State BLM Office, dated April 29, 2004, reply #2621(OR-958).
[24] There is no BLM State Office in South Dakota. The South Dakota land office did not respond.
[25] Texas entered the union as an independent nation and granted itself lands in trust for schools.
[26] Per letter from Sally Wisely, State Director, Utah State BLM Office, dated March 30, 2004.
[27] Per letter from Judy Ellen Nelson for Elaine M. Brong, State Director, Washington State BLM Office, dated April 29, 2004, reply #2621(OR-958).
[28] Per letter from Alan Rabinoff for Robert A. Bennett, State Director, Wyoming State BLM Office, dated February 19, 2004.
[29] On December 6, 1993, Alaska filed for 18S-9E-19-NW^4, S^2, S^2 NW^4 (Fairbanks Meridian).
[30] "Alaska's remaining school land entitlement was settled under the terms of Sec. 906(b) of ANILCA." (Letter from Henri R. Bisson, Alaska State BLM Director, dated March 17, 2004, p. 2).
[31] Remaining selections are as follows:

Statehood Act Grants	Acres
Sec 6(b) General Purpose	19,495,678
Sec 6(a) National Forest Community Grant	61,339
Sec 6(a) Public Domain Community Grant	385,791
Other Grants	
Act of July 28, 1956 (Mental Health)	136,939
Act of January 21, 1929 (University)	1,973
ANILCA 906(b) (School Land Settlement)	0
TOTAL	20,082,280

Ibid, (enclosure 6, State Conveyance Summary)
[32] California BLM has not tracked the number of acres that qualified as base. The California State Lands Commission thinks approximately 52,000 acres of state school lands qualified as base.
[33] The California State Lands Commission believes there are approximately 52,000 acres remaining to be selected. These lands are valued at approximately $8.5 million.
[34] The California State Lands Commission shows the most recent selection was approved March 21, 1990. It was for a 20-acre upland parcel near Owens Lake in Inyo County.
[35] 7N - 88W - 5 - SE^4SE^4
8 - N^2NE^4, SW^4NE^4
17S - 68W - 11 - SE^4SW^4, SW^4SE^4
15 - S^2NE^4, S^2
21 - NW^4SE^4
22 - NW^4NW^4
27 - SW^4
28 - NE^4SE^4
34 - W^2, SE^4
18S - 68W - 3 - S^2NW^4, SW^4, Lots 3, 4

4 - NE^4SE^4
10 - N^2NW^4

[36] "It was a very large acreage, as most of the western one-third of Colorado was within the Ute Indian Reservation by treaty of 1868. . ." Most of these entitlements were satisfied in the late 1800's by the State selecting lands on the eastern plains of Colorado." (Letter from Ron Wenker, Colorado State BLM Director, dated February 12, 2004, page 2).

[37] Letter from Jimmie Buxton, Chief, Branch of Lands and Minerals, Resource Services Division, Idaho BLM, dated March 8, 2004.

[38] The remaining 1,021.09 acres are being held in reserve "until final coal selections are complete." (Per Kim O. Prill letter, p.l. This land had an estimated value on June 5, 1984 of $1,846,982.50 per letter from John A. Kwiatkowski, Deputy State Director, Montana State BLM Office, dated June 5, 1984 to Dennis Hemmer, Commissioner, Montana Department of State Lands.

[39] Quantity Land Grants to State of Montana, June 20, 1973. This document shows the following remaining selections to be made:

	Acres
University of Montana	0.22
Agricultural College	78.60
School of Mines	0.25
Deaf and Dumb Asylum	11.77
Reform School	3.57
Public Buildings	67.21
TOTAL	161.62

[40] Quantity Land Grants to State of Montana, June 20, 1973, shows 16,752.21 acres as In-Place Base and 10,269.45 acres as Deficiency Base for a total In-Lieu acreage of 27,021.66. The letter from Kim O. Prill, Acting Montana State BLM Chief referenced in footnote 6, shows In-Place Base as 17,084.85.

[41] Judgment, Civil No. 76-543-P, dated May 22, 1980 states that New Mexico fulfilled its entitlement acreage.

[42] The New Mexico BLM Office indicated the selections were completed in the 1970's. The New Mexico State Land Office indicated that it had completed its in-lieu selections in 1978. "At that time, although we actually wanted to continue the process, we were sued by the federal government in an action intended to foreclose any further selections. That litigation was concluded by our agreement to terminate any further selection efforts."

[43] "The state of Oklahoma had filed an application in the mid-1970's, however, withdrew its application in 2001." Per letter from Carsten F. Goff, Deputy State Director, New Mexico State BLM Office, dated May 27, 2004, Reply #2620(92300). These acreage entitlements belong to the following Oklahoma institutions:

	Acres
Normal Schools	2.28
University Preparatory School	4.88
Colored Agricultural and Normal University	0.50
Oklahoma University	0.25
Agricultural and Mechanical College	56.35
TOTAL	74.26

[44] There is one pending selection, OR3737, for 146.06 acres filed September 20, 1968. It was involved in Oregon State Lieu Selection Case, Civil No. 85-646-MA and was held in abeyance until the case was decided June 19, 1991 by the U. S. District Court for the District of Oregon. The selected lands are 3S-8W (W.M.) - 7 - Lots 1-4, E^2SW^4 and 1S-6E (W.M.) - 16 Lots 7-9, part Lot 10. Since that time, Congress passed Public Law 100-425 on September 9, 1988, which designated Lots 1-4 as Oregon and California Railroad grant lands, thus making them ineligible for selection by the Oregon State Lands Office. Ann Hanus, State Director of the Oregon Division of State Lands, is currently involved with making an alternative selection for Lots 1-4. The Oregon Division of State Lands indicated there are no pending in-lieu selections per Monte Turner's e-mail dated May 24, 2004.

[45] Monte Turner of the Oregon Division of State Lands indicated in his e-mail of May 24, 2004, that 3,438 acres remain to be selected as in-lieu indemnity selection lands.

[46] Ibid. The Oregon Division of State Lands indicates that the most recently approved in-lieu selection occurred in 1997.

[47] Ibid. The Oregon Division of State Lands indicates 12,000 acres qualified as base for subsequent in-lieu selections.

[48] Patty Hensen of the Washington Department of Natural Resources via e-mail dated June 10, 2004, indicated 925,818 indemnity in-lieu selection acres.

[49] Ibid. The quantity grants with remaining selection rights in Utah are as follows:

Agricultural College (USU)	3,535.34
Deaf and Dumb Asylum	282.29
Miners' Hospital	2,173.10
Public Buildings	.28
Reservoirs	89.31
TOTAL	6,083.32

[50] Susan Child, Policy and Planning Coordinator, Wyoming Office of State Lands and Investments, indicated in her e-mail of June 10, 2004, that Wyoming has 1,124.38 acres to be selected.

[51] Ibid. The Wyoming BLM did not provide a date of the most recent selection.

[52] Ibid. The Wyoming BLM did not provide information on the number of acres that qualified as base.

[53] Ibid. The Wyoming BLM did not provide information on remaining quantity grants in the state.

[54] On August 20, 1982, 88 years since passage of the Utah Enabling Act, Utah had 223,000 acres remaining to be selected. There is no evidence that a thorough audit was done by the trustee to ascertain if this acreage is accurate. In a letter signed jointly by the BLM State Director Roland Robison and the Director of the Division of State Lands and Forestry Ralph Miles they agreed to assign a value of $59,534,400.00. Utah was the only state to do this. Since this modifies the provisions of the Utah Enabling Act, a reasonable question could be raised as to whether directors of agencies have that authority. There was no provision for inflation or compound interest in the letter.

According to Mike Pool, California BLM State Director, correspondence 2020 (p), "In order for a state to negotiate an agreement with BLM to convert remaining in-lieu acreage to a dollar value, Congress must first authorize that activity. Although this has been discussed, to date, there is no proposed legislation."