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New Mexico's Land Grant and Severance Tax Permanent Funds: Renewable Wealth from Non-Renewable Resources

Amy Williams

AMY WILLIAMS*

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ABSTRACT

New Mexico's Land Grant and Severance Tax Permanent Funds were constitutionally created to allow the state to save and invest the revenues it derives from the extraction of natural resources statewide. Those funds, responsibly invested, meet the dual goals of growing New Mexico's wealth and serving current and future generations of New Mexicans by funding public education. This type of system has been instituted in other states, provinces, and countries in the western United States, Canada, and abroad. Permanent funds elsewhere have achieved varying degrees of success. This article explores New Mexico's Land Grant and Severance Tax Permanent Funds, evaluates such funds in other states, and presents lessons to be learned from those funds. Finally, this article proposes changes to New Mexico's funds based on these lessons, which would allow New Mexico to continue to meet and exceed the dual goals of the Land Grant and Severance Tax Permanent Funds.

I. INTRODUCTION

New Mexico consistently ranks low in every indicator of the economic welfare of its citizens, including health and education. There is one ranking, however, where New Mexico scores surprisingly high: New Mexico holds the third largest endowment in the nation,[1] after Harvard University and the University of Texas.[2] The endowment, which is the combined total of the Land Grant and Severance Tax Permanent Funds

* J.D. 2008, University of New Mexico School of Law; B.A. 2003, St. John's College Santa Fe. I would like to thank Terwiliger Paige for his love, support, and endless patience in explaining to me the basics of finance. This article is dedicated to the memory of Barbara Williams-Rollings and Willard H. Rollings, my aunt and uncle, mentors, and dear friends.

1. Joy Waldron, *Psssst! The Country's Third Largest Endowment Belongs to New Mexico*, N.M. BUS. J., Mar. 1996, at 9.

2. *Fund Bonanza*, N.M. BUS. J., Nov. 2000, at 7.

(Permanent Funds), now holds more than $13 billion.[3] How can a state that is so poor be so rich?

The answer lies in New Mexico's rankings in natural resources production. In 2006, New Mexico ranked third in the United States for copper mining[4] and eleventh in coal mining.[5] Additionally, the state is third in natural gas production[6] and fourth in crude oil reserves.[7] Rather than squandering the taxes and lease income that the state collects through this mineral wealth, New Mexico has entrusted the collected tax and lease revenue to the New Mexico State Investment Council (NMSIC) through the Permanent Funds.[8] NMSIC invests this revenue in order to "optimize the Funds to insure that future generations receive the same benefits as current beneficiaries."[9] Through NMSIC's strategically diversified portfolio, the Land Grant Permanent Fund has grown at an average rate of 10.9 percent. Similarly, the Severance Tax Permanent Fund grew 11.2 percent in fiscal year 2006 (FY06).[10]

The Permanent Funds represent an attempt to replace non-renewable natural resources, which are depleted over time, with a permanent supply of money that grows ever larger. As New Mexico's Permanent Funds and similar funds elsewhere illustrate, such funds are successful when they both financially bolster the state's economy through strategic spending and continue to grow at a sustainable rate at least equal to the rate of inflation. Through careful investment, the Permanent Funds work to accomplish dual goals: first, to convert New Mexico's depleting natural resources into a source of wealth that is sustainable well into the future, and second, to serve the community today through the disbursement of funds.

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3. N.M. STATE INV. COUNCIL, 2006 ANNUAL REPORT 5 (2006), *available at* http://www.sic.state.nm.us/PDF%20files/NMSIC2006AR.pdf [hereinafter N.M. STATE INV. COUNCIL, ANNUAL REPORT].

4. N.M. ENERGY, MIN. & NAT. RES. DEPT., 2006 ANNUAL REPORT 34, tbl. A (2006), *available at* http://www.emnrd.state.nm.us/Main/documents/EMNRD2006_008.pdf.

5. *Id.*

6. *Id.* at 54.

7. *Id.*

8. The NMSIC also manages the Tobacco Settlement Permanent Fund, which was established in 2000 using the proceeds from a settlement between several states and tobacco companies. The three funds are pooled and invested collectively, with the exception of investments made in New Mexico's film industry directly from the Severance Tax Permanent Fund. *See* State Inv. Council, http://www.sic.state.nm.us/ (last visited Mar. 12, 2009).

9. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at iv.

10. *Id.* at ii.

New Mexico has mandated disbursement of funds for the benefit of the state's public schools.[11] Indeed, the Permanent Funds distributed approximately $407 million in FY06 to public educational institutions statewide.[12] The figure represents the conservative distribution of between 4.7 percent and 5.8 percent of the five-year average market value of the Permanent Funds.[13]

New Mexico's conservative spending of the Permanent Funds both helps and hinders the state's ability to meet the stated purposes of the Permanent Funds. Conservative spending ensures that the Permanent Funds maintain a low profile among New Mexicans. Unlike a similar fund in Alaska, the Permanent Funds are rarely considered a source of income in New Mexico.[14] As a result, recent proposals to increase spending from the Permanent Funds have been met with apathy or opposition.[15] Further, conservative spending ensures that the Permanent Funds continue growing through investment rather than being depleted by increased government spending, as has been the case with the similar Alberta Heritage Fund.[16] However, it is critical that the citizens of New Mexico feel personally committed to the Permanent Funds. Public commitment and oversight will ensure that funds are responsibly invested and that the funds are neither overspent nor spent without direction. These public functions are critical for guaranteeing that the Permanent Funds meet the dual goals established for them. In order to foster public commitment to the funds, citizens must be made aware of the personal benefit they derive from such funds. If the citizens of New Mexico consider that benefit to be crucial, they will protect the funds against legislative attack and mismanagement.

New Mexico's establishment, goals, and investment strategy for the Permanent Funds reflect the state's dual purposes of spending the funds for the benefit of current generations while creating a growing body of wealth for future generations through investment. Investigating the methods and means by which similar funds have accomplished these goals through strategic spending and investment provides insight into methods and means by which New Mexico can accomplish those goals. This article will

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11. Act of June 21, 1898, ch. 489, § 1, 30 Stat. 484, 484; Act of June 20, 1910, ch. 310, § 9, 36 Stat. 557, 563; N.M. STATE INV. COUNCIL ANNUAL REPORT, *supra* note 3, at 2.

12. Press Release, N.M. State Land Office, Land Office Collects Record Revenues for Fiscal Year 2006 (Sept. 15, 2006), *available at* http://www.nmstatelands.org/uploads/News/2006/2006_0915PAYOUT.pdf.

13. *See* N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 8.

14. *See generally* RÖGNVALDUR HANNESSON, INVESTING FOR SUSTAINABILITY: THE MANAGEMENT OF MINERAL WEALTH 65 (2001).

15. *See* Ben Neary, *Opponents Proud of Close Amendment 2 Race*, SANTA FE NEW MEXICAN, Sept. 24, 2003, at A7.

16. HANNESSON, *supra* note 14, at 74.

first outline the source and structure of New Mexico's Permanent Funds. Next the article will discuss similar funds elsewhere, including the strategies that govern their investment and spending. Finally, this article will propose methods by which New Mexico can responsibly invest and spend the Permanent Funds.

II. THE LAND GRANT AND SEVERANCE TAX PERMANENT FUNDS

A. Establishment of the Permanent Funds

Although both the Land Grant and Severance Tax Permanent Funds were established through legislation, the Land Grant Permanent Fund was created by federal law and the Severance Tax Permanent Fund was created by state law. The Land Grant Permanent Fund (LGPF) was created through the Fergusson Act of 1898 and New Mexico State Enabling Act of 1910.[17] The Acts require certain tracts of land within each township in the state to be leased or sold and the proceeds used to benefit the common schools.[18] The Enabling Act specifically mandates that any proceeds from the sale or lease of public lands be deposited into a permanent fund for the benefit of New Mexico's public schools.[19] Later, the Jones Act of 1927 established that school land grants would include proceeds from mineral estates as well as surface rights.[20] This means that the proceeds from any minerals mined on and sold from New Mexico's public lands are deposited into the LGPF.

The New Mexico State Constitution incorporates and develops the requirements for the LGPF that were outlined by the Acts.[21] The constitution provides that the LGPF will be comprised of proceeds from the sale or lease of state lands, as well as the proceeds from any investment of such proceeds.[22] The LGPF is primarily comprised of royalties collected on natural resources that are extracted from public lands.[23] The fund must meet the investment standards established by the New Mexico Legislature.[24]

17. *See* N.M. STATE INV. COUNCIL, 2005 ANNUAL REPORT 2 (2005), *available at* http://www.sic.state.nm.us/PDF%20files/SIC_Ann_report_05.pdf.

18. Act of June 21, 1898, ch. 489, § 1, 30 Stat. 484, 484; Act of June 20, 1910, ch. 310, § 9, 36 Stat. 557, 563.

19. Act of June 20, 1910, ch. 310, § 9, 36 Stat. 557, 563.

20. Act of Jan. 25, 1927, ch. 57, 44 Stat. 1026 (codified at 43 U.S.C. §§ 870-71 (2000)).

21. N.M. CONST. art. XII, § 2.

22. *Id.*

23. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 4.

24. N.M. CONST. art. XII, § 7.

The Severance Tax Permanent Fund (STPF) was established by an act of the New Mexico Legislature in 1973 as a method of investing excess severance taxes collected on natural resource products throughout the state. The funds are collected through both the Severance Tax and the Oil and Gas Severance Tax.[25] These taxes are imposed by the state for the privilege of extracting and selling New Mexico's natural resources, including oil, gas,[26] minerals, and uranium.[27] Taxes are collected at a rate that varies according to the mineral extracted. For example, oil and gas extraction is taxed at a rate of 3.25 percent of the value of the amount produced.[28]

These taxes are first collected and deposited into the Severance Tax Bonding Fund. The Severance Tax Bonding Fund is used to guarantee redemption of severance tax bonds issued by the New Mexico Board of Finance to fund projects approved by the legislature, such as the construction of public schools and other state buildings, higher education capital projects, and water resource projects.[29] In other words, the money collected by the state in the Severance Tax Bonding Fund is used to pay principal and interest on the bonds previously issued by the state to fund construction and water resource projects. The resulting STPF amounts to the difference between the total severance taxes collected and the payments made from the Severance Tax Bonding Fund on principal and interest of severance tax bonds.[30]

The 1973 Act requires that the state treasurer invest the funds collected in the STPF in accordance with state procedures for investment of funds.[31] The earnings from that investment, in turn, are deposited in the Severance Tax Income Fund. The New Mexico State Legislature then makes appropriations from the Severance Tax Income Fund for capital outlay projects and distributes the fund as general operating revenue for the benefit of the people of the state.[32]

Natural resources royalties and taxes provide huge economic gains for the state. Oil and natural gas revenue alone added more than $894 million to the Severance Tax Bonding Fund and LGPF in FY06.[33] In addition, mineral resources totaled more than $33 million in revenues in FY06. Coal extraction produced the most revenue at $25,094,186, followed by copper

25. *See* N.M. STAT. § 7-27-2 (2006).
26. *Id.* § 7-29-4.
27. *See id.* § 7-26-2 to -3.
28. *Id.* § 7-29-1.
29. *Id.* § 7-27-27.
30. N.M. CONST. art. VIII, § 10.
31. 1973 N.M. Laws 1300.
32. *Id.*; N.M. CONST. art. VIII, § 10.
33. *See* N.M. ENERGY, MIN. & NAT. RES. DEPT., 2006 ANNUAL REPORT, *supra* note 4, at 56, fig.1.

and potash, which each produced more than $2 million in revenue. Other natural resources, including gold, silver, uranium, industrial minerals like gypsum, perlite, salt, pumice, and others, and aggregates, like clay, shale, flagstone, and gravel, produced more than $3 million in combined revenue.[34] As a result of this revenue, contributions to the corpus of the Permanent Funds totaled $538 million in FY06.[35]

B. Investment of the Funds

NMSIC invests the proceeds of the Permanent Funds. NMSIC was created by an act of the New Mexico Legislature in 1957.[36] NMSIC is comprised of the New Mexico Governor, the State Treasurer, the Commissioner of Public Lands, the Secretary of State, a chief financial officer of a state institution of higher education, the State Investment Officer, and three members of the public as appointed by the governor with the advice of the New Mexico Senate.[37]

Of these members, the State Investment Officer (SIO) assumes primary responsibility for the Permanent Funds. The SIO is appointed by the governor with the approval of the New Mexico Senate and serves a term of four years.[38] The SIO's duties include using the Permanent Funds to make purchases, sales, exchanges, investments, and reinvestments, under the supervision of NMSIC and in accordance with the Uniform Prudent Investor Act.[39]

Because natural resources are primarily non-renewable, the investment of the Permanent Funds is intended to permanently conserve the payments of royalties and taxes for current and future New Mexicans to compensate for these resources' eventual depletion.[40] The SIO is limited in his investment of the Permanent Funds to investments approved by the New Mexico Legislature. The legislature has established that certain percentages of the Permanent Funds may be invested in certain types of investment opportunities. In 2007, nearly all of the assets managed by NMSIC were invested in seven investment pools. These pools include equity, fixed income, alternative and direct investments, small business

34. *Id.* at 34, tbl. A.
35. *See* N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 4.
36. State Inv. Council, *supra* note 8.
37. N.M. STAT. § 6-8-2 (1978).
38. *Id.* § 6-8-4.
39. *Id.* § 6-8-7. The Uniform Prudent Investor Act provides that a trustee of a trust owes a duty of loyalty and impartiality to the beneficiaries of a trust and will not incur unreasonable expense in managing and investing trust assets. Uniform Prudent Investor Act, N.M. STAT. § 45-7-601 to -612 (1978).
40. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 4–5.

administration guarantees and certificates of deposits in New Mexico financial institutions, the New Mexico film investment program, real estate, and hedge funds.[41]

NMSIC is an institutional investor, which means that it receives funds from the public, in the form of taxes on natural resources and income from sales and leases of public lands and minerals, and invests those funds on behalf of the people of New Mexico.[42] Institutional investors typically develop investment strategies based on several factors, including the nature of the institution, the role that it plays in the financial environment, the level of liquidity it needs, and the types of services it provides.[43]

Through its investment policy, NMSIC strives for a highly diversified investment portfolio in order to reduce the risk of market fluctuations and inflation that is assumed by investors when assets of various types are held for the long term.[44] A diversified portfolio typically includes a certain percentage of stocks and a certain percentage of bonds, allocated based on a consideration of the level of risk that can be tolerated by the investor and whether the investor is seeking an aggressive or a conservative investment strategy.[45] There is also variation within asset classes that allows for greater diversification. Investing in small, medium, and large companies, for example, can diversify a stock portfolio, which provides a balance of potential risk and return.[46] Likewise, bonds can be diversified according to the length of time for which they must be held. Shorter-term bonds are usually less risky, and thus yield a lower return, while longer term bonds are more risky and yield a higher return.[47] These are only two simple examples of the ways in which a portfolio may be diversified; there are numerous other methods for diversification.[48]

NMSIC is statutorily required to adhere to the Uniform Prudent Investor Act to ensure responsible investment of the Permanent Funds.[49] The Act establishes standards for investors of public monies. Specifically, NMSIC must invest and manage the assets of the Permanent Funds as would a prudent investor, by considering the purposes, terms, and

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41. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 11-14.

42. *See* DANIEL JAY BAUM & NED B. STILES, THE SILENT PARTNERS: INSTITUTIONAL INVESTORS AND CORPORATE CONTROL 34 (1965).

43. *Id.*

44. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 14-15.

45. Jim McWhinney, Introduction to Diversification, INVESTOPEDIA, http://www.investopedia.com/articles/basics/05/diversification.asp (last visited Mar. 20, 2009).

46. *Id.*

47. DAVE KANSAS, THE WALL STREET JOURNAL COMPLETE MONEY & INVESTING GUIDEBOOK 80 (2005).

48. *See generally id.* (discussing different diversification and investment strategies).

49. N.M. STAT. § 6-8-7 (1978).

distribution requirements of the Permanent Funds.[50] NMSIC must also consider other circumstances that might impact its investment of the Permanent Funds; including general economic conditions; the risk of inflation or deflation; the role that each investment plays in the overall portfolio; and the need for liquidity, regularity of income, and preservation or appreciation of capital.[51]

Along with these considerations, NMSIC must also follow certain statutory investment guidelines that delineate the particular percentages of the Permanent Funds that may be invested in certain asset classes. For example, NMSIC is authorized by the New Mexico State Legislature to invest no more than 10 percent of the value of the STPF to secure New Mexico small business loans made by other entities such as farm credit entities, banks, and savings and loan associations.[52] Such requirements are represented throughout the Permanent Funds' investment portfolio.[53]

The performance of the Permanent Funds' investments is measured against popular aggregate indices that are generally used within the financial community to determine how well particular types of assets are performing. The most famous of these is the Dow Jones Industrial Average, which measures the performance of 30 large stocks representing major industries.[54] NMSIC relies on several of these indices to gauge the performance of their portfolio.

NMSIC's investment strategy was successful in FY06. The LGPF yielded a 10.6 percent return while the STPF yielded an 11.9 percent return. Despite these gains, each individual asset class within NMSIC's portfolio either met or fell below the benchmark established by its respective indices.[55] Table 1 outlines the types of investments that comprise NMSIC's portfolio and the percentage of the Permanent Funds that those investments represent. [56]

Table 2 illustrates the particular investment types that NMSIC has invested in, the pools that comprise that investment type, the index against which the performance of the pool is measured, the performance of the index, and the performance of the investment pool in comparison.

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50. *Id.* § 45-7-603.
51. *Id.*
52. *Id.* § 7-27-5.4.
53. *See* N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at ii.
54. KANSAS, *supra* note 47, at 19.
55. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 20–22.
56. When referring to the following charts, one should keep in mind that it includes the investments made through the Tobacco Settlement Fund, which is not otherwise considered in this article.

Asset Class	Market Value (in millions)	Percentage of Funds
Cash/Cash Equivalents	64.0	0.7%
Equity	5,507.6	61.0%
Fixed Income	1,838.6	20.1%
Alternative Investments	592.9	6.5%
CDO Equity Pool	142.2	1.6%
Hedge Funds	924.2	10.1%
Total:	**9,069.5**	**100%**

TABLE 1: Investment pools comprising NMSIC's portfolio as of FY06.[57]

Investment Type	Investment Pool	Index	Index Performance	Pool Performance
Equity	Large Cap Active	S & P 500	8.6%	11.9%
	Large Cap Equity Index	S & P 500	8.6%	8.4%
	Mid/Small Cap Active	S & P Mid Cap 400	13.0%	11.6%
	Non-U.S. Developed Markets	FTSE World ex-U.S.	28.8%	20.8%
	Non-U.S. Emerging Markets	MSCI Emerging Markets Free Index	35.5%	35.1%
Fixed Income	Core Bonds	Lehman Aggregate	4.33%[58]	1.8%
	High Yield Bonds	Merrill Lynch US HY BB-B Constrained Index	4.0%	3.6%
Alternative Investments	Real Estate	N/A		
	Private Equity Programs[59]	S & P 500	8.6%	18.6%
	Direct Investment[60]	N/A		
	SBAs CDs and other NM Investments[61]	N/A		
	Film[62]	N/A		
Hedge Funds	N/A	N/A		

TABLE 2: Investment types and their performance relative to index.[63]

57. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 25.

58. Lehman Brothers, Global Family of Indices, http://www.lehman.com/fi/indices/ (last visited Mar. 9, 2009).

59. This fund provides start up funds for new businesses and expansion or turn around of existing businesses. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 11.

60. NMSIC is authorized by the New Mexico State Legislature to make direct co-investments in New Mexico companies, including such companies as Advent Solar and Eclipse Aviation. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 13.

61. This investment class is comprised of certificates of deposit in New Mexico financial institutions, New Mexico Mortgage Finance Authority Bonds, Small Business Administration, and Farm and Home Administration Guarantees. *Id.*

62. NMSIC is authorized to invest a certain amount in film projects that are primarily produced within the state of New Mexico. *Id.* This investment strategy is discussed further later, *infra* at 12.

63. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 11-14.

As Tables 1 and 2 illustrate, NMSIC's investments produced modest gains in FY06. While not all of the investment pools returned higher percentages than their respective indices, all of them did result in marked gains. The combined Permanent Funds experienced a net gain of $1.47 billion through investment in FY06.[64] The combined Permanent Funds' value grew to $13.62 billion in FY06.[65]

C. Criticism of NMSIC's Investment Strategy

Despite its successes, NMSIC's investment strategy has been criticized. Whether through acts of the legislature or its own investment decision making, NMSIC has invested in projects considered by some to be questionable, including substantial loans to the film industry and investments in corporations operating in the region of Darfur, Sudan.

The legislature has authorized NMSIC to invest a certain amount of the STPF in film projects that are primarily produced in New Mexico.[66] New Mexico's film investment program offers up to $15 million in loans from the Severance Tax Permanent Fund to fund film or television projects that are produced primarily in New Mexico, as long as at least 60 percent of the project's production crew are New Mexico residents. In lieu of interest on the loan, NMSIC has arranged a profit-sharing program that guarantees that the loan principal amount is not at risk of loss because of low profits.

Funding film production is not without its risks. Many of the projects funded through the program have received lukewarm reception and have had little success in distribution. For example, the Jennifer Lopez film *Bordertown*, to which NMSIC loaned $12.6 million, received a hostile reception at film festivals and defaulted on its loan as of February 2007.[67] As of September 30, 2007, New Mexico had loaned more than $161 million to film projects. Of that, only $32,106,313 had been repaid or partially repaid.[68]

NMSIC claims that the film industry generated $253 million in spending that benefited the New Mexico economy in 2007.[69] Nevertheless, a bill introduced in the 2008 session of the New Mexico State Legislature

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64. *Id.* at 8.
65. *Id.*
66. *Id.* at 13.
67. For current information on New Mexico's film investment program see State Inv. Council, New Mexico Film Investments, http://www.sic.state.nm.us/film.htm (last visited Mar. 21, 2009).
68. *Id.*
69. N.M. STATE FILM OFFICE & STATE INV. COUNCIL, ECONOMIC AND FISCAL IMPACTS OF THE NEW MEXICO FILM PRODUCTION TAX CREDIT (2009), http://www.sic.state.nm.us/PDF%20files/NM_Film_Credit_Impact_Analysis.Final.pdf (last visited Mar. 20, 2009).

proposed a cap of $30 million on the film incentives that may be granted by the state annually.[70] Democratic State Senator John Arthur Smith introduced the bill out of concern that the program is, and will be, too expensive to be sustainable in the long term. He cited estimates that the program would cost up to $100 million per year by 2010. Senator Smith believes that the issue of film incentives in New Mexico should continue to be discussed regularly, saying, "If you have to have a subsidy to sustain it to perpetuity, then it's not a catalyst and it's a strain across the board."[71]

While the investment in New Mexico's film industry may be a successful way to boost the local economy, such investment is not appropriate because it is not consistent with the dual goals established for the Permanent Funds. It may be true that film investments are creating new jobs and economic growth in the state. Nevertheless, the dual goals of the STPF, as stated above, are to spend the interest from the fund for the benefit of the people of New Mexico and to invest the money so as to create a permanent source of wealth for the state. Investing in an unstable opportunity, the return of which is questionable, and spending the corpus of the fund to boost the economy, are both approaches that do not align with the mission of the STPF and should be viewed with great skepticism by the citizens of New Mexico.

Moreover, NMSIC's investments have been questioned on ethical grounds ever since it was discovered that New Mexico is a major investor in oil extraction companies in the Darfur region of Sudan. Darfur is the site of an ongoing genocide that has resulted in the death of an estimated 400,000 Sudanese people. NMSIC has invested $42.3 million in stock in the seven "highest offender" companies with oil and gas operations in Sudan, Africa. These companies are charged with indirectly funding the genocide in Sudan by exchanging money, weapons, and political support for the chance to exploit the region's oil and natural resources reserves. It is estimated that 70 percent of Sudan's oil revenues are used to fund its military, which is accused of supplying arms to the Janjaweed militia that is responsible for the genocide.[72]

Due to this discovery, New Mexico announced in November 2007 that it would divest its assets from the companies considered to be the worst offenders. State Investment Officer Gary Bland stated that the intent of his decision was to send a "strong message to the corporate world that New Mexico will not accept investment profits that come at the expense of

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70. S. 519, 48th Leg., 2d Sess. (N.M. 2008), *available at* http://www.nmlegis.gov/lcs/_session.aspx?chamber=S&legtype=B&legno=%20519&year=08.

71. Dan Mayfield, *Bill Would Cap Film Credit*, ALBUQUERQUE J., Feb. 1, 2008, at A8.

72. SAVE DARFUR COALITION, THE PROBLEM: HOW YOUR TAX DOLLARS ARE FUNDING GENOCIDE, *available at* http://darfur.3cdn.net/c7ce06aa382382276a_i8m6bedz9.pdf.

innocent lives lost to genocide."[73] A nationwide effort to divest from Sudan has been successful in 22 states.[74]

NMSIC should make a further effort to ensure the moral and ethical soundness of its investment opportunities in order to fulfill its mission of investing to benefit current and future generations. Ethical investment practices benefit current generations because New Mexico's substantial investment dollars increase the state's political power despite its small population size. Divestment should be undertaken in any instance in which NMSIC has invested in corporations or organizations that do not meet the ethical, moral, or environmental standards of New Mexicans in order to guarantee that future generations are not burdened by any destructive policy of today's institutions. While not a strict financial benefit, increased oversight to ensure that NMSIC's investments are adhering to New Mexico's ideals would fulfill the mission of the Permanent Funds in an indirect way, by benefiting both current and future generations of New Mexicans.

These examples illustrate that, although generally sound, the investment strategy pursued by NMSIC is often criticized and must be amended in instances where it does not meet the dual goals established for the Permanent Funds. New Mexicans should pay close attention to the investment policies of NMSIC to ensure that they are consonant with the NMSIC's goal of investing the funds such that they continue to benefit current and future generations alike.

D. Distribution of the Permanent Funds

Distribution of the Permanent Funds is regulated by New Mexico statutes that require certain percentages of the Permanent Funds' average market value be distributed to the state's public schools. From the STPF, 4.7 percent of its five-year market average may be distributed to the state's general fund in 12 monthly increments.[75] In turn, nearly 50 percent of that is used to finance public education. This means that in addition to severance tax bonds primarily being issued for public and higher education capital projects, the STPF also supports the public schools through yearly revenue.[76]

The yearly distribution of the LGPF is in flux as a result of constitutional Amendment 2, which was passed by New Mexico voters in

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73. Press Release, Genocide Intervention Network, New Mexico to Divest from Sudan (Nov. 9, 2007), *available at* http://sudandivestment.org/docs/new_mexico_pr.pdf.

74. Dave Maass, *Khartoum Strip*, SANTA FE REP., Oct. 31, 2007.

75. N.M. STAT. § 7-27-3.3 (2006).

76. Robert Desiderio, *New Mexico Taxes: Taking Another Look*, 32 N.M. L. REV. 351, 366–367 (2002).

2005.[77] Through Amendment 2, the yearly distribution of the LGPF was increased to 5.8 percent of its five-year market value for seven years. For four years after that, the yearly distribution will decrease to 5.5 percent of the LGPF's five-year market value. Finally, the distribution will decrease to 5.0 percent thereafter.[78] This will eventually result in $78 million in additional expenditures from the LGPF. [79]

Constitutional Amendment 2 was a contentious issue during the 2003 election. Opponents included the New Mexico Republican and Green Parties, State Senator Ramsay Gorham, and State Land Commissioner Patrick Lyons.[80] The Republican Party argued that dipping further into the LGPF would compromise the state's ability to remain financially in the black.[81] The Green Party argued that the LGPF should be kept intact.[82]

Supporters of Amendment 2 included Governor Bill Richardson, Senator Pete Domenici, former Governor Garrey Carruthers, the American Federation of Teachers New Mexico, and the New Mexico Federation of Labor.[83] Proponents argued that the increase would result in higher pay for New Mexico teachers, day-long kindergarten programs, and increased ability to fulfill the requirements of the federal No Child Left Behind Act.[84]

Amendment 2 passed by a small margin, winning by only a handful of votes in a special election that was notable for its low voter turnout.[85] As of 2006, distributions from the LGPF remained at 5.8 percent of the five-year market average as a result of the amendment.[86]

The Permanent Funds have distributed more than $8 billion since 1989.[87] Distributions from both funds totaled $598.2 million for FY06. NMSIC calculates that this resulted in a $793 tax savings for every New Mexico household.[88] NMSIC estimates that, by 2019, the Permanent Funds will have distributed more than $1 billion to New Mexico's public schools and institutions of higher education.[89] The recipients of those funds include: New Mexico's public elementary and secondary schools, the University of

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77. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3 at 8.
78. *Id.*
79. Editorial, *Give Bill Hearty 'Yes' to Education Reform*, SANTA FE NEW MEXICAN, Sept. 21, 2003, at F6.
80. *Id.*; Neary, *supra* note 15.
81. Editorial, *supra* note 79.
82. *Id.*
83. Am. Fed'n of Teachers, *Amendments 1 & 2 Primer*, *available at* http://nm.aft.org.
84. Editorial, *supra* note 79.
85. Editorial, *No. 2 Still a Cliffhanger; Shouldn't Have Been*, SANTA FE NEW MEXICAN, Sept. 25, 2003, at A-7.
86. N.M. STATE INV. COUNCIL, ANNUAL REPORT, *supra* note 3, at 8.
87. *Id.*
88. *Id.*
89. *Id.*

New Mexico, New Mexico State University, Western New Mexico University, New Mexico Highlands University, Northern New Mexico Community College, Eastern New Mexico University, New Mexico Institute of Mining and Technology, New Mexico School for the Visually Handicapped, New Mexico School for the Deaf, New Mexico Boys' School, Miners Hospital of New Mexico, New Mexico State Hospital, the Penitentiary of New Mexico, and others.[90]

The Amendment 2 debate illustrates the importance of the Permanent Funds' first goal of responsible spending for the benefit of current generations and how that goal influences the second goal of preserving the resource for future generations. A primary criticism of the amendment was that broadening spending from the Permanent Funds would lead to their raiding. Raiding the Permanent Funds would result in a diminished amount available for investment, which might endanger New Mexico's ability to perpetually sustain the Permanent Funds. Amendment 2 exemplifies that the stated purposes of the Permanent Funds can only be met if neither of the funds' goals is overlooked.

Moreover, it is notable that less than 100 percent of the Permanent Funds' average annual payout is directed at public schools, which are the funds' intended beneficiaries. As noted above, approximately 50 percent of the payout from the STPF and 83 percent from the LGPF[91] are used to fund public education. Some of the annual disbursement is used to fund hospitals and penitentiaries statewide. If the percentage of the Permanent Funds' distribution to public schools was increased in accordance with their constitutional and legislative mandates, this increase would result in greater tax savings for New Mexicans and a reduced need for contentious increases in the percentage of annual payout from the funds.

III. NATURAL RESOURCES INVESTMENT AND DISTRIBUTION ELSEWHERE

Several states and nations have established severance-tax investment programs that are similar to those in New Mexico. Like the New Mexico Permanent Funds, the goals of these funds are twofold: to spend the funds for the benefit of current citizens and to invest the funds to create a permanent source of wealth. Decisions by states or nations to emphasize one of these dual missions over the other have resulted in varying degrees

90. Press Release, New Mexico State Land Office, Land Office Collects Record Revenues for Fiscal Year 2006 (Sept. 15, 2006) (on file with the author).

91. Press Release, New Mexico State Land Office, Johnson Joins Lyons in Opposition to Permanent Fund Raid (Aug. 8, 2003) (on file with the author), *available at* http://www.nmstatelands.org/uploads/News/2003/2003_0808_johnsonlpgf.pdf.

of success at fulfilling the missions. Norway, for example, has struck a balance that ensures that the fund is properly spent and invested, so that the fund continues to grow while simultaneously supporting the current generations. Alaska has chosen to spend the fund to benefit the state's citizens rather than directing the fund to a specific benefit of state government. Alberta, Canada, has spent the fund to its distinct disadvantage. Finally, there are some states, like West Virginia, that have elected to spend all of their natural resources wealth as it is created, rather than forming a financial reserve for the future in anticipation of the time when those resources will be depleted.

A. Norwegian Petroleum Fund

In 1990 the governing body of Norway, the Norwegian Storting, adopted an Act which established the Government Petroleum Fund.[92] In 1996, the fund was restructured and renamed the Government Pension Fund (GPF).[93] The GPF is composed primarily of severance taxes on oil extraction. Norway is the world's second largest oil-producing nation, after Saudi Arabia.[94] The GPF is intended to moderate the spending of oil revenues and act as a long-term savings plan so that the Norwegian government can manage its aging population.[95]

The GPF is managed by Norges Bank Investment Management (NBIM), an arm of the Norwegian National Bank, which is entirely owned by the Norwegian government.[96] NBIM manages the GPF under the authority of the Norwegian Ministry of Finance, which establishes the guidelines that NBIM must follow in managing and investing the GPF.[97] As of December 31, 2006, the GPF was valued at 1,784 billion Norwegian kroner (more than U.S.$279 billion).[98] It is the second largest pension fund in the world and the largest in Europe.[99]

Like New Mexico's Permanent Funds, the GPF is invested according to guidelines established by the local government, in this case the

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92. Norway Mission to the EU, Economic and Monetary Policy, http://www.eu-norway.org/policyareas/economy+monetary/ (last visited Mar. 9, 2009).

93. Norges Bank Inv. Mgmt., Government Pension Fund, http://www.norges-bank.no/templates/article____69365.aspx (last visited Mar. 21, 2009).

94. HANNESSON, *supra* note 14, at 80.

95. Press Release, *supra* note 91.

96. Norges Bank Inv. Mgmt., http://www.norges-bank.no/templates/article_41394.aspx (last visited Mar. 20, 2009).

97. *Id.*

98. Norges Bank Inv. Mgmt, http://www.norges-bank.no/templates/article_42086.aspx (last visited March 20, 2009). All currency conversions were calculated using interbank rates.

99. Wikipedia, The Government Pension Fund of Norway, http://en.wikipedia.org/wiki/The_Petroleum_Fund_of_Norway (last visited Mar. 9, 2009).

Norwegian Storting. The GPF is invested in medium-sized companies located in 27 different countries, in the currencies of 21 countries, and in equities worldwide.[100] The rate of return on the GPF's investments in 2006 was 7.9 percent, which is 0.15 percent higher than the target rate of return.[101]

One of the most interesting facets of the GPF is that the Storting has established a series of ethical guidelines that govern the companies and countries that the NBIM may invest in. The guidelines arose out of controversy surrounding the NBIM's investment in corporations that produce arms and tobacco.[102] As a result of these ethical considerations, NBIM has excluded several companies and countries from investment, including Wal-Mart, Honeywell International, Lockheed Martin, Boeing, Northrop Grumman, Kerr-McGee Nuclear Corporation, and General Dynamics Corporation.[103] As in the case of NMSIC's divestment from Sudan, Norway has leveraged its financial resources such that it benefits current and future Norwegians by expressing their ideals through the GPF's investment requirements.

Like the Alberta Heritage Fund, which is discussed below, deposits into the GPF were intermittent during a period of economic recession in Norway from 1990 through 1992. Although the GPF was officially established in 1990, no deposits were made until 1996, when the first deposit of 2 million kroner was made.[104] There is no specific amount that must be transferred to the GPF annually. Rather, the amount deposited is the amount of budget surplus authorized by the Norwegian Storting each year.[105] This raises the concern that the GPF could be entirely depleted if the government majority chooses to run a budgetary deficit for a number of years.[106] However, since 1996, more than half of the Norwegian government's net cash flow has been deposited in the GPF.[107]

As with the Alaskan Fund discussed below, the GPF is exclusively used for distribution directly to the people of Norway, although it is reserved for their retirement years. While there are members of the public who believe that more of the GPF should be spent on state spending,[108] the benefit to each Norwegian is large, constituting approximately 284,582

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100. NORGES BANK INV. MGMT., 2006 ANNUAL REPORT, *available at* http://www.norges-bank.no/templates/report____65332.aspx [hereinafter NBIM ANNUAL REPORT].

101. Norges Bank Inv. Mgmt., Government Pension Fund—Global, Key Figures 2006, http://www.norges-bank.no/Pages/Report____65333.aspx.

102. The Government Pension Fund of Norway, *supra* note 99.

103. *Id.*

104. NBIM ANNUAL REPORT, *supra* note 100.

105. HANNESSON, *supra* note 14, at 82.

106. *Id.*

107. *Id.* at 85.

108. The Government Pension Fund of Norway, *supra* note 99.

Norwegian kroner (U.S.$45,703.87) per person by the end of 2006.[109] Like the yearly dividend of the Alaska Permanent Fund, this retirement savings account serves as an incentive to maintain the GPF, because it gives each Norwegian a stake in the successful investment of oil revenues.[110] Although the GPF's longevity could have been better established by regular and consistent deposits into the fund, Norway's fund is an example of a fund that satisfies the dual goals of such funds because it is being spent for a specific purpose to benefit current citizens, who acknowledge that benefit, while also being invested for future generations.

B. Alaska Permanent Fund

The Alaska Permanent Fund (APF) is probably the most well known of the severance tax permanent funds, primarily because it is the source of the yearly dividend payment that has led many people to believe that Alaska simply pays its residents for living there. In reality, the yearly dividend is paid through interest on the APF, which is earned through investment of the state's oil revenues.

The APF was established by a 1976 amendment to the Alaska State Constitution. The amendment requires that at least 25 percent of all mineral leases, royalties, royalty sale proceeds, federal mineral revenue sharing payments, and bonuses received by the state be placed in a permanent fund. The principal of the fund may only be used to make income-producing investments that are designated by the legislature as eligible for investment. The income from the fund is deposited in the state's general fund.[111]

The money deposited in the APF is primarily comprised of revenue from Alaska's large oil industry.[112] Alaska is also a major producer of natural gas. Alaska's oil and natural gas production accounts for approximately 20 percent of the total oil and natural gas production in the United States.[113] Since 1957, Alaska has gained more than $72 billion as a result of oil and gas exploration. Oil and gas revenues comprise on average 84 percent of Alaska's general fund.[114] Oil revenues account for the largest

109. THOR ENGLUND, THE NORWEGIAN MINISTRY OF FOREIGN AFFAIRS, SAVING THE NORWEGIAN OIL WEALTH FOR FUTURE GENERATIONS, http://www.norway.org.au/policy/pensionfund.html (last visited Mar. 14, 2009).

110. HANNESSON, *supra* note 14, at 83.

111. ALASKA CONST. art. IX, § 15.

112. SCOTT GOLDSMITH, THE ALASKA PERMANENT FUND DIVIDEND: AN EXPERIMENT IN WEALTH DISTRIBUTION 3 (2003).

113. Alaska Oil and Gas Association, Industry Overview, http://www.aoga.org/industry.html (last visited Mar. 9, 2009).

114. *Id.*

deposits into the APF. Approximately 10 percent of total oil revenues have been deposited into the APF, with minor amounts being contributed from the production of other natural resources.[115]

The APF is administered by the Alaska Permanent Fund Corporation, a state-owned corporation responsible for investing and managing the fund.[116] The APF is currently valued at a total of $35 billion.[117] In 2006, the APF earned $2.7 million in net income.[118] The APF is invested in a mix of domestic and foreign stocks and bonds, real estate, and private equities. Domestic stocks and bonds comprise the majority of the APF's investment.[119] The total return for the APF in FY06 was 11 percent, which is slightly higher than the state's targeted return of 10.5 percent.[120]

The yearly net income of the APF determines the annual dividend payment distributed to Alaska residents.[121] Initially, only individuals who had lived in Alaska since 1959 were entitled to annual dividend payments, calculated at $50 per year of residency. In 1982, however, the U.S. Supreme Court ruled that program unconstitutional on Equal Protection grounds.[122] The program was changed to distribute equal yearly payments to every resident who has lived in Alaska for at least one calendar year by the deadline to apply for the dividend.[123]

The first dividend payment was $1,000, but the following year the amount was calculated according to a formula that has been used ever since. The amount of money available for the dividend is now one-half of the five-year average realized earnings of the APF.[124] The size of the individual yearly dividend is based on the number of people that apply for it.[125] Each year, the dividend increases the total personal income of Alaskans by 6 percent, or approximately $1.1 million.[126] The checks are distributed

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115. GOLDSMITH, *supra* note 112, at 3.

116. Alaska Permanent Fund Corporation, What is the Alaska Permanent Fund? http://www.apfc.org/home/Content/permFund/aboutPermFund.cfm (last visited Mar. 9, 2009).

117. ALASKA PERMANENT FUND CORP., 2006 ANNUAL REPORT 4 (2006) *available at* http://www.apfc.org/_amiReportsArchive/2006_ANNRPT.pdf.

118. *Id.*

119. *Id.* at 17.

120. *Id.* at 5.

121. *Id.*

122. *See* Zobel v. Williams, 457 U.S. 55 (1982).

123. AS 43.23.005.

124. GOLDSMITH, *supra* note 112, at 6.

125. *Id.* at 7.

126. *Id.*

shortly before Christmas.[127] The dividend for 2007 was $1,654 per person, with distribution beginning October 3, 2007.[128]

Although there have been no official studies of how Alaskans spend their dividends, some of Alaska's politicians initially disagreed with the dividend program because the money was perceived as being "wasted" if it was not invested in infrastructure or economic development.[129] While these concerns have merit, it appears that the dividend program has created a popular incentive for protecting the funds. Most Alaskan politicians acknowledge that, because of popular support for the dividend, it would be politically devastating to suggest policy changes that would eradicate or otherwise adversely affect the dividend program.[130] In that respect, it is Alaskans' awareness of the fund and the way that it personally benefits each resident that ensures that the fund continues to remain a priority for the state.

By regulating the percentage of the APF that is distributed to Alaskans yearly, the Alaskan government can ensure that the fund is not spent at a level that exceeds its ability to be reinvested for the benefit of future generations. However, without studies showing how Alaskans spend their yearly dividend payment, there is no way of knowing whether the fund is being spent to the greatest benefit of current generations or whether it would be better spent on essential government programs. As such, Alaska appears to be accomplishing the dual goals of its funds in a cursory way in addition to both creating a sense of personal investment on the part of Alaska residents and supporting the APF's long-term success.

C. Alberta Heritage Fund

The Alberta Heritage Fund (AHF) was created by the 1976 Alberta Heritage Savings Trust Fund Act.[131] The investment framework for the AHF was restructured by a new Act, which was passed in 1997.[132]

The AHF is comprised of non-renewable resources revenues collected by the government of Alberta.[133] Like New Mexico and Alaska, the

127. *Id.*

128. STATE OF ALASKA DEP'T OF REVENUE, PERMANENT FUND DIVIDEND DIVISION 2007 ANNUAL REPORT 5 (2007), *available at* http://www.pfd.state.ak.us/forms/AnnualReports/2007AnnualReport.pdf.

129. GOLDSMITH, *supra* note 112, at 8.

130. *Id.*

131. ALBERTA HERITAGE SAVINGS TRUST FUND 2006 ANNUAL REPORT 3 (2006), *available at* http://www.finance.alberta.ca/business/ahstf/annrep06/report.pdf [hereinafter ALBERTA TRUST FUND 2006 ANNUAL REPORT].

132. *Id.*

133. Alberta Heritage Savings Trust Fund Act, R.S.A., ch. A-23 (2007) (Can).

majority of Alberta's natural resources revenue comes from production of oil and natural gas.[134] Alberta is Canada's largest oil and natural gas producer, which allows Alberta to sell high-quality natural resources at a premium to the rest of the country.[135] Initially, Alberta deposited an ambitious 30 percent of its oil and natural gas revenue into the AHF.[136] However, the combination of increasing government debt and decreasing oil prices in the 1980s resulted in several years in which no deposits were made into the AHF at all.[137] As a result, the fund eroded through inflation from a high of $12.7 billion[138] (U.S.$9.6 billion) in 1987 to $11.4 billion (U.S.$8.2 billion) at the time of its reorganization in 1997.[139] In FY06, the recently debt-free province transferred $1.75 billion (U.S.$1.5 billion) into the AHF.[140]

Unlike the Alaska and New Mexico permanent funds, the AHF is managed and invested by a subgroup within the Alberta Ministry of Finance, according to the recommendations of the Endowment Fund Policy Committee (EFPC). The EFPC is composed of members of the private sector and the government.[141] The value of the AHF totaled $14.8 billion (U.S.$12.7 billion) as of March 31, 2006. The rate of return for 2006 was 15.2 percent for FY06.[142]

Also unlike the New Mexico and Alaska permanent funds, the AHF is not earmarked for any particular purpose. Rather than directing the funds to education or refunds for the people of the province, the income from the AHF is deposited into the Alberta general fund. As of March 31, 2006, $77.7 million (U.S.$66.6 million) was transferred from the AHF to the province's general fund. To maintain the AHF's value in the upcoming year, $382 million (U.S.$336.9 million) was retained in it.[143] The province's general fund is directed toward health, education, and other government services.[144] Spending from the AHF continued during the years in which the

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134. HANNESSON, *supra* note 14, at 71.
135. *Id.* at 76.
136. *Id.* at 72.
137. *Id.* at 73.
138. Please note that in this section, the author is referring to Canadian, rather than U.S. dollars. In 2006, one U.S. dollar purchased $1.17 Canadian dollars. The amount in parentheses represents the conversion from Canadian to U.S. dollars. ALBERTA TRUST FUND 2006 ANNUAL REPORT *supra* note 131, at 6.
139. HANNESSON, *supra* note 14, at 74, 77.
140. ALBERTA TRUST FUND 2006 ANNUAL REPORT, *supra* note 131, at 2.
141. *Id.* at 3.
142. *Id.*
143. *Id.* at 7.
144. *Id.* at 2.

government was depositing no new funds into the AHF, which resulted in further erosion of the AHF during that period.[145]

Some analysts have distinguished between the Alberta and Alaska funds by classifying Alberta's fund as based on nationalization and Alaska's fund as based on privatization. In the case of the AHF, the government of Alberta is entirely responsible for determining how their fund is invested and spent. Alternatively, in Alaska, while the government plays a role in determining how the money is invested, it is distributed directly to the people who then determine how to spend it.[146] Some people attribute at least part of the relative lack of success of the Alberta Heritage Fund to the lack of personal investment that the people of Alberta feel toward maintaining and preserving the fund.[147]

The AHF historically has met the goal of spending for the benefit of current generations by funding Alberta's government, while neglecting the long-term goal of investing the fund so that it lasts in perpetuity. While the government of Alberta has taken steps to correct the damage incurred to the AHF in the 1980s, with non-renewable natural resources constantly being depleted, the fund's potential is unlikely to be maximized because of Alberta's careless and directionless spending. Nevertheless, through consistent deposits and focused spending, the government of Alberta can guarantee some long-term benefit from the AHF, even if it is not as successful as it could have been.

D. West Virginia

In contrast to the states and countries discussed above, the state of West Virginia, which has long been a center of coal mining in the United States, has taken no steps to save or invest the proceeds of natural resources extraction in the state. Now, as West Virginia finds itself approaching the end of coal mining, it is struggling to diversify its economy, buoy its state budget, and address decades of environmental degradation that have overtaken several of its communities.

Coal was discovered in West Virginia in 1742, and by 1840, the state produced as much as 300,000 tons.[148] In 2005, West Virginia produced 153 million tons of coal, 60 percent of which is extracted from underground mines. In addition to coal, West Virginia produces natural gas, lumber, and

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145. ALLAN A. WARRACK & RUSSELL R. KEDDIE, ALBERTA HERITAGE FUND VS. ALASKA PERMANENT FUND: A COMPARATIVE ANALYSIS 4 (2007).

146. *Id.*

147. HANNESSON, *supra* note 14, at 78.

148. WVGES Geology: History of West Virginia Coal Industry, http://www.wvgs.wvnet.edu/www/geology/geoldvco.htm (last visited Mar. 9, 2009).

oil. In 2005, the state yielded 230 billion cubic feet of natural gas and 1.5 million barrels of oil.[149]

West Virginia levies severance taxes against companies that sever, extract, or produce natural resource products within the state.[150] The tax rate on coal, oil, and natural gas is currently 5 percent of gross receipts. The tax rate on timber is 3.22 percent of gross receipts.[151] There is also a county-specific tax on coal at a rate of $0.35 per every $100 of gross receipts.[152] Severance taxes on coal, which comprise more than 80 percent of the total severance taxes collected in West Virginia, account for approximately 8.5 percent of total state taxes and lottery revenues.[153] Natural gas accounts for most of the remaining severance taxes,[154] which totaled $355,680,000 in FY06.[155]

Rather than saving a portion of these taxes and investing them, all severance taxes collected in West Virginia are directed to general funds of the state, specific counties, or municipalities.[156] Unlike the states and countries discussed above, West Virginia does not cushion its income with severance tax savings to help regulate its economy in times of natural resources boom or bust.[157] Additionally, while other natural resources economies have been able to use their revenue not only to support schools and retirement programs but to also create additional wealth through investment, West Virginia's natural resources revenues have been used to prop up an ailing economy that grows weaker as coal is depleted.[158]

West Virginia's pending economic crisis could be detected as early as the late 1940s, when the demand for coal began to diminish and technological advances resulted in the loss of coal mining jobs in West Virginia.[159] While other countries and states began organizing their severance tax savings plans in the 1970s, resulting in millions of dollars saved by the 2000s, West Virginia had extracted thousands of tons of natural resources without investing in any type of savings account. In fact,

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149. W. VA. FY 2008–09 EXEC. BUDGET 216 (2008).

150. TAX COMM'R OF W. VA., FORTY-SEVENTH BIENNIAL REP. 18 (2006).

151. *Id.* at 18–19.

152. *Id.* at 20.

153. E-mail from Mark Muchow, Deputy Secretary, West Virginia Department of Revenue, to Amy Williams (Dec. 3, 2007, 08:26 MST) (on file with the author).

154. *Id.*

155. W.VA. 2006 COMPREHENSIVE ANNUAL FINANCIAL REPORT 29, *available at* http://www.wvfinance.state.wv.us/cafr06.htm.

156. West Virginia Coal Association, Severance Tax, http://www.wvcoal.com/index.php?option=com_content&task=view&id=35&itemid=42 (last visited Mar. 9, 2009).

157. JEFF GOODELL, BIG COAL: THE DIRTY SECRET BEHIND AMERICA'S ENERGY FUTURE 36 (2006).

158. *Id.* at 30-31.

159. *Id.* at 34.

West Virginia's economy is now the second weakest in the United States, followed only by Mississippi.[160]

As the end of mining in West Virginia looms, West Virginians are scrambling to diversify an economy that has long been supported by non-renewable natural resources. Counties in southern West Virginia have suffered particularly extreme economic depressions. In one county, nearly half of the income earned by residents is in the form of welfare, workers' compensation, Social Security, and disability benefits.[161] As the end of non-renewable natural resources, and particularly coal, draws near, residents of West Virginia are hoping that southern West Virginian communities will be able to revitalize their economies the way that some eastern West Virginian communities have.[162] To that end, community leaders have organized forums and discussions to address West Virginia's changing economy and how best to prepare for the end of natural resources extraction.[163]

West Virginia represents a case in which neither of the dual goals of non-renewable natural resources permanent funds is being met. Without a plan for directed strategic spending, the state has no way of gauging or controlling the benefit that current generations derive from natural resources severance taxes. Also, without savings or investment of those funds, the economic benefit from natural resources extraction will decline along with the natural resources themselves.

IV. RECOMMENDATIONS FOR THE LAND GRANT AND SEVERANCE TAX PERMANENT FUNDS AND CONCLUSIONS

When it comes to fulfilling the dual goals of severance tax permanent funds, there are varying degrees to which states and countries are successful. As these examples illustrate, there are numerous ways to spend and invest these funds that can determine whether or not those objectives are met.

Clearly, when it comes to natural resources severance taxes, it is better to save and invest than not, as is illustrated by contrasting West Virginia with New Mexico, Alaska, Alberta, and Norway. However, as Alaska and Norway illustrate, if a state or country (or province) is going to save its severance taxes, it is better to save them in such a way that individual citizens feel invested in their preservation. The Alaska dividend payments and Norwegian pension plan demonstrate that when the

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160. Wikipedia, Economy of West Virginia, http://en.wikipedia.org/wiki/Economy_of_West_Virginia (last visited Mar. 9, 2009).

161. GOODELL, *supra* note 157, at 35.

162. *Id.*; *Southern West Virginia Prepares for a Future Without Coal*, CENT. N.Y. BUS. J., Dec. 14, 1998.

163. *Southern West Virginia Prepares for a Future Without Coal*, *supra* note 162.

population feels invested in the severance tax permanent funds, they protect those funds from being misappropriated or invested poorly. In contrast, Alberta's directionless fund resulted in its being ignored for a number of years and eventually depleted by a goodly amount.

Given these illustrations, New Mexico is on the right path when it comes to its Permanent Funds. However, in order to create individual awareness of, and investment in, the funds, thereby leading to responsible investment and spending programs, it is necessary that each New Mexican acknowledges the benefit they derive from the funds.

The state could use as its model the New Mexico lottery scholarships, which direct state lottery revenue to provide New Mexico scholars with money to attend New Mexico institutions of higher education.[164] New Mexico could restructure its spending such that the Permanent Funds benefit specific integral elements of the public education system, and then make clear to the public that to protect the Permanent Funds means to protect these specific and essential functions of our public education system. If New Mexicans understood that to protect the Permanent Funds from misappropriation and bad investments meant to protect, for example, funding for public-school science laboratories or special education programs, rather than public schools generally, they might be more inclined to protect them. Additionally, Alaska's fund receives great publicity each year when the dividend checks are distributed. Similarly, greater public awareness of the Permanent Funds and how they are used could give New Mexicans a greater sense of the importance of the funds to the state's economy.

Additionally, New Mexico could support the dual goals established by the Permanent Funds and increase the impact of their annual distribution by directing more of the yearly payout to public education. As it stands, less than 100 percent of the annual distribution is actually given to institutions of public education. By increasing the amount that is directed to public education annually, the state could increase the tax savings of current New Mexico residents while having no impact on future New Mexicans, as the amount annually distributed would not change. This would eliminate the need for contentious proposals to increase the percentage of distribution from the funds, as Amendment 2 did.

Further, if New Mexicans understood more clearly the source of the Permanent Funds and how they are invested, they might be more inclined to participate in developing sound investment policies that reflect the ideals of the people of the state. New Mexicans might find an incentive to be more vocal when the state's investment strategies do not appear sound. For

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164. New Mexico Lottery, Legislative Lottery Scholarships, http://www.nmlottery.com/scholarships.htm (last visited Mar. 9, 2009).

example, those that disagree with public funding for New Mexico's film industry might be more inclined to express that disagreement to their local decision makers if they learned that it was funded out of the pockets of New Mexico's schoolchildren. Moreover, like the people of Norway, the people of New Mexico may see an incentive to invest their severance taxes ethically, which (as in the case of Sudan) would allow New Mexico to participate in national and international decision making with a weight far greater than its population size would traditionally warrant. This would serve both present and future generations of New Mexicans by promoting financially and ethically sound investments.

Greater personal investment in the Land Grant and Severance Tax Permanent Funds could result in greater protection of those funds, because more New Mexicans would feel a personal commitment to protect them. And protect the Permanent Funds we should, because like every natural resources-extracting state in the world, New Mexico will eventually see those resources depleted and those revenues gone. Through the dual mission of the state's Permanent Funds, New Mexico ensures that the current generation is served through strategic spending, while its natural resources taxes continue to grow through prudent investment. As such, the Permanent Funds represent the only lasting benefit New Mexico will derive from an inherently temporary product.