

Board of Land Commissioners

Date: December 20, 2002

BOARD ORDER 2002-64

POLICY NO. 2002-03

Management of Mineral Activities on Stewardship Trust Properties

WHEREAS, the Constitution of the State of Colorado, Article IX, Section 10 requires the Board to prudently manage the property it holds in trust in order to produce reasonable and consistent income over time;

WHEREAS, the Constitution of the State of Colorado, Article IX, Section 10(1) (b) (I) and § 36-1-107.5, C.R.S. require the Board to establish a long-term stewardship trust of 295,000-300,000 acres of land, determined to be valuable primarily to preserve long-term benefits and returns to the state, “which trust shall be held and managed to maximize options for continued stewardship, public use, or future disposition, by permitting only those uses, not necessarily precluding existing uses or management practices, that will protect and enhance the beauty, natural values, open space, and wildlife habitat thereof”;

WHEREAS, the Board, to meet its Constitutional obligations, conducted public Stewardship Trust nomination processes in 1998 and 2000, resulting in 295,672.23 acres of state trust land being designated into the Stewardship Trust as of Dec. 12, 2000;

WHEREAS, § 36-1-107.5, C.R.S. provides, “In holding [Stewardship Trust] lands in trust, the state board of land commissioners shall permit only those uses that will protect and enhance the beauty, natural values, open space, and wildlife habitat of those lands; except that any such restrictions on use need not necessarily preclude existing uses or management practices including but not limited to mineral resources, agricultural, and grazing uses.”;

WHEREAS, the Board desires to provide for the leasing of the mineral estate of Stewardship Trust parcels without negatively impacting the natural values that justify the inclusion of the parcels in the Stewardship Trust. It is consistent with the Colorado Constitution and statutes, and the Board’s fiduciary responsibilities to the trust beneficiaries for the Board to consider mineral development of Stewardship Trust property. However, the Constitution, statutes and the Board’s fiduciary responsibilities dictate that the Board must ensure that any mineral development of Stewardship Trust parcels is conducted in ways that protect and enhance the natural values that caused the lands to be designated into the Stewardship Trust. (See Board Policy 2001-01 concerning management of surface uses on Stewardship Trust properties.);

WHEREAS, the Board acknowledges that when mineral exploration and development occur adjacent to state trust lands, capture of the mineral values on state lands often depends on systematic exploration and development that includes the state minerals.

NOW THEREFORE, the Board issues the following policy regarding the long-term management of mineral resources on Stewardship Trust property:

Oil & Gas and Solid Mineral Activities on Stewardship Trust Lands

The basis for evaluation of mineral activity on Stewardship Trust property is whether the mineral activity can be conducted while protecting and enhancing the identified natural values on the property. The evaluation shall consider whether there would be significant adverse impacts on the identified natural values of the property and any benefits that successful reclamation may contribute to enhancing those values.

Throughout this policy and any associated procedures, natural values means beauty, natural values, open space, and wildlife habitat. See Article IX, Section 10(1) (b) (I) and § 36-1-107.5, C.R.S.

I. Application for a Solid Mineral Exploration Permit or a Solid Mineral Lease on a Stewardship Trust Parcel

- A. When the director of the State Board of Land Commissioners (the Director) receives an application for a solid mineral exploration permit or an application for a solid mineral lease on a Stewardship Trust parcel, the Director shall review the Stewardship Baseline Resource Inventory (“Baseline Inventory”), if available, and all pertinent Stewardship Trust files to identify the property’s natural values. If a Baseline Inventory has not been completed, the Director shall rely on the original nomination and other material contained in the Stewardship Trust file to identify the natural values for that property. The Director may consult with anyone with appropriate expertise including the nominator of the Stewardship Trust parcel, to identify the parcel’s natural values and to assist in the evaluation of the effects of mineral development on the identified natural values.
- B. Based on the information acquired during the process outlined in paragraph I.A, the Director shall identify the near-term and long-term impacts on the parcel’s natural values of all activities related to the mineral application.
- C. If the applicant demonstrates to the satisfaction of the Director that surface occupancy would not significantly affect the identified natural values of the parcel, the Director may recommend to the Board that surface occupancy of the Stewardship Trust parcel be permitted and recommend alternative lease or permit stipulations to mitigate the impacts on the parcel’s identified natural values. If the applicant can not demonstrate to the satisfaction of the Director that surface occupancy would not significantly affect the identified natural values of the parcel, the Director shall require lease or permit stipulations that prohibit surface occupancy of the Stewardship Trust parcel. The Director shall work with the applicant to develop additional lease or permit stipulations if required to mitigate the near-term and long-term impacts on the parcel’s identified natural values.
- D. If a parcel was designated into the Stewardship Trust for the purpose of mitigating the effect of surface development on the potential to develop the underlying mineral resources, the Director may elect to recommend that surface occupancy be permitted on these parcels.

- E. The Director shall determine the appropriate end use of the tract and ensure that suitable reclamation standards are devised that will achieve the end use. The Director shall work with the staff of the Colorado Division of Minerals and Geology to ensure that the reclamation standards are consistent with the proposed end use. The applicant may propose techniques beyond the reclamation standards to achieve the end use and the Director shall consider such proposals. If the Director believes that no reclamation standard or technique, or lease stipulation would achieve the end use, the Director shall recommend to the Board that the application be denied.
- F. The Director shall communicate the determinations of near-term and long-term impacts, the proposed lease or permit stipulations, and the proposed end use via certified mail to the nominator of the Stewardship Trust parcel and the Board of County Commissioners of the county in which the proposed mineral development would occur, informing them of the proposed activity and inviting their comments. The comment period shall be 30 days. The Director shall use the last known address on file for the nominator. The Director shall attempt to notify state and federal agencies that own adjacent property.
- G. The Director shall report the determinations of impacts, the proposed stipulations and end use, and any comments received during the comment period to the Board before the Board votes on whether to approve the lease or permit. If the Board determines that no reclamation standard or surface occupancy restriction would adequately protect the identified natural values on the parcel, the Board shall either postpone its decision on the application and direct the Director to develop lease stipulations that will adequately protect the identified natural values or deny the application.
- H. Any lease stipulation identified by the Director and approved by the Board shall be made a part of the lease document or exploration permit.
- I. When the Director receives a request to modify the reclamation plan in an existing Board-approved permit or lease, the Director shall undertake the review and comment specified in paragraphs I.A and I.F and determine whether the modification will adversely affect the parcel's identified natural values. If the Director finds that the modifications may affect the identified natural values the modification shall be brought before the Board.

II. Nomination of a Stewardship Trust Parcel to the Land Board's Oil and Gas Auction

- A. When the Director receives a nomination of a Stewardship Trust parcel for the Land Board's public oil and gas auction, the Director shall review the Baseline Inventory, if available, and all pertinent Stewardship Trust files to identify the parcel's natural values. If a Baseline Inventory has not been completed, the Director shall rely on the original nomination and other material contained in the Stewardship Trust file to identify the natural values for that property. The Director may consult with anyone with appropriate expertise including the nominator of the Stewardship Trust parcel, to identify the parcel's natural values and to assist in the evaluation of the effects of mineral development on the identified natural values.

- B. Based on the information acquired during the process outlined in paragraph II.A, the Director shall identify the near-term and long-term impacts on the parcel's natural values of all activities related to the nomination.
- C. If the nominator of the oil and gas tract demonstrates to the satisfaction of the Director that surface occupancy would not significantly affect the identified natural values of the parcel, the Director may recommend to the Board that surface occupancy of the Stewardship Trust parcel be permitted and recommend alternative lease stipulations to mitigate the impacts on the parcel's identified natural values. If the nominator of the oil and gas tract cannot demonstrate to the satisfaction of the Director that surface occupancy would not significantly affect the identified natural values of the parcel, the Director shall require lease stipulations that prohibit surface occupancy of the Stewardship Trust parcel. The Director shall work with the nominator of the oil and gas tract to develop additional lease stipulations if required to mitigate the near-term and long-term impacts on the parcel's identified natural values. The proposed lease stipulations shall be identified in the listing of the parcel on the oil and gas auction.
- D. The Director shall communicate the determinations of near-term and long-term impacts and the proposed lease stipulations via certified mail to the nominator of the Stewardship Trust parcel and the Board of County Commissioners for the county in which the proposed oil and gas development would occur, informing them of the nomination and inviting their comments. The comment period shall be 30 days. The Director shall use the last known address on file for the nominator. The Director shall attempt to notify state and federal agencies that own adjacent property.
- E. The Director shall report the determinations of impacts, the proposed stipulations, and any comments received during the comment period to the Board before the Board votes on whether to list the parcel for the auction. If the Board concludes that lease stipulations will not adequately protect the parcel's identified natural values, the Board shall either postpone its decision on the listing of the parcel for the auction and direct the Director to develop lease stipulations that will adequately protect the identified natural values or decline to list the parcel for auction.
- F. Any lease stipulation identified by the Director and approved by the Board shall be made a part of the lease document following the auction.
- G. The Director shall work with the staff of the Colorado Oil and Gas Conservation Commission to ensure that the oil and gas development activities on the parcel will not adversely affect the identified natural values.
- H. When the Director receives a request to modify an existing oil and gas lease, the Director shall undertake the review and comment specified in paragraphs II.A and II.D and determine whether the modification will adversely affect the parcel's identified natural values. If the Director finds that the modification may affect the identified natural values the modification shall be brought before the Board.

III. Application for an Oil and Gas Exploration Permit

- A. The Board recognizes that time is of the essence in the processing of an application for an oil and gas exploration permit. Accordingly, the review process will be expedited; however, the process should be sufficiently thorough to prevent adverse impacts on identified natural values.
- B. When the Director receives an application for an oil and gas exploration permit on a Stewardship Trust parcel, the Director shall review the Baseline Inventory, if available, all pertinent Stewardship Trust files, and any other relevant information to identify the parcel's natural values.
- C. The Director shall determine what impact(s) the proposed oil and gas exploration may have on the parcel's identified natural values and require the applicant to work with individual(s) and/or entity(ies) designated by the Director and the appropriate State Land Board District Manager to mitigate any impact to the identified natural values.
- D. If the Director determines that the impact of the proposed exploration on the parcel's identified natural values cannot be mitigated, the Director shall deny the permit.

This policy supersedes all previous policy statements regarding this matter and will become effective on _____. The State Board of Land Commissioners has the discretion to grant exceptions to this policy where circumstances warrant and when in the best interest of the trust.

STATE BOARD OF LAND COMMISSIONERS

Diane Evans, President

Christopher Castilian, Director