

Board of
Trustees
Meeting
Packet

11/15/2018

Board of
Trustees
Agenda

11/15/2018



School and Institutional Trust Lands Administration
675 East 500 South, Salt Lake City, Utah 84102

Board of Trustees Meeting Agenda

November 15, 2018

9 a.m.

1. Welcome

2. Approval of Board Meeting Minutes

October 17, 2018

3. Confirmation of Upcoming Meeting Dates

4. County Advisory Committee, Utah Tribes, and Public Comment Period

5. Chair's Report

6. EOG Resources Administrative Appeal

a. Hearing officer recommendations

Closed meeting pursuant to §52-4-205(1)(a), Discussion of the character, professional competence, or physical or mental health of an individual, and §52-4-205(1)(c), Strategy sessions to discuss pending or reasonably imminent litigation.

b. Decision

c. Status Update

7. Notification and Discussion Items

a. Notification of Development Transaction – Coral Canyon Commercial, Hurricane

- Kyle Pasley, Assistant Director, Planning & Development

b. Notification of Development Transaction – Warner Valley, Washington County

- Aaron Langston, Project Manager, Planning & Development

8. Director's Report

- a. Director's Update
 - Director Ure
- b. Report on October 2018 Land Sale Auction
 - Diane Lund, Sales Coordinator, Surface

9. Break

- a. WRI Fire Rehabilitation / Sage Grouse Habitat Enhancement Projects – Funding Request
 - Kim Christy, Deputy Director, Surface & External Relations
- b. Request for Approval of Negotiated Sale to Zion Mountain Land Holdings – Kane County
 - Ron Torgerson, Deputy Assistant Director – SW Area, Surface
- c. North American Vanadium Corporation OBA: Metalliferous Minerals – San Juan County
 - Andy Bedingfield, Resource Specialist, Minerals
- d. North Temple Landfill
 - Rodger Mitchell, Assistant Director, Planning & Development
- e. Beneficiary Report – Training of School Community Councils
 - Paula Plant, School Children's Trust – State Board of Education

10. Closed Session

Closed meeting pursuant to §52-4-205(1)(a), Discussion of the character, professional competence, or physical or mental health of an individual, §52-4-205(1)(c), Strategy sessions to discuss pending or reasonably imminent litigation, §52-4-205(1)(d), Strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, and §52-4-205(1)(e), Strategy sessions to discuss the sale of real property, including any form of a water right or water shares.

11. Adjourn

Items may be heard in any order, at any time, at the Board's discretion. Board Members may participate in the meeting via electronic means.

In accordance with the Americans with Disabilities Act, persons needing auxiliary communicative aids and services for this meeting should call Lisa Jones at 801-538-5110 or by email at lsjones@utah.gov. Please provide notice at least three days prior to the meeting.

Additional information, before and after the meeting, will be posted to the Utah Public Notice Website.

I, Lisa S. Jones, SITLA Board of Trustees' Executive Assistant, hereby certify the foregoing agenda was emailed to the Salt Lake Tribune, was posted on the Utah State Public Notice website, <http://pmn.utah.gov>, SITLA's website at <https://trustlands.utah.gov/>, the SITLA app, and was posted at SITLA's Offices, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102. *Posted and dated on the 1st day of November 2018.*

6a

EOG Appeal

Documents

**UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
BOARD OF TRUSTEES**

EOG RESOURCES, INC.,
Petitioner,

v.

UTAH SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION, OFFICE OF THE
DIRECTOR,
Respondent.

**ORDER CONCERNING RETENTION
OF MATTER, DESIGNATION OF
ADJUDICATION AS FORMAL, AND
APPOINTMENT OF HEARING
EXAMINER**

THIS MATTER having come before the Board of Trustees upon the parties' October 8, 2018 Joint Statement addressing procedural issues, and for the good cause shown therein, it is ORDERED that:

(1) The Board, pursuant to Utah Admin. Code R850-8-100.7, will retain and decide this matter;

(2) The Board will hear this matter as a formal adjudication pursuant to Utah Admin. Code R850-8-1100.1;

(3) Pursuant to Utah Admin. Code R850-8-1500.1, the Board will appoint a hearing examiner to take evidence and issue recommended findings of fact and conclusions of law. The parties shall confer and shall submit to the Board prior to the November 15, 2018 Board meeting a list of hearing examiner candidates. The parties shall set forth in that filing their respective positions concerning which of the candidates is best qualified to serve as the hearing examiner.

(4) The School and Institutional Trust Lands Administration may file a response to the petition. Such response shall be due on October 31, 2018.

Entered this 31st day of October, 2018,

BOARD OF TRUSTEES, FOR THE UTAH
SCHOOL AND INSTITUTIONAL TRUST
LANDS ADMINISTRATION

/s/ Lonnie M. Bullard

Lonnie M. Bullard, Chairman

Approved as to form:

/s/ Shawn T. Welch

(with permission via 10/29/18 email) Shawn
T. Welch

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**UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
BOARD OF TRUSTEES**

EOG RESOURCES, INC.,
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UTAH SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION, OFFICE OF THE
DIRECTOR,
Respondent.

**REQUEST TO SUBMIT FOR
DECISION**

On October 8, 2018, the parties to this matter filed a Joint Statement addressing procedural issues in which the parties moved the Board of Trustees to: (1) retain and decide this matter; (2) designate the matter as a formal adjudication; and (3) issue an order stating that the Board will appoint a hearing examiner after input by the parties concerning possible hearing examiner candidates.

The Board at its October 17, 2018 Board meeting voted to grant the above-referenced relief. Based upon the vote taken at the October 17, 2018 hearing, Respondent Utah School and Institutional Trust Lands Administration hereby submits the parties' joint motion for decision and files contemporaneously herewith a proposed order memorializing the Board's oral ruling.

As indicated on the proposed order, the approval of Petitioner EOG Resources, Inc. of the form of the proposed order was secured via email correspondence on October 29, 2018.

Respectfully submitted this 30th day of October, 2018.

SEAN D. REYES
UTAH ATTORNEY GENERAL

/s/ Michael S. Johnson
Michael S. Johnson
Christopher Shiraldi
Special Assistant Attorneys General
*Attorneys for Respondent Utah School and
Institutional Trust Lands Administration*

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document were served via email, this 30th day of October, 2018 on the following:

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**UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
BOARD OF TRUSTEES**

EOG RESOURCES, INC.,
Petitioner,

v.

UTAH SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION, OFFICE OF THE
DIRECTOR,
Respondent.

**RESPONSE OF THE UTAH SCHOOL
AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION TO EOG
RESOURCES, INC.'S PETITION
FOR REVIEW**

Respondent Utah School and Institutional Trust Lands Administration ("SITLA") respectfully submits this response to Petitioner EOG Resources, Inc.'s, ("EOG's") Petition for Review (the "Petition") dated August 22, 2018.

POSTURE OF THE CASE AND THE SCOPE OF THIS RESPONSE

Pursuant to the stipulated motion of the parties, the Board has elected to hear this appeal as a formal adjudication and appoint a hearing examiner to take evidence and make recommended findings of fact and conclusions of law. At the Board's request, the parties are presently identifying hearing examiner candidates and will present this list to the Board prior to the November 15, 2018

Board meeting.

Although it is not required under the Board's rules to file a response to the petition, *see* Utah Admin. Code R850-8-1200.1, -1300.3 and -1600.1, SITLA sought leave to file a short response to help frame the dispute and apprise the Board of the legal and factual issues that will need to be resolved going forward. The scope of this response is limited to identifying these issues to help provide a roadmap for future proceedings. The specifics concerning these issues will be addressed in greater depth through the presentation of evidence, and further briefing and argument, once a hearing examiner is appointed and a schedule is established.

BACKGROUND CONCERNING THE AUDIT UNDER REVIEW

This appeal arises out of a SITLA audit of royalties paid by EOG on a number of SITLA oil, gas and hydrocarbon leases in the Chapita and Stagecoach area in Uintah County, Utah.

The applicability of federal regulations.

A central feature of SITLA's audit procedures (and a primary question in dispute in this appeal) is the application of federal regulations promulgated by the Office of Natural Resources Revenue (ONRR). Section 4 of the majority of the oil and gas leases¹ at issue deals with the payment of royalties to SITLA. Section 4(b) of each lease states that where gas is sold under a contract,

the reasonable market value of such gas for the purpose of determining royalties payable hereunder, shall be the price at which the production is sold, provided that in no event shall the price for gas be less than that received by the United States of America for its royalties from gas of like grade and quality from the same field.

¹ The subject of the Petition deals mainly with three oil and gas leases dated January 2nd, 1953. Two (2) of the oil and gas leases are to Continental Oil Company (Mineral Lease Nos. 3077 and 3078) and one (1) oil and gas lease is to Shell Oil Company (Mineral Lease No. 3355). Section 4, entitled ROYALTIES, is the same in all three oil and gas leases. The Petition only addresses the lease language contained in these oil and gas leases; accordingly, this response only addresses these oil and gas leases as well.

Because SITLA's lease form establishes as a floor the price the federal government receives under its regulations for royalty valuation purposes, it has been the consistent practice of SITLA for decades to require its lessees to pay royalties on the same basis as lessees of federal lands. This involves the "unbundling" of certain costs incurred in placing gas into a marketable condition (which are not deductible from royalties) from deductible transportation and processing costs.

The 2012 Audit Report.

SITLA initially informed EOG via a February 14, 2012 letter that it was commencing an audit of the 2007 through 2011 calendar years. The audit culminated in an Audit Report dated August 1, 2012 (the "2012 Report") (attached to the Petition as Exhibit B). Consistent with the terms of the applicable leases and the ONRR regulations, the 2012 Report analyzed the unbundling of marketable condition costs from transportation and processing costs. As of the date of the 2012 Report, no unbundling analysis of the field gathering and processing systems at issue had been performed by the federal government (which would provide a formula to directly apply to EOG's royalties), and EOG had not provided SITLA with any similar analysis of its own. As a consequence, SITLA utilized a reasonable analog unbundling analysis performed by the federal government on a gas system in New Mexico. This showed a balance of \$820,120 of unpaid royalties owing to the Trust.

SITLA in the 2012 Report proposed to settle the audit with EOG by adhering to the methodology discussed above, and offered as an incentive to waive additional claims related to volumes of gas deducted by EOG for fuel use. Additionally, SITLA invited EOG to submit any evidence it possessed, including an unbundling methodology of its own, or to request a meeting with SITLA staff to work through the audit issues.

EOG's apparent agreement with the 2012 Report findings.

In August of 2012, following issuance of the 2012 Report, EOG indicated to SITLA that it intended to recalculate its SITLA royalties for the 2007 through 2011 calendar years utilizing an unbundling methodology consistent with the 2012 Report. In email correspondence on December 10, 2012, EOG indicated that this recalculation process was underway but not yet complete. However, EOG's communications on this issue ceased and it did not thereafter submit amended reports or payments based upon the recalculations discussed.

In May of 2016, EOG requested permission to retroactively amend its royalty reports dating back several years. SITLA assumed this was to correct amounts owing consistent with the 2012 Report and the previously agreed-upon unbundling methodology. The amended reports, however, only claimed additional deductions for processing costs, and did not make necessary corrections concerning disallowed gathering and/or marketable condition costs.

The 2018 Audit Report.

As of the end of 2017, EOG had neither paid the amounts owing the Trust under the 2012 Audit, nor implemented the previously agreed-upon changes to their method of calculating royalties. As a consequence, SITLA informed EOG in January of 2018 that it was commencing an audit of the 2013 through 2017 calendar years. This culminated in an Audit Report dated April 23, 2018 (the "2018 Report") (attached to the Petition as Exhibit A). The 2018 Report noted five separate royalty payment issues. The most consequential of these issues relates to EOG's deduction as costs of "transportation" amounts that the federal regulations define as non-deductible marketable-condition costs. The 2018 Report also noted EOG's having exceeded certain caps for the maximum amount that may be claimed as transportation costs, and processing deductions,

among other issues.

The 2018 Report noted that due to the complex methodology EOG uses to calculate royalties, and the absence of certain necessary information, the precise amount of unpaid royalties was difficult to calculate. The report concluded that the best estimate of EOG's unpaid royalty balance (including amounts dating back to the 2012 Report) stood at \$2,200,000. The report stated that SITLA was willing to discuss how it arrived at this number with EOG and invited EOG to submit relevant evidence and schedule a meeting. Unfortunately, EOG has not engaged with SITLA to have that discussion.

The present appeal.

On August 22, 2018, EOG filed its Petition, requesting that the Board either reverse SITLA's audit finding and order that a \$743,000 refund be paid to EOG, or remand the matter to SITLA for further analysis. EOG also requests a settlement conference at which the parties might clarify the outstanding issues and attempt to resolve the matter.²

**THE EFFECT OF MISSING INFORMATION ON THE
AUDIT FINDINGS AND ON THESE PROCEEDINGS**

As partially summarized in the Background section above, SITLA encountered significant difficulties in determining the precise dollar amounts associated with the identified errors in EOG's royalty calculations due to a lack of access to certain information in the possession of EOG. This lack of critical information forced SITLA to make certain assumptions, and utilize proxy unbundling methodologies, in completing the audit findings. The Petition criticizes SITLA for

² SITLA shares EOG's desire to narrow and clarify the issues, and potentially resolve some or all of matters in dispute, via negotiation, whether through direct discussions with EOG or via participation in formal Board-ordered settlement conferences pursuant to Utah Admin. Code R850-8-700.

using numbers, or formulas, that do not specifically apply to the subject wells and field. In those instances where this is true, it is the consequence of EOG's failure to provide SITLA with necessary information. SITLA was forced to use the best available substitute information instead. The most significant pieces of information that SITLA was not provided include the unbundling cost allocation, the 2013 through 2015 royalty calculation spreadsheets, and schematics detailing where measurement points and compressors are located and costs are incurred.

STANDARD OF REVIEW

Under Utah Code Ann. § 53C-1-304(4)(a), "the board shall uphold the decision of the director or the administration unless it finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or rules."

RESPONSE TO EOG'S PETITION

The following paragraphs respond to the individual sections set forth in the Petition's Procedural History and Argument discussions.

Audit History and Findings.

EOG's claim that SITLA's "entire audit findings rely on an extrapolation of sample months from the audit period" mischaracterizes the 2018 Report. Although some amounts have been extrapolated, the findings in the 2018 Report are based upon the information provided by EOG, including all of the Contract 476PI transportation invoices. Due to the lack of information provided as detailed above and, as noted in the 2018 Report, the complex methodology used by EOG, SITLA's calculation of royalties owed necessarily represents an informed estimate.

The "Federal Floor" lease provision.

As noted above, SITLA's lease form establishes as a floor the price the federal government receives under its regulations for royalty valuation purposes. This practice is consistent with the

ruling of the Utah Supreme Court in *Enron Oil & Gas Company v. Utah Div. of State Lands and Forestry*, 871 P.2d 508, 511 (Utah 1994). In its Petition, EOG relies on the dissenting opinion in *Enron* to make the argument that federal royalty valuation does not apply to state leases. However, as will be discussed in greater depth in later briefing, the language of the oil and gas leases and majority decision of the Supreme Court in *Enron* require that all elements of royalty valuation be the same for state leases as for federal leases where any deviation would result in lesser valuation and payments to SITLA.

Although EOG asserts the federal valuation regulations do not apply, it has not specified what rules it believes govern royalty valuation, deduction and payment issues in this matter. Nor has EOG explained whether the royalty valuation practices disputed by SITLA (including EOG's double-deductions discussed below) comply with those rules. In any event, SITLA contends that to disregard the federal regulations, and rely instead only on the lease provisions, would likely result in a finding of an equivalent or larger underpayment of royalties.

The Ryan, LLC response letter.

Following SITLA's granting of certain extensions for response, EOG, through its consultant Ryan, LLC, submitted a July 13, 2018 letter ("Ryan Letter") responding to the 2018 Report. The issues addressed in the Ryan Letter are largely repeated in EOG's Petition, and are addressed in the individual sections below.

One particular position taken in the Ryan letter and in the Petition—that EOG is owed a \$743,000 refund—is addressed here. Among other reasons to be addressed in later briefing, EOG's refund claim should be denied in its entirety due to the following.

First, unlike SITLA's longstanding demands for payment of royalty shortfalls, EOG asserted this overpayment argument for the very first time in the Ryan letter in July of 2018, after

the 2018 Report was completed. EOG has not identified the calendar years to which this refund claim applies, but to the extent the claim reaches back to the inception of the periods at issue in the SITLA audit, EOG's claims may be subject to applicable statutes of limitation (including Utah Code Ann. § 78B-2-309).

Second, EOG's refund claim, and the present assertion of that claim within the context of this appeal, are barred by the provisions of the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 et seq.

Third, SITLA disagrees that EOG, having calculated and voluntarily chosen to pay the subject royalty amounts, is entitled to seek a refund at this stage. Under the voluntary payment rule, "where money has been paid voluntarily with full knowledge of the facts, it cannot be recovered." *Freston v. Gulf Oil Company*, 565 P.2d 787, 789 (Utah 1977) (discussing *Thurman v. Clark*, 507 P.2d 142 (Wyo. 1973)). See also, *QEP Energy Company v. Sullivan*, 2010 WL 11468559 at *6 (D. Utah 2010). EOG has not provided any explanation as to the circumstances regarding why certain charges were not deducted or why the voluntary payment rule wouldn't bar its \$743,000 claim.

Fourth, EOG has provided no explanation or back-up documentation disclosing how it arrived at the \$743,000 figure, and the Board, if it reaches this issue, should reject this claim based on this failure of proof. SITLA denies that any overpayment was made by EOG.

Finally, EOG's refund claims are barred by the doctrines of laches, estoppel and unclean hands.

Misapplication of ONRR regulations and guidance.

EOG asserts in this section, with little elaboration, that SITLA has misread the applicable ONRR regulations. One of EOG's primary criticisms appears to be that SITLA in written

correspondence provided outdated citations to ONRR regulations, referencing, for example, 30 CFR § 206, when that regulation has since been redesignated as 30 CFR § 1206. This redesignation, however, has no substantive effect on the outcome of the audit or findings in the Audit Report. Additionally, SITLA notes that the correct citation to the regulations was given in the 2018 Report.

Royalty measurement point error and gathering charges.

Although it appears from EOG's petition that the royalty measurement point (sometimes referred to as facility measurement point) for some of the wells in question is located on the well pad within the applicable oil and gas lease, this information was not provided to SITLA until certain "sample site security schematics" were included in the Petition, long *after* the Audit Report was issued.

SITLA's audit and Audit Report used the tailgate of the processing plant as the royalty measurement point based upon the information (or lack thereof) provided by EOG during the audit, and was part of an attempt by SITLA to come up with an amicable resolution to the issue. It should be noted that EOG's suggested use of an upstream measurement point would both subtract from, and add to, the audit finding. Although SITLA's Audit Report disallowed certain transportation expenses because of the assumed royalty measurement point, certain processing expenses that would have been disallowed under EOG's newly-offered evidence were not accounted for in the audit determination.

Additionally, EOG's argument that "not all compression, dehydration, or treatment is performed to make gas marketable" (Petition Paragraph 29 at Page 9), while true as a general statement, leaves out a critical element of the analysis discussed in *Burlington Resources Oil & Gas Co. v. Office of Natural Resource Revenue*, 183 IBLA 333. In *Burlington*, the Interior Board

of Land Appeals determined that a transportation allowance may be taken “‘only if such services are required for transportation and exceed the services necessary to place production into marketable condition,’ as required by 30 CFR §206.152(i). 30 CFR §206.157(f).” EOG relies on the general statement of the rule without demonstrating, or even meaningfully analyzing, its applicability here. This would require a showing that the products meet the definition of “marketable condition” found in 30 CFR § 1206.151 and that the deductions are necessary for transportation. As will be shown at hearing, the evidence does not support this conclusion.

Lack of a reasonable proxy.

As stated in SITLA’s August 8, 2018 correspondence, using the Manzanares system as a proxy for the Chapita plant was reasonable at the time due to the failure of EOG to provide SITLA with any unbundling analysis. As further pointed out in that correspondence, since the issuance of the 2018 Report, an unbundling cost allocation formula has been developed specifically for the Chapita plant by ONRR. Based on SITLA’s analysis, the audit findings in this case would only increase based upon this new ONRR unbundling cost allocation information.

Transportation subject to cap.

As EOG correctly notes, 30 CFR § 1206.109(c)(2) provides for a mechanism to *apply for* an exception to the fifty percent (50%) transportation allowance limit found in 30 CFR § 1206.109(c)(1). EOG, however, has provided no evidence to SITLA that it has applied for such relief. Therefore, the fifty percent (50%) limit has not been waived by ONRR (or SITLA) and cannot be exceeded. Additionally, EOG states that its “transportation costs were reasonable, actual, and necessary.” EOG is not the decider of those facts; ONRR (or SITLA) would make that determination if and when an application for exception was submitted. To SITLA’s knowledge, this has not occurred.

Processing subject to cap.

The issue of processing costs being subject to a cap presents a similar problem. Although as EOG notes there is a mechanism set forth in 30 CFR § 1206.158(c)(3) to apply for an exception to the general rule limiting processing allowances to sixty six and two thirds percent (66 2/3%), EOG has provided no evidence to SITLA that it has requested (or received approval for) such excess allowance. Even if such processing costs were “reasonable, actual, and necessary” as EOG claims, those facts are for ONRR (or SITLA) to decide, not EOG. Additionally, Section 4(b) of the SITLA oil and gas leases provides additional, independent authority for the limit of processing costs and state that the “deduction for such costs may not exceed two-thirds of the amount of the gross of any such products...”

Fuel charges

Based upon the information reviewed in the audit, EOG is double charging SITLA for fuel used both upstream and downstream of the Ironhorse/Stagecoach plant. EOG’s gross proceeds are determined by the volume of gas delivered to sales points downstream of both the plant and the point of receipt into Questar’s main transportation pipeline. EOG has already taken an allowance for fuel used by basing its royalty payments on the lower volumes at the sales points. By converting fuel used in the field and fuel used along the Questar transportation line into a monetary deduction from gross proceeds, EOG takes this deduction twice. EOG is both using the fuel without paying royalties on it, and taking a deduction for the value of such fuel.

Statute of limitations.

EOG cites two statutes of limitation (or repose) it contends bar a portion of SITLA’s claims. EOG offers little or no explanatory argument in support of this suggestion (SITLA assumes this

will be briefed and argued after a hearing examiner is appointed and a briefing schedule is set). SITLA will fully address these issues at that time, but briefly offers the following.

First, the Utah Supreme Court has determined that when the State of Utah brings an action for royalties derived from trust lands, the six year statute of limitations in section 78B-2-309 (cited by EOG) does not apply. *Trail Mountain Coal Company v. Utah Division of State Lands and Forestry*, 921 P.2d 1365 (UT 1996).

Second, while Section 78B-2-201 (also cited by EOG) applies to the State of Utah, it does not apply to administrative proceedings. This statute only bars the state from bringing an “action” with respect to any real property, including for royalties, based on the state’s title to that property. An “action” is defined by statute as a “civil action[] in which affirmative relief is sought.” Utah Code Ann. § 78B-2-101. A “civil action” is initiated by filing a complaint with the court. See Utah R. Civ. P. 3(a); *Phillips v. Department of Commerce, Division of Securities*, 2017 UT App 84, ¶¶ 12-15. The Utah Supreme Court recently held that “an administrative hearing is not a civil action” for purposes of the statute of limitations in Title 78B. *Phillips*, 2017 UT at ¶ 14-15. See also, *Morgan v. Department of Commerce, Division of Securities*, 2017 UT App 225, ¶8.

Even if Section 78B-2-201 applied in this case, under a 2015 amendment, the statute is triggered only when the state receives actual notice of the facts giving rise to the action. SITLA did not have notice of EOG’s erroneous royalty calculations until SITLA conducted an audit and issued its first findings in 2012, which is within the seven year limitations period.

Any delay on the part of SITLA in making its final determination is attributable to EOG’s failure to provide SITLA with timely information when requested and the understanding that EOG was working toward implementing the methodology from the 2012 audit report. SITLA has been patient in giving EOG sufficient time to modify, amend and correct its past royalty reports only to

find in performing the 2018 audit that EOG has not implemented certain changes previously discussed.

For these and other reasons to be briefed before the hearing examiner, SITLA denies that any portion of its claims are time-barred.

Working interest partners.

EOG has not addressed issue No. 5 in the Audit Report regarding whether other operators were taking their respective production in-kind and whether EOG is paying to SITLA one hundred percent (100%) of the royalties due to SITLA under the lease. That issue remains outstanding.

CONCLUSION

It was only after the 2018 Audit Report that EOG, through Ryan, informed SITLA that it was seeking a \$743,000 refund for overpaid royalties. Neither Ryan (through the Ryan Letter) nor EOG (through the Petition) has provided any evidence or back-up documentation showing how this figure was determined. SITLA denies the alleged overpayment occurred and is unable to fully comment or brief the issue until further information is provided by EOG regarding the basis of its calculations.

The information obtained since the 2018 Audit Report (regarding the unbundling of the Chapita plant, among other matters) support SITLA's position as reflected in the 2018 Report and would only lead to a larger audit finding. As stated in the Audit Report and the August 8, 2018 correspondence to EOG, SITLA requests a meeting with EOG to discuss and negotiate the outstanding audit issues.

As noted above, the scope of this response is limited to identifying issues that are in dispute to help frame the controversy. SITLA denies any allegations or assertions contained in the Petition that are not specifically admitted herein. SITLA will address the issues in dispute in greater depth

through the presentation of evidence, and further briefing and argument, once a hearing examiner is appointed and a briefing schedule is set.

Respectfully submitted this 31st day of October, 2018.

SEAN D. REYES
UTAH ATTORNEY GENERAL

/s/ Michael S. Johnson
Michael S. Johnson
Christopher Shiraldi
Special Assistant Attorneys General
*Attorneys for Respondent Utah School and
Institutional Trust Lands Administration*

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018 I caused a copy of the foregoing RESPONSE to be served via email upon:

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/s/ Michael S. Johnson

7a

Coral Canyon

Development

MEMORANDUM

TO: Board of Trustees, School and Institutional Trust Lands Administration

FROM: Kyle A. Pasley, Deputy Assistant Director Planning & Development Group

RE: **Notice of Development Transaction-
Coral Canyon Commercial Hurricane – Parcels 4 and 5**

Date: October 24, 2018

Fund: **Miners Hospital**

Background

Parcels 4 and 5 are two smaller, subdivided commercial lots on the Hurricane side of SR 9 in the Coral Canyon development in Washington County, Utah. The lots are already mass graded and lie just north and west of the existing State Liquor store located on parcel 4B (Exhibit A).

Currently the residential portion of the Coral Canyon community is under a long term development lease structure with Cole West. As part of that transaction the remaining commercial portions of the community are under a brokered listing agreement with the Cole West companies.

As part of this partnership Cole West actively markets these remaining parcels. This transaction is a direct result of this marketing activity.

Offer

An offer has been made, through Cole West, by Indy RV, a local, long standing RV dealership who is looking to relocate and expand their business.

They have offered to pay full appraisal price for the parcels 4 and 5. A recent appraisal was commissioned for the area. Land values in an appraisal dated September 20, 2018 were set at approximately \$3.33 per square foot or approximately \$145,054.80 per acre.

Proposed Sale

Trust staff is prepared to sell these 2 parcels at the full appraisal price.

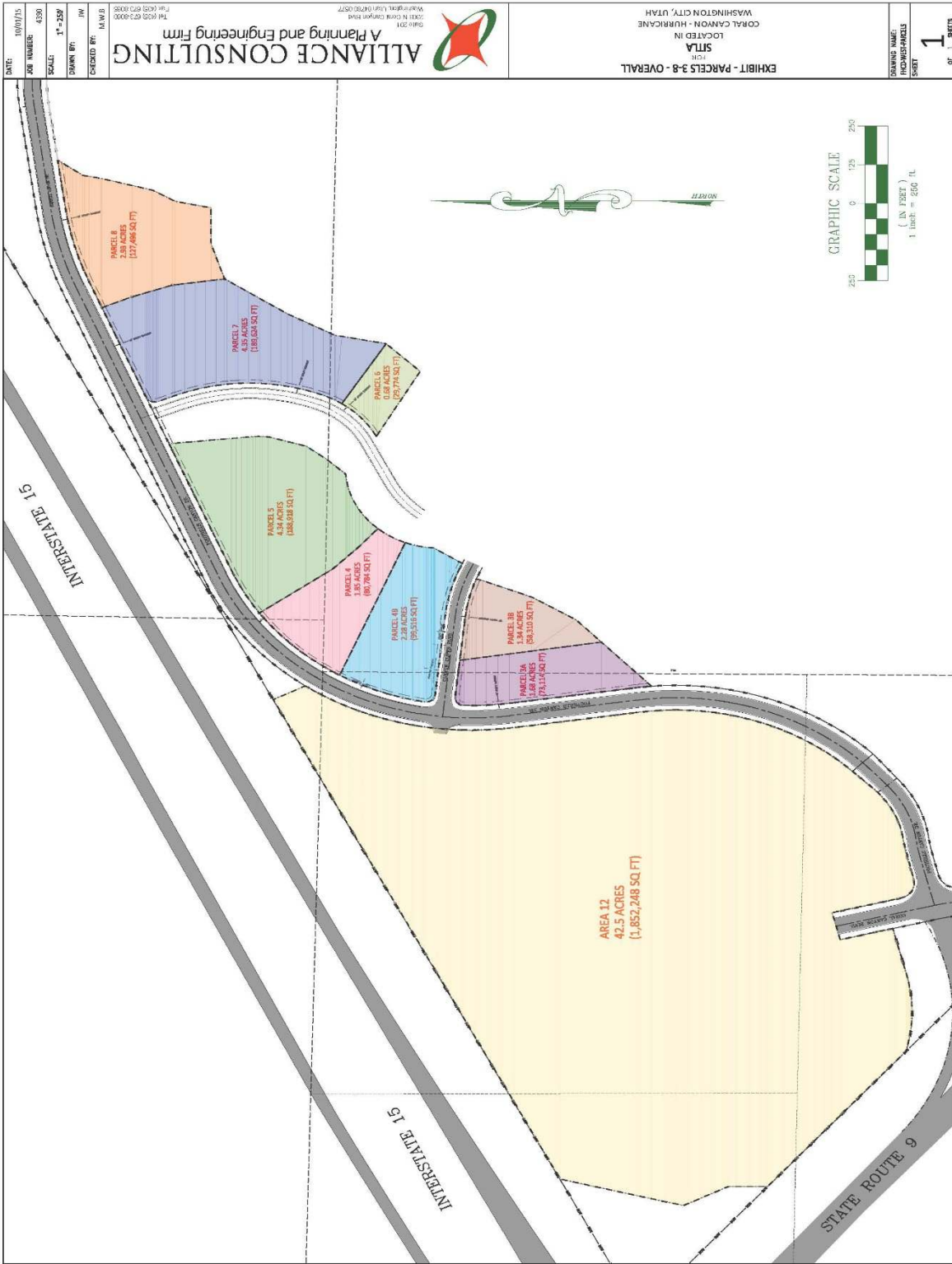
Conflicts of Interest

None

Recommendation:

On October 22 2018, the Real Estate Committee and beneficiaries reviewed this proposal and recommends approval to the full Board of Trustees.

EXHIBIT A



7b

Warner Valley Development

Notification

TO: Board of Trustees, School and Institutional Trust Lands Administration
FROM: Aaron Langston, P&DG Utah South
DATE: October 25, 2018
BENE: Schools and school of the DEAF
RE: *Notice of Minor Development Transaction—Sale of 801.7 Acre Parcel in Warner Valley*

Introduction

The Washington County Water Conservancy District (WCWCD) first approached the School Trust Lands Administration around 2010 about acquiring the northern portion of its lands in Warner Valley for a proposed reservoir.

The Reservoir was to be approximately 1,130 acres in size, a portion of which would cover the northern end of SITLA's Warner Valley block. SITLA Staff gave a favorable review to the WCWCD for the concept. Later, in 2016, the WCWCD approached SITLA, this time requesting the acquisition of approximately 1,160 acres of the northern portion of the Warner Valley block for their proposed reservoir. An appraisal was ordered to determine the approximate values for the subject lands, but an exact footprint of the acquisition lands had not yet been negotiated.

Staff thinks the property surrounding the proposed reservoir would likely increase in value once the reservoir is in place (like the land values surrounding Sand Hollow Reservoir did). However, Staff is concerned that the recharge at Sand Hollow, which caused considerable ground water issues around that reservoir, could similarly happen at the future Warner Valley reservoir (although the WCWCD indicates this should not happen at this reservoir).

Staff desired the WCWCD to acquire as much property as necessary to include all SITLA lands that could potentially be subject to recharge or ground water issues, but to withhold land near the reservoir that is not likely to be subject to possible ground water issues as that land would likely achieve higher values for residential development. The resulting compromise, which took a couple years to accomplish, was the proposed request for 801.7 acres.

Proposed Project

The WCWCD wishes to purchase the negotiated 801.7 acres +/- for their Warner Valley Reservoir.

Current Offer

The 2016 Appraisal valued the full 1,160 acres at \$4 million, or \$3,448 per acre. An updated appraisal has indicated that the values have increased to approximately \$4,000 per acre, which at the 801.7 acres will bring the transaction to \$3.2 million. The WCWCD will pay the appraised value.

Intended Action

Staff feels the proposed sale will expedite potential development on the Warner Valley block by as much as one decade or more. Not only will development property near a reservoir have an increased development demand, it will likely generate higher sales prices and thus more money for the beneficiaries.

Real Estate Committee Review

The Real Estate subcommittee reviewed this transaction in their meeting October 22, and recommended approval to the full Board of Trustees.

Exhibit on subsequent page

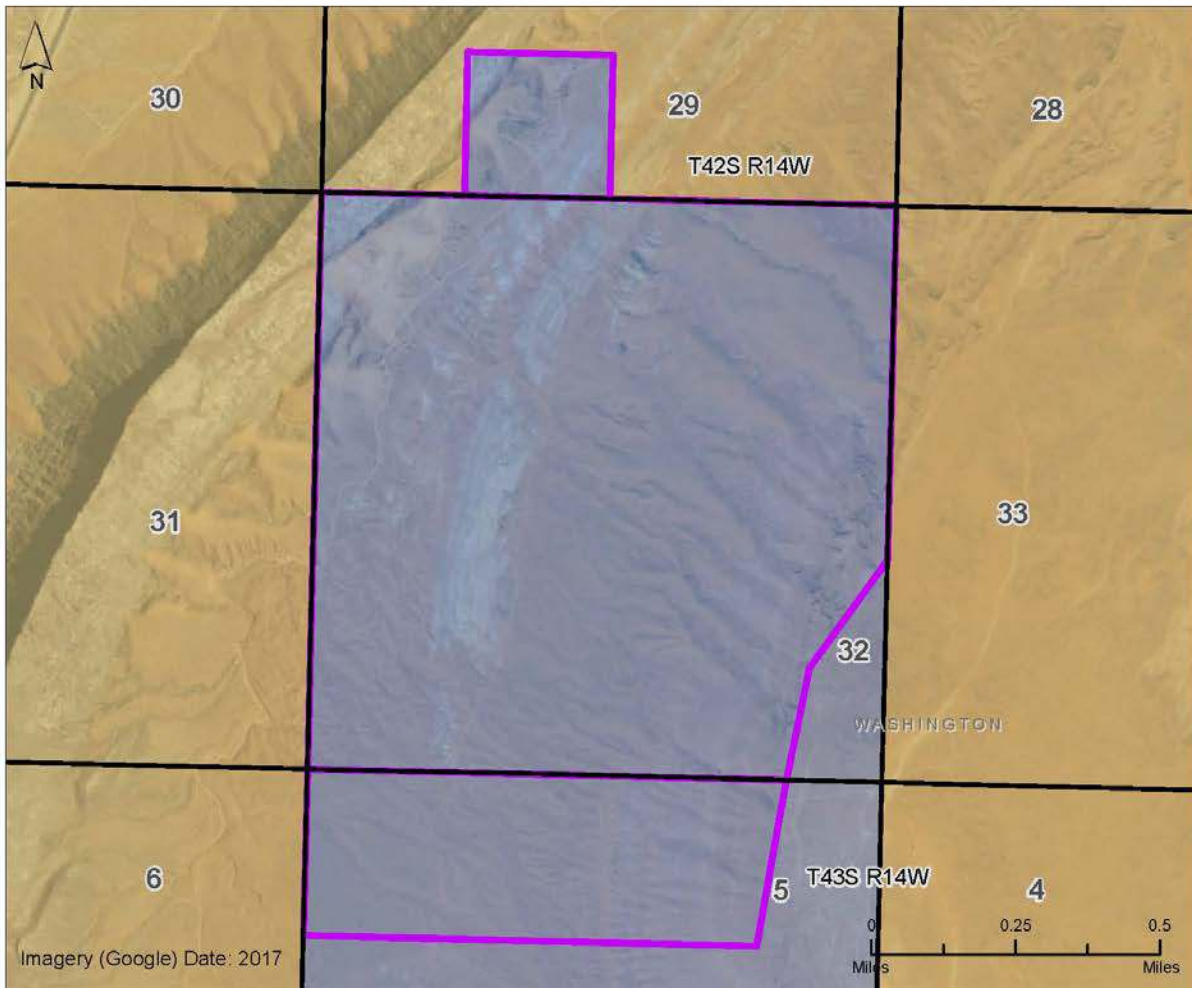
Exhibit A

Exhibit of Subject Property



C 26807 WCWCD Warner Valley Reservoir


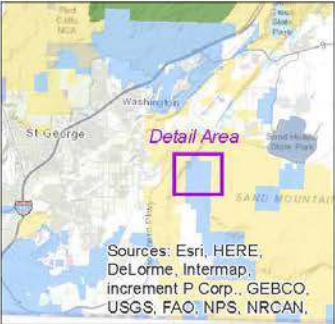
Washington County



C 26807 (801.7 acres)

Land Ownership and Administration

- Bureau of Land Management
- State Trust Lands

Data represented on this map is for REFERENCE USE ONLY and is not suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. SITLA provides this data in good faith and shall in no event be liable for any incorrect results, or any special, indirect or consequential damages to any party, arising out of or in connection with the use or the inability to use the data hereon. Land parcels, lease boundaries and associated SITLA data layers may have been adjusted to allow for visual 'best fit'. The Surface Ownership Land Status data (if present) are maintained by SITLA to reflect current trust land status and surface ownership. Lakes, rivers, streams, highways, roads, county and state boundaries are distributed by the Utah Automated Geographic Reference Center and/or other sources as specified. Contour lines (if present) were generated from USGS 10 meter DEM. Please Note: While SITLA seeks to verify data for accuracy and content, discrepancies may exist within the data. Acquiring the most current SITLA ownership GIS data may require contacting the GIS staff directly 801-538-5100 or TLA-OIS@utah.gov. The SITLA OIS department welcomes your comments and concerns regarding the data and will attempt to resolve issues as they are brought to our attention.

Document Path: \\GIS\GIS_Group\Staff\Working\MXD\Exhibit_Template_NEW.mxd

Coordinate System: NAD 83 UTM Zone 12N

9a

WRI Fire

Rehabilitation

Funding

Request

MEMORANDUM

DATE: October 30, 2018

TO: Board of Trustees

FROM: Kim Christy, Deputy Director-Surface

SUBJECT: 2018 SITLA Fire Rehabilitation Costs – Stewardship Funding

BENEFICIARIES: Schools and USU (184 acres)

Proposed Action:

The Trust requests the Board's consideration and recommendation of an appropriate expenditure of stewardship funds for wildfire rehabilitation projects on trust lands to be paid to the State of Utah's Watershed Restoration Initiative ("UWRI") program, which is managed by the Department of Natural Resources.

The anticipated expenditure will fund a portion of six specific UWRI fire rehabilitation projects on trust lands in fiscal year 2019 ("FY2019"). Maps of the projects will be shown electronically. These projects focus on seeding areas burned by wildfires in 2018 to stabilize watersheds, increase forage for livestock, restore sage grouse and wildlife habitat, protect against noxious weed invasions, and reduce the threat of subsequent fires on these lands.

The beneficiary of trust lands involved in these six projects is Schools, with minor amounts of USU (184 acres). Therefore, it is recommended that stewardship funds attributed to these two beneficiaries be used by proportion for expenditure.

Introduction:

2018 was an extraordinary year for wildfires in Utah and the western United States. Fires in Utah burned approximately 485,989 acres, 23,185 acres of which were on trust lands. Total Utah fire suppression costs were \$110M; with \$75M to be paid by the federal government and \$35M expected to be paid by the State of Utah from its general fund. UWRI is a group that receives money from federal, state, NGO's, and sportsman groups to restore watersheds throughout Utah. SITLA has provided \$200K each year for the past several years to UWRI to participate in rehabilitating trust lands burned by wildfires and to make sage grouse habitat improvements. UWRI anticipates requesting a supplemental appropriation of up to \$6.2M from the state legislature to help cover the costs of fire rehabilitation throughout the state.

Background Information:

This year there were 14 fires that burned on trust lands. Of these 14 fires, six will be reseeded with coordination and cooperation with UWRI. The following table shows the total amount of acres burned on trust lands and the rehabilitation costs attributed to those lands:

Fire	SITLA Acres	SITLA Costs
Price River	3	
Cherry Creek	11	
Black Knoll	16	
Chaparral	245	
Coal Hollow	535	
Black Mountain	575	\$30,573.00
Ellerbeck	806	
Trail Mountain	1,814	\$22,242.00
North Eden	4,117	
Willow Patch	2,991	\$412,388.00
Lakeside	4,000	
Maeser	448	\$51,708.00
Pole Creek	316	\$22,278.00
Goose Creek	7,311	\$705,100.00
TOTAL	23,185	\$1,244,289.00

Conclusion:

Given the land stewardship responsibility of keeping trust lands productive and protected from negative natural resource consequences, the Trust believes that it is in the best interest of the affected beneficiaries to participate in meaningful ways, including financially, to assist ongoing efforts to rehabilitate wildland fires. Furthermore, the rehabilitation of a portion of this acreage, particularly with respect to the Goose Creek fire, will restore and enhance sage grouse habitat, which is important to preventing the sage grouse from being listed on the endangered species list and the associated negative impact to Trust revenues.

The UWRI will be spending over \$1.2M to rehabilitate burned trust lands. The Surface Committee has reviewed this matter and has recommended that a contribution in the amount of \$500,000.00 from the Trust's stewardship fund be approved by the Board.

Cc: David Ure
Paula Plant
Margaret Bird

9b

Zion Mountain
Holdings

Proposed

Negotiated Sale

MEMORANDUM

DATE: October 30, 2018
TO: SITLA Board of Trustees
FROM: Kim Christy, Deputy Director
Ron Torgerson, Assistant Deputy Director-Surface
SUBJECT: Approval of Proposed Negotiated Sale with Zion Mountain Land Holdings, LLC
(C-26804 / SULA 1467)

Beneficiary: School

Pursuant to Rule R850-80-620(3), the Trust Lands Administration seeks formal approval of a negotiated sale of the following described land to Zion Mountain Land Holdings, LLC.

Legal Description:

Township 41 South, Range 9 West, SLB&M

Section 16: (within) Containing 581.92 acres (map attached) Kane County

Zion Mountain Land Holdings, LLC is the current lessee on the property described above. This lease is a commercial development lease to develop residential and recreational lots for sale.

The subject property is located just east of Zion National Park along state highway 9 in Kane County. The lessee owns the adjoining private property with commercial development on it. The subject property is terrain challenged but has a relatively flat bench where residential lots are planned (SULA 1467).

The lessee is now in the process of developing the property in accordance with the lease agreement but has requested that the Trust consider a sale of the property to help the lessee prolong the development beyond the lease term of November 30, 2021. The lessee has presented a favorable offer to purchase the property for 125% of the appraised value. The appraised value of the property is \$3,200,000.00 (\$5,500.00/acre), therefore the purchase price would be \$4,000,000.00. The petitioner desires to close the sale prior to December 31, 2018.

The lease is currently returning \$10,000.00/year in base rental and has a percentage rent provision of 30% of gross receipts to the extent that it exceeds minimum rent. An economic analysis of the lease has shown that if the lessee sells the remainder of the lots prior to the lease expiration date, the anticipated lease revenue would have a net present value of approximately \$3,015,000.00, which is substantially less than the purchase offer. As revenue from this lease depends on the speculative nature of the market and development of rough remote terrain, a sale would eliminate all of the risk associated with fulfillment of the current lease.

The agency has obtained an easement from the lessee across their private land to the north in order to provide access to the subject parcel. This easement would be cancelled once the parcel is sold.

A cultural resource survey was completed on this parcel for the lease. Three significant sites were located and will be protected by deed covenant.

Pursuant to R850-80-620(1) and R850-80-615 the agency advertised the subject property and no comments or competing applications were received.

In addition to the purchase price, Zion Mountain Land Holdings, LLC will pay \$2,000.00 for the appraisal, \$250.00 advertising, \$250.00 application fee, and a \$500.00 processing fee, totaling \$3,000.00.

The proposed sale was reviewed by the Resource Development Coordinating Committee (RDCC) and the local government clearing house. No comments were received as a result of these notifications.

This proposal was reviewed by and received a favorable recommendation from the Board's Surface and Water Rights Subcommittee.

SULA 1467
 Contract Terms and Values

Year	2018	2019	2020	2021 Total	
Units Sold	22	19	10	36	87
Price Per Unit	\$ 130,000.00	\$ 135,000.00	\$ 140,000.00	\$ 150,000.00	
	\$ 2,860,000.00	\$ 2,565,000.00	\$ 1,400,000.00	\$ 5,400,000.00	\$ 12,225,000.00
SITLA Take 30%	\$ 858,000.00	\$ 769,500.00	\$ 420,000.00	\$ 1,620,000.00	\$ 3,667,500.00
NPV @ 7.5%	\$3,015,153.28				

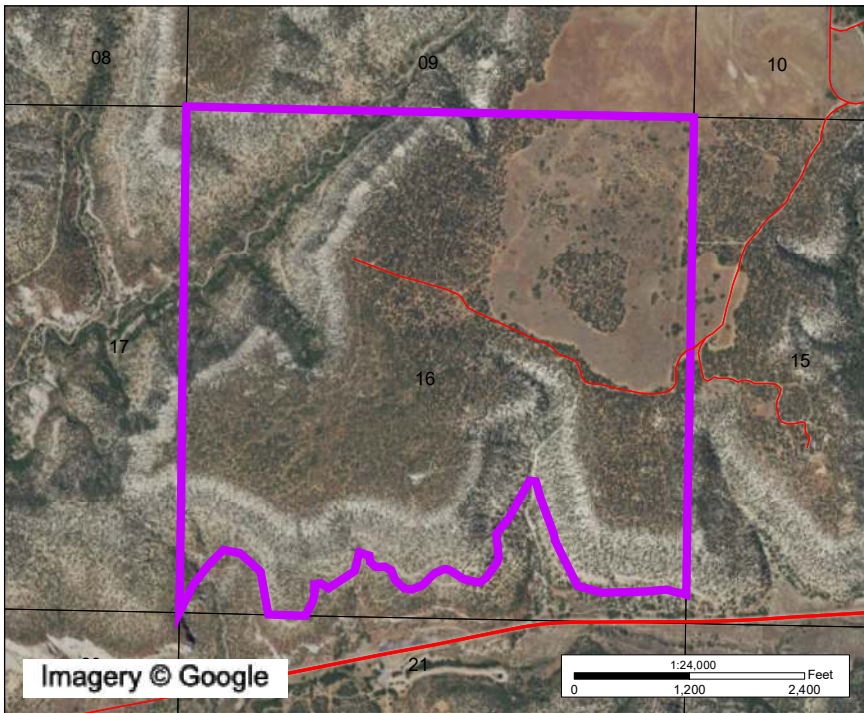
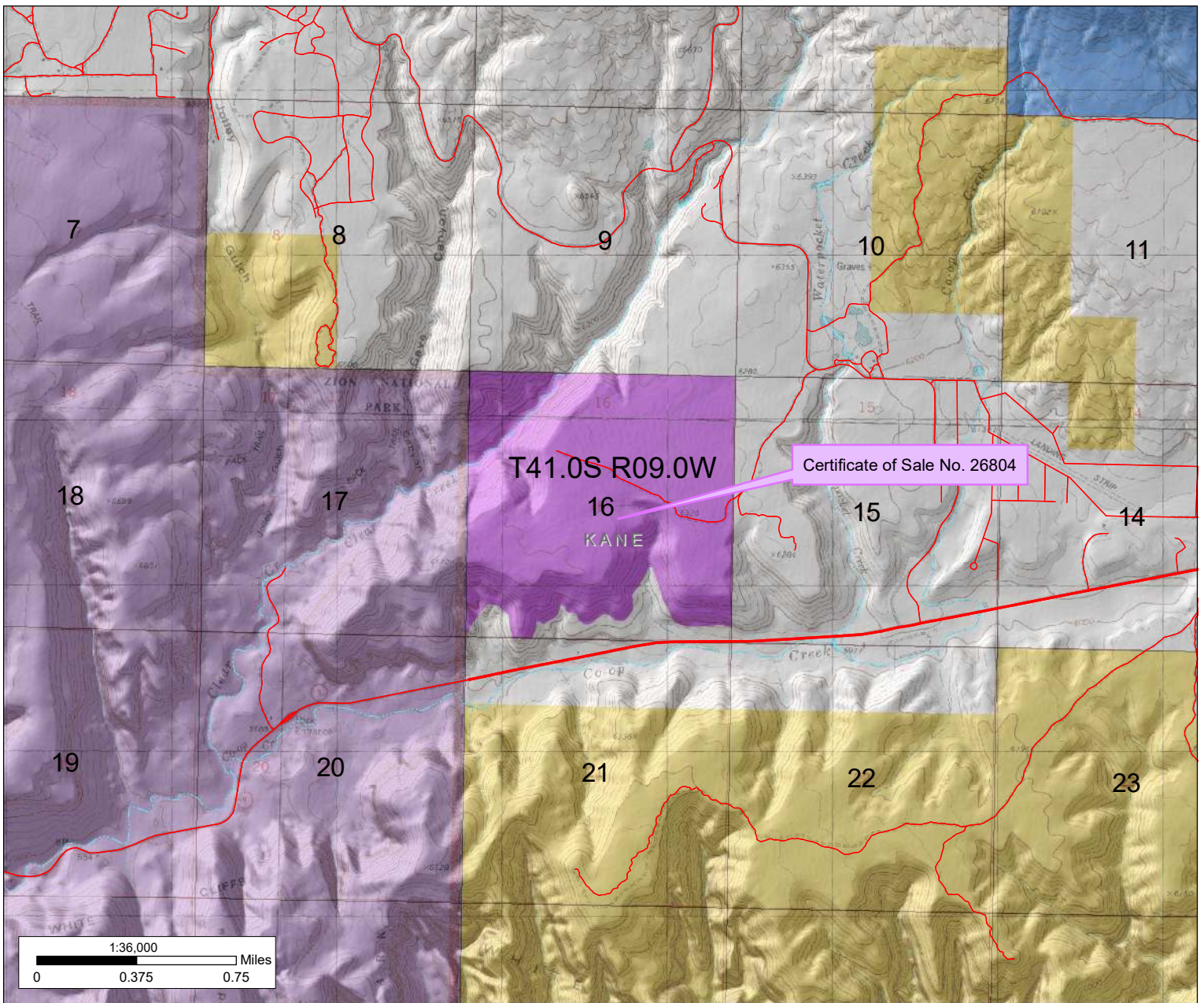
Or Wait Till Contract Expires and Sell For Appraised Value Without Another Extension

Total Acres	580.46				
Value Per Acre	\$ 7,500.00				
Total Value	\$ 4,353,450.00				
	\$ -	\$ -	\$ -	\$ -	\$ 4,353,450.00
NPV @ 7.5%	\$3,032,433.18				

Or Sell Today

Total Acres	581.92
Value Per Acre	\$5,500.00
Total Value	\$3,200,560.00

Negotiated Sale 1.25% \$4,000,700.00



Certificate of Sale No. 26804
East Zion
 Township 41 South, Range 9 West, SLB&M;
 ALL (Less Metes & Bounds), Section 16;
 Kane County

September 11, 2018 SITLA

Land Ownership and Administration

- Bureau of Land Management
- Bureau of Reclamation
- Bankhead-Jones Land Use Lands
- National Recreation Area
- National Parks & Historic Sites
- National Monument
- National Forest
- National Wilderness Area
- National Wildlife Refuge
- Other Federal
- Military Reservations and Corps of Engineers
- Private
- State Trust Lands
- State Sovereign Land
- State Parks and Recreation
- State Wildlife Reserve/Management Area
- Other State
- Tribal Lands

■ Certificate of Sale

N
↑

User: katestaley
 Coordinate System: NAD 1983 UTM Zone 12N
 Projection: Transverse Mercator
 Path: V:\GIS\GIS_Review\PreSales\PS\AerialTopoTemp_PS_NEW.mxd

Data represented on this map is for REFERENCE USE ONLY and is not suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. SITLA provides this data in good faith and shall in no event be liable for any incorrect results, or any special, indirect or consequential damages to any party, arising out of or in connection with the use or the inability to use the data hereon.

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9c

Metalliferous

Minerals –

San Juan

County

BOARD MEMORANDUM

DATE: November 15, 2018

TO: Board of Trustees, Utah School & Institutional Trust Lands Administration (SITLA)

FROM: Tom Faddies, Assistant Director/Minerals
Jerry Mansfield, Resource Specialist

RE: Other Business Arrangement (OBA) – Non-Competitive Lease of Metalliferous Minerals, San Juan County, Utah, North American Vanadium Corporation

BENEFICIARIES:

Schools, Normal Schools, Utah State Hospital, Universities, College of Mines, and Miners Hospital

LANDS PROPOSED FOR LEASE:

See Attachment

APPLICANT:

North American Vanadium Corporation
299 South Main Street, Suite 1300
Salt Lake City, Utah 84111

As provided for under Utah Code Anno. 53C-2-401(1)(d)(ii), which permits the Board of Trustees to approve “other business arrangements”, North American Vanadium Corporation (NAV) on October 15, 2018, submitted a proposal to lease, under the Metalliferous Minerals lease category the referenced land. The reason this action requires Board approval is the lease was not originally offered via any competitive lease process.

This proposed OBA has been reviewed by the SITLA Board’s Mining Committee and they have recommended the Board consider it for approval.

Lands Lease History

The lands encompassed in this proposal have been leased on and off for metalliferous minerals, oil and gas, and potash since as early as 1965. Currently some of the lands are leased for Oil, Gas, and Associated Hydrocarbons. None of the lands are leased for Potash. The lands up until the receipt of the proposal were open for lease of Metalliferous Minerals through SITLA’s “Over-the-Counter” leasing process.

Proposal

NAV has proposed to enter into a metalliferous minerals lease agreement for the lands specified. NAV will pay a \$1.00 per acre one-time bonus in addition to the \$1.00 per acre annual rental, and commits performing the following work to be done on the leased lands:

- Year 1 of work requirement:
 - Data compilation and review;
 - Soil and rock sampling;
 - Drainage stream sediment, soil, and rock sampling;
 - Airborne radiometric geophysical surveys on selected areas;
 - Compilation and submittal of complete report on all work.
 - Dollar commitment: \$50,000 plus the cost of the geophysics
- Year 2 of work requirement
 - Drill test up to 3 or more targets;
 - Other exploration as appropriate;
 - Preparation and submittal of complete report on work completed;
 - Dollar commitment: \$150,000
- Year 3 of work requirement:
 - Drill test up to 3 or more targets;
 - Other exploration as appropriate; preparation and submittal of complete report on work completed
 - Dollar commitment: \$250,000

The mineral lease or leases to be issued would be under SITLA's standard lease terms; those being:

- 10 year lease term;
- One-time Bonus Payment of \$1.00 per acre;
- Annual rental of \$1.00 per acre;
- Production royalty base on the gross value of 4% for non-fissionable metals and 8% for fissionable metals produced from the lease premises.

Recommendation

The Trust Land Administration Mining staff have reviewed the NAV proposal and recommends that the Board of Trustees, of the School and Institutional Trust Lands Administration, grant approval to issue an "Other Business Arrangement" (OBA) lease to NAV for Metalliferous Minerals for the lands listed under the terms described above.

Respectfully Submitted by:

Tom Faddies
Assistant Director of Minerals

Jerry Mansfield
Resource Specialist

Lands Proposed for Lease:

<u>T31S, R24E, SLB&M</u>	<u>Fund</u>	<u>Acreage</u>
Sec. 32: All	SCH	640.00
<u>T31S, R25E, SLB&M</u>		
Sec. 16: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T31S, R26E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4	SCH	71.21
Sec. 32: All	SCH	640.00
<u>T32S, R23E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, S2N2, S2 [All]	SCH	970.24
Sec. 16: All	SCH	640.00
<u>T32S, R24E, SLB&M</u>		
Sec. 2: S2	SCH	320.00
Sec. 16: All	SCH	640.00
Sec. 22: S2SE4	SCH	80.00
Sec. 23: E2NW4, SW4	SCH	240.00
Sec. 26: E2SW4	SCH	80.00
Sec. 27: SE4SW4, N2SE4	NS/SCH	120.00
Sec. 31: Lot 4	SCH	36.70
Sec. 32: All	SCH	640.00
Sec. 33: NE4, W2	SCH	480.00
Sec. 34: N2NW4, SW4NW4	NS	120.00
Sec. 35: NW4, NE4SW4	SCH	200.00
Sec. 36: All	SCH	640.00
<u>T32S, R25E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, S2 [All]	SCH	963.48
Sec. 13: NW4SW4, S2SW4	SCH	120.00
Sec. 14: E2SE4	SCH	80.00
Sec. 16: All	SCH	640.00
Sec. 23: E2NE4, SW4NE4	SCH	120.00
Sec. 31: Lots 1, 2, 3, 4, E2W2	SCH	306.32
Sec. 32: All	SCH	640.00
Sec. 33: N2	NS	320.00
Sec. 36: All	SCH	640.00
<u>T32S, R26E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, 5, 6	SCH	94.09

Lands Proposed for Lease (Continued):

<u>T33S, R23E, SLB&M</u>	<u>Fund</u>	<u>Acreage</u>
Sec. 8: N2SW4	SCH	80.00
Sec. 14: E2	SCH	320.00
Sec. 15: E2	USH	320.00
Sec. 16: N2, SW4	SCH	480.00
Sec. 22: E2SE4	SCH	80.00
Sec. 24: SE4NE4, E2SE4	SCH	120.00
Sec. 25: Part of SW4NE4, S2NW4, NE4SW4, W2SW4, Part of NW4SE4	SCH	252.00
Sec. 26: SE4NE4, E2NW4, Part of W2SE4	SCH	199.00
Sec. 32: All	SCH	640.00
Sec. 35: NW4SW4	SCH	40.00
 <u>T33S, R24E, SLB&M</u>		
Sec. 4: Lots 3, 4, S2NW4	SCH	160.22
Sec. 5: Lots 1, 2, S2NE4	SCH	160.12
Sec. 16: All	SCH	640.00
Sec. 19: Lots 2, 4, SE4NW4, NE4SW4, Part of SE4SW4, NW4SE4, Part of S2SE4	SCH	275.47
Sec. 21: SW4SE4	SCH	40.00
Sec. 24: E2	SCH	320.00
Sec. 25: E2	SCH	320.00
Sec. 26: S2SW4	SCH	80.00
Sec. 28: W2NE4, E2W2, NW4SE4	SCH	280.00
Sec. 29: W2NW4	SCH	80.00
Sec. 30: NE4	SCH	160.00
Sec. 31: E2NE4	SCH	80.00
Sec. 32: E2NE4, SW4NW4	SCH	120.00
Sec. 33: SE4	UNIV	160.00
Sec. 34: <u>E2NE4</u> , SW4SW4	<u>SCH/UNIV</u>	120.00
Sec. 35: NW4 less ROW	SCH	154.42
 <u>T33S, R25E, SLB&M</u>		
Sec. 1: SW4, S2SE4	SCH	240.00
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	642.40
Sec. 12: N2, N2S2	SCH	480.00
Sec. 13: SW4	SCH	160.00
Sec. 16: All	SCH	640.00
Sec. 24: N2	SCH	320.00
Sec. 27: NE4NW4, W2W2	NS	200.00
Sec. 30: Lots 1, 2, 3, 4, E2, E2W2 [All]	SCH	629.88
Sec. 31: Lots 1, 2, 3, 4, E2W2 less ROW	SCH	304.42

Lands Proposed for Lease (Continued):

<u>T33S, R25E, SLB&M (Continued)</u>	<u>Fund</u>	<u>Acreage</u>
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
 <u>T33S, R26E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3 4	SCH	92.85
Sec. 6: S2S2	SCH	160.00
Sec. 7: <u>E2</u> , NW4	UNIV/SCH	480.00
Sec. 8: W2	UNIV	320.00
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
 <u>T34S, R23E, SLB&M</u>		
Sec. 1: Lots 1, 2, S2NE4, SE4	SCH	320.00
Sec. 13: E2E2, SW4NE4, NW4SE4	SCH	240.00
Sec. 24: W2SE4	SCH	80.00
Sec. 25: NW4NE4	SCH	40.00
 <u>T34S, R24E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	640.16
Sec. 3: Lot 4	UNIV	40.13
Sec. 4: Lots 1, 2, SW4NE4, S2NW4, SW4, NW4SE4	UNIV	400.22
Sec. 6: Lots 6, 7, E2SW4	UNIV	156.03
Sec. 7: Lot 4, SE4SW4	SCH	78.31
Sec. 16: All	SCH	640.00
Sec. 17: W2SW4	SM	80.00
Sec. 18: <u>Lots 1, 2, Part of NE4, Part of the NE4NW4,</u> E2SW4, SE4	SCH/SM	458.36
Sec. 19: NW4SE4	SCH	40.00
Sec. 29: SW4NE4, SE4NW4, N2SW4, NW4SE4	SCH	200.00
Sec. 30: NE4SW4, N2SE4	SCH	120.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
 <u>T34S, R25E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2	SCH	651.96
Sec. 16: All	SCH	640.00
Sec. 20: E2E2	SCH	160.00
Sec. 32: All	SCH	640.00
Sec. 34: W2	SCH	320.00
Sec. 35: SE4SE4	MH	40.00
 <u>T34S, R26E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4	SCH	95.37

Lands Proposed for Lease (Continued):

<u>T34S, R26E, SLB&M (Continued)</u>	<u>Fund</u>	<u>Acreage</u>
Sec. 4: <u>Lots 1, 2, S2NE4, SE4, SW4</u>	SCH/USH	485.55
Sec. 5: SW4, S2SE4	SCH	240.00
Sec. 22: NE4SE4	MH	40.00
<u>T35S, R23E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	638.76
Sec. 12: NW4NE4	SCH	40.00
Sec. 14: SW4NE4	SCH	40.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T35S, R24E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	640.72
Sec. 7: E2SW4, SE4	SCH	240.00
Sec. 8: W2SW4	SCH	80.00
Sec. 16: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	642.88
Sec. 32: All	SCH	640.00
<u>T35S, R25E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N, S2 [All]	SCH	638.40
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T35S, R26E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4	SCH	118.61
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
<u>T36S, R23E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2S2 [All]	SCH	253.68
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T36S, R24E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2S2 [All]	SCH	244.04
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00

Lands Proposed for Lease (Continued):

	<u>Fund</u>	<u>Acreage</u>
<u>T36S, R25E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2S2 [All]	SCH	240.36
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T36S, R26E, SLB&M</u>		
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
<u>T37S, R23E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	637.40
Sec. 16: All	SCH	640.00
Sec. 26: SW4NW4	SCH	40.00
Sec. 32: All	SCH	640.00
Sec. 33: NE4NE4	SCH	40.00
Sec. 36: All	SCH	640.00
<u>T37S, R24E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	633.44
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T37S, R25E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	633.08
Sec. 36: All	SCH	640.00
<u>T37S, R26E, SLB&M</u>		
Sec. 16: All	SCH	640.00
<u>T38S, R23E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	637.84
Sec. 16: All	SCH	640.00
Sec. 27: S2SE4	SCH	80.00
Sec. 32: All	SCH	640.00
<u>T38S, R24E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	645.68
Sec. 16: All	SCH	640.00
Sec. 29: S2NW4	SCH	80.00
Sec. 30: NE4NE4	SCH	40.00
Sec. 36: All	SCH	640.00

Lands Proposed for Lease (Continued):

	<u>Fund</u>	<u>Acreage</u>
<u>T38S, R25E, SLB&M</u>		
Sec. 2: Lots 1, 2, 3, 4, S2N2, S2 [All]	SCH	639.60
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
Sec. 36: All	SCH	640.00
<u>T38S, R26E, SLB&M</u>		
Sec. 16: All	SCH	640.00
Sec. 32: All	SCH	640.00
	Total Acreage	64,017.08

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North Temple

Landfill

Nov. 15, 2018

To: Board of Trustees
From: Rodger Mitchell
Re: North Temple landfill

Beneficiary: Schools

Introduction: Pursuant to the Boards direction, staff has completed negotiations with the Ninigret Group on a partnership to clean up and develop the 770 acre landfill the Trust recently acquired from Suburban Land Reserve (SLR). Ninigret is a local company with deep experience in environmental cleanup and industrial development. They are nearing completion on the cleanup and development of 400 acres on the old Harshaw Chemical Company site in the southwest quadrant of Salt Lake. They have also been actively involved in the landfill property with SLR, and have worked with the Trust, for over a decade.

A final draft of the operating agreement is attached for your review. Since the Boards review of the draft agreement in August the Real Estate Committee (REC) has been particularly focused on three concepts in the agreement. First, the REC wanted to make sure the fee structure was competitive. Fees were benchmarked to DFCM's fee structure and, ultimately, the fee structure agreed upon is well below DFCM's standards for similar projects. Second, the REC wanted to insure that profits were not layered within work completed with Ninigret's own forces and that that work was controlled by SITLA. Clauses were inserted that insure work done with Ninigret's own forces will be at cost and that any work done with their own forces will be at SITLA's discretion. Third, the REC wanted to insure Ninigret did not gain a windfall if an entity came along and purchased the property prior to value being added through development activities. This problem was resolved by phasing in Ninigret's participation over a five year period. In addition, over the last 90 days, the agreement has undergone several "what if" reviews by the Trust's legal team, outside council, the Director's office and the Development Group resulting in multiple changes to increase transparency, control, and the managers fiduciary reasonability. The result of this rigorous review and negotiation process has resulted in a very well-thought-out agreement that will create a partnership where the benefits and liabilities to the Trust and its Partner stay aligned throughout the project's development while maintaining a decision making structure that allows the project to move forward with agility.

History: The Trust recently acquired title to the landfill, however, we have been working with DEQ, SLR, State and City government and Ninigret for well over two years to develop a remediation and development plan. The inland port law passed during the 2018 legislative session has required a reevaluation of our remediation and development plans, but has not stopped progress. The current Trust strategy is to focus the remediation and

development on the southeast 100 acres while working with the adjacent landowners to develop a plan that would incorporate an inland port on the northern 250 to 300 acres.

It appears the inland port decisions could be in process for years so this strategy will allow us to move forward with remediation and development on the first hundred acres while the port authority decisions are made. If ultimately the decision is to build an inland port, the Trust will have the capacity and will be well-positioned to accommodate that decision. If the decision is to not build an inland port the Trust will be in a position to move forward with a phased remediation and development on the balance of property. The strategy is sound but has created pressure to get our development partner on board so progress on the first hundred acres can move forward.

Transaction Summary: A summary of the agreement's basic structure follows:

- The partnership will be 75/25 with the Trust being the 75% partner. Expenses, liabilities and profits will be shared per percentage interest. However, if the Trust sells the property outright, the partner's equity is phased in over the first five years.
- Ninigret will be the managing member with SITLA's concurrence required on major decisions..
- Sales revenue will be disbursed first to SITLA for the base-land value (when title is passed), second to expenses and third as profit disbursements.
- Initial capitalization will be \$800,000 with a \$100,000 base bank balance requirement.
- The Trust will patent land upon sales closing to a third party.
- Any remediation or development work performed by the manager's own forces will be at predetermined costs and at the discretion of SITLA.

Transaction Advantages:

- The Trust gains a partner with the capacity and capability to undertake both the remediation and development aspects of the project.
- The transaction brings a partner who has worked on the property for over a decade and has a deep understanding of the challenges and advantages surrounding the complex issues this property presents.
- The project gains the substantial relationships this partner has developed over the last decade with local land use decision-makers whose decisions will be instrumental in the success or failure of this project. These relationships run through the City, County and State (DEQ) levels of government as well as the local industrial marketing and development communities.

Transaction Difficulty:

- Political risks (uncertainty)
- Gaining clarity on responsibility (City, State) for contingent liability (remediation).

Recommendation/ Request: Staff has received a positive response from the Real Estate Committee and asks the Board for a resolution to move forward with the execution of the agreement.