Michael R. Brown, Chairman
Kevin S. Carter, Director

MINUTES OF THE MEETING OF THE SCHOOL & INSTITUTIONAL TRUST LANDS ADMINISTRATION BOARD OF TRUSTEES

Date: March 15, 2012
Place: Salt Lake City, Utah

Attending:

BOARD	STAFF
Mike Brown	Kevin S. Carter
Dan Lofgren	Kim Christy
Steve Ostler	Doug Buchi
James Lekas	Dave Hebertson
Louis Cononelos	Tom Faddies
David Ure	LaVonne Garrison
Mike Mower	John Andrews
	Wendy Peterson
	Kay Burton
	Lou Brown
	Chris Fausett
	Scott Bartlett
	Andy Beddington
	Ron Torgerson
	Lisa Schndeider
	Ron Barton
	Tom Mitchell
	Nannette Johnson

OTHERS IN ATTENDANCE

Martell Menlove, State Office of Education
Margaret Bird, State Office of Education
Tim Donaldson, State Office of Education
Paula Plant, State Office of Education
Karen Rupp, State Office of Education
Gary Mason, Sevier County Commissioner
Brandon Loomis, Salt Lake Tribune
Lauren Shurman, Attorney for Rocky Mountain Power
Matthew Moscon, Attorney for Rocky Mountain Power
Mark Purdy, Citizen

Index

Item		Page Number
1.	**Approval of Board Minutes**	3
2.	**Confirmation of Calendar for 2012 Meetings**	3
3.	**Chairman's Report**	
	a. Beneficiary Report on Research for Governmental SULA	3
4.	**In the Matter of Rocky Mountain Power Petition for Administrative Review**	
	Initial Consideration Pursuant to Rule R850-8-1000 (6)	6
5.	**Director's Report**	
	a. Sage Grouse Listing Status (Closed Session for Strategy Discussion)	13
	b. Legal Update of Pending or Ongoing Litigation (Presented in Closed Session)	13
	c. Legislative Summary	14
	d. Draft Policy on Grazing Fees and Permits Involved in Land Exchanges	15
	e. Daggett County Exchange Proposal	22
	f. Draft Policy on Large Block Sales	22
6.	**Consent Calendar**	
	a. OBA Non-Competitive Exploration Agreement and Lease of Metalliferous Minerals - Bridger Jack Mesa, San Juan County	22
	b. Adoption of Grazing Assessments for 2012-2013 Grazing Season Request	22
	Notification	
	c. Notification of Proposed Negotiated Sale to Mr. Wayne Simper (PS 8487, Maseser North Parcel)	23
	Follow-up After Six Months	
	d. Development Lease Modifications – Sun River – Washington County	23
	e. OBA Gilsonite Lease in Rainbow Gilsonite Area Zeigler Chemical	23
	f. OBA Pride Ventures, LLC	23

Chairman Michael Brown welcomed all in attendance.

1. Approval of Board Minutes

Chairman Brown mentioned a change for correct spelling of Pinedale. With that change to the minutes, the Board approved Minutes of January 19, 2012.

Mower/Cononelos

"I move that we approve the Board minutes of January 19, 2012."

Roll Call:

Mike Brown – yes	Dan Lofgren – yes
James Lekas – yes	Steve Ostler – yes
Dave Ure – yes	Louis Cononelos – yes
Mike Mower – yes	

2. Confirmation of Upcoming Meeting Dates

April 11	Board Mine Tour - Price
April 12	Price
May 17	Salt Lake City
June 14	Salt Lake City
July	No Meeting
August 9	Salt Lake City

Director Carter mentioned the Western States Land Commissioners Association will meet in Eugene, Oregon in July, if any Board members are interested in attending those meetings please let Nannette know and arrangements will be made. The meetings are an opportunity to see what other states are doing with their trust lands and how they address some of the issues.

Mr. Cononelos asked for clarification on facility and transportation arrangements related to April meetings in Price and the tour early on April 11th. Information will be provided through email in the coming weeks. Those attending should contact Nannette to confirm requests for an overnight room and transportation.

No conflicts with future meeting dates were identified.

3. Chairman's Report

a. Beneficiary Report on Research of Government SULA

Tim Donaldson reported the beneficiaries plan to complete research from a list. The reports to the Board will be a way of presenting the research resulting from friendly audits.

Government Special Use Agreements (SULAs)

The government SULA presentation began with a look at the report "Dollars Spent v. Dollars Earned" and identified how a lease versus a sale will affect the report. Mr. Donaldson also presented a graph

illustrating the increases for government SULA revenue over a ten-year time span. Mr. Donaldson continued with the report through a PowerPoint presentation as follows:

Overview of 57/58 Current Leases
Payment

- $329,868/yr total revenue
  - $71,149 Direct Expenses ($4.64/$1)
- $5,687/yr average
- $0-$154,000/yr range
  - $0 (15%)
  - $50-1000 (35%)
  - $1001-5000 (30%)
  - $5001-35,000 (20%)
  - >$35,000 (<1%)

Category of Use

- Water (Storage tank, well, spillway, etc.) (50%)
- Military (15%)
- Recreation (10%)
- Science (10%)
- Road Construction (5%)
- Wildlife (5%)
- Other (5%) (Landfill, Airport, Parking Lot)

$0 Payment Leases

- Inherited from exchanges t $0 perpetual
  - Why acquire? Incidental to block acquisition
  - Minimal management costs
- Beneficial Use
  - Reservoir
  - University of Utah Parking Lot

Discussed with Surface Staff

- $400/yr may be market value, or even above market value, for some leases
  - Review cycle requires fair market value
  - $600/yr minimum next review cycle
  - Community goodwill
- If a low revenue lease invokes archeology, RDC process, and/or environmental concerns, are they worth doing?
  - Minimum Application Fee and Archeology costs are required to cover processing costs
- When is a surface sale preferable to a long-term lease?
  - General Philosophy: lease is best, case-by-case exceptions

General Observations

- Every lease issued since 1994 has a 3-5 year review for fair market value
- The vast majority of the time, incremental increase are made to the annual payment
- Major increases in payment were rarely required (from beneficiary perspective)
- Mr. Donaldson provided the disclaimer that he cannot say with any confidence where any lease is relative to market value, as his research did not go to that depth.

3. Chairman's Report (Cont'd)
   a. Beneficiary Report on Research for Governmental SULA (Cont'd)

R850-30 Special Use Leases

R850-30-200 Terms of Leases

1. The agency may issue special use leases for surface uses of trust lands, excluding grazing, for terms up to 51 years.
2. In exceptional cases, the agency may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the trust beneficiaries.
1. (Maximum Length by Type) (d-g) Commercial, Industrial, Residential, Governmental (0ther than military): 51 years

51 is the maximum by rule but often used as default preferred choice

Length of Lease Term					
Lease Type	1-30 Years	31-51 Years	>51 Years	No Expiration	Totals
Agricultural	40	9	-	-	49
Commercial	7	17	2	-	26
Governmental	23	30	-	4	57
Industrial	84	19	1	16	120
Residential	16	6	-	-	22
Telecomm	92	22	-	4	118
Totals	263 (67%)	104 (26%)	3 (1%)	24 (6%)	392
From Kim Christy, May 2008 Board presentation - Subsequent leases overwhelmingly 30 years or less					

Request for Board Consideration

1. Pros and Cons of reducing Government SULA lease term maximum from 51 years to 30 years?
2. Similar reduction for Commercial, Industrial, and Residential?

Mr. Donaldson recommended the Board present the opportunity for staff to respond.

John Andrews discussed the special use lease program and efforts to step up environmental enforcement. The agency hired an employee whose initial task was to visit all SULAs for a detailed environmental review and a risk finding to identify high-risk issues.

Mike Mower asked if Mr. Donaldson, having finished the review from the beneficiary point-of-view, had positive findings regarding how the current SULA program is operating. Mr. Donaldson indicated that on-the-whole, the program seems to be really good.

Director Carter added that it has been a philosophical position for the agency on government leases, to expect the leaseholder to run a clean operation. The agency is less concerned with a government lease compared to a lease with a private company, industrial, or commercial setting. The agency works under the premise that cities and counties are here to stay and not able to avoid cleaning up.

Mr. Ure indicated the size of the city could make a difference in an ability to afford the cleanup of a site. The smaller government SULA may benefit from a different consideration.

Director Carter stated that the agency has been aggressive about leasing land rather than selling. This practice emphasizes where there may be significant income opportunity like the Provo Landfill.

Economically, that is seen as a better deal. The maximum term on government leases have been lenient in letting the leases run an extended time and usually to the maximum term for locations with structures like a water tank, which is considered a long-term investment. The leaseholder will want the assurance of a long-term lease.

Director Carter continued saying that when the agency looks at commercial, industrial, or residential leases, it is more a function of what lenders are expecting for assurance on how long a term they will lend. The lease term can be looked at on a periodic basis. Director Carter indicated that the agency feels comfortable continuing with government leases for the maximum term, since most of the payments are made regularly. The positive side of this issue is better than the negative.

Margaret Bird indicated disagreement with the agency perspective presented by Director Carter. She used St. George as an example. If considered 50 years ago, St George would not have projections for the growth it has experienced.

Ms. Bird indicated the banking institution requires a 30-year lease for funding. She indicated the beneficiaries feel many things change and evaluation at 30 years may make more sense.

Chairman Brown provided the comparison that the mining industry claims on federal land are often for 40 years. Miners do not invest unless they can invest for over 40 years. He asked if there were any additional comments from staff.

Kim Christy reminded the Board of a presentation he made in May of 2008 when he identified 392 active leases. Of those leases, 67percent had terms of 30 years or less. Since that time, the SULA portfolio has grown to nearly 440 SULAs. Approximately 71 percent of the current SULA portfolio has terms of 30 years or less. There are circumstances where the agency needs to be flexible with the client. Mr. Christy indicated he believes that returning to a rigid 30-year framework would be more harmful than helpful.

Chairman Brown indicated the Board would consider the information provided.

4. In the Matter of Rocky Mountain Power Petition for Administrative Review

Chairman Brown indicated there were several in attendance to speak on the petition. He asked to begin with the representation for Rocky Mountain Power.

Matthew Moscon introduced himself as an attorney at Stoehl Rives and legal representation for Rocky Mountain Power. He asked the Board to exercise its authority under the Rule 850-8-1000(7) to transition a dispute between the trust lands administration and the power company to the district court as the proper forum to resolve the dispute between parties as to the valuation of an easement. The easement pertains to a large transmission project known as the Mona to Oquirrh transmission line. The power company did not randomly select the site of these power lines. They completed environmental

impact processes and litigation with the county at multiple levels. The power lines follow the route rated to have the least impact environmentally, which took the lines through SITLA lands. The agency said they did not want the power lines in the location identified. In order to try and minimize impact to SITLA projects the transmission line corridor was realigned to track the Mormon Trail Road. Instead of bisecting SITLA lands at cross-angles to the road, the towers were moved to run parallel to the road.

The power company and the agency completed a right of occupancy in anticipation of issuing an easement. The power company is on SITLA lands and the project is underway. The dispute comes down to valuation of the easement. The power company has hundreds of easements on SITLA lands.

The problem in this case is the complexity of the issue. As the Board is aware, SITLA thinks the future development is going to be in the value of development property near the power lines. How to value today what is hoped for in several decades may result in litigation that is rather complicated on both procedural grounds and legal grounds. The power company does not believe this is the best forum to undertake these complex issues.

Mr. Moscon used examples of ranchers to identify some of the complexities related to water rights for future development. He felt that it would be necessary for attorneys to depose those with the water rights now to get their side of the story. The Board's discovery rules do not contemplate the ability to go out to third parties and require them to sit for depositions. This Board, as the tribunal, is going to be asked to make a big decision without a complete set of facts that would be available to a district court.

There are going to be legal issues to be ruled on by the tribunal. For instance, the right of occupancy agreement entered into between the agency and the power company indicates the evaluation will be based upon an MAI appraisal. The power company obtained appraisals that criticized the appraisal obtained by the agency, saying it does not follow uniform standards of professional appraisal protocols.

Mr. Moscon pointed out that under state statutes if an entity has condemnation authority and acquires land the entity says that the value is not only in the damage to land but also in the value brought to the land. Mr. Moscon stated that future development will need power provided by this project.

Chairman Brown asked how far along the project is in relation to the comment, "if the project doesn't proceed." Mr. Moscon clarified his comments to say the project is proceeding. Chairman Brown indicated it is important to understand the project is proceeding.

Mr. Moscon said there is no doubt that the Board has every ability to adjudicate value issues. The easement should not cost this much. What is unique in this case is there are so many legal issues tied up with so many procedural issues. This Board is bound by and limited by its own regulations.

Mr. Moscon suggested there has been an implication of two things. First, that the power company agreed that this is the body that will determine value. Nothing in the agreement said that it had to be this adjudicative body. It simply said if there is a dispute, the decision would be appealed to this Board. The second thing is the appraisal issue. The power company has obtained two different appraisals that are miles apart from the appraisal the agency is relying on. There are a host of arguments to support belief

the appraisal is flawed and would not be admissible. This Board can consider, under its existing regulatory framework if there is automatically a stay and has the ability to determine the length of stay. This Board also has the ability, under R850-8-700, entitled Conferences Encouraged, to have settlement conferences. Mr. Moscon suggested that the Board, if for some reason it does not want to simply pass this on to the district court, could order the parities to obtain a different appraisal. Have SITLA get another appraisal from a qualified appraiser, that complies with USPPA standards and order the parties to come before the Board in a settlement conference to see if a new appraisal cannot facilitate a negotiated settlement.

Mr. Moscon summarized his comments saying the issues are so complicated and complex the power company believes, with full respect to the Board, this is not the proper forum because of the extrinsic facts that will need to be examined in order to come up with an appropriate land value determination. The power company is happy to do that in a settlement process. If needed, they will go to district court. The power company fears that a formal adjudicative process is going to tie everyone's hands and put this Board in the unenviable position of ruling on millions of dollars of dispute. It will likely be a very publicly visible process and may reach the Supreme Court without having had the ability to see all the extraneous facts that are so important.

Mike Mower indicated, as a member of the Board, he respects the agency obligation to look out for the beneficiaries. He also commented from his position as State Planning Coordinator for the Governor's Office, where the perspective is one of appreciation for the transmission line. There is a tendency to think that infrastructure takes care of itself. Mr. Mower indicated he knows the power company worked hard and no one wanted it in their back yard but everyone wanted to benefit from the product that Rocky Mountain Power produces. As this process starts, the Board recognizes the challenge and benefit to the State. Mr. Mower added, the Board needs to have a robust discussion to decide the best way to proceed.

Mr. Mitchell presented the procedure for application and the appeal process. He provided a handout of the steps in the process and pointed out an important fact that this is not a condemnation proceeding. Therefore, a rancher's willingness to sell water rights is null. The standard for this Board on an appeal of this decision is to determine a factual basis for the agency decision and to decide if it complies with the agency rules and statutes. The Board is asked to determine if the agency action is reasonable and in the beneficiaries best interest. It is to this Board, selected for its expertise, to determine the best means to address the issue. Then, if there is an appeal, it goes on a formal record where the Utah Supreme Court will ask if there is substantial evidence that directly supports the Board's decision. Did the Board follow its rules? Did the Board follow statute? Was it arbitrary and capricious to reach that conclusion?

Mr. Mitchell directed the Board to the image attached to the handout and indicated the project is built with no delay, without getting an order of temporary occupancy in advance of condemnation proceedings. The process followed agency procedures. Therefore, it is appropriate that the Board retain authority of review of its own actions.

Mark Burns, of the Attorney General's Office, and attorney for the Board, indicated the parties are arguing value. Mr. Burns suggested a step back into the rules and the petition process. As the initial petition is required to specify the statute, rule, contract provision, or Board policy, which the agency

action was alleged to violate. The second thing is the nature of the violation with the statute rule or contractual provision injury that results.

The contract provision that is at issue here is located in a footnote in the agency response on page nine. It reads:

> "The trust lands administration and permittee expressly acknowledge that permittee has sought an easement for the permanent activities on a permitted property and this right of entry is granted based upon the parties express understanding that permittee will acquire an easement in a form acceptable to the Trust Lands Administration and for consideration to be paid *[this is key because ordinarily in a condemnation hearing, the jury would make the determination as to what the value is*] in an amount as determined by the Trust Lands Administration [*not the Board, not the jury*] to provide compensation to the Trust Lands Administration for the fair market value. [*which does create a dilemma. Is the rule talking about fair market value or about what the agency as the property owners determine? Whether the fair market value is $100 or $1,000 or more, as the Board is well aware, the charge can be made that as long as the agency is not charging less than the fair market value for the benefit of the beneficiaries*] effected by the easement to be granted including severance damages to the remainder."

The Board has not heard what specific contractual provision the administration is alleged to have violated. Mr. Burns reviewed the tools available to the Board in the appeal process as provided by R850-8-1000 (6). He summarized the questions for the Board as being what future proceedings if any, should take place in this circumstance. Given the great disparity in the value of property, the determination should identify the scope of the proceedings, what issues are to take place within the proceedings, whether they will be formal or informal, and what the appeal rights of the parties are.

Mr. Ure asked for confirmation if the Board is acting as a judiciary body or if they are sitting as the administration to oversee SITLA. He also asked if the Board would fall under the open meetings law in their role in the petition.

Mr. Burns confirmed the Board is acting as a judicial body in considering the merits of the petition and whether it should be granted. He added this is why the question was raised as to whether the petition, on its face, meets the requirement of alleging that the agency has violated a contract, statute, rule or regulation of the Board. Ordinarily, under open meetings case law, agencies acting in a judicial capacity are allowed to have closed meetings of deliberations.

Mike Mower asked how the Board would go about appointing a hearing examiner. Is there precedence in prior SITLA history, where this type of issue has come before the Board, what route did that board take, at the time? Mr. Burns indicated he does not have knowledge of the Board previously hiring a hearing examiner to make recommendations to the Board.

Chairman Brown offered that during his time on the Board there has been one petition in which the Chairman at that time, James Lee, acting as the hearing examiner, heard the petition. Mr. Mower asked if he was appointed as the hearing examiner. The Chairman indicated he appointed himself with the consensus of the Board. Mr. Mitchell reported it has been common practice for the Board in formal

matters to appoint a hearing examiner. The examiner can use discovery, motions, expert witnesses, etc., which result in a final proposed recommendation.

Chairman Brown asked Mr. Mitchell and Mr. Burns to explain to the Board the difference a formal or informal hearing creates and what opportunities are precluded or provided. Also, define if there is a difference in those proceedings if a hearing examiner is appointed.

Mr. Burns stated that the biggest difference is that informal proceedings do not allow discovery or intervention of other parties and interests. At this time, it appears that the chief principle parties and interests are already aware of the case and are talking. The real question becomes a matter of discovery. Formal proceedings are more court-like. In the formal proceedings, the Board has the ability to issue subpoenas. Mr. Burns pointed out that the fundamental questions go back to the earlier point of being are these proceedings to address an alleged a violation of rule, statute, contract, or policy that effected Rocky Mountain Power's rights. It is Mr. Burns' recommendation that if there are further proceedings, they would be formal proceedings allowing both parties to argue their respective positions as to whether the administration violated policy. Mr. Burns does not think there is an option to discuss value.

Mr. Ure asked if Mr. Burns could define under formal and informal proceedings, what happens after the Board renders its decision. Mr. Burns indicated that an informal proceeding goes to the district court, it is reviewed and there is not any deference to the administrative record. A written order follows the formal proceedings. It then goes to the Court of Appeals or the Supreme Court to review if the Board's determination is supported by substantial evidence.

Mr. Mitchell indicated the standard of review is key. It relates to how to properly invoke the Board's jurisdiction by alleging there is a violation of rules or policy. If the Board proceeds informally, there is no administrative record for the court to review. The district court essentially starts over. Secondly, in a formal matter there is a record with a court reporter taking down what is said. The standard is limited to the narrow question of did the agency abuse discretion and did the agency have a basis for the decision.

Mike Mower asked about one of the options presented, as the Board is looking at fact and how to break it down to make a decision. Was there an option for mediation in this scenario and how would that work. Mr. Burns points out the appraisals are for $ 4,000,000 and $70,000 and that is a long way apart for consideration in mediation.

Mr. Mitchell told the Board they can at any time indicate they want the two parties to go into a room and see if an agreement can be reached.

Mike Mower pointed out the time on the agenda planned for 30 minutes and there are others in attendance for other agenda items. He asked if it makes sense for the Board to go into closed session to have a discussion on how to proceed.

Chairman Brown indicated he would entertain a motion to go into closed session. Mr. Cononelos put the motion forward. Chairman Brown asked for questions before the vote.

Dan Lofgren asked if damages are occurring for either party at this time or will damages occur if this takes a month or longer to resolve. Mr. Mitchell indicated the work has continued and there is nothing preventing access or use of the lines. It is a matter of when SITLA is paid and that would be true under any proceeding. Mr. Moscon, speaking for the power company, agreed with Mr. Mitchell's assessment.

Mr. Ure returned to his question of wondering if the Board is acting as administrators or in a judicial capacity. It was confirmed that the Board acts as a judicial body. He wondered if the judicial nature allowed for closed session discussion. Mr. Burns indicated they are separate issues. In these proceedings, the Board is determining how to go forward and if they will proceed in a formal or informal manner. That would be the scope of closed session discussion. The decision on how to hear the petition is administrative, not judicial. Mr. Mitchell indicated the decision today is about how to proceed. Judges also listen to evidence and deliberate outside of the courtroom before rendering a decision. Mr. Burns added the statute provides an express provision and asked to hear Mr. Moscon's comments.

Mr. Moscon emphasized the manner in how the discussions are progressing today highlights why the appropriate thing is to exercise the option to send this to the district court. He said this case is fraught with peril for this Board and could result in a do over for everyone if mistakes are made. He reported that the power company submitted a petition for a violation of law and statute based on SITLA statute requirement to get fair value for use of its lands. The power company contends the decision to allow the easement over four million dollars grossly exceeds fair value and is extracting payment above and beyond something that is not supported by an appraisal. The power company has many arguments to make that do implicate value. The confusion highlights why this is a matter better suited for the courts.

Nothing has been brought up on the issue of discovery. It was pointed out that in a formal proceeding the Board has subpoena power to allow discovery among the parties. The parties are aware of the other's position. This case is about the discovery that is needed to address what the appraiser looked at and when they collected extraneous information. Mr. Moscon reminded the Board he does not think he needs to depose Tom to ask his position. The discovery needs to happen with outside parties. The rules that this body follows say that in a formal proceeding on motion, there can be discovery of parties. So if the Board appoints a hearing examiner, that examiner can only follow agency rules.

If the Board goes into closed session, Mr. Moscon recommends the Board do two things. Number one is complying with its rules to elect, under R850-8-1000(7), to determine that this Board should decline to conduct adjudicative proceedings in response to the petition. In which case, it goes to district court for judicial review under this code. In taking this option, the Board has clearly followed its administrative protocol and no one can argue that it is not something the Board can do.

Secondly, the Board can prolong a stay under R850-8-1000 (3) which is that all matters on receipt of a petition are stayed and the Board has discretion to lift the stay. If the matter is stayed and the power company wants to meet to conference, the parties are still worlds and miles apart.
Another thing that was not addressed is the suggestion that the Board tell the agency we want the agency to get a new appraisal. Take that appraisal and meet with the power company and see if that resolves the

issue. The Board can stay the proceedings, in order to do that. If the Board decides that does not work, then the Board can decide formal or informal. Mr. Moscon expressed that he does not believe the Board can feel adequately prepared today to determine all of the complex questions.

Tom Mitchell responded with a request for the Board to look at the right of entry agreement that they built the power lines under, you will recognize the complexity of the appraisal problem which is part of the reason it was granted and entered into. This is like any other entity who want trust assets and do not want to pay what the Trust feels is fair to receive for the land. In most cases, the amounts are different we do not hear about it because the project simply does not happen.

Mr. Ure asked if the Board has a right to review the appraisal process itself to see how it is conducted. Mr. Mitchell confirmed that Board members have full access to the appraisals.

Chairman Brown recognized a motion to go into closed session. Upon motion, the Board went into closed session at 10:17 a.m. Those in attendance for closed session included Board members and Attorney Mark Burns.

Cononelos/Lofgren. Unanimously approved.

"I move that the Board go into closed session for the purpose of discussing pending or reasonably imminent litigation.

Roll Call:
Mike Brown – yes
James Lekas – yes
Dave Ure – yes
Mike Mower – yes
Dan Lofgren – yes
Steve Ostler – yes
Louis Cononelos – yes

Upon motion by Mr. Ure, seconded by Mr. Mower, the Board returned to open session at 10:28 a.m.

Board Member Dan Lofgren made the motion that further proceedings in this matter be conducted in a formal manner and pursuant to that the Board appoint a hearing examiner under R850-8-1500, to make a recommendation to the Board, in determining whether the administration violated statute, rule, contract provision, or Board policy, and if so, which of those was violated and how.
Lofgren/Cononelos Unanimously approved.

Chairman Brown recognized the motion and the second. He asked if there was any further discussion. Seeing none, he called for those in favor.

Roll Call:
Mike Brown – yes
James Lekas – yes
Dave Ure – yes
Mike Mower – yes
Dan Lofgren – yes
Steve Ostler – yes
Louis Cononelos – yes

Dan Lofgren indicated that the Board identified potential candidates for a hearing examiner. Mr. Burns, as Board counsel, will contact candidates for hearing examiner.

5. Director's Report

Chairman Brown requested to switch two agenda items to hear the sage grouse issue to the extent possible in open session. The Board will then go into closed session to address these two agenda items.

a. Sage Grouse Listing Status (Closed Session for Strategy Discussion)
b. Legal Update of Pending or Ongoing Litigation (Presented in Closed Session)

Director Carter presented a map of Greater Sage Grouse Range-wide Breeding Density Thresholds. He reported the sage grouse is a species that is common throughout the western United States. The sage grouse occupies land in Eastern Montana, Wyoming, smaller densities in Utah then again across southern Idaho and down into the great basin in Nevada.

There has been a challenge to the Fish and Wildlife Service to list the sage grouse, primarily because their numbers are down significantly from the 1940s. The map used color to depict the densities and the importance of the breeding ground for the species. Wyoming and Nevada are the most important areas. There are some in Utah. Parker Mountain is identified as one of the best sage grouse habitats throughout its range for maintaining a good population. Another important area is where the Wyoming populations come into Utah in Rich County and in western Box Elder County. The Rich County portion marked for best habitat is very near a block of trust lands. A number of areas in Rich County would likely have nexus to trust lands.

The Fish and Wildlife Service, when asked to list the sage grouse a few years ago, made a decision that the listing was warranted but precluded. They felt like the species was at risk, but they were precluded from doing the listing because other species were at greater risk. They assigned a priority eight to the sage grouse. There is another sage grouse species in Utah that occurs in San Juan County, called the Gunnison Sage Grouse, which has a priority of two, which will likely be listed this year.

One of the things that the Fish and Wildlife Service sees as risks to the species is a lack of a regulatory mechanism on federal land to protect the species from fragmentation of habitat. To address the lack of regulation on federal land, the Bureau of Land Management has issued interim guidance that affects any activity in areas where some type of sage grouse habitat could occur. They also said that if the state puts forward a plan that is accepted by Fish and Wildlife Service to address development in sage grouse habitat, that the plan would supersede the interim guidance. Wyoming has done that and Utah is addressing the issue now to try to come up with recommendations to the Governor for adoption of a plan that would be recognized by Fish and Wildlife Service and supersedes interim guidance in Utah.

The BLM indicated they will either adopt the language in the interim guidance or in the state plan, whichever has been accepted as part of the guidance, in their resource management plans. It is important to have a plan in place if the state is going to impact management of sage grouse in hope of forestalling a listing. The Governor has empaneled a committee to look at this issue and provide him with recommendations to develop the sage grouse plan. There are about 20 people on the committee.

5. Director's Report (Cont'd)

a. Sage Grouse Listing Status (Cont'd)

The State of Wyoming is concerned enough that they made a facilitator available to other state to help work through the process. The facilitator has been talking with Kathleen Clark, in Utah, who in charge of the committee. The committee is beginning to express real feelings and passions on the issue.

Some strategies that the agency is pursuing may ultimately result in the agency being onboard or not being on board and suing. Director Carter asked the Board to go into closed session to discuss strategies in hopes of avoiding a lawsuit.

Chairman Brown recognized a motion to go into closed session. Upon motion the Board went into closed session at 10:32 a.m. Those in attendance for closed session included Board members, Kevin Carter, John Andrews, Martell Menlove, Margaret Bird, Paula Plant, Karen Rupp, Tim Donaldson, and Nannette Johnson

Ure/Cononelos. Unanimously approved.

"I move that the Board go into closed session for the purpose of discussing pending or reasonably imminent litigation."

Roll Call:

Mike Brown – yes	Dan Lofgren – yes
James Lekas – yes	Steve Ostler – yes
Dave Ure – yes	Louis Cononelos – yes
Mike Mower – yes	

Upon motion by Mr. Ure, seconded by Mr. Cononelos, the Board returned to open session at 11:12 a.m.

c. Legislative Summary

Director Carter reported on the agency budget requests submitted in the legislative process. Changes to the budget include the addition of an FTE for Oil and Gas. The budget provides another year of funding for the Right of Way Program and the appraisal funding. There is also an addition of a third line item in the budget using funds from the capital budget.

The eminent domain bill passed and now lists oil and gas as a mineral. Mr. Ure asked for clarification on the wording change. Director Carter pointed out that Utah's eminent domain statute is different from what most people probably think. It is not laid out in terms of who can condemn but rather in terms of for what purpose. The wording change sought by the agency originally said: "for the access and development of minerals and minerals in solution." The court held that did not mean oil and gas. Now it reads, "for access and development of minerals including oil and gas and minerals in solution.

A landowner protection bill, essentially lays out a process where there is a split estate, with a private surface owner and a private mineral owner that is not the surface owner. The bill defines a process for oil and gas development to occur and gives some protection to the surface owner.

Representative Noel ran a bill for the beneficiaries to clarify their role with the agency to say that the state office of education and the section within, are the primary beneficiary representatives for the schools, the school for the deaf, and the school for the blind. It clarifies their rights to access information from the agency and participate with the Board in things like closed session when invited. It also provides a more stable funding source. The bill provides some clarification on how the nominating committee members are appointed. The bill did not change who makes the nominations, the Governor still makes those appointments. Timelines for the nomination process were also identified in the bill.

Mr. Ure asked if the bill more clearly defines the representation from organizations on the selection committee. Director Carter recalled that livestock, grazing, and farming interests are now defined as Farm Bureau in consultation with woolgrowers and cattlemen.

Director Carter reported there was a huge effort behind the passing of House Bill 148 which pushes the state to make a request to the federal government to convey the public domain back to the state. They excised several types of property, including National Parks, some National monuments, and Indian reservations. The bill defines a huge job this next year for the Constitution Defense Council to come back with recommendation for creating a state land commission and guidance for the commission. Land will not come into the agency portfolio, nor did the agency ask for that.

The legislature addressed the process of the counties putting together county land bills and going to congress. The bill laid out a process that involves the state legislature and the Public Lands Coordination Office in vetting these land bills before a county can claim to have state backing when they go to Congress. Senator Lee said he would not support counties in pursuing land bills with congress. As long as the senator is in office, state legislation will need to be involved in pursuing a land bill. Yet, it is known that with state legislation review it does not change how the Congress will make their decision. The county land bills are important to the agency because they open the door for the agency to do exchanges that can help reposition assets in different areas.

d. Draft Policy on Grazing Fees and Permits Involved in Land Exchanges

Director Carter informed the Board they will be asked to talk about development of policy for grazing permits that convey to, or were acquired from, the federal government as the result of a land exchange. Mr. Christy has a draft policy he presented in the Board information packets.

Mr. Christy reminded Board members of the substantial changes in the grazing program over the years. Back in 2003, the Board requested a comprehensive review of the grazing program. The changes, including a split-fee arrangement, were not memorialized in rule or policy. The grazing program is probably one of the most politically sensitive issues the agency administers, but is an important resource to rural communities. An examination of the program revealed that some assets are valued much higher than others are. Mr. Christy pointed out that much of the portfolio sits in a sea of BLM domain. In comparison to the large portions of BLM land, the agency is a subordinate landowner.

Director Carter indicated that even though the agency owns sections and issues permits on land, the federal government determines what is called the exchange of use on lands that are not federal lands, but

are within a federal allotment. SITLA has the authority and flexibility to complete range improvement projects for a higher-valued asset that can demand a higher fee. The BLM determines how much grazing can occur on and within the allotment. They essentially control the grazing on the scattered section if it is within a BLM allotment, unless the section is fenced off.

Mr. Christy referenced a map showing only 3% of total permits are the higher valued blocks and have been administered with a higher fee. The measurement AUM (animal unit months), is used to measure the amount of forage necessary to sustain a cow and her calf or an equivalent other form of livestock.

Mr. Christy reported that the agency has 200,000 AUMs in the overall portfolio with 19% administered at the higher fee. In the draft policy, the agency identified 12 parcels considered to be higher valued assets. The two grazing specialists for the agency are Ron Torgerson, who administers the southern part of the state, and Scott Chamberlain, who administers the northern part of the state. They have worked hard with permitees to provide understanding of higher valued land assets. The agency has built support in the industry within the evolution of the changes. The policy will allow the agency to expand the higher valued parcels as they evolve over time.

When the agency acquires high value grazing lands in an exchange with the federal government, the application of the grazing fees will be phased in over a five-year period. This is a sensitive issue as the permits with the BLM and the Forest Service have assessments at $1.34 per AUM. One of the major issues the agency took on with the changes in the grazing program, was to elevate the fees. Right now, the scattered fees are hovering just over $4.00 and the block fees are at $7.17 per AUM. There are substantial variations in the quality of the agency's grazing portfolio, which now constitutes 1360 permits. The Board can appreciate the difficulty in navigating higher fees when SITLA permits are largely in held within BLM allotments. The agency has prevailed in this effort.

Mr. Christy added that in taking on these changes, in the cases of higher valued blocks there was a five-year incremental phase-in. Instead of suddenly moving up to $7.00, it was incrementally increased over five years. The Director recommended that the same phase-in occur in the event of future land exchanges resulting in higher valued grazing lands.

In the case of the scattered sections, they did not qualify as higher value assets. There could be a three-year phase-in to bring the fee to the agency levels. It is important to note that the BLM has a 10-year term to its permits. The agency has determined that the BLM permit can be allowed to ultimately expire under its normal timeline. When the expiration occurs, the permit would change to the agency's fees.

Mr. Cononelos asked what the minimum and maximum size is for a block or a range. Mr. Christy indicated there is no minimum. There is a potential to create something as small as 5,000 acres. When not subordinate to the BLM, we can still justify the higher fees. It is important to the agency to maintain higher fees so that even if it were only 1,000 acres the agency can still implement a higher value.

Director Carter added that the agency has followed the general rule that a block is at least 5,000 acres. Not every block has a higher grazing fee.

Mr. Cononelos asked if there are other entities, other than the federal government, that the agency participates with in land exchanges. Mr. Christy indicated that the policy is only applicable in exchange of land with the federal government. Chairman Brown pointed out they are the only other entity that issues grazing rights.

Director Carter mentioned he is not aware of any private landowner with a big enough land base that has an interest in land exchanges with the agency. Chairman Brown asked in regard to discussions about fencing, if there have been requests by grazers to have the right to build a fence. Director Carter indicated that the right is granted all the time.

Kim Christy continued to say that one of the things the grazers appreciate with SITLA, over working with the BLM, is that the agency has the flexibility to support the grazers who feel it is appropriate to put in a fence. Director Carter indicated the agency will often extend the length of the permit to amortize the cost of their investment.

Mr. Christy pointed out the importance of the changes in the grazing program to reward good stewardship instead of just collecting the money. If someone could demonstrate through investments and range improvements an increase in value of the asset, the agency would extend the terms based on the kind of investments that are taking place by private operators.

Chairman Brown recalled a grazer who in the past was doing just that by putting in culverts and fencing. Mr. Christy confirmed that is the philosophy being implemented for these situations.

Mr. Christy shifted to the more controversial dimensions of the proposed policy. He first emphasized the purpose was to introduce the proposed policy but not to anticipate any formal action. There is vetting to be accomplished with industry.

Mike Mower asked if this was a first impression opportunity and asked if the agency has heard from the Farm Bureau or the Cattleman's Association.

Mr. Christy indicated the concept has been introduced to the Cattlemen's Association, the Utah Wool Growers, and the Farm Bureau. They all indicated they would like time to consider it and will respond later. Emery County is anxious for the agency to memorialize a policy. Historically, some of the exchanges have, unfortunately, not had consistent outcome as to how the tenure is treated. Mr. Christy presented a scenario in which the historic BLM format would be applicable until the death of any living heir associated with the operations.

Tracking those leases administratively has become cumbersome and difficult to establish with any level of consistency. The policy is designed to create consistency. Some industry representatives have indicated they would ask for perpetual non-compete consideration at the end of their 15-year terms. The permits are currently put before the public, who have the right to bid on these permits. The agency has proposed to allow for two-successive 15-year terms on non-competes if moving away from the BLM format in a trust land situation. Mr. Christy feels this a fair compromise to perpetual permits.

Mr. Ure asked about the phrase non-compete, and to explain to the Board what is meant by competing. He asked for specifics on how a permit, before the public, could result in the permit going to another grazer.

Mr. Christy indicated at the end of a 15-year grazing permit, it is subject to competitive bidding. The agency does not aggressively advertise for bids, yet the permit is subject to a competitive bid. If another operator would like to obtain the permit they would bid for that permit. The process includes a bonus bid by any and all bidders. Mr. Ure asked if the bidder would have to buy out the entire permit. Mr. Christy indicated there is no third party obligation associated with the permit in that circumstance. He added that before the 15-year term expiration, the permits are bought and sold through third parties.

Mr. Ure wanted the Board to understand the permit holder can purchase the permit for one price and sell it for more to another grazer. Mr. Ure expressed concern and defined a sense of responsibility for the permit holder to have a good stewardship of the ground. Yet, in many cases, the AUM cost is much cheaper than in other locations. Mr. Ure indicated he is not in support of a non-compete due to the value of the assets. He expressed interest in the Board understanding the situation for consideration of the policy at a later date.

Chairman Brown asked if the provisions are part of R850-400. John Andrews responded to the question by providing background information. The Grand Staircase National Monument exchange was negotiated quickly and it was thought that the mineral assets the trust was acquiring would be profound. There was a lot of pressure at the time and concern that the grazing permitees in Emery County on BLM lands would raise issue to the fees going up. They are sensitive because in the BLM format, once you have a grazing permit – you have it forever. Whereas, with SITLA, every 15 years it is exposed to competitive pressure. The agency made a conscious decision to eliminate possibility of grazing opposition to the land exchange and allow them to have the multi-tenure that they would have in the federal system.

Since that time the agency has backed away from that by saying that at the end of the BLM term, the permit goes into the SITLA system. At the end of the BLM permit, the permit moves immediately to the SITLA 15-year term and at the end of 15 years there will be competitive pressure. Emery County has expressed concern for BLM permits becoming SITLA permits not so much for the fees but for the competitive process. This political question becomes part of discussions for land bills.

Mike Mower indicated he would think the asset would be advertised and posted like other assets for competitive bids and auction. He asked the agency to consider advertising for the permits.

Director Carter pointed out it would require a rule change and the last time the agency approached this idea it cost the Director his job. Director Carter stated that the agency does not solicit for bids or publicly advertise for the permits.

Chairman Brown asked Mr. Ure if he follows the terms on grazing leases to know when other grazers leases are expiring? Mr. Ure provided that he has tried but it is difficult to keep up with them. Mr. Ure

shared that he met with Kim Christy and Margaret Bird for a few hours to discuss this topic. He does not feel he knows the best alternative. There are individuals who have the permits and have them renewed and have 15 years on them. They have turned around and sold them for hundreds of thousands of dollars. That does not benefit the organization.

Mr. Ure continued by saying there are pieces of ground that the agency has to work hard to keep grazers on because it is economically difficult. There are many other good pieces and the grazing fees are probably 70% below the market value. All of this is creating a quagmire. Mr. Ure points out that he pays $12.50 an AUM and doing the work himself to maintain the fences, the water holes, to put a cow and a calf on a piece of land. On the private blocks, the most being paid is $7.00 an AUM. He mentioned there is a formula in place that will, hopefully, take into consideration the extremely high price of cattle and sheep right now. The formula takes a couple of years to work into place. Next year will likely be the only time there is an accurate description of the cost to a SITLA grazer. He asked Mr. Christy if that was correct.

Mr. Christy indicated the data is always a year old as it presents itself in the formula.

Mr. Ure asked for a formula that will go up and down faster to keep pace with the price of cattle. The price can drop a dollar a pound in a year, which can result in a calf that is only worth sixty-six cents a pound compared to $1.60 a pound.

Chairman Brown identified two issues. The first is the issue of transferability. He remembered discussing the topic before and recalls a decision that any transferability should come with a kick-back to the trust, if not everything. He asked why people are allowed to sell grazing permits at a profit with nothing going to the trust. Secondly, the industry makes adjustments based on government factors and wondered if there is a way to work with a fluctuating market.

Director Carter addressed the issue by suggesting a change in the word quagmire and instead to call the process a finely crafted, well running machine that allows a grazing program to proceed. The program allows the trust to receive more money that is closer to fair-market value than before. While, it does not allow grazing to stand in the way of other deals that are worth more money to the trust. It requires little effort to end a land exchange. Twenty letters from livestock permittees to their senator or representative and a land exchange languishes forever. The agency was probably earning $50,000 a year on grazing in the Grand Staircase National Monument. The land has earned a third of a billion dollars since that time. In the big scheme of things, the agency cannot let a grazing program stand in the way of accomplishing the other opportunities.

The agency is trying to draft a grazing program that extracts earnings closer to fair-market value and still has a competitive process. Without a competitive process the agency would be challenged and probably lose in court. Whoever competes against a grazer for a permit will have to show that they will protect our water rights and if they are held by grazing then they have to graze the land, otherwise they will lose the water rights. The agency has crafted a number of hurtles that make the program favor the livestock industry. Yet, it is still competitive enough that we have not been sued by the environmental groups.

All of this has been done so that the agency can in fact try to extract fair market value for this use and maintain the ability to make working with us attractive enough that the livestock industry won't come out in arms against land exchanges.

Mr. Ure noted that the Director brought forth two key elements that have not been mentioned to him before. The first is the letters to congress for land exchange. The second is the environmental groups coming in to bid on permits and retiring them. With consideration of those factors, he indicates he would back off some of the stand he has taken.

Chairman Brown asked to discuss the transferability issue. John Andrews responded by asking the Board to keep in mind the attempt in 1995 to change the rules for grazing permits. Due to the perceived tenure and transferability of the permits, people have used the permit as collateral for loans. Director Carter points out that is also happening with federal permits. Ron Torgerson provided that there has long been a practice of selling permits and defined a range within the permit cost and the price associated with a sale.

Chairman Brown asked for more explanation to help provide understanding to accept that this practice occurs. Mr. Christy referenced the discussions Chairman Brown referred to, in which the sale of a permit should result in money for the agency. He reported that two outside consultants were hired to look at the process. Mr. Christy points out he shared the same concerns expressed by the Chairman. He wondered how the agency could capture part of the revenues or profits that are obtained through third party transactions. The consultants revealed that the only way you can do this practically is to absorb it through increase AUM fees, which will ultimately diminish over time the value of the permit. There are literally decades of culture on how the permits are bought and sold.

Mr. Ure indicated he agrees under the scenario of the study. However, in the last four years on the world market, where there is a small amount of beef cattle, prices have jumped to absolute levels. He indicated that when the price per pound for a calf was under a dollar the formula worked well. But when the cattle are $1.60 to a $1.70 for a 500 pound calf, then the economics allows the grazer to do different things. He questioned the ability of the formula designed for a time in which it was instigated, to pertain to the market today. Mr. Ure would like to see a formula that would allow for more rapid adjustments.

Director Carter discussed a broad perspective by which the agency has approached this, that if the agency doubled the grazing fees the income goes from one million dollars to two million dollars in one year. Therefore, staff were asked to craft a grazing program that is attractive to the livestock industry so they are comfortable with us becoming their landlord. That still captures much more money than the federal government captures from their grazing program. It is four to five times and up to eight times more than the federal government captures. The agency is capturing all that the private market can. When the agency tried to instigate the new grazing fee several years ago diligent attempts went into getting as close to the market formula as possible. The agency had to phase it in to keep from inciting resistance. Comparison in the grazing program now from where it was, back then, is much better and much closer to the market process and it has walked that tightrope between being sued by the

environmental community and revolution from the livestock industry. The agency works hard to show how much is lost if the legislature seeks to prevent grazing permits awarded to those who retire the land.

Director Carter extended congratulations to Kim Christy, Ron Torgerson, and Scott Chamberlain who work with grazing permitees and convince them to pay $4.00 on land adjacent to the BLM land at a $1.35. Mr. Ure indicated he, too, would pay the difference to work with this agency. Director Carter indicated that is what the agency feels many permitees will say.

Margaret Bird asked for clarification on the grazing permit that is subleased asking if SITLA should get revenue from a sublease. Director Carter indicated the agency gets a dollar per AUM. She asked if the permit sells for more, would the agency still only receive one dollar per AUM. Director Carter indicated it would remain at one dollar per AUM. Ms. Bird suggested that should be a percentage instead.

Chairman Brown agreed that was worth consideration but it was time to move the meeting along.

Mr. Christy closed by acknowledging Mr. Ure's concerns are relevant based on unprecedented livestock pricing. It is important to remember the formula should not be driven by livestock prices. It should be driven by forage prices. The new formula embraces the forage prices by removing the subjectivity out of the formula. The private lease rates are moving upward but they are not dramatic, though they are moving upward. Mr. Christy expressed an interest in securing more stability in how the process works, rather than have volatility from year to year that makes it difficult to sustain.

Director Carter reported a need to have the Board adopt a policy before the agency can promulgate rules. The law requires the agency to bring rules before the Board that reflect policy.

Chairman Brown reminds the members of the Board the agenda item was brought forth today as informational and the Board will expect to see it back on the agenda in the future after vetting the change with industry.

e. Daggett County Exchange Proposal

Director Carter presented a map illustrating the location associated with a requests from Daggett County for SITLA to assist with a development project. He reported that the agency has met with representatives to try to express to the Forest Service, a desire to do something, if there was interest.

During the meeting, it was introduced that the language in the statute that created Flaming Gorge prevented the deal from progressing. If the conflict with the statute were resolved, the agency asked that the County work to gain the enthusiasm of the Forest Service to support development. Mike Mower indicated the Governor supports this deal with SITLA, as it provides economic development with wise use of land.

Director Carter also reported that the Forest Service would like SITLA to pick up all costs of the land exchange. Director Carter offered that there may be some help with costs but indicated the agency

would not pick up the full cost of an exchange. The County is trying to work through congress with lands in-lieu and the Hill Creek exchange. Director Carter reported that the agency will pursue this further if the county receives the necessary support from other entities to allow for the development.

f. Draft Policy on Large Block Sales

Director Carter presented a first draft of the policy for the Board to review and provide direction on how they would like to move forward. Chairman Brown asked the Director to talk with the Board members who left the meeting for other commitments and to talk with the beneficiaries and then bring the policy back to the Board reflecting those discussions.

6. Consent Calendar

a. OBA Non-Competitive Exploration Agreement and Lease of Metalliferous Minerals – Bridger Jack Mesa, San Juan County

Mr. Cononelos reviewed this OBA and highlighted key features. He sees the efforts by agency and arrangements accomplished as positive efforts for the agency. Tom Faddies will proceed and return with a report in six months.

b. Adoption of Grazing Assessments for 2012-2013 Grazing Season – Consent Request

The item was approved. The Board suggested an evaluation of the grazing fees formula and its efficiency for presentation next year.

c. This item was removed from the agenda before the meeting.

Notification

d. Notification of Proposed Negotiated Sale - Simper (PS 8487, Maeser North Parcel)

The Board had no comment on the consent item. Kim Christy will proceed and return with a report in six months.

Follow-up After Six Months

Six-Month follow-up reports were provided.

e. Development Lease Modification – Sun River - Washington County
Doug Buchi follow-up from August 2011

No issues or concerns were identified by the Board members.

f. OBA Gilsonite Lease in Rainbow Gilsonite Area - Zeigler Chemical
Tom Faddies follow-up from September 2011

Board requested an additional follow-up in six months.

g. OBA Pride Ventures, LLC
LaVonne Garrison follow-up from September 2011

Board requested an additional follow-up in six months.

Upon motion by Mr. Mower, the Board adjourned at 1:05 p.m.