

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, May 21, 2012, at 9:00 a.m.
State Capitol
Helena, MT

Please note: *The Land Board has adopted the audio recording of its meetings as the official record, as allowed by [2-3-212, MCA](#). These minutes provide an abbreviated summary of the Land Board discussion, public testimony, action taken, and other activities. The time designations listed are approximate and may be used to locate the referenced discussion on the audio recording of this meeting. Access to an electronic copy of these minutes and the audio recording is provided from the Land Board webpage at <http://dnrc.mt.gov/LandBoard>. The written minutes summary, along with the audio recordings, are listed by meeting date on the Land Board Archive webpage.*

Members Present

Governor Brian Schweitzer
Attorney General Steve Bullock
Secretary of State Linda McCulloch
Superintendent of Public Instruction Denise Juneau

Members Absent

Commissioner of Securities and Insurance Monica Lindeen

Testifying Staff

Mary Sexton, DNRC Director
Lisa Axline, DNRC Real Estate Management Bureau
Sonya Germann, DNRC Forest Management Bureau Chief
John Grimm, DNRC Real Estate Management Bureau
Tommy Butler, DNRC Attorney

Attachments

Related Materials, Attachment 1 – Sign-in Sheet
Related Materials, Attachment 2 – Submission by Montana Environmental Impact Center (MEIC)
Related Materials, Attachment 3 – Photographs of Missoula train yard from Blue Skies Campaign

Call to Order

00:00:03 Governor Brian Schweitzer called the meeting to order.
00:00:09 Ms. McCulloch moved to approve the April 19, 2012, minutes. The motion was seconded by Mr. Bullock and carried unanimously.

Business Considered

512-1 Corrective Deed – Non-Trust Land Transfer to the City of Poplar under 77-2-351, MCA

00:00:19 Ms Sexton gave an overview of the item.

Public Comment

00:01:34 Gary MacDonald, Roosevelt County Commissioner

00:02:29 Ms. Juneau moved to approve the corrective deed. The motion was seconded by Ms. McCulloch and carried unanimously.

512-2 Signal Peak Coal Lease Application

00:02:41 Ms Sexton gave an overview of the item.

Public Comment

00:05:52 Anne Hedges, MEIC (see Related Materials, Attachment 2)
00:09:40 Clayton Elliot, Northern Plains Resource Council
00:12:43 Lowell Chandler, Blue Skies Campaign
00:16:03 Bryan Nickerson, Blue Skies Campaign
00:17:30 Nick Engelfried, Blue Skies Campaign
00:20:24 Robert Ochsner, Signal Peak Energy Chief Mining Engineer
00:20:49 Mr. Bullock moved to initiate the coal lease bidding process. The motion was seconded by Ms. Juneau.

Board Discussion/Questions

00:21:00 Mr. Bullock
00:22:34 Governor Schweitzer
00:25:48 Mr. Chandler
00:27:43 Mr. Engelfried (see Related Materials, Attachment 3)

00:28:47 The motion to initiate the coal lease bidding process was carried unanimously.

512-3 Easements

A. Rights-of-Way

00:28:55 Ms Sexton gave an overview of the item.
00:29:27 Ms. McCulloch moved to approve the rights-of-way applications. The motion was seconded by Mr. Bullock.

Board Discussion/Questions

00:20:35 Ms. Juneau
00:30:10 Ms. Sexton
00:30:28 Ms. Axline
00:31:05 Ms. Juneau
00:31:11 Ms. Axline

00:31:26 The motion to approve the rights-of-way applications was carried unanimously.

~~**B. ONEOK Pipeline Easement**~~

The item was removed from the agenda prior to the meeting on May 17, 2012.

C. Youngs Creek Mining Co. LLC Railroad Spur Easement

00:31:33 Ms Sexton gave an overview of the item.
00:34:09 Ms. McCulloch moved to the railroad spur easement. The motion was seconded by Mr. Bullock.

Board Discussion/Questions

00:34:20 Ms. Juneau
00:35:21 Mr. Bullock
00:35:35 Ms. Sexton
00:36:06 Governor Schweitzer

00:39:24 The motion to approve the railroad spur easement was carried 3-1, Ms. Juneau dissenting.

512-4 Communitization Agreement – Whiting Oil and Gas Corporation

00:39:31 Ms Sexton gave an overview of the item.

00:40:15 Ms. McCulloch moved to approve the communitization agreement. The motion was seconded by Mr. Bullock and carried unanimously.

512-5 Timber Sales

A. Logan Creek

B. Mystery Fish

C. Reid Divide

00:40:26 Ms. Sexton gave an overview of items 512-5A through 512-5C, which were taken as a block.

00:40:25 Mr. Bullock moved to approve items 512-5A through 512-5C. The motion was seconded by Ms. McCulloch.

Board Discussion/Questions

00:43:31 Mr. Bullock

00:43:50 Ms. Sexton

00:44:28 Ms. Germann

00:44:43 Mr. Bullock

00:44:52 Ms. Germann

00:45:00 Governor Schweitzer

512-6 Preliminary Approval for Land Banking Parcel

00:45:30 Ms Sexton gave an overview of the item.

00:46:22 Ms. Juneau moved to approve items 512-5A through 512-5C. The motion was seconded by Ms. McCulloch and carried unanimously.

512-7 Final Approval for Sale of Land Banking Parcels

00:46:34 Ms Sexton gave an overview of items 512-7A through 512-7C.

A. Deer Lodge County

00:49:00 Ms. McCulloch moved for final approval of the Deer Lodge County parcels. The motion was seconded by Ms. Juneau and carried unanimously.

B. Gallatin County

00:40:19 Mr. Bullock moved to final approval of the Gallatin County parcel. The motion was seconded by Ms. Juneau and carried unanimously.

Board Discussion/Questions

00:49:24 Governor Schweitzer

00:50:18 The motion to approve the Gallatin County parcel was carried unanimously.

C. Hill County

Public Comment

00:50:40 George Stahl, Gilford Colony

Board Discussion/Questions

00:52:52 Governor Schweitzer

00:53:06 Ms. Sexton

00:53:21 Mr. Grimm

00:53:51 Governor Schweitzer

00:54:05 Mr. Stahl

00:55:09 Ms. Juneau moved for final approval of the Hill County parcel. The motion was seconded by Ms. McCulloch.

00:55:11 Governor Schweitzer

00:56:00 Ms. Sexton

00:56:36 Governor Schweitzer

00:56:50 Mr. Grimm

00:57:36 Governor Schweitzer

00:57:42 Mr. Stahl

00:57:54 Governor Schweitzer

00:58:07 Mr. Stahl

00:58:13 Governor Schweitzer

00:59:46 Mr. Stahl

01:00:06 Governor Schweitzer

01:00:28 Mr. Bullock

01:00:45 Mr. Butler

01:01:41 Governor Schweitzer

01:01:50 Ms. Juneau moved to modify her motion to postpone final approval for the Hill County parcel until the next month to further explore the Land Board's options. The motion was seconded by Ms. McCulloch.

01:02:12 Governor Schweitzer

01:02:20 The motion to postpone final approval for the Hill County parcel until next month was carried unanimously.

01:02:24 Governor Schweitzer

01:02:33 Mr. Stahl

01:02:47 Governor Schweitzer

01:03:06 Mr. Stahl

01:03:08 Governor Schweitzer

512-8 2012 Agriculture and Grazing Competitive Bid Hearings

01:03:35 Ms. Sexton gave an overview of the competitive bid hearing process.

A. Lease No. 9208 – Broken Circle Three Land & Cattle (Lessee)/Jason Kelly (Bidder)

01:05:06 Ms. Sexton gave an overview of lease number 9208.

Public Comment

01:08:37 Dean Schillinger, Broken Circle Three Land & Cattle

01:08:56 Ms. Sexton

01:09:15 Mr. Schillinger

01:12:13 Leslie Kelly, representing high bidder Jason Kelly

01:13:26 Ms. McCulloch moved to award the lease to Broken Circle Three Land & Cattle as a cash lease for \$28 per acre. The motion was seconded by Ms. Juneau.

01:13:40 Governor Schweitzer

01:15:21 The motion to award the lease to Broken Circle Three Land & Cattle as a cash lease for \$28 per acre was carried unanimously.

B. Lease No. 9992 – Broken Circle Three Land & Cattle (Lessee)/Marvin Strand (Bidder)

01:15:28 Ms. Sexton gave an overview of lease number 9992.

01:16:48 Mr. Bullock moved to award the lease to Broken Circle Three Land & Cattle at \$15 per AUM. The motion was seconded by Ms. Juneau.

01:16:55 Governor Schweitzer

01:18:06 The motion to award the lease to Broken Circle Three Land & Cattle at \$15 per AUM was carried unanimously.

C. Lease No. 1528 – J&J Livestock Inc. (Lessee)/Randy Smith (Bidder)

01:18:13 Ms Sexton gave an overview of lease number 1528.

Public Comment

01:20:14 Norma Jardee, J&J Livestock

01:21:20 Ms. Juneau moved to award the lease to J&J Livestock at \$50 per AUM. The motion was seconded by Ms. McCulloch.

Board Discussion/Questions

01:21:29 Mr. Bullock

01:21:45 Ms. Sexton

01:22:40 Governor Schweitzer

01:22:55 Ms. Sexton

01:23:41 Ms. Jardee

01:23:53 Governor Schweitzer

01:23:57 Ms. Jardee

01:24:00 Governor Schweitzer

01:24:05 Ms. Jardee

01:24:08 Governor Schweitzer

01:24:31 Ms. Jardee

01:24:36 Governor Schweitzer

01:24:46 Ms. Jardee

01:24:54 Governor Schweitzer

01:25:05 Ms. Jardee

01:25:08 Governor Schweitzer

01:25:52 Ms. Jardee

01:26:05 Governor Schweitzer

01:26:10 Ms. Jardee

01:26:21 Governor Schweitzer

01:26:25 Ms. Jardee

01:26:26 Governor Schweitzer

01:26:28 Ms. Jardee

01:26:31 Governor Schweitzer

01:26:37 Ms. Jardee

01:26:42 Governor Schweitzer

01:26:52 Ms. Jardee

01:26:57 Governor Schweitzer

01:27:08 Ms. Jardee

01:27:11 Governor Schweitzer

01:27:19 Ms. Jardee

01:27:23 Governor Schweitzer

01:27:53 Ms. Jardee

01:27:55 Govenor Schweitzer

01:28:06 Ms. Jardee

01:28:09 Governor Schweitzer

01:28:16 Ms. Jardee

01:28:20 Governor Schweitzer

01:28:39 Ms. Jardee

01:28:46 Governor Schweitzer

01:29:01 Clayton Jardee

01:29:19 Governor Schweitzer

01:29:31 Ms. Juneau moved to modify her motion to award the lease to J&J Livestock at \$30 per AUM. Motion seconded by Ms. McCulloch.

01:29:48 Governor Schweitzer

01:29:58 The motion to award the lease to J&J Livestock at \$30 per AUM was carried unanimously.

D. Lease No. 2425 – Joseph & Charlotte Brummer and Conrad Inc. (Lessee)/Frederick & Sandra Miller (Bidder)

01:30:06 Ms Sexton gave an overview of lease number 1528.

Public Comment

01:32:13 Tom Sheehy, attorney for Joseph and Conrad Brummer and Conrad Inc.

01:36:09 Fred Miller

01:37:40 Ms. Juneau moved to award the lease to Frederick and Sandra Miller at \$27.90 per AUM. Motion seconded by Ms. McCulloch.

Board Discussion/Questions

01:37:47 Governor Schweitzer

01:38:07 Ms. Sexton

01:39:08 Governor Schweitzer

01:39:24 Mr. Chappell

01:40:17 Governor Schweitzer

01:40:19 Mr. Chappell

01:40:21 Governor Schweitzer

01:40:51 Mr. Miller

01:40:58 Governor Schweitzer

01:41:00 Mr. Miller

01:41:01 Governor Schweitzer

01:43:53 Mr. Miller

01:43:54 Governor Schweitzer

01:44:02 Mr. Miller

01:44:07 Governor Schweitzer

01:44:34 Mr. Miller

01:44:54 Governor Schweitzer

01:45:02 Ms. Sexton

01:45:13 Governor Schweitzer

01:45:36 Mr. Miller

01:46:00 Governor Schweitzer

01:46:39 Mr. Sheehy

01:48:08 The motion to award the lease to Frederick and Sandra Miller at \$27.90 per AUM was carried unanimously

General Public Comment

None

Adjournment

01:48:30 Adjournment

PRESIDENT

ATTEST

/s/ Brian Schweitzer
Brian Schweitzer, Governor

/s/ Mary Sexton
Mary Sexton, DNRC Director

RELATED MATERIALS
ATTACHMENT 1

LAND BOARD MEETING SIGN-IN SHEET
May 21, 2012

NAME	AFFILIATION	E-MAIL	Check to be added to the interested parties list.
Gary Macdonald	Roosevelt Co.	comm@rooseveltcounty.org	512-1
Nick Engelfried	Blue Skies	nicke.activism@gmail.com	X
Lowell Chandler	Blue Skies		
Bryan Nickerson	Blue Skies		
Leslie Kelly		leskelly@midrivers.com	X 512-84
Jason Kelly			512-84
Clayton Elliott	Northman Plains Res Cncl	clayton@northplains.org	
Dean Schillinger	Broken Circle Three LLC		
Laraine Schillinger	"		
Kali Schillinger	"		
Tom Sheehy	Conrad, Inc. Joe Brummer	tomatty@mtintouch.net	
CR20 ST 9 HL	Common Schools	Bildford St	
Anne Hedqos	MEIC	ahedqos@meic.org	
Fred Miller	Harlem, Mont		
ROBERT DENNER	SIGNAL PEAK	ROCKSNER@SIGNALPEAKENERGY.COM	(X)
E.A. Viren	Signal Peak	eviren@signalpeakenergy.com	X
Stephanie Krueger	Caseement-Bowling	krueglaw@3rivers.net	
Norma Jandee	St. Justus	njandee@yahoo.com	
Graig Jandee	"		

Contact Lucy Richards at lrichards@mt.gov or indicate on this sign-in sheet if you would like to be placed on the monthly agenda distribution list.

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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

RELATED MATERIALS
ATTACHMENT 2

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CHIEF OF STAFF

April 24, 2012

Mr. Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C 20548

Dear Mr. Dodaro:

As Ranking Member of the House Natural Resources Committee, which has jurisdiction over coal leasing, exploration and production on federal lands, I write to request a Government Accountability Office (GAO) report examining federal coal leasing practices.

Coal exports are rising as U.S. electricity producers move away from coal in favor of natural gas and renewable energy. Last year, 107 million tons of coal was exported, the highest export total in two decades and equal to 10 percent of domestic coal production.¹ Peabody Energy told investors last week that the country's coal export capacity could more than double in five years to 250 million tons.² Cloud Peak Energy, which has tripled its coal exports over the last three years to 4.7 million tons, now considers its export business so important that the company has added both foreign electricity markets and clean air regulations to its required securities disclosure on business risks.³ With such rapid market changes taking place, American taxpayers must be assured they are receiving the full value for energy resources held in the public trust, especially when mining companies are seeking to export hundreds of millions of tons of coal for premium prices.⁴

¹ Brown, Matthew; *Associated Press*; "Coal Exports Surge to their Highest Levels since 1991." April 10, 2012: (<http://www.google.com/hostednews/ap/article/ALeqM5gEPo52y3iAhPhyDL-ht5N3pz6OZA?docId=b1c41839ca5f47c5a39e44acc019c633>)

² Peabody Energy. "Peabody Energy Announces Results for the Quarter Ended March 31, 2012," April 19, 2012: (<http://phx.corporate-ir.net/phoenix.zhtml?c=129849&p=irol-newsArticle-Print&ID=1684914&highlight>)

³ Cloud Peak Energy, Form 10-K; "Risks Related to our Business and Industry," Securities and Exchange Commission, February 17, 2012, p. 23: (<http://sec.gov/Archives/edgar/data/1411849/000104746912001130/a2207159x10-k.htm>)

⁴ Gartrell, Peter T., Miller, John; "Peabody projections show lucrative Chinese market for PRB coal," *Platts Coal Trader*, December 6, 2010.

April 24, 2012
U.S. Government Accountability Office
Page 2

GAO has not conducted a comprehensive review of the federal coal leasing program since 1994.⁵ Since that time, the coal industry has continued moving away from depleted coal reserves in the east, and increased its production from federally leased coal tracts in the west. Coal produced from federal leases has grown from less than 70 million tons in 1980 to more than 450 million tons in 2011. Federally leased coal now accounts for some 40 percent of U.S. coal production. Nearly nine out of every 10 tons of federally leased coal is mined in the Powder River Basin of Wyoming and Montana.

Companies mining federal leases in Wyoming and Montana are increasing coal exports not only because of declining U.S. demand but also because they can sell coal for higher prices in foreign markets. Arch Coal told investors last year that Powder River Basin coal sold to international customers could fetch more than \$20 a ton.⁶ By comparison, the company in 2012 contracted with mostly domestic buyers to sell coal from the basin for an average of \$14.40 per ton.⁷ This price is already well above what Arch Coal and other companies pay in federal lease sales. The highest price ever received by the federal government for a lease sale in the Powder River Basin was \$1.10 per ton.⁸

Western coal producers in Wyoming, Montana, Colorado and Utah have signed agreements to export—or have already begun exporting—coal through existing terminals in Vancouver, British Columbia; Prince Rupert, British Columbia; Stockton, California; Richmond, California; Corpus Christi, Texas; New Orleans, Louisiana; and Superior, Wisconsin. U.S. producers increased shipments to Westshore Terminals, a Vancouver export coal facility, by more than 300 percent between 2009 and 2011. They have agreements to continue shipping coal to the facility through 2022.⁹ In addition, multiple port projects are proposed along coasts and waterways in Oregon, Washington, Texas, Louisiana, Canada and Mexico—all potential outlets for coal produced from federal leases. Ambre Energy, an Australian firm that has bought coal mines in Montana and Wyoming, says it is “on track to becoming a major supplier of US thermal coal to international markets.”¹⁰ The company has applied to build two export facilities in Washington. The proposed facilities are among six in Washington and Oregon, which combined, could handle 145 million tons of coal bound for Asian markets—more than 15 percent of current U.S. coal production.

The rush to export coal comes shortly after a 2008 U.S. Geological Survey (U.S.G.S.) report reduced estimates of coal available for future mining.¹¹ The report found that technically

⁵ “Federal Coal-Leasing Program Needs Strengthening,” U.S. General Accounting Office: September, 1994: (<http://gao.gov/assets/160/154629.pdf>)

⁶ Gartrell, Peter T., “Arch CEO sees \$20 range for PRB coal to Asia,” *Platts Coal Trader*, January, 31, 2011.

⁷ Arch Coal, Form 10-K, February 29, 2012: (<http://sec.gov/Archives/edgar/data/1037676/000104746912001909/a2207536z10-k.htm>)

⁸ Bureau of Land Management, West Caballo LBA:

(http://www.blm.gov/xy/st/en/programs/energy/Coal_Resources/PRB_Coal/lba_west_caballo.html)

⁹ Westshore Terminals Investment Corporation, Annual Report 2011 (<http://www.westshore.com/pdf/finance/2011/ar.pdf>)

¹⁰ Ambre Energy, “US thermal coal strategy,” accessed April 19, 2012: <http://ambreenergy.com/projects/us-thermal-coal-production>

¹¹ Luppens, J. A., Scott, D. C., Haacke, J. E., Osmonson, L. M., Rohrbacher, T. J., and Ellis, M. S., 2008. *Assessment of Coal Geology, Resources, and Reserves in the Gillette Coalfield, Powder River Basin, Wyoming: U.S. Geological Survey Open-File Report 2008-1202*, 127 p.: (<http://pubs.usgs.gov/of/2008/1202/pdf/of2008-1202.pdf>)

April 24, 2012
U.S. Government Accountability Office
Page 3

recoverable reserves¹² make up 47 percent of the remaining coal in the Powder River Basin, while economically recoverable reserves¹³ account for just 6 percent or 10.1 billion tons. That means there is less than 25 years of supply in the area based on current production and consumption levels. The study's results led Peabody Energy to review its economic assumptions about mining in the basin, while one of the study's authors said "we really can't say we're the Saudi Arabia of coal anymore."¹⁴

Such sweeping changes to the marketplace underscore the need for more information about the Bureau of Land Management's (BLM) leasing program. The BLM is responsible for coal leasing on approximately 570 million acres of land, as set out by the Federal Coal Leasing Amendments Act of 1976. A coal lease is awarded to the highest bidder provided that the applicant's offer meets or exceeds BLM's estimate of the "fair market value" for the tract being auctioned.¹⁵ The agency's regulations allow two ways for selecting tracts of land to auction: (1) regional leasing in which BLM selects tracts within a region, and (2) leasing by application in which coal companies nominate tracts, subject to BLM approval. In 1990, the BLM disbanded the last of six federally designated "coal production regions" due to declining interest in coal leasing and poor coal market conditions.¹⁶ Since that time, coal production from federal leases has increased 78 percent, peaking at over 511 million tons in 2004, according to BLM data. More than 8.4 billion tons of coal has been mined from federal coal tracts during the same period and the number of active coal leases managed by BLM has tripled to more than 300.

We lack information about how the rapid growth of coal mining on federal land combined with shrinking reserves and increasing exports produced from federal leases affect the value of U.S. coal. The House Natural Resources Committee has an interest in ensuring that BLM's leasing process promotes competition for coal tracts and that the "fair market value" established by BLM is accurate. I therefore ask GAO to examine the following:

1. National trends in coal production since the disbanding of the federal coal regions, including the number of "lease by application" requests, the number of bidders on each of those requests, and the amount of coal and royalties generated from those leases;
2. Processes followed by BLM to estimate and get the fair market value for leases of coal produced from federal lands, including what factors it considers in its calculation;
3. Whether BLM's fair-market-value estimates adequately accounts for revised reserve estimates and increased coal exports to foreign markets where prices are higher; and

¹² Technically recoverable reserves are energy resources that can be extracted using currently available technology with no regard to cost

¹³ Economically recoverable reserves are energy resources that are technically feasible to extract at a reasonable rate of return

¹⁴ Smith, Rebecca; "U.S. Foresees a Thinner Cushion of Coal," *Wall Street Journal*, June 8, 2009:

<http://online.wsj.com/article/SB124414770220386457.html>

¹⁵ 43 CFR 3400.0-5(n) defines fair market value as the price "for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell or lease to a knowledgeable purchaser who desires but is not obligated to buy or lease."

¹⁶ <http://blogs.wvgazette.com/coalatattoo/2011/02/11/powder-river-basin-not-a-coal-producing-region/>

April 24, 2012
U.S. Government Accountability Office
Page 4

4. BLM's system for tracking and making publicly available information pertaining to sales, payments and other data related to coal production from federal leases.

Please contact Morgan Gray (morgan.gray@mail.house.gov or 202-225-6065) of the Committee on Natural Resources Democratic Staff to discuss in detail the specific scope of work and establish a timeline for completion. Thank you for your consideration and attention to this request.

Sincerely,



Edward J. Markey
Ranking Member
Committee on Natural Resources



