

03/14/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0314

February 20, 1973

STATE LAND BOARD  
A.L.L. P. 1146MINUTES  
ALTERNATE MEETING OF THE STATE BOARD OF LAND COMMISSIONERS  
Tuesday, February 20, 1973, at approximately 10:30 A.M.  
In Governor's reception room.

PRESENT: Governor Thomas L. Judge, Attorney General Robert L. Woodahl; Secretary of State Frank Murray, Superintendent of Public Instruction Dolores Colburg and Commissioner and Ex-officio Secretary Ted Schwinden.

## BUSINESS CONSIDERED:

Mr. Murray moved the minutes of the January 10 meeting be considered read and approved as read. Seconded Mrs. Colburg. Unanimous.

273-1. CONFIRMATION OF PRIOR APPROVAL, ON JANUARY 23, 1973, OF RESOURCE DEVELOPMENT PROJECT, CASCADE COUNTY, H. M. STANDLEY, LESSEE

Mr. Murray moved board confirm its prior individual approval of resource development project to convert 150 acres of grazing land to sprinkler irrigated pasture on Section 21-T19N-R2E, Cascade county, H. M. Standley lessee. Seconded Mrs. Colburg. Unanimous.

Resource development project - sprinkler mainline  
Lease No. 54977, Lessee: H.M. Standley  
Location: Sec. 21-T19N-R2E, Cascade County

"This project proposal would assist the lessee to convert approximately 150 acres of grazing land to sprinkler irrigated pasture. The state's contribution to this project would be purchase of approximately 3600 feet of irrigation pipeline, 2000 feet of which will be directly on state land and 1600 feet of which will be on the lessee's private land. The lessee will provide pumps, controls, and a 290 acre circular irrigator which will irrigate 140 acres of the lessee's land in addition to the state land. The lessee will also reimburse the Department for the cost of pipe which will be used on private land.

The total cost of the pipe is estimated to be \$13,104.00 of which the lessee will reimburse the Department \$5,824.00. The total state investment will be approximately \$7,280.00 or \$48.5 per acre.

In return for this investment the state will receive an increase in income from \$43.00 per year to \$1,050.00 per year. In addition to increased rentals the state will obtain a right to carry water through the pipeline on private land, a future option of installing its own pumps in the Missouri River, and water appropriations. The lessee will obtain the right to carry water through the pipeline on state land.

It is my recommendation that resource development funds be invested in this project. The sandy soils on this land are ideally suited to sprinkler irrigation."

## Summary: Resource Development Project

Type: Sprinkler Irrigation - approximately 150 acres. State  
approximately 140 acres. PrivateLocation and Lessee: Sec. 21 - T19N - R 2E, Cascade County  
#54977 H.M. Standley (expires 1980)

## Estimated Cost:

State: Pipe - \$7,280.00  
Lessee: Circular system, pumps, pipe, controls - \$50,000

## Income:

	Present	Total
Grazing	\$ .285/acre	\$ 42.75/yr.
Irrigated Pasture	\$ 7.00/acre	\$ 1,050.00/yr.

273-2. REQUEST BY BURLINGTON-NORTHERN FOR EASEMENT FOR CONSTRUCTION OF SARPY CREEK RAIL SPURSection 16, Twp. 3N., Rge. 37E: 18.941 acres  
Section 16, Twp. 2N., Rge. 37E: 18.781 acres

The attached summary reflects the administrative progress of right-of-way applications of the Burlington Northern for the purpose of constructing a rail line into the Sarpy Creek coal area.

Insofar as the impact on the state tracts involved, it is the conclusion of the Department that it would be minimal. The fair market value for the rights-of way was calculated at \$137.00 per acre plus \$2.25 per lineal foot of line...a total of \$28,493.18.

The Department's draft environmental impact statement (p.3) again notes the lack of public policy and the urgent need for legislative action to regulate siting of energy and energy related activities.

The Commissioner would recommend the grant of easement at a value of \$28,493.18, with confirmation of prior commitments by the B.N. as to wells, fencing, etc.

## Summary

March 21, 1972: B.N. requested procedure for acquiring right of way for a railroad across state land.

March 24, 1972: Application forms sent and a request for environmental comments.

June 26, 1972: B.N. furnished a short impact analysis.

July 25, 1972: Commissioner and Mr. Raundal inspected state tracts and met with lessee. Commitments for fencing, underpass, wells requested from B.N.

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273-2. REQUEST BY BURLINGTON-NORTHERN FOR EASEMENT FOR CONSTRUCTION OF SARPY CREEK RAIL SPUR-continued

## Summary-continued

Sept. 12, 1972: Easement applications filed.

Sept. 21, 1972: B.N. advised that contract for archeological survey had been made.

Sept. 25, 1972: Consent of lessee Howard received.

Oct. 4, 1972: Coal task force requested CEQ require ICC to do impact evaluation.

Oct 5, 1972: A 10 page impact analysis prepared by B.N. forwarded to Fish and Game Department of Natural Resources, Environmental Quality Council.

Oct. 27, 1972: B.N. officials met in Helena with Department and other state agency officials relative to adequate environmental analysis.

Nov. 21, 1972: B.N. delivered comprehensive impact analysis.

Dec. 1, 1972: Department draft environmental was prepared and circulated.

Dec. 2, 1972: Department received order of Federal District Court finding the Sarpy Creek line a "spur" and therefore not subject to ICC approval.

Dec. 29, 1972: Department received written consent of lessee Hays.

Feb. 1, 1973: Department received comments from B.N. in response to agency comments on the draft environmental impact statement.

Feb. 15, 1973: Department forwarded to EQC letter and comments pursuant to EQC guidelines.

Mr. James J. Gordon, Regional Manager Industrial Development, Burlington-Northern attended meeting to answer any questions that might be asked. Bill Tomlinson, University of Montana, attended meeting representing Montana Wilderness Association, Montana League of Conservation Voters. Mr. Tomlinson urged the board to defer action on this matter until final court rulings on both damages and court of appeals case. Mr. Gordon advised the board that an agreement had been reached with the majority of landowners, and that the appeal would be dismissed. Don Aldrich, Montana Wildlife Federation, asked to be heard and cited a particular case involving a Harold Miller, located at the foot of Sarpy Creek. Mr. Tomlinson said he had been in contact with many people closely associated in Sarpy Creek matter and the reason they were not in attendance was that they were not aware of the Board meeting in time to attend. Fletcher Newby, EQC, was called upon. He stated that the Department of Highways knew about the intentions of the railroad February, 1972; the Department of State Lands March 21; and that had the EQC been notified at the beginning, they would have been able to more thoroughly check it out. Mrs. Colburg stated she felt most of the options of the board were gone by the time they received such matters. She also questioned why ICC had not been involved. Mr. Tomlinson replied that was the crux of the matter; whether the line is an extension or an industrial spur. ICC jurisdiction is not finally settled. It was brought out there are several bills before the legislature concerning matters of this type and it was suggested that the matter be delayed until legislature adjourned. Mr. Gordon stated it would be very costly to wait until legislature adjourned. Mr. Woodahl asked Mr. Newby if he thought B.N. has supplied all of the safeguards necessary. Mr. Newby replied that with the information supplied, the EQC was not against granting the easement.

Mrs. Colburg moved to defer action for at least one month so that the board might know in that interim what legislature may have done, and the outcome of appeal, whether or not dismissed. No second to the motion. Governor Judge rules motion died for lack of second.

Mr. Murray moved on recommendation of Land Commissioner, as outlined in this request, that easement be granted. Seconded Mr. Woodahl. Mr. Woodahl and Mr. Murray voted in favor of easement. Mrs. Colburg voted against easement. Motion carried by majority vote.

273-3. LAND SALES TO BE APPROVED - Sheridan County

Date of Sale	Purchaser and Address	Description	Acres	Price per Acre	Total Paid	C.P. No.
2/9/73	Dept. of Highways Helena, Mt.	S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 9-37N-58E	20	\$60	\$1200	Cash
2/9/73	Echo Garberg Whitetail, Mt.	SW $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 33-37N-51E	40	\$70	\$2800	\$ 300 10480

Sheridan County  
(Sale authorized by Board December 18, 1972)

Mr. Woodahl moved board approve sale of S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 9-37N-58E, Sheridan county to Department of Highways at \$60.00 per acre and the sale of SW $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 33-37N-51E, Sheridan county to Echo Garberg at \$70.00 per acre. Seconded Mr. Murray. Unanimous.

273-4. RIGHT OF WAY APPLICATIONS

Applicant:	State Department of Highways, Helena, Montana R/W State Highway	Acres	Compensation
7023	S $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 34-35N-2E, Toole County	13.10	\$762.50
7024	S $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 35-35N-2E, Toole County	6.90	297.50
7025	S $\frac{1}{2}$ S $\frac{1}{2}$ , Sec. 36-35N-2E, Toole County	3.80	285.00

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273-4.	<u>RIGHT OF WAY APPLICATIONS - continued</u>	ACREAGE	COMPENSATION
Applicant: State Department of Highways, Helena, Montana - continued			
7026	SW $\frac{1}{2}$ NW $\frac{1}{2}$ , Sec. 33-6N-4W, Jefferson County	4.05	\$ 81.00
7027	W $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{2}$ NW $\frac{1}{4}$ , Sec. 36-2S-9W, Madison County	18.30	1,422.90
7028	SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32-6N-4W, Jefferson County	2.28	45.60
7029	NW $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , Sec. 16-1S-20E, Stillwater County	8.30	373.50
Applicant: Livingston City-County Airport Board, Livingston, Montana R/W for a Runway Clear Zone Approach Area			
7030	NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 36-1S-10E, Park County	4.	110.00
Applicant: City of White Sulphur Springs, White Sulphur Springs, Montana R/W City Dump			
7031	E $\frac{1}{2}$ W $\frac{1}{2}$ , Sec. 36-9N-6E, Meagher County	13.3	831.25

Written consents on file.

Mr. Murray moved board approve right of way applications. Seconded Mrs. Colburg. Unanimous.

273-5. APPLICATIONS FOR URANIUM MINING LEASES - Felmont Oil Company

Felmont Oil Corporation  
P.O. Box 1855  
Midland, Texas 79701

Township 1 South, Range 62 East  
Section 16: All  
Carter County, Montana  
640.00 acres

Township 2 South, Range 62 East  
Sec. 16: N $\frac{1}{2}$ , N $\frac{1}{4}$ N $\frac{1}{4}$ N $\frac{1}{4}$ S $\frac{1}{2}$ , S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$   
Carter County  
425.00 acres

Township 1 South, Range 61 East  
Sec. 36: All  
Carter County  
640.00 acres

Mining will be a lode operation with a rental of 50¢ per acre per annum for first 5 years, thereafter \$2.00 per acre per annum until production in commercial quantities, then revert to 50¢ per acre per annum. The royalty due the state will be in the amount of 5% of the gross amount received.

Montana Bureau of Mines has reviewed and approved these leases. Commissioner recommends approval of the above described leases.

Mr. Murray moved board concur in commissioner's recommendation and grant uranium leases in Carter county to Felmont Oil Company. Seconded Mr. Woodahl. Unanimous.

273-6. CLARIFICATION OF DEPARTMENT AUTHORITY PURSUANT TO EXECUTIVE REORGANIZATION

Under the Executive Reorganization Act of 1971, there was created the Department of State Lands, with the Board of Land Commissioners as the head of the Department. The Office of Commissioner of State Lands and Investments was abolished along with the Department of State Lands and Investments and the functions of the Commissioner and the Department were transferred to the newly created Department. There was also created the position of Commissioner of State Lands.

The only place in the laws of Montana referring to the new Commissioner is in the section which created the Commissioner, Section 82A-1104. That section provides that the "commissioner is the chief administrative officer of the department under the direction of the state board of land commissioners, and shall perform those functions that are delegated to him by the department".

The Board of Land Commissioners, in order to avoid any legal questions as to the delegation of functions to employees in the newly created Department of State Lands, should specifically state that the Commissioner and employees of the Department shall carry out the functions of the Board. This is especially important when employees of the Department are performing very important functions the Board is required to perform.

Under Section 82A-107 (2) (b), the Board as head of the Department may delegate any of the functions vested in the Department head. The proposed motion is phrased so that the Board has clearly delegated its functions to employees of the Department who have been designated by the Commissioner to carry out those functions. Thus, there would be no future problem as to the legality of certain employees performing the functions of the Board, as long as they had been properly designated by the Commissioner to perform those functions.

It should be pointed out that the proposed motion does not negate the power of the Board to review and control all actions taken by employees of the Department.

The Commissioner therefore recommends the adoption of the following resolution by the Board:

Moved that the Board of Land Commissioners, as head of the Department of State Lands, delegate, pursuant to Section 82A-107 (2) (b), R.C.M., 1947, to the Commissioner of State Lands or to the employees the Commissioner may designate, all of the functions vested in the Board under the law of Montana except those functions expressly reserved by the Board, subject to the review by the Board of all actions taken by the Commissioner or the employees of the Department under the delegation given to them by this action. The Board reserves the right to cancel or revoke the delegation of all functions or a specific function given to employees of the Department by this motion, and directly exercise the powers granted to it by the laws of Montana.

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273-6. CLARIFICATION OF DEPARTMENT AUTHORITY PURSUANT TO EXECUTIVE REORGANIZATION - continued

Mr. Woodahl moved that the Board of Land Commissioners, as head of the Department of State Lands, delegate, pursuant to Section 82A-107 (2)(b), R.C.M., 1947, to the Commissioner of State Lands, or to the employees the Commissioner may designate, all of the functions vested in the Board under the laws of Montana except those functions expressly reserved by the Board, subject to the review by the Board of all actions taken by the Commissioner or the employees of the Department under the delegation given to them by this action. The Board reserves the right to cancel or revoke the delegation of all functions or a specific function given to the employees of the Department by this motion, and directly exercise the powers granted to it by the laws of Montana. Seconded Mr. Murray. Unanimous.

273-7. TIMBER SALE- Lincoln County

The following letter, dated February 15, 1973, was received from Gareth C. Moon, Administrator, Division of Forestry:

"Reference is made to the timber designated for cutting on the rock quarry in Section 34, T31N-R29W in conjunction with the U.S. Army Corps of Engineers riprap project on the east abutment of Libby Dam.

Cutting and decking has been completed by the contractor for the Corps of Engineers as provided for in the operating permit granted by your Department.

We have estimated and appraised this timber as follows. Please bring my recommendations to the State Board of Land Commissioners at their next meeting.

## Section 34, T31N-R29W MPM - Lincoln County

237 MBF ponderosa pine sawlogs @ \$60.55/MBF	\$14,350.35
50 MBF Douglasfir " @ 40.75/MBF	2,037.50
24 MBF larch " @ 40.30/MBF	967.20
	<u>\$17,355.05</u>

There will be no charges for Brush or Timber Stand Improvement on this sale.

It is my recommendation that this timber be advertised for sale at not less than the appraised stumpage rates upon the State Land Board's approval of this sale."

Mrs. Colburg moved timber be advertised for sale at not less than the appraised stumpage rates. Seconded Mr. Murray. Unanimous.

273-8. LICENSE AGREEMENT FOR UTILITY CONSTRUCTIONNW $\frac{1}{2}$ NW $\frac{1}{2}$ -Section 10, Twp. 7S, Rge. 19E, Carbon County

Beartooth Electric Cooperative has requested a right-of-way easement for construction of a 69 KV transmission line.

The tract in question has potential for sprinkler irrigation, and is located on the northern edge of the Custer National Forest. Pole construction could restrict future optimum use of the tract.

The Commissioner, recommends, therefore, that a license agreement be executed reserving to the state the right to terminate possession by Beartooth on six months written notice. Full market value of the license is \$170.00. Form of license agreement has been approved by the Attorney General.

A form of temporary license agreement has been drafted by the Department and approved by the Attorney General. This form would be utilized for specific temporary uses over or on state lands for a short period of time. The Commissioner requests Board approval of the form of temporary license agreement.

## TEMPORARY LICENSE AGREEMENT

The State of Montana, herein called licensor, in consideration of the sum of \_\_\_\_\_ Dollars hereby grants to \_\_\_\_\_ herein called licensee, a temporary license to occupy and use, subject to all of the terms and conditions hereof, the following described premises:

The premises may be occupied and used by licensee solely for:

Licensee agrees that he does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises, by virtue of this temporary license or his occupancy or use hereunder.

No assignment of this temporary license or any interest therein and no sublicense for any purpose shall be made or granted by licensee without the prior written consent of licensor.

Licensor reserves the right to terminate the permission hereby given at any time by giving licensee at least \_\_\_\_\_ days written notice of such termination, except that licensor may terminate the permission forthwith at any time if licensee shall fail to comply with or abide by each and all of the provisions hereof or cease to use the permission hereby granted.

In witness whereof, the parties have executed this license agreement this the \_\_\_\_\_ day of \_\_\_\_\_, 1974.

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
TED SCHWINDEN, Commissioner  
Department of State Lands

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273-8. LICENSE AGREEMENT FOR UTILITY CONSTRUCTION-continued

## LICENSE AGREEMENT

The State of Montana, herein called licensor, in consideration of the sum of One Hundred Seventy Dollars (\$170.00) hereby grants to Beartooth Electric Cooperative, Inc. herein called licensee, a license to occupy and use, subject to all of the terms and conditions hereof, the following described premises:

Beginning at a point in the NW $\frac{1}{4}$  of Section 10, T 7S, R 19E, described as being 873 feet from the  $\frac{1}{4}$  corner sections 10 and 3 measured along a line bearing S. 10 degrees 33' E.; thence N 5 degrees 27' E. a distance of 818 feet terminating at a point on the north boundary of said section approximately 312 feet east of the  $\frac{1}{4}$  corner sections 3 and 10, containing .94 acres, more or less.

The premises may be occupied and used by licensee solely for the erection, construction, reconstruction, replacement, removal, and maintenance of a line of utility poles or towers with such wires and cables as licensee shall from time to time suspend therefrom for the transmission of electric energy, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with such poles, towers, wires and cables.

Licensee agrees that he does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises, by virtue of this license or his occupancy or use hereunder.

No assignment of this license or any interest therein and no sublicense for any purpose shall be made or granted by licensee without the prior written consent of licensor.

Licensor reserves the right to terminate the permission hereby given at any time by giving licensee at least six (6) months written notice of such termination, except that licensor may terminate the permission forthwith at any time if licensee shall fail to comply with or abide by each and all of the provisions hereof or cease to use the permission hereby granted.

In witness whereof, the parties have executed this license agreement this the \_\_\_\_\_ day of \_\_\_\_\_, 1973.

\_\_\_\_\_  
Beartooth Electric Cooperative, Inc.

\_\_\_\_\_  
TED SCHWINDEN, Commissioner  
Department of State Lands

Mr. Woodahl moved item be referred to the Attorney General for review and, if approved, be circulated by letter to the board members for their individual approval. Seconded Mr. Murray. Unanimous.

Upon motion of Mr. Murray, and seconded by Mrs. Colburg, meeting unanimously adjourned.

APPROVED:

ATTESTED:

Thomas Z. Judge  
President

Ted Schwinden  
Secretary