PERFORMANCE AUDIT

LAND DEPARTMENT

Report to the Arizona Legislature
By the Auditor General
September 1987
87-8

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September 25, 1987

Members of the Arizona Legislature
The Honorable Evan Mecham, Governor
Mr. M.J. Hassell, State Land Commissioner

Transmitted herewith is a report of the Auditor General, A Performance Audit of the State Land Department. This report is in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee.

The report addresses the State Land Department's performance in managing approximately 9.7 million acres of State Trust land on behalf of the public schools and other institutions. In recent years, the Department has been involved in several highly controversial land transactions. Although critics have charged that some Departmental actions were not in the best interests of the beneficiaries, neither the Attorney General nor an expert retained by our office found evidence of wrong doing in conducting the transactions.

However, our consultant's review of several transactions indicates a need for the Department to strengthen its ability to evaluate proposed land exchanges and commercial leases and provide a more complete record of its decisions. Specifically, the Department should ensure that appraisal reports contain complete information about the basis for valuing land. Developing a process to incorporate issues not normally addressed in appraisal reports into the official record and periodically evaluating the results of its transactions would also assist the Department in making decisions about the use of State land.

We also found that, while the Department has improved its handling of trespass cases since our 1980 audit, additional improvements are needed. The Department still lacks adequate procedures for handling its trespass case load and many activities are never recorded as cases. As a result, the Department lacks adequate documentation to define its need for trespass staff.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona State Land Department (SLD) in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes §§41-2351 through 41-2379.

The State Land Department was established in 1915, and is responsible for managing approximately 9.7 million acres of State trust land. Trust lands were given to Arizona between 1863 and 1929 for the purpose of supporting a variety of public institutions, particularly common schools. SLD has a fiduciary responsibility to maximize the income from the sale and use of trust lands and their products. Funds derived from land transactions are deposited into either a permanent fund which is invested to produce income for the beneficiaries, or an expendable fund which beneficiaries may use directly for their operations. During fiscal year 1986-87, land transactions generated $60 million for the perpetual fund and $15 million for the expendable fund.

The State Land Department Needs To Strengthen Its Decision-Making Process (see pages 15-24)

SLD needs to improve its decision-making process to provide all necessary information to support its decisions about State trust lands. Several recent transactions have been highly controversial. Opponents questioned whether the Department was receiving fair market value as required by the Enabling Act, and also questioned the wisdom of some exchanges. For example, the LaPaloma-Tortolita exchange involved trading 3,399 acres of rural State trust land near Tucson for 34 acres of privately owned, undeveloped urban commercial land. Opponents expressed concerns about the appraisals, particularly the use of comparable sales from the Phoenix metropolitan area rather than the Tucson area, and the fact that the appraiser was hired by the private applicant. Local appraisers questioned the wisdom of the exchange because they felt the State lands were

appreciating more rapidly than the private lands. SLD supported the exchange because it felt the commercial property would provide a substantial increase in Trust Fund receipts and that future development on the traded land would benefit adjacent State lands.

Despite the controversy, recent Attorney General investigations have found no evidence to indicate that SLD did not receive fair market value in its transactions. In addition, a leading real estate expert hired by the Auditor General found the Department's appraisal decisions to be adequate. However, our consultant recommended improving appraisal reports and review appraisals by ensuring that they contain complete information on comparable sales and any adjustments.

Our consultant recommended that the Department develop a process to incorporate other issues not normally addressed in appraisal reports, such as anticipated long-range benefits, into the official record. Such issues were a factor in several highly controversial transactions, but were not formally addressed or documented in the official record. In addition, the Department should consider hiring other professionals, such as urban planners, economists and financial analysts to evaluate potential long-range benefits, and should periodically evaluate the results of its transactions to determine if the anticipated benefits are actually realized.

The State Land Department Lacks Adequate Documentation For Some Commissioner Decisions (see pages 25-26)

SLD public files do not provide adequate information documenting all critical aspects of commissioner decisions. In several cases, the commissioner's final decision appeared to contradict staff recommendations because the record did not indicate the reasons for the commissioner's action. The former commissioner did not deem it necessary to document changes that increased land value nor did he feel he had the time. Although the commissioner may have had good reasons for some decisions, lack of clear documentation showing the reasons for rejecting staff recommendations adds to the controversy surrounding SLD transactions. In future transactions the State land commissioner should ensure that the bases for decisions are fully documented.

State Land Department Enforcement Of Trespass Laws Is Weak (see pages 27-36)

Although SLD has made some progress in dealing with trespass on State lands, it needs to further improve its ability to prosecute violators. The Department's backlog of cases has increased substantially since our 1980 audit. At that time, the Department had 91 unresolved trespass cases that were less than two years old. As of June 1, 1987, 159 cases less than two years old remained unresolved. Failure to act on trespass cases within the two year statute of limitations may prevent SLD from collecting damages from trespassers. A sample of trespass cases shows that SLD may have lost $320,000 in potential damages from cases on which no action was taken within the statute of limitations.

SLD needs to revise its procedures to encompass all staff activities related to trespass and to ensure that cases are handled in a timely manner. Many duties of the trespass officer are not reflected in the recorded case load but can require substantial time. SLD should also develop accurate workload measures to document the appropriate number of staff needed to effectively control trespass on State land.

Existing statutes prohibiting trespass on State land are unclear and may contribute to enforcement problems. The Maricopa County Sheriff's Office will not issue citations under A.R.S. §37-501 because the county attorney has interpreted the law to be very limited. In addition, the Attorney General's Office has indicated that the law does not adequately define trespass on State land or provide clear authority to cite persons for endangering public safety.

The State Land Department Needs To More Carefully Protect Important Records (see pages 37-41)

SLD needs to improve records management to ensure that essential records are protected against loss. Department records are a unique management resource that provide data on the location of land parcels and their history. SLD staff and the public regularly use these records. Most SLD records are original documents for which no duplicates are available. Some records date from Arizona's territorial and early statehood era.

Despite the importance of the records, SLD storage facilities do not provide adequate protection. An evaluation team from the Department of Library, Archives and Public Records found that the climate control was not adequate to protect the paper records, which are susceptible to changes in temperature and humidity and exposure to light. The building's electrical system is overloaded and poses a fire hazard. No sprinkler system protects the records area. In addition, the weight of the records may exceed the building's structural capacity.

Although current storage facilities are limited, SLD could reduce the potential for loss. Creating duplicate or backup copies, such as microfiche or electronic imaging, would enable the Department to recreate lost or damaged records. Moving SLD to the former State Compensation Fund building, as is tentatively planned, could also improve SLD records security.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona State Land Department (SLD) in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes §§41-2351 through 41-2379.

The State Land Department was established by the Arizona Legislature in 1915. The Department administers and controls all State trust lands and their products. Arizona has approximately 9.7 million acres of State trust land given by the Federal government.

Trust Lands

State trust lands were granted to Arizona by the Federal government at various times between 1863 and 1929. When the territory of Arizona was established in 1863, two sections of every township [1] were reserved for the benefit of the territory's common schools. Most of the remainder of Arizona's trust lands were granted in 1910 when the State's Enabling Act reserved two more sections per township for common schools, plus additional acres for other specific institutions. Since then, the total acreage has changed due to sale and exchange of State lands. In some cases, the acreage has increased through the exchange of a smaller amount of State land for a larger amount of private land. Table 1 shows the trust land acreage originally granted and acreage still retained in 1986 for each designated beneficiary.

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(1) A township consists of 36 equal sections, each section being one square mile (640 acres) in area.

TABLE 1

TRUST LAND ACREAGES MANAGED BY SLD GRANTED BETWEEN 1863 AND 1929

Beneficiary	Year of Grant(s)	Trust Acres: Original Grant(s)	Trust Acres: Remaining In FY 1986
Common Schools	1863, 1910[a]	9,334,972	8,402,185
Normal Schools	1910	200,000	174,788
University Land Code	1910	200,000	168,238
School of Mines	1910	150,000	134,935
Agriculture and Mechanical Colleges	1910	150,000	134,629
Miners' Hospital	1910, 1929[b]	100,000	104,577[c]
School for the Deaf and Blind	1910	100,000	85,374
Military Institutes	1910	100,000	82,945
State Charitable, Penal, and Reformatory Institutions	1910	100,000	81,725
Penitentiaries	1910	100,000	80,990
Insane Asylums	1910	100,000	79,198
Legislative, Executive, and Judicial Buildings	1910	100,000	66,980
University of Arizona	1881	46,080	63,795[c]
TOTAL		10,781,052	9,660,359

(a) The acreage shown for the common schools grant includes a 1910 county bonds grant, originally for 1 million acres. The Enabling Act provided for the County Bonds acreage to revert to the Common Schools after repayment of county bonds. In its reports, SLD combines County Bond acreage with Common Schools acreage.

(b) There are two Miners' Hospital grants of 50,000 acres each.

(c) In some instances, the 1986 acres exceed the original grant. Smaller parcels of trust lands have been exchanged for larger amounts of private land.

Source: Enabling Act of 1910; State Land Department Transition Report, 1978-86; State Land Department Annual Report, 1978-79; and Auditor General Performance Audit Report 80-3.

The Enabling Act also imposes a fiduciary responsibility upon Arizona regarding the State's trust lands, and the Legislature delegated this responsibility to the State Land Department. As trustee, it is the Department's duty to maximize trust revenues for the beneficiaries.

Revenues earned on trust lands are classified as either perpetual or expendable. Perpetual fund revenues generally come from the sale of land or royalties from natural products of the land. Monies deposited in the perpetual fund are not expendable for any purpose, but are invested by the State Treasurer in interest bearing securities. Expendable revenues generally include lease revenue from trust land leases and permits, interest from sales contracts, and interest earned on perpetual fund investments. These monies are used for the benefit of the appropriate trust beneficiaries. Table 2 shows SLD receipts for fiscal years 1984-85 through 1986-87.

TABLE 2

FUND DISTRIBUTION OF STATE LAND RECEIPTS
FISCAL YEARS 1984-85 THROUGH 1986-87
(unaudited)

Fund Type	FY 1984-85	FY 1985-86	FY 1986-87
Perpetual Trust Fund	$ 38,421,076	$ 44,630,644	$ 58,960,442
Expendable Trust			
Trust Land Revenues	12,313,033	13,923,076	15,050,848
Perpetual Fund Interest Earnings	22,250,621	22,274,082	28,264,098
General Fund [a]	2,211,294	2,442,751	2,012,304
Other [b]	129,212	95,059	705,457
TOTALS	$ 75,325,236	$ 83,365,612	$104,993,149

(a) Receipts from transactions involving farm loan lands, navigable stream beds, special grant - airfields, land held in trust state, land deeded to SLD and fees are deposited in the General Fund.

(b) Other includes the Map Sales Revolving Fund, Timber Suspense Fund, receipts from the Cooperative Fire Control Program, quit claim recording fees and interest earned.

Source: Compiled by Auditor General staff from information provided by the State Land Department and State Treasurer's Office.

Department Organization

The Department is headed by the State Land Commissioner who is appointed by the Governor for an indefinite term. The Commissioner serves as the Department's executive officer and exercises all powers vested in the Department.

The Department is organized into eight major divisions.

- Administrative Division - provides general support to the other Divisions of SLD.
- Commercial Division - handles all leases of commercial trust property, and contracts for the land appraisals that are required for most trust land transactions.
- Contracts and Records Division - maintains all records on State trust lands, and manages lease applications and contracts. This Division is also responsible for responding to appeals and litigation involving the Department, and is currently updating the Department's rules and regulations.
- Forestry Division - manages, protects, and encourages effective use of forest resources; administers sales of timber on trust lands; and provides rural fire prevention and control for 18 million acres of State and private land in Arizona.
- Natural Resources Division - manages grazing, agricultural and mining uses of State land; and administers the Natural Resources Conservation District program. This Division also protects the State's water rights, and prevents and controls trespass on trust lands.
- Resource Analysis Division - operates the Department's computer information system; and provides geographic information, engineering and mapping services.
- Sales, Rights-of-Way and Exchange Division - negotiates and processes trust land sales, rights-of-way and exchanges.
- Urban Planning Division - conducts planning and zoning activities for trust lands located in urban areas, as provided for in the Urban Lands Management Act of 1981.

In addition to these Divisions, a five member Board of Appeals approves all sales and commercial leases of State lands. The Board also serves as an administrative review board to hear any appeals of final decisions made by the State Land Commissioner regarding appraisals and classifications. The Selection Board, comprised of the Governor, Attorney General and State Treasurer, is responsible for obtaining title to lands granted to the State, apportioning State lands to each of the beneficiaries of the land trust, distributing Central Arizona Project Water allocated for the benefit of State lands, and approving exchanges and annexations of State land.

Budget

Although trust beneficiaries receive revenues generated by trust lands, they are not required to defray the Department's administrative costs. Instead, the Department is funded through an appropriation from the General Fund. Table 3 summarizes SLD expenditures for fiscal years 1984-85 through 1986-87.

TABLE 3

SUMMARY OF STATE LAND DEPARTMENT EXPENDITURES
FISCAL YEARS 1984-85 THROUGH 1986-87
(unaudited)

	FY 1985 (Actual)	FY 1986 (Actual)	FY 1987 (Estimated)
Full-Time Equivalent Positions	123	132	159
Personal Services	$2,888,000	$3,293,100	$4,015,100
Employee Related Expenditures	615,700	660,400	816,100
Professional & Outside Services	190,600	277,000	545,200
Travel - In State	90,400	165,900	176,300
Travel - Out of State	4,700	9,300	2,400
Other Operating Expense	544,900	803,800	1,106,400
Equipment	59,300	67,600	48,900
TOTAL OPERATING	4,393,600	5,277,100	6,710,400
Water Right Fees Litigation		200	433,900
Water Right Fees	35,100	31,500	80,500
Litigation Expenses	19,992	21,400	20,500
Natural Resource Conservation District	144,400	116,400	145,000
Forest Service Reimbursement	100,000		
ADOT Mapping Services	40,500	40,500	40,500
Coyote Creek Watershed Matching Fund			67,000
Conservation Education			30,000
TOTAL	$4,733,592	$5,487,100	$7,527,800

Source: Compiled by Auditor General staff from the State of Arizona Appropriations Reports, fiscal years 1986-87 and 1987-88.

Audit Scope

The audit of the State Land Department evaluated the Department's performance in managing State trust lands. The report specifically addresses the following issues.

- The adequacy of the decision-making process and information used in evaluating land transactions
- The lack of documentation for some commissioner decisions
- The effectiveness of the Department's response to trespass on State lands
- The need for improved records storage and management

We also developed Other Pertinent Information on the grazing fees, mineral royalties and the Department's computer system (see page 41).

This audit was conducted in accordance with generally accepted governmental auditing standards.

The Auditor General and staff express their appreciation to the State Land Commissioner and Department staff for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with Arizona Revised Statutes §41-2354, the Legislature should consider the following 12 factors in determining whether the State Land Department (SLD) should be continued or terminated.

1. **The objective and purpose in establishing the Department**

   The State Land Department was established to ensure proper management and control of the 9.7 million acres of land owned by the State Trust. These lands were granted to Arizona by the Federal government to support schools and other public institutions. When Congress created the Territory of Arizona in 1863, it reserved specific sections within each township for the benefit of common schools. The Enabling Act of 1910 added sections of land to the 1863 grant and established various other beneficiaries. The Department is responsible for managing the surface and subsurface products on those lands. The State Land Department manages State lands for the benefit of 15 specified Trust Funds. To benefit the Trust Funds, land may be used by the general public for grazing, farming, mining and commercial development. Revenues derived from those activities are then placed into the Trust Funds for use by the beneficiaries.

2. **The effectiveness with which the Department has met its objective and the purpose and efficiency with which it has operated**

   The Department has generally met its prescribed objective and purpose. However, some problems remain in the following areas that adversely impact the Department's effectiveness and efficiency.

   - **Decision-Making for Land Transactions** - SLD needs to strengthen its process for evaluating land transactions. Recent exchanges and a lease

auction have been highly controversial. Although the Attorney General and an appraiser hired by the Auditor General found no evidence of impropriety in these exchanges, the Department could improve accountability for transaction decisions by: 1) requiring that appraisal reports provide more specific information on comparable sales and adjustments, 2) ensuring that review appraisers list all critical assumptions and their impact, 3) using and documenting input from experts, such as urban planners, financial analysts and economists to determine aspects of transactions not addressed in appraisal reports, and 4) evaluating the results of land sales, leases and exchange transactions (see Finding I, page 15).

- **Regulation Of Trespass Activity** - Enforcement of trespass laws is weak. The Department does not have a systematic process for managing trespass cases, and appears unable to resolve cases in a timely manner. Although the Department estimates that it closed almost 500 cases since 1980, the number of unresolved cases increased from 91 in 1980 to 166 in 1987. Failure to resolve cases limits SLD's ability to deter trespass. In addition, SLD's inability to resolve trespass cases within the two year statute of limitations may have cost the Department $320,000 in potential damages (see Finding III, page 27).

- **Records Management** - SLD could improve the management of its records. These irreplaceable records are exposed to environmental hazards that diminish their duration. The hazards include fluctuating temperatures, humidity and improper lighting. In addition, access to records is not controlled effectively. Improved control would help protect records against loss or theft (see Finding IV, page 37).

3. **The extent to which the Department has operated within the public interest**

Generally, the Department has operated within the public interest by managing State lands to produce revenue for the beneficiaries of the various Trust Funds. Revenues for the 15 Trust Funds have risen substantially in recent years. According to figures provided by SLD and the State Treasurer, the permanent fund balance increased from $125.8 million in 1979-80 to $315.9 million in

1986-87, and annual revenues to the expendable fund increased from $14 million in 1978-79 to $43.3 million in 1986-87. Department officials attribute the additional revenue to SLD's emphasis on obtaining income producing lands through sales and exchanges, and the Urban Lands Management Act passed by the Legislature in 1981. This Act enables the Department to seek planning and zoning changes that will increase the value of State lands in urban areas before they are leased or sold.

SLD also serves the public interest by managing and protecting lands under its jurisdiction. The Department regulates the use of State lands and provides fire protection for all State owned lands, and more than 8 million privately owned acres.

4. **The extent to which rules and regulations promulgated by the Department are consistent with the legislative mandate**

State Land Department rules and regulations appear to be consistent with its enabling legislation. The Land Department is mandated to "have charge and control of all lands owned by the State, and timber, stone, gravel and other products of such lands." The rules and regulations promulgated by the Department generally provide guidance on how the lands may be used and procedures for obtaining permission to use the lands. The Department's 1984 rules and regulations revisions were reviewed by the Attorney General and found to be consistent with its legislative mandate.

5. **The extent to which the Department has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public**

The Land Department generally has encouraged input from the public when amending regulations. The Department last promulgated rules and regulations in 1984. At that time, public hearings were held in Flagstaff, Tucson and Phoenix. According to SLD officials, published notification was made in various newspapers and by direct mail before new or revised rules were enacted.

6. **The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction**

The Department has not effectively investigated and resolved complaints about trespass on State lands. The number of unresolved cases has increased almost 75 percent since 1980, and the Department's inability to resolve cases within the two year statute of limitations may have caused it to lose approximately $320,000 in potential damage payments (see Finding III, page 27).

7. **The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation**

The Attorney General's Office has authority to prosecute violations of SLD regulations. A.R.S. §37-102 allows SLD to request prosecution by the Attorney General's Office or the County Attorney's Office. The Attorney General's Office assists the Natural Resources Division in the area of trespass regulation, and has coordinated settlement agreements between persons accused of violating trespass regulations and the Department. However, deficiencies in the statute prohibiting trespass on State land may limit the ability to enforce this statute (see Finding III, page 27).

8. **The extent to which the Department has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate**

The Department has requested the Legislature to address several deficiencies in the statutes. Since 1981, the Department has proposed various legislation pertaining to the regulation of State lands. SLD proposed 36 pieces of legislation between 1981 and 1986, 28 of which became law. In 1987, the Department proposed legislation dealing with Central Arizona Project water rights, trespass on State land and prospecting. Some legislation enacted in 1986 addressed commercial leasing, land exchanges, zoning fees, urban land patents and protests of SLD auctions.

9. **The extent to which changes are necessary in the laws of the Department to adequately comply with the factors listed in the Sunset Law**

Based on our audit work, we recommend that the Legislature consider amending Arizona Revised Statutes to strengthen the Department's ability to control trespass on State land by 1) clearly defining activities prohibited on State land, 2) establishing penalties for unauthorized use, theft and damage to State land and 3) defining civil liability for unauthorized use of State land (see Finding III, page 27).

10. **The extent to which termination of the Department would significantly harm the public health, safety and welfare**

Terminating the State Land Department would have a harmful effect on the public welfare. Administration of public lands for the benefit of the common schools and other institutions is required by the State Constitution and the Enabling Act. Another State agency would need to execute these duties in the absence of SLD. Unregulated use of State land could result in significant damage to the land and loss of valuable resources. Such loss could reduce the revenues generated from sale or lease of the land and its natural resources. SLD also provides fire protection for all State lands and more than 8 million acres of private land.

11. **The extent to which the level of regulation exercised by the Department is appropriate and whether less or more stringent levels of regulation would be appropriate**

The Department's level of regulation is appropriate in most areas, and is directed toward ensuring that State lands are protected and used in a manner that benefits trust beneficiaries and the general public.

12. **The extent to which the Department has used private contractors in the performance of its duties and how effective use of private contractors could have been accomplished**

The Department relies on contractors to assist in performing several important duties. SLD employs contractors to conduct appraisals for land exchanges, sales and leases. In 1986, approximately 36 appraisals were contracted to outside appraisers. SLD budgeted $139,000 for outside appraisals in fiscal year 1986-87. SLD also contracted with private firms to prepare plans for urban trust lands. The Department budgeted $167,000 for such plans in fiscal year 1986-87. In addition, SLD has budgeted $20,000 during fiscal year 1987-88 for private consultant assistance in analyzing and reviewing commercial lease proposals and to strengthen its ability to lease trust land.

SLD also employs outside personnel to assist in fighting fires throughout the State. SLD signed cooperative fire agreements with 126 local fire departments, including Rural Metro and volunteer departments, to control fires throughout Arizona.

FINDING I

STATE LAND DEPARTMENT NEEDS TO STRENGTHEN ITS DECISION-MAKING PROCESS

The State Land Department (SLD) needs to improve its decision-making process to ensure that all necessary information is provided to account for decisions about State trust lands. Several recent transactions have been highly controversial, although no evidence has been found to support allegations of poor decisions or impropriety. However, a real estate expert who reviewed recent transactions recommended ways for the Department to strengthen its basis for making decisions.

SLD is required to produce the highest revenue possible for the trust's beneficiaries. Section 28 of the Enabling Act mandates that all trust land transactions be made at fair market value. Fair market value is determined by an appraisal done within 180 days prior to completion of any sale, exchange or long-term lease. The Department uses its own staff appraisers and private appraisers to assess land values. Private appraisers are used when: 1) the Department feels the transaction may be controversial, 2) an in-house appraisal may be questioned, or 3) the land is highly valued. All appraisals are reviewed by an in-house appraiser, usually the chief appraiser. After evaluating the appraisal, the reviewer agrees or disagrees with the report and values. If the reviewer disagrees, he assigns the values he determines to be the most accurate of the land's fair market value. The reviewer assigns values based on an assessment of the information in the report plus additional information the reviewer may have gathered. By law, the commissioner has the final say in setting trust land values.

Recent Land Transactions Have Been Controversial

Recent SLD transactions have generated considerable controversy. The controversy has focused on allegations that the State did not receive fair market value for its trust land acreage. Other issues have been raised, such as significant differences in acreage of private and State land exchanged and public concern that trust land should be used to preserve critical habitats or recreation.

Several exchanges have been questioned by the public. The LaPaloma-Tortolita exchange exemplifies all the issues that have been raised.

- The LaPaloma transaction involved the exchange of approximately 3,399 acres of undeveloped, vacant rural land near Tucson for about 34 acres of undeveloped, urban commercial land. (1) The Department anticipated a large increase in expendable revenues for the Trust through commercial leasing of the private land received in the LaPaloma exchange. According to the private exchange manager, the traded trust land was generating approximately $280 per year from livestock grazing leases. The Department anticipates a revenue potential of $1 million annually from the approximately 34 acres of commercial land it received. In addition, the Department anticipates that the recipient of the 3,399 acres of trust land will make needed infrastructure improvements which in turn will increase the value of the surrounding thousands of acres of trust land. Therefore, based on the anticipated additional revenue and infrastructure improvements, the Department and a majority of the Selection Board members considered this trade good for the State.

  Critics raised several concerns. Many questioned the exchange based on the significant difference between State and private acreage traded. Questions were raised about the March 1986 appraisal report on the commercial land because it used comparable sales in the Phoenix area rather than the Tucson area. A second appraisal, completed in May 1986, used comparable values in the Tucson area. Moreover, the initial appraiser's independence and objectivity were questioned because the private landowner hired and contracted the appraiser. (2) Further attention was focused on the exchange when other private appraisers, who did not appraise the land, stated that the offered urban land was not appreciating in value as rapidly as the rural trust land. Private appraisers also questioned the propriety of SLD's instructions to appraise by parcel or section and sum values together. (3)

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(1) The file indicates that the application requested an exchange of approximately 9,760 acres of trust land for approximately 34 acres of private commercial land. The file indicates that the amount of trust land involved in the trade kept decreasing throughout the process, even through the date the Selection Board approved of the exchange, August 19, 1986.

(2) Until June 1986, SLD allowed private landowner applicants to select and contract the outside fee appraisers. According to the Department, allowing the applicants to hire the appraisers expedited the process and did not cost the Department anything. After June 1986, private appraisers were contracted by the Department. The applicants now pay SLD for the appraisals, and the Department then pays the appraiser.

(3) Appraising land by individual parts and summing the values in a manner that could be misleading is not consistent with normally accepted appraisal standards. However, based on the Enabling Act, Arizona Revised Statutes, and Arizona State Land Department v. State ex rel. Herman (1976) 113 Arizona 125, 547 P.2d 479, the Department cannot appraise land in segments greater than a section (640 acres).

In addition, the Pima County Board of Supervisors expressed concern over the valuation of both pieces of property. The concern involves the lack of a master plan for the Tortolita mountains. In addition, the supervisors expressed a need for suitability studies on the LaPaloma property. Furthermore, the supervisors suggested that SLD should consider letting the county trade or purchase the trust land for inclusion in its planned Tortolita Mountain Park. The supervisors argued that the preservation of the unique desert/mountain environment is in the best interest of a rapidly growing county whose residents need the wilderness and recreational spaces. The supervisors suggested that the park may increase the value of the trust land.

Other exchanges raised similar controversial issues.

- The Juniperwood exchange involved the trade of approximately 21,000 acres of State trust land for about 285 acres of private land in Yavapai County. The Department supported the trade based on the anticipated revenue to be generated from the land the State received. The 21,000 plus acres of trust land traded generated about $3,000 annually from livestock grazing leases. Because of the lack of ground water, it was determined that the 21,000 acres would only be suitable for livestock grazing. In contrast, the 285 plus acres of private land offered was considered to have greater income potential. Since the adjacent acreage is used for commercial recreational purposes, the Department expected to lease this land for commercial recreational purposes, and to earn revenues of $17,000 the first year. The Department anticipated revenues of $170,000 annually. Protesters asserted that the appraised value of the State land was too low based on the price they paid for other land in the area. Therefore, they felt that the State was not receiving fair market value for the trust land.

- The Empirita transaction involved the exchange of 2,000 acres of rural State trust land for 1,999 acres of rural private land. All the land is located in Pima County between Tucson and Benson, south of Interstate 10. The Department contended that the land the State received contained several natural springs and other water sources in addition to approximately 2.5 lineal miles of stream bed bordered with rich riparian habitat. The commissioner stated in his letter to the Selection Board that it was his opinion that the land the State would receive was substantially equal or more valuable with riparian habitat than the trust land to be exchanged. The commissioner further argued that the exchange would result in the consolidation of trust and private land.

  At the public hearing for the Empirita exchange, several objections were raised. Citizens opposed the exchange because certain parcels of the trust land support a valuable wildlife habitat that the opponents felt should remain under State ownership. A question of independence arose when it was learned that the father of the private appraiser is a trustee of private land adjacent to the land involved in the exchange. Concern over the appraiser's independence was further fueled by the fact that the applicant selected and contracted with the appraiser.

Values set on urban trust land in Scottsdale have also been questioned.

- A protest was filed against the long-term commercial leasing of 143.31 acres of urban trust land in Scottsdale. This land, near Scottsdale Road and Union Hills Road, is zoned PRC (Planned Regional Center). In part, the protest questioned the appraisal values on the land. (1) The discounting of the future value of the land was termed arbitrary. Moreover, the use of comparable sales in Peoria and south Tempe were questioned. The lease was auctioned on June 11, 1987, to Forest City Scottsdale Company. The protest was denied by the Arizona Supreme Court on July 9, 1987.

Independent Investigations Support Department Decisions

Despite the controversy, recent investigations found no evidence that SLD decisions were improper. The Attorney General's Office concluded that the Department did receive fair market value in each of the four transactions investigated. A consultant hired by the Auditor General found that the Department handled the appraisal process to ensure that the State received fair market value.

Attorney General investigations - The Attorney General found no evidence to support the accusation that the Department did not receive fair market value in its transactions. (2) The Attorney General opened five cases to investigate allegations made about State land private exchange transactions. Four of the five cases are now closed. (3) In each of the four cases, the Attorney General did not

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(1) The focus of the protest is on the preferential right of the existing lessee to automatically match any other bid and thereby be the successful bidder. The protest letter states "Such a preference right, while embodied in the statutes (A.R.S. §37-335) violates the Arizona mandate (Arizona Constitutional Article 10, 3) that all auctions of state lands be made to the highest and best bidder." The protester states the preferential right has "a 'chilling effect' on the bidding process."

(2) The Attorney General's Office also investigated political influence and personal gain allegations. No evidence was found to support these allegations.

(3) The exchange with Lakeview, Inc. was a legislatively mandated exchange involving acreage in LaPaz, Mohave and Maricopa Counties in August 1986. The Attorney General's Office, in Opinion #I86-108, stated that the legislation authorizing the exchange was unconstitutional. The Attorney General's Office intends to file a lawsuit on behalf of SLD against Lakeview, Inc. to recover the State trust land patents.

find substantial evidence supporting charges that the Department did not receive fair market value or that pertinent statutes were violated. For example, after an in-depth review of the Juniperwood exchange, the Attorney General investigator stated that the lands involved were both appraised based on a fair market value by the State Land Department's appraisers. The investigator concluded that the comparable sales presented by the protesters as evidence that the SLD did not receive fair market value were not really comparable to the exchange situation. Therefore, the investigator determined that the lands involved in the exchange were substantially of the same value, as required by A.R.S. §37-607. Moreover, all statutory requirements of A.R.S. § 37-604 were followed.

Although the Attorney General investigator found no criminal evidence or support for the allegations, he concluded that the bulk of the allegations and complaints are based on a certain lack of appropriate checks and balances within the Land Department. He made three specific recommendations.

- A Selection Board staff administrator position should be created to allow for further separation between the Selection Board and the Land Department.
- A conflict of interest statement should be read and signed by all private parties involved with an exchange process.
- Each private land exchange packet that is provided to the Selection Board should have a list of private parties and companies to forewarn the Selection Board of any possible conflicts.

Auditor General review - A leading real estate expert hired by the Auditor General also found the Department's appraisal decisions to be adequate. Because of the persisting controversy surrounding appraised values of SLD transactions, the Auditor General hired a real estate appraisal expert to review the Department's appraisal procedures.[1]

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(1) Our consultant, Joseph M. Davis, Ph.D., has a diverse background in real estate, with experience in appraising, reviewing appraisals, real estate development, and teaching appraisal and real estate classes. He has earned several professional designations, including MAI (Member of American Institute, American Institute of Real Estate Appraisers), SRPA (Senior Real Property Appraiser, Society of Real Estate Appraisers), ASA (American Society of Appraisers), and CRA (Certified Review Appraiser, National Association of Review Appraisers). Dr. Davis is one of very few individuals who holds both the Ph.D. and MAI designation.

Based on his review, our consultant concluded that the Department's appraisers are doing a good job, and in fact, at times they have been instrumental in ensuring that better decisions were made. For example, the chief appraiser deemed the appraisal done for Lakeview, Inc. on 22,000 acres of State land located in north central Maricopa County totally unacceptable. According to the chief appraiser, this land, which is so close to the Phoenix metropolitan area, should be valued section by section. The appraisal report had not done this. The Department did not use this appraisal, but requested a reappraisal by the exchange proponent.

Moreover, our consultant noted that the recently enacted legislation giving the Department control of ordering appraisals and selecting appraisers will have significant impact on the quality and usefulness of future appraisals. To implement the new procedure, SLD worked with the State Purchasing Office to establish a list of private appraisers with whom SLD could contract. The Department now selects and contracts with the private appraisers in all transactions for which a private appraiser is needed, except right-of-way appraisals. [1] According to our consultant, the outside appraisals are now more relevant and useful, and appear to be more objective and independent. Furthermore, our consultant found the Department's contracts and instructions to the outside appraisers to be adequate.

SLD Could Strengthen Basis For Decisions

Although our consultant found no major problems with the appraisal procedures, he concluded that the Department needs to make improvements to deal with controversy surrounding transactions. [2] The quality of the appraisals could be improved by requiring more specific information in the appraisal reports. Moreover, the Department needs to utilize other analysts and experts, and document their input on costs and benefits. In addition, the Department should periodically evaluate the results of its decisions.

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(1) The Department still allows right-of-way applicants with impending deadlines to select and hire their own appraisers to expedite the application process.

(2) For the text of Dr. Davis's comments, see Appendix I.

Appraisal reports could be improved - Based upon his review, our consultant recommended ways to improve the appraisals. The improvements presented require more specific information to be added to the appraisal and review appraisal reports.

Our consultant was concerned with the scarcity of information in some reports. Varying levels of information were provided on comparable sales and rationale for adjustments made. In one case, our consultant commented on the lack of data in the report on comparable sales. The lack of and inconsistent data provided on the comparable sales make it difficult to decide to what extent the comparable sales were "truly" comparable. Furthermore, our consultant found insufficient support and quantification of appraisers' and reviewers' adjustments to the comparable sales. According to our consultant, "Improvement in this area will substantially reduce the amount of 'guess work' that the S.L.D. Commissioner will have to do in reconciling differences between appraisals."

The recommendations made by our consultant on improving the quality of the appraisal reports emphasize the need for more information. For example, he recommends that reports include all known comparable sales within a certain area and time frame. More detailed information on each comparable sale should be provided. This detailed information, such as topographical maps and aerial photographs, sales history, gross and net area, proposed usage (highest and best use), and proposed zoning if unzoned, would help the reviewer and commissioner better determine the comparability of the sales used by the appraiser in setting appraised values. In addition, the comparable sales should be adjusted to represent an all cash transaction, and the magnitude of the percentage adjustments should be explained and quantified. Such adjustments should be supported by market data if possible, or the appraiser should state why it is not included. The final value estimate for the land being appraised should be reported on an all cash basis. (1)

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(1) In a cash basis transaction the seller receives full cash payment at completion of sale, and does not provide financing for the purchaser.

Our consultant also recommended improvements for reviewing appraisal reports. The recommendations emphasize the need for information to clarify the assumptions and rationale of the reviewer. According to our consultant, information on market data support and market comparisons for adjustments made for time, utility potential, size and location would facilitate decisions as to what extent to rely upon the assessment of the reviewer or the original appraisal report. Furthermore, the review appraiser should fully document and clearly explain any changes in the original appraiser's value.

Other issues not addressed and documented - Although appraisals were not the only factors in decisions, these other issues were not formally addressed nor documented. In the LaPaloma exchange, additional considerations or benefits to the State were considered. First, SLD anticipated substantial revenues from commercial leasing of the land the Department received in the trade. Second, Land Department staff and Selection Board members anticipated that the surrounding State trust land would also be impacted positively by private development and improvement of the traded land. However, no formal studies were performed to verify these expectations. Moreover, appraisals as normally requested by the Department are not designed to answer the side benefit questions of exchange decisions. Therefore, our consultant recommended that the SLD have a formal process for documenting all aspects of the entire decision as to whether a property should be sold, leased or exchanged. Furthermore, the Department should consider hiring experts such as urban planners, economists and financial analysts, in addition to appraisers, to assist in evaluating the broader, long-range aspects of decisions.

Periodic review of decision outcomes - To ensure that it is meeting its fiduciary responsibility to land beneficiaries, the Land Department should establish formal review procedures to measure the results of its decisions on all aspects and side benefits of land transactions. According to our consultant, SLD is entrusted with an asset - land - upon which it should be provided a suitable rate of return. Good management dictates that an annual accounting be made of the Department's fiduciary responsibility. Simply reporting that income from State land is up "X" percent or "Y" dollars does not accurately measure the performance of the land fund managers.

The Department needs to evaluate past decisions in order to make better informed decisions. Without a review of results of past decisions, the Department will continue to make long-term arrangements in a vacuum. For example, long-term land leases are negotiated based on the current market value of the property, and the rental amount is set with built-in small step increases in the rental rate over the term of the lease. The initial value of the property (based on the appraisal) is increased at the Consumer Price Index rate. Our consultant suggested that the Department annually value leased properties to compare the property value to the income generated. If there is a pattern of reducing rates of return, the Department should revise its leasing policy in future leases.

In addition, the Department should review the side benefit factors that impact decisions, particularly in sale and exchange transactions. SLD should determine whether the anticipated side benefits were met and were relative to costs incurred. Such information could facilitate future decisions as to what side benefits are most desirable and attainable.

RECOMMENDATIONS

1. Appraisal reports should contain more specific and detailed information.

   a. Comparable sales data, such as topographical maps and aerial photographs, sales history, gross and net area, proposed usage (highest and best use), and proposed zoning if unzoned should be included.
   b. All adjustments made to comparable sales should be explained, quantified and supported by market data.

2. Review appraisal reports should be expanded.

   a. All assumptions in the "Critical Assumptions" section should be listed with the major factors evaluated and, if necessary, reviewed with the outside appraiser.
   b. All adjustments made to comparable sales should be explained, quantified, and supported by market data.
   c. All changes made by the review appraiser to the original appraiser's final value should be clearly documented and explained in the review appraisal report.

3. The Department should consider utilizing experts, such as urban planners, economists and financial analysts, in addition to appraisers.

   a. To assist in evaluating the broader long-range aspects of decisions.
   b. To ensure that these determinations are documented.

4. A formal procedure should be implemented for annual evaluation of prior land sales, leases and exchange decision results.

FINDING II

STATE LAND DEPARTMENT LACKS ADEQUATE DOCUMENTATION FOR SOME COMMISSIONER DECISIONS

State Land Department (SLD) public files do not provide adequate information documenting all critical aspects of commissioner's decisions. The commissioner's final decisions appeared to contradict staff recommendations in some transactions because the record does not indicate the basis for rejecting the recommendations. To ensure full accountability for decisions regarding State lands, the commissioner should clearly document reasons for changing recommendations made by Department staff.

Records of some decisions made by the State land commissioner do not provide full information about how decisions were made. Our auditors found several cases in which the commissioner's reasons for decisions are not provided in Departmental files. In some cases, the commissioner's decision did not follow the recommendations made by Department staff. Lack of documentation for these apparent contradictions can add to the controversy surrounding SLD decisions.

- An exchange of land with Anam, Inc. was pursued and approved even though documentation in the public file shows the private exchange manager recommending denial of the exchange. The staff recommended denial because the exchange would not consolidate trust land. Moreover, the staff stated that the trust land was more valuable than the private land offered in the exchange. In his letter to the Selection Board, the commissioner argued for the exchange on the basis that it would result in consolidation of land ownership in the area. No other documentation in the file supported the commissioner's decision. However, the former commissioner stated that through negotiation with Anam, Inc. a deal was made that eliminated the staff's negative recommendations.

- In another exchange with the Shawver family, the final appraisal values were set by the commissioner and were different than those of either the independent appraiser or the Department's appraiser. The commissioner's valuation per acre on the offered private land was the same as that of the private appraiser's value, but considerably higher than the Department review appraiser's value. On the selected State land acreage the commissioner's valuation was higher than the private appraiser's and slightly lower than the Department's review appraiser. On the comments section of the review appraisal, it was written that the values reached by the commissioner were a compromise. When asked about this exchange, the former commissioner said a settlement was negotiated. However, no documentation explains the facts upon which the compromise values were based.

According to SLD staff, documentation of decisions is lacking for several reasons. The former commissioner felt it was not necessary to document changes that increased valuations and he felt he didn't have the time to document his decisions. The private exchange manager gave two other reasons for the lack of documentation for negotiations.

- The private exchange section does not have a secretary to keep minutes of meetings, and the manager does not have enough time to do it.
- Negotiation meetings are hard to document because the discussion focuses on maps and land boundaries. In addition, it is difficult to pinpoint when a specific decision has been made.

In discussion with the former commissioner, he stated that negotiations were based on staff input. However, SLD staff indicate that many exchange decisions were made without staff input.

Although the commissioner may have had adequate reasons for the decisions made, SLD's management role of a public trust requires the Department to delineate its decisions that impact the trust's revenues. The Department's mandate to manage the trust lands to the advantage of the beneficiaries requires the Department to maintain a complete record of facts and assumptions upon which its decisions are based. Special efforts to document commissioner decisions are necessary when they contradict staff recommendations. Since controversy pervades many SLD transactions, a clear trail of why decisions were made may aid in limiting some of the controversy.

RECOMMENDATION

The State land commissioner should maintain documentation in the public file that includes all underlying assumptions, projections of benefit to the trust, and facts upon which decisions are based.

FINDING III

STATE LAND DEPARTMENT ENFORCEMENT OF TRESPASS LAWS IS WEAK

Although the State Land Department (SLD) has made some progress in dealing with trespass on State lands, the Department needs to further improve its ability to act against violators. The Department does not effectively manage trespass cases. The Department's current handling of trespass cases limits its ability to deter trespass and may have resulted in lost revenue. In addition, current statutes prohibiting trespass on State land are unclear.

Trespass involves the unauthorized use of State land. Unauthorized use may result in damage to the land or removal of valuable resources or historical artifacts. For example, in one trespass case a road was built across State land without permission, resulting in damage to native plants and loss of rental revenues for the road. Other instances involved the illegal removal of materials such as sand, gravel and wood from State land. In addition to the physical damage, trespass may also deprive SLD of revenue that would be paid for legal use of the land.

Trespass and the Department's ability to enforce trespass laws has been a continuing concern. A 1980 Auditor General report on the State Land Department found that SLD lacked both the resources and procedures to effectively deal with trespass. SLD now has a full-time trespass officer. This finding evaluates the Department's success in controlling trespass on State lands since the 1980 audit.

SLD Does Not Effectively Manage Trespass Cases

The Department does not effectively manage trespass cases. SLD has not established a systematic process or adequate procedures to ensure that cases are handled in a timely manner. The number of unresolved trespass cases appears to have increased substantially since 1980.

No systematic process - SLD has not established a systematic process for managing trespass cases. Several problems cited in the Auditor General's 1980 report have not been addressed. As a result, the Department still cannot effectively direct its limited resources toward the most critical cases.

- The Department has not developed a system for setting priorities among trespass cases. The procedures manual does not provide any guidance for determining which cases are more important. According to the trespass officer, he uses his own discretion in deciding which cases to pursue.

- The trespass officer also lacks a comprehensive log for recording initial reports of trespass. The trespass log currently used includes only cases that have been assigned a case number. Only one-third of the cases considered active by the trespass officer have been assigned numbers.

- SLD does not regularly review trespass cases to ensure that appropriate actions are taken to resolve them. Department procedures do not specify what actions should be taken or any time frames for managing the trespass case load. Although the Department has a computerized system for tracking cases, the trespass officer does not use the system.

Although problems dealing with trespass cases were identified in the Auditor General's 1980 audit of the State Land Department, little progress has been made to improve management procedures. The procedures manual developed in 1981 instructs all SLD employees to report trespass incidents that come to their attention. However, the trespass officer has assumed most of the responsibility for investigating trespass cases. In addition, the manual does not establish any clear expectations about what action should be taken on a trespass case or when. SLD is revising the manual, but the new procedures appear to be similar to the previous ones and do not address the deficiencies cited above.

In addition, current procedures and revisions apply only to cases that are officially logged as trespass cases and do not address problems that are not recorded as trespass cases. Most of these problems grow out of telephone reports and are not part of the official case load. The actual volume and extent of these problems is not well documented, but available records show that the trespass officer received over 500 calls from January through July 1987. According to the trespass officer, the time needed to address these problems can equal the time needed to resolve recorded cases.

Trespass case load - The haphazard management of trespass cases has contributed to the increase in SLD's case load. Although SLD estimates that it closed almost 500 cases since 1980, the number of unresolved cases less than two years old has increased by 75 percent. The current rate of closure indicates that the Department will be unable to significantly reduce the number of unresolved cases.

SLD's trespass case load has increased since 1980. Currently, the trespass officer has 299 unresolved cases. [1] Most of these cases (203) are classified as inactive cases, which the trespass officer does not normally address. The remaining 96 cases are part of what the trespass officer terms his active workload (Table 4). [2] In 1980 the Auditor General reported that the Department had not resolved 91 of the 135 trespass cases reported during the period December 1, 1977 through December 1, 1979. The current case load now includes many cases that are more than two years old, but even when these are excluded, SLD still has 159 unresolved cases reported since July 1, 1985.

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(1) Excludes 59 cases in which SLD has reached agreement with the trespasser, and 14 cases for which no responsible party has been identified.

(2) According to the trespass officer, the backlogged files are comprised largely of cases that were opened before he was hired in September 1986. The cases categorized as active were opened during his tenure. Some cases in the active category were opened prior to his employment but contained sufficient information for the work to continue. Auditor General review of the active and backlogged cases indicates that the inactive cases tend to be older, but otherwise the characteristics of both groups are essentially the same.

TABLE 4

UNRESOLVED TRESPASS CASES
AS OF JUNE 1987

Duration	Active Cases	Inactive Cases	All Cases
Less than 6 months	33	0	33
6 months to 1 year	31	9	40
1 to 2 years	18	68	86
TOTAL UNDER 2 YEARS	82	77	159
2 to 3 years	3	45	48
3 to 5 years	6	58	64
Over 5 years	5	23	28
TOTAL OVER 2 YEARS	14	126	140
All cases	96	203	299

Source: Auditor General review of trespass officer files, June 1987.

SLD officials attribute the growth of the unresolved cases to a previous trespass officer who did not follow Department policy in dealing with trespass. Instead of investigating complaints and resolving cases as specified in the procedures manual, this employee acted more as a peace officer, carrying a gun and a badge. After the individual's termination, the position was not filled for several months.

SLD officials also attribute the growth in unresolved cases to the time needed to address problems not recorded as trespass cases. The trespass officer's telephone log shows a high volume of calls about trespass problems. According to the trespass officer, he completes action on some of these reports without ever recording them as trespass cases. For example:

- Contractors moving three houses abandoned the buildings on State land in north Phoenix. One building is in poor condition and may be a safety hazard. The trespass officer has spent time trying to locate the owners and attempting to have the buildings removed. He estimates the removal cost at $10,000, a cost for which SLD will be liable if the owners cannot be located.

- Officials in Duncan complained of weeds and debris on State land in the town. The trespass officer traveled to Duncan and arranged for the town to maintain the properties at SLD expense. He estimates that he spent three days resolving this problem.

The number of calls and the time required to respond to them varies, but the demand on the trespass officer's time can be substantial. The trespass officer also reports activities such as special projects can limit the time available for managing the recorded case load. He spent three weeks during August 1987 supervising a clean-up on State land near Tucson that was funded by a $25,000 appropriation.

However, the increase in unresolved cases is also the result of the Department's failure to manage the case load. Without systematic procedures for making decisions and tracking trespass cases, SLD may not be able to act in a timely manner after a case comes to its attention. For example, the failure to include two-thirds of the trespass officer's active cases on the trespass log limits the Department's ability to review current status. The high number of cases older than two years also reveals an inability to take timely action.

Inefficient Handling Of Cases Decreases Deterrence Effect

Lack of effective management limits SLD's ability to deter trespassers. The Department's failure to act in some cases may result in no action against trespassers or allow the trespass to continue for extended periods of time. Failure to act within the two year statute of limitations may have cost the State significant amounts of potential revenue. The Department may need additional staff to adequately manage trespass on State land.

Damage to State land - Poor management of trespass cases has prevented SLD from taking action against trespassers. This limits the Department's ability to deter potential trespassers, and in some cases allows trespassers to continue their unauthorized use of State land. The following examples illustrate the problems associated with limited enforcement.

- SLD has not resolved a trespass case pending for five years involving a city utility with some underground lines on State land. The city has the lines in the same location as some private lines which where also placed illegally. SLD settled the case with the the private utilities, for $163,000 in damages resulting from the installation of the lines and $87,600 in rent. However, SLD has not estimated or billed the city for its share of the damages, nor has the city paid $30,200 due in rent for its use of the right-of-way.

- SLD records contain two cases of roads built across State land to private homes. The roads damaged and destroyed native plants and were built without permits. Although both cases are more than two years old, the records show no evidence of attempts to collect damages or rent for use of the State land.

- A 1983 trespass report indicates that a county government removed 70,000 tons of sand and gravel from State land without a permit in 1983. SLD has not estimated the damages or value of the materials removed and has taken no action to recover damages for the lost resources.

As these examples illustrate, trespass cases are allowed to continue without sanction and penalties are not imposed. Such inaction may provide an incentive for persons to use State lands without authorization.

<u>Loss of potential revenue</u> - Due to the inadequate handling of cases, the lack of procedures and limited deterrence, SLD may have lost an estimated $320,000 in revenue. A sample of inactive trespass cases taken in February 1987 indicates that they may represent significant amounts of money. [1] By extrapolating the sample results, revenue amounts for all inactive cases were projected to be approximately $589,000. Due to the two year statute of limitations on civil cases, however, SLD may only be able to collect damages from cases that are less than two years old. [2] Potential revenue for cases less than two years old is $269,000. Thus, by failing to resolve cases in a timely manner, the State may have lost $320,000.

In addition, after cases are resolved and fines and damages paid, SLD may be able to enter into lease agreements with trespassers that would allow them to use the State land legally and generate revenue for the trust. In the sample of inactive cases, 15 had estimated lease payments for legal use of State lands that totalled $36,000 annually. Other inactive and active cases may have similar lease potential.

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(1) See Appendix III for a complete description of the sampling methodology.

(2) According to the Legislative Council, the Arizona statute of limitations applies to the State Land Department (see Appendix II). SLD may pursue cases older than two years if action was initiated before the statute of limitations expired. However, the trespass officer indicated that no action has been initiated for any of the trespass cases in his inactive case load. Although trespass cases are usually handled through settlement agreements reached by the Department and trespasser, SLD may use criminal or civil means to recover damages, in compliance with the statute of limitations.

Staffing requirements - SLD may need additional staff to effectively address trespass problems. However, available information does not clearly indicate how many staff would be needed. The large number of unresolved cases may not be an accurate measure of workload. As previously noted, the high number of unresolved cases resulted from the lack of an effective process for reviewing and acting on trespass reports, the failure of a previous officer to perform his duties and other demands on the trespass officer's time. Recent experience suggests that the increase in recorded trespass cases is slight. SLD closed an average of four trespass cases per month and opened an average of five new cases per month between October 1986 and May 1987. Developing a more effective system for managing trespass cases could be sufficient to keep the number of unresolved cases from increasing and enable the trespass officer to resolve cases in a more timely manner.

A more effective system must incorporate cases that are not currently included in the trespass officer's workload and must also utilize indicators of the staff time needed to resolve cases. A review of the trespass officer's activities indicates that these cases constitute a significant workload, yet because they are not logged or tracked in a systematic manner, SLD cannot estimate their impact or translate this impact into required staffing patterns. Moreover, SLD currently has no workload measures to predict the time required to resolve trespass cases that are recorded in the trespass officer's workload.

SLD needs to clearly determine and justify its need for additional trespass staff. Any additional staff should be used to address the large number of unresolved cases and the additional activities that are not officially recorded. As noted previously, resolving trespass cases provides revenue to the State land trust; over $269,000 in potential revenue could be generated by resolving inactive cases (see page 32). Even without resolving these cases, the current trespass officer estimates that he has recovered approximately $87,500 during fiscal year 1986-87, or more than twice his salary and related costs.

Trespass Statutes Are Unclear

Statutes prohibiting trespass on State lands may also contribute to enforcement problems. Maricopa County law enforcement officials and at least one justice of the peace have been unwilling to enforce A.R.S. §37-501. A memorandum prepared by the Attorney General's Office describes the trespass statutes as inadequate for the types of problems which exist on State lands today. The Department plans to request the 1988 Legislature to enact legislation to strengthen its ability to address trespass problems.

Enforcement of trespass statutes on State land has been limited by legal decisions in Maricopa County. In 1986, the Maricopa County attorney advised the sheriff's office not to enforce A.R.S. §37-501 against trespassers on State land. The county attorney based its advice on its opinion that this statute was intended only to protect the improvements, minerals and plants on State land and did not restrict public access to State lands. As a results, the sheriff's office directed its officers to cite trespassers for violations of A.R.S. §13-502 (criminal trespass) and statutes involving the use of firearms, where applicable.[1] A justice of the peace in northeast Phoenix has also refused to convict trespassers of violating A.R.S. §37-501 for similar reasons. The justice of the peace feels that it is unethical to bar public access to State lands.

The Attorney General's office researched the problems with SLD's trespass statute and concluded that it is inadequate for dealing with the trespass problem. The research memorandum prepared by the Auditor General staff identifies several problems with the current law, including:

- lack of clear authority to cite persons endangering public safety while on State land,
- lack of clear definition of trespass and effective penalties to deter potential violators,
- no provision for non-consumptive use of State lands, and
- no specific prohibition against dumping trash and debris on State lands

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(1) Use of criminal trespass statutes increases the difficulty in obtaining convictions because SLD would be required to fence or otherwise post the land in order to prove that trespassers acted knowingly.

The Attorney General's staff recommended new legislation to address these and other problems. A bill was introduced in the 1987 legislative session that would more clearly define unauthorized use of State lands, prohibit removal of archeological specimens, prohibit illegal dumping, provide for recreational uses, and permit the Department to make regulations to carry out the trespass legislation. The bill was not enacted.

The Department has drafted new legislation to submit to the 1988 Legislature. The new proposal requests changes in the criminal damage and theft statutes (Title 13, Chapters 16 and 18) to specifically define offenses on State land. The Department also plans to request revisions in Title 37 to clearly define civil liability for unauthorized use of State land and prohibit activities such as unauthorized dumping and vehicle use on State land.

RECOMMENDATIONS

1. The Department should establish a clearly defined procedure for responding to reported trespass on State lands. The procedure should address at a minimum all activities relating to trespass activity, including activities not recorded as trespass cases. The procedure should specify:

    a. Criteria for evaluating the relative importance of each case,
    b. Periodic review of all unresolved cases to determine current status, and
    c. Requirements for making decisions about cases as a result of the periodic review. Trespass cases should not remain unresolved for more than two years without the Department taking action to ensure that damages can be recovered.

    These procedures should be incorporated into a revised procedures manual and distributed to all Department staff.

2. The Department should use the revised procedures to develop accurate workload measures to determine the time needed to adequately manage all trespass-related activities and to estimate the appropriate number of necessary staff. The Legislature should consider increasing the Department's trespass staff to meet the documented needs.

3. The Legislature should consider amending Arizona Revised Statutes to strengthen the Department's ability to control trespass on State land by:

   a. Clearly defining activities prohibited on State land,
   b. Establishing penalties for unauthorized use, theft and damage to State land, and
   c. Defining civil liability for unauthorized use of State land.

FINDING IV

STATE LAND DEPARTMENT NEEDS TO MORE CAREFULLY PROTECT IMPORTANT RECORDS

The State Land Department (SLD) needs to improve records management to ensure that essential records are protected against loss. The Department maintains a large number of unique records that contain important information for managing State lands. However, existing storage facilities place SLD records at risk. In addition, current procedures for handling records do not provide adequate protection. SLD could improve records management in several ways.

Department Records Are An Important Management Resource

SLD manages numerous records concerning the 9.7 million acres of land under its jurisdiction. The records contain important information used by its staff and the public to make decisions about the management and use of State lands. Many Department records are unique and irreplaceable.

SLD records provide information to Department staff and the public about State lands. Department officials estimate that there are more than 13,000 files pertaining to State lands. The records include tract books, lease files, right of way files, certificates of purchase and sales files. Tract books are an especially important information resource because they include data on the location of State land parcels and history of each parcel since it was granted to Arizona. Land Department records are used regularly by Department staff and citizens interested in using State lands. For example, staff members may use the records for reviewing lease agreements, evaluating sales potential, or developing plans for future development and use of the land. The general public may use the records to determine what lands are available, and how long a parcel has been leased at what rates.

Many SLD records are unique and irreplaceable. Most of the records stored at the SLD offices are originals for which no duplicates or other backup are available. Some records are historically significant because they date from Arizona's

territorial and early statehood era. Department officials expressed concern about the storage of these records to Auditor General staff. As a result, Auditor General staff requested the Department of Library, Archives and Public Records to review SLD records management. The information presented in this finding is based on the Library and Archives report and Auditor General staff audit work.

Storage Facility Puts Records at Risk

SLD record storage facilities do not provide adequate protection for these important records. Conditions within the State Office Building limit the Department's ability to preserve its records. In addition, general problems due to the building's age and structural capacity create the potential for record damage or loss.

The State Office Building where SLD records are stored does not provide the proper environment for records preservation. The Library & Archives team found that the climate control was not adequate to protect the paper documents, which are susceptible to damage from changes in temperature and humidity and exposure to light. However, the area where records are stored was not designed to control against these hazards. The blinds in the records area do not close and, therefore, cannot sufficiently reduce light in the area. Temperatures may fluctuate as much as ten degrees during the day.

The building itself does not appear to be adequate for safe storage of records. According to Department of Administration-Facilities Planning personnel, the building has poor electrical and plumbing systems. [1] SLD operates much electronic equipment and circuits are often overloaded, creating fire hazards. In early 1986, an overloaded circuit caused a carpet fire in an office on the same floor

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(1) DOA-Facilities Planning personnel indicated that the State Office Building is in need of major renovation. Such renovation would require the building to be completely vacated.

where SLD records are stored. The records area does not have a sprinkler system, which further increases the likelihood of record losses from fire. Another danger is water damage. A water line burst in January 1987 on the second floor of the building. Although no records were damaged, plumbing is generally inadequate throughout the building, and similar problems could recur.

Also, the volume of SLD records and the shelving used may exceed the building's structural capacity. The records area is on the fourth floor of the State Office Building. According to the Library & Archives team, the typical weight load of the filing equipment in the records area is between 350 and 400 pounds per square foot. The State Engineer and City of Phoenix building code personnel estimate the load capacity for the floor to be 50 pounds per square foot, the minimum design requirement for buildings in Phoenix when the State Office Building was constructed. [1] Storage space is available on the first floor, but the agency that recently vacated the area reported damage to paper materials from termites.

Management Procedures
Leave Records Susceptible To Loss

SLD procedures for handling records do not guard against their loss or theft, because access to records is controlled only to a limited degree. Although an SLD inventory conducted in 1986 accounted for all but two grazing files, Department personnel often had difficulty locating records requested during our audit.

During the course of the audit, SLD improved control over records. SLD now requires all staff and the general public to sign a register when examining records. The register enables the Department to more effectively control public access. However, further action is needed to reduce the potential for record loss. The Library and Archives evaluation team noted that "maintaining security against loss or theft . . . is difficult because the area is essentially open and accessible to the public."

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(1) The likelihood of structural failure due to excessive weight loads is unknown. According to the State Engineer, a detailed engineering assessment of the building's structural integrity would be needed to determine the extent of structural problems.

SLD Could Improve Records Security In Several Ways

Although SLD facilities for records storage are limited, the Department could reduce its potential for loss. Creating duplicate or backup copies would enable the Department to recreate any lost or damaged records. Greater control over the records area would improve accountability for records. Moving SLD to a more adequate building may reduce the physical hazards to the Department's records.

The Department of Library, Archives and Public Records evaluation team recommended that the Department consider micrographics or electronic imaging of its records, and offered assistance in that effort. SLD has begun to microfilm approximately 1,200 commissioner's orders, at an estimated total cost of $60. Microfilming all 511,000 documents contained in SLD's 13,000 lease records would require a one-time expenditure of approximately $41,000. Annual costs to microfilm records created each year are unknown because SLD cannot estimate the number of additional pages created annually. However, updating costs appear to be minimal. For example, if three pages were added to each of SLD's 13,000 files, the cost to update the microfilm would be $3,120.

Although SLD has instituted new procedures to strengthen control in the records area, control over access remains limited. Ultimately, the Department's records manager would like to create a controlled access area where records would be readily available for use. Such an area is not possible in the current facility. However, the Department could limit access to its original documents by providing microfilm copies for use by the public and staff. Microfilm copies would reduce the potential for damage or loss of original documents. Because additional microfilm copies can be easily made, more than one person could use the same material at the same time.

There are tentative plans to move SLD to a new building. This could also improve records security. DOA-Facilities Planning is considering moving SLD to the former State Compensation Fund building. This building has better electrical and plumbing systems, fire sprinklers, and an area that appears adequate for storing the volume and weight of SLD records.

RECOMMENDATIONS

1. SLD should microfilm or otherwise duplicate records to ensure that copies are available in case of loss. SLD should work with The Department of Library, Archive and Public Records to develop a plan to implement recommendations.

2. SLD should limit access to original documents by providing microfilm copies of documents for use by the public and Department staff.

3. SLD should work with the Department of Administration to define the requirements for records storage in any new facility. Where needed, Department of Library, Archives and Public Records staff should be brought into discussions to ensure that facilities meet SLD records management requirements.

OTHER PERTINENT INFORMATION

During the audit, other pertinent information was developed on grazing fees, mineral royalties and the State Land Department (SLD) information system.

Grazing Fees

Grazing fees have declined since the fee structure was revised five years ago. The 1980 Auditor General report on the State Land Department (80-3) showed that Arizona's grazing fees were lower than nine other western states, the Federal government and private landowners. In 1982, the Arizona Legislature revised Arizona's grazing fee formula to incorporate the same factors used to determine grazing fees on Federal lands.

The Federal formula was established by the Public Rangelands Improvement Act (PRIA) of 1978 and calculates the Animal Unit Month (AUM) [1] rate as follows.

$$\frac{(\text{Beef Price Index} + \text{Forage Value Index}) - \text{Prices Paid Index}}{100} \times \$1.23$$

The PRIA formula incorporates the economic circumstances of the cattle industry by basing grazing fees in part on beef prices. However, the formula also recognizes the value of public land forage. The previous Arizona grazing fee formula was based entirely on beef prices.

Arizona's revised formula differs from the Federal formula in the amount of the base fee. The State base was set at 95 cents rather than $1.23, in recognition of the fact that Federal agencies could retain a portion of their grazing receipts for range improvement projects. In contrast, all SLD receipts must be credited to the designated beneficiaries of the trust lands. Therefore, the Arizona formula is identical to the Federal one, except the various indexes are multiplied by a base of 95 cents instead of $1.23.

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(1) An animal unit month is the equivalent of one weaned beef animal or five sheep grazing for one month.

Due to changes in the indexes, SLD fees have fallen steadily since the new formula took effect. Fees are now lower than they would have been under the old formula (Table 5).

TABLE 5

STATE LAND GRAZING FEES
1983 THROUGH 1988

Grazing Year	Old Fee	New Fee
1982-83	$1.08	$1.43
1983-84	1.05	1.07
1984-85	1.04	1.05
1985-86	1.06	1.05
1986-87	0.98	0.73
1987-88	0.95	0.66

Source: SLD Grazing Section.

Although Arizona now uses the PRIA formula to determine its grazing fees, the fees are still only about half of Federal fees for the 1988 grazing year. [1] In 1986 the Federal government established a minimum fee to ensure that grazing fees did not fall below $1.35 per AUM. Arizona's 1988 fee is 66 cents, compared to the Federal rate of $1.35.

Unlike the Federal program, however, the costs of administering the SLD grazing program appear to be fully recovered by grazing fees. The cost of administering the Federal grazing program exceeds the revenues generated. The cost of administering SLD's grazing program is relatively low. According to SLD calculations, the current grazing program costs the State approximately 26 cents per AUM.

(1) The grazing year begins on March 15th. Therefore, the 1988 grazing year in Arizona began March 15, 1987, and ends March 14, 1988.

Mineral Royalties

The State Land Department is responsible for collecting royalty payments for the extraction of minerals from State lands. Royalty payments are deposited into the perpetual fund and interest from the fund may be used by the beneficiaries of the State land trust. The 1980 performance audit of the Department found that Arizona's method of determining fees differed from most other western states, and its royalty rate was lower. The report also noted that current statutes and procedures made the collection process uncertain and difficult. We made the following recommendations to improve collection of royalties and strengthen Departmental control over the process.

- SLD should assess royalties on gross valuation of the minerals extracted rather than their net valuation.
- The Department should have authority to establish royalty fees for mining leases that would provide for an equitable return to the State and allow for production or operational differences between lessees.
- The price basis for calculating gross values and timeliness of royalty payments should be more specifically determined.

These recommendations have not been implemented. SLD has not requested the necessary statutory changes to implement the recommendations, nor has it used existing authority to make the recommended changes. According to an SLD official, no changes have been made because of declining activity in Arizona's mining industry during the 1980s. The officials felt that higher royalty fees would further depress the industry. This decline is evident in the reduced royalties paid to the State for mineral extraction. In 1980 SLD received almost $8 million in royalties. In 1986, however, royalty receipts had declined to approximately $1.3 million.

Information System

The State Land Department's information system consists of numerous manual and computer generated records that aid the Department in fulfilling its mission as trustee for the beneficiaries of the State Trust. The present system operates with

outdated technology and cannot handle the current needs of the Department. This inadequate information system causes numerous problems.

- Between 9 a.m. and 5 p.m. the system is often near capacity. As a result, computer response times are below acceptable standards.
- The system does not have an uninterrupted power supply, and is vulnerable to power surges or outages which can destroy files. Approximately 36 shutdowns occur annually, which result in damage to electronic components and on-line data loss.
- The system cannot handle billing statements with figures larger than five digits.
- The system cannot calculate percentage interest charges over 5 percent.
- There is an eight year backlog of title transactions that have not been posted to the current land/title processing system.

SLD has identified major areas for improvement, and is in the process of upgrading the entire information system. The computerization of the system will take place over a five year period that began in fiscal year 1985-86. An SLD estimate indicates that as of June 1986, the computer system would cost a total of $311,188 for all hardware, software and operational costs. According to SLD, $242,000 has been received from the Legislature to computerize the information through the first two of five phases.

Previous attempts to develop a new information system have failed due to inadequate funding, lack of a comprehensive information systems plan, and personnel turnover. Currently, according to SLD officials, the Department is three months behind schedule. In addition, the Department could fall further behind, since full funding has not been provided for all the resources that are required to complete projects according to the established development schedule.

According to a briefing report from SLD, funding is lacking for needed programmer/analyst and information processing specialist positions. The Department has determined that additional staff are needed to ensure that the system is properly designed and tested, and to eliminate the eight year title backlog.

Arizona
State Land Department

EVAN MECHAM
GOVERNOR

1624 WEST ADAMS
PHOENIX, ARIZONA 85007

M. J. HASSELL
STATE LAND COMMISSIONER

September 24, 1987

Mr. Douglas Norton
Auditor General
2700 North Central, Suite 700
Phoenix, Arizona 85004

Dear Mr. Norton:

The Performance Audit of the State Land Department has addressed several significant issues relating to the Department. We concur with the conclusions and recommendations that have been reached in all four areas. We had already begun to implement changes in some areas and the audit confirms our assessment of and solution to the problem. In addition, we have made significant progress in implementing many of the other recommendations of the report.

The report notes that the private exchange program has been controversial in the past. In March of this year, we implemented a new policy for land exchanges which limit exchanges to rural parcels being consolidated for land management purposes and established new procedures for documenting land exchange decisions. A copy of our March 5, 1987 Exchange Policy Memo is attached. Trust lands that are suitable for development will be leased or sold for income to the Trust Fund, rather than being disposed of by exchange. We anticipate that implementation of these policies and procedures will greatly reduce the controversy surrounding the exchange program.

We agree that problems continue to exist in the Department's enforcement of trespass violations and have initiated actions to incorporate the Auditor General's recommendations into our operating procedures. A revised trespass manual has been completed and distributed to the staff. Criteria for evaluating prioritization of trespass actions is under development and will be incorporated in the manual when completed. Periodic reviews of unresolved cases will become part of the process. A detailed log of all trespass has been established to provide information for workload analysis. The draft legislation that would strengthen the Department's ability to control trespass on Trust lands is being circulated to the interested public in preparation for introduction in the next session.

We do not totally agree with the report's conclusion that improved management and additional manpower will eliminate trespass backlogs. Our experience has been that as trespass efforts are increased there is a corresponding increase in discovery of trespass. The recommendation to improve documentation of workload will help us to more fully understand this relationship.

The report correctly identifies current inadequacies with regard to the protection of our records. Our plans to move to the Compensation Fund Building are still on schedule. The improved electrical, plumbing and heating and cooling systems in that building will greatly reduce the current threat to our records. Also we have already begun to microfilm the Commissioner's Orders and tract books. In addition, we are in the second year of a five year program to revamp our business and administrative data processing systems. When implemented, access of staff and the public to original documents will be, for the most part, eliminated. Instead, data will be accessed through inquiry screens, computer terminals or through hard copy printouts or microfiche.

The State Land Department would like to acknowledge the professional and courteous manner in which your staff conducted the performance audit of the Arizona State Land Department in compliance with the Sunset Review required in A.R.S. § 41-2351 through 2379. We appreciate the assistance you have given us in evaluating and improving our programs.

Sincerely,

M. J. Hassell
Commissioner

MJH/djh

EVAN MECHAM
GOVERNOR

Arizona
State Land Department

1624 WEST ADAMS
PHOENIX, ARIZONA 85007

OFFICE OF
STATE LAND COMMISSIONER

STATE LAND DEPARTMENT POLICY MEMO NO. 36

TO: DIVISION DIRECTORS

DATE: 3/05/87

FROM: M. J. HASSELL
Acting State Land Commissioner

SUBJECT: EXCHANGE OF STATE LANDS

A.R.S. §37-604 et. sec. provides authority for State land to be exchanged for land owned or held by the United States or agency thereof, other State agencies, counties, municipalities and privately owned lands.

The following outlines the policy by which State lands will be exchanged:

1. Land exchanges must be to the benefit of the State Trust. Land exchanges for the benefit of an exchange proponent must show an equal or greater benefit for the Trust.

2. Urban Trust lands will not be disposed of through land exchanges, but will be offered for lease or sale to the highest bidder to produce income to the Trust beneficiaries.

3. Land exchanges with large disparities of acreage or development potential will not be approved.

4. The State will not make land exchanges to acquire small parcels of land which have reached their development and value potential in trade for a large acreage of Trust lands that have not yet reached their development or value potential.

5. The State will not exchange developable lands for undevelopable lands regardless of appraised values.

6. The State will not exchange lands with potential for near-term development for lands with lesser potential.

7. The Land Department will acquire, through exchange, land that has a highest and best use for public recreation or other uses by state or local governmental entities, only as a last resort, and only then when such entities can demonstrate that they have the capability to pay full fair-market value rental or purchase price.

8. The State will make land exchanges to block up rural Trust lands to increase natural resource management efficiencies and reduce administrative costs.

9. The State will attempt to exchange to "block up" large checkerboard areas of State and private lands that are expected to be impacted by 40-acre subdivisions of the private lands.

10. The State will exchange Trust lands out of Federal land management areas, such as National Parks, Wildlife Refuges and Wilderness areas, where Federal land management policies restrict the development and income potential of the Trust lands.

11. The State will not use urban Trust lands or commercially developable Trust lands to trade for private lands near military airports that have zoning or land use restrictions.

APPENDIX I

JOSEPH M. DAVIS, CONSULTANT REPORT

Joseph M. Davis and Associates
1054 E. Buena Vista Drive • Tempe, Arizona 85284 • (602) 839-2064

April 28, 1987

Ms. Margaret E. Cawley
OFFICE OF THE AUDITOR GENERAL
State of Arizona
2700 N. Central Avenue, #700
Phoenix, AZ 85004

Dear Ms. Cawley:

In response to your request that a review be made of the Arizona State Land Department's appraisal procedures, I submit this letter with attachments which include four case studies and general recommendations.

It appears to this reviewer that recent changes such as the State Land Department ordering the appraisal and selecting the appraiser will have significant impact on the quality and usefulness of future appraisals. The contracts and instructions given the outside appraisers appear to be adequate. Also, since the State Land Department started ordering the appraisals the outside appraisals seem to be objective and independent. However, specific recommendations for improving the quality of the outside appraisals are made in the attachments to this letter.

The Department's review of outside appraisal reports and its in-house appraisals can be improved as discussed on the attached pages. Generally, the Department's appraisers are doing a good

job and in fact, at times they have been instrumental in ensuring that better decisions were made.

An area of major concern to this reviewer is that the total decision of which the appraisals may only be a part is not better analyzed and documented. Another concern is that follow up review procedures are not formalized to evaluate prior decisions and that an annual rate of return accounting is not required on prior leases to evaluate future leasing policies. The fiduciary responsibility of managing the state land assets should require more than just stating that "X" percent or "Y" dollars more income came into the State Treasury over the prior year. The question is what should "X" and "Y" have been and what are they likely to be over the next generation.

Another concern is that the Department relys upon appraisals but does not, to the knowledge of this reviewer, utilize other outside analysts and experts to assist in the sale, exchange or lease decision. The Department is simply relying on one tool, the appraisal, to do too much. The costs of these other inputs should be relatively inconsequential compared to the magnitude of the decision. For example, sales and exchanges with side benefits to the State should be encouraged, therefore, a cost-benefit analysis would be appropriate in addition to the appraisals.

Some of the attached specific recommendations for improving appraisal reports are considered by this reviewer to be very important and will substantially reduce the "guess work" burden placed upon the State Land Commissioner in the reconciliation process.

In summary, some specific recommendations need to be implemented with regard to outside and in-house appraisals. Good management of the state's land assets dictates that better ficiduary accountability be established. Finally, appraisals of speculative land will always result in differences of opinion

because the appraiser's value judgment must to some extent be based upon conjecture about the future.

As a citizen of the State of Arizona, it is my hope that we can improve these procedures both in fact and appearance and if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Joseph M. Davis, Ph.D.,
MAI, SRPA, ASA, CRA

JMD/dsd

GENERAL RECOMMENDATIONS

(1) The Arizona State Land Department is entrusted with an asset, land, upon which it should be expected to provide a suitable rate of return,just as the State Treasurer should be held accountable for returns on financial assets. Good management would dictate that an annual accounting be made of this fiduciary responsibility.

(a) Reporting that income from state land is up "X" percent or "Y" dollars does not accurately measure the performance of the "land fund" managers.

(b) Long term land leases (say 65 years) are negotiated based upon the current market value of the property and the rental rate is set with some small steps and increases in the rental rate. The initial value of the property (based on the appraisal) is increased at the Consumer Price Index (C.P.I.) rate. The question is "Do the underlying land values increase at the C.P.I. rate?" If the land values are increasing at a greater rate than the C.P.I. then the annual rate of return on the State land asset will be less over time.

(c) This reviewer has been told that land leases based upon periodic re-appraisals cannot be done because of lender constraints. However, it is done in the private sector - more research into this possibility is needed.

(d) Irregardless of (c) above, the S.L.D. should annually value leased properties (even if just in-house) to compare the property value to the income generated. If a pattern of reducing rates of return occurs, then the S.L.D. should re-work its leasing policy in future leases. The alternative is to make long term

arrangements in a vacuum. The argument that the State will receive the land back at a much higher value does not negate loss rental income that might have been generated in future years.

(e) A formal procedure should be implemented for evaluating prior land sales and exchange decisions. The S.L.D. should make a bi-annual review of its prior decisions to determine especially if the side benefits are being realized. In fact, sales and exchanges with side benefits, should have a preference over sales and exchanges where no side benefits accrue.

(2) A more extensive effort should be made to explain and document all the comparable sales data adjustments utilized by the outside appraiser and the S.L.D. appraisers. As stated in several of the cases, all comparable data must be of sufficient detail to demonstrate the transactions were conducted under the terms and conditions of the definition of market value or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property, and; are physically and economically comparable to the subject property. Improvement in this area will substantially reduce the amount of "guess work" that the S.L.D. Commissioner will have to do in reconciling differences between appraisals.

(3) All comparable sales data sheets received in appraisals should be copied, coded and filed, and the basic data entered on the computer for retrieval by location, size, zoning/use, etc.

(4) The S.L.D. should expand its data sources for comparable sales data, for example, to include the Real Estate Evaluation Group computerized retrieval system and COMPS of Arizona. Also the S.L.D. should expand its sources, references, and data on land value trends.

APPENDIX II

LEGISLATIVE COUNCIL OPINION, O-87-2

ARIZONA LEGISLATIVE COUNCIL

MEMO

April 15, 1987

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-87-2)

This is in response to a request submitted on your behalf by William Thomson in a memorandum dated March 25, 1987.

FACT SITUATION A:

Arizona Revised Statutes (A.R.S.) section 37-501 provides that:

A person is guilty of a class 2 misdemeanor who:

1. Knowingly commits a trespass upon state lands, either by cutting down or destroying timber or wood standing or growing thereon, or by carrying away timber or wood therefrom, or by mowing, cutting, or removing hay or grass thereon or therefrom, or grazing livestock thereon, unless he has an application pending for leasing the lands or the lands are then leased to any other person.

2. Knowingly extracts or removes oil, gas, coal, mineral, earth, rock, fertilizer or fossils of any kind or description therefrom.

3. Knowingly without right injures or removes any building, fence or improvements on state lands, or unlawfully occupies, plows or cultivates any of the lands.

4. With criminal negligence exposes growing trees, shrubs or undergrowth standing on state lands to danger or destruction by fire.

QUESTIONS PRESENTED:

1. Do people have to know that they are on state land in order to be committing trespass? For example, is it a trespass if they are not aware they are on state land but are aware that they are doing something without permission from the owner?

2. Is it necessary that the land be posted or that the trespasser be previously informed of the violation in order to prove that knowledge of the illegality of the act existed?

3. Can there be citations with associated fines issued under the present statutes without proof of knowledge or intent to trespass if an appropriate fine schedule were developed?

4. Are people guilty of trespass if they damage state land without removing or extracting any product? For example, through the use of all terrain vehicles or unauthorized dumping on state lands.

DISCUSSION:

1. Under common law, which is the law of Arizona unless inconsistent with the constitution or statutes, A.R.S. section 1-201, any unauthorized physical presence on another's property is a "trespass". State ex rel. Purcell v. Superior Court, 111 Ariz. 582 (1975). Whether or not the person only inadvertently or innocently sets foot on another's property, he is trespassing in the strict sense of the term. These types of trespasses do not usually cause any injury to the property or to the property's owner. What happens after the entry, as well as the trespasser's knowledge, intent and motivation, are immaterial to the fact of the trespass and are considered only as aggravating factors. If the trespasser does injure the property or the property owner, the owner has the right to bring a civil action against the trespasser for damages. In addition the state deems some acts of trespass so flagrant that it prescribes criminal sanctions for violations. A.R.S. sections 13-1502, 13-1503, 13-1504 and 37-501.

These statutes and principles of law apply to private land, but they apply to trespasses on state land as well. With respect to its own lands the government has the rights of an ordinary "proprietor" to maintain its possession and to prosecute trespassers. U.S. v. West, 232 F.2d. 694, cert. den. 352 U.S. 834 (9 Cir., 1956). The state may, therefore, sue trespassers for damages, assuming damage is done, as well as seek enforcement of criminal trespass statutes for those criminal trespass acts specifically enumerated in A.R.S. sections 13-1502, 13-1503, 13-1504 and 37-501, if they occur on state land.

With respect to criminal trespass a person must "knowingly" commit the proscribed act to violate the law. This means that he must know that the facts exist which bring the act within the provisions of the statutes. For example, under A.R.S. section 37-501, paragraph 1 the state would have to show that the alleged trespasser knew that he committed the proscribed act on state land that he was not leasing or applying to lease. The state would not have to show that he knew the act was unlawful. A.R.S. section 1-215, paragraph 12, cf., A.R.S. section 13-105, paragraph 6, subdivision (b).

The related offense, not specifically termed "trespass", of exposing live trees and plants on state lands to fire, A.R.S. section 37-501, paragraph 4, requires the mental state of "criminal negligence". As defined for purposes of the criminal code:

> (d) "Criminal negligence" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(A.R.S. section 13-105, paragraph 6.)

Whether the law would require a reasonable person to know if he was on state land when exposing trees and plants to fire depends entirely on the factual circumstances and must be considered on a case-by-case basis.

To summarize, if a person knows he is doing something without permission of the landowner without specific knowledge that the state owns the land, he is committing a civil trespass, and the state could bring legal action against him, but recovery of damages would depend on the aggravating facts of the case. Criminal prosecution would depend on the person's committing the specifically prohibited acts with the required state of mind.

2. If evidence of knowledge is required in a civil or criminal action against a trespasser, the normal method is to show that the land was posted or that the trespasser was informed. It is conceivable that the required knowledge could be transmitted in another manner in unusual circumstances, but it would depend on specific facts and can only be considered on a case-by-case basis. In the case of third degree criminal trespass, however, A.R.S. section 13-1502, subsection A, paragraph 1 specifically requires posting or a request to leave as a condition for prosecution.

3. Citations and fines are sanctions imposed for violations of criminal law. Frazier v. Terrill, 65 Ariz. 131, (1946). The existing criminal trespass statutes discussed above prescribe the mental state required for violations and also prescribe the penalties for violations, including the applicable fines. A.R.S. sections 13-802 and 13-803. No administrative schedule of citations and fines may supersede or conflict with the statutory sanctions.

4. As explained in the response to question no. 1 above, the act of trespass consists of merely crossing the boundary line without authorization. Civil trespass does not depend on extracting or removing anything from the land. The occurrences after entry are aggravating factors that are considered in assessing damages. The damage may be minimal which the law will not recompense ("de minimis non curat lex"), but if the harm is great enough, any type of damage done to the land may be recovered.

FACT SITUATION B:

A.R.S. section 37-502 provides that:

> A. Whoever commits any trespass upon state lands as defined by section 37-501 is also liable in a civil action brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by the trespass, if the trespass was wilful, but for single damages only if casual or involuntary.

A.R.S. section 12-542 provides that:

> Except as provided in section 12-551 there shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions:
>
> * * *
>
> 3. For trespass for injury done to the estate or the property of another.

A.R.S. section 12-510 provides that:

> The state shall not be barred by the limitations of actions prescribed in this chapter.

The state was informed of an alleged trespass violation in 1980. _____ Sand and Gravel Company allegedly removed sand and gravel from state trust lands during 1976 and possibly early 1977. The attorney general's office was not informed of the situation until 1980. In an attorney general memo dated October 6, 1982 responding to the matter, the attorney general's office stated that at that point in time the state land department could not act on this matter due to the statute of limitations. The limitation mentioned in the

memo was two years in length, making it appear that the case was a civil matter, but this isn't clear.

QUESTIONS PRESENTED:

1. In light of A.R.S. sections 12-510 and 12-542, is the state precluded from civil recovery for damages from a trespasser under A.R.S. section 37-502 if more than two years have passed since actual discovery of the offense?

2. If the two year limitation does apply to the state in its efforts to recover civil damages from a trespasser, when does the two year period commence? For example, does the period begin when the damage occurred, upon discovery of the damage by the state, upon identification of the trespasser or at some other time (if not all occurring at the same time)?

3. If the two year limitation applies to the state land department in its efforts to recover civil damages from a trespasser, specifically what must the state do prior to the expiration of the two year period in order to protect its ability to recover damages?

DISCUSSION:

1. A.R.S. section 12-510 codifies the common law principle "nullum tempus occurrit regi" - time does not run against the king. The king's - or the public's - interest will not be jeopardized because of the bureaucrat's lack of diligence in protecting public property and rights. Several states, including Arizona, limit the application of nullum tempus to those cases involving the state's sovereign, public or governmental rights and powers as distinguished from cases where the state is exercising a private or proprietary right. See City of Bisbee v. Cochise County, 52 Ariz. 1 (1938); Board of Regents v. City of Tempe, 88 Ariz. 299 (1960); State ex rel., etc. v. Sergent, Hauskins & Beckwith, 27 Ariz. App. 469 (1976). If the state goes into business or asserts a pecuniary or proprietary right, it has the same status with regard to the statutes of limitations as any private suitor. The inquiry, therefore, is whether the state in a particular case is or would be acting in its character as a sovereign or as a proprietor.

The State of Arizona can obtain and "own" state lands in a number of ways, and how it acquired the land, and for what purpose, usually determines whether the land ownership is considered sovereign or proprietary. For example:

- Property acquired by operation of eminent domain is sovereign property and the statute of limitations does not apply. Cracchiolo v. State, 6 Ariz. App. 597 (1968).

- When Arizona became a state, it acquired title to navigable streambeds through operation of the common law principle that the sovereign owns the land underlying navigable waters. This land is sovereign land, and the state is not precluded by the statute of limitations from asserting its claims to this land, as it is currently in the process of doing.

- When property taxes on land become delinquent and there is no buyer at a tax sale, the tax lien may be "struck off" to the state for future resale. A.R.S. sections 42-390 and 42-401. During this time the state holds the tax lien on the land in its governmental capacity since it is acting solely in aid of the various taxing jurisdictions. Bigler v. Graham County, 128 Ariz. 474 (App. 1981); Arizona Title etc. Co. v. State of Arizona, 60 Ariz. 555 (1943).

- The state is authorized by the state constitution to "engage in industrial pursuits." Article II, section 34, Constitution of Arizona. If the state were to acquire land for such an industrial pursuit, it would be held in a proprietary capacity, subject to the statute of limitations. Murphy v. State, 65 Ariz. 338, P. (1947).

- On statehood the United States granted lands to Arizona to be held in trust for public schools, universities and other public institutions and purposes. Other lands may be acquired from other sources to be held in trust for public benefit. See, e.g., A.R.S. sections 37-521 et seq. which list lands and property held in trust for common schools, universities, normal schools, agricultural and mechanical colleges, school of mines, legislative, executive and judicial public buildings, etc. These lands that are held in trust, as well as lands acquired as proceeds from the original trust res, are held in a proprietary capacity, subject to the normal statutes of limitations. Murphy v. State, supra.

An important exception to the sovereign - proprietary dichotomy may exist in one instance. The Arizona court of appeals has held that the statute of limitations for acquiring title by adverse possession does not apply to state-owned land, apparently without regard to the nature of the land. Pretzer v. Lassen, 13 Ariz. App. 553 (1971). This principle protects all state land from squatters. The state supreme court, however, has not ruled on whether adverse possession applies to proprietary state land, and the court of appeals may have simply made an overbroad application of nullum tempus.

2. A cause of action accrues when the state knew or in the exercise of reasonable diligence should have known of the trespass, i.e., when the state is first able to sue. Sato v. Van Denburgh, 123 Ariz. 225 (1979). In the case of a trespass that continues over a period of time, as described in the given facts, the statute of limitations begins with the last trespass, and damages may be recovered for all of the statutory period before commencement of the action. Garcia v. Sumrall, 58 Ariz. 526 (1942).

3. The statute of limitations requires that the action be "commenced and prosecuted within two years . . . ". A.R.S. section 12-542, cf. sections 12-541, 12-543, etc. The Arizona courts hold that an action is "commenced" by filing a complaint within the prescribed time. Thereafter, the action must be prosecuted with reasonable diligence. (Cf. 16 A.R.S. Rules of Civil Procedure, rule 6(f) providing for service of summons up to one year after filing the complaint.) The case need not be completed within two years. Taylor v. Superior Court, 13 Ariz. App. 52 (1970). The two-year deadline is specifically for filing the complaint. It is important to note that only those parties brought into the action within the statute of limitations will be allowed. An amended complaint will not be allowed to thereafter bring in new parties as to whom the statute of limitations has already expired. Hughes Air Corp. v. Maricopa County Superior Court, 114 Ariz. 412 (1977).

FACT SITUATION C:

Section 28 of the Enabling Act provides that:

> All lands, leaseholds, timber and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.

A.R.S. section 37-285, subsections A and B provide that:

> A. An agricultural, grazing, commercial or homesite lease shall provide for an annual rental of not less than the appraised rental value of the land or forage for grazing, and never less than five cents per acre per annum. The rental provided in such leases is subject to adjustment each year.
>
> B. A grazing lease shall provide for an annual rental of the grazing land as computed under this subsection. All grazing land shall be classified and appraised on the basis of its annual carrying capacity. The annual rental rate for grazing land shall be the amount determined by multiplying the carrying capacity of the lands by the annual rental rate per animal unit month. The rental rate per animal unit month is determined by adding the beef price index and the forage value index, subtracting the prices paid index, dividing by one hundred and multiplying by a base fee of ninety-five cents.

The state land department conducts appraisals of any land being considered for sale. However, grazing leases are executed without ensuring that lease rates meet the appraised or market value requirement of the Enabling Act.

QUESTION PRESENTED:

Does the formula specified in A.R.S. section 37-185, subsection B conflict with section 28 of the Enabling Act which requires full consideraton of value? For example, is the state land department not meeting the Enabling Act requirement to obtain true value by relying on the formula in A.R.S. section 37-185, subsection B to determine the grazing fee level since this formula includes allowances for beef prices?

DISCUSSION:

In granting land to the State of Arizona in trust for schools and other public institutions the United States intended to ensure that the trust beneficiaries receive appropriate revenues, although not necessarily the maximum revenues in every case. Gladden Farms, Inc. v. State, 129 Ariz. 516 (1981). Accordingly the Enabling Act contains provisions, such as cited in the given facts, requiring true value or the highest bid for the sale or lease of the land. Nevertheless, in 1936 the Enabling Act was amended by act of Congress (49 Stat. 1477, c. 517) and again in 1951 (65 Stat. 51, c. 120) to provide:

> Nothing herein contained shall prevent: (1) the leasing of any of the lands referred to in this section, in such manner as the Legislature of the State of Arizona may prescribe, for grazing, agricultural, commercial, and domestic purposes, for a term of ten years or less. . . .

This provision gave the legislature full control over the manner of leasing state land for grazing for terms of up to ten years. This may reflect a need for flexibility caused by the effects of the depression.

Article X of the State Constitution reaffirms section 28 of the Enabling Act and adds a clarification that the exception quoted above contained in section 28 of the Enabling Act and Article X, section 3, Constitution of Arizona, applies to any contrary provision in section 28 and Article X, including the provisions requiring "true" value or the highest bid for grazing leases.

In 1980 the auditor general issued a report of a performance audit of the state land department which found that Arizona state grazing fees were abnormally low compared with the other western states and recommended a substantial increase in the fee. Specific consideration was suggested for the fee formula used by the United States bureau of land management in determining the federal grazing fee. The federal formula was subsequently adopted by the legislature and enacted into law in 1982. A.R.S. section 37-285, as amended by Laws 1982, chapter 189, section 3, quoted above. The formula uses three indices developed by the federal government which reflect the current 1) beef cattle sale price, 2) the pasturage value of private land and 3) agricultural costs, multiplied by a base fee per head. The federal base fee was $1.23. The state adopted a $.95 base fee, presumably reflecting less financial, improvement and development services available to state grazing lessees compared with federal grazing lessees.

Based on section 28 of the Enabling Act and Article X, section 3, Constitution of Arizona, giving the legislature completed authority to prescribe the manner of leasing state land for grazing purposes, A.R.S. section 37-185, subsection B does not violate either the letter or the spirit of the Enabling Act requiring appropriate revenues to the state trust beneficiaries.

cc: William Thomson

APPENDIX III

METHODOLOGY FOR PROJECTING REVENUE

FROM

TRESPASS CASES

APPENDIX III

METHODOLOGY FOR PROJECTING REVENUE FROM TRESPASS CASES

Auditor General staff estimated the amount of potential damage revenues from inactive trespass cases, using a statistically valid sample of the 255 inactive trespass cases as of February 1987. The sample included 116 cases. Preliminary review resulted in the deletion of 42 cases: 20 cases were deleted by Auditor General staff because SLD had reached a settlement with the trespassers, 18 cases had no revenue potential because no responsible party had been identified, and 4 cases had a portion of the fine collected. Thus, 74 cases (63.7 percent of the original sample) were found to have revenue potential. Projecting this percentage to the entire population indicates that 162 (255 X .637) of the 255 inactive cases could produce revenue for SLD.

However, 40 of the 74 cases with revenue potential are older than two years. Because Arizona law requires civil actions to be initiated within two years of a violation's discovery, SLD may be able to recover damages only in cases that are less than two years old. Of the 74 sample cases, 34, or 29 percent of the original sample, were less than two years old as of February 20, 1987. Projecting this percentage to the entire population indicates that 74 cases (255 X .29) may have revenue that SLD can realistically collect.

The sample was used to project the amount of fines that could be collected from inactive cases. The sample included 15 cases for which SLD estimated fines for damage inflicted on the land. The estimated damages for those cases totaled $54,565, or an average of $3,637 per case. Using this average to project revenues for the 162 cases with revenue potential, a total of $589,194 (162 X $3,637) in potential revenues could be collected by the Land Department. Limiting damages to cases less than two years results in estimated damages of $269,138 (74 X $3,637).