

Legal Notice Ad

Notice of Intent to Adopt Rules and Regulations of the State Board of Land Commissioners

Agency: Office of State Lands and Investments

Address: 122 West 25th Street, Cheyenne, Wyoming 82002

Agency contact person for these rules: Butch Parks, Senior Lands Management Specialist, Real Estate Management and Farm Loans Division

Work Telephone: 307-777-5762

Proposed Rule Changes of the State Board of Land Commissioners:

Chapter 6 – Wind Energy Leasing

The proposed rules relate to the leasing of State Trust Lands for Wind Energy Development.

A copy of the proposed rules may be obtained at:

Office of State Lands and Investments, 122 West 25th Street, Herschler Building 3rd Floor West, Cheyenne, Wyoming 82002

- Interested persons may present their views on the intended action by submitting written comments to the Office of State Lands and Investments, 122 West 25th Street, Herschler Building, 3rd Floor West, Cheyenne, Wyoming 82002.
- Written comments will be accepted beginning January 15, 2010, Monday-Friday, 8:00 a.m.-5:00 p.m. (MDT)
- Comment period will end at 5:00 p.m. (MDT) on March 1, 2010.
- Public hearings are scheduled as follows:
 - Casper**, March 15, 6-9pm
Oil and Gas Commission, 2211 King Blvd, Room 129
 - Green River**, March 16, 6-9pm
WWW Green River Center, #1 College Way, Room 211
 - Rawlins**, March 17, 1-4pm & 6-9pm
Carbon County Library, 215 West Buffalo Street, Sheller Room
 - Cheyenne**, March 18, 6-9pm
Herschler Building, 122 West 25th Street, Room 1699
- Any person may urge the agency not to adopt the rules and also request the agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to or within 30 days after adoption of the rule, addressed to: Office of State Lands and Investments, 122 West 25th Street, Herschler Building, 3rd Floor West, Cheyenne, Wyoming 82002.

The proposed rule change meets minimum substantive state statutory requirements. The proposed rules relate to the leasing of State Trust Lands for Wind Energy Development.

**RULES AND REGULATIONS
BOARD OF LAND COMMISSIONERS**

Chapter 6

Wind Energy Leasing

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5- 114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and Investments.
- (c) “Existing Lease” means a subsurface or surface lease approved by the Board and in effect prior to the wind lease.
- (d) “Office” means the Office of State Lands and Investments.
- (e) “Surface impact payment” means money paid by a wind energy lessee to an existing surface lessee in compensation for potential negative impacts to the leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.
- (f) “Wind energy leasing” means leasing of state land for the exclusive right to convert wind energy into electrical energy including collecting and transmitting the electrical energy so converted to the substation from which the electricity will be transmitted from the wind energy development to the interconnection of the transmission grid.

Section 3. Lease Purposes

The Board may lease suitable state land for wind energy development under the provisions of this chapter. The wind (wind resource, wind energy, or wind right) is considered an unseverable interest in the surface estate and the right to use the wind for wind energy development is included in a wind energy lease.

Section 4. Existing Lease Impairment

- (a) The leased premises of a wind energy lease may coincide with the leased premises of an Existing Lease(s) and is subject to any Existing Lease(s). Prior to issuing a wind

energy lease, the Board shall determine whether or not the proposed wind energy lease would result in substantive impairment of an Existing Lease(s). Upon application, the wind energy lease applicant shall advise the Office of the planned or contemplated improvements to be placed on state land and the Office shall consult with the existing lessee(s) to determine if the existing uses are anticipated to interfere with the contemplated wind energy development.

(b) Lessee notification and consent. The wind energy lease applicant shall notify the existing lessee(s) of state land of the application and such notification shall include a description of the proposed use. If the wind energy lease applicant obtains written consent from the existing lessee(s) to the issuance of a wind energy lease, the wind energy lease shall be deemed to not result in substantive impairment of the Existing Lease(s).

(c) Board determination. If the wind energy lease applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the wind energy lease, the Board shall determine whether the issuance of the proposed wind energy lease will substantively impair the Existing Lease(s). The Office shall notify the existing lessee(s) at least 20 days before the proposed wind energy lease is to be considered by the Board.

Section 5. Term of Leases

(a) Wind energy leases may be for any term, up to seventy five years, at the discretion of the Board.

(b) The Board shall determine that the proposed lease does not adversely affect its management goals on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:

- (i) An appraisal of the market value of the parcels;
- (ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel;
- (iii) The manageability of the parcel, individually and in combination with any adjoining state parcel.

(c) The Board shall set the term of the lease for a period that does not exceed the anticipated economic life of the proposed lease use.

(d) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:

- (i) All of the criteria within this section of the rules are still met; and
- (ii) The overall term of the lease does not exceed seventy five years.

(e) The Board shall include provisions within the wind energy lease that promote development within a reasonable time including, but not limited to, provisions which provide that the lease may be cancelled in whole or in part if development does not occur within a reasonable time.

Section 6. Applications

(a) Forms. All applications to lease lands for wind energy development shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the proposed location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) Signature. If an application is signed by a party other than the wind energy lease applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Renewal periods. The wind energy lessee must apply for renewal at least 90 days prior to the expiration of a wind energy lease. In such event, lessee and Office shall negotiate a new wind energy lease agreement evidencing the additional lease term not to exceed seventy-five (75) years from the effective date of the original wind energy lease. Any new wind energy lease agreement shall contain the terms and conditions (including the total rents to be paid under such new lease term) agreed to by Office and lessee, and approved by the Board.

(d) Conflicting applications. If two or more applications are filed to lease the same land for wind energy development, the Office shall consider issuing a Request for Proposal (RFP) to solicit competitive wind energy lease offers.

(e) Legal description. All applications for wind energy leases will require a legal description which identifies the property proposed for lease. At the discretion of the Office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning and zoning laws.

(i) The wind energy lease applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all applicable land use planning and zoning laws for the jurisdiction(s) where the property is located; or

(ii) The Board may approve a lease application contingent upon the state's ability to acquire the necessary changes to the existing land use planning and zoning laws that will allow the intended uses on the state land within the lease.

Section 7. Rentals

(a) The annual rental for wind energy leases shall be the amount determined by the Board on an individual lease basis.

(b) At a minimum, the annual rental shall be based on fair market value for the same or similar use of the land and any improvements owned by the state after an economic analysis is made. In cases where annual rental cannot be established based on fair market value for the same or similar use of the land, the minimum rental shall not be less than \$1000.00 or 5 1/2% of the appraised land value and any improvements owned by the state.

(c) All rental rates are subject to review and adjustment as specified in the wind energy lease.

(d) All rental payments are due and payable at the Office on the dates specified within the wind energy lease.

Section 8. Board Approval of Assignments

(a) A wind energy lease may not be assigned without prior approval of the Board. Lessees or their assignees shall request Board approval of proposed assignments, pursuant to W.S. 36-5-116, on a form provided by the Office.

(b) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 9. Subleases

The leased premises under a wind energy lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director. Lessees shall request approval of proposed subleases by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Improvements

Prior to construction, the wind energy lessee shall submit to the Office for approval a detailed description and location of the lessee improvements to be placed on state land. The Office shall approve the lessee improvements and locations thereof provided that the wind energy lessee is in compliance with the wind energy lease, substantive impairment to any Existing Lease(s) will not result, the lessee improvements on state land are necessary for wind energy conversion to electricity on state land, and impacts to state land are minimized. Once approved by the Office, any additional lessee improvements or changes to the approved location of lessee improvements shall require approval of the Office. The wind energy lessee shall request permission from the Board to construct any improvements not approved concurrently with the granting of the wind energy lease.

Section 11. Cancellation

The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 12. Surface Impact Payments and Surface Use Agreements

(a) Any wind energy lease applicant desiring to enter upon the state lands shall contact the existing surface lessee(s) prior to entry.

(b) For all entries in which there is to be actual or potential negative impacts to the surface leasehold estate as defined in Section 2(e) of these rules, the wind energy lessee and the existing surface lessee(s) shall negotiate a surface impact payment. The lessee shall remit directly to the existing surface lessee(s) the surface impact payment and provide evidence of such payment to the Office.

(c) If the wind energy lessee is unable to reach an agreement with an existing surface lessee(s) regarding a surface impact payment after having negotiated with the existing surface lessee(s) in good faith for a period of ninety (90) days, the wind energy lessee and/or the existing surface lessee(s) may submit evidence to the Office to establish the surface impact payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the surface impact payment shall constitute final agency action.

(iii) The wind energy lessee may immediately enter the state lands while negotiations with the existing surface lessee(s) are proceeding, upon providing the Office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the surface impact payment to the existing surface lessee and return any excess money on deposit to the wind energy lessee, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the wind energy lessee and the existing surface lessee(s).

(d) If any agreement is made between a wind energy lessee and any existing lessee that defines the rights of the parties as to the use of the leased state land, then such agreement shall be provided to the Office.

(e) The wind energy lease shall provide for an installation/construction fee as compensation to the State for negative impacts to the fee simple interest in the state land.

Section 13. Bonding Provisions

(a) The Board shall require a bond as a condition of a wind energy lease sufficient to assure compliance with all terms and conditions of the lease. The bond amount shall not be reduced by any anticipated salvage value. All bonds posted on wind energy leases may be used by the Board for payment for costs of reclamation and for compliance with all other terms and conditions of the lease and rules pertaining to the lease.

(b) The bond shall be in effect even if the Board subsequently approves an assignment of the wind energy lease pursuant to Chapter 6, Section 8, of these rules unless or until assignee posts an adequate and sufficient bond.

(c) Additional bonding to cover risks not anticipated at the time of the original wind energy lease may be required at any time by the Director, provided the Director first gives the lessee 30 days written notice stating the reason and amount of the bond. The Director shall prepare an informational board matter pursuant to Chapter 1 whenever such additional bonding has been required. The bond will remain in place until the unanticipated risk is diminished.

(d) Bonds may be accepted in any of the following forms at the discretion of the Director:

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the “Board of Land Commissioners”, with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments.

(iii) Other forms of surety as may be acceptable to the Director.