



April 6, 2021

The Honorable Dan Dockstader,
President, Wyoming Senate,
200 West 24th Street
Capitol Building
Cheyenne, WY 82002

Dear President Dockstader,

The State Board of Land Commissioners (SBLC) was created by the Constitution of the State of Wyoming, and through the provisions of Article 18, Section 3 was given express authority over the “direction, control, leasing and disposal of lands granted to the state” so “as to realize the largest possible proceeds” “for the support and benefit of public schools.” This same section gave the Legislature the opportunity to help direct that responsibility “as limited by this constitution.”

Thus, as required by existing statute, SBLC manages leasing of state trust land in a way and to such parties that inures to the greatest benefit of the State’s trust beneficiaries. All members of SBLC take this responsibility seriously. The Board must balance various requests for uses of state trust land with the need to provide an optimal return for the trust beneficiaries. Various Legislatures have reviewed and amended statutory language to clarify practice and implementation; but the constitutional obligation for Commissioners remains unchanged.

This past year, Commissioners raised concerns with a well-established Office of State Lands (OSLI) practice regarding the leasing of vacant lands. Statutory language offered two competing interpretations regarding the use of the word “preference.” One interpretation is “the power or opportunity to choose.” The other refers to “the act, fact, or principle of giving advantages to some over others.” Both are valid -- hence the confusion. The SBLC departed from established protocol on these matters and sought greater clarification from the 66th Legislature. Accordingly, I asked the Legislature to take up this matter and to revise the awkward language, which made only the portion of the statute dealing with the disposition of vacant lands perplexing.

Since its introduction at the behest of the SBLC, Senate File 114/Senate Enrolled Act 0054 has undergone numerous changes. The bill was drafted, edited and revised by a number of legislators, members of my staff, the OSLI leadership and industry representatives. I particularly want to thank the Joint Agriculture Committee for their hard work on this bill. As delivered to the House, the bill contained a few flaws; but with the help of many, including those mentioned above, clarifications

were added to the bill regarding how the concept of “preference” might be applied when leasing vacant state trust lands. By in large these changes made the bill more workable. Unfortunately, other amendments unnecessarily tied the hands of the SBLC removing prerogatives of the SBLC that are essential to executing our duties as a board.

As written and set before me, this legislation now requires the SBLC to award leases based less on return to the schools and almost solely on how proximate a bidder is to the state land in question. These changes potentially upset a carefully crafted and historic balance between the two competing interests that is recognized elsewhere in the statute. In effect, this bill instructs the SBLC to ignore all other criteria except adjacency, which the SBLC would normally consider when determining an optimal solution that would best inure to the greatest benefit of the State’s trust beneficiaries. It is clear that vacant land can often be best used by adjacent landowners, and the continued viability of those operations inures to the benefit of the state. Still, preemptively restricting competitive bidding from the process to lease state trust lands, thereby depressing the potential revenue derived from that activity, seems to stand in contrast with the constitutional obligation set forth in Article 18, Section 3.

I believe the implications of eliminating the Board’s discretion within its inherent decision making authority is improper and contrary to the intent of the SBLC’s Constitutional duties. For these reasons, I have vetoed SEA No. 54.

I would ask the Legislature to take this topic up in the interim. I believe there is a simpler solution that can be found that clarifies the Legislature’s intent, respects the Constitution, reaffirms the discretion afforded the Executive Branch in the Constitution, and finds a way forward to help proximate landowners successfully compete for vacant lands. Members of the State Board of Land Commissioners stand ready to work with you in this endeavor and the efforts of the Legislature to date are truly appreciated.

Thank you for your work on this important issue.

Sincerely,



Mark Gordon
Governor

cc: The Honorable Secretary of State, Edward Buchanan,
The Honorable Eric Barlow, Speaker of the House
Chief Clerk, Wyoming Senate
Chief Clerk, Wyoming House of Representatives