



Comment on the Proposed Qualified Bidder Rule, Amendments to Wyoming’s Rules and Regulations 060.0002.18

Property and Environment Research Center (PERC)

Bozeman, Montana

Aug. 13, 2024

Main Points:

- State trust land must be managed to produce revenue and long-term value for public schools, consistent with traditional trust principles. These lands are of particular interest to PERC as an opportunity for conservation through markets and incentives, rather than top-down regulation.
- The proposed “qualified bidder” definition would violate trust principles by artificially restricting the market to lease state trust land and sacrificing revenue for schools. The proposed rule is a concerning step toward treating trust lands as a political football rather than managing them consistent with trust duties.
- The proposed “qualified bidder” definition excludes conservation interests from the market for oil and gas leases without any alternative process for conservation to generate more revenue and long-term value for trust beneficiaries. OSLI must either revise the proposed definition to avoid suppressing the market or establish an alternative process to evaluate conservation offers. We are not asking for conservation and recreation interests to receive preferential consideration, just that OSLI considers all users and interests equally and in line with its trust duties.

The Property and Environment Research Center (PERC) respectfully submits this comment opposing the Office of State Lands and Investments’ (OSLI’s) proposed regulation defining “qualified bidder” to exclude conservation interests.¹ PERC supports the creation of markets for voluntary conservation of state trust lands, which enable states to capture for trust beneficiaries the substantial environmental and economic benefits these lands provide. This market solution is clearly preferable to the alternative of top-down regulation that imposes conservation while reducing revenues for public schools. And it also

¹ OSLI, Emergency Rules and Regulations Chapter 18 – Leasing of Oil and Gas State Board of Land Commissioners (June 6, 2024), <https://drive.google.com/file/d/1ujFLAEpUqzN1Paj2hO2dU2zpGrHEDe5p/view>.

has the salutary benefit of encouraging conservation groups to come to the table, be realistic about their demands and sensitive to the costs imposed on others, and favor compromise solutions. The proposed rule closes off this win-win solution, restricting the market and revenue for public schools to subsidize a favored industry.

The Property and Environment Research Center

PERC is the national leader in market solutions for conservation, with over 40 years of research and a network of respected scholars and practitioners. Through research, law and policy, and innovative field conservation programs, PERC explores how aligning incentives for environmental stewardship produces sustainable outcomes for land, water, and wildlife. Unlike other conservation groups, PERC is firmly committed to private property rights and pursuing conservation through voluntary markets and incentives rather than top-down regulation. We are committed to paying our fair share to achieve the conservation outcomes we desire. In addition to supporting market-based solutions for public land leasing,² PERC advocates Endangered Species Act reforms to reduce burdens on states and landowners while rewarding progress toward species' recovery,³ supports delisting recovered species such as Greater Yellowstone Ecosystems grizzly bears,⁴ and defends the rights of private landowners against heavy-handed and counterproductive regulations.⁵ Founded in 1980, PERC is nonprofit, nonpartisan, and proudly based in Bozeman, Montana.

² See Shawn Regan et al., *Opening the Range: Reforms to Allow Markets for Voluntary Conservation on Federal Grazing Lands*, 2023 Utah L. Rev. 197 (2023), <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1344&context=ulr>; Temple Stoellinger, *Valuing conservation of state trust lands*, American Bar Association (Mar. 3, 2023), https://www.americanbar.org/groups/environment_energy_resources/resources/trends/2023-march-april/valuing-conservation-state-trust-lands/; Bryan Leonard et al., *Allow "nonuse rights" to conserve natural resources: "Use-it-or-lose-it" requirements should be reconsidered*, 373 Science 958 (2021), <https://www.science.org/doi/abs/10.1126/science.abi4573>; Bryan Leonard & Shawn Regan, *Legal and Institutional Barriers to Establishing Non-Use Rights to Natural Resources*, 59 Nat. Resources J. 135 (2019), <https://www.perc.org/wp-content/uploads/2019/05/Legal-and-Institutional-Barriers-to-Establishing-Non-Use-Rights-t.pdf>; Shawn Regan, *Why Don't Environmentalists Just Buy the Land They Want to Protect? Because It's Against the Rules*, Reason (Dec. 2019), <https://www.perc.org/2020/12/16/why-dontenvironmentalists-just-buy-what-they-want-to-protect/>.

³ See Hannah Downey et al., *A Field Guide for Wildlife Recovery*, PERC Reports (2023), <https://www.perc.org/2023/09/20/a-field-guide-for-wildlife-recovery/>; Katherine Wright and Shawn Regan, *Missing the Mark: How the Endangered Species Act Falls Short of its Own Recovery Goals* (2023), <https://perc.org/2023/07/26/missing-the-mark/>; Tate Watkins, *How Not to Protect Endangered Species* (2021), <https://perc.org/2021/10/29/how-not-to-protect-endangered-species/>.

⁴ See Brief for Pacific Legal Foundation and PERC, as Amici Curiae Supporting Defendants-Appellants/Reversal, *Crow Indian Tribe v. United States*, 965 F.3d 662 (9th Cir. 2020), <https://pacificlegal.org/wp-content/uploads/2019/05/Crow-Indian-Tribe-v-US-amicus-brief.pdf>; Brian Yablonski, *A Path Forward for the Grizzly Bear*, PERC Reports (2023), <https://perc.org/2023/10/17/a-path-forward-for-the-grizzly-bear/>.

⁵ PERC, as Amicus Curiae Supporting Petitioners, *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023), https://www.supremecourt.gov/DocketPDF/21/21-454/221303/20220418150428150_Brief%20amici%20curiae%20of%20Property%20and%20Environment%20Research%20Center.pdf.

I. The proposed rule treats state trust land as a political football and will only encourage conflict

OSLI's proposed regulation defining "qualified bidders" will exacerbate the problem of treating state trust lands as a political football by banning a pathway for voluntary markets to conserve state trust land and generate value for trust beneficiaries.⁶ State trust lands are unlike other public lands. The duty to generate revenue and long-term value for trust beneficiaries provides a clear rule for management decisions that makes it possible to avoid the political conflict prevalent on other public land. Regardless of political power, almost any interest can be advanced on state trust land, provided supporters are willing to pay for it. Stepping away from markets and the state's trust duties will encourage political conflict.

Environmental groups, for instance, have an incentive to claim that public land holds tremendous conservation value when they expect the result to be regulation of that land at no cost to them. State trust land can avoid this gamesmanship, however, by revealing the true value of land to different interests. Recently, for instance, a member of the State Land and Investment Board fairly criticized an environmental group's testimony that a parcel was incredibly valuable for conservation, noting that the group had bid far less for the land.⁷ The cliché "putting one's money where your mouth is" has real meaning in this context. Signaling the state's willingness to manipulate the market to favor particular interests will encourage interest groups to pursue political strategies, rather than participate in the market.

Eroding the role of markets will also encourage all-or-nothing conflicts, rather than the nuance and compromise that markets can facilitate. We see this play out on other public land, where some conservation groups advocate for absolute restrictions on oil and gas development. Those same groups, however, allow such development on land they own, because they bear the costs of tradeoffs on that land.⁸ In the state trust land context, markets encourage compromise because the state must consider the opportunity cost of its decisions. If a lease restricts a parcel's development entirely, the state must charge a conservation group more to make up for the foregone revenue. But if the group can find a way to facilitate both conservation and development by, for instance, partnering with a gas company to limit

⁶ See Don Richards, Wyo. Legis. Serv. Off., *Review of Revenue from State Trust Lands* (2019), https://www.wyoleg.gov/InterimCommittee/2019/SCF-2019062710-01_Whitepaper-Lands.pdf.

⁷ See SLIB/SBLC Regular Meeting, 5:47:00–7:46:00 (Oct. 5, 2024), <https://www.youtube.com/watch?v=MikF3si1sm8> (discussion of result of July 12, 2023, oil and gas auction to lease parcel 194).

⁸ See Shawn Regan, *Why Property Rights Matter*, PERC Reports (July 26, 2017), <https://www.perc.org/2017/07/26/why-property-rights-matter/> (noting that Audubon opposes drilling on public land, where it bears no cost for preempting development, while allowing oil development on its own land where it directly confronts this tradeoff)

development in a sensitive area or to pursue directional drilling to conserve the surface, the group could be rewarded with a lower price.

These concerns are not limited to any particular interest group. Industry has the same incentive to exaggerate stakes or eschew compromise for political reasons. The proposed rule appears to be motivated, at least in part, by imagined fears that conservation interests will consistently outbid competing users for state trust land. Despite accepting bids from conservation interests in previous oil and gas auctions, this hasn't occurred.⁹ Nor has it occurred in states that have recognized their trust duties require them to consider revenue opportunities from voluntary conservation.¹⁰

And this makes sense; oil and gas development generates tremendous revenue on many state trust parcels that could not realistically be matched by conservation groups. Instead, conservation is most likely to generate more revenue on parcels that are of marginal value to oil and gas, but of exceptional conservation value. PERC, for instance, recently proposed to pay \$5,000 a year for a special use lease to conserve the surface of a parcel important to mule deer migration and greater sage grouse habitat, while allowing oil and gas development through directional drilling.¹¹ There had been no prior oil or gas development on the parcel, and the parcel was several miles from the core of the Pinedale Anticline production area. Indeed, the parcel had previously been leased to oil and gas twice since 2004 at the minimum price of \$640 per year (\$1 per acre) and not developed.¹² OSLI did not move forward with our application and instead again leased the parcel to an oil and gas company for the minimum of \$640 a year, favoring regulations in the form of lease stipulations to protect mule deer migration over our more lucrative voluntary proposal.¹³

Moreover, by eliminating consideration of other appropriate uses of state trust land, the proposed rule favors one user by artificially suppressing fair market bids, essentially treating state trust lands as a form of government handout. In this way, the state is picking winners and losers rather than letting the market decide. And it is proceeding with this policy at the expense of the state's education system. One of the

⁹ See House Minerals, Business & Economic Development Committee, 29:20 (Feb. 16, 2024), <https://www.youtube.com/watch?v=TnbhEXJ5wrE> (Director Scoggin discussing how conservation interests outbidding oil and gas producers for leases is not a "big issue" and that there has only been "one instance" where a successful bidder was a conservation organization).

¹⁰ See Susan Culp & Joe Marlow, *Conserving State Trust Lands: Strategies for the Intermountain West*, Lincoln Inst. of Land Pol'y (2015), <https://www.lincolninst.edu/app/uploads/legacy-files/pubfiles/conserving-state-trust-lands-full.pdf>.

¹¹ App. B: Letter to Director Scoggin from PERC.

¹² See OSLI, *Land and Lease Map Viewer*, Parcel 195, T28N, R104W, Sec. 36, <https://gis2.statelands.wyo.gov/portal/apps/webappviewer/index.html?id=cc0e524241b04d49bc60c4caa798377f> (last visited Aug. 13, 2024) (showing that Parcel 195 has been leased from 2004 to 2009 and 2018 to now, and never developed).

¹³ See SLIB/SBLC Regular Meeting, 10:00 (Aug. 1, 2024), https://www.youtube.com/watch?v=wJwwjuXvKvc&list=PLFif5hMf9PHjXf5T4ihqoM_mV9HUXDmh&index=9 (approving lease sale of Parcel 195 for \$1 an acre).

chief complaints raised by industry is that if conservationists can participate in the market for state trust land, those companies will pay more for leases.¹⁴ That’s how capitalism works, and that’s exactly what state trust duties demand from OSLI. Rather than trying to reduce competition, the state must remember its obligations to the trust beneficiaries: Wyoming public schools.

It is not the state’s fiduciary role to guarantee below market leasing rates. For example, PERC’s proposal to pay \$25,000 over five years for a special use lease to conserve a mule deer migration route while still allowing directional drilling contrasts sharply with the winning bid of a mere \$3,200 over the same five years. This is on a parcel that has historically shown limited development potential and in all likelihood, given the lack of infrastructure, won’t see development during the life of the lease. The difference of almost \$22,000 would have gone a long way to a Wyoming public school. While anyone would want to pay less for something if they could, the state should not use school trust land to engage in protectionism.

Despite being a solution in search of a problem, the proposed regulation will likely lead to litigation and demands for top-down regulation of state trust lands. Rather than the win-win solutions that a market approach would facilitate, we fear that the proposed regulation will lead to more lose-lose outcomes.

II. OSLI’s trust duties do not allow it to ignore revenue opportunities from conservation

The proposed regulation would limit participation in oil and gas auctions to “qualified bidders,” those “engaged in good faith exploration for, or production of Oil and Gas as a primary component of their business activity.”¹⁵ Previously, conservation interests were qualified to bid and occasionally participated in the market for these oil and gas leases. The clear purpose of the proposed rule is to exclude conservation and sportsmen’s groups from the market, which will have the effect of reducing revenue for trust beneficiaries.

By foreclosing the only effective way for conservation interests to participate in the market for state trust lands without providing an alternative, the proposed regulation would violate the state’s trust duties. The Tenth Circuit has previously held that language in Colorado’s enabling act, which is almost identical to Wyoming’s, created federal trust obligations.¹⁶ This federal trust duty, the court explained, required “the sole and exclusive beneficiary of the school lands trust to be the ‘common schools,’” that the state must “take steps to preserve the trust property from loss, damage or diminution in value,” and

¹⁴ See Pat Maio, *In Major Policy Shift, Wyoming Redefines Who Can Bid on State Oil and Gas Leases*, Cowboy State Daily (July 8, 2024), <https://cowboystatedaily.com/2024/07/08/in-major-policy-shift-wyoming-redefines-who-can-bid-on-state-oil-and-gas-leases/>.

¹⁵ Wyo. Rules and Regs. 060.0002.18 § 2(f).

¹⁶ *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619, 634 (10th Cir. 1998).

that “[o]verarching all the trustee’s fiduciary duties [is] the paramount duty to exercise reasonable prudence and care in the management of the trust solely for the benefit of the” schools.¹⁷ A federal court considering Wyoming’s trust duties would almost certainly find that OSLI similarly cannot sacrifice revenue and value for trust beneficiaries to benefit any other interest, including a particular class of user. Under the Supremacy Clause, any state law or policy that violates this duty is unlawful, including the proposed rule.¹⁸

The Wyoming Supreme Court has interpreted the trust duties to arise under state rather than federal law.¹⁹ Under that precedent, too, the state cannot exclude conservation interests from the market for state trust lands. The Wyoming Supreme Court has held that the Wyoming legislature established trust duties under a statute providing that the state must “protect[] the [trust] corpus for the long term” and that “[a]ll leases of trust land shall assure a return of at least fair market value considering the management practices and risk assumed by the lessee when determining fair market value.”²⁰ The court held that “such explicit trust language . . . clearly indicate[d] the legislature’s intent that the land” granted by the United States to Wyoming “be subject to a trust and administered according to the prescribed guidelines.”²¹

While the Wyoming Legislature recently enacted legislation directing OSLI to define “qualified bidders,” that legislation did not provide guidance on how the phrase should be defined, nor did it set aside OSLI’s trust duties under state law.²² Therefore, those duties identified by the Wyoming Supreme Court and codified in statute must guide OSLI’s development of a qualified bidder rule.²³ It cannot define bidding qualification to restrict the market for state trust lands at the expense of trust

¹⁷ *Id.* at 637.

¹⁸ *See id.*; *see also ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989) (holding that Arizona’s enabling act prevents Arizona from valuing or leasing mineral rights on state trust lands for less than fair market value).

¹⁹ *Riedel v. Anderson*, 70 P.3d 223, 233 (Wyo. 2003). Any future challenge to the state’s compliance with trust duties would arise in federal court, where Tenth Circuit precedent would control, and the Wyoming Supreme Court’s analysis would not be persuasive. Among other problems with *Riedel*, it misapplied *Dist. 22 United Mine Workers v. Utah*, 229 F.3d 982, 984 (10th Cir. 2000), to find that Wyoming’s enabling act did not create federal trust duties. In that case, the Tenth Circuit considered a provision in Utah’s enabling act granting land for a hospital and placing no explicit restrictions on how the lands could be managed or disposed of. *See id.* at 990. While it held that this was insufficient to establish federal trust duties, the Tenth Circuit described it as “a close case.” *Id.* In contrast, Wyoming’s enabling act and Constitution does restrict how school trust lands can be managed or disposed of in ways virtually identical to Colorado’s. *Compare id., with Wyo. Const. Art. 18 § 1., and Wyo. Act of Admission § 5., and Branson Sch. Dist.*, 161 F.3d at 634–37. Therefore, it would not present a close case but would easily establish federal trust duties.

²⁰ *See Riedel*, 70 P.3d at 233.

²¹ *Id.*

²² *See* 2024 Wyo. Legis. Serv. 64 § 2 (West).

²³ *Riedel*, 70 P.3d at 233.

beneficiaries. Doing so conflicts with the obligation to receive fair market value for the use of trust land.²⁴

III. OSLI has several options to meet its trust obligations by incorporating conservation value into its management of state trust lands

While federal and state law impose trust duties on the management of state trust land, they also give OSLI some discretion on how to comply with those duties. There are two primary options the state could pursue. It could modify the proposed definition of qualified bidders to not exclude conservation interests. Or it could modify its special use lease process or establish an alternative process for conservation interests to participate in the market for state trust lands and have their offers fairly considered against other competing users.

As noted above, House Enrolled Act No. 34, which is the authorizing statute for the proposed regulation, directed OSLI to define a “qualified bidder” for an oil and gas lease without providing further guidance on how to do so. Therefore, it must define that phrase consistent with its trust duties. If OSLI believed changes to the existing definition were necessary, it could establish two classes of qualified bidders: one similar to the proposed definition, and another that would capture conservation interests, speculators, and others less likely to develop the parcel and generate royalties.

However, distinguishing bidders in this way would require the state to fairly compare bids from each group. OSLI cannot simply assume that one category would generate royalties while the other wouldn't, considering that it recently reported that only 27% of state trust land parcels leased for oil and gas leases ever reach production and generate royalty revenue.²⁵ So in the vast majority of cases, bids by conservation interests and oil interests are equivalent, and should be evaluated as such. This is because most parcels are leased by speculators and not developed,²⁶ and OSLI proposes to give these bidders preferential treatment over recreation and conservation organizations that are willing to provide significantly more funding to trust beneficiaries.²⁷

If OSLI took this approach, PERC would be interested in working with it on a way to identify the minority of cases where industry and conservation bids are not equivalent and how to account for their

²⁴ See *Branson Sch. Dist.*, 161 F.3d at 641 (“The maximum possible price that a willing buyer would pay to a willing seller is in fact the fair market value for a property.”).

²⁵ House Minerals, Business & Economic Development Committee Feb. Hearing, 36:00, *supra* 9.

²⁶ If OSLI is concerned about trust land being leased and not developed, the proposed rule is woefully underinclusive and should include penalties for speculators who acquire a lease but do not develop it. By treating these speculators differently from conservation interests, OSLI further undermines any possible justification for the proposed rule.

²⁷ See, e.g., *Land and Lease Map Viewer*, Parcel 195, *supra* note 12.

differences.²⁸ This could include a structure for leasing to conservation interests that takes into account foregone royalty revenues. Leases are not forever and leasing land to conservation groups is not the same as a conservation easement. PERC's proposed lease for Parcel 195, for instance, would have expired after five years. Therefore, accepting a conservation bid does not mean that the state loses out on royalty revenues forever, it only means a possible postponement of realization of that value.²⁹ Accordingly, OSLI could account for this deferment of present value royalty revenue in the auction process, especially if it shared its royalty projections for parcels up for auction.³⁰ After all, sacrificing revenue to favor conservation interests is just as much a violation of trust duties as sacrificing revenue for any other interest group.³¹

Another option would be to update the special use leasing process or establish an alternative process to capture the conservation value of state trust land for trust beneficiaries. In several cases, OSLI has used special use leases in this way.³² Munger Mountain, for instance, will generate \$75,000 in annual revenue for trust beneficiaries based on the value of conserving land for recreation and open space, rather than developing it. But this process was slow, burdensome, and haphazard.³³ As discussed above, PERC submitted a similar proposal, for a parcel important to mule deer migration and greater sage grouse habitat. But OSLI did not pursue our bid and did not analyze how it compared to alternative uses of the parcel. The parcel was later leased for oil and gas for the minimum bid of just \$640 per year, compared to the \$5,000 annually that PERC bid, suggesting that it holds relatively little potential for development and will likely be one of the 73% of leases that do not generate royalties.³⁴ If so, trust beneficiaries will lose 90% of the value they could have obtained under our special use lease compared to what they are receiving from this oil and gas speculator.³⁵

If OSLI wants special use leasing to be the primary process for recreation and conservation values to be incorporated into state trust land leasing, these uses should be specifically authorized as a use of a special use lease and a process should be established to develop special use lease proposals and to fairly evaluate them against competing uses.³⁶ Alternatively, OSLI could establish a separate track for leases for

²⁸ See, e.g., Daniel Kaffine, *Pricing Conservation Leases: Insights from Economics*, PERC Policy Brief (forthcoming 2024).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Nat. Parks & Cons. Ass'n v. Bd. of St. Lands*, 869 P.2d 909, 921 (Utah 1993) (abrogated on other grounds).

³² Compare SLIB/SBLC Regular Aug. Meeting, 29:15–1:26:00, *supra* note 13 (approving Munger Mountain's recreational lease under the special use lease framework to Teton County); with App. A (PERC's application for a special use lease that was never officially considered).

³³ See SLIB/SBLC Regular Aug. Meeting, *supra* note 13.

³⁴ See *id.*, 10:00.

³⁵ See App. A.

³⁶ See Leonard et al., *supra* note 2.

recreation and conservation, likewise with processes for addressing the opportunity costs associated with using a parcel one way or another.

IV. If OSLI finalizes the proposed “qualified bidder” regulation, it should explicitly authorize co-bidding to encourage negotiation between oil and gas and conservation interests

The proposed “qualified bidder” regulation appears to even preclude conservation interests from developing co-bids with oil and gas companies to facilitate development that conserves valuable environmental resources. Explicitly authorizing co-bidding would allow oil and gas companies to voluntarily negotiate with conservation and recreation organizations to modify their production practices, and in turn, increase their bid amount based on the conservation organization’s financial commitments.³⁷ This practice would both promote voluntary conservation by the oil and gas companies, and increase the revenue going to trust beneficiaries. This wouldn’t cure the trust duty problems associated with the rule, but it would leave some room for markets for voluntary conservation on state trust lands.

V. Conclusion

Wyoming has an opportunity to chart a better path for managing state trust lands. It could facilitate market solutions that capture for trust beneficiaries the environmental values these lands provide, demonstrate conservation works best when it makes economic sense, and encourage collaboration between conservation interests and developers on solutions that balance the needs of both. Down the other path, state trust lands will be a source of sustained conflict, including litigation and demands for regulations to restrict land use. Unfortunately, the proposed regulation threatens to undermine markets for voluntary conservation and recreation on state trust land and promote lose-lose outcomes. We encourage OSLI to revise the proposed regulation to reflect the principles and specific recommendations in this comment to avoid conflict, and to provide public schools with the resources they deserve from state trust lands. We ask not that conservation be treated as greater than any other use, all of which are important, only that conservation interests be given a seat at the table to prove they are willing to pay their fair share for the outcomes they want.

³⁷ *See id.*

Appendix A: PERC's Application for a Special Use Lease for Parcel 195



Dear Director Scoggin,

cc: Jason Crowder

cc: Cody Booth

cc: Tyler Seno

(via email)

The Property and Environment Research Center (PERC) is a 45-year-old nonprofit conservation organization with an interest in developing innovative solutions to conserve wildlife habitat, maintain landscape connectivity for migratory wildlife, and demonstrate means by which state-owned lands can be conserved for wildlife. PERC has an interest in helping Wyoming conserve state trust land for the benefit of the Red Desert to Hoback Mule Deer Migration Corridor as well as Greater Sage-Grouse in the Golden Triangle. PERC proposes a special use lease, in line with all state laws and regulations, that will provide the state with revenue, conserve the surface of the parcel, and allow the state to meet its trust obligations.

Wyoming contains some of the most impressive and important big game migration corridors, as well as a majority of the remaining Greater Sage-Grouse habitat, in the western U.S. Mule deer migrate through Sublette County, Wyoming via the Red Desert to Hoback Migration Corridor, and Greater Sage-Grouse call the Golden Triangle home. Many forms of human development threaten these exceptional wildlife values. The State of Wyoming has taken extraordinary measures to conserve and maintain the wildlife values that are so important to the people of Wyoming, through Governor's Executive Orders 2019-3 "Greater Sage-Grouse Core Area Protection" and 2020-1 "Wyoming Mule Deer and Antelope Migration Corridor Protection."

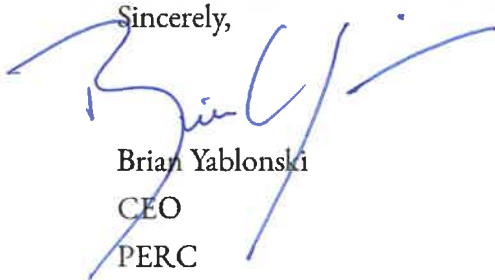
In February, 2024, the Wyoming Office of State Lands and Investments (OSLI) offered several parcels of state land for oil and gas drilling through the competitive auction process. One parcel, "Parcel 108," which is the subject of the attached lease, was withdrawn from the auction on February 22, 2024, for reevaluation due to concerns related to the wildlife habitat values of the parcel. The OSLI has not yet taken any further action on Parcel 108.

The State of Wyoming, as a result of the State's Constitution Article 18 Section 3, and Wyoming Statute § 36-5-105, has a trust obligation to use state lands to generate revenue for the benefit of Wyoming schools. Currently, the state is generating reduced revenue from Parcel 108 because it was not auctioned for oil and gas development. The attached lease offers a way to provide the State of Wyoming with revenue at least equal, and likely in excess, to the revenue the state would have realized by auctioning Parcel 108 for oil and gas development, to prove that conservation does not have to be a net drain on state coffers, but can instead be a means of generating revenue.

This lease offers the State an alternative to leasing Parcel 108 for oil and gas development. Given the parcel's location inside the Designated Mule Deer Migration Corridor, any oil and gas leases would be subject to stipulations intended to protect the corridor. The stipulations likely mean that any oil and gas company lease bids will be at a reduced amount compared to parcels without stipulations. For the State to meet its trust obligations, it must maximize the revenue generated by the lease of each state land parcel. This proposed special use lease allows the state to maximize the revenue generated by Parcel 108.

Attached to this letter are the completed application packet for a special use lease on Parcel 108, with a draft lease for the parcel. We are excited for the opportunity to partner with the OSLI and find ways to conserve Wyoming's outstanding natural resources, while ensuring the state can continue to generate revenue for the school system. Thank you for your consideration.

Sincerely,



Brian Yablonski

CEO

PERC

WYOMING OFFICE OF STATE LANDS AND INVESTMENTS

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Cheyenne, WY 82002
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Fax: 307-777-2980
slfmail@wyo.gov



MARK GORDON
Governor

JENIFER E. SCOGGIN
Director

APPLICATION FOR SPECIAL USE LEASE

The undersigned hereby makes application pursuant to the provisions of W.S. 36-5-101 et. seq. to lease the lands described for the purpose and term requested to the Board of Land Commissioners.

1) Lease Applicant: Property and Environment Research Center
(Fill in as you want name shown on lease)
Address: 2048 Analysis Drive, Suite A
Bozeman, MT, 59718
Phone: (406) 587-9591
Email: tbrammer@perc.org

- a) If the applicant is a business, is it qualified under the laws of the State of Wyoming to do business therein? Yes. Where is your principal place of business? Montana.
- b) If the applicant is an individual, are you a citizen of the United States? NA. (If not, have you declared your intention to become a citizen? NA.)

2) a) Legal description of state lands applied for, including access road:
T28N R104W Sec 36 All. Access Road NA

b) Total length (in rods) and width of access road:
NA

c) Latitude/Longitude coordinates for Point of Beginning and Point of Commencement and coordinate system with unit of measure from survey:
NA

3) a) Description of the proposed use: The Property and Environment Research Center proposes a conservation use of the parcel. This will entail the continued recreation and grazing use of the parcel, but will limit all other surface uses of the parcel. See the attachment for details on the proposed use on this parcel and information regarding compliance with zoning laws.

b) Is the proposed use an offset well pad producing off lease minerals? (Y / N) No

c) If yes, on a separate sheet please provide well names, unit or communitization agreement name and number if applicable, API numbers, status, surface hole location, bottom hole location and percentage of off lease mineral produced from the site.

4) Describe the type and value of the improvements you intend to place on the land:
NA

5) Describe the type and value of existing improvements on the land and list the owner(s) of those improvements: There exist livestock grazing improvements, including fences, stock water, and other appurtenances.

6) Will the proposed use result in loss of forage or timber production, unusable or inaccessible land or water, surface disturbance, or damage to crops, timber, or improvements?
Yes No
If yes, describe:
The proposed use will result in the surface of the entire parcel being unusable for uses other than grazing, recreation, and conservation.

7) Requested lease term: From: 9/1/2024 To: 9/1/2029
(Date) (Date)

8) Annual Lease Rental Offer and Fees
Annual Lease Rental Offer (Required) = \$5,000
Lease Application Filing Fee = \$250.00 (non-refundable)

Application must be signed by all applicants. If a corporation, application must be signed by an authorized officer.

Date: 5/3/24 X Brian Yablonski X [Signature]
(Print Name) (Signature)
Date: _____ X _____ X _____
(Print Name) (Signature)

Rental Notices To Be Mailed To: _____
(Name)

(Address Line 1)

(Address Line 2)

Supplemental Attachments to Special Use Lease Application

Question 3. a) Description of the proposed use:

The Lessee proposes a special use lease on the surface of the entire parcel for the purposes of protecting wildlife habitat, grazing, recreation, landscape connectivity, open space, and big game migration routes. The special use lease will specify that grazing is a use compatible with the lease. The special use lease will specify that recreation and public access are compatible with the lease. Surface uses such as construction or renovation of fencing to meet agricultural needs or wildlife friendly standards, habitat improvement or maintenance projects, weed and invasive species management, and agricultural or wildlife water development are compatible with the special use lease. This special use lease shall not restrict access or use of subsurface minerals through means such as directional drilling.

Consistent uses of the parcel include, but are not limited to:

- Livestock grazing
- Agricultural infrastructure development
- Other grazing or livestock agricultural uses
- Weed/invasive species management
- Wildlife conservation and conservation-related activities
- Habitat management/restoration
- Non-energy related water development
- Casual recreation
- Recreational hunting, fishing, and shooting (in line with applicable Wyoming laws)
- Hiking
- Biking
- Horseback riding
- Wildlife viewing
- Wildlife and conservation research
- Subsurface energy resource extraction

Any other development or surface use, not specified as consistent, that creates a surface impact to the parcel, is specified to be incompatible with the special use lease.

Zoning

The special use lease is compatible with Sublette County's zoning regulations. In the Purposes of the zoning regulations (Section 3, Subsection e), the county encourages the protection of "residential, agricultural, business, industrial, and recreation uses alike from harmful or detrimental encroachment by incompatible uses, and incurring that land allocated to a zoning district may not be usurped by other inappropriate uses." In the Purposes of the zoning regulations (Section 3, Subsection i), the county encourages "furthering the appropriate use of land and the conservation of natural resources." In the Purposes of the zoning regulations (Section 3, Subsection o), the purpose of the development regulations are to foster "the State's agricultural, mineral, recreational and other industries." The parcel is currently zoned as

Resource Conservation (RC) with the intent to protect and conserve “environmentally sensitive areas where development must be limited to prevent degradation of the areas.” Uses authorized in the RC district are, among others: wildlife preserves, grazing and agricultural uses, and soil and water conservation.

In the comprehensive plan, Sublette county encourages public/private partnerships to stimulate economic opportunity. The comprehensive plan also proposes policies to “encourage migratory routes be kept open,” and coordinate with WGFD to “preserve the quantity and quality of wildlife and wildlife habitat and provide sustainable hunting and fishing opportunities.” The comprehensive plan also encourages county policies to evaluate all land use proposals “and provide comments representing the interests of the county,” and “utilize the best science and technical information available when making land use planning decisions.” The comprehensive plan encourages a policy of discouraging “the intrusion of the impact of exploration and development activities into the peace and harmony of other land uses.” Finally, the comprehensive plan encourages several policies that “consider wildlife habitat values as part of any new development proposals.”

**State of Wyoming
Board of Land Commissioners**

**Special Use Lease
(proposed)**

Between:

The Property and Environment Research Center (Lessee)

and

The Wyoming Board of Land Commissioners (Lessor)

Background:

PERC proposes a special use lease on the surface of the entirety of Parcel 108 for the purposes of protecting wildlife habitat, grazing, recreation, landscape connectivity, open space, and big game migration routes. Some uses of the parcel will have a reduced impact on the wildlife values of the parcel, so will be considered consistent with the purpose of this lease.

Consistent uses of the parcel are:

- Livestock grazing
- Agricultural infrastructure development
- Other grazing or livestock agricultural uses
- Weed/invasive species management
- Wildlife conservation and conservation-related activities
- Habitat management/restoration
- Casual recreation
- Recreational hunting, fishing, and shooting (in line with applicable Wyoming laws)
- Hiking
- Biking
- Horseback riding
- Wildlife viewing
- Wildlife and conservation research
- Subsurface energy resource extraction

All surface uses not specifically named in this lease will be considered inconsistent with the lease and will not be permitted on the surface of the parcel.

PURPOSE:

The Lessor hereby leases to the Lessee, for the purpose of wildlife and wildlife habitat conservation, the following described lands, subject to all terms, conditions, regulations, and restrictions contained in this lease, the Statutes of the State of Wyoming, and the Rules and Regulations of the Board of Land Commissioners.

Any other use by Lessee is a violation of the terms and conditions of the lease.

DESCRIPTION:

T28N R104W Sec 36 All.

TERM OF LEASE

The term of this lease shall begin at 5:00 P.M. on August 1, 2024 and terminate at 5:00 P.M. on August 1, 2029.

RENTAL PAYMENT

The Lessee shall pay the Lessor at the Office of State Lands and Investments, Herschler Building, Cheyenne, Wyoming, a rental for the use of the premises in the amount and manner as follows:

\$5,000 annually to be paid in annual installments on or before the anniversary date of this lease.

LESSEE'S RESPONSIBILITIES

Lessee Agrees:

(a) Not to take or disturb any fur bearing animals on the premises except where a permit to do so has been secured from the Wyoming Game and Fish Commission and consent thereto has also been obtained from the Office of State Lands and Investments.

(b) To observe state and federal laws and regulations for the protection of fish and wildlife.

(c) Not to cut, destroy or remove, or permit to be cut, destroyed or removed, any timber that may be upon the premises. The Lessee shall promptly report to the Lessor the cutting or removal of timber by other persons.

(d) Lessee may, for the benefit of wildlife habitat, occasionally work to manage noxious weeds and pests on the parcel. Lessee may work in conjunction with County Weed and Pest Control

Districts to develop projects to be submitted to the Office of State Lands and Investments for reimbursement of certain costs of eradication of weeds and pests on state lands. Cost estimates must be submitted by County Weed and Pest Districts and approved by the Office to be eligible for reimbursement. Subject to funding availability, the total cost of the project will be reimbursed for leafy spurge infestations, for all other noxious weeds and pests, the cost of materials only. Lessee of state lands shall pay the cost of application or other control measures.

(e) To dispose of all waste in a proper manner and to occasionally monitor the parcel to ensure that debris, garbage, contaminants or other refuse have not accumulated on the leased premises. Any landfill or open dump operated by the Lessee on the leased premises, must be permitted by the Board and must comply with State law and the rules and regulations of the Department of Environmental Quality. Any landfill, open dump, accumulation of debris, garbage, contaminants or refuse of any kind which the Lessee placed, or allowed to be placed, on the leased premises, and which has not been authorized by the Board, must be removed at the Lessee's expense. Lessee further agrees that the Lessor shall have the right to remove debris, garbage, contaminants, or other refuse which the Lessee placed on the premises and collect the cost of such removal from the Lessee. The Lessee further agrees to document and report, as soon as possible, to the Office any unauthorized dumping of debris, garbage, contaminants, or other refuse on the leased premises, by parties other than the Lessee, so that appropriate investigation and corrective measures can be taken by the Lessor.

(f) Lessee shall restore the leased premises to as near its original condition as possible upon termination of this lease or any renewal thereof.

(g) Lessee shall not take or allow any action that would disturb wildlife or wildlife habitat on the premises. Agriculture, casual recreation, recreational hunting and fishing, habitat maintenance, modification, or improvement, fence maintenance or repair, and other ancillary activities typically associated with agriculture and casual recreation do not disturb wildlife habitat.

SPECIAL PROVISIONS:

(1) RESERVATIONS - Lessor Reserves:

- (a) The right to order the sale of all or any portion of the premises at any time, subject to this lease.
- (b) The right to lease and dispose of all subsurface coal, oil, gas, and other minerals, together with the right to mine and remove such minerals and other deposits, so long as mining or removal of minerals does not impact the surface of the premises.
- (c) The right to hold, sell, appropriate or otherwise dispose of any fences or other improvements of any character owned by the Lessee upon the premises, to insure the payment of rentals, damages or other expenses accruing to the Lessor by virtue of this lease.
- (d) The right to enter in and upon the premises at any time for purposes of inspection or management.

- (e) The right to use or lease the premises or any part thereof at any time for any purpose other than the rights and privileges granted by this lease.
 - (f) The privilege of any person to use the premises for casual recreational day uses, fishing and hunting pursuant to Chapter 13 of the Rules and Regulations of the Board of Land Commissioners.
 - (g) All rights not expressly granted to Lessee by this lease are reserved to the Lessor.
- (2) **ASSIGNMENTS** - This lease shall not be assigned without the prior approval of the Lessor. Any assignment of this lease shall be recorded in the Office of State Lands and Investments.
- (3) **SUBLEASES** - The premises shall not be subleased or made subject to any contract, or other agreement of any kind, without the approval of the Lessor. Such approval may be conditioned upon payment of additional rental to the Lessor.
- (4) **IMPROVEMENTS** -
- (a) Lessee shall have the right to construct or make improvements upon state lands in the amount of \$2,000.00 per section, without first obtaining permission.
 - (b) Lessee shall request permission to construct or make improvements in excess of \$2,000.00 in value per section by submitting a completed application form furnished by the Office.
 - (c) Any improvement regardless of value, which will restrict existing public access or alter existing multiple use of the lands must be approved by the Board of Land Commissioners.
 - (d) Unless permission has been obtained in the manner provided, the owner of the improvements in excess of the \$2,000.00 per section shall not be entitled to compensation as provided by W.S. 36-5-111 and 36-9-105, and upon expiration of the lease the improvements shall forfeit to and become the property of the state; except that within 120 days from the date of the expiration of the lease, the owner may remove such improvements in a manner which minimizes injury to the land.
- (5) **ENTRY UPON LEASED PREMISES BY THIRD PARTIES** - Third parties, that do not hold leases or other interests on the leased premises, desiring to enter upon the leased premises shall contact the lessee prior to entry, unless it is a member of the Board of Land Commissioners or its representatives or a member of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to provisions of Chapter 13 of the Rules and Regulations of the Board of Land Commissioners. For all entries by third parties, the lessee may negotiate a payment for damage to the surface of the leased premises, pursuant to Chapter 4, Section 13. Payments must be consistent with payments for damages to adjacent lands.
- (6) **CANCELLATION** - If it be determined by the Lessor that this lease has been procured by fraud, deceit, or misrepresentation, or if the premises or any part thereof be used for unlawful, unauthorized, or illegal purposes, or if the Lessee fails to perform or violates any of the terms of this lease, the Lessor shall have power and authority to cancel this lease.

- (7) **SURRENDER OF PREMISES UPON TERMINATION OF LEASE** - The Lessee shall, upon termination of this lease, surrender and deliver unto the Lessor the peaceful and uninterrupted possession of the premises. The Lessee may remove his improvements in accordance with W.S. 36-5-110.
- (8) **TIME AND SPECIFIC PERFORMANCE** are each of the essence of this lease, and all agreements and conditions herein contained shall extend to and be binding alike upon the heirs, administrators, successors and assigns of the parties hereto.
- (9) **RELIANCE** - The Lessor has expressly relied on the representations made by the Lessee in the written application to lease the premises.
- (10) **EXCHANGE** - The lease is granted upon the express condition that should the Lessor hereafter find it to be in the best interest of the Lessor to exchange the lands embraced in this lease for other lands, as provided by law, then this lease may be terminated upon giving the Lessee one (1) year's notice, unless by mutual consent of the Lessor and the Lessee, an earlier date of termination may be fixed.
- (11) **BUY-OUT BY LESSOR** - The Lessor shall have the right to purchase back from the Lessee all the rights and interests granted to the Lessee by this lease for any portion of the premises at any time by paying to the Lessee the fair market value or annual lease rate of those rights and interests for the remaining term of the lease.

GENERAL PROVISIONS.

- (1) **NOTICES** - All notices arising out of, or from, the provisions of this lease shall be in writing and given to the parties at the address provided under this lease, either by regular mail, or delivery in person.
- (2) **EFFECT OF CHANGE IN LAW** - The rights and responsibilities of the Lessee under this lease which are granted or imposed by the Statutes of the State of Wyoming or rules and regulations of the Board of Land Commissioners, are subject to change during the term of this lease as a result of the adoption, amendment, or repeal of statutes or rules.
- (3) **COMPLIANCE WITH LAWS** - The Lessee shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this lease.
- (4) **APPLICABLE LAW/VENUE** - The construction, interpretation and enforcement of this lease shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this lease and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- (5) **ENTIRETY OF LEASE** - This lease contains the entire contract between the parties and supersedes all prior negotiations, representations, leases or other contracts, either written or oral. This lease cannot be changed except by a written instrument subsequently executed by the parties or included in the body of the lease and signed by the parties.
- (6) **INDEMNITY** - The Lessee shall release, indemnify, and hold harmless the State, the Lessor, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of this lease.
- (7) **SOVEREIGN IMMUNITY** - The State of Wyoming and the Lessor do not waive sovereign immunity by entering into this lease, and specifically retain immunity and all

defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other state law.

- (8) **WAIVERS** - The failure of Lessor to insist on a strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that Lessor may have regarding that specific term or condition.
- (9) **EXTENUATING CIRCUMSTANCES**: In the event circumstances arise for whatever reason which create the impossibility of continuing the lease, it may be canceled by either party upon written notice. Neither party shall be liable for failure to perform under this lease if the failure is based upon the extenuating circumstances. Lessor reserves the right to determine

CONTACT INFORMATION.

Lessee's address is:

2048 Analysis Drive Suite A, Bozeman, Montana 59718

Lessor's address is:

the Office of State Lands and Investments, 122 West 25th Street, 3rd Floor West, Cheyenne, Wyoming 82002-0600.

In the event that the addresses listed above change, the party whose address has changed shall immediately notify the other party to the lease in writing.

SIGNATURES

IN WITNESS THEREOF, the parties to this lease through their duly authorized representative have executed this lease on the dates set out below, and certify that they have read, understand, and agree to the terms and conditions of this lease.

LESSOR: THE STATE OF WYOMING
BOARD OF LAND COMMISSIONERS
BY:

Director, Office of State Lands and Investments

Date: _____

LESSEE:

Date: _____

DRAFT

SURFACE IMPACT PAYMENTS

Pursuant to Chapter 4 Section 2(f), Surface Impact Payment (SIP) "means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface." SIPs are separate and distinct from annual rentals or royalty payments.

***PLEASE NOTE:** This form will need to be filled out and submitted to the Office of State Lands and Investments (OSLI) for all approved Special Use Leases (SUL) prior to entering lands owned by the State. Typically, SIPs are negotiated and paid after an SUL has been approved by the Board. In certain instances, there may be a need to negotiate the SIP and fill this form out prior to approval. If you wish to negotiate a SIP prior to receiving Board approval of an SUL, please contact OSLI.

SURFACE IMPACT PAYMENT STATEMENT

1. Payor of Surface Impact Payment:

Name: Property and Environment Research Center

Address: 2018 Analysis Drive Bozeman Suite A, Montana, 59718

Phone: (406) 587-9591

Contact Person: Travis Brammer

2. State Grazing and Agricultural Lease Number: 3-7317

3. Grazing and Agricultural Lessee Name: Little Sandy Grazing Ass'n

4. State Mineral _____ Federal Mineral _____ Fee Mineral _____
(Check if applicable)

5. Type of use necessitating a surface impact payment: NA

<u>Type of Use</u>	<u>Payment Per Unit</u>	<u>Unit in Rods or Acres</u>	<u>Total Amount</u>
Geophysical Activities	\$ _____	_____	\$ _____
Access Road (to well location on state land)	\$ _____	_____	\$ _____
Well Site	\$ _____	_____	\$ _____
Pipeline	\$ _____	_____	\$ _____
Other: _____	\$ _____	_____	\$ _____

Please describe below any other basis for calculating the surface impact payment(s) and the surface activities covered by the impact payment:

NA

If the surface impact payments are to be paid in annual installments:

Lessee's Share - 20%
State's Share - 80%

If the surface impact payment is to be paid in one lump sum payment:

Initial Payment:

<u>\$5,000 Payment</u>	<u>Payment Between \$5,001 - \$10,000</u>	<u>Payment Over \$10,000</u>
Lessee's Share - 40%	Lessee's Share - 30%	Lessee's Share - 20%
State's Share - 60%	State's Share - 70%	State's Share - 80%

1. Surface Impact Payment Information:

TOTAL PAYMENT: \$ _____

Lessee's Share	\$ _____	_____	_____
		Total Amount	Check Number
State's Share	\$ _____	_____	_____
		Total Amount	Check Number
			Date Issued

2. Annual Payments Negotiated: (If none negotiated, please mark N/A.)

Type of Use	Basis of Payment	# Rods or # Acres	Amount
Well Site	\$ _____	_____	\$ _____
Access Road	\$ _____	_____	\$ _____
Other: _____	\$ _____	_____	\$ _____

3. State Lands Involved:

Section: 36 _____, T. 28 _____ N., R. 104 _____ W.

Section: _____, T. _____ N., R. _____ W.

Well Name or Number: NA

Participatory Unit Name (if applicable): NA

The undersigned certifies that the surface impact payor has negotiated the above described surface impact payment in good faith with the surface lessee, the negotiated surface impact payment covers the potential adverse impacts caused by the payor's known and/or anticipated use(s) of the state trust land surface.

_____	_____
Signature of Payor	Date

Print or Type Name	

For Office Use Only: _____ Percentage: _____

Board Date: _____

INSTRUCTIONS:

1. Form to be completed and signed by *surface impact payment* payor.
2. Issue separate checks payable to *the Office of State Lands and Investments* and the *surface lessee*.
3. Provide *surface lessee's* share of payment by separate check and provide a copy of this completed form to *surface lessee*.
4. Immediately mail original Surface Impact Payment Statement and State's share of payment by separate check to the *Office of State Lands and Investments*, 122 West 25th Street, Suite 103W, Herschler Building, Cheyenne, WY 82002. Phone (307) 777-6638. TIN:830208667
5. Retain copy of Surface Impact Payment Statement for your records.

Please visit The Office of State Lands and Investments Website at <https://lands.wyo.gov/> for the Surface Impact Payment Statement form and the Board of Land Commissioners' Rules and Regulations. For questions and assistance please contact Sherri Hall at sherri.hall@wyo.gov or 307-777-6638.

**STATE OF WYOMING
BOARD OF LAND COMMISSIONERS**

SURFACE LESSEE NOTIFICATION AND CONSENT FORM

Applicant Name: Brian Yablonski Company Name: Property and Environment Research Center

Mailing Address: 2048 Analysis Drive, Suite A

Phone: (406) 587-9591 Email: tbrammer@perc.org

Project/Activity Legal Description of State Trust Land: (Identify Aliquot, Section, Township, Range)

T28N R104W Sec 36 All.
The Property and Environment Research Center proposes a conservation use of the parcel. This will entail the continued recreation and grazing use of the parcel, but will limit all other surface uses of the parcel.

Existing Surface Lessee Information: (Click here to link to on-line plat book)

Lease #: 3-7317
Name: Little Sandy Grazing Ass'n
Address: PO Box 275
Farson, WY 82932
Phone: (307) 273-9715
Email: keaton@wyoming.com

Surface Lessee Comments: (To Be Completed By Existing Surface Lessee)

Do you consider (the project) _____ compatible with your existing operation? y/n _____
Will this project result in substantive impairment to your existing lease? y/n _____
How will this project affect your existing operation (attach additional pages if needed):

(Signature of Surface Lessee) (Date)

(Please type or print name)

ADDITIONAL INFORMATION AND INSTRUCTIONS:

1. The completed and executed Surface Lessee Notification and Consent Form **must** be submitted to Office of State Lands and Investments prior to consideration of the application by the Board of Land Commissioners.
2. It is the responsibility of the applicant to provide adequate information on the proposal so that the existing surface lessee can provide appropriate comments.



Date March 18, 2024

Little Sandy Grazing Association
% Gary Zakotnik
68 W. 1st South Road
Eden, Wyoming, 82932

Dear Gary and the Board of the Little Sandy Grazing Association,

Thank you for your time and consideration of this matter. The Property and Environment Research Center (PERC) is a 44 year-old research organization that was founded on the ideas that markets and incentives, more than regulations, can conserve our natural resources. PERC has long advocated for strong property rights and voluntary, incentive based conservation solutions. Starting in 2021, PERC began to research incentive-based ways to encourage states and federal agencies to conserve their lands, without the need for strict regulations.

In 2023, PERC started the Conservation Innovation Lab, a new department within the organization, to test the ideas of the research team. To test our idea about conserving state land, we are pursuing a Special Use Lease on a parcel of state land, on which you have a grazing lease. Our Special Use Lease will not limit grazing or other agricultural activities on the parcel in any way, so your grazing lease will not be impacted. The Special Use Lease will limit energy development on the surface, to conserve mule deer and pronghorn habitat.

This particular parcel of state land was initially offered for oil and gas leasing in the March 4-6th auction. The state withdrew the parcel before the auction was completed. Currently, the state is not generating any energy revenue on the land, and if the parcel is re-auctioned for oil and gas, it will likely come with stringent stipulations. Through a Special Use Lease on the land we will provide some revenue to the state, allow for continued grazing and recreation, and show that incentives can be an effective way to conserve state lands.

Attached to this letter is our draft application to the Office of State Lands and Investments, with a list of proposed restricted uses attached. We have not yet submitted the application. We have also attached two copies of a consent form, please fill out and return one copy if you agree that our proposed use of the parcel will not impact your current lease. Also included are two maps showing the location of the parcel.

Please do not hesitate to call me if you have any questions or if you would like any additional information. My number is (970)580-9314, I can also be reached at tbrammer@perc.org.

Sincerely,

Travis Brammer
Director of Conservation

Appendix B: PERC's Letter to Director Scoggin



Dear Director Scoggin,
cc: Jason Crowder
cc: Cody Booth
cc: Tyler Seno
(via email)

The Property and Environment Research Center (PERC) requests that the Office of State Lands and Investments grant our Special Use Lease application for oil and gas lease Parcel 195 (formerly 108). PERC submitted its application on May 3, 2024, which offered the trust substantially more revenue than the only bid for the oil and gas lease on the same parcel. PERC is a 45-year-old nonprofit conservation organization with an interest in developing innovative, market-based solutions to conserve wildlife habitat, maintain landscape connectivity for migratory wildlife, and demonstrate means by which state-owned lands can be conserved for wildlife.

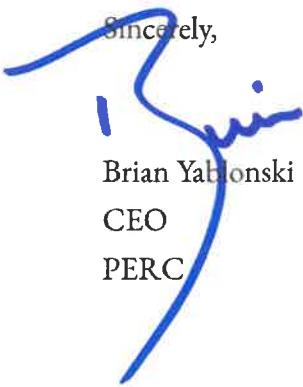
On May 3, 2024, PERC submitted an application for a special use lease on a parcel of state land in Sublette County important to the Red Desert to Hoback mule deer migration route, and within the sage grouse Golden Triangle. As PERC's interest is in protecting wildlife habitat, rather than opposing oil and gas development, the proposed special use lease would not have precluded subsurface oil and gas exploration, but would only have limited surface disturbance by energy development. The proposed lease specifically allowed for directional drilling to access subsurface minerals. The proposed lease also would not have impacted current or future agricultural or recreational uses of the parcel.

This month, the Office of State Lands and Investments offered for auction an oil and gas lease on the Sublette County parcel. The parcel did not draw significant oil and gas interest, attracting only one bid for the minimum of \$1 per acre per year, or \$640 per year. This is barely 1/10th of the amount PERC offered (\$5,000 per year), even before accounting for additional revenues from directional drilling that could occur under our proposal.

The state has an obligation to manage state trust land, including the Sublette County parcel, to generate revenues for common schools. We understand that the state may have been reluctant to grant our proposed lease without first seeing how much revenue an oil and gas lease might generate. But, having received no meaningful interest in the parcel at auction, it is now clear that PERC's special use lease, with the option for directional drilling, would have generated more revenue while simultaneously protecting wildlife habitat.

We again encourage the Office of State Lands and Investments to grant our special use lease. Additionally, to avoid situations like this from occurring again, we also encourage the state to create a formal process by which applications such as ours may be considered in the future. Our proposal would generate significant revenue for the state, achieve the state's trust obligations, and help conserve the outstanding and unique wildlife resources of the state without resorting to top-down regulation. And, unlike other controversial proposals, it would do so without precluding oil and gas development or impacting agricultural or recreational uses, which we recognize are important revenue opportunities for state trust lands. We welcome the opportunity to discuss this with you further to ensure a positive outcome for conservation and the people of Wyoming.

Sincerely,



Brian Yablonski
CEO
PERC