

2002

Mountain Top Leasing, LLC v. The School and Institutional Trust Lands Administration, the Board of Trustees of the School and Institutional Trust Lands Administration, and Billy Jim Palone : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

J. Craig Smith; Scott M. Ellsworth; Smith Hartvigsen; Attorneys for Petitioner.

Shawn T. Welch; Angela L. Franklin; Pruitt, Gushee and Bachtell; Dawn J. Soper; Justin J. Quigley; Attorneys for Respondent.

Recommended Citation

Brief of Respondent, *Mountain Top Leasing, LLC v. The School and Institutional Trust Lands Administration, the Board of Trustees of the School and Institutional Trust Lands Administration, and Billy Jim Palone*, No. 20020831 (Utah Court of Appeals, 2002).
https://digitalcommons.law.byu.edu/byu_ca2/4008

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

In the Utah Court of Appeals

MOUNTAIN TOP LEASING, LLC,	:	BRIEF OF RESPONDENT
	:	PALONE
Petitioner,	:	
v.	:	Case No. 20020831-CA
	:	
THE SCHOOL AND	:	<i>In the Matter of the Formal</i>
INSTITUTIONAL TRUST LANDS	:	<i>Adjudicative Proceeding Concerning a</i>
ADMINISTRATION, the BOARD	:	<i>Challenge by Mountain Top Leasing,</i>
OF TRUSTEES of the SCHOOL	:	<i>LLC, to the Denial of its Lease</i>
AND INSTITUTIONAL TRUST	:	<i>Applications of Lease Unit Nos. 70, 75,</i>
LANDS ADMINISTRATION, and	:	<i>76, 85, 86, 87, 88, 89, and 90</i>
BILLY JIM PALONE,	:	<i>(October 2001)</i>
	:	
Respondents.		

***Petition from a Decision of the Board of Trustees
of the School and Institutional Trust Lands Administration***

J. Craig Smith
Scott M. Ellsworth
SMITH HARTVIGSEN, PLLC
1150 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

*Attorneys for Petitioner,
Mountain Top Leasing*

Shawn T. Welch (7113)
Angela L. Franklin (5697)
PRUITT, GUSHEE & BACHTELL
1850 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

*Attorneys for Respondent
Billy Jim Palone*

Dawn J. Soper
Justin J. Quigley
**School & Institutional
Trust Lands Administration**
675 East 500 South, #500
Salt Lake City, Utah 84102

*Attorneys for Respondent School &
Institutional Trust Lands Administration*

TABLE OF CONTENTS

STATEMENT OF JURISDICTION.....	1
STATEMENT OF ISSUES – STANDARD OF REVIEW	1
DETERMINATIVE LAW	4
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS	5
SUMMARY OF ARGUMENT	8
ARGUMENT	9
I. INTRODUCTION	9
II. THE BOARD OF TRUSTEES’ ORDER MUST BE UPHELD BECAUSE SITLA DID NOT VIOLATE ANY LAW, POLICY OR RULE IN REJECTING MOUNTAIN TOP’S APPLICATIONS.....	12
A. SITLA Had the Authority to Reject Mountain Top’s Applications.....	12
B. Mountain Top’s Application Nos. 1 and 2 Violate R850-20-700.....	13
C. Mountain Top’s Application No. 3 Violates R850-20-900.....	13
D. Mountain Top is Not Entitled to Correct its Applications Under R850-20-1200	14
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>McKnight v. State Land Board</i> , 381 P.2d 726 (Utah 1963).....	14, 15
<i>Morton Int’l, Inc. v. Utah State Tax Comm’n.</i> 814 P.2d 581 (Utah 1991)	3

Statutes

Utah Code Ann. § 53C-1-101	12
Utah Code Ann. § 53C-1-102	12
Utah Code Ann. § 53C-1-304	1, 2
Utah Code Ann. § 53C-2-402	12
Utah Code Ann. § 53C-2-403	12
Utah Code Ann. § 53C-2-407	10
Utah Code Ann. § 63-46b-16.....	1, 2, 3
Utah Code Ann. § 78-2-2	1

Regulations

Utah Admin. Code R850-3-500	13
Utah Admin. Code R850-20-700.....	13
Utah Admin. Code R850-20-900	13
Utah Admin. Code R850-20-1200.....	11, 14, 15
Utah Admin. Code R850-20-1800.....	11

STATEMENT OF JURISDICTION

The Utah Court of Appeals has appellate jurisdiction of this matter pursuant to Utah Code Ann., §§ 78-2-2(3)(e)(iii) and 78-2-2(4).

STATEMENT OF ISSUES – STANDARD OF REVIEW

Petitioner Mountain Top Leasing, LLC (“Mountain Top”) sets forth four issues for this Court’s review and cites subsections (d) and (h) of Utah Code Ann., § 63-46b-16(4) as the statutory standard of review. However, Mountain Top has failed to cite the statutory provision specifically applicable to review of actions involving the Utah School and Institutional Trust Lands Administration (“SITLA”). Utah Code Ann., § 53C-1-304 provides in its entirety:

Rules to ensure procedural due process -- Board review of director action -- Judicial review

(1) The board shall make rules to ensure procedural due process in the resolution of complaints concerning actions by the board, director, and the administration.

(2) An aggrieved party to a final action by the director or the administration may petition the board for administrative review of the decision.

(3) (a) The board may appoint a qualified hearing examiner for purposes of taking evidence and making recommendations for board action.

(b) The board shall consider the recommendations of the examiner in making decisions.

(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.

(b) The board shall base its final actions on findings and conclusions and shall inform the aggrieved party of its right to judicial review.

(5) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63-46b-15 and 63-46b-16.

(emphasis added.)

Pursuant to this statute, Mountain Top petitioned SITLA's Board of Trustees ("Board of Trustees") to review SITLA's rejection of its applications. The Board of Trustees is required to uphold the rejection of Mountain Top's applications unless it finds by a preponderance of the evidence that SITLA's action violated applicable law, policy or rules.

This Court's review, therefore, is limited to review of the action of the Board of Trustees. *See* Utah Code Ann., § 53C-1-304(5). In other words, the Court's inquiry under Utah Code Ann., § 63-46b-16, is limited to whether the Board of Trustees properly followed its statutory mandate, such being to uphold SITLA's decision unless it finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or rules.

Mountain Top incorrectly casts this Court's review herein as being under general administrative procedures review. However, Utah Code Ann., § 63-46b-16(1) provides that review of formal agency action is to be "[a]s provided by statute" As provided by Utah Code Ann., § 53C-1-304(5), this Court's review is limited to whether the Board of Trustees properly followed its statutory mandate.

Given the limited review afforded under the applicable statute, there is a legitimate question as to which issues Mountain Top has properly appealed. Mountain Top cannot press an appeal herein based on whether SITLA could have taken some other action. Mountain Top's stated issues for review appear to question whether

SITLA could have accepted parts of its applications, whether SITLA could have interpreted Mountain Top's applications in some other way, or whether SITLA should have allowed Mountain Top to correct the defects in its applications. However, this Court may only reverse the Board of Trustees' Order if the Court finds that the Board of Trustees failed to comply with its statutory directive, such being to reverse SITLA's decision only if a preponderance of the evidence establishes that SITLA's action violated an applicable law, policy or rule.

Nevertheless, this appeal was taken following formal adjudicative proceedings and Utah Code Ann., § 63-46b-16(4) governs this appeal. The relevant portions of subsection (4) provide:

The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

* * *

(h) the agency action is:

. . .

(ii) contrary to a rule of the agency;

. . .

The appropriate standard of review is determined by the agency action challenged. However, when a statute expressly or implicitly involves an agency's discretion, such as interpretation of SITLA's policies, the appellate court will give deference to the agency because it is "appropriate to grant the agency deference on the basis of an explicit or implicit grant of discretion contained in the governing statute."

Morton Int'l, Inc. v. Utah State Tax Comm'n, 814 P.2d 581, 588 (Utah 1991).

DETERMINATIVE LAW

Statutes

Utah Code Ann., § 53C-1-102

Utah Code Ann., § 53C-1-304

Utah Code Ann., § 53C-2-402

Utah Code Ann., § 53C-2-403

Utah Code Ann., § 53C-2-407

Utah Code Ann., § 63-46b-16

Regulations

Utah Admin. Code, R850-3-500

Utah Admin. Code, R850-20-700

Utah Admin. Code, R850-20-900

Utah Admin. Code, R850-20-1200

Utah Admin. Code, R850-20-1800

See Addendum A.

STATEMENT OF THE CASE

Following the SITLA's October 4, 2001 simultaneous lease auction, SITLA determined that three lease applications filed by Mountain Top must be rejected. In rejecting Mountain Top's applications and returning the bonus, SITLA was well aware that it would give back \$87,110.16 in bonus it could easily keep. Mountain Top petitioned SITLA's Board of Trustees to conduct a formal adjudicative proceeding to review SITLA's action. Mr. John Harja was appointed to hear this matter on behalf of the Board of Trustees. Following cross motions for summary judgment filed by Mountain Top, SITLA, and respondent Billy Jim Palone ("Palone"), Mr. Harja presented his findings to the Board of Trustees.

All five members of the Board of Trustees who considered this matter signed an order upholding SITLA's rejection of Mountain Top's applications.¹ The Board of Trustees was well aware that upholding SITLA's rejection ensured the trust would return \$87,110.16 it could easily keep.

Mountain Top's Petition for Review asks the Utah Court of Appeals to take a third look at the rejected applications and, substituting its judgment for that of both SITLA and the Board of Trustees, reverse their decisions. However, as noted above, this Court's review is limited.

STATEMENT OF FACTS

SITLA published its October 4, 2001 Lease Offering and designated 97 separate leasing units to be offered for "Oil, Gas, and Hydrocarbon lease by simultaneous filing" R. 1768. A copy of the October 4, 2001 Lease Offering ("Lease Offering") is attached as Addendum B. *See* R. 980-90.

The Lease Offering expressly required that each application "be accompanied by two checks, one for the bid and one in the amount of \$30.00 for the application fee (all application fees are forfeited to the Trust Lands Administration)." R. 1768.

The Lease Offering further required:

The minimum bid will be \$1.00 per acre or fractional part thereof unless otherwise noted. The bid will be for the first year of the lease. Each application must be submitted in a sealed envelope marked: "Sealed bid for simultaneous filing on leasing Unit No. _____ being

¹ SITLA's Board of Trustees is comprised of seven members. One member abstained and another was absent.

offered for Oil, Gas, and Hydrocarbon leasing. Bids to be opened at 10:00 a.m. Monday, October 29, 2001, at the School and Institutional Trust Lands Administration Office, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102-2818.” No bid will be accepted unless it includes all of the lands offered in a particular leasing unit. The bid checks of unsuccessful applicants will be returned to the applicant.

R. 1768 (quotations in original).

The Lease Offering required the sealed envelopes to be filed at SITLA by 5:00 p.m., Friday, October 26, 2001. Prior to October 26, 2001, Mountain Top filed three envelopes containing the applications at issue herein. R. 1768.

On October 29, 2001, the envelopes were opened. Mountain Top’s envelope marked “Unit 70” and “Unit 86” contained one \$30.00 application fee check, one \$35,476.98 bid check, and one application listing both Leasing Unit Nos. 70 and 86. R. 40 and 1768. Hereinafter, this application will be referred to as “Application No. 1”.

Mountain Top’s envelope marked “Unit 75”, “Unit 76” and “Unit 84” contained one \$30.00 application fee check, one \$43,400.00 bid check and one application listing Leasing Unit Nos. 75, 76 and 85 (not leasing unit no. 84, as indicated on the envelope). R. 42, 993, and 1769. Hereinafter, this application will be referred to as “Application No. 2”.

Mountain Top’s envelope marked “Unit 87”, “Unit 88”, “Unit 89”, and “Unit 90” contained one \$30.00 application fee check, one \$68,686.88 bid check and one application listing Leasing Unit Nos. 87, 88, 89, and 90. R. 44 and 1769. Hereinafter, this application will be referred to as “Application No. 3”.

Application Nos. 1, 2 and 3 were signed by Walter A. Kelly, Jr., on behalf of Mountain Top. R. 40, 42 and 44. Mountain Top's bid checks submitted with Application Nos. 1, 2, and 3 equaled a total of \$147,563.86. R. 41, 43, and 45. Although Mountain Top claims it applied for nine separate leases, it only filed three application fee checks of \$30.00 each. R. 41, 43, and 45.

Palone submitted applications for each of these nine leasing units (70, 75, 76, 85, 86, 87, 88, 89, and 90), by unit number, in separately marked envelopes. Each envelope contained a \$30.00 application fee and a separate bid check. Palone's bid checks offered a total of \$60,453.70. R. 47-55, 1771-72. Palone's applications will be referred to as "Palone's Applications."

SITLA staff reviewed Mountain Top's Application Nos. 1, 2 and 3, its rules, and determined that each application was defective and must be rejected. SITLA's grounds for rejecting Mountain Top's Application Nos. 1, 2, and 3 are set forth in that letter dated November 15, 2001 (as corrected by that letter dated December 20, 2001). R. 57-59, 79-80; *see also* R. 1772. Copies of these letters are attached as Addendum C. Upon rejection of Mountain Top's Application Nos. 1, 2 and 3, SITLA determined that Palone's Applications were the highest bids submitted in the manner required. R. 1772.

On or about November 29, 2001, Mountain Top filed its Appeal of Agency Action & Petition for Adjudicative Proceeding. R. 10-65. Upon request of Palone, and

without objection by Mountain Top, the Board of Trustees ordered this matter to be heard as a formal adjudicative proceeding. R. 83-88.

Following the close of discovery, each of Mountain Top, SITLA and Palone filed for summary judgment. R. 919-1178. Oral argument was held on May 17, 2002. R. 1767. On October 9, 2002, the Board of Trustees issued its Order upholding SITLA's rejection of Mountain Top's Application Nos. 1, 2 and 3. R. 1767-1789. A copy of the Board of Trustees' Order is attached hereto as Addendum D.

SUMMARY OF ARGUMENT

Mountain Top failed to follow the clear instructions in the Lease Offering and failed to properly complete and pay for its application forms. Rather than conceding its own mistakes, Mountain Top has pursued this litigation in an attempt to push SITLA to make a special exception for Mountain Top's mistakes. Mountain Top's arguments have a common premise: SITLA can pick up a quick \$87,110.16 if it will just let Mountain Top fix the defects in the applications.

Mountain Top's opening brief fails to present any policy or goal of SITLA that will be promoted by accepting Mountain Top's applications, except that in this specific instance there is a quick economic benefit. Both SITLA and the Board of Trustees, however, understand that their mandate is to maximize long-term trust revenue, rather than seeking short-term gain. Both SITLA and the Board of Trustees stated their considered determination that protecting the integrity and certainty of the lease offering process, at the expense of this one-time gain, will best maximize trust revenues. It

should be beyond argument that as between the parties before the Court, SITLA and the Board of Trustees are the parties most likely to act for the benefit of the trust.

Mountain Top variously argues broad constitutional mandates and parsed grammatical analyses as grounds for reversing the Order. However, Mountain Top has failed to show that the Board of Trustees overlooked SITLA's violation of any applicable law, policy or rule. Mountain Top's appeal should be denied.

ARGUMENT

I. INTRODUCTION

Counsel for SITLA and the Board of Trustees will separately file a brief with this Court, setting forth in detail the rules, statutes and case law that support the Order. Palone joins in the brief filed on behalf of SITLA and the Board of Trustees and, to the extent possible, will avoid duplicating their efforts. Palone intends to use this brief to present to the Court the perspective of a participant in SITLA's mineral leasing program.

Throughout its opening brief, Mountain Top has attempted to characterize Palone's interest herein as something short of legitimate and to convince the Court that Palone is to receive a "windfall" from the Order. Pet. Brief at 36. Quite simply, there is no windfall to the highest responsible bidder who submits a bid in the manner required. To the extent compliance with the instructions in the Lease Offering indicates the ability to comply with SITLA's other rules that govern oil and gas operations on trust lands, Palone has passed and Mountain Top has failed.

Had Mountain Top reviewed the simple instructions on the face of the Lease Offering, filled out an application form for each leasing unit, and submitted an application fee for each application, an investment of 15 minutes, Mountain Top would have been the highest responsible bidder who submitted a bid in the manner required—and Mountain Top would have avoided what is now 16 months of litigation. However, Mountain Top failed to follow the instructions on Lease Offering, failed to properly fill out an application for each lease, and failed to pay an application fee for each lease. Despite Mountain Top's rash of failures, it accuses SITLA and the Board of Trustees of breaching fiduciary duties and Palone of being nothing more than opportunistic. Mountain Top has no one but itself to blame.

Mountain Top has cobbled together, or parsed, a laundry list of regulations in the Utah Administrative Code in an attempt to implement, through this Court, its own version of SITLA's oil and gas leasing program, one that would resurrect its defective applications. Mountain Top's opening brief, however, fails to inform the Court that SITLA is authorized to issue mineral leases under at least three distinct processes and the regulations in the Utah Administrative Code may apply to more than just the simultaneous offering at issue in this appeal. Subsections (1), (3) and (8) of Utah Code Ann., § 53C-2-407 authorize SITLA to issue leases through, respectively, contractual arrangements, simultaneous filing, and "in the order in which applications are filed". The process of issuing leases "in the order in which applications are filed" is commonly known as "over the counter" leasing. An over the counter lease application is prepared

by an applicant who, by searching the records for unleased lands, selects available lands, prepares an application (which creates the dimensions of the lease), and files it as soon as possible to get it time stamped. The time stamp, in over the counter leasing, is vitally important because such lands are leased “in the order in which applications are filed”. Utah Code Ann., § 53C-2-407(8). With over the counter leasing, Utah Administrative Code², R850-20-1200 and R850-20-1800, serve to allow correction of deficient applications, and partial or full rejection of applications. SITLA does not currently issue leases over the counter.

Nevertheless, this case involves a simultaneous lease offering. The simple, undeniable fact is that an applicant in a simultaneous lease offering does not have to know the regulations in the Utah Administrative Code to be successful. That is because SITLA staff review and comply with the applicable regulations in creating leasing units to be offered, and the first page of the Lease Offering provides all the necessary guidance. Mountain Top ran afoul of the rules when it chose to ignore the instructions in the Lease Offering and do it its own way. For example, Palone paid nine non-refundable application fees (\$270.00) for the nine leases at issue, while Mountain Top tried to get by with three (\$90.00). A question presented in this appeal is whether an applicant or SITLA gets to set and enforce the rules that govern SITLA’s oil and gas leasing program.

² Hereinafter, citations to the Utah Administrative Code shall be by rule number.

II. THE BOARD OF TRUSTEES' ORDER MUST BE UPHOLD BECAUSE SITLA DID NOT VIOLATE ANY LAW, POLICY OR RULE IN REJECTING MOUNTAIN TOP'S APPLICATIONS

A. SITLA Had The Authority To Reject Mountain Top's Applications

The School and Institutional Trust Lands Management Act ("Act"), Utah Code Ann., § 53C-1-101 *et seq.*, grants broad discretion to the Board of Trustees and SITLA to manage trust lands "in the most prudent and profitable manner possible . . ." (Utah Code Ann., § 53C-1-102(2)(b)), "balancing . . . short and long-term interests so that long-term benefits are not lost in an effort to maximize short-term gains." Utah Code Ann., § 53C-1-102(2)(c).

The Act authorizes mineral leasing, including by simultaneous and over the counter filing. SITLA is given the authority to establish the rules and the form of lease application. *See* Utah Code Ann., § § 53C-2-403(1) and 53C-2-402(1). With respect to simultaneous filing, Utah Code Ann., § 53C-2-407(3)(c) provides: "Leases shall be awarded to the highest responsible, qualified bidder, in terms of the bonus paid in addition to the first year's rental, who submitted a bid in the manner required." The Lease Offering and the lease application form provide that an application should be filed for a lease, in the singular, and that a \$30.00 application fee must be submitted with each application. Mountain Top, however, filed three applications, claims they were for nine leases, but paid only three application fees rather than nine. Thus,

Mountain Top failed to submit its application in the manner required and its applications were rejected.

Furthermore, the mere filing of an application does not require SITLA to issue a lease and SITLA may reject any application if doing so is in the best interest of the trust.

(1) Until an executed . . . lease . . . is delivered or mailed to the successful applicant, applications for the . . . use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

(2) The Trust Lands Administration may reject any application prior to execution if it determines that rejection is in the best interest of the trust.

R850-3-500(1) and (2).

Thus, SITLA had the authority to reject Mountain Top's applications.

B. Mountain Top's Application Nos. 1 and 2 Violate R850-20-700

Mountain Top's Application Nos. 1 and 2 violate R850-20-700, which provides: "A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township." Application Nos. 1 and 2 violate R850-20-700 due to the inclusion of non-contiguous lands in two townships, Townships 39 and 40 South.

C. Mountain Top's Application No. 3 Violates R850-20-900

The application form expressly states that it is for "an Oil, Gas and Hydrocarbon lease". Application No. 3 proposes a lease of almost 4,300 acres. Such a lease would

violate R850-20-900, which limits the size of leases to no more than 2,560 acres or four sections.

D. Mountain Top Is Not Entitled To Correct Its Applications Under R850-20-1200

Mountain Top argues that it is entitled to correct its applications pursuant to R850-20-1200, as interpreted by McKnight v State Land Board, 381 P.2d 726 (Utah 1963). Neither the rule nor the case entitle Mountain Top to alter or amend its rejected applications.

R850-20-1200 allows SITLA to return deficient mineral lease applications for correction, “. . . except in the case of simultaneous filing . . .” By its express terms, R850-20-1200 does not apply to Mountain Top’s Applications, which were filed in a simultaneous filing.

In McKnight, the court upheld the State Land Board’s decision to allow an applicant ten days to correct three deficiencies on his simultaneous filing application. The deficiencies in the application were: 1) the applicant used an obsolete form; 2) the obsolete form omitted a pledge to obey Utah’s oil and gas laws; and 3) the application form bore an improper notarization.

The State Land Board (SITLA’s predecessor) granted a ten-day grace period for the applicant to correct the deficiencies pursuant its “Rule 6.” The former “Rule 6”, now R850-20-1200, was edited, after the 1963 McKnight decision and before the October 4, 2001 Lease Offering, to exclude applications filed in a simultaneous lease

offering. The first sentence of this rule now expressly excludes applications submitted for simultaneous filing, which suggests the intent of the amendment was to change the rule (and result) in McKnight in the instance of simultaneous filings.

Furthermore, it is important to note that McKnight did not direct the State Land Board to allow correction of a deficient application, it merely affirmed the agency's discretion to do so. "[W]e do hold that an interpretation of an application still rests with the Land Board, and if the original application would meet the legal requirements with some amendment for clarification, it could so order and the applicant would retain his standing as to priority." Id. at 733 (emphasis added). Mountain Top's Applications do not need clarification, rather whole new applications would have to be filed. Thus, neither R850-20-1200 nor McKnight entitles Mountain Top to be able to correct the rejected applications.

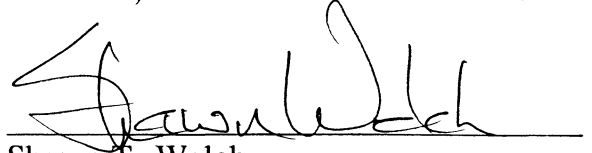
CONCLUSION

The Court must uphold the Board of Trustees' Order and deny Mountain Top's appeal because SITLA's rejection of Mountain Top's Applications did not violate any law, policy or rule. Palone requests the Court for an award of costs.

//

Dated this 26th day of March, 2003.

PRUITT, GUSHEE & BACHTTELL

A handwritten signature in dark ink, appearing to read "Shawn T. Welch", written over a horizontal line.

Shawn T. Welch

Angela L. Franklin

Attorneys for Respondent

Billy Jim Palone

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2003, I caused to be mailed, postage prepaid, two true and correct copies of the foregoing BRIEF OF RESPONDENT PALONE, to the following:

J. Craig Smith
Smith Hartvigsen, PLLC
1150 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

Dawn J. Soper
Justin J. Quigley
School and Institutional Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, UT 84102



ADDENDUM

A – Determinative Law

B – Lease Offering

C – Application Rejection Letters From SITLA to Mountain Top dated November 15, 2001 and December 20, 2001

D – Order

Tab A

History: C. 1953, 53C-1-101, enacted by L. 1994, ch. 294, § 6

Repeals and Reenactments. — Laws 1994, ch. 294 § 6 repeals former § 53C 1 101

as enacted by Laws 1993, ch. 46, § 1, containing the title of the act, and enacts the present section effective July 1, 1994

NOTES TO DECISIONS

Purpose.

The purpose of this title is to show that school trust lands are unique and that a trust exists between the state as trustee and the public

education system and the institutions designated by the state enabling act as the beneficiaries *UMW, Dist No. 22 v State*, 6 F Supp 2d 1298 (D. Utah 1998)

53C-1-102. Purpose.

(1) (a) The purpose of this title is to establish an administration and board to manage lands that Congress granted to the state for the support of common schools and other beneficiary institutions, under the Utah Enabling Act

(b) This grant was expressly accepted in the Utah Constitution, thereby creating a compact between the federal and state governments which imposes upon the state a perpetual trust obligation to which standard trust principles are applied

(c) Title to these trust lands is vested in the state as trustee to be administered for the financial support of the trust beneficiaries

(2) (a) The trust principles referred to in Subsection (1) impose fiduciary duties upon the state, including a duty of undivided loyalty to, and a strict requirement to administer the trust corpus for the exclusive benefit of, the trust beneficiaries

(b) As trustee, the state must manage the lands and revenues generated from the lands in the most prudent and profitable manner possible, and not for any purpose inconsistent with the best interests of the trust beneficiaries

(c) The trustee must be concerned with both income for the current beneficiaries and the preservation of trust assets for future beneficiaries, which requires a balancing of short and long term interests so that long-term benefits are not lost in an effort to maximize short-term gains

(d) The beneficiaries do not include other governmental institutions or agencies, the public at large, or the general welfare of this state

(3) This title shall be liberally construed to enable the board of trustees, the director, and the administration to faithfully fulfill the state's obligations to the trust beneficiaries

History: C. 1953, 53C-1-102, enacted by L. 1994, ch. 294, § 7.

Repeals and Reenactments. — Laws 1994, ch. 294, § 7 repeals former § 53C 1 102, as enacted by Laws 1993, ch. 46, § 2, setting out the purpose of the act, and enacts the

present section effective July 1, 1994

Cross-References — Education Ut Const Art X

Land grants accepted Ut Const Art XX, Sec 1

NOTES TO DECISIONS

ANALYSIS

Adverse possession.
Duty of trust.
Federal leases.
Lease of school land.

Adverse possession.

School lands cannot be acquired by adverse possession against the state. *Van Wagoner v. Whitmore*, 58 Utah 418, 199 P 670 (1921) (decided under prior law).

Duty of trust.

Trust obligations take priority and must first be met before consideration can be given to multiple use-sustained yield principles. *National Parks & Conservation Ass'n v. Board of State Lands*, 869 P2d 909 (Utah 1993) (decided under prior law)

The Board of State Lands and Forestry did

not breach its trust duties by refusing to give priority to the scenic, aesthetic, and recreational values of a parcel of school trust land over economic values when it approved a land exchange. *National Parks & Conservation Ass'n v. Board of State Lands*, 869 P2d 909 (Utah 1993) (decided under prior law).

Federal leases.

The state must recognize leases and the extensions granted by federal law on mineral school lands transferred to the state under the federal Dawson Acts. *Jacobson v. State Land Bd.*, 12 Utah 2d 307, 366 P2d 70 (1961).

Lease of school land.

Territorial legislature held to have had no right to pass law giving to county court authority to lease sections of land reserved by United States for common school purposes. *Burrows v. Kimball*, 11 Utah 149, 41 P. 719 (1885)

53C-1-103. Definitions.

As used in this title:

(1) "Administration" means the School and Institutional Trust Lands Administration.

(2) "Board" or "board of trustees" means the School and Institutional Trust Lands Board of Trustees.

(3) "Director" or "director of school and institutional trust lands" means the chief executive officer of the School and Institutional Trust Lands Administration.

(4) "Nominating committee" means the committee which nominates candidates for positions and vacancies on the board.

(5) "Policies" means statements applying to the administration that broadly prescribe a future course of action and guiding principles.

(6) "School and institutional trust lands" or "trust lands" means those properties granted by the United States in the Utah Enabling Act to the state in trust, and other lands transferred to the trust, which must be managed for the benefit of:

(a) the state's public education system; or

(b) the institutions of the state which are designated by the Utah Enabling Act as beneficiaries of trust lands.

History: C. 1953, 53C-1-103, enacted by L. 1994, ch. 294, § 8.

Repeals and Reenactments. — Laws 1994, ch. 294, § 8 repeals former § 53C-1-103,

as enacted by Laws 1993, ch. 46, § 3, defining terms used in this title, and enacts the present section, effective July 1, 1994.

(l) respond in writing within a reasonable time to a request by the board for responses to questions on policies and practices affecting the management of the trust.

(2) Procedures and rules adopted by the Division of State Lands and Forestry as they relate to trust lands prior to the effective date of this act remain in effect until amended or repealed by the director.

(3) The administration shall be the named party in substitution of the Division of State Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust lands from the effective date of this act.

(4) The director may:

(a) with the consent of the state risk manager and the board, manage lands or interests in lands held by any other public or private party pursuant to policies established by the board;

(b) sue or be sued as the director of school and institutional trust lands;

(c) contract with other public agencies for personnel management services;

(d) contract with any public or private entity to make improvements to or upon trust lands and to carry out any of the responsibilities of the office, so long as the contract requires strict adherence to trust management principles, applicable law and regulation, and is subject to immediate suspension or termination for cause; and

(e) with the approval of the board enter into joint ventures and other business arrangements consistent with the purposes of the trust.

(5) Any application or bid required for the lease, permitting, or sale of lands in a competitive process or any request for review pursuant to Section 53C-1-304 shall be considered filed or made on the date received by the appropriate administrative office, whether transmitted by United States mail or in any other manner.

History: C. 1953, 53C-1-303, enacted by L. 1994, ch. 294, § 15; 1995, ch. 299, § 15; 1997, ch. 126, § 3.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, in Subsection (1)(b) deleted “for day-to-day management” after “rules” and made a stylistic change and in

Subsection (1)(b) added “by state law and board policy.”

Compiler’s Notes. — The phrase “the effective date of this act,” in Subsection (2), refers to L. 1994, ch. 294, which revised the laws regarding state lands and which became effective, with a few exceptions, on July 1, 1994.

53C-1-304. Rules to ensure procedural due process — Board review of director action — Judicial review.

(1) The board shall make rules to ensure procedural due process in the resolution of complaints concerning actions by the board, director, and the administration.

(2) An aggrieved party to a final action by the director or the administration may petition the board for administrative review of the decision.

(3) (a) The board may appoint a qualified hearing examiner for purposes of taking evidence and making recommendations for board action.

(b) The board shall consider the recommendations of the examiner in making decisions.

- (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
- (b) The board shall base its final actions on findings and conclusions and shall inform the aggrieved party of its right to judicial review
- (5) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63-46b-15 and 63-46b-16

History. C. 1953, 53C-1-304, enacted by L. 1994, ch. 294, § 16; 1995, ch. 299, § 16; 1997, ch. 72, § 1.

Amendment Notes — The 1997 amendment, effective May 5, 1997, deleted Subsection

(2) which provided that final action be taken based on findings supported by a record redesignating subsections accordingly, added Subsection (4)(b), and made stylistic changes

53C-1-305. Attorney general to represent administration.

- (1) The attorney general shall
- (a) represent the board, director, or administration in any legal action relating to trust lands except as otherwise provided in Subsection (3),
- (b) review leases, contracts, and agreements submitted for review prior to execution, and
- (c) undertake suits for the collection of royalties, rental, and other damages in the name of the state
- (2) The attorney general may institute actions against any party to enforce this title or to protect the interests of the trust beneficiaries
- (3) The administration may, with the consent of the attorney general, employ in house legal counsel to perform the duties of the attorney general under Subsections (1) and (2)
- (4) In those instances where the interests of the trust beneficiaries conflict with those of state officers or executive department agencies for which the attorney general acts as legal advisor under Utah Constitution Article VII, Section 16, the board may, with the consent of the attorney general, employ independent counsel to represent and protect those interests

History: C. 1953, 53C-1-305, enacted by L. 1994, ch. 294, § 17, 2000, ch. 237, § 5.

Amendment Notes. — The 2000 amendment, effective May 1, 2000, added Subsection (3), redesignating former Subsection (3) as Sub

section (4), and rewrote Subsection (4), which had read "The attorney general shall appoint inhouse and independent counsel, when required, with the consent of the board "

53C-1-306. Board and administration subject to Public Officers' and Employees' Ethics Act.

- (1) Board members, the director, employees, and agents of the administration are subject to the requirements of Title 67, Chapter 16, Public Officers' and Employees' Ethics Act, and to any additional requirements established by the board
- (2) A board member, the director, or an employee of the administration may not directly or indirectly acquire any interest in trust lands or receive any direct benefit from any transaction dealing with trust lands, except as provided by law and after providing notice to the board, director, attorney general, and the governor

53C-2-402. Mineral leases — Director to establish rules for mineral leases — Revenues to be deposited in Land Grant Management Fund.

(1) Mineral leases of all trust lands owned by the state shall be made exclusively by the director, under rules made by the director.

(2) Revenues from mineral leases of trust lands shall be deposited in the Land Grant Management Fund.

History: C. 1953, 53C-2-402, enacted by L. 1994, ch. 294, § 27.

53C-2-403. Mineral leases — Director to establish forms, term, rental, and royalty.

The director shall establish the:

- (1) form of a mineral lease application;
- (2) form of the lease;
- (3) term of the lease;
- (4) annual rental;
- (5) amount of royalty in addition to or in lieu of rental; and
- (6) basis upon which the royalty shall be computed.

History: C. 1953, 53C-2-403, enacted by L. 1994, ch. 294, § 28.

53C-2-404. Applicants for mineral leases — Qualifications.

Applicants for mineral leases must, throughout the application period and throughout the duration of the lease, be in full compliance with all of the laws of the state as to qualification to do business within the state and must not be in default under those laws.

History: C. 1953, 53C-2-404, enacted by L. 1994, ch. 294, § 29.

53C-2-405. Mineral leases — Multiple leases on same land — Lease terms.

- (1) (a) Mineral leases, including oil, gas, and hydrocarbon leases, may be issued for prospecting, exploring, developing, and producing minerals covering any portion of trust lands or the reserved mineral interests of the trust.
 - (b) (i) Leases may be issued for different types of minerals on the same land.
 - (ii) If leases are issued for different types of minerals on the same land, the leases shall include stipulations for simultaneous operations.
 - (c) No more than one lease may be issued for the same resource on the same land.

- (2) (a) Each mineral lease issued by the administration shall provide for an annual rental of not less than \$1 per acre per year.
- (b) However, a lease may provide for a rental credit, minimum rental, or minimum royalty upon commencement of production, as prescribed by rules of the director.
- (3) The primary term of a mineral lease may not exceed:
 - (a) 20 years for oil shale or tar sands; or
 - (b) ten years for oil, gas, or any other mineral.
- (4) The director shall make rules regarding the continuation of a mineral lease after the primary term has expired, which shall provide that a mineral lease shall continue so long as:
 - (a) the mineral covered by the lease is being produced in paying quantities from:
 - (i) the leased premises;
 - (ii) lands pooled, communitized, or unitized with the leased premises; or
 - (iii) lands constituting an approved mining or drilling unit with respect to the leased premises; or
 - (b) (i) the lessee is engaged in diligent operations, exploration, research, or development which is reasonably calculated to advance development or production of the mineral covered by the lease from:
 - (A) the leased premises;
 - (B) lands pooled, communitized, or unitized with the leased premises; or
 - (C) lands constituting an approved mining or drilling unit with respect to the leased premises; and
 - (ii) the lessee pays a minimum royalty.
- (5) For the purposes of Subsection (4), diligent operations with respect to oil, gas, or other hydrocarbon leases may include cessation of operations not in excess of 90 days in duration.

History: C. 1953, 53C-2-405, enacted by L. 1994, ch. 294, § 30.

53C-2-406. Withdrawal of trust lands from leasing.

- (1) The director may at any time withdraw trust lands from leasing upon a finding that the interests of the trust would best be served through withdrawal.
- (2) Any withdrawal which is in force on the effective date of this act shall continue in force until revoked by the director.

History: C. 1953, 53C-2-406, enacted by L. 1994, ch. 294, § 31.

Compiler's Notes. — The phrase "the effective date of this act," in Subsection (2), refers to

L. 1994, ch. 294, which revised the laws regarding state lands and which became effective, with a few exceptions, on July 1, 1994.

53C-2-407. Mineral lease application procedures.

- (1) Lands that are not encumbered by a current mineral lease for the same resource, a withdrawal order, or other rule of the director prohibiting the lease of the lands, may be offered for lease as provided in this section or may with

board approval, be committed to other contractual arrangement under Subsection 53C-2-401(1)(d).

- (2) (a) A notice of the land available for leasing shall be posted in the administration's office.
- (b) The notice shall:
 - (i) describe the land;
 - (ii) indicate what mineral interest in each tract is available for leasing; and
 - (iii) state the last date, which shall be no less than 15 days after the notice is posted, on which bids may be received.
- (3) (a) Applications for the lease of lands filed before the closing date stated in the notice shall be considered to be filed simultaneously.
- (b) The applications shall be:
 - (i) submitted in sealed envelopes; and
 - (ii) opened in the administration's office at 10:00 a.m. of the first business day following the last day on which bids may be received.
- (c) Leases shall be awarded to the highest responsible, qualified bidder, *in terms of the bonus paid in addition to the first year's rental*, who submitted a bid in the manner required.
- (d) (i) In cases of identical bids of successful bidders, the right to lease shall be determined by drawing.
- (ii) The drawing shall be held in public at the administration's office.
- (4) (a) At the discretion of the director, mineral leases may be offered at an oral public auction.
- (b) The director may set a minimum bid for a public auction.
- (5) The director may award a mineral lease without following the competitive bidding procedures specified in Subsections (3) and (4) or conducting an oral public auction, if the mineral lessee waives or relinquishes to the trust a prior mining claim, mineral lease, or other right which in the opinion of the director might otherwise:
 - (a) defeat or encumber the selection of newly acquired land, either for indemnity or other purposes, or the acquisition by the trust of any land; or
 - (b) cloud the title to any of those lands.
- (6) Following the awarding of a lease to a successful bidder, deposits, except filing fees, made by unsuccessful bidders shall be returned to those bidders.
- (7) (a) Lands acquired through exchange or indemnity selection from the federal government shall be subject to the vested rights of unpatented mining claimants under the Mining Law of 1872, as amended, and other federal vested rights, both surface and minerals.
- (b) Subsection (7)(a) does not prevent the director from negotiating the accommodation of vested rights through any method acceptable to the parties.
- (8) The director may lease lands in the order in which applications are filed if:
 - (a) the director offers trust lands for lease for mineral purposes according to the procedures in Subsections (3) through (6) and the lands are not leased; or
 - (b) a period of time of not less than one year but less than three years has elapsed following:
 - (i) a revocation of a withdrawal; or

(ii) the date an existing mineral lease is canceled, relinquished, surrendered, or terminated.

History: C. 1953, 53C-2-407, enacted by L. 1994, ch. 294, § 32; 1996, ch. 103, § 5.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, in Subsection (1), substituted “may” for “shall” and added “or may, with board approval, be committed to

other contractual arrangement under Subsection 53C-2-401(1)(d) ”

Federal Law. — The Mining Law of 1872, cited in Subsection (7)(a), is 30 U.S.C. § 22 et seq.

53C-2-408. Mineral lease covenants.

Each mineral lease shall contain the following covenants:

- (1) the lessee shall promptly pay any rent annually in advance;
- (2) waste may not be committed on the land;
- (3) the premises shall be surrendered at the expiration of the term;
- (4) the lessee may not assign or sublet without the prior written authorization of the director; and
- (5) if authorized improvements have been placed on the land by any person other than the lessee, the lessee shall allow the owner of the improvements to remove them within 90 days.

History: C. 1953, 53C-2-408, enacted by L. 1994, ch. 294, § 33.

53C-2-409. Mineral leases — Cancellation — Use of surface land — Liability for damage.

(1) Upon violation by the lessee of any lawful provision in a mineral lease, the director may, without further notice or appeal, cancel the lease after 30 days notice by registered or certified return receipt mail, unless the lessee remedies the violation, rectifies the condition, or requests a hearing pursuant to Section 53C-1-304 within the 30 days or within any extension of time the director grants.

(2) (a) A mineral lessee, subject to conditions required by the director, has the right at all times to enter upon the leasehold for prospecting, exploring, developing, and producing minerals and shall have reasonable use of the surface.

(b) The lessee may not injure, damage, or destroy the improvements of the surface owner or lessee.

(c) The lessee is liable to the surface owner or lessee for all damage to the surface of the land and improvements, except for reasonable use.

(3) Any mineral lessee may occupy as much of the surface of the leased land as may be required for all purposes reasonably incident to the exercise of lessee's rights under the lease by:

(a) securing the written consent or waiver of the surface owner or lessee;

(b) payment for the damage to the surface of the land and improvements to the surface owner or lessee where there is agreement as to the amount of the damage; or

(c) upon the execution of a good and sufficient bond to the director for the use and benefit of the surface owner or lessee of the land to secure the payment of damages as may be determined and fixed by agreement or in

Utah Code Ann. § 63-46b-16

UTAH CODE ANNOTATED
Copyright (c) 2003 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** STATUTES CURRENT THROUGH THE 2002 6TH SPECIAL SESSION ***
*** ANNOTATIONS CURRENT THROUGH 2002 UT 111, 2002 UT APP 384 ***
*** AND NOVEMBER 15, 2002 (FEDERAL CASES) ***

TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 46b. ADMINISTRATIVE PROCEDURES ACT

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Utah Code Ann. § 63-46b-16 (2003)

§ 63-46b-16. Judicial review -- Formal adjudicative proceedings

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

HISTORY: C. 1953, 63-46b-16, enacted by L. 1987, ch. 161, § 272; 1988, ch. 72, § 26.

R850-3. Applicant Qualifications, Application Forms, and Application Processing.

R850-3-100	Authorities
R850-3-200	Applicant Qualifications
R850-3-300	Application Forms
R850-3-400	Application Processing
R850-3-500	No Interest Conveyed by Submitting Application
R850-3-600	Rule Changes During Application Processing

R850-3-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-404 which authorize the Director of the School and Institutional Trust Lands Administration (Trust Lands Administration) to prescribe the applicant requirements and the form of application.

R850-3-200. Applicant Qualifications.

Any person qualified to do business in the state of Utah, and not in default under the laws of the state of Utah relative to qualification to do business within the state, or not in default on any previous obligation with the Trust Lands Administration, shall be a qualified applicant for sale, exchange, lease or permit.

R850-3-300. Application Forms.

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

R850-3-400. Application Processing.

Within 15 days from receipt of an application for a Special Use Lease, Easement, Sale, Exchange or Materials Permit, the Trust Lands Administration shall conduct an initial evaluation of the application. Trust Lands Administration may refuse the application if it determines, in its sole discretion, that

- (1) activities with higher priorities would be adversely impacted by processing the application,
- (2) an existing or planned application or activity on the parcel would be adversely impacted by processing the application,
- (3) an agency-initiated activity would be adversely impacted by processing the application, or
- (4) proceeding with the proposal would not be in the best interests of the trust land beneficiaries.

No fees shall be collected from the applicant prior to the above-referenced evaluation. If the Trust Lands Administration chooses to refuse the application, it shall notify the applicant in writing. If the Trust Lands Administration chooses to accept the application, it shall inform the applicant of any further information, material, deposits and fees which may be required in order to accept the application and commence processing. Failure to provide the requested items by the deadline established by the Trust Lands Administration may result in the application being rejected. A determination refusing an application shall not be subject to administrative review.

R850-3-500. No Interest Conveyed by Submitting Application.

- (1) Until an executed instrument of conveyance, lease, permit or right is delivered or mailed to the

successful applicant, applications for the purchase, exchange, or use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

- (2) The Trust Lands Administration may reject any application prior to execution if it determines that rejection is in the best interest of the trust.

- (3) If an application is rejected, all monies tendered by the applicant, except the application fee, shall be refunded.

- (4) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee and any amounts expended on advertising or appraisals prior to the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the Trust Lands Administration, unless otherwise ordered for a good cause shown.

- (5) Any deposit to cover advertising, appraisal costs and processing fees shall be forfeited if any lease, permit, grant or certificate is offered but not executed by the applicant.

R850-3-600. Rule Changes During Application Processing.

Applications shall be processed in accordance with the applicable rules in effect at the time the application was accepted except that the Trust Lands Administration may apply rule changes that become effective during the processing of an application if the Trust Lands Administration determines that the application of the rule change is in the best interest of the beneficiary of the land. If the applicant objects to compliance with changes in the rules, then the applicant may elect to withdraw the application, or the Trust Lands Administration may reject the application. For applications which are withdrawn or rejected under this section 600, all fees, except application fees, shall be refunded to the applicant without penalty.

References: 53C-1-302(1)(a)(ii), 53C-2-404

History: 14537, AMD, 08/02/93, 15945, NSC, 08/01/94, 16343, NSC, 12/01/94, 17012, NSC, 06/30/95, 17193, NSC, 09/01/95, 17671, NSC, 04/15/96, 17789, AMD, 07/02/96, 19513, 5YR, 06/30/97

R850-4. Application Fees and Assessments.

R850-4-100	Authorities
R850-4-200	Fee Schedule

R850-4-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorizes the Director of the School and Institutional Trust Lands Administration to adopt rules necessary to fulfill the purposes of Title 53C.

R850-4-200. Fee Schedule.

The fees are established by the agency pursuant to policy set by the School and Institutional Trust Lands Board of Trustees. A copy of the fee schedule is

in R850 20 200 classifications. These leases are on terms and conditions as the agency finds to be in the best interest of the Trust Lands Administration.

R850-20-400 Close Association Minerals.

A mineral lease issued as to any category shall include other minerals found in a close association with the expressly leased minerals when the expressly leased minerals cannot reasonably be mined or removed separately.

R850-20-500 Mineral Estate Distinctions.

Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on Trust Lands Administration owned lands in Utah. These commodities are withdrawn from leasing and may only be obtained through a materials permit approved by the agency director. Materials permits are administered through the regional offices of the agency.

R850 20-700 Non Contiguous Tracts.

A separate application is filed for each non contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township.

R850-20 800 Size of Leasable Tract.

Except for good cause shown, no mineral lease is issued for a tract less than a quarter quarter section or surveyed lot except where the land owned by the Trust Lands Administration within any quarter quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter quarter section or surveyed lot.

R850 20 900 Lease Acreage Limitations.

Mineral leases are limited to no more than 2,560.00 acres or four sections.

R850-20-1000. Rentals and Royalties.

1 Rentals

(a) Rental for the first lease year is at the rate of \$1 per acre, or fractional part thereof, per annum, regardless of percentage of Trust Lands Administration ownership in any given acre of land. Subsequent rental paying dates shall be on or before the annual anniversary date of the effective date of the lease, the effective date of the lease being the first day of the month following the date on which the lease is issued.

(b) Any overpayment of advance rental occurring from mineral lease applicant's incorrect listing of acreage of lands described in the application, may, at the option of the agency, be credited toward the applicant's rental account.

(c) Minimum annual rental on any mineral lease is \$20.

(d) The agency shall accept lease payments made by any party, but the acceptance of lease payments shall not be deemed to be a recognition of any interest of the payee in the lease.

2 Royalty Provisions

The following production royalty rates shall apply to all classified mineral leases, as listed in R850 20 200, issued on or after the effective date of the applicable adjusted royalty rate. Mineral leases entered into prior to the effective date of adjusted royalty rates shall retain the royalty rate as specified in the lease agreement. The board shall review production royalty rates on a timely basis and shall adjust rates when in the best interest of the trust.

Production royalty rates for non classified minerals shall be established by the board as the need arises.

(a) Royalty rates on substances under oil, gas, and hydrocarbon leases

TABLE

Oil	12 1/2 %
Gas	12 1/2 %
Sulfur	12 1/2 %
Other hydrocarbon substances	6 1/4 % (1)

(1) During the first ten years of production and increasing annually thereafter at the rate of 1% to a maximum of 16 2/3%.

(b) Royalty rates on mineral commodities, coal, and solid hydrocarbons

TABLE

Coal	8%	Phosphate	5%
Oil Shale (1)	5%	Potash and Associated Minerals	2%
Asphaltic/Bituminous Sands (2)	7%	Gypsum	5%
Gilsonite	10%	Clay	0
Met Minerals		Geothermal Resources	10%
Fissionable	8%	Limestone	5%
Non Fissionable	4%		
Gemstone/Fossil(3)	10%	Volcanic Materials	5%
Salt (Sodium chloride)	3%	Industrial sands	5%

(1) 5% during the first five years of production and increasing annually thereafter at the rate of 1% to a maximum of 12 1/2% (providing that the first lessee to commercially produce oil shale on Trust Lands Administration lands shall be exempted from royalty payment on the first 200,000 barrels within a 12 month period) (See R850 20 3500).

(2) May be escalated after the first five years of production at the rate of 1% per annum to maximum of 12 1/2% at lessor's discretion.

(3) Requires payment of annual minimum royalty of \$5 per acre.

(c) Notwithstanding the terms of oil, gas, and hydrocarbon lease agreements, gas and natural gas liquid reports, and their required royalty payments, are required to be received by the agency on or before the last day of the second month succeeding the month of production. This extension of payment and reporting time for gas and NGL does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production, as currently provided in the lease form.

(d) Any gilsonite lessee may petition the agency to amend its state gilsonite lease as to "Article VI, Payment of Rentals and Royalties", paragraph, SECOND, with the following provision:

SECOND Lessee shall pay a production royalty on the basis of a percentage of the market price, including all bonuses and allowances received by lessee, for the nearest point of sale of the first marketable product or products produced from the leased substances and sold under a bona fide contract of sale, whether or not the product or products are produced through chemical or mechanical treating or processing of the leased substances raw material. It is expressly understood and agreed that none of lessee's mining, or product costs, including material costs, labor costs, overhead costs, distribution costs, or general and administrative costs may be deducted from market price for the point of sale in computing lessor's royalty. All costs shall be entirely borne by lessee and are anticipated by the rate of royalty.

assigned in his agreement. The royalty shall be 12-1/2% of the market price, as defined above, except where the thickness of the vein is less than 24 inches, in which case the royalty shall be as follows:

TABLE

Vein Size	Royalty Rate
From 23 9 inches to 21 0 inches	8%
From 20 9 inches to 19 0 inches	5%
Less than 18 inches	3%

Where lessee is claiming a vein width less than 24 inches, he shall be required to measure the width of the vein in the course of mining every 20 feet on each level, and each quarter shall submit a statement, signed and attested to by the lessee, giving the tonnage mined during said quarter, the average width of the vein mined during that quarter, and showing on a suitable plat, the location and width of the measured locations. Lessor shall have the right to require that the vein width measurements and quarterly statement be performed and prepared by a certified professional engineer employed by and at the sole expense of lessee. Further, lessee agrees to the following special stipulations regarding the royalty rate provision contained in this lease:

1) This royalty rate provision shall be subject to review in five years from the date of this amendment, at which time the lessor may make any reasonable changes in the provision as may be deemed to be in the best interest of the Trust Lands Administration.

2) At the time of review of the original lease or of this royalty provision, the lessee shall provide the lessor, at no cost, on a proprietary basis, all of lessee's information and documentation regarding sales, costs of production, and ore prices, for all gilsonite mined under this lease.

R850-20-1100. Rental Credit.

The rental paid for the lease year shall be credited only against the production royalties as they accrue for that lease year.

R850-20-1200. Record of Application and Deficient Applications.

Applications for mineral leases, except in the case of simultaneous filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received, whether by U.S. Mail or by personal delivery over the counter, are immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., of that day. In the same manner, all applications received in the first delivery of the U.S. Mail of each business day is stamped received as of 8 a.m., of that day. The time indicated on the time stamp is deemed the time of filing unless the agency director shall determine that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it is returned to the applicant with instructions for its amendment or completion.

If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

R850-20-1300. Order of Filing Conflict.

Except in cases of simultaneous filing, in the event that two or more applications for the same land bear

a time stamp showing the said applications were filed at the same time, then the agency shall determine which applicant is awarded a lease by public drawing.

R850-20-1500. Minimum Bid/Simultaneous Filing.

The bid shall at least equal the rental rate for the substance to be leased and shall be the rental for the first year of the lease.

R850-20-1600. Posting Dates/Simultaneous Filing.

Notices of the offering of lands for simultaneous filing will run for 15 working days and are posted at times to insure that all bid openings are on the last Monday of that month.

R850-20-1700. Sealed Envelopes/Simultaneous Filing.

Applications shall be submitted in sealed envelopes marked for simultaneous filing.

R850-20-1800. Application Refund.

If application, or any part thereof, is rejected, money tendered for rental or rejected portion may be refunded or credited.

R850-20-1900. Application Withdrawal.

Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after approval, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the trust, unless otherwise ordered by the board for good cause shown.

R850-20-2000. Application Withdrawal Under Simultaneous Filing.

Applicants desiring to withdraw an application which has been filed under the simultaneous filing rules, must make a written request. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after sealed bids for rental have been opened, and if the applicant's rental offer is high, then unless the applicant accepts the offered lease, all money tendered is forfeited to the Trust Lands Administration, unless otherwise ordered by the board for good cause shown.

R850-20-2100. Failure of Trust's Title.

Should it be found necessary to reject an application or to terminate an existing lease, excepting applications or leases approved through simultaneous leasing procedure, due to failure of trust's land title, then only advance rental paid for the year in which title failure is discovered is refunded. All other advance rentals and fees paid on the application or lease are forfeited to the Trust Lands Administration.

R850-20-2200. Lease Provisions.

In order to affect the purposes of development of mineral resources owned by the Trust Lands Administration, the following provisions, terms and conditions shall apply to all mineral lessees/leases:

1. Preference Rights for Unleased Minerals—Any mineral lessee who discovers any minerals on lands leased from the Trust Lands Administration which are not included within his lease shall have a preference right to a mineral lease covering these unleased

Tab B

OCTOBER 4, 2001 LEASE OFFERING
(With bids to be opened October 29, 2001)

STATE OF UTAH
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
675 EAST 500 SOUTH
SUITE 500
SALT LAKE CITY, UT 84102-2818
(801) 538-5100

The Oil, Gas, and Hydrocarbon leases on the lands listed below have been terminated. These lands are hereby offered for Oil, Gas, and Hydrocarbon lease by simultaneous filing by the State of Utah, School and Institutional Trust Lands Administration, at a 12½% royalty rate, in accordance with provisions of State law and Rules Governing the Management and Use of Trust Lands in Utah. The offering of these lands for leasing of Oil, Gas, and Hydrocarbon does not guarantee that there are deposits of Oil, Gas, and Hydrocarbon on these lands. The filing period ends at 5:00 p.m., Friday, October 26, 2001. Each application must be on the form provided by the School and Institutional Trust Lands Administration, or copies thereof, and must be accompanied by two checks, one for the bid and one in the amount of \$30.00 for the application fee (all application fees are forfeited to the Trust Lands Administration). The minimum bid will be \$1.00 per acre or fractional part thereof unless otherwise noted. The bid will be for the first year of the lease. Each application must be submitted in a sealed envelope marked: "Sealed bid for simultaneous filing on leasing Unit No. _____ being offered for Oil, Gas, and Hydrocarbon leasing. Bids to be opened at 10:00 a.m., Monday, October 29, 2001, at the School and Institutional Trust Lands Administration Office, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818." No bid will be accepted unless it includes all of the lands offered in a particular leasing unit. The bid checks of all unsuccessful applicants will be returned to the applicant.

<u>Leasing Unit No.</u>	<u>Description</u>	<u>County/Acres</u>
1	<u>T8N, R6E, SLB&M.</u> Sec. 2: Lots 1, 2, 3, 4, S½N½, S½ (All)	Rich 630.40 acres
2	<u>T8N, R6E, SLB&M.</u> Sec. 12: SE½NE½	Rich 40.00 acres
3	<u>T8N, R6E, SLB&M.</u>	Rich

	Sec. 16: All	680.00 acres
	Sec. 18: NE $\frac{1}{4}$ NE $\frac{1}{4}$	
4	<u>T8N, R6E, SLB&M.</u> Sec. 24 NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	Rich 80.00 acres
5	<u>T8N, R6E, SLB&M.</u> Sec. 32: Lots 1,2,3,4,N $\frac{1}{2}$ S $\frac{1}{2}$,N $\frac{1}{2}$ (All)	Rich 630.00 acres
6	<u>T9N, R5E, SLB&M.</u> Sec. 36: Tract 47	Rich 586.85 acres
7	<u>T9N, R6E, SLB&M.</u> Sec. 2: Lots 1,2,3,4,S $\frac{1}{2}$ N $\frac{1}{2}$,S $\frac{1}{2}$ (All)	Rich 678.72 acres
8	<u>T9N, R6E, SLB&M.</u> Sec. 16: All	Rich 640.00 acres
9	<u>T9N, R6E, SLB&M.</u> Sec. 32: All	Rich 640.00 acres
10	<u>T9N, R6E, SLB&M.</u> Sec. 36: All	Rich 640.00 acres
11	<u>T10N, R6E, SLB&M.</u> Sec. 1: SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 2: Lots 1,2,3,4,S $\frac{1}{2}$ NE $\frac{1}{4}$,SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$	Rich 646.02 acres
12	<u>T10N, R6E, SLB&M.</u> Sec. 16: NW $\frac{1}{4}$ NE $\frac{1}{4}$,SE $\frac{1}{4}$,S $\frac{1}{2}$ SW $\frac{1}{4}$,N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 17: N $\frac{1}{2}$ SE $\frac{1}{4}$,SW $\frac{1}{4}$ SE $\frac{1}{4}$,SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 20: NW $\frac{1}{4}$ NE $\frac{1}{4}$,N $\frac{1}{2}$ NW $\frac{1}{4}$,SW $\frac{1}{4}$ NW $\frac{1}{4}$	Rich 680.00 acres
13	<u>T10N, R6E, SLB&M.</u> Sec. 32: All	Rich 640.00 acres
14	<u>T10N, R6E, SLB&M.</u> Sec. 36: All	Rich 640.00 acres
15	<u>T11N, R7E, SLB&M.</u> Sec. 2: SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 16: NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 17: SW $\frac{1}{4}$ NE $\frac{1}{4}$,SE $\frac{1}{4}$ NW $\frac{1}{4}$	Rich 160.00 acres
16	<u>T11N, R7E, SLB&M.</u>	Rich

	Sec. 36: Lots 4,9,10,11,13,14, 15,16,17,18,19,20,21, 22,23,24,25	498.75 acres
17	<u>T11N, R8E, SLB&M.</u> Sec. 16: Lots 1,2,3,4,W $\frac{1}{2}$ W $\frac{1}{2}$	Rich 207.08 acres
18	<u>T11N, R8E, SLB&M.</u> Sec. 32: All Sec. 33: SW $\frac{1}{4}$ NW $\frac{1}{4}$	Rich 680.00 acres
19	<u>T12N, R7E, SLB&M.</u> Sec. 2: Lots 1,2,3,4,S $\frac{1}{2}$ (All) Sec. 4: Lot 4 Sec. 5: NE $\frac{1}{4}$ SE $\frac{1}{4}$	Rich 475.13 acres
20	<u>T12N, R7E, SLB&M.</u> Sec. 16: All Sec. 18: NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 19: Lot 3,SE $\frac{1}{4}$ SW $\frac{1}{4}$,NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 20: NE $\frac{1}{4}$ NW $\frac{1}{4}$,NE $\frac{1}{4}$ SW $\frac{1}{4}$	Rich 872.76 acres
21	<u>T12N, R8E, SLB&M.</u> Sec. 32: Lots 7,11,12,13,14,15, 16,17,18,19,20,21,SE $\frac{1}{4}$ NW $\frac{1}{4}$	Rich 303.33 acres
22	<u>T13N, R7E, SLB&M.</u> Sec. 36: All	Rich 640.00 acres
23	<u>T11S, R9E, SLB&M.</u> Sec. 16: All Sec. 22: NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 23: SW $\frac{1}{4}$ NE $\frac{1}{4}$,SE $\frac{1}{4}$ SW $\frac{1}{4}$,W $\frac{1}{2}$ SW $\frac{1}{4}$,SW $\frac{1}{4}$ NW $\frac{1}{4}$	Duchesne 880.00 acres
24	<u>T11S, R10E, SLB&M.</u> Sec. 12: NE $\frac{1}{4}$ SE $\frac{1}{4}$,SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 13: SE $\frac{1}{4}$ SE $\frac{1}{4}$,SW $\frac{1}{4}$ NE $\frac{1}{4}$,NE $\frac{1}{4}$ NW $\frac{1}{4}$,NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 14: NE $\frac{1}{4}$ NE $\frac{1}{4}$	Duchesne 280.00 acres
25	<u>T11S, R10E, SLB&M.</u> Sec. 15: SE $\frac{1}{4}$ NE $\frac{1}{4}$,NE $\frac{1}{4}$ SW $\frac{1}{4}$,NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 16: All	Duchesne 760.00 acres
26	<u>T11S, T10E, SLB&M.</u> Sec. 19: Lot 3,NE $\frac{1}{4}$ SE $\frac{1}{4}$,NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 20: NW $\frac{1}{4}$ SE $\frac{1}{4}$,SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 21: NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 28: SE $\frac{1}{4}$ NE $\frac{1}{4}$,SE $\frac{1}{4}$ SW $\frac{1}{4}$,NE $\frac{1}{4}$ NW $\frac{1}{4}$	Duchesne 561.70 acres

Sec. 29: NE $\frac{1}{4}$ NE $\frac{1}{4}$
 Sec. 30: NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

27	<u>T11S, R10E, SLB&M.</u> Sec. 22: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 23: NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$	Duchesne 600.00 acres
28	<u>T11S, R10E, SLB&M.</u> Sec. 25: E $\frac{1}{2}$ E $\frac{1}{2}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26: NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ Sec. 27: E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$	Duchesne 600.00 acres
29	<u>T11S, R10E, SLB&M.</u> Sec. 35: Lots 2, 3, 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$	Duchesne 232.50 acres
30	<u>T11S, R10E, SLB&M.</u> Sec. 36: Lots 1, 2, 3, 4, N $\frac{1}{2}$ S $\frac{1}{2}$, N $\frac{1}{2}$ (All)	Duchesne 636.00 acres

LEASING UNIT NO'S. 31 THRU 35 CONTAINS ACREAGE WITHIN AN EXISTING BUREAU OF LAND MANAGEMENT ("BLM") WILDERNESS STUDY AREA ("WSA") OR AN AREA PROPOSED FOR A WSA DESIGNATION BY BLM. A FEDERAL JUDICIAL DECISION PROVIDES THAT REASONABLE ACCESS TO STATE TRUST LANDS WITHIN WSA'S MUST BE GRANTED BY THE BLM; HOWEVER, THE SUCCESSFUL LESSEE WILL BE REQUIRED TO APPLY FOR AND OBTAIN THE APPROPRIATE EASEMENTS FROM THE BLM AT ITS EXPENSE. ADDITIONALLY, THE SUCCESSFUL LESSEE SHOULD BE AWARE THAT THE TRUST LANDS ADMINISTRATION WILL NOT CONSENT TO LEASE TERM OR ANNUAL RENTAL SUSPENSIONS ON LEASE WHOLLY OR PARTIALLY WITHIN EXISTING OR PROPOSED WSA'S ON ACCOUNT OF RESTRICTIONS PLACED UPON ACCESS OR AVAILABILITY OF SURROUNDING BLM LANDS FOR LEASING AND/OR OPERATIONS.

31	<u>T20S, R17E, SLB&M.</u> Sec. 16: All	Grand 640.00 acres
32	<u>T20S, R18E, SLB&M.</u> Sec. 32: Lots 1, 2, 3, 4 (All)	Grand 186.08 acres
33	<u>T20S, R18E, SLB&M.</u> Sec. 36: All	Grand 640.00 acres
34	<u>T20$\frac{1}{2}$S, R18E, SLB&M.</u> Sec. 32: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ (All)	Grand 674.08 acres
35	<u>T20$\frac{1}{2}$S, R18E, SLB&M.</u> Sec. 36: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ (All)	Grand 673.48 acres

36	<u>T24S, R13E, SLB&M.</u> Sec. 16: All	Emery 640.00 acres
37	<u>T24S, R13E, SLB&M.</u> Sec. 36: All	Emery 640.00 acres
38	<u>T24S, R14E, SLB&M.</u> Sec. 32: All	Emery 640.00 acres
39	<u>T24S, R14E, SLB&M.</u> Sec. 36: All	Emery 640.00 acres
40	<u>T25S, R13E, SLB&M.</u> Sec. 2: Lots 1,2,3,4,5,6,7,8, S½N½,S½ (All)	Emery 690.00 acres
41	<u>T25S, R14E, SLB&M.</u> Sec. 2: Lots 1,2,3,4,5,6,7,8, S½N½,S½ (All)	Emery 694.20 acres
42	<u>T25S, R14E, SLB&M.</u> Sec. 16: All	Emery 640.00 acres
43	<u>T25S, R14E, SLB&M.</u> Sec. 36: All	Emery 640.00 acres
44	<u>T25S, R15E, SLB&M.</u> Sec. 16: All	Emery 640.00 acres
45	<u>T25S, R15E, SLB&M.</u> Sec. 32: All	Emery 640.00 acres
46	<u>T25S, R15E, SLB&M.</u> Sec. 36: All	Emery 640.00 acres
47	<u>T25S, R16E, SLB&M.</u> Sec. 32: All	Emery 640.00 acres
48	<u>T25S, R16E, SLB&M.</u> Sec. 36: All	Emery 640.00 acres
49	<u>T26S, R15E, SLB&M.</u> Sec. 2: Lots 1,2,3,4,S½N½,S½ (All)	Emery 595.08 acres
50	<u>T26S, R16E, SLB&M.</u> Sec. 2: Lots 1,2,3,4,S½N½,S½ (All)	Emery 596.32 acres

51	<u>T26S, R16E, SLB&M.</u> Sec. 16: All	Emery 640.00 acres
52	<u>T26S, R16E, SLB&M.</u> Sec. 32: All	Emery 640.00 acres
53	<u>T26S, R16E, SLB&M.</u> Sec. 36: All	Emery 640.00 acres
54	<u>T26S, R17E, SLB&M.</u> Sec. 16: SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 32. W $\frac{1}{2}$ W $\frac{1}{2}$	Emery 200.00 acres
55	<u>T35S, R21E, SLB&M.</u> Sec. 32: S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$	San Juan 120.00 acres
56	<u>T35S, R21E, SLB&M.</u> Sec. 36: All	San Juan 640.00 acres
57	<u>T35S, R22E, SLB&M.</u> Sec. 32: N $\frac{1}{2}$	San Juan 320.00 acres
58	<u>T35S, R22E, SLB&M.</u> Sec. 36: SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$	San Juan 480.00 acres
59	<u>T36S, R20E, SLB&M.</u> Sec. 36: All	San Juan 640.00 acres
60	<u>T36S, R21E, SLB&M.</u> Sec. 2: Lots 1, 2, 3, 4, S $\frac{1}{2}$ S $\frac{1}{2}$ (All)	San Juan 250.00 acres
61	<u>T36S, R21E, SLB&M.</u> Sec. 16: All	San Juan 640.00 acres
62	<u>T36S, R21E, SLB&M.</u> Sec. 32: E $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$	San Juan 400.00 acres
63	<u>T36S, R22E, SLB&M.</u> Sec. 10: SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 11: SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, also, beg at a pt 12 ft S from the NE cor of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, th S 72 Δ 00'W 1106 ft; th S 18 Δ 50'W 267 ft; th N 85 Δ W 910 ft; th N 377 ft; th S 77 Δ 06'W 572 ft; th N 5 Δ 00'E 279 ft; th W 1335 ft; th S 1320 ft; th E 1320 ft; th S 1526 ft; th N 86 Δ 30'E 602 ft; th N 85 Δ 23'E 617 ft; th S 30 Δ 55' E 181 ft; th S 33 Δ 15'E 265 ft; th S 40 Δ 46'E 121 ft; th S 43 Δ 50'E 255	San Juan 570.90 acres

ft;th S85A55'E 657 ft;th S 33A05'E 504
ft;th N3898.6 ft to pob.

Sec. 12: NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$

Sec. 15: SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$

64	<u>T37S, R19E, SLB&M.</u> Sec. 36: All	San Juan 640.00 acres
65	<u>T37S, R20E, SLB&M.</u> Sec. 2: Lots 1,2,3,4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ (All)	San Juan 640.40 acres
66	<u>T37S, R20E, SLB&M.</u> Sec. 16: All	San Juan 640.00 acres
67	<u>T37S, R20E, SLB&M.</u> Sec. 32: All	San Juan 640.00 acres
68	<u>T37S, R20E, SLB&M.</u> Sec. 36: All	San Juan 640 00 acres
69	<u>T37S, R21E, SLB&M.</u> Sec. 16: All	San Juan 640.00 acres
70	<u>T39S, R6W, SLB&M.</u> Sec. 2: S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 3: Lots 1,2,3	Kane 324.77 acres
71	<u>T39S, R6W, SLB&M.</u> Sec. 16: E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$	Kane 480.00 acres
72	<u>T39S, R6W, SLB&M.</u> Sec. 28: SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 33: SW $\frac{1}{4}$ SE $\frac{1}{4}$	Kane 80.00 acres
73	<u>T39S, R6W, SLB&M.</u> Sec. 36: All	Kane 640.00 acres
74	<u>T39S, R7W, SLB&M.</u> Sec. 22: SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36: E $\frac{1}{2}$ NW $\frac{1}{4}$	Kane 160.00 acres
75	<u>T39S, R7W, SLB&M.</u> Sec. 29: SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 30: NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 32: E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	Kane 640.00 acres

76	<u>T39S, R7W, SLB&M.</u> Sec. 31: Lots 1, 2, 3, 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$	Kane 480.00 acres
77	<u>T39S, R8W, SLB&M.</u> Sec. 2: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ (All)	Kane 625.40 acres
78	<u>T39S, R9W, SLB&M.</u> Sec. 1: Lot 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 10: E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 11 NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 12 NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 14: NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$	Kane 518.68 acres
79	<u>T39S, R9W, SLB&M.</u> Sec. 4: SE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 5: S $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 6: Lot 1 Sec. 7: Lot 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$	Kane 475.82 acres
80	<u>T39S, R9W, SLB&M.</u> Sec. 8: All	Kane 640.00 acres
81	<u>T39S, R9W, SLB&M.</u> Sec. 9: All	Kane 640.00 acres
82	<u>T39S, R9W, SLB&M.</u> Sec. 16: All	Kane 640.00 acres
83	<u>T39S, R9W, SLB&M.</u> Sec. 17: S $\frac{1}{2}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 18: N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 19: S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 20: N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$	Kane 840.00 acres
84	<u>T39S, R9W, SLB&M.</u> Sec. 22: NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24: N $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 25: E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 27: SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 33: E $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 34: SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$	Kane 640.00 acres
85	<u>T40S, R7W, SLB&M.</u> Sec. 2: Lot 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$	Kane 281.76 acres

86	<u>T40S, R7W, SLB&M.</u> Sec. 5: Lots 2,3,4,6,7,SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$,E $\frac{1}{2}$ SW $\frac{1}{4}$,NW $\frac{1}{4}$ SW $\frac{1}{4}$,S $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 6: All	Kane 1287.82 acres
87	<u>T40S, R7W, SLB&M.</u> Sec. 7: All Sec. 8: All	Kane 1378.08 acres
88	<u>T40S, R7W, SLB&M.</u> Sec. 14: SW $\frac{1}{4}$ Sec. 15: All Sec. 23: SW $\frac{1}{4}$ SW $\frac{1}{4}$,N $\frac{1}{2}$ NW $\frac{1}{4}$	Kane 921.96 acres
89	<u>T40S, R7W, SLB&M.</u> Sec. 16: All	Kane 630.20 acres
90	<u>T40S, R7W, SLB&M.</u> Sec. 17: All Sec. 18: All	Kane 1362.69 acres
91	<u>T40S, R7W, SLB&M.</u> Sec. 25: E $\frac{1}{2}$ SE $\frac{1}{4}$,SW $\frac{1}{4}$ SE $\frac{1}{4}$,SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 26: SE $\frac{1}{4}$ NE $\frac{1}{4}$,NE $\frac{1}{4}$ SE $\frac{1}{4}$,NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 27: Lots 1,2,3,4,W $\frac{1}{2}$ SE $\frac{1}{4}$,W $\frac{1}{2}$	Kane 838.98 acres
92	<u>T40S, R7W, SLB&M.</u> Sec. 30: Lots 1,4,5,8,E $\frac{1}{2}$,E $\frac{1}{2}$ W $\frac{1}{2}$ Sec. 31: All	Kane 1435.35 acres
93	<u>T40S, R7W, SLB&M.</u> Sec. 32: All Sec. 33: All Sec. 34: NW $\frac{1}{4}$ SE $\frac{1}{4}$,N $\frac{1}{2}$ NW $\frac{1}{4}$,SW $\frac{1}{4}$ NW $\frac{1}{4}$	Kane 1483.30 acres
94	<u>T40S, R8W, SLB&M.</u> Sec. 1: Lots 1,2,3,5,7,8,SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$,SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12: Lots 1,2,3,4,W $\frac{1}{2}$ E $\frac{1}{2}$ Sec. 13: Lots 1,2,3,4,W $\frac{1}{2}$ E $\frac{1}{2}$ Sec. 24: NE $\frac{1}{4}$ NE $\frac{1}{4}$	Kane 1120.51 acres
95	<u>T40S, R8W, SLB&M.</u> Sec. 3: SW $\frac{1}{4}$,SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4: Lot 4 Sec. 5: Lots 1,2,3 Sec. 7: NW $\frac{1}{4}$ SE $\frac{1}{4}$	Kane 666.56 acres

Sec. 8: SW $\frac{1}{4}$ SE $\frac{1}{4}$
 Sec. 9: SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$
 Sec. 10: NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Sec. 17: NW $\frac{1}{4}$ NW $\frac{1}{4}$

96	<u>T40S, R8W, SLB&M.</u>	Kane
	Sec. 19: Lots 2,3,4, SE $\frac{1}{4}$	737.01 acres
	Sec. 20: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$	
	Sec. 29: NW $\frac{1}{4}$ SW $\frac{1}{4}$	
	Sec. 30: E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$	
	Sec. 31: Lots 3,4	
	Sec. 32: S $\frac{1}{2}$ SE $\frac{1}{4}$	
97	<u>T40S, T8W, SLB&M.</u>	Kane
	Sec. 36: All	640.00 acres

**For further information, contact Trust Lands Administration minerals specialist
 Ed Bonner at 801-538-5100.**

Tab C



State of Utah

School and Institutional
TRUST LANDS ADMINISTRATION

Michael O. Leavitt
Governor

Stephen G. Boyden
Director

675 East 500 South, Suite 500
Salt Lake City, Utah 84102-2818
801-538-5100
801-355-0922 (Fax)
<http://www.trustlands.com>

November 15, 2001

Certified Mail No. 7000 1530 0002 1502 7962

Mr. J. Craig Smith
Nielsen & Senior
60 East South Temple, Suite 1100
Salt Lake City, Utah 84111-1019

Re: Mountain Top Leasing, LLC Mineral Lease Applications

Dear Craig:

LaVonne Garrison of the School and Institutional Trust Lands Administration (the "Trust Lands Administration") has referred your letter concerning the above-referenced matter, dated October 30, 2001, to me for response. I have reviewed your letter, the three disputed lease applications, and our agency's administrative rules, and concur in Ms. Garrison's conclusion that the referenced lease applications are defective and cannot be accepted. This letter represents a final agency action for the purposes of administrative review of the agency's decision.

The three lease applications in dispute were submitted by Mountain Top Leasing, LLC ("Mountain Top") for the Trust Lands Administration's October 29, 2001 simultaneous lease auction. The applications were for, respectively: (1) Units 70 and 86; (2) Units 75, 76 and 85; and (3) Units 87, 88, 89, & 90. Each of the three applications was accompanied by a single \$30 application fee and a single bid check for bonus and first year rental. Two of the applications sought leases for lands in more than one township, and the third application sought a lease for 4292.93 acres.

The Trust Lands Administration's mineral leasing rules provide: "A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township." Utah Admin. Code R850-20-700. Two of the three applications comply with this rule. Utah Admin. Code R850-20-900 limits the size of mineral leases to 2,560 acres. The third application, if accepted, would create a lease larger than the maximum size permitted by rule.

The Trust Lands Administration's lease application form specifically provides that it is an application for "an" oil and gas lease for "the following described tract of land". The use of the singular indicates that each application is to be for one lease, not multiple leases. There is a practical reason for this requirement. If a competing bidder bid higher on one but not all tracts listed in the application, it would force the Trust Lands Administration to allocate the single bid

Mr. J. Craig Smith
November 15, 2001
Page -2-

amount among different units, and to cash the single bid check, retain some funds, and return the balance. We believe that allowing the inclusion of multiple lease units in a single application, with a single bid check, creates a likelihood of confusion in the lease auction process that would be detrimental to industry and public confidence in the integrity of the leasing process.

In the case of Mountain Top's applications, this confusion would be exacerbated by the fact that the checks submitted do not match the amounts that would be required to be submitted to equal the per acre bid amounts noted on the bottom of each application. In two cases, this is because Mountain Top based its proposed rental payment on actual fractional acreage, rather than rounding up as required by the application form, and in the case of the application for Units 75, 76 and 85, because it understated the acreage for Unit 85.

Your letter indicates Mountain Top's belief that it should be able to correct its deficient applications pursuant to Utah Admin. Code R850-20-1200. However, this rule applies by its terms only to "over the counter" lease applications, not lease applications submitted in connection with the simultaneous lease auction process. In addition, the Trust Lands Administration believes that allowing bidders in a sealed bid auction to modify their applications after bid opening on the basis of "mistake" could create significant questions about the integrity of the auction process.

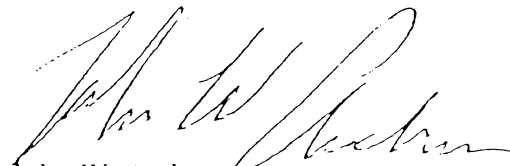
The Trust Lands Administration recognizes that Mountain Top submitted higher bids than the other bidders, and we understand our general duty to maximize revenue to the trust beneficiaries. However, we also have the specific statutory duty to accept lease applications only if they are submitted in the required manner. Utah Code Ann. § 53C-2-407(3)(c). More importantly, we believe that maintaining the integrity of the lease auction process is the best way of maximizing long term revenue, even if high bids in a particular auction are disqualified for procedural reasons, as here. We also note that Ed Bonner of the Trust Lands Administration's minerals group recollects that on several occasions in the past, he specifically informed Mountain Top's representatives that a separate application must be filed for each lease. While we regret Mountain Top's apparent confusion about the correct application process, we believe it could have been avoided had the company been more attentive to the proper procedure in submitting its bids.

I am returning herewith Mountain Top's bid checks, and the additional \$180 check your firm submitted in an attempt to cure the deficient applications. The three original \$30.00 application fee checks have been retained by the Trust Lands Administration in accordance with existing rules.

Mr. J. Craig Smith
November 15, 2001
Page -3-

This Record of Decision constitutes final agency action pursuant to Utah Code Ann. § 53C-1-304 and Utah Administrative Code R850-8. Any party wishing to appeal this decision must file a written petition in the form required by Utah Administrative Code R850-8-1000 with the Director of the Trust Lands Administration within 14 days of the mailing date of this Record of Decision. IN THE EVENT A PETITION IS NOT FILED IN THE OFFICE OF THE DIRECTOR WITHIN THE 14 DAY TIME PERIOD (EXPIRING NOVEMBER 29, 2001). THIS RECORD OF DECISION WILL BECOME FINAL AND UNAPPEALABLE.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John W. Andrews", written over a horizontal line.

John W. Andrews
General Counsel

Enclosures

cc: Stephen G. Boyden
Kevin S. Carter
LaVonne Garrison
Effie Burns



State of Utah

School and Institutional
TRUST LANDS ADMINISTRATION

Michael O. Leavitt
Governor

Stephen G. Boyden
Director

675 East 500 South Suite 500
Salt Lake City Utah 84102 2818
801 538 5100
801 355 0922 (Fax)
<http://www.trustlands.com>

December 20, 2001

Mr. J. Craig Smith
Nielsen & Senior
60 East South Temple, Suite 1100
Salt Lake City, Utah 84111

Re Mountain Top Leasing, LLC Mineral Lease Applications

Dear Craig,

This letter is intended to correct a significant typographical error in the School and Institutional Trust Lands Administration's decision letter dated November 15, 2001 concerning the above referenced lease applications. The third paragraph of that letter stated:

The Trust Lands Administration's mineral leasing rules provide "A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township." Utah Admin. Code R850-20-700. Two of the three applications comply with this rule. Utah Admin. Code R850-20-900 limits the size of mineral leases to 2,560 acres. The third application, if accepted, would create a lease larger than the maximum size permitted by rule.

With respect to the second sentence, in fact, two of the three lease applications do not comply with the stated rule (R850-20-700) because they request lease of lands in multiple townships. The paragraph should instead read as follows:

The Trust Lands Administration's mineral leasing rules provide "A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township." Utah Admin. Code R850-20-700. Two of the three applications **fail to** comply with this rule. Utah Admin. Code R850-20-900 limits the size of mineral leases to 2,560 acres. The third application, if accepted, would create a lease larger than the maximum size permitted by rule.


I apologize for any confusion that this error may have caused. In light of the Trust Lands Administration's Board of Trustees decision to hear this matter as a formal adjudication, I believe that there will not be any prejudice to any of the parties by making this correction at this time.

Mr J Craig Smith
December 20, 2001
Page -2-

On a procedural note, I have assigned defense of this matter to Justin Quigley of this office. Please direct all further communications to him, although I will be available in his absence. Justin's direct phone line is 538-5142.

Best wishes over the holiday season to you and your family.

Sincerely yours,



John W. Andrews
General Counsel

cc: Lynda Belnap (Board File)
Dawn J. Soper (Board Counsel)
Justin J. Quigley
Angela Franklin

Tab D

BEFORE THE BOARD OF TRUSTEES
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
STATE OF UTAH

In the Matter of the Formal Adjudicative)	
Proceeding Concerning a Challenge by)	
Mountain Top Leasing, LLC, to the)	ORDER RE: CROSS-MOTIONS
Denial of its Lease Applications for)	FOR SUMMARY JUDGMENT
Lease Unit Nos. 70, 75, 76, 85, 86, 87,)	
88, 89 and 90)	

This matter is before the Board of Trustees of the State of Utah, School and Institutional Trust Lands Administration (the "Board") on cross motions for summary judgment filed by petitioner Mountain Top Leasing, LLC ("Mountain Top"), respondent Billy Jim Palone ("Palone"), and the State of Utah, School and Institutional Trust Lands Administration (the "Trust Lands Administration"). All parties timely filed opposing and responsive memoranda and were represented by counsel at oral argument held on May 17, 2002. J. Craig Smith and Scott M. Ellsworth represented Mountain Top. Shawn T. Welch represented Palone, and Justin J. Quigley appeared on behalf of the Trust Lands Administration.

The Hearing Examiner appointed by the Board, John A. Harja, heard the matter on its behalf and reviewed the memoranda in their entirety. The Board, having been fully advised, adopted this Order Re: Cross-Motions for Summary Judgment on October 9, 2002.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On or about October 4, 2001, the Trust Lands Administration published its October 4, 2001 Lease Offering designating 97 separate leasing units to be offered for "Oil, Gas, and Hydrocarbon lease by simultaneous filing . . ." (the "Lease Offering").
2. The Lease Offering required each application to "be accompanied by two checks, one for the bid and one in the amount of \$30.00 for the application fee." (Emphasis in original).
3. The Lease Offering further required:

The minimum bid will be \$1.00 per acre or fractional part thereof unless otherwise noted. The bid will be for the first year of the lease. Each application must be submitted in a sealed envelope marked: "Sealed bid for simultaneous filing on leasing Unit No. _____ being offered for Oil, Gas, and Hydrocarbon leasing. Bids to be opened at 10:00 a.m., Monday, October 29, 2001, at the School and Institutional Trust Lands Administration Office, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818." No bid will be accepted unless it includes all of the lands offered in a particular leasing unit. The bid checks of unsuccessful applicants will be returned to the applicant.

4. The Lease Offering required the sealed envelopes to be filed at the Trust Lands Administration office by 5:00 p.m., Friday, October 26, 2001.
5. Prior to October 26, 2001, Mountain Top filed three envelopes with the Trust Lands Administration. Each of the envelopes submitted by Mountain Top contained one application form:
 - a. The application form in the first envelope pertained to Leasing Units Nos. 70 and 86 (designated "Application Form 1" by the Board for reference purposes);

- b. The application form in the second envelope pertained to Leasing Units Nos. 75, 76, and 85 (designated "Application Form 2" by the Board for reference purposes); and
 - c. The application form in the third envelope pertained to Leasing Units Nos. 87, 88, 89 and 90 (designated "Application Form 3" by the Board for reference purposes).¹
6. The two Leasing Units on Application Form 1 are located in different townships. Leasing Unit No. 70 lies in Township 39 South, Range 6 West, while Leasing Unit No. 86 lies in Township 40 South, Range 7 West both in Salt Lake Base & Meridian (as are all references to locations hereafter).
7. The three Leasing Units on Application Form 2 are located in two different townships. Leasing Units Nos. 75 and 76 lie in Township 39 South, Range 7 West. Leasing Unit No. 85 is located in Township 40 South, Range 7 West.
8. The four Leasing Units comprising Application Form 3 all lie within the same township. Leasing Units Nos. 87, 88, 89 and 90 are located in Township 40 South, Range 7 West.

¹ In its Opposition Memorandum, the Trust Lands Administration disputed these facts as set forth by Mountain Top. Mountain Top relied in part on the Trust Lands Administration's response to its Request for Admissions "at 5" in establishing these facts. The Trust Lands Administration interpreted "at 5" as a reference to its response number 5, which did not establish the above facts. Mountain Top clarified in its Reply Memorandum, however, that it intended the reference to direct the reader to *page 5*. The Board notes that the Trust Lands Administration's response to Mountain Top's Request for Admission No. 13, found on page 5, does admit the above facts and they are not otherwise disputed by Palone.

9. Two checks were enclosed with each of the Application Forms. Each of the Application Forms were accompanied by a \$30.00 application fee and a rental and bonus bid check as follows:
 - a. \$35,476.98 accompanied Application Form 1;
 - b. \$43,400.00 accompanied Application Form 2; and
 - c. \$68,686.88 accompanied Application Form 3.
10. Mountain Top's rental and bonus bids checks for the Leasing Units amounted to \$147,563.86.
11. Each of the Leasing Units contain the following acreages:
 - a. Leasing Unit No. 70– 324.77 acres;
 - b. Leasing Unit No. 75– 640.00 acres;
 - c. Leasing Unit No. 76– 480.00 acres;
 - d. Leasing Unit No. 85– 281.76 acres;
 - e. Leasing Unit No. 86– 1287.82 acres;
 - f. Leasing Unit No. 87– 1378.08 acres;
 - g. Leasing Unit No. 88– 921.96 acres;
 - h. Leasing Unit No. 89– 630.20 acres; and
 - i. Leasing Unit No. 90– 1362.69 acres.
12. The acreages comprising Leasing Units Nos. 87, 88, 89 and 90 add up to 4,292.93 acres.

13. Mountain Top did not “round up” the acreages in Application Forms 1 and 2 for purposes of calculating the rental. As a result, the amounts of the actual bonus bids (after subtracting \$1.00 per acre or fraction thereof from the rental and bonus bid check), did not calculate evenly to the penny. In one instance, Mountain Top also mis-stated the acreage. Because of this error, the bonus bid amounts actually submitted did not match the hand-written notation stating the “amount bid per acre” in the lower left hand corner of the Application Forms.
14. Prior to October 26, 2001, Palone submitted separate envelopes containing sealed bids for each of the above Leasing Units. Each sealed envelope contained one application form and pertained to one individual Leasing Unit. Each envelope was marked with the same Leasing Unit number written on the enclosed application form. Each envelope contained one \$30.00 application fee and one separate rental and bonus bid check.
15. Palone submitted a bonus bid \$8.27 per acre for each of the ing Units, for total bids as follows:
 - a. Leasing Unit No. 70– \$2,687.75;
 - b. Leasing Unit No. 75– \$5,292.80;
 - c. Leasing Unit No. 76– \$3,969.60;
 - d. Leasing Unit No. 85– \$2,332.14;
 - e. Leasing Unit No. 86– \$10,651.76;

- f. Leasing Unit No. 87– \$11,404.33;
 - g. Leasing Unit No. 88– \$7,624.94;
 - h. Leasing Unit No. 89– \$5,218.37; and
 - i. Leasing Unit No. 90– \$11,272.01.
16. Palone’s rental and bonus bid checks for the Leasing Units amounted to \$60,453.70.
17. Mountain Top’s total rental and bonus bid checks exceeded Palone’s by \$87,110.16.²
18. On October 29, 2001, the Trust Lands Administration opened Mountain Top’s and Palone’s sealed envelopes.
19. By letter dated November 15, 2001, as corrected on December 20, 2001, the Trust Lands Administration issued a final agency action (the “Record of Decision”) in which it rejected Mountain Top’s Application Forms 1, 2 and 3 for being defective.
20. The Trust Lands Administration made a determination that Palone’s bids were the highest bids submitted in the manner required.

² The Board recognizes there has been a vigorous dispute among the parties as to the characterization and intent of various mathematical computations. However, despite the claim of the Trust Lands Administration and Palone that these disputes preclude summary judgment, the Board has carefully reviewed the discovery filed in this case and finds the parties actually do agree upon the basic math, which is all that is relied upon here. Additionally, for purposes of these motions for summary judgment, the Board believes it is entitled to perform its own addition, subtraction, multiplication and division of otherwise undisputed check amounts and Lease Unit acreages. See Oil & Gas Futures Inc. of Texas v. Andrus, 610 F.2d 287 (5th Cir. 1980) (wherein the appeals court performs its own “grammar school” level mathematics in reaching its decision).

21. Mountain Top filed its Petition asking the Board to review the Trust Lands Administration's Record of Decision on November 29, 2001, as amended for mathematical corrections only, on April 2, 2002.

STANDARD OF REVIEW

Utah Rule of Civil Procedure 56(c) mandates that summary judgment shall be rendered if "there is no genuine issue as to any material fact and that the moving party is entitled judgment as a matter of law." The law governing the decision of the Board in this instance is found in Utah Code Ann. § 53C-1-304(4)(a), which provides, "[t]he 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." At all times, the over-riding statutes the Board will consider are Utah Code Ann. §§ 53C-1-102 and 53C-1-302 requiring the Trust Lands Administration and, specifically, its director, to exercise discretion in the manner that is in the best interest of the trust beneficiaries.

DISCUSSION

UTAH ADMIN. CODE RULE R850-20-700

Mountain Top, Palone and the Trust Lands Administration each argue Utah Admin. Code Rule R850-20-700 ("Rule 850-20-700") calls for a ruling in their favor as a matter of law. Rule 850-20-700 provides:

R850-20-700. Non-Contiguous Tracts.

A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township.

The plain language of this rule requires applicants to file separate applications for each tract of land sought to be leased, unless the tracts are contiguous or fall entirely within a single township. Put the opposite way, separate applications are not required under this rule if the tracts of land sought to be leased are contiguous or fall entirely within the same township.

It is undisputed that all four of the Leasing Units appearing on Application Form 3 lie in the same township, which is Township 40 South. Accordingly, Application Form 3 has not been, and cannot be, rejected on the basis of Rule 850-20-700.

There is also no real dispute over whether Application Forms 1 and 2 violate this rule. All parties must, and do, acknowledge that different townships are included on those Application Forms. Application Form 1 contains two Leasing Units, one of which is located in Township 39 South while the other is located in Township 40 South. Application Form 2 contains three Leasing Units, two of which are in Township 39 South with the third being located in Township 40 South.

Where the parties differ is in their view of what measures should be taken in response to this violation. The Trust Lands Administration and Palone argue Application Forms 1 and 2 and all of the bids thereon must be stricken in their entirety. Mountain Top, on the other hand, believes that the Trust Lands Administration should consider each bid in the order in which it appears on the Application until a bid is reached where the township differs from the preceding bids. Mountain Top argues that first offending bid and any bids appearing after it should be

stricken. Mountain Top also states it would be fair to allocate the bonus bid portion of the rental and bonus bid check equally on a per acre basis among all of the bids on the Applications, whether accepted or rejected, and then refund any portion attributed to a rejected bid.

Mountain Top argues Utah Admin. Code Rule R850-20-1800 ("Rule 850-20-1800") mandates such an approach. Rule 850-20-1800 provides:

R850-20-1800. Application Refund.

If application, or any part thereof, is rejected, money tendered for rental or rejected portion may be refunded or credited.

This rule has no effect, however, on how violations of Rule 850-20-700 should be addressed. While the rule allows for partial refunds of applications, it does not direct the Trust Lands Administration to exercise its discretion in any particular way. The rule certainly does not, as Mountain Top argues, *require* the Trust Lands Administration to remedy Mountain Top's deficient Applications in the manner suggested.

The Trust Lands Administration has made a reasoned determination that maintaining the integrity of the simultaneous bid procedure is essential to its long term revenue producing potential. In order to maintain this integrity, the Trust Lands Administration's simultaneous bid procedure must be perceived as predictable. While not controlling on the Trust Lands Administration, the importance of a similar process's integrity has also been recognized in the federal oil and gas simultaneous leasing process.

In Superior Oil Company v. Udall, 409 F.2d 1115 (D.C. Cir. 1969), the Department of the Interior published a Notice of Sale for the simultaneous bidding of oil and gas leases. The Notice

required bids to be filed pursuant to the regulations. The regulations and Notice of Sale required the bid for each tract to be in a separate sealed envelope. The Notice also prescribed that it be signed by an authorized officer.

When the sealed envelopes were opened, it became apparent that the high bidder failed to sign the bid. However, the Secretary accepted the bid because he determined the unsigned bid together with a signed letter from the high bidder constituted a conforming bid.

The D.C. Circuit rejected the Secretary's determination, holding instead:

[t]he requirement of steadfast compliance with competitive bidding procedures comports best with the need to promote the integrity of the bidding process. Although such a stance may entail some limitation on the Secretary's discretion, it seems clear that this is an indispensable ingredient to the maintenance of competitive bidding processes which will engender public confidence and that of persons dealing with the Government.

Id. at 1120.

The Court also cited the Comptroller General's unfavorable view toward post bid opening modifications, as follows:

the strict maintenance of the competitive bidding procedures required by law is infinitely more in the public interest than obtaining a pecuniary advantage in individual cases by permitting practices which do violence to the spirit and purpose of the law. Conditions or reservations which give a bidder a chance to second-guess his competitors after bid-opening must be regarded as fatal to the bid.

Id. at 1119 (citing 34 Comp.Gen. 82, 84, B-120436 (1954)).

The large degree of subjectivity that would be required of the Trust Lands Administration in making the kinds of determinations Mountain Top advocates would make the simultaneous

bidding procedure unworkable. The Trust Lands Administration would essentially be second-guessing the applicant, with the benefit of having the content of all the other simultaneously opened bids known to it. Unhappy applicants could challenge the Trust Lands Administration's determinations of which bids to accept and which ones to reject, particularly if, as Mountain Top suggests, the Trust Lands Administration reviewed bids in the order they appear and the applicant was not the high bidder on accepted bids and would have been the prevailing bidder on rejected bids. Unsuccessful applicants could also challenge these subjective determinations by claiming their bonus bids should have been allocated differently. Applicants who properly filled out their forms could also object. This level of unpredictability would erode public confidence in the Trust Lands Administration's simultaneous bidding process, ultimately harming its long term revenue potential.

The Board recognizes that in upholding the Trust Lands Administration's decision, it is sacrificing a short-term gain because Mountain Top's total bids on Application Forms 1 and 2 exceed Palone's total bids on the same Leasing Units. However, Utah law twice instructs the Trust Lands Administration to optimize trust land revenues consistent with the "balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains." Utah Code Ann. §§ 53C-1-102(2)(c) and 53C-1-302(2). The Trust Lands Administration has made the hard decision to forego an immediate gain in the long-term interests of its beneficiaries.

Such a determination does not violate applicable law, rule or policy. Accordingly, the Board upholds the decision of the Trust Lands Administration that Application Forms 1 and 2 violate Rule 850-20-700 and must be rejected in their entirety.

UTAH ADMIN. CODE RULE 850-20-900 and UTAH CODE ANN. § 53C-2-407(3)(c)

The Trust Lands Administration rejected Application Form 3, stating in its Record of Decision that Application Form 3 violated Utah Admin. Code Rule R850-20-900 ("Rule 850-20-900"). That Rule imposes a limitation on the number of acres or number of sections permitted to comprise a lease, as follows:

R850-20-900 Lease Acreage Limitations.

Mineral leases are limited to no more than 2,560.00 acres or four sections.

On Application Form 3, Mountain Top included four different leasing units. The four leasing units together amounted to 4,292.93 acres, well over the limit imposed by Rule 850-20-900. Separately, however, none of the leasing units exceeded 2,560.00 acres.

Mountain Top argues the rejection was improper and contends it lacks the authority to create an impermissibly large lease by including multiple leasing units on one lease application form. Mountain Top also claims the lease application form has been improperly elevated by the Trust Lands Administration to having force equivalent to statute or adopted rule, in violation of the Rule Making Act.

The Trust Lands Administration and Palone, on the other hand, argue that Application Form 3 did violate Rule 850-20-900 and the Trust Lands Administration has been granted

statutory authority to establish the lease application form and require compliance with it.

The Trust Lands Administration is clearly directed by statute to ensure that applicants have complied with the Trust Lands Administration's requirements. Utah Code Ann. § 53C-2-407(3)(c) states, "[l]eases shall be awarded to the highest responsible, qualified bidder, in terms of the bonus paid in addition to the first year's rental, who submitted a bid in the manner required." In other words, if the applicant did not submit a bid in the manner required, than a lease should not be awarded to it.

As part of the "manner required", the director of the Trust Lands Administration is statutorily empowered and directed to establish the form of a mineral lease application pursuant to Utah Code Ann. § 53C-2-403(1), which provides, "[t]he director shall establish the . . . form of a mineral lease application".

In response to this directive, the director has promulgated a rule *requiring* applicants to utilize forms developed by the Trust Lands Administration. Utah Admin. Code Rule R850-3-300 ("Rule 850-3-300") provides:

R850-3-300. Application Forms.

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

As a result, the Trust Lands Administration has developed a form specifically for oil, gas, and hydrocarbon lease applications. The form refers to "lease" in the singular three times on its face. It states: 1) it is an "Oil, Gas, and Hydrocarbon Lease"; 2) that "[a]pplicant hereby applies

for an Oil, Gas, and Hydrocarbon Lease”; and 3) that applicant deposits with the application some specified amount “to pay rental for the first year of the lease”.³ According to the Trust Lands Administration and Palone, the manner required by the Trust Lands Administration is, accordingly, that one lease is to be applied for on one lease application form.⁴

Mountain Top argues that if the application form may only be used to apply for one leasing unit, the form is invalid because it is inconsistent with the Trust Lands Administration’s rules and laws. Primarily, this inconsistency arises with Rule 850-20-700, which allows more than one lease to be applied for on a single form when the land is within the same township.

The Board acknowledges that Rule 850-20-700 may be inconsistent with the lease application form to the extent the rule allows more than one leasing unit to be applied for on a single application form under certain circumstances. However, Application Form 3 did not violate Rule 850-20-700 and that rule was not the reason Application Form 3 was rejected. The Board does not even have any evidence of what the Trust Lands Administration’s determination would be in a situation where Rules 850-20-700 and 850-20-900 were followed, yet more than

³ The Notice of Lease Offering reinforces the use of the singular form of “lease” and requires each application to be submitted in a sealed envelope marked “Sealed bid for simultaneous filing on leasing Unit No. _____ being offered for Oil, Gas, and Hydrocarbon leasing”.

⁴ The Board agrees with Mountain Top that the Trust Lands Administration’s intent in drafting the lease application form is irrelevant at this point. The Board agrees the issue of whether the law permits the inclusion on a single lease application form of bids for more than one lease unit is a purely legal question and accordingly, no factual ambiguity exists, which would preclude summary judgment.

one leasing unit was listed on a single lease application form. The question could have arisen, for example, if Mountain Top had included Leasing Units Nos. 88 and 89 on a single form. The Board recognizes, in that instance, the Trust Lands Administration may have a conflict and urges the Trust Lands Administration to prospectively address this matter. However, the question the Board will address today is the one before it, which is whether Application Form 3 violates Rule 850-20-900, not whether the lease application form could be validly interpreted under other conditions to allow more than one lease per application form.

Both parties have miscast this issue as one requiring a determination as to whether the lease application form has the force of law. Mountain Top goes so far as to say it would only be required to comply with a form that has gone through the Rule Making Act. Otherwise, Mountain Top argues, merely submitting the required application form, whether correctly or incorrectly completed, satisfies its obligation to submit a bid in the “manner required”.⁵

This type of analysis may only be appropriate if the Board had before it the hypothetical scenario discussed above. In that instance, the Board may have a conflict between a form and an administrative rule to resolve and may need to engage in an analysis of which one trumps the other, or consider the Rule Making Act. Such is not the case here.

⁵ The McKnight case has also been mentioned by the parties with regard to whether Mountain Top was required to strictly comply with the application form as long as its application otherwise complied with statutes and regulations. In its case, the Board has found the content of Application Form 3 did not comply with Rule 850-20-900. However, even Mountain Top agrees that Rule R850-3-300 renders McKnight inapplicable to this issue.

The statutory and administrative scheme that: 1) requires the director to establish a lease application form; 2) requires an applicant to use the established form; and 3) requires a lease to be awarded to the highest bidding qualified applicant who submitted a bid in the manner required, is more than sufficient to establish the Trust Lands Administration's duty to ensure that an applicant comply with the requirements of the form. Implicit in being granted statutory authority to require a certain form be used, is that its instructions be read and followed. The Board finds, in this instance, Mountain Top failed to follow the lease application form's instructions, and as a result, applied for a lease that exceeded 2,560 acres, violating Rule 850-20-900.

Mountain Top points to a 1993 Oil, Gas, and Hydrocarbon Lease Application granted to Vern Jones, which requested more than 2,560 acres, as proof that the Trust Lands Administration erroneously or, at least inconsistently, interpreted Rule 850-20-900 in denying its Application Form 3. The Jones Application, however, did not violate Rule 850-20-900 because the rule limits a lease to 2,560 acres *or four sections*. The 2,800.44 acres requested by the Jones Application complied with the latter part of the provision in that the land applied for was located in sections 2, 16, 32 and 36, some of which were oversized sections.

In contrast, Application Form 3 shows the four Leasing Units listed are comprised of lands lying in eight different sections. Accordingly, Application Form 3 fails under both alternatives allowed by Rule 850-20-900.

Mountain Top suggests, if the Board reaches this conclusion, Mountain Top was nevertheless entitled to have the Trust Lands Administration “pare down” the four leasing units on Application Form 3 to separate leases. This approach suffers from the same problems as the suggestion regarding picking and choosing portions of Application Forms 1 and 2 in order to avoid their complete rejection. Paring down the application form would require speculation on the part of the Trust Lands Administration as to what the applicant intended. It is entirely possible that the applicant, without realizing it did not have the option, only wanted to be awarded all four leasing units or none at all. Once again, there is the additional problem of allocating the bid amount, particularly where the bids could be prevailing, or not, depending on the allocation.⁶ The Board agrees with the Trust Lands Administration that the exercise of such a large degree of subjectivity on its part in curing defective simultaneous bids could create questions regarding the integrity of the process, ultimately harming its beneficiaries.

The Board finds the Trust Lands Administration did not violate applicable law, rule or policy in interpreting its statutes and rules and applying them in such a manner as to reject

⁶ The Board notes that it does not believe the Trust Lands Administration is prohibited from rounding up or down fractions of pennies where the bids are not otherwise deficient or from evaluating amounts actually bid, even where the amount does not match up with a notation elsewhere on the application. In this case, however, the mathematical irregularities do demonstrate the additional confusion that would result from the Trust Lands Administration attempting to remedy Mountain Top’s defects in the manner it suggests. However, absent any other defects, the Trust Lands Administration could exercise its discretion to do so, if it determined such an action would be in the best interests of its beneficiaries. The Board agrees with Mountain Top that its bids were not “short” by any amount, there being more than enough to cover the required rounded-up amount for rental and a bonus bid. However, there is no reason to address this argument any further because the Applications have been rejected for other reasons.

Application Form 3. The Board therefore upholds the Trust Lands Administration's rejection of Application Form 3.

UTAH ADMIN. CODE RULE 850-20-1200

Mountain Top argues that, to the extent its Applications are found to be defective, it is entitled to cure the defects under Utah Admin. Code Rule R850-20-1200 ("Rule 850-20-1200").⁷ Mountain Top relies on its interpretation of the rule and also the decision of McKnight v. State Land Board, 381 P.2d 726 (Utah 1963), to support its position.

The Trust Lands Administration and Palone contend that this "cure provision" does not apply to applications submitted as simultaneous filings and McKnight does not apply because the decision was based on a previous version of the Rule.

Rule 850-20-1200 provides:

R850-20-1200. Record of Application and Deficient Applications.

Applications for mineral leases, *except in the case of simultaneous filing*, are received for filing in the office of the agency during office hours. Except as provided, all the applications received, whether by U.S. Mail or by personal delivery over the counter, are immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., of that day. In the same manner, all applications received in the first delivery of the U.S. Mail of each business day is [sic] stamped received as of 8 a.m., of that day. The time indicated on the time stamp is deemed the time of filing unless the agency directory shall determine that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it is returned to the applicant with instructions for its amendment or completion.

⁷ Mountain Top makes this argument in its Memorandum in Opposition but not in its own Motion for Summary Judgment. All parties have fully briefed the issue and it was extensively argued at oral argument on the Motions. Accordingly, the Board will fully address this issue.

If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(Emphasis added).

All parties agree that applications for simultaneous filings are distinguished from other applications by use of the phrase “except in the case of simultaneous filing” in the first sentence of the Rule. The Trust Lands Administration and Palone argue the simultaneous filing exception applies to the entire Rule. Mountain Top contends the exception is more limited, using a technical grammatical analysis to argue the exception applies only to the first sentence, or in any event, only up to the sixth sentence, at which point it is definitely cut-off.

Both parties have mentioned the McKnight case in addressing this issue. In McKnight, the State Land Board (which was the predecessor to this Board) exercised its discretion to allow an applicant to cure deficient applications submitted as simultaneous filings.

The rule in effect at that time was essentially the same as the present-day Rule 850-20-1200, except the phrase, “except in the case of simultaneous filing,” did not appear anywhere in the rule. The meaning of this subsequent amendment is the very issue being disputed by the parties. Accordingly, McKnight itself is of little help and does not dictate any particular result here.⁸ The fact of the subsequent amendment, however, reveals that the exception was

⁸ It is also important that, regardless of the language used in the rule, the McKnight court merely approved the Board’s discretion to allow the opportunity for curing the deficient applications. The court did not require the Board to take any particular action. It reviewed whether the Board’s exercise of its discretion fell within its authority, and found that it did.

intentionally added to alter the meaning of the Rule and is entirely consistent with the interpretation that says the exception applies to the entire Rule.

This interpretation of Rule 850-20-1200 is also consistent with the plain language of the Rule. The appearance of “except in the case of simultaneous filings,” in the first sentence simply means simultaneous filings are being excluded from the body of the Rule.

Allowing an applicant to “cure” defects in its application, after simultaneous bids have been opened, may be even more detrimental to the public’s perception of the process’s integrity than the Trust Lands Administration’s after-the-fact corrections. Admittedly, in this case, Mountain Top can easily equally divide its bids according to acreage and place the bids on separate forms and still prevail as the high bidder on every Leasing Unit. However, it is not difficult to imagine a situation where an applicant would need to allocate its bid in a different manner in order to prevail. The Board cannot invite this level of unpredictability into the Trust Lands Administration’s simultaneous bidding process. The Board find the Trust Lands Administration’s interpretation of Rule 850-20-1200 is entirely consistent with its fiduciary duties, for the same reasons previously stated.

Overall, the Board finds as a matter of law that the Trust Lands Administration did not violate applicable law, rule or policy in interpreting Rule 850-20-1200 to exclude applications submitted as simultaneous filings and the Board upholds the decision of the Trust Lands Administration to deny Mountain Top the opportunity to cure its defects, post bid opening.

CONCLUSION

In conclusion, the Board grants those portions of the Motions for Summary Judgment filed by the Trust Lands Administration and Palone that support the Board's rulings that the Trust Lands Administration did not violate applicable law, rule or policy in determining Application Forms 1, 2 and 3 are deficient and should be rejected for the following reasons:

1. Application Forms 1 and 2 violate Rule 850-20-700;
2. Application Form 3 violates Rule 850-20-900; and
3. Rule 850-20-1200 does not apply to the simultaneous filing procedure.

The Board denies the Motion for Summary Judgment filed by Mountain Top.

The Board does not rule on the remaining portions of the Motions for Summary Judgment filed by the Trust Lands Administration, Palone and Mountain Top.

NOTICE OF RIGHT TO JUDICIAL REVIEW AND REQUEST FOR RECONSIDERATION

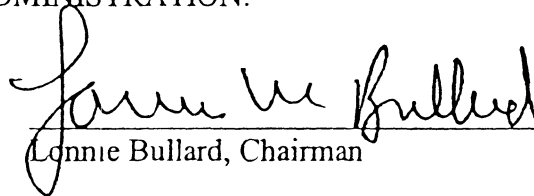
Any party affected by a final order or decision of the Board may file a petition for reconsideration and modification of an existing order within 20 days after the date the order was issued by complying with Utah Admin. Code Rule R850-8-1700.

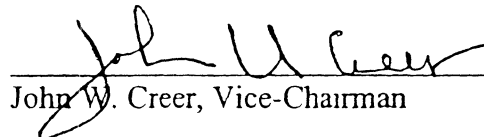
Any party may request judicial review of this order by complying with the requirements of Utah Admin. Code Rules R850-8-1800.3(a) and (b), and R850-8-1900, which require a party to: 1) "file a petition for judicial review of a final order issued by the board within 30 days after the date the order is issued or considered issued"; 2) "name the Trust Lands Administration and all other appropriate parties as respondents"; and 3) file a petition for review of a board order

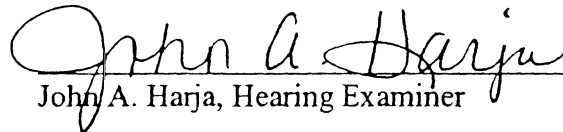
with the appropriate court in the manner required by Sections 63-46b-15 and 63-46b-16, as appropriate. IN THE EVENT A PETITION IS NOT FILED WITHIN THE 30 DAY TIME PERIOD, THIS ORDER WILL BECOME FINAL AND UNAPPEALABLE.

SO ORDERED THIS 9TH DAY OF OCTOBER, 2002:

BY THE BOARD OF TRUSTEES OF THE SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION:


Lonnie Bullard, Chairman

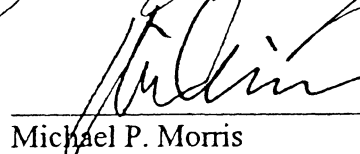

John W. Creer, Vice-Chairman


John A. Harja, Hearing Examiner

Ruland J. Gill, Jr. - Abstained

Vernal J. Mortensen - Absent


James J. Eardley


Michael P. Morris

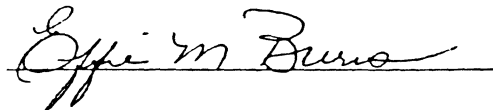
CERTIFICATE OF HAND DELIVERY

I hereby certify that on the 9th day of October, 2002, the foregoing **ORDER RE: CROSS-MOTIONS FOR SUMMARY JUDGMENT** was hand-delivered as follows:

J. Craig Smith
Scott M. Ellsworth
Nielsen & Senior, P.C.
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
(Counsel for Petitioners)

Angela L. Franklin
Shawn T. Welch
Pruitt, Gushee & Bachtell
1850 Beneficial Life Tower
Salt Lake City, Utah 84111
(Counsel for Respondent)

Justin J. Quigley
School and Institutional Trust Lands
Administration
675 East 500 South, Suite 500
Salt Lake City, Utah 84102
(Counsel for SITLA)

A handwritten signature in cursive script, reading "Effie M. Bruno", is written over a horizontal line.