

# Wyoming Legislative Service Office Program Evaluation Report



## Office of State Lands & Investments: Management of State Trust Lands

Management Audit Committee  
June 8, 2010

# Office of State Lands & Investments

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As they work to allocate tax dollars effectively and make government more efficient, legislators and administrators need objective information. Program evaluation reports from the Legislative Service Office (LSO) are a source for timely, accurate, and unbiased information on state government performance. These reports assist the Legislature in performing its function of oversight: decisionmakers need to understand the operations of state government in order to make informed decisions on the laws they pass and the financial decisions they make.

Wyoming's legislative evaluation activities began in 1971 with the creation of LSO and establishment of the legislative auditor to examine agencies' accounts and operations. In subsequent years, the Legislature changed the section's orientation from financial to sunset auditing, and then to program evaluation. These reviews compare what a program is accomplishing to what the Legislature intended the program to accomplish. W.S. 28-8-107 through 113 authorizes the program evaluation function.

The Management Audit Committee chooses state government programs for review and approves the final reports for release. An eleven-member bi-partisan committee, it has representation from the Senate and the House of Representatives.

LSO program evaluators research, analyze, and write reports on the assigned topics. The reports assess effectiveness and efficiency, examine whether intended results are being achieved, and include non-binding recommendations for change in administrative policies as well as for statutory changes.

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## Wyoming Legislative Service Office

# EXECUTIVE SUMMARY

## Office of State Lands and Investments: Management of State Trust Lands

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Program Evaluation Section

June 2010

### **Purpose**

On July 31, 2009, the Management Audit Committee directed staff to undertake a review of the Office of State Lands & Investments (OSLI). The overall objective of this audit is to determine whether the OSLI is maximizing revenue for Wyoming's trust beneficiaries, through the effective leasing and use of State trust lands.

With the exception of discussing surface impact payments resulting from damage caused by sub-surface activities, staff did not include an analysis of surface leases or other uses (e.g. grazing, timber sales, granting easements, etc.) in its review.

During our audit, we encountered an important scope limitation dealing with the OSLI's data systems. Upon request, it did provide various reports, spreadsheets, documents for our review throughout the audit, as well as access to physical records maintained in its vault. However, LSO audit staff was not granted direct access rights to the OSLI's databases.

The OSLI is currently engaged in a large data system integration project and stated it was not possible for LSO staff to have direct access to the systems in transition. In order to provide some assurances as to the accuracy of the OSLI-provided reports and spreadsheets, we conducted numerous case file review samples for the areas we addressed in this report.

Lastly, although we present contextual information in the report discussing severance taxes generated from State leased land, we did not audit the processing of severance tax returns and certification of gross production for ad valorem tax purposes by the Department of Revenue.

### **Background**

The Office of State Lands & Investments is created pursuant to W.S. 9-2-2015 and is headed by a Director, who is appointed by the Governor and confirmed by the Wyoming State Senate.

Importantly, the OSLI is primarily the administrative and programmatic staff for the Board of Land Commissioners (Board) and the State Loan and Investment Board. Both boards are composed of the five statewide elected officials – Governor, Secretary of State, State Auditor, State Treasurer, and the State Superintendent of Public Instruction.

In terms of State trust lands management (also termed State trust assets management) the OSLI works to implement the policies and decisions of the Board. Basic principles of trust asset management apply as outlined in the Wyoming State Constitution, but primarily through direction of the Wyoming State Legislature.

The purpose and goal of managing State trust lands is for long-term growth in value, and optimum, sustainable revenue production of the land for named beneficiaries. The

beneficiaries include various State institutions (e.g. Wyoming State Hospital and the University of Wyoming). Revenues are primarily used for the support and benefit of the public schools. According to the OS LI, similar principles apply to non-trust and institutional lands acquired since statehood.

Administratively, the OS LI consists of the Director, as well as five divisions: **1)** Financial Programs and Management Services; **2)** Real Estate Management and Farm Loans; **3)** Mineral Leasing and Royalty Compliance; **4)** Wyoming State Forestry; and **5)** Information Technology. Most of the information contained in this report addresses functions covered by the Mineral Leasing and Royalty Compliance, Real Estate Management and Farm Loan, and Information Technology divisions.

In summary, the State holds approximately 3.5 million surface acres and 3.9 million mineral acres of State trust lands. These acres have generated over \$705 million in revenue in the last two biennia (BFY 2007 and 2009) for trust beneficiaries and other statutorily created programs for which the funding can be used.

This income production is a direct result of all land uses presently allowed by the Board, but the vast majority is the result of sub-surface or mineral estate leasing and production royalties. Currently, there are almost 5,400 leases for development of various minerals on State lands. It should be noted that over 75% of these leases are for oil and gas development.

### **Results in Brief**

For more than a decade, the OS LI has stated the desire and need to become a proactive land management agency. The goal is to be more market driven and react quickly to changing market forces/dynamics to realize

the greatest short-term revenue without sacrificing the long-term value and preservation of the land for the trust beneficiaries.

Through constitutional, statutory, and administrative rule provisions, the OS LI has set up a network of revenue generating strategies, significantly reliant on the trust land minerals to generate income.

The OS LI maintains the view that with the fragmented State land ownership pattern and price/prospect impact on mineral development, the State is not well positioned to be more proactive or forceful in how it develops its trust mineral estate.

In fact, we identified several themes during our audit of the OS LI's current conditions for generating revenue that may keep it behind industry in evaluating the land's income potential.

The themes are as follows: 1) tracking, evaluating, and modifying revenue generating strategies; 2) providing adequate oversight and monitoring to maintain trust asset values for future revenue potential; and 3) working more to fulfill its total asset management objective by actively managing and analyzing its data.

On the first theme, the OS LI has generally done a good job providing for varied uses of State lands. However, it has been fairly passive and reactive to industry as opposed to more actively pursuing alternative strategies to gain extra revenue or mineral production. Evaluating various incentives such as the use of surface and subsurface surveys, working more to develop progressive lease language for underground coal gasification development, and investigating geothermal potential on State lands could be used by the OS LI to better inform industry and the Land Board in pursuing future development.

On the second theme, we learned that the OSLI has taken steps in recent years to increase its oversight and monitoring posture with industry. It currently has two mineral field inspectors and hired a lead royalty compliance auditor for major company audits. Yet due to how recent these staff developments are, the OSLI is not at a point where these functions provide for clear and consistent oversight.

On the third theme, the OSLI has been immersed in a multi-year data system project – the agency-wide integrated system hub (AWISH) – that is intended to fully automate and integrate its various land management systems and functions. However, we learned throughout the course of our audit, the system as planned will primarily integrate currently “silos” databases and place additional manual processes and documents into automated format.

Importantly, certain requested information will still not be captured in the system’s functionality. Also, automated analyses envisioned by the OSLI will more than likely not occur until after 2010. Therefore, the OSLI will continue to be challenged in the future, to fully automate various analysis such as the use and efficacy of production incentives, as well as 9-section grid analysis (e.g. analyzing production activity over 9-sections, where a state lease is located on one of those sections; one section equals 1 square mile).

### **Principal Findings**

There are 13 significant finding areas and related recommendations discussed in more detail in the report:

#### Chapter 2

1. The OSLI offers various mineral development incentives to encourage leasing of State lands, as well as for increased production related to existing leases.

However, not all are utilized by the mineral industry, nor is the effectiveness of incentives tracked by the OSLI.

2. The fact that three companies acquired 274 leases for Underground Coal Gasification in a two year time period suggests potential and interest existed for competitive bidding, which was not undertaken.
3. Surface Impact Payments from Temporary Use Permits and from granting easements are not recorded by the OSLI

#### Chapter 3

1. The OSLI uses special use leases and temporary use permits to generate additional revenue for the State.
2. The OSLI has been proactive in offering State lands for wind energy use.
3. The OSLI has not proactively engaged State land for geothermal use/leasing to continue diversifying and optimizing revenues.
4. The OSLI allows surface and sub-surface surveying activities, but its oversight is minimal.

#### Chapter 4

1. The OSLI monitoring of subsurface development through field inspections is new and evolving.
2. The OSLI royalty compliance auditors recently started major audits of non-compliant companies.
3. The OSLI is moving forward with more formal audit processes re: non-compliant companies.
4. The OSLI’s current approach of assessing increased rental fees during suspended leases is not articulated in lease language or existing rules.

#### Chapter 5

1. More than a decade after a thorough study of the OSLI’s GIS data needs, and five years after dedicated funding, it is

still developing its GIS base lands inventory and analytical capabilities.

2. The OSLI has had difficulty migrating from paper-based to electronic information management for easier reporting and analysis.

## Chapter 6

We also present a variety of contextual and comparison material gathered from other states and the United States Bureau of Land Management.

This information indicates that Wyoming may be able to borrow other states' practices with respect to incentives and oversight of areas such as surface impact payments and granting permission to conduct various surveys on State lands.

### **Agency Comments**

The OSLI's formal response is incorporated into the final report. It agrees with the majority of recommendations (11); partially agrees with two (2) recommendations; disagrees with two (2) recommendations; and is neutral on one (1) recommendation.

### **Potential Area for Further Study**

According W.S. 36-1-102, State agencies are required to file legal and other information with the OSLI related to acquisition of real property. This includes land that does not fall specifically into the trust asset category. For example, these lands are typically acquired outside of the federally-granted trust lands since Wyoming became a state. We did not conduct audit work related to this area.

A finding from the recent (FY 2009) State of Wyoming Statewide Single Audit states,

*“The State currently does not have an effective internal control system in place to track all non-trust land that it owns and its corresponding value... Without a*

*comprehensive inventory of all of the State's land holdings, the State does not have an adequate audit trail for land transactions or the overall valuation presented in the financial statements. We recommend the State develop a system for inventorying and tracking these non-trust lands.”*

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*Copies of the full report are available from the Wyoming Legislative Service Office. If you would like to receive the full report, please fill out the enclosed response card or phone 307-777-7881. The report is also available on the Wyoming Legislature's website at <http://legisweb.state.wy.us>*

## Recommendation Locator

Chapter Number	Recommendation Number	Recommendation Summary	Page Number	Party Addressed	Agency Response
2	2.1	The OSLI should review, plan, and confirm that the AWISH data project will provide for detailed data tracking and analysis of its mineral incentives programs to evaluate their effectiveness and to proactively take steps to improve leasing and production potential on State lands.	21	OSLI	Agree
2	2.2	The OSLI should continue to work with the three companies to determine operations and royalty issues with respect to production of syngas. In addition, it should work with the Department of Revenue related to issues concerning severance tax, as well as certification of valuation of syngas.	26	OSLI	Agree
2	2.3	The OSLI should track surface impact payments to grazing lessees resulting from TUPs and from granting easements. This information can be used by the Board to periodically reassess its policies with respect to calculation and disbursement of surface impact payment revenue. The OSLI could amend the <i>Applications for Temporary Use Permits Report</i> to include an additional field(s).	33	OSLI	Partially Agree
2	2.4	The OSLI should update its <i>Surface Impact Payment Report</i> to break out surface impact revenue for leases and surface and subsurface surveys. This would provide additional information to the Board about the types of impact and revenue generated from survey activities.	33	OSLI	Agree
2	2.5	The Board should consider requiring that all surface impact payments be made to the OSLI. Then, the OSLI would be responsible for disbursing monies to grazing lessees after approval	34	Board	Disagree

		by the director. Part of the approval process should include periodic reviews to make sure payments are consistent with Board approved schedules.			
<b>2</b>	<b>2.6</b>	The Board should consider creating schedules that would guide the process for negotiating surface impact payments for all leases and surface and subsurface survey activities. It is inconsistent that such schedules exist for payments related to TUPs and from granting easements. Approved Board schedules would provide more consistent guidance to grazing lessees when negotiating with companies, regardless of the land use.	<b>34</b>	<b>Board</b>	<b>Disagree</b>
<b>3</b>	<b>3.1</b>	The OSLI should continue to develop wind energy and offer leasing in Wyoming	<b>46</b>	<b>OSLI</b>	<b>Agree</b>
<b>3</b>	<b>3.2</b>	The OSLI should further research and consider offering geothermal leasing options for State lands. It should review BLM, other states and its own wind energy program to develop a geothermal energy strategy. In addition, it should formally work with the State Geologist to identify usable thermal activity under State leased lands.	<b>51</b>	<b>OSLI</b>	<b>Agree</b>
<b>3</b>	<b>3.3</b>	The OSLI should review licensing, permitting, or leasing options for Chapter 16 surveys and reformulate the process to provide for minimum conditions and consideration to be placed on these activities. For surface disrupting activities like geophysical surveys, the OSLI should look at minimally applying its special use lease or temporary use permit processes and rules on a standard basis.	<b>58</b>	<b>OSLI</b>	<b>Agree</b>
<b>4</b>	<b>4.1</b>	The OSLI should begin to formalize standards for inspection activities; it should provide greater consistency and establish criteria for prioritizing duties. The OSLI should also discuss with the Board whether surface impact money could be used to fund additional inspector positions.	<b>69</b>	<b>OSLI</b>	<b>Partially Agree</b>

<b>4</b>	<b>4.2</b>	The OSLI should continue working with the IT division on automating the audit processes through AWISH. Staff should identify requirements for including automatic flags and calculations typically necessary for audits to more quickly work through desk and major audits with reporting companies.	<b>75</b>	<b>OSLI</b>	<b>Agree</b>
<b>4</b>	<b>4.3</b>	The OSLI and the Board should continue to formalize the processes for identifying and resolving disputes with non-compliant companies to assure they are consistently resolved in a timely manner with the best outcome for the State.	<b>81</b>	<b>OSLI</b>	<b>Agree</b>
<b>4</b>	<b>4.4</b>	The OSLI and the Board should formally discuss the issue of statutory clarification with respect to industry and the OSLI's interpretation of gathering versus transportation	<b>81</b>	<b>OSLI</b>	<b>Neutral</b>
<b>4</b>	<b>4.5</b>	The OSLI should consider updating oil and gas lease language and rules to include specific reference to the increased rental rate schedule for suspended leases.	<b>83</b>	<b>OSLI</b>	<b>Agree</b>
<b>5</b>	<b>5.1</b>	The OSLI should continue to move forward with plans to fully integrate its GIS capabilities with AWISH in order to routinely conduct 9-section grid analysis (auto-prompt) and other lease analysis based on single-point GIS.	<b>88</b>	<b>OSLI</b>	<b>Agree</b>
<b>5</b>	<b>5.2</b>	The OSLI should continue to implement its AWISH data system project. It should re-evaluate and modify as necessary the system's capabilities to meet the basic information and analytical requests of the type made by LSO during this study to evaluate the effectiveness of its various programs.	<b>96</b>	<b>OSLI</b>	<b>Agree</b>



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# List of Acronyms and Definitions

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## Office of State Lands and Investments

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**Act of Admission:** An Act to Provide for the Admission of the State of Wyoming into the Union, and for other purposes including but not limited to the authority to accept, manage, lease and sell land.

**AG:** Attorney General for the State of Wyoming.

**A&I; A&I-ITD:** Wyoming Department of Administration and Information; Wyoming Department of Administration and Information, Information Technology Division

**AWISH:** Agency Wide Integrated System Hub – IT centralization project for OSLI data systems

**MRS:** Mineral Royalty System

**MLA:** Mineral Leasing Auction

**eRMA:** Electronic Royalty and Management Application; Producers enter into an agreement with the agency and are allowed to report with this application and transfer requisite payments via the application.

**RAS:** Royalty Accounting System

**GIS:** Geological Information System

**GALS:** Grant and Loan System

**BFY:** Budget Fiscal Year; equals two consecutive State fiscal years

**BLM:** Bureau of Land Management

**Board of Land Commissioners:** Board made up of the five statewide elected officials - Governor, Secretary of State, State Auditor, State Treasurer, and State Superintendent of Public Instruction; these same officials make up the State Loan and Investments Board.

**Bond; Well Bond; bonding:** An agreement where money is posted that shall bind the principle and its surety for all payments due, surety for full compliance of rules and regulations, reclamation of the surface, payment for all disturbances and improvements to the land. A bond may be of several types including a corporate surety bond, cash bond, certified cashier's check, certificate of deposit, non-revocable letter of credit, or AAA rated debenture. A bond does not need to post until actual operations begin which include exploration.

**CBM:** Coal bed methane

**Chapter 16 Surveys:** Surface and subsurface surveys allowed on State lands pursuant to Board of Land Commissioner Chapter 16 rules; surveys include land, mineral, geophysical, environmental, historical, etc. surveys.

**Communitization Agreement:** A written agreement detailing the functional operation and obligation under a pooling arrangement. It typically involves operators who cannot develop separate tracts of lands due to well spacing or well development programs. An area can be joined by volunteer action or regulatory action by asking the lessee to approve the communitization agreement or the Director may require it. The purpose being to produce oil and gas in the most efficient, least environmentally damaging, and most economical fashion.

**DEQ:** Wyoming Department of Environmental Quality

**Director:** OSLI agency director.

**Division; Divisions:** Office of State Lands and Investment organizational divisions: Real Estate and Farm Loans – “surface”; Mineral Leasing and Royalty Compliance – “subsurface”; Information Technology; Financial Programs and Management Services; Wyoming State Forestry

**Dormant Well** shall mean a well which is no longer actively producing, monitoring or injecting; or which does not qualify as permanently abandoned, shut-in, or temporarily abandoned.

**Drilling Window:** A specified time period defined and written into certain leases which allows for a royalty rate reduction if production in paying quantities is established within the specified time period.

**FY:** Fiscal Year

**Industrial Siting Council (ISC):** Created through W.S. 35-12-104, the Industrial Siting Council reviews the socio-economic and environmental impacts of industrial facilities before issuing a permit for construction.

**Injection or Disposal Well:** A any well used for the injection of air, gas, water, or any other substance into any underground stratum.

**OSLI:** Office of State Lands and Investments; manages administrative duties related to State trust lands and State investments. OSLI serves as staff to the Board of Land Commissioners and the State Lands and Investments Board.

**Permanent Land Funds; Permanent Land Income Funds:** Funds in which income generated from State lands administered by the Board of Land Commissioners is deposited; corpus of permanent funds is inviolate and cannot be expensed. The following are a list of primary funds used, but not all funds:

- Miners Hospital Permanent Land Fund (L01)
- Public Building Permanent Land Fund (L02)
- Fish Hatchery Permanent Land Fund (L03)
- Common School Permanent Land Fund (L04)
- DD&D Asylum Permanent Land Fund (L05)
- Carey Act Permanent Land Fund (L06)
- Omnibus Permanent Land Fund (L07)
- State Hospital Permanent Land Fund (L08)
- St. Training Permanent Land Fund (L09)
- Penitentiary Permanent Land Fund (L10)
- Agricultural College Permanent Land Fund (L11)
- University Permanent Land Fund (L12)
- Montgomery Trust Fund Principal (615)
- Montgomery Operating Fund (616)
- School District's Royalty Fund (063)
- Income Miner's Hospital (N01)
- Common School Land Income (N02)
- Ag College Land Income Fund (N03)
- University Permanent Land Income Fund (N04)
- Omnibus Land Income Fund (N05)
- Taylor Grazing Act (431)

**Permanently Abandoned Well:** A well which is no longer considered active and has been permanently plugged and abandoned, as provided by these rules, in such a manner as to prevent migration of oil, gas, and water or other substances from the formation or horizon in which it originally occurred.

**Pooling Area:** The set boundary defining the possible area of drainage for a specific reservoir of oil and gas shared among adjacent property owners or lessees. This is due to the mobility of oil and gas to move through small pores, between grains of sand and fractures in rocks which allows a well to drain oil or gas from adjacent lands.

**Primary Lease Extension:** A limited additional time period added to the original lease accompanied by an extra fee where the lessee can attempt to produce.

**Rental/Consideration:** A fee paid for the rights to operate and explore a defined section of land.

**Royalty:** A share of the product or profit (as of a mine, forest, etc.), reserved by the owner for permitting another to use the property.

**Royalty Rate Reduction:** A reduction that is achieved by producers who meet specific criteria set out in rule, which results in the royalty rate paid to be reduced from 16.67% to 10%.

**SEO:** Wyoming State Engineer's Office

**Shut-In Well:** A well not currently considered active in which the completion interval has not been isolated from the well-bore above and where the well-bore condition is such that its utility may be restored by opening valves or by energizing equipment involved in operating the well.

**SIP:** Surface Impact Payment

**SUL:** Special Use lease

**Suspension:** A temporary abrogation, as of a law or rule. In this case it refers to the lessees contract, most typical used when a well is in production or the second phase, but can't transport the product to market because of a circumstance like not having a pipeline.

**Temporarily Abandoned Well** shall mean a well in which the completion interval has been isolated from the well-bore above and the surface. The completion interval may be isolated by a retainer, bridge plug, cement plug, tubing and packer with tubing plug, or any combination thereof.

**TUP:** Temporary Use Permit

**UCG:** Underground Coal Gasification

**Unit Agreement:** A pooling arrangement that can be entered into by federal, State, or private entities which are proportional based on economies of scale. The purpose is to efficiently and effectively distribute gains and minimize the impact on the land.

**USFWS:** U.S. Fish and Wildlife Service

**WGFD:** Wyoming Game and Fish Department

**WOGCC:** Wyoming Oil and Gas Conservation Commission

**WOLFS:** Wyoming Online Financial System; State of Wyoming accounting system run by the State Auditor's Office.

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# INTRODUCTION

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## Objective, Scope, and Methodology

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### Introduction

The Management Audit Committee requested an audit of the Office of State Lands & Investments (OSLI), created pursuant to W.S. 9-2-2015.

According to W.S. 9-2-2015:

*“(a) From and after April 1, 1997, the state land and farm loan office shall be known and referred to as the Office of State Lands and Investments. (b) The administrative head of the office shall be a director appointed by the governor with the advice and consent of the senate. The director shall serve at the pleasure of the governor and may be removed by the governor as provided in W.S. 9-1-202. (c) The Office of State Lands and Investments shall consist of the director and shall administer all programs of the Board of Land Commissioners and State Loan and Investment Board.”*

The director’s general duties are annotated in W.S. 36-3-102 with respect to conducting and recording the business of the Wyoming Board of Land Commissioners (Board). The Board is created pursuant to Article 18, Section 3 of Wyoming’s Constitution:

*“The governor, secretary of state, state treasurer, state auditor and superintendent of public instruction shall constitute a board of land commissioners, which under direction of the legislature as limited by this constitution, shall have direction, control, leasing and disposal of lands of the state granted, or which may be hereafter granted for the support and benefit of public schools, subject to the further limitations that the sale of all lands shall be at public auction, after such delay (not less than the time fixed by congress) in portions at proper intervals*

*of time, and at such minimum process (not less than the minimum fixed by congress) as to realize the largest possible proceeds. And said board, subject to the limitations of this constitution and under such regulations as may be provided by law shall have the direction, control, disposition and care of all lands that have been heretofore or may hereafter be granted to the state.”*

The Wyoming State Constitution and the Wyoming State Legislature direct the Board of Land Commissioners to manage trust assets for long-term growth in value, and optimum, sustainable revenue production. According to the OSLI, similar principles apply to non-trust acquired and institutional lands.

The Office of State Lands and Investments consists of the Office of the Director, as well as five divisions: **1)** Financial Programs and Management Services, **2)** Real Estate Management and Farm Loans, **3)** Mineral Leasing and Royalty Compliance, **4)** Wyoming State Forestry and **5)** Information Technology. Collectively, these divisions along with the Wyoming Board of Land Commissioners serve Wyoming’s trust beneficiaries, primarily comprised of Wyoming’s public schools and State institutions.

*Legislative Question(s)* The Committee’s request was based on a general question of whether the OSLI is doing all it can to *maximize revenues* from the use of State leased land for Wyoming’s trust beneficiaries. The Committee’s request was limited to mineral production.

## **Objective**

W.S. 28-8-107(b) authorizes the Legislative Service Office to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

In July 2010, the Management Audit Committee directed staff to undertake an audit of the Office of State Lands & Investments (OSLI). The overall objective of this audit is to determine whether the OSLI is maximizing revenue for Wyoming’s trust

beneficiaries, through the effective leasing and use of State trust mineral lands. With the exception of discussing surface impact payments resulting from damage caused by sub-surface activities, staff did not include an analysis of surface leases or other uses (e.g. grazing, granting easements, timber sales, etc.) in its review.

It should also be noted that staff did not focus on the management of non-trust acquired and institutional land. According W.S. 36-1-102, State agencies are required to file information with the OSLI related to acquisition of real property. This includes land that does not fall specifically into the trust asset category. These lands are typically acquired outside of the federally-granted trust lands since Wyoming became a state. This area could be a matter for further consideration by the Committee, given a finding in the State of Wyoming Statewide Single Audit for FYE June 30, 2009 conducted by McGee, Hearne & Paiz, LLP. That finding states:

*“The State currently does not have an effective internal control system in place to track all non-trust land that it owns and its corresponding value. The Office of State Land and Investments developed an inventory of the State’s trust lands with a corresponding estimate of the historical cost; however, there have been and continue to be, other lands acquired by other State agencies that have not been included in this inventory. Without a comprehensive inventory of all of the State’s land holdings, the State does not have an adequate audit trail for land transactions or the overall valuation presented in the financial statements. We recommend the State develop a system for inventorying and tracking these non-trust lands.”*

Finally, although contextual information in the report discussing severance taxes generated from State leased land is presented, we did not audit the processing of severance tax returns and certification of gross products by the Department of Revenue.

This report addresses the following questions:

1. Is the OSLI doing enough to encourage mineral lease holders to explore and move towards production?
2. Is the OSLI doing enough to encourage business to enter into leases for exploration and production of various minerals?
3. According to the OSLI'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?
  - How often are leases inspected each year?
  - How much revenue can be generated if more lease inspections are completed? Do inspections 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, and temporary permits?

## **Scope and Methodology**

This evaluation was conducted according to statutory requirements and professional standards and methods for governmental audits. The research was performed from July 2009 through April 2010.

Research methods included:

### Interviews

1. Interviewed officials and personnel from the OSLI for programmatic and financial aspects of its responsibilities with respect to maximizing revenues from State trust lands for the benefit of Wyoming's trust beneficiaries. Interviews also focused on areas such as oversight, regulation, financial administration, database administration, and GIS capabilities.
2. Interviewed two (2) member(s) from the Wyoming Board of Land Commissioners with respect to policy issues that OSLI officials could not answer on behalf of the Board.
3. Interviewed officials from the following Wyoming agencies: Department of Environmental Quality; Oil & Gas Conservation Commission; Department of Audit; Wyoming State Auditor's Office; Department of Administration & Information, Budget and Information Technology Divisions; and the Geological Association at the University of Wyoming.

### Tours

4. Accompanied OSLI officials and field inspection staff on inspections of active oilfields, non-producing and bonded well sites, and reclaimed well sites outside of Glenrock, Wyoming. See Appendix B for photographs of conditions we observed during a field inspection.

### Research and Analysis

5. Reviewed existing Legislative Service Office publications discussing earlier ideas (1970s) with respect to proposed changes in Wyoming's fund structure and accounting procedures. These studies were the precursor to legislative changes reflected in W.S. 9-4-301 through W.S. 9-4-311, which deal with issues such as the disposition of State land revenue.
6. Reviewed professional publications and literature from the Lincoln Institute of Land Policy; Sonoran Institute dealing with legal and fiduciary trust issues across the United States.
7. Reviewed Wyoming Titles 9 and 36; Article 18 of Wyoming's Constitution, and various Board rules with respect to duties and responsibilities of the OSLI and the Board.

8. Reviewed accounting and other financial data from the Wyoming Online Financial System (WOLFS); infoAdvantage; the Wyoming Internet Budget and Analysis Reporting System (IBARS); Wyoming Session Laws; and OSLI budget requests with respect to programmatic and expenditures and revenues, as well as fund revenues from various revenue codes generated through the use of State trust lands.
9. Verified and sampled data from various databases provided by the OSLI to determine validity of data.
10. Conducted Internet research on other states and BLM practices; also interviewed responsible officials from other states and BLM.

## Scope Limitation

It should be noted that LSO auditors uncovered a scope limitation, which increased the risk of inaccurate, inconsistent, or incomplete information from the Office of State Lands & Investments (OSLI). More specifically, upon request to access OSLI databases, auditors were informed that as a result of transitioning from multiple databases on separate servers (e.g. Geographic Information Systems, Mineral Lease Auction, Mineral Royalty System, Mineral Lease System, and Royalty Accounting System) and other data tracking methods (paper summary sheets, excel spreadsheets, etc.) to an integrated system of eleven components (agency-wide integrated system hub or AWISH) such access was not granted.

Rather, OSLI officials stated that they would provide CRYSTAL or other reports of information collected in the five siloed systems, as well as other databases maintained in Excel, Word, and Access. The caveat however, was that such reports were often based on complex formulas that often left out important information. This required the OSLI to expend tremendous amounts of resources to gather various lease and other data for the analysis, which led to an increase in time to actually conduct the audit.

There were times that OSLI staff worked past midnight to provide requested data. Auditors undertook procedures to

essentially test sample data, to determine that although data was extremely difficult to access, it was sufficient and valid enough upon which to base our findings and recommendations.

As a result of the scope limitation, our non-financial data summary information throughout the report generally corresponds with an effective date of September 2009, which is the date OSLI officials generated various CRYSTAL and other data reports used in the audit. We did not request the OSLI to refresh such reports prior to the Management Audit Committee meeting in May, 2010. It should be noted however, that WOLFS and infoAdvantage data was not impacted by the scope limitation, which allowed a presentation of more recent financial data, as of April 2010, which is noted throughout the report.

## **Acknowledgements**

The Legislative Service Office expresses appreciation to the Office of State Lands & Investments (OSLI), as well as the Wyoming Board of Land Commissioners for its continued cooperation throughout this audit.

We would also like to express appreciation to the following agencies for their assistance: Bureau of Land Management; Wyoming Department of Environmental Quality; Wyoming Oil & Gas Conservation Commission; Wyoming Department of Revenue; Wyoming State Auditor's Office; Wyoming Department of Audit; Wyoming Department of Administration & Information, Budget and Information Technology Divisions; Wyoming Geological Association at the University of Wyoming; and various other State land offices (e.g. Colorado, Idaho, Montana, New Mexico, Texas, Utah, and Washington).



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# Chapter 1

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## Background

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### **Wyoming Constitution lays the groundwork for the State to accept and govern State-owned lands**

The Office of State Lands and Investments (OSLI) is statutorily tasked with administering – as directed by the Board of Land Commissioners (Board) and the State Loan and Investment Board (Investment Board) – the Wyoming State Land Trust consisting of three trusts: State Trust Land, State Trust Minerals, and the State Permanent Land Trust Fund. These lands (sometimes termed as “assets”) resulted from the Act of Admission that granted statehood to Wyoming in 1890 by the United States Congress. Both Boards are made up of the same five statewide elected officials.

Article 18 of the Wyoming Constitution acknowledges and accepts the granting of these lands. This article also notes the creation and delegation of power for governing State land to the Board, and legislative duties to establish proper methods by which State land may be governed (see Appendix A for select Wyoming Constitution and statutory references).

The Board is directed as follows by Section 3 of this article:

*“The governor, secretary of state, state treasurer, state auditor and superintendent of public instruction shall constitute a board of land commissioners, which under direction of the legislature as limited by this constitution, shall have direction, control, leasing and disposal of lands of the state granted, or which may be hereafter granted for the support and benefit of public schools...”*

The purpose for the granting of these lands was, and remains, to support public schools, State institutions, public buildings, and for other specific purposes. As such, the State has the authority

to lease, sell, or exchange granted State lands in pursuit of such purposes and support.

*The Board and the OS LI, through legislative direction act as trustees*

Based on the constitution, case law and Wyoming statutes amended since statehood, the Board and the OS LI, through direction from the Legislature, act as trustees of the proceeds from the use, sale and transfers of State land assets. Specifically, Wyoming Constitution Article 18, Section 4 notes the legislative role in managing the trust:

*“The legislature shall enact the necessary laws for the sale, disposal, leasing or care of all lands that have been or may hereafter be granted to the state, and shall, at the earliest practicable period, provide by law for the location and selection of all lands that have been or may hereafter be granted by congress to the state, and shall pass laws for the suitable keeping, transfer and disbursement of the land grant funds, and shall require of all officers charged with the same or the safekeeping thereof to give ample bonds for all moneys and funds received by them...”*

The Wyoming Supreme Court has also held that the trust is a statutory trust and not one that is regulated by common law principles. This gives the legislature significant discretion with respect to the administration of the public lands as long as every action is in compliance with the Constitution. The main purpose of the trust is to balance the short-term gain in revenues with the long-term protection and increase in value of assets for the defined trust beneficiaries. This includes looking at State land income potential on an intergenerational, in perpetuity, basis which does not require the State to outright dispose of the land.

*Title 36 of Wyoming Statutes clarifies specific trustee responsibilities*

In order to set out specific and necessary management duties and responsibilities, W.S. 36-1-101 through 36-12-109 note important parameters for how the Board and the OS LI may care for the State trust lands. Important features include:

- W.S. 36-5-101 sets the qualifying criteria for potential lessees;
- W.S. 36-5-102 through 117 addresses leasing in general,

agriculture, grazing and special use leases;

- W.S. 36-6-101 through 204 specifically addresses mineral leasing;
- W.S. 36-5-108 through 111 pertain to rental payments due and improvements upon State land; and
- W.S. 36-5-113 establishes the criteria and conditions for the cancellation of leases.

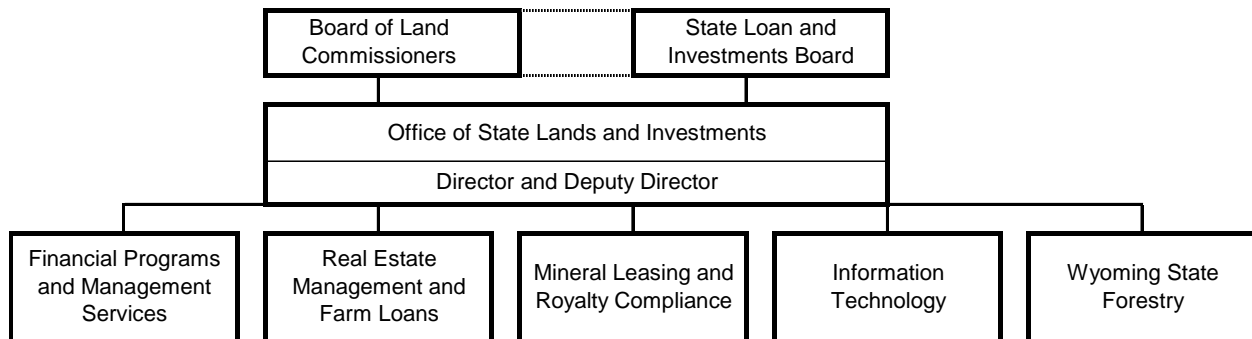
*The OSLI is the administrative staff for the Boards*

The OSLI, reorganized and renamed in 1997, is responsible for implementing the policy directives and decisions of the both Boards and consists of the Office of the Director and five divisions:

- Mineral Leasing and Royalty Compliance – “subsurface;”
- Real Estate Management and Farm Loans – “surface;”
- Information Technology;
- Financial Programs & Management Services; and
- Wyoming State Forestry.

Figure 1.1 below shows an abbreviated and simplified organizational chart of the OSLI. The first three divisions above are described in more detail on the following pages. The remaining divisions do not have as strong roles regarding the issues and findings discussed in the remainder of the report.

**Figure 1.1**  
**Abbreviated OSLI organizational chart**



Source: Legislative Service Office adaptation and summary of OSLI documents.

**Mineral Leasing and Royalty Compliance:** This division is referred to as the “subsurface” division in the OSLI’s budget requests and is primarily responsible for issuing all subsurface leases for mineral development on trust land assets. Through various leasing methods – including competitive auctions of oil and gas leases to over-the-counter coal leases – this division tracks and maintains leasing, rental, and royalty records attributable to State lands. Additional duties include:

- Review, approval, and recording lease assignments, company name changes, lease holds and well bonds;
- Works with the Wyoming Oil and Gas Conservation Commission to monitor oil and gas production, unit and communitization agreements; and
- Assure timely and accurate royalty accounting and payment for all operating State subsurface mineral leases pursuant to lease terms, State statutes, and leasing rules.

**Real Estate Management and Farm Loans:** This division is commonly referred to as the “surface” division in agency budget requests and is primarily responsible for managing the surface acres of trust land assets. This includes managing grazing leases, special use leases, temporary use permits, accounting for surface impact payments, and easements. It also works on land sales and exchanges as determined reasonable and compliant with trust responsibilities, and administers the farm loan program.

**Information Technology:** This division primarily assists the other divisions with information technology planning and support needs. Currently, its biggest function is to manage the OSLI’s large data system centralization project – the agency wide integrated system hub (AWISH) based on recommendations from the 2005-2006 Joint Legislative-Executive Task Force on OSLI trust program funding.

The task force recommended the OSLI work to more fully automate and integrate most of its various “siloed” databases and paper tracking sheets under a common infrastructure. The purpose is to link the OSLI’s trust land information to a unique identifier standard tied to a geographic information system (GIS)-

based land inventory data set.

Table 1.1 below summarizes the OSLI's actual expenditures for selected budget units, which comprise the areas on which the audit focuses.

**Table 1.1**  
**OSLI Operations (0100) Expenditures\***  
**BFY 2007 and BFY 2009**

<b>Programs</b>	<b>BFY 2007</b>	<b>**BFY 2009</b>	<b>Total</b>
Administration and Support (0101)	\$2,010,757.19	\$2,255,774.50	\$4,266,531.69
Surface (0102)	\$3,605,165.59	\$3,346,706.17	\$6,951,871.76
Subsurface (0107)	\$2,043,747.10	\$1,829,889.61	\$3,873,636.71
Information Technology (0109)	\$2,655,184.43	\$3,134,240.68	\$5,789,425.11
<b>Total</b>	<b>\$10,314,854.31</b>	<b>\$10,566,610.96</b>	<b>\$20,881,465.27</b>

Source: Legislative Service Office from information provided in WOLFS.

\* Selected budget units, which comprise the areas upon which the audit focuses.

\*\* Amount as of April 30, 2010. Also, according to WOLFS, an additional \$389,835.86 was expended from the Foundation Program Account (009) for Surface (0102).

### **Trust assets have generated just over \$700 million since FY 2007**

*Revenue generated from bids, rental, royalties, and other fees generated just over \$700,000,000 for BFY 2007 and 2009*

Revenue generating activities from leasing are divided into four general categories: bids; rental; royalties; and other. Competitive bidding on leases for oil and gas bring in "bonus" payments for companies to gain access to land for development. Once the lease has been obtained, a rental amount is charged per acre for a company to retain the land and lease it for future development and mineral production.

When a lease begins to produce marketable or paying quantities of a mineral, a royalty is assessed when the production quantity exceeds the rental rate. Various rates apply to different mineral types. In addition to the first three revenue types, there are miscellaneous fees that cover a large spectrum of the OSLI's State land activities. Tables 1.2 through 1.4 provide additional details on different revenue-generating uses.

**Table 1.2  
Lease Rental Revenue  
BFY 2007 & 2009**

<b>Commodity</b>	<b>Revenue BFY 2007</b>	<b>Revenue BFY 2009*</b>	<b>Revenue BFY 2007 &amp; 2009*</b>
Bentonite	\$101,666.00	\$114,130.50	\$215,796.50
Coal	\$669,841.48	\$1,042,248.50	\$1,712,089.98
Grazing	\$10,934,052.45	\$12,793,973.19	\$23,728,025.64
Excess Grazing	\$89,346.75	\$265,929.95	\$355,276.70
Miscellaneous Mineral	\$118,347.50	\$130,609.22	\$248,956.72
Oil & Gas	\$2,509,784.25	\$1,954,407.42	\$4,464,191.67
Oil & Gas Bonus	\$19,828,838.60	\$5,950,001.39	\$25,778,839.99
Sand & Gravel	\$2,757.50	\$400.00	\$3,157.50
Sodium & Trona	\$176,988.00	\$185,856.00	\$362,844.00
Special Use	\$1,771,141.52	\$2,317,506.95	\$4,088,648.47
Uranium	\$1,176,365.55	\$721,144.72	\$1,897,510.27
<b>Grand Total</b>	<b>\$37,379,129.60</b>	<b>\$25,476,207.84</b>	<b>\$62,855,337.44</b>

Source: Legislative Service Office from information provided in WOLFS.

\* Revenue amounts for BFY 2009 are accurate as of April 13, 2010.

**Table 1.3  
Lease Royalty Revenue  
BFY 2007 & 2009**

<b>Commodity</b>	<b>Revenue BFY 2007</b>	<b>Revenue BFY 2009*</b>	<b>Revenue BFY 2007 &amp; 2009*</b>
Bentonite	\$939,562.72	\$780,681.83	\$1,720,244.55
Coal	\$10,889,103.69	\$9,840,974.26	\$20,730,077.95
Miscellaneous Mineral	\$113,218.18	\$113,504.92	\$226,723.10
Oil & Gas	\$297,406,446.47	\$254,043,877.50	\$551,450,323.97
Sand & Gravel	\$1,955,535.67	\$1,651,250.43	\$3,606,786.10
Sodium & Trona	\$23,315,511.68	\$18,816,188.21	\$42,131,699.89
Uranium	\$95.20	\$0.00	\$95.20
<b>Grand Total</b>	<b>\$334,619,283.21</b>	<b>\$285,246,477.15</b>	<b>\$619,865,760.36</b>

Source: Legislative Service Office from information provided in WOLFS.

\* Revenue amounts for BFY 2009 are accurate as of April 13, 2010.

**Table 1.4  
Other Revenue  
BFY 2007 & 2009**

<b>Revenue Type</b>	<b>Revenue BFY 2007</b>	<b>Revenue BFY 2009*</b>	<b>Revenue BFY 2007 &amp; 2009*</b>
Penalty, Delinquent Payment	\$1,032,876.44	\$0.00	\$1,032,876.44

Revenue Type	Revenue BFY 2007	Revenue BFY 2009*	Revenue BFY 2007 & 2009*
Liquidated Damages	\$90,000.00	\$100,000.00	\$190,000.00
Advertising Fees	\$23,865.69	\$0.00	\$23,865.69
Land Sales-Interest	\$108,987.90	\$105,113.31	\$214,101.21
Other Surface Fee	\$16,690.00	\$3,200.00	\$19,890.00
Prior Year-Refunds, Rcvrs, Reimbursement	\$6,547.98	\$450.68	\$6,998.66
Publication Sales	\$14,225.32	\$805.38	\$15,030.70
Real Estate-Sales	\$5,096,851.15	\$1,889,192.22	\$6,986,043.37
Right Of Way Easements	\$3,118,617.05	\$1,834,920.56	\$4,953,537.61
Subsurface Application Fee	\$41,670.00	\$68,527.05	\$110,197.05
Subsurface Assignment Fee	\$85,791.00	\$5,625	\$91,416.00
Surface Impact	\$3,615,332.72	\$3,285,761.85	\$6,901,094.57
Surface Lease Application Fee	\$17,150.00	\$110,763.92	\$127,913.92
Temporary Leases/Permits	\$1,369,453.76	\$1,365,749.27	\$2,735,203.03
Timber Sales	\$534,820.20	\$263,681.82	\$798,502.02
<b>Grand Total</b>	<b>\$15,172,879.21</b>	<b>\$9,033,791.06</b>	<b>\$24,206,670.27</b>

Source: Legislative Service Office from information provided in WOLFS.

\* Revenue amounts for BFY 2009 are accurate as of May 5, 2010.

*State received over \$430 million in severance taxes from State trust land mineral production in CY 2008 and 2009*

In addition to lease rentals, royalties, and other permits and fees, which generate revenue from State trust lands directly through the OSLI, the State also receives severance taxes from companies for taking the mineral resources. It should be noted that severance taxes are tracked by the Wyoming Department of Revenue. Severance taxes vary depending on the type of mineral (e.g. 7% for surface mined coal, 6% for crude oil and natural gas, 4% for trona).

Table 1.5 below shows in aggregate what the State received in severance taxes on coal, oil, gas, and trona for CY 2008 and 2009 off production from leased State trust lands. In total, the State received over \$430 million in severance taxes during these two years.

**Table 1.5**  
**Coal, Oil and Gas, and Trona Severance Taxes Generated Off State Leased Lands**  
**CY 2008 and 2009**

Severance Tax Type	CY 2008	CY 2009	Total CY 2008 - 2009
Coal	\$205,503,092.85	\$185,683,401.42	\$391,186,494.27
Gas	\$27,374,988.73	*Not provided	\$27,374,988.73
Oil	\$13,477,734.83	*Not provided	\$13,477,734.83
Trona	\$236,656.16	\$340,294.88	\$576,951.04
<b>Total (all minerals)</b>	<b>\$246,592,472.57</b>	<b>\$186,023,696.30</b>	<b>\$432,616,168.87</b>

Source: Legislative Service Office from information provided by Department of Revenue from industry severance tax returns.  
 \* The Wyoming Department of Revenue has not yet analyzed data for CY 2009 oil and gas severance taxes on State leased lands at the time of this report.

Also, before production can occur, bonding is required where money is posted that shall bind the principal and its surety for all payments due. This implies surety for full compliance with rules and regulations, reclamation of the surface, and payment for all disturbances; in order to make improvements to the land.

A bond may be of several types including a corporate surety bond, cash bond, certified cashier's check, certificate of deposit, non-revocable letter of credit, or AAA rated debenture. A bond does not need to be posted until actual operations begin, which include exploration.

Easements, special use leases, and non-producing hydrocarbon wells have specific provisions for bonding which convey rights to the assignee/operator and provide surety for full compliance. Bonding provisions for easements and special use leases primarily cover surety for compliance, proper reclamation, and financial backing to mitigate any unforeseen risks. The amount and type of the bond may come in several forms at the discretion of the Director.

Non-producing hydrocarbon wells require additional bonding if the wells are not going to produce for more than 30 days; wells where bonding is calculated at \$10 per foot of depth drilled. Akin to the first two provisions there are several acceptable

bonding methods that are at the discretion of the Director, but bonding cannot be reduced below \$2 per foot of depth drilled. It should be noted that OSLI's statement related to a \$6 per foot minimum is well above the \$2.00 minimum set in Board rules.

*Three minerals – oil and gas, uranium, and coal – comprise 95% of all mineral leases issued by the OSLI*

The OSLI's primary revenue generating tool is from mineral leasing, mostly through oil and gas and hard rock minerals, including coal. Table 1.6 summarizes the number of mineral leases under contract with the OSLI as of September 2009. It should be noted that over  $\frac{3}{4}$  of all leases are oil and gas leases.

Additionally, Table 1.7 shows the count of leases by current status: prospect, operating, or in unit agreements. As shown, about 25% of mineral leases are termed by the OSLI as currently operating – in some phase of exploration or production.

**Table 1.6**  
**Number of Leases per Mineral Type**

Type of Lease	Number of Leases	Type of Lease	Number of Leases
Oil & Gas	4,159	Gypsum	2
Uranium	535	Leonardite	2
Coal	430	Limestone	2
Bentonite	85	Salt	2
All Metallic & Non-Metallic Minerals	50	Silica Sand	2
Trona & Associated Minerals	30	Silica/Silica Sand & Associated Minerals	2
Sand and Gravel	18	Aggregate	1
Gold Silver & Precious Metals	15	Copper Nickel Gold Platinum & Palladium	1
Phosphate	12	Decorative Stone	1
Sodium	9	Green Colored Quartz & Other Quartz	1
Trona	5	Gypsum & Limestone	1
Gypsum/Anhydrite & Limestone	5	Iron Titanium Zircon & Monazite	1
Limestone/Dolomite	5	Jade	1
Sodium & Associated Minerals	4	Landscape Rock/Surface	1
Ballast & Associated Rock Products	2	Limestone & Crushed Aggregate	1
Diamonds	2	Precious Metals	1
Dimension Stone	2	Scoria	1
<b>Subtotal</b>	<b>5,371</b>	<b>Subtotal</b>	<b>23</b>

Type of Lease	Number of Leases	Type of Lease	Number of Leases
			<b>Total</b>
			<b>5,391</b>

Source: Legislative Service Office from provided by the Office of State Lands and Investments.

**Table 1.7**  
**Status of Mineral Leases: Operating, Prospect, or Units**

Type	Operating	Prospect	*Unit	Total
Oil & Gas	1,318	2,699	142	4,159
**Hard Rock Minerals	53	1179	0	1,232
<b>Total</b>	<b>1,371</b>	<b>3,878</b>	<b>142</b>	<b>5,391</b>

Source: Legislative Service Office from information provided by the Office of State Lands and Investments as 9/15/2009.

\* Leases included in unit agreements are considered either prospect or operating, but not necessarily producing.

\*\* Includes coal.

Overall, the OSLI currently administers approximately 3.5 million surface acres and 3.9 million mineral acres. It should be noted that some of the original grant lands have been sold or exchanged. In terms of the actual leased subsurface State land acreage, Table 1.8 shows the area of State lands leased for different mineral development purposes (e.g. oil and gas, coal, etc.).

**Table 1.8**  
**Leased State Lands by Mineral Development Type**  
**FY 2009 \***

Mineral Type	Leased Acreage	Leased Acreage in Production or Exploration	Leased Acreage not in Production or Exploration
Oil and Gas	1,642,948.54	516,697.40	1,126,251.14
Coal	264,966.37	8,484.00	256,486.37
Sodium and Trona	31,076.14	4,317.21	26,758.93
Uranium	422,876.10	1,320.00	421,556.10
Bentonite	26,064.13	3,165.08	22,899.05
Metallic & Non-Metallic Rocks/Minerals	26,559.20	0	26,559.20
Sand, Gravel, Borrow, and Rip-Rap	3,066.11	2,310.04	756.07
<b>Total</b>	<b>2,417,556.59</b>	<b>536,293.73</b>	<b>1,881,266.86</b>

Source: Legislative Service Office from information provided by the OSLI.

\* Under the OSLI's multiple use policies, many State land tracks will be encumbered under different lease types including mineral leases under grazing and special use leases.

*Other activities generate revenue, but also may impact the surface resources*

While this report's focus was mainly on mineral/subsurface leasing, a review of how this type of development impacts the trust land resources through surface disturbance was conducted. Since mineral development has many supplementary impacts outside the traditional mineral leases, we reviewed special use leases, temporary use permits and "Chapter 16" surveys – so named from the rule number that guides these surveys.

With respect to revenue generation, activities engaged under each of these mechanisms may result in surface impact payments submitted to the OSLI and/or the surface (grazing) lessees. To clarify, special use leases and temporary use permits are not used as incentives for companies to move forward with mineral leasing and production, but Chapter 16 surveys can act as a leasing/production incentive (see Chapter 3).

Activities commonly allowed by these authorizations are as follows:

**Special Use Leases:** For industrial, commercial, and recreational purposes as defined by W.S. 36-5-115 – wind energy projects, water and disposal wells, oil and gas compressor sites, helicopter pads, etc.

**Temporary Use Permits:** Roadways, outfitting/guiding, water wells, hot mix facilities, and monitoring activities.

**Chapter 16 Surveys:** Land, mineral, geophysical, cultural, historical, biological, environmental, and mapping surveys.

**Emerging issues in the OSLI trust asset management**

Three important issues have occurred in recent years that continue to push the OSLI to evolve its administrative responsibilities and revenue generating strategies:

- The emergence of underground coal gasification (UCG) as a commercially viable technology to exploit deep coal resources;
- Continued expansion of alternative energy uses on the land,

including wind energy development, as well as potential to move into geothermal energy uses; and

- More direct monitoring of and care/preservation for trust land resources through direct field inspections as well as post production and royalty report auditing.

### **Wyoming could be at the forefront of emerging UCG commercial viability**

UCG has been used and researched for more than 100 years with early forms of this technology being used since the late 1800's. During the early to mid 1900s there were several UCG plants commercially operating in Russia (USSR). Only one is currently in operation in Uzbekistan.

There were a number of UCG trials in the United States, including in Wyoming: Hanna Trials (1972-1979), Hoe Creek project (1976-1979), Rocky Hill Trial (1978), Rawlins Tests (1979-1981), Rocky Mountain I (1986-1988) and Carbon County UCG (1995).

The Rocky Mountain I trial is considered the most technically and environmentally successful UCG test in the U.S. While several Wyoming and other states' tests were successful, none led to commercialization of underground coal gasification production in the United States. This was largely due an increase in natural gas production, which was cheaper to produce.

*UCG technology defined* The definition of UCG process is as follows:

*“The basic underground coal gasification process consists of one production well drilled into the unmined coal-seam for injection of the oxidants, and another production well to bring the product gas to surface. The coal seam is ignited via the first well and burns at temperatures as high as 1,500 K (1,230 °C), generating carbon dioxide (CO<sub>2</sub>), hydrogen (H<sub>2</sub>), carbon monoxide (CO), small quantities of methane (CH<sub>4</sub>) and hydrogen sulfide (H<sub>2</sub>S) at high pressure. As the coal face burns and the immediate area is depleted, the oxidants injected are controlled by the operator, ultimately with the objective of guiding the burn along the seam.*”

*As coal varies considerably in its resistance to flow, depending on its age, composition and geological history, the natural permeability of the coal to transport the gas is generally not satisfactory. For high pressure break-up of the coal, a hydrofracking, an electric-linkage, and a reverse combustion may be used with varying degrees.*

*There are two different commercially available underground coal gasification methods. One of the methods uses vertical wells and a method of reverse combustion to open up the internal pathways in the coal. The process was used in the Soviet Union and later it was tested in Chinchilla by using air and water as the injected gases.*

*Another method that was largely developed in the USA creates dedicated in-seam boreholes, using drilling and completion technology adapted from oil and gas production. It has a movable injection point known as CRIP (controlled retraction injection point) and generally uses oxygen or enriched air for gasification.”*

Currently, three companies hold slightly more than 250,000 acres of State land in the Powder River Basin with the intent of development of a UCG demonstration plant slated to come online in late 2011 or early 2012.

The OSLI indicates there are 430 coal leases, 420 of which are identified as being in prospect status. Of those 420 prospect leases, the three subject companies hold 65% of the leases (Company #1: 107 leases; Company #2, 91 leases; Company #3: 75 leases). All three of these companies have interests and experience in the UCG industry and one company owns the only currently commercially operating UCG plant in the world in Angren, Uzbekistan.

### **Alternative energy use of trust assets may help diversify short and long term revenue streams**

#### *Wind Energy and Geothermal Potential*

Under conditions spelled out in special use leases, the OSLI has moved to optimize State revenues by engaging industry to place wind energy projects on State lands. It has proactively

researched the field and addressed industry concerns to place the State in a better position to capitalize on alternative energy expansion.

Since Wyoming has valuable wind resources, it has been surrounded by intense public and legislative interest. Recent Wyoming legislation will impact how wind energy progresses in the State and will impact how the OSLI can work with this industry. Overall, the OSLI continues to work with communities and lessees to grow the numbers of wind leases and turbines on State land.

Our research indicates that Wyoming may have high amounts of geothermal potential, and that leasing State lands for geothermal energy development could give the OSLI and the Board the opportunity to generate additional income for the trust beneficiaries. The BLM and other states are leasing land for geothermal exploration and development.

In Wyoming there are no federal geothermal leases, yet there are procedures and guidelines. There is currently one application for geothermal development placed with the Wyoming BLM, but this application is waiting for revisions to be completed on the Kemmerer Resource Management Plan to see if the land is suitable for geothermal leasing.

It should be noted that a geothermal plant is being tested at the Teapot Dome in Midwest, Wyoming to explore the potential of hydrothermal power to offset heating costs. The geothermal plant was sold to the United States Department of Energy for an undisclosed amount. Ormat Technologies built the plant to prove the technical feasibility of using hot water associated with oil production to generate electricity.

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## Chapter 2

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**The OSLI cannot effectively evaluate the effectiveness of various incentives used by the mineral industry, nor has it taken advantage of current situations to optimize revenue.**

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**Finding 2.1: The OSLI offers various mineral development incentives to encourage leasing of State lands, as well as for increased production related to existing leases. However, not all are utilized by the mineral industry, nor is the effectiveness of incentives tracked by the OSLI.**

The Office of State Lands & Investments (OSLI) offers various incentives, which are provided for in Board of Land Commissioner rules, as well as in Wyoming statute. Five of seven (71%) incentives offered are utilized by industry.

The use of such incentives allows the mineral industry to develop State trust lands, which generates royalties and taxes for Wyoming. It should be noted, however, that the OSLI does not track the efficacy of the incentives. As a result, adequate data does not exist to determine whether or not the incentives have been advantageous to the State.

The following Table 2.1 provides additional information.

**Table 2.1  
Incentives for the Mineral Industry**

<b>Incentive</b>	<b>Authority</b>	<b>Used by Industry</b>
<b>Royalty Rate Reduction:</b> oil & gas royalties set at 16 2/3% unless there is no interest in competition at that rate; 12	Board Rules (Ch. 18- Leasing of Oil & Gas), Section 7 (a) (i) (ii).	Yes

Incentive	Authority	Used by Industry
½% would then be offered for competition. If no interest occurs, leases would then be offered non-competitively at 12 ½%.		
<b>Royalty Rate Reduction (drilling window):</b> oil & gas royalties may be reduced to 10% to encourage operators to drill within a primary term of an existing lease.	Board Rules (Ch. 18- Leasing of Oil & Gas), Section 7 (a) (iii).	No
<b>*Royalty Rate Reduction (additional operations):</b> oil & gas royalties may be reduced to the statutory minimum of 5% to increase operations, deep zone exploration, and when operations costs and royalties create losses.	Board Rules (Ch. 18- Leasing of Oil & Gas), Section 7 (a) (iv).  W.S. 36-6-101 (c).	No
<b>**Primary Lease Extensions:</b> the primary lease term for oil & gas exploration is five years. However, the Board may extend, in one year increments, not to exceed an additional five years. This is consistent with the 10-year maximum set in Wyoming statutes.	Board Rules (Ch. 18- Leasing of Oil & Gas), Section 8 (a) (b).  W.S. 36-6-101 (a).	Yes
<b>Unit Agreements &amp; Cooperative Agreements:</b> the OS LI on behalf of State lessees may join in unit plans or pooling to further enhance exploration and production.	W.S. 36-6-101 (d) (k)	Yes
<b>Surface and Subsurface Surveys:</b> the OS LI grants “liberal permission” for companies to conduct geophysical or other surveys to determine production potential of State leased lands.	Board Rules (Ch. 16- Surface and Subsurface Activities)	Yes
<b>Credit Annual Rental Payments Against Royalties:</b> allows for monthly or annual payments to apply against royalty payments.	W.S. 36-6-101 (c)	Yes

Source: Legislative Service Office from information provided by the OS LI.

\* W.S. 36-6-101 (c) sets a minimum royalty for coal not less than five cents (\$.05) per ton on coal produced. Lease language allows 12 ½% royalty for surface mined coal and 8% for underground mined coal.

\*\* The primary term for a coal lease is 10 years, pursuant to W.S. 36-6-101 (m) and Board rules (Ch. 19-Leasing of Coal), Section 8 (a).

While OS LI staff stated that industry does not and likely will not take advantage of all incentives to lease land or produce hard rock mineral commodities, the State has still outlined various

incentives to encourage mineral development as much as possible. Additionally, incentives are primarily aimed at oil and gas development, and not as much toward other mineral development such as coal and hard rock minerals.

Royalty rates may not be the most motivating factor as incentives to lease or incentives to producing. One OS LI official stated “if the price is good and the prospect is good, it doesn’t matter if the royalty rate is 30%, as long as they are making money.” Additionally, a 2000 University of Wyoming study, *Mineral Tax Incentives, Mineral Production and the Wyoming Economy*, notes most states, including Wyoming, treat royalty payments for production on public land as deductible items in computing severance tax liabilities.

What may be the most used incentive, which is automatically used by the industry, is the ability to credit or apply monthly or annual rental payments to royalty payments once leases begin to produce. W.S. 36-6-101 (c) discusses this in more detail.

It should be noted that some incentives such as the drilling window are not currently being used. Although the OS LI retains these incentives, there does not appear to be any current measures in place to review them. Without data to do the analysis, there is no basis to remove or alter them.

### **The OS LI does not track the effectiveness of various incentives**

Although the table above shows that incentives are used, the OS LI does not analyze data to determine if the incentives are actually increasing revenue for the State. A significant issue for the OS LI is how best to determine the effectiveness of various incentives. Because OS LI data systems are fragmented and mostly manual, they do not allow for adequate analytical potential to make clear determinations on incentive effectiveness.

The OS LI does not know if or how well various incentives are working. As a result, it may be offering rates or terms that are not attractive under the current market conditions. Its data does not capture or allow certain types of information (see Table 5.3 in Chapter 5) to be broken out in order to determine if incentives are working or to what degree.

Although the OSLI does not track the effectiveness of incentives, it is still able to identify non-producing leases, which should go back to rental payments. For example, one lease with a reduced royalty rate had actually produced a \$.26 royalty. To OSLI's credit, it continued to charge the rental of \$1,280 as the lease was not at a "paying quantity." This well was later plugged and abandoned but because it was part of a unit agreement the lease cannot be terminated so the State will continue to receive rental payments.

*The OSLI offers royalty rate reductions and lease extensions*

Generally, leases where royalty rate reductions to 12 ½% for oil and gas companies occurred because of non-competition are not analyzed by the OSLI to ascertain how much revenue the State is actually making.

According to OSLI data, as of September 2009, there were 438 oil and gas leases with reduced royalty rates of 12 ½%. These leases covered 170,446 acres. OSLI officials also stated they have no mechanism in place to track leases paying a reduced royalty.

Likewise, data related to lease extensions are not analyzed by the OSLI. As of September 2009, there were 120 oil and gas leases in an extended state. These leases covered 45,017 acres. Periodic analysis of lease extensions to determine probability of future production could help the OSLI to determine if the leases should be opened up again for public competition.

It should be noted that Wyoming's oil and gas royalty rate has not always been at the current 16 2/3%. The most recent change occurred in March of 1982 when the Land Board increased the rate from 12 ½%. By contract, leases prior to that increase are locked in at the lower rate. According to OSLI's data, there are 600 oil and gas leases at the pre 1982 rate. After that date, there are several circumstances where the Board offered the lower rate to entice potential lessees.

*Surface and subsurface surveys*

In addition, the OSLI does not collect data on activities related to surface and subsurface surveys conducted pursuant to Board rules (Ch. 16-surface and subsurface activities). Although the OSLI has recently begun to track and record the types and numbers of surveys requested, it does not routinely conduct an

analysis to determine if such activities are actually leading to State leases.

The intent of these surveys is to allow companies to obtain information and data on the lands' development potential, whether there are commercially viable deposits of minerals, so that exploration and production can occur under a lease at a later date. Seismic survey work is one type of activity that looks for such mineral development potential.

These surveys are the clearest incentive to encourage additional leasing (and eventual production) on State lands. As noted in the background, the Land Board's Chapter 16 rules govern these surveys. The basic condition of these surveys is that the OSLI grants companies broad permission, without the need for any license, permit, or use/rental fee to enter State owned land to conduct land, mineral, and geophysical surveys. It should be noted that for some surveys, surface impact payments may need to be considered.

*Unit agreements* Of the incentives discussed previously, the closest to demonstrating effectiveness relates to unit agreements. It appears that such agreements are successful, based on generation of royalty income for the State. According to OSLI officials, there are currently 1,369 existing unit agreements, which generated \$38,015,220.23 in royalties for Wyoming during CY 2009.

Unit agreements keep adjacent lessees on federal and private lands from draining State reserves. The OSLI describes this incentive as pooling production resources and costs among several lessees (state, federal and or private) to start development of a defined drainage area based on established production, acreage, and well calculations. In a planned and orderly manner lessee's resources are used efficiently and revenues are shared on a correlative or percentage basis.

Though these agreements are generally overseen by the Wyoming Oil and Gas Conservation Commission, the OSLI can encourage State lessees to engage in these agreements to protect State rights to the mineral resources. These agreements assure that each participant's rights are protected from having their oil and gas drained before they can drill, which protects also

protects the state trust beneficiaries. The agreements assure more cost efficient and economical extraction of the mineral with the least amount of surface land damage.

It should be noted that the OSLI indicated it has the authority to compel a leaseholder to commence production if activity on contiguous acreage to State leased lands occurs. This would be done to assure the State's share of royalty revenues are not lost as a nearby operator drains known oil and gas reserves. The OSLI stated that it has only compelled production a few times in over 20 years. Presumably the practicality of the unit agreement forestalls the need for compelling production on a regular basis.

### **Few incentives are available for coal leasing**

Coal is one of the primary minerals produced on State leased land. For coal development, the leasing structure is different and there is less area for the OSLI to incentivize leasing and production on State lands. There are no royalty rate reductions, nor is there any compelling of production, but there may be unit agreements based on State statutes. Due to the Federal Bureau of Land Management's (BLM) use of logical mine plans, some of which the State is attached to, there is no current use of the state-level unit agreement statute for coal production on State lands.

Of the 430 Wyoming coal leases, nine (9) are producing and one was under reclamation. The remaining 420 leases are in prospect phase. Leases go in and out of production as the drag line makes its way along the seam. So, for this group of productive coal leases, the average time from lease to production is 35.56 years with a range of 5 years to 43 years. When the coal lease is producing it pays the royalty, when it is not in production the State receives a rental.

There are no coal lease auctions, as there are with oil and gas leases, for rights to access State land coal resources. The OSLI's main reason for this is that it terms the State as a "price taker" not a "price maker" in most mineral markets as the State does not have many contiguous parcels where traditional surface mining may be directed by the OSLI rather than on BLM terms. Annual rental payments for all coal leases are per acre and based on the number of years in the primary term or the renewal term.

**Recommendation: The OSLI should review, plan, and confirm that the AWISH data project will provide for detailed data tracking and analysis of its mineral incentives programs to evaluate their effectiveness and to proactively take steps to improve leasing and production potential on State lands.**

We recommend the OSLI review its current data collection practices to assure that all necessary information is collected regarding incentives. In addition, it needs to assure that this necessary information will be captured and reported on through the AWISH data system once the system infrastructure is completed.

The OSLI can then provide more complete reporting and analysis on these incentives and assist the Board in pursuing potential changes to these incentive programs, such as lowering royalty rate reductions down to the statutory minimum of 5% when certain lease conditions are met by the lessee or by increasing the existing royalty rates. It may also wish to ascertain whether changes in W.S. 36-6-101 (c) could generate additional revenue for the State, by disallowing monthly or annual rental payments to be applied to royalty payments. This information could be provided to the Board and the Legislature for its consideration.

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**Finding 2.2: The fact that three companies acquired 274 leases for Underground Coal Gasification in a two year time period suggests potential and interest existed for competitive bidding, which was not undertaken.**

The Office of State Lands & Investments (OSLI) did not use competitive bidding with respect to three companies that expressed interest in leasing State land in the Powder River Basin where potential for Underground Coal Gasification (UCG) exists. It should be noted however, that it correctly advised the three companies that existing coal lease language would work better than moving forward with separate oil and gas leases.

Although the OSLI has the authority under Board rules (Ch. 19-Leasing of Coal) to issue such leases through competitive bidding, between 2005 and 2007 it leased 254,516 acres (274 separate leases) of State land to three companies via an over-the-counter process that allows the “first qualified applicant” to lease land for coal production. Also, the OSLI appears to not have considered the development of a cooperative mining plan pursuant to W.S. 36-6-101 (k), which could have pooled the resources of numerous companies to pursue UCG technology in the Powder River Basin.

As a result, the OSLI may have missed an opportunity to generate additional revenue for the State by encouraging competition between the three companies interested in the UCG potential of the Powder River Basin, or by other companies interested in different mining techniques. In addition, the OSLI has removed this acreage for bidding until at least 2015, upon which time the 10-year primary lease terms of the initial leases lapse.

*UCG not addressed specifically in Wyoming statute, Board rule, or lease language*

UCG is not addressed in Wyoming statute, nor is it addressed in Board rules or current coal lease language. It should be noted, however, that Board rules (Chapter 19-Leasing of Coal) allow for competitive bidding, which could have been applied to UCG. More specifically, it states “*If the Board determines that any*

*state coal lands should be offered for lease by competitive bidding, it shall enter an order setting a time and place for the sale...Notice of sale shall be given in such form and manner as the Board shall direct.”*

Also, current leases include traditional language related to royalties (e.g. 12% on coal mined by surface mining operations and 8% on coal mined by underground mining methods). Lease language does not include operational or other issues with respect to UCG technology. For example, rules discussing the actual operations of UCG, as well as specifics of when severance taxes would apply, and how certification of production would occur are very salient. Because syngas is not a naturally liberated gas, these issues will need to be addressed formally.

It should be noted though, that the Board during its June 7, 2007 (Board Matter F-7) discussed and voted on whether current lease language allows for UCG mining techniques. The discussion and vote is illustrated below in Table 2.2:

**Table 2.2**  
**Board of Land Commissioner’s Discussion on UCG**

<b>Board Discussion</b>
<p><i>“Gas Tech, Inc., a lessee of multiple State coal leases, has asked for Board affirmation that the existing State coal lease authorizes coal mining through in-situ underground coal gasification (UCG) operations, while recognizing that certain sections of that lease will require amendatory language pursuant to such form of development.</i></p> <p><i>UCG could prove a significant means of mining deeper, significantly thick coal seams that in the near term future are not economically minable by conventional surface or underground methods. As such, State coal leases with deeper coals could potentially render a significant value in the immediate future with this technology, where such situated coals might not otherwise be minable for many years, if at all.</i></p> <p><i>The Director recommends Board recognition that the current State coal lease form does authorize mining of coal by in-situ methods, specifically, by underground coal gasification. However, the Director also recommends that no such mining take place on Coal Lease No. 0-41097 or any other State coal lease until amendatory language, acceptable to the Board (through the presentation and approval of a Board Matter), has been agreed upon pursuant to the calculation of the value of coal burned in the</i></p>

<b>Board Discussion</b>
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<i>process and the royalty related thereto, as well as all requirements related to reclamation at the cessation of mining.”</i>
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Source: Legislative Service Office from information provided by the OSLI.

As illustrated above, one of the companies that currently hold leases in the Powder River Basin requested that OSLI staff meet “as soon as possible to explore and resolve these royalty and operations issues.” It should be noted that coal lease language Section 3 (d) states that “...In the event there is no sale of the coal or the Board of Land Commissioners determines that the sales price does not truly reflect the value of the coal, it may make its own determination of value and require that royalties be paid on the basis of the value determined by the Board.”

According to OSLI officials, this particular provision grants the Board authority to set a royalty rate outside of the traditional lease terms. However, the director has also recommended (see above) that before production occurs amended language must be agreed upon by the Board. OSLI officials also stated that it has received a preliminary proposal from an assignee for valuing the production, but that approval is pending further review and discussion.

*UCG is not at a point where valuation has occurred in the United States*

Because UCG is not at a point in the United States where valuation has occurred, the OSLI appears not to have been positioned to take advantage of the intense interest by three coal companies to lease land in the Powder River Basin. OSLI officials did state that there is always potential that some form of competitive offering could garner competition. However, they also stated that “unconventional and minable coal” would have taken everybody out of the market and because UCG technology is not used on a commercial scale in the United States it did not “speculatively offer deep coal with UCG in mind.”

Although this rationale is somewhat understandable, there were three companies that were interested, which may have been used to the advantage of the OSLI during a competitive bidding period. The worst case scenario would have been no interest, which would have allowed the three companies to lease the acreage “over-the-counter,” which is what occurred.

In addition, the OSLI could have discussed the potential of pursuing a cooperative mining plan, pursuant to W.S. 36-6-101 (k). Such a plan could have pooled the resources of the three companies involved (and possibly others) to move forward with developing UCG production techniques. It also could have been used to identify one operator as a single point of contact to discuss issues related to production and royalties.

It should be noted that such plans (or agreements) appear to be successful related to the oil and gas industry. Although the success of unit agreements related to the oil and gas industry may not translate to the coal industry, it is interesting to note that they do generate revenue. According to the OSLI, there are currently 1,369 existing unit agreements, which generated \$38,015,220.23 in royalties for Wyoming during CY 2009.

By not taking advantage of the interest provided by three companies related to UCG, the OSLI may have missed an opportunity to generate additional rental related to 254,516 acres currently leased under 274 separate leases. In addition, it has committed a tremendous amount of acreage until the 10-year primary lease terms of the initial leases expire in 2015, which could keep other viable companies from moving forward with UCG or other mining techniques.

Finally, it may have also missed an opportunity to formalize essentially what is going on now with the 274 leases; an agreement between three companies who are actively pursuing UCG technology together. Such an agreement, in the form of a cooperative mining plan, could be serving the interests of the State more productively.

**Recommendation:** The OSLI should continue to work with the three companies to determine operations and royalty issues with respect to production of syngas. In addition, it should work with the Department of Revenue related to issues concerning severance tax, as well as certification of valuation of syngas.

As the primary terms of the 274 leases expire, the OSLI should be prepared to rebid the leases in a competitive manner and/or enter into a cooperative mining plan.

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**Finding 2.3:** **Surface Impact Payments from Temporary Use Permits and from granting easements are not recorded by the OSLI.**

The Office of State Lands & Investments (OSLI) does not record surface impact payments to grazing lessees from Temporary Use Permit (TUPs) activities or from granting easements across State leased land. Board rules (Chapter 3-Easements and Chapter 14-TUPs) allow for direct payments to surface lessees by permitted companies based on schedules approved by the Board of Land Commissioners (Board). The most recent schedules were approved by the Board during its June 4, 2009 meeting. However, there are no requirements for the OSLI to keep records of payment amounts to determine if the schedules are being followed.

In addition, there are no requirements for the OSLI to keep records to monitor surface impacts related to TUPs or from granting easements. As a result, the OSLI does not have the information it needs to continually reassess its current policies

related to surface impact payments as a result of TUPs and from granting easements.

*Surface impact payments not addressed specifically in Wyoming statute or the Constitution*

Surface impact payments are not addressed in Wyoming statute, nor are they addressed specifically in Wyoming's Constitution. There was however, legislation introduced in 2001, which would have required the OSLI to calculate all surface impact payments, and that all payments be made to the OSLI. Any payment to lessees, based on proof through documentation and a sworn statement, would have been allowed based on damage to actual forage. That legislation died on the House Floor.

As a result of the public's concern and discussion related to surface impact payments, the Board from 2000 through 2001 made a series of policy decisions with respect to how surface impact payments are calculated and disbursed to grazing lessees and to the State. These decisions were formalized in updated Board rules in 2001, which were based on numerous hearings and discussions between Board members, OSLI staff, and the public.

Issues discussed ranged from the appropriateness of grazing lessees acting as agents for the State with respect to negotiating surface impact payments to whether grazing lessees should be compensated above and beyond damage to grazing acreage based on an Animal-Unit-Month (AUM). AUM is a calculation used to determine annual rental payments based on "*forage to sustain one cow and calf for one month.*" The following Table 2.3 summarizes rule changes made by the Board in 2001.

**Table 2.3**  
**Summary of Board of Land Commissioner Rules**  
**Surface Impact Rules**

Pre-2001	Post-2001
Damage Payment Agreements Required:  <i>"If the proposed use, construction, or maintenance, will result in damage to the surface of the land or improvements thereon, a damage payment agreement shall be negotiated prior to entry by the applicant on the state land, provided that</i>	Replaced Damage Payment Agreements with Board approved schedules for granting easements and TUPs. Most recent schedules approved June 4, 2009.  Payments by the permitted company are remitted directly to the lessee. The lessee is allowed to keep 100% of the payment related to granting

Pre-2001	Post-2001
<p><i>any payment is consistent with payments for damages to adjacent lands.”</i></p> <p>Used for granting easements, TUPs, and surface and sub-surface surveys.</p>	<p>easements and TUPs.</p>
<p>For any surface damage, the lessee was allowed to negotiate a payment. Payments were made to the lessee and the OSLI jointly. Lessee would endorse the check and send it to the OSLI. The OSLI would then upon approval by the director, pay the lessee 50% of the damage payment.</p>	<p>Replaced the term “surface damage” with “surface impact payment.” Defined as follows: <i>“Money paid by a permit applicant in compensation for potential negative impacts to the leasehold estate resulting from use pursuant to a temporary use permit granted under this chapter, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, and inconvenience.”</i></p> <p>For all leases resulting in expected surface impacts, including mineral leases, Special Use Leases (SULs) and surface and sub-surface surveys, the lessee is allowed to negotiate payment amounts. However, based on a schedule approved by Board rule (Chapters 4 &amp; 5), the payment amount is split between the lessee and the State. Rule language requires that permitted companies remit separate checks to both the lessee and the OSLI.</p>

Source: Legislative Service Office from Board of Land Commissioners rules (e.g. Chapters 3, 4, 5, 14, and 16).

***Public concern caused debate and compromise related to surface impact payments***

According to Board members and OSLI staff, the above compromise sought to address public concerns, while expanding the notion of surface impact to more than just damaged forage. Because surface impact payments resulting from TUPs and from granting easements did not generate as much revenue as those from leases and surface and subsurface surveys, and because the surface impact was of shorter duration, grazing lessees are allowed to keep 100% of the impact payment. Schedules approved by the Board would prevent lengthy negotiations between lessees and permitted companies.

Policy decisions by the Board related to surface impact payments resulting from leases and surface and subsurface surveys were made to encourage the use of grazing lessees to continue in their

“care taking” roles, thus assuring observation of activity on State leased land. And, by allowing the grazing lessee more discretion to negotiate on their behalf, there seems to be an informal quid pro quo, thus assuring that State leased lands are under observation, while assuring the grazing lessee is adequately compensated for rendered services. Finally, the State also receives its share of impact payments for public education. At this point, the arrangement seems to work. However, it appears somewhat precarious and inconsistent in that all surface impact revenue is not treated in the same manner.

*The OSLI and the Board track certain types of surface impact payment revenue*

It should be noted that the Board does track its share of surface impact revenue through the use of a separate revenue code (RSRC 4127) in the Wyoming Online Financial System (WOLFS) with respect to leases and surface and subsurface surveys. For BFY 2007, the State received \$3,615,332.72 and for BFY 2009 (4/13/10) it received \$3,285,761.85. Revenues from this source are deposited into various funds. However, the majority goes into the Common School Permanent Land Fund (L04). The following Table 2.4 provides additional information.

**Table 2.4**  
**Wyoming’s Share of Surface Impact Payments**  
**BFY 2007 and BFY 2009 (4/13/10)**

*Fund	BFY 2007	BFY 2009
L01	\$1,076.80	\$438.40
L02	\$18,932.35	\$25,381.00
L04	\$3,442,366.30	\$3,158,313.05
L05	\$17,674.12	\$360.00
L07	\$67,215.67	\$49,400.52
L08	\$2,486.10	\$6,338.00
L10	\$9,183.96	\$6,308.00
L11	\$51,309.85	\$34,620.00
L12	\$5,087.57	\$4,602.88
<b>Total</b>	<b>\$3,615,332.72</b>	<b>\$3,285,761.85</b>

Source: Legislative Service Office from information obtained from the Wyoming Online Financial System (WOLFS).

\*See *List of Acronyms and Definitions* for fund names.

In addition, the Board routinely reviews and approves *Surface Impact Payment Reports* during each of its meetings. The report

illustrates information about surface impact payments for activities related to leases and surface and subsurface surveys, but not for granting easements and TUPs. The report provides the following information shown in Table 2.5:

**Table 2.5  
Board of Land Commissioners  
Surface Impact Payment Report Fields**

<b>Grazing Lease #</b>	<b>County</b>	<b>Lessee</b>	<b>Basis of Payment</b>	<b>Total Impact Payment</b>	<b>State's % of Payment</b>	<b>State's Share of Payment</b>	<b>Lessee's Share of Payment</b>
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Source: Legislative Service Office from information provided by the OS LI.

This report provides valuable information to the Board with respect to surface impact payment revenue being generated on State leased lands. One criticism of the report is that it does not break out surface impact revenue as a result of mineral or special use leases vs. surface and subsurface surveys. Rather, information is collapsed for these land use types. An additional breakout would better inform the Board about impacts and revenue generated as a result of those separate impacts.

*The OS LI and the Board do not give equal attention to TUPs and easement activities*

Although the OS LI does a good job tracking revenue generated as a result of surface impact from mineral and special use leases and surface and subsurface activities, it does not give equal importance to tracking revenue generated as a result of surface impact from TUPs and from granting easements. According to OS LI officials, since the State does not receive a share of those impact payments, there is no reason to track associated revenue.

However, tracking surface impact payments, as well as the impacts on State leased lands, would provide valuable information to the Board with respect to all aspects of the surface impact payments issue area. This information would allow the Board to periodically reassess its policy decisions to determine if the State should ultimately receive a share of impact payments as a result of TUPs and from granting easements.

It should be noted that the Board is aware of impact on State leased lands related to TUPs, with respect to “*consideration*” or rental that the State receives. Chapter 14, Section 6 of the Board’s rules related to TUPs annotates a schedule that sets out minimum monetary amounts that goes to the State in the form of annual rental. This schedule has similarities to the types of impact used by the OSLI to determine surface impact (e.g. construction activities, hot mix facilities, stock pile sites, construction of roadways, construction activities, and disposal or injection wells).

The following Table 2.6 provides additional information:

**Table 2.6**  
**Consideration from Impact Caused by TUPs**

<b>Impact</b>	<b>Consideration (Rental)</b>
Construction activities	\$10/acre affected or \$100, whichever is greater.
Hot mix facilities	\$500/year.
Organized recreation activities	\$25/day.
Roadways	\$1/linear rod/year or \$100/year whichever is greater.
Sign boards	\$1/square foot or sign/year or \$100/year, whichever is greater.
Stockpile sites	\$100/year.
Water wells	\$10/acre-foot of water removed from State land or \$100/year whichever is greater.
Disposal or injection wells	Market value per barrel or \$100.00/year whichever is greater.
Outfitting/guiding activities	For exclusive (to outfitters) permits 15 cents/acre/year or \$150/year, whichever is greater. For nonexclusive permits \$150/year.
Non-commercial removal of decorative rock/stone	\$50/ton.

Source: Legislative Service Office from Board Chapter 14 Rules (TUPs).

The Board tracks total “*consideration*” (rental) through the use of a separate revenue code (RSRC 4116) in the Wyoming Online Financial System (WOLFS). For BFY 2007, the State received \$1,369,453.76 and for BFY 2009 (4/13/10) it received \$1,365,749.77. Revenues from this source are deposited into various funds. However, the majority goes into the Common Land School Income Fund (N02). The following Table 2.7 provides additional information.

**Table 2.7**  
**Consideration (Rental) from TUPs**  
**BFY 2007 and BFY 2009 (4/13/10)**

<b>Fund</b>	<b>BFY 2007</b>	<b>BFY 2009</b>
001	\$31,482.00	\$62,240.42
540	\$0	\$681.75
F01	\$230.00	\$2,348.63
N01	\$478.00	\$403.00
N02	\$1,311,083.93	\$1,280,598.81
N03	\$8,321.19	\$6,078.83
N04	\$4,289.33	\$1,354.81
N05	\$13,569.31	\$12,043.52
<b>Total</b>	<b>\$1,369,453.76</b>	<b>\$1,365,749.77</b>

Source: Legislative Service Office from information obtained from the Wyoming Online Financial System (WOLFS).

\*See *List of Acronyms and Definitions* for fund names.

Finally, the Board reviews and approves *Applications for Temporary Use Permits* during each of its meetings. This report illustrates information about approved TUPs. The report provides the following information shown in Table 2.8:

**Table 2.8**  
**Board of Land Commissioners**  
**Applications for Temporary Use Permits Report Fields**

<b>Permit #</b>	<b>Applicant</b>	<b>Use</b>	<b>Area</b>	<b>Legal Description</b>	<b>County</b>	<b>Term</b>	<b>Consideration</b>
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Source: Legislative Service Office from information provided by the OS LI.

This report provides valuable information to the Board with respect to activities on State leased lands, as well as information on revenue generated as a result of those activities. One criticism of the report is that it does not track anticipated or actual impact payments to grazing lessees. Rather, information

related to “consideration” or rental is only recorded. Using this report to also include impact payments related to TUPs and from granting easements would provide the Board additional information related to total impact payments made, so it can continually reassess its policy decisions in this complicated area.

*The OSLI and the Board do not have complete information to make adjustments to Board policy related to surface impact payment issues*

As a result of not tracking surface impact payments related to TUPs and from granting easements, the Board is not receiving adequate information to determine whether the State should in the future receive a percentage of impact payments. In addition, it cannot satisfy itself that permitted companies and surface lessees are following Board approved schedules. Finally, it is not able to determine the type and amount of impact occurring on State land from activities related to TUPs and from granting easements.

**Recommendation:** The OSLI should track surface impact payments to grazing lessees resulting from TUPs and from granting easements. This information can be used by the Board to periodically reassess its policies with respect to calculation and disbursement of surface impact payment revenue. The OSLI could amend the *Applications for Temporary Use Permits Report* to include an additional field(s).

**Recommendation:** The OSLI should update its Surface Impact Payment Report to break out surface impact revenue for leases and surface and subsurface surveys. This would provide additional information to the Board about the types of impact and revenue generated from survey activities.

**Recommendation:** The Board should consider requiring that all surface impact payments be made to the OSLI. Then, the OSLI would be responsible for disbursing monies to grazing lessees after approval by the director. Part of the approval process should include periodic reviews to make sure payments are consistent with Board approved schedules.

**Recommendation:** The Board should consider creating schedules that would guide the process for negotiating surface impact payments for all leases and surface and subsurface survey activities. It is inconsistent that such schedules exist for payments related to TUPs and from granting easements. Approved Board schedules would provide more consistent guidance to grazing lessees when negotiating with companies, regardless of the land use.

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## Chapter 3

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**The OSLI allows the use of State trust lands for various purposes, which increases revenue for the State.**

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**Finding 3.1:           The OSLI uses special use leases and temporary use permits to generate additional revenue for the State.**

The OSLI generates additional revenue for the State by allowing the use of State trust lands for purposes not traditionally associated with grazing and mineral leases using special use leases and temporary use permits.

According to Board rules (Ch. 5-Special Use Leasing), special use is defined as “...any use of state land other than for grazing, agriculture, the extraction of minerals, or uses authorized under easements...includes leases for industrial, commercial and recreational purposes.”

Likewise, Board rules (Ch. 14-Temporary Use Permits) allows permitted companies to use State land for a limited term for the following activities: construction; hot mix facilities; organized recreation activities; roadways; sign boards; stockpile sites; water wells, disposal and/or injection wells; outfitting/guiding activities; non-commercial removal of decorative rock/stone; and other appropriate facilities and activities of temporary duration.

For BFY 2007 temporary use permits generated \$1,369,453.76 in consideration (rental) and for BFY 2009 (4/13/10) generated \$1,365,749.77. Special use leases generated \$1,771,141.52 in rental for BFY 2007 and \$2,317,506.95 for BFY 2009 (4/13/10). The following Tables 3.1 and 3.2 provide more detailed information on the types of uses and activities that generated this additional revenue for the State, as well as impacted acreage.

**Table 3.1  
Overview of Special Use Leases**

<b>SUL Type</b>	<b>Number of Leases</b>	<b>Acreage</b>
Access Road	2	2.18
Airport Landing Strip	2	131.64
Amine Plant	1	5.74
Bio-Remediation Site	2	7.268
Buffer Zone	1	360
Cabin Site	25	71.636
CBM Reservoir	1	480
Coal Mine Facilities	6	797.065
Commercial	2	9.912
Communication Site	65	134.17
Compressor Site	30	109.66
Conservation Camp	1	45.61
Disposal Well	13	23.998
Disposal Well & Facilities	4	27.041
Drill Site	1	10
Drop Zone	1	640
Ecological Study Area	1	80
Electric Substation	1	.06
Elk Feed Ground	2	480
Emergency Operations	1	1.41
Equip. Site For CO2 Flood	1	3.35
Equipment Storage Area	1	2
Fire Hall	5	17.746
Fire Truck Storage	1	3
Firearms Training Area	1	14.27
Fish Hatchery	1	7.5
Gas Metering Facility	1	6.424
Gas Storage Facility	3	1,840
Helicopter Pad	1	2.3
Hot Mix Asphalt Plant	1	.95
Man Camp & Storage	1	0
Measuring Station	1	1
Meat Processing Facility	1	17.06
Mental Health Facility	1	0

<b>SUL Type</b>	<b>Number of Leases</b>	<b>Acreage</b>
Meter House	1	.144
Methane & Helium Facility	1	33.83
National Guard Armory	1	33.4
Non-motorized Trails	1	0
Office & Construction Yard	1	5.246
Office Building & Parking	2	5.3
Offset Gas Well Pad	2	8.74
Off-Set Well Pad	1	.248
Oil & Gas Facilities	8	71.38
Perlite Processing Plant	1	40
Pump Station & Tank	1	5
Radio Control Airplane Site	1	39.5
Ranch Headquarters	2	17.02
Reclamation & Restoration	1	800
Recreation	11	4,084.84
Residence	6	39.53
Residence & Outbuildings	1	2.5
Residence (3) & Access	1	1
Rodeo Area	1	10
School	3	63.499
Shop	2	15.73
Stockpile Site	1	5
Storage Yard	3	2.41
Storage Yard & Building	1	1.49
Storage Yard & Parking	1	5
Storage Yard/Field Office	1	7.14
Storage/Evaporation Pond	1	47.243
Track & Physical Ed Field	1	4.496
Truck Offloading Terminal	1	6.619
Truck Turn-Around	1	.58
Uranium Mine Facilities	1	150
Water Encroachment Area	1	30
Water Injection Plant	1	10
Water Storage Tank	2	4.63
Water Supply System	16	26.56
Water Transfer Station	1	.92
Water Treatment Facility	2	23.803

<b>SUL Type</b>	<b>Number of Leases</b>	<b>Acreege</b>
Water Treatment Plant/Pit	1	3.81
Wildlife Habitat	13	14,847.08
Wind Energy	21	45,052.54
Youth Camp	1	7.828
<b>Total</b>	<b>302</b>	<b>70,847.046</b>

Source: Legislative Service Office from information provided by the OS LI (September 2009).

**Table 3.2**  
**Overview of Temporary Use Permits**

<b>TUP Purpose</b>	<b>Number of Permits</b>	<b>Acreege</b>
2 Groundwater Monitoring Wells	1	0
3 Monitoring Wells	1	0
4 Monitoring Wells	1	0
Access Road	403	201,212.87
Access Road & Stockpile Site	1	0
Access Roads	4	5,012
Air Quality Monitoring Station	2	0
Archaeological Excavation	2	0
Backfill Monitoring Well	1	10
Bicycle Race	1	0
Cloud Seeder	1	0
Cloud Seeding Generators	6	0
Construction Activity	3	3.21
Construction Activity & Borrow	1	0
Construction Activity & Borrow Area	1	0
Construction Activity and Borrow Areas	1	0
Construction Activity, Hot Mix Facility & Borrow Area	1	43.68
Cross Country Ski Trail Grooming & Use	1	0
Equipment Storage Area	1	8.04
Gauging Station Anchor & Access	1	1
GPS Monitoring Site	2	.04
Grazing	3	640
Grazing Lease	1	0
Ground Monitoring Wells	1	.03
Guided Fishing	4	320
Haul Road & Boulder Removal Site	1	0
Haul Road & Bridge	1	2,122.20
Helicopter Landing Zone	1	0
Horseback rides & Temporary Campsite	1	0
Horseback trail rides	1	1,920
Hot Air Balloon Take-Off & Landing Area	1	4

<b>TUP Purpose</b>	<b>Number of Permits</b>	<b>Acreage</b>
Hot Mix Facility	2	168.27
Hot Mix Facility & Borrow Area	1	18.36
Hot Mix Facility & Stockpile Site	2	103
House Rental	1	5
Jerky Sales Stand	1	0
Land Reclamation	1	310.70
Meteorological Tower	1	0
Meteorological Tower	1	0
Meteorological Tower	2	0
Military Training	1	0
Military Training Exercises	1	0
Monitoring Well	12	120
Monitoring Wells	33	445.12
Mountain Bike Tours	1	0
Off-Lease Reservoir	1	1.57
Off-Lease CBM Reservoir	1	1.22
Off-Lease CBM Reservoir	1	3.01
Off-Lease CBM Reservoir	8	84.51
Off-Site Mitigation Activities	1	9,200
On-Lease CBM Reservoir	2	6.07
On-Lease CBM Reservoir	2	3.17
Organized Recreation Activity	3	669,910.50
Outdoor Classroom	1	15
Outfitting River Trips	1	0
Outfitting/Guiding	132	0
Outfitting/guiding activity	1	0
Outfitting/Guiding-Exclusive	24	1,197,194.69
Overstrip Topsoil Land Overburden Site	1	160
Paragliding Landing Zone	1	169
Pasture/Fire Control	1	77.56
Reciprocal Access Road	1	0
Reclamation of Tank Battery Facility	1	0
River Gage	1	0
Seismic Stations	1	0
Shed, Fence and House	1	0
Shooting Range	1	20
Shooting Range & Rendezvous Site	1	10
Sign board	5	577
Solar Power Trailer Unit	1	0
Staging Area	1	10
Stock pile for sand, gravel and topsoil	1	8.3
Stockpile Site	11	59.61
Stockpile Site/Staging Area	1	1

TUP Purpose	Number of Permits	Acreage
Surface Gas Pipeline	1	290.91
Surface Pipeline	1	436
Temporary Pipeline	3	490.65
Tilt Meter Sites	1	0
Vegetation Reference Site	1	3
Water Removal Facility	1	1,320
Water Well	1	10
Weather/Air Quality Station	1	0
Wildlife Inventory & Research	1	0
WYDEQ Air Quality Monitoring Station	1	0
<b>Total</b>	<b>731</b>	<b>2,092,530.29</b>

Source: Legislative Service Office from information provided by the OSLI (September 2009).

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### **Finding 3.2: The OSLI has been proactive in offering State lands for wind energy use.**

Under conditions spelled out in special use leases, the OSLI has moved to optimize State revenues by engaging industry to place wind energy projects on State lands. It has proactively researched the field and addressed industry concerns to place the State in a better position to capitalize on alternative energy expansion.

Since Wyoming has valuable wind resources, the State has been the center of intense public and legislative interest. Also, Wyoming legislation will impact how wind energy progresses in the State and will impact how the OSLI can work with this industry. Overall, it continues to work with communities and lessees to grow the numbers of wind leases and turbines on State land.

To place current wind development on State land in perspective, as of October 2009 there were 22 approved wind special use leases and 86 wind turbines on State lands. The energy production generated from these leases/turbines is about 92 megawatts. At this same time, there were also 15 leases in negotiation and 18 leases that have been withdrawn due to

environmental conflicts with sage grouse habitat.

*Wind energy projects are managed under OS LI special use leases*

In recent years, mostly over the last decade, wind energy development has increased dramatically in Wyoming. Here too, it has become a recent issue and concern for the OS LI to determine how best to use State lands in pursuit of this development. There is intense public interest in the subject and constantly changing research impacts State and OS LI policies.

In practice, wind energy projects proposed/located on State lands are covered by OS LI special use leases. Special use leases are handled by the Real Estate Management and Farm Loans (or “surface”) division. Each project under these leases has different terms and conditions depending on which State parcels the turbines are located. General special use lease terms allow for a maximum term of 75 years, but they are currently contracted for 35 year terms.

It should be noted that the OS LI’s approach is somewhat different than what the BLM does. BLM uses right-of-ways (ROWs), which allow for the use of surface acreage to install wind facilities. According to the BLM, a ROW is offered for 30 years with rights of renewal. Annual rentals are \$4,155 per MWh.

*Revenues have increased*

The OS LI uses discretion with respect to initial payments related to wind energy leases. According to the industry, lessees need money at the beginning of a project to set up turbines and afford the operation expenses. The OS LI prefers to keep the initial rental costs lower in order to gain more money over the lifetime of the project. Consequently, the initial rent for wind energy leasing is negotiated by the Board and current rates range from \$3 to \$11 per acre per year. Generally it is \$5 for years one through four and increases to \$7 for years five through eight.

Revenues from wind energy development have almost tripled since FY 2004. In FY 2004 wind leasing generated close to \$120,000 for the State. In FY 2010, revenue generated was more than \$321,600. The total revenue generated through wind energy development on State land from FY 2004 through FY 2010 is \$1,012,561.84.

Royalties for the industry ranges from 3% to 8% and are applied based on years of operation: 3% to 4% for years 1 through 10; 5% for years 11-20; and 6% to 8% thereafter.

### **Wind energy in Wyoming has grown**

Based on energy produced, wind leasing in Wyoming has grown rapidly in the past years on State, federal, and private land. In fact, Wyoming's wind energy generation capacity nearly quadrupled in 2008 and 2009, to over 1,100 megawatts. Wyoming ranks seventh in the nation for potential capacity and 12th for existing wind capacity.

In 2000, there were eight (8) wind farms and 143 turbines on all lands throughout Wyoming. Today that number has grown to 27 wind farms and 779 turbines. In addition, there are 3,369 proposed wind turbines that are projected to produce over 5,700 megawatts of electricity if completed.

### *New statutory and regulatory framework is being established*

In Wyoming, the Legislature and the OSLI are working towards a statutory and regulatory framework for the wind energy industry. For example, the OSLI is currently in the midst of promulgating rules and policies related to the leasing of State trust lands for wind energy development.

The Wind Energy Task Force was created by the Legislature in 2009 to address concerns surrounding wind energy growth in the State and current federal developments that may impact expansion in Wyoming. The Legislature has also taken steps during the 2010 Budget Session to regulate the industry. During this session, the Legislature passed four (4) significant bills addressing wind issues: House Bills 72, 79, and 101, and SF 66.

**HB0072 (2010 Session Laws, Chapter 97):** This bill addressed county regulation of wind energy development. It requires all facilities generating more than 0.5 megawatts of electricity from wind power to obtain a permit from that county. It also requires the Industrial Siting Council (ISC) to adopt new rules regarding the decommissioning and site reclamation of wind energy facilities and financial assurance requirements for permit holders. Finally, it establishes requirements for hearings, public comments, applications, and violation fees.

**HB0079 (2010 Laws, Chapter 48):** This bill placed an immediate moratorium on the exercise of eminent domain for the purpose of erecting “collector systems” associated with wind energy projects. It allows for a continuation of the Wind Energy Task Force, which will remain in existence until December 31, 2010. The Task Force must report its findings by November 1, 2010.

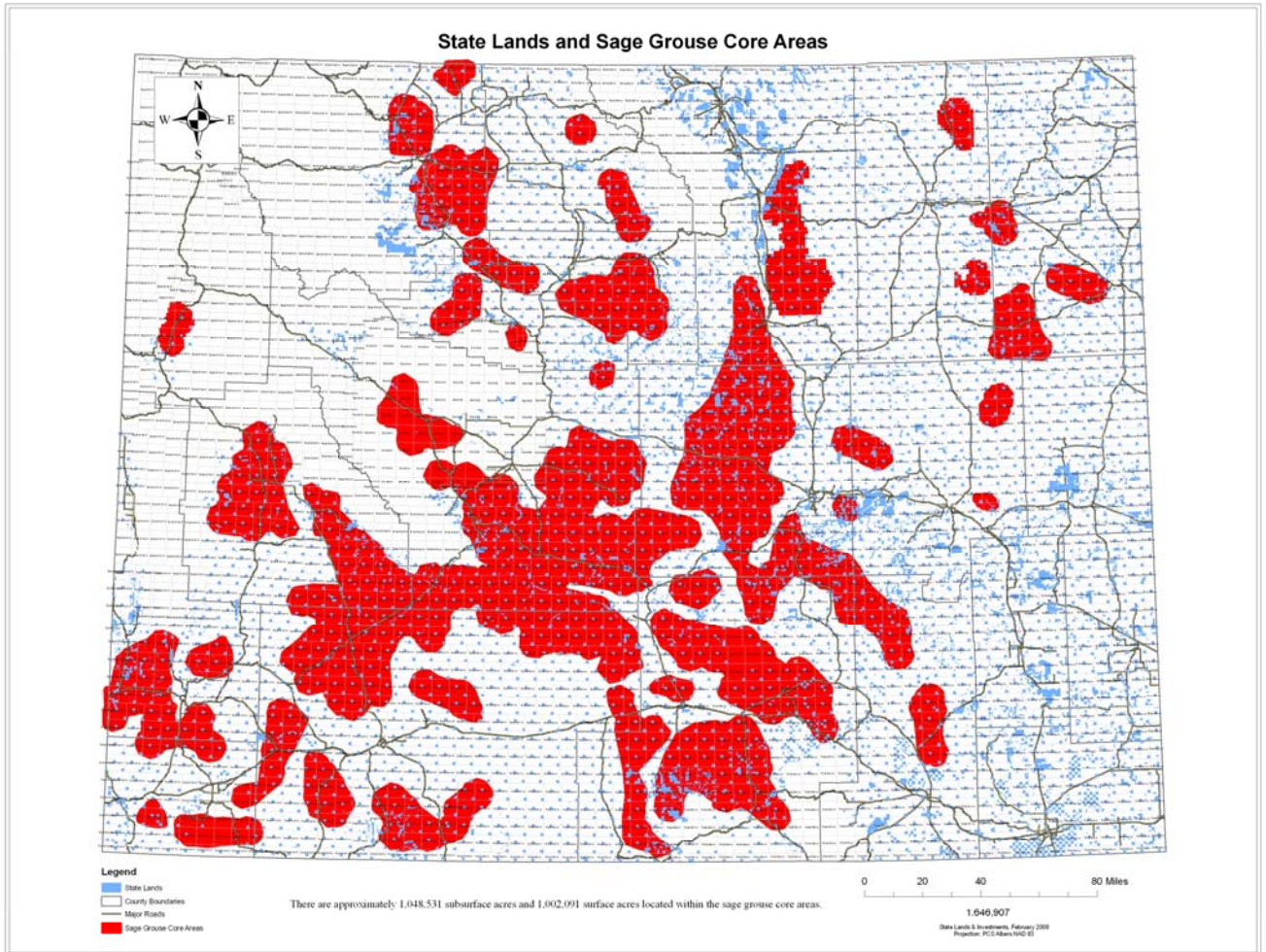
**HB0101 (2010 Laws, Chapter 49):** This bill imposed a \$1 per megawatt hour tax upon the production of electricity from wind resources. The tax becomes effective three years after a turbine first produces electricity. Sixty-percent (60%) of the tax is distributed to the counties where the generating facility is located, and 40% is distributed to the General Fund. Wyoming is the first state to tax wind energy production. The tax follows the OSLI’s strategic plan of diversifying revenue, and the Governor’s office estimates the tax will raise about \$11.5 million annually.

**SF 0066 (2010 Laws, Chapter 47):** Expands the ISC's jurisdiction over "facilities" to include wind energy facilities, including its collector systems, which consists of 30 or more towers.

*Conflicts with sage  
grouse habitat have  
impacted development  
on State lands*

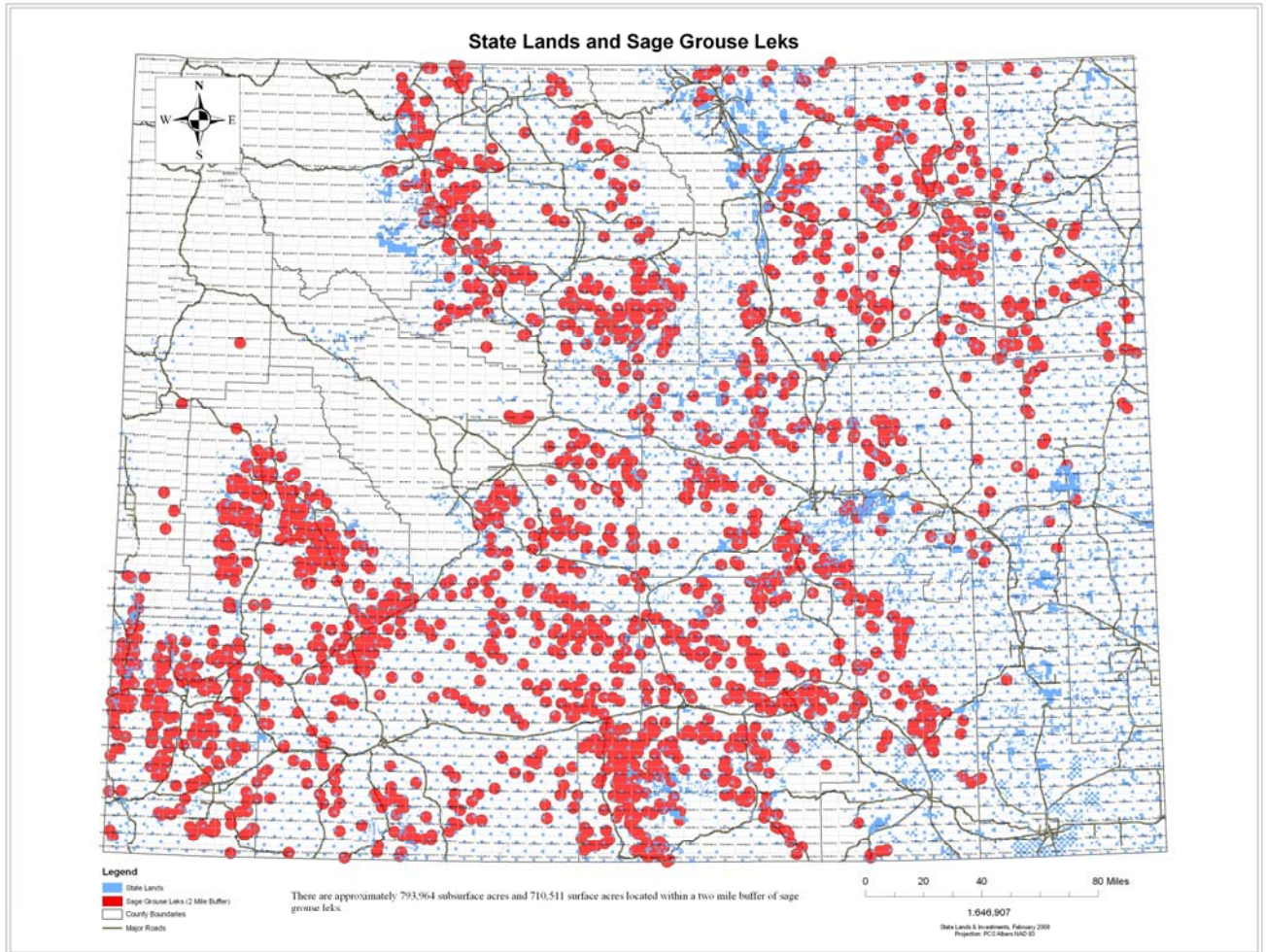
Sage grouse-wind development conflicts are also an important issue surrounding wind energy development. For example, the OSLI has had 18 proposed wind energy leases withdrawn due to this conflict. Though the U.S. Fish and Wildlife Service recently decided not to pursue endangered species listing of the sage grouse, this issue will continue to impact wind energy development in Wyoming. Current USFW recommendations include siting wind turbines at least five miles away from sage grouse leks, which are crucial for breeding and nesting. Below are Figures 3.1 and 3.2 showing OSLI-produced maps of sage grouse core areas and sage grouse leks in proximity to State trust lands.

**Figure 3.1**  
**Sage Grouse Core Areas and State Trust Lands**



Source: Legislative Service Office from information provided by Office of State Lands and Investments.

**Figure 3.2**  
**Sage Grouse Leks and State Trust Lands**



Source: Legislative Service Office from information provided by the Office of State Lands and Investments.

Both the Governor and the OS LI have worked to address this issue. The Governor’s Wyoming Executive Order 2008-2 states that “new development or land uses should be authorized or conducted only when it can be demonstrated by the state agency that the activity will not cause declines in Greater Sage-Grouse populations.” Additionally, in August 2009, the Board of Land Commissioners withdrew State trust lands within sage grouse core areas from wind development until research establishes compatibility of the

development with sage grouse populations or identifies best management practices that would mitigate negative impacts.

**Recommendation: The OSLI should continue to develop wind energy and offer leasing in Wyoming.**

Looking into the future, there is still more to learn about wind energy development and its impacts on the State and particularly State trust lands. With the fast pace of development, the public interest will continue to grow as project proposals and construction increases. The OSLI has taken a proactive approach thus far and should continue working with the industry to optimize and diversify revenue for the trust.

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**Finding 3.3: The OSLI has not proactively engaged State land for geothermal use/leasing to continue diversifying and optimizing revenues.**

Currently, the OSLI does not offer State land leases for geothermal alternative energy use. The OSLI and one Board member stated during this audit that they would react to industry proposals but have yet to receive such proposals. They characterize a general lack of interest for this activity on State land.

Our research indicates that Wyoming may have significant geothermal potential and that leasing State lands for geothermal energy development could give the OSLI and the Board the opportunity to generate additional income for the trust beneficiaries. The BLM and other states are currently leasing land for geothermal exploration and development.

In 2005, there were only four states with geothermal power plants: California; Hawaii; Nevada; and Utah. Today, there are eight states with 65 operating power plants. These states include Arkansas, Idaho, New Mexico, and Wyoming.

*The OSLI does not offer or issue leases for geothermal projects and uses on State lands*

The OSLI has expressed minimal interest in offering geothermal leases on State lands and to date there are no geothermal leases. From what we understand, it conducted an initial review of geothermal potential in the late 1990s, but has not revisited the issue since. Still, the potential in Wyoming to generate energy from geothermal development appears to exist, and should be explored. With what appears to be high potential of geothermal resources, the OSLI could distinguish itself as a leader for this industry, as it currently is with wind energy generation.

Under the OSLI 2009-2010 strategic plan, a central feature the OSLI termed as its purpose is to diversify and optimize State land income potential. One of its performance measures is to increase special use leasing income generated by new types of leasing revenue. The OSLI declares it will adopt a proactive approach to special use leases. Although it has worked hard developing wind energy leases, income could be further optimized if it would adopt a proactive approach concentrated on geothermal energy development as well.

*BLM and other states offer geothermal leases*

The BLM is leasing parcels of land for geothermal development and is receiving millions of dollars at each auction in states like Idaho, Utah, Nevada, and California. It distributes 50% of revenues - including bonus bids, rentals, and royalties collected on the leases - to the state where the leased land is located: 25% is distributed to the counties where the leased lands are located, and 25% is distributed to the BLM for the processing of geothermal leases and uses. Currently, federal leasing is offered through a competitive bidding process.

Example BLM lease terms, rentals, and royalty rates are as follows:

- Primary terms are set for ten years with two five-year extensions;
- Once production is obtained, the lease may be extended for 35 years and up to 55 years;
- BLM royalty rates are set at 1.76% during a project's first ten years;
- The royalty amount rises to 3.5% of gross proceeds thereafter;
- For leases existing before August 2005, when commercial

production occurs within the first six years of the Energy Policy Act, there is a 50% royalty rate reduction for the first four years of production; and

- The minimum rental is \$2.00 per acre.

In Wyoming, there are no federal geothermal leases, yet procedures and guidelines have been developed in anticipation of such leases. There is currently one application for geothermal development placed with the Wyoming BLM, but this application is waiting for revisions to be completed on the Kemmerer Resource Management Plan re: suitability.

*Other states are preparing geothermal development procedures*

Other states with geothermal potential offer state leasing. Although there are only eight states currently operating geothermal power plants, there are 14 states that have developed procedures, terms, and rules for leasing state land for exploration and production.

The majority of the states lease through a competitive bidding process. Four states (Hawaii, Idaho, New Mexico, and Utah) go a step further by offering designated areas within a known geothermal resource area at a competitive bid. Unspecified areas are leased through a different process noncompetitively. Other state land agencies have taken proactive steps to obtain lessees interested in geothermal exploration. Some states have escalating rates for rental payments and royalties, which are similar to the BLM and the OSLI's conditions for wind development.

Another strategy is offering geothermal permits. Several states that want to encourage a lessee to begin exploration plan to offer permits instead of leases. Therefore, the state is offering something to its lessees while ensuring that it is optimizing revenues. These strategies may work well in Wyoming since the OSLI has not confirmed the most suitable locations on State land with geothermal activity.

*The State may be missing out on additional revenue*

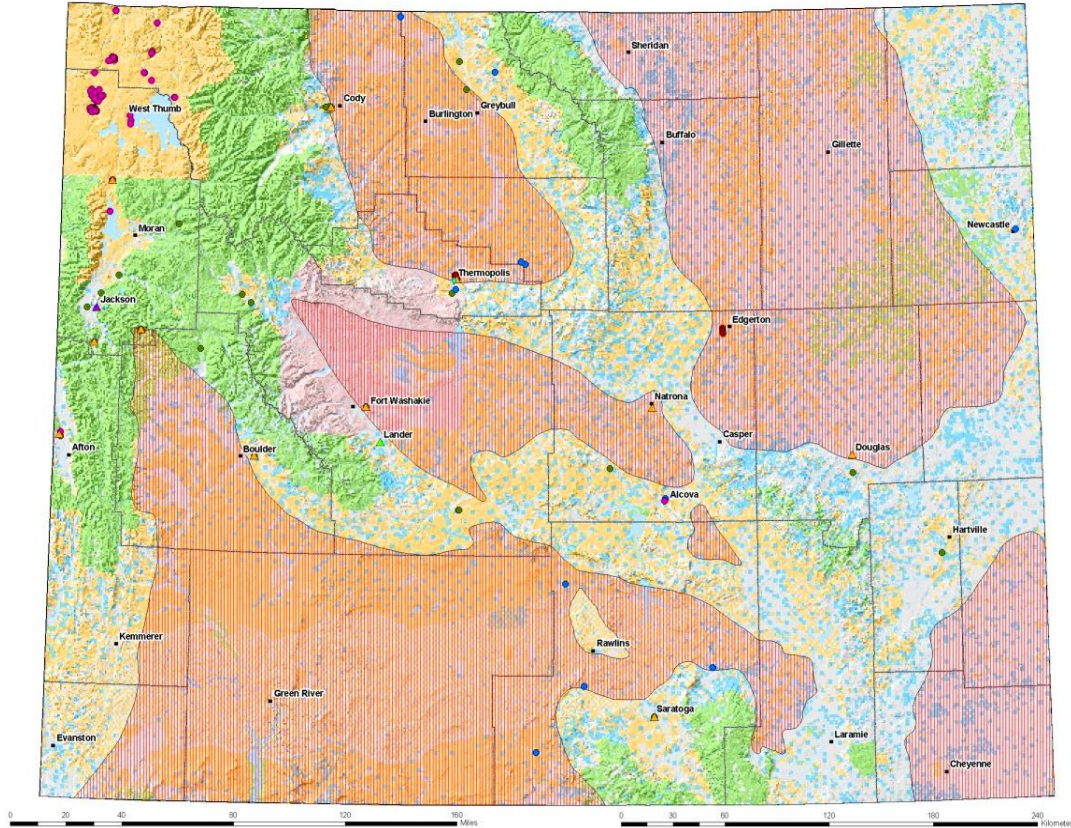
Geothermal energy accounts for 17% of the electricity generated from renewable sources in the US. Wyoming is among 13 states, which appear to have the most geothermal potential – states include California, Nevada, Hawaii, Colorado, Utah, Idaho, Oregon, Washington, Alaska, New Mexico, Arizona, and Montana.

For example, a geothermal plant is being tested at the Teapot Dome in Midwest, Wyoming to explore the potential of hydrothermal power to offset heating costs. The geothermal plant was sold to the United States Department of Energy for an undisclosed amount. Ormat Technologies built the plant to prove the technical feasibility of using hot water associated with oil production to generate electricity.

From what we understand, the plant is powered by a geothermal well that has been producing hot water since the 1920s. The temperature of the water is approximately 190 degrees. The plant produces 250 KW of electricity. It has been operating for more than one year. The federal government plans to continue the Ormat test for another two years. Ormat's director states it is conducting a market analysis to determine if there are other sites in the United States to implement similar projects.

Figure 3.3 shows several shaded areas around Wyoming representing geothermal resources outside the northwest portion of the State.

**Figure 3.3**  
**Regions of Known or Potential Geothermal Resources (outlined shaded areas)**



Source: Idaho National Engineering and Environmental Laboratory (INEEL) for US Department of Energy, November 2003.

- Springs greater than 50 degrees Celsius.

*The OSLI wants the industry to push geothermal leasing*

The OSLI has not expressed any real interest in geothermal leasing on State land. It stated that if any request is received, it would provide information to the Board and discuss potential leasing terms and conditions. One Board member stated there may be potential for leases in Wyoming, but the private sector must put a package together and apply for leases. This individual believes that costs and difficulties associated with interfering with ground waters and hot springs could be problematic.

Also, interest in geothermal may not occur unless it is likely that utility costs could decrease as a result, and that investment potentials actual exist related to the development of projects, according to the Board member.

It should be noted however, that another Board member stated the mineral industry often has to “cap” drilled holes, because oil and gas producers hit hot water wells. This type of activity indicates there is a reason for at least studying the potential of developing this type of resource, according to this Board member.

Wyoming is known for its geothermal resources concentrated in the northwest corner of the State in Yellowstone National Park. However, OSLI officials stated there is no structure that is separate from parks and recreation land issues. Still, the OSLI has inquired with the State Geologist Office to determine if there are potential structures underlying State lands, which could be exploited without aquifer damage or structure damage.

It should be noted that geothermal energy has been used in Thermopolis, near Lander, Jackson, as well as being used to melt snow from highway bridges/ramps in Cheyenne and Laramie. As of now, development has been dominated by the direct use of thermal waters for therapeutic bathing and recreation.

**Recommendation: The OSLI should further research and consider offering geothermal leasing options for State lands. It should review BLM, other states and its own wind energy program to develop a geothermal energy strategy. In addition, it should formally work with the State Geologist to identify usable thermal activity under State leased lands.**

In order to optimize revenues for the State of Wyoming, the OSLI could offer geothermal leasing as a special use lease, similar to wind. Currently, it wants the industry to push geothermal leasing. Until that push is made, it will remain passive and let potential income pass. The OSLI should investigate BLM and other states’ leasing practices for geothermal development.

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**Finding 3.4: The OSLI allows surface and sub-surface surveying activities, but its oversight is minimal.**

There are two main impacts on the OSLI and the trust beneficiaries under the practice/process outlined in Board rules (Chapter 16-Surface and Subsurface Surveys): 1) the OSLI is not able to account for how survey activities physically impact the land; and 2) the trust beneficiaries receive no consideration for the use of State lands for these surveys. As a consequence, potential harm to State land may remain unnoticed, the State may be uncompensated, or the surveyor is not useful in assisting the OSLI in evaluating both the short and long-term income potential on the land.

The informal process followed under the Chapter 16 rules lacks specificity on how the OSLI manages the surveys and their impacts. This occurs both on an administrative level as well as a practical, physical level. Since the rules do not require written notice to the OSLI on all surveys of State lands (only on geophysical surveys and those where a surface impact payment is necessary), the OSLI cannot be confident that it is tracking and overseeing all surveys on State lands. Additionally, without receiving all written notices, it is not in a position to physically inspect or verify survey impacts.

Also, the OSLI is not receiving consideration in either money or survey results information on some surveys. The ability to explore on state lands is a benefit to the surveyor, which deserves some consideration to the State. Without analysis by the OSLI to determine the amount of consideration based on potential royalty or taxes on the back end of the process, the State should at a minimum be receiving compensation for allowing companies to conduct surveys on State land.

It should be noted that on surveys that require surface impact payments, the OSLI will receive a portion of the payment along with the surface lessee. Of particular concern are the impacts and implications of the mineral or geophysical surveys. Without requiring substantive agreements, contracts, or leases on which

to grant surveying activities, the State may be losing out on valuable information (comparable to W.S. 36-6-102) that could indicate strategies as to future mineral leasing and development. Furthermore, despite the potential for some surface impact payment monies coming to the State, there is no compensation for the use of, as opposed to the impacts on, the land.

*Wyoming has allowed “liberal permission” to companies to explore*

Traditionally, Wyoming has granted “*liberal permission*” to mineral producers to come onto State land to conduct surveys, in the hopes of increasing business interest that will lead to the purchasing of mineral leases and production of mineral royalties for the State. Surveyors are granted permission to come onto State lands without having to enter a formal agreement. As of late, the OSLI has started to track these activities but relies heavily on the surveyor’s claims. The process is in danger of lacking oversight and compensation, which may come in the form of reclamation efforts, information and monetary compensation.

The OSLI has an informal process allowing persons or companies to conduct surveys of State trust lands. These surveys may include such activities as environmental or mapping surveys as well as more invasive and disruptive geophysical surveys. The surveying activities have been loosely guided since 1993 by the Board’s Chapter 16 rules whereby the basic requirement is for potential surveyors to send a written letter to surface lessees and the OSLI detailing its intentions to conduct surveys on State lands. Under these rules and current practice, the lack of a more formal and standard agreement/permitting process may be subordinating trust beneficiaries’ interests in the land to that of potential surveyors without just compensation of the land’s use.

**Rules allow survey activities**

Surveys allowed under the Board’s Chapter 16 rules include, “land, mineral, geophysical, cultural, historical, biological, environmental, and mapping surveys.” The general process for persons wanting to conduct surveys on State land is as follows (as stated in Chapter 16 rules):

- Interested surveyor must send a written letter to the surface lessee of intent to conduct a survey.
  - For geophysical surveys, a surveyor must also

provide written notification to the OSLI on the location and time period of the survey.

- If surface impacts/damages are anticipated, then the surveyor must negotiate a surface impact payment per the Board's Chapter 4 (Grazing and Agricultural Leasing) and Chapter 5 (Special Use Leasing) rules. In addition, if surface impacts/damages do occur, then the surveyor must reclaim the survey site.

The OSLI has begun (since 2008) tracking these survey activities via a summary spreadsheet. It can stop surveying activities if necessary. However, with a strong possibility of insufficient information due to lack of monitoring, chances are it will not know about impact to the State lands. Although the process requires the OSLI's permission, it does not require written agreements or permits, timeframes, inspections, or consideration (rental).

It should be noted that the OSLI provided a spreadsheet with only five entries for activities conducted in 2008 and 2009. In addition, it provided copies of seven approval letters for the same time period. Prior to 2009, there were no records of survey activities on State leased land. Rather, copies of approval letters were kept in relevant grazing lease files. As a result, the OSLI is not able to document the types of activities (and surface impact) that have occurred related to surface and subsurface surveys since 1993.

Another important note on how the OSLI engages surveyors is that the Director can suspend survey activities until the next scheduled Board meeting if there is evidence or information that indicates the survey activity is causing irreparable harm to surface or subsurface resources. However, the OSLI does not generally require follow-up or verification that survey activities were conducted as explained in the original notice, or that impacts and reclamation have been addressed.

*Board trust  
responsibilities indicate  
State land  
use should be  
compensated*

Two significant issues should be considered to understand how well the Board's Chapter 16 rules meet with reasonable trust management principles. First, since the State of Wyoming is the "owner" of the lands, the primary right to manage and retain the consideration for use of the land remains with the State. Secondly, as directed by the State constitution and statutes, use

of the State lands must be evaluated on both short and long-term (intergenerational) income potential to the beneficiaries.

### **Key legislation**

**Land Ownership Right:** Recent legislation has further defined the relationship of surface damage as it relates to both surface and subsurface owners. In 2005, the Wyoming Legislature passed the Wyoming Surface Accommodation Act, which governs issues related to oil and gas development and rights of surface and subsurface land owners. It does not affect other mining industries that are already similarly regulated by the Surface Mining Control and Reclamation Act and State regulations.

Though this act most directly addresses split estate issues (where surface and subsurface ownership are not under the same owner), the purpose of this Act was to notify the surface owner of potential mineral developments and foster agreement between the surface owner and industry. While it at first establishes the general dominance of the mineral estate, it mandates from the developer to “reasonably accommodate existing surface uses,” W.S. 30-5-402 (a). There are further impositions on the developer’s right to conduct “non-surface disturbing activities” narrowing down the activities to “inspections, staking, surveys, measurements and general evaluation of proposed routes and sites for oil and gas operations,” pursuant to W.S. 30-5-402 (b).

The operator must act with good faith and pursue negotiations with the surface owner to reach a surface use agreement, W.S. 30-5-402 (f). The contents of that surface use agreement are supposed to describe the methods utilized to protect surface resources, explain the compensation plan to the surface owner for any damages to the lands and necessary improvements with details laying out a timeline for reclamation efforts, W.S. 30-5-405 (c) (i) and (ii). These include payments to the surface owner for loss of production, income, land value, and value of improvements caused by oil and gas operations.

The existence of this Act demonstrates that the Legislature intends to emphasize the owner’s rights to the land in a split-estate situation. In the case of State lands, the State is the owner

whose rights should be protected. In other words, when the State leases its mineral interests, it causes the split-estate condition to occur, which presumes the owner's surface rights should be protected.

It has been claimed that the surface lessee is best suited to negotiate surface impact payments since it is in their vested interest to protect their land. Similarly, it has been argued that a streamlining of permitting may take away the right to protect one's own property." As much as formalization of the surveying process may appear to take away from the lessee's rights, it is ultimately intended to protect the rights of the trust beneficiary in the long-term, protecting State lands for future generations.

**Intergenerational Trust:** The 1890 Wyoming Act of Admission, which was enacted after Wyoming adopted its Constitution in 1889, holds only limited restrictions on the sale of trust land. It generally provides the state with ample authority to manage these lands. The Enabling Act demands that the lands "shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, as the state legislature may provide."<sup>1</sup>

In a similar vein, the Wyoming Constitution does not mention the trust lands as being held in trust. However, the permanent fund is explicitly referred to as a trust: "*All funds belonging to the state for public school purposes, the interest and income of which only are to be used, shall be deemed trust funds in the care of the state, which shall keep them for the exclusive benefit of the public schools.*"<sup>2</sup>

The Wyoming Supreme Court stated in *Riedel v. Anderson* that no trust was created by the Wyoming Admission Act or the Constitution, but the lands are held in trust pursuant to statute. The Wyoming legislature does not call for a constitutional change or congressional authorization to change its trust management scheme as long as the legislature stays within the realm of minimum requirements from the Enabling Act and the Constitution.

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<sup>1</sup> Wyo. Admission Act, 26 Stat. 222 § 4 (1890).

<sup>2</sup> Wyo. Const. Art VII §6.

As demonstrated in the “other states” chapter, it has become apparent that other states have a formalized process for granting exploration or geo-physical permits for surface and subsurface surveys that make the process more predictable, transparent, and consistent. Some states use temporary use permits for geo-physical surveys. The important piece of information is that most states we researched, track surface and subsurface surveying activities. Also, some of these states use formalized processes required for survey operations. Colorado, for example, uses an exploration permit; meanwhile Texas requires geo-physical permits.

### **The OSLI can require survey results**

With respect to obtaining survey results information, W.S. 36-6-102 states that the Board shall require copies of all electrical, gamma-ray neutron, resistivity or other types of subsurface log reports re: the leasing of minerals within 90 days.

Without substantive agreements by which to grant surveying activities, it appears as if a lease of State land for mineral exploration, which would include oil and gas leases, allows the Board to require subsurface log data after the drilling is completed. The OSLI keeps those reports in confidentiality for three years and extend the confidentiality period in one year increments upon written request.

By way of comparison, Colorado uses an *Exploration Permit*. This permit requires 13 conditions, which must be followed, to ensure the State’s property is protected. One of the conditions concerns the sharing of “data” on each hole that is drilled. Such an agreement would be consistent with what the OSLI requires of lessees, as well as W.S. 36-6-102, which requires the submission of certain information, which is kept confidential for a limited time. We also saw in the “OSLI vault” that oil and gas lease folders, as well as hard rock mineral lease folders contain confidential information, which is deemed proprietary. This illustrates that the OSLI does keep confidential or proprietary information.

*The OSLI oversight of survey activities* A common scenario intended to play out as a result of these surveys is that upon finding interesting and promising material, a

*is minimal* surveyor will pursue a lease, enter into production and eventually return money to the State for the use and development of the land. Under resulting leases, the surveyor will need to post a bond before entering the land to account for potential damage and reclamation costs associated with development. In all, though this scenario may seem appropriate, it is problematic to rely on this causal chain to occur when from the start, the State and surveyors remain unaccountable for instances that do not lead to a mineral lease agreement.

The central issue under the initial surveying activities is that the State does not assure minimal consideration and reasonable oversight of these activities, especially on potentially invasive ones like mineral and geophysical surveys. Under current Chapter 16 rules there are no permits, agreements, leases, or licenses necessary to set terms and conditions that will meet the best interest of the State trust beneficiaries.

Compounding this fact is that the OSLI only recently started requiring written notification as opposed to verbal notification by companies conducting survey activities. In all, without having formal agreements with surveyors, the State is at a loss to obtain money and/or data that can help the Board and the OSLI fulfill their trust management responsibilities.

**Recommendation: The OSLI should review licensing, permitting, or leasing options for Chapter 16 surveys and reformulate the process to provide for minimum conditions and consideration to be placed on these activities. For surface disrupting activities like geophysical surveys, the OSLI should look at minimally applying its special use lease or temporary use permit processes and rules on a standard basis.**

Though the OSLI took a positive step in setting out its original process and Chapter 16 rules to require a minimum notification of surveying activities, there is potential for trust lands to be

used without reasonable consideration being paid to the beneficiaries.

Therefore, the OSLI needs more formal agreements or contracts for allowing survey activities on State lands. The form of payment, consideration and the like should be evaluated both in terms of monetary value as well as to obtain required survey data and information gathered from the surface and subsurface resources. Agreements should specify the conditions for conducting, recording, and reporting on these activities and assist the OSLI in evaluating income potential of State lands commensurate with the Board's trust responsibilities.



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## Chapter 4

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### The OSLI has recently expanded post-leasing inspection and auditing oversight duties.

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**Finding 4.1:           The OSLI monitoring of subsurface development through field inspections is new and evolving.**

Currently, the OSLI has two field inspectors specifically tasked with monitoring mineral leases and related development on State lands. Since the use of field inspectors for subsurface estate monitoring is so new, basic standards and inspection protocols have been mostly self-directed by the two inspectors. Initial, but important issues addressed under the self-directed regime include evaluation of idle or non-hydrocarbon producing wells to see that adequate bonding is in place and that reclamation activities are completed.

These inspectors were added as part of the OSLI's movement toward more direct monitoring of leases to improve revenue potential by safeguarding, preserving and enhancing trust asset value, which are the basic constitutional and statutory charges for the Board and OSLI. In addition, such activities help to decrease the State's liability with respect to reclamation activities.

*Background of OSLI Inspections*

**Field inspectors:** In 2005, the first field inspection position in the OSLI was created by collapsing two vacant positions in the Royalty Compliance Section. The creation of the position was for the OSLI to have a presence in the field that was missing for 20 years, and according to the OSLI, is part of its responsibility. Prior to the creation of this position, it relied upon contractors, grazing lessees and Wyoming Oil and Gas Conservation Commission staff to fill this need when they were available.

It's important to note that the OSLI opined in its 2005 budget request the need to create the first field inspector position to fill part of the OSLI's responsibilities that had been lacking for 20

years. We commend the OSLI for setting into motion an important aspect of ensuring that State leased lands are protected.

In 2007, inspections were temporarily stopped for about three months due to a non-work related injury sustained by the field inspector. However, once back in action, the field inspector has been in the field continuously since the spring of 2007. A second inspector position was subsequently requested and approved through the 2007-2008 Supplemental Budget. The position was funded with General Funds in the amount of \$149,554.

**Surface field inspectors:** Surface field inspectors have expertise in appraisals and range management. They conduct appraisals related to farm loans and determine compensation due from temporary use permits and special use leases, when not established by a Board-approved payment schedule.

Range management staff annually inspects grazing lease renewals to determine grazing use, Animal Unit Month (AUM), management needs and lease compliance. All field staff inspect lease and permitting activities to determine lease compliance and reclamation adequacy.

Surface inspectors may have increasing duties in the future with numerous wind energy operators seeking special use leases. In addition, as oil & gas activity increases, TUP applications will increase, also leading to increased duties for the surface inspectors.

Based on the 2005-2006 budget, there appears to have been seven (7) to eight (8) surface inspectors. That number is now six (6) surface inspectors. The number of surface inspectors appears to have been fairly constant since the time the minerals field inspection section began operations with one position in 2005.

The 2011-2012 budget states there are six (6) inspectors/appraisers that conduct surface inspections and appraisals, feasibility studies, sign postings and potential easement sites.

*Two subsurface inspectors split the State in half and inspect thousands of wells/leases*

The use of field inspections for monitoring subsurface estate (mineral development) issues is a fairly new section – field inspection section within the Mineral Leasing and Royalty Compliance division – and is still evolving as a function. The OSLI has only been authorized since 2005 to employ a subsurface inspector. A second position was added in 2007.

The OSLI has wanted a greater field presence to fulfill its fiduciary duty of "... preservation and enhancement of trust asset values for current and future beneficiaries." Under these conditions, the current inspection practices have evolved into two general duties: 1) inspection of idle or non-hydrocarbon producing wells and well site reclamation; and 2) training on inspection of well/pipeline meter calibration and verifying product flows.

**Well Inspection and Site Reclamation:** Well inspection activity on the eastern side of the State has led to identification of non-hydrocarbon producing wells (including abandoned, shut-in and idle wells) that should have additional well bonding for reclamation purposes on State leases in the event of abandonment by lessees.

Original bonds may or may not exist, based on the financial condition of the company. A common scenario is that wells are shut-in and abandoned by bankrupt companies and the State is left with the cost of plugging the wells and reclaiming well sites. The central purpose is to limit the OSLI's and the State's liability for these costs, as well as maintaining or increasing the value of the lands for future mineral leasing or other uses.

**Well/pipeline Product Meter Calibration:** One area of inspection the OSLI is increasingly expanding into relates to the safety of production equipment and accuracy of production measurement (meter calibration and flow determination). The OSLI will move forward with additional training for inspectors in this area, but a complicating factor in this endeavor is the inability for OSLI inspectors to tear down production measurement equipment for inspection without the operator or a representative of the operator on-site.

According to one OS LI inspector, there is sonic technology available to measure the flow through the pipeline versus what the actual product meter reads in a noninvasive manner, i.e. placing the sonic meter on the pipe. However, this technology does not differentiate between products when they are mixed (oil/gas, water/gas, etc.) and flowing through the same pipeline.

*OSLI inspections are not regulatory* The OS LI's Field Inspection Section does not perform regulatory inspections. As the agency tasked with preservation and enhancement of State lands, these inspections are focused on the condition of the lease sites and well production, as well as calibration of production measurement equipment on-site.

In contrast, other State agencies that conduct regulatory inspections include the Department of Environmental Quality, Wyoming Oil and Gas Conservation Commission, and the State Engineer's Office. Its inspections are focused on compliance with State and federal law requirements and mandates with various mineral development permitting activities.

The following Table 4.1 summarizes these other agencies' regulatory inspection activities related to mineral development that occurs on State lands.

**Table 4.1**  
**State Regulatory Agency Duties and Responsibilities**

Agency	Duties and Responsibilities
Wyoming Oil and Gas Conservation Commission (WOGCC)	<ul style="list-style-type: none"> <li>• Check locations of plugged and abandoned wells</li> <li>• Check proposed wells</li> <li>• Ensure compliance with State statutes and rules and regulations</li> <li>• Uses EPA delegated authority to protect drinking water under Class II program</li> <li>• Observe pressure tests on temp abandoned enhanced recovery wells and active and temp abandoned water disposal wells</li> <li>• Observe pressure tests on production wells idle more than five years</li> </ul>
State Engineer's Office (SEO)	<ul style="list-style-type: none"> <li>• Check that CBM (coal bed methane) produced water is permitted for beneficial use</li> <li>• Check that retention ponds or reservoirs are permitted for CBM-only or other storage uses</li> <li>• Check that CBM-produced water is appropriately used and stored either on or off-channel from well site</li> </ul>

Agency	Duties and Responsibilities
	<ul style="list-style-type: none"> <li>• Overall responsibility to ensure proper use of water based on existing water rights</li> </ul>
Department of Audit (mineral royalty) (DOA)	<ul style="list-style-type: none"> <li>• Inspections related to tax and royalty audits in terms of equipment configurations and field layout and verifications within the meaning of the State tax and royalty valuation statutes for county assessors</li> <li>• Audits of royalties compared against production, as well as the transportation deduction</li> <li>• Audits related to severance tax returns, as well as valuations related to ad-valorem taxes</li> </ul>
Department of Environmental Quality (DEQ)	<p><u>Water Quality Division</u></p> <ul style="list-style-type: none"> <li>• Permit compliance</li> <li>• Inspect projects receiving State Revolving Fund monies</li> <li>• Water quality investigation</li> </ul> <p><u>Solid and Hazardous Waste Division</u></p> <ul style="list-style-type: none"> <li>• Permit inspections/compliance of waste holding or generating facilities.</li> <li>• Environmental monitoring</li> </ul> <p><u>Air Quality</u></p> <ul style="list-style-type: none"> <li>• Wyoming Environmental Quality Act, Wyoming Air Quality Standards and Regulations compliance</li> <li>• Air quality permits</li> <li>• On-site compliance inspections</li> <li>• Yearly inspection list to maintain presence in field</li> <li>• Asbestos program compliance</li> </ul> <p><u>Land Quality</u></p> <ul style="list-style-type: none"> <li>• Permit and regulatory compliance through operator submitted annual reports</li> <li>• On-site statutory and regulatory inspections</li> <li>• Pre-mine or mining site visits</li> <li>• Permit reviews</li> <li>• Monitor surface or ground water through samples provided by operators</li> </ul>

Source: Legislative Service Office from information provided by selected agencies.

In terms of how the OSLI coordinates with other agencies, its inspectors collaborate and share notes, questions and issues related to field inspections and reclamation efforts internally (among surface and subsurface inspection sections). The OSLI also stated that it works informally with the above listed agencies, as well as the Wyoming Game and Fish Department and the federal Bureau of Land Management.

Specific examples of this informal coordination include OSLI inspectors interacting with the State Engineer's Office regarding permitting water wells and reservoirs on State lands. Also, with DEQ's Water Quality Division when issues arise regarding compliance with the State's oil and gas lease related to groundwater contamination, etc. The OSLI may occasionally also inform other agencies if it observes problems upon inspection that fall under other agencies' authority.

*The OSLI's trust responsibilities demonstrate a need for inspection oversight of State lands*

Wyoming Statutes and Board rules do not expressly provide criteria to guide inspection efforts with specific roles and responsibilities of the subsurface (or surface) inspectors. Broad statutory language found in W.S. 36-2-107(a) notes the Board's authority to adopt and promulgate rules:

“(a) The board shall have the power and authority to promulgate and adopt rules and regulations not inconsistent with the laws of the State, as it may from time to time deem necessary in the *direction, control, disposition and care of all state lands, and to preserve the value of the land and to recognize the fiduciary duties of the state land office.*” [emphasis added]

Although it may not apply to an inspection function within the OSLI, W.S. 36-6-105 provides that *"The state geologist or any state coal mine inspector shall, when requested by the board of land commissioners, visit and make a report upon any lands held under coal and mineral leases. Such report shall be made without any fee to the officer making same."* This language appears to acknowledge that some sort of field presence on the part of the OSLI is needed, even if it does not directly address an internal inspection function.

**The OSLI has expressed a need for mineral inspectors for years and received consultant guidance**

Overall, the OSLI's interest in creating a field inspection section for field monitoring has existed for at least the last decade. In its BFY 2001-2002 budget request, the OSLI stated specifically that the Royalty Compliance Section *"...will also attempt to establish*

*a greater field presence in hopes of discouraging state lease theft, poor lease area maintenance and under-reporting for royalty volumes and values."*

Further, the need to maintain a field presence is implied in its strategic plans: 2005 – actively inspect and enforce lease compliance to protect the value of surface and sub-surface trust assets. Likewise its 2009 plan - preservation and enhancement of trust asset values for current and future beneficiaries...lease stipulations to protect surface and subsurface resources and adequate inspection, bonding and reclamation programs.

Ultimately, the OSLI received a consultant review and analysis on its 2005 strategic plan goals. This report was also received by the 2005-2006 joint Legislative-Executive Task Force on OSLI trust program funding. Succinctly, the report noted that while the element of an “honor system” among surface and subsurface lessees for self-reporting can be beneficial, it noted that *“no prudent landlord would rely wholly on his/her tenants to ensure compliance with lease terms.”* The report concluded that the OSLI had insufficient resources to meet its goal to enhance inspection and enforcement activities.

*Initial inspection activities are aimed at generating bond revenue and preserving trust assets*

Though it may be hard to place a definitive value on preserving or enhancing State trust lands, the section’s initial duties have aimed at minimizing State liability for damages (or potential damages) and reclamation problems on State lands. For example, based on OSLI emphasis on proper well bonding, it has quantified inspection efforts translating into potential cost savings to the State. The OSLI requested one operator with 138 non-hydrocarbon producing wells to bond an additional \$2.7 million to cover any reclamation should it abandon these wells. Currently, operators have abandoned 38 leases encompassing over 170 wells on State lands, which are now the liability of the OSLI.

Inspectors currently base bond increase requests on \$10.00 per foot of well depth, in line with similar provisions of the WOGCC. However, inspectors also have the authority to address dormant wells through Board Chapter 18 rules regarding oil and gas leasing and bonding minimum standards:

**Section 12. Surface Integrity and Minimum Reclamation:** *“(b) When any oil, gas, or disposal well on state lands becomes dormant as defined by Wyoming Oil and Gas Conservation Commission Rules at Chapter 3, Section 4, the lessee shall either properly plug and abandon it within one hundred eighty (180) days after first reaching that status or post an additional bond with the Office in the amount of two dollars (\$2.00) per foot of well depth. All wells must be properly plugged and abandoned, unless otherwise authorized by the Director, within one hundred eighty (180) days of the loss of lease. Lessee’s bond will not be released until satisfactory abandonment, as approved by the Wyoming Oil and Gas Conservation Commission and the Office, has been completed.”*

There are 2,300 of these wells located in the eastern half of the State. The OSLI has sent 136 letters to the operators of these leases informing them of the additional bonding requirements. It is reasonable to assume there may be a similar number of these wells in the western half of the State.

*Inspection activities are self guided without formal OSLI policies or priorities*

At present, there are no statutory references or rules to formally set forth inspection requirements. Without formal guidelines to achieve OSLI’s strategic plan goals for more and better field monitoring, there remains a lack of vision for what the desired outcomes are for the field inspection section and any structure to guide its evolution over time.

The OSLI has six surface inspectors to cover 3.5 million surface acres of State land, while there are only two subsurface inspectors to cover 3.9 million subsurface acres of State land. Though not all subsurface acres are currently under mineral leases, there are many issues with subsurface development that continue to make this work challenging.

With only two subsurface inspectors splitting the State, focus is likely spread too thin in terms of being able to check producing and non-producing wells. The lack of resources for such a large task limits the ability of the OSLI to identify any issues, or potential issues that may impact the proper revenue coming into the State as a result of subsurface production (mechanical integrity

issues, improper royalty reporting, etc). It also affects situations such as abandoned wells, which may cost the State money.

The OSLI has allowed each of these new inspectors great latitude to self direct its activities. Despite a very broad-based and simplified checklist for some possible issues inspectors may encounter, the section does not have formal policies or priorities to define its roles or responsibilities or goals in the field. This checklist should not be considered formal guidance as it is of a temporary nature and focused specifically on only oil and gas well site inspections.

Further, without going through the process of creating formal guidelines, the section runs the risk of duplicating inspection duties of other agencies. OSLI inspectors and WOGCC inspectors may have some overlapping duties in terms of checking locations of plugged or abandoned wells. To avoid duplication of duties, the Wyoming Oil and Gas Conservation Commission, for example has formal agreement memoranda (i.e. – Memorandum of Understanding/Agreement – MOU or MOA) with other agencies that in part address division of duties relevant to inspections.

**Recommendation: The OSLI should begin to formalize standards for inspection activities; it should provide greater consistency and establish criteria for prioritizing duties. The OSLI should also discuss with the Board whether surface impact money could be used to fund additional inspector positions.**

Overall, mineral development field inspection is a relatively new function within the OSLI, starting in 2005 with one position. As such, it has developed in an ad hoc manner. It does provide a valuable role and should act as the eyes and ears of the OSLI in the field in pursuit of fulfilling its duties to preserve and enhance trust assets. Considering the field inspection section has been developing over the past few years, the OSLI should now begin to fine-tune the duties of the inspectors related to subsurface resources.

Part of the development of this section may include coordinating with other State and federal agencies to better articulate the OSLI's niche to maintain State trust lands. This is particularly important for the OSLI with respect to well bonding and orphan well plugging that is also addressed by the WOGCC. The OSLI may also want to review the WOGCC inspection function with respect to setting criteria for prioritizing and allocating duties on a yearly basis.

Finally, discussion with respect to the use of surface impact payment revenue to fund additional inspector positions should occur. Given that the surface lessee and the State receive shares of impact payments, the use of additional inspector positions may provide additional benefit to the State.

In 2005, the Legislature created the State Lands Preservation and Enhancement Account (2005 Session Laws, Ch. 85 (original senate File 15, State Lands Trust Preservation Account)). This account (Fund 539) allows the OSLI to *“fund projects which preserve and enhance the asset value of all surface and mineral lands held in trust by the state.”*

It could be used for receipt of surface impact payment revenues to finance additional inspector positions. It currently is not a fund that is used to receipt surface impact payment revenues.

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#### **Finding 4.2:**

#### **OSLI royalty compliance auditors recently started major audits of non-compliant companies.**

OSLI royalty compliance staff routinely performs desk audits of the companies paying royalties on a regular basis. More recently staff has identified 17 companies representing significant royalty revenue discrepancies and therefore not in full compliance with full royalty reporting and payment.

During our audit, we observed the OSLI complete a major in-

depth, long term historical audit of one company. The only other previous major audit completed in July 2008 recouped in excess of \$3 million dollars for the State. Because much less of the staff's time is dedicated to this type of in-depth type of auditing, this could translate to less funding being recovered for the State.

OSLI staff is working with the IT division to accommodate a more streamlined and automated auditing process. A major contributing factor for how long these audits can take is the absence of a comprehensive auditing program that can leverage data systems to set up flags for potential errors by companies when reporting royalty payments and deductions.

*Royalty compliance staff perform routine desk audits of all companies*

Auditing staff for the Mineral Leasing and Royalty Compliance division, sometimes termed the royalty compliance section, is comprised of 15 persons, ten (10) of whom have a position classification described as "auditor" including the assistant director, the staff supervisor, and the lead auditor. In the course of auditing duties, these staff must keep track of and review royalty compliance on more than 1,000 companies.

Fortunately, only a handful of these companies do not utilize the electronic royalty reporting system to report/pay their monthly royalties. This means less staff time dedicated to raw data entry for companies that file hard-copy (paper) reports.

The auditing staff is organized so that each person maintains a certain number of company accounts upon which they perform monthly desk audits based on various checklists. This involves reviewing prior period data to determine propriety in reporting and billing companies who are not paying correctly. The monthly desk audits isolate problems, and resolution is generally achieved by requiring amendments and requiring re-filing of data.

*The first major audit involved the time of at least eight auditors*

With a staffing change in 2007, additional measures to review past data searching for high liability issues flagged 17 companies with major royalty compliance issues. While the desk audits usually are for the prior monthly time period, the major and in-depth audits can be for a much longer time period, and most likely involve requests for additional information based on the issues identified.

For example, the first major and in-depth company audit took about one year to complete. More importantly, it took the resources of the lead auditor along with the assistance of seven or eight other audit staff throughout the year. The lead auditor is now working on the second major audit of another company.

Based upon the settlement meeting we observed, the audit section staff review and analyze years of past data reports, are involved in numerous discussions with the company regarding the issues, and require the company to provide certain support documentation. In this particular situation, audit staff required the company to amend prior yearly royalty estimate reports, reconciling figures to actual production.

The amended report must be approved before the OSLI will allow the company to file the next amended report, to be approved and so on. By W.S. 30-5-303(a) and (b) it can assess 18% interest on the proceeds of production due and \$100 a month late fee for late reporting.

*In the past, along with desk audits, the section has recovered additional royalty amounts assessed of several hundred thousand dollars*

Earlier larger audits did not appear to include assessed dollar amounts for royalties over \$500,000, which established a maximum ceiling for auditing. The royalty compliance staff provided information detailing the larger dollar companies audited since 2005 and the amounts assessed and obtained. The total amount assessed, including penalties and fees, was \$6,373,461.59.

The amounts obtained include the company previously mentioned in the major audit, which including interest and fees paid \$4,572,166.25. Of this, \$453,070.58 was a penalty paid and \$608,512.30 was interest paid. For the 16 other major audits yet to be completed, the section does not maintain a database or spreadsheet devoted to them, nor did they provide a figure of estimated additional royalty dollars to be assessed.

*Lead auditor fulfills an important function*

The OSLI filled a critical need by bringing in an employee with understanding of complex internal control and auditing methods. The auditor has experience with the State Auditor's Office, which helps this individual work with existing staff to undertake larger and more complex audits.

However, the time staff dedicates to these major audits fluctuates dramatically. For example, the lead auditor's time as well as the other auditors' time and responsibilities, are split between many tasks and duties precluding them from fully pursuing the major suspect-reporting companies to the fullest extent needed to achieve recovery.

More specifically, the following additional responsibilities for the lead auditor includes:

- All mineral royalty side data entry for internal control;
- Monitor all company transaction work the technicians do and handle two problematic companies;
- Manage and scrutinize data on all suspended oil and gas and CBM wells;
- Track all new well completion reports from the WOGCC;
- Track all the Plug and Abandoned Reports from WOGCC;
- Supervise technicians' work on small audit projects and work products;
- Acts as contact person for the United States Department of the Interior for its Mineral Management System data requests;
- Review and provide demand letters for interest and penalties when the Department of Audit issues findings;
- Make changes and answer questions on tract allocations such as with Communitization Agreements; and
- Run testing scenarios for the new royalty data system.

While management and audit staff would like to pursue auditing these non-compliant companies full time, this is not currently occurring. As noted above, all personnel dedicated to royalty compliance have several responsibilities and tasks, so work on the major audits depends upon time available outside of traditional audit tasks.

The OSLI stated it wants to conduct four (4) or five (5) major audits yearly, with the lead auditor dedicating a significant percentage of time (between 80% and 90%) to these audits. But in fact, the amount of work devoted first to all other projects and

tasks indicates the work on the major non-compliant companies is a lower priority.

*Information technology solutions through AWISH are not yet operational*

In the last few years the top audit staff has developed a wide range of issue-specific document solutions for tracking information and working with companies on audit tasks. Since the lead auditor was hired, this person has also worked to refine internal processes to provide direction and consistency in methods for audit staff and to assure the proper checks and balances are in place for audit tasks and review.

We reviewed the following documents, which according to the OSLI constitutes the current auditing process and policies/procedures:

- Volume sheets;
- Payment sheets;
- Electronic spreadsheets;
- Checklists;
- Audit instructions;
- Templates for audits;
- Auditing business process; and
- Auditing gas plant spreadsheet.

According to OSLI officials, the auditing section is in the middle of implementing a new data system that is expected to alter the way in which auditing processes will occur. More specifically, it is envisioned that the above criteria, as well as additional internal controls, will be combined into more formal audit policies. In addition, the current manual system, which is transitioning, will migrate into an electronic auditing system.

**Recommendation: The OSLI should continue working with the IT division on automating the audit processes through AWISH. Staff should identify requirements for including automatic flags and calculations typically necessary for audits to more quickly work through desk and major audits with reporting companies.**

While these various worksheets/spreadsheets have been developed in order to move away from a formerly manual system, these documents do not assist staff by automatically flagging or notifying the OSLI when records or reports submitted by companies have irregularities. Moving toward the automated processes in AWISH is a good first step toward more efficient and effective use of audit staff and resources.

However, unless the system automation presents staff with common and consistent flags for reviewing companies' reports, making the current manual processes quicker will not necessarily allow for staff to leverage the system for greater review and analytical capabilities. By including audit flags or criteria within the AWISH programming, OSLI and audit staff can prioritize its major audits in line with the four or five audits planned per year goal.

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**Finding 4.3: The OSLI is moving forward with more formal audit processes re: non-compliant companies.**

As noted above, the OSLI's royalty compliance auditing staff has begun work on identifying companies with potentially large amounts in past due royalties. These companies largely remain outside of royalty reporting and payment compliance. The circumstances for audits that generally lead to company protest and disputes with the OSLI are based on a confluence of issues:

1) the OSLI has fragmented data systems; 2) the OSLI and companies disagree over statutory language defining deductions on transportation/gathering costs of production; and 3) disputes over required support documentation.

Settling these matters varies because of limited time and resources, and may not result in the full amount of past due royalties being collected. While the OSLI has well articulated rules setting processes for resolving some disputes, processes for resolving non-compliant cases are less clear or formalized.

*Companies are not compliant with royalty reporting in a number of areas*

As previously stated, the OSLI conducts two basic types of audits or reviews of company royalty reporting and payment: 1) monthly desk audits of all company reports; and 2) major royalty compliance audits of companies indicating risks or high liability issues. While the desk audits are routine and easier to perform, the major compliance audits are long, complicated, and require extra staff time and resources to resolve.

In total, since the OSLI hired a primary lead compliance auditor, it has identified 17 non-compliant companies. The length of time needed to resolve these compliance issues varies. It is highly dependent on a company's decisions to dispute the OSLI's audit conclusions.

There are three main areas that contribute to OSLI-company royalty compliance issues:

- Reliance on OSLI and company data systems;
- Disputes over allowable deductions for unbundling of transportation versus gathering costs; and
- Lack of support documentation (support media) reporting.

**Data Systems:** the OSLI's Mineral Royalty System (MRS) went on line in 2003 and is described as difficult to use for research purposes. While it maintains and records everything, it "spews" everything out rather than in salient reports. Oil and gas company data systems have also been problematic. In one instance a company transitioned to a new system and while doing so only estimated royalty amounts due to the State and then neglected to reconcile the estimates to actual amounts.

*Gathering is not allowed as a deduction*

**Deductions-Unbundling:** Included in the electronic reporting are the calculations showing deductions, such as for transportation which is an allowed deduction (W.S. 30-5-304 and W.S. 30-5-305). In reviewing royalty data the auditor checks the transportation deduction percentage. The normal range is between \$.14 and \$.23 per MBL.

Gathering is described as the act of combining the commodity from several well heads and bringing it to the point of commercial transportation to market. Gathering charges are not allowable deductions, but some companies try to include those costs with the transportation deduction raising the calculation to \$.50 per MBL. These high deduction rates raise a red flag with the royalty compliance section to audit the company for compliance.

**Support Media:** On top of the deductions disputes, there is disagreement between the OSLI and lessees pertaining to supplying support documentation (also know as support “media”) to help validate claims for deductions. The media may include the schematic diagrams and explanations that support their royalty reporting.

Most especially for this finding, schematics show the wells, the point where the gathering starts and where the transportation starts. The OSLI requires these schematics because they break out gathering and transportation, so that the costs are unbundled. During audits and disputes over unbundling, the OSLI requests support schematics of operators that some companies actually refuse to provide.

*The OSLI is frustrated by statutory guidance*

Although the Wyoming Royalty Payment Act provides statutory guidance related to deductions, it is often interpreted differently by the industry. More specifically, the determination of costs the lessee may deduct legally (W.S. 30-5-304) and how those deductions should be itemized pursuant to W.S. 30-5-305 (vi).

Costs are defined in the statute as: “...all costs incurred for exploration, development, primary or enhanced recovery and abandonment operations including, but not limited to lease acquisition, drilling and completion, pumping or lifting,

*recycling, gathering, compressing, pressurizing, heater treating, dehydrating, separating, storing or transporting the oil to the storage tanks or the gas into the market pipeline.”*

Wyoming law indicates that production costs do not include the reasonable and actual direct costs associated with transporting the oil from the storage tanks to market or the gas from the point of entry into the market pipeline or the processing of gas in a processing plant. Furthermore, “gathering charges” were specifically included as non-deductible costs of production.<sup>1</sup>

While internal constraints such as the usability of the data system contribute to difficulty in the auditing process, statutory ambiguity may be more of a culprit. W.S. 30-5-304 and W.S. 30-5-305, while disallowing gathering as a transportation deduction is vague on where exactly gathering stops and transportation starts.

According to the OSLI, the industry states that all lines that carry production to plants, to treating facilities and to pipelines are gathering lines. However, the OSLI typically assesses the point of merchantability as being the point where the product is in the condition to enter the interstate lines to the market. The statute, however, is silent on a specific definition of “gathering.”

*Lease language  
requires operator to  
provide reports*

It should be noted that each lease contains language on the royalty rate and appropriate units of measurement, as well as a clause that states that the operator is contractually obligated to provide reporting materials to the lessor (State):

*“...file annually, or at such times as the lessor may require, maps, showing the development of the structure and the location of all wells, pipelines, and other works used in connection with the operations of the lessee upon said land. To make such other reports pertaining to the production and operations by the lessee on said land, and report such other information as, may be possessed by the less on the wells, production or operations, of others on lands on the same geologic structure that may be of important in effecting proper development and operation of*

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<sup>1</sup> Wold v Hunt Oil Co., 52 F. Supp. 2<sup>nd</sup> 1330, 1999 U.S. Dist. LEXIS 9670 (D.Wyo.1999).

*the lands herein leases, as my be called for by the lessor, all logs, maps and reports shall be submitted in duplicate and the Commissioner may waive such reports as conditions ay warrant.”*

As stated previously however, the OSLI does not consistently receive this information from the industry. In addition, it appears that the OSLI does not routinely examine non-compliant companies' failure to provide this type of documentation. As a result, the OSLI is unable to quickly ascertain answers to questions related to production, as well as deductions, without going through the audit process.

The OSLI does provide *Mineral Royalty Reporting Guidelines* (dated February 2004) on its website. These guidelines generally describe the reporting process including description of reports, timelines for submission of reports, guidance with respect to reporting volume and values, as well as use of product codes. Guidelines also discuss information on various deductions related to gross sales value and transportation.

The OSLI also provides another document (Royalty Reporting and Payment System Requirements, dated July 1, 2005) that goes into more detail on additional aspects. For example, permanently abandoned wells, multiple lease operators, when items will be considered delinquent, and other pertinent items.

*State expending  
resources to collect  
disputed royalties*

Each of the OSLI's audits is unique in details and disputed royalty amounts. However, the auditing staff indicates the same issues routinely are presented and then are worked through with the companies over a long period of time.

Until the data system is an effective tool for auditing, it is adding to the slow process. The deduction issue regarding how to define what is “*gathering*” and what is “*transportation*” reoccurs time and again and requires staff to cover the same ground over and over again using its resources.

Potentially millions of dollars of uncollected royalty balances remain with companies while the OSLI continues to negotiate and audit the companies, in the midst of performing their daily

duties. Although the OSLI is moving in the right direction with increased audit presence, the lack of formalized policies could slow the process down for collecting this revenue.

The OSLI by lease language and under the reporting guidelines has authority to require operators (companies) to provide timely and accurate reports with proper and sufficient supporting documentation. When the operators do not provide any of the above in a suitable manner, it has the authority to impose the requisite penalty fees and interest on the proceeds for the production and should by right be able to compel the company to produce the documentation. From what we have observed and the documentation we have reviewed, the auditing process is methodical and firm with the non-compliant companies but there are not formalized processes to guide these activities.

### **The OSLI has some processes in place for other disputes**

It should be noted that the OSLI has in place through rules, as well as procedures to assure certain lease related conflicts are resolved in a consistent and formalized manner. For this we look specifically to Board rules (Chapter 1-Rules of Practice and Procedure Before the Board).

Section 7 sets the process for appealing decisions of the director regarding conflicting applications for leases to the Board in an appeals process, like a contested case as defined by W.S. 16-3-101(b)(ii).

Also, Section 8 discusses lease cancellation proceeding. Proceedings allow for contested cases to be held under W.S. 16-3-101(b) (ii). When the director files a “request for cancellation” in the record, the lessee has the right to request a hearing before the Board cancels any lease. Section 8 also covers procedures for contested cases, disposition by agreement, discovery, subpoenas, motions, court reports, hearing procedures, and findings of fact and conclusion of law.

**Recommendation:** The OSLI and the Board should continue to formalize the processes for identifying and resolving disputes with non-compliant companies to assure they are consistently resolved in a timely manner with the best outcome for the State.

The OSLI and the Board are at a point where forward momentum related to increased auditing presence is becoming quite beneficial to Wyoming. It is therefore important for more formalized policies to be developed related to the identification and resolution of issues with non-compliant companies.

**Recommendation:** The OSLI and the Board should formally discuss the issue of statutory clarification with respect to industry and the OSLI's interpretation of gathering versus transportation.

Currently, the OSLI spends an extraordinary amount of time discussing this issue with non-compliant companies. This type of discussion could go on indefinitely, with no resolution. The OSLI and the Board should formally discuss this issue, to determine if statutory changes should be proposed to the Legislature to better define the following terms: costs of production; gathering; and transportation, with respect to royalty deductions.

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**Finding 4.4:** The OSLI's current approach of assessing increased rental fees during suspended leases is not articulated in lease language or existing rules.

Due to economic conditions and the extensive amount of de-watering required for CBM wells, suspensions of operations have been increasing. The OSLI, to its credit, has instituted an

incremental fee schedule to encourage operators to return to production sooner rather than later and to discourage CBM producers from suspending operations while “allowing” adjacent CBM operators to bear the cost of de-watering. However, fee increases are not articulated in current lease language or rules.

The director may approve oil and gas lease suspensions of operations where suspensions are authorized by lease terms and appear to be in the best interest of orderly development of the leases, and can serve to prevent premature lease abandonment (Board rules, Chapter 18-Leasing of Oil and Gas, Section 8(c)). The OSLI requires additional rental, during lease suspensions, via an application for lease suspensions.

The rate schedule starts at \$2 per acre for or during the first suspension and goes to \$20 per acre for those under 6th or longer suspensions. As of the end of October 2009 when the OSLI provided data for our research, there were 586 leases with suspended operations.

Our sampling verified that the suspended operators are paying the increased rental amounts per the schedule. Our analysis also indicated that two companies hold not only a significant share of the suspensions, but are in suspension often enough to skew our analysis and may warrant further scrutiny by the OSLI.

*Increased fee schedule is not annotated in rule or lease language* Currently, the increased rental schedule related to suspended leases is not included within existing lease language. Rather, existing lease language requires a continuation of the \$2.00 minimum rental. Current lease language however, does not address the increased rental schedule:

*“...During the time any such suspension of operation is in effect, the lessee shall continue to pay the annual rental of \$2.00 per acre or fraction thereof provide by (c) above, and this lease shall remain in effect as though oil or gas was being produced from said lands.” (Emphasis added)*

The rental payment schedule is included as part of the application for lease suspensions, which shows rental from \$2.00 to \$20.00

per acre based on the number of suspensions. It is not reflected in lease language or Board rules.

By not updating the existing lease language or requiring the increased rental schedule via a new rule or incorporating the application packet by reference into existing rules, the State may be placing itself at risk of legal challenge by companies that have paid the increased rental payments.

It should be noted that paragraph (c) in the lease does state *“after the discovery of oil or gas in paying quantities to pay the lessor in advance,...an annual rental of \$2.00 per acre or fraction thereof, unless changed by agreement.”* Although one could argue that the application for suspension includes an implied agreement, it may still be argued that such fee increases should appear specifically as modified lease language, or through incorporation of the application material into existing rule.

**Recommendation: The OSLI should consider updating oil and gas lease language and rules to include specific reference to the increased rental rate schedule for suspended leases.**

The OSLI stated that upon taking action on lease suspensions, the Board and lessee have agreed to alter the conditions on the lease. Yet the actual, current lease language on suspensions is not addressed by the Board to include reference to the increased rental rate schedule. In all, this creates potential confusion or conflict in how suspensions impact lessees' rental obligations. Therefore, it may be troublesome for the OSLI to alternately apply its schedule without clearly articulating in rule or by specific reference in amended suspended leases that variable increasing rentals apply depending on the number of suspensions.



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## Chapter 5

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**The OSLI's GIS analysis capabilities and data system management is still developing.**

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**Finding 5.1: More than a decade after a thorough study of OSLI GIS data needs and five years after dedicated funding, it is still developing its GIS base lands inventory and analytical capabilities.**

Currently, the OSLI does have staff and resources dedicated toward completing its geographic information system (GIS). In fact, it was able to produce some maps and geographic overlays for our review during the audit. However, the OSLI remains in a position of using inaccurate data and as such is not confident using this data for analytical or presentation purposes, particularly with respect to monitoring lands adjacent to state land parcels.

This challenge continues even though it had a comprehensive assessment performed in 1997-1998 that identified its need for and planned development of GIS use within the OSLI. Overall, until recently, it took a conservative approach to slowly develop this primary data system with only partially dedicated staff and resources.

*The OSLI's current GIS capabilities allow for displaying map overlays*

Currently, the OSLI limits its use of GIS to internal purposes. The recently hired GIS analyst is taking steps to provide a quality control review of the data so that future analysis and presentations are as accurate as possible. The system is also attached as a component of the AWISH project so that all the relevant land records used by the OSLI are able to be linked to the appropriate state land parcels through a unique land identifier numbering system.

The OSLI is using a similar GIS data model and infrastructure design as the United States Bureau of Land Management (BLM) that will make its data more compatible with information exchanges between the BLM and other state agencies (e.g.

Wyoming Oil and Gas Conservation Commission – WOGCC). It has worked periodically to accept data transfers from other agencies, but without maintaining its own basic and consistent land inventory system, it has been difficult to translate other agencies' data into the OSLI's system design.

Under these constraints, the OSLI does maintain various GIS data layers and can produce some maps for visual presentation. For our audit, we requested various maps and were provided with same at great effort by the OSLI staff. OSLI staff noted that they generally use its GIS for visual depiction and analysis since the data is not seen as accurate enough to allow for more electronic and complex geographic analysis.

*The OSLI's GIS and data management goals were expressed in 1998 report*

The OSLI's initial step to acquire its primary base land inventory system occurred in 1997-1998 with an incremental study of how it could implement a GIS platform. The process of the study covered a needs assessment, GIS implementation plan, and a cost-benefit analysis. The needs assessment addressed five points: data; applications; staffing/training; hardware; and organizational/ procedural issues. On point, the implementation plan noted the need for a phased, multi-year strategy, similar to that currently being used to implement AWISH, would meet the following key goals for the OSLI:

- Support the assessment of impacts of activities on/near state lands;
- Support efficient response to questions regarding state lands;
- Support agency-wide decision-making; and
- Provide an asset management tool.

Finally, the cost-benefit analysis concluded that GIS implementation should proceed since the OSLI's basic function, land management, utilizes a great amount of geographic information. GIS implementation costs would be more than offset by better, more efficient management and implementation was a low-risk issue for the OSLI.

Additionally, it has continually noted the need for and intention toward more automated and coordinated data management for all its data tracking and analysis needs. This includes coordination

with other state and federal agencies, particularly the BLM, the WOGCC and the Wyoming Game and Fish Department.

*The OSLI's adjacent land monitoring process is informal and uncoordinated*

An important and data intensive responsibility for the OSLI is basic adjacent land monitoring, primarily for oil and gas leasing, to: 1) identify unleased lands for potential lease; 2) identify non-producing leased lands for potential production; and 3) identify primary-term oil and gas leases for possible extensions. By monitoring adjacent lands for these issues the OSLI can more quickly and readily make decisions on how to approach leasing, production incentives, and potential challenges to revenue generation from State lands.

Currently, the OSLI's monitoring process, described as its "9-section grid" analysis of adjacent lands, relies on several internal data bases (e.g. leasing database, royalty database, etc.) as well as reviewing information from the Wyoming Oil and Gas Conservation Commission. Its goal is to reach a point where staff can use the AWISH system to "auto-prompt" a review of adjacent land when certain data conditions are met within the system.

To better understand this important process, we requested that the OSLI demonstrate its adjacent land monitoring process for a sample of 23 primary-term leases for which there was identified adjacent producing state lands. The goal of this request was to define producing, non-producing lands and revenue (royalties) generated within one a one-square mile radius surrounding the sample leases.

While the OSLI was able to fulfill most of the request for data on the 23 sample leases (including that state lands adjacent to 13 of these sample leases brought in over \$200,000 in oil/gas production royalties), there were several inconsistencies in its data. The main concern was that from earlier data five of these sample leases had surrounding state producing leases – as defined on an OSLI-produced map. However, we did not receive associated producing leases and royalty information for five leases upon submission of the sample to the OSLI. This demonstrates a core inconsistency between different data sets upon which the OSLI relies to inform various land management decisions.

*Until recently, the OSLI has struggled meeting its GIS needs*

The primary challenge with implementing the GIS system from 1998 until 2008 (when a GIS analyst was hired) was the way in which already-employed OSLI staff was required to engage in information technology development without sufficient training or a coordinated direction. That is, some IT-trained or self-trained individuals formulated databases and spreadsheet tracking systems to meet various information needs that gradually became evident over time.

A portion of these efforts did require assistance from the Department of Administration and Information, Information Technology Division to work out how to plan and build some individual systems. However, each individual system was based on whichever OSLI division requested support and in total these systems were not linked by common fields or state land tract identifiers. In addition, the OSLI did not have a fully-dedicated GIS professional direct and develop the GIS system.

This approach can be explained through the 1998 GIS study, which memorialized the philosophy by noting one important assumption about the project implementation: that current staffing levels would suffice to move the system towards functionality to meet the needs of the OSLI. Under tight budget constraints of the past, this assumption was likely more realistic. However, this presupposed that its staff already dedicated to other functions could adapt to this new project along with its other duties and attain sufficient training to make the system fully functional. Under the current AWISH project the OSLI has moved forward with the Information Technology Division that has IT and GIS specialists who can now complete the GIS implementation.

**Recommendation: The OSLI should continue to move forward with plans to fully integrate its GIS capabilities with AWISH in order to routinely conduct 9-section grid analysis (auto-prompt) and other lease analysis based on single-point GIS.**

The most important responsibility for the OSLI as a land management agency is to be confident that it knows where its lands are and how they are being used. In total, most of the OSLI's various data systems can give answers related to this fundamental issue. However, these answers come with a lot of work and staff resources required to piece it together over time. Furthermore, OSLI staff articulated that it is not at a point to meet what we believe are standard and important data requests needed to answer the questions asked by the Legislature.

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**Finding 5.2: The OSLI has had difficulty migrating from paper-based to electronic information management for easier reporting and analysis.**

As noted in the introduction and scope limitation to this report, the overarching challenge present during this audit was the OSLI's self-professed shortcomings of its data tracking, retrieval, and analysis systems. Additionally, its current data system centralization project – Agency Wide Integrated System Hub (AWISH) – is not yet capable of consistently or efficiently assembling and reporting its data. As a result, despite the OSLI's long-standing best intentions to work under more automated and efficient electronic-based processes, it has developed a web of siloed and unreliable data systems that still do not reasonably eliminate staff need to constantly review primary paper records to hand tally or verify reported results.

OSLI officials mentioned that it is currently focusing on the basic structure to integrate all data and data systems; akin to building the engine and frame of a car. However, unless and until the OSLI provides more planning to incorporate analytical components re: various data fields; akin to assembling components to enhance the performance of the car, the system will not help the OSLI to become more proactive.

*The OSLI is moving from paper-based* One of the central features of the OSLI budget over the last two biennia has been the gradual implementation of its AWISH

*processes and siloed data systems to an integrated electronic-based data system– AWISH*

project. This project encompasses integrating many of the OSLI’s current stand-alone data systems, spreadsheet tracking lists and paper processes into one system with common information technology infrastructure. The basic goal is to move its data systems towards integration in order to report and analyze various data for each state land parcel based on a unique land identifier field.

This project is mostly targeted to encompass the functions of both land management divisions, the Real Estate Management (surface) Division and the Mineral Leasing and Royalty Compliance (subsurface) Division. In addition to paper records, both utilize several stand-alone databases to report on various land management functions. Yet, due to the current database limitations, the OSLI often chooses to hand-count/verify data from reports by going directly to the volumes of paper records stored in its land records vault.

Until AWISH is fully functional, it is still required to rely on this paper-based system. Table 5.1 below highlights the major databases and other systems the OSLI is migrating and assembling into the AWISH data infrastructure.

**Table 5.1  
The OSLI’s Pre- and Post-AWISH Data System Structure**

OSLI Data System Structure prior to AWISH *	AWISH Data System Structure (when complete) **
Databases	Components of AWISH
<ul style="list-style-type: none"> <li>• Mineral Leasing Auction (MLA)</li> <li>• Mineral Lease (MLS)</li> <li>• Royalty Accounting System (RAS)</li> <li>• Electronic Royalty Management Application (eRMA)</li> </ul>	<ul style="list-style-type: none"> <li>• Grants and Loans (GALS)</li> <li>• Pre-Auction, Auction, Auction Sales</li> <li>• Leasing and Royalty Compliance System (LARCS)</li> <li>• Surface</li> <li>• GIS</li> </ul>
Other Systems	

OSLI Data System Structure prior to AWISH *	AWISH Data System Structure (when complete) **
<ul style="list-style-type: none"> <li>• Surface Impact Payment</li> <li>• Easements</li> <li>• Farm Loan</li> <li>• Temporary Use Permits</li> <li>• Special Use Leases</li> <li>• Comparative Sales</li> <li>• Grazing</li> </ul>	<ul style="list-style-type: none"> <li>• Document Imaging and Indexing</li> <li>• Business Intelligence</li> </ul>

Source: Legislative Service Office from information provided by the OSLI.

\* Databases and systems prior to AWISH also include various hardcopy and manually generated summary sheets for information generated by the OSLI.

\*\* AWISH moves the OSLI's current data systems into one common infrastructure for which all data will be linked to state land parcels through a unique land identification numbering system.

It should be noted that prior to and during AWISH implementation the OSLI uses Crystal reports to sort through data fields from the existing databases. According to the OSLI, such reports are based on complex formulas that often leave out important information. In addition, it uses other software to maintain data (e.g. Excel, Access, Word, etc.), which is often inconsistent with other generated data.

*The OSLI has been working to develop automated processes and documents*

As a land management agency the OSLI has stated consistently over the last decade that it must be a “proactive” land manager to quickly react to changing market dynamics. Moreover, the OSLI stated that the goal of AWISH is to “fully automate” its data tracking and reporting needs from its current fragmented structure. This all points to its core mission to obtain the greatest short-term benefits from state land resources while balancing this with long-term preservation and growth in value of the same resources.

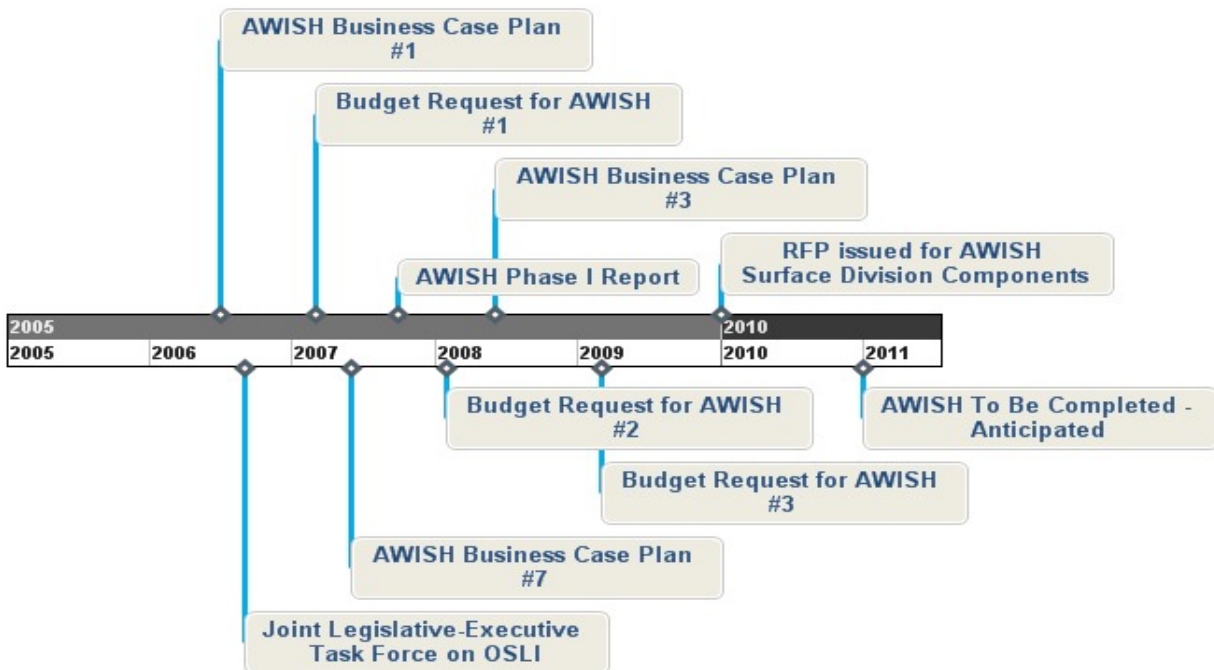
This theme of pro-active management has been expressed in several different ways. For example, references include remarks on how to further automate and streamline business processes and data systems, to improve staff efficiency, reliability, and reaction, and to help make key decisions. Below is a list of key elements to this overall integrated data management movement within the OSLI:

- It has slowly moved to manage data by integrating geographic information system (GIS) technology for tracking

- its base land inventory;
- The OSLI wants to have a more direct monitoring and inspection posture with its customers;
- It established the Information Technology Division, with dedicated staff and funding in FY 2006; and
- The Joint Legislative-Executive Task Force on the Office of State Lands and Investments Trust Program Funding recommended immediate implementation of a three-year funded design and build integrated automated data management program – currently being implemented through the AWISH project.

Figure 5.1 illustrates a timeline of how the OSLI has gradually, incrementally implemented the AWISH project since 2005.

**Figure 5.1**  
**Timeline of the OSLI’s AWISH Data System Development**  
**2005 to Present**



Source: Legislative Service Office from information provided by the OSLI.

*Incremental steps to improve data systems have moved slowly*

At the beginning of the audit, OSLI staff stated plainly that it is not confident in the ultimate accuracy of its various data systems as developed prior to the AWISH project. Though the intention of AWISH is to streamline its processes and data entry, until it is complete the OSLI remains constrained by its incrementally developed and fragmented data systems. For example, it stated that for a particular inquiry, it ran a query three times from one database and received three different values in the final results.

One of the over-arching causes for these inconsistent results is that the OSLI had uncoordinated data system development and management. Prior to forming the independent Information Technology Division in FY 2006, each of the OSLI divisions and functions relied upon self-initiated spreadsheet and database development.

Staff already dedicated to other OSLI functions used their own initiative and technical know-how to address immediate data needs that were not otherwise included in other data systems or methods of data tracking someplace else in the agency. This is highlighted by the GIS development noted above.

The following table shows OSLI biennial budget requests, appropriations, and expenditures for information-technology related issues within the Operations budget unit of the OSLI. These budget units include the surface, subsurface, and information technology divisions, which are vital to AWISH implementation.

**Table 5.2**  
**OSLI Operations Division (Unit 0101; 0102; 0107; and 0109)**  
**Information Technology-Related (0410 Series Object Code)**  
**Budget Expenditure Authorities and Actual Expenditures**  
**BFY2007; 2009; and 2011**

<b>Budget Fiscal Year (BFY)</b>	<b>Expenditure Authority</b>	<b>Expenditures*</b>
2007	\$1,625,408	\$1,648,910.87
2007 AWISH	\$560,000	
2009	\$4,559,217	\$1,778,511.15

Budget Fiscal Year (BFY)	Expenditure Authority	Expenditures*
2009 AWISH	\$4,024,969	
**2011	\$628,297	N/A
<b>***Total</b>	<b>\$6,812,922</b>	<b>\$3,427,422.02</b>
<b>Total AWISH</b>	<b>\$4,584,969</b>	

Source: Legislative Service Office summary from budget documents and WOLFS information.

\* The OSLI does not track AWISH project expenditures within WOLFS. However, due to the amount of AWISH appropriations, most of the expenditures for BFY 2007 and 2009 would be for the AWISH project. BFY 2009 expenditures are reflected as of April 30, 2010.

\*\* Appropriation during the 2010 Budget Session.

\*\*\* According to the OSLI, total includes \$1,000,000 to A&I for enterprise components (e.g. Active Directory, Sharepoint, and Exchange).

Comparing the timeline and budget/expense information, it is clear that OSLI's earlier systems were built and maintained on a relatively small budget. This may correspond to the limited information gathering and reporting potential inherent in those systems. AWISH, on the other hand, has required progressively more resources and time to integrate past data systems and is slated to be complete at the end of CY 2010.

Still, there are portions of the AWISH system that are waiting to be contracted out to build, primarily components related to surface land management. Under these circumstances, it stated the ultimate completion of AWISH could be extended a year or more.

*OSLI staff are at their limits to provide adequate information and service*

During the audit, an official stated that staff is at its limits to provide effective and efficient information retrieval to meet all internal and external demands placed on it with current staff. Included, was the OSLI's responses to our information requests for this audit. For example, officials stated several times that staff had to work many hours of overtime, staying until midnight or later to finish gathering some information.

Under the OSLI's tradition of relying on paper records, even in light of the various, separate data systems it has developed, it is not able to effectively report or analyze data. The following Table 5.3 shows examples of requests we made to the OSLI, for which we were unable to obtain data.

**Table 5.3**  
**\*List of Data Requests for Audit Process**

<b>Examples of Data Requested but not Received</b>
<ul style="list-style-type: none"> <li>• Break-out of coal bed methane producing leases from other oil and natural gas producing leases;</li> <li>• Break-out of production/leasing incentives applied to individual leases (i.e. – application of royalty rate reduction, leases forced to produce due to adjacent land production, lease extensions, surface and subsurface survey activities, etc.);</li> <li>• Breakout of “operational” leases into sub-groupings to define such things as exploration, producing, producing via unit agreements, etc.;</li> <li>• Break-out of producing state parcels for coal or other leased minerals;</li> <li>• Linking of company production reports with royalty reports;</li> <li>• Recording geophysical surveys and consistently or uniformly typing surface impact payments for surveys, special use leases, temporary use permits back to grazing leases;</li> <li>• Coordinated or consistent logging of complaints taken by the OSLI;</li> <li>• Consistent, reportable tracking of mineral leases where the state has obtained and held confidential information; and</li> <li>• GIS map data on producing coal or other mined minerals leases.</li> </ul>

Source: Legislative Service Office.

\* According to the OSLI, because AWISH has the appropriate design capability, it can be modified in the future to track the above and other data.

Furthermore, for many of the reports and data we received and analyzed, data errors and inconsistencies spurred our need to supplement with case file sampling (noted in the scope limitation at the beginning of this report). This occurred primarily as a result of numerous years of various individuals inputting data into various databases, but with no consistent internal controls to ensure consistent and accurate data.

For example, in the temporary use permit data, there were multiple ways the OSLI tracked permit terms – “5 years,” “5 yrs,” “5 yr,” etc. Another example is with the unit agreements where there were royalties assigned to agreements that had no corresponding identification number listed with the data. We did eliminate some duplication and confusion through data cleaning and cross-checking. As a result, we confirmed that the data that will be transferred and used through the AWISH system will have to go through data quality control checks.

**Recommendation:** The OSLI should continue to implement its AWISH data system project. It should re-evaluate and modify as necessary the system's capabilities to meet the basic information and analytical requests of the type made by LSO during this study to evaluate the effectiveness of its various programs.

We support the OSLI for staying committed to building and continually tracking the AWISH project toward completion. However, concern remains that the system will not be the panacea of answers to the OSLI's current struggle to provide outcome data for many of the areas detailed in this report. For example, under its current paper-based system, OSLI does not analyze the use of or outcomes of its mineral development incentive programs. Therefore, merely automating the current paper processes will not include gathering all the necessary information to evaluate these incentives.

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# CHAPTER 6

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## Western mineral states and BLM

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*Background on State land trust management* In this chapter, the audit team provides contextual information to the report's findings about the Office of State Lands and Investments. This information comes from extensive interviews with other states and the United States Bureau of Land Management (BLM).

When comparing other states' agency activity with respect to oil and gas and coal leases, it is important to keep in mind that the decisions to uphold certain policies are based on a certain trust management tradition that has developed in each particular state over time. Taking the differences in State land trust management into consideration, current issues such as increased emphasis on recreational use of State lands, are common to all states researched. Therefore, the audit benefits from understanding the development of State lands trust management practices and a comparison of best practices.

The precise contents of trust responsibilities for State lands depends on the specific enabling act, constitutional, and statutory requirements that pertain to each state. The State trust doctrine is continuing to evolve in common law due to court challenges of trust management decisions through litigation by lessees, trust beneficiaries, and other stakeholders such as conservation groups.

The following common themes apply to most western states in the U. S.: 1) the State holds State lands in trust; 2) as a trustee, the State has a fiduciary duty to manage the lands for the benefit of the beneficiaries of the trust grant; 3) this fiduciary duty curtails the discretion of the State's management decisions; and 4) it further requires the lands to be managed by keeping the best interest of the trust in mind. State trusts nevertheless differ in certain areas from common law trusts.

Only two western states, California and Wyoming, claim that

neither its Enabling Acts nor its Constitutions obliges trust responsibilities on the State.<sup>1</sup> Wyoming, however, holds its lands in trust in compliance with State legislation.<sup>2</sup> This awards the State Legislature with ample authority to establish the rules for the disposition of trust lands in Wyoming.

*Methodology* Surveying Wyoming's contiguous states is beneficial for several reasons. These states are generally more comparable to Wyoming than states on the east coast. The following factors were taken into consideration when choosing a sample state:

- High mineral producers;
- Ecologically similar;
- Percentage of State lands is comparable;
- Western (geography);
- Favorable business environment; and
- Population density.

Colorado, Idaho, Montana, Utah and Washington share a comparable percentage of State trust lands. New Mexico and Texas have higher percentages of State lands. Since these two states are home to the biggest mineral producers in the country, it is worthwhile comparing them to Wyoming despite of the fact that they are not contiguous states.

The following Table 6.1 provides additional information.

**Table 6.1**  
**Comparison of Other States' Surface Acreage**

State	State Trust Land Surface Acres	Surface in square miles	Subsurface Acres in millions	Total Area	Percentage of State land of total surface land area
CA	470,000	734.375	Retains mineral rights to 0.79	163,696 sq mi	0.4%
CO	3,000,000	4,687.50	3	104,185 sq mi	4.5%
ID	2,500,000	3,906.25	3	83,642 sq mi	4.7%

<sup>1</sup> See 41 Op. Cal. Atty Gen. 202 (1963).

<sup>2</sup> Riedel v. Anderson, 70 P. 3d 223 (Wyo. 2003).

State	State Trust Land Surface Acres	Surface in square miles	Subsurface Acres in millions	Total Area	Percentage of State land of total surface land area
MT	5,000,000	7,812.50	6.20	147,165 sq mi	5.3%
NM	9,000,000	14,062.50	13	121,665 sq mi	11.5%
NV	140,000	218.75	See surface	110,567 sq mi	0.2%
OR	790,000	1,234.375	2.10	98,466 sq mi	1.3%
TX	20,300,000	31,718.75	See surface acres	268,820 sq mi	11.8%
UT	3,500,000	5,468.75	4.50	84,889 sq mi	6.4%
WA	2,900,000	4,531.25	n/a	71,342 sq mi	6.4%
WY	3,000,000	4,687.50	4.20	97,818 sq mi	4.8%

Source: Legislative Service Office from information provided by the Lincoln Institute of Land Policy and websites of other states' land offices.

In the other states' narratives, the following broad themes will be listed:

- Primary term rates for oil & gas and coal leases;
- Possibility of lease extensions;
- Royalty rates for the different lease types;
- Usage of royalty rate reductions as an incentive;
- Possibility of pooling, compelling of production;
- Issuance of special use leased, temporary use permits and surface and subsurface permits;
- Monitoring of federal or other states' leasing activities,
- Analysis of suspension data;
- Use of inspectors to identify damage to State lands;
- Occurrence of surface impact payments by lessees;
- Existence of automated system for managing State lands;
- Leasing of lands for underground coal gasification (UCG);  
and
- Use of competitive bidding practices for State leases.

The next sections provide short overviews of agency activity with respect to oil & gas and coal leasing in other states. The table following the narrative illustrates all information received from other states (see Appendix C for the question template we sent to each state for responses).

## Other States

**Colorado** The Board of Land Commissioners approves leases in Colorado. The primary term of an oil and gas lease is five (5) years, with the possibility of one year extensions. Primary coal leases last for ten years and can be extended for ten years based on the discretion of the Board comparable to oil and gas lease extensions. The royalty rate for oil and gas leases is 12.5% and for coal leases 8% underground and 10% on the surface.

*Agency may compel production* Royalty rate reductions of oil and gas or coal leases are not used as an incentive. The State only compels production when State lands are suspected to be drained. Pooling is allowed, however, the State does not maintain records of the effectiveness of such agreements.

The State entity approves special use leases for wind, solar and geo-thermal energy, and might approve CO<sub>2</sub> sequestering in the future. The State entity gives out temporary use permits for uses such as access across lands or well pads.

*Agency issues exploration permits, and may request survey data* When asked if the State approves surface and subsurface surveys outside of normal leases or permits, the agency pointed out that they issue exploration permits (see Appendix D for sample permit documents from Colorado and Texas). In addition, if a surveyor plans on conducting seismic shootings on unleased land, it must post a \$5,000.00 bond.

Colorado's exploration permit specifically provides for the Board to have the right to cancel the privileges granted if deemed necessary for any reason. Moreover, the permittee is responsible for all damages to the lands and private property. Damages have to be mitigated within 60 days after completion of the exploration activity. Damage claims have to be settled before the bond will be released. All holes have to be safely and completely plugged. In addition, the importance of fresh water aquifers is emphasized. The Board can request data from each hole drilled. It comes in the form of raw data, and requires the interpretation through a contractor. The data has to be kept confidential in compliance with applicable law.

The agency employs three royalty auditors, and has 1.5 positions dedicated to rental review. Lastly, the agency tracks CBM production activity.

**Idaho** The State Board of Land Commissioners and the Idaho Department of Lands have decision-making power in Idaho. The primary term for oil and gas as well as coal leases is ten years. Extensions of ten years are possible for both types of leases. The royalty rate is 12.5% for oil and gas leases, and less than 10% for coal leases. Royalty rate reductions are not used as an incentive for either lease type.

Like Colorado, the State entity allows pooling, which it tracks for effectiveness. The State is further considering leasing of State lands for underground coal gasification.

*Agency utilizes temporary use permits for surface and subsurface surveys* When asked about the approval of special use leases and temporary use leases, agency personnel pointed out that proposed uses not related to production on State lands will be carefully reviewed to determine if they are appropriate uses of State lands. Another consideration would be how the proposed use may impact existing and future uses, and what compensation the State would require.

With respect to approved surface and subsurface surveys, the agency stated that temporary use permits as described above would be used for these activities.

The State entity does not monitor other state or federal mineral leasing activity. It does not analyze suspension data due to a lack of recorded production. Inspectors are used to identify damages to State lands. Bonding amounts are fixed by rule, but non-compliance with the lease can result in lease cancellation.

The mineral lessee does not make surface impact payments for damages to leased lands. Moreover, the State entity does not employ an automated system for managing State leased lands. Competitive bidding is required for all oil and gas leases. No auction is required for coal unless the Land Board withdraws it from over the counter leasing.

**Montana** The Montana State Board of Land Commissioners is the State agency with decision making power for mineral leases. The primary term rate for oil and gas leases is five (5) years and for coal leases is 10 years. The royalty rate for oil and gas leases is 16.67% and 12.5% for coal leases. Royalty rate reductions are not used as an incentive by the State agency.

*Agency may compel production* The agency has compelled existing production before based on other states or federal drilling activity. The State gives out CBM leases, but has no history or current interest in underground coal gasification. For all lease types, the State uses competitive leasing.

*Temporary use permits are used for seismic explorations; agency requires Land Use License for surface and subsurface surveys* The State agency approves special use leases such as Land Use Licenses for related activities on tracts without an active lease. Temporary use leases are given out, for example, in the case of one-year seismic exploration permits for oil and gas exploration or land use licenses for coal core sampling. Moreover, the agency approves surface and subsurface surveys and requires an agreement for such in the form of a Land Use License. The surveyor must pay filing fees and rentals, and the agency may access the data from the surveying activity.

In order to determine if and how much revenue is lost, the State agency reviews the shut-in status of a well after the ten-year primary term, and requires a shut-in royalty payment if approved by the department. Inspectors are used to identify damages to State lands.

A portion of the surface impact payments goes to the State, which is calculated by the State agency. The surface and subsurface lessee does not calculate the surface impact payment, only the actual damages to the surface lessee. The State entity determines the amount of surface impact payments and ascertains the split between the surface lessee and the State. The agency collects data about the surface impact payments, which are transferred directly to the trust beneficiaries.

*Agency oversees surface impact payments* CBM production is tracked, and the State entity uses GIS to integrate various information fields. Moreover, it tracks all lease types in an automated system.

***New Mexico*** The elected Land Commissioner approves mineral leases in New Mexico. The primary term for oil and gas leases is five (5) years in proven areas, and 10 years in frontier areas. Coal leases have a primary term of five (5) years. Oil and gas leases cannot be extended. However, if certain conditions are met, a coal lease can be extended for a secondary term of five (5) years, and an allowance is granted for payment of advance royalties for those years in lieu of production.

***Oil and gas royalty rates vary*** The royalty rate for oil and gas production depends on the specific lease. Available lease range from 12% to 20%. The State of New Mexico uses royalty rate reductions as an incentive. However, the frontier area's royalty rate is fixed at 12.5%.

Similar to Colorado the royalty rate paid for coal lease depends on the location of the coal. The royalty rate for underground mines is initially set at 8%, and for surface mines at 12.5%. Under specific circumstances, such as the showing of a lower rate in the same logical mining unit or the coal will be bypassed, the royalty rate for coal production can be reduced at the discretion of the commissioner.

***State agency may compel production*** The State entity has the possibility of compelling production of existing oil and gas lessees by having the lessee pay a compensatory royalty, which is part of the lease. However, this has not been enforced in the last six (6) years. The State does allow pooling.

***Geo-physical permits require a temporary permit*** Geo-physical permits, community caliche pit mining or surface damage cleanup are activities that require a temporary permit. The State entity approves surface and subsurface surveys through oil and gas geo-physical permits, not for coal mining. The State entity further allows testing for sand and gravel. Suspension data is used to determine how much revenue has been lost due to suspension.

District Resource Managers conduct some inspections. The majority of surface inspection responsibility is with the Oil Commission.

*Rule change might be pending concerning surface impact payments only benefiting the grazing lessee* Leases demand surface damage payments if applicable. Historically, these have been paid to the grazing lessee. This particular issue is subject to current review and possible rule change. Surface impact payments are made by lessees for damages to leased lands. These payments have historically been managed by the agricultural lessee and the oil and gas operator.

New Mexico gives out leases for underground gasification using the ONGAARD system. With respect to the level of competitiveness of leases, there is a monthly sale for oil and gas leases. Coal leases are occasionally given out during general mining sales. Certain minerals such as sand, gravel, and potash are sold over the counter but the commissioners keep discretionary authority to sell by competitive bid.

**Texas** In Texas, the Commissioner of the General Land Office, the School Land Board (SLB) and the Texas General Land Office (GLO, Office) are the State entities, which grant leases. The range of a primary lease term for oil and gas in Texas varies from three (3) to five (5) years.

Leases covering rivers and negotiated leases (State-owned severed minerals) are typically for three (3) years. Sealed bid off-shore lands and upland unsold properties are typically leased for a primary term of five (5) years. However, the leasing time may be reduced depending upon location and geology. Extensions are granted for oil and gas leases for 30 days.

The primary term for a coal lease typically lasts for 20 years. However, there are currently no valid leases for coal, only lignite. Coal leases can be extended, and the duration may vary. It is, however, more likely for the Office to request a new lease.

*Oil and gas royalty rates vary* The royalty rate paid for oil and gas leases is usually 25% for new leases. Some leases are as low as 20% if location and geology warrant a reduced rate. Some old “held by production” leases are still in effect at a 12.5% royalty. Royalty rate reductions are used in the case of sealed bid off-shore leases and upland unsold properties. The reduction is based on the date of first sales of production, allowing for a reduction to 20% from 22.5% for activity early in the primary term.

Royalty rates for coal production are between 6.25% and 12.5% depending upon location and geology. In the case of coal leases, royalty reductions are not used as an incentive. Leases for underground coal gasification can be given out, however, that has not happened yet.

*Agency may compel production* Like most surveyed states, the State entities may compel production of an existing oil and gas lease. Lessees of State-owned oil and gas are required to protect the State from drainage from a draining well by drilling a well, pooling the tract, or paying compensatory royalties.

With regards to pooling, the Office grants no pooling authority in its leases. Pooling or unitization requires a separate application and has to be approved by the GLO and SLB. Royalties are reported on a lease basis for each lease in a unit.

*Special use leases* The Office issues special use leases for commercial and industrial purposes. For example, it issues ground leases for the construction of retail, commercial or industrial facilities. The special use lease would be limited to a certain period of time. Temporary use permits on the other hand are issued for the construction of water wells, saltwater disposal wells, roadways, pipelines, coastal cabins, docks, piers etc., and are issued by the Office.

Surface and subsurface surveys can be granted, however, this has not happened in the recent past. Exploration activities are typically done by geo-physical permit from the Office. For 3-D projects, the geo-physical permit fees are set on a per acre basis. The terms and fees for a geo-physical permit vary by land type, and the Office does not issue seismic options.

The State entity monitors federal and other states' activities. Whenever a lease is applied for or a tract is nominated for a lease sale, the subject tract is reviewed for market comparable statistics and recent adjacent activity.

Suspensions are granted for *force majeure* events and are limited to the amount of time that the triggering event lasts. For large scale events, like a hurricane, estimates have been made of lost

revenue. In many cases, the revenue is not lost but simply deferred to a future date, costing only the time value of money.

The State uses energy field inspectors to identify lease compliance issues, such as ensuring that production is properly measured. In their normal course of work, the inspectors would also identify surface impacts. However, the State's mineral interests are primarily under submerged lands or are severed from the surface estate onshore. Impacts to submerged lands are addressed before commencement of activities.

*Surface impact payments*

The lessee pays surface impact payments for damaged lands. Those payments and the geophysical permitting fees are placed in a special account that may be utilized for improvements to State-owned real property interests. In west Texas, the GLO typically uses the University Lands fee schedule maintained by the Texas Permanent University Fund West Texas Office. For east Texas, it may be necessary to enlist a forestry officer to assess timber values.

With respect to tracking delinquent accounts, those are maintained by the GLO's financial accounting system and are maintained and monitored in a database. Billings are generated and sent out monthly to the parties responsible for payment. For some accounts, the entity may also be contacted directly by phone or other separate contact.

The State utilizes an automated system to manage its leased lands. At the moment, however, the GLO is performing a complete overhaul of its financial, lease management and royalty reporting systems.

Competitive bidding is used for certain types of State lands. For offshore (submerged) tracks, upland unsold properties and some rivers a sealed bid sale is used. For State-owned severed minerals subject to the Texas Relinquishment Act (about 6.3 million acres) the leases are negotiated. The State also owns non-participating royalty interests that are subject to lease by the mineral owner.

**Utah** The State agency approves oil and gas leases in Utah. The primary lease term of such lease is five (5) years. There are, however, exceptions to that based on special negotiations called “Other Business Arrangements.” The State agency approves extensions to oil and gas leases on a case-by-case basis depending upon the specific circumstances. The royalty rate for an oil and gas lease is 16.67%. Royalty rate reductions are not used as an incentive.

The commission comprised of appointed officials and the State agency issues coal leases. The primary term for coal leases is 10 years and may be extended. The royalty rate for coal leases is 8%. Royalty rate reductions are not used as an incentive.

The State entity has compelled production of an existing oil and gas lease based on other state or federal activity. Moreover, pooling is allowed.

**Special use leases** Special use leases are granted for drilling from State land to federal minerals, and water disposal wells and ponds. Temporary use permits are given for road access. The maximum duration for such permit is one year. In addition, the agency issues surface and subsurface survey permits.

The State entity monitors federal and State lease activity to determine if land should be leased for production both manually and through GIS. Suspension is not analyzed to determine lost revenue etc. The State entity uses inspectors to investigate damage to leased lands. However, surface impact payments by the lessee for damages to leased lands are not necessary.

An automated system is utilized to manage leased lands. This is done by the Utah Division of Oil, Gas and Mining. Moreover, the agency is working on the development of a GIS system that will enter information into its business system. In a few years, the Utah Trust Lands Administration will be paperless.

The State entity gives out leases for coal bed methane production. This is done under an oil and gas lease. If it is gob gas, it may be dealt with in the coal lease. The bidding process is generally competitive. It is used for oil and gas, CBM,

potash, some tar sand, oil shale, fossils and gem stone. Coal is generally a negotiated lease.

**Washington** The Commissioner of Public Lands is the State entity issuing mineral leases. Oil and gas leases are given out for a primary term ranging from five (5) to ten years. Generally, oil and gas leases cannot be extended, except for production or re-drilling. The royalty rate is at 12.5%. Reductions are not used as an incentive.

Competitive bidding is used for State mineral leases. Coal leases have a primary term rate of 20 years. The royalty rate paid for coal leases is 8% but not less than \$0.10 cents per ton for sub bituminous and not less than \$0.20 cents per ton for high grade bituminous coal. Royalty rate reductions are not used as an incentive. The agency approves underground gasification leases.

The State entity does not compel production of existing oil and gas leases based on other state or federal drilling activity. The agency is not responsible for pooling decisions. After discovery, the State Oil and Gas Supervisor decides about pooling decisions. Production allocations are made based on ownership acres in the pool.

Special use leases are issued, but not for oil and gas leases. The same holds true for temporary use permits. The State approves surface and subsurface surveys. The agency requires an agreement annotating the activity. It is further possible for the agency to request data from those activities. The agency monitors the activity of other states, but not federal mineral leasing activities.

**Surface Impact** The State entity uses inspectors to identify damage to leased lands. Surface impact payments by the lessee are used for reclamation purposes. The State of Washington has an Oil and Gas Supervisor who oversees the reclamation efforts for the entire State whether dealing with private or State leases. There is a permitting process, which includes a fee calculated and regulated through the Oil and Gas Supervisor. Each lessee has to go through this process in order to explore on lands.

The Oil and Gas Supervisor also sees that all reclamation efforts are completed when any surface impacts have taken place. Holes must be plugged, trees must be replaced etc. With respect to State leases, which go through a separate process, there is a Plan of Operations in place which the lessee must draw up and discuss with the State geologist. For its management, the State entity uses an automated system. The DNR (Department of Natural Resources) has a computer system that generates a report of past due accounts which is monitored on a daily basis.

The following Table 6.2 provides a summary of information on detailed information provided from other states compared to Wyoming.

**Table 6.2**  
**Other States' Information**

<b>Issue</b>	<b>CO</b>	<b>ID</b>	<b>MT</b>	<b>NM</b>	<b>TX</b>	<b>UT</b>	<b>WA</b>	<b>WY</b>
Primary term oil and gas lease	5 years	10 years	10 years	5-10 years	3-10 years	5 years	5-10 years	5 years
Extensions	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Royalty rate (o&g)	12.5%	12.5%	16.67%	1/8, 1/6, 3/16, 1/5	1/8 to 25%	16 2/3%	12.5%	16 2/3%
Royalty rate (o&g) reductions as incentive?	No	No	No	Yes	Possible	No	No	Yes
Primary term coal leases	10 years	10 years	10 years	5 years	20 years	10 years	20 years	10 years
Extensions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Royalty rate (coal)	8%-10%	Less than 10%	12.5%	8%-12.5%	1/16 to 1/8	8%	8%	8%-12 1/2%
Royalty rate (coal) reductions as incentive?	No	No	No	Yes	No	No	No	No
Possible to compel production due to other State or federal production?	Yes	No	Yes	Yes	Yes	Yes	No	Yes
Does the State entity allow pooling?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

Issue	CO	ID	MT	NM	TX	UT	WA	WY
Approve special use leases?	Yes	Yes	Yes	?	Yes	Yes	Yes (not for oil and gas)	Yes
Approve temporary use leases?	Yes	Yes	Yes	Yes	Yes	Yes	Yes (not for oil and gas)	Yes (permits)
Approve surface and subsurface permits?	Yes	No (use temp. permits)	Yes	Yes	Yes	Yes	Yes	Yes
Access surveying data?	possible	?	possible	?	?	?	Yes	No
Monitoring of other State or federal leases?	No	No	No	Yes	Yes	Yes	Yes	Yes (Manual)
Analysis of suspension data?	No	No	Yes	No	Yes	No	No	Yes
Use of inspectors to identify damages?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Surface impact payments by lessee for damages to leased lands?	No	No	Yes	Yes	Yes	No	Yes	Yes
*Automated system for managing State lands?	Yes	No	Yes	?	Yes	Yes	Yes	Yes (in transition)
Separate leases for CBM?	Yes	?	Yes	?	No, but possible	Yes	Yes	No
Separate leases for UCG?	No	Yes	No	Yes	No, but possible		Yes	No
Use of competitive bidding?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: Legislative Service Office from information provided from other states.

\* States, including Wyoming, are in various stages of automating systems.



### **Bureau of Land Management (BLM)**

Another important comparator for the OS LI is the federal BLM. Currently, the BLM manages 30 million surface acres and over 41 million mineral acres in Wyoming. This makes the BLM a primary stakeholder with respect to mineral development within the State. Additionally, in administering these surface and

mineral acres much of this land surrounds OSLI trust land parcels and therefore impacts how the OSLI may develop the trust mineral estate for continuing and expanding income. Overall, this interconnected relationship between the BLM and the State impacts how much similarity or consistency is reasonable between the two in addressing mineral development in the State. In line with the summary of select other states, the following notes significant development issues/practices by the BLM:

- Lease Terms and Conditions* The BLM sets longer primary lease terms for the most common mineral leases than the OSLI: 10 years for oil and gas leases and 20 years for coal leases. However, all initial leasing is done through competitive bidding.
- Incentives* Incentives for production generally follow similar royalty rate reductions to that of the OSLI, except the primary royalty rate for both oil/gas as well as surface mined coal is 12.5% (OSLI primary oil and gas royalty is 16 2/3%). The BLM also allows for lease extensions if production has commenced within the lease primary term. Finally, the BLM classifies increased bonding requirements on leases as incentive for lessees to keep wells in production instead of paying to have wells idle or shut-in.
- Other permitting/leasing* The BLM offers alternative ways to lease or use the lands. It offers right-of-way (ROW) agreements for wind energy development. The BLM does not classify these as leases since the agency cannot own the wind that is used to generate the electricity. The BLM does have a lease structure for geothermal development and there are stepped royalties applied depending on the age of the project. Finally, the agency uses a short term exploration license for coal exploration or a geophysical permit for oil and gas exploration before full leases are let on unleased federal lands.
- Inspection, oversight, and impact payments* The BLM relies on various State agencies to cover some of the necessary oversight, including the Wyoming DEQ for which land quality is monitored for coal production and the Wyoming Oil and Gas Commission to track adjacent oil and gas production around the State. BLM coal inspectors check for maximum

economic recovery of the coal while oil and gas inspectors are generally not involved in lease/well bond setting.

As far as surface impact payments and practices, the BLM requires that bonds be posted on leases as well as for surface impacts to surface owners in split estate situations where the mineral lessee and surface owner cannot arrive at an agreement. Also, under the BLM multiple use strategy, since multiple surface uses are allowed, none of the surface impact monies/bonds are receipted to the surface or grazing lessees. The BLM may determine that some impacts may unreasonably interfere with orderly mineral development and may curtail some uses. Table 6.3 below shows a more complete summary of the information we received from the BLM:

**Table 6.3**  
**BLM Requested Information**

<b>Topic</b>	<b>BLM response, practice</b>
<b>Primary term</b>	
Oil and gas	10 years – competitive or non-competitive leases
Coal	20 years
Wind	30 year initial ROW with right of renewal
Geothermal	10 years
<b>Extensions</b>	
Oil and gas	Extended with evidence of drilling or production (including unit or communitization agreements)
Coal	Indeterminate extension to complete resource removal
Wind	In compliance with 43 CFR 2807.22 – procedure for extension approval
Geothermal	Production extension up to 35 years; drilling extension up to 5 years
Competitive Bidding	All initial leasing for oil and gas and coal must be through competitive bidding; wind energy is leased on project by project basis
<b>Incentives to production</b>	
Oil and gas	Royalty rate reduction due to economic factors; stripper well; heavy oil; increase well bonding; reinstatement increase in royalty rate
Coal	Royalty rate reduction to encourage greatest resource recovery
Wind	None

<b>Topic</b>	<b>BLM response, practice</b>
Geothermal	Lower initial royalty during project life-time
<b>Royalties and taxes</b>	<b>No federal taxes assessed on oil/gas or coal production</b>
Oil and gas	Pre-1946 = lease terms (vary between 12 ½% to 33 1/3%); current royalty = 12 ½% standard; 16 2/3% for reinstated lease; 18 2/3% for multiple reinstated leases
Coal	12 ½ % surface mined coal; 8% underground mined coal
Wind	\$4,155 per megawatt hour rental fee
Geothermal	Years 1-10 = 1.76% of gross proceeds; 10+ years = 3.5% of gross proceeds; minimum \$2 per acre.
<b>Non-lease activity</b>	Require exploration license for off-lease coal exploration; geophysical permit for off-lease oil and gas exploration
<b>Forced production and unit agreements</b>	No forced production for coal, coal is mined under mining plans to obtain maximum economic recovery. Unit and communitization agreements are used for oil and gas and BLM can force production, require compensatory royalty payments, or lease relinquishment if it determines reservoir drainage occurs adjacent to BLM lands
<b>Suspensions</b>	BLM uses suspensions for issues beyond lessees' control; impact on federal revenues is not a consideration in granting suspensions
<b>Surface impact payments</b>	No surface impact payments per se; bonding is required for oil and gas leases, particularly regarding split estate situations where surface owner and mineral lessee cannot agree on impact compensation
<b>Inspections</b>	Coal and oil and gas inspectors inspect more for production and not for damages to leased lands; other State agencies (e.g. WOGCC and DEQ) account for environmental disturbances
<b>Underground coal gasification</b>	No current UCG development on Wyoming BLM lands; would need to be leased under coal lease with royalty language possibly determined on energy potential of coal byproduct (e.g. BTUs)
<b>Automated data system</b>	Utilizes automated system for administering oil and gas leases and unit agreements
<b>Adjacent land monitoring</b>	No standard monitoring; policy does require review of proximity issues and may lead to reviewing other agencies' data (e.g. WOGCC) to determine development and drainage potential

Source: Legislative Service Office from information provided by BLM.



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# CHAPTER 7

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## Conclusion

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The Management Audit Committee requested an audit of the Office of State Lands and Investments (OSLI) to evaluate whether or not it is optimizing revenues for the State of Wyoming through the use of State trust lands. The Committee also inquired as to how the OSLI can further increase revenues for the State.

It is clear that the Wyoming Board of Land Commissioners (Board) and the OSLI take its responsibilities seriously with respect to acting as fiduciary agents on behalf of State trust land beneficiaries. It is also clear that the OSLI and the Board have, and are continuing to take, actions to ensure that revenue from State trust lands are managed to achieve long-term and sustained yields, while caring for the corpus of the trust.

The OSLI has also worked diligently to maintain the documentation associated with its responsibilities to staff the Board. However, it is capable of optimizing revenues by taking more of a pro-active stance with integrating data systems, setting formalized standards, tracking and analyzing incentives, and diversifying alternative energy options. In its most recent strategic plan, the OSLI promises to take a pro-active approach to optimize and diversify trust asset revenue. In order to take this pro-active position it must stay on top of the industry, both in the office and in the field.

We acknowledge and commend the OSLI and the Board for taking steps with respect to wind development, implementing AWISH for better data and process automation, and beginning to work with industry on UCG technology. AWISH in particular will be a major development and accomplishment when it is complete, especially if it can assist both the surface and subsurface staff in tracking more of the data relevant to the issues presented in this report.

Still, the OS LI is not fully clear on when AWISH will come completely on line in its current form and it will most likely continue to become more expensive and time consuming before its completion. Moreover, it is not clear that AWISH will help the OS LI track the effectiveness of various incentives discussed in this report, or allow 9-section grid analysis to identify State trust lands that could be leased, or existing leases where production should be encouraged, based on contiguous operations.

During this audit, we looked into procedures and incentives of other states. For example, Colorado requires informal surface and sub-surface surveys, such as a geophysical permit, where the surveyor must apply for an exploration permit. The permit allows the State to request survey data if necessary. Having a formalized process in place ensures fair compensation, information, and accountability for trust beneficiaries. A formalized agreement would protect damaged land while collecting incoming money. Furthermore, it would be compatible with the State of Wyoming.

Finally, although other energy producing states may not be exactly similar to Wyoming, other states' practices with respect to exploring the potential of other revenue sources such as geothermal activity could be beneficial to Wyoming.

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# **AGENCY RESPONSE**

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**Office of State Lands and Investments**

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**Office of State Lands and Investments**  
*Funding Wyoming Public Education*

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Dave Freudenthal  
Governor

Ed Grant  
Director

May 11, 2010

The Honorable David Miller, Chairman  
Management Audit Committee  
c/o Mr. Gerald Hoppman, Program Evaluation Manager  
Wyoming Legislative Service Office  
213 Capitol Building  
Cheyenne, Wyoming 82002

Re: Wyoming Legislative Service Office Program Evaluation Report  
Management Audit Committee  
May 26, 2010

Dear Chairman Miller:

We appreciate the opportunity to respond to the captioned "revised" Program Evaluation Report (Report) prepared by the Legislative Service Office Program Evaluation Team (LSO) entitled **"Office of State Lands & Investments: Management of State Trust Lands"**.

Many of the recommendations cited in the Report serve to validate a number of initiatives currently being pursued by OSLI as well as ongoing initiatives previously implemented by OSLI. The Report also extends to validate recommendations advanced by the 2005 Legislative-Executive Task Force (See June 1, 2006 Report and Preliminary Recommendations for the Office of State Lands and Investments Trust Funding (2005 Wyoming Session Laws, Chapter 235, Section 1)). Further explanation as to OSLI's current activities will be addressed under each of LSO's sixteen (16) recommendations. Additionally, we believe it is important to communicate that inherent in some of the recommendations is the potential for fiscal impact. Cost estimates/cost benefit analyses commensurate with the recommendations are undetermined at this time and will be contingent on management decisions pursuant to this Report.

In accordance with W.S. 28-8-107(c), please consider the foregoing OSLI's formal written response to the Report. Our response will focus on the recommendations of the Report and will not take issue with all of the assertions and conclusions on which the recommendations are based and with which we may disagree, only those that are material. Before we address the recommendations of the Report, we believe that it is appropriate to communicate that the Board

and OSLI make every effort to manage the State Land Trust in accordance with the principles adopted by the Legislature in 1997. (See November 15, 1996 Final Report and Recommendations of the Select Committee on State Trust Lands (1997 Wyoming Session Laws Chapter 200, Section 3)). The Select Committee believed that “the perceived mandate to **maximize** revenue to the State Land Trust should be interpreted as an obligation to enhance the value of and to **optimize** economic returns to the State Land Trust in the long term for all beneficiaries, current and future, acting in accordance with trust principles and management goals to be established by the Board.” In addition, over the past four years OSLI has, in conformity with the findings and recommendations outlined in the June 1, 2006 Legislative-Executive Task Force Report, made every effort to implement “**incremental** change through an on-going, performance based, evaluative process.”

## **RECOMMENDATIONS**

### ***Chapter 2, Recommendation #2.1, Page 21:***

***“OSLI should review, plan and confirm that the AWISH data project will provide for detailed data tracking and analysis of its mineral incentives programs to evaluate their effectiveness and to proactively take steps to improve leasing and production potential on state lands.”***

#### ***Agency Response: Agree***

AWISH, once complete, will have developed a basic data foundation for core OSLI systems that will enable analysis and decision support processing from that data. OSLI will continue to identify the appropriate attributes for leases that are authorized, under the incentives available pursuant to Board rule, and will direct its efforts to analyzing, through AWISH when complete, the effectiveness of the various incentives.

LSO also suggested that OSLI may want to “ascertain whether changes in W.S. 36-6-101(c) could generate additional revenue for the state, by disallowing monthly or annual rental payments to be applied to royalty payments.” The State Oil & Gas Lease in this regard conforms to the nearly universal industry standard. The lessee pays annual rent until production begins. When production begins, the lessee pays royalties and is allowed to offset the annual rent against the royalties paid. The purpose and intent is that the lessee is not required to pay both rent and royalties. It also encourages production. This is how oil and gas leases work. To change it in the manner suggested would put state oil and gas leasing at a substantial competitive disadvantage.

### ***Chapter 2, Recommendation #2.2, Page 26:***

***“OSLI should continue to work with the three companies to determine operations and royalty issues with respect to production of syngas. In addition, it should work with the Department of Revenue related to issues concerning severance tax, as well as***

***certification of valuation of syngas. As the primary terms of the 274 leases expire, OSLI should be prepared to rebid the leases in a competitive manner and/or enter into a cooperative mining plan.***

***Agency Response: Agree***

OSLI will not dispute that there is growing interest and potential in UCG. It is an emerging process in the western U.S. which will be monitored by OSLI for opportunity as are all production techniques and sources. It should be noted that these processes have been tested before as indicated in the Report, however, interest was not acute and did not exist insofar as state resources were concerned until OSLI was first approached in late 2007. It should also be noted that the three companies did not concurrently express interest to OSLI about the possibility of UCG operations. The company that had done research in this arena came forward and acquired a number of leases as noted in the Report. That company then tried to find a partner to develop the production potential that it did not have the expertise or funding to facilitate. The State's lessee began its search, without asking for OSLI assistance, for another partner and found the second company which apparently had the ability to promote and secure an entity with the financial resources needed to move a pilot project forward. Thereafter, the leases were assigned from the second company to the third company.

The leases/lands involved are spread spatially over a wide area, generally are not contiguous, and will have to be examined on a parcel-by-parcel basis to establish viable reserves for an attempt at actual production. There is no reason or technical function for "the development of a cooperative mining plan..." unless OSLI is faced with a significant amount of contiguous acreage belonging to separate mineral interests, both wanting to develop and one or both economically impeded by the volume of its existing reserves given the ownership pattern and mining plans of one or both. Undoubtedly, protection of the State's interest in such relationships would be key for OSLI. Should this happen, the companies involved would have some incentive to work together for development and OSLI would attempt to encourage such an outcome as long as same was not viewed as being too invasive into the lessee's business dealings. The hiatus in which these leases rest is indicative of the absence of the market interest in UCG.

Certainly, when the market shows real interest in UCG, OSLI will be alert for opportunities to lease. There is now no such interest. OSLI, as recommended, will be working with its lessee, not three companies, pursuant to establishing value at either a btu coal to gas conversion ratio, valuing the burned coal, or at a market value, less costs, for the end product developed and sold as a direct result. Additionally, OSLI has conferred with the Department of Revenue regarding the valuation of UCG and will continue to do so.

***Chapter 2, Recommendation #2.3, Page 33:***

***"OSLI should track surface impact payments to grazing leases resulting from TUPs and from granting easements. This information can be used by the Board to periodically reassess its policies with respect to calculation and disbursement of surface***

***impact payment revenue. OSLI could amend the “Applications for Temporary Use Permits Report” to include an additional field(s).”***

***Agency Response: Partially Agree***

Relative to LSO’s statement in the Report that “As a result of not tracking surface impact payments related to TUPs and from granting easements, the Board is not receiving adequate information to determine whether the state should in the future receive a percentage of the impact payments”, we are not clear as to how this information would inform the Board on this policy decision. The Board established the payment amounts in these cases and based that decision on how much **the lessee** should receive.

As follow-up to LSO’s statement that “[the Board] cannot satisfy itself that permitted companies and surface lessees are following Board approved schedules”, if the lessee and the permittee are not following the payment schedules, it is the surface lessee that is shortchanged, not the State. In some cases the lessee may waive the surface impact payment (SIP).

As far as the Board “not [being] able to determine the type and amount of impact occurring on state land from activities related to TUPs and from granting easements”, the use of a schedule is appropriate given the relatively few variety of uses for which TUPs and easements are used; that is one reason the Board adopted a payment schedule for TUPs and easements as compared to the diverse array of activities and impacts under Special Use Leases (SULs).

OSLI can track SIPs to grazing lessees resulting from TUPs and from granting easements, but has not done so because, pursuant to Board rule, 100% of the SIP is remitted directly to the grazing lessee. The easement application form requires the permittee to inform OSLI the amount paid to the grazing lessee, when it was paid and the check number of the payment. OSLI retains this information in the appropriate grazing lease file; however, it is not tracked in our database. OSLI does track and report to the Board at each Board meeting the consideration paid for all easements.

Currently, the TUP application does not require this information relative to the SIP to the lessee, but it could be incorporated. We could include this data in our database for tracking purposes. OSLI annually reassesses the SIP schedules for both TUPs and easements by surveying federal, private and state markets to determine that the SIP schedule is still equitable and presents this information to the Board with any recommended changes for consideration.

***Chapter 2, Recommendation #2.4, Page 33:***

***“OSLI should update its “Surface Impact Payment Report” to break out surface impact revenue for leases and surface and subsurface surveys. This would provide additional information to the Board about the types of impact and revenue generated from survey activities.***

***Agency Response: Agree***

OSLI can make this change in its SIP Report. The SIP Report currently provided to the Board covers all the surface impact payments received whether the payment is generated from mineral related activities, as the result of the issuance of a special use lease, or survey activities. The survey activity that most frequently requires an SIP is seismic. SIPs made as the result of seismic activities are reported on the SIP Report and identified as such under the “basis of payment” column of the report.

The change in terminology in the “revised” Report from that presented to us in the Draft Report relative to SIPs wherein the term “special use leases (SUL)” was changed to “leases” or “all leases” renders some of the statements incorrect. The term “leases” implies all leases. Most importantly, on page 28, the text found in Table 2.3, Surface Impact Rules, Post-2001, a correct statement would read “For surface impacts created as a result of mineral lease activities, SULs and surface and subsurface surveys, the lessee is allowed to negotiate payment amounts.” And, on page 29, second paragraph, the first sentence would read “It should be noted that the Board does track its share of surface impact revenue through the use of a separate revenue code (RSRC 4127) in the Wyoming Online Financial System (WOLFS) with respect to mineral lease activities and surface and subsurface surveys.”

**Chapter 2, Recommendation #2.5, Page 34:**

***“The Board should consider requiring that all surface impact payments be made to OS LI. Then OS LI would be responsible for disbursing monies to grazing lessees, after approval by the director. Part of the approval process should include periodic reviews to make sure payments are consistent with Board approved schedules.”***

***Agency Response: Disagree***

OSLI can implement this recommendation. However, it is fair to question the benefit that would be gained vs. the cost of requiring that all surface impact payments be made to OS LI and then disbursed to the grazing lessee. This change, if implemented, will increase the time and cost to process the State’s share of the payments where applicable as well as the time and expense to arrange warrants for the lessee’s share of the payment. The SIP split is dictated by Board rule as is the SIP Payment Schedule. Therefore, if the SIP is made in accordance with Board rule, approval by the Director is irrelevant.

The SIP Statement form required by OS LI when submitting a surface impact payment to OS LI contains pertinent information regarding the total payment made, the lessee share, the State’s share, the basis of the payment, etc. Each SIP Statement and payment is reviewed prior to crediting the money to the proper permanent land fund to ensure payments are consistent with Board rule. Any discrepancies are resolved when the payment is processed. OS LI maintains a spreadsheet of SIPs in those cases that require annual payments as opposed to one-time payments to ensure payments are appropriately and timely remitted. The conversion of this manual process to electronic is a component of AWISH, which when completed, will increase the efficiency of the current process.

**Chapter 2, Recommendation #2.6, Page 34:**

***“The Board should consider creating schedules that would guide the process for negotiating surface impact payments for all lease and surface and subsurface survey activities. It is inconsistent that such schedules exist for payments related to TUPs and from granting easements. Approved Board schedules would provide more consistent guidance to grazing lessees when negotiating with companies, regardless of the land use.*”**

***Agency Response: Disagree***

Our response to this recommendation is based on the assumption that LSO is suggesting that schedules that include a range of SIPs for SULs and surface/subsurface surveys be established. If this is the case, it would be inherently difficult to accomplish because of variables in types of activities and nature of impacts associated with SULs and survey activities, and the variability in the “market value” of such impacts across the State.

**Chapter 3, Recommendation #3.1, Page 46:**

***“OSLI should continue to develop wind energy and offer leasing in Wyoming.”***

***Agency Response: Agree***

OSLI will continue to be proactive in its efforts to develop wind energy. A Request for Proposal (RFP) was published April 29, 2010 requesting proposals for wind energy production on approximately 163,754 acres of State land within 16 different locations in 6 counties. OSLI and the Board are currently promulgating rules and policies specific to leasing of state trust land for wind energy development.

OSLI currently has 23 wind leases, 18 of which were secured by the current Commercial Property Manager, a position that was supported by the Legislature as a result of the June 1, 2006 Legislative-Executive Task Force Report. These 18 leases generated \$261,500 in revenue over the last 12 months. When these projects begin operations, the revenues will increase substantially. For example, two state wind leases that were executed last year are to be operational within the next 18 months. They will generate over \$34 million in revenues to the trust beneficiaries over the life of the projects (30-35 years).

**Chapter 3, Recommendation #3.2, Page 51:**

***“OSLI should further research and consider offering geothermal leasing options for state lands; it should review BLM, other states and its own wind energy program to***

***develop a geothermal energy strategy. In addition, it should formally work with the State Geologist to identify usable thermal activity under state leased lands.”***

***Agency Response: Agree***

It is fair to say that OSLI has not proactively marketed its lands for geothermal development. However, LSO's statements that "OSLI has expressed minimal interest in offering geothermal leases on state lands" and "OSLI has not discussed any real interest in geothermal leasing on state land" are not accurate.

OSLI is very much aware of the BLM's efforts at the Bureau and state levels, but has devoted limited resources to higher priority issues. OSLI has and will continue to investigate geothermal potential and leasing on state lands. However, to date, no State land has been identified with the potential for commercial geothermal development. OSLI has spoken with staff at the State Geological Survey and has not been directed to any commercially viable/known geothermal potential on State lands, except those of original exclusion such as Hot Springs State Park and several hot springs in areas around the state which would not likely be appropriate for development. Naturally occurring commercially viable geothermal resources, outside federal and State park land and a couple of minor potential areas, e.g., near Jackson Hole, have not been located in Wyoming, at least for commercial activities related to power generation. The gradient map shown in the Report admittedly provides areas where there is hot water potential, but generally nothing in the competitive range of what is needed for a commercial operation producing power from geothermal. These areas may have potentially useable abandoned well bores which are being examined as direct source areas where infrastructure placement can be effected to take advantage of the available sourcing for hot water.

OSLI and another party are considering the feasibility of the use of unproductive or abandoned oil and gas wells for use in an application that uses the heat in the earth's crust but is not, strictly speaking, "geothermal energy." We take this phrase to mean the development of naturally occurring thermal features underground or at the surface. Rather, the system under consideration uses the borehole to heat water or another liquid for heat transfer for use in heating systems. A variation of it is used at Salt Creek.

At Salt Creek Field, the borehole heat raises the temperature of butyl alcohol (which boils at a temperature lower than that at which water boils) to create steam which powers a turbine to produce low volumes of electricity to operate the field. These applications fall far short of truly commercially viable geothermal energy development. We will watch it, but don't now see much likelihood of real geothermal energy activity on state lands.

***Chapter 3, Recommendation #3.3, Page 58:***

***“OSLI should review licensing, permitting or leasing options for Chapter 16 surveys and reformulate the process to provide for minimum conditions and consideration to be placed on these activities; for surface disrupting activities like geophysical surveys,***

*the OSLI should look at minimally applying their special use lease or temporary use permit processes and rules on a standard basis.”*

***Agency Response: Agree***

LSO has appropriately noted that Chapter 16 rules should be reviewed for a number of valid reasons. OSLI will pursue a review of the appropriate criteria necessary to employ Chapter 16 to adequately administer the multitude of short-term, non-invasive types of surveys primarily used for data capture and seismic surveys.

Currently, anyone wishing to conduct geophysical (seismic) surveys on state land must notify the grazing lessee and is required to negotiate a SIP with the grazing lessee in accordance with Board rules (Chapter 4 or 5).

***Chapter 4, Recommendation #4.1, Page 69:***

***“OSLI should begin to formalize standards for inspection activities; it should provide greater consistency and establish criteria for prioritizing duties. OSLI should also discuss with the Board whether surface impact money could be used to fund additional inspector positions.”***

***Agency Response: Partially Agree***

OSLI could formalize its policies and objectives as recommended. The OSLI Mineral Leasing and Royalty Compliance Division developed and currently maintains a 12 page “Inspector Field Inspection Guideline,” issued April 17, 2006, after bringing together the various aspects of what was formerly undertaken by the Assistant Director of that division. These guidelines are not static and will continue to be changed/updated as necessary to ensure state trust assets are protected.

On pages 62 and 63 of the Report the discussion about OSLI’s “inspectors” is confusing and could imply that OSLI’s inspection staff has increased over the past two biennium. First, for clarification purposes, it is important to understand that inspections performed by the two (2) mineral division field inspectors are specific to mineral leasing and they perform the duties cited in the Report. The six (6) “surface field inspectors” referred to in the Report are not “inspectors”. In fact, there are three (3) range management specialists and three (3) appraisers. The range specialists’ primary responsibilities revolve around grazing/agriculture lease compliance and renewals, range improvement plans, site and compliance review for easements, temporary use permits and special use leases. The primary responsibilities of the three (3) appraisers include appraisals required for farm loan applications, land transactions (sales, exchanges, acquisitions) and special use lease feasibility and rental determinations.

All revenue generated from SIPs is deposited into the appropriate beneficiary permanent land fund. The Board does not have the authority to expend SIP revenue deposited into the permanent land fund. However, the permanent land fund’s income and interest may be expended

on behalf of current beneficiaries upon legislative appropriation. A January 31, 2001 Attorney General's Opinion regarding the permissible use of surface damage payments (SIP) states, in part, that:

“The Wyoming Constitution and Wyoming Statutes require that school trust land revenues which derive from the disposing of any portion of the trust corpus be deposited into the permanent land fund; those school land trust revenues which derive from a source that is not itself depleted are to be deposited into the permanent land income fund. Basically, the character of the transaction determines whether the revenue would be considered principal to be held in the permanent land fund, or income to be placed in the permanent land income fund. The Board does not have the authority to spend the principal of the permanent land fund.”

***Chapter 4, Recommendation #4.2, Page 74:***

***“OSLI should continue working with the IT division on automating the audit processes through AWISH; staff should identify requirements for including automatic flags and calculations typically necessary for audits to more quickly work through desk and major audits with reporting companies.”***

***Agency Response: Agree***

We agree that OSLI should, and will continue to work with IT and coordinate reporting types, and program routine audit applications pursuant to providing a baseline for audits, identifiers of problem issues, etc. Flags will relate to volume and value tolerances, non-reporting, improper reporting, product code changes within a particular lease reporting regime and will help with surrounding production activities drawn from completed GIS and other information at the WOGCC.

One point of clarification relative to staff: the audit staff in the Royalty Compliance Section consists of a supervisor, a lead auditor and seven (7) auditors. These staff positions, together with other division personnel in the Mineral Leasing Section, constitute the division total of 15.

***Chapter 4, Recommendation #4.3, Page 80:***

***“OSLI and the Board should continue to formalize the processes for identifying and resolving disputes with non-compliant companies to assure that they are consistently resolved in a timely manner with the best outcome for the State.”***

***Agency Response: Agree***

OSLI will move forward with a more formal audit process.

**Chapter 4, Recommendation #4.4, Page 80:**

***“OSLI and the Board should formally discuss the issue of statutory clarification with respect to industry and OSLI’s interpretation of gathering versus transportation.”***

***Agency Response: Neutral***

This issue of statutory and lease interpretation is not unique to OSLI and the Board. It is a commonly disputed royalty valuation issue between mineral owners/lessors and oil and gas producers/lessees. OSLI and the Board work closely with the Attorney General’s Office on all disputed royalty valuation issues and will continue to do so, considering the possible benefit of statutory clarification.

**Chapter 4, Recommendation #4.5, Page 83:**

***“OSLI should consider updating oil and gas lease language and rules to include specific reference to the increased rental rate schedule for suspended leases.”***

***Agency Response: Agree***

OSLI agrees with this recommendation. Currently, the terms of the oil and gas lease allow an increase in rentals as described under Section 1(c). This, in conjunction with Section 1(k) of the lease related to suspending operations, our published web site policy information and use of Board approval has proved effective to this point; however, such language could be incorporated in the new lease form.

**Chapter 5, Recommendation #5.1, Page 89:**

***“OSLI should continue to move forward with plans to fully integrate their GIS capabilities with AWISH in order to routinely conduct 9-section grid analysis (auto-prompt) and other lease analysis based on single-point GIS.”***

***Agency Response: Agree***

Actual development of an enterprise GIS system for OSLI did not start until AWISH was well underway, within the last year. The Legislature made no funding available for GIS development until AWISH.

OSLI is in agreement that GIS is a crucial tool for land management activities and analysis. It is important to note that in order to fulfill this recommendation, another major challenge will be to have the necessary internal resources to manage GIS after AWISH is complete.

**Chapter 5, Recommendation #5.2, Page 96:**

***“OSLI should continue to implement its AWISH data system project; it should reevaluate and modify as necessary the system’s capabilities to meet the basic information and analytical requests made by LSO during this study to evaluate the effectiveness of its various programs.”***

***Agency Response: Agree***

The scope and desired outcomes of OSLI’s IT initiatives have not been limited to mere migration from paper to electronic information management. The challenges involve the integration and development of a structure that improves the data capture and subsequent analysis and reporting. OSLI is on track to complete AWISH as currently scoped. Completing AWISH is only a start for the continual need to improve and maintain IT systems for the benefit of the agency, the public, and most important, the trust beneficiaries. AWISH, once complete, will have developed a basic data foundation for core OSLI systems to enable analysis and decision support processing from such data. Core data will be available to allow analysis at many levels including the inquiries of LSO.

The common pitfall of many IT projects is increasing the goals and desired outcomes of the project commonly referred to as “scope creep”. Making changes to the scope of the project to facilitate turn key decision engines to determine whether OSLI is optimizing revenue for Wyoming’s trust beneficiaries is ambitious. Focus should remain on completing AWISH as currently scoped and funded with additional emphasis, if any, in the long term support, maintenance and improvement of the new systems. Improvements to the system would include such items as Business Intelligence whereas automated reports and digital dashboards would display relevant system information desired for decision support and business analysis. Such improvements can’t begin until the major objective of AWISH is completed “creating a structure and framework for improved data capture and reporting while improving the effected business processes.”

The foregoing concludes our comments relative to LSO’s recommendations. We look forward to discussing the Report in greater detail with the Committee on May 26, 2010.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ed Grant', with a long horizontal flourish extending to the right.

Ed Grant  
Director

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# **APPENDICES**

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**Office of State Lands and Investments:  
Management of State Trust Lands**

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# APPENDIX A

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## Selected Wyoming Constitution, statutes & rules

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### WYOMING ACT OF ADMISSION

An Act to Provide for the Admission of the State of Wyoming into the Union, and for Other Purposes

(Approved July 10, 1890, Statutes are Large 222, Ch. 664)

#### **Section 1. Wyoming admitted as a state; constitution ratified.**

Whereas, the people of the territory of Wyoming did, on the 30th day of September, 1889, by a convention of delegates called and assembled for that purpose, form for themselves a constitution, which constitution was ratified and adopted by the people of said territory at the election held therefore on the first Tuesday in November, 1889, which constitution is republican in form and is in conformity with the constitution of the United States; and

Whereas, said convention and the people of the said territory have asked the admission of said territory into the union of states on an equal footing with the original states in all respects whatever, therefore,

Be it enacted, etc., that the State of Wyoming is hereby declared to be a state of the United States of America, and is hereby declared admitted into the union on an equal footing with the original states in all respects whatever; and that the constitution which the people of Wyoming have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed.

#### **Section 2. Boundaries; limitations as to Yellowstone National Park; federal jurisdiction in Yellowstone National Park.**

The said state shall consist of all the territory included within the following boundaries, to-wit: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude and running thence west to the thirty-fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude; and thence north to the place of beginning. Provided, that nothing in this act contained shall repeal or affect any act of congress relating to the Yellowstone National Park, or the reservation of the park as now defined, or any may be hereafter defined or extended, or the power of the United States over it; and nothing contained in this act shall interfere with the right and ownership of the United States in said park and reservation as it now is or may hereafter be defined or extended by law; but exclusive legislation, in all cases whatsoever, shall be exercised by the United States, which shall have exclusive control and jurisdiction over the same; but nothing in this proviso contained shall be construed to prevent the service within said park of civil and criminal process lawfully issued by the authority of said state; and the said state shall not be entitled to select indemnity school lands for the sixteenth and thirty-sixth sections that may be in said park reservation as the same is now defined or may be hereafter defined.

#### **Section 4. School lands granted.**

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

lands in the Territory of Wyoming, and for other purposes,” shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable.

**Section 5. Sale or lease or school lands; immunity from entry under land laws.**

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

**Section 7. Common school fund.**

Five per cent of the proceeds of the sales of public lands lying within said state shall be sold by the United States subsequent to the admission of said state into the union, after deducting all the expenses incident to the same, shall be paid to the said state, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said state.

**Section 8. University lands; university fund; state control of schools; certain institutions not to be supported by sales of school lands; fish hatchery land transferred to state.**

The lands granted to the Territory of Wyoming by the act of February 18, 1881, entitled “An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming, for university purposes,” are hereby vested in the State of Wyoming, to the extent of the full quantity of 72 sections to said state, and any portion of said lands that may not have been selected by said Territory of Wyoming may be selected by the said state; but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said state, and the income thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this act shall forever remain under exclusive control of said state, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of May 28, 1888, to the Territory of Wyoming for a fish hatchery and other public purposes shall, upon the admission of said State of Wyoming into the union, become the property of said state.

**Section 9. Laramie City penitentiary granted to state.**

The penitentiary at Laramie City, Wyo., and all lands connected therewith and set apart and reserved therefore, and the personal property of the United States, now being in the Territory of Wyoming, and which has been in use in the said territory in the administration of the territorial government, including books and records, and the property used at the constitutional convention, which convened at Cheyenne in the month of September, eighteen hundred and eighty-nine, are hereby granted and donated, and unexpended appropriations of money therefore, are hereby granted and donated to the State of Wyoming.

**Section 10. Lands for agricultural college.**

Ninety thousand acres of land, to be selected and located as provided in section 4 of this act, are hereby granted to said state for the use and support of an agricultural college in said state, as provided in the acts of congress making donations of lands for such purpose.

**Section 11. Federal land grants for certain purposes.**

In lieu of the grant of land for the purpose of internal improvement made to new states by the eighth section of act of September 4, 1841, which section is hereby repealed as to the State of Wyoming, and in lieu of any claim or demand by the said state under the act of September 28, 1850, and section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the State of Wyoming, and in lieu of any grant of saline lands to said state, the following grants of land are hereby made, to-wit:

To the State of Wyoming: For the establishment and maintenance and support in the said state the insane asylum in Uinta County 30,000 acres; for the penal, reform or educational institution in course of construction in Carbon County, 30,000 acres; for the penitentiary in Albany County, 30,000 acres; for the fish hatchery in Albany County, 5,000 acres; for the deaf, dumb and blind asylum in Laramie County, 30,000 acres; for the poor farm in Fremont County, 10,000 acres; for a hospital for miners who shall become disabled or incapacitated to labor, while working in the mines of the state, 90,000 acres; for public buildings at the capital of the state, in addition to those hereinbefore granted for that purpose, 75,000 acres; for state, charitable, educational, penal and reformatory institutions, 260,000 acres; making a total of 500,000 acres; Provided, that none of the lands granted by this act shall be sold for less than ten dollars per acre.

**Section 12. Further land grants prohibited except for specific purposes.**

The state of Wyoming shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the state may provide.

**Section 13. Mineral lands exempt; lands in lieu thereof.**

All mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36, or any sub-division or portion of any smallest sub-division thereof in any township, shall be found by the department, of the interior to be mineral lands, said state is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said state in lieu thereof, for the use and the benefit of the common schools of said state.

*Mineral character of lands unknown at time of admissions. – The provisions of this section exempting “mineral lands” from the school land grants do not apply where at the time of the admission of Wyoming the mineral character of the lands was not known. The established law is that in the construction of such grants the mineral or nonmineral character is to be determined by the known presence of valuable minerals on the effective date of the grant. Wyoming v. Udall, 879 F.2d. 635 (10th Cir.), cert. denied, 389 U.S. 985, 98 S. Ct. 470, 19 L. Ed. 2d 479 (1967).*

**Section 14. Lands to be selected under direction of secretary of interior; deductions.**

All lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the state entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said state the number acres heretofore donated by congress to said territory for similar objects.

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**WYOMING CONSTITUTION**

**ARTICLE 7**

**SECTION 2, 3, 6, 7, 8, 13, 18, 19, 22**

**Section 2. School revenues.**

The following are declared to be perpetual funds for school purposes, of which the annual income only can be appropriated, to wit: Such per centum as has been or may hereafter be granted by congress on the sale of lands in this state; all moneys arising from the sale or lease of sections number sixteen and thirty-six in each township in the state, and the lands selected or that may be selected in lieu thereof; the proceeds of all lands that have been or may hereafter be granted to this state, where by the terms and conditions of the grant, the same are not to be otherwise appropriated; the net proceeds of lands and other property and effects that may come to the state by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons; all moneys, stocks, bonds, lands and other property now belonging to the common school funds. Provided, that the rents for the ordinary use of said lands shall be applied to the support of public schools and, when authorized by general law, not to exceed thirty-three and one-third (33 1/3) per centum of oil, gas, coal, or other mineral royalties arising from the lease of any said school lands may be so applied.

**Section 3. Other sources of school revenues.**

To the sources of revenue above mentioned shall be added all other grants, gifts and devises that have been or may hereafter be made to this state and not otherwise appropriated by the terms of the grant, gift or devise.

**Section 6. State to keep school funds; investment.**

All funds belonging to the state for public school purposes, the interest and income of which only are to be used, shall be deemed trust funds in the care of the state, which shall keep them for the exclusive benefit of the public schools. The legislature shall provide by law for the investment of such trust funds.

**Section 7. Application of school funds.**

The income arising from the funds mentioned in the preceding section, together with all the rents of the unsold school lands and such other means as the legislature may provide, shall be exclusively applied to the support of free schools in every county in the state.

**Section 8. Distribution of school funds.**

Provision shall be made by general law for the equitable allocation of such income among all school districts in the state. But no appropriation shall be made from said fund to any district for the year in which a school has not been maintained for at least three (3) months; nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever.

**Section 13. Land commissioners.**

[Superseded by Article 18, Section 3 as amended 1922.]

**Section 18. Establishment of institutions.**

Such charitable, reformatory and penal institutions as the claims of humanity and the public good may require, shall be established and supported by the state in such manner as the legislature may prescribe. They shall be supervised as prescribed by law.

**Section 19. Territorial institutions pass to state.**

The property of all charitable and penal institutions belonging to the Territory of Wyoming shall, upon the adoption of this constitution, become the property of the State of Wyoming, and such of said institutions as are then in actual operation, shall thereafter have the supervision of the board of charities and reform as provided in the last preceding section of this article, under provisions of the legislature.

**Section 22. Construction and supervision.**

The construction, care and preservation of all public buildings of the state not under the control of the board or officers of public institutions by authority of law shall be entrusted to such officers or boards, and under such regulations as shall be prescribed by law.

**WYOMING CONSTITUTION****ARTICLE 18****SECTION 1-6****Section 1. Acceptance of lands from United States; sale of such lands.**

The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may hereafter be made by the United States to the state, for educational purposes, for public buildings and institutions and for other objects, and donations of money with the conditions and limitations that may be imposed by the act or acts of congress, making such grants or donations. Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths the appraised value thereof, and for not less

than \$10 per acre; provided, that in the case of actual and bona fide settlement and improvement thereon at the time of the adoption of this constitution, such actual settler shall have the preference right to purchase the land whereon he may have settled, not exceeding 160 acres at a sum not less than the appraised value thereof, and in making such appraisement the value of improvements shall not be taken into consideration. If, at any time hereafter, the United States shall grant any arid lands in the state to the state, on the condition that the state reclaim and dispose of them to actual settlers, the legislature shall be authorized to accept such arid lands on such conditions, or other conditions, if the same are practicable and reasonable.

**Section 2. Application of proceeds of sale or rental.**

The proceeds from the sale and rental of all lands and other property donated, granted or received, or that may hereafter be donated, granted or received, from the United States or any other source, shall be inviolably appropriated and applied to the specific purposes specified in the original grant or gifts.

**Section 3. Board of land commissioners.**

The governor, secretary of state, state treasurer, state auditor and superintendent of public instruction shall constitute a board of land commissioners, which under direction of the legislature as limited by this constitution, shall have direction, control, leasing and disposal of lands of the state granted, or which may be hereafter granted for the support and benefit of public schools, subject to the further limitations that the sale of all lands shall be at public auction, after such delay (not less than the time fixed by congress) in portions at proper intervals of time, and at such minimum prices (not less than the minimum fixed by congress) as to realize the largest possible proceeds. And said board, subject to the limitations of this constitution and under such regulations as may be provided by law shall have the direction, control, disposition and care of all lands that have been heretofore or may hereafter be granted to the state.

**Section 4. Legislature to provide for disposition of lands.**

The legislature shall enact the necessary laws for the sale, disposal, leasing or care of all lands that have been or may hereafter be granted to the state, and shall, at the earliest practicable period, provide by law for the location and selection of all lands that have been or may hereafter be granted by congress to the state, and shall pass laws for the suitable keeping, transfer and disbursement of the land grant funds, and shall require of all officers charged with the same or the safekeeping thereof to give ample bonds for all moneys and funds received by them.

**Section 5. Special privileges prohibited.**

Except a preference right to buy as in this constitution otherwise provided, no law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any of the school lands granted to the state subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands, shall be diminished directly or indirectly.

**Section 6. Disposition of unexpended income of perpetual school fund.**

If any portion of the interest or income of the perpetual school fund be not expended during any year, said portion shall be added to and become a part of the said school fund.



**TITLE 9 - ADMINISTRATION OF THE GOVERNMENT**  
**CHAPTER 2 – AGENCIES, BOARDS, COMMISSIONS AND DEPARTMENTS**  
**ARTICLE 20 – GOVERNMENT DEPARTMENTS**

**9-2-2015. Office of state lands and investments; director appointed; structure.**

(a) As part of the reorganization of Wyoming state government there is created the state land and farm loan office consisting of the programs and functions specified in this section. From and after April 1, 1997, the state land and farm loan office shall be known and referred to as the office of state lands and investments.

(b) The administrative head of the office shall be a director appointed by the governor with the advice and consent of the senate. The director shall serve at the pleasure of the governor and may be removed by the governor as provided in W.S. 9-1-202.

(c) The office of state lands and investments shall consist of the office of the director and shall administer all programs of the board of land commissioners and state loan and investment board.

**TITLE 9 - ADMINISTRATION OF THE GOVERNMENT**  
**CHAPTER 4 – PUBLIC FUNDS**  
**ARTICLE 3 – STATE INSTITUTIONS**

**9-4-305. Disposition of state land revenue.**

(a) Any and all funds accruing from state lands set aside for the benefit or use of any public institution or organization specified in W.S. 9-4-303 shall be deposited in the state treasury.

(b) Proceeds from the sale of state lands, mineral royalties and any money designated by the Wyoming constitution or Wyoming statutes as collected shall be transmitted to the state treasurer and credited to the proper accounts within the permanent land fund, except as provided by article 7, section 2 of the Wyoming constitution, thirty-three and one-third percent (33 1/3%) of the mineral royalties received from the lease of any school lands but not to exceed eight million dollars (\$8,000,000.00) during any one (1) year, shall be deposited into the public school capital construction account. To the extent constitutionally permissible and notwithstanding any other provision of law, at the end of every fiscal year, the state treasurer shall transfer to the corpus of each account within the permanent land fund, except the common school account, from the income earned on the corresponding account within the permanent land fund, to the extent available, an amount as provided by this subsection. In determining the amount to be withheld, the state treasurer shall calculate the fiscal year beginning balance and ignore any appropriations made from the account within that fiscal year. For the fiscal year 2000, he shall transfer an amount equal to five percent (5%) of the inflation rate for the previous twelve (12) month period as determined by the department of administration and information multiplied by the beginning balance of each permanent land fund account, except the common school account. At the end of each succeeding fiscal year, the state treasurer shall increase the amount to be multiplied by that year's inflation rate by five percent (5%) until such time as the multiplier reaches one hundred percent (100%) of the inflation rate, and then multiply that amount by the beginning balance of each permanent land fund account, except the common school account.

(c) Except as provided by subsection (b) of this section, rentals for the ordinary use of the state lands, bonuses, interest on purchase money, interest from investment of money in corresponding accounts within the permanent land fund, and any money designated by the Wyoming constitution or Wyoming statutes as collected shall be transmitted to the state treasurer and credited to the proper accounts within the permanent land income fund or to the general fund as provided by the Wyoming Funds Consolidation Act and W.S. 9-4-311.

**9-4-307. Crediting of federal land grant income; omnibus account.**

(a) Three-fourths (3/4) of the income described in W.S. 9-4-305(c) attributable to the lands now remaining undistributed, as donated to the state for state, charitable, educational, penal and reformatory institutions under section 11 of the Act of Admission, shall be credited to the general fund, and one-fourth (1/4) of that income shall be credited to the omnibus account within the permanent land income fund for the department of corrections, the department of health and the department of family services.

(b) The omnibus account is an emergency account to be used by the department of corrections, the department of health and the department of family services in the maintenance and upbuilding of state charitable, educational, penal and reformatory institutions upon the unanimous vote of the state loan and investment board at a meeting attended by all board members or following an appropriation by the legislature.

**9-4-308. Crediting of federal land grant income; university account.**

The income described in W.S. 9-4-305(c) attributable to the lands granted to the state for university purposes under section 8 of the Act of Admission shall be credited to the university account within the permanent land income fund for the University of Wyoming, and shall be paid by the state treasurer to the treasurer of the university upon the request of the board of trustees of the university to be used for the support and maintenance of the University of Wyoming.

**9-4-309. Crediting of federal land grant income; game and fish fund.**

The income described in W.S. 9-4-305(c) attributable to the lands granted to the state for a state fish hatchery under sections 8 and 11 of the Act of Admission shall be credited to the game and fish fund.

**9-4-310. Permanent land fund and land income fund accounts.**

(a) The following accounts within the permanent land fund are established to account for revenue dedicated to certain institutions or for certain purposes accruing from grants of land contained in the Act of Admission or acts of Congress, or accruing from provisions of the Wyoming constitution or Wyoming statutes:

- (i) Deaf, dumb and blind account;
- (ii) Public buildings account;
- (iii) State hospital account (formerly the insane asylum account);
- (iv) Penitentiary account;
- (v) Poor farm account;
- (vi) Agricultural college account;
- (vii) Common school account;
- (viii) Fish hatchery account;
- (ix) Miner's hospital account;
- (x) Omnibus account;
- (xi) University account;
- (xii) Carey Act account.

(b) No appropriation shall be made from the agricultural college, common school or university accounts within the permanent land fund.

(c) The following accounts within the permanent land income fund are established to be expended as provided by law:

- (i) Agricultural college account;
- (ii) Common school account;

- (iii) University account;
- (iv) Omnibus account;
- (v) Miner's hospital account.



**TITLE 36 – STATE LANDS**  
**CHAPTER 2 – BOARD OF LAND COMMISSIONERS**  
**ARTICLE 1 – IN GENERAL**

**36-2-101. Composition; powers generally.**

The governor, secretary of state, state treasurer, state auditor, and superintendent of public instruction, being constituted a "board of land commissioners" by the provisions of section 3, article 18, of the constitution of the state of Wyoming, shall as such board, have 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. The board shall have the power and authority to take such official action as may be necessary in securing title to land grants, or any other lands acquired by the state.

**36-2-102. Authority to administer oaths.**

Each member of the board is hereby authorized and empowered to administer oaths in any proceeding of any character which may be pending before it.

**36-2-103. President; quorum; duties of employees.**

The governor shall be president of said board, but in his absence from any meeting, one (1) of the members may act as president pro tempore, and shall preside at such meeting. A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall have authority to prescribe the duties of all persons employed by it.

**36-2-104. Meetings; rules, regulations and forms of procedure; records.**

The board shall hold such regular and special meetings as it may prescribe and consider necessary for the proper transaction of the business before it. All meetings and transactions incident to the duties of the board, together with all protests, contests or other proceedings before it, shall be regulated by such reasonable rules, regulations and forms of procedure as may from time to time be prescribed by the board; and such rules, regulations and forms of procedure shall bear the same relation to proceedings pending before the board, and have the same legal force and effect, upon all parties to such proceedings, as the Code of Civil Procedure bears and has to civil actions and the parties thereto in the courts of this state. The board shall cause proper records of its meetings and other proceedings to be kept in suitable books, and shall preserve all important documents and papers pertaining to the lands of the state and business of the board.

**36-2-105. Repealed By Laws 1997, ch. 200, § 2.**

**36-2-106. Repealed By Laws 1997, ch. 200, § 2.**

**36-2-107. Rules and regulations; general penalty for violations; enforcement.**

(a) The board shall have the power and authority to promulgate and adopt rules and regulations not inconsistent with the laws of the state, as it may from time to time deem necessary in the direction, control, disposition and care of all state lands, and to preserve the value of the land and to recognize the fiduciary duties of the state land office.

(b) Any person who knowingly violates any provision of this subsection is guilty of a misdemeanor and shall be fined not more than seven hundred fifty dollars (\$750.00), imprisoned for not more than six (6) months, or both. The acts prohibited under this subsection are:

- (i) Damaging state lands under circumstances not a violation of W.S. 6-3-201;
- (ii) Using a motor vehicle on state lands off an established road as defined by the board or on a road closed by the board;
- (iii) Charging for or receiving payment for purposes of allowing persons to engage in hunting, fishing or any other recreational use of state lands, unless the payment is collected pursuant to a lease or temporary use permit issued by the state;
- (iv) Building, maintaining, using or attending an open fire, campfire or charcoal grill on state land except in areas established by the board; and
- (v) Camping overnight on state land except in areas established by the board.

(c) Any peace officer as defined in W.S. 7-2-101 shall have the authority to enforce this section on state lands. Any game and fish department law enforcement personnel qualified pursuant to W.S. 9-1-701 through 9-1-707 shall have authority to enforce this section to the extent that there is no diminishment in federal funds provided for under W.S. 23-1-601 and 23-1-602.

**36-2-108. Appointment of state forester; qualifications; duties.**

(a) The state board of land commissioners shall appoint a state forester who shall be the administrative head of the Wyoming state forestry division of the office of state lands and investments. He shall serve at the pleasure of the board. He shall have a bachelor's degree in forestry with not less than four (4) years experience in professional forestry work. The state forester shall, under the general supervision of the board, have direction of all forest interest and all matters pertaining to forestry within the jurisdiction of the state of Wyoming; and may, with approval of the board, appoint such assistants and employees as are necessary in executing the duties of his office.

(b) The state forester shall:

- (i) Take such action as may be deemed necessary by the state board of land commissioners to protect forest, range and other rural resources from fire. This responsibility shall in no way diminish the responsibility or authority of local fire protection districts;
- (ii) Assist the county sheriff in the enforcement of all laws pertaining to the protection of forest and range lands from fire;
- (iii) Collect data relative to forest conditions;
- (iv) Prepare an annual report on the progress and condition of state forestry work;
- (v) Recommend plans for improving the state system of forest protection, management and replacement;
- (vi) Whenever it is deemed essential and to the best interest of the state, cooperate with counties, cities, towns, corporations, or individuals for the protection, management and planting of trees, woodlots and timber tracts;
- (vii) Promote the development of the forest industry;
- (viii) Cooperate with federal agencies to fulfill the intent of this section.

**TITLE 36 – STATE LANDS**

**CHAPTER 3 – DIRECTOR OF THE OFFICE OF STATE LANDS AND INVESTMENTS**

**36-3-101. Appointment; term; salary; removal.**

(a) There shall be a director of the office of state lands and investments, who shall be appointed by the governor by and with the consent of the state senate. The term of his office shall expire at the end of the term of office of the governor during which he was appointed, unless sooner removed. He shall receive an annual salary as provided by law, to be paid

monthly by the state treasurer on the warrant of the state auditor. The governor may remove the director as provided in W.S. 9-1-202.

(b) Effective July 1, 1979, appointments and terms under this section shall be in accordance with W.S. 28-12-101 through 28-12-103.

**36-3-102. Duties generally.**

(a) The director shall keep the records of the board of land commissioners, and be the secretary thereof. He shall make out and countersign all patents, contracts or other instruments issued by him to purchasers and others, and make out and sign all leases. He shall keep a record of all such leases, patents or other instruments in books or other records. He shall file and preserve in his office all bonds, contracts, leases, and other instruments given by lessees, purchasers and others. He shall have the custody of the seal of the board, and shall keep the minutes of the proceedings thereof, and shall perform such other duties concerning the business transactions of the board as it may direct. He shall receive all applications for purchasing, leasing, entering, locating or in any manner acquiring title to, interest in, or any benefit from or use of any lands belonging to or under the control of the state of Wyoming, and he shall allow or disallow, subject to the approval of the board of land commissioners, such applications to purchase, lease, enter or otherwise acquire title to, interest in, benefit from or use of the lands, or the appurtenances thereof, and in all cases where there have been no conflicting applications, he shall report his decisions to the board for its approval at its next ensuing regular or special meeting, but in all cases where there have been conflicting applications to lease or otherwise acquire interests or benefits in the lands, he shall, before reporting his decisions to the board, give each of the applicants notice of what his decision is with reference to their applications, and if none of the applicants files an appeal in writing from the decisions of the director to the board within a period of thirty (30) days, except in the case of oil and gas leases when the period shall be not less than ten (10) days nor more than thirty (30) days at the discretion of the board, after the date of the notice, the director shall report his decision to the board for approval at its next meeting and in case an appeal in writing is taken from the decision of the director to the board of land commissioners within the time provided, the director shall give each of the applicants at least ten (10) days' notice, except in the case of oil and gas leases when the period shall be five (5) days' notice in writing of the date on which the appeal will be heard by the board. The director shall keep on file in his office the original of all documents filed as required by W.S. 36-1-102. He shall insure that these documents are properly indexed for reasonable public access, and to show ownership by each state commission, institution, department or board.

(b) Upon application and the annual payment of fifteen dollars (\$15.00) by any person qualified to lease oil and gas lands of the state of Wyoming, the director shall place the name and address of the person on a mailing list and mail to the person a complete list of lands open for filing prior to the date when the lands become subject to filing. The payments shall be placed in the general fund.

(c) The board shall have authority to override any decision made by the director. Upon such terms and conditions as shall be established by the board, in addition to other powers enumerated in this section, the director shall have authority to:

- (i) Issue all standard lease and permit renewals which do not convey any permanent interest in state lands;
- (ii) Approve lease assignments, sublease agreements and surface damage payments, and concur in water right petitions involving state lands;
- (iii) Approve applications to construct improvements within criteria established by the board pursuant to W.S. 36-5-110 and 36-5-111;
- (iv) Approve timber sale auctions within criteria established by the board pursuant to W.S. 36-1-112;
- (v) Approve acreage adjustments, suspension of operations and unit or communitization agreements under W.S. 36-6-101.

**36-3-103. Selection and location of lands.**

The director shall select and locate all lands which are now or may be hereafter granted to the state of Wyoming by the United States for any purpose whatever.

**36-3-104. Notice of selection.**

Before any selection of lands granted to the state is made, it shall be the duty of the director to publish in at least one (1) newspaper of general circulation in each county in the state a notice giving the area of the said lands so to be selected, and the time on or about when the director will receive applications for and begin the selection of said lands, and before any lands so selected shall be leased, sold or otherwise disposed of, a description of such lands together with the name of the person for whom selected, shall be published at least once in a newspaper of general circulation in each county wherein said lands are located, and such lands shall thereafter be sold, leased or otherwise disposed of in the same manner and under the same restrictions as provided by law for the disposition of other state lands.

**36-3-105. Annual report.**

On or before the 10th day of December, immediately preceding the meeting of the legislature, the director shall make a report of the business of his office, the transactions of the board of land commissioners, and the condition of the land affairs of the state, showing by tables the land belonging to the several funds of the state, to whom sold, leased or otherwise disposed of, the receipts from all sources, the condition of the conditional grants made to the state under the provisions of section 4 of an act of congress entitled "An act making appropriations for sundry civil expenses, approved August 18th, A.D. 1894", and acts amendatory thereof, including in his said report a comprehensive statement of the development and progress made by corporations or individuals reclaiming land under the provisions of said acts of congress, and of chapter 15, title 9, div. 1, Wyoming Revised Statutes of 1899 and showing in said report any and all facts or statistics concerning the lands of the state of Wyoming that will exhibit the condition of the said state lands.

**36-3-106. Arid land fund.**

As provided in the said acts of congress, all moneys collected by the director from the sale of lands selected under the provisions of such acts of congress shall be deposited by the director with the state treasurer, and shall constitute a trust fund in the hands of said treasurer to be used only for the reclamation of other arid lands when appropriated by the legislature for that purpose in the manner that other appropriations are made.

**36-3-107. Oaths; acknowledgments of written instruments; depositions.**

The director is hereby authorized to administer oaths and affirmations, to receive acknowledgments of powers of attorney and other instruments in writing, and to take depositions in matters relating to state, school, or arid land business, within the state of Wyoming.

**36-3-108. Official seal.**

The director shall provide himself with an official seal with which he shall authenticate such official acts as are not performed as secretary of the board of land commissioners, which seal shall be engraved with his official title and the word "Wyoming."

**36-3-109. Disposal of slash on timber lands; forestry performance account.**

(a) The state forester shall provide for the disposal of any slash resulting from the harvest of forest products and may require forest management work through a forest product sales contract or a service contract. The state forester may, when deemed necessary, require a slash deposit or performance bond to cover the anticipated cost of any slash disposal or required management work as a guarantee of compliance with contract specifications.

(b) When any slash is not disposed of or management work is not completed in accordance with the requirements of the forest products sales contract or service contract, the state forester may go upon the premises with such personnel, equipment and supplies as may be necessary to burn or otherwise dispose of the slash or complete a required management project. The expense incurred in disposing of the slash or completing the required management project, shall be a charge against the posted performance bond or slash deposit.

(c) Repealed By Laws 1999, ch. 124, § 2.

(d) There is created the revolving forestry performance account in which any performance bond or slash deposit shall be deposited, and from which any expense incurred in the completion of slash disposal or another contract requirement not complying with forest products sale or service contract specifications shall be paid. The funds in the account are continuously appropriated to the state forester for the purposes of this section. Upon successful completion of required slash disposal or other contract requirements, as determined and approved by the state forester, the performance bond or slash deposit shall be refunded to the purchaser or contractor. If required slash disposal or other contract requirements are partially completed, the expense of completing the required work shall be charged against the forestry performance account with the balance of the performance bond or slash deposit, if any, refunded to the purchaser or contractor.

**36-3-110. Fees.**

(a) The board shall determine by rule and regulation, and the director shall collect fees for the following administrative services:

- (i) For filing each application to lease;
- (ii) For filing each application for easement;
- (iii) For filing each assignment of lease;
- (iv) For filing each application for timber or forest product contract;
- (v) For filing each notice of security interest;
- (vi) For filing each change of name;
- (vii) For filing each unit or communitization agreement;
- (viii) For filing each application for a fossil permit;
- (ix) For filing each application for a temporary use permit;
- (x) For filing each surface estate sale nomination;
- (xi) For each insufficient fund check returned.

(b) The board shall determine the fees to be collected under subsection (a) of this section in an amount which approximates, but does not exceed, the direct and indirect costs of administering the regulatory provisions of this act. The office of state lands and investments shall be entitled to retain that portion of the fees collected which represent the cost of county filing and recording. All of the remaining money collected for fees shall be paid to the treasurer of the state monthly and shall be credited to the general fund.

**36-3-111. Appointment of deputy; compensation.**

The director may appoint a deputy to perform the duties of his office and to hold such appointment at the will of the director. The annual compensation of such deputy shall be as determined by the human resources division of the department of administration and information, payable monthly, upon vouchers submitted in proper form to the state auditor, and in manner that other accounts against the state are paid, and shall receive no other compensation for any services rendered by him to the state.

**TITLE 36 – STATE LANDS**

**CHAPTER 5 – LEASING GENERALLY**

**36-5-101. Qualifications of lessees; lease terms; rental.**

(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.

(b) 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 based upon a formula adopted by the board using the following criteria:

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

**36-5-102. Maximum term of agricultural or grazing lease.**

No lease for agricultural or grazing purposes shall be issued for a term of more than ten (10) years.

**36-5-103. Application for lease; cancellation of application.**

Any person, firm, association or corporation desiring to lease state lands for agricultural and grazing purposes shall file with the director an application on the form approved by the board, which must be accompanied by the regular filing fee, and a certified check, bank draft, cashier's check, post office or express money order, cash or personal check acceptable to the director for the full amount of the first year's rental offered; and if there are improvements owned by another located upon said lands, the applicant must also transmit in the manner above provided, the estimated amount of the value of the improvements as listed in his application, and in the event the successful applicant fails, refuses or neglects to complete the lease awarded, or otherwise fails, refuses, or neglects to comply with the provisions of this act, or the rules and regulations of the board, after having been given thirty (30) days notice by registered mail, the application shall be cancelled and the sum remitted as rentals and twenty-five percent (25%) of the sum remitted for improvements shall be retained by the board as liquidated damages; and the sum paid as rental shall be paid by the director to the state treasurer and credited by him to the proper permanent land income fund account, and the sum paid for improvements shall be credited to the general fund.

**36-5-104. Time for filing renewal applications.**

All applications to lease grazing and agricultural lands under outstanding leases must be filed in the office of state lands and investments not earlier than one hundred twenty (120) days prior to, and not later than thirty (30) days prior to the expiration date of the existing lease. Any conflicting application to lease grazing and agricultural lands under any existing lease shall be filed in the office of state lands and investments not earlier than one hundred twenty (120) days prior to, and not later than, ninety (90) days prior to the expiration date of the existing lease. Upon receipt of a conflicting lease application the office of state lands and investments shall notify the current lessee that a conflicting lease application has been received and shall provide the current lessee not less than thirty (30) days from receipt of notice to file a lease renewal application.

**36-5-105. Criteria for leasing; preferences; assignments, subleases or contracts; lands taken for war purposes; mineral lands excepted; agricultural lands.**

(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.

(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 not less than the minimum fair market value as determined by the board for the same or

a similar use of land using the formula developed pursuant to W.S. 36-5-101(b) and not more than one hundred twenty percent (120%) of the maximum fair market value as determined by the board based on the previous year's values for the state, district or county, whichever is most localized and available, as determined by the national agricultural statistics service utilizing:

- (i) The private land lease rate per animal unit month for Wyoming grazing leases; or
- (ii) The private land irrigated or nonirrigated cropland lease rate, as applicable, for Wyoming cropland leases on irrigated or nonirrigated cropland; and
- (iii) A downward adjustment of twenty percent (20%) to reasonably reflect lessee contributions typically provided as a part of a private land grazing lease rate or a private cropland lease rate, as applicable.

(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; however, no such approval shall be arbitrarily or unreasonably withheld and all action upon each application therefore, shall be such as will inure to the greatest benefit to the state land trust beneficiaries, provided, that in no event shall the lands be subleased unless one-half (1/2) of the excess rental is paid to the state.

(e) Repealed By Laws 2007, Ch. 111, § 2.

(f) Provided further, that whenever any state owned lands have been or may hereafter be condemned or acquired by the United States for war purposes and whenever said lands may hereafter be reconveyed to the state of Wyoming by the said United States or any department thereof, then in such event the state board of land commissioners shall give preference to the lessee holding said lands at the time of the taking of said lands by the said United States or any department thereof.

(g) Provided further, that this act shall not be applicable to the leasing of state mineral lands under the provisions of W.S. 36-6-101 through 36-6-105, as amended.

**36-5-106. Richard Bridge historical park.**

The state board of land commissioners is hereby authorized and empowered, if after investigation and study the board deems it to the best interest of the state of Wyoming, to enter into a lease agreement with the town of Evansville, Wyoming, for a portion of the land belonging to the state of Wyoming lying south of the centerline of the North Platte River in section 36, township 34 north, range 79 west of the sixth principal meridian, Natrona county, Wyoming. The lease authorized herein shall contain a clause restricting the use of the leased property to historical landmark, park, recreation, museum and municipal purposes. The land leased shall be known as Richard Bridge historical park.

**36-5-107. Preference in granting leases on exchanged lands.**

The holder of a lease of any school, state or institutional land that is offered for exchange under section 8, of the Taylor Grazing Act, shall have preference to lease the land received in such exchange.

**36-5-108. Even rental offers.**

If two (2) or more qualified applicants shall offer the same annual rental for the same lands, and such offers are the highest offers received and are equal to or above the minimum rental fixed by the board, and no preference exists in the old lessee, or if such old lessee does not exercise such preference, the director shall grant the lease to the applicant holding title to lands nearest to the lands applied for. When a preference exists in the old lessee under the provisions of this act, he shall be given fifteen (15) days notice by registered mail, and if he fails or refuses to file his acceptance together with the balance of the rental due for the first year, within the time specified, the lease shall be awarded automatically to the applicant offering to pay the highest annual rental, or in the event of even offers, shall be disposed of as hereinbefore provided.

**36-5-109. When rental due; procedure upon failure to pay.**

Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state by virtue of this act, except those for the first year, shall become due and payable at the office of the director on the anniversary date of the lease. If the rent is not paid on the anniversary date, the director shall notify the lessee or his

authorized agent by certified mail that the lease will be cancelled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is cancelled, the director shall as soon as possible thereafter, advertise the lands in the county where located, as vacant and subject to lease.

**36-5-110. Right to make and remove improvements.**

A lessee of state lands shall have the right to construct or make improvements upon state lands in the amount of two thousand dollars (\$2,000.00) per section, without first obtaining permission. If the lessee or any other person desires to construct or make improvements upon state lands in excess of the value of two thousand dollars (\$2,000.00) per section, he shall file an application for permission to construct or make the improvements with the director, which shall be subject to allowance or rejection as the best interests of the state require. The director shall have authority to grant permission to construct improvements in excess of two thousand dollars (\$2,000.00) for fencing, water development, livestock handling facilities and range enhancements. Any other improvement in excess of two thousand dollars (\$2,000.00) shall be applied for under a special use permit. Unless permission has been obtained in the manner provided by this section, the owner of the improvements in excess of the value of two thousand dollars (\$2,000.00) per section shall not be entitled to compensation therefore as provided by W.S. 36-5-111 and 36-9-105, and upon the expiration of the lease the improvements shall forfeit to and become the property of the state; except, that within one hundred twenty (120) days from the date of the expiration of the lease, the owner may remove such improvements in a manner which minimizes injury to the land.

**36-5-111. Payment for or removal of existing improvements.**

Any applicant applying to lease state lands upon which there are fences, buildings, reservoirs, ditches, dams, wells, or other improvements of any kind, belonging to or made by another, or for which water rights or proportionate interests in irrigation reservoirs, canals, or systems, have been acquired, shall before receiving the lease, pay to the director for the use and benefit of the owner or maker of any improvements at the time of the execution of the lease, the contributory value thereof as finally determined by the board in accordance with its rules and regulations; or the owner of the improvements shall, upon giving notice to the director in writing within the time fixed by board rule and regulation, have the right to remove those improvements in a manner which minimizes injury to the land; provided, that the improvements be removed within a period of one hundred twenty (120) days from the date of the expiration of the lease. For purposes of this section, "contributory value" means the increased value of the property after the lessee's improvements are considered.

**36-5-112. Form and execution of lease; bond.**

The general form of grazing and agricultural lease upon state lands shall be prescribed by the board and shall be signed by the director on behalf of the state. Except in cases where the board deems necessary, leases shall be issued without bond.

**36-5-113. Cancellation of leases.**

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.

**36-5-114. Leasing for industrial, commercial and recreational purposes; authority; rental fees; rules and regulations.**

(a) The board of land commissioners may lease for a term of not more than seventy-five (75) years state lands for industrial, commercial and recreational purposes.

(b) The board may lease state lands for purposes which shall bring about the compatible use of the surface area and shall inure to the greatest long term benefit of the state land trust. Provided, however, that nothing herein contained shall result in the substantive impairment of existing leases or the preferential right to the renewal thereof.

(c) The board shall fix a rental value based upon not less than the fair market value of each use of the land. If the land to be leased under this subsection was originally acquired by the state for the benefit of the common school permanent land fund, and is to be used by a Wyoming school district for the construction and maintenance of school buildings and facilities, the board may assess an annual rental fee of one hundred dollars (\$100.00) per acre or not less than fair market value, whichever is less.

(d) The board shall promulgate rules and regulations implementing policies, procedures and standards for the long-term leasing of state lands for industrial, commercial and recreational purposes under the provisions of W.S. 36-5-114 through 36-5-117, including provisions requiring compliance with all applicable land use planning and zoning laws and permitting the board to terminate a lease for good cause shown.

**36-5-115. Leasing for industrial, commercial and recreational purposes; "recreational purposes" defined.**

As used in W.S. 36-5-114 through 36-5-117 the term "recreational purposes" means land used for cabin sites, public camp sites, public parks and recreation areas, golf courses and any associated residential development, youth groups and ski or winter sports areas.

**36-5-116. Leasing for industrial, commercial and recreational purposes; assignment or transfer.**

Leases issued under the provisions of W.S. 36-5-114 through 36-5-117 shall not be assignable or transferable except with written consent of the board of land commissioners.

**36-5-117. Lessee's liability.**

A state lands lessee's liability to users of those lands is limited as specified in W.S. 34-19-101 through 34-19-106.

**TITLE 36 – STATE LANDS  
CHAPTER 6 – MINERAL LEASES  
ARTICLE 1 – IN GENERAL**

**36-6-101. Terms of leases; extensions; rules and regulations; rent and royalties; assignment of leases; grazing and agricultural leases; cooperation with United States or its lessees, in cooperative or unit plans.**

(a) The board of land commissioners may lease any state or state school lands for oil and gas for a primary term up to ten (10) years and as long thereafter as oil or gas may be produced in paying quantities, and may extend the term of existing oil and gas leases in good standing for as long as oil or gas may be produced in paying quantities.

(b) The board is further authorized to make and establish rules and regulations governing the issuance of oil and gas, coal and other mineral leases and covering the conduct of development and mining operations.

(c) Mineral leases may be issued upon such monthly or annual minimum rental payment basis as shall be fixed by the board, which payment shall be annually applied against such royalty as shall accrue for the same lease year by the terms of such lease, which royalty, as to lands leased for oil or gas shall not be less than five percent (5%) of all oil and gas produced and saved from and not used in operations on the lands under the lease, and royalty of not less than five cents (\$.05) per ton on coal produced from the lands under any such lease for coal purposes, such royalty to be paid on mine run of coal. No mineral lease issued under the provisions of this section shall be assignable or transferable except with written consent of the director, subject to criteria established by the board, and he shall require the lessee's full compliance with and observance of all rules and regulations adopted by the board and for the lessee's compliance with all other terms of the lease. All mineral leases issued pursuant to this section shall be separate and distinct from each lease of the same land for grazing or agricultural purposes, issued by the board, and rules and regulations adopted by the board as herein authorized, shall provide for joint use of such lands for grazing and agricultural or mineral purposes without undue interference by the lessees under any such class of leases with lessees under any other such class.

(d) The director, subject to criteria established by the board, on behalf of the state, and its lessee or lessees in any such mineral lease are hereby further authorized to join, in the interest of conservation and greater ultimate recovery of oil and gas, in fair and equitable cooperative or unit plans of development or operation of oil and gas pools, with the United States government and its lessees, or permittees, or others, or any of them, and the director, subject to criteria established by the board, is hereby authorized to modify and change any and all terms and conditions of any such oil and gas lease or leases, heretofore or hereafter issued, as mutually agreed by the lessor and lessee in any such lease, as required to conform to the terms of any such lease to such cooperative or unit plan and as required to effectuate proper operations thereunder, which

changes may include extension of the term of years otherwise applicable to any such lease, for the full period of time during which such cooperative or unit plan may remain in effect.

(e) When a cooperative or unit agreement is terminated or ceases to be effective as to lands upon which there is no production of oil or gas, the lease covering such lands shall remain in effect for a period of two (2) years from the date such lands ceased to be subject to said agreement, or for the remaining length of the term of the original lease, whichever shall be the greater, and so long thereafter as oil or gas is produced from said lands in accordance with the requirements of the original lease.

(f) The terms of any lease issued under this section for land on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for one (1) year and so long thereafter as oil or gas is produced in paying quantities.

(g) All natural gas leases executed hereunder shall provide that the state of Wyoming may require the lessee to dedicate all the natural gas produced on lands owned by the state for the use or benefit of the people of the state of Wyoming.

(h) If the state board of land commissioners determines it would benefit the people of the state to have the natural gas dedicated, the board may arrange for the sale of the natural gas for the use of the people of the state or arrange for the exchange of the natural gas produced with producers of natural gas produced from lands not owned by the state if the exchange will benefit the people of the state. If the board determines the dedication would not be in the public interest; or would cause waste as defined by W.S. 30-5-101; or would unreasonably deny the lessee the opportunity to economically market the natural gas, it may waive dedication.

(j) The board shall adopt and promulgate necessary rules and regulations to carry out the provisions of subsections (g), (h) and (j) of this section.

(k) The board, on behalf of the state, and its lessee or lessees in coal and other mineral leases, may approve cooperative mining development plans established for the purpose of development of the mineral resources in an efficient and economical manner and in accordance with sound engineering practice. The board may also modify and change any and all terms and conditions of any coal and other mineral lease or leases, heretofore or hereafter issued, as mutually agreed by the lessor and lessee in the lease. The director, subject to criteria established by the board, may conform the terms of the lease to a cooperative mining development plan required to effectuate proper operations, with changes that may include extension of the term of years otherwise applicable to the lease, for the full period of time during which the cooperative mining development plan may remain in effect. A cooperative development plan may consist of one (1) or more private, state or federal leaseholds or mineral interests. All lands in a cooperative mining development plan shall be under the effective control of a single operator, capable of being developed and operated as a single operation.

(m) The director, subject to criteria established by the board, may lease any state or state school lands for coal and other mineral purposes for a primary term of not exceeding ten (10) years. Lessee shall have the exclusive right to renew the lease for successive terms of ten (10) years each, if at the time application for renewal is filed:

(i) Coal or other minerals covered by the lease are actually being produced from the leased lands and the lessee is complying with all lease terms; or

(ii) The leased lands are committed to a cooperative mining development plan approved by the board and coal or other minerals are actually being produced from the cooperative mining development plan and the lessee is complying with the plan and all lease terms; or

(iii) The lessee is proceeding in good faith to develop the leased lands; or

(iv) If the lessee shows to the satisfaction of the director or the board that production of coal or other minerals has been delayed by the necessity of obtaining licenses, permits, or other approvals from governmental authorities and that the lessee has used reasonable diligence in an effort to obtain the licenses, permits or other required authorizations.

(n) As used in subsection (m) of this section, good faith development means the substantial expenditures or firm commitments for exploration, engineering, environmental studies, hydrological studies or research and development which is required for development of the lease. To assist the lessee in planning for the orderly development of the lease or

leases, the lessee may submit to the board at any time during the term of the lease or leases a schedule and discussion of proposed expenditures or commitments for the development of the lease or leases. After reviewing the schedule and discussion, the board shall issue a ruling in writing within ninety (90) days binding upon the state and the lessee, determining whether or not the proposed expenditures or commitments, when and if actually made by lessee, shall qualify as "substantial expenditures or commitments" so as to constitute "good faith development" within the meaning of subsection (m) of this section.

(o) Any mineral lessee or producer shall report all production including total volume, value and disposition of the mineral production under any lease, unit or communitization agreement in a timely manner and in such form as determined by the board. Any person failing to comply with this subsection shall be subject to penalties enacted by the board or the cancellation of the lease or agreement under which they are operating.

**36-6-102. Submission, custody and confidentiality of subsurface log reports.**

(a) Contingent upon the leasing of any state or state school lands for coal, uranium or other mineral exploration, the board of land commissioners shall require copies of all electrical, gamma-ray neutron, resistivity or other types of subsurface log reports, and all assay reports for any rock cores or cuttings to be submitted to the office of the state geologist within ninety (90) days after completion of drilling and completion of associated reports. Reports submitted to the oil and gas conservation commission are deemed to satisfy the requirements of this subsection.

(b) All subsurface log reports and assay reports will be held confidential for a period of three (3) years after initial receipt by the state geologist. Confidentiality may be extended in one (1) year increments upon receipt by the state geologist of a written request by certified mail, return receipt requested, from the person or legal entity requesting that confidentiality be extended. All requests must be received prior to the expiration of the period of confidentiality. All reports filed under this section shall become the property of the state to be retained within the permanent files of the Wyoming geological survey board for the use of the office and public after the period of confidentiality has expired.

**36-6-103. Existing oil and gas leases ratified.**

The issuance of all oil and gas leases upon any state or school lands heretofore issued by the board of land commissioners for primary terms up to ten (10) years and as long thereafter as oil or gas may be produced in paying quantities, and the granting of all extensions heretofore granted by the board of land commissioners of the terms of existing oil and gas leases upon any state or state school lands for as long after the primary term as oil or gas may be produced in paying quantities, are hereby ratified, confirmed, and validated. Each joinder by the board of land commissioners on behalf of the state of Wyoming in any cooperative or unit plan of development or operation of any oil or gas pool, and all modifications and changes in any of the terms or conditions of any oil or gas lease arising from any such joinder, or incident thereto, and all thereof, are hereby ratified, confirmed, and validated.

**36-6-104. Payment for improvements; "improvements" defined.**

If mineral lands upon which improvements have been made shall be sold or if such lands shall be leased to other than the owner of the improvements thereon, then such purchaser or such new lessee shall pay to the owner thereof the value of said improvements, at an agreed price with the owner thereof; or if such agreement cannot be reached, then at such price as shall be fixed by appraisement under the authority of the board of land commissioners. The word "improvements" shall be construed to mean surface improvements, machinery and other equipment used and necessary for the operation of the plant on such land, and work performed in the development of the property for operation and mining when such development work is of practical use in future mineral operations on such land. Wells drilled for oil which do not produce oil in commercial quantities, shafts, tunnels or drifts from which coal or other minerals have been practically exhausted, shall not be considered as improvements.

**36-6-105. Inspection reports.**

The state geologist or any state coal mine inspector shall, when requested by the board of land commissioners, visit and make a report upon any lands held under coal and mineral leases. Such report shall be made without any fee to the officer making same.

## **TITLE 36 – STATE LANDS**

### **CHAPTER 6 – MINERAL LEASES**

#### **ARTICLE 3 - CALCULATION OF ROYALTIES ON OIL, NATURAL GAS AND ASSOCIATED NATURAL RESOURCE PRODUCTION**

##### **36-6-301. Definitions.**

(a) As used in this article:

(i) "Associated natural resource" means any substance, element or compound, either gaseous, liquid or solid, associated with the production, refining or processing of oil or gas. The term includes, but is not limited to, propane, butanes, ethane, methane, carbon dioxide, sulphur, helium, nitrogen and natural gas liquids;

(ii) "Natural gas" means hydrocarbons or nonhydrocarbons which at atmospheric conditions of temperature and pressure are in a gaseous phase;

(iii) "Oil" means crude petroleum and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(iv) "Processing plant" means a plant to remove liquefiable hydrocarbons from a gas stream or to separate natural gas into physically or chemically distinct marketable associated natural resources;

(v) "Return on investment" means a percentage rate applied over a period of years to the equity investment for construction of transportation facilities or processing plants for oil, natural gas or associated natural resources. This percentage rate represents the rate a lessee or successor in interest supposedly could have received from investment of equity in some other commercial or financial undertaking. "Return on investment" also means a percentage of earnings or profitability ratio which a lessee, producer or successor in interest anticipates or desires to receive on the equity investment in transportation facilities or processing plant;

(vi) "Transportation facilities" means those facilities constructed for moving any oil, natural gas or associated natural resource from the place of production to the closest point of sale or to a processing plant.

##### **36-6-302. "Return on investment" deduction not allowed for calculation of royalty.**

(a) For state lease royalty and overriding royalty, other than royalty owing to the United States of America, calculations for oil, natural gas and associated natural resources, neither lessee nor any successor in interest will be allowed any deduction for any "return on investment cost."

(b) This article applies to all state leases of oil, natural gas or associated natural resources.

## **TITLE 36 – STATE LANDS**

### **CHAPTER 12 – STATE CONTROL OF CERTAIN LANDS**

##### **36-12-101. Legislative determinations.**

(a) The legislature determines:

(i) The intent of the framers of the constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the states;

(ii) The attempted imposition upon the state of Wyoming by the congress of the United States of a requirement in the Statehood Act that the state of Wyoming and its people "disclaim all right and title to any lands or other property not granted or confirmed to the state or its political subdivisions by or under the authority of this act, the right or title to which is held by the United States or is subject to disposition by the United States", as a condition

precedent to acceptance of Wyoming into the Union, was an act beyond the power of the congress of the United States and is thus void;

(iii) The purported right of ownership and control of the unappropriated public land in the state of Wyoming by the United States is without foundation and violates the clear intent of the constitution of the United States; and

(iv) The exercise of that dominion and control of the public land in the state of Wyoming by the United States works a severe, continuous and debilitating hardship upon the people of the state of Wyoming.

**36-12-102. Management.**

(a) Upon transfer to the state of Wyoming [of] the jurisdiction and ownership of lands and mineral resources subject to this act, the board shall manage such in an orderly manner in trust for the optimum benefit and use of all the people of Wyoming and in conformity with established concepts of multiple use and sustained yield which will permit the development of uses for agriculture, grazing, recreation, minerals, timber, and the development, production and transmission of energy and other public utility services. It shall be managed in such a manner as to permit the conservation and protection of watersheds and wildlife habitat, and historic, scenic, fish and wildlife, recreational and natural values.

(b) The board of land commissioners shall develop a plan for the transfer and management of lands and minerals subject to this act. This plan will be submitted to the governor and legislature prior to January 1, 1983 and will be subject to their approval. Such a management plan shall consider:

- (i) Management of the land pursuant to subsection (a);
- (ii) Policy and program regarding disposal, lease or exchange of any lands or resources acquired pursuant to this act;
- (iii) Policy and program regarding public access to use of such lands;
- (iv) Conservation of lands for wildlife habitat or recreational purposes; and
- (v) Program regarding use or transfer of lands to municipalities and other governmental entities for public purposes.

(c) As used in this section:

- (i) Sustained yield means the maintenance of a high-level annual or regular periodic output of the various renewable resources of the state lands consistent with multiple use;
- (ii) Multiple use means the management of the land in a combination of balanced and diverse resource uses that takes into account the long-term needs for renewable and nonrenewable resources, including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, natural, scenic, scientific and historical values, and the coordinated management of the resources without permanent impairment of the productivity of the land or the quality of the environment.

**36-12-105. Interstate compacts.**

Land in the state which has been administered by the United States under interstate compacts will continue to be administered by the state in conformity with those compacts.

**36-12-106. Multiple use.**

The land shall be used to foster, promote and encourage the optimum development of the state's human, industrial, mineral, agricultural, water, wildlife and wildlife habitat, timber and recreational resources.

**36-12-107. Proceeds to the general fund.**

The proceeds of sales, fees, rents, royalties or other receipts from the land paid to the state under this act shall be deposited in the general fund.



## **OSLI's Current Board of Land Commissioner Rules**

*Chapter 1* – Practices and Procedures Before the Board;

...

*Chapter 3* – Easements;

*Chapter 4* – Grazing and Agricultural Leasing;

*Chapter 5* – Special Use Leasing;

...

*Chapter 7* – Disposition of State In-Kind Royalty Oil and Gas;

*Chapter 8* – Sale of Forest Products from State Lands;

*Chapter 9* – Governing Fire Danger Closures;

...

Chapter 11 – Fossil Permits;

Chapter 12 – Management of Centennial Acres;

Chapter 13 – Public Hunting and Fishing and General Recreational Use;

Chapter 14 – Temporary Use Permits;

...

Chapter 16 – Surface and Subsurface Survey Activities;

Chapter 17 – Fees for Administrative Services and Interest Rates;

Chapter 18 – Leasing of Oil and Gas;

Chapter 19 – Leasing of Coal;

Chapter 20 – Leasing of Trona/Sodium;

Chapter 21 – Leasing of Uranium;

Chapter 22 – Leasing of Bentonite;

Chapter 23 – Leasing of Zeolite;

Chapter 24 – Leasing of Metallic and Non-Metallic Rocks and Minerals;

Chapter 25 – Leasing of Sand and Gravel, Borrow Material, and Rip-Rap Rock;

Chapter 26 – Land Acquisition and Disposal;

Chapter 27 – Prescribed Burns;

Chapter 28 – Weed and Pest Control Program.



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# APPENDIX B:

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## Field Inspection (3/30/2010)

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Photograph #1: Non-producing and Bonded Well



Photograph #2: Evidence of Reclamation



Photograph #3: Evidence of Possible Production on Rental Lease



Photograph #4: Evidence of Plugged and Abandoned Well: Pre-Reclamation



# APPENDIX C

## Question template for other states' requests

	Commission or Board Comprised of Elected Officials	Commission or Board Comprised of Appointed Officials	State Agency
1) What state entity makes decisions with respect to approving leases?			
	<b>Less than Five Years</b>	<b>Between 5-10 Years</b>	<b>Over 10 Years</b>
2) What is the primary term of an oil and gas lease?			
	<b>Yes</b>	<b>No</b>	<b>If Yes, length of extension(s)</b>
3) Does the state entity approve lease extensions for oil & gas leases?			
	<b>Less than Five Years</b>	<b>Between 5-10 Years</b>	<b>Over 10 Years</b>
4) What is the primary term of a coal lease?			
	<b>Yes</b>	<b>No</b>	<b>If Yes, length of extension(s)</b>
5) Does the state entity approve lease extensions for coal leases?			
	<b>Less than 10%</b>	<b>Between 10% and 15%</b>	<b>Over 20%</b>
6) What is the royalty rate paid to the state for oil and gas production?			
	<b>Yes</b>	<b>No</b>	<b>If Yes, type and reduction of percentage</b>
7) Are royalty rate reductions for oil & gas leases used as an incentive?			

	<b>Less than 10%</b>	<b>Between 10% and 15%</b>	<b>Over 20%</b>
<b>8) What is the royalty rate paid to the state for coal production?</b>			
	<b>Yes</b>	<b>No</b>	<b>If Yes, type and reduction of percentage</b>
<b>9) Are royalty rate reductions for coal leases used as an incentive?</b>			
	<b>Yes</b>	<b>No</b>	<b>Explanation</b>
<b>10) Has the state entity compelled production of an existing oil &amp; gas lease based on other state or federal drilling activity?</b>			
	<b>Yes</b>	<b>No</b>	<b>If yes, does the state maintain production records, royalty amounts, etc., to show effectiveness of such agreements?</b>
<b>11) Does the state entity allow for combining private, state, and/or federal leases into cooperative drilling efforts where all participants share in mineral royalties?</b>			
	<b>Yes</b>	<b>No</b>	<b>If yes, please provide examples.</b>
<b>12) Does the state entity approve special use leases?</b>			
	<b>Yes</b>	<b>No</b>	<b>If yes, please provide examples.</b>
<b>13) Does the state entity approve temporary use permits?</b>			

	Yes	No	If yes, does the state require the following: 1) contracts or agreements annotating the activity; 2) fees or use of testing data; and 3) storing data with respect to the surveying activity?
<b>14)</b> Does the state entity approve surface and subsurface surveys (outside of normal leases or permits), which allow industry to test core samples, etc.?			
	Yes	No	If yes, please provide the mechanics of how this monitoring is done (e.g. manually, through GIS capabilities, etc.).
<b>15)</b> Does the state entity monitor federal and other state lease activity to determine if land should be leased for production?			
	Yes	No	Explanation
<b>16)</b> Does the state entity analyze suspension data to determine how much revenue it is losing, etc.?			
	Yes	No	Explanation
<b>17)</b> Does the state entity use inspectors to identify damage to leased land, which could result in increased surface impact payments or bonding?			

			<p><b>If yes, does: 1) A portion of the surface impact payment go to the state. Depends on direct damages to surface lessee and if its on unleased mineral lands.</b></p> <p><b>Otherwise bonds have to be posted before entry. The company will have apply for application for permit to drill.</b></p> <p><b>The thinking is that if a surveyor makes a good finding, he/she will want to lease the land if unleased. If damage has occurred to the land during the surveying phase, the bond will take care of the damages during recalibration.</b></p> <p><b>2) The state entity calculates the surface impact payment. This depends on whether the land is leased for minerals or not.</b></p> <p><b>3) the surface and/or subsurface lessee calculate the surface impact payments; Office would make that calculation</b></p> <p><b>4) the state entity maintain data to ascertain the amount paid in surface impact payments Timothy Kelly has all the files but does not track those cases</b></p> <p><b>5) the state entity use its share of surface impact payments for staffing, mitigation of damage, etc.)? Yes.</b></p>
<p><b>18) Are surface impact payments made by lessees for damages to leased land?</b></p>	<p><b>Yes</b></p>	<p><b>No</b></p>	

	Yes	No	<p>If yes, does the system 1) track CBM production activity; on state leases, yes</p> <p>2) utilize GIS to integrate various information fields (e.g. lease term, royalty rate, production figures, delinquent accounts, etc) No. However, they do employ three royalty auditors, and have 1 ½ positions doing rental reviews.</p> <p>3) track the effectiveness of incentives such as reduced royalty, surveying activity, use of cooperative or other unit plans, etc. No</p> <p>4) track the effectiveness of efforts to monitor adjacent state and federal leased lands? No.</p>
19) Does the state entity have an automated system for managing state leased lands?			
	Yes	No	If yes, what type of leases are let (e.g. coal or oil & gas, or modified) in order to maximize the revenue from such activities?
20) Does your state entity lease land for underground coal gasification or coal bed methane production?			
	Yes	No	Explanation
21) Does your state entity use competitive bidding for leasing state land?			



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# APPENDIX D

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## Example geophysical documents: Colorado permit; Texas permit application

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SLB 62  
Rev. 06/90

Phone (303) 866-3454

STATE OF COLORADO  
STATE BOARD OF LAND COMMISSIONERS  
Department of Natural Resources  
1313 Sherman Street, Room 620  
Denver, CO 80203

### EXPLORATION PERMIT NO. EP 2738

This is to certify that Tideland Geophysical, P. O. Box 283, Pratt, KS 67124 has permission for a term to expire April 1, 2010 to enter upon the following state-owned mineral lands:

<u>SUBDIVISION</u>	<u>SEC.TWP.RGE.</u>	<u>COUNTY</u>	<u>PATENTS</u>
W/2	6-10S-55W	Lincoln	None
ALL	36-9S-56W	Lincoln	None

for the purpose of carrying on the following method of exploration to determine the Gas Storage possibilities on said lands:

Method : 3-D Seismic using Vibroseis

The permission herein granted is subject to the following conditions:

1. **RESERVATION** - The Board reserves the right to withdraw any or all lands from this permit without prior notice at any time when or if the Board deems it to be in the best interests of the State to do so.
2. **NOTICES** - Permittee shall notify the surface owner or lessee of his intention to enter upon the lands under this permit and will, in every way, respect the rights of such occupants to the end that the least inconvenience and damage may be caused them by the conduct of the exploration. Permittee shall immediately notify the Board of any unusual damages or claims.
3. **CANCELLATION** - In the event of the failure of Permittee to abide by the terms and covenants of this permit, the State Board of Land Commissioners shall have the right to cancel the privileges herein granted. This permit may be cancelled at any time without notice if the Board deems cancellation to be in the best interest of the State.
4. **BOND** - An exploration bond or proof of a Colorado Oil and Gas Conservation Commission permit shall have been filed with the Board before work is commenced on any state-owned land. The amount of the bond, fixed by the board, varies in proportion to the type of land, the size of the area to be worked, and type of exploration. A permanent statewide bond may be filed with this office, but a separate permit shall be required for each exploration area.
5. **BOND RELEASE** - Before releasing permittee from bonded liability, the Board may require permittee to show proof that his operations have been conducted satisfactorily and that damage claims have been settled. Bond provided by Tidelands Geophysical.
6. **DAMAGES** - Permittee shall be responsible for all damages to the lands and personal and private property, including but not limited to livestock, crops, fences, gates, culverts, irrigation systems, stock watering facilities, roads, power lines, buried pipe lines, water lines, etc. Permittee shall settle damage claims within sixty (60) days after completion of the borehole abandonment activities.
7. **OPERATIONS** - All work shall be done in a reasonable manner with the least possible interference with the surface owner's or surface lessee's operations, or with the operations of other minerals lessees. No member of the crew will be permitted to carry firearms, nor will they be permitted to fish on the premises covered by this permit during the field operations without the permission of the surface owner or lessee.
8. **EXPLOSIVES** - No powder charge shall be exploded within one-quarter (1/4) mile of any water

well, spring, reservoir, dam, or dwelling, except by special permission of the surface owner or lessee.

- 9. **PLUGGING** - (a) All holes shall be substantially, safely and completely plugged, from bottom to top. The surface of the land must be restored to its original condition as nearly as practicable. All holes shall be capped at all times when not in use. Uranium exploration holes shall be cemented from bottom to three (3) feet below plow depth. Any other method of plugging exploration holes shall be submitted for Board approval prior to use. Plugging and abandonment procedures shall conform to attached Exhibit A.

- (b) Protection of fresh water aquifers is vital. Permittee must take the necessary precautions to protect the fresh water formations penetrated in each hole drilled and also agrees to comply with all state laws as well as the rules and regulations of the State Engineer's Office and other state agencies charged with the protection of same.

- (c) Water - Permittee shall not establish any water rights and water shall not be used or withdrawn in any amount except by specific permission of the surface owner or lessee and shall be taken only from sources designated by such owner. Any water developed shall be developed in the name of the surface owner unless otherwise agreed.

- (d) Permittee shall report water sands encountered and an estimated amount of water, if any, and if possible, in each hole drilled on state lands.

- 10. **DATA** - Upon request the Board shall be entitled to data obtained from each hole drilled, which data may be kept confidential upon request as consistent within the law.

- 11. **RESTORATION** - (a) All restoration must be completed within sixty (60) days from completion of exploration on any particular tract.

- (b) All materials brought into any area, such as paper, cans, wire, dynamite boxes and other refuse, shall be removed.

- (c) When important alterations to the state-owned land surface are necessary, the land shall be returned as nearly as possible to its original condition.

- (d) All damages shall be reported to the surface owner or lessee within twenty-four (24) hours and shall be repaired immediately as nearly as possible to the condition existing prior to such operation.

- (e) Any public hazard caused by operations of permittee shall be marked or barricaded until restoration is completed.

- 12. **ARCHAEOLOGY** - Under no circumstances shall any person destroy, disturb, mar, collect, remove or alter any prehistoric or historic resources of any kind on state lands as provided by law. These resources include all artifacts of stone, wood or metal, pictographs, structures, etc. In the event of discovery of anything of prehistoric or historic nature, the Office of the State Archaeologist should be notified immediately.

- 13. **HOLD HARMLESS** - Permittee shall at all times conduct all operations in a manner that will assure complete safety against accidents of any kind that may endanger life and limb of anyone, and permittee shall hold harmless the State of Colorado and its Board of Land Commissioners from any and all claims arising from operations conducted by permittee.

STATE BOARD OF LAND COMMISSIONERS

\_\_\_\_\_  
Timothy J. Kelly, Minerals Leasing Manager

The terms and covenants of this exploration permit are accepted by the undersigned Permittee.

Date \_\_\_\_\_ Tidelands Geophysical Company

Permittee \_\_\_\_\_



**Application to Perform Seismic Work on State-Owned Land**  
 Texas General Land Office  
 1700 N. Congress Ave.  
 Austin, Texas 78701-1495

**For GLO Use Only:**

Permit #  
 Date of Application  
 From  
 To

Complete this form and return it, along with all requested information and required fees, to the Texas General Land Office, 1700 N. Congress Avenue, Suite 600, Austin, Texas 78701-1495. A complete application must be received by the GLO at least 20 business days (for submerged lands) and at least 10 business days (for upland tracts) before proposed commencement of operations. Please print/type all information.

**Applicant Information**

Applicant name	Phone ( )
Address	
Contact name	
Signature	
Permittee name	Phone ( )
Address	
Contact name	
Signature	

**Submerged Lands, Gulf of Mexico, Bays and All Tidally Influenced Waters**

Name of bay(s), bayou(s):  
 Gulf of Mexico (area):  
 County(-ies):  
 Name of crew chief supervising work: Crew Number:  
 Name of Health, Safety, and Environmental Coordinator:  
 HSE contact phone:  
 Identification markings to be used on all equipment:  
 Energy Source: High velocity  Yes  No Low velocity  Yes  No  
 Type of high velocity source: Type of low velocity source:  
 Size of charge per shot: lbs. If airguns are to be used, number of airguns per shot:  
 Planned depth of charge below mudline: ft. Total volume per shot: \_ psi.  
 Distance between shots: ft.  
 Distance between shot lines: ft. Distance between receiver lines: ft.  
 If using a high velocity energy source in a bay system. Include the types of equipment to be used for access, drilling, and the location of the proposed staging area(s).  
 Equipment types:  
 Staging area(s):  
 Number of unleased state-owned acres in proposed seismic project:  
 Total fee amount to be paid prior to issuance of permit: \$

Please include the following with the application: A list of the state tracts, any corresponding environmental codes (available from the GLO), X and Y coordinates of the beginning and ending points of each line, 10 copies of map showing the state tracts, all proposed shot and receiver lines, bird rookery islands and oyster reefs (public or private), and a \$100 application fee. All other applicable fees must be paid prior to issuance of a geophysical permit on state-owned lands.

**Upland Tracts**

List all unleased Upland State Fee Tracts<sup>1</sup> (includes lands where the Permanent School Fund owns both the surface and minerals, surface only or minerals only, and non-tidally influenced riverbeds, creeks, lakes, and bayous)

County(-ies)      Block(s)      Township(s)      Section(s)      Survey Name(s)      Abstract #(s)

List all unleased Relinquishment Act Tracts<sup>2</sup>

County(-ies)      Block(s)      Township(s)      Section(s)      Survey Name(s)      Abstract #(s)

List all unleased rivers, creeks, lakes, or bayous (non-tidally influenced)

County(-ies)      Rivers      Creeks      Lakes      Bayous

Energy Source: High velocity     Yes     No    Low velocity     Yes     No    Cables only     Yes     No

Type of high velocity source:

Type of low velocity source:

Number of unleased state-owned acres in proposed seismic project:

Total fee amount to be paid prior to issuance of permit \$

If needed, please attach a list of additional state-owned tracts to be included in this application.

Please submit a topographic plot showing all shot and receiver lines and any state-owned tracts to be permitted, and a \$100 application fee.

Notes:

1. An archeological survey may be required for properties in which the state owns the surface estate.
2. On unleased Relinquishment Act lands, all fees for actual damages, if any, to personal property, improvements, livestock, or crops are to be negotiated with the surface owner. Any fees in excess of actual damages must be shared equally with the state.

I, Jerry E. Patterson, Commissioner of the Texas General Land Office, by virtue of the authority vested in me by those statutes governing geophysical work on Public School Lands of the state of Texas, do hereby authorize the above-named applicant to conduct seismic exploration on state-owned lands described above under the following conditions:

1. This authorization is granted for work described in this application only. Work in excess of these limits, or not complying with agreed procedures, will be grounds for immediate termination of this permit, appropriate penalties to be determined by the Commissioner, and denial of future rights to conduct seismic work on state-owned lands.
2. Recommendations made by Texas General Land Office field representatives regarding placement of shot holes, location of shot lines, or restorative measures shall be followed.
3. This permit is subject to all provisions of 31 T.A.C. section 9.11.

# Recent Program Evaluations

State Park Fees	May 2001
Childcare Licensing	July 2001
Wyoming Public Television	January 2002
Wyoming Aeronautics Commission	May 2002
Attorney General's Office: Assignment of Attorneys and and Contracting for Legal Representation	November 2002
Game & Fish Department: Private Lands Public Wildlife Access Program	December 2002
Workers' Compensation Claims Processing	June 2003
Developmental Disabilities Division Adult Waiver Program	January 2004
Court-Ordered Placements at Residential Treatment Centers	November 2004
Wyoming Business Council	June 2005
Foster Care	September 2005
State-Level Education Governance	December 2005
HB 59: Substance Abuse Planning and Accountability	January 2006
Market Pay for State Employees	July 2006
Wyoming Drug Courts	July 2006
A&I HRD Role in State Hiring	December 2006
Kid Care CHIP: Wyoming's State Children's Health Insurance Program	June 2007
Wyoming Retirement System: Public Employee Plan	August 2007
WYDOT and General Fund Appropriations for Highways	May 2008
Wyoming Child Protective Services	September 2008
Department of Fire Prevention and Electrical Safety	December 2008
Office of Health Care Licensing and Surveys	July 2009
Victim Services Division: Phase I	August 2009
Reading Assessment and Intervention Program	February 2010
Victim Services Division: Phase II	February 2010

**Evaluation reports can be obtained from:**

*Wyoming Legislative Service Office*  
213 State Capitol Building Cheyenne, Wyoming 82002  
Telephone: 307-777-7881 Fax: 307-777-5466  
Website: <http://legisweb.state.wy.us>

