

**DIRECTOR'S DECISION
OFFICE OF STATE LANDS AND INVESTMENTS**

LEASE NO.: 1-8710 COUNTY: Converse
TOTAL ACRES: 146.95 TOTAL AUM's: 34
LEGAL DESCRIPTION: Township 31 North, Range 73 West, 6th P.M.
Section 18: Lots 3, 4 : E2SW4
MINIMUM ANNUAL RENTAL: \$210.12

This vacant land was advertised in the Douglas Budget on November 14, 2018. Applications by sealed bid were accepted by the Office through December 7, 2018.

THE FOLLOWING CONFLICTING APPLICATIONS HAVE BEEN RECEIVED

Wagonhound Land & Livestock Company, LLC
PO Box 1100
Douglas, WY 82633

APPLICATION RECEIVED:	November 29, 2018
DEPOSIT FOR IMPROVEMENTS:	No
QUALIFIED TO LEASE:	Yes
WYOMING RESIDENT:	Corporation is authorized to do business in Wyoming
ACTUAL USE OF LAND:	Grazing
OWNER/LESSEE/OCCUPANT OF ADJOINING LAND:	Yes
PRIOR LESSEE PREFERENCE:	No
RENTAL OFFER:	\$1,360.00 per year or \$40.00 per AUM

John T. Leman
69 Moss Agate Road
Douglas, WY 82633

APPLICATION RECEIVED:	December 3, 2018
DEPOSIT FOR IMPROVEMENTS:	No
QUALIFIED TO LEASE:	Yes
WYOMING RESIDENT:	Yes
ACTUAL USE OF LAND:	Grazing
OWNER/LESSEE/OCCUPANT OF ADJOINING LAND:	Yes
PRIOR LESSEE PREFERENCE:	No
RENTAL OFFER:	\$348.84 per year or \$10.26 per AUM

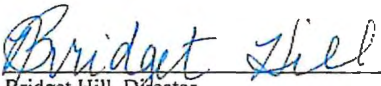
DIRECTOR'S DECISION:

The Director conditionally awards the 146.95 acres in conflict to Wagonhound Land & Livestock Company, LLC for a term from February 7, 2019 to January 1, 2029 at the annual rental of \$1,360.00 based on the highest rental offer received.

Wagonhound Land & Livestock Company, LLC is given fifteen (15) days from receipt of notice by certified mail to file their acceptance in writing to this decision.

Thirty (30) days are provided by law for the appeal of this decision to the Board of Land Commissioners, said appeal should be made in writing and filed with the Office of State Lands and Investments. If no appeal is filed within thirty (30) days from receipt of notice by certified mail, this decision will become final when approved by the Board of Land Commissioners. In case of appeal, notice will be given to the applicants of the date of hearing.

DATED AT CHEYENNE, WYOMING this 17th day of December, 2018.


Bridget Hill, Director
Office of State Lands and Investments

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710:)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

vs.)

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

and,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent.)

**ORDER RESETTING PREHEARING CONFERENCE, HEARING DATE
AND DISCLOSURE DEADLINE**

THIS MATTER came before the Office of Administrative Hearings (Office) on August 14, 2019 for a previously set scheduling conference. The Office has reviewed the file and finds it is now appropriate to reset this matter for a prehearing conference, hearing date, and a disclosure deadline.

IT IS THEREFORE ORDERED that:

1. The prehearing conference is reset for **October 15, 2019 at 9:30 a.m.**, by telephone with this Office to make the call. The purpose of the prehearing conference is to

address all pending motions, challenges to admissibility of exhibits or the testimony of witnesses, and any other matters raised by the parties. The Office may record the prehearing.

2. The hearing is reset for **October 22, 2019, at 9:30 a.m. at the Law Offices of Mark C. Hardee, 900 South Grant Street, Douglas, Wyoming.** By request of the referring agency, the Office will record the hearing. If a court reporter is desired, this Office shall be advised immediately, and the referring agency shall arrange for scheduling and payment of the court reporter pursuant to Chapter 3, Section 2, of the Rules for Contested Case Practice and Procedure Before the Office of Administrative Hearings.

3. At least 20 days prior to hearing, each party shall file and serve the following upon all other parties and this Office:

a. A complete list of all witnesses who will or may testify, together with information on how that witness may be contacted and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original should be filed with the **Office of State Lands and Investments, Attn: Jason Crowder, Assistant Director**, and a copy shall be provided to this Office along with other disclosure. The parties shall make appropriate arrangements for the attendance of their witnesses at the above-scheduled hearing.

b. A statement of the specific claims, defenses and issues, which the party asserts, are presently before the Office for hearing.

c. A complete list and a **copy** of all documents, statements, etc. which the party will or may introduce into evidence. **John T. Leman's** exhibits shall be identified by letters beginning with "A" and going through "Z." If

necessary, additional exhibits shall begin with "AA" and continue alphabetically. **Office of State Lands and Investments** exhibits shall be identified using numbers beginning with "1" preceded by the letter "S" (Example: S-1). **Wagonhound Land & Livestock Company, LLC's** exhibits shall be identified by numbers beginning with "1". The parties shall be prepared to present their exhibits at the above-scheduled hearing. *Each exhibit shall be tabbed, and each page shall be numbered so that every page presented to the Office can be specifically identified. Exhibits containing multiple pages must be individually numbered. The parties shall include a separate index list of all exhibits, which identifies each exhibit and corresponding page number.*

All Disclosure Statements and exhibits exceeding 25 pages shall be bound in a spiral or ring binder with all exhibits tabbed and incorporated into a single 8.5 by 11 inch document.

All original documents filed in this proceeding must be mailed to Office of State Lands and Investments, Attn: Jason Crowder, Assistant Director.

4. All discovery shall be completed at least 30 days prior to hearing, **Discovery requests and answers are not to be served upon this Office.**

5. All parties should continue to make reasonable efforts towards achieving settlement of this contested case. **Should this matter settle, or should any party decide they no longer wish to pursue this matter further, please contact the Office of Administrative Hearings immediately at (307) 777-6660.**

DONE this 15th day of August, 2019.



Tania S. Hytrek, Hearing Examiner
State of Wyoming
OFFICE OF ADMINISTRATIVE HEARINGS
2020 Carey Avenue, Fifth Floor
Cheyenne, Wyoming 82002-0270
(307) 777-6660

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties by mailing a true and correct copy postage prepaid, on the 15 day of August, 2019, addressed to the following:

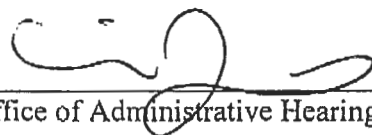
Office of State Lands and Investments – (ORIGINAL)
Jason Crowder, Assistant Director – Trust Land Management Division
122 West 25th Street, Third Floor
Cheyenne, Wyoming 82002-0600

Keith Burrin – Attorney for Unsuccessful Lease Bidder/Objector
1695 Morningstar Road
Cheyenne, Wyoming 82009

William L. Hiser – Attorney for Successful Lease Bidder/Respondent
P.O. Box 971
Laramie, Wyoming 82073-0971

Megan Pope – Attorney for Office of State Lands and Investments
Senior Assistant Attorney General
2424 Pioneer Avenue, Third Floor
Cheyenne, Wyoming 82002

David Robinson – Advising Attorney for the Board of Land Commissioners
Assistant Attorney General
2424 Pioneer Avenue, First Floor
Cheyenne, Wyoming 82002



Office of Administrative Hearings

b. Objector is asserting that Wagonhound obtained the State Lease at issue based on fraudulent statements; that Wagonhound does not have actual and necessary use for the land and its forage; and/or, that Wagonhound is otherwise not entitled to secure the State Lease based on its application. Wagonhound disputes Objector's claims and asserts that its application was and is appropriate; was duly presented and considered; and, as the highest bidder, Wagonhound is entitled to the benefits of the State Lease as awarded by the Office.

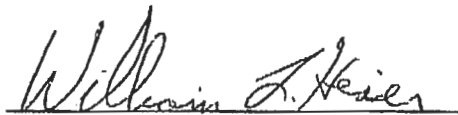
c. Wagonhound has marked for identification and furnished copies of anticipated exhibits to all parties. A copy of the Wagonhound's anticipated Exhibit List is attached hereto as Exhibit B. Wagonhound reserves the right to supplement this list if additional exhibits are discovered or if necessary to rebut information presented in Objector's case in chief and the right to offer any exhibits identified or provided by any other party to this proceeding.

d. Completion of discovery. No discovery has been conducted by any party.

e. Wagonhound has filed no pretrial motions including motions in limine.

f. Settlement discussions have been brief and are unlikely to resolve this matter.

DATED this 30th day of September, 2019.



William L. Hiser #5-2591
Of Brown & Hiser LLC
Attorneys for Wagonhound Land and Livestock,
LLC
163 N. 3rd Street
P.O. Box 971
Laramie, WY 82073-0971
(307) 745-7358

EXHIBIT A
DEFENDANTS POSSIBLE "MAY CALL" WITNESS LIST

a. Dustin Ewing, General Manager, Wagonhound Land & Livestock Company LLC, 1061 Poison Lake Road, Douglas, WY 82633. Mr. Ewing may be contacted through William L. Hiser, counsel for Wagonhound, (307) 745-7358. Mr. Ewing has knowledge concerning the ownership and use of Wagonhound real property. Mr. Ewing prepared and submitted applications with the Office of State Lands including applications for Temporary Use Permits and the Lease Application at issue. Mr. Ewing will provide testimony that the applications were/are correct, were submitted in a timely manner, were not materially incorrect in any information, properly represented the matters set forth in the application and were not submitted for any false or fraudulent purpose. Mr. Ewing will also provide testimony concerning his interactions with the Office of State Lands relative to the Lease and applications in question, his actions in seeking to secure the Lease and permits in question, the nature, conditions and qualifications of Wagonhound to apply for and hold State Land leases. Mr. Ewing, as the general manager of Wagonhound may testify concerning all of Wagonhound's operations, specifically its cattle operations, land ownership and its operations on State of Wyoming leased lands pursuant to the Lease at issue and other Leased land. Mr. Ewing may also testify concerning the State land at issue and the circumstance surrounding the application and Wagonhound's anticipated use of the land in question and the challenges presented by existing fences and the lack of fences. It is also anticipated that Mr. Ewing will rebut any testimony or evidence that Wagonhound is not entitled to secure and hold a State land lease and this lease in particular.

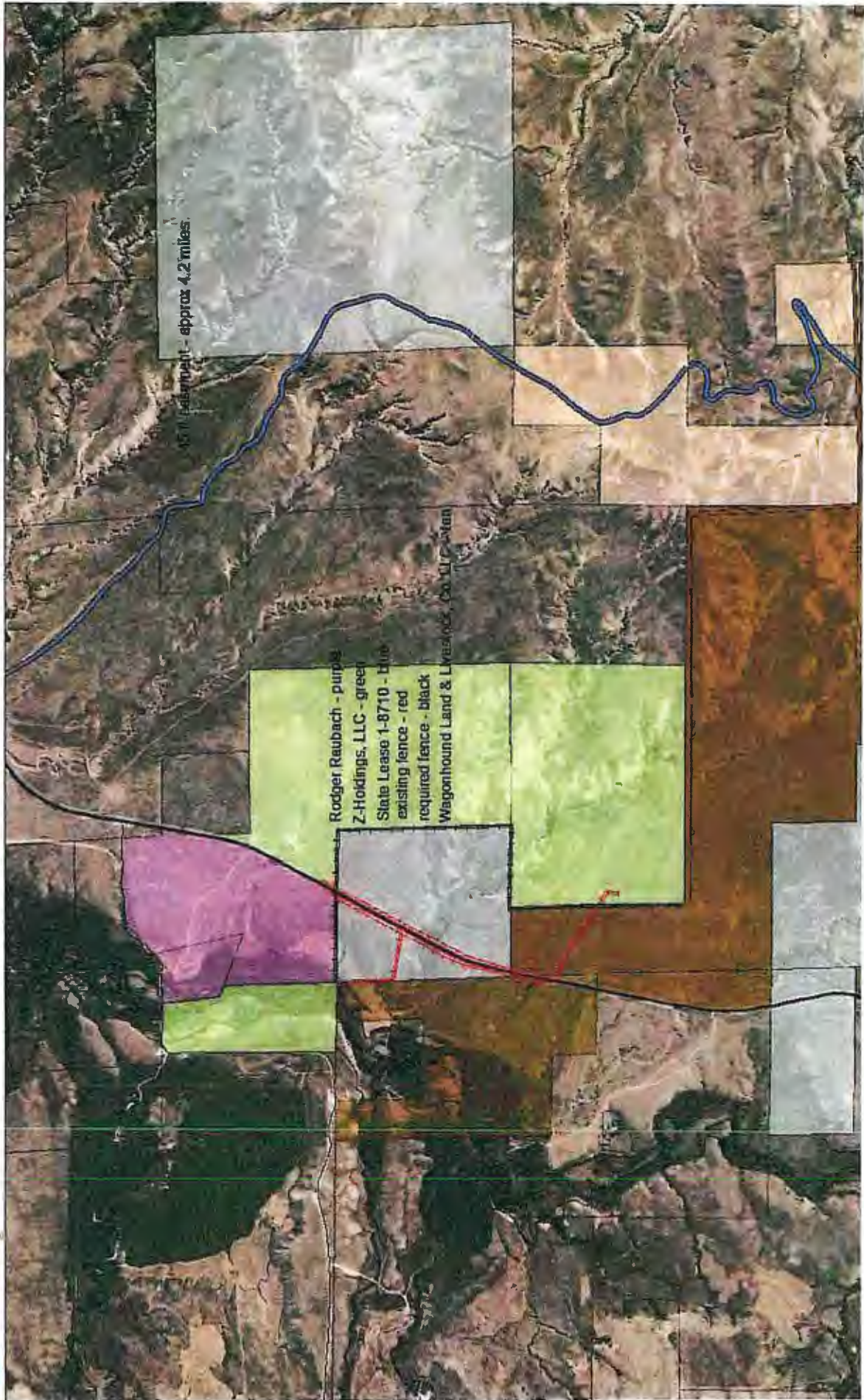
b. Mark Norem, 114 W. 2nd Ave., Big Timber, MT 59011, (406) 932-4606. Mr. Norem is a licensed real estate broker (Number 3314) that works with and for Wagonhound. Mr. Norem has knowledge of Wagonhound's owned and leased property and the ownership and use of other property in the area including Objector's land. Mr. Norem has had communications with principals of Wagonhound and has knowledge of Wagonhound's operations and uses of both their private land and the other State lands leases under which Wagonhound is a lessee. Mr. Norem may testify concerning his knowledge of Wagonhound's owned land and the fences (and

lack of fences) relative to the State land at issue. Mr. Norem has owned and/or managed and listed and sold ranch properties in Wyoming and Montana that include deeded land, private leased land, BLM leased land, State leased land, and Forest Service leased land. Mr. Norem has knowledge and familiarity with the State lease land and surrounding lands as he reviewed the properties on behalf of Wagonhound prior to Wagonhound's purchase of the same. Mr. Norem has been involved in conveyances and acquisition of real estate in the general vicinity of the Subject Property for years. Mr. Norem may testify concerning his investigation of the Wagonhound properties adjacent to the State Land and that a portion Wagonhound property is fenced within the same pasture as the State Land on both the east and west sides of the highway.

c. James F. (Jim) Jones, CEPI, 6080 Enterprise Drive, Casper, WY 82609, (307) 266-4346. Mr. Jones has been a licensed land surveyor in the State of Wyoming since 1987 and is currently licensed in Wyoming and Colorado. It is expected that Mr. Jones will testify about his education, background, training and experience, the information and documents provided to him in this case by the parties and his review of the same as well as his personal inspection and land surveys of the lands in question and the testimony of other witnesses. Mr. Jones may offer expert opinions relating to the location of the State Land, the adjacent Wagonhound lands, the location and ownership of other lands near the State Land, the roads, fences, and topographical features on, along and near the State Land. It is also anticipated that Mr. Jones will testify concerning his conduct of an on-site investigation and survey review of the important features of area, including the current location of fences and other prominent features based on current high-resolution aerial photography, and may also prepare and produce maps, photos and/or other demonstrative exhibits depicting the on-site conditions. Mr. Jones is expected to testify that Wagonhound is the owner of lands adjoining the State lands for which Wagonhound applied for a lease and that the State lands at issue in this lease are fenced in with other lands owned by Wagonhound on both the East and West side of the highway and that such State lands are not fenced separately from the Wagonhound lands.

EXHIBIT B
DEFENDANTS' ANTICIPATED EXHIBIT LIST

EXHIBIT	DESCRIPTION
1	Map of Area prepared by Dustin Ewing
2	Map of Area prepared by Jim Jones, CEPI
3	Map of Area prepared by John Leman
4	
5	



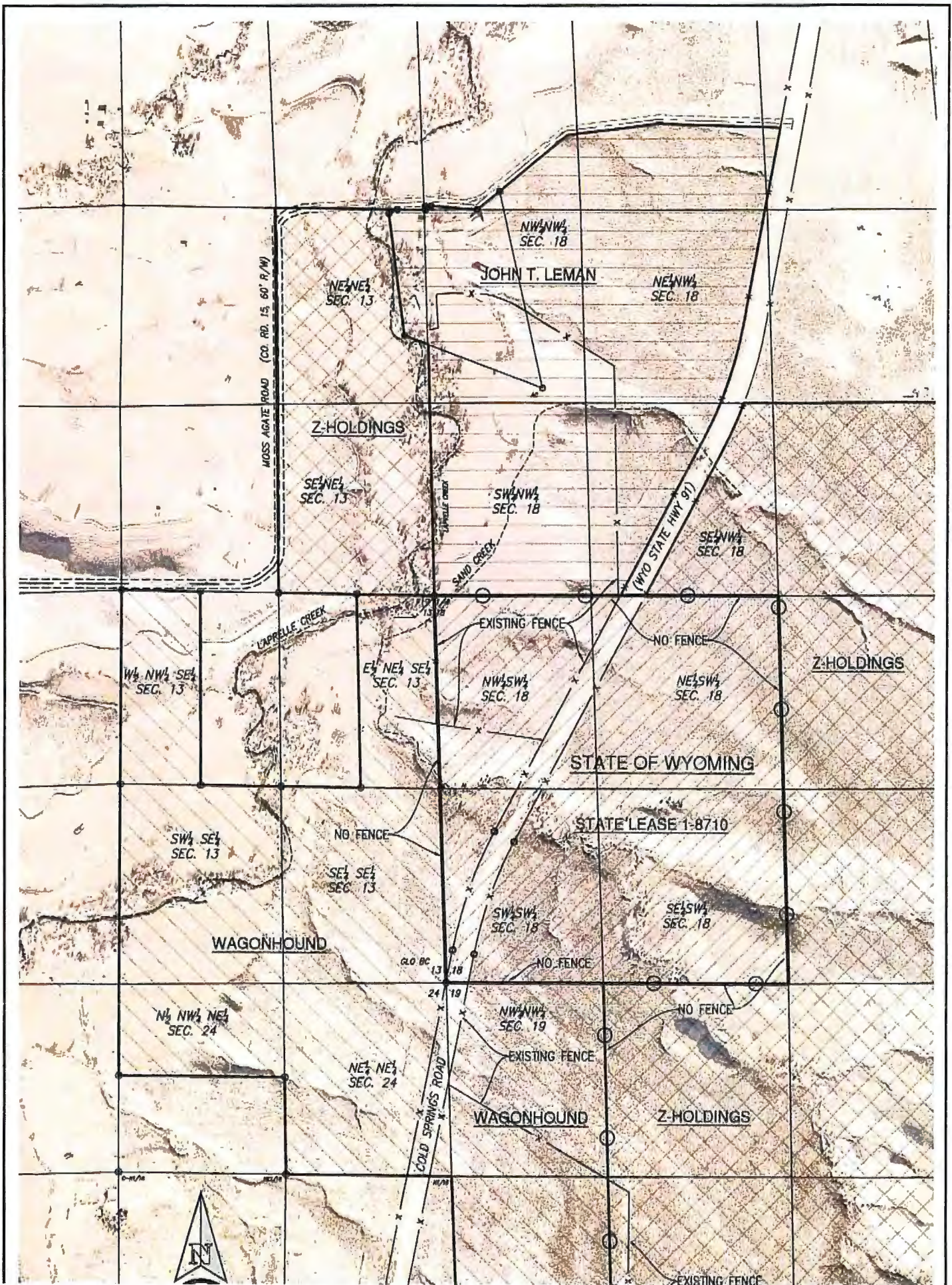
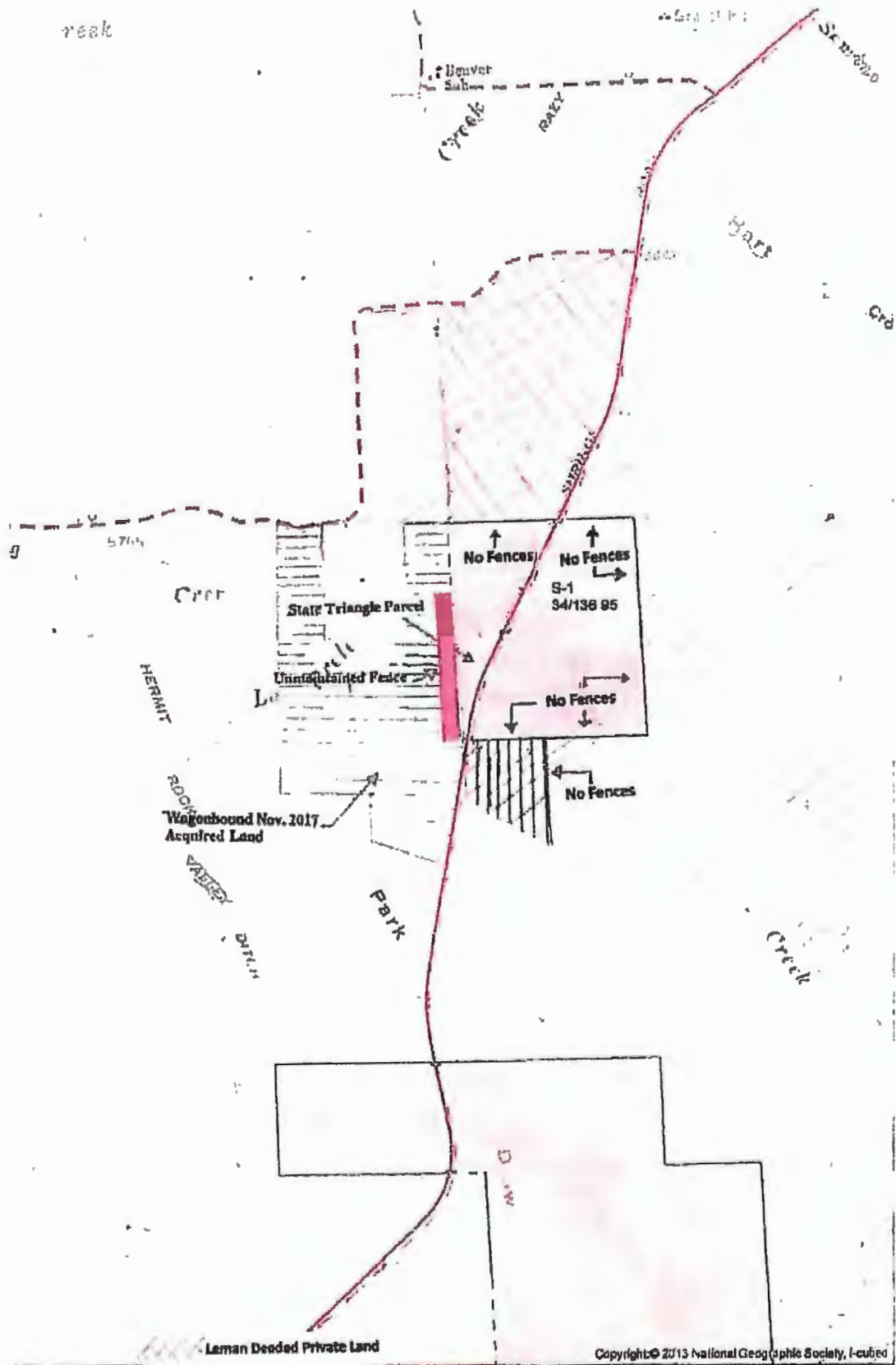


Exhibit A-1

reak



GRZ-1-8710
18-31-73

Wagonbound Fenced In
 with Z-Holdings
 Leman Controlled Private
 Land - Z-Holdings



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0 0.25 0.5 Miles

Fence ——— Highways

The State of Wyoming and its agencies make no express or implied warranties as to the use and the date for copies. Users of this and information sources to ascertain the reliability of the information. The State of Wyoming and its agencies assume no liability for any consequences with the use of any of the

Attachment 1
 (Leman Affidavit)

Date: 9/28/2018
 By Cole Lambert

Exhibit 3 Page 1

Exhibit 3, Page 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties by mailing a true and correct copy postage prepaid, on the 30th day of Oct, 2019, addressed to the following:

Office of State Lands and Investments – (ORIGINAL)
Jason Crowder, Assistant Director – Trust Land Management Division
122 West 25th Street, Third Floor
Cheyenne, Wyoming 82002-0600

Office of Administrative Hearings
2020 Carey Avenue, 5th Floor
Cheyenne, Wyoming 82002

Keith Burron
1695 Morningstar Rd.
Cheyenne, WY 82009
Attorney for John T. Leman – Objector/Unsuccessful Lease Bidder

Megan Pope – Attorney for Office of State Lands and Investments
Senior Assistant Attorney General
2424 Pioneer Avenue, Third Floor
Cheyenne, Wyoming 82002

David Robinson – Advising Attorney for the Board of Land Commissioners
Assistant Attorney General
2424 Pioneer Avenue, First Floor
Cheyenne, Wyoming 82002



Of Brown & Hiser, LLC

Objector, John T. Leman (“Leman”), through undersigned counsel, hereby files his Prehearing Disclosure pursuant to the Hearing Examiner’s August 15, 2019 Order Resetting Prehearing Conference, Hearing Date and Disclosure Deadline.

I. WITNESSES

Leman identifies the following witnesses that will or may be called to testify in this matter:

1. **John T. Leman**, c/o Keith Burron, attorney for Leman, 307-631-7372. Mr. Leman will be called to testify to the facts previously set forth in his affidavit submitted in opposition to the State’s Motion for Summary Judgment and to his knowledge of ranching practices, the importance of leased lands to ranching operations, the fencing issues relevant to the granting of the subject lease and to any other facts relevant to this matter. Mr. Leman may also testify to his research related to this lease and to any facts necessary to establish foundation for any exhibit.
2. **Gigi Leman**, c/o Keith Burron, attorney for Leman, 307-631-7372. Mrs. Leman may be called to testify to matters addressed in the prospective testimony of Mr. Leman, above.
3. **Jason Crowder**, Office of State Lands and Investments (OSLI), Herschler Building, 1st Floor, Cheyenne, WY 82002, 307-777-7331. Mr. Crowder will be called as an adverse witness to testify to any matter relevant to the OSLI’s conditional decision in this matter and to the statements in his affidavits from the summary judgment proceedings. He is expected to testify to the procedures followed by OSLI in issuing grazing leases (including those related to vacant leases) and Temporary Use Permits (TUPs) generally and in this case, the criteria used to evaluate applications, his

knowledge of the facts in this case related to the issuance of the lease and to any facts related to the multiple TUPs granted to Wagonhound on the leased parcel, and to the application of regulations and statutes to the facts, and to his discussions with Mr. Leman or OS LI staff regarding the matters at issue in this case.

4. **Cole Lambert**, OS LI, Herschler Building, 1st Floor, Cheyenne, WY 82002, 307-777-7331. Mr. Lambert may be called to testify concerning his inspection of Lease 1-8710, the map he prepared following that inspection, the fencing of lands in relation to the lease, the reasons for inspecting state lands, any communication between him and OS LI concerning this land, his knowledge of the TUPs, and to any other matter about this case of which he has knowledge.
5. **Stephanie Hardee**, Wyoming Bearing and Supply, 206 S. College Dr., Cheyenne, WY 82007, 307-634-9000. Ms. Hardee formerly worked for OS LI. She may be called to testify concerning her communications with Mr. Leman about Lease 1-8710 prior to and during the time that the OS LI advertised Lease 1-8710 for bid, including his efforts to lease the parcel prior to it being advertised for bid, and to any other matters related to the leasing of the parcel and TUPs issued to Wagonhound relevant to this matter.
6. **Dustin Ewing**, Wagonhound Land and Livestock Company, LLC, c/o Counsel for Wagonhound, Mr. Hiser, 307-745-7358. Mr. Ewing will be called as an adverse witness to testify concerning any of the following subjects: Wagonhound's operations, land holdings, state leases held by Wagonhound, its practices in acquiring state leases and other agricultural lands, history and knowledge of leasing of state lands, the TUPs Wagonhound acquired for Lease 1-8710, his knowledge of uses of

Lease 1-8710 and adjacent lands, and information relating to the Wagonhound lease application and TUP applications covering Lease 1-8710.

7. **Bryon Preciado**, business address 4800 W. Yellowstone Hwy, Mills, WY 82644, 307-797-1242. Mr. Preciado is familiar with the lands encompassed by and adjacent to Lease 1-8710 and may be called to testify to his knowledge of whose cattle were located on and in the vicinity of Lease 1-8710 during many of the years Wagonhound held TUPs on the lease and is expected to testify that he did not observe Wagonhound cattle on Lease 1-8710 during the years he hunted in the area, which included several years since 2010 during which Wagonhound held TUPs on the lease. If called, he is also expected to testify that he observed the fence between Lease 1-8710 and the private property to the west in the southwest portion of Lease 1-8710 exists but is in disrepair and in need of maintenance.
8. **Dave Hulshizer**, 2242 Mercy Cir., Casper, Wyoming, 82609, 307-251-0547. Mr. Hulshizer may be called upon to testify that he did not observe Wagonhound cattle on Lease 1-8710 or adjacent private lands during the years he hunted in the area, which included several years since 2008 and including years when Wagonhound held TUPs on the lease. If called, he is also expected to testify that he observed the fence between Lease 1-8710 and the private property to the west in the southwest portion of Lease exists but is in disrepair and in need of maintenance.
9. **Doug Olsen**, 7175 Lake Drive, Evansville, Wyoming, 82636, 307-441-1574. Mr. Olsen assisted Mr. Lemman occasionally with ranch work. He may be called to testify to his familiarity with the lands Lemman owns and controls adjacent to Lease 1-8710 and to his knowledge of fencing of the relevant lands, and that he did not observe

Wagonhound cattle on Lease 1-8710 or adjoining lands during the years

Wagonhound held TUPs on the lease, which included years between 2012 and 2017.

10. Hon. Bridget Hill, Attorney General (and former Director of State Lands when the OSLI decision was rendered), 2320 Capitol Avenue, Cheyenne, WY 82002, 307-777-7841. Leman does not expect that testimony from Attorney General Hill will be necessary and does not expect to call her unless Mr. Crowder is unable to speak fully to the position of the OSLI in this matter. Leman expects Mr. Crowder's testimony will eliminate any need for Attorney General Hill to testify, but she is listed here as a precaution in the event Mr. Crowder is not able to testify to any aspect of the OSLI's position relative to the OSLI's decision in this matter.

11. Witnesses identified by other parties: Leman may call any witness listed or called by any other party in this matter.

12. Other Witnesses: Leman reserves the right to call as a witness any person necessary to provide rebuttal testimony or to lay foundation for any testimony, evidence or exhibit offered or introduced at the hearing. Leman further reserves the right to amend and supplement its identification of witnesses based on a review of other parties' witnesses lists and/or upon the discovery of new or additional information should facts or information be discovered after the date of this submission that warrants such identification.

II. CLAIMS AND ISSUES

Leman identifies the following claims, defenses and issues that are presently before the Office for hearing:

1. Whether Wagonhound's lease application for Lease 1-8710 contained misrepresentations or false, incomplete and/or misleading information, such that the Board should find that its application for the lease should be rejected under regulations and statutes governing the leasing of state lands. (*Wyo. Stat. § 36-5-113; Board Rules, Chapter 4 § 5(a) and §12*).
2. Whether Leman is entitled to a preference over Wagonhound under Wyo. Stat. § 36-5-105(b) based on the criteria of having actual and necessary use of the lands.
3. Whether the lands within Lease 1-8710 are fenced in with other lands owned or controlled by Wagonhound or by Leman.
4. Whether OS LI's conditional award of Lease 1-8710 properly considered all necessary and required factors, including the proper factual inquiry into the applications and the application and interpretation of applicable statutes and regulations.
5. Whether OS LI failed to conduct a proper review of the competing applications under the preference statute, *Wyo. Stat. 36-5-105(b)*, due to OS LI's incorrect legal conclusion that the preference only applied as a "tie breaker" when competing bids were for the same amount.

III. EXHIBITS

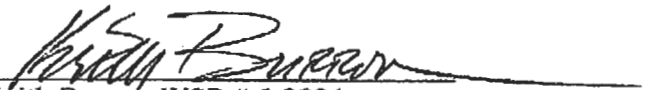
Leman identifies the following exhibits that will or may be used in the presentation of his case in this matter, copies of which are attached to this pleading:

- A. Director's Decision dated December 18, 2018.
- B. Leman Application for Lease 1-8710.
- C. Wagonhound Application for Lease 1-8710.
- D. Wagonhound TUP materials (portions), 2011.

- E. Wagonhound TUP materials (portions), 2016.
- F. OSLI Inspection Map prepared by Cole Lambert.
- G. Map prepared by Leman showing fencing and other information.
- H. Photos of boundary fence, south portion of west boundary of 1-8710.
- I. Tabulation of OSLI leases held by Wagonhound (1 of 2, September 2019 printout).
- J. Tabulation of OSLI leases held by Wagonhound (2 of 2, February 2019 printout).
- K. Board Action and Decision, OAH Docket 18-139-060 (Barlean's Organic Oils, LLC).
- L. State Lands Audit Committee Report, 2009.

Leman further reserves the right to use any exhibit listed by any other party, any exhibit or document used by any party in the summary judgment proceedings in this matter, and any exhibit necessary for rebuttal or impeachment purposes. Leman further reserves the right to identify any additional exhibits that were not reasonably identifiable prior to the disclosure deadline or that may be appropriate based on a review of other parties' disclosure statements.

Respectfully submitted this 2nd day of October, 2019.


Keith Burron, WSB # 5-2884
The Burron Firm, P.C.
1695 Morningstar Rd.
Cheyenne, WY 82009
307-631-7372 (Phone)
keith@burronlaw.com
Attorney for Objector, John T. Leman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 2, 2019 a true, full and correct copy of the foregoing document attached exhibits was filed by hand delivery of the original to the Office of State Lands and Investments at the address below and served by placing a copy in the U.S. Mail, First Class, postage prepaid and addressed as follows:

Office of State Lands and Investments (Original-Filed by Hand Delivery)
Jason Crowder, Assistant Director – Trust Land Management Division
Herschler Bldg., 1E
122 W. 25th Street
Cheyenne, WY 82002

Attn: Tania S. Hytrek, Hearing Examiner (Served US Mail)
State of Wyoming
Office of Administrative Hearings
Cheyenne, WY 82002-0270

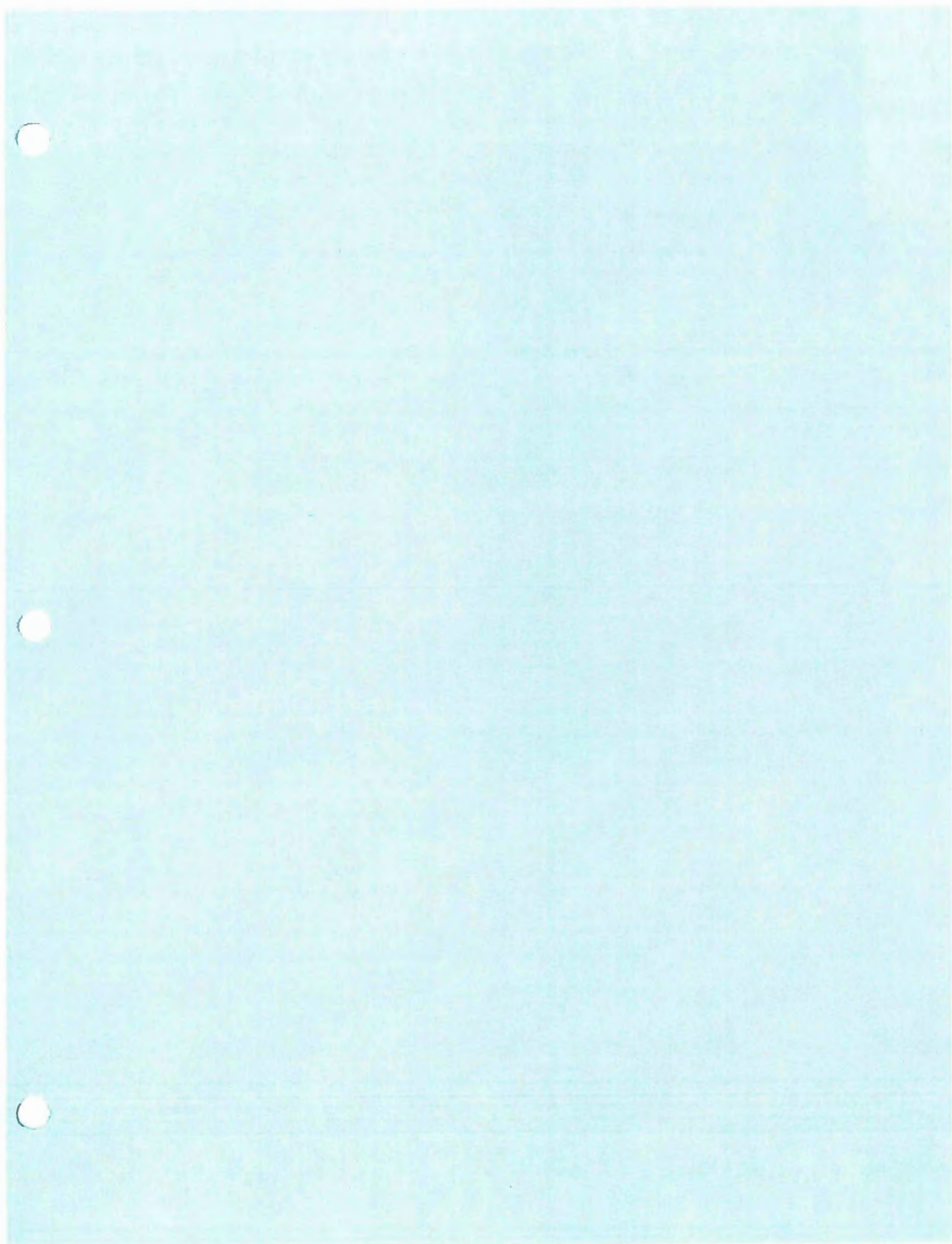
William L. Hiser (Served US Mail)
P.O. Box 971
Laramie, WY 82073-0971
[Attorney for Respondent Wagonhound Land & Livestock Co.]

Megan Pope (Served US Mail)
Senior Asst. Attorney General
2424 Pioneer Avenue, Third Floor
Cheyenne, WY 82002
[Attorney for Office of State Lands and Investments]

David Robinson (Served US Mail)
Assistant Attorney General
2424 Pioneer Avenue, First Floor
Cheyenne, WY 82002
[Advising Attorney for Board of Land Commissioners]


Keith Burron

C. Wagonhound Application for Lease 1-8710	00007
D. Wagonhound TUP materials (portions), 2011	00015
E. Wagonhound TUP materials (portions), 2016	00016
F. OSLI Inspection Map prepared by Cole Lambert	00018
G. Map prepared by Lemman showing fencing and other information	00019
H. Photos of boundary fence, south portion of west boundary of 1-8710	00020
I. Tabulation of OSLI leases held by Wagonhound (September 2019 printout)	00026
J. Tabulation of OSLI leases held by Wagonhound (February 2019 printout)	00036
K. Board Action and Decision, OAH Docket 18-139-060 (Barlean's Organic Oils, LLC)	00045
L. State Lands Audit Committee Report, 2009	00053



**DIRECTOR'S DECISION
OFFICE OF STATE LANDS AND INVESTMENTS**

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John T. Lemay
69 Moss Agate Road
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RENTAL OFFER:	\$348.84 per year or \$10.26 per AUM

DIRECTOR'S DECISION:

The Director conditionally awards the 146.95 acres in conflict to Wagonhound Land & Livestock Company, LLC for a term from February 7, 2019 to January 1, 2020 at the annual rental of \$1,360.00 based on the highest rental offer received.

Wagonhound Land & Livestock Company, LLC is given fifteen (15) days from receipt of notice by certified mail to file their acceptance in writing to this decision.

Thirty (30) days are provided by law for the appeal of this decision to the Board of Land Commissioners, said appeal should be made in writing and filed with the Office of State Lands and Investments. If no appeal is filed within thirty (30) days from receipt of notice by certified mail, this decision will become final when approved by the Board of Land Commissioners. In case of appeal, notice will be given to the applicants of the date of hearing.

DATED AT CHEYENNE, WYOMING this 11th day of December, 2018.


Bridget Hill, Director
Office of State Lands and Investments

STATE OF WYOMING

APPLICATION TO LEASE STATE LANDS
FOR GRAZING AND AGRICULTURAL PURPOSES

THIS APPLICATION MUST BE COMPLETED IN FULL OR IT WILL NOT BE ACCEPTED

TO: THE OFFICE OF STATE LANDS AND INVESTMENTS, Herschler Building, Cheyenne, Wyoming 82002-0600. Pursuant to the provisions of Wyoming Statutes 36-5-101 to 36-5-113 and amendments subsequent thereto, the undersigned hereby makes application to lease the lands described below for a term not exceeding ten years:

EXPIRING LEASE IS HELD IN THE FOLLOWING NAME:

IF YOU ARE APPLYING FOR THE LEASE IN ANOTHER NAME OR YOU ARE NOT THE CURRENT LESSEE, PLEASE INDICATE HOW THE LEASE IS TO BE HELD. (NOTE: IF YOU ARE THE CURRENT LESSEE AND ARE REQUESTING A NAME CHANGE, YOU WILL BE REQUIRED TO COMPLETE A LEASE ASSIGNMENT FORM IN ACCORDANCE WITH WYOMING STATUTES 36-5-105)

JOHN T. LEMAN

(Fill in exactly as you want name shown on lease)

DESCRIPTION OF LANDS APPLIED FOR:

Acres	Description	Sec.	Twp	Range	Co.
146.95	Lots 3, 4: E2SW4	18	31	73	Converse

TOTAL 146.95 ACRES WITH 34 ANIMAL UNIT MONTHS OF FORAGE

(1.) (a.) Is the applicant a: Limited partnership? General partnership? Corporation? Other: Individual
Is the applicant qualified under the laws of the State of Wyoming to do business and is it registered with the Wyoming Secretary of State? Yes No

(b.) If the applicant is an individual, are you a citizen of the United States? Yes No If no, have you declared your intention to become a citizen? Yes No

(2.) Are you the owner, lessee, or lawful occupant of lands adjoining the lands applied for? Yes No If you are not the owner, lessee, or lawful occupant of lands adjoining the lands applied for, do you have legal access, or can you acquire legal access to the state lands? Yes No Please list those parcels of state land that you do not have legal access to and cannot acquire legal access to:

(3.) Do the state lands applied for have legal public access? Yes No

Please list those sections of state land that have legal public access: Section 18

(4.) Do you have actual and necessary use for the land and its forage? Yes No

If yes, how do you anticipate grazing on this lease: Continuous (Year Round)

Seasonal (check all that apply): Spring Summer Fall Winter

Rotational (please describe): We plan to graze in summer year one (1) (grass in the fall year two (2)) Do not graze in year three (3) (rest)

If your grazing lease is part of a federal grazing allotment, please provide the allotment name(s): UFA

If this is an agricultural lease, list what types of crop(s) to be grown on the state land (including hay): no crops are to be grown. This is a native dry land lease.

Will you irrigate the state land? Yes No If Yes, please describe your method of irrigation:

(5.) How many head of livestock, by type, do you own?
Horses? _____ Cattle? 20 + 1 Sheep? _____ Other? _____ Totals: _____

(6.) Are the state lands fenced in with other lands that you own or control? Yes No

Are they fenced separately? Yes No

- (7.) Do the lands contain stock or irrigation water? Yes How many months each year? Year Round
 In what form? Wells X Springs X Reservoirs _____ Creeks or Rivers (names): _____
- (8.) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? Yes No
 Do you plan to enter into a sublease or pasture agreement in the future? Yes No
- (9.) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? Yes No
 Describe: There is some evidence of weeds/worms in spots.
 If YES, have you participated in control efforts through the County Weed & Pest Control District? Yes
- (10.) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? If so, please describe and give approximate location: None that I am aware of at this time
- (11.) Are there any improvements located on the lands applied for? Yes No If YES complete the following Improvement Section of the application.
- (12.) IMPROVEMENTS: ("Contributory Value" means the increased value of the property after the lessee's improvements are considered) If you are the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of improvements. It is important that you provide an estimate should a conflicting application be filed, or should a decision be made to nominate the land for sale during the term of the lease.

KIND OF IMPROVEMENT	NUMBER	LOCATION	ESTIMATED CONTRIBUTORY VALUE
DWELLINGS			
BARNs			
SHEDS			
CORRALS			
RESERVOIRS			
IRRIGATION DITCHES			
WELLS			
FENCES (MILES)			
OTHER (Specify)			
Total Estimated Contributory Value			\$

DEPOSIT FOR IMPROVEMENTS: If you are not the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of the improvements and remit a deposit equal to your contributory value estimate, as required by law.

- 13) THIS APPLICATION MUST BE ACCOMPANIED BY THE FIRST YEAR'S ANNUAL RENTAL AND REQUIRED FEES, AS SET FORTH BELOW:

ANNUAL RENTAL	<u>\$210.12</u>
APPLICATION FILING FEES	<u>50.00</u> (non-refundable)
TOTAL REMITTANCE	<u>\$260.12</u>

ANNUAL RENTAL OFFER IF OTHER THAN SPECIFIED ABOVE OR IF FILING A CONFLICTING LEASE APPLICATION:

ANNUAL RENTAL	<u>398.84</u>
APPLICATION FILING FEES	<u>50.00</u> (non-refundable)
TOTAL REMITTANCE	<u>398.84</u>

Date 12/10/18
 Check No. 3139
 Amount \$398.84

\$10.26 / Acum

THE APPLICANT HAVING MADE STATEMENTS HEREIN FOR THE PURPOSE OF OBTAINING A LEASE FROM THE STATE OF WYOMING AGREES THAT IF AWARDED A LEASE UPON ANY PART OF SAID LANDS HE WILL COMPLY WITH ITS COVENANTS AND WITH THE RULES AND REGULATIONS OF THE BOARD OF LAND COMMISSIONERS RELATING THERETO. THE EXECUTION AND DELIVERY OF A LEASE BY THE BOARD SHALL BE CONSIDERED AN ACCEPTANCE OF SAID APPLICATION.

BY ACCEPTING THIS LEASE OF STATE LAND, THE LESSEE AGREES TO PROVIDE OR MUST EXERCISE HIS BEST EFFORTS TO OBTAIN REASONABLE YEAR-ROUND INSPECTION AND MANAGEMENT ACCESS TO THE BOARD OF LAND COMMISSIONERS AND ITS AGENTS WHEN REASONABLE PUBLIC ACCESS IS NOT OTHERWISE AVAILABLE. SUCH ACCESS WOULD EITHER BE ACROSS THE LESSEE'S ADJOINING DEEDED LAND OR ADJACENT LANDS NOT OWNED BY THE LESSEE THROUGH THE USE OF ANY ACCESS RIGHTS HELD BY THE LESSEE. IF THE OTHER LANDOWNER IS AGREEABLE.

(Application must be signed by applicant and all co-applicants. If a corporation, application must be signed by an authorized officer.)




DATED Nov. 30, 2018 (SIGN) John T. Lemmon
(SIGN) _____
(SIGN) _____
(SIGN) _____

RENTAL NOTICES TO BE MAILED TO: John T. Lemmon
(THIS SECTION MUST BE COMPLETED) (NAME)
69 Moss Acre Rd
(ADDRESS) Douglas, WY 82633
(307) 358-8369
(PHONE)

THE ATTACHED PLAT MUST BE COMPLETED WITH THE REQUIRED INFORMATION OR YOU MAY ATTACH A RANCH OR QUAD MAP

TOWNSHIP <u>31</u> N						TOWNSHIP <u>31</u> N					
RANGE <u>74</u> W						RANGE <u>73</u> W					
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
TOWNSHIP <u>30</u> N						TOWNSHIP <u>30</u> N					
RANGE <u>74</u> W						RANGE <u>73</u> W					

IMPORTANT: SHOW THE FOLLOWING ON THE ABOVE PLAT:

1. Location of state lands applied for. 
2. Location of your deeded lands. 
3. Location of your other federal, state, and private leased lands. 

Leman Ranch, LLC
69 Moss Agate Rd
Douglas, WY 82633-9279
(307)358-8369

3139
10-110/1000

Nov 30 2018

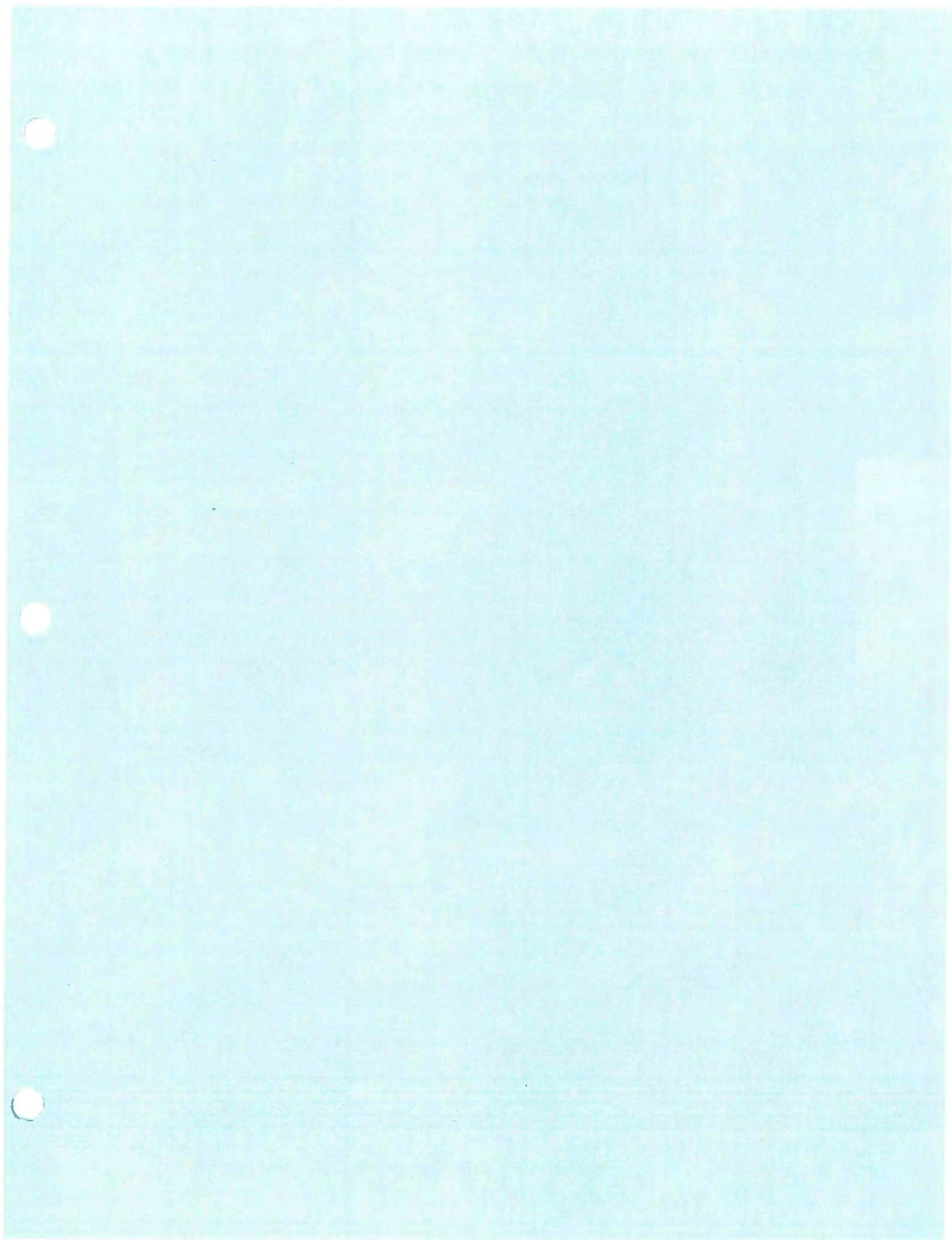
PAY TO THE ORDER OF Wyoming Office of State Lands & Investments \$ 398.84

Three hundred ninety eight and $\frac{84}{100}$ DOLLARS

Hilltop National Bank
111 S. Durbin Street
Casper, WY 82601
(307)277-3415

FOR Lease # 1-8710

Jan T. Leman



STATE OF WYOMING

APPLICATION TO LEASE STATE LANDS
FOR GRAZING AND AGRICULTURAL PURPOSES

THIS APPLICATION MUST BE COMPLETED IN FULL OR IT WILL NOT BE ACCEPTED

TO: THE OFFICE OF STATE LANDS AND INVESTMENTS, Herschler Building, Cheyenne, Wyoming 82002-0600. Pursuant to the provisions of Wyoming Statutes 36-5-101 to 36-5-113 and amendments subsequent thereto, the undersigned hereby makes application to lease the lands described below for a term not exceeding ten years:

EXPIRING LEASE IS HELD IN THE FOLLOWING NAME:

IF YOU ARE APPLYING FOR THE LEASE IN ANOTHER NAME OR YOU ARE NOT THE CURRENT LESSEE, PLEASE INDICATE HOW THE LEASE IS TO BE HELD. (NOTE: IF YOU ARE THE CURRENT LESSEE AND ARE REQUESTING A NAME CHANGE, YOU WILL BE REQUIRED TO COMPLETE A LEASE ASSIGNMENT FORM IN ACCORDANCE WITH WYOMING STATUTES 36-5-105)

(Fill in exactly as you want name shown on lease)

DESCRIPTION OF LANDS APPLIED FOR:

Acres	Description	Sec.	Twp	Range	Co.
146.95	Lots 3, 4 : E2SW4	18	31	73	Converse

TOTAL 146.95 ACRES WITH 34 ANIMAL UNIT MONTHS OF FORAGE

(1.) (a.) Is the applicant a: Limited partnership? General partnership? Corporation? Other: _____
Is the applicant qualified under the laws of the State of Wyoming to do business and is it registered with the Wyoming Secretary of State? Yes No

(b.) If the applicant is an individual, are you a citizen of the United States? Yes No If no, have you declared your intention to become a citizen? Yes No

(2.) Are you the owner, lessee, or lawful occupant of lands adjoining the lands applied for? Yes No If you are not the owner, lessee, or lawful occupant of lands adjoining the lands applied for, do you have legal access, or can you acquire legal access to the state lands? Yes No Please list those parcels of state land that you do not have legal access to and cannot acquire legal access to: _____

(3.) Do the state lands applied for have legal public access? Yes No

Please list those sections of state land that have legal public access: sec 18

(4.) Do you have actual and necessary use for the land and its forage? Yes No

If yes, how do you anticipate grazing on this lease: Continuous (Year Round)

Seasonal (check all that apply): Spring Summer Fall Winter

Rotational (please describe): using for feeding until to summer range and used coming back into fall/winter

If your grazing lease is part of a federal grazing allotment, please provide the allotment name(s): N/A

If this is an agricultural lease, list what types of crop(s) to be grown on the state land (including hay): N/A

Will you irrigate the state land? Yes No If Yes, please describe your method of irrigation: no irrigation rights

(5.) How many head of livestock, by type, do you own?
Horses? 200 Cattle? 4500 Sheep? — Other? — Totals: 4700

(6.) Are the state lands fenced in with other lands that you own or control? Yes No

Are they fenced separately? Yes No

- (7.) Do the lands contain stock or irrigation water? 10 How many months each year? _____
 In what form? Wells _____ Springs _____ Reservoirs _____ Creeks or Rivers (names): _____
- (8.) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? Yes No
 Do you plan to enter into a sublease or pasture agreement in the future? Yes No
- (9.) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? Yes No
 Describe: _____
 If YES, have you participated in control efforts through the County Weed & Pest Control District? _____
- (10.) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? If so, please describe and give approximate location: none known
- (11.) Are there any improvements located on the lands applied for? Yes No If YES complete the following Improvement Section of the application.
- (12.) IMPROVEMENTS: ("Contributory Value" means the increased value of the property after the lessee's improvements are considered) If you are the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of improvements. It is important that you provide an estimate should a conflicting application be filed, or should a decision be made to nominate the land for sale during the term of the lease.

KIND OF IMPROVEMENT	NUMBER	LOCATION	ESTIMATED CONTRIBUTORY VALUE
DWELLINGS			
BARNs			
SHEDS			
CORRALS			
RESERVOIRS			
IRRIGATION DITCHES			
WELLS			
FENCES (MILES)			
OTHER (Specify)			
Total Estimated Contributory Value			\$ _____

DEPOSIT FOR IMPROVEMENTS: If you are not the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of the improvements and remit a deposit equal to your contributory value estimate; as required by law.

- 13) THIS APPLICATION MUST BE ACCOMPANIED BY THE FIRST YEAR'S ANNUAL RENTAL AND REQUIRED FEES, AS SET FORTH BELOW:

ANNUAL RENTAL	<u>\$210.12</u>	Date <u>12/10/18</u>
APPLICATION FILING FEES	<u>50.00</u> (non-refundable)	Check No. <u>40356</u>
TOTAL REMITTANCE	<u>\$260.12</u>	Amount <u>1410.00</u>

ANNUAL RENTAL OFFER IF OTHER THAN SPECIFIED ABOVE OR IF FILING A CONFLICTING LEASE APPLICATION:

ANNUAL RENTAL	<u>1340.00</u>	<u>\$40.00 / AUM</u>
APPLICATION FILING FEES	<u>50.00</u> (non-refundable)	
TOTAL REMITTANCE	<u>1410.00</u>	

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(Application must be signed by applicant and all co-applicants. If a corporation, application must be signed by an authorized officer.)

DATED 11/21/2018 (SIGN) Dustin Ewing
(SIGN) _____
(SIGN) _____
(SIGN) _____

RENTAL NOTICES TO BE MAILED TO: Wagonbound Land and Livestock C. LLC
(THIS SECTION MUST BE COMPLETED) (NAME)
P.O. Box 1100
(ADDRESS)
1041 Poison Lake Rd, Douglas WY 82633
307-358-720
(PHONE)

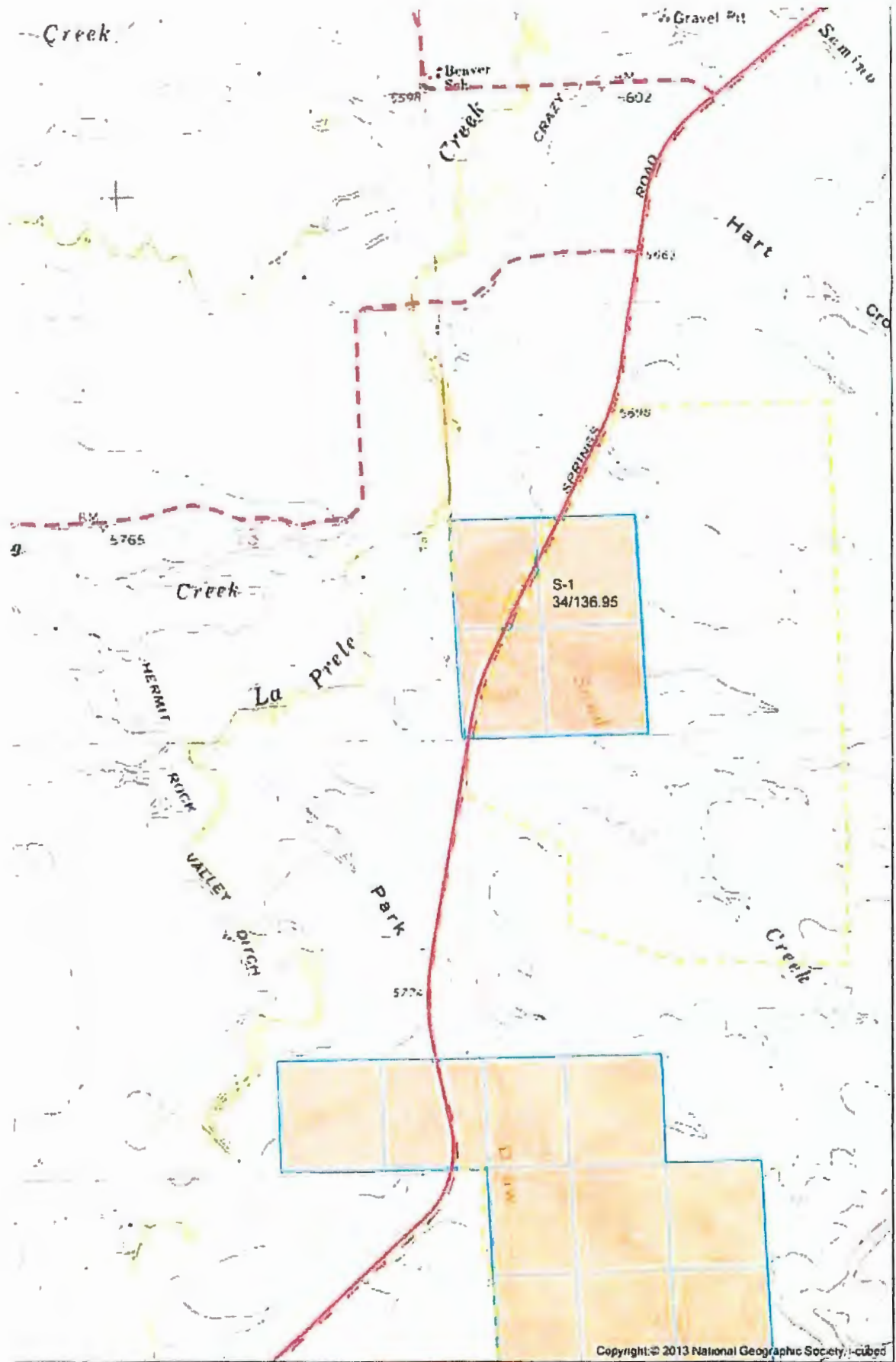
THE ATTACHED PLAT MUST BE COMPLETED WITH THE REQUIRED INFORMATION OR YOU MAY ATTACH A RANCH OR QUAD MAP

TOWNSHIP _____ N						TOWNSHIP _____ N					
RANGE _____ W						RANGE _____ W					
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
TOWNSHIP _____ N						TOWNSHIP _____ N					
RANGE _____ W						RANGE _____ W					

IMPORTANT: SHOW THE FOLLOWING ON THE ABOVE PLAT:

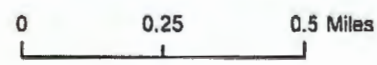
1. Location of state lands applied for.
2. Location of your deeded lands.
3. Location of your other federal, state, and private leased lands.

- see attached ranch map



Copyright © 2013 National Geographic Society. i-cubed

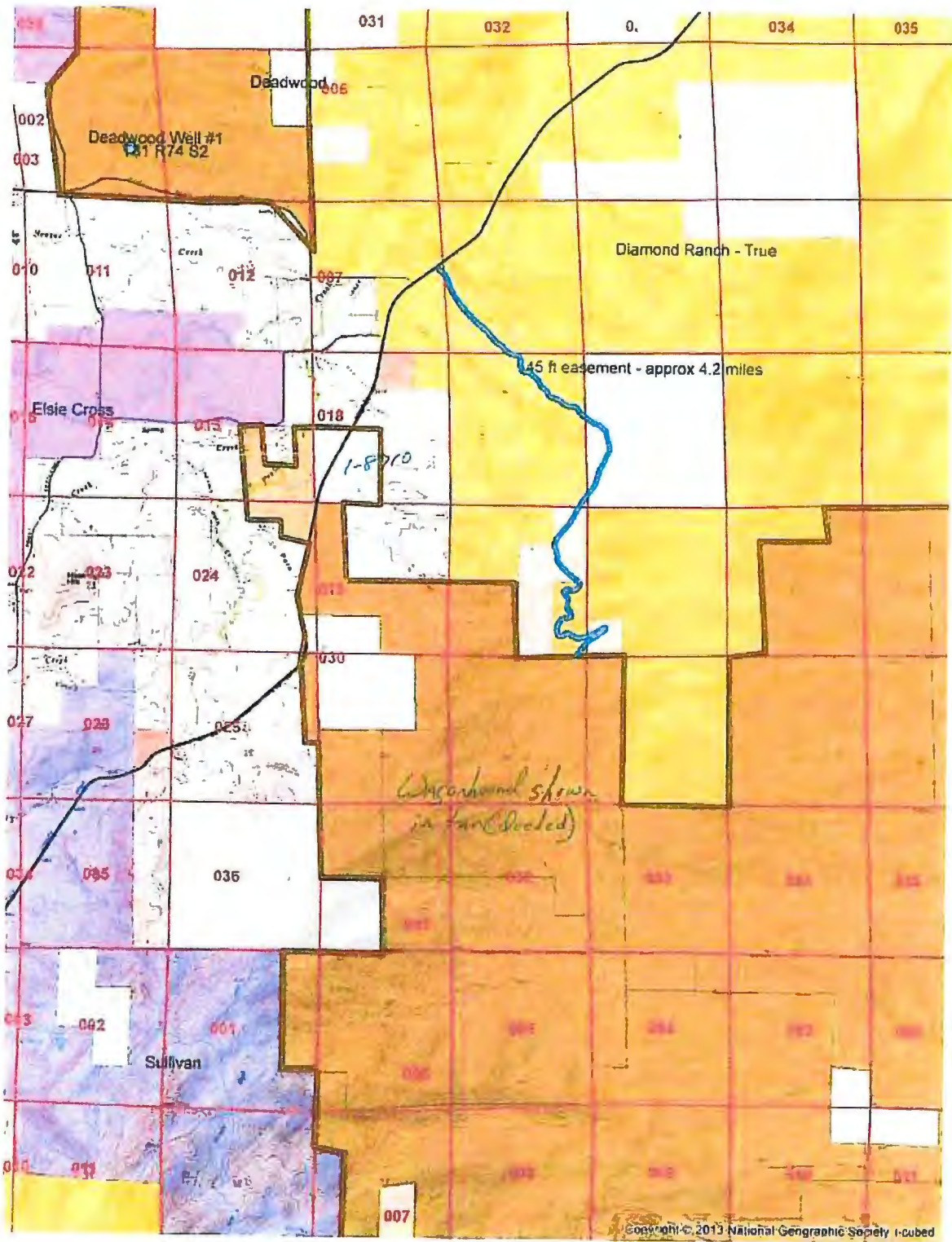
BRZ-1-8710
18-31-73



00011
M — Fence — Highways
M — County Road

The State of Wyoming and its agencies make no express or implied warranties as to the map and its contents. Users of this map and its contents are advised to consult the relevant agency for more information. The State of Wyoming and its agencies assume no liability associated with the use or misuse of this information and warrant only when specifically stated otherwise.

Date: 9/28/2018
By: Cole Lambert




RESOLUTION

The following is a Resolution duly adopted by Wagonhound Land & Livestock Company, LLC, a Wyoming limited liability company, the sole member of Western Equity, LLC, a Wyoming limited liability company, (the "Company"):

RESOLVED, that Dustin Ewing is hereby appointed as General Manager of the Company to serve in such capacity until he is removed by the sole member of the Company or otherwise terminates his employment with the Company, and to have such duties and responsibilities as shall be determined by the sole member of the Company, including but not limited to authority to execute, deliver, file and otherwise take action with respect to the transfer and exchange of real property by the Company.

DATED effective this 28th day of February, 2014.

Wagonhound Land & Livestock Company, LLC
a Wyoming limited liability company, by AEN,
LP, a California limited partnership - sole member
of Wagonhound Land & Livestock Company,
LLC as sole member of Western Equity, LLC

By: 
Arthur E. Nicholas, Manager of AEN, LLC,
a California limited liability company,
General Partner of AEN, LP

40356

WAGONHOUND LAND & LIVESTOCK CO., LLC
PO BOX 1100
DOUGLAS, WY 82633

CONVERSE CC / BANK
DOUGLAS, WYOMING 82633
99-154/1023

11/27/2018

PAY Wyoming Office of State Lands and Investments

**1,410.00

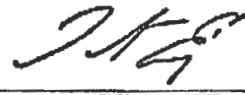
TO THE
ORDER OF

One thousand four hundred ten and 00/100

\$

DOLLARS

Wyoming Office of State Lands and Investments
122 West 25th Street
Cheyenne WY 82002
United States



AUTHORIZED SIGNATURE

MEMO-8710 BID

Security Features: Outside serial box



STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

APPLICATION NO. 2161
(Assigned by office)

COUNTY Converse

APPLICANT:

Name Wagon Wheel Land & Livestock, LLC
Address 1061 Johnson Lake Rd
Douglas WY 82033
Phone 307-358-5459 ext. 1 Dustin Ewing

Use applied for: (check one)

- Construction activity (indicate total acreage affected _____)
- Hot mix facility (indicate total acreage affected _____)
- Organized recreation activity
- Roadway (indicate proposed width _____ and length _____)
- Sign Board (indicate dimensions: width _____ and length _____)
- Stockpile site (indicate total acreage affected _____)
- Water removal facility
- Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
- Disposal and/or Injection Well
- Non-commercial Decorative Rock/Stone Removal
- Other: (specify) grazing

Specifically describe proposed use:

Control of grazing

List any improvements to be placed on the land:

Fencing if needed

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

Legal Description	Sec.	Twp.	Range	length/ft	County	
<u>N/4 SW 1/4, L4, SE 3/4</u>	<u>18</u>	<u>31</u>	<u>73</u>		<u>Converse</u>	<u>approx. 100 acres</u>
<u>S/4 SW 1/4, L4</u>	<u>19</u>	<u>31</u>	<u>73</u>		<u>Converse</u>	<u>approx. 70 acres</u>
<u>NW, NW 1/4</u>	<u>30</u>	<u>31</u>	<u>73</u>		<u>Converse</u>	<u>approx. 200 acres</u>
	<u>24</u>	<u>31</u>	<u>74</u>	<u>?</u>	<u>?</u>	<u>There is a small parcel of land part of ground part of Hwy</u>

Requested duration of permit: Number of years _____ from 6/1/2011 to 10/31/2011
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$ 603.20

Surface Impact paid to the Surface Lessee: \$ N/A on _____ Check No. _____
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Signature of Applicant Dustin Ewing
Print or Type Name

5/20/11
(Date)

5/23/2011
2500
325.00

6/8/2011
620418
4603.20

Leaves receipt 6/23/2011

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

Wagon Road

APPLICATION NO. 02161 COUNTY Converse

APPLICANT:
Name Wagon Road Land and Livestock
Address 1061 Poison Lake Rd
Douglas WY 82633
Phone 307-358-5437 ext. 1

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity _____
 - Roadway (indicate proposed width _____ and length _____)
 - Sign Board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility _____
 - Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well _____
 - Non-commercial Decorative Rock/Stone Removal _____
 - Other: (specify) GRAZING

Specifically describe proposed use: Correct temporary permit # 02161

- grazing vacant leases # 1-8820 and # 1-8710
- lands are located within existing deeded lands

List any improvements to be placed on the land:
Solar well and stock tank (water cement tank)

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

8220
410 13.39 ac
300 228,910 ac
140 44.22 ac
180 146.95 ac
443.47

Legal Description	Sec.	Twp.	Rng.	length	County
<u>Grazing</u>	<u>24</u>	<u>31</u>	<u>79</u>		<u>95</u>
	<u>16</u>	<u>28</u>	<u>23</u>		<u>17</u>

120 acreage # 16.12
\$199.20

Requested duration of permit: Number of years 5 from 6/1/16 to 12/31/2020

Annual Consideration offered to the State of Wyoming for this permit \$ 130 Acres @ 6.14 + 25.02 ac = \$823.20 (2016)

Surface Impact paid to the Surface Lessee: \$ N/A on _____ Check No _____

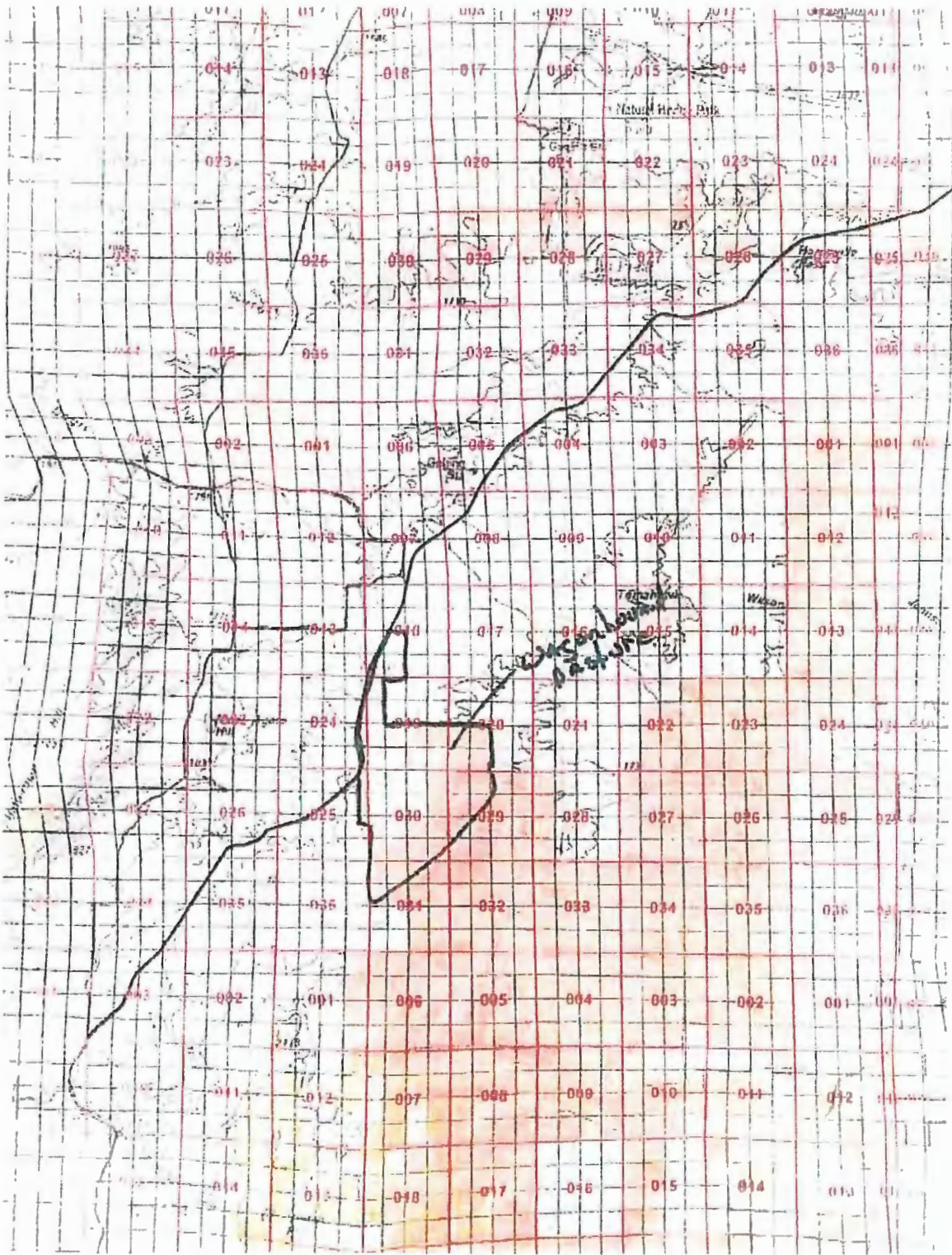
This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Signature of Applicant: Dustin Ewing (Date) 12/16/2015

772 - 1/2016
7510 - N/A 2/1/16

Date 2/15/2016 Check No. 029
 Check No. 034934 Amount \$523.20
 Amount: \$25.00



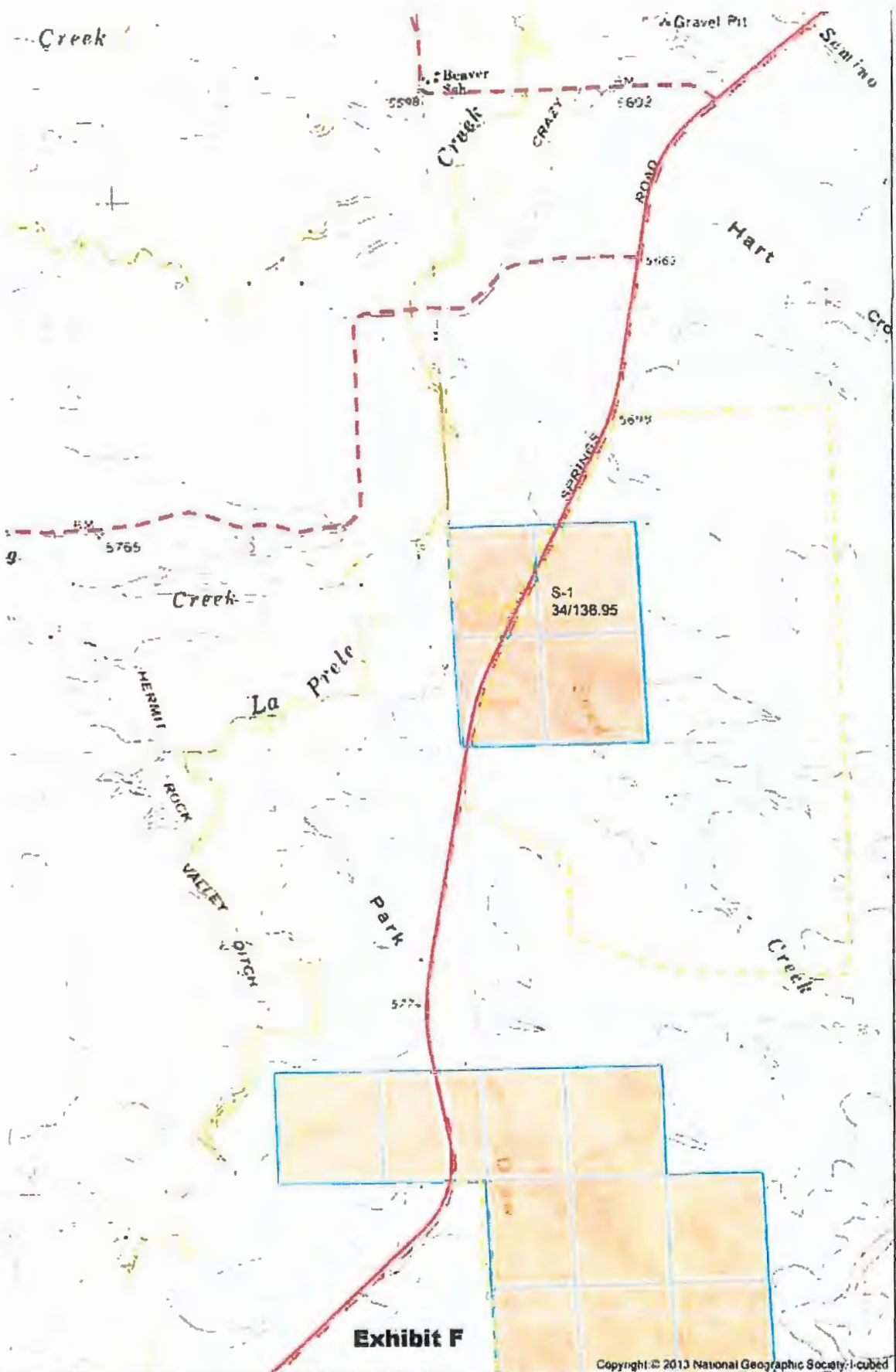


Exhibit F

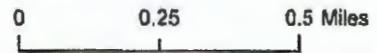
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3RZ-1-8710
18-31-73

00018 Fence — Highways

M - - - County Road

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Date: 9/28/2018
By: Cole Lambert

reek

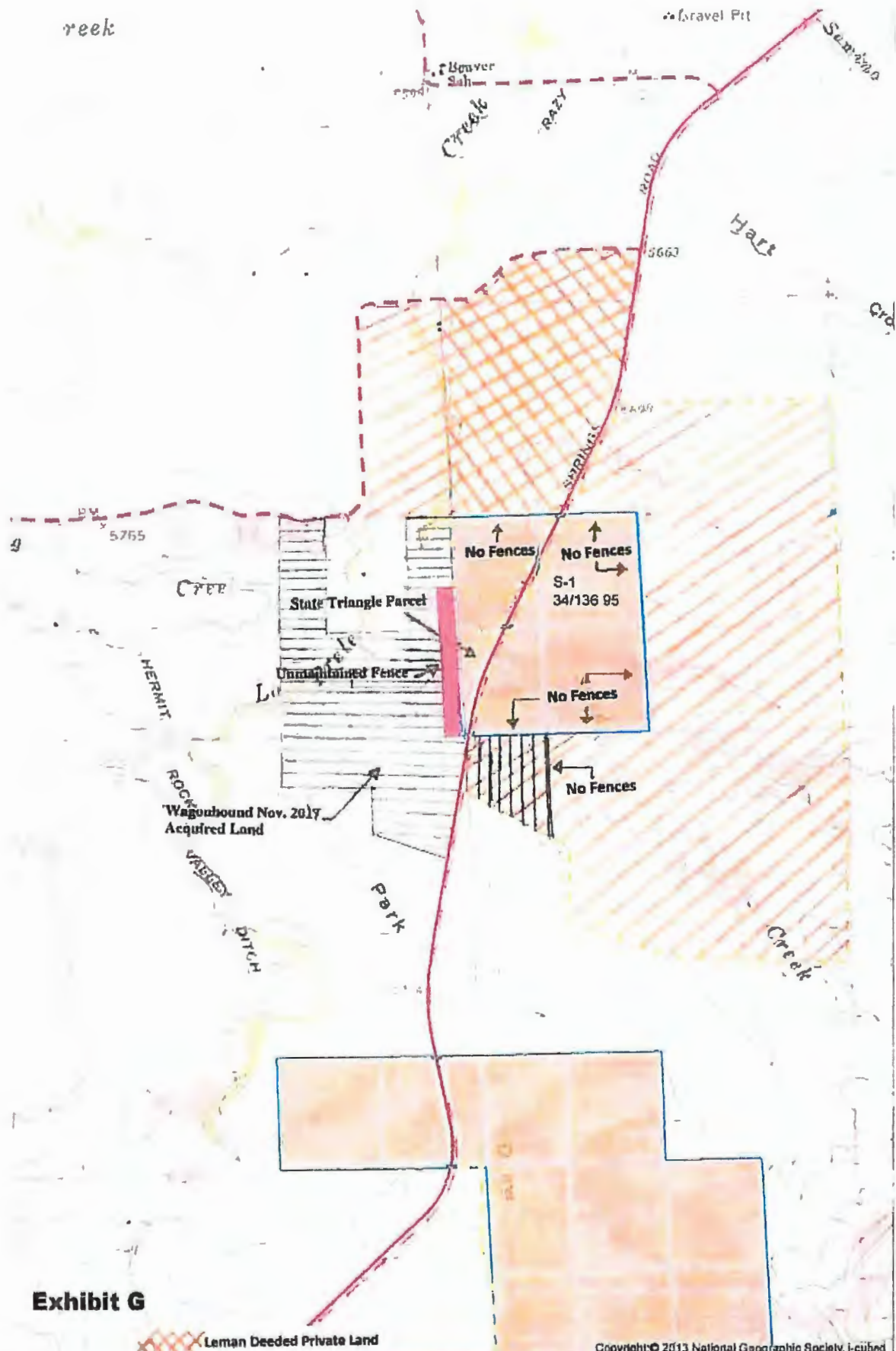


Exhibit G

XXXX Leman Deeded Private Land
XXXX Wagonbound Fenced in with Z-Holdings
XXXX Leman Controlled Private Land - Z-Holdings
--- Fence
--- Highways
--- Creeks

Copyright: © 2013 National Geographic Society, Inc. Cubed
 0 0.25 0.5 Miles
 Date: 9/28/2018
 By Cole Lambert

GRZ-1-8710
 18-31-73

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Exhibit H, Page 3



00023

Exhibit H, Page 4



00024

Exhibit H, Page 5



00025

Exhibit H, Page 6

Grazing Leases

Lease Number: e.g. 1-6839

Lessee: Wagonhound Land & Livestock Company

Township: Enter Numbers Only

Range: Enter Numbers Only

Section

County:

Fund Code:

Filter

Lease Number	County	Township	Range	Section	Legal Description	Legal Description Acres	Total Lease Acres	Fund Code	Legal Description AUMs	Lessee	Lessee Address 1	Lessee City	Lessee State	Lessee Zip Code	Lease End Term
1-7573	Albany	28.0N	75.0W	36	ALL	640.00	4360.00	Common School	159	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7573	Albany	28.0N	75.0W	32	E2	320.00	4360.00	Common School	117	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7573	Albany	28.0N	75.0W	27	SE4	160.00	4360.00	Common School	62	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7573	Albany	28.0N	75.0W	29	E2	320.00	4360.00	Common School	111	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7573	Albany	28.0N	75.0W	23	SE4NW4	40.00	4360.00	Common School	15	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7573 00026	Albany	28.0N	75.0W	24	E2	320.00	4360.00	Common School	87	Wagonhound Land &	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00

1-8915	Converse	30.0N	73.0W	3	SE4SE4	40.00	80.00	Common School	13	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2025 12:00:00 AM
1-8915	Converse	30.0N	73.0W	10	NE4NE4	40.00	80.00	Common School	13	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2025 12:00:00 AM
1-8839	Converse	30.0N	73.0W	16	N2	320.00	320.00	Common School	20	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2025 12:00:00 AM
1-7452	Converse	29.0N	71.0W	27	E2W2	160.00	525.93	Common School	44	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7452	Converse	29.0N	71.0W	29	NW4	160.00	525.93	Common School	44	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7452	Converse	29.0N	71.0W	20	SE4	160.00	525.93	Common School	44	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7316	Converse	30.0N	71.0W	19	LOT 1:NE4NW4+NE4+N2SE4	317.90	676.27		89	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-7316	Converse	30.0N	71.0W	18	LOT 4:SE4SW4+S2SE4+NE4SE4	198.37	676.27	Deaf Dumb And Blind	208	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-8805	Converse	30.0N	74.0W	31	NE4	160.00	636.71	Common School	48	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8805	Converse	30.0N	74.0W	30	LOTS 3,4: E2SW4+SE4	316.71	636.71	Common School	96	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8805	Converse	30.0N	75.0W	25	SE4	160.00	636.71	Common School	49	Wagonhound Land &	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM

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1-7246	Converse	29.0N	71.0W	32	LOT 1	67.17	312.52	Deaf Dumb And Blind	16	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-7625	Converse	30.0N	73.0W	14	S2S2	160.00	2072.31	Common School	53	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7625	Converse	30.0N	72.0W	18	PT. OF RES. TRACT 42(SSEE METES& BOUNDS)	618.05	2072.31	Public Buildings	207	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7625	Converse	30.0N	73.0W	73	NE4;PART OF SE4 (SEE METES &BOUNDS)	282.00	2072.31	Common School	92	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7625	Converse	30.0N	73.0W	15	E2	320.00	2072.31	Common School	104	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7625	Converse	30.0N	73.0W	24	NW4;PART OF SW4 (SEE METES &BOUNDS)	250.00	2072.31	Common School	84	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8847	Converse	29.0N	72.0W	14	NE4;N2SE4	240.00	280.00	Common School	200	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8847	Converse	29.0N	72.0W	25	SW4NW4	40.00	280.00	Common School	13	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7821	Converse	31.0N	73.0W	25	W2NW4;SE4NW4;NW4SW4	160.00	160.00	Common School	44	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8837	Converse	29.0N	72.0W	16	W2;NW4SE4	360.00	360.00	Common School	100	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8838	Converse	30.0N	72.0W	19	RES. TRACT 41 (N2SE4.S2NE4;NW4NE4)	199.92	317.40	Deaf Dumb And Blind	63	Wagonhound Land &	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00

00030

								School		Land & Livestock Company, LLC	1100				12:00:00 AM
1-7705	Converse	29.0N	75.0W	15	W2: NW4SE4	360.00	1400.00	Common School	65	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7705	Converse	29.0N	75.0W	16	ALL	640.00	1400.00	Common School	68	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8388	Converse	30.0N	72.0W	19	RES. TR. 41	40.00	1058.91	Deaf Dumb And Blind	13	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8388	Converse	29.0N	73.0W	16	N2	320.00	1058.91	Common School	28	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8388	Converse	30.0N	73.0W	16	ALL	640.00	1058.91	Common School	170	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7732	Converse	31.0N	72.0W	17	W2	320.00	1197.71	Common School	104	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7733	Converse	31.0N	72.0W	18	RES. TR. 41	320.81	1197.71	Common School	108	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7733	Converse	32.0N	72.5W	36	LOTS 1,2,3,4	226.90	1197.71	Common School	74	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7733	Converse	32.0N	73.0W	36	E2	320.00	1197.71	Common School	104	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7228	Albany	27.0N	77.0W	16	E7	320.00	320.00	Common School	65	Wagonhound Land & Livestock	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM

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1-8701	Converse	29.0N	76.0W	16	ALL	640.00	640.00	Common School	162	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-8026	Converse	30.0N	72.0W	13	19.65 A. IN NE4SW4 LYING BET-WEEN E. R/W LINE OF CO. RD. & CENTERLINE OF HWY. 94; 8.8 A. LYING E. OF EAST R/W LINE OF WILLOX RD. IN SW4SW4	73.20	-3996.00	Deaf Dumb And Blind	147	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2025 12:00:00 AM
1-7196	Albany	28.0N	71.0W	12	SE4.S2SW4:NE4SW4	280.02	1160.00	Omnibus	94	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-7196	Albany	28.0N	71.0W	13	N2:SW4	479.98	1160.00	Agricultural College	163	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-7196	Albany	28.0N	71.0W	14	SE4	160.00	1160.00	Agricultural College	36	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-7196	Albany	28.0N	71.0W	23	NE4:NE4NW4	200.00	1160.00	Omnibus	56	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028 12:00:00 AM
1-7471	Converse	32.0N	71.0W	32	SE4SE4	40.00	200.00	Common School	11	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7471	Converse	31.0N	71.0W	16	RESURVEYED TRACT 71 (LYING INN2N2 NORTH OF RIVER)	100.00	200.00	Common School	164	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7705	Converse	29.0N	75.0W	22	NW4NW4	40.00	1400.00	Common School	4	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7705	Converse	29.0N	75.0W	3	SW4SE4	40.00	1400.00	Common School	8	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM
1-7705033	Converse	29.0N	75.0W	10	S2SW4:W2E2:SE4NE4:NE4SE4	320.00	1400.00	Common	71	Wagonhound	PO Box	Douglas	WY	82633	1/1/2023

1-8428	Converse	30.0N	73.0W	11	N2NW4	80.00	80.00	Common School	28	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2025	12:00:00 AM
1-7336	Albany	27.0N	77.0W	36	ALL	640.00	1522.19	Common School	121	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028	12:00:00 AM
1-7336	Albany	27.0N	77.0W	1	S2NE4-N2SE4	160.00	1522.19	Common School	23	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2028	12:00:00 AM
1-7712	Converse	29.0N	76.0W	36	ALL	640.00	640.00	Common School	214	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023	12:00:00 AM
1-7434	Albany	28.0N	77.0W	36	ALL	640.00	1403.10	Common School	114	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023	12:00:00 AM
1-7434	Albany	27.0N	77.0W	2	LOT 1:SE4NE4:NE4SE4	120.41	1403.10	Common School	21	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023	12:00:00 AM
1-7434	Albany	27.0N	76.0W	12	SW1SW4	40.00	1403.10	Common School	20	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023	12:00:00 AM
1-7434	Albany	27.0N	77.0W	1	LOTS 1,2,3,4:S2NW4:N2SW4	321.14	1403.10	Common School	57	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2023	12:00:00 AM
1-8820	Converse	31.0N	73.0W	30	NWNE : SWNE : NENW : L1 - L2 : SENW	228.01	343.13	Common School	70	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2029	12:00:00 AM
1-8820	Converse	31.0N	73.0W	19	L4 : SESW	74.22	343.13	Common School	26	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2029	12:00:00 AM

00034

1-8820	Converse	31.DN	74.DW	24	EAST OF HIGHWAY 91 IN SESE	7.79	343.13	Common School	2	Wagonhound Land & Livestock Company, LLC	PO Box 1100	Douglas	WY	82633	1/1/2029 12:00:00 AM
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Grazing Leases

Lease Number: e.g. GRZ-1-6839

Lessee: Wagonhound Land & Livestock, LLC

Township: Enter Numbers Only

Range: Enter Numbers Only

Section:

County: albany

Fund Code:

[Filter](#)

Lease Number	County	Township	Range	Section	Legal Description	Legal Description Acres	Total Lease Acres	Fund Code	Legal Description AUMs	Total Lease AUMs	Lessee	Lessee Address 1	Lessee Address 2	Lessee City	Lessee State	Lessee Zip Code	Lease End Term	Total Lease Rent Due
GRZ-1-7196	Albany	28.0N	71.0W	12	SE4:S2SW4:NE4SW4	280.00	1120.00	OM	94	349	Wagonhound Land & Livestock, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2018 12:00:00 AM	\$2226.62
GRZ-1-7196	Albany	28.0N	71.0W	13	N2-SW4	480.00	1120.00	AG	162	349	Wagonhound Land & Livestock, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2018 12:00:00 AM	\$2226.62
GRZ-1-7196	Albany	28.0N	71.0W	14	S24	160.00	1120.00	AG	36	349	Wagonhound Land & Livestock, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2018 12:00:00 AM	\$2226.62
GRZ-1-7196	Albany	28.0N	71.0W	23	NE4:NE4NW4	200.00	1120.00	OM	57	349	Wagonhound Land & Livestock, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2018 12:00:00 AM	\$2226.62

Grazing Leases

Lease Number: e.g. GRZ-1-6839

Lessee: Wagonhound Land & Livestock Company

Township: Enter Numbers Only

Range: Enter Numbers Only

Section:

County: albany

Fund Code:

Lease Number	County	Township	Range	Section	Legal Description	Legal Description Acres	Total Lease Acres	Fund Code	Legal Description AUMs	Total Lease AUMs	Lessee	Lessee Address 1	Lessee Address 2	Lessee City	Lessee State	Lessee Zip Code	Lease End Term	Total Lease Rent Due
GRZ-1-7573	Albany	28.0N	75.0W	16	ALL	640.00	4120.00	CS	158	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	21	W2	320.00	4120.00	CS	89	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	23	SE4NW4	40.00	4120.00	CS	15	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	24	E2	320.00	4120.00	CS	87	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	25	NE4	160.00	4120.00	CS	41	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	26	NE4	160.00	4120.00	CS	61	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40

00037

GRZ-1-7573	Albany	28.0N	75.0W	27	SE4	160.00	4120.00	CS	62	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	29	E2	320.00	4120.00	CS	111	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$5890.40
GRZ-1-7573	Albany	28.0N	75.0W	32	E2	320.00	4120.00	CS	117	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	28.0N	75.0W	36	ALL	640.00	4120.00	CS	160	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	27.0N	76.0W	2	W2SE4	80.00	4120.00	MH	14	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Albany	27.0N	76.0W	16	ALL	640.00	4120.00	CS	115	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40

Grazing Leases

Lease Number: e.g. GRZ-1-6839

Lessee: Wagonhound Land & Livestock Company

Township: Enter Numbers Only

Range: Enter Numbers Only

Section:

County: Converse

Fund Code:

Lease Number	County	Township	Range	Section	Legal Description	Legal Description Acres	Total Lease Acres	Fund Code	Legal Description AUMs	Total Lease AUMs	Lessee	Lessee Address 1	Lessee Address 2	Lessee City	Lessee State	Lessee Zip Code	Lease End Term	Total Lease Rent Due
GRZ-1-7471	Converse	31.0N	71.0W	16	RESURVEYED TRACT 71 (LYING IN	100.00	140.00	CS	164	175	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1116.50
GRZ-1-7471	Converse	31.0N	71.0W	16	N2N2 NORTH OF RIVER)	100.00	140.00	CS	164	175	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1116.50
GRZ-1-7471	Converse	32.0N	71.0W	32	SE4SE4	40.00	140.00	CS	11	175	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1116.50
GRZ-1-7573	Converse	29.0N	75.0W	36	SE2 OR THAT PART LYING SE OF A	320.00	4120.00	CS	50	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Converse	29.0N	75.0W	36	DIAGONAL LINE COMMENCING AT	320.00	4120.00	CS	50	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Converse	29.0N	75.0W	36	THE NE CORNER DIAGONAL TO THE	320.00	4120.00	CS	50	1080	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40
GRZ-1-7573	Converse	29.0N	75.0W	36	SW CORNER	320.00	4120.00	CS	50	1080	Wagonhound Land &	P.O. Box 1100		Douglas	WY	82633-1100	1/1/2023 12:00:00 AM	\$6890.40

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GRZ-1- 7625	Converse	30.0N	72.0W	18	PT. OF RES. TRACT 42(SEE METES	613.05	1630.05	PB	207	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	72.0W	18	& BOUNDS)	618.05	1630.05	PB	207	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	73.0W	14	S2S2	160.00	1630.05	CS	54	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	73.0W	15	E2	329.00	1630.05	CS	104	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	73.0W	23	NE4 PART OF SE4 (SEE METES &	282.00	1630.05	CS	92	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	73.0W	23	BOUNDS)	282.00	1630.05	CS	92	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	73.0W	24	NW4:PART OF SW4 (SEE METES &	250.00	1630.05	CS	83	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7625	Converse	30.0N	73.0W	24	BOUNDS)	250.00	1630.05	CS	83	540	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$3445.20
GRZ-1- 7705	Converse	29.0N	75.0W	3	SW4SE4	40.00	1400.00	CS	8	217	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1384.46
GRZ-1- 7705	Converse	29.0N	75.0W	10	S2SW4:W2E2:SE4NE4:NE4SE4	320.00	1400.00	CS	72	217	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1384.46
GRZ-1- 7705	Converse	29.0N	75.0W	15	W2:NW4SE4	360.00	1400.00	CS	65	217	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1384.46
GRZ-1- 00040	Converse	29.0N	75.0W	16	ALL	640.00	1400.00	CS	68	217	Wagonhound	P.O. Box	Douglas	WY	82633	1/1/2023	\$1384.46

GRZ-1-8701	Converse	29.0N	76.0W	16	ALL	640.00	640.00		162	162	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1033.56
GRZ-1-8805	Converse	30.0N	74.0W	30	LOTS 3,4: E2SW4:SE4	316.71	636.71	CS	96	192	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1224.96
GRZ-1-8805	Converse	30.0N	74.0W	31	NE4	160.00	636.71	CS	48	192	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1224.96
GRZ-1-8805	Converse	30.0N	75.0W	25	SE4	160.00	636.71	CS	48	192	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1224.96
GRZ-1-8838	Converse	30.0N	72.0W	18	PART OF RES. TRACT 42 (SEE	39.00	238.92	PB	13	76	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$484.88
GRZ-1-8838	Converse	30.0N	72.0W	18	METES & BOUNDS)	39.00	238.92	PB	13	76	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$484.88
GRZ-1-8838	Converse	30.0N	72.0W	19	RES. TRACT 41 (N2SE4:S2NE4:	199.92	238.92	DD	63	76	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$484.88
GRZ-1-8838	Converse	30.0N	72.0W	19	NW4NE4)	199.92	238.92	DD	63	76	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$484.88
GRZ-1-8839	Converse	30.0N	73.0W	16	N2	320.00	320.00	CS	20	20	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2025 12:00:00 AM	\$127.60
GRZ-1-8847	Converse	29.0N	72.0W	14	NE4:N2SE4	240.00	280.00	CS	200	213	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1358.94
GRZ-1-8847	Converse	29.0N	72.0W	25	SW4NW4	40.00	280.00	CS	13	213	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$1358.94
GRZ-1-8854	Converse	28.0N	72.0W	10	W2NE4:NE4NE4	120.00	1637.35	CS	25	378	Wagonhound Land & Livestock	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64

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											Land & Livestock Company, LLC	1100						12:00:00 AM
GRZ-1-7765	Converse	29.0N	75.0W	22	NW4NW4	40.00	1400.00	CS	4	217	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$1384.46
GRZ-1-7712	Converse	29.0N	76.0W	36	ALL	640.00	640.00	CS	210	210	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$1339.80
GRZ-1-7821	Converse	31.0N	73.0W	25	W2NW4SE4NW4NW4SW4	160.00	160.00	CS	44	44	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$280.72
GRZ-1-7832	Converse	30.0N	73.0W	16	S2	320.00	640.00	CS	19	39	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$248.82
GRZ-1-7832	Converse	30.0N	74.0W	36	E2	320.00	640.00	CS	20	39	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$248.82
GRZ-1-8387	Converse	29.0N	72.0W	16	W2NW4SE4	360.00	360.00	CS	100	100	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$638.00
GRZ-1-8388	Converse	30.0N	72.0W	19	RES. TR. 41	40.00	1000.00	DD	13	211	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$1346.18
GRZ-1-8388	Converse	29.0N	73.0W	16	N2	320.00	1000.00	CS	28	211	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$1346.18
GRZ-1-8388	Converse	30.0N	73.0W	36	ALL	640.00	1000.00	CS	170	211	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2023 12:00:00 AM	\$1346.18
GRZ-1-8526	Converse	31.0N	74.0W	1	LOT 1:SE4NE4	80.08	400.08	OM	35	167	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2018 12:00:00 AM	\$1055.46
GRZ-1-8526	Converse	32.0N	74.0W	36	S2	320.00	400.08	CS	132	167	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633		1/1/2018 12:00:00 AM	\$1055.46

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Grazing Leases

Lease Number: e.g. GRZ-1-6839

Lessee: Wagonhound Land & Livestock Co., LLC.

Township: Enter Numbers Only

Range: Enter Numbers Only

Section:

County: Converse

Fund Code:

Lease Number	County	Township	Range	Section	Legal Description	Legal Description Acres	Total Lease Acres	Fund Code	Legal Description AUMs	Total Lease AUMs	Lessee	Lessee Address 1	Lessee Address 2	Lessee City	Lessee State	Lessee Zip Code	Lease End Term	Total Lease Rent Due
GRZ-1-8428	Converse	30.0N	73.0W	11	N2NW4	80.00	80.00	CS	28	28	Wagonhound Land & Livestock Co., LLC.	P.O. Box 1100		Douglas	WY	82633	1/1/2025 12:00:00 AM	\$178.64

GRZ-1- EES4	Converse	28.0N	72.0W	16	W2:W2NE4:NE4NE4	440.00	1637.35	CS	63	378	Company, LLC Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64
GRZ-1- EES4	Converse	29.0N	72.0W	35	W25W4	80.00	1637.35	CS	23	378	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64
GRZ-1- EES4	Converse	27.0N	73.0W	11	NE4SE4	40.00	1637.35	CS	10	378	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64
GRZ-1- EES4	Converse	27.0N	73.0W	12	N2NW4:SE4NW4:NW4SW4	160.00	1637.35	MH	37	378	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64
GRZ-1- EES4	Converse	27.0N	73.0W	13	SW4	160.00	1637.35	CS	41	378	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64
GRZ-1- EES4	Converse	28.0N	73.0W	36	LOTS 1-16 INCLUSIVE	637.35	1637.35	CS	179	378	Wagonhound Land & Livestock Company, LLC	P.O. Box 1100	Douglas	WY	82633	1/1/2023 12:00:00 AM	\$2411.64

June 6, 2019

WALK-IN BOARD MATTER #1

ACTION: Consider entering into the record the Board's alternative Findings of Fact, Conclusions of Law, and Order Denying the Motion for Summary Judgment (attached) in lieu of the Office of Administrative Hearings' recommended decision *In the Matter of Conflicting Lease Application by Barlean's Organic Oils, LLC* (OAH Docket No. 18-139-060; State Lease No. 1-8907).

AUTHORITY: Wyoming Statute § 36-2-101: *Rules, Office of Lands & Investments, Board of Land Commissioners*, ch. 1, §§ 7, 9 (2017).

ANALYSIS:

This matter arises from the conflicting application appeal brought by Barlean's Organic Oils, LLC ("Barleans"). On July 5, 2018, the Office of State Lands and Investments ("State Lands Office") advertised for bids to lease the lands covered by State Lease No. 1-8907. The advertisement for bids was open until July 27, 2018, and required a minimum annual rental of \$1,671.56. On July 23, 2018, Barleans submitted a bid for the lease at the minimum annual rental, also indicating that it owned and controlled land adjoining to the lease area. On July 24, 2018, Chad and Julia McNutt ("McNutt's") submitted a \$1,940.00 bid for the lease. The McNutt's bid indicated that they owned lands near to the lease area, but not adjoining.

On August 6, 2018, the Director of the Board of Land Commissioners issued a Director's Decision conditionally awarding State Lease No. 1-8907 to the McNutt's for ten years at a rental amount of \$1,940.00. The State Lands Office received Barleans' written appeal of the Director's Decision on September 4, 2018, and referred Barleans' appeal to the Office of Administrative Hearings to conduct a contested case hearing on September 11, 2018.

On December 14, 2018, the State Lands Office moved for summary judgment. On January 7, 2019, Barleans responded to the motion. On January 22, 2019, the State Lands Office replied to Barleans' response on January 22, 2019. The Office of Administrative Hearings closed the record upon receipt of the State Lands Office's reply. On February 4, 2019, the Office of Administrative Hearings issued its *Recommend Findings of Fact, Conclusions of Law, and Order Granting Office of State Lands and Investments' Motion for Summary Judgment* ("OAH Recommended Decision") finding that the award of the lease of State Lease No. 1-8907 to the McNutt's should be upheld.

The Board discussed the OAH Recommended Decision at its April 4, 2019, meeting. The Board declined to adopt the OAH Recommended Decision and decided instead to return the matter to the Office of Administrative Hearings for further proceedings. At that time, however, the Board neither made nor entered into the record an order evidencing its decision.

RECOMMENDATION:

The Board approve and enter into the record its own Findings of Fact, Conclusions of Law, and Order Denying the Motion for Summary Judgment (attached) in lieu of the Office of Administrative Hearings' recommended decision, thereby returning the matter to the Office of Administrative Hearings for further contested case proceedings in which the parties will be allowed to present further argument and evidence, consistent with the Board's written decision.

BOARD ACTION: Board Approved

RE: In the Matter of Conflicting Lease Application by Barlean's Organic Oils, LLC
OAH Docket No. 18-139-060
State Lease No. 18907

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
DENYING THE MOTION FOR SUMMARY JUDGMENT**

Whereas this matter came before the State Board of Land Commissioners (Board) during its public meeting on April 4, 2019, the next regular meeting following receipt of the Office of Administrative Hearings' recommended decision in this case. The Office of Administrative Hearings (OAH) presided over the contested-case portion of this matter and issued a recommended decision on February 4, 2019. The OAH based its recommended decision upon a December 14, 2018, Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment filed by the Office of State Lands and Investments (State Lands Office). The State Lands Office appeared by and through Assistant Attorney General James LaRock. Barlean's Organic Oils, LLC (Barleans) filed its response to the Motion for Summary Judgment on January 7, 2019. Barleans appeared by and through its counsel Ben N. Reiter and Joel Matteson, admitted pro hac vice. The State Lands Office submitted its Reply to Barleans' Response on January 22, 2019. The OAH closed the record on January 22, 2019, and the parties agreed and stipulated that there were no genuine issues of material fact and that a contested case evidentiary hearing before the OAH was not needed. Based upon the evidence and arguments, the OAH issued its Recommended Findings of Fact, Conclusions of Law, and Order Granting the State Lands Office's Motion for Summary Judgment.

Based on the recommendations of the OAH, the Board makes the following findings of fact, conclusions of law, and order:

I. Jurisdiction

The OAH had jurisdiction to hear the proceedings and recommend a decision in this matter. Wyoming Statute § 9-2-2022(b) authorizes the OAH to provide hearing services to other state agencies. The hearings are to be “conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure, and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings.” Wyo. Stat. Ann. § 9-2-2202(b)(iii).

The Board’s Rules (Board Rules) require a contested case hearing upon a timely appeal of conflicting applications to lease lands of the Board. Bd. of Land Comm’rs Rules, Ch. 1, § 7. In addition, the Board Rules incorporate the OAH’s Uniform Rules for Contested Case Practice and Procedure (OAH Rules). *Id.*, § 10. The OAH Rules incorporate and adopt Rule 56 of the Wyoming Rules of Civil Procedure, which provides for summary judgment. Office of Admin. Hearings Rules, Ch. 2, § 2.

The State of Wyoming owns the lands covered by State Lease No. 1-8907, and those lands are subject to the Board’s jurisdiction. In July 2018, Barleans and Chad and JuliAnna McNutt (McNutts) submitted conflicting applications to lease the land covered by State Lease No. 1-8907 from the Board. On August 6, 2018, the Board Director issued a Director’s Decision awarding State Lease No. 1-8907 to the McNutts. Barleans timely requested a contested case hearing following the issuance of the Director’s Decision. On September 11, 2018, the State Lands Office referred this matter to the OAH for purposes of conducting contested case proceedings.

II. Statement of the Case

The State Lands Office advertised for bids to lease the lands covered by State Lease No. 1-8907, which required a minimum annual rental of \$1,671.56. Both Barleans and the McNutts submitted bids for State Lands Lease No. 1-8907. Barleans' bid was for the minimum annual rental amount, while the McNutts' bid was for \$1,940.00. Barleans' bid indicated it owned and controlled land adjoining the lands covered by State Lease No. 1-8907, and the McNutts' bid indicated they did not own or control land adjoining to the lands covered by State Lease No. 1-8907. The Director awarded the lease to the McNutts because the McNutts' bid was for a higher amount of rent. Barleans objected, contending the Director failed to properly apply the preference for adjoining landowners under Wyoming Statute § 36-5-105(b).

III. Issue

The issue in this case, overall, is whether the State Lands Office proved by a preponderance of the evidence the Director's Decision to award State Lease No. 1-8907 to the McNutts was in accordance with the law. So far, the parties have focused on whether the mandated preference for adjoining landholders was properly applied to Barleans under Wyoming Statute § 36-5-105(b) under Wyoming Statute § 36-5-105(b).

IV. Findings of Fact

1. The State of Wyoming owns the lands covered by State Lease No. 1-8907. The lease consists of 1240 acres in Natrona County, Wyoming. [Exhibit (Ex.) D].
2. On July 5, 2018, the State Lands Office advertised for bids to lease the lands covered by State Lease No. 1-8907. The advertisement for bids was open until July 27, 2018, and required a minimum annual rental of \$1,671.56. [Ex. A, p. 1].

3. On July 23, 2018, Barleans submitted a bid for State Lands Lease No. 1-8907. Barleans' bid was for the minimum annual rental amount of \$1,671.56. Barleans' bid further indicated it owned and controlled land adjoining the lands covered by State Lease No. 1-8907. [Ex. A, p. 1; Ex. C].

4. On July 24, 2018, the McNutts submitted a bid for State Lands Lease No. 1-8907. The McNutts' bid was for \$1,940.00. The McNutts' bid indicated they did not own or control land adjoining the lands covered by State Lease No. 1-8907. [Ex. A, p. 1; Ex. B]. The McNutts bid reflected they owned land near the lands covered by State Lease No. 1-8907. [Ex. B, p. 4].

5. Barleans owns approximately 5,726 deeded acres in Natrona County, and possesses rights to federal grazing leases adjoining its deeded property. Barleans' deeded lands and the lands Barleans leases under federal grazing leases both adjoin the lands covered by State Lands Lease No. 1-8907. [Exs. 1, 2].

6. On August 6, 2018, the Board Director issued a Director's Decision conditionally awarding State Lease No. 1-8907 to the McNutts for ten years for a rental amount of \$1940.00. [Ex. D; Ex. 3].

7. On September 4, 2018, the State Lands Office received Barleans' written appeal of the Director's Decision regarding State Lease No. 1-8907. [Appeal Letter submitted with Transmittal Sheet].

8. On September 11, 2018, the State Lands Office referred Barleans' appeal to the OAH to conduct a contested case hearing. [Transmittal Sheet in File].

9. All findings of fact set forth in the following conclusions of law section shall be considered as such and are fully incorporated into this section.

V. Conclusions of Law

A. The State Lands Office is Not Entitled to Summary Judgment

10. Pursuant to the Wyoming Rules of Civil Procedure, a movant must be granted summary judgment if the movant shows that: (a) there is no genuine dispute as to any material fact; and (b) the movant is entitled to judgment as a matter of law. W.R.C.P. 56(a). Here, however, the State Lands Office has failed to show that it is entitled to judgment under the leasing statutes.

11. Because the State Lands Office's interpretation and application of Wyoming Statute § 36-5-105(b) hinges on the assertion of ambiguous statutory language, the State Lands Office is not entitled to judgment as a matter of law unless it can show that the phrase "preference shall be given in all cases" is indeed ambiguous. When interpreting statutes, plain meaning controls: "[w]ords and phrases shall be taken in their ordinary and usual sense[.]" Wyo. Stat. Ann. § 8-1-103(a)(i). The State Lands Office, however, does not present a plain meaning analysis supporting ambiguity. While the term "preference" may have more than one meaning, there is no ambiguity in the mandate that preference shall be given "in all cases." Therefore, the State Lands Office's position that the mandated preference is intended only to serve as a tiebreak in the event of even bids proves unconvincing. Preference must be given in all cases, not only when there are even bids.

B. Other Comprehensive Issues

12. Independent of the State Lands Office's summary judgment motion, there are comprehensive issues of law evident in the parties' respective positions. The State Lands Office's interpretation of Wyoming Statute § 36-5-108 is inconsistent with plain meaning. Further, Barleans' request that the lease be awarded with an opportunity to match, under Wyoming Statute § 36-5-105(b), is also inconsistent with plain meaning.

13. Although Wyoming Statute § 36-5-108 is not dispositive, because there are no even bids in this case, the State Lands Office's regarding Section 108 raises concerns on how the Office generally interprets the leasing statutes. Wyoming Statute § 36-5-108 provides a tie-break when there are even bid offers: "the director shall grant the lease to the applicant holding title to lands nearest to the lands applied for." Wyo. Stat. Ann. § 36-5-108. The State Lands Office asserts that this tiebreak would not apply to an adjoining land holder because "adjoining" and "nearest" are not the same term. This position, however, disregards the plain meaning of "nearest." "Near" and "adjoining" are both terms to describe physical proximity. *Near*, Black's Law Dictionary (10th ed. 2014); *adjoining*, Black's Law Dictionary (10th ed. 2014). The nearest possible one piece of land can be to another is if they share a border, or adjoin one another. Thus, Wyoming Statute § 36-5-108 would appear to apply as a tiebreak if there are two equal bids and one applicant owns adjoining lands.

14. On the other hand, there are also concerns about how Barleans interprets the leasing statutes. Barleans requests that the lease be awarded to it with an opportunity to match pursuant to the mandated preference under Wyoming Statute § 36-5-105(b). Section 105(b), however, includes no language supporting this position. The opportunity to match is a component of Section 105(c), which controls expiring leases. *See* Wyo. Stat. Ann. § 36-5-105(c). This case regards a vacant lease, not an expiring lease.

15. Based on these considerations, the Board finds there to be comprehensive legal issues that still need to be addressed by the parties before a final decision is issued. *See, e.g.*, W.R.C.P. 56(f) (requiring notice and an opportunity to respond before entering a decision independent of the motion for summary judgment). The Board cannot yet determine whether the

State Lands Office proved by a preponderance of the evidence the Director's Decision to award State Lease No. 1-8907 to the McNutts and not to Barleans was in accordance with law.

VI. Order

It is therefore ordered that:

1. The State Lands Office's December 14, 2018, Motion for Summary Judgment is denied;
2. This matter be returned to the Office of Administrative Proceedings for further contested case proceedings consistent with this written decision;
3. The record be re-opened and the parties be afforded an opportunity to present further arguments and evidence consistent with this written decision; and
4. The Office of Administrative Hearings issue another recommended decision following the parties' opportunity to present further arguments and evidence consistent with this written decision.

This Order is effective immediately and shall remain in effect until amended.

Executed this _____ day of June, 2019.

Mark Gordon, President
Board of Land Commissioner

Office of State Lands & Investments

Scoping Paper for the Management
Audit Committee July 31, 2009

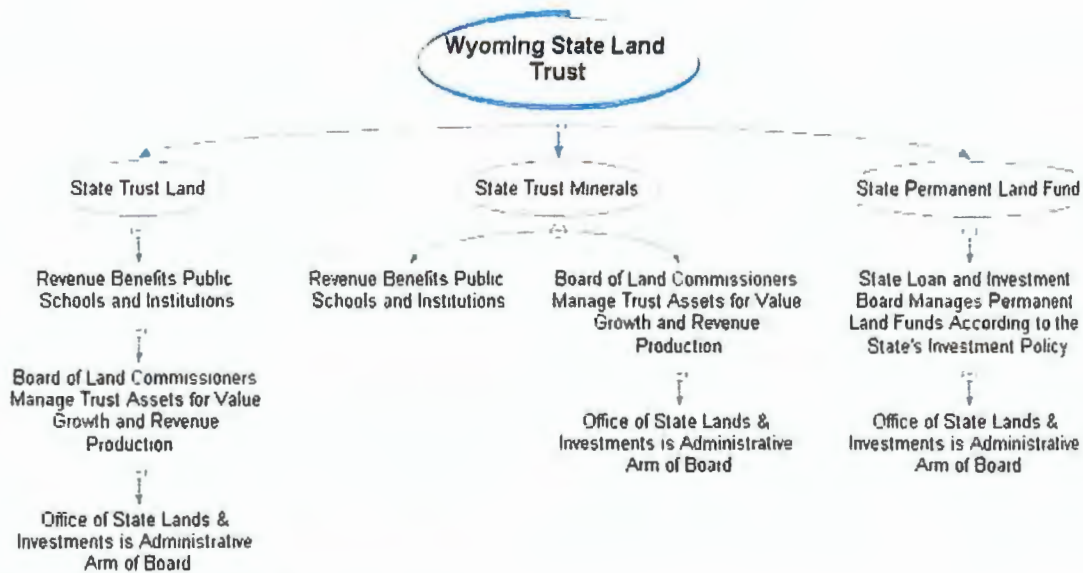


00053

Exhibit L, Page 1

Background

The Office of State Lands and Investments is statutorily tasked with administering (as directed by the Board of Land Commissioners and the State Land and Investments Board) the Wyoming State Land Trust consisting of three trusts: State Trust Land, State Trust Minerals, and Permanent Land Trust.



Source: LSO from information provided by the Office.

These assets resulted from the Act of Admission (the "Act") that granted statehood to Wyoming in 1890 by Congress. Sections 4 through 11 of the Act (26 Statutes at Large 222, Ch. 664) granted certain lands to the State of Wyoming from the United States for a variety of state supports. Article 18 of the Wyoming Constitution acknowledges and accepts the granting of these public lands. The purpose for the granting of these lands was, and remains, to support public schools, state institutions, public buildings, and for other specific purposes.

In 1992, during reorganization of the Wyoming state government, the State Land and Farm Loan Office was created (W.S. 9-2-2015), and subsequently renamed the Office of State Lands and Investments (the "Office") in 1997. W.S. 36-3-101 establishes the Director of the Office, who oversees various aspects of state lands and assets management pursuant to W.S. 36-3-102.

Scoping Paper Focus

The focus of this *Scoping Paper* is narrowed to the issue of leasing state lands and associated topics. The state currently owns approximately 3.6 million surface acres and 4.2 mineral acres; however, some of the original grant lands have been sold or exchanged.

Exhibit L, Page 2

The Office, in conjunction with the Board of Land Commissioners, has the authority to lease, sell, or exchange granted state lands in pursuit of such support. W.S. 36-5-101, et seq. and W.S. 36-6-101, et seq., provide general qualifications of lessees; lease terms; rental and terms of various types of leases. The Board of Land Commissioners also set forth provisions for leasing state lands through administrative regulations promulgated pursuant to W.S. 36-6-101 (b) as follows:

- grazing and agriculture (Chapter 4);
- special use leasing (Chapter 5);
- temporary use permits (Chapter 14);
- oil and gas (Chapter 18);
- coal (Chapter 19);
- trona (Chapter 20);
- uranium (Chapter 21);
- bentonite (Chapter 22);
- zeolite (Chapter 23);
- metallic & non-metallic rocks & minerals (Chapter 24); and
- sand and gravel, borrow material, and rip-rap rock (Chapter 25).

● Organization and Operations

The Wyoming State Constitution and the Wyoming State Legislature created, and oversees, the Board of Land Commissioners (W.S. 36-2-101) and the State Loan and Investment Board (W.S. 11-34-102(b)) (the "Boards"). Both Boards' members are comprised of the Governor, Secretary of State, State Treasurer, State Auditor, and Superintendent of Public Instruction.

The Office of State Lands and Investments is responsible for implementing the policy directives and decisions of the Boards and consists of the Office of the Director and five divisions.



Source: LSO from information provided by the Office.

For purposes of this *Scoping Paper*, the focus will center on the following divisions:

- Real Estate Management & Farm Loans Division, which is responsible for revenues associated with renewable resources such as grazing and agriculture leases;
- Mineral Leasing and Royalty Compliance Division, which is responsible for revenues associated with non-renewable resources such as various mineral and gas and oil leases; and
- Administrative Services Division, which is responsible for receipt and posting of all revenues collected by the Office and distributes to various permanent land funds; land income funds; the Permanent Mineral Trust Fund (PMTF); the General Fund; and various special revenue funds. The Division also provides various financial, accounting, and other reports.

Overview of Leasing Provisions for State Lands

As previously stated, the Office is responsible for administering leases on state lands, including mineral leases, agriculture and grazing leases, special use leases, and temporary use permits. In general, each type of lease has certain provisions and processes that must be met, including the manner in which leases are awarded, any bonding that may be required, lessee eligibility, whether or not leases may be sublet, etc.

In general, mineral leases are awarded through a competitive bid process; whereas that does not seem to be the case for agriculture and grazing leases, special use leases, and temporary use permits. For agriculture and grazing leases, state statutes (W.S. 36-5-105(c)) allow for a preferential right to an existing lessee who has remained compliant with the terms and provisions of the lease.

Exhibit L, Page 4

Various leases have specific time limitations (in years) associated with them, although extensions of the duration of leases granted by the Office are allowed. Depending upon the terms of the lease contract and the intended use, the terms tend to run from a few days to 75 years.

Bonds are required for mineral leases (once it becomes an operating lease), and in some instances, special use leases and temporary use permits. Bonding is required as a means to provide funding for surface damage caused during mining or drilling operations. Agriculture and grazing leases do not require bonding.

Rental payments in general are set using an economic analysis reflecting fair market value based on similar use of similar land. Agriculture and grazing lease rental payments are specifically based upon a formula developed by the Office. Minerals lease rental payments are typically based on extraction and royalty rates.

Subletting of leased lands is dependent upon the lease type and must be approved by the Director of the Office. Violation of this requirement may result in original lease termination. Minerals leases, in general, do not provide for subletting, but rather assignment of an undivided or divided interest.

Penalties

The Office does not assess administrative penalties against lessees in the event of violations of lease provisions, non-production, over-use, etc. It is interesting to note, however, that the Office may terminate agriculture and grazing lease contracts for non-use, but that is not the case for oil, gas, and other mineral leases in the event of non-production. The Board of Land Commissioners may, in the event of non-compliance with lease provisions, sue for damages under the lease, cancel or terminate the lease, or force the forfeiture of the lessee's bond to cover the cost of damages to the State.

Special use leases for wind energy development include language requiring initiation of development within a certain time frame because these particular leases are at risk for non-development. Pertaining to mineral leases, in general, as long as the lessee does not violate lease terms and remains current with rental payments, the lease will remain in effect. There is no requirement that a lessee explores or produces minerals within the terms of the primary lease period.

Maximizing Use of State Lands

For agriculture and grazing leases, receipt of fair market value and "compatible use" approach ensures optimal revenue generation for the State. As to mineral leases, "liberal permission" is granted to those interested in conducting land, mineral, geophysical, cultural, historical, biological, environmental and mapping surveys on state land. However, notification to current surface lessees must be provided along with negotiation of any surface impact payment if necessary.

Exhibit L, Page 5

Oil and gas leases appear to have a somewhat built-in incentive of a potential reduction in royalty rates if exploration on a non-producing parcel of land occurs within a “drilling window” of no more than two years. As to other mineral leases, after becoming an operating lease, the Board may reduce the royalty rate for any or all of the lands or formations covered by the lease if it is determined to be in the best interest for the profitability of the operation.

The issuance of separate leases for different minerals on the same tract of land is permissible. If all leases on the tract of land are non-producing, all parties are allowed to conduct exploratory operations so long as they do not adversely interfere with one another's operation. Neither state statute nor board rules allow for payment of refunds for non-productive leased lands.

Field Inspections

Both the Real Estate Management and Mineral Leasing and Royalty Compliance Divisions have field inspection staff with appropriate expertise to perform required field inspections for the respective leases. The Real Estate Management field inspectors have expertise in appraisals and range management: Appraisal staff conduct appraisals related to farm loans and determine compensations due under Temporary use Permits and Special Use leases when compensation is not established by the Board approved payment schedule, while Range Management staff conduct annual inspections of grazing lease renewals for the determination of grazing use, animal-unit-month, management needs and lease compliance.

There are two field/drilling inspectors in the Mineral Leasing and Royalty Compliance Division. These inspectors determine the following:

- general surface conditions and surface impact status of production on the leased lands;
- security of production handling equipment and the integrity of production measurement tools on site;
- assure lessee/operator compliance with all statutes (state and federal), rules and regulations and lease contract terms affecting mineral operations in Wyoming, specifically on state lands; and
- whether the then-current level of bonding held on a property provides sufficiency in terms of reclamation of all potential concerns discovered by inspection of the property.

Revenue Collection and Distribution

The Administrative Services Division (ASD) is responsible for providing administrative and fiscal support to the Director and the Office's divisions. The accounting staff receives, transmits, and distributes all revenues collected by the Real Estate Management and Farm Loan Division, Mineral Leasing and Royalty Compliance Division, and Wyoming State Forestry Division.

Exhibit L, Page 6

Checks received by mail remain in the possession of ASD until deposited with the State Treasurer. Any daily cash transactions are deposited into specific deferred revenue accounts. Copies of deposit transactions are provided to each division to post receipts to their internal accounting systems. After posting receipts, each division provides verification of completed postings to ASD for distribution from deferred revenue accounts on the statewide accounting system to the various permanent funds. "Revenue modification" transactions through the WOLFS system posts "undistributed funds" to the appropriate revenue source as designated for each division or program. ASD reconciles on a bi-weekly basis the revenue remaining in the fund 553, organization unit 0102.

● Current Issues

The overall question at hand is whether or not the Office is doing everything in its power to maximize the amount of revenues that come in to the State through its leasing provisions, i.e. are the efforts of the Office enough to ensure all available and potentially mineral productive state lands are currently under lease and, at a minimum, under exploration or production? Should this question be expanded to include *all* lease types applicable to available state lands?

Table 1, on the next page, provides additional information on acreage available for lease, while Table 2 and 3, pages 7 and 8, provides revenue generated through various leases.

Table 1
Leased Lands
Amount and Percentage of Leased State Land

Lease Type	*Total Acreage Currently Available for Lease	Acreage Currently Leased ⁽¹⁾	Acreage Currently Not Leased	Acreage Currently in Production, Exploration, or Use	Leased Acreage Currently Not in Production, Exploration, or Use ⁽⁴⁾
Grazing	3,561,481.22	3,497,083.30	64,397.92	3,497,083.30	None
Agriculture	3,561,481.22	⁽²⁾	⁽²⁾	⁽²⁾	⁽²⁾
Special Use	3,561,481.22	70,849.95	3,490,631.27	70,849.95	None
Oil and Gas	4,110,772.48	1,642,948.54	2,467,823.94	516,697.40⁽⁴⁾	1,126,251.14⁽⁵⁾
Coal	4,110,772.48	264,966.37	3,845,806.11	8,480.00⁽⁴⁾	256,486.37⁽⁵⁾
Sodium & Trona	4,110,772.48	31,076.14	4,079,696.27	4,317.21⁽⁴⁾	26,758.93⁽⁵⁾
Uranium	4,110,772.48	422,876.10	3,687,896.38	1,320.00⁽⁴⁾	421,556.10⁽⁵⁾
Bentonite	4,110,772.48	26,064.13	4,084,708.35	3,165.08⁽⁴⁾	22,899.05⁽⁵⁾
Zeolite	4,110,772.48	⁽³⁾	⁽³⁾	⁽³⁾	⁽³⁾
Metallic & Non-Metallic Rocks & Minerals	4,110,772.48	26,559.20	4,084,213.28	0⁽⁴⁾	26,559.20⁽⁵⁾
Sand, Gravel, Borrow, and Rip-Rap	4,110,772.48	3,066.11	4,107,706.37	2,310.04⁽⁴⁾	756.07⁽⁵⁾

Source: LSO from information provided by OSLI.

*Combine Leased and Not Leased Acreage.

(1) All lands under surface and/or sub-surface leases are deemed "in use".

(2) Included in grazing.

(3) Included in Metallic & Non-Metallic Rocks & Minerals.

(4) This figure represents acreage held by production as it relates to the sub-surface estate; however, all lands under lease are deemed "in use".

(5) "In use" but not held by production and/or producing as it relates to the sub-surface estate.

**Table 2
Total Leased Land and Land Revenue
FY 2008**

Type	Acres Leased	# of Leases	Rental (\$)	Royalties (\$)	Other (\$)
Grazing/Agriculture	3,505,720.00	3,999	\$5,230,869		
Special Use	26,995.87	251	\$937,004		
Temporary Use Permits (TUPS) ⁽¹⁾		838	\$666,655		
Right of Way/Easements ⁽¹⁾		8,044			\$1,609,398
Surface Damages ⁽²⁾					\$1,798,945
Real Estate Sales	1,269.71 ⁽³⁾	6 ⁽⁴⁾			\$2,923,422
Oil & Gas	1,417,738.52	3,659	\$1,287,002	\$159,742,276	
Coal	264,966.37	275	\$358,843	\$5,827,328	
Sodium & Trona	29,156.14	43	\$105,588	\$12,329,663	
Uranium	411,725.54	649	\$672,390		
Bentonite	22,356.91	73	\$53,062	\$497,603	
Sand & Gravel	3,084.04	51	\$1,600	\$1,044,987	
Miscellaneous Mineral	38,610.16 ⁽⁷⁾	86 ⁽⁷⁾	\$60,512	\$59,451	
Liquidated Damages					\$30,000
Oil & Gas Lease Bonus	190,656.91 ⁽⁵⁾	501 ⁽⁶⁾			\$12,000,838
Timber	N/A	N/A			\$310,665
Fees	N/A	N/A			\$57,311
Penalty Mineral	N/A	N/A			\$1,032,876
Total			\$9,373,525	\$179,501,308	\$19,763,455
Grand Total					\$208,638,288

Source: LSO from information provided by the Office.

(1) TUPS and easements are issued by rods, as opposed to number of acres.

(2) Surface damages are related to grazing/agriculture/special use leases.

(3) Number of acres sold.

(4) Number of transactions and/or parcels sold.

(5) Number of acres sold/leased at auction.

(6) Number of leases sold at auction.

(7) Includes metallic & non-metallic minerals.

Exhibit L, Page 10

**Table 3
Total Leased Land and Land Revenue
FY 2009**

Type	Acres Leased	# of Leases	Rental (\$)	Royalties (\$)	Other (\$)
Grazing/ Agriculture	3,497,083.30	3,986	\$5,362,698		
Special Use	70,849.95	298	\$1,202,357		
Temporary Use Permits (TUPS) ⁽¹⁾		1,021	\$759,369		
Right of Way/ Easements ⁽¹⁾		8,256			\$1,014,140
Surface Damages ⁽²⁾					\$1,671,116
Real Estate Sales	2,098.02 ⁽³⁾	4 ⁽⁴⁾			\$1,699,637
Oil & Gas	1,642,948.54	4,236	\$1,189,838	\$159,774,330	
Coal	264,966.37	85	\$501,533	\$5,649,458	
Sodium & Trona	31,076.14	46	\$88,092	\$12,061,250	
Uranium	422,876.10	672	\$451,039		
Bentonite	26,064.13	73	\$67,461	\$486,756	
Sand & Gravel	3,066.11	53	\$400	\$1,021,977	
Miscellaneous Mineral	53,626.17 ⁽⁷⁾	113 ⁽⁷⁾	\$69,305	\$58,165	
Liquidated Damages					\$90,000
Oil & Gas Lease Bonus	190,833.73 ⁽⁵⁾	489 ⁽⁶⁾			\$4,174,532
Timber	N/A	N/A			\$169,658
Fees	N/A	N/A			\$90,020
Penalty Mineral	N/A	N/A			
Total			\$9,692,092	\$179,051,936	\$8,909,103
Grand Total					\$197,653,131

Source: LSO from information provided by the Office.

- (1) TUPS and easements are issued by rods, as opposed to number of acres.
- (2) Surface damages are related to grazing/agriculture/special use leases.
- (3) Number of acres sold.
- (4) Number of transactions and/or parcels sold.
- (5) Number of acres sold/leased at auction.
- (6) Number of leases sold at auction.
- (7) Includes metallic & non-metallic minerals.

Exhibit L, Page 11

● Possible Evaluation Questions

1. Is the Office doing enough to encourage mineral lease holders to explore and move towards production? According to Table 1, the following percentages of leased mineral lands are not in production: Oil and Gas (69%); Coal (97%); Sodium and Trona (86%); Uranium (99.6%); and Bentonite (88%).
2. Is the Office doing enough to encourage business to enter into leases for exploration and production of various minerals?
3. According to the Office's FY 2008 Annual Report, suspensions for that year impacted 100 leases and 500 wells. How do these mineral lease suspensions affect revenue levels?
4. How is the role of the Field Inspection Section (two inspectors) in the Mineral Leasing and Royalty Compliance Division impacted by its staffing and resources?
 - How many mineral leases are reasonable to inspect each year?
 - Are leases required to be inspected each year, every other year, etc.?
 - How much revenue can be generated if more inspections are completed on leases, and reveal the potential for the state to incur damage as a result of the activities allowed under a lease?
5. Are Wyoming's bidding processes and lease rental processes similar to other western states?
6. Are there incentives to bid out and execute more leases on state lands for a variety of uses, including mineral exploration and extraction, grazing and agriculture, special use, temporary permits?
7. Why are agriculture and grazing leases subject to cancellation for non-use of leased land and minerals leases are not for non-production?

Exhibit L, Page 12

01 - 08 2019

Cheyenne

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING

IN THE MATTER OF CONFLICTING)	
APPLICATIONS FOR STATE LEASE)	STATE LEASE NO. 1-8710
	OAH DOCKET NO. 19-008-060
JOHN T. LEMAN)	
Appellant)	

WYOMING OFFICE OF STATE LANDS AND INVESTMENTS'
PREHEARING DISCLOSURE STATEMENT

The Wyoming Office of State Lands and Investments, through the Wyoming Attorney General's Office, submits its prehearing disclosure statement.

A. Background

This is a conflicting lease application case brought by Appellant, John Leman. The State of Wyoming owns the lands covered by Grazing Lease No. 1-8710. On November 14, 2018, the Office advertised Lease No. 1-8710 in the Douglas Budget as being available for leasing. The Office provided that the minimum annual rent amount for the lease would be \$210.12.

On November 29, 2018, the Office received Wagonhound Land & Livestock Company, LLC's bid on Lease No. 1-8710 for an annual rental payment of \$1,360. On December 3, 2018, the Office received Leman's bid on Lease No. 1-8710 for an annual rental payment of \$348.84. On December 17, 2018, the Office conditionally awarded the lease to Wagonhound because it

was the highest bidder. Upon learning that it was unsuccessful, Leman initiated this contested case to protest the conditional lease award.

B. List of Witnesses and Brief Description of Testimony

- 1) Jason Crowder (will call)
Deputy Director
Office of State Lands and Investments
122 W. 25th Street
Cheyenne, WY 82002
Telephone Number – 307.777.3428

Jason Crowder will testify about the development of the formal advertisement of Lease No. 1-8710, his involvement in the bid process, and the decision to conditionally award the lease to Wagonhound. He will generally describe the bid process and how the Office evaluates each application. He will also testify about the statutes and rules governing grazing leasing and how they apply in this case. He may also testify as to all other matters contained in Leman's notice of appeal.

- 2) The Office reserves the right to call other witnesses to rebut or explain evidence presented by Leman.

C. Statement of Claims, Defenses, and Issues

- 1) **Statement of Leman's Claims**
 - i. The Office or Board must reject Wagonhound's lease application because it misrepresents that Wagonhound owns land fenced in with the State land.
 - ii. Wagonhound is not entitled to a leasing preference under Wyoming Statute § 36-5-105(b) equal to Leman's.

2) **The Office's Defenses**

- i. The Office and Board lack authority to reject Wagonhound's lease application because it does not contain a false statement that materially affects the application.
- ii. The preference under Wyoming Statute § 36-5-105(b) only applies when the highest received rental offers are equal, which is not the case here.

3) **Issues of Law**

- i. Was the Office required to reject Wagonhound's lease application?
- ii. Does the preference under Wyoming Statute § 36-5-105(b) only apply when the highest received rental offers are equal?

4) **Relevant Issue of Fact**

- i. Does Wagonhound's lease application contain a false statement that materially affects the application?

D. **List of Exhibits**

Exhibit Number	Date	Document	Bates Number
S-1	May 20, 2011	Wagonhound's 2011 Temporary Use Permit Application	001-002
S-2	August 4, 2011	Wagonhound's 2011 Temporary Use Permit	003-005
S-3	June 5, 2012	Wagonhound's 2012 Temporary Use Permit Application	006
S-4	August 9, 2012	Wagonhound's 2012 Temporary Use Permit	007-009
S-5	May 9, 2013	Wagonhound's 2013 Temporary Use Permit Application	010
S-6	August 8, 2013	Wagonhound's 2013 Temporary Use Permit	011-013

S-7	May 9, 2014	Wagonhound's 2014 Temporary Use Permit Application	014
S-8	June 5, 2014	Wagonhound's 2014 Temporary Use Permit	015-017
S-9	April 2, 2015	Wagonhound's 2015 Temporary Use Permit Application	018
S-10	June 4, 2015	Wagonhound's 2015 Temporary Use Permit	019-021
S-11	December 16, 2015	Wagonhound's 2016 Temporary Use Permit Application	022-023
S-12	April 7, 2016	Wagonhound's 2016 Temporary Use Permit	024-026
S-13	November 30, 2016	Wagonhound's 2017 Temporary Use Permit Application	027
S-14	April 6, 2017	Wagonhound's 2017 Temporary Use Permit	028-030
S-15	May 8, 2018	Wagonhound's 2018 Temporary Use Permit Application	031-032
S-16	August 9, 2018	Wagonhound's 2018 Temporary Use Permit	033-035
S-17	----	Grazing Lease No. 1-8710 Application	036-040
S-18	November 29, 2018	Wagonhound's Grazing Lease Application	041-047
S-19	December 3, 2018	Leman's Grazing Lease Application	048-051
S-20	December 17, 2018	Director's Decision	052

The Office reserves the right to use other exhibits it deems necessary for foundation and cross-examination.

Respectfully submitted October 2, 2019.



Megan Pope, WY Bar No. 6-4483
Senior Assistant Attorney General
Wyoming Attorney General's Office
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2320 Capitol Avenue
Cheyenne, Wyoming 82002
(307)777-6710
megan.pope@wyo.gov

*ATTORNEY FOR WYOMING
OFFICE OF STATE LANDS AND INVESTMENTS*

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of October, 2019, the foregoing **PREHEARING DISCLOSURE STATEMENT** was served in the following manner, addressed to:

Office of State Lands and Investments
Attn: Jason Crowder, Assistant Director
Trust Land Management Division
122 West 25th Street, 1st Floor East
Cheyenne, Wyoming 82002-0600

ORIGINAL Via Hand Delivery

Office of Administrative Hearings
2020 Carey Avenue, 5th Floor
Cheyenne, Wyoming 82002

Via Hand Delivery

Keith Burron
1695 Morningstar Rd.
Cheyenne, Wyoming 82009
Attorney for John T. Leman/Appellant

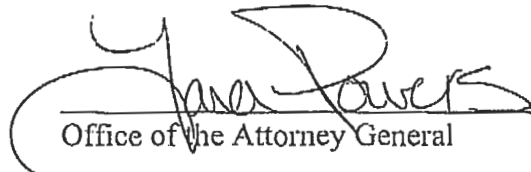
Via US Mail

William L. Hiser
Brown & Hiser
163 N. 4th Street
P.O. Box 971
Laramie, Wyoming 82073-0971
*Attorney for Wagonhound Land & Livestock
Company, LLC/Successful Lease Bidder*

Via US Mail

David Robinson
Assistant Attorney General
Wyoming Attorney General's Office
2424 Pioneer Avenue, First Floor
Cheyenne, Wyoming 82002
*Advising Attorney for the Board of Land
Commissioners*

Via Hand Delivery


Office of the Attorney General

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

APPLICATION NO. 2161 COUNTY Converse
(Assigned by office)

APPLICANT:
Name Wagonhead Land & Livestock, LLC
Address 1067 Dixon Lake Rd
Douglas WY 82433
Phone 307-358-5439 ext. 1 Dustin Ewing

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity
 - Roadway (indicate proposed width _____ and length _____)
 - Sign Board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility
 - Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well
 - Non-commercial Decorative Rock/Stone Removal
 - Other: (specify) grazing

Specifically describe proposed use:
cow/calf or yearling grazing

List any improvements to be placed on the land: fencing if needed

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map. 130 Alum's V

Legal Description	Sec.	Twp.	Rng.	Length/W	County
NESW, L3, L4, SESW	18	31	73		Converse
SESW, L4	19	31	73		Converse
NW, NW/2	30	31	73		Converse
	24	31	74		?

74.64 =
\$603.40
463.47 Acres
There is a small 0.1922 that is likely part of ground lease 1 st Hwy

Requested duration of permit: Number of years _____ from 6/1/2011 to 10/31/2011
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$ 603.40
(Date)

Surface Impact paid to the Surface Lessee: \$ N/A on _____ Check No. _____
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

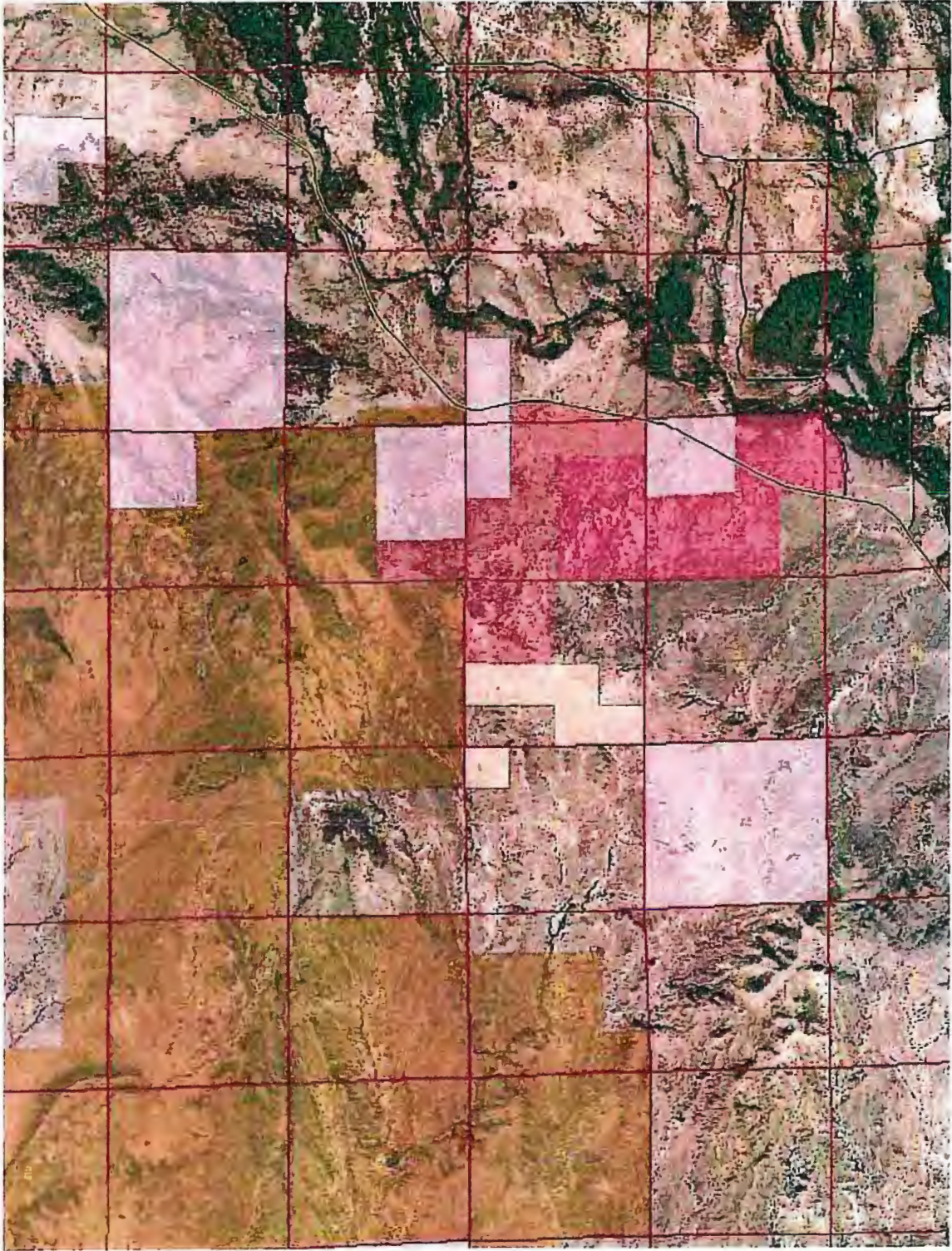
I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Signature of Applicant Dustin Ewing Date 5/23/11
Print or Type Name

Date 6/8/2011
Check No. 020418
Amount \$603.40

Leases mailed 6/23/2011

EXHIBIT
S-1



STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: 2161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-5439, Ext. 1

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land: Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.; Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.; Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.; All that portion of the S2SE4 lying east of state highway 91 of Section 24, 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2011 and expires on October 31, 2011.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of Six hundred three and 20/100 Dollars (\$603.20) due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: June 22, 2011

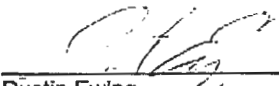

Preliminary Approval by
Director Office of State Lands and Investments

Date: August 4, 2011

BOARD APPROVED

Final Approval by
Board of Land Commissioners

Date: 8/27/2011


Dustin Ewing

EXHIBIT

S-2

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
 - (5) All irrigation ditches and laterals shall be kept in good condition at the Permittee's expense and shall be maintained so as to prevent washing, cutting and damage to the lands. Ditches and laterals shall attach to the lands and become the property of the Board of Land Commissioners.
 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
 - (5) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

APPLICATION NO. 2161 COUNTY Converse
(Assigned by office)

APPLICANT:
Name: Wagner/Brund Land & Livestock
Address: 101st Street Lake Boon
Dunnington 82623
Phone: 307-282-4499 ext 1

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity
 - Roadway (indicate proposed width _____ and length _____)
 - Sign Board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility
 - Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well
 - Non-commercial Decorative Rock/Stone Removal
 - Other: (specify) SAVING

Specifically describe proposed use:

* Wagner grazing lease # 1-8822
1-8710

List any improvements to be placed on the land:

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

*Permit
shall
map & locate
on file*

Legal Description	Sec.	Twp.	Rap.	length/ft	County

*150' x 111'
x 1/2
757.6'*

Requested duration of permit: Number of years from June 1, 2012 to October 31, 2012
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$ 587.60 + 200.00 7/12/12
(Date) (Date)

Surface Impact paid to the Surface Lessee: \$ _____ on _____ Check No. _____
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Wagner/Brund 6/3/2012
Signature of Applicant (Date)
Wagner/Brund Land & Livestock
Print or Type Name

Date 6/7/12
Office No. 027891
5612.69

EXHIBIT
S-3

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: 2161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-5439, Ext. 1

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

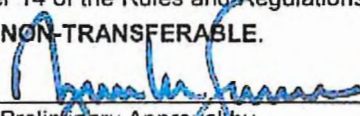
This permit valid only on the following state land: Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.; Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.; Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.; All that portion of the S2SE4 lying east of state highway 91 of Section 24, 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2012 and expires on October 31, 2012.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of **Five hundred eighty-seven and 60/100 Dollars (\$587.60)** due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: June 15, 2012


Preliminary Approval by
Director Office of State Lands and Investments

Date: August 9, 2012

BOARD APPROVED
Final Approval by
Board of Land Commissioners

Date: 4/22/12


Dustin Ewing

EXHIBIT
S-4

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
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 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
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- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall be forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

APPLICATION NO. 02161
(Assigned by office)

COUNTY Converse

APPLICANT:

Name: Wagonwheel Land & Livestock
Address: 1061 Poison Lake Rd.
Douglas, WY 82633
Phone: 307-358-5439

Use applied for: (check one)

- Construction activity (indicate total acreage affected _____)
- Hot mix facility (indicate total acreage affected _____)
- Organized recreation activity
- Roadway (indicate proposed width _____ and length _____)
- Sign Board (indicate dimensions: width _____ and length _____)
- Stockpile site (indicate total acreage affected _____)
- Water removal facility
- Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
- Disposal and/or Injection Well
- Non-commercial Decorative Rock/Stone Removal
- Other: (specify) grazing

Specifically describe proposed use:

vacant grazing leases # 1-8820
1-8710

130 ac lease
7 1/4 ac
76.24 ac

List any improvements to be placed on the land:

Permit 2161 map & legal on file

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

Legal Description	Sec	Twp.	Rng.	length/R	County

130 ac lease
x 4.52
\$587.60

Requested duration of permit: Number of years _____ from June 1, 2013 to Oct. 31, 2013
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$ 587.60 + 225.00 fee = \$812.60
607.60

Surface Impact paid to the Surface Lessee: \$ _____ on _____ Check No. _____
(Date)

607.60 = 2647.00
607.60 = 136.40

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Jennifer L. Rinn 5/9/2013
Signature of Applicant (Date)

Jennifer L. Rinn
Print or Type Name

5/15/2013
029336
76.24 ac

6/10/13
029447
736.40

EXHIBIT
S-5

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: 02161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-5439, Ext. 1

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land:

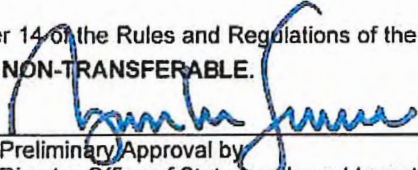
Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.
Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.
Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.
All that portion of the S2SE4 lying east of state highway 91 of Section 24, 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2013 and expires on October 31, 2013.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of **Six hundred twenty-four and no/100 Dollars (\$624.00)** due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: May 31, 2013


Preliminary Approval by
Director Office of State Lands and Investments

Date: August 8, 2013

BOARD APPROVED
Final Approval by
Board of Land Commissioners

Date: 6/18/2013


Dustin Ewing

EXHIBIT
S-6

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
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 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
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- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

No Board

APPLICATION NO. 02161 COUNTY Converse
(Assigned by office)

APPLICANT:

Name Wagonwheel Land and Livestock
Address 1061 Poison Lake Rd
Douglas WY 82633
Phone 307 358-5439 ext 1

Use applied for:

(check one)

- Construction activity (indicate total acreage affected _____)
- Hot mix facility (indicate total acreage affected _____)
- Organized recreation activity
- Roadway (indicate proposed width _____ and length _____)
- Sign Board (indicate dimensions: width _____ and length _____)
- Stockpile site (indicate total acreage affected _____)
- Water removal facility
- Outfitting/guiding activities (indicate exclusive ___ or nonexclusive ___ and provide outfitting/guiding license no. _____)
- Disposal and/or Injection Well
- Non-commercial Decorative Rock/Stone Removal
- Other: (specify) Grazing

Specifically describe proposed use:

vacant leases - #1-8820, 1-8710

List any improvements to be placed on the land:

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

Permit # 2161 map & legal on file.

Legal Description	Sec.	Twp.	Rng.	length/ft	County	
	34	31	74			4163.47 ac CS
	35, 32, 33	31	73			130 AUM 35.115 \$6,922.101 5.917.112

Requested duration of permit: Number of years 1 from 6/1/2014 to 11/1/2014
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$ 6,922.10 + 25.00 = 6,947.10

Surface Impact paid to the Surface Lessee: \$ N/A on --- Check No. ---
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Signature of Applicant [Signature]

5/9/2014
(Date)

Dustin Enring
Print or Type Name

Date 5/12/2014
Check No. 031136
Amount 3694.10

EXHIBIT
S-7

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: 02161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-5439, Ext. 1

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land:

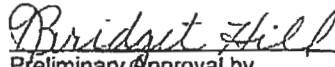
Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.
Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.
Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.
All that portion of the S2SE4 lying east of state highway 91 of
Section 24, 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2014 and expires on November 1, 2014.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of **Six hundred seventy-two and 10/100 Dollars (\$672.10)** due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: May 20, 2014

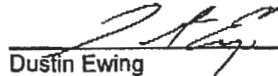

Preliminary Approval by
Director Office of State Lands and Investments

Date: June 5, 2014

BOARD APPROVED

Final Approval by
Board of Land Commissioners

Date: 5/23/2014


Dustin Ewing

**EXHIBIT
S-8**

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
 - (5) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
 - (5) All irrigation ditches and laterals shall be kept in good condition at the Permittee's expense and shall be maintained so as to prevent washing, cutting and damage to the lands. Ditches and laterals shall attach to the lands and become the property of the Board of Land Commissioners.
 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

12/25/15

APPLICATION NO. 02161 COUNTY Converse
(Assigned by office)

APPLICANT:
Name Wagonhound Land & Livestock
Address 1061 Poison Lake Road
Douglas WY 82633
Phone 307-358-5439

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity
 - Roadway (indicate proposed width _____ and length _____)
 - Sign Board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility
 - Outfitting/guiding activities (indicate exclusive ___ or nonexclusive ___ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well
 - Non-commercial Decorative Rock/Stone Removal
 - Other: (specify) Grazing

Specifically describe proposed use:
Vacant Leases - # 1-8820, 1-8710

List any improvements to be placed on the land:

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

Legal Description	Sec.	Twp.	Rng.	length/ft	County		
	<u>24</u>	<u>31</u>	<u>74</u>			<u>165.40 ac.</u>	<u>25</u>
	<u>2130</u>	<u>31</u>	<u>73</u>				<u>170.29</u>

Requested duration of permit: Number of years 3 mos. from 4/1/2015 to 11/1/2015
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$ 720.20 + \$25.00 = 745.20

Surface Impact paid to the Surface Lessee: \$ Nil on - Check No. -
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

[Signature] 4/2/15
Signature of Applicant (Date)

Dorita Ewing
Print or Type Name

160. Converse - 4/1/15-2015
Dept 20 wage permit 2015

4/16/2015
03291
\$745.20

EXHIBIT
S-9

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: 02161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-5439, Ext. 1

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land:

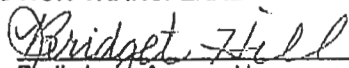
Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.
Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.
Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.
All that portion of the S2SE4 lying east of state highway 91 of
Section 24, 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2015 and expires on November 1, 2015.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of **Seven hundred twenty and 20/100 Dollars (\$720.20)** due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: April 16, 2015


Preliminary Approval by
Director Office of State Lands and Investments

Date: June 4, 2015

BOARD APPROVED

Final Approval by
Board of Land Commissioners

Date: APR 24 2015


Dustin Ewing

EXHIBIT
S-10

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
 - (5) All irrigation ditches and laterals shall be kept in good condition at the Permittee's expense and shall be maintained so as to prevent washing, cutting and damage to the lands. Ditches and laterals shall attach to the lands and become the property of the Board of Land Commissioners.
 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
 - (5) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

No Canal

APPLICATION NO. 02161 COUNTY CONVERSE
(Assigned by office)
APPLICANT: Name Wagonboard Land and Livestock
Address 1061 Bison Lake Rd
Douglas WY 82633
Phone 307-358-5437 ext 1

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity _____
 - Roadway (indicate proposed width _____ and length _____)
 - Sign board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility _____
 - Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well _____
 - Non-commercial Decorative Rock/Stone Removal _____
 - Other: (specify) GRAZING

Specifically describe proposed use: Current temporary permit # 02161
- grazing vacant leases # 1-8820 and # 1-8710
lands are located within existing deeded lands
List any improvements to be placed on the land:
solar well and stock tank (water treatment tank)

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

1-5820
24 = 13.39 ac
30 = 328.91 ac
19 = 74.22 ac
18 = 146.95 ac

1163.47

Legal Description	Sec.	Twp.	Rng.	length/ft	County
<u>Grazing</u>	<u>24</u>	<u>31</u>	<u>79</u>		<u>CS</u>
	<u>15/19</u>	<u>31</u>	<u>73</u>		<u>CS</u>

120 acres X #6.14 =
\$798.00

Requested duration of permit: Number of years 81 from 6/1/16 to 12/31/2020 11/12016
(Date) (Date)
Annual Consideration offered to the State of Wyoming for this permit: \$ 130 Ann + 6.14 + 25.00 fee - \$823.20 (2016)
Surface Impact paid to the Surface Lessee: \$ N/A on _____ Check No. _____
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

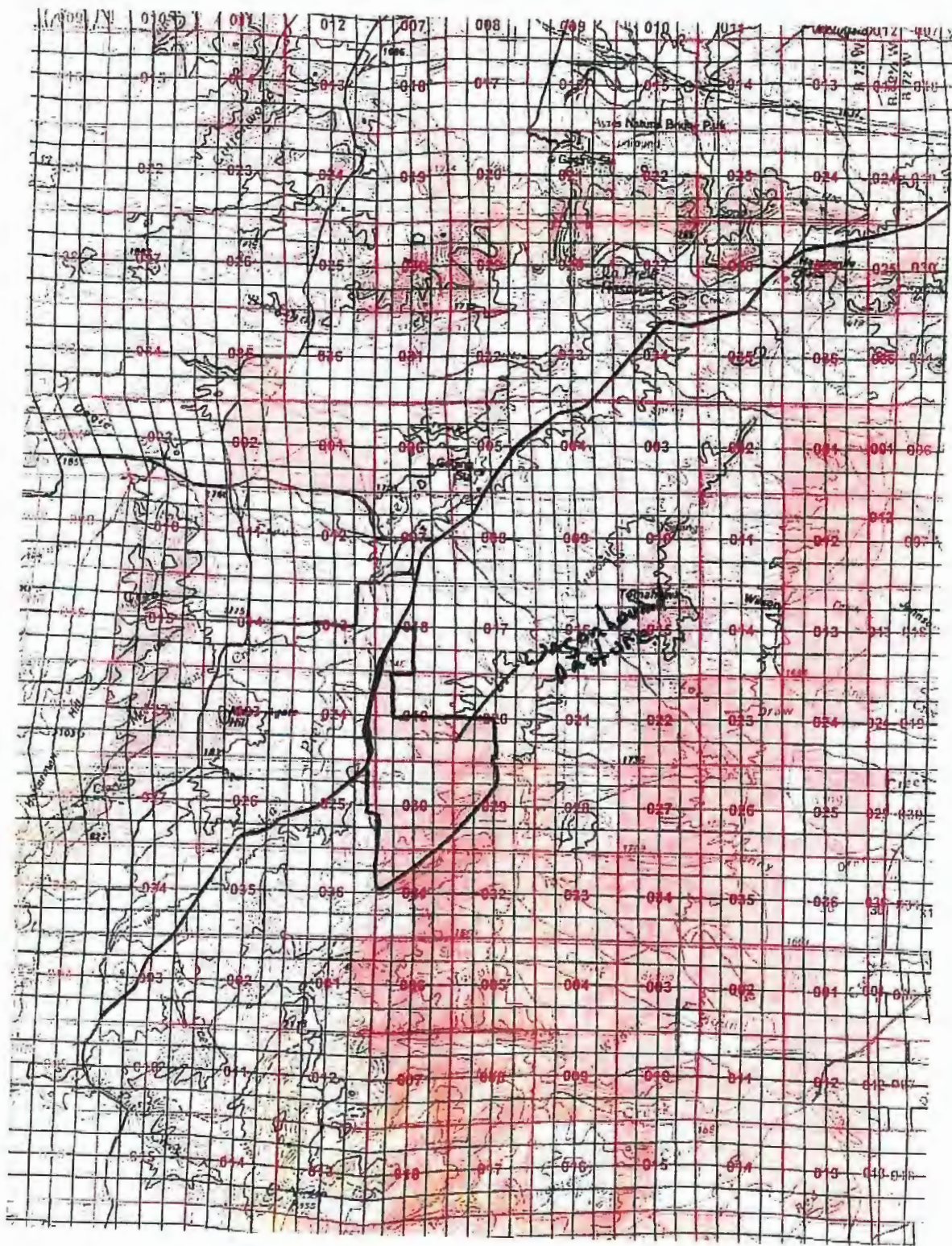
I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.

Signature of Applicant Dustin Fusing 6/16/2015 (Date)
Print or Type Name _____

*Type Comment Form to
314 - 1/14 grazing fee

2015 12/31/2015
2016 2/15/2016
When Due 2/34/34
Amount \$25.00

EXHIBIT
S-11



STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: TUP-02161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-5439, Ext. 1

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land:

Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.
Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.
Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.
All that portion of the S2SE4 lying east of state highway 91 of
Section 24, Township 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2016 and expires on November 1, 2016.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of **Seven hundred ninety-eight dollars and 20/100 Dollars (\$798.20)** due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: February 9, 2016


Preliminary Approval by
Director Office of State Lands and Investments

Date: April 7, 2016

BOARD APPROVED
Final Approval by
Board of Land Commissioners

Date: 2/29/2014

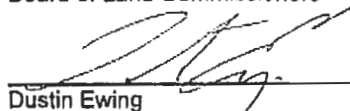

Dustin Ewing

EXHIBIT
S-12

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
 - (5) All irrigation ditches and laterals shall be kept in good condition at the Permittee's expense and shall be maintained so as to prevent washing, cutting and damage to the lands. Ditches and laterals shall attach to the lands and become the property of the Board of Land Commissioners.
 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
 - (5) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

Dr. [unclear]

Revised September, 2015

PERMIT APPLICATION FEE \$50.00

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

APPLICATION NO. 02161 COUNTY Converse
(Assigned by office)

APPLICANT:
Name Wagenhound Land and Livestock
Address 1861 Poison Lake Rd
P.O. Box 1100 Douglas WY 82033
Phone 307-358-7026

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity
 - Roadway (indicate proposed width _____ and length _____)
 - Sign Board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility
 - Outfitting/guiding activities (indicate exclusive ___ or nonexclusive ___ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well
 - Non-commercial Decorative Rock/Stone Removal
 - Other: (specify) grazing

Date 12/5/2016
Check No. 035988
Amount \$ 893.70

Specifically describe proposed use:
grazing horses - # 1-8820, 1-8710
prior temporary use permit # TUP-02161
List any improvements to be placed on the land:

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

Legal Description	Sec.	Twp.	Rng.	length/ft	County	
<u>24 = 13.39 ac</u>	<u>24</u>	<u>31</u>	<u>74</u>			<u>25</u>
<u>30 = 278.41 ac</u>	<u>18</u>					<u>↓</u>
<u>19 = 44.22 ac</u>	<u>30</u>	<u>31</u>	<u>73</u>			<u>↓</u>
<u>18 = 146.25 ac</u>						

*130 Acres
456.19 =
843.70*

Requested duration of permit: Number of years 5 months from 6/1/2017 to 11/1/2017
(Date) (Date)
Annual Consideration offered to the State of Wyoming for this permit: \$ 893.70
Surface Impact paid to the Surface Lessee: \$ 12.00 on — Check No. —
(Date)

This form must be fully completed and be accompanied by the executed Lessee Comment Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit.
[Signature] 11/30/2016
Signature of Applicant (Date)
Dustin Ewing
Print or Type Name

** Dustin Ewing
11/30/2016
* 130 Acres, 456.19 = 843.70*

130 AUM
456.19 - 2017 rate
\$ 843.70
50.00 - App. Fee
893.70

EXHIBIT
S-13

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

STATE OF WYOMING
DEPARTMENT OF LANDS AND INVESTMENTS
7000 10th AVENUE
CASP, WY 82413

TEMPORARY USE PERMIT

PERMIT NO.: TUP-02161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-7020

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land:

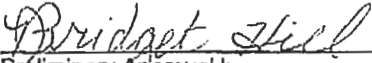
Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.
Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.
Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.
All that portion of the S2SE4 lying east of state highway 91 of
Section 24, Township 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2017 and expires on November 1, 2017.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of Eight hundred forty-three dollars and 70/100 Dollars (\$843.70) due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: February 23, 2017


Preliminary Approval by
Director Office of State Lands and Investments

Date: April 6, 2017

BOARD APPROVED
Final Approval by
Board of Land Commissioners

Date: 3/6/2017

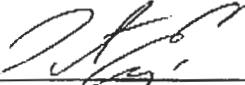

Dustin Ewing

EXHIBIT
S-14

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
 - (5) All irrigation ditches and laterals shall be kept in good condition at the Permittee's expense and shall be maintained so as to prevent washing, cutting and damage to the lands. Ditches and laterals shall attach to the lands and become the property of the Board of Land Commissioners.
 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
 - (5) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

TUP-02141

Revised September, 2015

PERMIT APPLICATION FEE \$50.00

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
APPLICATION FOR TEMPORARY USE PERMIT

APPLICATION NO. 02141 COUNTY Converse

APPLICANT:
Name Wagonhead Land and Livestock Co LLC
Address P.O. Box 1100
Dorcas WY 82633
Phone 307-358-2020

- Use applied for: (check one)
- Construction activity (indicate total acreage affected _____)
 - Hot mix facility (indicate total acreage affected _____)
 - Organized recreation activity
 - Roadway (indicate proposed width _____ and length _____)
 - Sign Board (indicate dimensions: width _____ and length _____)
 - Stockpile site (indicate total acreage affected _____)
 - Water removal facility
 - Outfitting/guiding activities (indicate exclusive _____ or nonexclusive _____ and provide outfitting/guiding license no. _____)
 - Disposal and/or Injection Well
 - Non-commercial Decorative Rock/Stone Removal
 - Other: (specify) Grazing

Specifically describe proposed use:
Vacant Leases # 1-8820, 1-8710 or TUP-02141

List any improvements to be placed on the land:

Describe the state land applied for (use a separate sheet if necessary). Delineate the proposed permit area on a quad map and attach the map.

Legal Description	Sec	Twp	Rng	length/ft	County	
	18	29	73	486.4	T11N R13W	CR
	14	29	73			
	24	29	73			
	27	29	73			

Requested duration of permit. Number of years 11/10 from 11-10 to 11-12
(Date) (Date)

Annual Consideration offered to the State of Wyoming for this permit: \$29.40

Surface Impact paid to the Surface Lessee: \$ _____ on _____ Check No. _____
(Date)

This form must be fully completed and be accompanied by the executed Lessee Consent Form, Quad Map, Application Fee and Consideration to the State. If not, all will be returned.

I hereby certify that I have read and agree to abide by the Rules and Regulations of the Board of Land Commissioners governing temporary use permits and the terms and conditions of the temporary use permit

[Signature] 5/8/2018
Signature of Applicant (Date)
Dustin Fearing
Print or Type Name

*State of Converse
vac - Grazing
11-12*

*130-ADM
6.58 - 2018 rate
\$ 829.40
50.00 - App Fee
\$ 879.40*

038707
\$ 879.40
1051701
Amount
Check No.
Date

EXHIBIT
S-15

STATE OF WYOMING
BOARD OF LAND COMMISSIONERS

TEMPORARY USE PERMIT

PERMIT NO.: TUP-02161

COUNTY: Converse

PERMITTEE:

NAME: Wagonhound Land & Livestock, LLC

ADDRESS: 1061 Poison Lake Road
Douglas, WY 82633

PHONE: (307) 358-7020

This permit authorizes only grazing of animals and other related agricultural activities.

This permit does not authorize any new improvements.

This permit valid only on the following state land:

Lots 3, 4 of Section 18, Township 31 North, Range 73 West, 6th P.M.
Lot 4:SE4SW4 of Section 19, Township 31 North, Range 73 West, 6th P.M.
Lots 1, 2 of Section 30, Township 31 North, Range 73 West, 6th P.M.
All that portion of the S2SE4 lying east of state highway 91 of
Section 24, Township 31 North, Range 74 West, 6th P.M.

This permit commences on June 1, 2018 and expires on November 1, 2018.

Permittee shall pay the Board of Land Commissioners, as consideration for this permit, the sum of Eight hundred twenty-nine dollars and 40/100 Dollars (\$829.40) due and payable when cattle are placed in the pasture. If any payment is not received when due, this permit shall terminate immediately.

This permit is issued pursuant to Chapter 14 of the Rules and Regulations of the Board Land Commissioners. **THIS PERMIT IS NON-TRANSFERABLE.**

Date: June 13, 2018


Preliminary Approval by
Director Office of State Lands and Investments
BOARD APPROVED

Date: August 9, 2018

Final Approval by
Board of Land Commissioners

Date: 6/19/2018


Dustin Ewing

EXHIBIT
S-16

TEMPORARY USE PERMIT
ADDITIONAL TERMS AND CONDITIONS

PERMITEE'S RESPONSIBILITIES - Permittee Agrees:

- (a) To conduct all grazing and agricultural operations on the premises in a manner which protects soil fertility and forage production, and does not contribute to soil erosion, or overgrazing. The Permittee further agrees to work in cooperation with the Board of Land Commissioners to make every reasonable effort to control noxious weeds and pests. Permittee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Permittee of state lands shall pay the cost of application or other control measures.
- (b) To maintain all buildings, wells, dams, windmills, fences, and other improvements located on the premises in a good state of repair at the Permittee's expense.
- (c) To dispose of all waste in a proper manner and not to allow debris, garbage, contaminants or other refuse to accumulate on the premises. Any landfill or open dump operated by the Permittee on the premises must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Permittee placed, or allowed to be placed, on the premises, and which has not been authorized by the Board, must be removed at the Permittee's expense. Permittee further agrees that the Board of Land Commissioners shall have the right to remove debris, garbage, contaminants, or other refuse which the Permittee placed on the premises and collect the cost of such removal from the Permittee. The Permittee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the premises, by parties other than the Permittee, so that appropriate investigation and corrective measures can be taken by the Board.
- (g) **IRRIGATED LAND** - If the premises are subject to irrigation in whole or in part from water available for that purpose under a permanent water right, contract or otherwise temporary water right, as the case may be:
 - (1) The Permittee agrees to use water so as to protect and maintain all water rights.
 - (2) Where applicable, the Permittee agrees to pay when due all charges for operation, maintenance, and delivery of water.
 - (3) The lands shall be operated under a customary and appropriate crop rotation method.
 - (4) The lands shall be cultivated, irrigated and fertilized in a proper husbandlike manner so as to prevent washing, blowing, seepage, leaching of the soil, waste of water and other damage.
 - (5) All irrigation ditches and laterals shall be kept in good condition at the Permittee's expense and shall be maintained so as to prevent washing, cutting and damage to the lands. Ditches and laterals shall attach to the lands and become the property of the Board of Land Commissioners.
 - (6) The Permittee shall file annually, on or before March 31, of each year, with the Office of State Lands and Investments, on the proper forms, a report of the location and yield of all crops grown the preceding year and the location and type of crops to be grown in the ensuing year.
- (h) Not to post signs on state lands unless specifically authorized by the Board of Land Commissioners.
- (i) Not to lock or remove gates, block or change established roads on the premises which provide public access to state land unless specifically authorized by the Board of Land Commissioners.

SPECIAL PROVISIONS

- (a) **RESERVATIONS** - The Board of Land Commissioners Reserves:
- (1) The right to order the sale of all or any portion of the premises at any time.
 - (2) The right to lease and dispose of all coal, oil, gas and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining or commercial purposes, and all timber, together with the right to mine and remove such minerals or other deposits and timber with the right of ingress and egress thereto, and to cancel this permit as to any portion of the premises when required for these purposes.
 - (3) The right to enter in and upon the premises at any time for purposes of inspection or management.
 - (4) The right at any time to grant easements across the premises for ditches, overhead wires, pipelines, railroads, reservoirs, public roads and highways, roadways to private land or residences, snow fences, underground cables, open space, or other lawful purposes, with the right of ingress and egress thereto.
 - (5) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
- (e) **ENTRY UPON PREMISES BY THIRD PARTIES** - Third parties desiring to enter upon the premises shall contact the Permittee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the Permittee may negotiate a payment for damage to the surface of the premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (f) **PASTURE AGREEMENTS** - Permittee will be allowed to pasture a third party's cattle during the duration of this permit, provided one-half of any excess rental is paid to the Office of State Lands and Investments.
- (g) **IMPROVEMENTS** - Upon expiration of the permit the improvements shall forfeit to and become the property of the state, except that within 120 days from the date of the expiration of permit, the owner may remove such improvements in a manner which minimizes injury to the land.
- (h) **CANCELLATION** - If it be determined by the Board that this permit has been procured by fraud, deceit or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Permittee fails to perform or violates any of the terms of this permit, the Board shall have power and authority to cancel this permit.

GENERAL PROVISIONS

- (a) **ENTIRETY OF PERMIT** - This permit contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This permit cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the permit and signed by the parties.
- (b) **INDEMNITY** - The Permittee shall release, indemnify, and hold harmless the State, the Board, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this permit.
- (c) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Board do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

STATE OF WYOMING

APPLICATION TO LEASE STATE LANDS
FOR GRAZING AND AGRICULTURAL PURPOSES

THIS APPLICATION MUST BE COMPLETED IN FULL OR IT WILL NOT BE ACCEPTED

TO: THE OFFICE OF STATE LANDS AND INVESTMENTS, Herschler Building, Cheyenne, Wyoming 82002-0600. Pursuant to the provisions of Wyoming Statutes 36-5-101 to 36-5-113 and amendments subsequent thereto, the undersigned hereby makes application to lease the lands described below for a term not exceeding ten years:

EXPIRING LEASE IS HELD IN THE FOLLOWING NAME:

IF YOU ARE APPLYING FOR THE LEASE IN ANOTHER NAME OR YOU ARE NOT THE CURRENT LESSEE, PLEASE INDICATE HOW THE LEASE IS TO BE HELD. (NOTE: IF YOU ARE THE CURRENT LESSEE AND ARE REQUESTING A NAME CHANGE, YOU WILL BE REQUIRED TO COMPLETE A LEASE ASSIGNMENT FORM IN ACCORDANCE WITH WYOMING STATUTES 36-5-105)

(Fill in exactly as you want name shown on lease)

DESCRIPTION OF LANDS APPLIED FOR:

Acres	Description	Sec.	Twp	Range	Co.
146.95	Lots 3, 4 : E2SW4	18	31	73	Converse

TOTAL 146.95 ACRES WITH 34 ANIMAL UNIT MONTHS OF FORAGE

(1.) (a.) Is the applicant a: Limited partnership? General partnership? Corporation? Other: _____
Is the applicant qualified under the laws of the State of Wyoming to do business and is it registered with the Wyoming Secretary of State? Yes No

(b.) If the applicant is an individual, are you a citizen of the United States? Yes No If no, have you declared your intention to become a citizen? Yes No

(2.) Are you the owner, lessee, or lawful occupant of lands adjoining the lands applied for? Yes No If you are not the owner, lessee, or lawful occupant of lands adjoining the lands applied for, do you have legal access, or can you acquire legal access to the state lands? Yes No Please list those parcels of state land that you do not have legal access to and cannot acquire legal access to: _____

(3.) Do the state lands applied for have legal public access? Yes No

Please list those sections of state land that have legal public access: _____

(4.) Do you have actual and necessary use for the land and its forage? Yes No

If yes, how do you anticipate grazing on this lease: Continuous (Year Round)

Seasonal (check all that apply): Spring Summer Fall Winter

Rotational (please describe): _____

If your grazing lease is part of a federal grazing allotment, please provide the allotment name(s): _____

If this is an agricultural lease, list what types of crop(s) to be grown on the state land (including hay): _____

Will you irrigate the state land? Yes No If Yes, please describe your method of irrigation: _____

(5.) How many head of livestock, by type, do you own?
Horses? _____ Cattle? _____ Sheep? _____ Other? _____ Totals: _____

(6.) Are the state lands fenced in with other lands that you own or control? Yes No

Are they fenced separately? Yes No

**EXHIBIT
S-17**

- (7.) Do the lands contain stock or irrigation water? _____ How many months each year? _____
 In what form? Wells _____ Springs _____ Reservoirs _____ Creeks or Rivers (names): _____
- (8.) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? Yes No
 Do you plan to enter into a sublease or pasture agreement in the future? Yes No
- (9.) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? Yes No
 Describe: _____
 If YES, have you participated in control efforts through the County Weed & Pest Control District? _____
- (10.) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? If so, please describe and give approximate location: _____

- (11.) Are there any improvements located on the lands applied for? Yes No If YES complete the following Improvement Section of the application.
- (12.) IMPROVEMENTS: ("Contributory Value" means the increased value of the property after the lessee's improvements are considered) If you are the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of improvements. It is important that you provide an estimate should a conflicting application be filed, or should a decision be made to nominate the land for sale during the term of the lease.

KIND OF IMPROVEMENT	NUMBER	LOCATION	ESTIMATED CONTRIBUTORY VALUE
DWELLINGS			
BARNS			
SHEDS			
CORRALS			
RESERVOIRS			
IRRIGATION DITCHES			
WELLS			
FENCES (MILES)			
OTHER (Specify)			
Total Estimated Contributory Value			\$

DEPOSIT FOR IMPROVEMENTS: If you are not the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of the improvements and remit a deposit equal to your contributory value estimate; as required by law.

- 13) THIS APPLICATION MUST BE ACCOMPANIED BY THE FIRST YEAR'S ANNUAL RENTAL AND REQUIRED FEES, AS SET FORTH BELOW:

ANNUAL RENTAL \$210.12
 APPLICATION FILING FEES 50.00 (non-refundable)
 TOTAL REMITTANCE \$260.12

ANNUAL RENTAL OFFER IF OTHER THAN SPECIFIED ABOVE OR IF FILING A CONFLICTING LEASE

APPLICATION:

ANNUAL RENTAL _____
 APPLICATION FILING FEES 50.00 (non-refundable)

TOTAL REMITTANCE _____

THE APPLICANT HAVING MADE STATEMENTS HEREIN FOR THE PURPOSE OF OBTAINING A LEASE FROM THE STATE OF WYOMING AGREES THAT IF AWARDED A LEASE UPON ANY PART OF SAID LANDS HE WILL COMPLY WITH ITS COVENANTS AND WITH THE RULES AND REGULATIONS OF THE BOARD OF LAND COMMISSIONERS RELATING THERETO. THE EXECUTION AND DELIVERY OF A LEASE BY THE BOARD SHALL BE CONSIDERED AN ACCEPTANCE OF SAID APPLICATION.

BY ACCEPTING THIS LEASE OF STATE LAND, THE LESSEE AGREES TO PROVIDE OR MUST EXERCISE HIS BEST EFFORTS TO OBTAIN REASONABLE YEAR-ROUND INSPECTION AND MANAGEMENT ACCESS TO THE BOARD OF LAND COMMISSIONERS AND ITS AGENTS WHEN REASONABLE PUBLIC ACCESS IS NOT OTHERWISE AVAILABLE. SUCH ACCESS WOULD EITHER BE ACROSS THE LESSEE'S ADJOINING DEEDED LAND OR ADJACENT LANDS NOT OWNED BY THE LESSEE THROUGH THE USE OF ANY ACCESS RIGHTS HELD BY THE LESSEE, IF THE OTHER LANDOWNER IS AGREEABLE.

(Application must be signed by applicant and all co-applicants. If a corporation, application must be signed by an authorized officer.)

DATED _____ (SIGN) _____

(SIGN) _____
(SIGN) _____
(SIGN) _____

RENTAL NOTICES TO BE MAILED TO: _____
(THIS SECTION MUST BE COMPLETED) (NAME)

(ADDRESS)

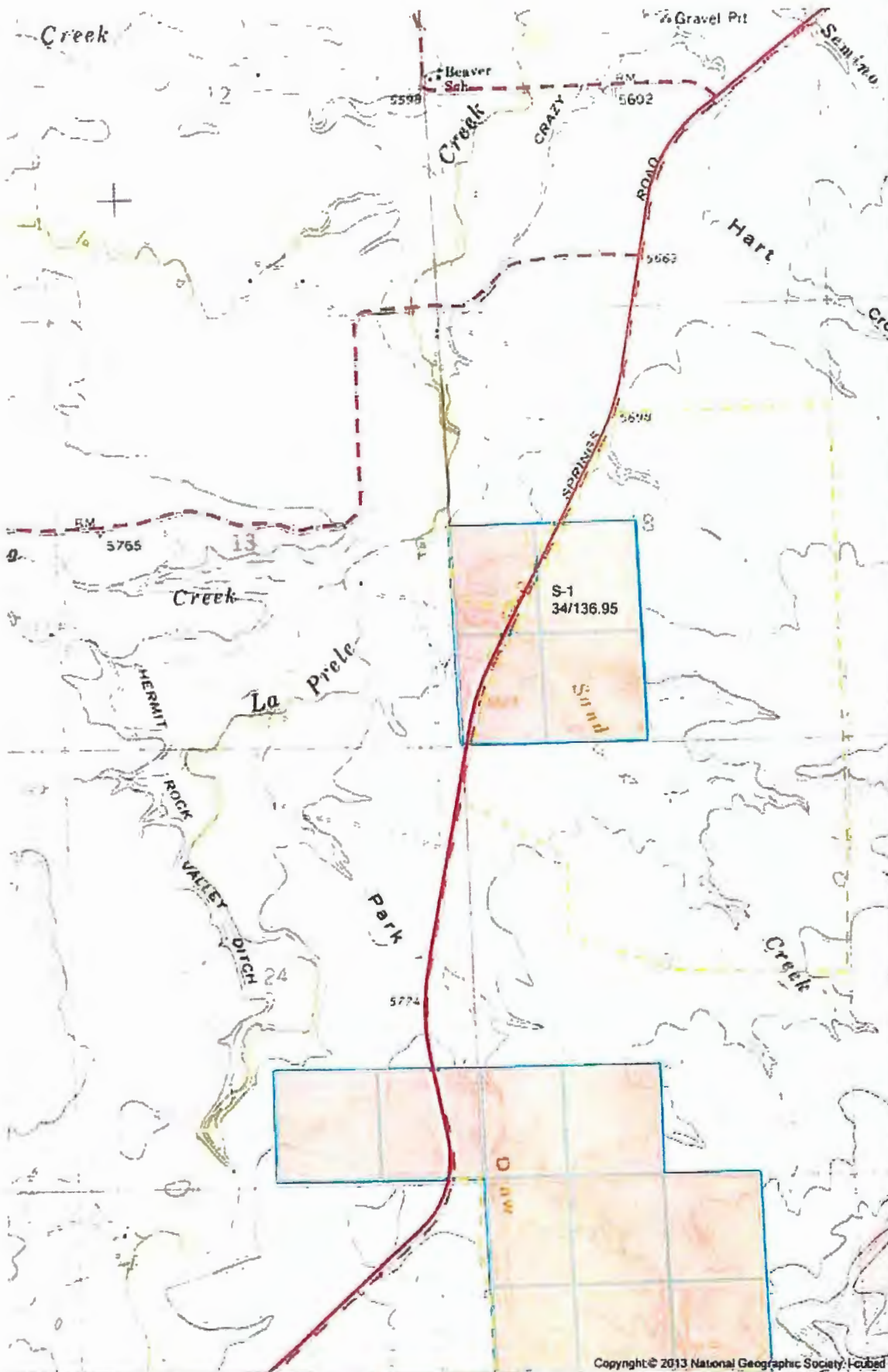
(PHONE)

**THE ATTACHED PLAT MUST BE COMPLETED WITH THE REQUIRED INFORMATION
OR YOU MAY ATTACH A RANCH OR QUAD MAP**

TOWNSHIP _____ N						TOWNSHIP _____ N					
RANGE _____ W						RANGE _____ W					
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
TOWNSHIP _____ N						TOWNSHIP _____ N					
RANGE _____ W						RANGE _____ W					

IMPORTANT: SHOW THE FOLLOWING ON THE ABOVE PLAT:

1. Location of state lands applied for.
2. Location of your deeded lands.
3. Location of your other federal, state, and private leased lands.



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3RZ-1-8710
18-31-73



0 0.25 0.5 Miles

--- Fence — Highways
M --- County Road

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Date: 9/28/2018
By: Cole Lambert

040

STATE OF WYOMING

APPLICATION TO LEASE STATE LANDS
FOR GRAZING AND AGRICULTURAL PURPOSES

THIS APPLICATION MUST BE COMPLETED IN FULL OR IT WILL NOT BE ACCEPTED

TO: THE OFFICE OF STATE LANDS AND INVESTMENTS, Herschler Building, Cheyenne, Wyoming 82002-0600. Pursuant to the provisions of Wyoming Statutes 36-5-101 to 36-5-113 and amendments subsequent thereto, the undersigned hereby makes application to lease the lands described below for a term not exceeding ten years:

EXPIRING LEASE IS HELD IN THE FOLLOWING NAME:

IF YOU ARE APPLYING FOR THE LEASE IN ANOTHER NAME OR YOU ARE NOT THE CURRENT LESSEE, PLEASE INDICATE HOW THE LEASE IS TO BE HELD. (NOTE: IF YOU ARE THE CURRENT LESSEE AND ARE REQUESTING A NAME CHANGE, YOU WILL BE REQUIRED TO COMPLETE A LEASE ASSIGNMENT FORM IN ACCORDANCE WITH WYOMING STATUTES 36-5-105)

(Fill in exactly as you want name shown on lease)

DESCRIPTION OF LANDS APPLIED FOR:

Acres	Description	Sec.	Twp	Range	Co.
146.95	Lots 3, 4 : E2SW4	18	31	73	Converse

TOTAL 146.95 ACRES WITH 34 ANIMAL UNIT MONTHS OF FORAGE

- (1.) (a.) Is the applicant a: Limited partnership? General partnership? Corporation? Other: _____
Is the applicant qualified under the laws of the State of Wyoming to do business and is it registered with the Wyoming Secretary of State? Yes No
- (b.) If the applicant is an individual, are you a citizen of the United States? Yes No If no, have you declared your intention to become a citizen? Yes No
- (2.) Are you the owner, lessee, or lawful occupant of lands adjoining the lands applied for? Yes No If you are not the owner, lessee, or lawful occupant of lands adjoining the lands applied for, do you have legal access, or can you acquire legal access to the state lands? Yes No Please list those parcels of state land that you do not have legal access to and cannot acquire legal access to: _____
- (3.) Do the state lands applied for have legal public access? Yes No
Please list those sections of state land that have legal public access: Sec 18
- (4.) Do you have actual and necessary use for the land and its forage? Yes No
If yes, how do you anticipate grazing on this lease: Continuous (Year Round)
Seasonal (check all that apply): Spring Summer Fall Winter
Rotational (please describe): using for grazing until to summer range and use & coming back into fall/winter
If your grazing lease is part of a federal grazing allotment, please provide the allotment name(s): N/A
If this is an agricultural lease, list what types of crop(s) to be grown on the state land (including hay): N/A
Will you irrigate the state land? Yes No If Yes, please describe your method of irrigation: no irrigation rights
- (5.) How many head of livestock, by type, do you own?
Horses? 200 Cattle? 4500 Sheep? — Other? — Totals: 4700
- (6.) Are the state lands fenced in with other lands that you own or control? Yes No
Are they fenced separately? Yes No

EXHIBIT
S-18

- (7.) Do the lands contain stock or irrigation water? 12.0 How many months each year? _____
 In what form? Wells _____ Springs _____ Reservoirs _____ Creeks or Rivers (names): _____
- (8.) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? Yes No
 Do you plan to enter into a sublease or pasture agreement in the future? Yes No
- (9.) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? Yes No
 Describe: _____
 If YES, have you participated in control efforts through the County Weed & Pest Control District? _____
- (10.) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? If so, please describe and give approximate location: none known
- (11.) Are there any improvements located on the lands applied for? Yes No If YES complete the following Improvement Section of the application.
- (12.) IMPROVEMENTS: ("Contributory Value" means the increased value of the property after the lessee's improvements are considered) If you are the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of improvements. It is important that you provide an estimate should a conflicting application be filed, or should a decision be made to nominate the land for sale during the term of the lease.

KIND OF IMPROVEMENT	NUMBER	LOCATION	ESTIMATED CONTRIBUTORY VALUE
DWELLINGS			
BARNs			
SHEDS			
CORRALS			
RESERVOIRS			
IRRIGATION DITCHES			
WELLS			
FENCES (MILES)			
OTHER (Specify)			
Total Estimated Contributory Value			\$ ---

DEPOSIT FOR IMPROVEMENTS: If you are not the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of the improvements and remit a deposit equal to your contributory value estimate; as required by law.

- 13) THIS APPLICATION MUST BE ACCOMPANIED BY THE FIRST YEAR'S ANNUAL RENTAL AND REQUIRED FEES, AS SET FORTH BELOW:

ANNUAL RENTAL	<u>\$210.12</u>	Date <u>12/10/18</u>
APPLICATION FILING FEES	<u>50.00</u> (non-refundable)	Check No. <u>40356</u>
TOTAL REMITTANCE	<u>\$260.12</u>	Amount <u>1410.00</u>

ANNUAL RENTAL OFFER IF OTHER THAN SPECIFIED ABOVE OR IF FILING A CONFLICTING LEASE

APPLICATION:
 ANNUAL RENTAL 1360.00 \$40.00 / AUM
 APPLICATION FILING FEES 50.00 (non-refundable)
 TOTAL REMITTANCE 1410.00

THE APPLICANT HAVING MADE STATEMENTS HEREIN FOR THE PURPOSE OF OBTAINING A LEASE FROM THE STATE OF WYOMING AGREES THAT IF AWARDED A LEASE UPON ANY PART OF SAID LANDS HE WILL COMPLY WITH ITS COVENANTS AND WITH THE RULES AND REGULATIONS OF THE BOARD OF LAND COMMISSIONERS RELATING THERETO. THE EXECUTION AND DELIVERY OF A LEASE BY THE BOARD SHALL BE CONSIDERED AN ACCEPTANCE OF SAID APPLICATION.

BY ACCEPTING THIS LEASE OF STATE LAND, THE LESSEE AGREES TO PROVIDE OR MUST EXERCISE HIS BEST EFFORTS TO OBTAIN REASONABLE YEAR-ROUND INSPECTION AND MANAGEMENT ACCESS TO THE BOARD OF LAND COMMISSIONERS AND ITS AGENTS WHEN REASONABLE PUBLIC ACCESS IS NOT OTHERWISE AVAILABLE. SUCH ACCESS WOULD EITHER BE ACROSS THE LESSEE'S ADJOINING DEEDED LAND OR ADJACENT LANDS NOT OWNED BY THE LESSEE THROUGH THE USE OF ANY ACCESS RIGHTS HELD BY THE LESSEE, IF THE OTHER LANDOWNER IS AGREEABLE.

(Application must be signed by applicant and all co-applicants. If a corporation, application must be signed by an authorized officer.)

DATED 11/21/2018 (SIGN) Dustin Ewing
(SIGN) _____
(SIGN) _____
(SIGN) _____

RENTAL NOTICES TO BE MAILED TO: Warpoint Land and Livestock Co. LLC
(THIS SECTION MUST BE COMPLETED) (NAME)
P.O. Box 1100
(ADDRESS)
1041 Person Lake Rd, Douglas WY 82603
307-358-720
(PHONE)

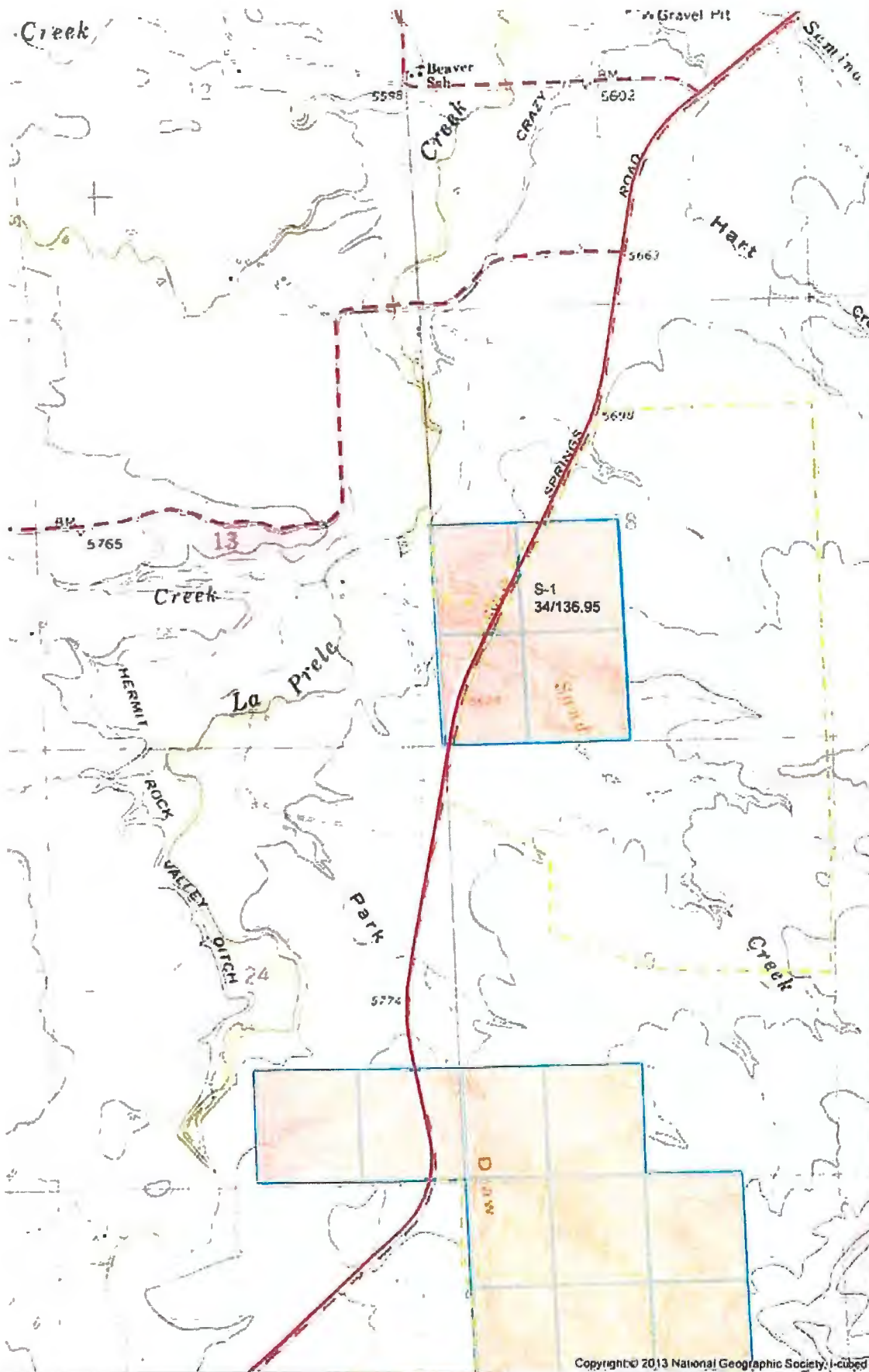
THE ATTACHED PLAT MUST BE COMPLETED WITH THE REQUIRED INFORMATION OR YOU MAY ATTACH A RANCH OR QUAD MAP

TOWNSHIP _____ N						TOWNSHIP _____ N					
RANGE _____ W						RANGE _____ W					
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
TOWNSHIP _____ N						TOWNSHIP _____ N					
RANGE _____ W						RANGE _____ W					

IMPORTANT: SHOW THE FOLLOWING ON THE ABOVE PLAT:

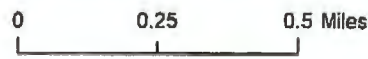
1. Location of state lands applied for.
2. Location of your deeded lands.
3. Location of your other federal, state, and private leased lands.

- see attached ranch map



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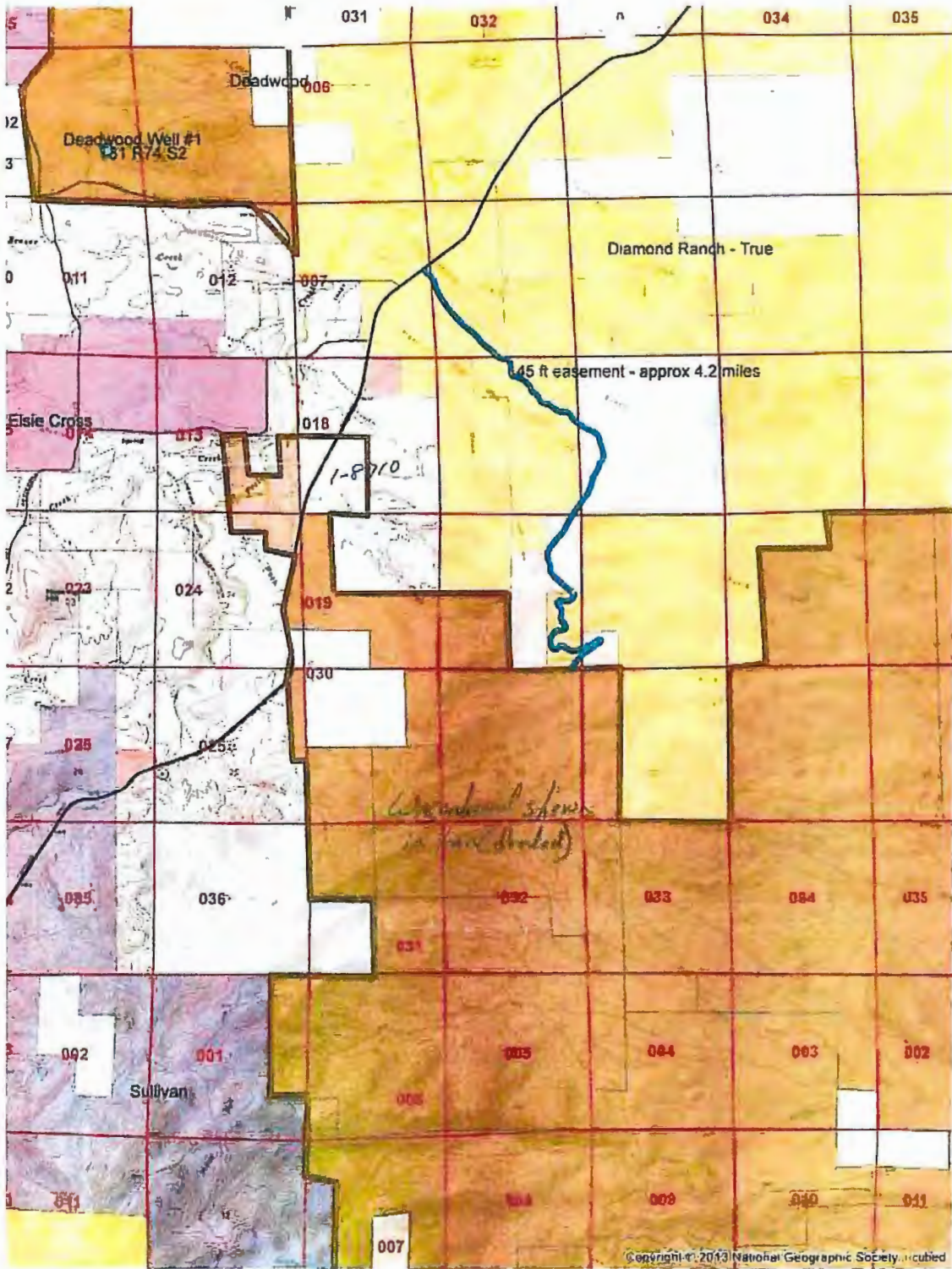
RZ-1-8710
I-31-73



Fence — Highways
County Road

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Date: 9/28/2018
By: Cole Lambert



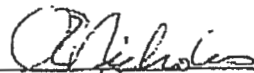
RESOLUTION

The following is a Resolution duly adopted by Wagonhound Land & Livestock Company, LLC, a Wyoming limited liability company, the sole member of Western Equity, LLC, a Wyoming limited liability company, (the "Company"):

RESOLVED, that Dustin Ewing is hereby appointed as General Manager of the Company to serve in such capacity until he is removed by the sole member of the Company or otherwise terminates his employment with the Company, and to have such duties and responsibilities as shall be determined by the sole member of the Company, including but not limited to authority to execute, deliver, file and otherwise take action with respect to the transfer and exchange of real property by the Company.

DATED effective this 28th day of February, 2014.

Wagonhound Land & Livestock Company, LLC
a Wyoming limited liability company, by AEN,
LP, a California limited partnership - sole member
of Wagonhound Land & Livestock Company,
LLC as sole member of Western Equity, LLC

By: 
Arthur E. Nicholas, Manager of AEN, LLC,
a California limited liability company,
General Partner of AEN, LP

STATE OF WYOMING

APPLICATION TO LEASE STATE LANDS
FOR GRAZING AND AGRICULTURAL PURPOSES

THIS APPLICATION MUST BE COMPLETED IN FULL OR IT WILL NOT BE ACCEPTED

TO: THE OFFICE OF STATE LANDS AND INVESTMENTS, Herschler Building, Cheyenne, Wyoming 82002-0600. Pursuant to the provisions of Wyoming Statutes 36-5-101 to 36-5-113 and amendments subsequent thereto, the undersigned hereby makes application to lease the lands described below for a term not exceeding ten years:

EXPIRING LEASE IS HELD IN THE FOLLOWING NAME:

IF YOU ARE APPLYING FOR THE LEASE IN ANOTHER NAME OR YOU ARE NOT THE CURRENT LESSEE, PLEASE INDICATE HOW THE LEASE IS TO BE HELD. (NOTE: IF YOU ARE THE CURRENT LESSEE AND ARE REQUESTING A NAME CHANGE, YOU WILL BE REQUIRED TO COMPLETE A LEASE ASSIGNMENT FORM IN ACCORDANCE WITH WYOMING STATUTES 36-5-105)

JEAN T. LEMAN

(Fill in exactly as you want name shown on lease)

DESCRIPTION OF LANDS APPLIED FOR:

Acres	Description	Sec.	Twp	Range	Co.
146.95	Lots 3, 4 : E2SW4	18	31	73	Converse

TOTAL 146.95 ACRES WITH 34 ANIMAL UNIT MONTHS OF FORAGE

(1.) (a.) Is the applicant a: Limited partnership? General partnership? Corporation? Other: Individual
Is the applicant qualified under the laws of the State of Wyoming to do business and is it registered with the Wyoming Secretary of State? Yes No

(b.) If the applicant is an individual, are you a citizen of the United States? Yes No If no, have you declared your intention to become a citizen? Yes No

(2.) Are you the owner, lessee, or lawful occupant of lands adjoining the lands applied for? Yes No If you are not the owner, lessee, or lawful occupant of lands adjoining the lands applied for, do you have legal access, or can you acquire legal access to the state lands? Yes No Please list those parcels of state land that you do not have legal access to and cannot acquire legal access to: _____

(3.) Do the state lands applied for have legal public access? Yes No
Please list those sections of state land that have legal public access: Section 18

(4.) Do you have actual and necessary use for the land and its forage? Yes No
If yes, how do you anticipate grazing on this lease: Continuous (Year Round)
Seasonal (check all that apply): Spring Summer Fall Winter
Rotational (please describe): We plan to graze in summer year one (1), graze in the fall year two (2), Do not graze in year three (3) repeat
If your grazing lease is part of a federal grazing allotment, please provide the allotment name(s): N/A

If this is an agricultural lease, list what types of crop(s) to be grown on the state land (including hay): No crops are to be grown. This is a native dry land lease.

Will you irrigate the state land? Yes No If Yes, please describe your method of irrigation: _____

(5.) How many head of livestock, by type, do you own?
Horses? _____ Cattle? 20 + 1 Sheep? _____ Other? _____ Totals: _____

(6.) Are the state lands fenced in with other lands that you own or control? Yes No
Are they fenced separately? Yes No

EXHIBIT
S-19

- (7.) Do the lands contain stock or irrigation water? Yes How many months each year? Year Round
 In what form? Wells X Springs X Reservoirs _____ Creeks or Rivers (names): _____
- (8.) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? Yes No
 Do you plan to enter into a sublease or pasture agreement in the future? Yes No
- (9.) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? Yes No
 Describe: There is some evidence of hounds tongue in spots.
 If YES, have you participated in control efforts through the County Weed & Pest Control District? Yes
- (10.) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? If so, please describe and give approximate location: Note that I am aware of it this time.
- (11.) Are there any improvements located on the lands applied for? Yes No If YES complete the following Improvement Section of the application.
- (12.) IMPROVEMENTS: ("Contributory Value" means the increased value of the property after the lessee's improvements are considered) If you are the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of improvements. It is important that you provide an estimate should a conflicting application be filed, or should a decision be made to nominate the land for sale during the term of the lease.

KIND OF IMPROVEMENT	NUMBER	LOCATION	ESTIMATED CONTRIBUTORY VALUE
DWELLINGS			
BARNs			
SHEDS			
CORRALs			
RESERVOIRs			
IRRIGATION DITCHES			
WELLS			
FENCES (MILES)			
OTHER (Specify)			
Total Estimated Contributory Value			\$

DEPOSIT FOR IMPROVEMENTS: If you are not the owner of the improvements located upon the lands applied for, use your best judgment in calculating the contributory value of the improvements and remit a deposit equal to your contributory value estimate; as required by law.

13) THIS APPLICATION MUST BE ACCOMPANIED BY THE FIRST YEAR'S ANNUAL RENTAL AND REQUIRED FEES, AS SET FORTH BELOW:

ANNUAL RENTAL \$210.12
 APPLICATION FILING FEES 50.00 (non-refundable)
 TOTAL REMITTANCE \$260.12

ANNUAL RENTAL OFFER IF OTHER THAN SPECIFIED ABOVE OR IF FILING A CONFLICTING LEASE APPLICATION:

ANNUAL RENTAL 348.84
 APPLICATION FILING FEES 50.00 (non-refundable)
 TOTAL REMITTANCE 398.84

Date 12/10/18
 Check No. 3139
 Amount \$398.84

\$10.26 / ACUM

TOWNSHIP <u>31</u> N						TOWNSHIP <u>31</u> N					
RANGE <u>74</u> W						RANGE <u>73</u> W					
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
-6-	-5-	-4-	-3-	-2-	-1-	-6-	-5-	-4-	-3-	-2-	-1-
-7-	-8-	-9-	-10-	-11-	-12-	-7-	-8-	-9-	-10-	-11-	-12-
-18-	-17-	-16-	-15-	-14-	-13-	-18-	-17-	-16-	-15-	-14-	-13-
-19-	-20-	-21-	-22-	-23-	-24-	-19-	-20-	-21-	-22-	-23-	-24-
-30-	-29-	-28-	-27-	-26-	-25-	-30-	-29-	-28-	-27-	-26-	-25-
-31-	-32-	-33-	-34-	-35-	-36-	-31-	-32-	-33-	-34-	-35-	-36-
TOWNSHIP <u>30</u> N						TOWNSHIP <u>30</u> N					
RANGE <u>74</u> W						RANGE <u>73</u> W					

IMPORTANT: SHOW THE FOLLOWING ON THE ABOVE PLAT:

1. Location of state lands applied for.
2. Location of your deeded lands.
3. Location of your other federal, state, and private leased lands.

THE APPLICANT HAVING MADE STATEMENTS HEREIN FOR THE PURPOSE OF OBTAINING A LEASE FROM THE STATE OF WYOMING AGREES THAT IF AWARDED A LEASE UPON ANY PART OF SAID LANDS HE WILL COMPLY WITH ITS COVENANTS AND WITH THE RULES AND REGULATIONS OF THE BOARD OF LAND COMMISSIONERS RELATING THERETO. THE EXECUTION AND DELIVERY OF A LEASE BY THE BOARD SHALL BE CONSIDERED AN ACCEPTANCE OF SAID APPLICATION.

BY ACCEPTING THIS LEASE OF STATE LAND, THE LESSEE AGREES TO PROVIDE OR MUST EXERCISE HIS BEST EFFORTS TO OBTAIN REASONABLE YEAR-ROUND INSPECTION AND MANAGEMENT ACCESS TO THE BOARD OF LAND COMMISSIONERS AND ITS AGENTS WHEN REASONABLE PUBLIC ACCESS IS NOT OTHERWISE AVAILABLE. SUCH ACCESS WOULD EITHER BE ACROSS THE LESSEE'S ADJOINING DEEDED LAND OR ADJACENT LANDS NOT OWNED BY THE LESSEE THROUGH THE USE OF ANY ACCESS RIGHTS HELD BY THE LESSEE, IF THE OTHER LANDOWNER IS AGREEABLE.

(Application must be signed by applicant and all co-applicants. If a corporation, application must be signed by an authorized officer.)

DATED Nov. 30, 2018 (SIGN) John T. Leman

(SIGN) _____
(SIGN) _____
(SIGN) _____

RENTAL NOTICES TO BE MAILED TO: John T. Leman
(THIS SECTION MUST BE COMPLETED) (NAME)
69 Moss Agate Rd
(ADDRESS) Douglas, WY 82633
(307) 358-8364
(PHONE)

THE ATTACHED PLAT MUST BE COMPLETED WITH THE REQUIRED INFORMATION OR YOU MAY ATTACH A RANCH OR QUAD MAP

**DIRECTOR'S DECISION
OFFICE OF STATE LANDS AND INVESTMENTS**

LEASE NO.: 1-8710 COUNTY: Converse
TOTAL ACRES: 146.95 TOTAL AUM's: 34
LEGAL DESCRIPTION: Township 31 North, Range 73 West, 6th P.M.
Section 18: Lots 3, 4 : E2SW4
MINIMUM ANNUAL RENTAL: \$210.12

This vacant land was advertised in the Douglas Budget on November 14, 2018. Applications by sealed bid were accepted by the Office through December 7, 2018.

THE FOLLOWING CONFLICTING APPLICATIONS HAVE BEEN RECEIVED

Wagonhound Land & Livestock Company, LLC
PO Box 1100
Douglas, WY 82633

APPLICATION RECEIVED:	November 29, 2018
DEPOSIT FOR IMPROVEMENTS:	No
QUALIFIED TO LEASE:	Yes
WYOMING RESIDENT:	Corporation is authorized to do business in Wyoming
ACTUAL USE OF LAND:	Grazing
OWNER/LESSEE/OCCUPANT OF ADJOINING LAND:	Yes
PRIOR LESSEE PREFERENCE:	No
RENTAL OFFER:	\$1,360.00 per year or \$40.00 per AUM

John T. Lemay
69 Moss Agate Road
Douglas, WY 82633

APPLICATION RECEIVED:	December 3, 2018
DEPOSIT FOR IMPROVEMENTS:	No
QUALIFIED TO LEASE:	Yes
WYOMING RESIDENT:	Yes
ACTUAL USE OF LAND:	Grazing
OWNER/LESSEE/OCCUPANT OF ADJOINING LAND:	Yes
PRIOR LESSEE PREFERENCE:	No
RENTAL OFFER:	\$348.84 per year or \$10.26 per AUM

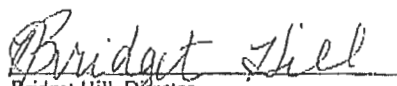
DIRECTOR'S DECISION:

The Director conditionally awards the 146.95 acres in conflict to Wagonhound Land & Livestock Company, LLC for a term from February 7, 2019 to January 1, 2029 at the annual rental of \$1,360.00 based on the highest rental offer received.

Wagonhound Land & Livestock Company, LLC is given fifteen (15) days from receipt of notice by certified mail to file their acceptance in writing to this decision.

Thirty (30) days are provided by law for the appeal of this decision to the Board of Land Commissioners, said appeal should be made in writing and filed with the Office of State Lands and Investments. If no appeal is filed within thirty (30) days from receipt of notice by certified mail, this decision will become final when approved by the Board of Land Commissioners. In case of appeal, notice will be given to the applicants of the date of hearing.

DATED AT CHEYENNE, WYOMING this 17th day of December, 2018.


Bridget Hill, Director
Office of State Lands and Investments

**EXHIBIT
S-20**

Keith Burron, WSB # 5-2884
The Burron Firm, P.C.
1695 Morningstar Rd.
Cheyenne, WY 82009
307-631-7372 (Phone)
keith@burronlaw.com

Attorney for Objector, John T. Leman

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710:)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

vs.)

STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

And,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent.)

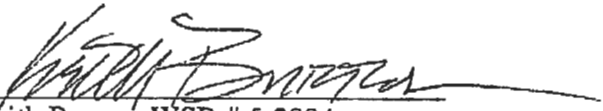
OBJECTOR JOHN T. LEMAN'S SUPPLEMENTAL EXHIBIT DESIGNATION

Objector, John T. Leman, through undersigned counsel, hereby supplements his exhibit list in the above-captioned matter to add Exhibit M.

Exhibit M is an email chain between Mr. Leman and an employee of the OSLI from 2010. Mr. Leman has advised undersigned counsel that the exhibit was not discovered prior to the filing of Leman's prehearing disclosure, as it predated the date on which Mr. Leman acquired his interest in the lands adjoining Lease 1-8710 and it is a copy of the email that he printed in 2010, as his email from that timeframe is no longer accessible to him electronically. Mr. Leman has also advised that to the best of his recollection, he did not come across the email chain in the OSLI's file for either Lease 1-8710 or 1-8820 when Mr. Leman reviewed those files earlier this year at OSLI's offices, and that he discovered the email in a paper file of his on Friday October 11th.

A copy of Exhibit M is attached hereto.

Respectfully submitted this 14th day of October, 2019.


Keith Burron, WSB # 5-2884
The Burron Firm, P.C.
1695 Morningstar Rd.
Cheyenne, WY 82009
307-631-7372 (Phone)
keith@burronlaw.com
Attorney for Objector, John T. Leman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 14, 2019 a true, full and correct copy of the foregoing Identification of Additional Exhibit was filed by hand delivery of the original to the Office of State Lands and Investments at the address below and served by placing a copy in the U.S. Mail, First Class, postage prepaid and addressed as follows, and via email to the addresses indicated:


Office of State Lands and Investments (Original-Filed by Hand Delivery)
Jason Crowder, Assistant Director – Trust Land Management Division
Herschler Bldg., 1E
122 W. 25th Street
Cheyenne, WY 82002

Attn: Tania S. Hytrek, Hearing Examiner (Served US Mail)
State of Wyoming
Office of Administrative Hearings
Cheyenne, WY 82002-0270
Emailed to dawn.haranelas@wyo.gov

William L. Hiser (Served US Mail)
P.O. Box 971
Laramie, WY 82073-0971
Emailed to: W.Hiser@brownandhiser.law
[Attorney for Respondent Wagonhound Land & Livestock Co.]

Megan Pope (Served US Mail)
Senior Asst. Attorney General
2424 Pioneer Avenue, Third Floor
Cheyenne, WY 82002
Emailed to: megan.pope@wyo.gov
[Attorney for Office of State Lands and Investments]

David Robinson (Served US Mail)
Assistant Attorney General
2424 Pioneer Avenue, First Floor
Cheyenne, WY 82002
Emailed to: david.robinson@wyo.gov
[Advising Attorney for Board of Land Commissioners]


Keith Burron

John Leman

From: Van Hatten, Jamie [Jvanha@wyo.gov]
Sent: Wednesday, October 06, 2010 8:10 AM
To: John Leman
Subject: RE: State Land Leases

Mr. Leman,

I was able to locate the cancelled file yesterday. Since the land is vacant we have to go through the process and we are unable to reinstate the lease. Sorry. I did put your information in the file so when we do advertise we will have it.

Jamie Van Hatten
Lands Management Program Supervisor
Office of State Lands and Investments
State of Wyoming
(307) 777-6637

From: John Leman [mailto:johnle@cnchd.org]
Sent: Tuesday, October 05, 2010 2:27 PM
To: Van Hatten, Jamie
Subject: RE: State Land Leases

Dear Ms. Hatten,

Thank you for your response. I thought that I would ask the following question. If Mr. Raubach was able to produce the document indicating that he indeed had the lease as well as when it expired, would your office be able or willing to reinstate the lease in his name and save on the expense of advertising the lease provided that he was willing to pay for the time from when it expired to the present?

I was just curious in the interest of saving time and expense on the part of your office and staff demands.

Thanks again for your time.

Respectfully,

John T. Leman

From: Van Hatten, Jamie [mailto:Jvanha@wyo.gov]
Sent: Tuesday, October 05, 2010 1:28 PM
To: John Leman
Subject: RE: State Land Leases

Mr. Leman

Thank you for your e-mail. When that was under a grazing lease becomes vacant, the process for re-leasing requires that this Office advertise the land in the county where the land lies. We usually advertise in the largest paper in the county, which is close to where the land is located. We usually advertise it for approximately 20 days and accept applications by sealed bid. Once we have the applications, they are reviewed and a lease awarded. The lease will be issued for a ten year term. Because you have expressed an interest in this state land, when we advertise it I will provide you with a copy of the ad, an application and a sealed bid envelope. Prior to advertising this Office needs to inspect the property to determine the carrying capacity for rental purposes, see if there are any improvements that were not removed by the prior lessee and assess the general condition of the land.

Unfortunately, due to staff time demands that take priority, we do not get the land advertised as quickly as we would like. Don't look for this to be advertised until sometime in early 2011. We will, however, keep your

00065

10/20/2010

Exhibit M-page 1

information on file and advise you when it is advertised.

Jamie Van Hatten
Lands Management Program Supervisor
Office of State Lands and Investments
State of Wyoming
(307) 777-6637

From: John Leman [mailto:johnle@cnchd.org]
Sent: Tuesday, October 05, 2010 10:51 AM
To: Van Hatten, Jamie
Subject: State Land Leases

Dear Ms. Van Hatten,

My name is John Leman. I live in the Douglas, Wyoming area. I just spoke with Brenda in your office regarding some state leases of which there are no lease numbers assigned. She recommended that I contact you for further information and direction.

We are currently in negotiations to purchase the deeded land around the subject area. In my conversations with the deeded land owner, Rodger A. Raubach,, he stated that he used to have the state leases; however, he did not keep up with the renewal process and that they have since gone back to the state. I would be interested in securing all of the state leases he used to have as it fits in with the deeded lands we are seeking to purchase.

The legal description in which the state lands of question are located is as follows:

Township 31 north, Range 73 West of the 6th P. M. Converse County Wyoming
Section 19:
Section 30:

Township 31 north, Range 74 West of the 6th P. M. Converse County Wyoming
Section 24: (East of Highway 91)

I look forward to hearing back from you regarding what I need to do to secure these state leases.

My contact information is as follows:

John T. Leman
69 Moss Agate Rd.
Douglas, WY 82633

Phone Number: (307) 358-8369
Cell Number: (307) 277-1601

Thank you in advance to your attention to this matter.

Respectfully,

John T. Leman

E-Mail to and from me in connection with the transaction of public business is subject to the Wyoming Public Records Act and may be disclosed to third parties.

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.445 / Virus Database: 271.1.1/3176 - Release Date: 10/04/10 06:35:00

00066
10/20/2010

Exhibit M-page 2

Excluded from release under exemption (b) (7) - (C), subject to the provisions of the Minnesota Public Records Act and may be disclosed to third parties.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.448 / Virus Database: 271.1.1/3180 - Release Date: 10/06/10 06:34:00

Keith Burron, WSB # 5-2884
The Burron Firm, P.C.
1695 Morningstar Rd.
Cheyenne, WY 82009
307-631-7372 (Phone)
keith@burronlaw.com

Attorney for Objector, John T. Leman

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710:)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

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STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

And,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent.)

**OBJECTOR JOHN T. LEMAN'S WRITTEN CLOSING STATEMENT AND
MEMORANDUM ON BURDEN OF PROOF**

Objector, John T. Leman (“Leman”), through undersigned counsel, hereby files his closing statement and memorandum on the burden of proof.

BURDEN OF PROOF

OSLI has the burden of proof in this matter because it is the proponent of the Director’s Decision in this lease matter and the director is charged by regulations with defending the decision before the Board. *Wyo. Stat. § 36-3-102 (a) and (c); Board Rules, Ch. 1 § 9*. Further, requiring the director to bear the burden of defending the conditional decision is consistent with *Penny v. State ex rel. WY Mental Health Prof. Lic. Bd.*, 2005 WY 117, 120 P.3d 152, 161 (2005) (generally “proponent of an order has the burden of proof, and “in general, an agency is the proponent of its orders.” (internal citations omitted)); see also, *JM v. Dep’t of Family Servs.*, 922 P.2d 219, 221(Wyo. 1996) (“When the statutes do not assign the burden of proof, the proponent of the order has both the initial burden of production and the ultimate burden of persuasion in a contested case.”) Since no statute assigns the burden of proof in this matter and the director must defend her decision before the Board, OSLI has the burden of proof.

CLOSING STATEMENT

Leman presented evidence on two issues at the hearing: First, that Wagonhound’s application for Lease 1-8710 should be rejected due to misrepresentations in its application. Second, that Leman is entitled to a preference under Wyo. Stat. § 36-5-105(b) because Leman demonstrated actual and necessary use for the land and Wagonhound did not.

Several unwritten practices and/or policies employed by OSLI prejudiced Leman in his efforts to obtain Lease 1-8710 and benefitted Wagonhound’s leasing efforts. Among these were: (1) Helping Wagonhound obtain grazing Temporary Use Permits (TUPs) on the lease for 8 years, while never advising Leman of the TUPs and without verifying that they were being used;

(2) Using an inappropriate standard for determining “actual and necessary use” for land under Wyo. Stat. § 36-5-105(b); (3) Determining that *only 3 of the 13 questions* on the Board’s lease application form are material; and (4) Ignoring the Board’s legal interpretation that the preference statute must be applied “in all cases”, and instead contending it is only used as a tiebreaker. Leman discusses the problems with these practices and policies below.

Specific Evidence Relating to Misrepresentation:

There is significant evidence that Wagonhound misrepresented facts in its application. Such misrepresentations provide grounds for the Board to reject the application. Wyo. Stat. § 36-5-113 provides that the Board “shall have the power and authority to cancel leases procured by fraud, deceit or misrepresentation. . . .” The Board’s leasing regulations provide that “[a]ny false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.” *Bcl. Rules, Ch. 4 § 5(a)*. Chapter 4 § 12 of the rules similarly provides:

The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Evidence from the hearing demonstrates that Wagonhound’s application contained false and misleading information and that such information was not merely inadvertent. Wagonhound is a sophisticated, large landowner interested in growing its land base. It’s interest in securing land is evidenced by its 250,000 +/- acre and growing land holdings. *Audio Transcript, Ewing, PM recording 2:26:24-2:27:11*. (Audio transcripts hereafter referred to by “AM” or “PM and hr:min:sec.) It holds approximately 25,000 acres of state grazing leases. *Ex I*. Its desire to control more land is also demonstrated by its willingness to pay \$40.00/aum—approximately

650% of the market rate calculated by OSLI—for the lease. *Ex. C, p. 2; Ex. J; and Crowder testimony, AM at 1:23:36-1:24:50* (\$40.00/aum is “one of the highest for sure” amounts for a state lease, other Wagonhound state leases are at the minimum in the \$6-\$7 range.)

The specific misrepresentation Leman alleges relates to Question 6 on the State’s lease application form, which asks an important question: “*Are the state lands fenced in with other lands you own or control.*” Wagonhound answered “yes”, which Leman contends is a material misrepresentation. The question must be viewed in the context in which it is intended, which is to determine whether a party controls the parcel from a land management perspective.

Wagonhound spent considerable effort at the hearing trying to evade and obfuscate the plain and well-understood meaning of “fenced in”. These efforts were primarily premised on the fact that Wagonhound owns a small portion of land fenced in with Leman’s operation in the NWNW of Section 19. Lands fenced within Leman’s control include: Lands owned by Leman, lands leased by Leman from Z-Holdings, all of Lease 1-8710 on the east side of the highway, the northwest portion of Lease 1-8710 on the west side of the highway, and a small portion of Wagonhound land fenced in with those lands in the NWNW of Section 19. *See Ex G and Ex. 2.*¹

Wagonhound’s witness acknowledged that grazing on the small portion of Wagonhound land within that fencing on the east side of the highway has been conducted by Leman and that to

¹ The majority of Lease 1-8710, and a small parcel of Wagonhound land is fenced in with lands Leman owns or controls. The only arguable exception to the lease being fenced within Leman is on the small sliver of property on the west side of the highway, adjacent to the “Corbett” property that Wagonhound acquired in November of 2017. An unmaintained fence exists at the western border of the state land where it meets the Corbett parcel. *Ex. H & G.*

change that situation would require moving fences. *Ewing, PM 2:18:41-2:19:46*. Thus, when Leman puts cattle on his Z-Holdings lease, they have access to the state lease and the small portion of Wagonhound land within the fenced area, since those lands are “fenced in” with Leman’s lands.

At the hearing, Wagonhound rephrased the wording of Question 6 to suit its arguments. Questioning by Wagonhound counsel starting at *PM 2:03:23* illustrates this: Q: “Question 6 has been asked and discussed and so my first question to you is ‘*does Wagonhound own lands fenced in with the state lands in this case*?’” Shortly after, counsel asks “let’s start with the vertically striped lands [Wagonhound’s lands fenced in with Leman]; do you believe that land that’s owned by Wagonhound *is fenced in with the state lands* for which you applied for the lease?”

But *Question 6 does not ask if the applicant has lands fenced in with the state lands, but instead asks if the state lands are fenced in with the applicant's lands*. The distinction is critical as evidenced by Mr. Ewing’s testimony under cross-examination: Q: “The state lease on the east side of the highway, would you agree with me is not fenced in with your deeded lands...?” A: “I would say not entirely. On the south side there’s a fence [which is the Leman controlled area boundary] *all I gotta do is put roughly a mile fence to complete it*.” Mr. Ewing similarly agreed that the lands on the east side of the highway are not currently fenced in with Wagonhound’s land. *Ewing PM 2:17:55 to 2:18:44*; and *PM 1:53:03-1:53:33*. (Mr. Ewing testifying that he realized that “the 8710 on the north end was not totally fenced within ours...”) Mr. Ewing also acknowledged Mr. Leman’s cattle graze on the lands east of the highway and agreed that control of livestock is by fence lines. *Ewing, PM 2:19:26 - 2:20:06*. Finally, Wagonhound’s *Exhibit 1* admits that 1-8710 is not fenced in as Wagonhound stated in its application, by designating where “required fence” would be needed to fence in the lease with Wagonhound.

Wagonhound's admission that it cannot use the state lease without fencing it demonstrates that Wagonhound understands the distinction between asking whether their land is fenced in with the lease, or whether the lease is fenced in with their land. The answer to Question 6 is established by Wagonhound's admission that it *could not*, and in fact *did not*, use 1-8710 since it was not fenced in with land they own or control.

The witnesses who testified at the hearing all agreed that the party whose fencing encloses a parcel controls the parcel, which is the essence of Question 6. *See, Ewing: PM 2:17:35-2:19:46* (1-8710 not fenced in with Wagonhound on east side of highway, referring to his map, Ex. 1, which shows "required fence" that would be needed to fence the land in with Wagonhound; also testifying it is Leman's cattle that are on the portion of the lease on the northern portion west of the highway and all of the east side of the highway due to the fencing configuration); and *Jones PM 1:34:00 –1:39:15* (Wagonhound does not control the lands fenced in with Z-Holdings, Leman and the State that Leman controls; and *Jones PM 1:39:40 – 1:43:18* (the person enclosing property with fencing is generally in control, and the State's fencing statute, Wyo. Stat. § 1-28-101, definition for owner is consistent with that general proposition); *Leman PM 26:50-27:30* (no fence around 1-8710 to separate the state lease from lands Leman controls; Wagonhound would have needed to fence to use the TUP to keep cattle separate from Leman's.)

The testimony established that with the arguable exception of the small sliver of land on the west side of the highway (that has the old unmaintained fence separating the Corbett parcel from the lease), the state lease is fenced-in with lands Leman owns or controls and is not fenced in with lands Wagonhound owns or controls.

Further supporting the evidence of misrepresentation in the answer to Question 6 are the Wagonhound TUP applications. Wagonhound's testimony was that around 2010 or 2011, they received assistance from an OSLI staff member to obtain a TUP. *Ewing, 1:47: 10-1:49:50*. The plan included combining 2 separate vacant leases, 1-8710 and 1-8820, into a single TUP. See applications in TUP's, *Ex. S-1, S-3, S-5, S-7, S-9, S-11, S-13, S-15* (listing the legal descriptions of both leases in 2011, then both lease numbers in all subsequent applications). Wagonhound later unsuccessfully attempted to acquire the property around 1-8710, that Leman's lessor, Z-Holdings, purchased in 2012. *Ewing, PM 1:50:00-1:50:07; Leman PM 03:00-03:33* (January 2012 acquisition by Z-Holdings). Despite failing to acquire the property Z-Holdings purchased in 2012 adjacent to 1-8710, and although Wagonhound had no access to 1-8710 due to the fencing, Wagonhound did not drop 1-8710 from the TUP, but instead continued from 2012 through 2018 to include 1-8710 in the TUP along with 1-8820.

Combining the leases in the TUP, followed by continuing to keep 1-8710 in the TUP even after Wagonhound's unsuccessful attempt to buy the Z-Holdings parcel in 2012, further evidences the misrepresentation Leman alleges. In its first TUP application for 1-8710 in 2011 (prior to the Z-Holdings purchase), Wagonhound represented to the state that it would do "fencing if needed" on the TUP lands. *Ex. D*. Later, in its 2016 TUP application, Wagonhound explicitly stated that the "lands are fenced within existing deeded lands" and attached a map purporting to depict "Wagonhound pasture" that depicted all of Lease 1-8710 east of the highway as Wagonhound's pasture. *Ex. E*. But by the time of the 2016 TUP application, Z-Holdings had owned the land adjacent to 1-8710 for 4 years. The undisputed testimony of all witnesses established that there was no pasture use occurring by Wagonhound and no fencing enclosing the 1-8710 within Wagonhound deeded lands on the east side of the highway where

Wagonhound's TUP map depicted its pasture. Instead, these lands were all being controlled by Leman and had been since Z-Holdings acquired the surrounding lands in 2012. *Leman PM 03:00-03:33*. Why, then, would Wagonhound, after failing to purchase the Z-Holdings lands in 2012, assert in its 2016 application that the state lease that is fenced within the Z-holdings/Leman lands was "fenced in" with Wagonhound deeded lands and present a map depicting it as such?

Wagonhound attempted to explain away this discrepancy at the hearing, but the reasoning provided—that the map was merely trying to show how things would look if they had the lease or if everything was in place—rings hollow. At the time it made its 2016 TUP application, Wagonhound had already held a TUP on 1-8710 for 5 consecutive years and presumably had every expectation it would be renewed for 2016. It had failed four years prior to acquire the Z-holdings lands within which 1-8710 is fenced. As such, Wagonhound had no reason to seek a TUP for grazing on 1-8710 at the time it represented the lands were "Wagonhound pasture" and stated they were fenced in with Wagonhound's deeded lands. Also, recall that Wagonhound did not acquire the Corbett lands west of the highway adjacent to the lease until November of 2017, and no Wagonhound use on the sliver west of the highway occurred until 2018. *Ewing, PM 2:12:32-2:13:08*. Thus, there was no reason to hold 1-8710 in the TUP along with 1-8820 after 2012, at least not for legitimate grazing reasons. But keeping 1-8710 in the TUP allowed Wagonhound to maintain an inaccurate impression that it exercised grazing control over the lease. Stating that the lease was fenced in with its deeded lands and mapping it as "Wagonhound pasture" in the 2016 TUP misrepresented the situation on the ground, and that same assertion was then repeated in Wagonhound's response to Question 6. *Ex. E and Ex. C*.

Nonetheless, the State argues that Question 6 is immaterial, so any misrepresentation about that question didn't affect the outcome, so it's not grounds for disqualifying the application. This argument suffers from several flaws. First, Wyo. Stat § 36-5-103 mandates that the lease application form be approved by the Board. The Board-approved form contains *13 questions*. Of these questions, OSLI's witness testified that there are only *3 questions* that are "material" to the application: #1 (applicant status), #4 (actual and necessary use), and #13 (rental amount). *Crowder, AM 36:26-37:29*. Using OSLI's logic, an applicant could apparently misrepresent information on any of the other 10 questions on the form because they are ostensibly immaterial, and it would not be a basis for rejecting the application.

But Mr. Crowder also testified that the other 10 questions are important for the state's management decisions. *Crowder AM 1:26:26-1:26-49*. If they are important for management decisions, they are clearly not immaterial. Further, Mr. Crowder agreed leasing is on somewhat of an honor system, and that the provisions of law that provide for rejection of an application for false and misleading information reflects the honor system policy and if an applicant is not going to provide accurate information, they are not entitled to a lease. *Crowder AM 1:19:24-1:20:46*.

The Board's application form is an important litmus test to establish qualification of applicants and to aid in the management of state lands. To disregard 10 questions on the Board's form as "immaterial" cannot be harmonized with the testimony that the questions are important for managing state lands. If the OSLI's materiality policy were followed by the Board, it would usurp much of the Board's ability to enforce the remedies intended for addressing misrepresentations in applications that are expressly allowed by statute and regulation.

Mr. Crowder ultimately agreed that the lease was in fact fenced in with Leman, (except the sliver west of the highway abutting the Corbett place). See generally, *Crowder, AM 1:08:23-*

1:09:45, and AM 1:14:50-1:15:15 (Q: “So, you’re saying that your testimony is that it’s fenced in with Leman, but that’s not material to the Office’s decision, is that fair?” A: “That’s correct.”); AM 1:18:00-1:18:31 (Q: “The vast majority of the lease is fenced in with Leman, correct?” A: “Correct.”)

Mr. Crowder also testified that he agreed that the map from Wagonhound’s 2016 TUP application (Ex. E), “would intend to depict what Wagonhound is representing to your Office as being their pasture”, and that it “indicates what they wanted to represent to us as far as to where the pasture was eastside of the highway”. Mr. Crowder also agreed that the 2016 Wagonhound TUP map did not depict the actual fencing configuration based on the maps generated through OSLI inspector Mr. Lambert. *Crowder, AM 1:15:44-1:16:44*. From this testimony, the Board can infer that the TUP map was misleading and depicted a configuration for grazing control that did not exist on the ground and was a misrepresentation of the facts. The fact Wagonhound made that same assertion in Question 6 of its lease application permits an inference that the misrepresentation was not a mere oversight.

Undoubtedly, materiality is a question the Board is entitled to determine independently. The three separate references in statutes and regulations pertaining to false or misleading information speak to the importance of applicants providing accurate information. The evidence supports a finding that Wagonhound misrepresented facts in its 2016 TUP application and repeated them in its lease application in Question 6. Rephrasing Question 6 at the hearing conveniently obfuscated the issue but does not change the underlying facts or the clear intent of Question 6.

Specific Evidence Relating to Actual and Necessary Use and the Preference Statute:

Leman also contends he has a preference over Wagonhound based on the vacant lease preference statute. Wyo. Stat. § 36-5-105(b) requires that a preference be given in leasing vacant

land to applicants having actual and necessary use for the land. Leman contends that by using two unwritten policies and/or interpretations unsuited to resolving conflicting lease applications, OSLI improperly determined that the preference statute did not apply in this case.

First, OSLI never considered the preference statute in this case because, despite the Board's unequivocal legal interpretation in the *Barlean's Organic Oil's* summary judgment order (Ex. K), the Office relied on its contrary interpretation that the statute only applies as a tiebreaker when bids are equal. In the *Barlean's* order, the Board held that "[p]reference must be given in all cases, not only when there are even bids." *Exhibit K, p. 6 ¶11*. At the hearing, Mr. Crowder took the view that the Board's legal mandate in *Barlean's* was not binding on the office here and that because the bids were not equal, the preference statute does not apply. *Crowder AM 39:33-43:52*. Such reasoning is legally faulty because the Board is the agency that issues leases and if it interprets a statute, OSLI is bound to apply that interpretation, not its own conflicting interpretation. Because OSLI applied its own contrary interpretation in this case, it never considered the preference statute to be implicated. *Id.*

Second, OSLI follows an unwritten policy for determining "actual and necessary use" for the land under the preference statute. Under OSLI's unwritten policy, merely *owning livestock*, or even *intending* to own livestock, or *intending to sublease to someone that intends to own livestock*, passes the "actual and necessary use" test. *Crowder testimony, AM 25:03-25:35*. Other factors, (e.g., proximity of the land to other lands controlled by the applicant, the size of the parcel, fencing in relation to adjacent lands, land management considerations, actual use, fact-specific issues such as those raised by Leman here, etc.), are not considered under the OSLI's unwritten policy. The OSLI policy that focuses solely on livestock ownership sets the bar so low it renders the preference essentially meaningless by not allowing consideration of any

other legitimate factors relating to actual and necessary use for the land. The Board is not bound by OSLI's unwritten policy and has "large discretion" to determine what constitutes actual and necessary use under the statute. *Frolander v. Hsley*, 264 P.2d 790, 794 (Wyo. 1953).

Specific evidence adduced at the hearing establishes that Leman has actual and necessary use for the land and Wagonhound does not. As discussed above, the state lease is fenced in with lands controlled by Leman and Leman's cattle have had access to the land because it is not fenced separately. Further, observing on a map where the lease lies in relation to other lands Leman owns or controls makes it easy to see how the lease "fits" with the balance of Leman-controlled property. *See Ex. G*. Also, no party disputed Leman's actual and necessary use.

By contrast, Wagonhound concedes that despite holding TUPs on the lease for 8 consecutive years, it never once placed cattle on the parcel during the years 2011-2017, and only had cattle on the small sliver west of the highway where the unmaintained fence is located adjacent to the Corbett property starting in 2018. *Ewing, PM 2:12:25-2:13:08*. Wagonhound's witness confirmed that Wagonhound had no intention of grazing the parcel during the TUP years but paid for them on the hope that they would acquire other lands in the area in the future. *Ewing, PM 2:13:09-2:13:56*. Speculating on future acquisition of land is not a showing of actual and necessary use. Instead, by intentionally failing to use the lease for grazing during the 8 years it held TUPs, Wagonhound demonstrated it *did not* have actual and necessary use for the land.

Wagonhound tried to explain away its non-use of 1-8710 by saying that it couldn't justify the cost of fencing the land for just a TUP. *Ewing PM 2:10:50-2:11:07*. The Board should view that testimony with skepticism for three reasons. First, Wagonhound held the TUPs for 8 years and paid for them. It was not required to apply and pay for a TUP on lands it never intended to fence or use, so why would it even ask for a TUP for grazing when the lease was fenced-out

from Wagonhound's other lands? Second, Wagonhound's fencing testimony is contradictory. On cross examination about whether the lease was fenced in with other Wagonhound lands, Wagonhound's witness didn't complain about the cost, but instead appeared to minimize the difficulty of fencing the lease in, stating he "simply" needed to put in roughly a mile of fence. *Ewing PM 2:17:58-2:18:14; and see PM 1:52:47-1:53:14 ("I've built hundreds of miles of fence.")*. So, in one breath, Wagonhound contended fencing was too expensive to justify for 8 years of TUPs, but in the next, contended that it "simply" needed to fence a mile. Third, in trying to explain their need for the land and why they offered 650% of the market value, Wagonhound asserted the area is "kind of key to our movement of cattle." *Ewing PM 2:00:42-2:01:13*. But if that were really the case—the lands were so key to Wagonhound's operation as to merit paying 650% more for the lease than the market rate—the Board could legitimately question why Wagonhound decided not to fence the parcel during the 8 years it held the TUPs.

The contrary inference to be drawn from this contradictory testimony, and the one urged by Leman, is that these inconsistencies in Wagonhound's rationale point to a conclusion that the TUPs were not being sought for grazing, but were instead being maintained for 8 years to create a perception of control and use of the parcel. *See also Ewing PM 1:56:15-1:56:30* (When he first started, Mr. Ewing wanted to be notified and it [TUP process] was one of his attempts to be part of it; and he received "guidance" from OSLI.) Holding a TUP merely to be notified of future leasing opportunities is not necessary under any regulations (*Ex. M*) and does not constitute a showing of actual and necessary use.

Prejudice to Leman Resulting from the TUP and Lease Issuance Process:

The use of unwritten policies and processes in the issuance of TUPs and the leasing of this parcel resulted in unfairness and prejudice to Leman. Unlike the treatment Wagonhound

testified it received, when Leman made annual contacts to OSLI asking repeatedly to lease the parcel, he was *never* advised that a TUP was an option and he was *never* given “guidance” on obtaining a TUP, or on how to use the lease prior to it being advertised. Just the opposite—when Leman asked in 2010 if leases in the general area he was starting to operate in could be reinstated by back-paying lease amounts owed by the former lessee, he was told that was not an option. But even then, he wasn’t told a TUP was an alternative, like Wagonhound was. *Ex. M; Leman PM 19:00:00-21:31:00* (Leman “dumbfounded” at learning TUPs had been issued on 1-8710 and he had never been told of the TUPs until 2018 despite all of his annual inquiries; told by Mr. Crowder it should never have gone on as long as it did.) Unlike Wagonhound, Leman was simply told he would have to wait until the land could be inspected before it could be advertised for lease. *Id., and Leman, PM 2:58-4:13; Ex. M; and Crowder AM 1:33:58-1:34:56.*

If, as Wagonhound testified, OSLI provided “guidance” to Wagonhound to obtain a TUP, Leman contends such guidance was improper for several reasons. First, the Board should question why OSLI would guide someone into a TUP merely to be notified of a future leasing opportunity. Such a reason would run directly contrary to the Board’s intent, as the Board wants to see leases used for their stated purpose. *Crowder, AM 1:21:54-1:21:59; and see Ex. L, p. 5* (2009 Audit stating the office may cancel grazing leases for nonuse.) It is also unnecessary to hold a TUP to be notified of a future leasing opportunity. *See Ex. M, (OSLI email stating to Mr. Leman: “Because you have expressed an interest in this state land, when we advertise it I will provide you with a copy of the ad, an application and a sealed bid envelope.”)*

Further, Mr. Crowder testified that the Board’s regulations do not even provide for a TUP for grazing purposes. *Crowder, AM at 45:51 to 48:10* (Mr. Crowder was unaware of Wagonhound TUPs from 2011 until 2018; that “*in fact, the rules specifically say ‘no’ to that type*

of use [grazing]”; there’s nothing in the TUP regulations that provide for grazing use; it’s not the office’s practice to do it that way [let grazing TUPs run for 8 consecutive years].) While Mr. Crowder on re-direct stated that grazing TUPs could be issued, he still conceded the regulations don’t provide explicitly for it. He also agreed that they are unusual and that someone reading the regulations wouldn’t have reason to believe that grazing leases are part of the TUP process.

Crowder, AM 2:00:05-2:00:45.

The preferential treatment Wagonhound received with respect to 1-8710 worked unfairness on Leman, but to add insult to injury, at various points in this proceeding other parties have implied that because Mr. Leman’s cattle accessed the state lands fenced in with other lands he owns or controls, the cattle are in trespass. The Hearing Examiner will recall the mention of trespass by counsel for the state in the Summary Judgment hearing. Wagonhound similarly raised the issue of trespass in cross-examination of Mr. Crowder, over objection by Leman’s counsel, suggesting that for “anybody” who had livestock on the state lease without a lease or TUP, the livestock would be trespassing. He further attempted to get Mr. Crowder to agree that it was laudable for a party to seek a temporary use permit if their cattle could end up on unleased state lands. *Crowder, AM 1:39:43-1:41:27.*

Mr. Crowder’s response to obtaining a TUP to avoid an alleged trespass was noncommittal, but to suggest a TUP would be appropriate in such circumstances is odd to say the least, in light of Mr. Crowder’s testimony that “the rules specifically say ‘no’ to” TUPs for grazing, and the regulations make no mention of that option.

Further, as a matter of law, cattle accessing an unfenced parcel of state land does not constitute an actionable trespass. The law is well settled that Wyoming is a “fence out” state. Landowners wishing to keep livestock off their property must fence out their land, and if they


chose not to, no actionable trespass lies. See *Anderson v. Two Dot Ranch*, 2002 WY 105, 49 P.3d 1011, 1016-1017 (Wyo. 2002) and see Wyo. Stat. § 1-28-101 et seq. Mr. Crowder testified that the office does not think the fence-out statutes apply to OSLLI, but he offered no authority, foundation, or precedent for that proposition.

The fence-out statutes and case law make no exception for state lands. The fact that Mr. Leman's cattle had access to the lease because it was fenced in with his other lands and not separately fenced is not an actionable trespass under Wyoming law. Moreover, Mr. Leman testified that all of the fencing was in its present configuration when he started operating on the property. *Leman, PM 22:40-23:02*. Unlike what Wagonhound testified to, Mr. Leman was never privy to special "guidance", or a "model" of how to proceed to secure the land, nor was he ever offered a single TUP, let alone 8 of them, and his annual inquiries since 2010 attempting to lease the parcel were routinely put-off, despite the fact that the lease had sat vacant since 2001. *Crowder, AM 30:01-30:09*. Under both facts and law, it is unfortunate and pejorative for one to imply that Mr. Leman's cattle were unlawfully trespassing on the parcel. Any such suggestion is inflammatory and runs counter to the fence-out law and Wyoming case law.

Conclusion:

For the foregoing reasons, Leman asks the Board to reverse the Director's conditional decision and grant Lease 1-8710 to Leman.

DATED this 2nd day of December, 2019.


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 2nd, 2019 a true, full and correct copy of the foregoing document was filed by hand delivery of the original to the Office of State Lands and Investments and to the OAH at the address below and served by placing a copy in the U.S. Mail, First Class, postage prepaid, addressed as follows:

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DEC 02 2019

Cheyenne

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

vs.)

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

and,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC,)
 Successful Lease Bidder/Respondent.)

OFFICE OF STATE LANDS AND INVESTMENTS'
BRIEFING ON BURDEN OF PROOF AND CLOSING ARGUMENT

The Wyoming Office of State Lands and Investments (Office), through the Wyoming Attorney General's Office, hereby files its briefing on burden of proof and closing argument.

Burden of Proof

Leman carries the burden of proof in this proceeding under general burden of proof principles in administrative law. Typically, the burden of proof is on the proponent of the action. *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996). “In general, an agency is the proponent of its orders, while an applicant for benefits or for a license is the proponent in eligibility determinations.” *Id.* quoting 4 Jacob A. Stein et al., *Administrative Law* § 24.02 at 24-21 (1987). Another recognized principle is that the party initiating the proceeding has the burden of proof. *See Casper Iron & Metal v. Unemployment Ins. Comm’n of Dep’t of Employment*, 845 P.2d 387, 393 (Wyo. 1993); *see also* 4 *Administrative Law* § 24.02 (“The legislative history of the APA burden of proof provision states that the party initiating the proceeding has, at a minimum, the burden of establishing a *prima facie* case, but a burden of proof may also rest on other parties seeking a different decision by the agency.”).

In this case, Leman initiated this proceeding as the unsuccessful applicant for a state grazing lease. Leman carries the burden of proving entitlement to the conditional lease award as the proponent in the proceeding and an advocate for his position. As such, Leman has the burden of proof.

This conclusion is consistent with Wyoming precedent. The Wyoming Supreme Court has recognized that an unsuccessful applicant for a state grazing lease who challenges a lease award has the burden of proving the successful applicant was not entitled

to the lease. *See Rayburne v. Queen*, 326 P.2d 1108, 1110-11 (Wyo. 1958) (“a party attempting to secure State land because the former lessee has subleased for a cash consideration in excess of the rental paid to the State has the burden of proving this”); *Hawks v. Creswell*, 144 P.2d 129, 137 (Wyo. 1943) (unsuccessful applicants for state lands leases had burden to show that successful applicant who obtained renewal of expiring leases was not entitled to renewal under state statute). Here Lemman, the unsuccessful applicant, is alleging that Wagonhound, the successful applicant, is not entitled to the conditional lease award under state law. Accordingly, Lemman has the burden of proving this.

Closing Argument

The issue to be before the hearing officer is whether Lemman met his burden of showing that Wagonhound was not entitled to the conditional lease award under state law. To meet this burden, Lemman must first show that Wagonhound made a materially false statement in its grazing lease application by indicating that it owns land fenced in with the state land. Lemman must also show that Wagonhound does not have actual and necessary use for the state land. Lemman failed to meet this burden.

I. The evidence does not support Lemman’s contention that Wagonhound falsely stated in its application that it owns land fenced in with the state land.

Lemman alleges that Wagonhound misrepresented that it owns land fenced in with the state land and this misrepresentation provides grounds for the Office and Board to reject

Wagonhound's application. 10/22/19 Hearing Record (hereinafter "H.R."), Afternoon at 25:06-12 and 29:24 – 30:42; Leman's Disclosure Statement at 6. The hearing testimony shows otherwise.

In his testimony, Leman conceded that Wagonhound owns land within a maintained boundary fence that includes the state land at issue. H.R., Afternoon at 11:45-50. Leman also conceded that Wagonhound has used a portion of the state land in the past because an unmaintained fence did not prevent access. H.R., Afternoon at 27:40 – 28:33. This was consistent with Ewing's testimony on behalf of Wagonhound that it owns land fenced in with the state land. H.R., Afternoon at 2:04:10 - 2:04:24. Based on this undisputed information, Crowder testified that Wagonhound correctly answered yes to the question in the lease application as to whether Wagonhound owned land fenced in with state land. H.R., Morning at 1:49:43 – 1:50:09.

More importantly, even if Wagonhound's application misrepresented that it owned land fenced in with the state land, this is not a statement that materially affected the application. As a result, the Office has no grounds to reject Wagonhound's application.

The Board's rules provide, "[a]ny false or incomplete statement willfully made **that materially affects the application** will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application." *Rules Wyo. Bd. of Land Commissioner's*, ch. 4, § 5 (emphasis added). There is no requirement that a conflicting applicant own land fenced in with the state land. The requirements for leasing State land

are found in Wyoming Statute § 36-5-101(a). In relevant part that statute provides, “[n]o person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in the state.” Wyo. Stat. Ann. § 36-5-101(a).

Crowder testified that the Office asks whether an applicant owns land fenced in with the state land to determine how the land currently fits within the applicant’s existing operation. H.R., Morning at 26:27-37. The answer to this question does not bear on an applicant’s eligibility to lease state land. H.R., Morning at 23:18 – 24:04. Nor does it indicate whether an applicant has actual and necessary use of the land because fences are temporary in nature and can be moved and removed. H.R., Morning at 26:47-27:00. Therefore, even assuming Wagonhound’s statement that it owned land fenced in with the state land was willfully false, the statement did not **materially** affect its application. H.R., Morning at 36:30 – 37:25. As a result, Leman has failed to establish that this statement provides a basis for the Office to reject Wagonhound’s application. H.R., Morning at 37:30-43.

Similarly, Leman has failed to establish there are grounds for the Board to reject Wagonhound’s application. H.R., Morning at 37:57 – 38:35. Wyoming Statute § 36-5-113 provides, “[t]he board shall have the power and authority to cancel leases **procured by fraud, deceit or misrepresentation**, or for use of the lands for unlawful or illegal purposes, or for the violation of the covenants of the lease, upon proper proof thereof.”

(Emphasis added). The plain language of this statute only authorizes the Board to cancel leases procured by misrepresentation. In other words, there must be a material misrepresentation. As Crowder testified, the alleged misrepresentation in this case is not material because the statement that Wagonhound had land fenced in with the state land was not a factor in the Office's decision to conditionally award Wagonhound the grazing lease. H.R., Morning at 35:48-50. As a result, the Board lacks authority to reject Wagonhound's application.

Even assuming there was a willful and material misrepresentation in this case, the language of Wyoming Statute § 36-5-113 is not mandatory. *See Bucknum v. Johnson*, 21 Wyo. 26, 41, 127 P. 904, 908 (Wyo. 1912) (finding the Board's authority to cancel leases is permissive, not compulsory). The Board is not required to reject a lease application under this statute.

II. The evidence does not support Leman's contention that Wagonhound does not have actual and necessary use for the state land.

Next, Leman alleges that Wagonhound does not have actual and necessary use for the land. According to Leman, Wagonhound's failure to use the land in the past demonstrates a lack of actual and necessary use for the land going forward. H.R., Afternoon at 35:51 – 36:40. But the testimony at hearing does not support this contention.

Crowder testified to the Office's interpretation of actual and necessary use for the state land. H.R., Morning at 25:08-35. An applicant has actual and necessary use for the land if: (1) the applicant owns livestock that can be placed on the property, (2) the applicant

intends to own livestock that can be placed on the property, or (3) the applicant intends to sublease to an individual that owns livestock or intends to own livestock that will be placed on the property. H.R., Morning at 25:08-35. The Office does not consider past use when determining whether an applicant has actual and necessary use. H.R., Morning at 25:40-47.

Using this definition and the information provided in Wagonhound's application, the Office determined that Wagonhound had actual and necessary use for the land. H.R., Morning at 34:45-54. Wagonhound's application indicates that it has actual and necessary use for the land for grazing purposes. [State's Hearing Exhibit S-18, Wagonhound's Application at 1, question 4]. It further indicates that it owns 200 horses and 4,500 cattle. *Id.*, question 5. In fact, Ewing testified that Wagonhound has increased its livestock holdings since the time of its application. H.R., Afternoon at 2:05:00 – 2:05:20. He further testified it is Wagonhound's intention to introduce livestock grazing onto the leased land if and when secured. H.R., Afternoon at 2:11:26-54. Indeed, Ewing testified that this lease is instrumental to Wagonhound's operation and grazing cattle up and down the mountain. H.R., Afternoon at 2:05:40 – 2:06:10. Leman failed to offer evidence that these assertions are false.

III. Leman is not entitled to a preference as a matter of law.

Leman asserts that because Wagonhound does not have actual and necessary use for the state land, it is not entitled to an equal leasing preference under Wyoming Statute § 36-

5-105(b). As an initial matter, as discussed above, Wagonhound does have actual and necessary use for the state land. Therefore, Leman's claim that he is entitled to a preference over Wagonhound falls flat. Furthermore, Leman misunderstands how the preference operates.

Wyoming Statute § 36-5-105 lays out the criteria the Office uses in leasing state land. First, subsection (a) of that statute directs that "[a]ll state lands leased . . . for grazing and other agricultural purposes shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries." Wyo. Stat. Ann. § 36-5-105(a). The trust beneficiaries include public schools. *See* Wyo. Const. art. 18, § 1; H.R., Morning at 19:40. The Office's primary goal in leasing grazing land is to maximize the rent paid on land it leases to raise revenues for its beneficiaries, primarily public schools. H.R., Morning at 19:16-37.

In this case the Office is leasing vacant land—land that is not currently under any lease. The statute provides that applicants who have actual and necessary use for the land and who control adjoining land, among other requirements, must receive a preference. Wyo. Stat. Ann. § 36-5-105(b). The Office has historically applied the preference under subsection (b) of the statute as a tie-breaker. H.R., Morning at 27:43 – 28:06. It only applies when the highest received rental offers are equal.

The Office's approach is motivated primarily by its statutory and fiduciary duty to optimize revenue for school purposes, or, in the words of the leasing statute, to proceed in

a manner that “inure[s] to the greatest benefit of the state land trust beneficiaries.” Wyo. Stat. Ann. § 36-5-105(a). With this fiduciary obligation in mind, the Office’s interpretation of the vacant-land preference is consistent with § 36-5-105 as a whole. The Office has balanced its trust obligation of paragraph (a) with paragraph (b)’s preference by awarding a lease to a preferred applicant as a means of a tie-breaker when the applicant’s rental offer equals the high bids of other applicants through a competitive sealed-bid process. This practice gives effect to the preference while, at the same time, ensuring competition and maximizing revenue potential for school purposes.

The Wyoming Supreme Court endorsed interpreting a preference as a tie-breaker when applying an earlier version of the leasing statute. In *Cooper v. McCormick*, the Court held that the vacant-land preference was intended to break a tie “evidently . . . only where other things are equal.” *Cooper v. McCormick*, 10 Wyo. 379, 398, 69 P. 301, 303 (Wyo. 1902). Otherwise, the Court explained, the preference would mean that “in all cases and under all circumstances where there should be more than one application . . . the application of an [ordinary applicant] should be rejected in favor of a [preferred applicant].” *Id.* This would encourage those with a statutory preference to bid the lowest amount possible in hopes of successfully claiming the preference, frustrating the State’s objective to maximize the benefit to the school lands trust.

As Crowder testified, the Office has historically interpreted the statutory preference to apply as a tiebreaker when the highest received rental offers are equal. H.R., Morning at

27:43 - 28:06. “[A]n agency’s interpretation of the statutory language which the agency normally implements is entitled to deference, unless clearly erroneous.” *Wyo. Dep’t of Revenue v. Exxon Mobil Corp.*, 2007 WY 112, ¶ 31, 162 P.3d 515, 526 (Wyo. 2007). The Office’s historical interpretation of the statutory preference, which accords with Wyoming Supreme Court caselaw, deserves deference.

Here, the Office conditionally awarded the lease to Wagonhound because it was the highest bidder. H.R., Morning at 35:30-45. Because Wagonhound submitted a higher bid amount, the preference under Wyoming Statute § 36-5-105(b) is not applicable. Accordingly, the Office’s decision to conditionally award the lease to Wagonhound is correct.

Conclusion

Leman has failed to meet his burden of proof. First, Leman was unable to demonstrate that Wagonhound misrepresented in its application that it owns land fenced in with the state land. Even if Leman were able to show this, it is not material. As a result, Leman has failed to establish that this statement provides a basis for the Office or Board to reject Wagonhound’s application.

Next, Leman was unable to demonstrate that Wagonhound does not have actual and necessary use for the state land. The evidence at hearing showed that Wagonhound does have actual and necessary use for the state land. It also showed that the Office conditionally awarded the lease in accordance with state law.

For these reasons, the Office asks this Tribunal to recommend the Board uphold the Office's decision to conditionally award Grazing Lease No. 1-8710 to Wagonhound.

Respectfully submitted December 2, 2019.



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CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of December, 2019, the foregoing **BRIEFING ON BURDEN OF PROOF AND CLOSING ARGUMENT** was served in the following manner, addressed to:

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ORIGINAL Via Interagency Mail

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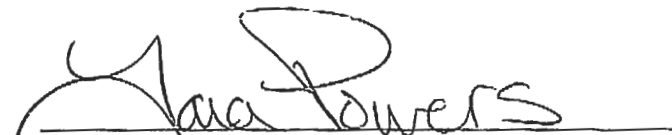
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Office of the Attorney General

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
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JOHN T. LEMAN)
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OFFICE OF STATE LANDS AND)
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 Respondent,)

STATE LEASE NO. 1-8710
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and,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent)

WAGONHOUND LAND & LIVESTOCK, LLC'S CLOSING ARGUMENT

COMES NOW, Successful Lease Bidder/Respondent, Wagonhound Land & Livestock Company, LLC (Wagonhound) and hereby provides its Closing Argument in accordance with the Hearing Examiner's Order.

BURDEN OF PROOF

The Wyoming Supreme Court has consistently recognized that an unsuccessful applicant for a state grazing lease who challenges a lease award has the burden of proving the successful applicant was not entitled to the lease. *See Bosler v. McKechnie*, 362 P.2d 809, 811-812 (Wyo. 1961) (unsuccessful applicant had burden to show the successful applicant violated the terms of

the expiring lease and therefore was not entitled to any preference); *Rayburne v. Queen*, 326 P.2d 1108, 1110-1111 (Wyo. 1958) (“a party attempting to secure State land because the former lessee has subleased for a cash consideration in excess of the rental paid to the State has the burden of proving this”); and *Hawks v. Creswell*, 144 P.2d 129, 137 (Wyo. 1943) (unsuccessful applicants for leases of state lands had burden to show that successful applicant who obtained renewal of expiring leases was not entitled to renewal under state statute).

In this instance, the unsuccessful bidder/objector, Leman, has the burden of proof to show that Wagonhound, the high bidder, is not entitled to receive the lease conditionally awarded to it based on its application and the office’s review. Furthermore, Leman alleges the decision of the director must be set aside based on fraud, misrepresentation or deceit.¹ In the review of a Rule 60(b) motion under the Rules of Civil procedure, the Wyoming Supreme Court has stated:

We turn to the argument by Fluor Daniel that this Default Judgment should be set aside because of fraud, misrepresentation, or other misconduct by Seward in connection with the proof of damages. Fluor Daniel relies upon the provisions of WYO. R. CIV. P. 60(b)(3) in submitting this argument. *A higher standard of proof is applicable when this ground is asserted because in order to prevail the party in default must establish the Plaintiff's misconduct by clear and convincing evidence:*

Where fraud and misrepresentation is relied upon as a ground for relief sought pursuant to a Rule 60(b) motion, *it must be proved by clear and convincing evidence. Fraud is never presumed, and the*

¹ Wyoming Statute § 36-5-113 states: “The Board shall have the power and authority to cancel leases procured by fraud, deceit or misrepresentation,” The Board’s rules provide:

Section 5. Applications

- (a) Forms. All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement *willfully made that materially affects the application* will be considered as fraud, deceit or misrepresentation and shall be cause for the rejection of the application. (Emphasis added).

burden of proof to clearly establish such fraud or misrepresentation is upon the party seeking relief.

Stevens v. Murphy, 680 P.2d 78, 79 (Wyo. 1984). This provision in the rule is not intended to permit the defendant to litigate the factual matters already established pursuant to WYO. R. CIV. P. 55. See 11 Charles A. Wright et al., *Federal Practice and Procedure* § 2860 at 310-17 (1995).

Fluor Daniel, Inc. v. Seward, 956 P.2d 1131, 1135 (Wyo. 1998) (emphasis added). While not a Rule 60(b) motion, the circumstances of this appeal are similar. Fraud must be proven by clear and convincing evidence, as opposed to by a preponderance of the evidence for negligent misrepresentation claims. See *Universal Drilling Co., LLC v. R & R Rig Serv., LLC*, 2012 WY 31, 271 P.3d 987, 994-95 (Wyo. 2012). Leman should bear the burden of proof on its allegations of fraud, misrepresentation and/or deceit and must prove such allegations by clear and convincing evidence.

FACTS AND HISTORY

The State of Wyoming owns lands within the State that are required to be leased and the Board of Land Commissioners (Board) is tasked with the administrative responsibilities of issuing and operating the leasing of such State lands. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the Superintendent of Public Instruction. Pursuant to the State Land Act (the Act), the Board has jurisdiction over “the direction, control leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature.” W.S. §36-5-101. The Board engages the Director of State Lands and Office of State Lands (Office) to administer the state lands. The Office offered State Lease No. 1-8710 (the Lease land) for bid and conditionally awarded Lease No. 1-8710 to Wagonhound.² Unsuccessful bidder, Leman, timely

² See Exhibit A.

appealed this conditional award and a contested case hearing was held on October 22, 2019.

Qualifications of Bidders

The Act describes those who are qualified to lease state lands under the jurisdiction of the Board as follows:

- (a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.

W.S. 36-5-101(a).³ The legislature goes on to require that “The rental of any lease awarded shall be based on an economic analysis and shall reflect *at least* the fair market value for the same or similar use of the land ...” W.S. § 36-5-101(b) (emphasis added).⁴ Additionally, the Act provides for preferences for the leasing of state lands under the jurisdiction of the Board. Specifically, the Act provides in relevant part:

- (a) All state lands leased by the state board of land commissioners, for grazing and other agricultural purposes shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.

- (b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land 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, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

³ It is undisputed that Wagonhound is a Wyoming limited liability company authorized to transact business in the State of Wyoming.

⁴ It is undisputed that the amount bid by Wagonhound meets or exceeds the fair market value for the same or similar use of land.

W.S. §36-5-105(a) and (b). Subparagraph (a) of W.S. §36-5-105 requires the Board lease lands to “inure the greatest benefit” to the “state land trust beneficiaries.” In other words, the leasing of state land should be on a competitive basis and leases, subject to the preference provisions, should be granted to the highest bidder. It is undisputed that Wagonhound was the highest bidder for Lease No. 1-8710 (the Lease). The Office, pursuant to its regulations and established procedure, advertised the Lease for bid requiring a minimum annual rental of \$210.12. Wagonhound submitted a bid for an annual rental of \$1,360.00 per year and the Objector (Leman) submitted a bid of \$348.84 per year.

Both Wagonhound and Leman submitted the bids on the forms promulgated by the State Land Office.⁵ Both applications indicated:

1. That each applicant is qualified under the laws of the State of Wyoming to do business and/or is registered with the Wyoming Secretary of State;⁶
2. An answer of “Yes” to the question: “Are you the owner, lessee, or lawful occupant of lands adjoining the lands applied for?”;⁷
3. That the state lands applied for have legal public access;⁸
4. That each applicant has “actual and necessary use for the land and its forage”;⁹

⁵ See Exhibits B (Leman Application) and C (Wagonhound Application).

⁶ See *Id.* responses to Application Questions 1(a.) and 1(b.). Please note that while Wagonhound’s application indicates incorrectly that it is a Limited partnership; it is, and was at all times relevant to this proceeding, a Wyoming limited liability company registered with the Wyoming Secretary of State. (See *Affidavit of Dustin Ewing* on file herein).

⁷ See Exhibits B and C, response to Question 2.

⁸ *Id.* Response to Question 3.

⁹ *Id.* Response to Question 4.

5. An answer of “Yes” to the question: “Are the state lands fenced in with other lands that you own or control?”¹⁰ and,
6. An answer of “No” to the question: “Are they fenced separately?”¹¹

It is clear that the Office compared the two competing applications and found each applicant to be qualified and otherwise identical in all respects except for the amount bid.¹²

It is undisputed in the record that both Wagonhound and Leman are bona fide resident citizens of the state qualified under the provisions of W.S. §36-5-101, are persons or legal entities authorized to transact business in the state, having actual and necessary use for the land¹³ and who are the owners, lessees or lawful occupants of land adjoining the lands applied for. Therefore, both applicants have equal entitlement to the preferences identified in W.S. §36-5-105(b), if applicable.¹⁴ With all of these preference matters being identical, the lease should be awarded to the highest bidder.¹⁵

ALLEGATIONS OF FRAUD, DECEIT OR MISREPRESENTATION

The Lease Land is Fenced-in With Land Owned by Wagonhound

The Act also provides:

¹⁰ *Id.* Response to Question 6 (first subpart).

¹¹ *Id.* Response to Question 6 (second subpart).

¹² See *Director's Decision*, Exhibit A.

¹³ Objector seems to assert that Wagonhound does not have actual and necessary use for the land; however, based on the livestock operations of Wagonhound and the vicinity of its operations to the state lands, Dustin Ewing clearly explained the necessity and use to which the land would be put at such time as the lease should be awarded to Wagonhound. The necessity of the use and the actual benefit it would provide to Wagonhound's operations were the basis and measure for the bid amount Wagonhound submitted. (Testimony of Dustin Ewing).

¹⁴ The Office argues that the preferences are only used as a tie-breaker in the event of equal bids. Regardless of whether that is a correct position or not, in this case the preferences apply equally to each bidder and therefore, the Lease should be awarded to the high bidder.

¹⁵ It is important to note that there is no preference for having the state land “fenced-in” with land owned or controlled by the applicant.

The board shall have the power and authority to cancel leases procured by fraud, deceit or misrepresentation, or for use of the lands for unlawful or illegal purposes, or for the violation of the covenants of the lease, upon proper proof thereof.

W.S. § 36-5-113.

Objector is asserting that Wagonhound obtained the State Lease at issue based on fraud, misrepresentations or false, incomplete and/or misleading (deceitful) information in its application. In support of this allegation, Leman argues that Wagonhound's response to Question 6 of the Application is fraudulent, deceitful or a misrepresentation. Question 6 on Wagonhound's Application appears as follows:

- (6.) Are the state lands fenced in with other lands that you own or control? Yes No
Are they fenced separately? Yes No

A "fence" is defined as: "A barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to prevent or control access or escape."¹⁶ With reference to the grazing of livestock on rural lands in Wyoming, it would generally be understood that the purpose of a fence would be to "control access or escape" of livestock. In Wyoming, a lawful fence is specifically defined:

(a) The following are lawful fences in this state:

- (i) A fence made of steel, concrete or sound wooden posts and three (3) spans of barbed wire not more than fifteen (15) inches or less than ten (10) inches apart, or two (2) spans of barbed wire with a wooden rail on top. Wooden posts shall be at least four (4) inches in diameter. Posts shall be set firmly in the ground at least twenty (20) inches deep, at no greater distance apart than twenty-two (22) feet between the posts or thirty-three (33) feet with at least two (2) iron or wooden stays between the posts. Stays shall be placed equal distance apart from themselves and the post on either side;

¹⁶ <https://www.lexico.com/en/definition/fence>

(ii) A post and board fence made of sound posts not less than four (4) inches in diameter set substantially in the ground not more than ten (10) feet apart, with three (3) boards sold as one (1) inch lumber eight (8) inches wide, and not more than ten (10) inches apart, or four (4) boards sold as one (1) inch lumber six (6) inches wide, not more than eight (8) inches apart, securely fastened with nails or otherwise;

(iii) A four (4) pole fence with round poles not less than two (2) inches in diameter at the small end, with either upright or leaning posts not more than sixteen (16) feet apart, and securely fastened with nails, wires or otherwise.

(b) All other fences made and constructed of boards, rails, poles, stones, hedge plants or other material which upon evidence is declared to be as strong and well calculated to protect enclosures, and *is as effective for resisting breaching stock* as those described in subsection (a) of this section, shall be considered a lawful fence.

(c) Any fence enclosing any hay corral situated outside of any field or pasture enclosed by a lawful fence, shall be at least six (6) feet high, constructed of boards, poles or wire. The posts shall not be more than eight (8) feet apart and set twenty-four (24) inches in the ground. If the fence is constructed of barbed wire there shall be at least seven (7) spans of wire, and all wires shall be kept properly stretched. *Any fence better than the above described fence is a lawful fence.*

W.S. § 11-28-102. (Emphasis added.) It is clear for the purposes of this Act, that a lawful fence is intended to be a barrier to livestock, controlling the livestock's access or escape.¹⁷

At the hearing, Leman went to great lengths to attempt to manipulate Wagonhound's response to Lease Application Question 6 into something other than the absolute true and correct answer that it is. It was established by licensed surveyor Jim Jones that Wagonhound is the owner, according to the land records in Converse County Wyoming, of the NW¼NW¼ of Section 19, T31N, R73W, which adjoins the Lease land in the SW¼SW¼ of Section 18 to the south and that

¹⁷ Leman attempts to claim the rights of ownership, and divest Wagonhound from ownership, based on W.S. §11-28-101. It is important to note that this statute is specific to actions commence under the provisions of W.S. §11-28-101 through 11-28-108 and is designed to give occupants, users and those in charge of enclosure the right to act (be considered) as the owner thereof. This statute has no application to this proceeding and should not be relied on to divest Wagonhound of ownership of their property and thereby conclude that Wagonhound is not the owner of lands fenced in with the state lands.

there is no fence between the land owned Wagonhound and the Lease land. Furthermore, Mr. Jones testified that Wagonhound owns the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T31N, R74W which adjoins the Lease land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 to the west and there is no fence between the land owned by Wagonhound and the Lease land.¹⁸ Both applications acknowledge that the Lease land is not fenced separately.¹⁹ In fact, Mr. Jones testified that the only fence on the boundary of the Lease land is a north-south fence on the west side of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section that exists for less than one-quarter mile.²⁰ All witnesses who testified, including Mr. Leman, recognized Wagonhound's ownership of land as explained by Mr. Jones and depicted on Exhibit 2. All witnesses who testified, including Mr. Leman, also recognized the lack of fencing around the perimeter of the Lease land and that fencing exists as expressed in Exhibit 2.²¹ Therefore, the Lease land is obviously fenced-in with other lands, including lands owned by Wagonhound.

The map prepared by Jim Jones indicates that the Lease land on the east side of Wyoming State Highway 91 is fenced-in with property owned by Z-Holdings (which Leman claims to control by virtue of a lease) and with property owned by Wagonhound.²² Furthermore, the map also indicates that the Lease land on the west side of the highway is fenced-in with land owned by Wagonhound.²³ The question posed by Question 6 is clearly in the alternative: "Are the state lands fenced in with other land you own *or* control?" If a party "owns" land fenced in with the state land, an affirmative answer is correct. Likewise, if a party "controls" land within the same

¹⁸ See Exhibit 2.

¹⁹ See Exhibits B and C, Response to Question 6, second subpart.

²⁰ See Exhibit 2.

²¹ Leman testified concerning the remnants of old fence he believed to be near the boundary between the Lease land and Wagonhound's land on the west. See Exhibit H. However, it is uncontested that these remnants are not a legal fence and are certainly not a barrier that would contain or repel livestock.

²² See Exhibit 2.

²³ *Id.*

boundary fence as the state land, an affirmative answer is also correct. Mr. Jones testified that the only correct answer to Question 6 that could be provided by Wagonhound is “yes.” Since this answer is correct and accurate, it cannot be fraudulent, deceitful, or misleading.

Wagonhound’s Actual and Necessary Use for the Land and its Forage

Leman also alleges that Wagonhound misrepresented its actual and necessary use for the state land. In short, Leman asserts that Wagonhound did not graze livestock on the Lease land during the time that it held Temporary Use Permits (TUP) relating to the land (or at least part of the land) included in Lease No. 1-8710.²⁴ Therefore, Wagonhound has not demonstrated actual and necessary use. In reviewing state lease application on the forms provided, the Office considers whether the applicant, owns livestock, intends to own livestock or intends to lease the lands to someone who owns livestock.²⁵ Past use is not considered.²⁶ Wagonhound’s application indicates that it owns 4,500 head of cattle.²⁷ Clearly, Wagonhound is capable of using the property and has made use of several other state leases.²⁸

While it is not the normal practice of the Office to issue TUPs for grazing, Wagonhound applied for and was granted TUPs in 2011 through 2018.²⁹ It is important to note that the TUPs do not have any influence, effect or any preferences relating to lease applications.³⁰ Each of the TUPs also included other state land located to the south of the Lease land and referred to as the State

²⁴ The TUPs included only lots 3 and 4 of Section 18 and do not include the E½SW¼. See Exhibits S-1 through S-16.

²⁵ Testimony of Jason Crowder.

²⁶ *Id.*

²⁷ See Exhibit C, Question 5.

²⁸ See Exhibits I and J and testimony of Dustin Ewing.

²⁹ See Exhibits S-1 through S-16.

³⁰ Testimony of Jason Crowder.

Lease No.1-8820 land.³¹ Wagonhound made regular and annual use of the State Lease No. 1-8820 land for grazing; however, it did not make use of the State Lease No. 1-8710 land due to the lack of fencing which would result in the commingling of Wagonhound's livestock with Leman's livestock. Due to the high cost of fencing, it makes no sense for Wagonhound to fence the state land to separate it from Leman's activities until such time as Wagonhound should successfully secure the state lease.

Wagonhound owns over 4,500 head of livestock³² and has significant deeded and leased ground in the vicinity to the Lease land. Wagonhound's general manager testified as to Wagonhound's extensive agricultural and grazing activities in the area.³³ Specifically, the Land lease at issue is vital to Wagonhound's operations in driving cattle to their summer range in the Spring and from the summer range in the Fall.³⁴ The amount bid by Wagonhound reflects the need and anticipated actual use of this ground for their operations.³⁵ In short, Wagonhound bid the amount it bid because the use it intends to make of the Lease land is necessary for their operations and worth the amount bid to them to secure the actual use of the Lease land.

CONCLUSION

Wagonhound is a Wyoming limited liability company, authorized to transact business in the State of Wyoming. Wagonhound owns land adjacent to the Lease lands (that is fenced-in with the Lease lands). Wagonhound has significant livestock operations running in excess of 4,500 head of owned cattle in the vicinity of the Lease land. Leman is unable to demonstrate that

³¹ State Lease No. 1-8820 was also let for bid at the same time and Wagonhound was the successful (only) bidder for that property. The location of State Lease No. 1-8820 is depicted on Exhibits G and E as the State land to the south of the State Lease No. 1-8710 land.

³² See Exhibit C, question 5.

³³ Testimony of Dustin Ewing, Transcript 1:58:50-2:01:30

³⁴ *Id.*

³⁵ *Id.* See also Transcript 2:05:36-2:06:36.

Wagonhound was conditionally awarded this lease based on any fraud, deceit or misrepresentation. Wagonhound, being duly qualified and meeting all stated preferences, if applicable, is entitled to receive the lease based on submission of the highest bid. Leman's appeal should be denied and State Lease No. 1-8710 should be awarded to Wagonhound.

DATED this 2nd day of December, 2019.

William L. Hiser /s/
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties by mailing a true and correct copy postage prepaid, on the 2nd day of December, 2019, addressed to the following:

Office of State Lands and Investments – (ORIGINAL)
Jason Crowder, Assistant Director – Trust Land Management Division
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Cheyenne, Wyoming 82002-0600

Office of Administrative Hearings
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Keith Burron
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William L. Hiser /s/
Of Brown & Hiser, LLC

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710:)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

vs.)

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

and,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent.)

STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

**RECOMMENDED FINDINGS OF FACT, RECOMMENDED CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER**

In this dispute, the Objector and Unsuccessful Lease Bidder, John T. Leman (Leman), challenged the Respondent, Wyoming Office of State Lands and Investments (Office of State Lands), Board of Land Commissioners's (Board), conditional award of State Lease No. 1-8710, to the Successful Lease Bidder and Respondent, Wagonhound Land & Livestock Company, LLC (Wagonhound). Leman argued Wagonhound materially misrepresented information provided in its lease application and asserted the Office of State Lands's conditional award of the State Lease No. 1-8710 did not conform to statutory and regulatory requirements. The Office of State Lands

and Wagonhound maintained the conditional award of State Lease No. 1-8710 was lawful and should be upheld.

A contested case evidentiary hearing was held by the Office of Administrative Hearings (Office), in Douglas, Wyoming, on October 22, 2019, and the record was closed December 4, 2019, upon receipt of written closing arguments and memorandums. Leman appeared by and through counsel, Keith S. Burrton. The Office of State Lands, appeared by and through counsel, Senior Assistant Attorney General Megan Pope. Wagonhound appeared by and through counsel, William L. Hiser. The Office received Leman's Exhibits A through N, the Office of State Lands's Exhibits S-1 through S-20, and Wagonhound's Exhibits 1 through 3, all of which were admitted into evidence. Based upon the evidence and arguments presented, this Hearing Examiner proposes as follows:

I. JURISDICTION

This Office is authorized to provide hearing services to other state agencies. The hearings are to be "conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings." Wyo. Stat. Ann. § 9-2-2202(b)(iii) (LexisNexis).

The Office of State Lands's Rules require a contested case hearing upon a timely appeal of conflicting applications to lease lands of the Board. Board of Land Commissioners, Practice & Procedure Before the Board, ch. 1, § 7, 060.0002.1.05162017 (Board Rules). In addition, the Board Rules incorporate the Office of Administrative Hearings, General Agency Rules, (OAH Rules), Chapter 2, 270.0001.2.07202017. Board Rules, ch. 1, § 10(a)(i).

The State of Wyoming owns the lands covered by State Lease No. 1-8710 and advertised for the submission of applications for use of the land for grazing and agricultural purposes. The Office of State Lands conditionally awarded State Lease No. 1-8710 to Wagonhound. Leman timely requested a contested case hearing, challenging the Office of State Lands's award of State Lease No. 1-8710 to Wagonhound. Therefore, this Office has jurisdiction to conduct the contested case proceedings and render a recommended decision in this matter.

II. STATEMENT OF THE CASE

On November 14, 2018, the Office of State Lands advertised for bids to lease the lands available under State Lease No. 1-8710, which required a minimum annual rental of \$210.12. Leman and Wagonhound submitted bids for State Lease No. 1-8710. Leman's bid was for an annual rental amount of \$348.84, and Wagonhound's bid was for an annual rental amount of \$1,360.00. Both bids indicated they owned and controlled land adjoining the state lands, that the state lands were fenced in with other land controlled by the bidder, and that the bidder had actual and necessary use of the state lands. The Director of the Office of State Lands (Director) conditionally awarded the lease to Wagonhound because Wagonhound was a qualified lessee that could make actual and necessary use of the state lands and the annual rental amount was higher. Leman challenged the Director's conditional award of State Lease No. 1-8710 to Wagonhound on the basis that Wagonhound's application contained false and misleading information. The matter was referred to this Office to conduct an evidentiary contested case proceeding.

III. BURDEN OF PROOF

The Director bears the burden of proof in this matter. Leman made a prima facie showing that he was a qualified lessee under the applicable statutes and rules and regulations. The

allegations that Wagonhound misrepresented facts in its lease application were not frivolous. The Director maintains authority to conditionally award state land leases; however, this authority is subject to the approval of the Board and the Director is required to defend his or her decisions in all contested cases. Wyo. Stat. Ann. § 36-3-102(a) and (c) (LexisNexis); Board Rules, ch. 1, §§ 7 and 9.

The Director is the proponent of the conditional award of State Lease No.1-8710, and the burden of proof in a contested case before the Board is not otherwise assigned by statute or rule and regulation. *Penny v. State Wyo. Mental Health Professions Licensing Bd.*, 2005 WY 117, ¶ 13, 120 P.3d 152, 161 (Wyo. 2005); *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996).

IV. ISSUES AND CONTENTIONS

The sole issue in this case is whether the Director and the Office of State Lands proved by a preponderance of the evidence the Director's decision to award State Lease No. 1-8710 to Wagonhound, was in accordance with the law. The parties dispute whether Wagonhound misrepresented or falsely reported information in its application for State Lease No. 1-8710, as well as, the materiality of any factual inaccuracies contained therein. The parties also disagree on proper application of the preference for landowners provided by Wyoming Statute § 36-5-105(b) (LexisNexis).

Leman contended Wagonhound misrepresented facts in its application for State Lease No. 1-8710, which required the Director to investigate the matter and ultimately, required the Board to reject Wagonhound's application under Wyoming Statute § 36-5-113 (LexisNexis). More specifically, Leman asserted Wagonhound erroneously indicated State Lease No. 1-8710 was fenced in with other lands owned by Wagonhound and falsely reported it had actual and

necessary use for State Lease No. 1-8710. Additionally, Leman maintained he was entitled to the award of State Lease No. 1-8710, under Wyoming Statute § 36-5-105(b) (LexisNexis), because he had actual and necessary use of State Lease No. 1-8710 at the time of his application.

The Office of State Lands and Wagonhound contended Wagonhound did not misrepresent material information in its application and, as the highest bidder, Wagonhound was entitled to the award of State Land Lease No. 1-8710. The Office of State Lands and Wagonhound asserted the preference requirements under Wyoming Statute § 36-5-105(b) (LexisNexis) apply only in instances where equal bids are received for the same parcel of state land.

V. RECOMMENDED FINDINGS OF FACTS

A. Witnesses

1. This case involves a number of witnesses. The testimonies of the witnesses were credible and believable. The witnesses carefully listened to each question and usually provided an appropriate answer and their demeanors, manners, answers, and speech were generally appropriate and responsive throughout the contested case hearing. The witnesses did not deflect questions in an attempt to avoid answers, which may have been unhelpful to their case. Generally speaking, the testimonies of the witnesses were consistent with the documents admitted as evidence in this matter. A basic summary of each witness's role and the basic facts they testified to is helpful at the outset.

a. Jason Crowder (Crowder) has served as the Deputy Director of the Office of State Lands since July 2019. Crowder has served in various roles and positions within the Office of State Lands and has extensive experience and expertise in land management and leasing of state lands. Crowder testified about the operation of the Office of State Lands in the

context of land management and leasing of state lands, the bidding and award process of grazing leases, and the facts specific to the award of State Lease No. 1-8710.

b. Leman testified generally about the operation of his ranch and his unsuccessful application for State Lease No. 1-8710. Leman also testified extensively about a map that he prepared depicting the land he owns or controls, Wagonhound's land, State Lease No. 1-8710, and the fences in the area.

c. James Jones (Jones) is a licensed surveyor in the State of Wyoming and testified about the map he prepared, depicting State Lease No. 1-8710, the existing fences, and the land owned or controlled by Wagonhound and Leman. [Exhibit (Ex.) 2]

d. Dustin Ewing (Ewing) is the general manager for Wagonhound and testified about Wagonhound's ranching operation, including its real estate ownership and land use. Ewing also testified about Wagonhound's successful application for State Lease No. 1-8710.

B. State Lease No. 1-8710 and Adjoining Land Owners

2. The State of Wyoming owns the lands covered by State Lease No. 1-8710. The lease consists of approximately 147 acres in Converse County, Wyoming. [Ex. A; Ex. S-17]

3. On November 14, 2018, the Office of State Lands advertised the availability of State Lease No. 1-8710. The advertisement for bids was open until December 7, 2018, and required a minimum annual rental of \$210.12. The Office of State Lands's lease application consists of 13 questions, which are summarized as follows: 1) Is the applicant a qualified lessee under the laws of the State of Wyoming? 2) Are you the owner, lessee, or lawful applicant of lands adjoining the lands applied for? 3) Do the state lands applied for have legal public access? 4) Do you have actual and necessary use for the land and its forage? Describe proposed grazing or agricultural use – seasonal grazing, rotational grazing, federal grazing allotment, crops to be

grown, use of irrigation; 5) How many head of livestock, by type, do you own? 6) Are the state lands fenced in with other lands that you own or control? Are they fenced separately? 7) Do the lands contain stock or irrigation water? 8) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? 9) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? 10) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? 11) Are there any improvements located on the lands applied for? 12) List any improvements, their location, and their value; and 13) The annual rent proposed by the applicant. [Ex. B; Ex. S-17]

4. The location of Lease No. 1-8710 and the land owned by Leman and Wagonhound, along with the existing fences, is not disputed. A number of maps admitted as evidence in this matter depict Lease No 1-8710 and the respective locations of the land owned or leased by Leman and Wagonhound. The maps are generally consistent with one another. [Ex. F; Ex. G; Ex. S-17, p. 40; Ex. 1; Ex. 2]

5. The land associated with State Lease No. 1-8710 is a quarter section, located in the south-west corner of section 18 (specifically, SW1/4SW1/4, section 18, township 31 north, range 73 east). A state highway, Highway 91, divides State Lease No. 1-8710, with the majority of the state land located east of the highway, and a smaller portion located west of the highway. [Ex. F; Ex. G; Ex. 2]

6. East of Highway 91, all of State Lease No. 1-8710 is fenced in with land leased by Leman. A small portion of Wagonhound's land, that adjoins State Lease No. 1-8710, lies within Leman's boundary fence. A fence does not exist to separate State Lease No. 1-8710 from

the land leased by Leman or the small parcel of Wagonhound's land. [Ex. F; Ex. G; Jones's Testimony; Leman's Testimony; Ewing's Testimony]

7. West of Highway 91, the majority of State Lease No. 1-8710 is also fenced in with land owned or leased by Leman. A small parcel of State Lease No. 1-8710, in the southwest most corner, is not within the land controlled and fenced in by Leman. This small parcel adjoins Wagonhound's land, but it is not fenced in with Wagonhound's land. [Ex. F; Ex. G; Ex. 2; Jones's Testimony; Leman's Testimony; Ewing's Testimony]

C. Wagonhound's Application for State Lease No. 1-8710

8. On November 21, 2018, Wagonhound submitted a bid for State Lease No. 1-8710. Wagonhound's bid was for \$1360.00. Wagonhound's bid indicated: Wagonhound owned and controlled land adjoining the state lands; the state lands were fenced in with land that Wagonhound owned or controlled; and Wagonhound had actual and necessary use of the state land for trailing livestock in the summer and fall or winter. [Ex. C]

9. At the time of the contested case hearing, Wagonhound owned or leased in excess of 260,000 acres in Converse County. Wagonhound's ranching activities are extensive, and include the ownership of 5000 cow-calf pairs, 1500 yearlings, 200 head of horses, and the operation of two feedlots. Wagonhound sought State Lease No. 1-8710 to stage trailing its cattle to and from summer and winter pastures. It is not disputed that east of Highway 91 a fence would be required to separate State Lease No. 1-8710 and Wagonhound's land, from Leman's land. [Ex. G; Ex. I; Ex. 1; Ewing's Testimony; Leman's Testimony; Jones's Testimony]

10. Beginning in 2011, and ending in 2018, Wagonhound annually secured temporary use permits (TUP) for grazing from the Office of State Lands for the land covered by State Lease No. 1-8710. Wagonhound did not graze, or otherwise make use of, the land covered by State

Lease No. 1-8710, nor did it advise Lemman of the TUPs. Of note, Wagonhound's December 16, 2015 TUP application included the following statement: "lands are fenced within existing deeded lands[.]" The application also included a map which did not depict land owned or controlled by Wagonhound accurately in relation to lands covered by State Lease No. 1-8710 and would lead one to believe Wagonhound's fence encompasses State Lease No. 1-8710. That said, the Office of State Lands does not consider previous TUPs in the award of grazing leases. [Ex. S-1 through S-16; Crowder's Testimony; Ewing's Testimony; Lemman's Testimony]

D. Lemman's Application for State Lease No. 1-8710

11. On November 30, 2018, Lemman submitted a bid for State Lands Lease No. 1-8710. Lemman's bid was for the minimum annual rental amount of \$348.84. Lemman's bid further indicated: it owned and controlled land adjoining the lands covered by State Lease No. 1-8710; the state lands were fenced in with land that Lemman owned or controlled; and Lemman had actual and necessary use of the state land for summer and fall grazing. [Ex. B]

12. Lemman began grazing his cattle on the land he controls east of Highway 91, which encompasses State Lease No. 1-8710 and a small portion Wagonhound's land, in 2011. Lemman began grazing his cattle on the land he controls west of Highway 91, which includes a portion of State Lease 1-81701, in 2012. Lemman has also historically maintained the fence associated with both parcels and the fence lines have remained unchanged since 2011. [Lemman's Testimony; Ewing's Testimony]

E. Award of State Lease No. 1-8710 by Office of State Lands

13. The application to lease state lands consists of 13 questions. The Office of State Lands maintains only three questions are "material" in the award of a state grazing lease. First, question #1, the applicant's status to lease state land; second, question #4, whether the applicant

has actual and necessary use of the state land; and third, question #13, the rental amount offered. In consideration of actual and necessary use of the state land, the Office of State Lands deems the requirement met if the applicant owns livestock, intends to own livestock, or intends to sublease to a person that owns livestock. The Office of State Lands asserted the remaining 10 questions elicit information utilized in the management of state lands, but maintained the responses to those questions were not material in the award of state grazing leases. [Crowder's Testimony]

14. On December 17, 2018, the Director conditionally awarded State Lease No. 1-8710 to Wagonhound for ten years for an annual rental amount of \$1,360.00. [Ex. A]

15. On January 18, 2019, the State Lands Office received Lemman's written appeal of the Director's decision conditionally awarding State Lease No. 1-8710. [Office File]

16. On January 23, 2018, the Office of State Lands referred Lemman's appeal to this Office to conduct a contested case hearing. [Office File]

17. All findings of fact set forth in the Conclusions of Law section shall be considered a finding of fact and are fully incorporated into this paragraph.

VI. RECOMMENDED CONCLUSIONS OF LAW

A. State Lands Leasing Principles

18. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the State Superintendent of Public Instruction and has jurisdiction over "the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature." Wyo. Stat. Ann. § 36-2-101 (LexisNexis).

19. In the leasing of state lands for grazing and agricultural purposes, the Board is required to ensure the state lands are leased “in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.” Wyo. Stat. Ann. § 36-5-105(a) (LexisNexis).

20. The term “greatest benefit” is not synonymous with “greatest revenue” and the Board retains the authority to review conflicting lease applications to determine the best use of state lands for grazing and agriculture to generate the greatest benefit for the State. In exercise of this authority, the Board has previously considered fencing, potential misrepresentations or errors in state land lease applications, historical use of vacant state lands, the need by the applicant for existing ranching activities – in addition to the potential revenue generated by the award of state land lease for grazing or agricultural purposes. *Sullivan Co. v. Meer*, 58 Wyo. 90, 125 P.2d 168 (Wyo. 1942); *Banzhaf v. Swan Co.*, 60 Wyo. 201, 148 P.2d 225 (Wyo. 1944); *Frolander v. Ilsley*, 72 Wyo. 342, 264 P.2d 790 (Wyo. 1953); *Howard v. Lindemier*, 67 Wyo. 78, 214 P.2d 737 (Wyo. 1950); *Rayburne v. Queen*, 78 Wyo. 359, 326 P.2d 1108 (Wyo. 1958).

21. The Board possesses broad discretion in the exercise of this power. *Banzhaf*, 148 P.2d at 225.

The exercise of the power conferred upon the board to lease the lands of the state in the manner and to parties which shall inure to the greatest benefit, and secure the largest revenue of the State, requires judgment and discretion. No inflexible rule is laid down for the guidance of the Board in those matters. The judgment and discretion to be exercised is judicial in character, and in an application for the writ of mandamus it is not proper for the court to interpose its opinion and judgment in the place of that of the board, even if the conclusion which the latter has reached upon the facts should appear to have been erroneous.

Jassman v. Wulffen, 71 Wyo. 261, 257 P.2d 334, 268 (Wyo. 1953), quoting *State, ex. rel, Marsh v. State Bd. of Land Commissioners*, 7 Wyo. 478, 490, 53 P. 292, 295 (Wyo. 1898).

22. Those who are qualified to lease state lands under the jurisdiction of the Board are described as follows:

(a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.

Wyo. Stat. Ann. § 36-5-101(a) (LexisNexis). In addition, the State Lands Act specifies the basic process for obtaining a grazing lease and renewing an outstanding lease of state lands under the Board's jurisdiction. Wyo. Stat. Ann. §§ 36-5-103 and -104 (LexisNexis).

23. The Board possesses separate and distinct authority to "cancel leases procured by fraud, deceit or misrepresentation, or for use of the lands for unlawful or illegal purposes, or for the violation of the covenants of the lease, upon proper proof thereof." Wyo. Stat. Ann. § 36-5-113 (LexisNexis).

24. The Board's Grazing Rules contain the following provisions that are relevant to this matter:

Section 5. Applications

(a) Forms. All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

....

Section 12. Cancellation

The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases

for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Board of Land Commissioners, Grazing and Agricultural Leasing (Board Grazing Rules), ch. 4, §§ 5(a) and 12, 060.0002.4.02212012.

25. Wyoming Statute § 36-5-105(b) (LexisNexis) expressly recognizes preferences for the leasing vacant state lands under the jurisdiction of the Board:

(b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land 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, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

26. The Director is charged with conducting business on behalf of the Board, including receipt and the conditional award of all applications to lease state lands for the purposes of grazing and agricultural purposes. In the event conflicting applications are received, the Director is required to report his decisions to the Board for consideration. The Board also maintains authority to “override any decision made by the director.” Wyo. Stat. Ann. § 36-3-102(a) and (c) (LexisNexis).

B. Application of Legal Principles

27. The facts specific to this case require the Board to carefully consider the Director’s conditional award of State Lease No. 1-8710 to Wagonhound. The Board clearly has authority to review “any decision made by the director” and is required to review conflicting state land lease applications when contested. Wyo. Stat. Ann. § 36-3-102(a) and (c) (LexisNexis). The Board’s review is not constrained to only those facts considered by the

Director in the conditional award of State Lease No. 1-8710. To conclude otherwise would render the Board's review meaningless and would contradict the long standing principle that the Board possesses broad discretionary powers that are judicial in nature in the award of state land leases. *Jassman*, 257 P.2d at 268.

28. The Office of State Lands readily acknowledged the responses to only three questions were considered material in the award of State Lease No. 1-8710: was the applicant a qualified lessee under Wyoming Statutes; could the applicant make actual and necessary use of the state land; and what was the annual rent proposed. Based on these three factors alone, Wagonhound was awarded State Lease No. 1-8710. The Office of State Lands asserted Wagonhound and Lemman were both qualified lessees and met the requirements associated with actual and necessary use – and thus, the sole deciding factor in the award of State Lease No. 1-8710 was the rental amount offered. The Office of State Lands also asserted it did not have a basis to reject Wagonhound's application. [Crowder's Testimony]

29. The Office of State Lands's rigid process for the award of State Lease No. 1-8710 does not align with the Board's charge to ensure state land leases "inure to the greatest benefit to the state land trust beneficiaries." Wyo. Stat. Ann. § 36-5-105(a) (LexisNexis). The Wyoming Supreme Court has consistently recognized that the determination of what constitutes the "greatest benefit" in the context of state land leases is not strictly limited to the financial benefit to the state and may require consideration of facts specific to conflicting lease applications. The Board has specifically considered misrepresentation in the context of fencing, historical use of the state land, and the necessity of state land for the lessee in continuation of ranching activities, among other facts, in awarding state land leases upon receipt of conflicting applications. *Sullivan*

Co., 125 P.2d 168; *Banzhaf*, 148 P.2d 225; *Frolander*, 264 P.2d 790; *Howard*, 214 P.2d 737; *Rayburne*, 326 P.2d 1108.

30. The application is a form required by the Office of State Lands for the award of a state grazing or agricultural lease. Board Grazing Rules, ch. 4, § 12. The application consists of 13 questions, 10 of which the Office of State Lands maintains are not material to the award of a state land lease. [Ex. S-17; Crowder's Testimony] That said, the Office of State Lands also testified that the 10 remaining questions, and the applicant's responses, are relevant to the overall management of state lands. [Crowder's Testimony] The two policies as expressed are internally inconsistent. If additional information gleaned from the responses to the 10 additional questions is relevant to the overall management of state lands – at a macro level – then it reasonably follows that the responses are relevant in the award of a specific state grazing lease – at the micro level.

31. The Office of State Lands readily acknowledged the applicants's responses regarding fencing were not considered in the award of State Lease No. 1-8710 and maintained even if Wagonhound's response was erroneous or was a misrepresentation, fencing was not a material fact in the award of State Lease No. 1-8710. An investigation of the potential misrepresentation with regard to fencing by Wagonhound was not conducted. [Crowder's Testimony] It is undisputed fencing controls land access and grazing of livestock and is paramount in management of ranching activities. [Leman's Testimony; Ewing's Testimony] Question #6 of the Office of State Lands's leasing application specifically requests information related to fencing. This Hearing Examiner recommends the Board find and conclude that fencing is a material fact to be considered in the award of State Lease No. 1-8710.

32. Wagonhound's response to Question #6 on its application for State Lease No. 1-8710 materially misrepresented its ownership and the existing fences in relation to the parcel of land at issue in this matter. A fence does not exist on Wagonhound's land to "fence in" its land with State Lease No. 1-8710. East of Highway 91, the only existing fence, which allows for grazing on State Lease No. 1-8710, is Leman's boundary fence. While it is true Wagonhound's land lies within the Leman's boundary fence, to "fence in" Wagonhound's land with State Lease No. 1-8710 requires construction of a fence. The map prepared by Jones, at the request of Wagonhound, confirms this fact. [Ex. 2] With respect to the portion of State Lease No. 1-8710 west of Highway 91 that is not fenced in with Leman's land, construction of a fence is also required to "fence in" Wagonhound's land with State Lease No. 1-8710. Wagonhound's December 16, 2015 TUP application, and accompanying map, also supports a finding that the misrepresentation by Wagonhound in its application for State Lease No. 1-8710 was not inadvertent. Furthermore, even if the misrepresentation was unintentional, consideration of existing fences given the facts of this particular case is relevant and material and this Hearing Examiner recommends that the Board find and conclude rejection of Wagonhound's November 21, 2018 application for State Lease No. 1-8710 is appropriate and warranted.

33. Assuming for the purposes of argument that Wagonhound's application was not rejected by the Board, analysis of Wyoming Statute § 36-5-105(b) (LexisNexis), the vacant leasing preference statute, is required. The vacant leasing preference statute requires preference be given in "all cases" to qualified lease applicants that have actual and necessary use of the state land, who own or control adjoining lands, and who offer to pay an annual rent equal to or more than fair market value. Wyo. Stat. Ann. § 36-5-105(b) (LexisNexis). The Office of State Lands maintained the vacant leasing preference statute applies only when bids are received for an equal

rental amount. The plain and unambiguous language of Wyoming Statute § 36-5-105(b) (LexisNexis) does not support that interpretation and imposes a restriction on the application of Wyoming Statute § 36-5-105(b) (LexisNexis) that does not exist.

34. The Office of State Lands maintained “actual and necessary use” was satisfied if the applicant owned livestock, planned to purchase livestock, or planned to sublease the state land to a party that owned or planned to purchase livestock. The determination of “actual and necessary use” requires a more in-depth analysis given the facts of this particular case. Wagonhound and Leman are qualified applicants under Wyoming Statute § 36-5-101(a) (LexisNexis); both have land adjoining State Lease No. 1-8710; both offered an annual rent equal to or more than \$210.12, the fair market value; and, both arguably have the ability to make actual and necessary use of the property. Given all other qualifications being equal under the vacant leasing preference statute, a more in-depth analysis of each applicant’s actual and necessary use is required.

35. It is not disputed that Leman has continuously utilized the lands covered by State Lease No. 1-8710 since 2011 and 2012. The large majority of State Lease No. 1-8710 is currently fenced in with land owned or controlled by Leman. Leman has expended time, effort, and money maintaining the fences associated with the use of State Lease No. 1-8710. Leman’s proposed use of State Lease No. 1-8710 for rotational grazing is consistent with his past use of the state land. [Ex. B; Leman’s Testimony] Wagonhound’s proposed future use of State Lease No. 1-8710 was limited to twice a year, to trail cattle to and from summer and winter pastures. [Ex. C; Ewing’s Testimony] This Hearing Examiner recommends the Board find and conclude Leman’s actual and necessary use outweighs that proposed by Wagonhound.

36. It is undisputed that Wagonhound secured TUPs for eight consecutive years for the land covered by State Lease No. 1-8710; yet it never attempted use of the land east of Highway 91, and utilized only a small sliver of land west of Highway 91, for a single year, in 2018. Wagonhound reasoned construction of a fence to make use of State Lease No. 1-8710 was cost prohibitive given that TUPs are only valid for a one-year period. [Ex. S-1 through S-16; Ewing's Testimony] This begs the question: why pay for TUPs year after year with no intent to use the land? Furthermore, the statement that construction of a fence was cost prohibitive was contradicted by later testimony by Wagonhound that roughly a mile of fence was "simply" required to make use of State Lease No. 1-8710 and that Wagonhound had constructed hundreds of miles of fence. [Ewing's Testimony] The Office of State Lands testified TUPs are not considered in the award of a state land lease; however, given the facts specific to this case, this Hearing Examiner recommends the Board find and conclude Wagonhound's TUPs for the land covered by State Lease No. 1-8710 does not constitute actual and necessary use.

37. Historical use and the necessity of the state lands for the continuation of an applicant's ranching activities are appropriate considerations by the Board in awarding a state lease and in determining the greatest benefit to the state land trust beneficiaries. Given the totality of the circumstances related specifically to State Lease No. 1-8710, this Hearing Examiner recommends the Board award State Lease No. 1-8710 to Leman, for a period of ten years, for the annual rent of \$348.48.

VII. RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED that:

1. The Director's December 17, 2018 conditional award of State Lease No. 1-8710 to Wagonhound is NOT UPHELD.

2. Wagonhound's November 21, 2018 application for State Lease No. 1-8710 is REJECTED.

3. Leman is awarded State Lease No. 1-8710 for the annual rental amount of \$348.84 per year, for a period of ten (10) years.

IT IS FURTHER RECOMMENDED that the parties be given ten days from the date of this recommended decision within which to file any exceptions to the recommended decision with the Office of State Lands and Investments.

IT IS THEREFORE ORDERED that this case is returned to the Board of Land Commissioners for the entry of a final decision.

DONE this 3rd day of January, 2020.



Tania S. Hytrek, Hearing Examiner
State of Wyoming
OFFICE OF ADMINISTRATIVE HEARINGS
1800 Carey Avenue, Fifth Floor
Cheyenne, Wyoming 82002-0270
(307) 777-6660

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties by mailing a true and correct copy postage prepaid, on the 3 day of January, 2020, addressed to the following:

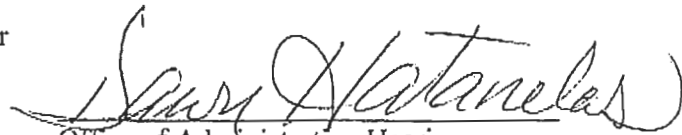
Office of State Lands and Investments – (ORIGINAL)
Jason Crowder, Assistant Director – Trust Land Management Division
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Office of Administrative Hearings

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

RECEIVED
Office of Administrative Hearings

JAN 17 2020

Cheyenne

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710)
)
JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)
)
vs.)
)
OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)
)
and,)
)
WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC,)
 Successful Lease Bidder/Respondent.)

STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

**OFFICE OF STATE LANDS AND INVESTMENTS'
EXCEPTIONS TO THE RECOMMENDED DECISION**

The Wyoming Office of State Lands and Investments, through the Wyoming Attorney General's Office, and pursuant to the Office of Administrative Hearings' (OAH) rules and recommended decision, respectfully submits its exceptions to the recommended decision. See Rules, OAH, ch. 2 § 27.

I. Introduction

This case stems from the Office's decision to conditionally award a grazing lease for previously vacant land to Wagonhound, the highest bidder. Leman, the low bidder, appealed. The Office forwarded the matter to OAH for contested case proceedings and to issue a recommended decision to the Board of Land Commissioners. The issue before the hearing officer was whether Wagonhound was entitled to the conditional lease award. Leman alleges it was not because Wagonhound made a materially false statement in its grazing lease application by indicating that it owns land fenced in with the state land and because Leman has a greater need for the state land than Wagonhound.

The hearing officer issued a recommended decision finding Wagonhound made a materially false statement in its application and that Leman's need for the lease outweighs Wagonhound's proposed use. Accordingly, the hearing officer recommended the Board enter a decision rejecting Wagonhound's lease application and awarding the lease to Leman. The Office takes exception with the hearing officer's recommended decision for many reasons. In general, the hearing officer misunderstands and misapplies the law, contradicts Wyoming Supreme Court and Board precedent, and inappropriately attempts to set Board policy in a manner that is unworkable and offensive.

Exceptions to the Recommended Decision

1. Burden of Proof – The hearing officer makes her first error in assigning the burden of proof to the Office. Leman carries the burden of proof in this proceeding under basic burden of proof principles in administrative law. Typically, the burden of proof is on the proponent of the action. *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996). “In general, an agency is the proponent of its orders, while an applicant for benefits or for a license is the

proponent in eligibility determinations.” *Id.* quoting 4 Jacob A Stein et al., Administrative Law § 24.02 at 24-21 (1987).

In this case, Leman initiated this proceeding as the unsuccessful applicant for a state grazing lease. Leman carries the burden of proving that the Director incorrectly awarded the lease to Wagonhound. Leman, therefore, is the proponent and bears the burden of proof.

This conclusion is consistent with Wyoming precedent. The Wyoming Supreme Court has recognized that an unsuccessful applicant for a state grazing lease who challenges a lease award has the burden of proving the successful applicant was not entitled to the lease. *See Rayburne v. Queen*, 326 P.2d 1108, 1110-11 (Wyo. 1958) (“a party attempting to secure State land because the former lessee has subleased for a cash consideration in excess of the rental paid to the State has the burden of proving this”); *Hawks v. Creswell*, 144 P.2d 129, 137 (Wyo. 1943) (unsuccessful applicants for state land leases had burden to show that successful applicant who obtained renewal of expiring leases was not entitled to renewal under state statute). Here, Leman, the unsuccessful applicant, is alleging that Wagonhound, the successful applicant, is not entitled to the conditional lease award under state law. Accordingly, Leman has the burden of proving this.

Ignoring these basic legal principles and without any citation or reasoning, the hearing officer concludes the Office carries the burden of proof. The hearing examiner seems to suggest the Director’s duty to defend her decision in all contested cases translates into the Office carrying the burden of proof. This finding is not supported by authority and is contrary to well established agency law.

2. Paragraph 20 - The Office takes exception with the hearing officer’s statement that the term “greatest benefit” may not be synonymous with “greatest revenue.” The grazing lease statutes previously provided that in leasing state land, the greater revenue to the state should be

considered. R.S. 1931 § 91-113 (former Wyo. Stat. Ann. § 36-5-105). While this language was removed by the legislature, the Wyoming Supreme Court has expressly stated that the term “greatest benefit” may be synonymous with “greatest revenue.” *Frolander v. Ilsley*, 72 Wyo. 345, 351 (Wyo. 1953) (the greatest revenue might be involved in the greatest benefit). The change in statute was meant to increase the discretion of the Board. *Id.*

The Office also takes exception with the hearing officer’s suggestion that in determining the greatest benefit to the state in leasing vacant land, the Board must consider historical use of the land and the need by the applicant for existing ranching activities. To support this assertion, the hearing officer cites Wyoming Supreme Court cases dealing with the preferential right of renewal.¹ In *Frolander v. Ilsley*, for example, the Court recognized that a preferential right of renewal is a substantial right granted by the legislature “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.” 72 Wyo. 345, 351 (Wyo. 1953). There is no question that in renewing leases, it is appropriate to consider the current leasholder’s existing ranching activities and historical land use. Indeed, those considerations are the basis of that preferential right.

These policy considerations do not exist in applicants for prospective leases of vacant, unleased lands. For vacant lands, there should be no historical land use or existing ranching activities. The hearing officer identifies Leman’s previous grazing activity as prior use. Leman undertook all

¹ Of the five cases cited by the hearing officer, only *Sullivan Co. v. Meer*, 58 Wyo. 90, 125 P.2d 168 (Wyo. 1942), involved a vacant grazing lease. The leased land in that case, however, was newly acquired by the state in an exchange with the federal government. Thus any discussion regarding past use or existing ranching operations is not on point. While the hearing officer states that the Board has previously considered historical use of vacant state lands, none of the cases cited concern historical use of vacant state lands. This makes sense given there should not be any use on vacant state lands because it would constitute trespass. Wyo. Stat. Ann. § 36-9-116.

previous use without a lease. By definition, Leman was a trespasser. *See* Wyo. Stat. Ann. § 36-9-116; Hearing Transcript (Hr'g Tr.) p. 80:6-9, October 22, 2019. By relying on the prior unauthorized use to support Leman's claim for actual use, the hearing officer rewards Leman for his illegal conduct. Aside from finding no legal authority to support this view, this creates a negative precedent and this Board should not condone this behavior.

The hearing officer also suggests that in determining the greatest benefit to the state in leasing vacant land, the Board must consider misrepresentations in the context of fencing. To support this assertion, the hearing officer cites *Frolander v. Ilsley*. Not only does this case not support the hearing officer's finding, but the case is in direct opposition to such a finding. In *Frolander*, the Court considered whether a false statement made in a lease application regarding fencing warranted rejection of the application. *Frolander*, at 357. The Court held the statement was not of sufficient importance to warrant the drastic remedy of rejecting the application. *Id.* In addition, the Court noted that the Board was fully advised of the facts before the lease was finally let so that it was not deceived in any way. *Id.* Here, while the Office does not concede that Wagonhound made a false statement in its application, even if it had, this is not a statement that materially affects the application and warrants the drastic remedy of rejecting the application.

The Court went on to note that if the misstatement deprives the successful applicant of the lease, it should also deprive the unsuccessful applicant of the lease because her application also included an inaccuracy regarding fencing. *Id.* The same can be said here. Leman admitted at the hearing that his statement in his application that the state lands are not fenced separately from lands he owns or controls was not accurate. Hr'g Tr. p. 161:8-12, p. 162:2-8.

The *Frolander* Court also addressed actual and necessary use for the land. *Frolander*, at 358. The unsuccessful applicant argued that his greater need for the land should be considered in

the lease award. *Id.* The Court flatly rejected this argument. *Id.* Instead, it noted that in the proper case, the Board may take into consideration in leasing land who should, for the greatest benefit to the state, be permitted to use the leasehold. *Id.* at 362. “So it is not a question whether the appellant would benefit more than the appellee, but the general public benefit is to be considered in conjunction with the preference right of renewal.” *Id.* at 363. Despite this clear directive given in *Frolander*, the hearing officer directs the Board to consider which applicant has the greater need for the lease in this case.

3. Paragraph 29 – The Office takes exception with paragraph 29 for the same reasons it takes exception with paragraph 20.

4. Paragraph 30 – The Office takes exception with the hearing officer’s determination that information that is relevant to the overall management of state land is material to the award of a grazing lease. Information regarding how an applicant will manage state land is relevant to the Office in terms of management of state land. In terms of awarding a grazing lease, however, that information is not material. These are not inconsistent policies.

The hearing officer seems to suggest that the Office can only ask questions material to the lease award in its application. This is absurd. It suggests that the Office must separately request information to administer state land as a whole. This practice would increase administrative costs. Contrary to the hearing officer’s suggestion, there is no logical reason why every piece of information in lease applications must be considered in an award decision.

Furthermore, this Board has already determined that not all questions in the lease application are material. Specifically, the Board considered whether a misrepresentation regarding adjoining land ownership made by a conflicting lease applicant for a renewal lease constituted fraud. *See* Adopted Recommended Decision In the Matter of Conflicting Lease Application by

Lonesome Country Limited, attached as Exhibit A, ¶ 46. The Board determined that owning adjoining land was not relevant to the lease award and therefore the misrepresentation was not material. *Id.* As a result, the Office had no authority to reject the application. *Id.*

5. Paragraph 31 – The Office takes exception with the hearing officer’s statement that an investigation of the potential misrepresentation with regard to fencing by Wagonhound was not conducted. Jason Crowder, Deputy Director of the Office, testified at the hearing that the Office is fully aware of the fencing situation and does not believe Wagonhound made a misrepresentation in its application. Hr’g Tr. p. 87:1-10. Crowder has over ten years of grazing lease management experience at the Office. Hr’g Tr. p. 16:20-25 - 18:1-12. The hearing officer completely disregarded his testimony and substituted her judgment for the experience and expertise of the Office.

Further, chapter 4, section 12 of the Board’s rules does not require the Board to investigate non-material allegations of misrepresentation. Instead, it provides the “Office shall investigate any allegation of fraud, deccit, or **misrepresentation in the procurement of leases.**” Rules, Wyo. Bd. of Land Commissioner’s, ch. 4, § 12 (emphasis added). The alleged misrepresentation in this case did not result in the procurement of the lease because the statement that Wagonhound had land fenced in with the state land was not a factor in the Office’s decision to conditionally award Wagonhound the grazing lease. Hr’g Tr. p. 32:9-11.

While the hearing officer recommends that fencing should be a material factor in considering the application, there is no authority for this proposition and it usurps the Board and the Office’s role in managing these lands. More importantly, the hearing officer completely disregarded the Office’s expertise and understanding of grazing leases in making this finding. The hearing officer goes on to conjure some sort of general investigation requirement before leases are

awarded. Not only is there no legal authority for this view, it would be unworkable in practice. The Office simply does not have the resources to investigate all lease applications statewide.

Finally, the Office takes exception with the hearing officer's recommendation that the Board find and conclude that fencing is a material fact to be considered in the award of the lease in this case. At the hearing, Crowder testified that the Office asks whether an applicant owns land fenced in with the state land to determine how the land currently fits within the applicant's existing operation. Hr'g Tr. p. 24:16-19. The answer to this question does not bear on an applicant's eligibility to lease state land. Hr'g Tr. p. 22:5-13. Nor does it indicate whether an applicant has actual and necessary use of the land because fences are temporary in nature and can be moved and removed. Hr'g Tr. p. 24:20-25 – 25:1-2. The hearing officer does not explain why the Office's position is legally wrong—as opposed to the hearing officer favoring a different policy—or how fencing is material under statute or rules. The Board should not follow this suggestion without a thoughtful discussion with the Director or consideration of the ramifications of this significant change in policy.

6. Paragraph 32 – The Office takes exception with the hearing officer's finding that Wagonhound made a misrepresentation in its application. The Office defers to Wagonhound's briefing on this issue.

It must be noted though that the hearing officer suggests Wagonhound made an intentional misrepresentation in its application—i.e., committed fraud. This is a serious accusation that is not supported by the record or the law. In Wyoming, the elements of fraud are (1) a false representation of material fact (2) reasonably relied on by a party (3) who then suffers a detriment. *McKenney v. Pacific First Federal Savings Bank of Tacoma*, 887 P.2d 927, 928 (Wyo. 1994). The asserted false representation must be made to induce action. *Id.* Furthermore, the circumstances alleged to

constitute fraud must be stated with particularity and established by clear, unequivocal, and convincing evidence. *Id.* at 928-29. Fraud will never be presumed. *Id.* at 929. Leman has failed to establish fraud by clear, unequivocal and convincing evidence and “fraud” cannot be presumed. *Id.*

First, Wagonhound has not made a false representation. Hr’g Tr. p. 87:1-10. Again, the Office defers to Wagonhound’s briefing on this issue. In addition, any alleged misrepresentation was not material. Hr’g Tr. p. 88:1-2, p. 93:7-13. Second, the Office did not rely on the fencing representation in its award decision. Hr’g Tr. p. 32:9-11. And third, the Office did not suffer any detriment as a result of the alleged misrepresentation. Therefore, there is no evidence of fraud in this case.

7. Paragraph 33 – The Office takes exception with the hearing officer’s finding that the vacant leasing preference does not act as a tie-breaker between even rental offers. It is troubling that the hearing officer attempts to resolve the preference argument in one paragraph without explanation as to what the preference means. Instead, the hearing officer merely dismisses the Office’s arguments and seems to equate “preference” with an absolute “right to the lease,” which the legislature did not establish. The Office incorporates its previous summary judgment briefing on the preference statute into these exceptions.

8. Paragraph 34 – The Office takes exception with the hearing officer’s assertion that the minimum rental arrived at pursuant to Wyo. Stat. Ann. §§ 36-5-105(b) and 36-5-101(b) is the fair market value for the lease. The Wyoming Supreme Court has rejected this argument. *See Office of State Lands and Invs. v. Mule Shoe Ranch, Inc.*, 2011 WY 68, ¶ 19, 252 P.3d 951, 956 (Wyo. 2011). In *Mule Shoe Ranch*, the Court noted that the minimum rental for a lease is *at least* the fair market value, not *the* fair market value. *Id.*, ¶ 20, 252 P.3d at 956. The Court clarified that the fair

market value is “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s length transaction.” *Id.*, ¶ 20, 252 P.3d at 956 quoting *Grommet v. Newman*, 2009 WY 150, ¶ 52, 220 P.3d 795, 815 (Wyo. 2009).

Here, the fair market value is an annual rental amount of \$1,360.00, the amount Wagonhound is willing to pay. The hearing officer is recommending the Board accept an annual rental that is more than \$1,000 under the fair market value. It is incomprehensible how this would be in the greatest interest of the state. The only benefit would be to Leman, who is rewarded for trespassing on state land for years.

9. Paragraph 35 – The Office takes exception with this paragraph for many reasons. First, the hearing officer found that in leasing vacant land, past use is relevant. This has been rejected by the Board. This Board has held that in determining whether an applicant has actual and necessary use for the land, “[t]he Director must determine if the applicant has the intent and ability to use the land and forage.” *See* Exhibit A, ¶ 50. The statute only requires the land and forage must be used when leased. *Id.* The Board further clarified that the Office is not required to conduct a business analysis of the applicant to determine a ranching necessity separate and distinct from the fact that the applicant has animals it intends to graze on the state land. *Id.*

Next, the hearing officer notes that Leman’s continuous use of the leased land since 2011 demonstrates his actual and necessary use. There is no dispute that Leman did not have a lease or permission from the Office to use the leased land during this time. The hearing officer therefore proposes rewarding applicants who are trespassers for their past unlawful use. A better policy, and possibly duty, is to find that any applicant who trespasses on state land is not a qualified lessee under Wyoming Statute § 36-5-101(a), which provides that no person shall be qualified to lease

state land unless he has complied with the laws of this state. In any event, Leman should not benefit from his repeated trespass.

Finally, the hearing officer recommends the Board find and conclude that Leman's actual and necessary use outweighs that proposed by Wagonhound. Again, as recognized by the Wyoming Supreme Court, the question is not which applicant has a greater need or would benefit more, but which applicant would best benefit the general public. *Frolander* at 363. Here, that is Wagonhound because it is willing to pay four times the rent as Leman.

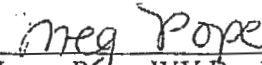
10. Paragraph 36 – The Office takes exception with the hearing officer's finding that Wagonhound's failure to use the land in the past demonstrates a lack of actual and necessary use for the lease going forward. As this Board has already determined, actual and necessary use for the land only requires the land and forage must be used when leased. *See* Exhibit A, ¶ 50. Past use is not relevant. Instead, an applicant is only required to show it has animals it intends to graze on the state land. *Id.*

11. Paragraph 37 – The Office takes exception with the hearing officer's finding that in determining the greatest benefit to the state in leasing vacant land, the Board must consider historical use of the land and the need by the applicant for existing ranching activities for the reasons stated in paragraph 2 of these exceptions.

12. Recommended Order – The Office takes exception with the hearing officer's recommendation that the Board not uphold the Office's decision, reject Wagonhound's application, and award the lease to Leman. There is no legal basis for this recommendation. The proper result is for the Board to uphold the Office's decision to conditionally award the lease to Wagonhound. In the alternative, if the Board determines that the Office should consider additional

factors, the solution is not to award the lease to Leman but to remand the case to the Office with instructions to consider any additional factors the Board deems appropriate.

Respectfully submitted January 17, 2020.



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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of January, 2020, the foregoing **EXCEPTIONS TO RECOMMENDED DECISION** was served in the following manner, addressed to:

Office of State Lands and Investments
Attn: Jason Crowder, Deputy Director
122 West 25th Street, 1st Floor East
Cheyenne, Wyoming 82002-0600

ORIGINAL Via Interagency Mail

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Via Hand Delivery

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*Advising Attorney for the Board of Land
Commissioners*

Via Hand Delivery


Office of the Attorney General

December 11, 2008

BOARD MATTER D - 12

ACTION: Consideration of a "Recommended Findings of Fact, Conclusions of Law and Order Granting Office of State Lands and Investments' and Two Y Ranch, LLC's Motions for Summary Judgment" from the Office of Administrative Hearings in *In the Matter of Conflicting Lease Application by Lonesome Country Limited*, State Lease No. 2-5284, OAH Docket No. 08-107-060

AUTHORITY: WYO. STAT. ANN. § 36-2-104
Board Rules, Chapter 1, § 9

ALTERNATIVES:

Adopt the Recommended Order Granting Motion for Summary Judgment

Adopt the Recommended Order Granting Motion for Summary Judgment as modified by the Board during the December 11, 2008 Board meeting

Reject the Recommended Order Granting Motion for Summary Judgment

ANALYSIS:

Lonesome Country Limited (Lonesome Country) held State Lease Number 2-5284, consisting of 4,200 acres of state lands in Crook County, for grazing and agricultural purposes. The lease expired on February 1, 2008. Lonesome Country sublet the land during the term of the expiring lease.

On October 30, 2007, Two Y Ranch submitted a conflicting lease application with the Office of State Lands and Investments (State Lands) offering \$28.00 per animal unit months (AUM) for the 4,200 acres of land under State Lease No. 2-5284. On November 13, 2007, Lonesome Country timely submitted its renewal application offering an annual rental payment of \$5.21 per AUM.

On March 25, 2008, the Director of State Lands conditionally awarded State Lease No. 2-5284 to Lonesome Country at the annual rental rate offered by Two Y Ranch, giving Lonesome Country the option to exercise its preferential right by meeting the highest bid offer by Two Y Ranch.

On April 7, 2008, Lonesome Country exercised its preferential right by filing its acceptance in writing and submitting payment for the balance of the first year's rent due to State Lands. Both Two Y Ranch and Lonesome Country contest the Decision of the Director issued on March 25, 2008.

This matter comes before the Board of Land Commissioners on Lonesome Country's September 8, 2008 Motion for Summary Judgment, State Lands' September 24, 2008 Motion to Set Aside the Director's Decision, or in the Alternative, Motion for Summary Judgment with Memorandum in support thereof and attached Affidavits of Jim Arnold and Lynne Boomgaarden, as well as Exhibits S-1 through S-9, and Two Y Ranch's September 29, 2008 Motion for Summary Judgment and Brief in support thereof, State Land Office's October 1, 2008 Response to Lonesome Country's Motion for Summary Judgment with attached Affidavit of Jim Arnold and Exhibits S-1, S-8 and S-40, Two Y's October 6, 2008 Brief in Response to Lonesome Country's Motion for Summary Judgment and Affidavit of Kim Kling with attached Exhibits A through D, Lonesome Country's October 10, 2008 Reply to State Land's Response to Lonesome Country's Motion for Summary Judgment, Lonesome Country's October 10, 2008 Opposition to State Land's Motion to Set Aside the Director's Decision or in the Alternative Motion for Summary Judgment, Lonesome Country's October 10, 2008 Opposition to Two Y's Motion for Summary Judgment, Lonesome Country's September 8, 2008 Statement of Material Facts, State Land's September 24, 2008 Statement of Undisputed Facts and its October 1, 2008 Statement of Disputed Facts, Two Y's September 29, 2008 Statement



of Material Facts and its October 6, 2008 Response to the Statement of Material Facts submitted by Lonesome Country.

The OAH recommends that State Lands' September 24, 2008, Motion to Set Aside the Director's Decision, or in the Alternative, Motion for Summary Judgment and Two Y Ranch, LLC's September 29, 2008 Motion for Summary Judgment be **GRANTED**. The OAH also recommends that Lonesome Country's September 8, 2008 Motion for Summary Judgment be **DENIED**. See attached "Recommended Order Granting Motion for Summary Judgment."

BOARD ACTION: Approved the Hearing Officer's Finding of Facts and Conclusion of Law and adopted a slightly modified Order Granting State Land's Motion to Set Aside the Director's Decision, or in the Alternative Motion for Summary Judgment and Two Y Ranch, LLC's Motions for Summary Judgment. The Board additionally awarded the lease to Two Y Ranch at the amount bid by Two Y Ranch.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS
STATE OF WYOMING

IN THE MATTER OF CONFLICTING)
LEASE APPLICATION BY) STATE LEASE NO. 2-5284
LONESOME COUNTRY LIMITED) OAH DOCKET NO. 08-107-060
)

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER GRANTING OFFICE OF STATE LANDS AND INVESTMENTS' AND
TWO Y RANCH, LLC.'s MOTIONS FOR SUMMARY JUDGMENT**

THIS MATTER came before the Office of Administrative Hearings (Office) upon Appellant's, Lonesome Country Limited (Lonesome Country), September 8, 2008 Motion for Summary Judgment, the Office of State Lands and Investments (State Land Office) September 24, 2008 Motion to Set Aside the Director's Decision, or in the Alternative, Motion for Summary Judgment with Memorandum in support thereof and attached Affidavits of Jim Arnold and Lynne Boomgaarden, as well as Exhibits S-1 through S-9, and Two Y Ranch, LLC's (Two Y) September 29, 2008 Motion for Summary Judgment and Brief in support thereof. This Office also received the State Land Office's October 1, 2008 Response to Lonesome Country's Motion for Summary Judgment with attached Affidavit of Jim Arnold and Exhibits S-1, S-8 and S-40, Two Y's October 6, 2008 Brief in Response to Lonesome Country's Motion for Summary Judgment and Affidavit of Kim Kling with attached Exhibits A through D, Lonesome Country's October 10, 2008 Reply to State Land Office's Response to Lonesome Country's Motion for Summary Judgment, Lonesome Country's October 10, 2008 Opposition to State Land Office's Motion to Set Aside the Director's Decision or in the Alternative Motion for Summary Judgment and Lonesome Country's October 10, 2008 Opposition to Two Y's Motion for Summary

Judgment. Additionally, this Office received Lonesome Country's September 8, 2008 Statement of Material Facts, State Land Office's September 24, 2008 Statement of Undisputed Facts and its October 1, 2008 Statement of Disputed Facts, and Two Y's September 29, 2008 Statement of Material Facts and its October 6, 2008 Response to the Statement of Material Facts submitted by Lonesome Country.

Lonesome Country appeared by and through its counsel, Roland Ericsson. The State Land Office appeared by and through counsel, Senior Assistant Attorney General, Bridget Hill. Two Y appeared by and through its counsel, Kenneth E. Barker. Oral argument was held on October 15, 2008. Although in their Motions for Summary Judgment the parties agreed there were no genuine issues of material fact in this matter and argued judgment as a matter of law was appropriate, both Lonesome Country and Two Y argued in response briefs that issues of material fact existed in this case and therefore summary judgment may not be appropriate. Based upon the evidence and argument presented, as well as the disclosure statements filed, the Office makes the following recommended findings of fact, conclusions of law and Order:

I. JURISDICTION

WYO. STAT. ANN. § 9-2-2202(b) (LEXIS 2008) authorizes the Office of Administrative Hearings to provide hearing services to other state agencies. The hearings are to be "conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings." WYO. STAT. ANN. § 9-2-2202(b)(iii) (LEXIS 2008).

Chapter 1, Sections 7 (a), (b) and (h) of the Rules and Regulations of the Board of Land Commissioners (Board's Rules) provide that any applicant affected by the Director of the Office of State Lands and Investments decision in a case of conflicting lease applications may appeal the decision to the Board of Land Commissioners. A contested case, as defined by WYO. STAT. ANN. § 16-3-101(b)(ii) (LEXIS 2008) shall be held upon an appeal of a Director's decision in a case of conflicting applications to lease lands under the jurisdiction of the Board. The Wyoming Rules of Civil Procedure apply to all contested cases before the Board. The provisions of Rule 56 of the Wyoming Rules of Civil Procedure provide for summary judgment.

The State of Wyoming owns the lands covered by State Lease No. 2-5284. On April 21, 2008, Lonesome Country timely appealed the March 25, 2008 decision of the Director of the State Land Office requiring Lonesome Country to pay increased rental payments under State Lease 2-5284 in order to exercise its preferential right. On April 28, 2008, Two Y also timely appealed the March 25, 2008 decision of the Director of the State Land Office to conditionally award State Lease 2-5284 to Lonesome Country rather than to Two Y. On May 30, 2008, the State Land Office for the Board of Land Commissioners referred this matter to the Office of Administrative Hearings for purposes of conducting contested case proceedings and providing a recommended decision.

The Board's Rules define a "Presiding Officer" to mean the administrative hearing officer designated to preside over a contested case. The presiding officer may hear any motion filed in connection with contested cases under the Board's Rules. See Board's Rules, Chapter 1, Sections 1(v) and 9(e). The presiding officer may provide the parties with a recommended decision if requested by the referring agency. See Office of Administrative Hearings, Rules for Contested Case Practice and Procedure, Chapter 2, Section 7 (2008).

Therefore, this Office has jurisdiction to hear and recommend a decision in this matter.

II. STATEMENT OF THE CASE

Lonesome Country previously leased the 4,200 acres of state lands in Crook County, Wyoming under State Lease No. 2-5284 for grazing and agricultural purposes. On February 1, 2008, the lease was due to expire. Lonesome Country subleased the land during the term of the expiring lease.

On October 30, 2007, the State Land Office received a conflicting lease application for the 4,200 acres of state lands under State Lease No. 2-5284 from Two Y, submitting a bid of \$28.00 per animal unit months (AUM). On November 13, 2007, Lonesome Country timely submitted its renewal application offering an annual rental payment of \$5.21 per AUM.

The Director of the State Land Office thereafter conditionally awarded State Lease No. 2-5284 to Lonesome Country at the annual rental rate offered by Two Y, which constituted the highest bid offered. The Director gave Lonesome Country the option to exercise its preferential right by meeting the highest bid offered.

On April 7, 2008, Lonesome Country exercised its preferential right by filing its acceptance in writing and submitted payment for the balance of the first year's rental due. Both Lonesome Country and Two Y challenged the Director's March 25, 2008 decision in this matter. Both parties, as well as the State Land Office filed the above identified motions for summary decision and responses. The parties agreed in their initial motions there were no genuine issues of material fact and the matter should be decided on the motions and memorandum filed.

However, in their subsequent responses, both Lonesome Country and Two Y asserted issues of material fact may exist in this case and therefore, summary judgment may not be appropriate.

III. ISSUES AND CONTENTIONS

The issue in this case is whether the Director's March 25, 2008 decision to conditionally award State Lease No. 2-5284 to Lonesome Country at the annual rate of \$54,712.00 or \$28.00 per AUM, is correct as a matter of law.

Lonesome Country asserted the Director's March 25, 2008 decision was incorrect for a number of reasons. Lonesome Country asserted the Director should not have accepted Two Y's application because Two Y submitted a fraudulent application with the Wyoming Secretary of State in forming a limited liability corporation and therefore was not a qualified applicant. Lonesome Country also asserted Two Y's lease application should have been summarily dismissed by the Director because the application contained false and material misrepresentations in stating that Two Y owned deeded lands adjoining the state lands to be leased but had no legal access to the leased land. Lonesome Country also asserted that the Director could not accept Two Y's bid because the bid was not based on fair market value. Lonesome Country argued for summary judgment in its favor and requested the Director's March 25, 2008 decision be reversed, Lonesome Country's original application be accepted and the annual rental be computed without regard to the conflicting application submitted by Two Y. Lonesome Country alternatively argued that summary judgment is not appropriate because issues of material fact exist as to whether Lonesome Country owes the State any money as excess rental in violation of the terms of Lonesome Country's lease.

Two Y asserted the Director's March 25, 2008 decision was erroneous because Lonesome Country subleased the state land during the period of the expiring lease and thereafter failed to make appropriate excess rental payments to the State Land Office under the prior lease as required by law. Two Y argued Lonesome Country was, therefore, not qualified for preferential rights to the lease at issue in this case. Two Y also argued that legal access is not a prerequisite to be a qualified applicant, but if legal access is deemed a prerequisite, Two Y could obtain the appropriate legal access. Two Y also vehemently denied any fraudulent, false or misleading statements on its application and argued Two Y filed a true and complete lease application in this matter. Two Y argued it should be granted summary judgment. However, if the issue of fraud is considered, then Two Y argued an issue of fact exists and therefore the case is not appropriate for summary judgment.

The State Land Office requested this Office set aside the Director's March 25, 2008 decision issued in this case or, in the alternative, grant summary judgment to the State Land Office or Two Y. The State Land Office conceded the Director's March 25, 2008 decision was erroneous and the lease at issue in this case should have been awarded to Two Y rather than to Lonesome Country. The State Land Office argued that although Lonesome Country made its annual payments when due, Lonesome Country failed to pay the State one-half of the excess rental payments received from subleasing as required by law, in order to be entitled to a preferential right. The State Land Office also asserted an alleged fraudulent limited liability corporation application for the organization of Two Y is a matter appropriate for the Secretary of State, but not this Office or the State Land Office. Finally, the State Land Office argued that a conflicting lease applicant is not required to show legal access on the face of the application and the Director has no authority to reject an application on that basis. According to the State Land

Office, Two Y's application stated it would use the leased State land for grazing purposes and the Director cannot presume that Two Y was untruthful when completing its application. The State Land Office also argued that any misrepresentations or mistakes in Two Y's application were not material to the application as Two Y's ownership of adjoining land is not a material fact since there is no requirement that a conflicting applicant own the adjoining land. The State Land Office argued that it and Two Y should be entitled to judgment as a matter of law.

IV. RECOMMENDED FINDINGS OF FACT

1. The State of Wyoming owns the lands covered by State Lease No. 2-5284. The lease consists of 4,200 acres in Crook County, Wyoming with 1,954 AUM's of forage. These lands are used for grazing and agricultural purposes. *Exhibit S-4, Director's Decision.*

2. Lonesome Country is a Wyoming Corporation and the existing leaseholder of State Lease No. 2-5284 and has held that lease since 1969. State Lease No. 2-5284 expired February 1, 2008. *See Affidavit of Ronald Ericsson and Affidavit of Jim Arnold.*

3. The Grazing and Agricultural Lease No. 2-5284 entered into by Lonesome Country (Lessee) and the Wyoming Board of Land Commissioners (Lessor) provided the Lessee could sublease the premises subject, in part, to the following condition: "In no event shall the premises be subleased unless one-half of any excess rental is paid to the Lessor." Through the discovery process, the State Land Office learned that Lonesome Country subleased the State land during the term of the expiring lease. Lonesome Country did not make excess rental payments to the State during the years of 2003, 2004, 2005, 2006 and 2007. The last excess rental payment made to the State was for the year 2002. *See Affidavit of Jim Arnold and State's Exhibits S-6, S-7A, S-7B and S-7C.*

4. As a result of being informed of subleasing of State lands, the State Land Office had a practice of notifying leaseholders with a standard form for approval of the pasture agreement. After 2002, Lonesome Country did not receive notification from the State Land Office concerning the completion of the approval forms. Upon inquiry in April 2004, an agent of the State Land Office informed Ronald Ericsson that State Lease No. 2-5284 was in good standing and no monies were due and owing to the State on the lease. *See Affidavit of Ronald Ericsson.*

5. Kathryn Richardson, Lonesome Country's bookkeeper, also made inquiry every year beginning in 2003 as to whether Lonesome Country owed any money to the State Land Office. An agent from the State Lands Office reported that Lonesome Country owed no monies.

6. After learning Lonesome Country subleased the State lands at issue in this case through the discovery process, on April 27, 2008, the State Land Office sent Lonesome Country a letter advising Lonesome Country that after reviewing their records, the State Land Office had no information regarding subleases for the seasons 2003, 2004, 2005, 2006 and 2007. The State Land Office enclosed Request for Approval of Sublease forms for Lonesome Country to submit for those past years. *See State's Exhibit S-13.*

7. Two Y is a Wyoming Limited Liability Company, and according to the Wyoming Secretary of State, is in good standing in this State. Two Y is an agricultural operation managed by Kim Kling. On October 30, 2007, the State Land Office received a conflicting lease application from Two Y for the 4,200 acres of land under State Lease No. 2-5284. *See Affidavit of Kim Kling and attached Exhibit A, Affidavit of Jim Arnold and State's Exhibit S-1 and S-8.*

8. Two Y offered an annual rental payment of \$54,712.00 or \$28.00 per AUM for the 4,200 acres they proposed to lease. Two Y stated that it intended to use the State lands for

grazing purposes. The application submitted by Two Y reflected they owned 10 horses, 900 cows, 600 yearlings and 50 bulls. The application was accompanied by the proposed first year's annual rental, the proper application fees, and deposits for contributory value of the improvements as estimated in the application. *See Affidavit of Jim Arnold, State's Exhibit S-1.*

9. Two Y's October 30, 2007 conflicting application was accompanied by the required Lease Application Plat. The Lease Application Plat reflected Two Y owned lands in Township 57 North, Range 62 West. Subsequent to the Director's March 25, 2008 decision, Two Y submitted a copy of the deed conveying property located in Crook County to Two Y. The deed included the property Two Y indicated it owned on the Lease Application Plat. The deed specifically stated that it is "incorporating herein all terms and conditions of a Final Order Granting Partition entered by Michael N. Deegan, District Judge in and for Crook County, Wyoming, filed in Crook County District Court in Civil Action # 7623 on February 1, 2007." Therefore, the order of partition was entered well before Two Y's application of October 30, 2007. However, Two Y did not obtain ownership of the adjoining land indicated in its Lease Application Plat until November 9, 2007. *State's Exhibit S-1 and S-40.*

10. Following receipt of Two Y's October 30, 2007 lease application, the State Land Office verified that Two Y was authorized to transact business in the State of Wyoming. Thereafter, on November 1, 2007, the State Land Office notified Lonesome Country that a conflicting lease application had been filed for State Lease No. 2-5284. *See Affidavit of Jim Arnold and State's Exhibits S-2.*

11. Lonesome Country timely submitted a renewal application for State Lease No. 2-5284 on November 13, 2007. In its application, Lonesome Country offered an annual rental payment of \$10,180.34 or \$5.21 per AUM for the 4,200 acres. Lonesome Country's application

was accompanied by the proposed first year's annual rental and the proper application fee. *See Affidavit of Jim Arnold and State's Exhibit S-3.*

12. On March 25, 2008, the Director of the State Land Office issued a Decision letter on the conflicting applications for State Lease No. 2-5284. The Director found that Two Y was a qualified applicant because it was a corporation in good standing authorized to do business in the State of Wyoming, that Two Y indicated it would use the leased premises for grazing purposes and thus had an "actual and necessary use for the land and available forage" and that Two Y's bid of \$54,712.00 or \$28.00 per AUM was the highest bid offered by a qualified applicant. The Director also noted that, "Two Y Ranch, LLC filed conflicting applications on three leases, Ericsson Corporation, Lonesome Country Limited, and Mule Shoe Ranch, Inc. These three leases make up a contiguous block of state land. If Two Y Ranch, LLC is successful in obtaining all three of these leases, it will have access to this lease. Thus, the Director cannot, on the face of the application, determine that Two Y Ranch, LLC would not have access to this parcel." *See State's Exhibit S-4.*

13. The Director's March 25, 2008 decision also conditionally awarded State Lease No. 2-5284 to Lonesome Country for a ten year term from February 1, 2008 to February 1, 2018 at the annual rate offered by Two Y, which represented the highest bid offered. The Director gave Lonesome Country 15 days to exercise its preferential right to meet the highest bid offered by filing its written acceptance of the Director's March 25, 2008 decision and paying the balance of the first year's annual rental due of \$44,531,66. *See Affidavit of Lynne Boomgaarden and State's Exhibit S-4.*

14. On April 7, 2008, Lonesome Country exercised its preferential right by filing its acceptance in writing and paying the rate established by the Director. The same letter also

advised that Lonesome Country intended to appeal the Director's March 25, 2008 decision asserting the competing bid of \$28.00 per AUM was a 437 percent increase over the current AUM and therefore not based upon fair market value. Lonesome Country also asserted Two Y did not have legal access to the state land leased by Lonesome Country and therefore was not a qualified applicant. *See Affidavit of Lynne Boomgaarden and State's Exhibit S-5.*

15. In an April 16, 2008, email to the State Land Office, Lonesome Country timely filed its Notice of Appeal of the Director's March 25, 2008 decision asserting the competing bid of \$28.00 per AUM was not a valid bid because it was not based upon fair market value using the formula developed by the Board of Land Commissioners for the same or similar use of land, the conflicting applicant did not have "actual" and necessary use for the land and available forage and Two Y did not have legal access to the land. In subsequent correspondence to the State Land Office, Lonesome Country also asserted that Two Y submitted a fraudulent lease application to the State Land Office and submitted a fraudulent limited liability company application to the Secretary of State. Therefore, the Director's March 25, 2008 decision was not in accordance with the law.

16. On April 28, 2008, Two Y also timely filed its Notice of Appeal of the Director's March 25, 2008 Decision asserting Lonesome Country subleased the referenced State land during the term of the expiring lease and failed to submit excess rental payments to the State in violation of the statutes. Two Y asserted Lonesome Country was an unqualified applicant or unqualified preferential right lessee under the statutes as a result of Lonesome Country's failure to make the excess rental payments to the State.

17. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. RECOMMENDED CONCLUSIONS OF LAW

I. General Principles of Law

18. All state lands leased by the State Board of Land Commissioners, for grazing and other agricultural purposes shall be leased in such a manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries. WYO. STAT. ANN. § 36-5-105(a) (LEXIS 2008).

19. Regarding summary judgment, the Wyoming Supreme Court has said:

. . . the legislature conferred authority upon the Office of Administrative Hearings to invoke summary judgment rules of the Wyoming Rules of Civil Procedure. The Rules For Contested Case Practice specifically provide the Wyoming Rules of Civil Procedure are invoked for guidance. The desirability of resolving the case when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law..." (Wyo.R.Civ.P. 56(c) is as desirable in an administrative proceeding as it may be in a case before the court.

Neal v. Caballo Rojo, Inc., 899 P.2d 56, 58-59 (Wyo. 1995).

20. The court further stated:

We hold summary judgment is available in contested case hearings before the Office of Hearing Examiners [Office of Administrative Hearings]. It should be invoked when, in the language of Wyo. R. Civ. P. 56(c), "[t]here is no genuine issue as to any material fact ... the moving party is entitled to judgment as a matter of law."

Id. at 62.

21. W.R.C.P. 56(e) (2001) also is pertinent in this matter and provides:

When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

22. The Wyoming Supreme Court has been clear that statutory interpretation is a question of law. *BP American Production Co. v. Department of Revenue*, 112 P.3d 596, para. 12 (Wyo. 2005). When interpreting statutory provisions, the first step is to look to the plain and ordinary meaning of the words to determine if the statute is ambiguous. *Parker Land and Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1042-43 (Wyo. 1993). "A statute is unambiguous if its wording is such that reasonable persons are able to agree as to its meaning with consistence and predictability. A statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations." *Id.* at 1043. (Citations omitted.)

23. The Wyoming Supreme Court also explained "the fact that opinions may differ as to a statute's meaning is not conclusive of ambiguity." *Basin Electric Power Coop. V. State Bd. Of Control*, 578 P.2d 557, 561 (Wyo. 1978). The Court also stated that statutes must be interpreted in accordance with the legislature's intent. An inquiry must be made "respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection." *Parker* at 1042, quoting *Rasmussen v. Baker*, 7 Wyo. 117, 133, 50 P. 819, 823 (1897). "We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe together all parts of the statute *in pari materia*." *Newton v. State ex rel. Wyoming Worker's Compensation Division*, 922 P.2d 863, 865 (Wyo. 1996), quoting *State Department of Revenue and Taxation v. Pacificorp*, 872 P.2d 1163, 1166 (Wyo. 1994).

24. In this case, none of the parties set forth any specific facts showing there is a genuine issue of material fact, and therefore, summary judgment is appropriate in this case.

II. A. Principles of Law Regarding the Preferential Rights Statutes

25. WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008) provides:

(c) An applicant who is the holder of an expiring lease, and has paid the rental when due, and has not violated the provisions of the lease, and is qualified under the provisions of W.S. 36-5-101, shall have a preferred right to renew such lease by meeting the highest bid offered by another qualified applicant who has actual and necessary use for the land and available forage and whose bid is based on the fair market value, using the formula developed by the board pursuant to W.S. 36-5-101(b), for the same or a similar use of the land. (Emphasis added).

26. The Board's Rules Chapter 4, Section 6 (a) and (b) provides:

Section 6. Rentals

(a) The annual rental for all leases shall be:

- (i) The amount bid by the applicant, if accepted by the Board, or
- (ii) As set by the Board as part of its decision in a case of conflicting applications.

However, in no event shall the annual rental be less than the minimum rate established in subsection (b) of this section.

(b) The minimum annual rental shall be:

- (i) For grazing land, as established by formula as follows:
Private land lease rate on a per AUM basis, average for the five years preceding the current year, as estimated by the Wyoming Agricultural Statistics Service; times the five year weighted average "parity ratio" for beef cattle per cwt. as established by the National Agricultural Statistics Service as an adjustment for changing resource conditions, market demand and industry viability; less 20% to reflect contributions made by the lessee.
- (ii) For hay and dry cropland, the average production shall be converted to AUM's and assessed at the rate established in paragraph (i) of this subsection.
- (iii) Rental for irrigated cropland shall be based on fair market value for the same or similar use of the land, less the value of

lessee's interest in the irrigation system and improvements, as determined by an economic analysis.

The Board shall review the above minimum annual rental determinations on an annual basis.

27. WYO. STAT. ANN. § 36-5-105(d) (LEXIS 2008) provides:

(d) 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; . . . provided, that in no event shall the lands be subleased unless one-half (1/2) of the excess rental is paid to the state. (Emphasis added).

B. Application of the Principles of Law Regarding the Preferential Rights Statutes requiring Ericsson to be in compliance with statutes in order to exercise a preferential right.

28. In order for an existing lessee to exercise a preferential right to meet the highest bid offered, the holder of the expiring lease must have paid the rental when due and not have violated the provisions of the lease. The terms of the grazing lease provide similarly that, "In no event shall the premises be subleased unless one-half of any excess rental is paid to the Lessor." *State's Exhibit S-6.*

29. According to the uncontradicted evidence submitted by the State Land Office, Lonesome Country made its annual payments of \$6,839.00 as required by the lease. However, unknown to the State Land Office until the current proceedings were underway, Lonesome Country subleased the State land at issue in this case during the years 2003, 2004, 2005, 2006 and 2007. The evidence was uncontradicted that Lonesome Country failed to pay the State one-half of the excess rental payments received from the subleasing as required by WYO. STAT. ANN. § 36-5-105(d) (LEXIS 2008).

30. . The Grazing and Agricultural Lease contract clearly required Lonesome Country to make excess rental payments and there are no exceptions to this requirement. Lonesome Country argued that it was the State Land Office's fault that no excess rental payments were made by Lonesome Country because the State Land Office discontinued sending a sublease form to Lonesome Country. This argument is not persuasive. The State Land Office was not informed of the sublease, as required by the clear terms of the original Grazing and Agricultural Lease entered into by Lonesome Country and the Wyoming Board of Land Commissioners. It was incumbent upon Lonesome Country to notify the State Land Office that it was subleasing the State land and thereafter required to pay the State one-half of any excess rental that resulted from the sublease.

31. The plain language of WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008) requires Lonesome Country to meet three conditions in order to be entitled to a preferential right. The statute clearly requires that Lonesome Country must have paid the rental when due, not violated the terms of the lease, and was qualified under WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008).

32. Lonesome Country is not entitled to a preferential right because it has not made all of its rental payments when due as required by WYO. STAT. ANN. § 36-5-105(d) (LEXIS 2008) and in violation of the clear and unambiguous terms of the Grazing and Agricultural Lease. Therefore Lonesome Country failed to meet the preferential right requirements of WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008).

33. Although Lonesome Country is not entitled to the preferential right to renew by meeting the highest bid offered, the parties also differed over the meaning of the phrase "meeting the highest bid offered . . . whose bid is based on the fair market value, using the formula developed by the board pursuant to W.S. 36-5-101(b), for the same or similar use of the land."

The meaning of the phrase is at issue in this case should the Wyoming Board of Land Commissioners determine that Lonesome Country is entitled to a preferential right to renew.

34. Lonesome Country argued that it must only match a competing bid if the bid is based upon fair market value using the formula developed by the Board. Lonesome Country argued the Board should determine the rental rate in light of current economic realities in the ranching business and without considering what it called "exorbitant bids." Lonesome Country provided no legal authority to support their position.

35. The State Land Office relied on the plain language of the above quoted statutes and Board's Rules, as well as *Riedel v. Anderson*, 70 P.3d 223 (Wyo. 2003) to support its position that the Director's March 25, 2008 decision in this matter was in accordance with the law. In *Riedel*, the Wyoming Supreme Court addressed the language in WYO. STAT. ANN. § 36-5-105(a) (LEXIS 2008) and analyzed the preferential right provisions. The Supreme Court did not specifically address the meaning of the phrase "meeting the highest bid offered which is based on the fair market value" but stated:

. . . .prior preferential right to renew leases are conditional, not absolute. The current statutory right is even more conditional: the incumbent must re-apply every ten years, must have met prior lease payments, must otherwise maintain eligibility, and most importantly must match any higher bid offered for the same land. The State may still decide to sell the land or not to lease it at all; if it does lease, it does so at the highest rate bid by anyone. (Citations omitted and emphasis added.)

Id. at para. 38.

36. The Supreme Court specifically recognized the importance of the requirement for existing lessees to meet any higher bid offered and recognized that offers to lease state lands can and do exceed the minimum annual rental established by the Board. *Riedel* at para. 38 and 42. The Court also stated "if [the Board] does lease, it does so at the highest rate bid by anyone." *Id.*

at para. 38. The Court continued and said “the current version requires that the renewing lease holder match any competing bid and therefore approximates market value.” *Id.* at para. 42.

37. The State Land Office also relied upon a recent District Court decision to support its position that the highest bid offered is the fair market value. *In the Matter of the Conflicting Grazing Lease Application of West Ranch, LLC*, State of Wyoming, Eighth Judicial District Court (June 6, 2007), the District Court addressed the issue of a high bid exceeding the minimum annual rate. In that case, the District Court held that the above quoted statutes, Board’s Rules and the *Riedel* case supported the Board setting the annual rental rate at the highest bid offered. Additional support is found in Chapter 4, Section 6 of the Board’s Rules which gives the Director the discretion in determining the annual rental rate when there are conflicting applications. From case law, it is clear a competing bid represents fair market value for purposes of a preferential right and must be met by the existing lessee.

38. In order to exercise its preferential rights, the plain language of WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008) requires Lonesome Country to meet the highest bid offered. WYO. STAT. ANN. §§ 36-5-101(b) and 36-5-105(c) (LEXIS 2008), when read in conjunction with Chapter 4, Section 6 of the Board’s Rules, establishes a minimum annual rental for the grazing leases on state lands. The statute does not contemplate having the Board establish a maximum amount that can be bid.

39. Additionally, since no maximum amount is set by statute, the annual rental offered in a conflicting lease is set by the market. In other words, the competing bid offered by a conflicting applicant necessarily represents the fair market value as it reflects what a competing bidder is willing to pay for the lease. The highest competing bid, therefore represents the fair market value.

III. A. Principles of Law Regarding Misrepresentations on an Application

40. WYO. STAT. ANN. § 36-5-101(a) (LEXIS 2008) provides that, “[n]o person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in the state.”

41. WYO. STAT. ANN. § 36-5-113 (LEXIS 2008) provides, “The board shall have the power and authority to cancel leases procured by fraud, deceit or misrepresentation, or for use of the lands for unlawful or illegal purposes, or for the violation of the covenants of the lease, upon proper proof thereof.”

42. Board’s Rules, Chapter 4, Section 5 provides, “Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentations and shall be cause for the rejection of the application.” (Emphasis added).

43. WYO. STAT. ANN. § 36-5-105(b) (LEXIS 2008) provides in relevant part:

(b) In leasing vacant lands, preference shall in all cases be given to applicants . . . having actual and necessary use for the land and who are owners, lessees or lawful occupants of adjoining lands, who offer to pay an annual rental at not less than fair market value . . . (Emphasis added).

B. Application of the Principles of Law Regarding Misrepresentations on an Application

44. In Two Y’s October 30, 2007 application to lease 4,200 acres of State land, Two Y represented ownership of lands it marked with a red pen on the Lease Application Plat. Although an Order of Partition was issued well before the deed and well before Two Y’s application, Two Y did not own those lands until November 9, 2007, or 10 days after Two Y submitted its application. Lonesome Country asserted this representation constituted fraud.

45. The State Land Office and Two Y argued that the representation was not fraudulent and, regardless, whether Two Y actually owned any adjoining land at the time of the

application is not relevant for the Director's decision because there is no requirement that a conflicting applicant own the adjoining land. Rather, WYO. STAT. ANN. § 36-5-101 (LEXIS 2008) merely requires the person or entity complied with the laws and is authorized to transact business in the state.

46. In leasing vacant lands, a preference is given to the owner of adjoining lands. *See Wyo. Stat. Ann. § 36-5-105(b) (LEXIS 2008)*. No such preference exists for lands upon which there is an existing lessee. Likewise, WYO. STAT. ANN. § 36-5-108 (LEXIS 2008) provides that in the case of equal rental offers where no preference exists in the old lessee or the old lessee does not exercise its preferential right, "the director shall grant the lease to the applicant holding title to lands nearest to the lands applied for." This preference only applies when the highest received rental offers are equal, which is not the situation in the present case. Thus, the misrepresentation was not material and the Director had no authority to reject the application simply because the applicant did not own the adjoining land. Two Y's ownership of adjoining land is, therefore, not a material fact for the Director's decision.

47. Lonesome Country alternatively argued that Two Y submitted a fraudulent application for the organization of Two Y Ranch, LLC to the Wyoming Secretary of State. Lonesome Country argued that the Certificate of Organization issued by the State is a nullity because it was fraudulently obtained. No evidence in the record supported this argument by Lonesome Country. Additionally, this Office is not the proper forum to challenge a Certificate of Organization issued by the Wyoming Secretary of State. The uncontradicted evidence in this case is that Two Y is a limited liability company in good standing in Wyoming.

IV. A. Principles of Law Regarding the language requiring “actual and necessary use for the land and available forage” in WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008)

48. WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008) provides:

(c) An applicant who is the holder of an expiring lease, and has paid the rental when due, and has not violated the provisions of the lease, and is qualified under the provisions of W.S. 36-5-101, shall have a preferred right to renew such lease by meeting the highest bid offered by another qualified applicant who has actual and necessary use for the land and available forage and whose bid is based on the fair market value, using the formula developed by the board pursuant to W.S. 36-5-101(b), for the same or a similar use of the land. (Emphasis added).

B. Application of the Principles of Law Regarding the language requiring “actual and necessary use for the land and available forage” in WYO. STAT. ANN. § 36-5-105(c) (LEXIS 2008)

49. In its April 7, 2008 Notice of Appeal letter, Lonesome Country asserted the State Land Office erred by accepting Two Y's application because Two Y had no legal or physical access to the leased lands. Therefore, Two Y does not have actual and necessary use for the land and available forage.

50. The plain and ordinary language of the statute is clear and unambiguous. The statute requires the land and forage must be used when leased. The Director must determine if the applicant has the intent and ability to use the land and forage. In Two Y's application, Two Y asserted that it would use the land for grazing purposes. The application also indicated that Two Y owned 10 horses, 900 cows, 600 yearlings, and 50 bulls. Two Y also submitted a letter indicating that Two Y was an agricultural operation. This Office is not persuaded that the Director must also conduct a business analysis of Two Y to determine a ranching necessity separate and distinct from the fact that Two Y has animals it intends to graze on the leased State land.

51. Additionally, the evidence showed that Ronald Graf's land adjoins the leased premises. There is no evidence that Two Y would not or could not obtain legal access to the leased premises through Graf's property, especially in light of the fact that Two Y and Graf were initially co-applicants for 1,600 acres of a lease in a companion case. The Director cannot presume Two Y would not or could not obtain legal access in a variety of ways including easements through adjoining property.

52. More importantly, there is no statutory requirement that an applicant show legal access on the face of its application in order to be a qualified applicant. Two Y complied with the statutes by showing it has, "actual and necessary use for the land and available forage" as contemplated by the statute.

V. Conclusion

This Office finds there are no genuine issues of material fact in this case and judgment as a matter of law is appropriate. This Office further finds that considering the plain language of the statutes and the Grazing and Agricultural Lease previously entered into by Lonesome Country and the Wyoming Board of Land Commissioners, the Director's March 25, 2008 decision to conditionally award the conflicting lease application to Lonesome Country was in error. This Office agrees with The State Land Office and Two Y that the lease should have been awarded to Two Y based upon the highest bid offered. In order to exercise its preferential right, Lonesome Country must have been in compliance with the preferential rights statute. The evidence was uncontradicted that Lonesome Country was not in compliance with the statutes because Lonesome Country had been subleasing the State lands and yet failed to pay the State one-half of the excess rental received. Lonesome Country disputed the amount owed the State,

but did not dispute the fact that Lonesome Country subleased the State lands and paid no excess rental payments during five separate grazing seasons. Therefore, Lonesome Country was not a qualified applicant to receive a preferential right to match the highest bid offered.

Should the Board of Land Commissioners reject the recommendation that Lonesome Country is not legally entitled to a preferential right to renew, then Lonesome Country should be required to pay the annual rate based on the highest rental bid offered. The highest bid offered represents the fair market value in this case.

Additionally, any misstatement on Two Y's application regarding ownership of adjoining lands was not relevant or material to the Director's decision. A conflicting applicant is not required to show legal access on the face of its application in order to be a qualified applicant. The Director has no authority to reject an application simply because the applicant does not own adjoining lands. There is no presumption that the applicant could not obtain access to the State lands.

Finally, the Director properly made inquiry with the Secretary of State to determine that Two Y was a corporation in good standing with this State. Lonesome Country's argument that Two Y made a fraudulent application with the Secretary of State to form a limited liability company is misplaced.

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED that:

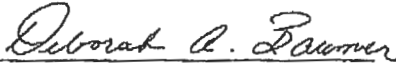
1. The State of Wyoming, Office of State Lands and Investments September 24, 2008, Motion to Set Aside the Director's Decision, or in the Alternative, Motion for Summary Judgment and Two Y Ranch, LLC's September 29, 2008 Motion for Summary Judgment be **GRANTED**.

2. Lonesome Country Limited's September 8, 2008 Motion for Summary Judgment be **DENIED**.

3. This case is returned to the Wyoming State Board of Land Commissioners for entry of a final decision.

4. The parties shall have 10 days in which to file exceptions to this Recommended Order with the Wyoming State Board of Land Commissioners.

DONE this 19th day of November, 2008.



Deborah A. Baumer, Hearing Examiner
State of Wyoming
OFFICE OF ADMINISTRATIVE HEARINGS
Cheyenne, Wyoming 82002-0270
(307) 777-6660

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Office of State Lands and Investments and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 19th day of November, 2008, addressed to the following:

Office of State Lands and Investments - (ORIGINAL)

Attn: Jim Arnold, Assistant Director
122 West 25th Street
Cheyenne, Wyoming 82002-0600

Bridget Hill - Attorney for Office of State Lands and Investments

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Ronald J. Ericsson

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Kenneth E. Barker – Attorney for Two Y Ranch, LLC

P.O. Box 100
Belle Fourche, SD 57717-0100


Office of Administrative Hearings

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710;)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

vs.)

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

STATE LEASE NO. 1-8710
OAH DOCKET NO. 19-008-060

and,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent)

WAGONHOUND LAND & LIVESTOCK, LLC'S
EXCEPTIONS TO THE RECOMMENDED DECISION

Wagonhound Land & Livestock Company, LLC (Wagonhound), by and through the undersigned counsel and pursuant to the Office of Administrative Hearings' (OAH) rules,¹ hereby provides its exceptions to the *Recommended Findings of Fact, Recommended Conclusions of Law, and Recommended Order* (Recommended Decision) proposed by the Hearing Examiner.

¹ See Rules, OAH, Ch. 2 §27.

INTRODUCTION

This matter stems from competing bids submitted for a *vacant*² grazing lease, State Lease No. 1-8710, in Converse County, Wyoming.³ The Office conditionally awarded the lease to Wagonhound, the high bidder. The low bidder, Leman, appealed and a contested case hearing was held. Leman contended at hearing that even though he bid less than Wagonhound, he is entitled to be awarded the lease because he alleges Wagonhound made a materially false statement in its grazing lease application when it answered Question 6 in the affirmative. Leman also asserted that Wagonhound does not have actual and necessary use for the lease at issue, or at least not as much actual and necessary use as he has.

The Hearing Examiner issued *Recommended Findings of Fact, Recommended Conclusions of Law and Recommended Order* (Recommended Decision) finding that Wagonhound made a materially false statement in its application and that Leman's need for the lease outweighs Wagonhound's need and proposed use. The Hearing Examiner recommends that Wagonhound's application be rejected and the lease be awarded to Leman. Wagonhound takes exception to the Recommended Decision as set forth below. Wagonhound also agrees with and incorporates herein the *Office of State Lands and Investments' Exceptions to the Recommended Decision* (Office's Exceptions) on file herein. Because the Recommended Decision of the Hearing Examiner misconstrues and misinterprets the facts and misunderstands and misapplies the law, it should be rejected by the Board.

² It is important to differentiate between a lease of vacant lands and the renewal procedure for lands currently under lease. For purposes of these proceedings the reference to vacant lands refers to the fact that the land is not subject to any state lease.

³ State Lease No. 1-8710 was cancelled for nonpayment in 2001 and remained vacant since that time. Testimony of Jason Crowder, Transcript, p. 27, lns. 16-20.

EXCEPTIONS TO RECOMMENDED DECISION

1. Burden of Proof—Wagonhound takes exception to the Hearing Examiner's assignment of the burden of proof. The Hearing Examiner errs in assigning and evaluating the burden of proof in this action. Wagonhound agrees with and incorporates the Office's Exceptions on this topic relative to the review of the Director's decision. Additionally, Wagonhound takes exception to the burden and standard of proof relating to the allegations of fraud. Leman alleges, and the Hearing Examiner suggests, Wagonhound made an intentional misrepresentation in its application—i.e., committed fraud. This serious accusation is not supported by the record or the law.⁴ In Wyoming, the elements of fraud are a false representation of material fact which has been relied upon by a party to his detriment. *McKenney v. Pacific First Federal Savings Bank of Tacoma*, 887 P.2d 927, 928 (Wyo. 1994). The asserted false representation must be one which is made to induce action. *Id.* Furthermore, the circumstances alleged to constitute fraud must be stated with particularity and established by clear, unequivocal, and convincing evidence. *Id.* at 928-929. Fraud will never be presumed. *Id.* at 929. Fraud must be proven by clear and convincing evidence, as opposed to by a preponderance of the evidence for negligent misrepresentation claims. See *Universal Drilling Co., LLC v. R & R Rig Serv., LLC*, 2012 WY 31, 271 P.3d 987, 994-95 (Wyo. 2012).

Where fraud and misrepresentation is relied upon as a ground for relief sought pursuant to a Rule 60(b) motion, *it must be proved by clear and convincing evidence. Fraud is never presumed, and the burden of proof to clearly establish such fraud or misrepresentation is upon the party seeking relief.*

⁴ See subsequent discussion concerning Exception to Recommended Decision ¶32.

Stevens v. Murphy, 680 P.2d 78, 79 (Wyo. 1984). The burden to establish fraud falls on Leman. Leman has failed to establish fraud by clear, unequivocal and convincing evidence and “fraud” cannot be presumed. *McKenney*, at 929. Without a showing of “fraud” by clear and convincing evidence, there is no basis to dismiss Wagonhound’s application.

2. Paragraphs 20, 29, 30, 31, 32, 33, 34, and 35 — Wagonhound takes exception to each of these paragraphs for the reasons set forth in the Office’s Exceptions and incorporates the same herein by this reference.

3. Paragraph 32 — Wagonhound takes exception to the Hearing Examiner’s finding that it made an intentional misrepresentation (committed fraud) in its application. Question 6 states: “Are the state lands fenced in with other lands you own or control? Yes No.” Wagonhound responded to this question by checking the box indicating “yes”. The question seems very straightforward and was interpreted by Wagonhound quite simply as seeking to determine if there is a fence between the State land and the applicant’s adjoining land.⁵ The location of Lease No. 1-8710 and the land owned by Leman and Wagonhound, along with the existing fences, was not disputed and the maps submitted by the parties are generally consistent.⁶

It was established by licensed surveyor Jim Jones that Wagonhound is the owner, according to the land records in Converse County Wyoming, of the NW¼NW¼ of Section 19, T31N, R73W, which adjoins the State land in the SW¼SW¼ of Section 18 and that there is no fence between the land owned by Wagonhound and the State land. Furthermore, Mr. Jones testified that

⁵ Question 2 asks: “Are you the owner, lessee or lawful occupant of lands adjoining the lands applied for? Yes No.” Both applicants indicated “yes”. See Exhibits B and C.

⁶ See Recommended Decision ¶4. See also Exhibits G, 1 and 2.

Wagonhound owns the SE¼SE¼ of Section 13, T31N, R74W which adjoins the State land in the SW¼SW¼ of Section 18 to the west and there is no fence between the land owned by Wagonhound and the State land.⁷ Both applications acknowledge that the State land is not fenced separately.⁸ In fact, Mr. Jones testified that the only fence on the boundary of the State land is a north-south fence on the west side of the NW¼SW¼ of Section 18 that exists for less than one-quarter mile.⁹ All witnesses who testified, including Mr. Leman, recognized Wagonhound's ownership of land as explained by Mr. Jones and depicted on Exhibit 2.¹⁰ All witnesses who testified, including Mr. Leman, also recognized the lack of fencing around the perimeter of the State land and that fencing exists as expressed in Exhibit 2.¹¹ Since the State land is not separately fenced, the State land is unavoidably fenced in with other lands, including lands owned by Wagonhound.¹²

The map prepared by Jim Jones indicates that the State land on the east side of Wyoming State Highway 91 is fenced in with property owned by Z-Holdings (which Leman claims to control by virtue of a lease) and with property owned by Wagonhound.¹³ Furthermore, the map also

⁷ See Exhibit 2 and testimony of Jim Jones, Transcript, pp. 169 ln 11 through p. 170 ln 23.

⁸ See Exhibits B and C, Response to Question 6, second subpart.

⁹ See Exhibit 2 and testimony of Jim Jones, Transcript, pp. 168 ln 14 through p. 169 ln 10.

¹⁰ Jason Crowder, Transcript, p. 59 lines 16-25, pp. 60 ln 8 through p. 61 ln 2; John Leman, Transcript, p. 112 ln 7-14, p. 138 lines 6-13, p. 139 lines 1-6, pp. 153 ln 18 through 154 ln 4, and p. 154 lines 12-14 ln 4; Jim Jones, Transcript, pp. 172 ln 17 through p. 173 ln 7, and pp. 184 ln 24 through p. 186 ln 14; and, Dustin Ewing, Transcript, pp. 201 ln 4 through p. 202 ln 10.

¹¹ Leman testified concerning the remnants of old fence he believed to be near the boundary between the lease land and Wagonhound's land on the west. See Exhibit II. However, it is uncontested that these remnants are not a legal fence and are certainly not a barrier that would contain or repel livestock. Testimony of John Leman, Transcript, pp. 140 ln 14 through p. 147 ln 19.

¹² Recommended Decision ¶6 states "A small portion of Wagonhound's land, that adjoins State Lease No. 1-8710, lies within Leman's boundary fence." While the Hearing Examiner may choose to call it Leman's boundary fence, the fence actually separates the Leman pasture from other pastures and this fence is wholly located on Wagonhound property as it traverses the NW¼NW¼ of Section 19, T31N, R73 W. In other words, Wagonhound owns land on both sides of the fence as it crosses this ground contrary to the Hearing Examiner's statement that "A fence does not exist on Wagonhound's land to 'fence in' its land with State Lease No. 1-8710."

¹³ See Exhibit 2.

indicates that the State land on the west side of the highway is fenced in with land owned by Wagonhound.¹⁴ The Hearing Examiner states incorrectly that the parcel on the west side of the highway “adjoins Wagonhound’s land, but is not fenced in with Wagonhound’s land.”¹⁵ It is undisputed that there is no fence between Wagonhound’s land and the State land. If there is no fence between the State’s land and the adjoining land they *must* be fenced in together. In the normal understanding of fenced in, an applicant would respond based on their understanding of whether or not the State land is within the same exterior fence (pasture) as the adjoining land they own or control. The only reasonable reading of Question 6 inquires whether the State land is within the same exterior fence (pasture) as adjoining lands of the applicant. In this case, it is irrefutable that the State land is within the same exterior fence (pasture) with land owned by Wagonhound on both the east and west sides of the highway.

The inquiry posed by Question 6 is also clearly in the alternative: “Are the state lands fenced in with other land you own *or* control?” If a party “owns” land fenced in with the state land, an affirmative answer is correct. Likewise, if a party “controls” land within the same boundary fence as the state land, an affirmative answer is also correct. Both Mr. Crowder and Mr. Jones testified that the only correct answer to Question 6 that could be provided by Wagonhound is “yes.”¹⁶ Since this answer is correct and accurate, it cannot be fraudulent, deceitful, or misleading.

Even if the answer provided to Question 6 is somehow determined to be wrong, there is no evidence that was intended to deceive or that the Office was deceived by Wagonhound’s response

¹⁴ *Id.*

¹⁵ See Recommended Decision ¶7.

¹⁶ Testimony of Jason Crowder, Transcript, p. 87 lines 1-10. Testimony of Jim Jones, Transcript, pp. 172 ln 17 through p. 173 ln 7 and pp.184 ln 24 through 185 ln 16.

to Question 6. In fact, the evidence in the record is that Jason Crowder, Deputy Director of the Office, was fully aware of the fencing situation and that he did not believe Wagonhound made a misrepresentation in its application.¹⁷ Without any evidence of intention or materiality, if Wagonhound's answer is found to be wrong, Wagonhound's application should not be summarily rejected but the matter should be returned to the Office to determine if the alleged incorrect answer to this question was intentional and if it is material to the award of this lease.

4. Paragraph 36 — Wagonhound takes exception to the Hearing Examiner's statements in paragraph 36 and her polluted manipulation of this information to reach her Recommended Decision. It is undisputed that Wagonhound secured TUPs for eight consecutive years. What is left out by the Hearing Examiner is that each of the TUPs actually related to *two* vacant state leases, State Lease No. 1-8710, or at least part of it,¹⁸ and State Lease No.1-8820¹⁹ constituting 310.92 acres.²⁰ These two State Leases were previously held by Mr. Roger A. Raubach. Mr. Raubach sold part of his land to Wagonhound and part of it to Z-Holdings (the leased land of Leman).²¹ State Lease No. 8820 is not fenced separately and is wholly surrounded by Wagonhound deeded land. (It is clearly fenced in with Wagonhound's deeded land in one large pasture.)²² The fencing situation regarding the lease at issue is well documented and it is admitted that Wagonhound did not make use of State Lease No. 1-8710 east of the highway during the time

¹⁷ Testimony of Jason Crowder, Transcript, pp. 62 ln 22 through p. 63 ln 9 and p. 87 lines 1-10.

¹⁸ The TUPs included only lots 3 and 4 of Section 18 and do not include the E½SW¼. See Exhibits S-1 through S-16. See also Testimony of Jason Crowder, Transcript, pp. 29 lines 8-23.

¹⁹ State Lease No. 1-8820 was also let for bid at the same time and Wagonhound was the successful (only) bidder for that property. See Exhibit N. The location of State Lease No. 1-8820 is depicted on Exhibits G and E as the State land to the south of the State Lease No. 1-8710 land.

²⁰ Testimony of Jason Crowder, Transcript, pp. 46-48 and pp. 82 ln 17-22. Exhibit N.

²¹ Testimony of John Leman, Transcript, p. 104 ln 11-19, p. 105 ln 16-25. See also Exhibit M. Testimony of Dustin Ewing, Transcript, pp. 188 ln 24 through p. 189 ln 5.

²² Testimony of Dustin Ewing, Transcript, pp. 188 ln 24 through p. 189 ln 5.

it held the TUPs. However, it did make annual and regular use of the lands included in State Lease No. 8820 each and every year it held the TUPs.²³

The Hearing Examiner pretentiously states: “This begs the question: why pay for TUPs year after year with no intention to use the land?” The answer is simple and is clearly in the record. The Office joined the two leases together under each of the TUPs. Wagonhound needed to make use of its private land that surrounded State Lease No. 8820 and it did not want to trespass on State land;²⁴ therefore, it secured the TUPs to allow grazing until such time as the *two* vacant leases were awarded in the bidding process. The Hearing Examiner then proceeds to punish Wagonhound for being proactive and not trespassing on the State land. Wagonhound paid the fees for each of the TUPs based on the rate established by the Office *and* the state land trust beneficiaries received the benefit of these payments.

While it is not the normal practice of the Office to issue TUPs for grazing, Wagonhound applied for and was granted TUPs in 2011 through 2018.²⁵ It is important to note that the TUPs do not have any influence, affect or provide any preference relative to vacant land lease applications.²⁶ While Wagonhound made regular and annual use of the State Lease No. 1-8820 land for grazing, it did not make use of the State Lease No. 1-8710 land due to the lack of fencing which would result in the commingling of Wagonhound’s livestock with Leman’s livestock. Each of the TUPs precluded the installation of fencing on the State land.²⁷ Due to the high cost of fencing, it simply made no sense for Wagonhound to seek permission to fence the State land to

²³ Testimony of Dustin Ewing, Transcript, p. 206 ln 18-24.

²⁴ See W.S. § Wyo. Stat. Ann. §36-9-116. See also Testimony of Jason Crowder, Transcript, pp. 79 ln 4 through p. 80 ln 22.

²⁵ See Exhibits S-1 through S-16.

²⁶ Testimony of Jason Crowder, Transcript, pp 76 ln 23 through p. 77 ln 22.

²⁷ Testimony of Jason Crowder, Transcript, pp. 77 ln 23 through p. 79 ln 3. See also Exhibits S-1 through S-16.

separate it from Leman's activities until such time as Wagonhound might successfully secure the state lease.

5. Paragraph 37 — Wagonhound takes exception with this paragraph. Historical use and the continuation of an applicant's ranching activities are not appropriate for consideration by the Board in awarding a *vacant* state lease and/or determining the greatest benefit to the state land trust beneficiaries. This statement simply turns the historic vacant lease application and bidding process upside down and makes each vacant lease application process a beauty competition between each applicant's historical and ongoing ranching activities. If historic use and the necessity of the State lands for the continuation of an applicant's ranching activities are appropriate considerations, the Board should request such information from the applicants and each applicant should be afforded the opportunity to present their respective positions on this issue. Specifically, the lease at issue is vital to Wagonhound's ranching operations.²⁸ The amount bid by Wagonhound reflects the need and anticipated actual use of this ground and the value of the lease to its operations.²⁹ In short, Wagonhound offered the amount it bid because the use it intends to make of the State land and the necessity of the land to their ranching operations justified the amount bid. The amount bid is indicative of the value the lease has to the applicant.

6. Recommended Order — Wagonhound takes exception with the Hearing Examiner's recommendation that the Board not uphold the Director's decision, reject Wagonhound's application and award the lease to Leman. As pointed out above, there is no showing of fraud on behalf of Wagonhound justifying the dismissal of its application; there is no legal basis for this recommendation; the Recommended Decision is contrary to existing law and it

²⁸ Testimony of Dustin Ewing, Transcript, pp.197 ln 12 through p. 199 ln 11.

²⁹ *Id.*

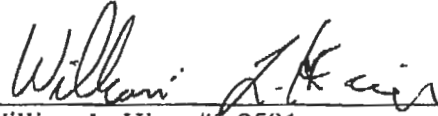
is not supported by the evidence nor by the procedural rules and practices for awarding *vacant* leases. Wagonhound maintains that the proper result is to uphold the Director's decision and award the lease to Wagonhound. In the alternative, if the Board believes the Office should consider additional factors, those factors should be spelled out and the matter remanded to the Office with instructions to consider such additional factors as the Board deems appropriate and specifically identifies, and each of the competing applicants should be provided the opportunity to address such additional factors.

CONCLUSION

Wagonhound is a Wyoming limited liability company, authorized to transact business in the State of Wyoming. Wagonhound owns land adjacent to the State lands that is not separated from the State land by a fence. (i.e. The State lands are fenced in with Wagonhound land). Wagonhound has significant livestock operations in the vicinity of the State land and has necessary and actual use for the State lands. Wagonhound submitted the highest bid for the vacant lease. Leman is unable to demonstrate that Wagonhound was conditionally awarded this lease based on any fraud, deceit or misrepresentation. Wagonhound, being duly qualified and meeting all stated preferences, if applicable, is entitled to receive the lease on this vacant land based on submission of the highest bid. Leman's appeal should be denied and State Lease No. 1-8710 should be awarded to Wagonhound.

[Signature and Certificate of Service on following pages].

Respectfully submitted this 17th day of January, 2020.

A handwritten signature in black ink that reads "William L. Hiser". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties by mailing a true and correct copy postage prepaid, on the 17th day of January, 2020, addressed to the following:

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Of Brown & Hiser, LLC

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE) STATE LEASE NO. 1-8710
JOHN T. LEMAN) OAH DOCKET NO. 19-008-060
Appellant)

OBJECTOR JOHN T. LEMAN'S OBJECTION/RESPONSE TO OSLI'S EXTRA-RECORD MATERIALS AND BRIEF IN RESPONSE TO OSLI'S AND WAGONHOUND'S EXCEPTIONS TO THE HEARING EXAMINER'S RECOMMENDED DECISION

Pursuant to W.S. §§ 16-3-108(d), 107 (j) and (k), 16-3-109 and Board Rules Chapter 1, §§ 6 and 9, Objector John T. Leman ("Leman"), through his undersigned counsel, hereby submits his objections to the Office of State Lands and Investments' ("OSLI") extra-record material designated as Exhibit A to OSLI's Exceptions, and his brief in response to the Exceptions filed by the Office of State Lands and Investments ("OSLI") and Wagonhound Land and Livestock Company ("Wagonhound") to the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Recommended Order ("*Recommended Decision*").

I. INTRODUCTION

As the prevailing party before the Hearing Examiner, Leman had no need to take Exceptions to the Recommended Decision. In seeking to overturn the Recommended Decision, OSLI and Wagonhound each filed separate but coordinated Exceptions. Combined, their Exceptions

encompass over 20 pages, raising arguments to which Leman is entitled to respond under the Administrative Procedure Act (“APA”) provisions cited above and as a matter of due process.¹

Leman also objects to OS LI’s late attempt to add 27 pages of new information to the record, consisting of parts of a 2008 Board proceeding. *Exhibit A to OS LI Exceptions* (Matter involving Lonesome Country and Two Y Ranch, December 11, 2008, hereafter the “Two Y” case.) If OS LI wanted the Board to consider Two Y in the context of this case, it should have been proffered during the hearing proceedings, not after the entry of the Recommended Decision.

Leman respectfully requests the Board consider this brief in reaching a final decision.

II. EXHIBIT A OF OS LI’S EXCEPTIONS

Process objections relating to OS LI’s Exhibit A:

Leman objects to OS LI’s attempt to have the Board take judicial notice of agency files in Exhibit A as prejudicial at this late date, but if the Board considers Exhibit A, the APA requires that Leman be able to contest it. Wyo. Stat. § 16-3-108(d) requires that parties be notified either before, during or after the hearing, *but before the agency decision* of material facts noticed, and they shall be afforded an opportunity to contest the facts noted. Two Y was not listed in prehearing disclosures or raised at the hearing, even though the issues OS LI contends it supports have been in dispute since summary judgment briefing in the summer of 2019. It was also not presented to the Hearing Examiner or Leman prior to issuance of the Recommended Decision.

OS LI gives no reason for not proffering the material earlier and its inexplicable delay deprived Leman of any ability to cross examine any state witness on the case or the issues

¹ Wyo. Stat. § 16-3-109 (All parties as a matter of right shall be permitted to file a brief with the agency); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 547-48 (1985) (due process requires an opportunity to respond); Wyo. Stat. § 16-3-108(d) (requiring notification and opportunity to contest judicially noticed facts).

asserted, or to otherwise prepare evidence and testimony to rebut the material. It also prevented the Hearing Examiner from addressing it in the Recommended Decision.

Substantive Response to OSLI's Exhibit A:

Despite OSLI's failure to timely seek consideration of its Exhibit A, Leman recognizes the Board has discretion to determine whether to take judicial notice of its files at any stage of the proceedings. Thus, should the Board consider it, Leman comments on the materials as follows:

First, Two Y was a case with very different facts and equities that bear no resemblance to this case. In Two Y, the principal issue was whether a lessee with an expiring lease (not a vacant land parcel as in this case) was entitled under the bid preference statute to secure the lease by meeting the bid of a higher competing bidder. The facts showed the expiring lessee, Lonesome Country, had subleased the leased land to a third party for multiple years but failed to pay half of the excess lease payments to OSLI during several years as required by statute. *Two Y*, p. 23. As a result, the Board determined Lonesome Country was not eligible for the preference.

Second, OSLI relies on Two Y to challenge statements about the fair market value of the lease in this case. But the statute at issue in Two Y, Wyo. Stat. 36-5-105(c), was amended following the decision in Two Y to revise how fair market value is determined under the preference statute and cap the upper limit. *See OSLI v. Mule Shoe Ranch*, 252 P.3d 951, 954 and 958 n.1 (Wyo. 2011). Thus, OSLI's reliance on Two Y and the Mule Shoe decision for fair market value is inapposite, as the legislature amended the statute after the Board's decision.

Third, OSLI also argues Two Y shows that a misrepresentation in a lease application may not necessarily be deemed "material" and may not disqualify an applicant. In Two Y, Lonesome Country argued Two Y misrepresented its access to the lease parcel. However, unlike Question 6 at issue in this case related to fencing, which is expressly set forth on the face of the Board's

application form, in Two Y, one of OS LI's main arguments against materiality was that Two Y was "not required to show legal access on the face of the application".² *Two Y*, p. 6. Further, the facts explained in Two Y about the alleged misrepresentation are far different than those found in this case.³ *Two Y*, findings ¶¶ 9 and 12 (describing Two Y's process of acquiring property adjacent to the lease.)

The decision in Two Y does not negate the Board's large discretion in leasing matters or the requirement that each lease contest be fairly adjudicated in a contested case. *Frolander v. Ilsley*, 264 P. 2d 790, 796 (Wyo. 1953).

In this case, the Hearing Examiner determined, after fully weighing the evidence and assessing the credibility of all witnesses' testimony, that Wagonhound made a material misrepresentation of a magnitude that warranted rejection of its application. *Recommended Decision* ¶ 32. OS LI's attempt to use Two Y to persuade the Board to set aside that reasoned decision is misplaced, as that case had different facts, statutes and equities at play.

The Board should instead place heavy reliance on the independent Hearing Examiner's Recommended Decision and defer to her findings of fact. The role of an independent hearing examiner is to conduct a hearing in an impartial manner pursuant to the APA. *Wyo. Stat. § 9-22-2202*. The Supreme Court has emphasized the deference to be given to a Hearing Examiner's findings:

The hearing examiner, as the trier of fact, is charged with weighing the evidence and determining the credibility of witnesses. A hearing examiner's findings of fact are accorded deference, and the hearing examiner's decision will not be overturned unless it is clearly contrary to the overwhelming weight of the evidence.

² The current Board form was approved in December, 2009, (after the Two Y decision). *Tr. p. 83, lines 10-12*. The current form asks about legal access to the land on the face of the application.

³ Lonesome Country also alleged a misrepresentation was made to the secretary of state in a corporate filing, but the hearing examiner found that was not a matter for OS LI's inquiry.

Baxter v. Sinclair Oil Corp., 2004 WY 138 ¶ 9, 100 P.3d 427, 431 (Wyo. 2004) (emphasis added). There is nothing in Two Y that requires overruling the Hearing Examiner in this case.

III. RESPONSE TO EXCEPTIONS

At the outset, Leman urges the Board to review his December 2, 2019 *Closing Argument* and incorporates it herein by reference. Leman's Closing contains detailed citations to the audio record that support the findings and conclusions in the Recommended Decision and refute the majority of the Exceptions filed by OSLI and Wagonhound.⁴ In the interest of minimizing duplication of points in Leman's Closing Argument, the following discussion focuses primarily on those portions of OSLI and Wagonhound's arguments as presented in their Exceptions.

General Observations on Exceptions:

A common theme in OSLI's Exceptions is that certain issues were not considered by the Director or were deemed not material to the Director's conditional decision. *OSLI's Exceptions* ¶¶2, 4, 5, 6, 10. Thus, OSLI's argument implies, they should not be considered by the Board either. But as the Hearing Examiner observed in her finding and conclusion ¶ 29, OSLI's "rigid process... does not align with the Board's charge to ensure state land leases 'inure to the greatest benefit to the state land trust beneficiaries.'" While the OSLI's process may suffice in uncontested lease applications, to simply defer to that same process for contested leases would deprive the Board of its role under Wyo. Stat. § 36-3-102(a) and (c) to review conflicting

⁴ Prior to filing its exceptions, Wagonhound had the audio recording transcribed. However, there are numerous instances where the written transcription states "indcipherable" and some of the content of the testimony is therefore not reflected in the written version. Similarly, there are some words in the transcript that are inaccurately transcribed. Leman notes that many of the references to "indcipherable" are decipherable on the audio recording, thus, in the event of a question, the audio transcript should be referred to as more definitive of the verbatim testimony.

applications and its authority to override any decision made by the Director. The Hearing Examiner recognized these principles in her Conclusion ¶ 27.

To follow OSLI's reasoning would also negate the Order entered by the Board when it denied OSLI summary judgment and returned the case to OAH to "conduct a contested case hearing on the merits of all issues raised in the appeal." *Order Denying OSLI's Motion for Summary Judgment*, last page, ¶ 2. If misrepresentation of fencing in Wagonhound's application is immaterial to its application, then there would have been no reason for the Board to have denied OSLI's motion for summary judgment. The Board could have simply said that even if Wagonhound misrepresented fencing facts, it didn't matter, and dismissed Leman's appeal. But that's not what the Board did and now the Board has before it a Recommended Decision that finds and concludes, based on "facts specific to this case" (¶27) and "the totality of the circumstances related specifically to State Lease No. 1-8710" (¶37), that Wagonhound misrepresented material facts in its application, that there was evidence to support that the misrepresentation was "not inadvertent," and recommending that the Board reject Wagonhound's application and grant the lease to Leman at Leman's bid amount. (¶32 and *Recommended Order*).

For its part, Wagonhound's Exceptions attempt to recast Leman's claims and the Hearing Examiner's findings into something that they are not. First, Wagonhound contends that Leman argued "fraud" and that a higher standard of proof applies. But the record from the beginning of this case discloses Leman argued "misrepresentation," a separate and independent ground for disqualifying Wagonhound's application under both statute and regulation. Second, despite the Hearing Examiner's well-documented findings and conclusions that the state lease is not fenced in with Wagonhound and that Wagonhound misrepresented the fencing, Wagonhound persists in

its efforts to complicate the simple concept of “fenced in” and turn it into a convoluted exercise in word parsing.

Response to particular categories of exceptions:

Burden of Proof: Both OS LI and Wagonhound take exception to the assignment of the burden of proof to OS LI, but fail to state how such assignment, even if incorrect, affected the findings and conclusions. The Hearing Examiner cited the leading case addressing the general rule that an agency is the proponent of its orders and must carry the burden of proof. She also noted that no statute assigns the burden, thus it falls to OS LI. *Recommended Decision, pp. 3-4.* Cases cited by OS LI do not persuasively overcome this assignment of the burden.

More importantly, however, is that even assuming Leman had the burden of proof, the Hearing Examiner’s findings and conclusions demonstrate he successfully carried it. Leman alleged and proved both the misrepresentation and the actual use and necessity issues. Thus, even assuming for the sake of argument that the burden of proof was improperly assigned, Leman still succeeded in carrying the burden on the two issues he raised, rendering any alleged error harmless. *See, Grams v. Environmental Quality Council, 739 P.2d 784, 787 (Wyo. 1986)* (Onus on appellant to show how error was prejudicial and error must prejudice substantial rights of appellant to warrant reversal.) OS LI and Wagonhound fail to argue or explain how they were prejudiced by the alleged improper assignment of the burden.

Misrepresentation as opposed to Fraud: Both OS LI and Wagonhound mischaracterize Leman’s misrepresentation claim and contend Leman must prove “fraud” and meet a heightened standard of proof of “clear and convincing” as opposed to the “preponderance of evidence” standard on the question of whether Wagonhound misrepresented Question 6 relating to fencing.

Wagonhound Exceptions, p. 3, *OSLI exceptions* p. 8. These objections are misplaced in at least two important respects.

First, the record is clear that Leman alleged and relied on the misrepresentation provisions of statute and regulations. Rather than citing to the record to support their fraud argument, both OSLI and Wagonhound invent the argument for fraud by trying to claim it is identical to misrepresentation. See, *Wagonhound Exceptions*, p. 3 and *OSLI Exceptions* p. 8 (using identical language stating the Hearing Officer suggests “Wagonhound made an intentional misrepresentation in its application—i.e., committed fraud.”)

The fallacy in these arguments is that the relevant statutes and regulations make a clear distinction between “misrepresentation” and “fraud.” The two terms are independent and used disjunctively in every relevant statute and regulation. They are not synonymous and under rules of statutory construction they cannot be lumped together as the singular “fraud” because:

[b]asic rules of statutory construction require that effect be given to every word of a statute, because it is presumed that the legislature has not included useless words.

BP America Production Co. v. Department of Revenue, 2006 WY 27, 130 P.3d 438, 460 (2006) (emphasis added). The statute at issue provides that the Board “shall have the power and authority to cancel leases procured by fraud, deceit or misrepresentation...” Wyo. Stat. § 36-5-113 (emphasis added). The disjunctive use of the term “misrepresentation” evinces a legislative intent different from the term “fraud.”

The Board’s regulations are also disjunctive, providing that:

[a]ny false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit or misrepresentation and shall be cause for the rejection of the application.

Board Rules, Chapter 4 § 5(a) (emphasis added). Similarly, Chapter 4 § 12 requires that OSLI “shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases...” (emphasis added). Further, the emphasis in § 5(a), is on “any false or incomplete statement willfully made that materially affects the application” and provides that false or incomplete statements “will be considered as” fraud, deceit or misrepresentation. Thus, to violate the regulation in § 5, an applicant’s materially false or incomplete statements are what is disqualifying. There is no requirement that fraud be proved to establish a material misrepresentation under the regulation.

Second, even if Leman were held to a “clear and convincing” standard on his misrepresentation allegation, the evidence rises to that level. The Hearing Examiner looked to Wagonhound’s TUP applications, testimony and its lease application to conclude it materially misrepresented the answer to Question 6 and that the evidence supported a finding that the misrepresentation was not inadvertent. *Recommended Decision* ¶ 32. OSLI and Wagonhound argue that the TUP applications are irrelevant to the lease award, but the Hearing Examiner clearly found them relevant as evidence in the context of the misrepresentation she found in Wagonhound’s lease application. Specifically, she found:

Wagonhound’s December 16, 2015 TUP application included the following statement: “lands are fenced within existing deeded lands[.]” The application also included a map which did not depict land owned or controlled by Wagonhound accurately in relation to lands covered by State Lease No. 1-8710.

Recommended Decision ¶ 10. The Hearing Examiner then referenced the same TUP application along with other evidence from her findings in reaching her conclusion that:

Wagonhound’s response to Question #6 on its application for State Lease No. 1-8710 materially misrepresented its ownership and the existing fences in relation to the parcel of land at issue in this matter.... Wagonhound’s December 16, 2015 TUP application, and accompanying map, also supports a finding that the

misrepresentation by Wagonhound in its application for State Lease No. 1-8710 was not inadvertent....

Recommended Decision, ¶32 (*emphasis added*). The findings related to Wagonhound’s misrepresentation of fencing are supported by clear, convincing and substantial evidence, including testimony of witnesses.⁵

The Materiality Issue: Where Chapter 4 § 5(a) refers to *materiality*, it also is focused on “false or incomplete” information presented in an application. OSLI and Wagonhound argue essentially that because OSLI purportedly did not *rely* on any fencing misrepresentation in its conditional award, it is immaterial and cannot form the basis for rejection of Wagonhound’s application. *OSLI’s Exceptions*, p. 9, *Wagonhound Exceptions*, p. 3, 7.⁶ The Hearing Examiner appropriately rejected this reasoning in Finding ¶ 30, pointing out that OSLI’s position was “internally inconsistent,” in that OSLI says only 3 questions are material to applications, but the other 10 are relevant to the overall management of state lands.

If OSLI were correct in its assertion that only 3 questions are material to an application, there would be no need to even require applicants to answer the other 10 question on the form (or to even have them on the form) to obtain a lease. But Mr. Crowder testified the other 10 questions are relevant to the ability of OSLI to manage trust lands. The Hearing Examiner rightly pointed out the inconsistency in OSLI’s position, by observing that if the 10 questions are “relevant to the overall management of state lands—at a macro level—then it reasonably follows that the responses are relevant in the award of a specific state grazing lease—at the micro level.”

Recommended Decision, ¶30.

⁵ Lemman refers the Board to Pages 3-9 of Lemman’s December 2, 2019 Closing Statement for details on this evidence.

⁶ See also, *Tr. p. 32 line 12 to p. 33 line 17 and Tr. p. 69 lines 14-19* (Mr. Crowder’s ’s testimony on the questions that are “material” to OSLI.)

The Hearing Examiner's conclusions in ¶¶ 19, 29 and 30 illustrate how the "rigid" leasing process used by OSLI for 1-8710, "does not align with" the Board's statutory charge to ensure that state lands are leased "in such a manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries." *Wyo. Stat. § 36-5-(105)(a) and Recommended Decision ¶¶19, 29, 30*. In exercising its broad discretion to lease in the best interest of the trust land beneficiaries, the Board's hands are not tied to inquiring into only 3 of 13 questions on its own approved form.

Weighing the evidence and applying the law to the specific facts in this case, the Hearing Examiner concluded that it "is undisputed fencing controls land access and grazing of livestock and is paramount in management of ranching activities." She observed that "Question #6 Specifically requests information related to fencing..." and recommended that the Board find and conclude that fencing is a material fact to be considered in the award of State Lease 1-8710." *Id. ¶ 31*. That finding and conclusion based on the evidence in this case should be granted deference.

The Board has many reasons to reject OSLI's arguments that only three questions are relevant to whether an application can be rejected for a misrepresentation. First, by statute, the form must be approved by the Board, so allowing OSLI to simply dismiss 10 of 13 question on the Board-approved form as immaterial essentially overrules the Board's approved form. *Wyo. Stat. § 36-5-103*. Finding only three questions (#'s 1, 4, and 13) are material is also inconsistent with the requirement that "[a]pplication forms must be completed in full." *Chapter 4 § 5(a)*. The fact that the Board approved the form with 13 questions and required it to be completed in full suggests that more than 3 questions are material and the Board may consider them all.

Second, holding that an applicant's statutory qualifications to obtain a lease are the *only* material questions in an application would also impermissibly narrow the plain language and intent of Chapter 4 § 5(a), which commands that any false or incomplete statement willfully made that materially affects the application" is grounds for rejection of an application. Under OSLI's interpretation, the regulation would have to be interpreted to read that only false or incomplete statements that affects a bidder's statutory qualifications could be grounds for rejection. Such an interpretation would conflict with the plain language of the regulations.

Taken to its logical conclusion, OSLI's position is essentially that as long as the answers to Questions 1, 4 and 13 are not misrepresented, the highest bidder wins, even if an applicant makes misrepresentations on every other question on the form. Such a result would divest the Board of its statutory remedy against applicants who fail to provide accurate information in an application that the state needs to manage trust lands. Stated another way, just because an applicant demonstrates it is qualified to lease and has the high bid does not negate the Board's discretion to reject its application on grounds of a material misrepresentation in the application.

Third, this Board apparently believed at Summary Judgment that Question 6 was material, or it presumably would not have determined that OSLI "failed to prove there is no genuine dispute as to any material fact" and that viewing the facts in a light most favorable to Lemman (as required at the summary judgment stage), "it appears Wagonhound's response to Question 6 was erroneous," and that "[t]here is no evidence in the record that the Board [sic] investigated the misrepresentation in any manner." *See, Board Order Denying Summary Judgment*, ¶ 17. Again, if these issues were immaterial, the Board could have ruled against Lemman on summary judgment, but it did not.

Fourth, other portions of Mr. Crowder's testimony further reinforce the Hearing Examiner's findings and conclusions recommending rejection of Wagonhound's application. Mr. Crowder testified that the leasing process is on somewhat of an honor system due to OSLI's need to rely on the accuracy of information that appears in applications and because it's not feasible for OSLI to go through each and every item line by line. *Tr. p. 64, line 6 to p., 65 line 4.* He further agreed that the remedy of disqualification is "a reflection of that policy that you're on an honor system [and] if you're not going to provide accurate information, you're not entitled to a lease[.]" *Id.* Thus, the Board's power to cancel leases and reject applications with false or incomplete information also serves as a safeguard and deterrent against misrepresentations by applicants.

Wagonhound's Fencing Arguments: Question 6 of the Board's application is not difficult to understand or ambiguous. Mr. Crowder agreed that, except for a sliver of land on the west side of the highway, the vast majority of the lease is fenced in with Leman. *Tr., pp. 63-64.* With respect to the small silver on the west side of the highway, Mr. Crowder did not take issue with the evidence of the unmaintained fence on the boundary between Wagonhound's land and the state parcel. *Id.*

The findings and conclusions entered by the Hearing Examiner on fencing are clearly articulated with citation to exhibits, testimony and the record. *Recommended Decision*, ¶¶ 4-7 and 32. In light of this evidence, the Hearing Examiner's findings and conclusions related to fencing are well supported.

Wagonhound quibbles with the Hearing Examiner's conclusions related to the small sliver of property on the west side of the highway bounded by the unmaintained fence. *Wagonhound Exceptions*, p. 6. However, the facts related to the minimal amount of land

encompassed within the sliver were considered and described by the Hearing Examiner in her finding ¶ 7 and are shown in Exhibits G and H.

Wagonhound also argues that because there is no fence between the small parcel deeded to Wagonhound that is fenced within Leman's pasture east of the highway that surrounds the state parcel on the east, the state parcel must therefore be "fenced in" with Wagonhound land for purposes of Question 6. *Wagonhound Exceptions*, p. 4-5. The Hearing Examiner relied in part on Wagonhound's own testimony to reject this argument.

Perhaps the most obvious flaws in Wagonhound's argument come from its own witness and documents that contradict its argument in multiple places.⁷ *Tr.* p. 212, line 21 to p. 213, line 18 and Exhibit 1 (designations of "required fence" to enclose the parcel with Wagonhound property); *see also Tr.*, p. 210-212 (conceding that if Wagonhound put cattle into 1-8710 on the east side of the highway they could not control where they went, which is why the TUPs were not exercised on 1-8710). As previously noted, the Hearing Examiner also found Wagonhound's December 2015 TUP application and map to be relevant to its misrepresentation. *Recommended Decision* ¶P 10, 32 and Exhibit E, pp. 1-2.

In sum, there are multiple lines of evidence supporting the Hearing Examiner's findings and conclusions related to fencing. The Hearing Examiner's findings and conclusions on this point should be upheld as they involve weighing the evidence and testimony adduced at the hearing and are based on the "totality of the circumstances related to State Lease No. 1-8710." *Recommended Decision* ¶ 37.

Actual and Necessary Use: Wagonhound and OSLI challenge Paragraph 36 of the Recommended Decision that concludes Leman is entitled to a preference under Wyo. Stat. § 36-

⁷ See pp. 4-5 of Leman's Closing Argument for citations to the evidence on this point.

5-105(b) based on his actual and necessary use. *Recommended Decision* ¶ 36. Their exceptions on this point fail to demonstrate that the Hearing Examiner’s findings are erroneous.

Mr. Ewing testified that OSLI provided “guidance” to Wagonhound from 2011-2018 to allow them to secure a TUP for grazing that covered two leases, one of which was Lease 1-8710. *Tr. p. 195, lines 4-14*. He also testified that he talked with Brenda Davis of OSLI and they “modeled it and that’s the way we leased it for each year.” *Tr. p. 208, line 24 to p. 209, line 3*. In its exceptions, Wagonhound asserts that it secured the TUPs “because it didn’t want to trespass on state lands,” but that it didn’t use 1-8710 purportedly due to the high cost of fencing that would be needed. *Wagonhound Exceptions, p. 8*. In testimony, Wagonhound also admitted it never put cattle on the TUPs for Lease 1-8710 during all the years 2011-2018⁸ because the fencing configuration would not allow them to contain their livestock separate from Leman’s pasture. *Tr. p. 208 line 2 through p. 211 line 17*. If Wagonhound deliberately never put cattle on Lease 1-8710, they obviously had no reason to be concerned about “not wanting to trespass” on the lease—they affirmatively decided not to stock the lease under the TUPs for 8 consecutive years.

Wagonhound argues that the Hearing Examiner failed to give credence that the TUPs covered two leases, 1-8820 and 1-8710 and that Wagonhound did use the TUP because it used the land under Lease 1-8820. *Wagonhound Exceptions, p. 8*. Again, this assertion is undermined by Wagonhound’s own witness testimony noted above that although Wagonhound’s TUP covered 1-8710, Wagonhound never used the lands under 1-8710 for grazing. Wagonhound’s TUP applications clearly differentiated between the AUMs and amounts paid for each separate

⁸ The only exception being on the small sliver of the lease west of the highway that saw use by Wagonhound for the first time in 2018.

lease parcel under the TUP. Knowing it had no need for 1-8710 and purportedly not wanting to fence it, Wagonhound could have eliminated 1-8710 from the TUP at any time during the 8 years in which it was annually renewed. Yet it continued to pay and not put livestock on 1-8710.⁹

The Hearing Examiner's factual determinations related to Wagonhound's non-use of the TUP on 1-8710 and their effect on the question of actual use and necessity is entitled to deference because it clearly involves weighing the veracity of the testimony. She specifically cited the record and noted contradictions in Wagonhound's testimony related to its failure to use the TUP for 1-8710. *Recommended Decision*, ¶36.

In contrast to the Hearing Examiner's careful review of the evidence, Wagonhound's criticism of the Hearing Officer's findings and conclusions accuses the hearing examiner of using "polluted manipulation" and acting "pretentiously." *Wagonhound Exceptions pp. 7 and 8*. Such rhetoric is not persuasive and does not overcome the Hearing Examiner's well considered findings and conclusions.

Wagonhound not surprisingly tries to point to its own witness testimony to argue that it didn't want to fence 1-8710 under the TUPs due to the fencing cost. *Wagonhound Exceptions, pp. 8-9*. But the Hearing Examiner correctly pointed out that this testimony "was contradicted by later testimony by Wagonhound that roughly a mile of fence was 'simply' required to make use of State Lease No. 1-8710 and that Wagonhound had constructed hundreds of miles of fence." *Recommended Decision* ¶ 36. The Hearing Examiner's findings based on weighing the evidence are entitled to deference.

After weighing the evidence and witness credibility, the Hearing Examiner phrased her conclusion as "Wagonhound's TUPs for the land covered by State Lease No. 1-8710 does not

⁹ Leman refers the Board to his Closing Statement at pp. 11-12 for further discussion of this issue.

constitute actual and necessary use.” *Recommended Decision*, ¶37. Leman agrees and further contends there is ample evidence in the record and the Hearing Examiner’s decision to conclude that Wagonhound’s failure to use the TUP for 1-8710 for 8 years despite paying for it, affirmatively demonstrates the absence of any actual and necessary use for the land.

Alleged Trespass: OSLI repeatedly refers to Leman as a “trespasser” who engaged in “illegal conduct” and “unlawful use” and would be “rewarded for trespassing” if he were granted the lease. *OSLI’s Exceptions*, pp. 5, 10, 11. These allegations are both legally unsupported and equitably uncalled for under the facts of this case and the fence-out doctrine that has been the law in Wyoming for over a century. Leman addressed the trespass issue in his Closing Statement at pp. 14 and 15 and refers the Board to that discussion. But in light of the numerous assertions of trespass in OSLI’s Exceptions, Leman offers some further detail on the issue.

The only citations offered by OSLI in support of its trespass assertions are the bare state land trespass statute under Wyo. Stat. § 36-9-116 and an opinion offered with no foundation by Mr. Crowder. OSLI fails to cite even a single case under the statute or otherwise to support their trespass allegations.

OSLI’s reliance on Mr. Crowder’s opinion is unwarranted, given his candid testimony that he is “not an expert” in the fence out doctrine and had done no research to support his opinion. *See Tr. pp. 97 line 11 to p. 98 line 5.* (Mr. Crowder: “So, I haven’t researched existing statute or case law regarding that. However, it’s the Office’s opinion that the fence out doesn’t necessarily apply to lands owned by the state.”) These equivocal statements carry no legal authority and without the benefit of any legal precedent supporting them, the OSLI’s mere expression of an opinion is entitled to no weight.

By contrast, the fence out doctrine has been well established for over a century and contradicts OS LI's trespass allegations. The doctrine was succinctly stated in *Reichert v. Daugherty*, 425 P. 3d 990, 997 (Wyo. 2018): "Wyoming is indeed a fence-out state, meaning the onus is on a property owner to fence out livestock to prevent damage rather than on the livestock owner to fence in the livestock." Under the doctrine, the owner of cattle wandering on unenclosed land will not be guilty of actionable trespass. *Braunstein v. Robinson Family Ltd. Partnership LLP*, 226 P. 3d 826, 834-35 (2010).

Mr. Crowder asserted that OS LI takes the position that the doctrine does not apply to state lands but admitted to having no authority supporting that assertion. Nonetheless, even assuming for argument's sake that OS LI were correct, under the facts of this case, an allegation of trespass is not warranted under any theory.

The facts are undisputed that Leman originally contacted OS LI via email as far back as 2010 seeking to lease lands previously leased by Mr. Raubach that Raubach had not kept current. *Exhibit M, p. 2*. OS LI told him they would have to inspect and advertise first, and they would keep Mr. Leman's name on file for when they advertised. *Id. p. 1*.

Following his initial inquiry in 2010, the record is undisputed that Mr. Leman contacted OS LI annually from 2012 through 2018 to lease 1-8710 but was repeatedly told he would have to wait until it could be inspected and advertised. *Tr. p. 113, lines 17 to p. 114, line 22*. (Leman's testimony regarding inquires to the state about the lease and "trying to make every effort to contact the state and figure out what I could do to make it right with what was going on."); and *Tr. p. 38, lines 19 to p. 39, line 1 and p. 74, lines 2-7* (Mr. Crowder agreeing he has no reason to contest that Leman contacted the office for approximately 8 years about the lease; and having no quibble with that assertion.)

Unlike the guidance Wagonhound received from OS LI to obtain a TUP, Mr. Leman was never told a TUP was an option and he did not know about the TUP process. *Tr. p. 106, lines 13-18*. This is not surprising, given Mr. Crowder's testimony that grazing leases are not a typical temporary use permit event, it is not typical for them to run year-to-year indefinitely for grazing, and in fact "the rules specifically state no as to that type of use." *Tr. p. 40, lines 3-10*. While OS LI's counsel tried to rehabilitate Mr. Crowder's testimony that the rules prohibit TUPs for grazing, Mr. Crowder's later testimony still agreed that TUP regulations do not provide explicitly for grazing, they are unusual, and someone reading the regulations wouldn't have reason to believe that grazing leases are part of the temporary use process. *Tr. p. 40, line 3 to p. 41, line 17*.

He also testified that allowing Wagonhound's TUPs for 1-8710 to run for 8-years is not the office's practice and should not have happened. *Id.* The record confirms that Mr. Leman did everything a reasonable person could do to try to get the OS LI to lease 1-8710 for 8-years and his requests were put off every year.


At the hearing, OS LI could provide no reason why it waited until 8 years after Mr. Leman began his annual inquiries about leasing 1-8710 before advertising the parcel. In fact, the parcel had sat vacant and unleased since 2001. *Tr. p. 27, lines 18-20*. Mr. Crowder testified that generally vacant lands "have not raised in priority" to complete the process and OS LI has typically "foregone the vacant land leasing process for other priorities the Office was required to work on." *Tr. p. 41, line 15 to p. 42, line 5*. While this may be the case, Leman has no control over the process and could only keep asking year after year to have the parcel advertised. Thus, even assuming for argument's sake that the fence out doctrine did not apply to OS LI (a position OS LI cites no support for), OS LI's failure to respond to Leman's repeated and transparent efforts

to lease the parcel fenced in with his operations and its choice to defer leasing work in favor of other office priorities, leaves OS LI no room to call Leman a trespasser. Giving credence to OS LI's trespass arguments would require Leman to fence his cattle in to keep them off the state parcel, turning the fence-out doctrine on its head. It would also require overlooking the fact that OS LI allowed 1-8710 to remain unleased since 2001 and failed to act on Mr. Leman's numerous annual inquiries requesting the parcel be put up for lease.

In light of the established facts and law, under any scenario, legal or equitable, OS LI's "policy and precedent" arguments based on alleged trespass by Leman are wholly unfounded.

Proposed Remedy: OS LI and Wagonhound ask that if the Board has questions or reservations, that the Board "remand" the case back to OS LI for further consideration. Leman has already incurred great expense in this adversarial proceeding with OS LI and Wagonhound. A remand would serve only to perpetuate the dispute. Neither OS LI nor Wagonhound are legally entitled to a remand. Instead, this case has proceeded according to statute to a contested case before the Board, and the Board is unquestionably the body with the final authority and duty to issue or deny leases on state lands. Leman therefore requests that the Board enter a final decision in this matter, and that it uphold the Recommended Decision issued by the Hearing Examiner.

RESPECTFULLY SUBMITTED this 27th day of January, 2020.


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 27th, 2020, a true, full and correct copy of the foregoing document was filed by hand delivery of the original to the Office of State Lands and Investments and to the OAH at the address below and served by placing a copy in the U.S. Mail, First Class, postage prepaid, addressed as follows:

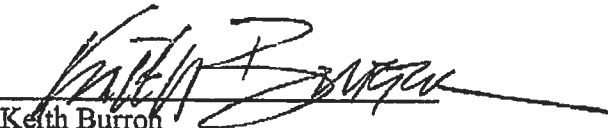
Office of State Lands and Investments (Original-Filed by Hand Delivery)
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122 W. 25th Street
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With copy also via email: jason.crowder@wyo.gov

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Keith Burron

April 9, 2020

WALK-IN BOARD MATTER - 1

ACTION: Consider entering into the record the Office of Administrative Hearings Recommended Findings of Fact, Conclusions of Law and Recommended Order In the Matter of Conflicting Applications for State Lease No. 1-8710 (OAH Docket No. 19-008-060).

AUTHORITY: Wyoming Statute § 36-2-101; Board of Land Commissioners' Rules and Regulations, Ch. 1 §§ 7, 9 (2017).

ANALYSIS:

This matter is an appeal from the Director's decision resolving conflicting lease applications by conditionally awarding the lease to the highest bidder. The State Lands Office (OSLI) advertised for bids to lease the lands covered by State Lease No. 1-8710, which required a minimum annual rental of \$210.12. John T. Leman and Wagonhound Land & Livestock Company, LLC., submitted bids for State Lease No. 1-8710. Leman's bid was for an annual rental amount of \$348.84, and Wagonhound's bid was for an annual rental amount of \$1,360.00. Both bidders indicated they owned and controlled land adjoining the lands covered by State Lease No. 1-8710 and that the state lands were fenced in with other land controlled by the bidder. The Director conditionally awarded the lease to Wagonhound because it submitted the higher bid.

Leman timely requested a contested case hearing, and OSLI referred the matter to the Office of Administrative Hearings to conduct the contested case proceedings. A contested case evidentiary hearing was held on October 22, 2019. On January 3, 2020, the Office of Administrative Hearings issued its *Recommended Findings of Fact, Conclusions of Law and Recommended Order*.

In general, the hearing officer recommended that the decision of the Director be reversed and the lease awarded to the low bidder for two reasons. First, she concluded that Wagonhound's application should be rejected because Wagonhound misrepresented that it had land that was fenced in with the land offered for lease, and the Board should consider this misrepresentation material even though OSLI does not. Second, she concluded that even if Wagonhound's application was not rejected, Leman should receive the lease. The hearing officer concluded that Leman is entitled to the benefit of the vacant leasing preference statute over Wagonhound, because his prior actual use of the land without a lease outweighed Wagonhound's prior non-use even though Wagonhound had previously obtained temporary use permits from OSLI to use the land.

RECOMMENDATION:

Reject the Office of Administrative Hearings' recommended decision and issue a final order upholding the Director's decision and awarding the lease to the high bidder on the grounds that Wagonhound's representation regarding whether it had land that was fenced in with the land offered for lease was not material to the award of the lease, both parties are entitled to the benefit of the vacant leasing preference statute and, accordingly, the high bid should prevail.

BOARD ACTION: Board Approved

BEFORE THE BOARD OF LAND COMMISSIONERS

RE: In the Matter of Conflicting Lease Applications for State Lease No. 1-8710
OAH Docket No. 19-008-060

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

In this dispute, the Objector and Unsuccessful Lease Bidder, John T. Leman (Leman), challenged the Respondent, Wyoming Office of State Lands and Investments (Office of State Lands), Board of Land Commissioners's (Board), conditional award of State Lease No. 1-8710, to the Successful Lease Bidder and Respondent, Wagonhound Land & Livestock Company, LLC (Wagonhound). Leman argued Wagonhound materially misrepresented information provided in its lease application and asserted the Office of State Lands's conditional award of the State Lease No. 1-8710 did not conform to statutory and regulatory requirements. The Office of State Lands and Wagonhound maintained the conditional award of State Lease No. 1-8710 was lawful and should be upheld.

A contested case evidentiary hearing was held by the Office of Administrative Hearings (Office), in Douglas, Wyoming, on October 22, 2019, and the record was closed December 4, 2019, upon receipt of written closing arguments and memorandums. Leman appeared by and through counsel, Keith S. Burron. The Office of State Lands, appeared by and through counsel, Senior Assistant Attorney General Megan Pope. Wagonhound appeared by and through counsel, William L. Hiser. The Office received Leman's Exhibits A through N, the Office of State Lands's Exhibits S-1 through S-20, and Wagonhound's Exhibits 1 through 3, all of which were admitted into evidence.

I. STATEMENT OF THE CASE

On November 14, 2018, the Office of State Lands advertised for bids to lease the lands available under State Lease No. 1-8710, which required a minimum annual rental of \$210.12. Lemman and Wagonhound submitted bids for State Lease No. 1-8710. Lemman's bid was for an annual rental amount of \$348.84, and Wagonhound's bid was for an annual rental amount of \$1,360.00. Both bids indicated they owned and controlled land adjoining the state lands, that the state lands were fenced in with other land controlled by the bidder, and that the bidder had actual and necessary use of the state lands. The Director of the Office of State Lands (Director) conditionally awarded the lease to Wagonhound because Wagonhound was a qualified lessee that could make actual and necessary use of the state lands and the annual rental amount was higher. Lemman challenged the Director's conditional award of State Lease No. 1-8710 to Wagonhound on the basis that Wagonhound's application contained false and misleading information. The matter was referred to the Office to conduct an evidentiary contested case proceeding.

II. BURDEN OF PROOF

Lemman bears the burden of proof in this matter. The general rule is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof. *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996). Here, Lemman initiated this appeal seeking relief from the Director's decision on the conflicting lease applications. While the Director's decision is conditional, Lemman nonetheless is the party seeking an order from the Board reversing that decision. Accordingly, he bears the burden of proving the Director's decision was not in accordance with the law. *See, e.g., Rayburne v. Queen*, 326 P.2d 1108, 1110 (Wyo. 1958) ("a party attempting to secure State land because the former lessee has subleased for a cash consideration in excess of the rental paid to the State has the burden of proving this"); and *Hawks v. Creswell*, 144

P.2d 129, 137 (Wyo. 1943) (“the burden devolved upon appellants to show that the state lands were in fact ‘subleased for a cash consideration in excess of the rental paid to the state.’”).

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether Leman proved by a preponderance of the evidence the Director's decision to award State Lease No. 1-8710 to Wagonhound was not in accordance with the law. The parties dispute whether Wagonhound misrepresented or falsely reported information in its application for State Lease No. 1-8710, as well as the materiality of any factual inaccuracies contained therein. The parties also disagree on proper application of the preference for landowners provided by Wyoming Statute § 36-5-105(b) (LexisNexis).

Leman contended Wagonhound misrepresented facts in its application for State Lease No. 1-8710, which required the Director to investigate the matter and, ultimately, required the Board to reject Wagonhound's application under Wyoming Statute § 36-5-113 (LexisNexis). More specifically, Leman asserted Wagonhound erroneously indicated State Lease No. 1-8710 was fenced in with other lands owned by Wagonhound and falsely reported it had actual and necessary use for State Lease No. 1-8710. Additionally, Leman maintained he was entitled to the award of State Lease No. 1-8710, under Wyoming Statute § 36-5-105(b) (LexisNexis), because he had actual and necessary use of State Lease No. 1-8710 at the time of his application.

The Office of State Lands and Wagonhound contended Wagonhound did not misrepresent material information in its application and, as the highest bidder, Wagonhound was entitled to the award of State Land Lease No. 1-8710. The Office of State Lands and Wagonhound asserted the preference requirements under Wyoming Statute § 36-5-105(b) (LexisNexis) apply only in instances where equal bids are received for the same parcel of state land.

IV. FINDINGS OF FACT

A. Witnesses

1. This case involves a number of witnesses. The testimonies of the witnesses were credible and believable. The witnesses carefully listened to each question and usually provided an appropriate answer and their demeanors, manners, answers, and speech were generally appropriate and responsive throughout the contested case hearing. The witnesses did not deflect questions in an attempt to avoid answers, which may have been unhelpful to their case. Generally speaking, the testimonies of the witnesses were consistent with the documents admitted as evidence in this matter. A basic summary of each witness's role and the basic facts they testified to is helpful at the outset.

a. Jason Crowder (Crowder) has served as the Deputy Director of the Office of State Lands since July 2019. Crowder has served in various roles and positions within the Office of State Lands and has extensive experience and expertise in land management and leasing of state lands. Crowder testified about the operation of the Office of State Lands in the context of land management and leasing of state lands, the bidding and award process of grazing leases, and the facts specific to the award of State Lease No. 1-8710.

b. Leman testified generally about the operation of his ranch and his unsuccessful application for State Lease No. 1-8710. Leman also testified extensively about a map that he prepared depicting the land he owns or controls, Wagonhound's land, State Lease No. 1-8710, and the fences in the area.

c. James Jones (Jones) is a licensed surveyor in the State of Wyoming and testified about the map he prepared, depicting State Lease No. 1-8710, the existing fences, and the land owned or controlled by Wagonhound and Leman. [Exhibit (Ex.) 2]

d. Dustin Ewing (Ewing) is the general manager for Wagonhound and testified about Wagonhound's ranching operation, including its real estate ownership and land use. Ewing also testified about Wagonhound's successful application for State Lease No. 1-8710.

B. State Lease No. 1-8710 and Adjoining Land Owners

2. The State of Wyoming owns the lands covered by State Lease No. 1-8710. The lease consists of approximately 147 acres in Converse County, Wyoming. [Ex. A; Ex. S-17]

3. On November 14, 2018, the Office of State Lands advertised the availability of State Lease No. 1-8710. The advertisement for bids was open until December 7, 2018, and required a minimum annual rental of \$210.12. The Office of State Lands's lease application consists of 13 questions, which are summarized as follows: 1) Is the applicant a qualified lessee under the laws of the State of Wyoming? 2) Are you the owner, lessee, or lawful applicant of lands adjoining the lands applied for? 3) Do the state lands applied for have legal public access? 4) Do you have actual and necessary use for the land and its forage? Describe proposed grazing or agricultural use – seasonal grazing, rotational grazing, federal grazing allotment, crops to be grown, use of irrigation; 5) How many head of livestock, by type, do you own? 6) Are the state lands fenced in with other lands that you own or control? Are they fenced separately? 7) Do the lands contain stock or irrigation water? 8) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? 9) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? 10) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? 11) Are there any improvements located on the lands applied for? 12) List any improvements, their location, and their value; and 13) The annual rent proposed by the applicant. [Ex. B; Ex. S-17]

4. The location of Lease No. 1-8710 and the land owned by Leman and Wagonhound, along with the existing fences, is not disputed. A number of maps admitted as evidence in this matter depict Lease No 1-8710 and the respective locations of the land owned or leased by Leman and Wagonhound. The maps are generally consistent with one another. [Ex. F; Ex. G; Ex. S-17, p. 40; Ex. 1; Ex. 2]

5. The land associated with State Lease No. 1-8710 is a quarter section, located in the south-west corner of section 18 (specifically, SW1/4SW1/4, section 18, township 31 north, range 73 east). A state highway, Highway 91, divides State Lease No. 1-8710, with the majority of the state land located east of the highway, and a smaller portion located west of the highway. [Ex. F; Ex. G; Ex. 2]

6. East of Highway 91, all of State Lease No. 1-8710 is fenced in with land leased by Leman. A small portion of Wagonhound's land, that adjoins State Lease No. 1-8710, lies within Leman's boundary fence. A fence does not exist to separate State Lease No. 1-8710 from the land leased by Leman or the small parcel of Wagonhound's land. [Ex. F; Ex. G; Jones's Testimony; Leman's Testimony; Ewing's Testimony]

7. West of Highway 91, the majority of State Lease No. 1-8710 is also fenced in with land owned or leased by Leman. A small parcel of State Lease No. 1-8710, in the southwest most corner, is not within the land controlled and fenced in by Leman. This small parcel adjoins Wagonhound's land, but it is not fenced in with Wagonhound's land. [Ex. F; Ex. G; Ex. 2; Jones's Testimony; Leman's Testimony; Ewing's Testimony]

C. Wagonhound's Application for State Lease No. 1-8710

8. On November 21, 2018, Wagonhound submitted a bid for State Lease No. 1-8710. Wagonhound's bid was for \$1360.00. Wagonhound's bid indicated: Wagonhound owned and

controlled land adjoining the state lands; the state lands were fenced in with land that Wagonhound owned or controlled; and Wagonhound had actual and necessary use of the state land for trailing livestock in the summer and fall or winter. Ewing signed the application on behalf of Wagonhound and testified that he believed at the time and continues to believe that Wagonhound owns land that is fenced in with State Lease No. 1-8710. [Ex. C; Ewing Testimony] Wagonhound's bid included a copy of a map prepared by Office of State Lands employee, Cole Lambert, dated September 28, 2018, which accurately depicted the existing fences relevant to State Lease No. 1-8710. [Ex. C]

9. At the time of the contested case hearing, Wagonhound owned or leased in excess of 260,000 acres in Converse County. Wagonhound's ranching activities are extensive and include the ownership of 5000 cow-calf pairs, 1500 yearlings, 200 head of horses, and the operation of two feedlots. Wagonhound sought State Lease No. 1-8710 to stage trailing its cattle to and from summer and winter pastures. It is not disputed that east of Highway 91 a fence would be required to separate State Lease No. 1-8710 and Wagonhound's land from Leman's land. [Ex. G; Ex. I; Ex. I; Ewing's Testimony; Leman's Testimony; Jones's Testimony]

10. Beginning in 2011, and ending in 2018, Wagonhound annually secured temporary use permits (TUP) for grazing from the Office of State Lands for the land covered by State Lease No. 1-8710. Wagonhound did not graze, or otherwise make use of, the land covered by State Lease No. 1-8710, nor did it advise Leman of the TUPs. However, the Office of State Lands does not consider previous TUPs in the award of grazing leases. [Ex. S-1 through S-16; Crowder's Testimony; Ewing's Testimony; Leman's Testimony]

D. Leman's Application for State Lease No. 1-8710

11. On November 30, 2018, Leman submitted a bid for State Lands Lease No. 1-8710. Leman's bid was for the minimum annual rental amount of \$348.84. Leman's bid further indicated:

he owned and controlled land adjoining the lands covered by State Lease No. 1-8710; the state lands were fenced in with land that Leman owned or controlled; and Leman had actual and necessary use of the state land for summer and fall grazing. [Ex. B]

12. In 2011, Leman began grazing his cattle on the land he controls east of Highway 91, which encompasses State Lease No. 1-8710 and a small portion Wagonhound's land. In 2012, Leman began grazing his cattle on the land he controls west of Highway 91, which includes a portion of State Lease 1-8710. Leman has also historically maintained the fence associated with both parcels and the fence lines have remained unchanged since 2011. [Leman's Testimony; Ewing's Testimony]

E. Award of State Lease No. 1-8710 by Office of State Lands

13. The application to lease state lands consists of thirteen questions. The Office of State Lands maintains only three questions are "material" in the award of a state grazing lease. First, question #1, the applicant's status to lease state land; second, question #4, whether the applicant has actual and necessary use of the state land; and third, question #13, the rental amount offered. In consideration of actual and necessary use of the state land, the Office of State Lands deems the requirement met if the applicant owns livestock, intends to own livestock, or intends to sublease to a person that owns livestock. The Office of State Lands asserted the remaining 10 questions elicit information utilized in the management of state lands, but maintained the responses to those questions were not material in the award of state grazing leases. [Crowder's Testimony]

14. On December 17, 2018, the Director conditionally awarded State Lease No. 1-8710 to Wagonhound for ten years for an annual rental amount of \$1,360.00. [Ex. A]

15. On January 18, 2019, the State Lands Office received Leman's written appeal of the Director's decision conditionally awarding State Lease No. 1-8710. [Office File]

16. On January 23, 2018, the Office of State Lands referred Leman’s appeal to this Office to conduct a contested case hearing. [Office File]

17. All findings of fact set forth in the Conclusions of Law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. State Lands Leasing Principles

18. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the State Superintendent of Public Instruction. The Board has jurisdiction over “the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature.” Wyo. Stat. Ann. § 36-2-101 (LexisNexis).

19. In the leasing of state lands for grazing and agricultural purposes, the Board is required to ensure the state lands are leased “in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.” Wyo. Stat. Ann. § 36-5-105(a) (LexisNexis).

20. The term “greatest benefit” is not synonymous with “greatest revenue” and the Board retains the authority to review conflicting lease applications to determine the best use of state lands for grazing and agriculture to generate the greatest benefit for the State. In exercise of this authority, the Board has previously considered fencing, potential misrepresentations or errors in state land lease applications, historical use of vacant state lands, the need by the applicant for existing ranching activities – in addition to the potential revenue generated by the award of state land lease for grazing or agricultural purposes. *Sullivan Co. v. Meer*, 58 Wyo. 90, 125 P.2d 168

(Wyo. 1942); *Banzhaf v. Swan Co.*, 60 Wyo. 201, 148 P.2d 225 (Wyo. 1944); *Frolander v. Ilsley*, 72 Wyo. 342, 264 P.2d 790 (Wyo. 1953); *Howard v. Lindemier*, 67 Wyo. 78, 214 P.2d 737 (Wyo. 1950); *Rayburne v. Queen*, 78 Wyo. 359, 326 P.2d 1108 (Wyo. 1958).

21. The Board possesses broad discretion in the exercise of this power. *Banzhaf*, 148 P.2d at 225.

The exercise of the power conferred upon the board to lease the lands of the state in the manner and to parties which shall inure to the greatest benefit, and secure the largest revenue of the State, requires judgment and discretion. No inflexible rule is laid down for the guidance of the Board in those matters. The judgment and discretion to be exercised is judicial in character, and in an application for the writ of mandamus it is not proper for the court to interpose its opinion and judgment in the place of that of the board, even if the conclusion which the latter has reached upon the facts should appear to have been erroneous.

Jassman v. Wulfjen, 71 Wyo. 261, 257 P.2d 334, 268 (Wyo. 1953), quoting *State, ex. rel, Marsh v. State Bd. of Land Commissioners*, 7 Wyo. 478, 490, 53 P. 292, 295 (Wyo. 1898).

22. Those who are qualified to lease state lands under the jurisdiction of the Board are described as follows:

(a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.

Wyo. Stat. Ann. § 36-5-101(a) (LexisNexis). In addition, the State Lands Act specifies the basic process for obtaining a grazing lease and renewing an outstanding lease of state lands under the Board's jurisdiction. Wyo. Stat. Ann. §§ 36-5-103 and -104 (LexisNexis).

23. The Board possesses separate and distinct authority to “cancel leases procured by fraud, deceit or misrepresentation, or for use of the lands for unlawful or illegal purposes, or for

the violation of the covenants of the lease, upon proper proof thereof.” Wyo. Stat. Ann. § 36-5-113 (LexisNexis).

24. The Board’s Grazing Rules contain the following provisions that are relevant to this matter:

Section 5. Applications

(a) Forms. All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

....

Section 12. Cancellation

The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Board of Land Commissioners, Grazing and Agricultural Leasing (Board Grazing Rules), ch. 4, §§ 5(a) and 12, 060.0002.4.02212012.

25. Wyoming Statute § 36-5-105(b) (LexisNexis) expressly recognizes preferences for the leasing vacant state lands under the jurisdiction of the Board:

(b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land 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, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

26. The Director is charged with conducting business on behalf of the Board, including receipt and the conditional award of all applications to lease state lands for the purposes of grazing and agricultural purposes. In the event conflicting applications are received, the Director is required to report his decisions to the Board for consideration. The Board also maintains authority to “override any decision made by the director.” Wyo. Stat. Ann. § 36-3-102(a) and (c) (LexisNexis). In making its decision, the Board shall issue “a written order containing findings of fact and conclusions of law based upon the evidence in the record.” Board of Land Commissioners Rules of Practice and Procedure Before the Board, ch. 1 § 9(e).

B. Application of Legal Principles

27. In his first assertion of error by the Director, Leman contends that Wagonhound’s bid contained a material misrepresentation of fact and, consequently, should have been rejected pursuant to Chapter 4, Section 5(a) of the Board’s Rules.

28. The application is a form required by the Office of State Lands for the award of a state grazing or agricultural lease. Board Grazing Rules, ch. 4, § 12. The application consists of 13 questions, 10 of which the Office of State Lands maintains are not material to the award of a state land lease. [Ex. S-17; Crowder’s Testimony] The Office of State Lands only considers the responses to three questions to be material in the award of State Lease No. 1-8710: was the applicant a qualified lessee under Wyoming Statutes; could the applicant make actual and necessary use of the state land; and what was the annual rent proposed. The Office of State Lands contends that the 10 remaining questions, and the applicant’s responses, are relevant to the overall management of state lands, but are not material to the award of the lease. [Crowder’s Testimony]

29. Question #6 of the leasing application specifically requests information related to fencing. It is undisputed that fencing controls land access and grazing of livestock and is important

to the management of ranching activities. [Leman's Testimony; Ewing's Testimony] In its response to Question #6 on its application for State Lease No. 1-8710, Wagonhound represented that the state lands were fenced in with other lands that it owned or controlled. It is undisputed that a fence does not exist on Wagonhound's land that would "fence in" its land with State Lease No. 1-8710 exclusively. The only existing fence east of Highway 91, which allows for grazing on State Lease No. 1-8710, is Leman's boundary fence. While it is true Wagonhound's land lies within Leman's boundary fence, to "fence in" Wagonhound's land with State Lease No. 1-8710 exclusively would require construction of a fence. With respect to the portion of State Lease No. 1-8710 west of Highway 91 that is not fenced in with Leman's land, construction of a fence would also be required to "fence in" Wagonhound's land with State Lease No. 1-8710.

30. While the Board agrees with Leman that Wagonhound's answer to Question #6 had the potential to mislead, when the Board considers the application as a whole, it agrees with the Office of State Lands that the representation was not material to the award of the lease. Wagonhound's application also included a map, prepared by the Office of State Lands before the applications were submitted, that accurately depicted the existing fences. [Ex. C] The Office of State Lands could hardly be deceived by or have relied on Wagonhound's answer when it knew the actual situation on the ground from its own inspection and mapping. *See, e.g., Brown v. Wintermute*, 139 P.2d 435, 437 (Wyo. 1943) (finding Board not misled by alleged misrepresentations about who owned fence enclosing pasture). Not every inaccurate or imprecise response in an application is material. In fact, the Wyoming Supreme Court previously found that an inaccurate statement in a lease application that "did not deceive the Board, since the facts were before it" did not warrant denial of an application. *Frolander*, 264 P.2d at 796. Such is the case here.

31. The Board finds that Wagonhound and Leman were both qualified lessees and met the requirements associated with actual and necessary use and, thus, the Director properly decided to award State Lease No. 1-8710 based on the rental amount offered. The Board concludes that the Office of State Lands and the Director properly applied the law in reaching this decision. It is not necessary in this case for the Board to decide whether under different circumstances an inaccurate response to Question #6 might constitute a material misrepresentation warranting rejection of a lease application.

32. Leman next argues that he is entitled to the preference provided by Wyoming Statute § 36-5-105(b) (LexisNexis), the vacant leasing preference statute. The vacant leasing preference statute requires preference be given in “all cases” to qualified lease applicants that have actual and necessary use of the state land, who own or control adjoining lands, and who offer to pay an annual rent equal to or more than fair market value. Wyo. Stat. Ann. § 36-5-105(b) (LexisNexis). For its part, the Office of State Lands argued that the vacant leasing preference statute applies only when bids are received for an equal rental amount and, therefore, the preference statute is not applicable here. The Board does not need to resolve this question in this appeal.

33. Even assuming for the sake of argument that the preference statute applies, it provides no benefit to Leman, because Wagonhound is entitled to the same preference. Wagonhound and Leman are both qualified applicants under Wyoming Statute § 36-5-101(a) (LexisNexis); both have land adjoining State Lease No. 1-8710; both offered an annual rent equal to or more than \$210.12, the fair market value; and, both have the ability to make actual and necessary use of the property. The Office of State Lands explained that “actual and necessary use” was satisfied if the applicant owned livestock, planned to purchase livestock, or planned to

sublease the state land to a party that owned or planned to purchase livestock. [Crowder Testimony] Both Wagonhound and Leman satisfy this test.

34. The Board does not believe that weighing the relative merits of each party's historic use of State Lease No. 1-8710 is necessary or appropriate in this case. Leman used the land beginning in 2011 and 2012, but did so without a lease, while Wagonhound obtained multiple TUPs for the land beginning in 2011, but did not make actual use of the land. Under these circumstances, the Board concludes that neither party should obtain any benefit from either their use without permission or their non-use despite permission.

35. Because both parties are entitled to the preference if it applies, they remain equally qualified for the lease in every way except for the rental amounts they bid for the lease. In such cases, the higher bid prevails. Accordingly, the Board concludes that the Office of State Lands and the Director properly applied the law in conditionally awarding State Lease No. 1-8710 to Wagonhound.

VII. ORDER

IT IS THEREFORE ORDERED that:

1. The Director's December 17, 2018 conditional award of State Lease No. 1-8710 to Wagonhound is UPHELD.

2. Leman's November 30, 2018 application for State Lease No. 1-8710 is REJECTED.

3. Wagonhound is awarded State Lease No. 1-8710 for the annual rental amount of \$1,360.00 per year, for a period of ten (10) years.

Executed this _____ day of April, 2020.

Mark Gordon, President
Board of Land Commissioners

BEFORE THE BOARD OF LAND COMMISSIONERS

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

IN THE MATTER OF CONFLICTING)
APPLICATIONS FOR STATE LEASE)
NO. 1-8710:)

JOHN T. LEMAN)
 Unsuccessful Lease Bidder/Objector,)

vs.)

STATE LEASE NO. 1-8710

OFFICE OF STATE LANDS AND)
INVESTMENTS, BOARD OF LAND)
COMMISSIONERS,)
 Respondent,)

and,)

WAGONHOUND LAND & LIVESTOCK)
COMPANY, LLC.,)
 Successful Lease Bidder/Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

In this dispute, the Objector and Unsuccessful Lease Bidder, John T. Leman (Leman), challenged the Respondent, Wyoming Office of State Lands and Investments (Office of State Lands), Board of Land Commissioners's (Board), conditional award of State Lease No. 1-8710, to the Successful Lease Bidder and Respondent, Wagonhound Land & Livestock Company, LLC (Wagonhound). Leman argued Wagonhound materially misrepresented information provided in its lease application and asserted the Office of State Lands's conditional award of the State Lease No. 1-8710 did not conform to statutory and regulatory requirements. The Office of State Lands

and Wagonhound maintained the conditional award of State Lease No. 1-8710 was lawful and should be upheld.

A contested case evidentiary hearing was held by the Office of Administrative Hearings (Office), in Douglas, Wyoming, on October 22, 2019, and the record was closed December 4, 2019, upon receipt of written closing arguments and memorandums. Leman appeared by and through counsel, Keith S. Burron. The Office of State Lands, appeared by and through counsel, Senior Assistant Attorney General Megan Pope. Wagonhound appeared by and through counsel, William L. Hiser. The Office received Leman's Exhibits A through N, the Office of State Lands's Exhibits S-1 through S-20, and Wagonhound's Exhibits 1 through 3, all of which were admitted into evidence.

I. STATEMENT OF THE CASE

On November 14, 2018, the Office of State Lands advertised for bids to lease the lands available under State Lease No. 1-8710, which required a minimum annual rental of \$210.12. Leman and Wagonhound submitted bids for State Lease No. 1-8710. Leman's bid was for an annual rental amount of \$348.84, and Wagonhound's bid was for an annual rental amount of \$1,360.00. Both bids indicated they owned and controlled land adjoining the state lands, that the state lands were fenced in with other land controlled by the bidder, and that the bidder had actual and necessary use of the state lands. The Director of the Office of State Lands (Director) conditionally awarded the lease to Wagonhound because Wagonhound was a qualified lessee that could make actual and necessary use of the state lands and the annual rental amount was higher. Leman challenged the Director's conditional award of State Lease No. 1-8710 to Wagonhound on the basis that Wagonhound's application contained false and misleading information. The matter was referred to the Office to conduct an evidentiary contested case proceeding.

II. BURDEN OF PROOF

Leman bears the burden of proof in this matter. The general rule is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof. *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996). Here, Leman initiated this appeal seeking relief from the Director's decision on the conflicting lease applications. While the Director's decision is conditional, Leman nonetheless is the party seeking an order from the Board reversing that decision. Accordingly, he bears the burden of proving the Director's decision was not in accordance with the law. *See, e.g., Rayburne v. Queen*, 326 P.2d 1108, 1110 (Wyo. 1958) ("a party attempting to secure State land because the former lessee has subleased for a cash consideration in excess of the rental paid to the State has the burden of proving this"); and *Hawks v. Creswell*, 144 P.2d 129, 137 (Wyo. 1943) ("the burden devolved upon appellants to show that the state lands were in fact 'subleased for a cash consideration in excess of the rental paid to the state.'").

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether Leman proved by a preponderance of the evidence the Director's decision to award State Lease No. 1-8710 to Wagonhound was not in accordance with the law. The parties dispute whether Wagonhound misrepresented or falsely reported information in its application for State Lease No. 1-8710, as well as the materiality of any factual inaccuracies contained therein. The parties also disagree on proper application of the preference for landowners provided by Wyoming Statute § 36-5-105(b) (LexisNexis).

Leman contended Wagonhound misrepresented facts in its application for State Lease No. 1-8710, which required the Director to investigate the matter and, ultimately, required the Board to reject Wagonhound's application under Wyoming Statute § 36-5-113 (LexisNexis). More specifically, Leman asserted Wagonhound erroneously indicated State Lease No. 1-8710 was

fenced in with other lands owned by Wagonhound and falsely reported it had actual and necessary use for State Lease No. 1-8710. Additionally, Leman maintained he was entitled to the award of State Lease No. 1-8710, under Wyoming Statute § 36-5-105(b) (LexisNexis), because he had actual and necessary use of State Lease No. 1-8710 at the time of his application.

The Office of State Lands and Wagonhound contended Wagonhound did not misrepresent material information in its application and, as the highest bidder, Wagonhound was entitled to the award of State Land Lease No. 1-8710. The Office of State Lands and Wagonhound asserted the preference requirements under Wyoming Statute § 36-5-105(b) (LexisNexis) apply only in instances where equal bids are received for the same parcel of state land.

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management and leasing of state lands, the bidding and award process of grazing leases, and the facts specific to the award of State Lease No. 1-8710.

b. Leman testified generally about the operation of his ranch and his unsuccessful application for State Lease No. 1-8710. Leman also testified extensively about a map that he prepared depicting the land he owns or controls, Wagonhound's land, State Lease No. 1-8710, and the fences in the area.

c. James Jones (Jones) is a licensed surveyor in the State of Wyoming and testified about the map he prepared, depicting State Lease No. 1-8710, the existing fences, and the land owned or controlled by Wagonhound and Leman. [Exhibit (Ex.) 2]

d. Dustin Ewing (Ewing) is the general manager for Wagonhound and testified about Wagonhound's ranching operation, including its real estate ownership and land use. Ewing also testified about Wagonhound's successful application for State Lease No. 1-8710.

B. State Lease No. 1-8710 and Adjoining Land Owners

2. The State of Wyoming owns the lands covered by State Lease No. 1-8710. The lease consists of approximately 147 acres in Converse County, Wyoming. [Ex. A; Ex. S-17]

3. On November 14, 2018, the Office of State Lands advertised the availability of State Lease No. 1-8710. The advertisement for bids was open until December 7, 2018, and required a minimum annual rental of \$210.12. The Office of State Lands's lease application consists of 13 questions, which are summarized as follows: 1) Is the applicant a qualified lessee under the laws of the State of Wyoming? 2) Are you the owner, lessee, or lawful applicant of lands adjoining the lands applied for? 3) Do the state lands applied for have legal public access? 4) Do you have actual and necessary use for the land and its forage? Describe proposed grazing or agricultural use – seasonal grazing, rotational grazing, federal grazing allotment, crops to be grown, use of irrigation;

5) How many head of livestock, by type, do you own? 6) Are the state lands fenced in with other lands that you own or control? Are they fenced separately? 7) Do the lands contain stock or irrigation water? 8) If you hold the expiring lease upon the lands applied for, have the leased lands been included in a sublease or pasture agreement of any kind during the past lease term? 9) To your knowledge, are there known noxious/invasive weeds or pests present on the state lands applied for? 10) Are there any areas of concern on the state lease (i.e. dumps, oil field trash, public abuse, etc.)? 11) Are there any improvements located on the lands applied for? 12) List any improvements, their location, and their value; and 13) The annual rent proposed by the applicant.

[Ex. B; Ex. S-17]

4. The location of Lease No. 1-8710 and the land owned by Lemman and Wagonhound, along with the existing fences, is not disputed. A number of maps admitted as evidence in this matter depict Lease No 1-8710 and the respective locations of the land owned or leased by Lemman and Wagonhound. The maps are generally consistent with one another. [Ex. F; Ex. G; Ex. S-17, p. 40; Ex. 1; Ex. 2]

5. The land associated with State Lease No. 1-8710 is a quarter section, located in the south-west corner of section 18 (specifically, SW1/4SW1/4, section 18, township 31 north, range 73 east). A state highway, Highway 91, divides State Lease No. 1-8710, with the majority of the state land located east of the highway, and a smaller portion located west of the highway. [Ex. F; Ex. G; Ex. 2]

6. East of Highway 91, all of State Lease No. 1-8710 is fenced in with land leased by Lemman. A small portion of Wagonhound's land, that adjoins State Lease No. 1-8710, lies within Lemman's boundary fence. A fence does not exist to separate State Lease No. 1-8710 from the land

leased by Leman or the small parcel of Wagonhound's land. [Ex. F; Ex. G; Jones's Testimony; Leman's Testimony; Ewing's Testimony]

7. West of Highway 91, the majority of State Lease No. 1-8710 is also fenced in with land owned or leased by Leman. A small parcel of State Lease No. 1-8710, in the southwest most corner, is not within the land controlled and fenced in by Leman. This small parcel adjoins Wagonhound's land, but it is not fenced in with Wagonhound's land. [Ex. F; Ex. G; Ex. 2; Jones's Testimony; Leman's Testimony; Ewing's Testimony]

C. Wagonhound's Application for State Lease No. 1-8710

8. On November 21, 2018, Wagonhound submitted a bid for State Lease No. 1-8710. Wagonhound's bid was for \$1360.00. Wagonhound's bid indicated: Wagonhound owned and controlled land adjoining the state lands; the state lands were fenced in with land that Wagonhound owned or controlled; and Wagonhound had actual and necessary use of the state land for trailing livestock in the summer and fall or winter. Ewing signed the application on behalf of Wagonhound and testified that he believed at the time and continues to believe that Wagonhound owns land that is fenced in with State Lease No. 1-8710. [Ex. C; Ewing Testimony] Wagonhound's bid included a copy of a map prepared by Office of State Lands employee, Cole Lambert, dated September 28, 2018, which accurately depicted the existing fences relevant to State Lease No. 1-8710. [Ex. C]

9. At the time of the contested case hearing, Wagonhound owned or leased in excess of 260,000 acres in Converse County. Wagonhound's ranching activities are extensive and include the ownership of 5000 cow-calf pairs, 1500 yearlings, 200 head of horses, and the operation of two feedlots. Wagonhound sought State Lease No. 1-8710 to stage trailing its cattle to and from summer and winter pastures. It is not disputed that east of Highway 91 a fence would be required

to separate State Lease No. 1-8710 and Wagonhound's land from Lemman's land. [Ex. G; Ex. I; Ex. 1; Ewing's Testimony; Lemman's Testimony; Jones's Testimony]

10. Beginning in 2011, and ending in 2018, Wagonhound annually secured temporary use permits (TUP) for grazing from the Office of State Lands for the land covered by State Lease No. 1-8710. Wagonhound did not graze, or otherwise make use of, the land covered by State Lease No. 1-8710, nor did it advise Lemman of the TUPs. However, the Office of State Lands does not consider previous TUPs in the award of grazing leases. [Ex. S-1 through S-16; Crowder's Testimony; Ewing's Testimony; Lemman's Testimony]

D. Lemman's Application for State Lease No. 1-8710

11. On November 30, 2018, Lemman submitted a bid for State Lands Lease No. 1-8710. Lemman's bid was for the minimum annual rental amount of \$348.84. Lemman's bid further indicated: he owned and controlled land adjoining the lands covered by State Lease No. 1-8710; the state lands were fenced in with land that Lemman owned or controlled; and Lemman had actual and necessary use of the state land for summer and fall grazing. [Ex. B]

12. In 2011, Lemman began grazing his cattle on the land he controls east of Highway 91, which encompasses State Lease No. 1-8710 and a small portion Wagonhound's land. In 2012, Lemman began grazing his cattle on the land he controls west of Highway 91, which includes a portion of State Lease 1-8710. Lemman has also historically maintained the fence associated with both parcels and the fence lines have remained unchanged since 2011. [Lemman's Testimony; Ewing's Testimony]

E. Award of State Lease No. 1-8710 by Office of State Lands

13. The application to lease state lands consists of thirteen questions. The Office of State Lands maintains only three questions are "material" in the award of a state grazing lease.

First, question #1, the applicant's status to lease state land; second, question #4, whether the applicant has actual and necessary use of the state land; and third, question #13, the rental amount offered. In consideration of actual and necessary use of the state land, the Office of State Lands deems the requirement met if the applicant owns livestock, intends to own livestock, or intends to sublease to a person that owns livestock. The Office of State Lands asserted the remaining 10 questions elicit information utilized in the management of state lands, but maintained the responses to those questions were not material in the award of state grazing leases. [Crowder's Testimony]

14. On December 17, 2018, the Director conditionally awarded State Lease No. 1-8710 to Wagonhound for ten years for an annual rental amount of \$1,360.00. [Ex. A]

15. On January 18, 2019, the State Lands Office received Lemman's written appeal of the Director's decision conditionally awarding State Lease No. 1-8710. [Office File]

16. On January 23, 2018, the Office of State Lands referred Lemman's appeal to this Office to conduct a contested case hearing. [Office File]

17. All findings of fact set forth in the Conclusions of Law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. State Lands Leasing Principles

18. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the State Superintendent of Public Instruction. The Board has jurisdiction over "the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature." Wyo. Stat. Ann. § 36-2-101 (LexisNexis).

19. In the leasing of state lands for grazing and agricultural purposes, the Board is required to ensure the state lands are leased “in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.” Wyo. Stat. Ann. § 36-5-105(a) (LexisNexis).

20. The term “greatest benefit” is not synonymous with “greatest revenue” and the Board retains the authority to review conflicting lease applications to determine the best use of state lands for grazing and agriculture to generate the greatest benefit for the State. In exercise of this authority, the Board has previously considered fencing, potential misrepresentations or errors in state land lease applications, historical use of vacant state lands, the need by the applicant for existing ranching activities – in addition to the potential revenue generated by the award of state land lease for grazing or agricultural purposes. *Sullivan Co. v. Meer*, 58 Wyo. 90, 125 P.2d 168 (Wyo. 1942); *Banzhaf v. Swan Co.*, 60 Wyo. 201, 148 P.2d 225 (Wyo. 1944); *Frolander v. Ilsley*, 72 Wyo. 342, 264 P.2d 790 (Wyo. 1953); *Howard v. Lindemier*, 67 Wyo. 78, 214 P.2d 737 (Wyo. 1950); *Rayburne v. Queen*, 78 Wyo. 359, 326 P.2d 1108 (Wyo. 1958).

21. The Board possesses broad discretion in the exercise of this power. *Banzhaf*, 148 P.2d at 225.

The exercise of the power conferred upon the board to lease the lands of the state in the manner and to parties which shall inure to the greatest benefit, and secure the largest revenue of the State, requires judgment and discretion. No inflexible rule is laid down for the guidance of the Board in those matters. The judgment and discretion to be exercised is judicial in character, and in an application for the writ of mandamus it is not proper for the court to interpose its opinion and judgment in the place of that of the board, even if the conclusion which the latter has reached upon the facts should appear to have been erroneous.

Jassman v. Wulfejn, 71 Wyo. 261, 257 P.2d 334, 268 (Wyo. 1953), quoting *State, ex. rel, Marsh v. State Bd. of Land Commissioners*, 7 Wyo. 478, 490, 53 P. 292, 295 (Wyo. 1898).

22. Those who are qualified to lease state lands under the jurisdiction of the Board are described as follows:

(a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.

Wyo. Stat. Ann. § 36-5-101(a) (LexisNexis). In addition, the State Lands Act specifies the basic process for obtaining a grazing lease and renewing an outstanding lease of state lands under the Board's jurisdiction. Wyo. Stat. Ann. §§ 36-5-103 and -104 (LexisNexis).

23. The Board possesses separate and distinct authority to "cancel leases procured by fraud, deceit or misrepresentation, or for use of the lands for unlawful or illegal purposes, or for the violation of the covenants of the lease, upon proper proof thereof." Wyo. Stat. Ann. § 36-5-113 (LexisNexis).

24. The Board's Grazing Rules contain the following provisions that are relevant to this matter:

Section 5. Applications

(a) Forms. All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

.....

Section 12. Cancellation

The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Board of Land Commissioners, Grazing and Agricultural Leasing (Board Grazing Rules), ch. 4, §§ 5(a) and 12, 060.0002.4.02212012.

25. Wyoming Statute § 36-5-105(b) (LexisNexis) expressly recognizes preferences for the leasing vacant state lands under the jurisdiction of the Board:

(b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land 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, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

26. The Director is charged with conducting business on behalf of the Board, including receipt and the conditional award of all applications to lease state lands for the purposes of grazing and agricultural purposes. In the event conflicting applications are received, the Director is required to report his decisions to the Board for consideration. The Board also maintains authority to “override any decision made by the director.” Wyo. Stat. Ann. § 36-3-102(a) and (c) (LexisNexis). In making its decision, the Board shall issue “a written order containing findings of fact and conclusions of law based upon the evidence in the record.” Board of Land Commissioners Rules of Practice and Procedure Before the Board, ch. 1 § 9(e).

B. Application of Legal Principles

27. In his first assertion of error by the Director, Leman contends that Wagonhound’s bid contained a material misrepresentation of fact and, consequently, should have been rejected pursuant to Chapter 4, Section 5(a) of the Board’s Rules.

28. The application is a form required by the Office of State Lands for the award of a state grazing or agricultural lease. Board Grazing Rules, ch. 4, § 12. The application consists of 13

questions, 10 of which the Office of State Lands maintains are not material to the award of a state land lease. [Ex. S-17; Crowder's Testimony] The Office of State Lands only considers the responses to three questions to be material in the award of State Lease No. 1-8710: was the applicant a qualified lessee under Wyoming Statutes; could the applicant make actual and necessary use of the state land; and what was the annual rent proposed. The Office of State Lands contends that the 10 remaining questions, and the applicant's responses, are relevant to the overall management of state lands, but are not material to the award of the lease. [Crowder's Testimony]

29. Question #6 of the leasing application specifically requests information related to fencing. It is undisputed that fencing controls land access and grazing of livestock and is important to the management of ranching activities. [Leman's Testimony; Ewing's Testimony] In its response to Question #6 on its application for State Lease No. 1-8710, Wagonhound represented that the state lands were fenced in with other lands that it owned or controlled. It is undisputed that a fence does not exist on Wagonhound's land that would "fence in" its land with State Lease No. 1-8710 exclusively. The only existing fence east of Highway 91, which allows for grazing on State Lease No. 1-8710, is Leman's boundary fence. While it is true Wagonhound's land lies within Leman's boundary fence, to "fence in" Wagonhound's land with State Lease No. 1-8710 exclusively would require construction of a fence. With respect to the portion of State Lease No. 1-8710 west of Highway 91 that is not fenced in with Leman's land, construction of a fence would also be required to "fence in" Wagonhound's land with State Lease No. 1-8710.

30. While the Board agrees with Leman that Wagonhound's answer to Question #6 had the potential to mislead, when the Board considers the application as a whole, it agrees with the Office of State Lands that the representation was not material to the award of the lease. Wagonhound's application also included a map, prepared by the Office of State Lands before the

applications were submitted, that accurately depicted the existing fences. [Ex. C] The Office of State Lands could hardly be deceived by or have relied on Wagonhound's answer when it knew the actual situation on the ground from its own inspection and mapping. *See, e.g., Brown v. Wintermute*, 139 P.2d 435, 437 (Wyo. 1943) (finding Board not misled by alleged misrepresentations about who owned fence enclosing pasture). Not every inaccurate or imprecise response in an application is material. In fact, the Wyoming Supreme Court previously found that an inaccurate statement in a lease application that "did not deceive the Board, since the facts were before it" did not warrant denial of an application. *Frolander*, 264 P.2d at 796. Such is the case here.

31. The Board finds that Wagonhound and Leman were both qualified lessees and met the requirements associated with actual and necessary use and, thus, the Director properly decided to award State Lease No. 1-8710 based on the rental amount offered. The Board concludes that the Office of State Lands and the Director properly applied the law in reaching this decision. It is not necessary in this case for the Board to decide whether under different circumstances an inaccurate response to Question #6 might constitute a material misrepresentation warranting rejection of a lease application.

32. Leman next argues that he is entitled to the preference provided by Wyoming Statute § 36-5-105(b) (LexisNexis), the vacant leasing preference statute. The vacant leasing preference statute requires preference be given in "all cases" to qualified lease applicants that have actual and necessary use of the state land, who own or control adjoining lands, and who offer to pay an annual rent equal to or more than fair market value. Wyo. Stat. Ann. § 36-5-105(b) (LexisNexis). For its part, the Office of State Lands argued that the vacant leasing preference statute applies only when bids are received for an equal rental amount and, therefore, the

preference statute is not applicable here. The Board does not need to resolve this question in this appeal.

33. Even assuming for the sake of argument that the preference statute applies, it provides no benefit to Leman, because Wagonhound is entitled to the same preference. Wagonhound and Leman are both qualified applicants under Wyoming Statute § 36-5-101(a) (LexisNexis); both have land adjoining State Lease No. 1-8710; both offered an annual rent equal to or more than \$210.12, the fair market value; and, both have the ability to make actual and necessary use of the property. The Office of State Lands explained that “actual and necessary use” was satisfied if the applicant owned livestock, planned to purchase livestock, or planned to sublease the state land to a party that owned or planned to purchase livestock. [Crowder Testimony] Both Wagonhound and Leman satisfy this test.

34. The Board does not believe that weighing the relative merits of each party’s historic use of State Lease No. 1-8710 is necessary or appropriate in this case. Leman used the land beginning in 2011 and 2012, but did so without a lease, while Wagonhound obtained multiple TUPs for the land beginning in 2011, but did not make actual use of the land. Under these circumstances, the Board concludes that neither party should obtain any benefit from either their use without permission or their non-use despite permission.

35. Because both parties are entitled to the preference if it applies, they remain equally qualified for the lease in every way except for the rental amounts they bid for the lease. In such cases, the higher bid prevails. Accordingly, the Board concludes that the Office of State Lands and the Director properly applied the law in conditionally awarding State Lease No. 1-8710 to Wagonhound.

VII. ORDER

IT IS THEREFORE ORDERED that:

1. The Director's December 17, 2018 conditional award of State Lease No. 1-8710 to Wagonhound is UPHELD.

2. Leman's November 30, 2018 application for State Lease No. 1-8710 is REJECTED.

3. Wagonhound is awarded State Lease No. 1-8710 for the annual rental amount of \$1,360.00 per year, for a period of ten (10) years.

Executed this 13th day of April, 2020.



Mark Gordon, President
Board of Land Commissioners