

**REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
MINUTES**

July 15, 2024, 9:00 a.m.

**Supreme Court Chambers, Mazurek Justice Building
Helena, MT**

Members Present

Greg Gianforte, Governor
Austin Knudsen, Attorney General
Troy Downing, Commissioner of Securities and Insurance
Elsie Arntzen, Superintendent of Public Instruction

Members Absent

Christi Jacobsen, Secretary of State

Testifying Staff

Amanda Kaster, DNRC Director

Attachments

Related Materials, Attachment 1 – Sign-in sheet
Related Materials, Attachment 2 – Ag & Grazing Bureau Improvements Presentation
Related Materials, Attachment 3 – Ag & Grazing Bureau Improvements Handout

Call to Order

00:00:26 Governor Gianforte called the meeting to order.
00:00:32 Elsie Arntzen, Superintendent of Public Instruction moved to approve the June, 2024, minutes. The motion was seconded by Troy Downing, Commissioner of Securities and Insurance and carried unanimously.

Business Considered

0724-1 Timber Sales: North Lake Timber Sale

00:00:55 Director Kaster gave an overview of the item.

Public Comment: N/A

00:01:40 Elsie Arntzen, Superintendent of Public Instruction moved to approve item 0724-1. The motion was seconded by Troy Downing, Commissioner of Securities and Insurance and carried 3-0.

Board Discussion/Comments: N/A

0724-2 Cabin & Home Sites: Set Minimum Bid for Sale

00:02:01 Director Kaster gave an overview of the item.

Public Comment: N/A

00:02:40 Elsie Arntzen, Superintendent of Public Instruction moved to approve item 0724-2. The motion was seconded by Troy Downing, Commissioner of Securities and Insurance and carried 2-1.

Board Discussion/Comments: N/A

0724-3 Cabin & Home Sites: Set Minimum Bid for Sale

00:03:11 Director Kaster gave an overview of the item.

Public Comment: N/A

00:03:55 Elsie Arntzen, Superintendent of Public Instruction moved to approve item 0724-3. The motion was seconded by Troy Downing, Commissioner of Securities and Insurance and carried 3-0.

Board Discussion/Comments: N/A

0724-4 Informational Item: Agriculture and Grazing Improvement Settlement Process

00:04:18 Director Kaster gave an overview of the informational item.

Public Comment: N/A

Board Discussion/Comments: N/A

00:11:44 Elsie Arntzen, Superintendent of Public Instruction

00:12:26 Kelly Motichka, Bureau Chief, Ag & Grazing Management, DNRC

00:12:48 Greg Gianforte, Governor

00:12:57 Kelly Motichka, Bureau Chief, Ag & Grazing Management, DNRC

00:13:00 Elsie Arntzen, Superintendent of Public Instruction

00:13:13 Kelly Motichka, Bureau Chief, Ag & Grazing Management, DNRC

00:13:54 Elsie Arntzen, Superintendent of Public Instruction

00:14:14 Kelly Motichka, Bureau Chief, Ag & Grazing Management, DNRC

00:14:27 Greg Gianforte, Governor

General Public Comment

None

Adjournment

00:15:26 Adjournment

PRESIDENT

ATTEST

/s/ Greg Gianforte

Greg Gianforte, Governor

/s/ Amanda Kaster

Amanda Kaster, DNRC Director

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.

REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
SIGN-IN SHEET
July 15th, 2024 at 9:00 am
Supreme Court Chambers, Mazurek Justice Building
Helena, MT

Check to be added to the interested parties list.

[illegible]

Email landboard@mt.gov or indicate on this sign-in sheet if you would like to be placed on the Land Board interested parties list.

This sign-in sheet is a public record under Title 2, Chapter 6 of the Montana Code Annotated, but may not be reproduced or distributed for use as a mailing list without the permission of the named individuals under 2-6-1017, MCA.

Informational Item: Improvement Settlement Process on State Trust Land

Kelly Motichka, Ag & Grazing Bureau Chief

July 15, 2024



EXECUTIVE SUMMARY

- Improvement Settlement Process is defined in Statute & Rule.
- Occurrence of disputes are infrequent. Only one has gone to arbitration in the past 5 years.
- There is a process to arbitrate disputes through DNRC's hearings Unit, and if necessary, District Court.



State Trust Lands

The process to settle improvements between a prior lessee/licensee and the new lessee/licensee is defined in:

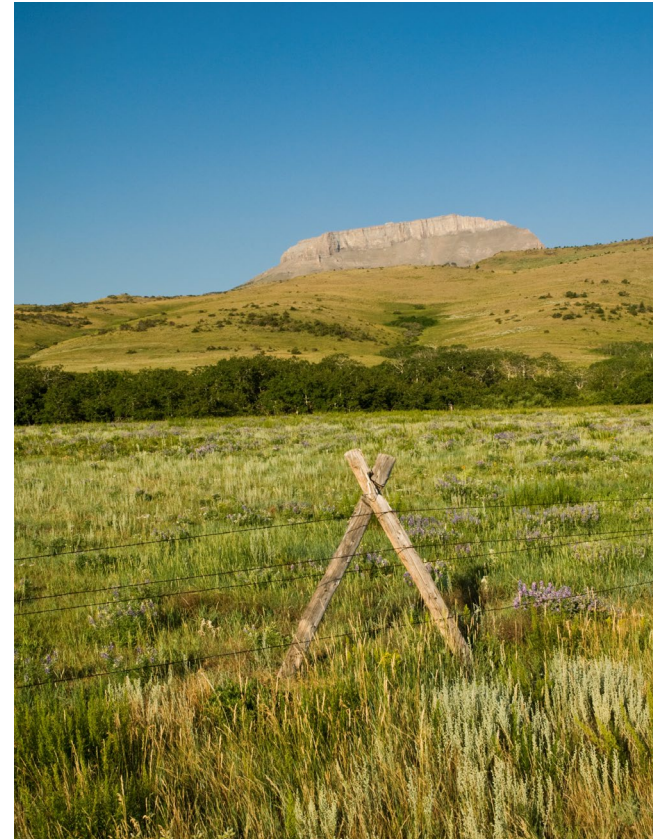
MCA 77-6-302. Compensation for improvements – actual costs.

MCA 77-6-303. Determination of compensation.

MCA 77-6-306. Arbitrators to fix value of improvements.

And administered through:

ARM 36.25.125. Improvements



How often do disputes over valuation of Ag and Grazing improvements occur?

- 8,931 active leases on 4.7 million acres
- 2,474 agriculture leases & 6,457 grazing leases

Five Year Data

- Renewal of 6104 tracts
- 175 competitively bid (3%)
 - 173 were retained by the lessee, 2 changed lessees
 - 1 lease in arbitration
- 45 vacant tracts went to bid
 - 0 disputed improvement settlements



WHAT IS THE PROCESS?

- When a lease is renewed (usually every 10 years)
 - Forms sent to lessee to submit a list of all current improvements on lease
 - Improvement information sent to all bidders

If a lease changes over to a new lessee:

IMPROVEMENT SETTLEMENT

- Agree on value of improvements
- Remove any moveable improvements
- And/or initiate arbitration process

ARBITRATION

- Lessees select arbitrators
- Facilitated through DNRC Hearings Unit
- District Court



CONCLUSION

- The Ag/Grazing lease Improvement Settlement Process is defined in MCA 77-3-302, 303 & 306 and ARM 36.25.125
- Occurrence of arbitration is infrequent; less than 1% in a 5-year average time frame
- There is a defined process when disputes occur.
- Most improvements are moveable and owned by the lessee. 99% of lessees reach an agreement with the new lessees regarding settlement of improvements and do not go through the arbitration process.



QUESTIONS?



AGRICULTURE AND GRAZING - IMPROVEMENT SETTLEMENT PROCESS

The process to settle improvements between a prior lessee/licensee and the new lessee/licensee is defined in 77-3-302, 303 & 306, MCA, and ARM 36.25.125.

77-6-302. Compensation for improvements -- actual costs. (1) Except for the improvements described in **77-1-134**, prior to renewal of a lease, the department shall request from the lessee a listing of improvements on the land associated with the lease, including the reasonable value of the improvements. This information must be provided to any party requesting to bid on the lease. Except for the improvements described in **77-1-134**, when another person becomes the lessee of the land, the person shall pay to the former lessee the reasonable value of the improvements. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in **77-6-306**. The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. The department notification must include an explanation of the requirements of **77-6-306**. Failure to initiate the process within this time period results in all improvements, except those described in **77-1-134**, becoming the property of the state.

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.

77-6-303. Determination of compensation. (1) In determining the value of the improvements described in **77-6-302**, consideration must be given to their original cost, their present condition, their suitability for the uses ordinarily made of the land on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration must be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirability for the new lessee.

(2) However, if any of the improvements consist of the original plowing of the land and 1 year's crops have been raised on the land after the plowing, the compensation for the improvement may not exceed \$2.50 per acre, and if two or more crops have been raised on the land after the original plowing, the original plowing may not be considered as an improvement to the land.

77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to **77-6-302**, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two appointed arbitrators. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to **77-6-302**.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department. The department shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located for judicial review of the decision.

36.25.125 IMPROVEMENTS

(1) A lessee or licensee may place improvements on state land which are necessary for the conservation or utilization of such state land with the approval of the department.

(a) The lessee or licensee shall apply for permission prior to placing any improvements on state land on the form prescribed by the department and then in current use.

(b) A lessee or licensee will not be entitled to compensation by a subsequent lessee or licensee for improvements which are placed on the land after May 10, 1979, and which are not approved by the department. Proof of the date of placement of improvements may be required by the department.

(c) Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee or licensee.

(2) The lessee or licensee is responsible for notifying the new lessee or licensee of the improvements and their value on the lease or licensed tract.

(a) Within 120 days of the issuance of the lease or license, the new lessee or licensee shall:

(i) provide proof of the new lessee's offer of payment or actual payment to the former lessee or licensee of the value of the improvements and fixtures either as agreed upon with the former lessee or licensee;

(ii) the value of the improvements as fixed by arbitration; or

(iii) provide proof that the former lessee has decided to remove the improvements and fixtures from the lease or license.

(3) If the improvements and fixtures become the property of the state because the former lessee or licensee has failed to act within 60 days after expiration of the lease, as per (4), then the new lessee or licensee shall not be required to provide proof of the offer to pay the former lessee or licensee for such improvements and fixtures.

(4) The department may require a written notice from the former lessee or licensee stating that he has been paid for, or is removing the improvements and fixtures. If the former lessee or licensee does not agree on the value of the improvements and fixtures or begin arbitration procedures within 60 days after the expiration of the lease or license, then all improvements and fixtures remaining, both movable and fixed, shall become the property of the state. The 60-day period for removal of improvements may be extended by the department upon proper written application.

(5) The value of the improvements will be determined by arbitration when the former lessee or licensee wishes to sell improvements and fixtures and the new lessee or licensee wishes to purchase such improvements and fixtures, but the parties cannot agree upon a reasonable value.

(6) When the new lessee or licensee does not wish to purchase the movable improvements and fixtures, then the former lessee or licensee shall remove such improvements immediately. Extensions for removing these improvements for good cause may be granted by the department.

(7) In case of arbitration:

(a) the lessee or licensee, or purchaser and the former lessee or licensee, shall each appoint an arbitrator, with a third arbitrator appointed by the two arbitrators first appointed:

(i) no party may exert undue influence upon the arbitrators in an effort to affect the outcome of the arbitration decision; and

(ii) if any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director, the director may appoint an arbitrator for that party;

(b) the value of the improvements and fixtures shall be fixed by the arbitrators in writing and submitted to the department. That determination shall be binding on both parties; however, either party may appeal the decision to the department within ten days of the receipt of the arbitration decision by the department;

(c) if any relevant portion of the arbitration decision is vague or unclear, then the department may ask for written clarification of the intent of the arbitration panel;

(d) upon appeal by either party, the department may examine such improvements to determine the value of the improvements and fixtures and the department's determination shall be final, however:

(i) the determination of the value of improvements by the department shall be limited to those improvements involved in the arbitration; and

(ii) the department shall charge the cost of its examination to the party or parties in such proportion as justice may require; and

(e) the compensation for the arbitrators shall be paid in equal shares by both parties:

(i) if the former lessee or licensee refuses to pay his share of the cost of arbitration, then those costs may be deducted from the value of the improvements and fixtures;

(ii) if the new lessee or licensee refuses to pay the cost of arbitration within 30 days of the completion of the arbitration, the lease or license shall be cancelled, and the lease or license shall be put up for bid to qualified bidders.

(8) The lessee or licensee shall pay the former lessee or licensee for the improvements and fixtures within 30 days after the value has been determined. Failure to pay the former lessee or licensee within 30 days shall result in rebidding of the lease or license in accordance with ARM 36.25.115 and the bid deposit shall be forfeited. The department may grant an extension in writing under special circumstances.

(9) Summer following, necessary cultivation done after the last crop grown, seeding and growing crops shall all be considered improvements. The value of seeded acreage and growing crops shall be limited to costs for seeding, seedbed preparation, fertilization and agricultural labor at the prevailing rate in the area. The former lessee's or licensee's anticipated profit shall not be included in such value. If the parties cannot agree on the value of seeded acreage or growing crops, the arbitration procedure set out in (7) shall be followed. The original breaking of the ground shall also be considered an improvement; however, if one year's crops have been raised on the land the value shall not exceed \$2.50 per acre, and if two year's crops have been raised, there shall be no compensation.

PROCEDURE FOR IMPROVEMENT REQUESTS AND SETTLEMENT

- Lessee requests to place improvement on the lease by submitting an improvement request form for approval.
 - Depending on the nature of the improvement project, MEPA must be completed.
 - In the case of a temporary change for water rights, no MEPA is completed.
 - Forms are submitted to the field office and filed at Headquarters.
 - During lease renewal, improvement forms are sent to lessees to complete for accurate and current information regarding improvements.
 - All competitive bid packets sent to potential bidders will include improvements information. This information is available to potential bidders as these improvements may transfer to the new lessee, or they may be removed prior to the new lessee acquiring the lease.
 - The values placed on these forms are not appraised values. They are a starting point for negotiation between the two parties. Almost every time the values are agreed upon between the two parties with no arbitration process needed.
 - Upon issuance of the lease to the new lessee, there is a 60-day period for prior lessee & new lessee to either: (1) agree on a value of the improvements; (2) remove any moveable improvements; and/or (3) if a value cannot be agreed upon, each party selects an arbitrator, and each arbitrator selects a third arbitrator, per 77-6-306, MCA.
 - DNRC must be notified within this timeframe of improvement settlement or if an arbitration process is necessary.
 - The only time DNRC plays a role in arbitration is if the two selected arbitrators do not appoint a third arbitrator within the allocated timeframe, then DNRC appoints the third arbitrator.
 - DNRC facilitates the arbitration hearing through the administrative hearings unit of DNRC, an independent work unit that does not include trust lands staff.
 - If the value cannot be agreed upon through the arbitration process, the parties may, within 30 days, petition the District Court within the county of the lease for judicial review of the decision.

FIVE YEAR DATA REGARDING IMPROVEMENT SETTLEMENTS

- Agriculture & Grazing Management Bureau has 8,931 active leases on 4.7M acres.
 - 2,474 agricultural leases
 - 6,457 grazing leases
- Each year ranges from 900-1,400 leases renewed that are open to competitive bidding.
 - 2020 – 931 leases
 - 2021 – 903 leases
 - 2022 – 1,412 leases
 - 2023 – 1,418 leases
 - 2024 – 1,440 leases
- Of these leases open to bidding, there averages 35, or 3%, annually that are competitively bid.
- 99% of the time, the current lessee exercises their preference right, matches the bid, and the lease does not transfer.
- Less than 1% of the time, the lease transfers due to the competitive bid hearing process, or the existing lessee does not match the bid and the lease is transferred to the high bidder.
- In the last five years, only one (1) lease has gone through the arbitration process because of the lease bid on during renewal and the lease was awarded to the high bidder. In addition, there is one (1) other lease that was renewed in 2018 in which the lessee did not exercise their preference right and the lease transferred to the high bidder. This lease is also involved in arbitration.
- Over the past five years, the Ag & Grazing Bureau has had 43 vacant tracts competitively bid. Of these 43 leases, all have settled and agreed upon the improvement values without an arbitrator needed.