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## State School Lands - Disinterest in the Public Interest: The Wyoming Supreme Court's Failure to Define the Great Public Interest in State School Lands

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**STATE SCHOOL LANDS – Disinterest in the Public Interest: The Wyoming Supreme Court’s Failure to Define “The Great Public Interest” in State School Lands. *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003).**

INTRODUCTION

At the end of December 1997, Craig and Gail Anderson’s agricultural lease to a section of state school land in Laramie County, Wyoming was to expire.<sup>1</sup> The Andersons submitted a renewal lease application to the Wyoming Office of State Lands and Investments (State Lands Office) proposing an annual lease rate of \$4,586.40.<sup>2</sup> The State Lands Office received two competing bids for the lease; one bid was lower than the Andersons, but the other bid, which was made by William Riedel, offered to pay a lease rate of \$6,000 for the same section.<sup>3</sup> Under Wyoming law, the holder of an expiring lease has a preferential right to renew the lease if the holder meets any competing bid.<sup>4</sup> The Andersons met Riedel’s bid of \$6,000 per year for the lease, and on January 16, 1998, the interim director of the State Lands Office awarded the lease to the Andersons.<sup>5</sup>

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1. *Riedel v. Anderson*, 70 P.3d 223, 226 (Wyo. 2003). Beginning with the 1803 admission of Ohio to the United States, Congress granted each new state sections of public land for the support of common schools. Wade R. Budge, Comment, *Changing the Focus: Managing State Trust Lands in the Twenty-First Century*, 19 J. LAND RESOURCES & ENVTL. L. 223, 226 (1999). The school lands grants evolved for over a century, “and played an integral role in the westward movement and state-making process.” Sally K. Fairfax et al., *The School Trust Lands: A Fresh Look at Conventional Wisdom*, 22 ENVTL. L. 797, 798 (1992). The land grants remain significant: out of the 322 million acres originally transferred to the states for the support of schools, nearly 135 million acres of surface and 152 million acres of mineral rights continue in state ownership. *Id.* At statehood, Congress granted sections sixteen and thirty-six of every township in Wyoming to the state for the support of common schools. Wyo. Act of Admission, Ch. 664, § 4, 26 Stat. 222 (1890); WYO. CONST. art. XVIII, § 1. Today, Wyoming’s state land trust is comprised of 3.6 million surface acres and 4.2 million mineral acres. STATE OF WYOMING OFFICE OF STATE LANDS & INVESTMENTS, STRATEGIC PLAN FOR THE PERIOD JULY 1, 2004 THROUGH JUNE 30, 2008, 4, at <http://slf-web.state.wy.us/ami/adobe/StrategicPlan.pdf> (Sept. 1, 2003).

2. *Riedel v. Anderson*, 70 P. 3d 223, 226 (Wyo. 2003). The state leases almost all of the surface estate of the state trust lands for grazing and agricultural use through “4,600 grazing and agricultural leases, special use leases, and temporary use permits.” STATE OF WYOMING OFFICE OF STATE LANDS & INVESTMENTS, STRATEGIC PLAN FOR THE PERIOD JULY 1, 2004 THROUGH JUNE 30, 2008, 16, 21, at <http://slf-web.state.wy.us/ami/adobe/StrategicPlan.pdf> (Sept. 1, 2003). Surface lease rentals and mineral royalties from oil and gas contribute 99.6% of total revenue to the state’s trust land income, with the large majority of revenue resulting from mineral leases. STATE OF WYOMING OFFICE OF STATE LANDS & INVESTMENTS, SUMMARY OF STATE TRUST LAND REVENUE, 1, at [http://slfweb.state.wy.us/ami/adobe/Summary\\_Trust08.pdf](http://slfweb.state.wy.us/ami/adobe/Summary_Trust08.pdf) (June 30, 2004). In fiscal year 2004, Wyoming trust land revenue totaled \$93,254,321. *Id.* at 5. Mineral royalties contributed 91% to the total while non-timber surface leasing added another 8%. *Id.*

3. *Riedel*, 70 P.3d at 226.

4. *Id.* See WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

5. *Riedel*, 70 P.3d at 226.

Riedel filed an administrative appeal challenging the award of the lease to the Andersons.<sup>6</sup> After a hearing, the Board of Land Commissioners (Board) upheld the grant of the lease to the Andersons.<sup>7</sup> Riedel then filed a petition in the First Judicial District of the State of Wyoming for judicial review of the Board's decision and challenging the constitutionality of the right-to-renew preference.<sup>8</sup> Upon certification to the Wyoming Supreme Court, the petition was dismissed as "the [c]ourt lacked jurisdiction to review the constitutionality of a statute upon petition for judicial review of an administrative action."<sup>9</sup> In June 1999, Riedel initiated a declaratory judgment case against the Board and its members challenging the constitutionality of Wyoming's preferential right-to-renew preference.<sup>10</sup> On July 10, 2000, the district court granted the Wyoming Stock Growers Association's and the Wyoming Wool Growers Association's (Associations) joint motion to intervene and the Wyoming Farm Bureau Federation's (Federation) separate motion to intervene.<sup>11</sup> Before trial, the district court asked the parties to brief the issue of whether the United States' conveyance of school lands to the State of Wyoming imposed a trust on those lands.<sup>12</sup> On October 29, 2001, the district court issued an order stating the school lands were encumbered by a trust that imposed a fiduciary duty on the State to manage the lands exclusively for the benefit of the State's common schools.<sup>13</sup>

In November 2001, the district court tried the issue of whether Wyoming's right-to-renew preference is unconstitutional given the State's trust duties.<sup>14</sup> The district court granted the intervenor Associations' motion to dismiss on the grounds that Riedel failed to present "adequate evidence that the preferential right to renew violates the State's fiduciary responsibili-

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6. *Id.* The Wyoming Administrative Procedures Act provides the procedural requirements for an appeal of an administrative decision. WYO. STAT. ANN. § 16-3-114 (LexisNexis 2003). If after an administrative appeal a party remains dissatisfied with an agency decision, the party has a right, subject to the exhaustion of all administrative remedies, to judicial review. *Id.*

7. *Riedel*, 70 P.3d at 226.

8. *Id.* Wyoming's right-to-renew statute allows incumbent lease-holders to renew their leases by meeting higher bids based on the same or similar use of the leased lands. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

9. *Riedel*, 70 P.3d at 226; see *In re* Conflicting Lease Applications for Wyo. Agric. Lease No. 1-7027, 972 P.2d 586, 587 (Wyo. 1999) (dismissing Riedel's initial petition as neither the district court nor the Wyoming Supreme Court has "authority on review of an agency decision to hold a statute unconstitutional *vel non*"); WYO. STAT. ANN. § 16-3-114(c) (LexisNexis 2003) (outlining procedures for judicial review of agency decisions). The Wyoming Supreme Court has stated that the appropriate course for an aggrieved party when a statute affording authority to an agency is deemed unconstitutional is a declaratory judgment action. *In re* Conflicting Lease Application, 972 P.2d at 587 (citing WYO. R. APP. P. 12.12).

10. *Riedel*, 70 P.3d at 226. Wyoming's right-to-renew preference is articulated in WYO. STAT. ANN. §§ 36-5-101 and 36-5-105 (LexisNexis 2003).

11. *Riedel*, 70 P.3d at 226.

12. *Id.*

13. *Id.* at 226-27.

14. *Id.* at 227.

ties.”<sup>15</sup> Riedel appealed the dismissal and the Associations cross-appealed the court’s order that “school lands are held in trust.”<sup>16</sup>

The Wyoming Supreme Court held that the lands granted by the United States to Wyoming for the maintenance of common schools are not subject to a federal or state constitutional trust, but are subject to a legislatively created statutory trust.<sup>17</sup> If the court had found a federal or state con-

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15. *Id.*

16. *Id.* See Fairfax et al., *supra* note 1, at 851, for the following brief summary of basic trust principles:

A *trust* is a fiduciary relationship with respect to property in which the person by whom the title to the property is held is subject to equitable duties to keep or use the property for the benefit of another. A *fiduciary relationship* places on the trustee the duty to act with strict honesty and candor and solely in the interest of the beneficiary. The *settlor* of a trust is the person who creates a trust. The *trustee* is the person holding property in trust . . . . The property held in trust is the *trust property*. The *beneficiary* is the person for whose benefit the trust property is held in trust. The *trust instrument* is the ‘manifestation of the intention of the settlor’ by which property interests are vested in the trustee and beneficiary and the rights and duties of the parties (called the trust terms) are set forth in a manner that admits of its proof in judicial proceedings.

*Id.*

17. *Riedel v. Anderson*, 70 P.3d 223, 235 (Wyo. 2003). A total of eight briefs, containing twenty-four different formulations of the issues on appeal, were filed by the Associations, the Federation, the State of Wyoming, and Riedel. The Associations argued that neither the Wyoming Enabling Act nor the Wyoming Constitution created a state school lands trust; rather both merely created a solemn agreement with the United States. Appellant Wyoming Stock Growers Association and Wyoming Wool Growers Association Opening Brief, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). In the alternative, the Associations argued that even if a trust exists, the trust is not governed by common law trust principles. *Id.* The Associations countered each of Riedel’s arguments and asserted the constitutionality of Wyoming’s right-to-renew preference. Brief of Appellees Wyoming Stock Growers Association and Wyoming Wool Growers Association, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). The Federation asserted that the right-to-renew statute is constitutional and consistent with Wyoming’s fiduciary trust obligations. Brief of Appellee Wyoming Farm Bureau Federation, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). The State of Wyoming argued that the right-to-renew preference is constitutional and compatible with the state’s fiduciary trust obligations. Brief of Appellee State of Wyoming, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). Riedel asserted the right-to-renew statute was unconstitutional as it violates: (1) the state’s fiduciary trust obligation to receive fair market value for school lands leases; (2) the Wyoming Enabling Act’s prohibition on leases over ten years; (3) the Wyoming Constitution’s requirement to dispose of school lands at public auction; (4) the Wyoming Constitution’s prohibition on granting privileges that directly or indirectly diminish the amount derived by sale or other disposition of state lands; (5) the state’s duty to ensure benefits are not provided to non-beneficiaries of the school lands at the expense of the beneficiaries. Brief of Appellant/Appellee William H. Riedel, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). The Associations, the State of Wyoming, and Riedel submitted additional briefs on whether Wyoming’s state school lands were subject to a trust. The Associations’ argued that neither the Wyoming Enabling Act nor Wyoming Constitution created an express or common law trust. Reply Trust Brief of Wyoming Stock Growers As-

stitutional trust, the rules of trust law would apply to Wyoming's school lands.<sup>18</sup> A constitutional trust would require the state and the Board, as trustees, to manage school lands for the sole benefit of the beneficiaries of the trust, the state's schools.<sup>19</sup> In contrast, a statutory trust is technically not a trust, though the rules of trust law apply except as otherwise provided by the applicable statute.<sup>20</sup> The provisions of the statute creating the statutory trust "may change most of the generally applicable rules of trust law," and thereby allow the State and the Board to manage Wyoming's school lands according to legislative preferences rather than for the sole benefit of the state's schools.<sup>21</sup> The *Riedel* court found that concurrent with the creation of the statutory trust, the legislature created the right-to-renew statute that allows incumbent leaseholders of state lands a preference in renewing their leases.<sup>22</sup> Further, the court held that the provisions of the right-to-renew preference did not "violate[] any fiduciary or constitutional constraints on the State's management of the trust lands."<sup>23</sup>

This case note will examine the constitutional, statutory, and case law principles governing state school lands in Wyoming. Against this background, the case note will evaluate the Wyoming Supreme Court's holdings in *Riedel*. It will argue the court's determination that state school lands are subject only to a statutory trust, rather than a constitutional trust, was incorrect. This case note will argue further that the court's less-than-thorough analysis of the state school lands trust issue caused the court to uphold Wyoming's right-to-renew preference for grazing leases even though it conflicts with the great public interest. Finally, this case note will urge the Wyoming Supreme Court to re-examine and strike down the "same or similar use" provision of the right-to-renew preference as it violates the public interest by restricting income to the school lands trust and creating ranching as a beneficiary of the trust.

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sociation and Wyoming Wool Growers Association, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). The State of Wyoming asserted that the Wyoming Constitution creates a state school lands trust. Trust Brief of Appellee State of Wyoming, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60). *Riedel* argued that the Wyoming Enabling Act and the Wyoming Constitution create both an express and common law trust. *Riedel's Brief Regarding the Trust Status of School Lands, Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60).

18. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

19. RESTATEMENT (THIRD) OF TRUSTS § 2 cmt. f (2003). See WILLIAM F. FRATCHER, SCOTT ON TRUSTS § 2.3 (4th ed. 1987), for a discussion of the Restatement definition of a trust. See also 63C AM. JUR. 2D *Public Lands* § 63 (2004), for the rule that the state takes title of state school lands as a trustee administering the property for the support of public schools and that the state or its designee "must administer the trust estate under the law applicable to trustees acting in a fiduciary capacity." *Id.*

20. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

21. *Id.*

22. *Riedel v. Anderson*, 70 P.3d 223, 235 (2003).

23. *Id.*

## BACKGROUND

*Wyoming's Enabling Act, Constitution, & Statutes*

By the July 1890 Act of Admission, Congress ratified the Wyoming Constitution, which the citizens of the Territory of Wyoming had adopted in November 1889.<sup>24</sup> The Act of Admission grants sections 16 and 36 of each township to the state for the purpose of maintaining common schools.<sup>25</sup> The Act specifies that school lands may be disposed of only at public auction and that the legislature has the power to regulate leasing of the lands, so long as “the term of agricultural and grazing leases shall not exceed 10 years.”<sup>26</sup>

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24. *Merrill v. Bishop*, 287 P.2d 620 (Wyo. 1955) (holding that the provisions of the Act of Admission ratifying the state constitution have the same effect as an independent act of Congress enacting the provisions of the constitution).

25. Wyo. Act of Admission, ch. 664, § 4, 26 Stat. 222 (1890). In its entirety, section 4 reads

Sections numbered 16 and 36 in every township of said proposed state, and, where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter-section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said state for the support of common schools, such indemnity lands to be selected within said state in such manner as the legislature may provide, with the approval of the secretary of the interior; provided, that section 6 of the act of Congress of August 9, 1888, entitled “An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes,” shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable.

*Id.* See WYO. CONST. art. XVIII, § 1 (accepting the grants of land made by the United States for educational purposes).

26. Wyo. Act of Admission, Ch. 664, § 5, 26 Stat. 222 (1890). In its entirety, section 5 reads

All lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for mineral, grazing, agricultural, or other purposes, provided that the term of agricultural and grazing leases shall not exceed 10 years; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

*Id.* See *Dir. of the Office of State Lands & Invs. v. Merbanco*, 70 P.3d 241 (Wyo. 2003), for analysis of the term “disposed of” as it relates to the public sale of state school lands.

The Wyoming Constitution also addresses state school lands.<sup>27</sup> Under article seven of the constitution, all moneys arising from the sale or lease of state school lands are perpetual funds and only the annual income from the funds can be appropriated.<sup>28</sup> Further, “[a]ll funds belonging to the state for public school purposes . . . shall be deemed trust funds in the care of the state, which shall keep them for the exclusive benefit of the public schools.”<sup>29</sup> Income from the perpetual funds along with all rents from the unsold school lands “shall be exclusively applied to the support of free schools in every county in the state.”<sup>30</sup>

In article eighteen of the constitution, the State of Wyoming accepted the United States’ grant of lands for educational purposes “with the conditions and limitations that may be imposed by the act or acts of Congress.”<sup>31</sup> To fulfill the purpose of the congressional land grant, the “proceeds from the sale and rental of all lands . . . donated, granted or received, from the United States or any other source, shall be inviolably appropriated and applied to the specific purposes specified in the original grant or gifts.”<sup>32</sup> Article eighteen also creates the Board to administer the state lands.<sup>33</sup> Under the direction of the legislature, the Board shall direct, control, lease and dispose of lands that are granted to the state “for the support and benefit of public schools” and the Board’s sale of such land is to “realize the largest possible proceeds.”<sup>34</sup>

Wyoming statutes further define the state’s relationship with state school lands.<sup>35</sup> Section 36-5-101 encompasses the qualifications of lessees, lease terms, and rental of public lands.<sup>36</sup> To lease state lands an individual must have reached the age of majority, be a citizen of the United States or declared intention to become a United States citizen, have complied with Wyoming’s laws, and be authorized to conduct business in Wyoming.<sup>37</sup> The rental fee of any lease “shall be based on an economic analysis and shall reflect at least the fair market value for the same or similar use of the

27. WYO. CONST. art. VII, Education; State Institutions; Promotion of Health and Morals; Public Buildings, and art. XVIII, Public Lands and Donations. *See also infra* notes 28-34 and accompanying text.

28. WYO. CONST. art. VII, § 2. State school lands are sections “sixteen and thirty-six in each township in the state, and the land selected or that may be selected in lieu thereof.” *Id.*

29. WYO. CONST. art. VII, § 6.

30. WYO. CONST. art. VII, § 7.

31. WYO. CONST. art. XVIII, § 1.

32. WYO. CONST. art. XVIII, § 2.

33. WYO. CONST. art. XVIII, § 3.

34. WYO. CONST. art. XVIII, § 3.

35. *See* WYO. STAT. ANN. §§ 36-5-101 to 36-5-117 (LexisNexis 2003). Title thirty-six of the Wyoming Statutes focuses on public lands and chapter five addresses leasing of public lands. *Id.*

36. WYO. STAT. ANN. § 36-5-101 (LexisNexis 2003).

37. *Id.* § 101(a).

land."<sup>38</sup> The Board is charged with adopting a formula for determining the fair market value (FMV) of the state lands' leases.<sup>39</sup> The Board's rules do not define FMV, but the Board relies on a standard definition that FMV equals "[t]he price in cash, or its equivalent, that the asset would bring by bona fide bargaining between willing and well-informed buyers and sellers at the date of acquisition."<sup>40</sup> Historically, the Board has used the "comparable sales" technique to determine FMV.<sup>41</sup> This technique relies on two factors to determine FMV: "[1] the proposed nature and scope of the requested use of the surface; and [2] an analysis of market data for similar uses of lands in the same area."<sup>42</sup>

Section 36-5-105 of the Wyoming Statutes focuses on the leasing of state lands and an incumbent leaseholder's right-to-renew preference.<sup>43</sup> The statute requires all state lands leased for "grazing and other agricultural purposes" be leased "in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries."<sup>44</sup> Preference in awarding or renewing leases shall be given to individuals or legal entities meeting the provisions of section 36-5-101 and "who are the owners, lessees or lawful occupants of adjoining lands, who offer to pay an annual rental at not less than fair market value" for a period of ten years.<sup>45</sup> Further, an incumbent leaseholder, who has paid rent when due, has not violated the terms of the lease, and is qualified under section 36-5-101, "shall have a preferred right

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38. *Id.* § 101(b).

39. *Id.* The criteria used by the Board when adopting a formula to determine fair market value includes:

- (i) Readily available data averaged over an adequate number of years to remove any radical fluctuations;
- (ii) Factors which reasonably reflect the true market value of state leases;
- (iii) Parameters within which the board can be responsive to changing resource conditions, market demand and industry viability;
- (iv) Factors which reasonably reflect the contributions made by the lessee.

*Id. Cf.* Ronald W. Spahr & Mark A. Sunderman, *Additional Evidence on the Homogeneity of the Value of Government Grazing Leases and Changing Attributes for Ranch Values*, 10 J. OF REAL ESTATE RESEARCH 601 (1995) (arguing against current formulas for FMV calculation of grazing leases and proposing new method of variable-fee pricing that recognizes the variation in value of the state lands available for grazing leases).

40. STATE OF WYO. BD. OF LAND COMM'RS R. & REGS. HANDBOOK, SURFACE AND MINERAL ESTATE, 3, at <http://www.slf-web.state.wy.us/ami/adobe/SURFACE3.pdf> (2004).

41. *Id.* at 3.

42. *Id.*

43. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

44. *Id.* § 36-5-105(a).

45. *Id.*

to renew such lease by meeting the highest bid offered which is based on the fair market value" for the same or similar use of the lease.<sup>46</sup>

### Case Law

The issues in *Riedel* were whether Wyoming's state school lands were held in trust, and, if so, what were the state's fiduciary obligations under the trust.<sup>47</sup> If the school lands were subject to a federal or state constitutional trust, then the rules of trust law would apply and the state would be required to manage the trust lands for the sole benefit of the state's schools.<sup>48</sup> If the school lands were subject to a statutory trust, the rules of trust law would continue to apply, but specific statutory provisions could alter the terms of the trust.<sup>49</sup> Thus, as long as the terms of the statutory trust do not violate the specific constitutional requirements for the school lands, the lands could be managed according to legislative preference rather than for the sole benefit of the state's schools.<sup>50</sup>

In *Papasan v. Allain*, the United States Supreme Court stated that a state's interests in federally granted state school lands depends "on the federal laws that transferred that interest."<sup>51</sup> The Court noted that "some school lands grants did not create express trusts and . . . other grants did create such trusts."<sup>52</sup> The Court postulated that one explanation for the inconsistent interpretation of school lands grants may rest in the variation of the terms of the grants.<sup>53</sup>

In *Branson School District Re-82 v. Romer*, the United States Court of Appeals for the Tenth Circuit applied the case-by-case analysis advocated in *Papasan*.<sup>54</sup> *Branson* involved Colorado voters' passage of Amendment

46. *Id.* § 36-5-105 (a), (e). Section 36-5-105 emphasizes the right-to-renew preference, so much so that the last four lines of (a), which explain the preference, are repeated verbatim in (e). See Mark A. Sunderman & Ronald W. Spahr, *Valuation of Government Grazing Leases*, 9 J. OF REAL ESTATE RESEARCH 179, 179-80 (1993), for a comparison of state and federal grazing leases. The authors postulate that state leases are valued more highly than federal grazing leases because of they offer greater certainty of future availability and more reasonable leasing fees. *Id.* at 191.

47. *Riedel v. Anderson*, 70 P.3d 223, 226 (Wyo. 2003).

48. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003); RESTATEMENT (THIRD) OF TRUSTS § 2 cmt. f (2003). See WILLIAM F. FRATCHER, SCOTT ON TRUSTS § 2.3 (4th ed. 1988) for a discussion of the Restatement definition of a trust.

49. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

50. *Id.* See *supra* notes 24-34 and accompanying text.

51. *Papasan v. Allain*, 478 U.S. 265, 289-91 n.18 (1986).

52. *Id.*

53. *Id.* Compare, e.g., *Lassen v. Ariz. ex rel. Ariz. Highway Dep't*, 385 U.S. 458, 460 (1967) (holding that Arizona school lands grant created an express trust), with *Cooper v. Roberts*, 59 U.S. 173, 181-82 (1856) (holding that school lands grant to Michigan did not create a trust).

54. *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619, 633 (10th Cir. 1998). Citing *Papasan*, 478 US 265 (1986), the Tenth Circuit stated, "the question of whether a statehood

16, which rewrote the management principles underlying Colorado's state school lands.<sup>55</sup> The court found constitutional the shift of focus from a short-term profit maximization to a focus on long-term yields from the state school lands.<sup>56</sup> In reaching its conclusion, the court first determined that the Colorado Enabling Acting Act contained "sufficient enumeration of duties to indicate" that Congress intended to create a fiduciary relationship between the state and its common schools with respect to its common school lands.<sup>57</sup>

The holding in *Branson* was built on the court's foundational definition of a trust.<sup>58</sup> A trust results "when a settlor conveys property to a trustee with a manifest intent to impose a fiduciary duty on that person requiring that the property be used for a specific benefit of others."<sup>59</sup> The court relied on the accepted principle that "Congress may create a trust through the manifestation of an intent to create a fiduciary relationship."<sup>60</sup> In expressing

statute creates a federal trust requires a case-specific analysis of the particular state's enabling statute because the history of each state's admission to the Union is unique." *Branson*, 161 F.3d at 633.

55. *Branson*, 161F.3d at 625.

56. *Id.* at 638-39.

57. *Id.* at 634. The enumeration of duties includes:

- (1) how the school lands are to be disposed, (2) at what minimum price, (3) how the income from the sales is to be held, (4) what may be done with the interest on that capital holding, and (5) Congress has provided for the permanence of the benefit of these assets for the common schools.

*Id.*

58. *Id.* at 633.

59. *Branson Sch. Dist.*, 161 F.3d at 633 (citing RESTATEMENT (SECOND) OF TRUSTS §§ 2, 17, 23 and 23 cmt. (a) (1959)). See *supra* note 16 (summarizing basic trust principles).

60. *Branson Sch. Dist.*, 161 F.3d at 633 (citing *Lassen v. Arizona ex rel. Arizona Highway Dep't*, 385 U.S. 458, 460 (1967)). In *Jicarilla Apache Tribe v. Supron Energy Corp.*, 782 F.2d 855, 857(10th Cir. 1984), the United States Court of Appeals for the Tenth Circuit adopted "the prior dissenting opinion of Judge Seymour, reported at 728 F.2d 1555, 1563 (10th Cir. 1984), which stated:

Both the Supreme Court and this circuit have recently set out the test for determining a trust relationship. In *Whiskers v. United States*, 600 F.2d 1332 (10th Cir. 1979), *cert. denied*, 444 U.S. 1078, . . . we made it clear that no particular words or phrases are critical to the finding of a trust relationship. "[T]he use of the word 'Trustee' is not absolutely essential to the finding of a trust relationship when it is otherwise clear that Congress intended a trust relationship to exist. Rather, the test is whether the relevant statutory and regulatory provisions [contain] an enumeration of duties which would justify the conclusion that Congress intended . . . [to] establish a fiduciary relationship and define the contours of United State's fiduciary responsibilities.

*Id.* (footnote omitted). See also *United States v. Ervien*, 246 F. 277, 279 (8th Cir. 1917) (re-viewing state school lands grant in New Mexico Enabling Act and concluding that "[w]ords

its intent to create a trust, "Congress need not use any particular form of words . . . and the absence of the words 'trust' or 'trustee' in the conveyance is not determinative of . . . whether Congress intended to create a trust."<sup>61</sup> Rather, "the creation of a trust depends on whether the relevant statutory provision contains 'an enumeration of duties' which would justify a conclusion that Congress intended to create a trust relationship."<sup>62</sup>

In *District 22 Mine Workers v. Utah*, the United States Court of Appeals for the Tenth Circuit found the Utah Constitution contains sufficiently restrictive language to create a state lands trust even though the state's Enabling Act does not.<sup>63</sup> In *District 22 Mine Workers*, members of the United Mine Workers of America alleged that Utah breached a trust with respect to lands granted to the state for a miner's hospital when the state used the "trust corpus and revenue for the benefit of the general public rather than disabled miners."<sup>64</sup> As in *Branson*, the court applied the case-specific analysis to *District 22 Mine Workers* to determine that Utah's constitution explicitly states that the lands granted to the state "shall be held in trust."<sup>65</sup> Even though the specific trust language was present in Utah's constitution, the court again emphasized that trust language was not determinative of a trust relationship.<sup>66</sup>

The Utah Supreme Court's discussion of state school lands and fiduciary duties in *National Parks and Conservation Association v. Board of State Lands* is informative.<sup>67</sup> The court found that the "duties of a trustee apply to the state in administering school trust lands."<sup>68</sup> Additionally, trustees' fiduciary duties require trustees "to act only for the benefit of the beneficiaries [the public schools]," which precludes using the value of school

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more clearly designed than those of the act of Congress to create definite and specific trusts . . . could hardly have been chosen"), *aff'd*, 251 U.S. 41(1919).

61. *Branson Sch. Dist.*, 161 F.3d at 634 (citing *Jicarilla Apache Tribe*, 782 F.2d at 1564).

62. *Id.* (citing *Jicarilla Apache Tribe*, 782 F.2d at 1564; RESTATEMENT (SECOND) OF TRUSTS § 23 cmt. (a) (1959)).

63. *Dist. 22 United Mine Workers v. Utah*, 229 F.3d 982, 990 (10th Cir. 2000).

64. *Id.* at 984.

65. *Id.* at 990.

66. *Id.* at 989.

67. *Nat'l Parks and Conservation Ass'n v. Bd. of State Lands*, 869 P.2d 909, 918-21 (Utah 1994).

68. *Id.* at 918. The Utah Supreme Court identified many cases outlining the various duties of the State as trustee. *Id.* See *Ervien v. United States*, 251 U.S. 41, 46-47 (1919) (expending school trust funds to advertise the state unlawful); *United States v. 78.61 Acres of Land*, 265 F. Supp. 564, 566-67 (D. Neb. 1967) (asserting sole purpose of placing school lands in trust was to ensure proceeds used for schools and not general public benefit); *State v. University of Alaska*, 624 P.2d 807, 813-14 (Alaska 1981) (requiring full value for sale or lease of school lands); *Gladden Farms Inc. v. State*, 633 P.2d 325, 330 (Ariz. 1981) (subsidizing public programs with trust lands not allowed); *County of Skamania v. State*, 685 P.2d 576, 580 (Wash. 1984) (concluding state school trust lands are subject to a trust obligation requiring state land managers to seek full value for school lands).

lands to further other legitimate governmental interests, “even if there is some indirect benefit to the public schools.”<sup>69</sup>

In *Oklahoma Education Association v. Nigh*, the education association brought an action against the commissioners of the state land office concerning the leasing of state school lands and loaning of trust funds.<sup>70</sup> The Oklahoma Supreme Court determined that a State may not use school lands to subsidize farming and ranching.<sup>71</sup> Therefore, statutes allowing these subsidies are unconstitutional.<sup>72</sup> The court also addressed language in Oklahoma’s Enabling Act that states the “[l]egislature of the state may prescribe additional legislation governing such leases” and that land sales “are to be conducted ‘under such rules and regulations as the Legislature of the said State may prescribe.’”<sup>73</sup> The State alleged that the “literal language of the [Enabling] Act vest[ed] in the Legislature the authority to enact practically any rule or regulation it [chose] with regard to selling or leasing the federally granted land.”<sup>74</sup> Pointing out the speciousness of the State’s position, the court asserted that “[c]ommon sense dictates” the Enabling Act be read as a whole rather than reading the “selected language in isolation from the entire contextual content of the relevant sections.”<sup>75</sup> According to the court, the “rule making authority granted the Legislature was intended to promote rather than impede attainment of the manifest objective of the Enabling Act”—management of the state school trust lands for the benefit of the State’s public schools.<sup>76</sup>

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69. *Nat’l Parks and Conservation Ass’n*, 869 P.2d 909, 918 (Utah 1994) (citing *Ervien v. United States*, 251 U.S. 41, 46-47 (1919) (expending school trust funds to advertise state unlawful); *Lassen v. Ariz. ex rel. Ariz. Highway Dep’t*, 385 U.S. 458, 466 (1967) (subsidizing state highway construction with school land trust funds unlawful); *Terracor v. Utah Bd. of State Lands*, 716 P.2d 796, 799 (Utah 1986); *Jenkins v. Swan*, 675 P.2d 1145, 1148-51 (Utah 1983)).

70. *Oklahoma Educ. Ass’n v. Nigh*, 642 P.2d 230, 235 (Okla. 1982).

71. *Id.* at 236 (relying on holding in *Lassen v. Ariz.*, 385 U.S. at 466, that a State may not subsidize its highway construction program with school land trust fund assets).

72. *Id.* at 235-36. The Oklahoma Supreme Court further explained:

We are not saying under the proper circumstances a preference right to release [sic] trust lands requiring the current lessee to equal or exceed other bids cannot be given. We are merely saying that a preference right to release given to the current lessee that does not require the payment of a competitive rate for such lease is violative of the trustee’s duty to obtain the maximum benefit and return to the trust estate.

*Id.* at 236 n.10.

73. *Id.* at 237 (quoting Okla. Enabling Act of 1906, ch. 3335, §§ 9-10, 34 Stat. 267 (1906)).

74. *Id.*

75. *Id.*

76. *Id.*

Similarly, *In State ex rel. Ebke v. Board of Educational Lands & Funds*, the Nebraska Supreme Court addressed the constitutionality of legislative restrictions on trust management.<sup>77</sup> The court recognized that while the legislature had authority to establish rules and regulations, such could not violate the constitution.<sup>78</sup> The court determined that the state is the trustee of state school lands and that:

A trustee is required to accept the highest bid in the absence of a cogent reason for not so doing. It is a breach of trust for a trustee to knowingly handle the property of a trust estate for the benefit of any person at the expense of the trust estate . . . . It is a fundamental principle that a trustee owes beneficiaries of a trust his undivided loyalty.<sup>79</sup>

Though prior to *Riedel* the courts had not analyzed Wyoming's school lands grant to determine if it is subject to a trust, state lands have been a repeated focus of the Wyoming Supreme Court.<sup>80</sup> As Wyoming's management of state lands does not distinguish between those lands granted to the state for the purpose of supporting the state's common schools (school lands) and lands granted to the state for purposes other than supporting schools (non-school lands), any decision concerning state lands management likely would impact both the state's school and non-school lands.<sup>81</sup> The Wyoming Supreme Court's state lands decisions generally fall into three broad categories: (1) inheritability of state lands leases; (2) the degree of deference extended to the legislature's and the Board's discretion; and (3) the incumbent lease-holder's renewal preference and support of grazing and

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77. *Ebke v. Bd. of Educ. Lands & Funds*, 47 N.W.2d 520 (Neb. 1951).

78. *Id.*

79. *Id.* at 523.

80. The author's August 2004 search on WestLaw under "state lands" indicates the Wyoming Supreme Court addressed the issue at least eighty-four times between 1902 and 2004. This is significant given Wyoming's sparse case law.

81. See Spahr & Sunderman, *supra* note 39, at 614 (suggesting single-price grazing fee misprices many leases and recommending a variable-fee form of pricing be adopted). See also Jeff Oven & Chris Voigt, Comment, *Wyoming's Last Great Range War: The Modern Debate Over the State's Public School Lands*, 34 LAND & WATER L. REV. 75, 91-92 (1999). The authors discuss the problems created by Wyoming's one-size-fits-all state lands management system. *Id.* Wyoming does not distinguish between the management of state school lands and other state-owned lands, but does differentiate school lands' proceeds from the proceeds of non-school lands. See WYO. CONST. art. VII, § 2 (declaring proceeds from lease or sale of state school lands part of "the perpetual fund for school purposes."); WYO. CONST. art. VII, § 7 (declaring income arising from the perpetual school funds "together with all the rents of the unsold school lands . . . shall be exclusively applied to the support of free schools in every county in the state"); WYO. CONST. art. XVIII, § 2 (declaring the "proceeds from the sale and rental of all lands and other property donated, granted or received . . . from the United States . . . shall be inviolably appropriated and applied to the specific purposes specified in the original grant or gift"); Act of Admission for the State of Wyoming, ch. 664, § 5, 26 Stat. 222 (1890) (declaring proceeds from the sale of state school lands to "constitute a permanent school fund").

other agricultural interests.<sup>82</sup> The inheritability of state lands leases is beyond the scope of this note, but the precedent established by the last two of these three categories formed the basis for the court's reasoning in *Riedel*.<sup>83</sup>

### *Discretion & Deference*

Repeatedly, the Wyoming Supreme Court has shown a high level of deference to the legislature's and the Board's discretion in managing school lands.<sup>84</sup> The court has concluded that it would be compelled to uphold the Board "[i]n the absence of abuse of discretion or fraud or illegal action."<sup>85</sup> In *Thompson v. Conwell*, the Board renewed Conwell's lease even though Thompson owned land adjoining the leased section, needed the land, and contended leasing to Conwell was not in the state's best interest.<sup>86</sup> Thompson claimed that renewing Conwell's lease in light of these circumstances "was a substantial abuse of discretionary authority and unlawful."<sup>87</sup> The Wyoming Supreme Court disagreed with Thompson's claim and found itself court bound to uphold the Board because granting the lease renewal to Conwell "was a matter within the sound discretion of the . . . Board."<sup>88</sup>

In *Frolander v. Ilsley*, the Wyoming Supreme Court upheld the Board's decision granting renewal of a grazing lease to the lessee instead of granting it to an applicant who offered a higher bid.<sup>89</sup> The court reasoned that "the [B]oard has a large discretion, which can be overturned only" on limited grounds.<sup>90</sup> Further, the court found an amendment to the renewal preference statute was intended "to increase the discretion of the [B]oard."<sup>91</sup> Prior to amendment, the statute required the Board to lease lands "for the greatest benefit and to secure the greatest revenue to the state."<sup>92</sup> The amended statute removed the requirement "to secure the greatest revenue to

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82. See, e.g., *Hawks v. Creswell*, 144 P.2d 129 (Wyo. 1943) (passing of right-to-renew preference to decedent's estate or representative); *Thompson v. Conwell*, 363 P.2d 927 (Wyo. 1961) (granting lease renewal to incumbent lease-holder within sound discretion of board); *Kerrigan v. Miller*, 84 P.2d 724 (Wyo. 1938) (granting renewal of lease of agricultural school land must recognize state's policy to support ranching business).

83. *Riedel v. Anderson*, 70 P.3d 223, 229-35 (Wyo. 2003).

84. For examples of the court's deference to the legislature and Board, see *Thompson v. Conwell*, 363 P.2d 927, 928 (Wyo. 1961); *Rayburne v. Queen*, 326 P.2d 1108, 1111 (Wyo. 1958); *Frolander v. Ilsley*, 264 P.2d 790, 794 (Wyo. 1953); *Howard v. Lindmier*, 214 P.2d 737, 739 (Wyo. 1950); *Mayor v. Bd. of County Comm'rs*, 192 P.2d 403, 428 (Wyo. 1948); *Banzhaf v. Swan Co.*, 148 P.2d 225, 228 (1944).

85. *Thompson*, 363 P.2d at 928.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Frolander v. Ilsley*, 264 P.2d 790, 799 (Wyo. 1953).

90. *Id.* at 794. See *supra* note 84 and accompanying text.

91. *Frolander*, 264 P.2d at 793-94. Compare Wyo. Codified Stat. § 24-113 (Bobbs-Merrill 1945), with Wyo. Revised Stat. § 91-113 (Courtright 1931).

92. Wyo. Revised Stat. § 91-113 (Courtright 1931).

the state."<sup>93</sup> The court refrained from defining "greatest benefit," reasoning that "the change in the statute seems to show that the legislature meant to increase" the Board's discretion.<sup>94</sup> However, in *Kerrigan v. Miller*, the court found the Board's discretion "distinctly limited or regulated" by the legislature's provision for a "preference right of renewal."<sup>95</sup>

### *Right-to-Renew & Support of Grazing*

In *Frolander v. Ilsley*, the Wyoming Supreme Court noted, "the right to renew preference is a *very substantial* right."<sup>96</sup> The right-to-renew preference:

[C]learly shows that the legislature meant to make it the policy of the state to recognize equities in those who have built up a ranching business in the state which should be considered in passing upon applications for renewal of expiring leases, and that the absence of such policy would be injurious if not destructive to that industry.<sup>97</sup>

The extent of the renewal preference's support of Wyoming ranching interests is evidenced in *Stauffer v. Johnson*.<sup>98</sup> In *Stauffer*, the Board granted the incumbent rancher's application for renewal at \$320 annual rental even though a competing bid of \$3,500 annual rental was received.<sup>99</sup> The court reasoned that the lessee of the school land and his father were residents of the state, had used the land for many years, had made valuable improvements which were in large part responsible for the increased value of the lease, and if the lease were lost the value of the remainder of lessee's ranch would be seriously impaired.<sup>100</sup> The court determined that the Board did not

93. Wyo. Codified Stat. § 24-113 (Bobbs-Merrill 1945).

94. *Frolander*, 264 P.2d at 793.

95. *Kerrigan v. Miller*, 84 P.2d 724, 729 (Wyo. 1938).

96. *Frolander*, 264 P.2d at 794 (citation omitted).

97. *Id.* (quoting *Kerrigan v. Miller*, 84 P.2d 724, 729 (Wyo. 1938)).

98. *Stauffer v. Johnson*, 259 P.2d 753 (Wyo. 1953).

99. *Id.* at 755, 758. Stauffer, a resident of Utah, sub-leased and grazed Johnson's school lands lease. *Id.* at 754. Stauffer wanted the lease for grazing, but the Board determined that his interest in the land was outweighed by Johnson's use of the school section as the base of a ranching operation. *Id.* at 755. The Board determined that the land "should serve as a base ranch like it has in the past for the best interests of the State." *Id.* The renewal preference statute in effect in 1953, like the renewal preference statute in effect today, required that state lands "be leased in such manner and to such parties as shall inure to the greatest benefit to the state." Wyo. Codified Stat. § 24-113 (Bobbs-Merrill 1945). The 1953 statute lacked the current requirement that incumbent leaseholders match any competing bids based on FMV for same or similar use of the land. Compare Wyo. Codified Stat. § 24-113 (Bobbs-Merrill 1945), with WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

100. *Stauffer*, 259 P.2d at 755, 756, 757.

abuse its discretion in awarding the lease to the incumbent leaseholder, and, therefore, affirmed the Board's decision.<sup>101</sup>

In *Bosler v. McKechnie*, the Wyoming Supreme Court upheld lessee's right-to-renew over a competing lease application and allegations that the lessee violated the terms of lease and forfeited his right-to-renew by subleasing land without paying one-half of the excess rent to the state.<sup>102</sup> The court concluded that insufficient evidence existed to overturn the Board's decision and that "refusal to give effect to the preference right of renewal [would be] a detriment to the interest of the state."<sup>103</sup>

#### PRINCIPAL CASE

William Riedel challenged the constitutionality of Wyoming's right-to-renew preference in a declaratory judgment case against the Board.<sup>104</sup> The district court issued an order "concluding that the lands were indeed encumbered by a trust, imposing on the State a fiduciary duty to manage the lands exclusively for the beneficiaries, the State's common schools."<sup>105</sup> Following this order, the district court addressed the issue of whether the right-to-renew preference is an unconstitutional interference with the State's trust duties.<sup>106</sup> The district court granted the intervenor Associations' motion to dismiss Riedel's claim on the grounds that he "failed to present adequate evidence that the preferential right to renew violates the State's fiduciary responsibilities."<sup>107</sup> The Wyoming Supreme Court granted Riedel's timely appeal of the district court's dismissal of his complaint, and the Associations' cross-appeal of the district court's holding that school lands are held in trust.<sup>108</sup>

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101. *Id.* at 765.

102. *Bosler v. McKechnie*, 362 P.2d 809 (Wyo. 1961). Wyoming statute section 36-5-105 (b) states:

If the lessee of state lands shall assign, sublease or contract all or any part of the lease area, the lease shall be subject to cancellation unless such assignment or sublease or contract is approved by the director, subject to criteria established by the board of land commissioners; however, no such approval shall be arbitrarily or unreasonably withheld and all action upon each application therefor, shall be such as will inure to the greatest benefit to the state land trust beneficiaries, provided, that in no event shall the lands be subleased unless one-half (1/2) of the excess rental is paid to the state.

WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

103. *Bosler v. McKechnie*, 362 P.2d 809, 813 (Wyo. 1961).

104. *Riedel*, 70 P.3d at 226.

105. *Id.* at 226-27.

106. *Id.* at 227.

107. *Id.*

108. *Id.*

*State School Lands "Trust" Analysis*

The Wyoming Supreme Court began its analysis by first addressing whether state school lands are held in trust and, if so, whether the preferential right-to-renew violates this trust. Reviewing the historical background of public land grants to the several states for the support of schools, the court observed the *laissez faire* approach to state school lands evidenced by the enabling acts of states admitted to the United States in the early nineteenth century.<sup>109</sup> The language of these early state enabling laws did not mention "trusts, fiduciary obligations, or restrictions on the sale, lease or other use of the lands."<sup>110</sup> This early approach contrasts sharply with the "closely regulated express trust conveyances" found in the enabling acts of later-admitted states such as New Mexico and Arizona.<sup>111</sup> The court asserted, "Wyoming's admission, both chronologically and conceptually, falls somewhere between Congress' *laissez faire* approach to the states admitted in the early nineteenth century and the closely regulated express trust conveyances to New Mexico and Arizona . . . ."<sup>112</sup>

The court then reviewed the instances where the Wyoming Constitution addresses state school lands.<sup>113</sup> The court summarized the constitution's provisions as showing:

[T]he lands are accepted for educational purposes; that the board of land commissioners is established with authority to manage, sell or lease the lands as directed by the legislature; that the proceeds from the sale and lease of the lands shall constitute a permanent trust fund, with only the income used for educational purposes; that the lands may be leased on whatever terms the legislature shall prescribe; and that the

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109. *Riedel*, 70 P.3d at 227.

110. *Id.* (relying on *Fairfax et al.*, *supra* note 1, at 810, and *Budge*, *supra* note 1, at 226).

111. *Riedel*, 70 P.3d at 228. The 1912 Arizona-New Mexico Enabling Act

[S]tated expressly that the lands granted to the state are held "in trust"; provided that the products and proceeds of the lands "shall be subject to the same trusts as the lands;" prescribed the manner of advertising, selling and leasing the lands; directed the method of maintaining and investing the permanent fund; voided any transaction not in conformity with the enabling act; and directed the Attorney General of the United States to enforce all provisions related to the trust lands.

*Riedel*, 70 P.3d at 228 (summarizing Arizona-New Mexico Enabling Act, 36 Stat. 557, 561-68 (1910)).

112. *Id.* at 228.

113. *Id.* at 228-29 (quoting WYO. CONST. art. VII, § 2, 6, 7 and art. XVIII, § 1, 2, 3). The court relied on the text of the constitution as originally adopted in 1891. *Id.*

lands may be sold only at public auction for at least three-quarters of their appraised value.<sup>114</sup>

The court noted that the delegates to Wyoming's constitutional convention in September 1889 borrowed heavily from previously admitted states' constitutions.<sup>115</sup> The court afforded considerable weight to the fact that the constitutions of Colorado, Washington, Idaho, and South Dakota—all of which the Wyoming Constitution borrowed heavily from—“expressly provided that the states' school lands were ‘held in trust.’”<sup>116</sup> Likewise, the Oklahoma Constitution, drafted after Wyoming's admission, declared state school lands and proceeds “a sacred trust.”<sup>117</sup> The court found Wyoming's constitution “significant by contrast” as it does not follow the contemporary examples of the above mentioned states, but instead follows earlier admitted states, such as Michigan, which “declare a trust in the sale proceeds but not in the lands themselves.”<sup>118</sup> Based on these observations, the court concluded that Wyoming's constitution did not create a constitutional trust for the state's school lands.<sup>119</sup>

The court found Riedel had standing to bring his claim as the right-to-renew preference had “clearly worked to deprive [him] of a lease to the subject school lands.”<sup>120</sup> Even if the court had not found Riedel's injury sufficient to grant his standing, the court stated that it has “recognized a relaxed standing requirement in matters of great public interest or importance,” and the court has applied “the great public interest doctrine when a constitutional question is presented.”<sup>121</sup> The court concluded that “the con-

114. *Id.* at 232.

115. *Id.* at 229 (citing Robert B. Keiter & Tim Newcomb, *The Wyoming State Constitution: A Reference Guide* 1, 4 (1993)).

116. *Id.* See COLO. CONST. art. IX, § 10 (1876); WASH. CONST. art. XVI, § 1 (1889); IDAHO CONST. art. IX, § 8 (1889); S.D. CONST. art. VIII, § 7 (1889).

117. *Riedel*, 70 P.3d at 229. See OKLA. CONST. art. XI, § 1 (1907).

118. *Riedel*, 70 P.3d at 229. See MICH. CONST. art. X, § 2 (1836).

119. *Riedel*, 70 P.3d at 232.

120. *Id.* at 230. The court found Riedel's injury “more direct and personal” than that of petitioner in *Jolley v. State Loan and Inv. Bd.*, 38 P.3d 1073 (Wyo. 2002). *Riedel*, 70 P.3d at 230. In *Jolley*, the petitioner challenged the sufficiency of the Loan and Investment Board's public meeting schedule. *Id.* at 1075. Since petitioner's interest in the meeting was as a reporter and citizen, he was neither aggrieved nor adversely affected by the meeting schedule change. *Id.* at 1077. Therefore, the petitioner lacked standing to appeal the board's decision. *Id.* at 1079.

121. *Riedel*, 70 P.3d at 230. The *Jolley* court traced the development of the great public interest doctrine, and stated:

Historically, we have applied the great public interest and importance doctrine to find standing where we ordinarily would not in the following instances: *Washakie County School District Number One*, 606 P.2d 310 (constitutionality of school financing); *Memorial Hospital of Laramie County*, 770 P.2d 223 (tax exempt status of hospital); *State ex rel. Wyoming Association of Consulting Engineers and Land Surveyors v. Sulli-*

stitutional challenge to the statute at issue" in *Riedel* required the court to "decide the status of the state's obligations with regard to the . . . state school lands."<sup>122</sup> The court determined that Riedel's challenge of Wyoming's right-to-renew preference was a matter of public importance and, therefore, an appropriate instance to "invoke the great public interest exception to the standing requirement."<sup>123</sup>

After establishing Riedel's standing, the court turned its attention to an analysis of the status of school lands in Wyoming. The court first focused on Wyoming's Act of Admission and held that the Act does not create a trust obligation in connection with the state's ownership of school lands.<sup>124</sup> The court relied on two decisions from the Court of Appeals for the Tenth Circuit to reach this conclusion. First, in *Branson School District Re-82 v. Romer*, the Tenth Circuit determined that "the question of whether a statehood statute creates a federal trust requires a case-specific analysis of the particular state's enabling statute because the history of each state's admission to the Union is unique."<sup>125</sup> The *Branson* court found that the Colorado Enabling Act "contains a sufficient enumeration of duties to indicate Congress's intent to create a fiduciary relationship between the state . . . and its common schools."<sup>126</sup> In *Branson*, the court also found the Colorado Constitution relevant to its decision as the constitution was adopted immediately after the Enabling Act and was, therefore, a "contemporaneous expression of the parties' intent" that state school lands be "held in trust."<sup>127</sup> Second, in *District 22 United Mine Workers v. Utah*, the Tenth Circuit implemented *Branson's* case-specific review and concluded that Utah's enabling act gave too much freedom to the legislature to manage and dispose of state school lands to create a trust.<sup>128</sup> However, the Tenth Circuit found Utah's constitution contained explicit trust language and sufficient provisions to create a trust with respect to those lands granted to the state for the support of the

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*van*, 798 P.2d 826 (Wyo. 1990) (constitutionality of the Wyoming Professional Review Panel Act); *Board of County Commissioners of the County of Laramie v. Laramie County School District Number One*, 884 P.2d 946 (Wyo. 1994) (entitlement of school district to interest on school district funds held by county treasurer); and *Management Council of the Wyoming Legislature*, 953 P.2d 839 (constitutional scope of governor's veto power).

*Jolley*, 38 P.3d at 1078.

122. *Riedel*, 70 P.3d at 230.

123. *Id.* at 230-31.

124. *Id.* at 231, 232.

125. *Id.* at 231 (quoting *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619, 633 (10th Cir. 1998)).

126. *Branson Sch. Dist.*, 161 F.3d at 634. See *infra* notes 175-95 and accompanying text for a discussion of the duties enumerated in the Colorado Enabling Act.

127. *Riedel*, 70 P.3d at 231 (citing *Branson Sch. Dist.*, 161 F.3d at 634-35).

128. *Id.* (citing *District 22 United Mine Workers v. Utah*, 229 F.3d 982, 990 (10th Cir. 2000)).

state's common schools.<sup>129</sup> The Wyoming Supreme Court found that Wyoming's enabling act did not specify "a minimum sales price for its school lands and expressly authorizes the leasing of the lands in any manner the state legislature provides," both of which "militate[] against the creation of an express trust by the Wyoming Act of Admission."<sup>130</sup>

After determining the Wyoming Act of Admission does not create a trust obligation in connection with the state's ownership of school lands, the *Riedel* Court focused on the Wyoming Constitution and determined that it does not create an express trust of state school lands.<sup>131</sup> The court distinguished between the constitution's articulation of a trust as to the proceeds from the sale of the lands and the constitution's silence as to the land itself.<sup>132</sup> The court also found it significant that Wyoming's Constitution, which limits the trust to proceeds from the sale of state school lands, was adopted by the Wyoming Territory in 1889 and was available for Congress's review when it passed the Wyoming Act of Admission in 1890.<sup>133</sup> Therefore, Congress allowed Wyoming to join the union knowing that the state's constitution limited the trust of lands given to it by the United States to the proceeds from the sale of such lands.<sup>134</sup> In addition, Wyoming's Constitution gives the legislature latitude to direct the management, sale, or lease of state lands and to prescribe whatever terms it chooses for the lease of state lands.<sup>135</sup> The court found that the latitude given the legislature and the limitation of the trust language to the proceeds from the lands "militate against a constitutionally-created trust" in the state school lands.<sup>136</sup>

Though the court found neither the Wyoming Act of Admission nor the Wyoming Constitution subjected state school lands to a trust, the court recognized that the lands were subject to a statutory trust.<sup>137</sup> The court determined that although state land grants may have been informally referred to as "trust lands" prior to 1997, the 1997 revision of leasing statutes left little doubt that these lands were governed by a statutorily-created trust.<sup>138</sup>

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129. *Dist. 22 Mine Workers*, 229 F.3d at 990.

130. *Riedel*, 70 P.3d at 231.

131. *Id.*

132. *Riedel*, 70 P.3d at 232.

133. *Id.*

134. *Id.*

135. *Id.* The legislature's freedom is restricted by constitutional limits such as the ten-year maximum length of grazing and agricultural leases. Wyo. Act of Admission, Ch. 664, § 5, 26 Stat. 222 (1890).

136. *Riedel*, 70 P.3d at 232.

137. *Id.*

138. *Id.* at 233. The Wyoming Legislature amended the leasing statutes in 1997, setting forth an uncodified statement of principles, which states:

- (a) The legislature endorses the following statements of principle and directs that the board of land commissioners and the director of state lands abide by these statements in the implementation of these statutes:

The court found that "it is within the legislature's authority to declare a trust in the school lands" and that the legislature had done so.<sup>139</sup>

*The Statutory Trust and the Right-to-Renew*

After holding that state school lands are subject to a statutory trust, the court determined that the state's preferential right-to-renew preference does not violate the state's fiduciary duties.<sup>140</sup> The court stated that "the land trust in Wyoming is a creature of statute."<sup>141</sup> As such, "the statutes incorporate all of the trustee's duties, and . . . such arrangement is authorized by the Act of Admission and the Constitution's express authorization to lease the lands 'under such regulations as the legislature shall prescribe.'"<sup>142</sup> The court dispatched each of Riedel's five constitutional objections to the state's preferential right-to-renew.<sup>143</sup> First, the court rejected Riedel's claim that Wyoming's fiduciary duties include receiving "fair market value for agricultural leases of the common school land grants."<sup>144</sup> The court asserted, "any trust in Wyoming is a creation of Wyoming statute, that trust does not carry with it the duty to maximize revenues."<sup>145</sup> Second, the court rejected Riedel's argument that the preferential right-to-renew "is tantamount to an absolute right of renewal," which violates the Wyoming Enabling Act's prohibition against leases longer than ten years thereby depressing lease values

(i) The state land trust, consisting of trust lands, trust minerals and permanent land funds shall be managed under a total asset management policy;

(ii) The state land trust is intergenerational. Therefore, the focus is on protecting the corpus for the long term;

(iii) Trust land should remain a substantial, integral component of the state land trust portfolio. There is no mandate to sell any trust asset to maximize revenue in the short term;

(iv) All leases of trust land shall assure a return of at least fair market value considering the management practices and risk assumed by the lessee when determining fair market value;

(v) Investment policies shall ensure that the earning power of the permanent land fund is not reduced from the effect of inflation.

1997 Wyo. Sess. Laws Ch. 200, § 3.

139. *Riedel*, 70 P.3d at 233.

140. *Id.*

141. *Id.*

142. *Id.* (quoting Wyoming Act of Admission, Ch. 664, § 5, 26 Stat. 222 (1890)).

143. *Id.* at 234-35.

144. *Id.* at 234.

145. *Riedel*, 70 P.3d at 234.

and favoring incumbent leaseholders.<sup>146</sup> The court found the right-to-renew conditional—“the incumbent must re-apply every ten years, must have met prior lease payments, must otherwise maintain eligibility, and . . . must match any higher bid offered for the same land.”<sup>147</sup> The court noted the evidence presented by Riedel “that the vast majority of leases are renewed by the incumbent lease holders” did not meet the heavy burden to “clearly and exactly show the unconstitutionality beyond a reasonable doubt.”<sup>148</sup> Third, Riedel argued the right-to-renew preference violates the Wyoming Constitution’s requirement that “school lands be disposed of by public auction.”<sup>149</sup> The court concluded that “a lease of state lands . . . is not a disposal of those lands and need not be accomplished by public auction.”<sup>150</sup> Fourth, Riedel contended the right-to-renew “violates the constitutional prohibition on ‘granting any privileges to persons who may have settled upon any of the school lands’” and the court quickly dispatched this argument as nonsensical.<sup>151</sup> Fifth, Riedel argued that if the common law governs the trust, the right-to-renew “depresses the value of agricultural leases and therefore violates the trustees [sic] duty to maximize revenue from the trust lands.”<sup>152</sup> In response, the court reasserted its position that the leasing of state school lands is “governed by the statutes and not by common law trust principles.”<sup>153</sup> The court concluded summarily: “The legislature will not be presumed to have created the trust and violated it at the same time.”<sup>154</sup>

In closing, the court stated, “the current version [of the right-to-renew preference] requires that the renewing lease holder match any competing bid and therefore approximates market value.”<sup>155</sup> The court made clear that Riedel’s evidence to the contrary was unconvincing.<sup>156</sup> The court stated

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146. *Id.*

147. *Id.*

148. *Id.* (quoting *Reiter v. State*, 36 P.3d 586, 589 (Wyo. 2001)).

149. *Id.* See WYO. CONST. art. XVIII, § 1.

150. *Riedel*, 70 P.3d at 234.

151. *Id.* The court explained that “the lessees of today are not the original settlers contemplated by the Constitution and . . . the leasing of the lands is not a ‘sale or other disposition’ of the school lands.” *Id.* at 234.

152. *Id.* at 235.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Riedel*, 70 P.3d at 235. Evidence offered by Riedel to support his constitutional objections to section 36-5-105 included expert testimony that:

[I]ncumbent lease holders in Wyoming almost always prevail when there is a competing lease application, that those leases have a positive “permit value” when agricultural properties are marketed, and that other states realize more for their leases because they have a variable rather than a single statewide minimum lease rate.

*Id.* See Brief of Appellant/Appellee William H. Riedel, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60).

that to conclude from Riedel's offered evidence "that the state is not realizing sufficient income from its trust lands, rising to the level of a breach of fiduciary duty, would be sheer speculation."<sup>157</sup>

The court concluded that under the Wyoming Act of Admission and Constitution, the Wyoming Legislature acted appropriately when it declared state school lands subject to a statutorily created trust and concurrently provided incumbent leaseholders of those lands with a right-to-renew preference.<sup>158</sup> For these reasons, the court affirmed the district court's grant of defendants' motion to dismiss.<sup>159</sup>

#### ANALYSIS

The Wyoming Supreme Court incorrectly determined that Wyoming's state school lands were not subject to a constitutional trust. In rejecting a constitutional trust, the court ignored precedent from the Court of Appeals for the Tenth Circuit and the Wyoming Supreme Court.<sup>160</sup> The Wyoming Supreme Court's stance also contradicted the position advanced by Wyoming's Attorney General in the state's appellee brief in *Riedel*.<sup>161</sup> If the court had found a constitutional trust, then the rules of trust law would apply to the management of school lands and the state would be required to manage the lands for the sole benefit of the state's schools.<sup>162</sup> Under a constitutional trust, Wyoming's right-to-renew preference would be unconstitutional as it restricts trust lands revenue and creates grazing interests as a beneficiary of the school lands trust.<sup>163</sup>

Instead of recognizing a constitutional trust, the court determined that Wyoming's state school lands are subject only to a statutory trust.<sup>164</sup> In reaching this conclusion, the court incorrectly found trust language as determinative of the creation of a trust and failed to recognize that the rules of trust law continue to govern a statutory trust except where specifically altered by a statutory provision.<sup>165</sup> Since the statutory provisions signaled by the court as creating the statutory trust conform with, rather than alter, the rules of trust law, the rules of trust law continue to govern the statutory trust.<sup>166</sup> The court's failure to recognize that the rules of trust law continue to control the terms of the statutory trust led the court to incorrectly uphold

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157. *Riedel*, 70 P.3d at 235.

158. *Id.*

159. *Id.*

160. *Riedel*, 70 P.3d at 231-2. See *infra* notes 171-222 and accompanying text.

161. *Riedel*, 70 P.3d at 232. See Trust Brief of Appellee State of Wyoming at 10-31, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60).

162. See *supra* note 19 and accompanying text.

163. See WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

164. *Riedel*, 70 P.3d at 232-33. See RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

165. See *infra* notes 171-222 and accompanying text.

166. *Riedel*, 70 P.3d at 232-33; RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

Wyoming's preferential right-to-renew.<sup>167</sup> The right-to-renew preference violates the statutory trust for the same reasons it violates a constitutional trust: it restricts trust lands revenue and creates grazing interests as a beneficiary of the school lands trust.<sup>168</sup>

The court declared the state school lands trust and the constitutionality of the right-to-renew preference issues of "great public interest."<sup>169</sup> Therefore, the court's incorrect and incomplete analyses are especially ironic. The court's holdings in *Riedel* constructed a school lands trust within which the right-to-renew preference is constitutional, even though it creates an artificially isolated market for grazing and other agricultural use of school lands that restricts income to the trust and creates a beneficiary other than the state's schools.<sup>170</sup> Certainly this result is not in the "great public interest," but in the interest of ranching.

### *Constitutional Trust*

By rejecting a state school lands constitutional trust, the Wyoming Supreme Court ignored precedent from the Court of Appeals for the Tenth Circuit and the Wyoming Supreme Court and contradicted the position advanced by Wyoming's Attorney General in the state's appellee brief in *Riedel*.<sup>171</sup> In *Papasan*, the United States Supreme Court advocated a case-specific analysis of states' constitutions and enabling acts to determine the existence and parameters of school lands trusts.<sup>172</sup> The Tenth Circuit, in both *Branson* and *District 22 Mine Workers*, applied the case-specific analysis advocated by the United States Supreme Court.<sup>173</sup> The Wyoming Supreme Court recognized the use of the case-specific analysis in *Papasan*, *Branson*, and *District 22 Mine Workers*, but failed to apply the test as it had been applied in those cases to the Wyoming Act of Admission and the Wyoming Constitution.<sup>174</sup> If the Wyoming Supreme Court had applied the case-specific analysis as the Tenth Circuit did in *Branson*, the court would have determined Wyoming's state school lands are subject to a constitutional trust.

After performing the case-specific analysis, the *Branson* court determined that the Colorado Enabling Act contained a "sufficient enumeration of duties to indicate Congress' intent to create a fiduciary relationship between the state of Colorado and its common schools with respect to the

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167. *Riedel*, 70 P.3d at 233-35.

168. See *infra* notes 223-256 and accompanying text.

169. *Riedel*, 70 P.3d at 230.

170. See *infra* notes 257-301 and accompanying text.

171. *Riedel*, 70 P.3d at 232.

172. *Papasan v. Allain*, 478 U.S. 265, 289-91 n. 18 (1986).

173. *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619 (10th Cir. 1998); *Dist. 22 Mine Workers v. Utah*, 229 F.3d 982 (10th Cir. 2000).

174. *Riedel*, 70 P.3d at 231.

management of the school lands."<sup>175</sup> The Tenth Circuit recognized that the language used in Congress' conveyance of state school lands to the state—that the school lands “are hereby granted to the said State *for the support of the common schools*”—was insufficient to create a federal trust.<sup>176</sup> The court determined that evidence of Congress' intent to create a trust exists in section 14 of Colorado's 1875 enabling act, which states:

That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school-fund, the interest of which to be expended in the support of common schools.<sup>177</sup>

Through this section of the enabling act Congress prescribed: “(1) how the school lands are to be disposed, (2) at what minimum price, (3) how the income from these sales is to be held, (4) what may be done with the interest on that capital holding, and” (5) the permanence of the benefit of these assets for the common schools.<sup>178</sup> The *Branson* court recognized that the above restrictions were imposed to serve Congress' goal of “providing a sound financial basis for the ‘support’ of the state's common schools in perpetuity.”<sup>179</sup> The court felt confident, “[i]n light of this enumeration,” that Congress “intended to create a fiduciary obligation for the state of Colorado to manage the school lands in trust for the benefit of the state's common schools.”<sup>180</sup>

When the *Branson* court's application of the case-specific analysis is repeated with Wyoming's constitution and enabling act, enumerated duties nearly identical to those contained in Colorado's enabling act are revealed. First, both states' documents dictate how the school lands are to be disposed.<sup>181</sup> In Colorado state school lands must be disposed of at public sale and in Wyoming lands may be disposed of at public auction or at public sale.<sup>182</sup> Second, both states mandate a minimum price at which lands may be disposed.<sup>183</sup> Colorado requires state school lands be sold for “not less than

175. *Branson*, 161 F.3d at 634.

176. *Id.* at 634 (citing *Alabama v. Schmidt*, 232 U.S. 168, 173-74 (1914) (interpreting the sparse language of the land grants to Michigan and Alabama as creating a solemn agreement, not a federal trust)).

177. *Id.* at 634 (citing Colorado Enabling Act § 14, 18 Stat. 474, 476 (1875)).

178. *Id.*

179. *Id.*

180. *Id.*

181. Compare Colorado Enabling Act § 14, 18 Stat. 474, 476 (1875), with WYO. CONST. art. XVIII, § 1, and Wyo. Act of Admission, ch. 664, § 5, 26 Stat. 222 (1890).

182. Compare Colorado Enabling Act § 14, with WYO. CONST. art. XVIII, § 1, and Wyo. Act of Admission § 5.

183. Compare Colorado Enabling Act § 14, with WYO. CONST. art. XVIII, § 1.

two dollars and fifty cents per acre," while Wyoming insists state school lands be sold for "not less than three-fourths the appraised value thereof, and not less than \$10 per acre."<sup>184</sup> Third, both states indicate how the income from the sales of state school lands is to be held.<sup>185</sup> In Colorado, the proceeds from the sale of state school lands "constitute a permanent school-fund."<sup>186</sup> In Wyoming, proceeds from the sale and rental of school lands are "inviolably appropriated and applied to the purposes specified in the original grant or gifts."<sup>187</sup> Further, money from the sale or lease of state school lands constitutes a permanent school fund to be maintained and used for the exclusive benefit of the public schools.<sup>188</sup> Fourth, both Colorado and Wyoming provide for the interest on the permanent school fund.<sup>189</sup> Colorado requires interest from the permanent school-fund "be expended in support of common schools."<sup>190</sup> Wyoming requires that only the annual income and interest be appropriated from the school's perpetual fund and said funds "shall be exclusively applied to the support of free schools."<sup>191</sup> Finally, both states provide for the permanence of the state school lands and their benefit to the common schools.<sup>192</sup> In Colorado, sections sixteen and thirty-six are granted to the state for the support of common schools.<sup>193</sup> Wyoming has a nearly identical provision and assures the permanence of the state school lands by declaring that "such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, . . . but shall be reserved for school purposes only."<sup>194</sup>

The *Branson* Court determined that through enumerated duties contained in Colorado's enabling act Congress intended to create a fiduciary obligation for the state.<sup>195</sup> Clearly, the Tenth Circuit would reach the same conclusion if it applied the same analysis to Wyoming's enabling act and constitution. Admittedly, the Wyoming Act of Admission does not contain a minimum price for the sale of school lands, but the minimum sales price is clearly articulated in the Wyoming Constitution.<sup>196</sup> As the Tenth Circuit recognized the Colorado Enabling Act and the Colorado Constitution as contemporaneous documents that should be considered in concert, the Wyoming

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184. Compare Colorado Enabling Act § 14, with WYO. CONST. art. XVIII, § 1.

185. Compare Colorado Enabling Act § 14, with WYO. CONST. art. XVIII, § 2, WYO. CONST. art. VII, §§ 2, 6, and Wyo. Act of Admission § 5.

186. Colorado Enabling Act § 14.

187. WYO. CONST. art. XVIII, § 2.

188. WYO. CONST. art. VII, § 2; WYO. CONST. art. VII, § 6; Wyo. Act of Admission § 5.

189. Compare Colorado Enabling Act § 14, with WYO. CONST. art. VII, §§ 2, 6-7, and Wyo. Act of Admission § 5.

190. Colorado Enabling Act § 14.

191. WYO. CONST. art. VII, § 7. See also WYO. CONST. art. VII, §§ 2, 6; Wyo. Act of Admission § 5 (restricting school funds expenditures).

192. Compare Colorado Enabling Act § 7, with Wyo. Act of Admission §§ 4, 5.

193. Colorado Enabling Act § 7.

194. Wyo. Act of Admission §§ 4, 5.

195. *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619, 634 (10th Cir. 1998).

196. WYO. CONST. art. XVIII, § 1.

Constitution and Act of Admission should be analyzed with the same regard.<sup>197</sup> When taken together, the two Wyoming documents reveal a constitutional trust that recognizes Congress' intent "to create a fiduciary obligation for the state . . . to manage the school lands in trust for the benefit of the state's common schools."<sup>198</sup>

By failing to follow the precedent established by *Branson*, the Wyoming Supreme Court incorrectly determined that Wyoming's state school lands are not subject to a constitutional trust, and that the state is not subject to the fiduciary obligation a trust would imply.<sup>199</sup> This conclusion foreclosed the court's analysis of Riedel's constitutional claims that the right-to-renew preference breached the state's fiduciary duties.<sup>200</sup> If school lands are not subject to a constitutional trust, then the state does not owe any fiduciary duties under the trust, and, therefore, the state could not have breached any fiduciary duties regardless of the right-to-renew preference's contents.<sup>201</sup> The court's finding that state school lands are not subject to a constitutional trust prevented the court from analyzing Riedel's argument against the right-to-renew preference from within the parameters of constitutionally imposed trust obligations.<sup>202</sup> If the court had performed this analysis, it likely would have found that the right-to-renew preference violated the state's fiduciary obligations and was, therefore, unconstitutional on its face.<sup>203</sup>

In addition to failing to follow Tenth Circuit precedent, the Wyoming Supreme Court failed to follow its own precedent established in *Frolander v. Ilsley*.<sup>204</sup> In this decision, the court stated, "[s]chool lands are, it is

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197. *Branson*, 161 F.3d at 634. The Colorado Enabling Act was passed in 1875 and the Colorado Constitution was approved a year later in 1876. *Id.* In an order reverse of most states, Wyoming's Constitution was approved in 1889, a year before the state was admitted into the union by the passage of the Wyoming Act of Admission in 1890. *Riedel v. Anderson*, 70 P.3d 223, 228 (Wyo. 2003).

198. *Branson*, 161 F.3d at 634.

199. *Riedel*, 70 P.3d at 232.

200. *Id.* at 233-35.

201. *Id.* at 232-33.

202. *Id.*

203. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

204. See *Frolander v. Ilsley*, 264 P.2d 790, 799 (Wyo. 1953). *Frolander* focused on whether the Board properly awarded a grazing lease to the incumbent leaseholder despite the competing lease applicant's allegations that the leaseholder had violated the provisions of the lease. *Id.* at 791-92. The court examined the right-to-renew preference and the Board's discretion in awarding renewal leases. *Id.* at 793-794. The court concluded that school lands are held in trust by the state, which requires the state's prudent management of the lands. *Id.* at 799. In upholding the right-to-renew preference, the *Frolander* court stated, "[w]e see no reason why the interest of the trust and that of the ranchers in the state may not be harmonized so as to result in the best interest of the state as well as of the schools." *Id.* at 799. The court declared both a school lands trust exists and that the trust could constitutionally serve dual beneficiaries: ranching and the state's schools. *Id.* Though the court's declaration of a school

true, held in trust by the state, and the trust must be administered wisely and prudently so that its aim may be reasonably attained."<sup>205</sup> The *Frolander* court continued by discussing the parameters of the State's fiduciary obligations under the trust.<sup>206</sup> In *Riedel*, the Wyoming Supreme Court only recognized the *Frolander* decision in passing, stating that it was "not necessary . . . to decide whether this Court's use of trust language in *Frolander v. Ilsley* . . . decided the issue [of the existence of a school lands trust] or was dicta that merely used a colloquial expression to describe the school lands."<sup>207</sup> The *Riedel* court dismissed the *Frolander* decision as irrelevant to Riedel's claim even though the underlying issues of each case appear identical: whether a school lands trust exists and, if so, the state's fiduciary obligations under such a trust.<sup>208</sup> Rather than analyzing *Frolander* and determining the precedential weight of the decision for the issues in question in *Riedel*, the court dismissed its prior treatment of the issues.<sup>209</sup> In *Riedel*, the court should have analyzed *Frolander* and either overruled, affirmed, or distinguished its prior decision from the present case.<sup>210</sup> By failing to conduct this analysis, the court treated the binding precedent of the *Frolander* court as simply dicta without any rationale for doing so.<sup>211</sup> If the court had analyzed its decision in *Frolander* and determined that the case established binding precedent on the existence of a school lands trust and the state's obligations under such a trust, the determination would have had serious implications for the *Riedel* court. Specifically, the court would have been bound to recognize a school lands constitutional trust, which would have necessitated the court's analysis of Riedel's claim that the right-to-renew statute violated the state's fiduciary obligations under the trust.<sup>212</sup> Even if the court determined ultimately that the right-to-renew preference did not violate the constitutional trust, at least the court would have conducted its analysis of Riedel's claim within the proper context.

In addition to rejecting its own precedent and that established by the Court of Appeals for the Tenth Circuit, the Wyoming Supreme Court contradicted the Wyoming Attorney General's argument in support of a state

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lands trust was correct, basic trust principles preclude dual beneficiaries. See *supra* notes 16, 19 and accompanying text.

205. *Frolander*, 264 P.2d at 799.

206. *Id.*

207. *Riedel*, 70 P.3d at 233.

208. *Riedel*, 70 P.3d at 226. See *Frolander*, 264 P.2d at 799.

209. See *Riedel v. Anderson*, 70 P.3d 223, 233 (Wyo. 2003).

210. See *id.*

211. See *id.*

212. See *Frolander*, 264 P.2d at 799; *Riedel*, 70 P.3d at 226. See also *Riedel*, 70 P.3d at 233-35, for the court's cursory examination of Riedel's constitutional objections to the right-to-renew preference.

school lands constitutional trust.<sup>213</sup> The Attorney General's trust brief argued "that the acceptance of school lands in the Wyoming Constitution created a trust" and that counter-arguments "parse[] the constitutional history and interpretation to arrive at a result lacking any philosophical coherency or consistency."<sup>214</sup> The Attorney General further contended that "[e]very court which has recently considered the school land trusts has concluded that these are real, enforceable trusts that impose upon the State the same fiduciary duties applicable to private trustees."<sup>215</sup> The Attorney General rejected the assertion that there is a trust upon the proceeds, but not upon the lands.<sup>216</sup> According to the Attorney General, this position ignores the constitutional restrictions on the sale, lease, or other disposal of school lands and "would make Wyoming the only state to have an artificial separation of the purpose of holding the lands, and the purpose of holding the proceeds from the disposition of the lands."<sup>217</sup>

The Wyoming Supreme Court's rejection of the Attorney General's arguments for a constitutional trust again impacted the court's analysis of Riedel's constitutional claim.<sup>218</sup> The court did not analyze the constitutionality of the right-to-renew preference within the context of a trust.<sup>219</sup> If it had, the court would have at least recognized that the right-to-renew preference creates an artificially isolated market that restricts trust income and casts ranching as the beneficiary of state school lands.<sup>220</sup> The court's recognition of the renewal preference's role in supporting ranching interests would have necessitated further analysis to determine if this role violated the state's fiduciary duties under the trust.<sup>221</sup> Instead, the court incorrectly reasoned that neither a constitutional trust nor fiduciary duties under the trust exist, and, therefore, the right-to-renew preference cannot violate non-existent fiduciary duties.<sup>222</sup>

### *Statu. v Trust*

After incorrectly determining that Wyoming's state school lands were not subject to a constitutional trust, the Wyoming Supreme Court determined that state school lands were subject to a statutory trust.<sup>223</sup> The

213. *Frolander*, 264 P.2d at 799; *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619, 634 (10th Cir. 1998); Trust Brief of Appellee State of Wyoming at 10-31, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60).

214. Trust Brief of Appellee State of Wyoming at 10, *Riedel* (No. 02-60).

215. Trust Brief of Appellee State of Wyoming at 26, *Riedel* (No. 02-60).

216. Trust Brief of Appellee State of Wyoming at 30, *Riedel* (No. 02-60).

217. Trust Brief of Appellee State of Wyoming at 30, *Riedel* (No. 02-60).

218. *Riedel v. Anderson*, 70 P.3d 223, 233 (Wyo. 2003).

219. *Id.*

220. WYO. STAT. ANN. 36-5-105 (LexisNexis 2003).

221. See *infra* note 237 and accompanying text.

222. *Riedel*, 70 P.3d at 233.

223. *Id.* at 232.

court's declaration and analysis of a school lands statutory trust incorrectly found express trust language determinative of the creation of the statutory trust and failed to recognize that the rules of trust law continue to govern a statutory trust except where specifically altered by a statutory provision.<sup>224</sup> Failing to determine the controlling terms of the statutory trust led the court to incorrectly uphold Wyoming's right-to-renew preference even though it restricts income to the school lands trust in direct conflict with both the rules of trust law and the specific statutory provisions signaled by the court as creating the statutory trust.<sup>225</sup> The irony of the resulting situation is apparent. The Wyoming Supreme Court declared that the school lands trust and the right-to-renew preference were issues of "great public interest," but then failed to examine how, or even if, the statutory trust and the right-to-renew preference served the public interest.<sup>226</sup> If the court's analytical follow-through had matched its good intentions, the *Riedel* court would have recognized that the right-to-renew preference conflicted with the terms of the statutory trust by restricting school lands revenue and serving grazing interests above "the great public interest."<sup>227</sup>

The Wyoming Supreme Court's first error in declaring a statutory trust is evidenced by the court's equation of express trust language with the creation of a trust.<sup>228</sup> Precedent indicates that the presence or absence of express trust language is not determinative of the existence of a trust.<sup>229</sup> Instead of following precedent or articulating reasons for not doing so, the Wyoming Supreme Court proceeded to analyze whether and when a school lands trust was established based on the statutes' inclusion or exclusion of express trust language.<sup>230</sup> The court asserted that the 1997 amendments to the state lands leasing statutes contained such "explicit trust language" that clearly the legislature intended "the land grant be subject to a trust."<sup>231</sup> The court's equation of the appearance of trust language in the statutes to the creation of a statutory trust paralleled the court's determination that the Wyoming Constitution and Enabling Act did not create a trust due to the absence of express trust language in the documents.<sup>232</sup> The court reasoned

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224. See *infra* notes 229, 237 and accompanying text.

225. *Riedel*, 70 P.3d at 232-33 (Wyo. 2003); RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

226. *Riedel*, 70 P.3d at 230.

227. *Id.* at 233-34.

228. *Id.* at 232-33.

229. See *Dist. 22 Mine Workers v. Utah*, 229 F.3d 982, 989 (10th Cir. 2000) ("A settlor is not required to use any particular form of words in expressing its intent to create a trust, and the absence of trust language does not preclude the formation of a trust."); *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619, 634 (10th Cir. 1998) (affirming the absence or presence of express trust language not determinative of Congress' intent to create a trust); RESTATEMENT (SECOND) OF TRUSTS § 23 cmt. a (1959) (stating it is "immaterial whether or not the settlor knows that the intended relationship is called a trust").

230. *Riedel*, 70 P.3d at 232-33.

231. *Id.* at 233. See also *infra* note 240 and accompanying text.

232. *Riedel*, 70 P.3d at 232-33.

that the limitation of express trust language to the proceeds of the state school lands “militates against the creation of an express trust by the Wyoming Act of Admission” and the Wyoming Constitution.<sup>233</sup> Clearly, the court was looking for the “magic words” of an express trust and declined to find that the Wyoming Constitution or Enabling Act created a trust due to the absence of trust language.<sup>234</sup> By only searching the documents for trust language, rather than following the precedent of analyzing the documents’ enumeration of duties, the court demonstrates it would rather find a quick answer than conduct a thorough analysis.<sup>235</sup> Though the state declared the existence of a school lands trust to be an issue of “great public interest,” the court’s anemic analysis of documents while in search of express trust language did not reflect the public’s interest in a more thorough and thoughtful determination of the existence of a school lands trust.<sup>236</sup>

Coupled with the Wyoming Supreme Court’s inaccurate assessment of express trust language is the court’s failure to recognize that the rules of trust law continue to govern a statutory trust except where the terms are specifically altered by a statutory provision.<sup>237</sup> To determine the controlling terms of the statutory trust, the court must first ascertain which statute created the trust and then identify the specific provisions of the statute that replaced the rules of trust law.<sup>238</sup>

The Wyoming Supreme Court pointed to two sources for the creation of the statutory trust: the principles expressed in the 1997 Wyoming Session Laws and Wyoming Statute section 36-5-105.<sup>239</sup> The purpose of the

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233. *Id.* at 231-32.

234. *Id.* at 231-34.

235. *See supra* note 60 and accompanying text.

236. *Riedel*, 70 P.3d at 230.

237. *See* RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003) for an explanation of the relationship between trust law and statutory trusts. The Restatement applies “to trusts that are established by statute.” *Id.* These statutory trusts are “so similar to express private trusts in their characteristics [and ] applicable legal principles” . . . that . . . “they are treated as trusts within the meaning of this Restatement. It is therefore intended that the rules of trust law as stated in this Restatement apply to these types of custodianships except as otherwise provided . . . by the applicable statute.” *Id.* The accompanying Reporter’s Notes cite a Utah case to illustrate the trust created by federal land grants for the support of public schools. *Id.* (citing *National Parks & Conservation Ass’n v. Board of State Lands*, 869 P.2d 909, 916-917 (Utah 1993)). The Restatement quotes the case as stating, “the school land trust embraced all the elements of an express trust, with the state [as] the trustee, holding title only for the purpose of executing the trust.” *Id.* *See also* GEORGE G. BOGERT AND GEORGE T. BOGERT, *THE LAW OF TRUSTS AND TRUSTEES* §§ 29-34 (rev. 2d ed. 1984) (comparing trusts and equitable charges or conditions); *Budge, supra* note 1, at 223-24 (stating state trust lands are owned and were granted “for the specific purpose of providing income to specified beneficiaries—in most cases, a state’s school children”).

238. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

239. *Riedel*, 70 P.3d at 232-34. *See* 1997 Wyo. Session Laws ch. 200, § 3; WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

statement of principles was to direct the Board's implementation of state lands statutes. The five principles state:

(i) The state land trust, consisting of trust lands, trust minerals and permanent land funds shall be managed under a total asset management policy;

(ii) The state land trust is intergenerational. Therefore, the focus is on protecting the corpus for the long term;

(iii) Trust land should remain a substantial, integral component of the state land trust portfolio. There is no mandate to sell any trust asset to maximize revenue in the short term;

(iv) All leases of trust land shall assure a return of at least fair market value considering the management practices and risk assumed by the lessee when determining fair market value;

(v) Investment policies shall ensure that the earning power of the permanent land fund is not reduced from the effect of inflation.<sup>240</sup>

This statement of principles conforms with, rather than alters, the rules of trust law.<sup>241</sup> Therefore, the specific provisions of the statement of principles do not alter the rules of trust law that govern the statutory trust.<sup>242</sup>

The second source to which the Wyoming Supreme Court pointed for the creation of the statutory trust is Wyoming Statute section 36-5-105.<sup>243</sup> The court indicated that the statutory trust was created by the statute's direction that state school lands be leased "in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries."<sup>244</sup> This statutory language requiring that trust lands be managed for the benefit of the beneficiary conforms with, rather than alters, the rules of trust law.<sup>245</sup>

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240. 1997 Wyo. Sess. Laws ch. 200, § 3.

241. Some debate exists whether a trustee has a narrow duty to maximize revenues or a more broad duty to manage the trust for the benefit of the beneficiary. See RESTATEMENT (THIRD) OF TRUSTS § 2 (2003) and accompanying Comments and Reporter's Notes for a description of trustee's duty to manage trust for benefit of beneficiary. Cf. Fairfax et al., *supra* note 1, at 841 (unwinding the "deeply ingrained idea" that school lands management is constrained by economic maximization principles).

242. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

243. Riedel v. Anderson, 70 P.3d 223, 233 (Wyo. 2003). See WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

244. *Id.* (quoting WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003)).

245. See RESTATEMENT (THIRD) OF TRUSTS § 2 (2003) and accompanying Comments and Reporter's Notes for a description of trustee's duty to manage the trust for benefit of a beneficiary.

Given the court's articulation of only the 1997 session laws' statement of principles and the language quoted above from Wyoming Statute section 36-5-105 as the sources creating the statutory trust, it appears that the rules of trust law would control the statutory trust as neither source provides a statutory alteration of the rules of trust law.<sup>246</sup>

Unfortunately, the court failed to recognize that the rules of trust law continue to govern a statutory trust except where the terms are specifically altered by a statutory provision.<sup>247</sup> Instead, the court declared that since the statutory trust "is a creature of statute . . . the statutes incorporate all of the trustee's duties."<sup>248</sup> Regrettably, the court did not further clarify this sweeping statement by specifying which statutes or which provisions of the statutes articulate the terms of the statutory trust.<sup>249</sup> The court created a confusing situation by stating that "statutes" incorporate the trustee's duties without clarifying to which statutes it was referring.<sup>250</sup> Further, the court asserted that "[i]t is not necessary, and indeed would be inappropriate, to look to other states or common law trust principles to define the state's fiduciary obligations with regard to the school land's *statutory* trust."<sup>251</sup> Though the court's assertion may be correct in that other states or common law trust principles should not inform Wyoming's statutory trust, the court overlooked the rules of trust law by ignoring the Restatement provision that statutory trusts are controlled by the rules of trust law except where the terms are altered by specific statutory provisions.<sup>252</sup> Clearly, the court's position that "[t]he legislature will not be presumed to have created the [state school lands] trust and violated it at the same time" provided little instruction as to what trust terms actually controlled the statutory trust.<sup>253</sup>

The 1997 Session Laws statement of principles and the quoted language from Wyoming Statute section 36-5-105 were the only statutory provisions specified by the court as creating the statutory trust.<sup>254</sup> By default, these provisions, in conjunction with the rules of trust law, control the terms of the statutory trust.<sup>255</sup> The court's sweeping assertion that the statutory trust "is a creature of statute" and, therefore, "the statutes incorporate all of the trustee's duties" provided no guidance as to the controlling terms of the trust beyond the two statutory provisions the court specified.<sup>256</sup> If the court

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246. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

247. See *supra* note 237 and accompanying text.

248. *Riedel*, 70 P.3d at 233.

249. *Id.*

250. *Id.*

251. *Id.*

252. RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (2003).

253. *Riedel*, 70 P.3d at 235.

254. *Id.* at 232-34.

255. See *supra* notes 237-245 and accompanying text.

256. *Riedel*, 70 P.3d at 233.

continues to maintain that Wyoming's school lands are subject to a statutory trust, it is essential that the court clarify the terms controlling the trust.

### *Right-to-Renew Preference*

Failing to determine the controlling terms of the statutory trust led the court to incorrectly uphold Wyoming's right-to-renew preference.<sup>257</sup> The court erroneously upheld the right-to-renew preference even though it restricts income to the school lands trust, which directly conflicts with the rules of trust law and the two specific statutory sources the court identified as creating the statutory trust.<sup>258</sup> Under the rules of trust law, state school lands form the corpus of a trust that is administered by the Board, as trustee, for the benefit of the state's school beneficiaries.<sup>259</sup> Under the only specific statutory language the court indicated created the statutory trust, the same tenets are affirmed.<sup>260</sup> The 1997 session laws' statement of purpose indicates state trust lands "shall be managed under a total asset management policy" with a long term, intergenerational focus and "[a]ll leases of trust land shall assure a return of at least fair market value."<sup>261</sup> Wyoming Statute 36-5-105 states that the school lands shall be leased "in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries."<sup>262</sup>

Ironically, the court specifies the above quoted language from Wyoming Statute section 36-5-105 as one of two statutory sources of the statutory trust terms, but language contained later in the same statute articulates the right-to-renew preference, which violates the terms of the statutory trust.<sup>263</sup> The right-to-renew preference states that an incumbent lease-holder, who has paid the lease rental and not violated the terms of the lease, "shall have a preferred right to renew such lease by meeting the highest bid offered which is based on the fair market value . . . for the same or a similar use of the land."<sup>264</sup> This preference violates the terms of the statutory trust whether they are supplied by the rules of trust law or specific statutory provisions.<sup>265</sup> In addition, if the Wyoming Supreme Court had correctly recognized a constitutional trust, rather than declaring a statutory trust, the right-to-renew preference would violate the constitutional trust terms as well.<sup>266</sup>

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257. *Id.* at 233-35.

258. *See supra* notes 237-45 and accompanying text.

259. *See supra* notes 237-45 and accompanying text.

260. *See supra* notes 237-45 and accompanying text.

261. 1997 Wyo. Sess. Laws ch. 200, § 3.

262. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

263. *Id.*

264. *Id.*

265. *See supra* notes 237-255 and accompanying text.

266. *See supra* notes 237-255 and accompanying text.

Regardless whether the terms of the school lands trust are constitutionally or statutorily imposed, the right-to-renew preference violates the trustee's duty to manage the trust for the greatest benefit of the beneficiaries.<sup>267</sup> The "greatest benefit" includes receiving FMV for agricultural leases of state school lands and the "same or similar use" provision of the right-to-renew preference violates this duty.<sup>268</sup> Further, as Riedel correctly argued, the right-to-renew preference violates the trust terms by depressing revenue from agricultural leases by foreclosing other possible uses of the land and thereby restricting revenue from the trust lands.<sup>269</sup> The right-to-renew preference requires that the holder of an expiring lease have a preferred right to renew the lease "by meeting the highest bid offered which is based on the fair market value . . . for the same or a similar use of the land."<sup>270</sup> Under this formulation, the lessee only has to meet those bids that are based on a valuation of the land for the same or similar use.<sup>271</sup> Therefore, the value of a grazing lease is determined by the value of the leased land for grazing. A substantially higher bid for the lease would suggest that the competing bidder valued the land for a purpose other than grazing and the bid could be rejected under the terms of the statute.<sup>272</sup> Rather than managing the state school lands for the greatest benefit of the state's schools, the "same or similar use" provision of the right-to-renew preference protects grazing and other agricultural interests. The provision ensures that prices for grazing leases remain low by requiring the incumbent lessee to match only those competing bids that anticipate using the land in the same or similar way.<sup>273</sup>

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267. See *supra* note 237 and accompanying text. See also Sally K. Fairfax & Andrea Issod, *Trust Principles as a Tool for Grazing Reform: Learning from Four State Cases*, 33 ENVTL. L. 341 (2003) (discussing how trust principles are playing out in grazing cases in Arizona, Idaho, New Mexico, and Oregon and the difficulty of enforcing trust notions in the courts).

268. See *supra* note 237 and accompanying text; WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

269. Riedel v. Anderson, 70 P.3d 223, 234-35 (Wyo. 2003).

270. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

271. *Id.*

272. See *id.* § 36-5-105. See also Oven & Voigt, *supra* note 81, at 85, which states:

[A]s a result of Wyoming statute section § 36-5-105(a), a potential lessee, with a desire to offer more than the set "fair market value" could lose the opportunity to lease state land to an existing leaseholder. . . . [T]he statutory framework artificially restrains true "free-market bidding" by capping rental values to a formula based on industry viability . . . [and] industry stability. The public school fund loses out on the revenue that could have been gained if the process had been opened up to true competitive bidding.

*Id.* (citations omitted).

273. See WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003). See also Fairfax et al., *supra* note 1, at 868-69 (using school lands to support agricultural community "increasingly under

The right-to-renew preference's FMV formula further conflicts with the state's fiduciary obligations.<sup>274</sup> By statute, the Board is required to develop a formula to assess the FMV of state lands leases.<sup>275</sup> This formula must be developed pursuant to Wyoming Statute section 36-5-101 (b), which requires the Board to adopt a FMV formula based on the following criteria:

- (i) Readily available data averaged over an adequate number of years to remove any radical fluctuations;
- (ii) Factors which reasonably reflect the true market value of state leases;
- (iii) Parameters within which the board can be responsive to changing resource conditions, market demand and industry viability;
- (iv) Factors which reasonably reflect the contributions made by the lessee.<sup>276</sup>

The Board uses a comparable sales technique to determine FMV.<sup>277</sup> The FMV "is derived by comparing the property being appraised to similar properties that have been sold recently."<sup>278</sup> The Board states that by using the comparable sales technique the FMV is dependent on two factors: "[T]he proposed nature and scope of the requested use of the surface; and an analysis of market data for similar uses of lands in the same area."<sup>279</sup> The statutorily mandated criteria in conjunction with the Board's adopted policy ensure that lands leased for grazing and other agricultural purposes have an FMV that reflects only this limited use.<sup>280</sup> The incumbent lessee is only required to meet competing bids based on the FMV.<sup>281</sup> The Board may exclude a higher competing bid if the bid is based on an FMV that reflects a different and/or more profitable use.<sup>282</sup> Just as the statute requires competing bids be "for the same or a similar use" of the leased land, the statute requires the

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attack in the courts" as such management strategies benefit ranching at the expense of reducing revenue to the school trust funds).

274. See Spahr & Sunderman, *supra* note 39, for a discussion of FMV and variable-fee grazing leases based on FMV.

275. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003).

276. *Id.* § 36-5-101 (b).

277. STATE OF WYO. BD. OF LAND COMM'RS R. & REGS. HANDBOOK, SURFACE AND MINERAL ESTATE, 3, at <http://www.slf-web.state.wy.us/ami/adobe/SURFACE3.pdf> (2004).

278. *Id.*

279. *Id.*

280. WYO. STAT. ANN. § 36-5-101 (b)(2003); STATE OF WYO. BD. OF LAND COMM'RS R. & REGS. HANDBOOK, SURFACE AND MINERAL ESTATE, p. 3, at <http://www.slfweb.state.wy.us/-ami/adobe/SURFACE3.pdf> (2004).

281. WYO. STAT. ANN. § 36-5-105 (a), (e) (LexisNexis 2003).

282. See *id.*

FMV be based on the same narrow criteria.<sup>283</sup> Again, the provision ensures that prices for grazing leases remain low by requiring incumbent lessee to match only those competing bids that reflect an FMV based on the same or similar use of the land.<sup>284</sup>

The right-to-renew preference requires that incumbent lease-holders only have to match competing bids that reflect an FMV based on the same or similar use of the land, which could potentially benefit grazing and other agricultural interests to the exclusion of the intended beneficiaries of the state school land trust—Wyoming's schools.<sup>285</sup> Granted, if the state's supplement of grazing through the requirements of the right-to-renew preference enables the state to lease school lands that would otherwise not be leased, then the income to the school's permanent trust fund is increased.<sup>286</sup> However, if the right-to-renew requirements serve to keep state school lands locked indefinitely in agricultural leases generating minimal income, then the right-to-renew preference violates the state's fiduciary duties regardless whether the trust is constitutionally or statutorily created.<sup>287</sup> If the right-to-renew preference creates dual beneficiaries—the state's schools and the state's ranchers—the preference violates constitutionally and statutorily imposed terms of the trust that require trustees to manage the trust for the benefit of the beneficiary.<sup>288</sup> In those instances where state school lands could be managed to increase the benefit to the trust, but are locked in agricultural leases due to the incumbent lease-holder's right to renew, the state has prioritized ranching interests over the interests of Wyoming schools. Clearly this violates the state's fiduciary duties to manage school trust lands for the benefit of Wyoming's schools.

As Riedel correctly argued, the right-to-renew preference also depresses the value of agricultural leases by foreclosing other possible uses of

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283. WYO. STAT. ANN. § 36-5-105 (a), (e) (LexisNexis 2003).

284. See *id.* See also Oven & Voigt, *supra* note 81, at 92-93 ("A system that contains a statewide renewal preference and artificially restricted lease prices, such as Wyoming's, can result in the public schools being harmed in both the long- and short-term.").

285. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003). See *supra* note 237 and accompanying text. See also Oven & Voigt, *supra* note 81, at 92.

286. See Fairfax et al., *supra* note 1, at 908-09 (asserting trust land management mandates are more flexible than might first appear and that they allow trust lands managers to address "the relationship between the trust lands and resources and the beneficiaries").

287. See 63C AM. JUR. 2D *Public Lands* § 63 (2004) (summarizing state's role as trustee of school land grants). See *supra* notes 67-79 and accompanying text for discussion of fiduciary duties. But see Daniel J. Chasan, *A Trust for All the People: Rethinking the Management of Washington's State Forests*, 24 SEATTLE U. L. REV. 1, 1-2 (2000) (advocating a broader public trust that rejects the trust principle of undivided loyalty in order to safeguard environmental and aesthetic values of public lands).

288. See *supra* note 287. See also Oven & Voigt, *supra* note 81, at 92 (discussing Wyoming's creation of dual beneficiaries of state school lands).

the land and thus restricting revenue from the trust lands.<sup>289</sup> According to the constitutional and statutory terms of the trust, trustees have a duty to make the trust productive and to preserve and protect the trust property.<sup>290</sup> When the “duty to make the trust productive” conflicts with the “duty to preserve and care for the trust,” the trustee “must act as a prudent investor.”<sup>291</sup> Rather than requiring the Board to manage school lands in order to maximize revenue, the terms of the trust require the Board to manage the lands to obtain the “greatest benefit to the state land trust beneficiaries.”<sup>292</sup> Revenue maximization may be the greatest benefit to the trust in some instances, but not in all.<sup>293</sup> Often, the “highest bid rate is only half of the equation. Obtaining the lessee who will utilize the best management techniques is another measure of legitimate advantage to the beneficiaries.”<sup>294</sup> Arguments for maximum revenue from the school lands trust are flawed as they focus solely on the trust’s short-term gains at the expense of the long-term security and stability of the trust.<sup>295</sup> If the right-to-renew preference were eliminated in order to allow maximum revenue to the trust, this situation would be no more in the public interest than the current situation where the right-to-renew statute restricts income to the trust by granting preference to the ranching industry.<sup>296</sup>

A recent Montana case found the right-to-renew preference unconstitutional and not in the public interest.<sup>297</sup> Montana’s First District Court found that the right-to-renew preference removed the discretion of the lands board to make leasing decisions based on the best interests of the trust and the trust’s beneficiaries, the state’s schools.<sup>298</sup> The discretion instead rested in the hands of the incumbent lessee, who could choose whether to renew the

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289. See *Riedel v. Anderson*, 70 P.3d 223, 235 (Wyo. 2003). See also Brief of Appellant/Appellee William H. Riedel at 21-23, *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) (No. 02-60).

290. See *supra* notes 16, 67-79, 237 and accompanying text for a discussion of statutory and constitutional trust terms and fiduciary duties.

291. *Fairfax et al.*, *supra* note 1, at 851-852.

292. WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003). See *supra* note 241 and accompanying text.

293. See *Budge*, *supra* note 1, at 223-24 (discussing the difficulty state school lands trustees have adopting “ecosystems management” and “balanced environmental management” due to the legal obligation to seek maximum return for sale or lease of school lands).

294. *Broadbent v. Montana*, No. BDV-2003-361 (Mont. 1st Judicial Dist. July 15, 2004) (holding right-to-renew statute unconstitutional as it removes Board’s discretion in determining lease that will achieve the greatest benefit for beneficiaries). See *infra* notes 297-299 and accompanying text.

295. See *Fairfax et al.*, *supra* note 1, at 909 (“[M]anagement for revenue within the trust principle typically leads—and is required to lead—to conservative decisions, especially in regard to long-term rather than short-term management, because of the requirement to protect the corpus of the trust.”).

296. See WYO. STAT. ANN. § 36-5-105 (LexisNexis 2003). See also *Fairfax et al.*, *supra* note 1, at 909.

297. *Broadbent v. Montana*, No. BDV-2003-361 (Mont. 1st Judicial Dist. July 15, 2004).

298. *Id.* 10-16.

lease based on his or her own interests and not on the best interests of the trust or the trust's beneficiaries.<sup>299</sup> The same situation exists in Wyoming. Though the court claims that Wyoming's renewal preference is discretionary, the minimum standards an incumbent leaseholder must meet in order to renew an expiring lease overwhelmingly allow the lessee to choose whether to renew.<sup>300</sup> As in the Montana decision, this precludes the Board's discretion in determining what use and which lessee would bring the greatest benefit to the school lands trust.

The public interest is not served by the court's analysis of the state school lands statutory trust. The court's analysis incorrectly found express trust language as determinative of the creation of the statutory trust and failed to recognize that the rules of trust law continue to govern a statutory trust except where specifically altered by a statutory provision.<sup>301</sup> The court's error in rejecting a constitutional trust and in failing to determine the controlling terms of the statutory trust led the court to incorrectly uphold Wyoming's right-to-renew preference.

#### CONCLUSION

The Wyoming Supreme Court missed the opportunity presented in *Riedel* to define the great public interest in Wyoming's state school lands. Instead, the court incorrectly and incompletely analyzed the issues presented by the case. A more thorough analysis by the court would have led to the conclusion that Wyoming's state school lands are subject to a trust constitutionally created at the moment Wyoming joined the union. A constitutional trust would require that the school lands trust benefit only the state's schools; therefore, the right-to-renew preference would have been found unconstitutional as it creates grazing interests as a beneficiary of the school lands trust. In addition, the court's declaration of a statutory trust failed to recognize the role of trust law in statutory trusts or determine the controlling terms of the trust. By not analyzing the controlling terms of the trust, the court incorrectly upheld the right-to-renew preference even though it violates the state's fiduciary obligations under the statutory trust.

In order to meet the fiduciary obligations of a trustee, the Board must be able to examine all possible uses for school lands leases and determine which uses best meet the terms of the trust. The current right-to-renew preference, in particular the provision requiring lease applications for an expiring lease be for the same or similar use of the land, prevents the Board

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299. *Id.* at 12.

300. Compare *Huckfeldt v. State Bd. of Sch. Land Comm'rs*, 122 P. 94 (Wyo. 1912) (explaining that right of renewal is not an absolute, vested right, but involves Board's discretion), with *Broadbent v. Montana*, No. BDV-2003-361 (Mont. 1st Judicial Dist. July 15, 2004) (holding right-to-renew eliminates Board's discretion).

301. See *supra* notes 227- 236 and accompanying text.

from exploring other possible uses of school lands leases. Admittedly, a large portion of the state's grazing leases is suited almost exclusively for that narrow purpose. Unfortunately, one can only speculate as to other possible uses of grazing leases, as the Board is unable to accept competing lease applications that envision a use other than grazing. If the "same or similar use" provision of the right-to-renew preference were removed and the Board were allowed to accept bids for other uses, it does not seem far-fetched to postulate that other interests would make use of school lands leases. Given the current sociopolitical climate in the West, conservation, environmental, recreation, and hunting interests all could potentially out-bid ranchers in an attempt to protect watersheds, riparian zones, or other critical habitat, or increase access to recreation or hunting opportunities.<sup>302</sup>

To administer a trust as important as the school lands trust, the Board must have full discretion to choose the use of the school land that best meets the terms of the trust. With the current right-to-renew preference, the discretion rests with the incumbent leaseholder to renew as it best suits his or her needs. State school lands and the state's fiduciary obligations under a school lands trust are issues of great public interest; to better serve this interest the "same or similar use" provision of the right-to-renew preference should be removed. Removal of this provision would allow the Board to consider all applications for the lease and choose the application that best meets the terms of the trust. Removal of the "same or similar use" provision would still allow incumbent lease-holders a renewal preference, but would require the lease-holder to match *any* higher bid the Board found acceptable, not just the bids that were based on the FMV of the land for the same or similar use. In this situation, the Board can select the ideal application—one that brings the greatest benefit to the school lands trust while incurring the least amount of damage to the trust corpus—without either unjustly excluding or favoring grazing interests.

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302. Fairfax & Issod, *supra* note 267, at 345 ("In at least four jurisdictions—Arizona, Idaho, New Mexico, and Oregon—environmental groups have attempted to bid against ranchers in hopes of leasing state lands traditionally used for grazing.").

