

A PERFORMANCE AUDIT of THE DIVISION OF STATE LANDS AND FORESTRY

Chapter I INTRODUCTION

Land management in the Division of State Lands and Forestry has improved significantly since our 1977 audit, where we found the division fraught with program management problems. These problems have been reasonably well resolved, but the division now needs to refine its people management by measuring, evaluating, and directing staff efforts more toward activities that produce revenue. The Legislature and board should rescind their authorization for non-competitive land sales, which have cost the trust well over a million dollars. Finally, the board should change its policy to allow advertising of and acceptance of bids from all grazers for the trust's better blocked-up lands, which could increase trust revenue by as much as \$100,000 each year.

The division has made significant improvements during the past fifteen years. With the exception of non-competitive sales to political subdivisions and state agencies, the division has strengthened its land sales program to the point that it is receiving, on average, two-and-one-half times the appraised value on its land sales. Whereas our earlier audit found Utah's coal rental rate was the lowest among comparable jurisdictions and that coal and metalliferous leases could be extended indefinitely without going into production, these problems have been corrected. Utah's mineral rent and royalty rates now are generally comparable with those in other states. In contrast with earlier conditions, the division's revenue accounting unit has developed a detailed accounting system, correlated with the Division of Finance's FIRMS accounting system, which allocates each of the numerous beneficiaries' funds to their individual accounts on a daily basis. Finally, a computer-generated reminder system helps to assure that each special-use lease is reviewed in a timely manner, typically at three to five year intervals, to incorporate current market rates, and an effective royalty auditing unit has been established.

The Board of State Lands and Forestry makes policy and the Division of State Lands and Forestry (located within the Department of Natural Resources) manages the state's lands and forestry programs. This audit addresses only state lands and their management; it does not address the forestry programs. State lands include those granted to Utah at statehood--as a trust--for the benefit of schools and other institutions. Blocked-up lands are contiguous parcels, consolidated through exchange rather than being scattered, section-by-section, among federal lands. Program management activities include receiving applications for and approving leases, sales, and exchanges; monitoring leases; and auditing rental and royalty payments.

Audit Scope And Objectives

This is the second of two reports responding to the Legislature's Public School Trust Lands Task Force's request for an audit of the Division of State Lands and Forestry. The first report, **A Review of Costs and Revenues of the Division of State Lands and Forestry** (Report No. 92-04), was released July 14, 1992. Whereas the cost report determined that trust funds are not subsidizing General Fund activities, this final report addresses the issues of staff efficiency and maximization of trust income.

Although they have received extensive publicity, the division's historical management problems are not discussed in this audit. Rather, the audit focuses on current problems, those which management can address and resolve. Specifically, the audit seeks to:

1. Determine the effectiveness of non-competitive (determinable fee) sales in producing revenue for the trust.
2. Determine the efficiency of the division's surface lease staff, and whether an adequate information system exists to measure staff productivity.
3. Determine if the division's lease administration procedures are effective and if grazing revenue is appropriate for the market.

Chapter II

NON-COMPETITIVE SALES SHOULD BE DISCONTINUED

Legislative and board actions authorizing non-competitive (determinable fee) sales to three political subdivisions have cost the trust well over a million dollars, in our opinion, and have created legal complications regarding land ownership. Most western states do not make non-competitive trust land sales to cities, counties, and state agencies because such sales do not assure that market value is received. Further, the determinable fee provision in **Utah Code 65A-7-4** and board rules have cast a cloud over the legal ownership of certain trust lands sold to political subdivisions and subsequently sold or leased to private parties.

Determinable fee trust land sales had their origin in an act passed by the Legislature in 1959. Determinable fee refers to the limited title, it being determined by a limited use, for example, a public use. In allowing such sales at less than fair market value and without public auction, the act stipulates that the land automatically reverts to state ownership if it is ever used for non-public purposes. Since certain local units of government have sold or leased all or part of their acquired land to private parties, the local units of government, the private parties, and the division are now faced with difficult legal problems. The Attorney General's Office, the division, and the local units of government are currently trying to deal with these legal problems. The dilemma they face is how to resolve these violations without resorting to eviction or other remedies which may not be equitable.

Our survey noted several non-competitive sales since their authorization by the Legislature in 1959. However, three non-competitive sales stood out as deserving independent, detailed review; also, individual Legislators requested that we examine these three land sales.

Three Transactions Have Created Special Problems

Three non-competitive sales, made between 1973 and 1990, represent significant losses to the trust and or pose serious legal problems for the local units of government, the private parties involved, and the division. Non-competitive sales forfeit the probability of the land's sale price being "bid up" through a public sale. In two of the three cases, the present use of the land does not appear to fill a public purpose, and in two cases the trust likely did not receive market value for the land.

Commercial Radioactive Waste Disposal Site in Tooele County. In 1987, Tooele County assisted a private low-level radioactive waste disposal developer in obtaining the 543

remaining acres of the Vitro tailings repository site in the west desert of Tooele County. This was state trust land, particularly valuable because the federal government had already completed an environmental impact statement (EIS) at a cost of \$1.4 million, at least one-half of this cost pertaining to the subject property, and the property had both road and railroad access as well as electric power. However, in a three-way purchase and exchange procedure, the division accepted what appears to us to be an unrealistically low appraisal that discounted the land's value as a low-level radioactive waste repository even though that is what the developer wanted it for. Thus the trust was deprived of a significant return on a valuable parcel of land.

Tooele County's intent in facilitating the purchase and land exchange in behalf of the developer was made known fully to the division and the board. The division allowed the purchaser, in this case the county and the developer, to order the appraisal. The cover letter on the appraisal is addressed to the county and notes that the developer and the county had requested it. An unusual approach was used wherein Tooele County competitively purchased some unrelated, remote west desert trust land, then exchanged it for the desired low-level radioactive waste property, and finally sold it to the developer. By this means the "public purpose" issue was avoided since the initial purchase was competitive and the conditions of the initial sale were apparently transferred with the exchange. Our concern is that this valuable low-level radioactive waste site was never competitively sold and consequently, the division did not know and did not receive its true value.

Tooele County also benefited financially for facilitating the land purchase and exchange for the developer. The county receives a \$25 per ton tippage fee on the waste deposited in the facility and any economic benefit the project brings to the county, we believe for its cooperation in supporting the dump and for obtaining the property non-competitively. Also, the 1992 Legislature changed an earlier licensing fee to a \$2 tippage fee, which tippage fee goes into the General Fund to pay for the costs of low-level radioactive waste regulation.

Based on a comparison with competitive sales in the area, the Tooele County transaction appears to have not fully compensated the trust. Only six months earlier, two nearby sections of trust land had sold at public auction, one for over twelve times its appraised value and the other for over three times its appraised value. Although it is impossible to know what sales price the subject property would have earned at a competitive sale, in our opinion the \$339,000 the trust received was not fair market value. The \$339,000 amount was the exchange value, which was increased 25 percent above the appraisal value of \$271,500 as required by board policy for an exchange.

Based on three considerations, we believe that this transaction did not fully compensate the trust: 1) a study of recent competitive sales shows that the average competitive sale returned two-and-one-half times the appraised value, 2) in our opinion the appraisal was unrealistically low and 3) Tooele County is making millions of dollars from the exchange while the trust received a mere one-third of a million dollars.

Figure II on page 9 identifies the appraisal price (minimum acceptable price), actual selling

price, and the percent increase for 15 recent, competitive sales of trust lands. In every case the competitive sale price exceeded the appraisal price. The average selling price was nearly two-and-one-half times the appraisal price (145 percent increase over appraisal

price). If the subject property had sold competitively, and if it had brought two-and-one-half times the appraised value, it would have produced about \$325,000 more for the trust. A competitive sale generally is to the benefit of the trust.

The appraisal on the trust property appears unrealistically low for several reasons. The property was being purchased as a commercial radioactive waste disposal site, the very purpose for which it had been previously used by the federal government. The already existing improvements (EIS, railroad, access road, and utilities) to the property were very valuable to the buyer because they were necessary for facility operation. Though the appraisal acknowledged these improvements, it appears to us that the improvements were never considered in terms of the actual dollar value they added to the property. For example, an official has indicated the environmental study completed on the trust property conservatively saved the purchaser more than \$700,000, plus the time it would have taken to conduct the study. However, this actual value of the EIS was never considered by the appraisal or the board prior to the sale.

The actual value of the other improvements may not have been considered either. For example, the appraisal examines the costs associated with the construction of railroad and utilities extensions, but does not look at the cost of obtaining a right-of-way which can be more expensive than the construction. To illustrate, the cost of a railroad, 3 miles of access road, and utilities installed at a near-by waste facility exceeded \$7 million. Finally, one health department official stated that the existence of ground water monitoring wells (installed on the trust property by the federal government) can be very expensive, and there were never included in the appraisal of the property.

The appraisal also appears low because it discounted the high sale amount of one of the comparable sales mentioned earlier. Seven months prior to the sale of the subject property, the division competitively sold a section of land only a mile away. This property was appraised at \$90 per acre but sold for \$1,173 per acre. The appraisal of the subject property claimed that the competitive sale of \$1,173 per acre was not "economically logical" because it was intended to eliminate competition rather than be used as a hazardous waste facility. However, a hazardous waste incinerator is now being built on this site. We believe competition from the public auction drove the price up and the price on that sale reflects the value of raw property used as a hazardous waste facility. We believe the subject trust property that was sold without a public auction could have brought more than \$1,173 per acre. In our opinion, the sale of this land has cost the trust well over a million dollars because it was done non-competitively and because the real value of the EIS and other improvements were not considered in the appraisal.

Finally, Tooele County's agreement with the developer stipulated that the county would receive a \$25 per ton tippage fee for all low-level radioactive waste deposited on the property. The county has already received approximately \$2.1 million in tippage fees. By the time the property's capacity is exhausted, the county could potentially receive a total of \$162 million in tippage fees.

The board missed the opportunity to include tippage fees in their exchange agreement when they ignored the division staff's recommendation for a tippage fee. The current division director stated that his predecessor may have been opposed to the idea of a per-ton fee because of the potential liability it could bring. Evidently the former director was concerned that since the state retained the mineral rights to the land sold, that if the state also received a tippage fee, that would further increase potential liability. According to the current Attorney General staff person, who is familiar with geophysical matters, receipt of a tippage fee would not have increased the trust's liability; the fact that the state retained the mineral rights was a greater factor of liability. He stated that, in reality, since the EIS found the site suitable for a low-level radioactive repository, and therefore the risks were minimal, the liability may have been overemphasized.

Washington County's Dixie Downs. In 1973, the division sold 280 acres of land, northwest of St. George, to Washington County for a race track. The non-competitive sale was for \$103,000, the appraised value. Today a church, some private storage facilities, and at least two homes are situated on a portion of that land. Evidently, some of the land was transferred to private parties shortly after it was sold to Washington County. According to the statute's determinable fee requirements, the land's ownership automatically reverted to the state when it was sold to private owners.

Not only are the buyers' rights in question, but the trust likely did not receive market value for the land. Because determinable fee sales are made at appraised value, but without a public auction, the division cannot be certain that the proceeds represented market value. . While it is impossible to determine precisely how much additional revenue a competitive sale would have brought, the amount can be approximated based on competitive sales of other trust lands in the same area during the same general time.

There were four competitive sales in Washington County in the late 1960's through the early 1970's. The following table summarizes this sales information.

FIGURE I					
WASHINGTON COUNTY COMPARISON OF COMPETITIVE AND NON-COMPETITIVE SALES					
Sale	Date	Number of Acres	Appraisal Price per Acre	Actual Sales Price per Acre	Percent Increase Over Appraisal
1	4/67	8.66	\$100	\$250	150 %
2	10/68	40.00	100	100	0
3	3/71	5.00	375	1,280	241
4	5/74	80.00	150	345	130
*	73	280.00	368	368	0

** Non-competitive sale to Washington County.*

As shown in Figure I, three of the four competitive sales generated a substantial increase over the appraisal value (minimum acceptable price). Only one of the four competitive sales failed to produce a higher price than the minimum and that was because the applicant was the only bidder. The average increase of actual sales price over the minimum acceptable price for the four was 114 percent (weighted average). Projecting a 114 percent increase to the Washington County sale price of \$103,000 would have produced \$220,000, providing an additional \$117,000 more than the trust received.

East Carbon City's Non-Hazardous Waste Dump. The third case involves the 1990, non-competitive purchase of a 640-acre section by East Carbon City. The public purpose of this land was that it would be used as part of a disposal facility to accommodate the garbage of the cities of East Carbon and Sunnyside. The city has leased the entire section to a private, for-profit corporation, which, while providing free garbage disposal for the cities of East Carbon and Sunnyside, also plans to deposit non-hazardous waste from cities across the United States and Canada.

The fact that the private development corporation was to be the exclusive operator of the facility and the state section was only part of a larger area for the landfill was explicitly stated in the official appraisal of the section of trust land. The division told the city that the state section could be used only for the local cities' garbage; however, the division should have been aware that it would likely be economically infeasible for the developer to operate that section purely for the waste of these two small cities. This case is also being handled by the Attorney General's office and to date has not been resolved.

Although a public sale may have brought more money, the impact of the East Carbon City land sale on the trust likely was not significant. The land was appraised for \$112,000, or \$175 an acre. An officer of the development company told us that the company purchased some adjacent property for \$125 to \$150 an acre. Our correspondence with one of the adjacent landowners indicated that they traded their land to the company for the equivalent of \$175 an acre. It is unlikely that the trust land would have sold for any purpose other than a landfill since it would become surrounded by the landfill project. Nevertheless, a public auction may have brought a higher sale price, given that in public sales the appraised value is not disclosed, and buyers tend to bid higher to enhance their chances of getting the land. Even when there is only one buyer, the bid may be higher than the appraisal because the appraisal amount is not revealed.

In two of the three cases discussed above, the public purpose is questionable, and in two the proceeds returned to the trust appear to have been significantly below market value.

Competitive Sales Exceed Appraisal Value

Since determinable fee sales are made at the appraised value, another way to evaluate non-competitive sales is to consider how much more the division's normal, statewide, competitive sales have brought above appraised value. In the last three to four years, the division has developed a sophisticated strategy for marketing state land. The division hired an individual with real estate expertise, increased the scope of advertising for the sale of land, sometimes conducted preliminary development before selling to enhance the land value, and developed a more effective competitive public auction process. The following table shows the results of all competitive sales of state land during the past 3 years.

FIGURE II					
COMPETITIVE LAND SALES COMPARISON OF APPRAISED vs SALES VALUES					
Sale Date	Number of Acres	Number of Bids	Appraisal Price	Actual Selling Price	Percent Increase
2/90	30.00	4	\$27,000	\$39,551	46 %
3/90	60.00	8	15,720	37,000	135
4/90	640.00	5	64,000	101,000	58
7/90	80.00	3	12,000	23,000	92
7/90	513.00	2	40,000	154,122	285
8/90	24.00	2	4,920	7,380	50
9/90	160.00	1	16,000	160,000	900
10/90	228.00	6	34,306	75,000	119
12/90	10.00	1	5,000	5,250	5
12/90	40.00	9	5,000	28,000	460
1/91	40.00	4	3,800	6,600	74
1/91	72.00	11	23,533	27,000	15
2/91	80.00	8	16,560	36,000	117
2/91	40.00	8	12,000	29,000	142
4/92	303.33	3	34,250	40,000	17
Weighted Average					145

As shown in Figure II above, in every case the competitive sale price exceeded the appraisal (minimum acceptable price). The average amount by which the actual selling price exceeded the minimum acceptable price in these 15 sales was 145 percent (weighted average). Four additional properties offered for sale did not receive bids as high as the appraisals and therefore did not sell. With the enhanced marketing program, the trust is realizing a substantiality higher return on competitive sales of state land than the appraised value. Also the division is not concerned whether the land is still being used for a public

purpose as it is with determinable fee sales. From a pure trust management perspective, an unrestricted, competitive sale is "clean" because it does not require monitoring; it is the only way the division can be assured it is receiving market value for the land it sells.

Utah Is in the Minority in Making Non-competitive Sales

Utah is in the minority of western states in making non-competitive land sales to political subdivisions and state agencies. We contacted the state land agencies in eight western states to determine how each sells its trust land to political subdivisions. Since all state land offices must make land available for highway use, we also inquired how other states meet this need. Figure III summarizes the results of our calls.

FIGURE III		
WESTERN STATES' TRUST LAND SALES TO POLITICAL SUBDIVISIONS		
State	How is Land Sold to Political Subdivisions?	How is Land Provided for Road Construction?
Arizona	Competitively	By perpetual right-of-way
Colorado	Competitively	By perpetual right-of-way; rights-of-way are also issued to other public agencies for schools, prisons, etc.
Idaho	Competitively except to state and federal agencies with the power of condemnation	Non-competitively since it involves an agency with the power of condemnation
Montana	Competitively	By perpetual right-of-way
New Mexico	Competitively	By perpetual right-of-way
Oregon	Political subdivisions have the right to buy trust land non-competitively before it goes to public auction	Can be bought non-competitively
Washington	Can be sold non-competitively	Can be bought non-competitively

Wyoming

Competitively

By perpetual right-of-way

Figure III shows that six of the eight states only sell land competitively; Idaho sells non-competitively when the buyer has the power of condemnation. Just two of the states have provisions similar to Utah's for selling land non-competitively to government agencies.

Trusts' Interest Must be Paramount

Selling land non-competitively to any person or entity generally is not to the benefit of the trust, but to the benefit of others. According to the **Utah Enabling Act and Constitution**, these trust lands have been granted "for the support of common schools" and the other beneficiaries and are "to be disposed of ... for the respective purposes for which they have been or may be granted...."

Presumably, the reason the Utah Legislature enacted **Utah Code 65A-7-4** allowing non-competitive sales to political subdivisions and state agencies was to save local units money because the lands so acquired would benefit the public as a whole. In our opinion, the reasoning behind the statute does not fit with traditional trust management concepts. According to the Legislative Legal Counsel, a statute is presumed constitutional until challenged in court. This rationale might be palatable if these lands were always used exclusively for a public purpose, thus benefiting the citizens of the state, a part of whom are the school children. But as shown by the three examples of non-competitive transactions, the interests of the trust as well as the interests of the public have become secondary in an effort to help private parties, and that is clearly not consistent with the state's duties as trustee.

Recommendations:

1. We recommend that the Legislature and the Board of State Lands and Forestry rescind the legislation and rules, respectively, which authorize determinable fee (non-competitive) sales, and that the division conduct all land sales competitively.
2. We recommend that the board establish a policy requiring a critical evaluation of all appraisals, for both sales and exchanges of trust land.
3. As an alternative, in the event the Legislature chooses not to rescind the determinable fee legislation, we recommend the use of the division's recently revised rules recommended to the board, which are summarized below:
 - a. That determinable fee sales to political subdivisions be allowed only in cases where a documented benefit will accrue to the trust from such sales, and only if this benefit is demonstrated to the division to be greater than what would otherwise reasonably result from a competitive sale.
 - b. We recommend that in cases where a determinable fee sale is authorized, the use of the land be clearly approved by the division as a prerequisite to the

sale, that the sale satisfactorily conform with the statutory public purpose requirement, and that the specific public purpose be specified in the conveyance documents.

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Chapter III

SURFACE MANAGEMENT AND SPECIAL-USE LEASING NEED BETTER CONTROLS

The division staff who are responsible for leasing surface lands should be more closely monitored to assure their efforts are efficiently applied to maximizing trust revenue and, the elapsed time required to approve a special-use lease should be shortened to reduce the loss of revenue. We cannot accurately determine the effectiveness of the surface staff because management is not formally measuring employee productivity. Although the current time sheet does establish whether or not staff time is spent in trust activities, it inadequately measures specific uses of employee time and consequently does not provide meaningful information regarding productivity. Also, the time required to process a special-use lease has greatly increased in recent years, being much greater than in other states, which likely has had an adverse effect on trust revenues.

Management's need to clearly establish priorities consistent with the best interests of the trust and to measure the output of the surface staff is discussed in the first section of this chapter. Surface staff are those concerned with non-mineral leasing activities, such as grazing, easements, and special-use leases. The second section addresses the substantial length of time required by the division to process a special-use lease as compared to the time required by other states. While there may be some justification for the excessive processing time, management should carefully evaluate the necessity of the procedures involved in processing special-use leases in light of their cost to the trust.

The Efficiency Of The Surface Staff Is Not Being Measured

As mentioned above, the efficiency of the surface staff cannot be determined at present. In the absence of objective productivity indicators, we have attempted to evaluate staff performance using our own measurements. Considered together, these measurements indicate that the administration of surface activities in some areas of the state is inefficient. We believe that the division, and ultimately the trust, would benefit through formal measurement of employee productivity and through a revised time sheet that would allow management to monitor specific uses of staff time. Below, we discuss the organization of surface management activities, followed by a description of our analyses of surface staff efficiency.

How the Management of Surface Activities is Organized

The management of state land surface activities is handled by northern and southern regional offices. Within these two regions are five areas broken down along county lines: two in the north and three in the south. Each of the area offices is staffed with one land specialist, clerical support, forestry and fire-fighting personnel, and is managed by either the northern or southern regional supervisor. The southern region also employs a range conservationist responsible for coordinating grazing activities and managing range land conditions. While overall policy matters are dealt with centrally, all surface transactions are processed, issued, and kept on file within these area offices.

We interviewed and actually traveled with the land specialists to discuss and observe how they spend their time. They are mainly responsible for accepting and processing all surface lease and permit applications as well as applications for the purchase or exchange of state lands. They also periodically review certain leases after issuance to determine if they need to be adjusted to match current market conditions. In addition, the specialists spend a fair amount of time traveling to various state land sites to a) inspect the land before issuing a lease or considering a sale or exchange; b) evaluate range conditions for grazing purposes; c) discuss problems and concerns lessees are having; and d) investigate alleged trespass situations. They also attend training sessions and meetings as well as perform other general administrative duties.

The land specialists generally state they are very busy in their jobs and are often not able to keep pace with the workload. However, as we discuss next, there is no measurement of how land specialist time is specifically spent or how productive the specialists are relative to the best interests of the trust.

Output and Productivity Indicators are Lacking

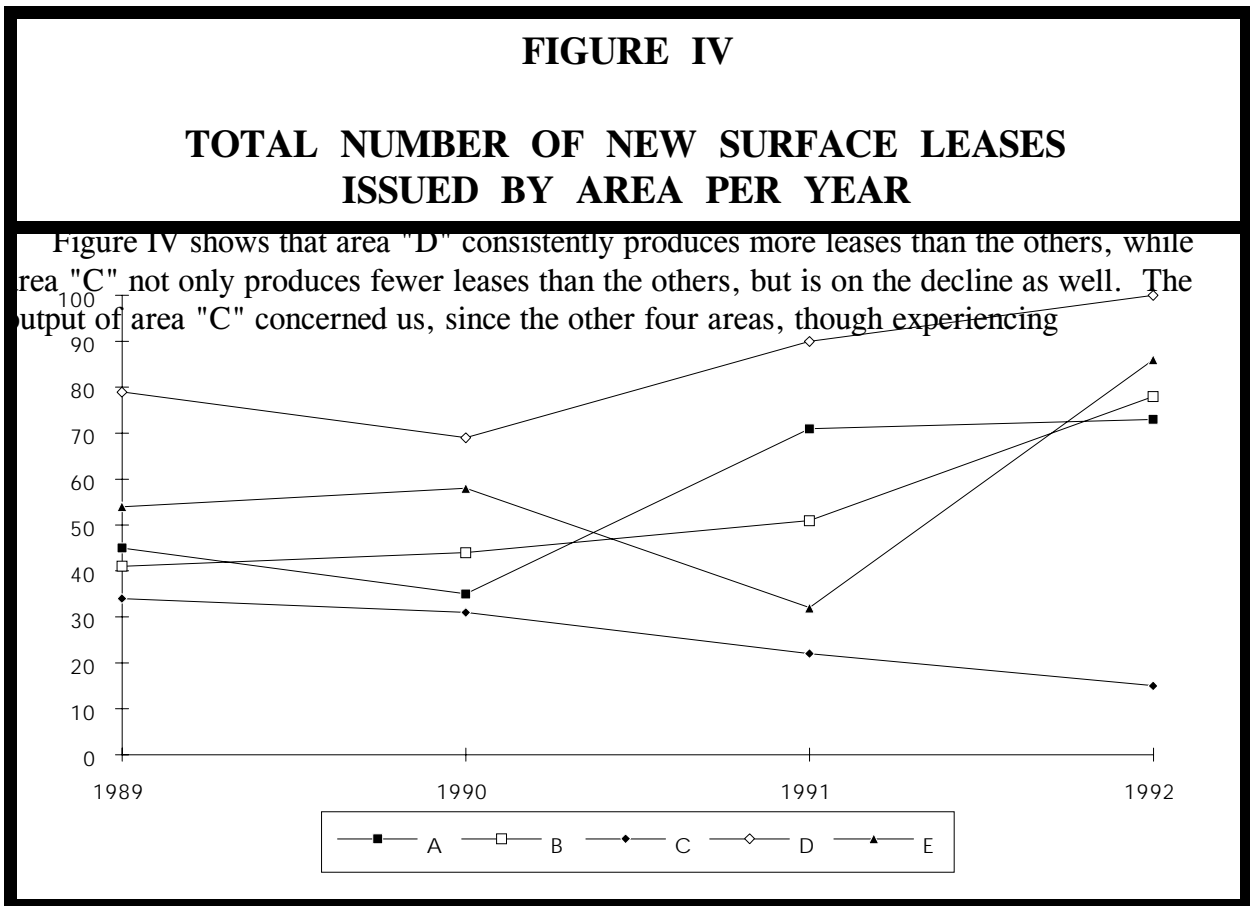
Division management does not collect and evaluate specific data on land specialist output or productivity, and consequently does not know how efficiently the specialists are operating. One indicator we used (lease processing) suggests there are some significant differences in the efficiency of the five area offices. It also appears that management has not set specific priorities regarding land specialist output. By establishing and measuring the desired land specialist output, management can assess their contribution to the trust and best direct employee resources.

As mentioned earlier, the land specialists spend the bulk of their time performing the following activities:

- Processing applications for the lease, sale, or exchange of state land as well as periodically reviewing existing leases;

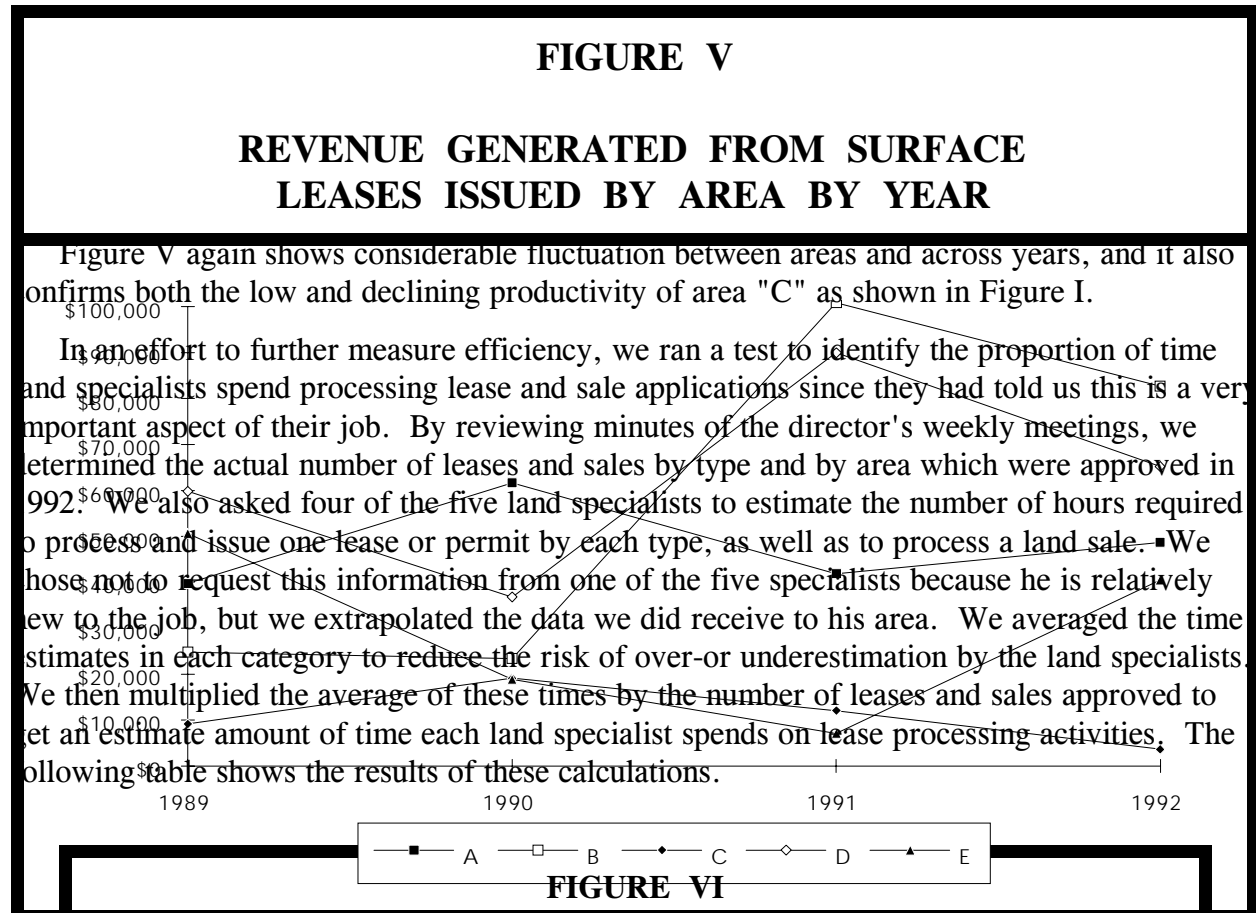
- Conducting site inspections before leasing or selling, and evaluating range conditions for grazing purposes;
- Discussing problems, concerns, and complaints with existing lessees;
- Investigating alleged trespass situations;
- Attending training sessions and other meetings and performing other general administrative duties.

The division does not gather or report information about either the productivity of the activities listed above or the amount of land specialist time they demand. Therefore, we collected data on one of these activities, lease processing, in an attempt to evaluate land specialist efficiency. We chose to evaluate lease processing because a) it produces direct revenue for the trust and is thus a very consequential activity; b) it consumes a substantial amount of land specialist time; and c) data exist that make it measurable. Using a computer printout, we first identified the number of surface leases issued annually in fiscal years 1989-1992 by each area. This information is reported in the following figure.



fluctuations, all exhibit a pattern of increasing productivity. This information was generated from the division's own computer system, but may be subject to some interpretation because of time delays in data entry.

We then identified the amount of revenue the new leases in Figure V generated in the fiscal year they were issued. The following figure presents that information.



PERCENT OF LAND SPECIALIST TIME SPENT ON LEASE/SALES PROCESSING ACTIVITIES IN FY 1992

ACTIVITY	LAND SPECIALIST				
	A	B	C	D	E
Sales	0.0%	3.6%	0.0%	3.6%	10.6%
Special-Use Leases	20.4	16.9	3.4	10.1	13.2
Easements	17.8	15.4	6.0	7.1	20.7
Material Permits	6.9	2.3	2.3	2.3	4.4

Rights of Entry	2.7	0.4	0.0	4.9	9.2
New Grazing Permits	0.5	0.7	0.6	0.5	0.4
Renewed Grazing Permits	1.2	1.4	2.0	0.9	1.3
TOTAL	49.5%	40.7%	14.3%	29.4%	59.8%

While these figures represent only a portion of land specialist duties, the processing of lease and sale applications is the most basic and important land specialist function because it generates present and future income for the trust. Figure VI shows again that area "C" lags far behind the others in terms of productivity. Viewed together, these three analyses clearly illustrate that area "C" has consistently been less productive than the other areas.

The staff from the area "C" office explained to us that their low numbers are not due to a lack of staff productivity, but rather are a result of the lower quality and marketability of the land in the area. Consequently, the land specialist has been devoting more time to administrative duties than the other specialists. He could only estimate the amount of time he spends in administration, and said this time has increased because of the recent training of new personnel in the region.

It concerns us that this time is not being monitored, because administrative duties, though important, do not generate direct revenue for the trust as does the processing of lease and sale applications. When we mentioned this, one supervisor suggested that division officials

would be concerned if they knew the amount of time being spent on administrative matters. We are further concerned about the time spent in administration when other specialists have more lease applications than they are able to process quickly.

We believe it is important for management to measure actual staff activities and to identify their relative cost and value to the trust. The division should collect and evaluate information relating to workload as well as output and productivity of each area office on an ongoing basis to utilize employee resources as fully as possible in ways that will directly benefit the trust. Doing this will allow management to distribute land specialist workload such that all lease applications can receive more immediate attention, and will also help the specialists become, according to one specialist, more "proactive" rather than "reactive" in their work.

One relatively easy way of monitoring employee productivity would be through employee time sheets. However, as we discuss next, this is currently not possible because the time sheet now used does not capture sufficiently meaningful information.

Time Sheets Do Not Entirely Reflect How Time is Spent

The current time sheet was designed to identify division program costs as well as trust versus non-trust costs; however, it is inadequate for identifying the amount of time spent in certain activities. For example, there is no provision for clearly reporting administrative activities. Division personnel are instead forced to record activities such as staff and board meetings, training sessions, and general administrative functions into actual land activity categories such as special-use leasing or land sales. Even sick and annual leave as well as compensatory time used must be allocated to these categories.

The danger with this system is that management does not know how much time is actually spent in administrative activities. In addition, because of this system time reported in actual program activities is overstated. While administrative activities may be necessary, management should have a working idea of how much time they consume and how they affect the trust.

Further, the categories currently used for reporting time may not be useful for evaluating land specialist productivity and benefit to the trust. While reporting time by lease type, land sales, etc., allows the division to differentiate between trust and non-trust activities, management does not know how effectively land specialist time is spent within those categories. A time sheet with categories such as lease, sale, or exchange processing time, lease review time, site inspection or range evaluation, handling lessee complaints, training and other administration, and trespass investigation would allow management to assess land specialist efficiency. To our knowledge, management does not use the current time reporting system to direct or alter staff activities.

One activity of particular concern currently not identified on the time sheet is the handling of lessee and other complaints. We understand from our interviews that land specialists,

clerical staff, and others spend a considerable amount of their time listening to the problems and complaints of lessees and other parties having an interest in state lands. However, because this activity is not measured, we are unable to determine how much time it requires or how it benefits the trust. Management could make an informed assessment of the value of processing complaints if they knew how much land specialist time it requires.

We visited the Wyoming State Lands Office and they told us they rarely become involved in the complaints and problems of lessees. All complaints are funneled to one individual who screens them by requiring evidence of the problem with a written request for mitigation. The problem will then be investigated when it can be consolidated with other business in the particular area. Many of the complaints now processed in Utah would not be considered in Wyoming. For example, Wyoming refuses to examine any problem between two parties unless it is clearly harming their trust land.

Because of the limitations of the current time sheet, management cannot measure specifically how staff time is being spent or use it as a meaningful way of evaluating staff productivity. We believe a revised time sheet with specific categories for recording administrative time and other land specialist activities would be one way for management to provide better staff direction and insure that trust responsibilities are met.

Processing Time For Special-Use Leases Is Excessive

The elapsed time required for the division to process and approve an application for a special-use lease has increased considerably over the years and the current process time is long compared to other states. We believe this lengthy process is part of the reason that some land specialists have a backlog of special-use lease applications as mentioned in the previous section. The excessive processing time is due in large part to the division's attempt to satisfy the concerns of outside parties and protect itself from criticism and even litigation. It is our opinion that being so thoroughly scrutinized by school trust beneficiary representatives and others has caused the division to become overly cautious in its procedures and has added to special-use lease processing time. The efforts the division is making to address the concerns of these parties may be legitimate, but we feel they should be weighed against the loss of revenue due to leases never being completed and to the delay in completing leases.

Special-Use Leases Are Very Beneficial to the Trust

Special-use leases are the most profitable surface leases the division offers. Such leases are utilized for long-term needs where permanent structures or improvements are developed, such as stores, radio transmission sites, and explosive manufacturing plants. They are generally long-term leases (issued for up to 99 years) and contain a clause for the review and

adjustment of the lease rate every 3-5 years so current market rates can be applied. There are eight basic categories of special-use leases: telecommunications, governmental, military, commercial, industrial, residential, agricultural, and recreational.

As mentioned above, however, the elapsed time required to approve a special-use lease application has risen dramatically over the last several years. We obtained a computer printout from the division indicating the time interval between application date and the date of approval for all special-use leases in recent years. This information is summarized in the following table.

FIGURE VII			
AVERAGE PROCESSING TIME FOR SPECIAL-USE LEASES			
Year	Number of Special- Use Leases Approved	Average Processing Time in Months	Percent Change From Prior Year
1985	19	2.08	-----
1986	20	4.15	99.5%
1987	26	4.48	8.0
1988	23	8.13	81.5
1989	22	10.73	32.0
1990	21	9.00	(16.1)

The above figure illustrates that special-use lease process time has more than quadrupled since 1985. These numbers may actually be conservative when considering only small business applicants; some of the land specialists told us the lease processing time for large companies is relatively short. This is because large companies are financially able to arrange for their own cultural resources study, which, in some cases, is actually completed before application for the lease is made. Large companies also have the advantage of receiving more immediate attention by the division because they represent a greater dollar benefit to the trust. Consequently, a lease application submitted by a small organization which might take more than a year to process would likely be processed in a much shorter time if submitted by a large company. Division management further told us they have refined the lease approval process somewhat so that certain aspects are taking less time. This likely explains the decrease in processing time from 1989-1990.

The overall increase in processing time is the result of certain procedures used by the division to assure that the decision to lease or not to lease has been very well considered and is defensible. Three of these procedures include a cultural resources (archeological) survey, a review of the lease proposal by an intergovernmental body called the Resource Development Coordinating Committee (RDCC), and an official, written analysis of the division's decision regarding the lease application, called a record of decision. A cultural resource study can take several months and up to a year to complete while the RDCC is given up to 45 days to review and respond to the lease application. The record of decision goes through several levels of review and takes about 2 months and even up to 4 months before being approved.

We contacted the lands division in other western states in person or by phone to determine how lengthy their special-use leasing process is and to see if they require these same procedures. This information is presented in the following figure.

FIGURE VIII AVERAGE PROCESSING TIME FOR SPECIAL-USE LEASES IN WESTERN STATES					
State	Lease Processing Time	Cultural Resources Study		RDCC Review	Record of Decision
		Yes / No	When		
Arizona	3 months	Yes	Occasionally done	No	No
Colorado	3 months	Yes	Occasionally done	No	No
Idaho	3 months	Yes	Rarely done	No	Yes
Montana	3 months	Yes	Usually done	No	No
New Mexico	1 month	Yes	Rarely done	No	No
Oregon	2-24 months	Yes	Usually done	Yes	No
Washington	3 months	Yes	Occasionally done	No	No
Wyoming	3 months	Yes	Occasionally done	No	No
Utah	9 months	Yes	Usually done	Yes	Yes

Figure VIII shows that the average lease processing time for Utah is triple that of the other states. Utah is one of only two of the nine states that has any kind of an RDCC review process or requires a record of decision or something similar. State statute requires both the RDCC

and that cultural resources be given equal consideration in evaluating the potential revenue to be generated from the land. Although all states have some requirement or provision for a cultural resources consultation or study, most states are only conducting them periodically and are still able to approve an average special-use lease in about 3 months.

The many requirements for processing a special-use lease have clearly created a lengthy and inefficient system. We are concerned that this time delay has an adverse effect on parties trying to do business with the division. We therefore contacted several parties whose lease applications had taken an extraordinarily long time to approve to see how they felt about the process. Many of them were dismayed about the bureaucracy of the whole situation and could not understand how something which seemed so simple could take so long to resolve.

We believe processing time for special-use leases will likely increase as the division continues to respond to the concerns of outside groups and tries to make the most prudent decisions. Our concern is that this will inevitably cost the trust in terms of staff efficiency and delayed or even withdrawn lease applications and associated revenue. We believe the Board and Division of State Lands and Forestry need to evaluate the benefit of the procedures they directly control and streamline the process of special use leasing so it is more reasonable than the current system.

Recommendations:

1. We recommend that division management collect and evaluate information that would determine employee productivity.
2. We recommend that division management revise the time sheet currently used by the surface staff so time can be recorded and measured in both program and support categories to allow management to meaningfully monitor employee productivity. At a minimum, we recommend that this revised time sheet include categories for time spent in administration (training, team meetings, etc.), time spent in dealing with public and land users' complaints and concerns, and all leave taken.
3. We recommend that in the process of implementing the above recommendations, division management clearly establish and communicate priorities for how land specialist time should be spent relative to the best interests of the trust.
4. We recommend that the division adopt a policy of screening public and land user complaints as a way of reducing time spent by the surface staff which benefits only the complaining party and not the trust.
5. We recommend that the board and division determine the necessity of each step involved in the processing of special-use leases. Specifically, we recommend that the board and division work in conjunction with the Legislature to minimize the impact of the cultural resource study, the RDCC, and the record of decision on special-use lease processing time.

6. We recommend that from this evaluation process, the board and division establish a time range for the processing of special-use leases which is more helpful to the trust and lessees than is the current system.

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Chapter IV

LEASE PROCEDURES IMPROVED, BUT GRAZING FEE STILL LOW

Although the division is consistently monitoring and auditing its leases to assure full payment of rents and royalties, and Utah's rent and royalty rates are otherwise generally in line with those in other states, its grazing fee is second lowest among western states. While we could not determine if Utah's grazing fee is appropriate, we believe that competitively bidding the grazing permits on blocked-up land could increase trust revenues by upwards of \$100,000 per year.

The first section of this chapter addresses how Utah's rent and royalty rates compare with those in other western states and recommends that grazing permits be advertised and bid on blocked-up land. Blocked-up lands are contiguous parcels, consolidated through exchange rather than being scattered, section-by-section, among federal lands. The second section reviews the division's updating of leases to incorporate current market rates and its auditing to assure that full royalty payments are received.

Utah's Grazing Fee is Low

Although Utah's rental and royalty rates otherwise parallel those in other western states, its grazing fee per animal unit month (AUM) is second lowest. An AUM is the measure of the amount of forage one cow and calf or one horse or five sheep eats in one month. The AUM fee is the charge for one AUM. Figure IX compares Utah's rental, royalty, and AUM grazing fees with those in contiguous western states, as well as in Montana.

Figure IX

**Comparison of Rents, Royalties, and Grazing Fees
Utah and Other Western States**

State	Per Acre Rental	Coal Royalty	Oil & Gas Royalty	Metals Royalty	Grazing Fee/AUM
AZ	Between \$.75-15.00	N/A	N/A	Varies; minimum of 2% of gross value	\$1.48
CO	Between \$1.00-2.00	Between 5.0%-12.5% depending on several factors	12.50%	N/A	\$4.75
ID	Between \$1.00-3.00	12.5% for surface; 8.0% for sub-surface	12.50%	\$.25 per ton or 10% of gross value	\$4.99
MT	Between \$1.50-3.00	12.5% for surface	Oil-13.00% Gas-12.50%	5% of gross value	\$4.17
NM	Between \$.25-1.00	12.5% for surface	Between 12.50% - 20.00%	N/A	\$3.28
OR	Between \$.50-5.00	N/A	12.50%	5% of gross sales	Between \$2.50-3.50
WA	Between \$1.25-3.00	Between \$.10- \$.20 a ton	12.50%	N/A	\$6.20
WY	Between \$1.00-2.00	12.5% for surface; 8% for sub-surface	16.67%	5% of value	\$2.50
UT	Between \$1.00-3.00 *	8.0% for sub-surface	12.50%	Between 4% - 8%	\$2.27

** Coal is \$3.00 minimum.*

As shown in Figure IX, Utah's rental and royalty rates favorably compare with those in other states; however, its grazing fee is lower than those of any state except Arizona's, and similar to Wyoming's.

One explanation for Utah's low grazing fee is that its land is more scattered among federal land. At statehood, Arizona, New Mexico, and Utah all received four sections of land per township, which tends to create a more scattered pattern. It is argued that it would be difficult to raise the state fee on its inholdings within federal land when the prevailing federal fee is lower. In addition, if the state fee were much higher than the federal fee, grazers might refuse to buy a permit for the state's inholdings and accept the lower number of Animal Unit Months (AUM) the federal government would then require. However, since the state's inholdings are seldom fenced, the grazers' animals would still graze the state land, and the cost to prevent it would be prohibitive. Since data do not exist in the comparison states relating the degree to which a state's trust land is scattered among federal land, we were unable to address the scattered land explanation.

Another explanation for Utah's low grazing fee is that Utah's trust land is generally of inherently lower quality than that in other states. One possible way to compare quality of the various states' grazing land is to compare the land's loading capacity as measured by acres of land necessary to sustain one AUM. Figure X compares each comparison states' AUM fee with the acres of land it takes to sustain one AUM.

Figure X

AUM Rate vs Loading Capacity

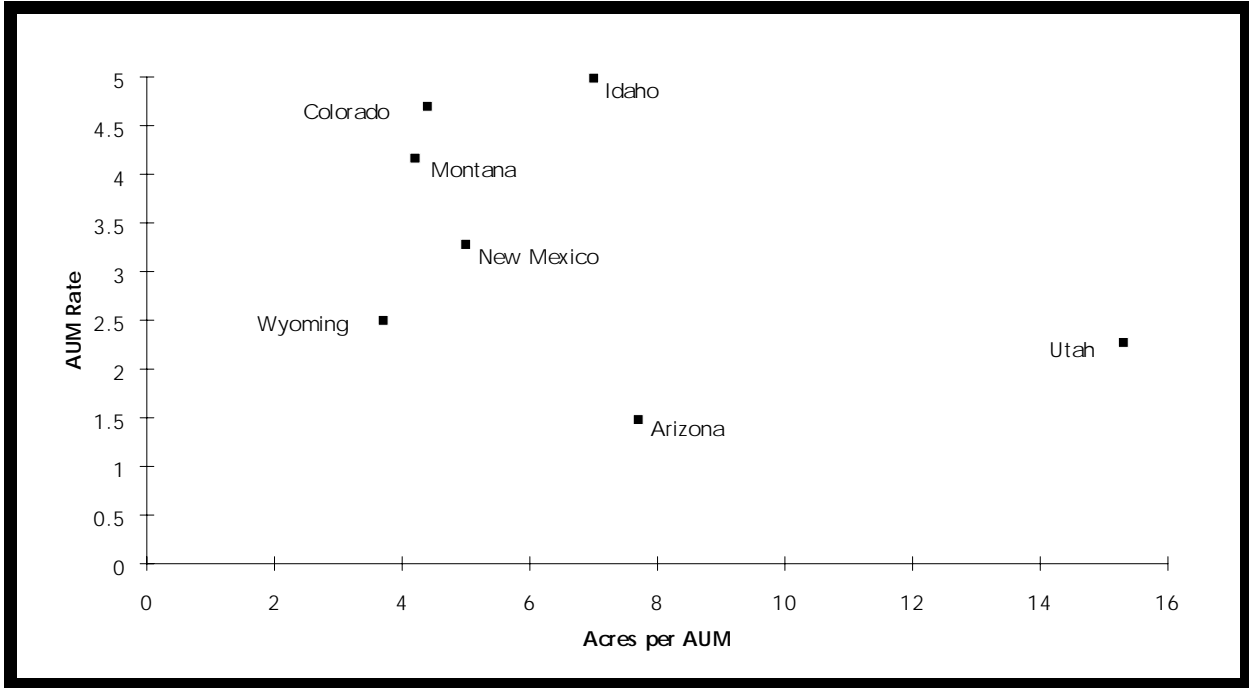


Figure X is helpful, but inconclusive because different states use different approaches in how heavily they load their grazing land, that is in how many acres are used to support one AUM. Some use the BLM loading capacities on surrounding land, while others do their own studies, and depending on their results, stock the land more or less heavily than BLM.

Figure X suggests 1) that Utah may be using twice as much land to graze one AUM as the next closest states in loading capacity, and 2) those states with what appears to be the highest loading capacity tend to have the highest AUM fees. Yet, there are exceptions. Idaho and Arizona have approximately the same apparent capacity, but they have respectively the highest and lowest fees of any of the comparison states. Wyoming appears to have the highest capacity of all, yet its AUM fee is only slightly higher than Utah's. Wyoming officials told us that they evaluated all of their grazing land and established loading rates which generally were higher than the BLM rates on adjoining land.

The fact that Utah has both the lowest grazing fee and the lowest AUM loading capacity indicates either that Utah's land is of relatively lower quality or that further study needs to be done to identify the correct fee and AUM loading rate. Other states have examined either the fee or the AUM carrying capacity to determine if they are returning a fair market value. We believe sometime in the future the division should reevaluate its fee structure and its AUM carrying capacity on the scattered sections of trust land to determine if the value received is at

market. However, an examination of carrying capacity should take place in years that are more consistent with normal water years since the state is experiencing the sixth or seventh year of drought conditions.

Whatever the merit of the above explanations for Utah's low AUM fee, neither the scattered sections nor the poor land explanation applies to Utah's blocked-up lands. In this audit, Utah's blocked-up lands comprise large parcels of 2,000 acres or more of contiguous land. Sixty percent of such parcels are rated as being superior grazing land. Further, the blocked up lands typically are summer range, which adds to their grazing value and carrying capacity.

One university range specialist suggested, and two others concurred, that Utah could bid its blocked-up land, and the trust would receive more revenue. They caution that the bids should not be for short terms, such as for one year, but for longer terms, perhaps the same 15-year period for which permits are now issued. Their caution is that on short term permits grazers might abuse the land by overgrazing it without a long-term commitment to the resource.

We believe that the trust could realize a significant increase in its total grazing revenue by bidding its better blocked up parcels. Utah has 730,492 acres of blocked-up land, approximately sixty percent of which (436,371 acres) is rated as being above average, very good, or excellent grazing land. The excellent land's carrying capacity is estimated at approximately five acres per AUM. Assuming that the overall carrying capacity of the better sixty percent of the blocked-up land is midway between that of the excellent land and the state average of approximately 15 acres per AUM, it would take about ten acres to carry one AUM. This assumes that the better 60 percent of the blocked-up land should carry about 43,637 AUMs (436,371 acres divided by 10 acres per AUM), or approximately one-fifth of all AUMs on state land.

Although it is impossible to determine what the bidding process would bring, if the effect were to double the AUM fee on the better sixty percent of the blocked-up lands it would amount to approximately \$100,000 (the extra \$2.27 per AUM times 43,637 AUMs) of additional revenue for the trust each year, a 20 percent increase in grazing revenue. A more conservative estimate would be to use the average of the other states' fees (\$3.80), which would provide an additional \$67,000 (\$1.53 difference times 43,637 AUMs).

Present board policy prohibits advertising grazing permits and allows only adjoining permittees to bid on permits at the end of their terms. Division officials point out that if blocked-up units were bid, the current permittee, if not the successful bidder, should be recognized as having an investment in any undepreciated value of improvements he/she has made on the land. These officials concur that fairness would be served by applying present board rules that require the successful bidder to pay for the undepreciated value of the improvements and/or by allowing the present permittee to retain the permit by matching the high bid.

The Division is Systematically Updating and Auditing Its Leases

The division now has a procedure for systematically updating its leases at their appropriate review dates, and has established an effective audit unit to help assure that lessees are reporting and paying appropriate royalties.

Lease Reviews

Our 1977 audit found that many leases were being overlooked for adjustment to market rates at their renewal dates and recommended that a systematic reminder system be established to alert staff when leases were coming due for adjustment. When reviews are overlooked, the lease continues at the old and typically lower rates, thus losing money for the trust.

By 1985, the division had developed a computer data base to include all of its leases, which in recent years has culminated in the production of monthly and quarterly reminder reports to all mineral and surface specialists. These reports identify each lease coming due for renewal and each special-use lease coming due for periodic update of rates. Such leases typically run for very long terms, so they include provisions for review at three to five year intervals. Mineral and surface specialists, both in division headquarters and in the field, said that they receive the reports and use them to monitor leases coming due for renewal or update.

Our review indicates that the specialists are using the computer-prepared reminder lists to update leases at the appropriate dates. To judge how well the division has done in alerting its staff when leases have renewal dates, we tested a sample of 32 leases that had come due for renewal or review since our 1977 audit. No leases have been missed since 1990, when the last unit to adopt the computer-reminder system began using the system. Four leases were missed immediately following our 1977 audit, resulting in a loss of \$9,716. One special-use lease was missed in 1987 but was caught on its next review date in August 1992. Two other leases were missed in 1990, just prior to the last unit adopting the system. Because these two leases were in development and not in production, no money was lost and the lessee has expressed its willingness to accept the current rates as it enters production. In addition to the 32 leases reviewed, several recently initiated special-use leases were checked as to rates and values used in their preparation; all were found to have been appropriately prepared.

Royalty Auditing

The division established a royalty auditing unit nine years ago. Royalty auditing helps assure that royalty payments from mineral as well as some surface leases are accurate and,

when they're not, provides a mechanism for recovering overdue revenues. Our review indicates that the unit is well-coordinated and cost beneficial.

The audit team has designed a prioritized list of criteria for selecting audits that covers many areas relating to possible audit findings. A chief consideration in selecting audits is reviewing the audit schedules of both the Tax Commission and the Division of Oil, Gas, and Mining. These agencies also have audit functions related to the state lands as well as non-state lands and are interested in many of the same issues as the State Lands audit team. Coordination among the three agencies allows for the sharing of information on mineral operators when there is mutual interest, as well as prevents duplication of effort. The State Lands audit team benefits by comparing oil and gas production and pricing information they require from their lessees with similar information required by the other two agencies. Any difference in information between the agencies may indicate the need for further examination. We also reviewed the team's other criteria for selecting and conducting their audits and found them to be well qualified for effective auditing.

Audit Revenues and Expenses. Since the audit function was implemented in fiscal year 1984, approximately \$14 million has been recovered from the 89 audits that actually have been settled. There are another ten audits that have been issued but are still outstanding, and the recovery figure will increase as they are settled and collections made. The following table shows the number of audits that have been issued and paid, and the total amount of settlement by fiscal year.

FIGURE XI		
NUMBER OF AUDITS AND AMOUNTS RECOVERED		
Fiscal Year	Number of Audits Issued	Revenue From Audits Issued
1983 - 84	1	\$1,235,983
1984 - 85	2	106,832
1985 - 86	14	9,619,683
1986 - 87	8	176,085
1987 - 88	18	1,321,714
1988 - 89	16	1,155,006
1989 - 90	14	88,060
1990 - 91	10	92,592
1991 - 92	6	267,641
ANNUAL AVERAGE	10	\$1,562,622

As shown in Figure XI, an average of \$1,562,622 per year has been recovered as a result of the division's audits. Direct expenses of the audit function for fiscal year 1992 were approximately \$156,831. Comparing these figures, it can be seen that the division recovers nearly 10 times as much as it is spending. It should be noted that the five audits that have been performed on coal companies account for \$9,590,244 of the total settlement of the 89 audits, or nearly 70 percent. As noted below, these large settlements are not likely to recur. However, even if these coal audits are excluded, the audit function is still returning 3.17 times what it is spending on an annual basis.

The coal audits likely represent a one-time recovery of money because of the failure of lessees to adhere to the lease terms and pay the higher of an 8% royalty or \$.15 a ton. Since the per-ton rate has been abandoned, and as the 8% royalty rate is not likely to change anytime soon, the potential for the same kind of recovery is simply not as great. Therefore, we suggest that division management routinely monitor revenues as well as expenses to understand the cost-benefit ratio of the audit function and to be able to make appropriate staffing decisions in the future.

Recommendation:

We recommend that the Board modify its policy to allow advertizing and acceptance of bids from all grazers for the trust's blocked-up land, at the end of each permit's term. Further, the division should decide which blocked up lands to bid, the term of such permits, whether the bids should include a one-time, up-front bonus or a higher AUM fee for the life of the permit.

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Agency Response